



**CITY OF NEWPORT BEACH**  
**COMMUNITY DEVELOPMENT DEPARTMENT**

100 Civic Center Drive  
Newport Beach, California 92660

949 644-3200  
[newportbeachca.gov/communitydevelopment](http://newportbeachca.gov/communitydevelopment)

## Memorandum

**To:** Planning Commission  
**From:** Jaime Murillo, Senior Planner  
**Date:** February 20, 2019  
**Re:** **Agenda Item 2 (Newport Crossings Mixed-Use Project)**  
Subsequent comments, and revisions to mitigation measures and  
Draft Resolution No. PC2019-004 certifying the Environmental  
Impact Report

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Subsequent to the distribution of the staff report, staff received follow-up comments regarding the written responses that were prepared to the comments submitted on the Draft Environmental Impact Report (DEIR). These follow up comments were from the Department of Toxic Substances Control (DTSC) and Andrew Salas of the Gabrieleno Band of Mission Indians.

### DTSC Comments and Revisions to MM HAZ-2

The comments from DTSC (Attachment A) recommended the following changes to Mitigation Measure MM HAZ-2 clarifying the type of samples to be collected and actions to be completed based on results of samples.

#### *MM HAZ-2*

*Prior to issuance of the first building permit, soil and soil vapor samples shall be collected from beneath the former Enjay Cleaners and soil samples shall be collected from beneath the proposed 0.5-acre public park site and tested for (PCE) **Volatile Organic Compounds (VOC)** and Organochlorine Pesticides (OCP), respectively. The results shall be submitted to the Orange County Health Care Agency and City Building Official. In the event that soil concentrations exceed site-specific cleanup goals, affected soils shall be removed and properly treated/disposed of. Should soil vapor concentrations exceed site-specific cleanup goals, short-term soil vapor extraction and treatment shall be performed to reduce soil vapor concentrations. **Institutional controls will be required if the soil and soil gas cannot achieve the cleanup goals for residential land use, and/or vapor mitigation measure (e.g., passive ventilation system) are implemented to protect the future building receptors.***

## Andrew Salas Comment and Revisions to MM CUL-1

The comments from Andrew Salas of the Gabrieleno Band of Mission Indians (Attachment B) recommended the following changes to Mitigation Measure MM CUL-1 to clarify a Tribes involvement and responsibility should Native American resources be encountered during project grading.

### *MM CUL-1*

*Prior to the issuance of a grading permit by the City of Newport Beach, the project applicant shall retain a qualified archaeologist to periodically monitor ground-disturbing activities onsite and provide documentation of such retention to the City of Newport Beach Community Development Director. The archaeologist shall train project construction workers on the types of archaeological resources that could be found in site soils. The archaeologist shall periodically monitor project ground-disturbing activities. **During construction activities, if Native American resources (i.e. Tribal Cultural Resources) are encountered, a Cultural Resource Monitoring and Discovery Plan (CRMDP) shall be created and implemented to lay out the proposed personnel, methods, and avoidance/recovery framework for tribal cultural resources monitoring and evaluation activities within the project area. A consulting Native American tribe shall be retained and compensated as a consultant/monitor for the project site from the time of discovery to the completion of ground disturbing activities to monitor grading and excavation activities.** If archaeological resources are encountered, all construction work within 50 feet of the find shall cease, and the archaeologist shall assess the find for importance and whether preservation in place without impacts is feasible. Construction activities may continue in other areas. If, in consultation with the City **and affected Native American tribe (as deemed necessary)**, the discovery is determined to not be important, work will be permitted to continue in the area. Any resource that is not Native American in origin and that cannot be preserved in place shall be curated at a public, nonprofit institution with a research interest in the materials, such as the South Central Coastal Information Center at California State University, Fullerton.*

## Revised Documents as a Result of Comments

After reviewing the recommendations, both the applicant and staff agreed to the revisions recommended by both commenters. These revisions to the mitigation measures do not change the findings, conclusions, or recommendations of the Draft EIR and do not result in the identification of any new or increased significant impacts. Also, the revisions do not constitute the type of significant new information that requires recirculation of the Draft EIR for further public comment under CEQA Guidelines Section 15088.5.

The revisions to Mitigation Measures MM HAZ-2 and MM CUL-1 require changes to the Final Environmental Impact Report (FEIR) document that includes the formal Response to Comments and Revisions to the DEIR. The revised FEIR document is included as Attachment C.

The revisions to the mitigation measures also require changes to the Draft Resolution No. PC2019-004 certifying the EIR for the project. Specifically, the changes affect the CEQA Findings of Fact (Exhibit B of Draft Resolution) and the Mitigation Monitoring and Reporting Program (MMRP) (Exhibit C of the Draft Resolution). The revised Draft Resolution No. PC2019-004 is included as Attachment No. D.

#### Attachments

- A. Department of Toxic Substances Control (DTS) Subsequent Comments
- B. Andrew Salas (Gabrieleno Band of Mission Indians) Subsequent Comments
- C. Final EIR- Response to Comments and Revisions to DEIR
- D. Revised Draft Resolution No. PC2019-004 Certifying EIR

# **ATTACHMENT A**

Department of Toxic Substances Control  
Comment Letter





Jared Blumenfeld  
Secretary for  
Environmental Protection



## Department of Toxic Substances Control

Meredith Williams, Ph.D.  
Acting Director  
5796 Corporate Avenue  
Cypress, California 90630



Gavin Newsom  
Governor

February 14, 2019

Mr. Jaime Murillo  
Senior Planner  
City of Newport Beach  
Community Development Department  
100 Civic Center Drive  
Newport Beach, California 92660

RESPONSE TO COMMENTS FOR NEWPORT CROSSING MIXED USE PROJECT  
(PA 2017-107), NEWPORT BEACH, CALIFORNIA  
STATE CLEARINGHOUSE #2017101067

Dear Mr. Murillo:

The Department of Toxic Substances Control (DTSC) appreciates your Response to Comments, dated February 11, 2019, for the Newport Crossing Mixed Use Project (Project), located in Newport Beach, California.

Based on the review of the Response to Comments, DTSC is uncertain what the proposed remedial goals are for the Project and whether a land use covenant (LUC) would be a selected remedy if the site is not cleaned to meet remedial goals for residential land use (unrestricted land use).

DTSC recommends that Mitigation Measures MM HAZ-2 be revised as follows: (Changes made to the MM HAZ-2 are identified in strikethrough to indicate deletions and bold underlined text to signify additions.)

"Prior to issuance of the first building permit, soil and soil vapor samples shall be collected from beneath the former Enjay Cleaners and soil samples shall be collected from beneath the proposed 0.5-acre public park site and tested for **PCE Volatile Organic Compounds (VOCs)** and OCPs, respectively. The results shall be submitted to the Orange County Health Care Agency and City Building Official. In the event that soil concentrations exceed site specific cleanup goals, affected soils shall be removed and properly treated/disposed of. Should soil vapor concentrations exceed site specific

Mr. Jaime Murillo  
February 14, 2019  
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cleanup goals, short-term soil vapor extraction and treatment shall be performed to reduce soil vapor concentrations. **Institutional controls will be required if the soil and soil gas cannot achieve the cleanup goals for residential land use, and/or vapor mitigation measures (e.g., passive ventilation system) are implemented to protect the future building receptors.**

If final determination of the site does not allow unrestricted land use or requires mitigation or long-term monitoring, a land use covenant is required. In this case, DTSC recommends a land use agreement to be executed between DTSC and the Project site owner(s). For further assistance with the Project site, please contact Maryam Tasnif-Abbasi, DTSC's Voluntary Cleanup Coordinator, at (714) 484-5489 or submit a Voluntary Oversight Agreement (<https://www.dtsc.ca.gov/SiteCleanup/Brownfields/voluntary-agreements-guide.cfm>).

DTSC requests a copy of the document(s) determining that the project site has been remediated to meet its cleanup goals.

DTSC appreciates your Response to Comments and looks forward to providing any assistance to ensure the Project site protects human health and the environment.

Should you have any questions regarding this letter, please contact me at (714) 484-5392 or via email at [ChiaRin.Yen@dtsc.ca.gov](mailto:ChiaRin.Yen@dtsc.ca.gov).

Sincerely,



Chia Rin Yen  
Environmental Scientist  
Brownfields Restoration and School Evaluation Branch  
Site Mitigation and Restoration Program

ar/cy/yg

cc: See Next Page

Mr. Jaime Murillo  
February 14, 2019  
Page 3

cc: Governor's Office of Planning and Research (via e-mail)  
State Clearinghouse  
P.O. Box 3044  
Sacramento, California 95812-3044  
[State.clearinghouse@opr.ca.gov](mailto:State.clearinghouse@opr.ca.gov)

Mr. Dave Kereazis (via e-mail)  
Office of Planning & Environmental Analysis  
Department of Toxic Substances Control  
[Dave.Kereazis@dtsc.ca.gov](mailto:Dave.Kereazis@dtsc.ca.gov)

Ms. Yolanda M. Garza (via e-mail)  
Brownfields Restoration and School Evaluation Branch  
Site Mitigation and Restoration Program  
[Yolanda.Garza@dtsc.ca.gov](mailto:Yolanda.Garza@dtsc.ca.gov)

## **ATTACHMENT B**

Andrew Salas (Gabrieleno Band of Mission  
Indians) Comments

**From:** Matthew Teutimez <Matthew.Teutimez@gabrielenoindians.org>  
**Sent:** Tuesday, February 19, 2019 6:15 PM  
**To:** Murillo, Jaime  
**Cc:** Administration Gabrieleno Indians; Administration KNRM; Andrew Salas; Andy Salas  
**Subject:** Re: Newport Crossings Mixed Use Project - Revised mitigation

Mr. Murillo,

We are in concurrence with the revised language. Thank you for your time and effort in this matter.

Best,

Matt Teutimez

On Tue, Feb 19, 2019 at 5:37 PM Murillo, Jaime <[JMurillo@newportbeachca.gov](mailto:JMurillo@newportbeachca.gov)> wrote:

Hi Matthew,

As I mentioned on the phone, the applicant has agreed to the Mitigation Measure per your suggestions. Per our discussion, you also agreed with the revised language below (highlighted) to remove any tribe preference in the MM.

Thanks,

Jaime

CUL-1 Prior to the issuance of a grading permit by the City of Newport Beach, the project applicant shall retain a qualified archaeologist to periodically monitor ground-disturbing activities onsite and provide documentation of such retention to the City of Newport Beach Community Development Director. The archaeologist shall train project construction workers on the types of archaeological resources that could be found in site soils. The archaeologist shall periodically monitor project ground-disturbing activities. **During construction activities, if Native American resources (i.e. Tribal Cultural Resources) are encountered, a Cultural Resource Monitoring and Discovery Plan (CRMDP) shall be created and implemented to lay out the proposed personnel, methods, and avoidance/recovery framework for tribal cultural resources monitoring and evaluation activities within the project area. A consulting Native American tribe shall be retained and compensated as a consultant/monitor for the project site from the time of discovery to the completion of ground disturbing activities to monitor grading and excavation activities.** If archaeological resources are encountered, all construction work within 50 feet of the find shall cease, and the archaeologist shall assess the find for importance and whether preservation in place without impacts is feasible. Construction activities may

continue in other areas. If, in consultation with the City and affected Native American tribe (as deemed necessary), the discovery is determined to not be important, work will be permitted to continue in the area. Any resource that is not Native American in origin and that cannot be preserved in place shall be curated at a public, nonprofit institution with a research interest in the materials, such as the South Central Coastal Information Center at California State University, Fullerton.

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**From:** Matsler, Sean <[SMatsler@coxcastle.com](mailto:SMatsler@coxcastle.com)>  
**Sent:** Tuesday, February 19, 2019 5:22 PM  
**To:** Murillo, Jaime <[JMurillo@newportbeachca.gov](mailto:JMurillo@newportbeachca.gov)>  
**Cc:** 'Dan Vittone (Starboard Realty Partners)' <[dan@starboardrp.com](mailto:dan@starboardrp.com)>  
**Subject:** RE: Newport Crossings Mixed Use Project - Revised mitigation

Jaime – The applicant agrees to the revision to MM CUL-1 as shown below.

**Sean Matsler**



direct: 949.260.4652

[smatsler@coxcastle.com](mailto:smatsler@coxcastle.com) | [vcard](#) | [bio](#) | [website](#)

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**From:** Murillo, Jaime [<mailto:JMurillo@newportbeachca.gov>]  
**Sent:** Tuesday, February 19, 2019 4:52 PM  
**To:** Matsler, Sean  
**Subject:** FW: Newport Crossings Mixed Use Project - Revised mitigation

Give me a call

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**From:** Administration Gabrieleno <[admin@gabrielenoindians.org](mailto:admin@gabrielenoindians.org)>  
**Sent:** Tuesday, February 19, 2019 4:51 PM

**To:** Murillo, Jaime <[JMurillo@newportbeachca.gov](mailto:JMurillo@newportbeachca.gov)>; Andy Salas <[chairman@gabrielenoindians.org](mailto:chairman@gabrielenoindians.org)>;  
[gabrielenoindians@yahoo.com](mailto:gabrielenoindians@yahoo.com); Matthew Teutimez <[Matthew.Teutimez@gabrielenoindians.org](mailto:Matthew.Teutimez@gabrielenoindians.org)>  
**Subject:** Newport Crossings Mixed Use Project - Revised mitigation

Mr. Murillo,

Per our phone discussion today, below is the mitigation text for CUL-1. We have revised the language and included our additional language (**in bold**) that we request to include into the Tribal Cultural Resource Section of the EIR document for protective mitigation purposes.

CUL-1 Prior to the issuance of a grading permit by the City of Newport Beach, the project applicant shall retain a qualified archaeologist to periodically monitor ground-disturbing activities onsite and provide documentation of such retention to the City of Newport Beach Community Development Director. The archaeologist shall train project construction workers on the types of archaeological resources that could be found in site soils. The archaeologist shall periodically monitor project ground-disturbing activities. **During construction activities, if Native American resources (i.e. Tribal Cultural Resources) are encountered, a Cultural Resource Monitoring and Discovery Plan (CRMDP) shall be created and implemented to lay out the proposed personnel, methods, and avoidance/recovery framework for tribal cultural resources monitoring and evaluation activities within the project area. The consulting Native American tribe (i.e., Gabrieleño Band of Mission Indians-Kizh Nation) will be retained and compensated as a consultant/monitor for the project site from the time of discovery to the completion of ground disturbing activities to monitor grading and excavation activities.** If archaeological resources are encountered, all construction work within 50 feet of the find shall cease, and the archaeologist shall assess the find for importance and whether preservation in place without impacts is feasible. Construction activities may continue in other areas. If, in consultation with the City and affected Native American tribe (as deemed necessary), the discovery is determined to not be important, work will be permitted to continue in the area. Any resource that is not Native American in origin and that cannot be preserved in place shall be curated at a public, nonprofit institution with a research interest in the materials, such as the South Central Coastal Information Center at California State University, Fullerton.

Thank you for your time and understanding in this matter.

Admin Specialist  
Gabrieleno Band of Mission Indians - Kizh Nation  
PO Box 393  
Covina, CA 91723

Office: 844-390-0787

website: [www.gabrielenoindians.org](http://www.gabrielenoindians.org)



Attachments area

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**Matthew R. Teutimez**

**Tribal Biologist**

910 N. Citrus Ave

Covina, CA 91722

Toll Free: (844) 390-0787

Local: (626) 521-5827

Cell: (714) 872-3474

Website: [www.gabrielenoindians.org](http://www.gabrielenoindians.org)





**From:** Murillo, Jaime  
**Sent:** Tuesday, February 19, 2019 12:54 PM  
**To:** 'Andy Salas'  
**Cc:** Matthew Teutimez; gabrielenoindians@yahoo.com  
**Subject:** RE: AB52 Consultation - Newport Crossings Mixed Use Project

Hi Andrew,

Thank you for the emails. I will call you this afternoon to discuss further. However, please note that the City sent out a request for consultation on January 3, 2018, in compliance with AB-52 and Pub Res C §21080.3.1(d). We did not receive a response requesting consultation within the 30-day period. Therefore, pursuant to Pub Res C §21082.3(d)(3), the City has completed its noticing requirements and may take action on the certification of the EIR.

But in reviewing your comments made during the Draft EIR public review period, and comments raised by Patricia Martz, Ph. D, of the California Cultural Resource Preservation Alliance, Inc, Mitigation Measure No. CUL-1 was revised to take into account the cultural perspectives of tribes. Specifically, MM CUL-1 was revised to allow “*...representatives of cultural organizations, including traditionally-/culturally-affiliated Native American tribes (e.g., Gabrieleño Band of Mission Indians-Kizh Nation, Juaneño Band of Mission Indians Acjachemen Nation), to access the project site on a volunteer basis to monitor grading and excavation activities...*” Furthermore, the mitigation language was revised to require consultation with affected Native American tribe if archaeological resources are found.

The complete mitigation measure language with revisions is included below:

CUL-1 Prior to the issuance of a grading permit by the City of Newport Beach, the project applicant shall retain a qualified archaeologist to periodically monitor ground-disturbing activities onsite and provide documentation of such retention to the City of Newport Beach Community Development Director. The archaeologist shall train project construction workers on the types of archaeological resources that could be found in site soils. The archaeologist shall periodically monitor project ground-disturbing activities. **During construction activities, the project applicant shall allow representatives of cultural organizations, including traditionally-/culturally-affiliated Native American tribes (e.g., Gabrieleño Band of Mission Indians-Kizh Nation, Juaneno Band of Mission Indians Acjachemen Nation), to access the project site on a volunteer basis to monitor grading and excavation activities.** If archaeological resources are encountered, all construction work within 50 feet of the find shall cease, and the archaeologist shall assess the find for importance and whether preservation in place without impacts is feasible. Construction activities may continue in other areas. If, in consultation with the City **and affected Native American tribe (as deemed necessary)**, the discovery is determined to not be important, work will be permitted to continue in the area. Any resource that is not Native American in origin and that cannot be preserved in place shall be curated at a public, nonprofit institution with a research interest in the materials, such as the South Central Coastal Information Center at California State University, Fullerton.

Thanks,  
Jaime

**JAIME MURILLO, AICP**

**Community Development Department**



Senior Planner  
[jmurillo@newportbeachca.gov](mailto:jmurillo@newportbeachca.gov)  
949-644-3209

**CITY OF NEWPORT BEACH**

[100 Civic Center Drive, First Floor Bay C, Newport Beach, California 92660](https://www.newportbeachca.gov) | [newportbeachca.gov](https://www.newportbeachca.gov)

**From:** Andy Salas <[chairman@gabrielenoindians.org](mailto:chairman@gabrielenoindians.org)>

**Sent:** Monday, February 18, 2019 3:23 PM

**To:** Murillo, Jaime <[JMurillo@newportbeachca.gov](mailto:JMurillo@newportbeachca.gov)>

**Cc:** Matthew Teutimez <[Matthew.Teutimez@gabrielenoindians.org](mailto:Matthew.Teutimez@gabrielenoindians.org)>; [gabrielenoindians@yahoo.com](mailto:gabrielenoindians@yahoo.com);  
Stein, Robert <[RStein@newportbeachca.gov](mailto:RStein@newportbeachca.gov)>

**Subject:** AB52 Consultation - Newport Crossings Mixed Use Project

Mr. Murillo,

I wanted to follow up with you and request a brief meeting over the phone or in person to discuss our concerns regarding your Draft EIR document for the Newport Crossings Mixed Use Project. As you may or may not be aware, this document cannot be certified until AB-52 tribal consultation has concluded. Our Tribal Government has requested consultation, as described in your EIR document, to which as of this communication has not yet occurred. We have concerns for irreparable damage to our Tribal Cultural Resources and neither the City or its consultants can bypass this component of CEQA and AB52. I will make myself available to discuss this matter with you at your earliest convenience. I thank you for your time and understanding in this matter and I look forward to our discussion.

Please call my cell phone for the quickest response 626-926-4131.

Sincerely,  
Andrew Salas, Chairman  
Gabrieleno Band of Mission Indians - Kizh Nation  
PO Box 393  
Covina, CA 91723  
Office: 844-390-0787  
Cell: (626) 926-4131  
website: [www.gabrielenoindians.org](http://www.gabrielenoindians.org)

**From:** Andrew Salas <gabrielenoindians@yahoo.com>  
**Sent:** Saturday, February 16, 2019 8:50 AM  
**To:** Murillo, Jaime; jestrada@placeworks.com  
**Cc:** Matt Teutimez; Kizh Gabrieleno; Henrypedregon; Christina Swindall Martinez.  
Kizh Gabrieleno  
**Subject:** Re: Newport Crossings Mixed Use Project Draft EIR - Response to Comments

**Dear Mr. Murillo**

We **oppose** of the language set forth in this mitigation . It does not protect **our** cultural resources because it is only written pertaining to the scientific perspective and does not take into account our cultural perspective or include protective measures for our cultural resources under the law AB52

**SEC. 4.** Section 21074 is added to the Public Resources Code, to read:

**21074.** (a) *“Tribal cultural resources”* are either of the following:

(1) Sites, features, places, cultural landscapes, sacred places, and objects with ***cultural value to a California Native American tribe***

We will provide our mitigation to protect **our** cultural resources

## **Sacred Landscape**

Posted on **September 9, 2013** by **Ojibwa**

All humans have a cognitive map which provides them with a spatial analysis of their world, both natural and human-made. Traditionally, the cognitive maps of American Indians have been carried in the stories. Indian stories, particularly the spiritual stories and the stories of creation, focus on geography, telling what happened where and describing different places and their associations with each other.

When one knows the stories, then one has a map of the traditional tribal territory. Traditionally, this meant that a person could go someplace new and know, because of the stories, not only the route, but also the different geographic features which would be encountered on the trip.

The European cultures which first encountered American Indians were accustomed to delineating sacred places with some type of structure or monument which would then be consecrated as sacred. These structures-churches, cemeteries, altars, etc.-were considered to be self-contained, that is, their sacred nature was contained within the space designated as sacred.

American Indians, on the other hand, tended to be animists who viewed the world around them as a living thing. Sacred places were not created by humans. While the people would sometimes designate a sacred place with a structure of some type-a pile of stones, a circle of stones, a mound or earthwork, or a chamber-often places with great sacred power did not have any human-created indications that they were sacred. People know about these places because of the stories and the songs rather than because of the structures which they had constructed.

One example of the interrelationship of sacred space, cognitive maps, and oral tradition can be seen in the Salt Trail Songs of the Nuwuvi (Southern Paiute) which describe both a physical and spiritual landscape. This includes physical features such as oceans and deserts, and spiritual features including life and death. The songs describe ancient village sites, gathering sites for medicinal plants and salt, historic events, trade routes, and sacred areas. The 142-song cycle assists the deceased in their sacred journey.

For American Indians sacred places do not exist in isolation: they are connected to other sacred places and these connections enhance the spiritual power of an area. The connections between sacred places are explained in the stories and in the songs.

It is not just "places" that are spiritually connected, but also the "people" who are associated with the places: the plants, the animals, the rocks. Again, the stories, songs, and ceremonies explain the nature and meaning of these connections.

Beginning in the nineteenth century, archaeologists began their scientific attempts to recreate and understand American Indian past. With regard to spiritual sites, they brought with them a European bias based in classical archaeology: they looked for sacred sites in structures created by humans and they considered these sites as self-contained, that is, not connected with other human-made or natural features in the area. The archaeologists did not know the native stories and often dismissed them as meaningless with regard to their work as archaeologists.

One of the places where archaeologists have become more aware of the larger sacred landscape is in Chaco Canyon, New Mexico. There are eight major sites here-very large apartment-type complexes known as pueblos, each with several hundred rooms-which can be studied independently. However, the discovery of the ancient road system connecting the Chaco Canyon pueblos with other sites outside of the canyon shows that Chaco must be understood as a larger complex. Furthermore, the discovery that the sites in the region often have an astronomical orientation adds an additional dimension to the picture: Chaco represents a very large ritual landscape.

The astronomical orientation found at Chaco Canyon can also be seen in other sites around North America, including Woodhenge at Cahokia, Illinois, the many medicine wheels found on the northern Plains, and the stone chambers found in New England. As with Chaco Canyon, these sites may be studied alone, but they are best understood as a part of a larger spiritual and ritual landscape. Unfortunately, many of the oral traditions (stories and songs) which could provide a better explanation of these landscapes have been lost. Archaeologists, however, must pay attention to the larger landscape in order to understand the role which these sites played in the ancient world. Archaeologists must get past their Eurocentric bias regarding sacred sites and attempt to look at them through Native American and animistic eyes.

***“Archaeologists, however, must pay attention to the larger landscape in order to understand the role which these sites played in the ancient world. Archaeologists must get past their Eurocentric bias regarding sacred sites and attempt to look at them through Native American and animistic eyes.”***

*This was for similar language on a different project . However our legal weighed in to protect our cultural resources under the law.*

Good morning Chairman,

I am the person requesting that mitigation for Tribal Cultural Resources (TCRs) be separated from Archaeological resources. I am not suggesting that lead agencies MUST use the sample measures in the OPR document, but for projects where there is no tribal input, those suggested measures can provide a beginning for TCRs as distinctly different from archaeology.

One of our comments on environmental documents is addressing a separate Tribal Cultural Resources section and separate mitigation measures that include tribal input under AB-52 consultation. The TCR section is the ideal place to document consultation and thoroughly analyze and address the impacts to TCRs specifically. Ideally, I can read through the mitigation and know that tribal input was incorporated into the measures. Often, lumping everything together in under Archaeology results in confusion about what impacts are being addressed and what mitigation is required.

Also, the use of archaeological language (curation, data recovery) can be problematic for some tribes so we are emphasizing the differences between archaeological resources and tribal cultural resources in how mitigation is applied.

I hope this clears up the reason that Mr. Keeler got the comments he did on the environmental document for his project.

Sincerely,  
Gayle

Gayle Totton, M.A., Ph.D.  
Associate Governmental Program Analyst  
Native American Heritage Commission

## Sacred Landscape

Posted on [September 9, 2013](#) by [Ojibwa](#)

All humans have a cognitive map which provides them with a spatial analysis of their world, both natural and human-made. Traditionally, the cognitive maps of American Indians have been carried in the stories. Indian stories, particularly the spiritual stories and the stories of creation, focus on geography, telling what happened where and describing different places and their associations with each other. When one knows the stories, then one has a map of the traditional tribal territory. Traditionally, this

meant that a person could go someplace new and know, because of the stories, not only the route, but also the different geographic features which would be encountered on the trip.

The European cultures which first encountered American Indians were accustomed to delineating sacred places with some type of structure or monument which would then be consecrated as sacred. These structures-churches, cemeteries, altars, etc.-were considered to be self-contained, that is, their sacred nature was contained within the space designated as sacred.

American Indians, on the other hand, tended to be animists who viewed the world around them as a living thing. Sacred places were not created by humans. While the people would sometimes designate a sacred place with a structure of some type-a pile of stones, a circle of stones, a mound or earthwork, or a chamber-often places with great sacred power did not have any human-created indications that they were sacred. People know about these places because of the stories and the songs rather than because of the structures which they had constructed.

One example of the interrelationship of sacred space, cognitive maps, and oral tradition can be seen in the Salt Trail Songs of the Nuwuvi (Southern Paiute) which describe both a physical and spiritual landscape. This includes physical features such as oceans and deserts, and spiritual features including life and death. The songs describe ancient village sites, gathering sites for medicinal plants and salt, historic events, trade routes, and sacred areas. The 142-song cycle assists the deceased in their sacred journey.

For American Indians sacred places do not exist in isolation: they are connected to other sacred places and these connections enhance the spiritual power of an area. The connections between sacred places are explained in the stories and in the songs.

It is not just "places" that are spiritually connected, but also the "people" who are associated with the places: the plants, the animals, the rocks. Again, the stories, songs, and ceremonies explain the nature and meaning of these connections.

Beginning in the nineteenth century, archaeologists began their scientific attempts to recreate and understand American Indian past. With regard to spiritual sites, they brought with them a European bias based in classical archaeology: they looked for sacred sites in structures created by humans and they considered these sites as self-contained, that is, not connected with other human-made or natural features in the area. The archaeologists did not know the native stories and often dismissed them as meaningless with regard to their work as archaeologists.

One of the places where archaeologists have become more aware of the larger sacred landscape is in Chaco Canyon, New Mexico. There are eight major sites here-very large apartment-type complexes known as pueblos, each with several hundred rooms-which can be studied independently. However, the discovery of the ancient road system connecting the Chaco Canyon pueblos with other sites outside of the canyon shows that Chaco must be understood as a larger complex. Furthermore, the discovery that the sites in the region often have an astronomical orientation adds an additional dimension to the picture: Chaco represents a very large ritual landscape.

The astronomical orientation found at Chaco Canyon can also be seen in other sites around North America, including Woodhenge at Cahokia, Illinois, the many medicine wheels found on the northern Plains, and the stone chambers found in New England. As with Chaco Canyon, these sites may be studied alone, but they are best understood as a part of a larger spiritual and ritual landscape. Unfortunately, many of the oral traditions (stories and songs) which could provide a better explanation of these landscapes have been lost. Archaeologists, however, must pay attention to the larger landscape in order to understand the role which these sites played in the ancient world. Archaeologists must get past their Eurocentric bias regarding sacred sites and attempt to look at them through Native American and animistic eyes.

Sent from my iPhone

On Feb 11, 2019, at 7:40 PM, Jorge Estrada <[jestrada@placeworks.com](mailto:jestrada@placeworks.com)> wrote:

Dear Commenter,

Pursuant to the provisions of CEQA Guidelines Section 15088, attached please find the City's responses to the comments raised in your letter. Specific comments in your letter are given letters and numbers for reference purposes.

Also enclosed is a table that lists the agencies and persons that submitted comment letters on the Newport Crossings Mixed Use Project Draft EIR during the public review period. The City's responses to those comment letters have been sent directly to each of the commenting agencies and persons.

Finally, please note that the completed Newport Crossings Mixed Use Project Final EIR will be posted on the City's website as soon as possible and prior to the upcoming Newport Beach Planning Commission meeting scheduled for February 21, 2019.

If you have any questions or need additional information, please contact Jaime Murillo, Senior Planner, at 949-644-3209 or via email at [JMurillo@newportbeachca.gov](mailto:JMurillo@newportbeachca.gov).

Regards,

**JORGE ESTRADA**  
Senior Associate

<[image002.jpg](#)>

3 MacArthur Place, Suite 1100 | Santa Ana, California 92707  
714.966.9220 | [jestrada@placeworks.com](mailto:jestrada@placeworks.com) | [placeworks.com](http://placeworks.com)

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<RTC Transmittal\_GabrieleñoBandKizh.pdf>

# **ATTACHMENT C**

Revised FEIR- Response to Comments and  
Revisions to Draft EIR

February 2019 | Final Environmental Impact Report  
State Clearinghouse No. 2017101067

# NEWPORT CROSSINGS MIXED USE PROJECT (PA2017-107)

City of Newport Beach

*Prepared for:*

**City of Newport Beach**

Contact: Jaime Murillo, Senior Planner  
100 Civic Center Drive  
Newport Beach, California 92660  
949.644.3209

*Prepared by:*

**PlaceWorks**

Contact: JoAnn C. Hadfield, Principal  
3 MacArthur Place, Suite 1100  
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- Appendix A. FAA Determination of No Hazard to Air Navigation
- Appendix B. Evaluation of Key Intersections and Roadways for 2024 With Project Conditions

## Table of Contents

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# 1. Introduction

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## 1.1 INTRODUCTION

This Final Environmental Impact Report (FEIR) has been prepared in accordance with the California Environmental Quality Act (CEQA) as amended (Public Resources Code §§ 21000 et seq.) and CEQA Guidelines (California Code of Regulations §§ 15000 et seq.).

According to the CEQA Guidelines, Section 15132, the FEIR shall consist of:

- (a) The Draft Environmental Impact Report (DEIR) or a revision of the Draft;
- (b) Comments and recommendations received on the DEIR either verbatim or in summary;
- (c) A list of persons, organizations, and public agencies comments on the DEIR;
- (d) The responses of the Lead Agency to significant environmental points raised in the review and consultation process; and
- (e) Any other information added by the Lead Agency.

This document contains responses to comments received on the DEIR for the Newport Crossing Mixed Use Project during the public review period, which began November 30, 2018, and closed, January 14, 2019. This document has been prepared in accordance with CEQA and the CEQA Guidelines and represents the independent judgment of the Lead Agency. This document and the circulated DEIR comprise the FEIR, in accordance with CEQA Guidelines, Section 15132.

## 1.2 FORMAT OF THE FEIR

This document is organized as follows:

**Section 1, Introduction.** This section describes CEQA requirements and content of this FEIR.

**Section 2, Response to Comments.** This section provides a list of agencies and interested persons commenting on the DEIR; copies of comment letters received during the public review period, and individual responses to written comments. To facilitate review of the responses, each comment letter has been reproduced and assigned a number: A-1 through A-14 for letters received from agencies and organizations, and I-1 for letters received from one individual. Individual comments have been numbered for each letter and the letter is followed by responses with references to the corresponding comment number.

# 1. Introduction

**Section 3. Revisions to the Draft EIR.** This section contains revisions to the DEIR text and figures as a result of the comments received by agencies and interested persons as described in Section 2, and/or typographical errors and omissions discovered subsequent to release of the DEIR for public review.

The responses to comments contain revisions that will be added to the text of the FEIR. City of Newport Beach staff has reviewed the revisions and determined that none of the revisions constitute significant new information that requires recirculation of the DEIR for further public comment under CEQA Guidelines Section 15088.5. None of the revisions indicate that the project will result in a significant new environmental impact not previously disclosed in the DEIR. Additionally, none of this material indicates that there would be a substantial increase in the severity of a previously identified environmental impact that will not be mitigated, or that there would be any of the other circumstances requiring recirculation described in Section 15088.5.

## 1.3 CEQA REQUIREMENTS REGARDING COMMENTS AND RESPONSES

CEQA Guidelines Section 15204 (a) outlines parameters for submitting comments, and reminds persons and public agencies that the focus of review and comment of DEIRs should be “on the sufficiency of the document in identifying and analyzing possible impacts on the environment and ways in which significant effects of the project might be avoided or mitigated. Comments are most helpful when they suggest additional specific alternatives or mitigation measures that would provide better ways to avoid or mitigate the significant environmental effects. At the same time, reviewers should be aware that the adequacy of an EIR is determined in terms of what is reasonably feasible. ...CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commenters. When responding to comments, lead agencies need only respond to significant environmental issues and do not need to provide all information requested by reviewers, as long as a good faith effort at full disclosure is made in the EIR.”

CEQA Guidelines Section 15204 (c) further advises, “Reviewers should explain the basis for their comments, and should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments. Pursuant to Section 15064, an effect shall not be considered significant in the absence of substantial evidence.” Section 15204 (d) also states, “Each responsible agency and trustee agency shall focus its comments on environmental information germane to that agency’s statutory responsibility.” Section 15204 (e) states, “This section shall not be used to restrict the ability of reviewers to comment on the general adequacy of a document or of the lead agency to reject comments not focused as recommended by this section.”

In accordance with CEQA, Public Resources Code Section 21092.5, copies of the written responses to public agencies will be forwarded to those agencies at least 10 days prior to certifying the environmental impact report.



## 2. Response to Comments

Section 15088 of the CEQA Guidelines requires the Lead Agency (City of Newport Beach) to evaluate comments on environmental issues received from public agencies and interested parties who reviewed the DEIR and prepare written responses.

This section provides all written responses received on the DEIR and the City of Newport Beach's responses to each comment.

Comment letters and specific comments are given letters and numbers for reference purposes. Where sections of the DEIR are excerpted in this document, the sections are shown indented. Changes to the DEIR text are shown in underlined text for additions and ~~strikeout~~ for deletions.

The following is a list of agencies and persons that submitted comments on the DEIR during the public review period.

Number Reference	Commenting Person/Agency	Date of Comment	Page No.
<b>Agencies &amp; Organizations</b>			
A1	California Cultural Resource Preservation Alliance	December 3, 2018	2-3
A2	Irvine Ranch Water District	December 6, 2018	2-7
A3	Orange County Fire Authority	December 19, 2018	2-11
A4	Department of Toxic Substances Control	January 3, 2019	2-15
A5	City of Irvine	January 7, 2019	2-23
A6	The Kennedy Commission	January 10, 2019	2-27
A7	Santa Ana Unified School District	January 10, 2019	2-33
A8	South Coast Air Quality Management District	January 11, 2019	2-39
A9	California Department of Transportation	January 11, 2019	2-47
A10	Airport Land Use Commission	January 14, 2019	2-51
A11	OC Public Works	January 14, 2019	2-57
A12	Wittwer Parkin, LLP (for Southwest Regional Council of Carpenters)	January 14, 2019	2-61
A13	Gabrieleño Band of Mission Indians – Kizh Nation	December 17, 2018	2-89
A14	State Clearinghouse	January 15, 2019	2-93
<b>Individuals</b>			
I1	Jim Mosher	January 14, 2019	2-105

## 2. Response to Comments

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## 2. Response to Comments

LETTER A1 – California Cultural Resource Preservation Alliance (1 page)



**P.O. Box 54132**  
**Irvine, CA 92619-4132**

**California Cultural Resource Preservation Alliance, Inc.**  
An alliance of American Indian and scientific communities working for  
the preservation of archaeological sites and other cultural resources.

December 3, 2018

Jaime Murillo, Senior Planner  
City of Newport Beach

Re: Draft Environmental Impact Report for Newport Crossings Mixed Use Project

Dear Mr. Murillo:

Thank you for the opportunity to review the above-mentioned Draft Environmental Impact Report. We concur with the determination that the project area is considered moderately sensitive for buried resources. Given the urban development, the mitigation measures presented in 5.4.7 that include retaining a qualified archaeologist to periodically monitor ground-disturbing activities and to a lesser extent, training project construction workers to recognize archaeological resources seem appropriate. We also concur with the measures to be taken should cultural materials including human remains be discovered. Since the project includes a public park, there is an opportunity for preservation. Finally, we suggest that a culturally related Native American monitor also be retained to periodically monitor ground-disturbing activities.

A1-1

Sincerely,

Patricia Martz, Ph.D.  
President

## 2. Response to Comments

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## 2. Response to Comments

### A1. Response to Comments from California Cultural Resource Preservation Alliance, Patricia Martz, President, dated December 3, 2018.

A1-1 The commenter concurs with the findings, conclusions and mitigation measures outlined in Draft EIR Section 5.4, *Cultural Resources*. The commenter also suggests that a culturally-related Native American monitor be retained to periodically monitor ground-disturbing activities at the project site. No impacts to tribal cultural resources were identified. As described in Section 5.15, *Tribal Cultural Resources*, of the Draft EIR, no Native American tribes responded to the City's AB 52 consultation request or requested mitigation measures.

In response to this comment, however, Mitigation Measure CUL-1 on pages 5.4-10 and 5.4-11 of Draft EIR Section 5.4 has been revised, as follows. The revision is also provided in Chapter 3, *Revisions to the Draft EIR*, of the Final EIR. The revision does not change the findings or conclusions of the Draft EIR. Changes made to the Draft EIR are identified here in ~~strike out~~ text to indicate deletions and in **bold underlined** text to signify additions.

## 5.4 CULTURAL RESOURCES

### Impact 5.4-2


CUL-1 Prior to the issuance of a grading permit by the City of Newport Beach, the project applicant shall retain a qualified archaeologist to periodically monitor ground-disturbing activities onsite and provide documentation of such retention to the City of Newport Beach Community Development Director. The archaeologist shall train project construction workers on the types of archaeological resources that could be found in site soils. The archaeologist shall periodically monitor project ground-disturbing activities. **During construction activities, if Native American resources (i.e. Tribal Cultural Resources) are encountered, a Cultural Resource Monitoring and Discovery Plan (CRMDP) shall be created and implemented to lay out the proposed personnel, methods, and avoidance/recovery framework for tribal cultural resources monitoring and evaluation activities within the project area. A consulting Native American tribe shall be retained and compensated as a consultant/monitor for the project site from the time of discovery to the completion of ground disturbing activities to monitor grading and excavation activities.** If archaeological resources are encountered, all construction work within 50 feet of the find shall cease, and the archaeologist shall assess the find for importance and whether preservation in place without impacts is feasible. Construction activities may continue in other areas. If, in consultation with the City **and affected Native American tribe (as deemed necessary)**, the discovery is determined to not be important, work will be permitted to

## 2. Response to Comments

continue in the area. Any resource that is not Native American in origin and that cannot be preserved in place shall be curated at a public, nonprofit institution with a research interest in the materials, such as the South Central Coastal Information Center at California State University, Fullerton.

## 2. Response to Comments

LETTER A2 – Irvine Ranch Water District (1 page)



December 6, 2018

Jaime Murillo, Senior Planner  
City of Newport Beach  
Community Development Department  
100 Civic Center Drive  
Newport Beach, CA 92660

**Re: Notice of Availability – Newport Crossings Mixed Use Project EIR**


Dear Jaime Murillo:

Irvine Ranch Water District (IRWD) has reviewed the Notice of Availability (NOA) for the Draft Environmental Impact Report (DEIR) for the Newport Crossings Mixed Use Project, located in Newport Beach.

IRWD wishes to reiterate the comments indicated in our November 17, 2017, comment letter towards the project's Notice of Preparation (NOP). IRWD understands that this project should have no impacts to IRWD since the project is outside IRWD's service area. If this is not correct or if there are any future changes to the project which could impact IRWD's facilities, Newport Beach is required to notify IRWD.

IRWD appreciates the opportunity to review the NOP for the Newport Crossings Mixed Use Project EIR. If you have any questions, please contact the undersigned or Jo Ann Corey, Environmental Compliance Specialist at (949) 453-5326.

Sincerely,



Fiona M. Sanchez  
Director of Water Resources

cc: Jo Ann Corey, IRWD

Irvine Ranch Water District • 15600 Sand Canyon Ave., Irvine, CA 92618 • Mailing Address: P.O. Box 57000, Irvine, CA 92619-7000 • 949-453-5300 • www.irwd.com

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DEVELOPMENT  
DEC 10 2018  
CITY OF  
NEWPORT BEACH

A2-1

## 2. Response to Comments

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## 2. Response to Comments

### **A2. Response to Comments Irvine Ranch Water District, Fiona. M. Sanchez, Director of Water Resources, dated December 6, 2018.**

- A2-1 The commenter noted that the project site is outside of the Irvine Ranch Water District's (IRWD) service area and, as such, the project would not impact IRWD. As confirmed in Draft EIR Section 5.16, *Utilities and Service Systems*, the City of Newport Beach Water Services, and not IRWD, provides water to the project site.

## 2. Response to Comments

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## 2. Response to Comments

### LETTER A3– Orange County Fire Authority (1 page)

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**JoAnn Hadfield**

**From:** Murillo, Jaime <JMurillo@newportbeachca.gov>  
**Sent:** Wednesday, December 19, 2018 9:30 AM  
**To:** Jorge Estrada; JoAnn Hadfield  
**Subject:** FW: Notice of Availability Newport Crossings Mixed Use Project

---

**From:** Rivers, Tamy <TamyRivers@ocfa.org>  
**Sent:** Wednesday, December 19, 2018 9:04 AM  
**To:** Murillo, Jaime <JMurillo@newportbeachca.gov>  
**Subject:** Notice of Availability Newport Crossings Mixed Use Project

Thank you for the opportunity to review subject document. Orange County Fire Authority has no comments regarding this project. A3-1

Have a great day.

**Tamera Rivers**

Management Analyst  
Orange County Fire Authority  
Office: 714-573-6199  
[tamyivers@ocfa.org](mailto:tamyivers@ocfa.org)

*We visualize problems and solutions through the eyes of those we serve.*

## 2. Response to Comments

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## 2. Response to Comments

### **A3. Response to Comments from Orange County Fire Authority, Tamera Rivers, Management Analyst, dated December 19, 2019.**

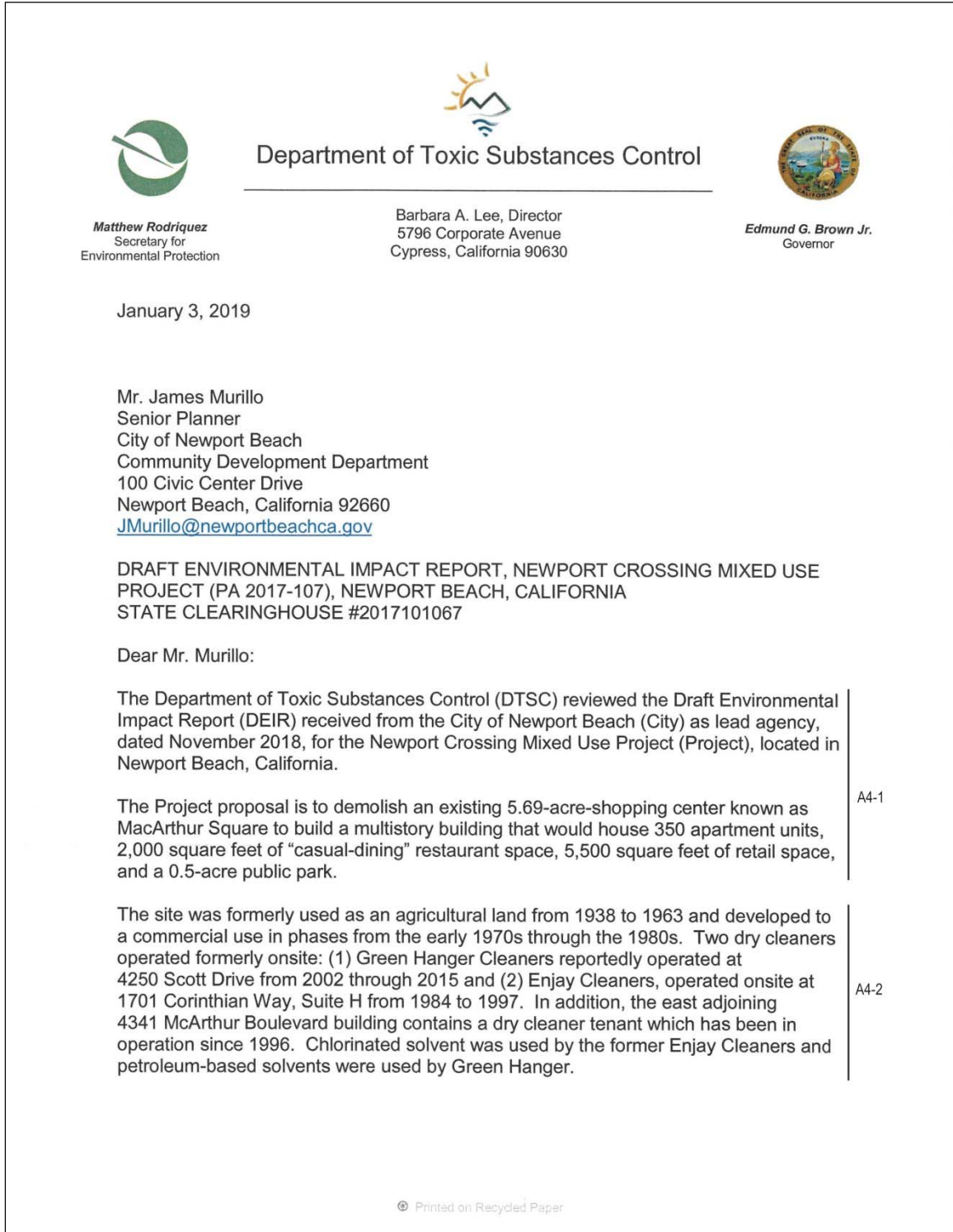
A3-1 The comment does not concern the content or adequacy of the Draft EIR. The comment is acknowledged.

## 2. Response to Comments

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## 2. Response to Comments

LETTER A4 – Department of Toxic Substances Control (4 pages)



## 2. Response to Comments

Mr. James Murillo  
January 3, 2019  
Page 2

Former investigations along the project site boundary detected perchloroethylene (PCE) in the sub slab at concentrations exceeding acceptable residential regulatory levels using the California Human Health Hazard Screening Level (CHHSL) of 0.48 microgram per liter( $\mu\text{g/l}$ ) for residential land use. PCE was also detected at concentrations above the residential screening levels. As a result, the Project includes a proposal for a passive ventilation system as a vapor intrusion mitigation measure (MM HAZ-1) in the DEIR for Impact 5.7-2.

A4-2  
cont'd

DTSC recommends that mitigation measures for Impact 5.7-2 should also include further investigation, human health risk assessment, and remediation including a land use covenant and monitoring to ensure this mitigation will be protective of public health in perpetuity. DTSC comments are listed below.

A4-3

1. Soil Vapor Sampling and testing: 2013, Page 5.7-8. A typographical error was noted for CHHSL which stands for California Human Health Screening Level, not California Health Hazard Screening Levels as stated on this page.

A4-4

2. Soil and Soil Vapor Sampling and Testing: 2017, Page 5.7-9 and Onsite Soil and Soil Vapor Testing Results, Page 5.7-18. Both sections conclude that the detections of PCE were likely associated with regional groundwater impacts because higher concentration of PCE in soil gas was detected at 15 feet below ground surface (bgs) compared with concentrations at 5 feet bgs. This conclusion may be inadequate as PCE may have migrated vertically over time. Based on Appendix F3 (Phase II Investigation Report, dated April 22, 2013), soil vapor samples were not collected beneath the former Enjay Cleaners but along the project site boundary.

In addition, the Site was used for agricultural land from 1938 to 1963. Appendix F1 (Phase I Environmental Site Assessment) does not consider historical agricultural use as a recognizable environmental condition due to the site redevelopment. DTSC recommends that agricultural related chemicals, organochlorine pesticides (OCP), be considered as potential chemicals of concern as the OCPs may have been spread across the site. There is no information regarding whether during development of the commercial shopping center, the shallow soils were removed for offsite disposal or reused onsite. If reused onsite, historical contamination may have been distributed in these areas. Soil investigation is needed to determine whether the soil beneath the project site was impacted by the former use of OCPs.

A4-5

In conclusion, the sources of the potential releases and potential chemicals of concern were not properly identified and investigated at the project site. There is no sufficient investigation data to demonstrate that the VOC detected in soil vapor samples are associated with the groundwater impacts. Further soil, soil vapor and groundwater investigations are recommended for the project site.



## 2. Response to Comments

Mr. James Murillo  
January 3, 2019  
Page 3

DTSC recommends the soil gas investigations be conducted in accordance with DTSC Advisory-Active Soil Gas Investigation ([https://www.dtsc.ca.gov/SiteCleanup/upload/VI\\_ActiveSoilGasAdvisory\\_FINAL.pdf](https://www.dtsc.ca.gov/SiteCleanup/upload/VI_ActiveSoilGasAdvisory_FINAL.pdf)) and Final Guidance for Evaluation and Mitigation of Subsurface Vapor Intrusion to Indoor Air ([https://www.dtsc.ca.gov/AssessingRisk/upload/Final\\_VIG\\_Oct\\_2011.pdf](https://www.dtsc.ca.gov/AssessingRisk/upload/Final_VIG_Oct_2011.pdf))

A4-5  
cont'd

3. Human Health Risk Assessment 2017, Page 5.7-9. Based on the Appendix F3a, only soil vapor samples at 5 feet bgs were used for human health risk assessment. The human health risk assessment should include soil gas samples taken at 15 feet bgs. Groundwater should also be considered in the human health risk assessment if it is impacted by PCE. Risk to human health should be re-assessed after the extent of soil gas and groundwater contamination is fully defined. This assessment will then be used to design the vapor mitigation system and associated monitoring program. DTSC recommends the multi-media human health risk assessment be conducted in accordance with the Preliminary Endangerment Assessment Guidance Manual, section 2.5 ([https://www.dtsc.ca.gov/PublicationsForms/upload/PEA\\_Guidance\\_Manual.pdf](https://www.dtsc.ca.gov/PublicationsForms/upload/PEA_Guidance_Manual.pdf)) and Human Health Risk Assessment (HHRA) Note 4 (<https://www.dtsc.ca.gov/AssessingRisk/upload/NOTE-4-HHRA-Number-4-October-2016-revision-2016-10-26-FINAL-2.pdf>)

A4-6

4. Section 5.7.3.1 Regulatory Requirements, Page 5.7.15. RR HAZ-1 addresses the transportation of any project-related hazardous materials and hazardous waste. Please note that transportation of hazardous waste should also be transported in accordance with California Code of Regulations, title 22, division 4.5, chapter 13.

A4-7

5. Section 5.7.7 Mitigation Measures, Page 5.7-21. MM HAZ-1 requires a passive ventilation system for the proposed project. Please note that a land use covenant and long-term monitoring is required because the site was not remediated to meet the residential land use. In addition, confirmation sampling (e.g., indoor sampling or sub-slab sampling) is recommended after the installation of a vapor mitigation measure to verify the effectiveness of the mitigation measure. DTSC recommends any vapor intrusion mitigation be implemented in accordance with DTSC Vapor Intrusion Mitigation Advisory ([https://www.dtsc.ca.gov/SiteCleanup/upload/VIMA\\_Final\\_Oct\\_20111.pdf](https://www.dtsc.ca.gov/SiteCleanup/upload/VIMA_Final_Oct_20111.pdf)).

A4-8

6. Any further investigation, human health risk assessment, vapor intrusion mitigation measures and remediation should be overseen by a regulatory agency with jurisdiction to oversee hazardous substance cleanup. Due to the potential of vapor intrusion into residential properties, DTSC's oversight is recommended. A request for DTSC's oversight can be found at:

A4-9

## 2. Response to Comments

Mr. James Murillo  
January 3, 2019  
Page 4

<https://www.dtsc.ca.gov/SiteCleanup/Brownfields/voluntary-agreements-guide.cfm> (click on "Request for lead Agency Oversight Application").

A4-9  
cont'd

DTSC looks forward to a conference call or a meeting to discuss further DTSC's concerns regarding this project. Should you have any questions regarding this letter, please contact me at (714) 484-5392 or e-mail [chiarin.yen@dtsc.ca.gov](mailto:chiarin.yen@dtsc.ca.gov).

Sincerely,



Chia Rin Yen  
Environmental Scientist  
Brownfields Restoration and School Evaluation Branch  
Site Mitigation and Restoration Program

ara/cy/yg

cc: Governor's Office of Planning and Research (via e-mail)  
State Clearinghouse  
P.O. Box 3044  
Sacramento, California 95812-3044  
[State.clearinghouse@opr.ca.gov](mailto:State.clearinghouse@opr.ca.gov)

Mr. Dave Kereazis (via e-mail)  
Office of Planning & Environmental Analysis  
Department of Toxic Substances Control  
[dave.kereazis@dtsc.ca.gov](mailto:dave.kereazis@dtsc.ca.gov)

Ms. Yolanda M. Garza (via e-mail)  
Brownfields Restoration and School Evaluation Branch  
Site Mitigation and Restoration Program  
[yolanda.garza@dtsc.ca.gov](mailto:yolanda.garza@dtsc.ca.gov)

## 2. Response to Comments

### A4. Response to Comments from Department of Toxic Substances Control, Chia Rin Yen, Environmental Scientist, dated January 3, 2019.

- A4-1 The comment does not concern the content or adequacy of the Draft EIR. The Department of Toxic Substances Control's (DTSC) summary of the project description is acknowledged.
- A4-2 The comment does not concern the content or adequacy of the Draft EIR. DTSC summary of the project site history and site investigations and findings is acknowledged.
- A4-3 Responses to the individual comments raised by DTSC's are provided herein.
- A4-4 The typographical error under the *Soil Vapor Sampling and Testing: 2013* discussion on page 5.7-8 of Draft EIR Section 5.7, *Hazards and Hazardous Materials*, has been revised, as follows. The revisions are also provided in Chapter 3, *Revisions to the Draft EIR*, of the Final EIR. Changes made to the Draft EIR are identified here in ~~strikeout~~ text to indicate deletions and in **bold underlined** text to signify additions.

#### *Soil Vapor Sampling and Testing: 2013*

The 2013 Phase II investigation included three subslab soil-vapor samples collected from directly beneath the slab below the former dry cleaner at 4250 Scott Drive. In addition, seven subsurface soil vapor samples were collected from the property perimeter at depths of 5 feet bgs. The PCE concentration in one of the three subslab samples was 0.73 µg/L (that is, 0.73 part per billion), above the California Health ~~Hazard~~ **Health** Screening Level (CHHSL) of 0.48 µg/L for residential land use; concentrations in the other two samples were below the CHHSL. The location this sample was taken from is shown in Figure 5.7-1, *Soil and Soil Vapor Sampling Locations*. Soil vapor samples from two of the seven locations sampled on the site perimeter yielded PCE concentrations of 1.5 and 1.4 µg/L, respectively, also above the CHHSL for residential use. One location is on the northwest site boundary, and the other is on the northern part of the eastern site boundary (see Figure 5.7-1). The concentrations of PCE detected indicated groundwater contamination may be present.

- A4-5 DTSC is recommending the following additional studies and analysis be conducted for the project site:
- Soil vapor samples be collected from beneath the former Enjay Cleaners.
  - Additional soil samples be collected site-wide for analysis of OCPs.
  - Additional soil vapor samples be collected in accordance with DTSC Advisory for Active Soil Gas Investigation and DTSC Final Guidance for Evaluation and Mitigation of Subsurface Vapor Intrusion to Indoor Air.

## 2. Response to Comments

- Groundwater samples be collected to show that PCE in deeper soil gas is associated with regional groundwater impacts.

Following are response to the additional studies and analysis requested by DTSC:

- DTSC's statement that "based on Appendix F3 (Phase II Investigation Report, dated April 22, 2013), soil vapor samples were not collected beneath the former Enjay Cleaners but along the project site boundary" is not accurate as the report does present results for three sub-slab samples that were collected from beneath the former Enjay Cleaners. These soil vapor sample results were at low levels and are not indicative of a release to soil having occurred. In order to confirm that a release did not occur, soil samples from the beneath the former Enjay Cleaners should be collected after demolition of the existing structures in that area.
- Because much of Orange County was used in the past for agricultural land, residual pesticides can often be detected at low concentrations in near-surface soil. The City agrees with the conclusion of the Phase I report that redevelopment of the site has likely further reduced these concentrations. However, because a public park is planned and the DTSC will be concerned with dermal contact, it may be prudent to collect surface (or near-surface) soil samples from the proposed park area to document the absence of, or presence of, low concentrations of residual pesticides. The area of the Project planned for the public park is currently under asphalt or existing buildings. Sample collection for analysis of OCPs would be completed in the area where the park will be constructed after demolition of the existing structures. Based on our experience sampling similar sites for residual OCPs, it is likely that concentrations will be below levels of concern or at levels that do not pose significant human health risks to future site development. In the unlikely event that OCPs are discovered and are determined to be RCRA hazardous waste or California-only hazardous waste, affected soils will be removed consistent with State protocols.
- PCE in soil gas appears to be a result of downward migration of vapors. This is supported by two facts: (1) soil vapors are lowest in the sub-slab vapor and the highest in the deeper soil gas samples collected at 15 feet bgs (groundwater may be encountered at approximately 20 feet bgs); and (2) there were no detections of PCE in any soil samples collected from the soil vapor sample locations. The average PCE concentration in soil vapor at 15 feet bgs is less than 3 µg/I. For PCE, soil gas levels may not become a threat to impact groundwater until they exceed 100 µg/I.<sup>1</sup> To verify this, AECOM back-calculated the equilibrium concentration (Ceq) expected after 5 years for a GW concentration of 5 µg/L of PCE (MCL). The Ceq would be

---

1 Sources: [https://iavi.rti.org/attachments/Resources/Hartman\\_-\\_Soil\\_Gas\\_Sampling\\_Methods\\_and\\_Approaches\\_for\\_VI\\_Assessments.pdf](https://iavi.rti.org/attachments/Resources/Hartman_-_Soil_Gas_Sampling_Methods_and_Approaches_for_VI_Assessments.pdf) and <file:///C:/Users/jestrada/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/S840ZOHA/The%20Downward%20Migration%20of%20Vapors.htm>.

## 2. Response to Comments

approximately 180 µg/L. Multiplying by the dimensionless Henry's Law Constant for PCE (0.754) gives a corresponding soil gas concentration of approximately 135 µg/L. This supports the statement that for PCE, soil gas levels may not become a threat to impact groundwater until they exceed 100 µg/L. For the project site, the greatest soil vapor concentration of PCE was 4.4 µg/L (and was fairly near groundwater). Dividing by Henry's Law Constant for PCE (0.754) gives a  $C_{eq}$  of less than 6 µg/L and an expected PCE concentration in groundwater of less than 0.2 µg/L after 5 years. If contact time with groundwater is less than 5 years, which is more typical, the expected PCE concentration in groundwater at this Site would be less than 0.01 µg/L. Collection of groundwater samples to show that PCE in deeper soil gas is associated with regional groundwater impacts is not warranted because the planned passive ventilation system will be installed to mitigate vapors already detected.

A4-6 In response to this comment, PCE in soil gas is more likely a result of downward migration of vapors and not associated with regional groundwater impacts. Any increase in the estimated cancer risk for the residential land use scenario shown by further soil vapor samples would be reduced through the passive ventilation system. It is anticipated that these results will not significantly affect the current design of the planned vapor mitigation system, as required by Mitigation Measures HAZ-1.

A4-7 In response to the commenter, the text for regulatory requirement RR HAZ-1 on pages 5.7-15 and 5-7-16 of Draft EIR Section 5.7, *Hazards and Hazardous Materials*, has been revised, as follows. The revisions are also provided in Chapter 3, *Revisions to the Draft EIR*, of the Final EIR. Changes made to the Draft EIR are identified here in ~~strikeout~~ text to indicate deletions and in **bold underlined** text to signify additions.

RR HAZ-2 Any project-related hazardous waste generation, transportation, treatment, storage, and disposal will be conducted in compliance with the Subtitle C of the Resource Conservation and Recovery Act (Code of Federal Regulations, Title 40, Part 263), including the management of nonhazardous solid wastes and underground tanks storing petroleum and other hazardous substances. The proposed project will be designed and constructed in accordance with the regulations of the Orange County Environmental Health Department, which serves as the designated Certified Unified Program Agency and which implements state and federal regulations for the following programs: (1) Hazardous Waste Generator Program, (2) Hazardous Materials Release Response Plans and Inventory Program, (3) California Accidental Release Prevention, (4) Aboveground Storage Tank Program, and (5) Underground Storage Tank Program. **Transportation of hazardous waste will also be transported in accordance with California Code of Regulations, Title 22, Division 4.5, Chapter 13.**



## 2. Response to Comments

- A4-8 After demolition of existing structures, additional soil and soil gas sampling in the area of the former Enjay Cleaners may be warranted to determine if concentrations are decreasing, limited in extent, and in soil or soil gas or both. With limited soil removal and/or soil vapor extraction, levels which are suitable for unrestricted use of the land could be achieved and a land use covenant would not be required. If the vapor mitigation measure is implemented in accordance with DTSC Vapor Intrusion Mitigation Advisory, an operation and maintenance (O&M) plan should be prepared and include general guidelines for monitoring, including establishing baseline conditions and number and frequency of monitoring events necessary to meet the performance goals and measures.
- A4-9 In response to the commenter, the following mitigation measure has been added to further reduce the significant impact already identified under Impact Statement 5.7-2, of Draft EIR Section 5.7, *Hazards and Hazardous Materials*. Subsection 5.7.7, *Mitigation Measures*, of Section 5.7 has been revised, as follows. The revisions are also provided in Chapter 3, *Revisions to the Draft EIR*, of the Final EIR. The additional mitigation measure does not change the findings, conclusions, or recommendations of the Draft EIR and does not result in the identification of any new or increased significant impacts. Also, the revisions do not constitute the type of significant new information that requires recirculation of the Draft EIR for further public comment under CEQA Guidelines Section 15088.5. Changes made to the Draft EIR are identified here in ~~strikeout~~ text to indicate deletions and in **bold underlined** text to signify additions.


### 5.7.7 Mitigation Measures

#### Impact 5.7-2

MM HAZ-2 Prior to issuance of the first building permit, soil and soil vapor samples shall be collected from beneath the former Enjay Cleaners and soil samples shall be collected from beneath the proposed 0.5-acre public park site and tested for Volatile Organic Compounds (VOC) and Organochlorine Pesticides (OCP), respectively. The results shall be submitted to the Orange County Health Care Agency and City Building Official. In the event that soil concentrations exceed site-specific cleanup goals, affected soils shall be removed and properly treated/disposed of. Should soil vapor concentrations exceed site-specific cleanup goals, short-term soil vapor extraction and treatment shall be performed to reduce soil vapor concentrations. Institutional controls will be required if the soil and soil gas cannot achieve the cleanup goals for residential land use, and/or vapor mitigation measure (e.g., passive ventilation system) are implemented to protect the future building receptors.

## 2. Response to Comments

### LETTER A5 – City of Irvine (2 pages)

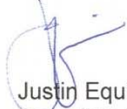
	Community Development	cityofirvine.org
	1 Civic Center Plaza, Irvine, CA 92606-5208	949-724-6000
January 7, 2019		
Mr. Jamie Murillo City of Newport Beach Community Development Department 100 Civic Center Drive Newport Beach, CA 92660		
<b>Subject: Draft Environmental Impact Report (PA2017-107) for the Newport Crossings Mixed Use Project located in the City of Newport Beach</b>		
Dear Mr. Murillo:		
Staff reviewed the Draft Environmental Impact Report (DEIR) for the Newport Crossings Mixed Use project in the City of Newport Beach. The project site is within the Newport Place Planned Community of the Airport Area, and bounded by Corinthian Way to the northeast, Martingale Way to the east, Scott Drive to the northwest, and Dove Street to the southwest. The proposed project involves demolishing an approximately 58,277 square-foot shopping center to develop a mixed use site consisting of 350 residential units, 2,000 square feet of casual dining restaurant space, 5,500 square feet of commercial space, and a 0.5-acre public park.	A5-1	
Staff completed its review and offers the following comments on the project:		
1. The City recommends including the following study area intersections: <ul style="list-style-type: none"><li>• Jamboree/I-405 ramps</li><li>• Jamboree/Michelson</li><li>• Jamboree/Dupont</li></ul>	A5-2	
Additionally, the arterial segments should include City of Irvine roadways that are bounded by I-405 to the north, MacArthur to the west, and Jamboree to the east.		
2. On Page 5.14-4, under the City of Irvine section, discuss how a significant impact also occurs when the proposed project causes the study area intersection to operate from an acceptable level of service to an unacceptable level of service.	A5-3	

## 2. Response to Comments

Mr. Jamie Murillo  
January 7, 2019  
Page 2

If you have any questions, you may contact me at 949-724-6364 or at  
[jequina@cityofirvine.org](mailto:jequina@cityofirvine.org).

Sincerely,



Justin Equina  
Associate Planner

cc: Kerwin Lau, Manager of Planning Services  
Bill Jacobs, Principal Planner  
Lisa Thai, Supervising Transportation Analyst



## 2. Response to Comments

### A5. Response to Comments from City of Irvine, Justin Equina, Associate Planner, dated January 7, 2019.

A5-1 The comment does not concern the content or adequacy of the Draft EIR. The comment is acknowledged.

A5-2 The commenter requested that three additional intersections, beyond those analyzed in the Traffic Impact Analysis (TIA) prepared for the proposed project, be analyzed, and that the arterial segments include certain City of Irvine roadways. The TIA, which is included as Draft EIR Appendix J, includes the relevant study area intersections in Irvine. As noted in the *Study Area* subsection/discussion of the TIA (see page J-9), the study area locations were selected in consultation with the City of Irvine. The project's trip distribution, as presented in the TIA, shows nominal AM and PM peak-hour project-related traffic on the intersections and segments along Jamboree Road in Irvine that were not analyzed, including those requested by the commenter. Approximately five percent of the project's total traffic would travel on Jamboree Road north of Dupont Drive, which is approximately 6 AM peak-hour trips (5 northbound and 1 southbound), 4 PM peak-hour trips (2 northbound and 2 southbound), and 54 daily trips.

Furthermore, the project's traffic volume contribution is less than 0.001 of the peak-hour lane capacity and daily segment capacity of Jamboree Road. As such, the project would not significantly impact the intersections of Jamboree Road/Dupont Drive, Jamboree Road/Michelson Drive, and Jamboree Road/I-405 ramps, or the Jamboree Road segment north of Dupont Drive. In addition, the project is not anticipated to add vehicles to Dupont Drive or Michelson Drive. Based on the preceding, the project study area is not required to be expanded to include additional Irvine intersections or segments.

A5-3 In response to the commenter, the text on page 5.14-4 of Draft EIR Section 5.14, *Transportation and Traffic*, has been revised, as follows. The revisions are also provided in Chapter 3, *Revisions to the Draft EIR*, of the Final EIR. The text revisions do not change the findings, conclusions, or recommendations of the TIA or Draft EIR and do not result in the identification of any new or increased significant impacts. Changes made to the Draft EIR are identified here in ~~strikeout~~ text to indicate deletions and in **bold underlined** text to signify additions.

## 5.14 TRANSPORTATION AND TRAFFIC

### *City of Irvine*

In Irvine, LOS E (peak hour ICU less than or equal to 1.00) is considered acceptable in the Irvine Business Complex (IBC) intersections. At other study area intersections in Irvine, LOS D (peak hour ICU less than or equal to 0.90) is acceptable. ~~At Irvine intersections, if the intersection would operate at unacceptable levels of service and the project contribution is 0.02 or greater, mitigation is required to bring intersection back to~~

## 2. Response to Comments

~~an acceptable level of service or to no project conditions.~~ **At Irvine intersections and, if project traffic causes the study area intersection level of service to drop from acceptable to unacceptable level of service, mitigation is required, where feasible, to bring the intersection back to an acceptable level of service or to no project conditions. Also, if the intersection would operate at unacceptable level of service and the project contribution is 0.02 or greater, mitigation is required, where feasible, to bring intersection back to an acceptable level of service or to no project conditions.**

## 2. Response to Comments

### LETTER A6 – The Kennedy Commission (3 pages)

January 10, 2019

Mr. Jaime Murillo, Senior Planner  
City of Newport Beach  
3300 Newport Blvd.  
Newport Beach, CA 92658-8915

**RE: Newport Crossings Mixed-Use Development Draft Environmental Impact Report**

Dear Mr. Murillo:

The Kennedy Commission (the Commission) is a coalition of residents and community organizations that advocates for the production of homes affordable for families earning less than \$20,000 annually in Orange County. Formed in 2001, the Commission has been successful in partnering with Orange County jurisdictions to create effective housing policies that have led to the new construction of homes affordable to lower income working families.


As the City considers how to effectively address the housing needs for all income segments of the community, **the Commission urges the City to support and approve the proposed Newport Crossings Mixed-Use development that will set aside 78 units to lower income working households.** The Commission supports planning efforts in developing new homes that provide a community benefit, such as affordable homes to lower income working families. The proposed Newport Crossing Mixed-Use development will not only provide quality and affordable homes for the City's work force, but it will also build and contribute to a more economically competitive and opportunity rich community. In addition, locating homes such as affordable homes near job centers (i.e. John Wayne airport and corporate offices), mass transit and neighborhood amenities will create a more walkable, healthier and sustainable Newport Beach.

**Affordability for Lower Income Households**

To address the City's existing and projected housing needs, Newport Place Planned Community was amended in 2012 to facilitate the development of affordable homes in the City. A residential development overlay was established to allow residential developments that set-aside 30 percent of units affordable to lower-income households.<sup>1</sup> It has been over five years since the amendment and the proposed Newport Crossings Mixed-Use development could be the first development implemented in the Newport Place Planned Community Residential Overlay. The City should take this golden opportunity and move forward with the proposed Newport Place project to ensure the implementation of the residential overlay will be successful and come to fruition. In addition, the Newport Crossings proposed development was identified in the City's 2014-2021 Housing Element as a housing opportunity site (Site 1a, 1b, 1c and 1d) in Area 9-Airport Area.<sup>2</sup>

<sup>1</sup> City of Newport Beach General Plan Housing Element, p. 5-89, September 2013.  
<sup>2</sup> City of Newport Beach General Plan Housing Element, p. 5-227, September 2013.

Working for systemic change resulting in the production of homes affordable to Orange County's extremely low-income households



www.kennedycommission.org  
17701 Cowan Ave., Suite 200  
Irvine, CA 92614  
949 250 0909  
Fax 949 263 0647

A6-1

A6-2

## 2. Response to Comments

Mr. Jaime Murillo  
 January 10, 2019  
 Page 2 of 3

Ranked among the top ten least affordable metropolitan areas in the country<sup>3</sup>, Orange County is suffering from an affordable housing crisis. A resident must earn at least \$36.08 per hour to afford a two-bedroom apartment at a fair market rent of \$1,876 a month.<sup>4</sup> Over the past seven years, Orange County renters have paid an average of \$355 more a month and rents are projected to continually rise.<sup>5</sup> During 2000 to 2015, Orange County's inflation-adjusted median rent increased by 28 percent while the median renter income decreased by 9 percent.<sup>6</sup>

The impact of this crisis is dire. Many Orange County renters are rent burdened where they spend more than 30% of their income towards housing costs. Struggling to make ends meet, many households take on more jobs or live in overcrowded substandard households. With high rents, low vacancy rates and an increasing number of residents needing affordable homes, the supply of affordable homes being built for lower income households has also not kept up with the demand. An additional 92,738 affordable rental homes are needed to address Orange County's housing needs for lower income renters.<sup>7</sup>

A6-2  
 cont'd

Compared to other cities in Orange County, housing costs are significantly higher and out-of-reach for many working households in Newport Beach. Ranked second for Southern California's most expensive city for renters, Newport Beach's average two-bedroom asking rent was \$2,760 a month.<sup>8</sup> With the serious lack of affordable home and with wages that are not keeping up with rising rent, many working families, especially those who earn lower wages, struggle financially to work *and* live in Newport Beach.

In Newport Beach, tourism is one of the City's leading industries and it generates substantial revenue and jobs for the City. Of the top 12 principal employers in the City, four provide leisure and hospitality services<sup>9</sup>; however, jobs related to leisure and hospitality services, restaurants and retail that greatly contributes to the City's tourism market typically offers lower wages. The average salary for occupations in the tourism market is approximately less than \$30,000 a year<sup>10</sup>, which is not enough to rent an apartment home in the City without overpaying and being rent burdened.

### **Affordable Homes Decreases Environmental Impacts**

With high housing costs and significant lack of affordable homes, many workers and families, especially those who earn lower wages, struggle financially to live in the city they work in. These impacts not only hurt workers and families but may also impact the city's economic competitiveness and attractiveness to major employers to provide jobs. Locating homes,

A6-3

<sup>3</sup> Out of Reach 2018- The High Cost of Housing, National Low Income Housing Coalition, p.14, 2018.

<sup>4</sup> Out of Reach 2018- The High Cost of Housing, National Low Income Housing Coalition, p.38, 2018.

<sup>5</sup> Southern Californians Scrimp to Get By As Average Rents Hit \$1,900, Orange County Register, February 15, 2018.

<sup>6</sup> California Rents Have Risen to Some of the Nation's Highest. Here's How that Impacts Residents, Orange County Register, February 15, 2018.

<sup>7</sup> Orange County's Housing Emergency and Proposed Solutions, California Housing Partnership Corporation, p. 1, May 2018.

<sup>8</sup> Marina del Rey, Newport Beach Have Region's Highest Rents. Lowest? Try Highland, Orange County Register, October 13, 2017.

<sup>9</sup> City of Newport Beach Comprehensive Financial Annual Report, p. 222, June 30, 2017.

<sup>10</sup> OC Community Indicators 2018, p. 31, 2018.

## 2. Response to Comments

Mr. Jaime Murillo  
January 10, 2019  
Page 3 of 3

specifically affordable homes, near transit, job centers and neighborhood services will decrease travel costs and allow individuals to save money and spend it elsewhere in the City. In particular, the environmental impacts of a development are especially less drastic when a person can afford to live and spend their money in the same community in which they work in.

In 2016, the average commute time to work for Orange County residents was approximately 29 minutes and approximately 82% of commuters drove alone.<sup>11</sup> Improving location accessibility and connectivity reduces the dependency for residents, especially for lower income households and workers, to drive their automobiles. This will lead to decreased environmental impacts, such as vehicles miles traveled (VMT) and greenhouse gas emissions, which will contribute to the project's overall purpose and intent to create a sustainable transit oriented neighborhood. The project will also align with the Sustainable Communities and Climate Protection Act of 2008 (SB 375) and help the City implement and comply with SB 375 goals of reducing VMT and greenhouse gas emissions.

A6-3  
cont'd

The Commission looks forward to partnering with the City to increase affordable home opportunities for lower income working households in the City. Please keep us informed of any updates and meetings regarding the Newport Crossings Mixed-Use Development. If you have any questions, please contact me at (949) 250-0909 or [cesarc@kennedycommission.org](mailto:cesarc@kennedycommission.org).

Sincerely,



Cesar Covarrubias  
Executive Director

<sup>11</sup> Profile of Orange County, Southern California Association of Governments, p. 18, May 2017.



## 2. Response to Comments

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## 2. Response to Comments

**A6. Response to Comments from Kennedy Commission, Cesar Covarrubias, Executive Director, dated January 10, 2019.**

- A6-1 The comment does not concern the content or adequacy of the Draft EIR. The City of Newport Beach acknowledges the commenters support of the proposed project.
- A6-2 The comment does not concern the content or adequacy of the Draft EIR. The comment is acknowledged.
- A6-3 The comment does not concern the content or adequacy of the Draft EIR. The comment is acknowledged.


## 2. Response to Comments

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## 2. Response to Comments

LETTER A7 – Santa Ana Unified School District (2 pages)



# Santa Ana Unified School District

*Facilities & Governmental Relations*  
**Jeremy Cogan, Director of Facilities Planning**

Stefanie P. Phillips, Ed.D.  
**Superintendent of Schools**

RECEIVED BY  
COMMUNITY  
DEVELOPMENT  
JAN 11 2019  
CITY OF  
NEWPORT BEACH

January 10, 2019

Jaime Murillo, Senior Planner  
City of Newport Beach Community Development Department  
100 Civic Center Drive  
Newport Beach, CA 92660

Re: **Environmental Impact Report for the Newport Crossings Mixed Use Project**

Dear Mr. Murillo:

The Santa Ana Unified School District (“District”) appreciates the opportunity to provide the following comments with respect to the Environmental Impact Report (EIR) for the Newport Crossings Mixed Use Project (hereafter, “the Project”). The proposed project consists of the development of 350 multi-story residential units in addition to other retail/mixed use, and is located on a 5.69-acre project site. The site is currently within the “Airport Area” planning subarea of the City of Newport Beach.

The District has an obligation to serve students generated in the project area. The proposed project lies within the attendance boundaries of the following District schools:

**Table 1 – District Schools**

School	Grades Served	Address	Approximate Traveling Distance from the Project
Monroe Elementary	K-5	417 E. Central Ave.	5 miles
McFadden Intermediate	6-8	2701 S. Raitt St.	5 miles
Century High	9-12	1401 S. Grand Ave.	5.8 miles

The District’s 2018 School Facilities Needs Analysis, prepared April 27, 2018, finds student generation factors as follows:

**Table 2 – Student Generation**

School Level	Multi-Family Attached Units	Number of Proposed Units	Students Potentially Generated by the Project
Elementary School	0.2367	350	83
Intermediate School	0.1218	350	43
High School	0.1533	350	54
<b>Total</b>	<b>0.5118</b>	<b>350</b>	<b>180</b>

1601 East Chestnut Avenue, Santa Ana, CA 92701-6322, (714) 480-5349

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**BOARD OF EDUCATION**  
Valerie Amezcua, President • Rigo Rodriguez Ph.D., Vice President  
Alfonso Alvarez Ed.D., Clerk • John Palacio, Member

A7-1

A7-2

## 2. Response to Comments

As the data in the above table was made available subsequent to outreach to SAUSD, the District recommends the Draft EIR reflect the newer information.

An analysis of current enrollment, current permanent capacity, and students potentially generated by the project finds that the District is able to accommodate the anticipated student growth. While such an analysis considers the capacity to serve additional students, it does not take into consideration enrollment variations and educational program changes that will impact school capacity district-wide.

A7-3

In accordance with Government Code Section 65995, the District requires all new development within the District to pay fees to help offset the impacts to school facilities from new residential and commercial/industrial development. The Draft EIR for this project makes note of the State Allocation Board's adjustment to level-on residential school fees in 2016, however this should be updated to reflect the SAB's 2018 action. As of September 17, 2018, the District's developer fees are as follows:

**Table 3 – Impact Fee**

Type of Development	Fee (effective 9/17/18)
Commercial/Industrial	\$0.61
Residential	\$3.79

A7-4

While the developer fees are intended to help offset impacts from the students generated by new development, the fees may not be sufficient to provide adequate comprehensive school facilities, including classrooms, athletic equipment and playfields, kitchen and dining facilities, library space, pools, or other educational or recreational facilities.

Having reviewed the Draft EIR prepared for the Project, the District recommends mitigation measures in line with the recommendations of the EIR. In addition, at least one reference was found in the Draft EIR referring to "LAUSD" which should be corrected to "SAUSD"

A7-5

Pursuant to Public Resources Code section 21092.2, the District requests that the City of Newport Beach, as lead agency, provide to the District copies of all notices and documents prepared pursuant to CEQA relative to the project. All notices should be sent to the attention of the Assistant Superintendent of Facilities & Governmental Relations.

A7-6

Sincerely,



Jeremy Cogan  
 Director of Facilities Planning  
 Facilities and Governmental Relations

cc:

Stefanie P. Phillips, Superintendent  
 Thomas A. Stekol, Deputy Superintendent  
 Orin Williams, Assistant Superintendent, Facilities & Government Relations  
 1601 East Chestnut Avenue, Santa Ana, CA 92701-6322, (714) 480-5349

### BOARD OF EDUCATION

Valerie Amezcua, President • Rigo Rodriguez Ph.D., Vice President  
 Alfonso Alvarez Ed.D., Clerk • John Palacio, Member

## 2. Response to Comments

### A7. Response to Comments from Santa Ana Unified School District, Jeremy Cogan, Director of Facilities Planning, dated January 11, 2019.

- A7-1 The comment does not concern the content or adequacy of the Draft EIR. The comment is acknowledged.
- A7-2 The comment states the number of students potentially generated by the project. As requested in Comment A7-3, the Draft EIR has been revised to reflect the updated student generation factors and resultant student generation numbers. See response to Comment A7-3, below.
- A7-3 The commenter requests that the student generation numbers provided in Draft EIR Section 5.12, *Public Services*, be revised to reflect the District's updated student generation estimate. As requested, the text on page 5.12-13 of Section 5.12 has been revised, as follows. The revisions are also provided in Chapter 3, *Revisions to the Draft EIR*, of the Final EIR. The text revisions do not change the findings or conclusions of the Draft EIR and do not result in the identification of any new or increased significant impacts. Changes made to the Draft EIR are identified here in ~~strikeout~~ text to indicate deletions and in **bold underlined** text to signify additions.

## 5.12 PUBLIC SERVICES

**Impact Analysis:** The proposed project is estimated to generate about ~~39~~ **180** students—using SAUSD student generation factors for multifamily units—consisting of ~~22~~ **83** elementary school students, ~~8~~ **43** intermediate students, and ~~9~~ **54** high school students (see Table 5.12-3).

**Table 5.12-3 Estimated Project Student Generation (350 Proposed Multifamily Units)**

School Level	Generation Factor per Household (multifamily attached units) <sup>1</sup>	Students Generated
Elementary (K-5)	<del>0.0620</del> <b><u>0.2367</u></b>	<del>22</del> <b><u>83</u></b>
Intermediate (6-8)	<del>0.0229</del> <b><u>0.1218</u></b>	<del>8</del> <b><u>43</u></b>
High (9-12)	<del>0.0254</del> <b><u>0.1533</u></b>	<del>9</del> <b><u>54</u></b>
<b>Total</b>	<del>0.11</del> <b><u>—</u></b>	<del>39</del> <b><u>180</u></b>

Source: Cogan ~~2018~~ **2019**.

The three schools serving the project site have sufficient capacities for the proposed project's student generation, as shown in Table 5.12-4. Project development would not require SAUSD to add school capacity as the schools serving the project site would have more than adequate capacity.

## 2. Response to Comments

**Table 5.12-4 Project Impacts on School Capacities**

School	Existing Available Capacity (from Table 5.12-2) <sup>1</sup>	Project Student Generation (from Table 5.12-3)	Available Capacity After Project Student Generation
Monroe Elementary School	191	<del>22</del> <b><u>83</u></b>	<del>169</del> <b><u>108</u></b>
McFadden Intermediate School	609	<del>8</del> <b><u>43</u></b>	<del>601</del> <b><u>566</u></b>
Century High School	127	<del>9</del> <b><u>54</u></b>	<del>118</del> <b><u>76</u></b>

Source: Cogan 2018.

Additionally, the need for additional school services and facilities is addressed by compliance with school impact assessment fees per Senate Bill 50, also known as Proposition 1A. SB 50—codified in California Government Code Section 65995—was enacted in 1988 to address how schools are financed and how development projects may be assessed for associated school impacts. To address the increase in enrollment at ~~LAUSD~~ **SAUSD** schools that would serve the Proposed Project, the project applicant/developer would be required to pay school impact fees to reduce any impacts to the school system, in accordance with SB 50. These fees are collected by school districts at the time of issuance of building permits. As stated in Government Code Section 65995(h),

A7-4

The comment states that the Draft EIR should be updated to reflect the State Allocation Board's most recent adjustment to level-on residential school fees. As requested, the text on page 5.12-11 of Draft EIR Section 5.12 has been revised, as follows. The revisions are also provided in Chapter 3, *Revisions to the Draft EIR*, of the Final EIR. The text revisions do not change the findings or conclusions of the Draft EIR and do not result in the identification of any new or increased significant impacts. Changes made to the Draft EIR are identified here in ~~strikeout~~ text to indicate deletions and in **bold underlined** text to signify additions.

Additionally, the commenter noted that while developer fees are intended to help offset the students generated by the project, the fees may not be sufficient to provide adequate comprehensive school facilities. As noted under impact statement 5.12-3 (pages 5.12-13 and 5.12-14) of Draft EIR Section 5.12, pursuant to Government Code Section 65995(h), "The payment or satisfaction of a fee, charge, or other requirement levied or imposed ... are hereby deemed to be full and complete mitigation of the impacts of any legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization ... on the provision of adequate school facilities."

## 2. Response to Comments

### 5.12 PUBLIC SERVICES

#### Regulatory Background

##### *Senate Bill 50 (Chapter 407 of Statutes of 1998) (SB 50)*

SB 50 sets forth a state school facilities construction program that includes restrictions on a local jurisdiction's ability to impose mitigation for a project's impacts on school facilities in excess of fees set forth in Education Code 17620. It establishes three potential limits for school districts, depending on the availability of new school construction funding from the state and the particular needs of the individual school districts. Level one is the general school facilities fees imposed in accordance with Government Code Section 65995 as amended. Level two and three fees are alternate fees that are intended to represent 50 percent or 100 percent of a school district's school facility construction costs per new residential construction as authorized by Government Code Sections 65995.5, 65995.6, and 65995.7. On ~~February 24, 2016~~ **September 17, 2018**, the State Allocation Board adjusted the maximum level-one residential school fee to be ~~\$3.48~~ **\$3.79** per square foot for residential development; ~~\$0.56~~ **\$0.61** per square foot for commercial, industrial, and senior housing projects; and ~~\$0.406~~ per square foot for hotel/motel projects. Development fees authorized by SB 50 are deemed by Section 65996 of the California Government Code to be "full and complete school facilities mitigation."

- A7-5 The commenter concurs with the mitigation measures outlined in the Draft EIR. The comment is acknowledged. Also, in response to the commenter's minor edit requested, the text on page 5.12-13 of Section 5.12 has been revised, as shown in response to Comment A7-3, above. The revision is also provided in Chapter 3, *Revisions to the Draft EIR*, of the FEIR.
- A7-6 As requested, the City will continue to provide the District with all CEQA-related project notices and documents in accordance pursuant to Public Resources Code Section 21092.2, and to the attention of the Assistant Superintendent of Facilities & Government Relations.

## 2. Response to Comments

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## 2. Response to Comments

### LETTER A8 – South Coast Air Quality Management District (4 pages)



SENT VIA E-MAIL AND USPS:  
[jmurillo@newportbeachca.gov](mailto:jmurillo@newportbeachca.gov)  
Jaime Murillo, Senior Planner  
City of Newport Beach, Community Development Department  
100 Civic Center Drive  
Newport Beach, CA 92660

January 11, 2019

**Draft Environmental Impact Report (Draft EIR) for the Proposed  
Newport Crossings Mixed-Use Project (SCH No.: 2017101067)**

South Coast Air Quality Management District (SCAQMD) staff appreciates the opportunity to comment on the above-mentioned document. The following comments are meant as guidance for the Lead Agency and should be incorporated into the Final EIR.

**SCAQMD Staff's Summary of Project Description**

The Lead Agency is proposing to demolish 58,277 square feet of the existing structures for the construction of a mixed-use development consisting of 350 residential units, a 2,000-square-foot restaurant, and 5,500 square feet of retail uses on 5.69 acres (Proposed Project). The Proposed Project is located on the southeast corner of Corinthian Way and Scott Drive. Construction of the Proposed Project is expected to occur over approximately 38 months, beginning in December 2019<sup>1</sup>.

A8-1

**SCAQMD Staff's Summary of Air Quality Analysis**

In the Air Quality Analysis section, the Lead Agency quantified the Proposed Project's construction and operational emissions and compared those emissions to SCAQMD's regional and localized air quality CEQA significance thresholds. The Proposed Project would result in a daily maximum of 217 pounds per day (lbs/day) of NOx emissions during construction, which would exceed SCAQMD's regional air quality CEQA significance threshold of 100 lbs/day for NOx. After the implementation of mitigation measures (MM) AQ-1 through MM AQ-3, construction-related NOx emissions would be mitigated to be less than significant<sup>2</sup>. MM AQ-1 would limit the hauling of soil to a maximum 269 trucks per day and restrict overlapping between rough grading and associated soil hauling activities and other construction activities<sup>3</sup>. MM AQ-2 would limit the hauling of building demolition debris to a maximum 47 trucks per day and restrict overlapping between demolition and associated debris hauling activities and other construction activities such as rough grading and site preparation<sup>4</sup>. MM AQ-3 would require that construction equipment meet or exceed the U.S. EPA Tier 3 emissions standards for off-road diesel-powered construction equipment with more than 50 horsepower<sup>5</sup>.

A8-2

**SCAQMD's 2016 Air Quality Management Plan**

On March 3, 2017, the SCAQMD's Governing Board adopted the 2016 Air Quality Management Plan (2016 AQMP)<sup>6</sup>, which was later approved by the California Air Resources Board on March 23, 2017. Built upon the progress in implementing the 2007 and 2012 AQMPs, the 2016 AQMP provides a regional perspective on air quality and the challenges facing the South Coast Air Basin. The most significant air quality challenge

A8-3

<sup>1</sup> DEIR, Page 5.2-21.

<sup>2</sup> DEIR, Table 5.2-12, Pages 5.2-34 and 35.

<sup>3</sup> DEIR, Page 5.2-32.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.* Pages 5.2-32 and 33.

<sup>6</sup> South Coast Air Quality Management District, March 3, 2017. *2016 Air Quality Management Plan*. Accessed at: <http://www.aqmd.gov/home/library/clean-air-plans/air-quality-mgt-plan>.

## 2. Response to Comments

Jaime Murillo

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January 11, 2019

in the Basin is to achieve an additional 45 percent reduction in nitrogen oxide (NOx) emissions in 2023 and an additional 55 percent NOx reduction beyond 2031 levels for ozone attainment. A8-3  
cont

### SCAQMD Staff's General Comments

As described in the 2016 AQMP, achieving NOx emissions reductions in a timely manner is critical to attaining the National Ambient Air Quality Standard (NAAQS) for ozone before the 2023 and 2031 deadlines. SCAQMD is committed to attaining the ozone NAAQS as expeditiously as practicable. While construction-related NOx emissions were mitigated to be less than significant with the implementation of MM AQ-1 through MM AQ-3, to further reduce NOx emissions during construction, SCAQMD staff recommends that the Lead Agency incorporate changes to MM AQ-3 and include additional mitigation measures in the Final EIR. Details are provided in the attachment. A8-4

### Conclusion

Pursuant to California Public Resources Code Section 21092.5(a) and CEQA Guidelines Section 15088(b), SCAQMD staff requests that the Lead Agency provide SCAQMD staff with written responses to all comments contained herein prior to the certification of the Final EIR. In addition, issues raised in the comments should be addressed in detail giving reasons why specific comments and suggestions are not accepted. There should be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice (CEQA Guidelines Section 15088(c)). Conclusory statements do not facilitate the purpose and goal of CEQA on public disclosure and are not meaningful or useful to decision makers and to the public who are interested in the Proposed Project. A8-5

SCAQMD staff is available to work with the Lead Agency to address any air quality questions that may arise from this comment letter. Please contact Robert Dalbeck, Assistant Air Quality Specialist, at [rdalbeck@aqmd.gov](mailto:rdalbeck@aqmd.gov) or (909) 396-2139, should you have any questions.

Sincerely,

*Lijin Sun*

Lijin Sun, J. D.  
Program Supervisor, CEQA IGR  
Planning, Rule Development & Area Sources

Attachment  
LS:RD  
ORC181205-10  
Control Number



## 2. Response to Comments

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January 11, 2019

### ATTACHMENT

#### Air Quality Analysis

##### *Overlapping Construction and Operation Scenario*

1. According to the Draft EIR<sup>7</sup>, construction of the Proposed Project would occur over 38 months beginning in December 2019 and be completed by the end of January 2023. However, based on a review of the CalEEMod output file, SCAQMD staff found that the Proposed Project would be operational in 2022<sup>8</sup>. Therefore, it is recommended that the Lead Agency clarify in the Final EIR if any of the construction activities would overlap with operation. In the event that there is an overlapping construction and operation scenario, SCAQMD staff recommends that the Lead Agency identify the overlapping phases, combine construction emissions with operational emissions, and compare the combined emissions to SCAQMD's regional and localized air quality CEQA significance thresholds for operation to determine the level of significance in the Final EIR. Should the Lead Agency, after revising the Air Quality Analysis, find that the Proposed Project's air quality impacts would be significant, the Lead Agency is required to consider feasible mitigation measures and determine if new mitigation measures would be warranted in addition to the existing Mitigation Measure (MM) AQ-1 through MM AQ-3.

A8-6

#### Mitigation Measures

##### *Recommended Changes to Existing MM AQ-3*

2. While the Proposed Project's NOx emissions during construction (i.e., approximately 217 lbs/day) were mitigated to be less than significant with the implementation of MM AQ-1 through MM AQ-3, to further reduce NOx emissions during construction, SCAQMD recommends that the Lead Agency incorporate the following changes to MM AQ-3 and include additional mitigation measures in the Final EIR.

AQ-3 Construction contractors shall, at minimum, use equipment that meets the EPA's Tier 3 4 emissions standards for off-road diesel-powered construction equipment ~~with more than of 50 horsepower or greater, for all building and asphalt demolition, building and asphalt demolition debris hauling, rough grading, and rough grading soil hauling activities~~ phases of construction activity, unless it can be demonstrated to the City of Newport Beach Building Division with substantial evidence that such equipment is not available. Any emissions control device used by the contractor shall achieve emissions reductions that are no less than what could be achieved by Tier 3 4 emissions standards for a similarly sized engine, as defined by the California Air Resources Board's regulations. Successful contractor(s) must demonstrate the ability to supply the compliant construction equipment for use prior to any ground disturbing and construction activities. A copy of each unit's certified tier specification or model year specification and CARB or SCAQMD operating permit (if applicable) shall be available upon request at the time of mobilization of each applicable unit of equipment.

A8-7

To ensure that Tier 4 construction equipment or better will be used during the Proposed Project's construction, SCAQMD staff recommends that the Lead Agency include this requirement in applicable bid documents, purchase orders, and contracts. The Lead Agency should also require periodic reporting and provision of written construction documents by construction contractor(s), and conduct regular inspections to the maximum extent feasible to ensure and enforce compliance.

<sup>7</sup> DEIR, Page 5.2-31.

<sup>8</sup> DEIR, Appendix B, *Air Quality and Greenhouse Gas Modeling*.

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### *Additional Recommended Mitigation Measures*

3. CEQA requires that all feasible mitigation measures that go beyond what is required by law be utilized to minimize or eliminate any significant adverse air quality impacts. SCAQMD staff recommends that the Lead Agency incorporate the following mitigation measures in the Final EIR.
- Require zero-emissions or near-zero emission on-road haul trucks such as heavy-duty trucks with natural gas engines that meet the CARB's adopted optional NOx emissions standard at 0.02 grams per brake horsepower-hour (g/bhp-hr), if and when feasible. At a minimum, require that construction vendors, contractors, and/or haul truck operators commit to using 2010 model year trucks (e.g., material delivery trucks and soil import/export) that meet CARB's 2010 engine emissions standards at 0.01 g/bhp-hr of particulate matter (PM) and 0.20 g/bhp-hr of NOx emissions or newer, cleaner trucks. Operators shall maintain records of all trucks associated with project construction to document that each truck used meets these emission standards. The Lead Agency should include this requirement in applicable bid documents, purchase orders, and contracts. Operators shall maintain records of all trucks associated with project construction to document that each truck used meets these emission standards, and make the records available for inspection. The Lead Agency should conduct regular inspections to the maximum extent feasible to ensure and enforce compliance.
  - Suspend all on-site construction activities when wind speeds (as instantaneous gusts) exceed 25 miles per hour.
  - All trucks hauling dirt, sand, soil or other loose materials are to be covered, or should maintain at least two feet of freeboard in accordance with California Vehicle Code Section 23114 (freeboard means vertical space between the top of the load and top of the trailer).
  - Enter into applicable bid documents, purchase orders, and contracts to notify all construction vendors, contractors, and/or haul truck operators that vehicle and construction equipment idling time will be limited to no longer than five minutes, consistent with the California Air Resources Board's policy<sup>9</sup>. For any idling that is expected to take longer than five minutes, the engine should be shut off. Notify construction vendors, contractors, and/or haul truck operators of these idling requirements at the time that the purchase order is issued and again when vehicles enter the Proposed Project site. To further ensure that drivers understand the vehicle idling requirement, post signs at the Proposed Project entry gate and throughout the Proposed Project site, where appropriate, stating that idling longer than five minutes is not permitted.

A8-8

<sup>9</sup> California Air Resources Board. June 2009. *Written Idling Policy Guidelines*. Accessed at: <https://www.arb.ca.gov/msprog/ordiesel/guidance/writtenidlingguide.pdf>.

## 2. Response to Comments

### A8. Response to Comments from South Coast Air Quality Management District, Lijin Sun, Program Supervisor CEQA IGR, dated January 11, 2019.

- A8-1 The comment does not concern the content or adequacy of the Draft EIR. The South Coast Air Quality Management District's (SCAQMD) summary of the project description is acknowledged .
- A8-2 The comment does not concern the content or adequacy of the Draft EIR. SCAQMD's summary of the potential air quality impacts of the project and mitigation measures is acknowledged.
- A8-3 The comment does not concern the content or adequacy of the Draft EIR. SCAQMD's summary of the goals of the 2016 Air Quality Management Plan (AQMP), including the substantial nitrogen oxides (NOx) reductions necessary to achieve the 2023 and 2031 targets, is acknowledged.
- A8-4 SCAQMD requests changes to Mitigation Measure AQ-3 to further reduce NOx emissions during construction activities. As identified in response to Comment A8-7 below, the commenter's recommendation to utilize certain construction equipment that meets the US Environmental Protection Agency (EPA) Tier 4 emissions standards has been incorporated into Mitigation Measure AQ-3.
- A8-5 The comment requests that the City provide written responses to all of the SCAQMD's comments. As requested, responses to SCAQMD's comments are provided herein in accordance with the Public Resources Code and CEQA Guidelines.
- A8-6 The comment questions whether any construction activities would overlap with project operation. As noted in Subsection 3.3.4, *Project Phasing and Construction*, of Draft EIR Chapter 3, *Project Description*, the proposed project would be constructed in one phase. There would be no overlap of project operation with project-related construction activities. No revisions are necessary to the air quality modeling; and additional mitigation measures are not warranted to reduce impacts below the SCAQMD significance thresholds.
- A8-7 The comment requests that Mitigation Measure AQ-3 be revised to require the use of certain construction equipment that meets the EPA's Tier 4 emission standards. As substantiated in Draft EIR Section 5.2, *Air Quality*, use of Tier 3 construction equipment would be sufficient to reduce emissions below the SCAQMD significance thresholds. However, in an effort to further reduce NOx emissions during construction activities, Mitigation Measure AQ-3 has been revised to require the construction contractor to utilize construction equipment with engines that achieve the US EPA Tier 4 rating. The mitigation text on pages 5.2-32 and 5.2-33 of Section 5.2, has been revised, as follows. The revisions are also provided in Chapter 3, *Revisions to the Draft EIR*, of the Final EIR. The text revisions do not change the findings or conclusions of the Draft EIR and do not

## 2. Response to Comments

result in the identification of any new or increased significant impacts. Changes made to the Draft EIR are identified here in ~~strikeout~~ text to indicate deletions and in **bold underlined** text to signify additions.

### 5.2 AIR QUALITY

#### Impact 5.2-2

AQ-3 Construction contractors shall, at minimum, use equipment that meets the EPA's Tier ~~34~~ emissions standards for off-road diesel-powered construction equipment ~~with more than~~ **of** 50 horsepower **or greater** for all ~~building and asphalt demolition, building and asphalt demolition debris hauling, rough grading, and rough grading soil hauling activities~~ **phases of construction activity**, unless it can be demonstrated to the City of Newport Beach Building Division **with substantial evidence** that such equipment is not available. Any emissions control device used by the contractor shall achieve emissions reductions that are no less than what could be achieved by Tier ~~34~~ emissions standards for a similarly sized engine, as defined by the California Air Resources Board's regulations.

Prior to construction, the project engineer shall ensure that all construction (e.g., demolition and grading) plans clearly show the requirement for EPA Tier ~~34~~ emissions standards for construction equipment ~~over~~ **of** 50 horsepower **or greater** for the specific activities stated above. During construction, the construction contractor shall maintain a list of all operating equipment in use on the construction site for verification by the City of Newport Beach. The construction equipment list shall state the makes, models, and numbers of construction equipment onsite. Equipment shall be properly serviced and maintained in accordance with the manufacturer's recommendations. Construction contractors shall also ensure that all nonessential idling of construction equipment is restricted to 5 minutes or less in compliance with Section 2449 of the California Code of Regulations, Title 13, Article 4.8, Chapter 9.

A8-8 The comment requests that various additional mitigation measures should be required. As substantiated in Draft EIR Section 5.2, *Air Quality*, additional mitigation measures are not necessary to reduce impacts below the SCAQMD significance thresholds. The SCAQMD AQMP emissions forecast include emissions from construction activities in the air basin. The additional measures identified by the commenter would not eliminate the fact that construction activities would generate criteria air pollutant emissions. As substantiated in Draft EIR Section 5.2, *Air Quality*, with implementation of Mitigation Measures AQ-1 through AQ-3, the proposed project would not exceed the SCAQMD significance thresholds. Additionally, the request to require zero-emissions or near-zero-emission on-

## 2. Response to Comments

road haul trucks is potentially not feasible for a project with a buildout in year 2023 as these types of trucks are in the “demonstration” phase and not readily available by most construction sub-contractors at this time.

SCAQMD Rule 403 already requires that onsite activities be suspended when wind speeds exceed 25 miles per hour (mph). This is an existing regulation that requires project applicant compliance and therefore is, not required as a mitigation measure. Similarly, the California Vehicle Code requires that trucks hauling dirt are tarped/covered and/or maintain six inches of freeboard and the California Air Resources Board’s in-use off-road diesel vehicle regulations prohibit non-essentially idling for more than five consecutive limits. These are also existing regulations that the project applicant would have to comply with and not required as mitigation measures.

## 2. Response to Comments

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## 2. Response to Comments

### LETTER A9 – California Department of Transportation (2 pages)

STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY

**DEPARTMENT OF TRANSPORTATION**  
DISTRICT 12  
1750 EAST FOURTH STREET, SUITE 100  
SANTA ANA, CA 92705  
PHONE (657) 328-6267  
FAX (657) 328-6510  
TTY 711  
[www.dot.ca.gov](http://www.dot.ca.gov)

EDMUND G. BROWN Jr., Governor



*Making Conservation  
a California Way of Life.*

January 11, 2019

Jaime Murillo  
City of Newport Beach  
100 Civic Center Drive  
Newport Beach, CA 92660

File: IGR/CEQA  
SCH#: 2017101067  
12-ORA-2018-01031  
SR 73, PM 25.198

Dear Mr. Murillo,

Thank you for including the California Department of Transportation (Caltrans) in the review of the Draft Environmental Impact Report for the Newport Crossings Mixed Use project in the City of Newport Beach. The mission of Caltrans is to provide a safe, sustainable, integrated and efficient transportation system to enhance California's economy and livability.

The proposed project consists of the development of a multistory building that would house 350 apartment units, 2,000 square feet of "casual-dining" restaurant space, 5,500 square feet of retail space, and a 0.5-acre public park. The project site is approximately 0.6 miles north of State Route (SR) 73 and 1.3 miles south of Interstate 405 (I-405). Caltrans is a commenting agency on this project and upon review, we have the following comments:

**Transportation Planning**  
The City's Bicycle Master Plan (2014) recommends that Class II facilities be constructed on several streets surrounding the project site, including Birch Street, MacArthur Boulevard, Westerly Place, and Dove Street. Please consider these recommended facilities when developing the project's circulation element.

**Encroachment Permit**  
Please be advised that any project work proposed in the vicinity of the State Highway System (SHS) will require an Encroachment Permit and all environmental concerns must be adequately addressed. If the environmental documentation for the project does not meet Caltrans' requirements, additional documentation would be required before the approval of the Encroachment Permit. For specific details for Encroachment Permits procedure, please refer to the Caltrans' Encroachment Permits Manual. The latest edition of the Manual is available on the web site: <http://www.dot.ca.gov/hq/traffops/developserv/permits/>

Please continue to keep us informed of this project and any future developments which could potentially impact the SHS. If you have any questions, please do not hesitate to contact Joseph Jamoralin, at (657) 328-6276 or [Joseph.Jamoralin@dot.ca.gov](mailto:Joseph.Jamoralin@dot.ca.gov).

*"Provide a safe, sustainable, integrated and efficient transportation system  
to enhance California's economy and livability"*

A9-1

A9-2

A9-3

## 2. Response to Comments

Newport Crossings Mixed Use Project  
January 11, 2019  
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Sincerely,



SCOTT SHELLEY  
Branch Chief, Regional-IGR-Transit Planning  
District 12

*"Provide a safe, sustainable, integrated and efficient transportation system  
to enhance California's economy and livability"*



## 2. Response to Comments

### **A9. Response to Comments from California Department of Transportation, Scott Shelley, Branch Chief, Regional-IGR-Transit Planning, dated January 11, 2019.**

- A9-1 The comment does not concern the content or adequacy of the Draft EIR. The comment is acknowledged.
- A9-2 The commenter requested that the City consider the recommended Class II (on-street) bicycle facility along Dove Street, which forms the southwestern boundary of the project site. Specifically, the recommended Class II bicycle facility is called out in Figure 5-1 (Recommended Bicycle Facilities Network) of the City's Bicycle Master Plan (2014). The project does include improvements to the sidewalk along Dove Street, which would be demolished and reconstructed to City standards, and the project will provide new ADA compliant curb access ramps at Dove Street/Scott Drive in accordance with City standards. Further, although designated bike lanes are not located on the local streets surrounding the project site (i.e., Corinthian Way, Martingale Way, Scott Drive, and Dove Street), Class II bicycles lanes are provided on both sides of Campus Drive–Irvine Avenue from MacArthur Boulevard to Cliff Drive in the vicinity of the project. However, the recommendation for a Class II bicycle facility along Dove Street remains conceptual at this time and has yet to be determined feasible through a study and public outreach process, which would be initiated by the City. The recommended Class II bicycle facility along Dove Street is not planned for implementation at this time in connection with the proposed project.
- A9-3 The comment is acknowledged. The proposed project does not require an encroachment permit as no work is being proposed on, adjacent to, or in proximity of a State Highway System.

## 2. Response to Comments

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## 2. Response to Comments

LETTER A10 – Airport Land Use Commission for Orange County (2 pages)



### AIRPORT LAND USE COMMISSION

FOR ORANGE COUNTY

3160 Airway Avenue • Costa Mesa, California 92626 • 949.252.5170 fax: 949.252.6012

January 14, 2019

Jaime Murillo, Senior Planner  
City of Newport Beach  
Community Development Department  
100 Civic Center Drive  
Newport Beach, CA 92660

**Subject: DEIR for Newport Crossings Mixed Use Project**

Dear Mr. Murillo:

Thank you for the opportunity to review the Draft Environmental Impact Report (DEIR) for the proposed Newport Crossings Mixed Use Project in the context of the Airport Land Use Commission's (ALUC) *Airport Environs Land Use Plan (AELUP) for John Wayne Airport (JWA)*. The proposed project consists of 350 residential dwelling units, 2,000 square feet of casual-dining restaurant space, 5,500 square feet of commercial space, and a 0.5-acre public park. The proposed project is bounded by Corinthian Way to the northeast, Martingale Way to the east, Scott Drive to the northwest, and Dove Street to the southwest.

A10-1

The proposed project is located within the Federal Aviation Regulation (FAR) Part 77 Notification Area for JWA. The DEIR states that the proposed maximum building height for the project area is 153 feet above ground level (AGL). However, the DEIR does not address if the proposed project penetrates the FAA Notification surface. We recommend that the project proponent utilize the Notice Criteria Tool on the Federal Aviation Administration (FAA) website <https://oecaaa.faa.gov/oecaaa/external/portal.jsp> to determine if the proposed project penetrates the notification surface and requires filing Form 7460-1 Notice of Proposed Construction or Alteration with the FAA. The results from the Notice Criteria Tool should be included in the DEIR. Additionally, if the project requires Form 7460-1 filing, the resulting FAA airspace determination should be included in the project submittal package to ALUC.

A10-2

Additionally, the DEIR states that the maximum ground elevation at the project site is 53 feet above mean sea level (AMSL). With a proposed building height of 153 feet added to the ground elevation, the total proposed elevation of the building would be 206 feet AMSL. The JWA horizontal imaginary surface at the location of this project is 206 feet AMSL and should not be penetrated. Although the proposed structure is not proposed to

A10-3

## 2. Response to Comments

ALUC Comments- Newport Crossings DEIR  
 1/14/2019  
 Page 2

penetrate the 206 feet AMSL elevation, the ALUC does not recommend that structures be built to this elevation. A10-3  
cont'd

With respect to noise, the proposed project is located within the 60 dBA CNEL noise contour and is located within Safety Zone 6 for JWA which will subject the proposed project to overflight from general aviation operations. The DEIR discusses how the proposed project will address noise and safety concerns. A10-4

With respect to noise requirements, the City will require that the project applicant demonstrate that interior noise levels from aircraft be reduced to 45 dBA CNEL or less in all habitable rooms per the California Code of Regulations, Title 24, Building Standards Administrative Code, Part 2. The DEIR states that an acoustic study shall be performed by a qualified professional that demonstrates compliance with these standards. The City is also requiring that signage be posted in public parks and outdoor common or recreational areas informing the public of the presence of operating aircraft and noise. We concur with these requirements. A10-5

A referral by the City to the ALUC may be required for this project due to the close proximity of the proposal to JWA. In this regard, please note that the Commission wants such referrals to be submitted and agendized by the ALUC staff between the Local Agency's expected Planning Commission and City Council hearings. Since the ALUC meets on the third Thursday afternoon of each month, submittals must be received in the ALUC office by the first of the month to ensure sufficient time for review, analysis, and agendizing. A10-6

Thank you again for the opportunity to comment on the DEIR. Please contact Lea Choum at (949) 252-5123 or via email at lchoum@ocair.com should you have any questions related to the Airport Land Use Commission for Orange County.

Sincerely,

  
 Kari A. Rigoni  
 Executive Officer

## 2. Response to Comments

### A10. Response to Comments from Airport Land Use Commission of Orange County, Kari A. Rigoni, Executive Director, dated January 14, 2019.

A10-1 The comment does not concern the content or adequacy of the Draft EIR. The comment is acknowledged.

A10-2 Impact Statement 5.7-3 of Draft EIR Section 5.17, *Hazards and Hazardous Materials*, provides a discussion of the FAR Part 77 Notification Area and the potential impacts to JWA navigable air space resulting from the proposed project's building heights. See Response to Comment A10-3, below, regarding the discrepancy in the proposed building height. As noted in that response, the building heights noted in the Draft EIR were incorrect. The correct building height proposed is 130 feet AMSL, which is well below the 206 foot AMSL height limit for the project site. Therefore, it is not necessary to use the Notice Criteria Tool to determine if the proposed building would penetrate the Part 77 Notification Area, as the building would not penetrate notification area.

However, in response to the commenter, a formal submittal was made to the Federal Aviation Administration (FAA) to determine if the proposed building would penetrate the notification surface and require filing Form 7460-1, Notice of Proposed Construction or Alteration, with the FAA. Upon submittal, the FAA conducted an aeronautical study, which revealed that the proposed building does not exceed obstruction standards and would not be a hazard to air navigation provided that FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed within 5 days after the construction reaches its greatest height (see Appendix A). The FAA-issued "Determination of No Hazard to Air Navigation" is provided as Appendix A to this FEIR. Applicant submittal of FAA Form 7460-2 form will be ensured through the City's site development review process, as it will be included as a condition of approval.

A10-3 The commenter stated the project's maximum building height would be 153 AMSL, which is text directly taken from page 5.7-20 under Impact Statement 5.7-3 of Draft EIR Section 5.7, *Hazards and Hazardous Materials*. Adding the proposed building height of 153 feet AMSL with the highest ground level of the site of 53 feet AMSL would result in the building reaching the maximum FAA allowed height for the site of 206 AMSL, which is of concern to the commenter and JWA operations.

The building height of 153 feet AMSL referenced on Draft EIR page 5.7-14 is incorrect. The maximum height would be approximately 130 AMSL, which is the sum of the maximum proposed building height of 77 feet 9 inches (tallest structure proposed) plus the highest ground level of the site of 53 feet AMSL. This would put the proposed building height well below the 206 foot AMSL height limit. The text on pages 5.7-14 and 5.7-20 under Impact Statement 5.7-3 of Draft EIR Section 5.7 has been revised, as follows. The revisions are also provided in Chapter 3, *Revisions to the Draft EIR*, of the Final EIR. The text revisions do not change the findings or conclusions of the Draft EIR

## 2. Response to Comments

and do not result in the identification of any new or increased significant impacts. Changes made to the Draft EIR are identified here in ~~strikeout~~ text to indicate deletions and in **bold underlined** text to signify additions.

### 5.7 HAZARDS AND HAZARDOUS MATERIALS

#### Airport-Related Hazards

The proposed project is in Safety Zone 6 designated in the Airport Environs Land Use Plan (AELUP) for John Wayne Airport (JWA) issued by the Orange County Airport Land Use Commission in 2008. Outdoor stadiums and similar uses with very high intensities are prohibited in Zone 6. Children's schools, large day care centers, hospitals, and nursing homes should be avoided. Residential uses and most nonresidential uses are permitted (OCALUC 2008).

There are no heliports within one mile of the project site other than JWA (Airnav.com 2018).

The proposed project is also in an area surrounding JWA where structure heights are regulated under Federal Aviation Administration (FAA) Regulations Part 77 for preservation of navigable airspace. The maximum structure height permitted at the project site is 206 feet above mean sea level (amsl) (OCALUC 2008). The elevation onsite ranges from 48 feet amsl at the southwest corner of the site to 53 feet amsl at the northeast corner. Thus, **the maximum structure height proposed onsite would be** based on the higher of those two elevations, ~~the maximum structure height permitted on-site is about 153 feet above ground level~~ **plus the proposed building height.**

***Impact Analysis:*** The project site is in Safety Zone 6 designated in the Airport Environs Land Use Plan for John Wayne Airport. Outdoor stadiums and similar uses with very high intensities are prohibited in Zone 6. Children's schools, large day care centers, hospitals, and nursing homes should be avoided. Residential uses and most nonresidential uses are permitted (OCALUC 2008). The proposed project does not propose any land uses prohibited or discouraged by the AELUP and would not subject people on the ground to substantial hazards from crashes of aircraft approaching or departing JWA.

The project site also in an area surrounding JWA where structure heights are regulated under FAA Regulations Part 77 for preservation of navigable airspace. The maximum structure height permitted at the project site is 206 feet amsl (OCALUC 2008). The elevation onsite ranges from 48 feet amsl at the southwest corner of the site to 53 feet amsl at the northeast corner. Thus, based on the higher of those two elevations, the maximum structure height ~~permitted onsite is about 153 feet above ground level~~ **is approximately 130 amsl, which is the sum of the maximum proposed building height of 77 feet 9 inches (tallest structure proposed) plus the highest elevation of the site of 53 feet amsl. This would put the proposed building height well below**



## 2. Response to Comments

the 206 foot amsl height limit for the site. The proposed buildings would be approximately 55 feet high for residential living spaces, with limited ancillary structures to 77 feet 9 inches for stair towers architectural features (including parapets), parking, roof decks, elevator shafts, and mechanical equipment. The proposed project would conform with structure heights permitted on-site under FAA regulations and would not adversely affect navigable airspace surrounding JWA.

- A10-4 As provided in the Draft EIR, the comment states that the project site is within the 60 dBA CNEL noise contour and within Safety Zone 6 of the JWA, and acknowledges that the Draft EIR includes a discussion of measures intended to address safety and noise concerns for the project. The comment is acknowledged.
- A10-5 The commenter concurs with the noise requirements outlined in Draft EIR Section 5.10, *Noise*, including those related to the project applicant's requirement to prepare an acoustic study to ensure that airport-related noise impacts are adequately addressed for future residents. It should be noted that the reference to the need for an acoustic study was provided for reference purposes only (see regulatory requirement SC NOI-1 on page 5.14-14), and not in response to any of the impact statements/questions of Section 5.10. Under CEQA, a project's impact on the environment are required to be analyzed; however, an analysis of the environments impact on a project is not required.
- A10-6 The commenter stated that a referral to the Airport Land Use Commission (ALUC) may be required for the proposed project due to its close proximity to JWA. The City of Newport Beach General Plan was found consistent with the Airport Environs Land Use Plan (AELUP) for John Wayne Airport by ALUC on July 20, 2006. As such, the City of Newport Beach is considered a consistent city. Per Policy LU 3.8 of the Newport Beach General Plan Land Use Element, and per ALUC Referral Requirements for Consistent Cities, projects within the JWA planning area that include the adoption or amendment of a general plan, zoning code, specific plan, or planned community development plan require review by ALUC. The policy also states that development projects that include buildings with a height greater than 200 feet above ground level require ALUC review. The proposed project does not meet either of these criteria, and therefore, does not require ALUC review. Also, see responses to Comments A10-2 and A10-3, above. Based on these responses, no ALUC review is necessary.

## 2. Response to Comments

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## 2. Response to Comments

LETTER A11 – OC Public Works (1 page)



January 14, 2019

NCL-18-061

Jaime Murillo, Senior Planner  
City of Newport Beach  
Community Development Department  
100 Civic Center Drive  
Newport Beach, CA 92660

**Subject:** Newport Crossings Mixed Use Project: Notice of Availability of a Draft Environmental Impact Report

Dear Mr. Murillo:

The County of Orange has reviewed the Draft Environmental Impact Report for the Newport Crossings Mixed Use Project and has no comments at this time. We would like to be advised of further developments on the project. Please continue to keep us on the distribution list for future notifications related to the project.

A11-1

If you have any questions regarding these comments, please contact Cindy Salazar at (714) 667-8870 in OC Development Services.

Sincerely,

Richard Vuong, Manager, Planning Division  
OC Public Works Service Area/OC Development Services  
300 North Flower Street  
Santa Ana, California 92702-4048  
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## 2. Response to Comments

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## 2. Response to Comments

**A11. Response to Comments from OC Public Works, Richard Vuong, Manager, Planning Division, dated January 14, 2019.**

A11-1 The comment does not concern the content or adequacy of the Draft EIR. The comment is acknowledged.

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## 2. Response to Comments

LETTER A12 – Wittwer Parkin, LLP representing the Southwest Regional Council of Carpenters (14 pages)

wittwer / parkin

January 14, 2019

**VIA E-MAIL**

Jamie Murillo, Senior Planner  
City of Newport Beach  
Community Development Department  
100 Civic Center Drive  
Newport Beach, California  
jmurillo@newportbeachca.gov

**Re: Newport Crossings Mixed Use Project Draft Environmental Impact Report  
(PA2017-017)**

Dear Ms. Murillo:

Wittwer Parkin, LLP represents the Southwest Regional Council of Carpenters (“Southwest Carpenters”) and submits this letter on the above-referenced project on its behalf. Southwest Carpenters represents 50,000 union carpenters in six states, including in Southern California. Southwest Carpenters has a strong interest in addressing the environmental impacts of development projects, including the proposed Newport Crossings Mixed-Use Project (“Project”) at 1701 Corinthian Way, 1660 Dove Street, 4251, 4253, 4255 Martingale Way, and 4200, 4220, and 4250 Scott Drive in Newport Beach, California.

The Project is located in the “Airport Area” region of the City of Newport Beach (“City”). (DEIR, p. 1-4.) It is located near the John Wayne Airport, and is surrounded by offices, retail uses, and hotels. (*Id.* at Figure 3-3a [depicting project site and surrounding area], p. 4-4.) The Project site is approximately 5.69 acres, and is currently used as a shopping center, with eight retail and commercial buildings, surface parking, and trees. (*Id.* at p. 1-4.) The Project, if approved, would result in the demolition of these facilities and the construction of 350 apartment units, 2,000 square feet of restaurant space, 5,500 square feet of retail space, a six-level, five story parking structure, and a half-acre park. (*Ibid.*) Of the 350 apartment units, 91 would be constructed under a 35% density bonus, and 30% of the total units would be reserved for affordable housing. (*Id.* at pp. 1-4, 3-12.) In order to construct the Project, the Project Applicant would need to receive two “development concessions”: approval to build to 77 feet and 9 inches, rather than 55 feet, as required by the zoning code, and permission to build more one-bedroom and studio apartments than is typically permitted. (*Id.* at pp. 1-4 – 1-5, 3-33.) It would also need a lot line adjustment to consolidate three parcels into one large parcel for the mixed-use project, a half-acre parcel for the park, and a small parcel for emergency access improvements needed for the Project. (*Id.* at p. 3-33.)

A12-1

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In the DEIR, the City concludes that the Project would not result in any significant and unavoidable adverse impacts. (DEIR, p. 6-1.) It determines that the Project would result in potentially significant impacts to air quality, biological resources, cultural resources, hazards and hazardous materials, and fire protection and emergency services. (*Id.* at pp. 1-9, 1-11, 1-13 – 1-14, 1-15.) It asserts that mitigation would reduce these impacts to below a level of significance. (*Ibid.*) This is incorrect. As discussed more fully below, the DEIR is confusing, missing key analysis, and does not provide sufficient support for conclusions that the Project will have less than significant impacts in a number of areas.

A12-2

### **I. The DEIR's Cumulative Projects List Does Not Provide Sufficient Information.**

The data provided in the Cumulative Projects List is insufficient to fully examine the listed projects. (DEIR, pp. 4-13 – 4-14.) The list does not include a description of related development or indicate when the developments will be constructed, nor does the list identify how close the developments are to the Project site. (*Ibid.*) It is, therefore, difficult for Southwest Carpenters to determine how these developments will have cumulative effects in conjunction with the proposed Project. Please update the Cumulative Projects List to, at minimum, include a description of each development, an address for each development and their distance from the Project site, as well as projected construction dates.

A12-3

### **II. The DEIR's Air Quality Analysis is Incomplete.**

#### **A. The air quality analysis is uninformative.**

“[A]n EIR is ‘an informational document’” aimed at providing “‘detailed information about the effect which a proposed project is likely to have on the environment....’” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391 [“*Laurel Heights*”], citing Pub. Resources Code § 21061 and Cal. Code Regs., tit. 14, § 15003(b)-(e).) An EIR that is unclear fails to adequately inform the public about a potential project's impact on the environment.

A12-4

The Project is located in the South Coast Air Basin (“SCAB”). (DEIR, p. 5.2-1.) The SCAB is in non-attainment for California Ambient Air Quality Standards for ozone (“O<sub>3</sub>”), inhalable particulate matter (“PM<sub>10</sub>”), and fine particulate matter (“PM<sub>2.5</sub>”), and is in non-attainment for PM<sub>2.5</sub> and the 8-hour standards for O<sub>3</sub> under the National Ambient Air Quality Standards. (*Id.* at pp. 5.2-5 – 5.2-7, 5.2-12.)



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The City does not clearly explain whether it considered all of the information about the Project to reach its conclusions about Project impacts. It explains that the Project is consistent with Impact 5.2-1 (“the proposed project is consistent with the applicable air quality management plan”). (DEIR, pp. 5.2-22 – 5.2-23.) It explains: “projects that are consistent with the local general plan are considered consistent with the air quality-related regional plan,” because such projects are consistent with general-plan related demographic projections, and thus, they reason, will not have unexpected impacts on air quality. (*Ibid.*) The DEIR notes that “changes in population, housing, or employment growth projections have the potential to affect SCAG’s demographic projections.” (*Id.* at p. 5.2-23.) The evidence demonstrates that the Project will redevelop a commercial retail space into a hybrid-residential/retail/restaurant development, which will increase the population. (*Ibid.*) The DEIR states that this should not impact the Project’s ability to comply with the Air Quality Management Plan, and summarily states that the Project would be within the projected housing growth, but it does not explain why. (*Ibid.*) In addition, it fails to address how the Project’s 35% density bonus for above what is typically permitted for housing on site will increase the population density or how this, in turn, could impact the Project’s consistency with the applicable Air Quality Management Plan. (See *id.* at pp. 3-12, 5.2-23) [density bonus].) Please update the Air Quality analysis to better explain how this would be within projected housing growth and address the density bonus’s potential impacts on compliance with air quality standards.

A12-4  
cont’d

Further, the City does not explain how compliance with various regulatory requirements (RR AIR-1, RR AIR-2, and RR AIR-3) have any bearing on the potential of the Project to conflict with the Air Quality Management Plan, such that compliance with these unrelated regulations would reduce Project impacts to less than significant *prior* to mitigation. (See *id.* at p. 5.2-23.) In fact, much of the air quality analysis frequently references regulations that the Project must comply with or measures to reduce impacts that are contained in other portions of the DEIR, without a description of the measures, reference to where they are described, or, most importantly, how these measures serve to reduce Project impacts. (See, *e.g.*, DEIR, pp. 5.2-22 - 5.2-31.) As another example, the DEIR explains, “with implementation of RR AIR-1, RR AIR-2, and RR AIR-4, Impact 5.2-3 would be less than significant,” etc. (*Id.* at p. 5.2-26.) But the DEIR fails to explain or clearly indicate what these impacts or measures entail. This is uninformative and does not allow Southwest Carpenters to understand the City’s conclusions about air quality impacts. Please update the air quality analysis to adequately explain what the measures or procedures and impacts it references entail and explain how these measures will reduce Project impacts.

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### **B. The DEIR does not adequately examine cumulative air quality impacts.**

When conducting an environmental impact analysis, an agency's determinations must be supported by evidence in the record. (Cal. Code Civ. Proc. § 1094.5 [providing that agency findings must be supported by record evidence]; Cal. Pub. Resources Code § 21168 [applying the Section 1094.5 standard to CEQA actions].) An agency cannot simply draw conclusions without analysis. (See *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 511–512, 515 [“*Topanga*”].) It “must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order.” (*Ibid.*)

The City's conclusion that “air pollutant emissions associated with the proposed project would not be cumulatively considerable” is not supported by the evidence. (DEIR, p. 5.2-31.) Nearby development, in conjunction with the Project, will have significant and unavoidable cumulative air quality impacts. The data provided in the Cumulative Projects List shows that the developments listed will result in significant construction and will increase residential, hotel, commercial, office, and other uses. (See *id.* at pp. 4-13 – 4-14.) This will result in increased vehicle trips, and will ultimately delay the air basin's timely attainment with air quality standards designed to protect human health and the environment. (*Ibid.*) Tellingly, the City does not disclose whether any of the cumulative projects it lists have been found to have significant and unavoidable impacts, to which the Project will cumulatively contribute. The evidence in the record does not support a conclusion that the Project will result in a less than cumulatively considerable impact.

A12-5

In reaching this conclusion, the DEIR fails to comply with its obligations under CEQA. CEQA requires an agency drafting an EIR to conduct “[a] reasonable analysis of the cumulative impacts of the relevant projects.” (Cal. Code Regs., tit. 14, § 15130(b)(5).) An agency must “examine reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects” in an EIR, (*ibid.*), and “must use its best efforts to find out and disclose all that it reasonably can” (*San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61, 74 [“*San Franciscans*”])). The DEIR does not “use its best efforts to find out and disclose all it reasonably can.” (*Ibid.*) In the cumulative air quality impacts analysis, the DEIR does not analyze, let alone mention, any of the projects on the Cumulative Projects List included in the DEIR, or other projects in the greater South Coast Air Basin region, nor does it disclose the air quality impacts of each project. (DEIR, pp. DEIR, p. 5.2-31.) As described *supra*, the Cumulative Projects List also lacks sufficient information to determine whether each project might contribute to cumulative air quality impacts, either on a local or regional level. (See *id.* at pp. 4-13 – 4-14.) Please confirm whether the City analyzed the actual impacts of surrounding projects or provide estimates of project emissions from



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construction or operation of such projects. The City must, at a minimum, provide information on all potential related projects included in the Cumulative Projects List.

The DEIR also segregates the cumulative air quality impacts of construction from impacts from the operation of other past, present, and reasonably foreseeable future projects. (DEIR, p. 5.2-31.) This makes it difficult to understand the overarching emissions of pollutants from this and other projects. Please provide information that discusses these projects' total air quality impacts – rather than providing separate analyses of construction and operations related impacts.

A12-5  
cont'd

In an FEIR or a recirculated DEIR, please provide specific pollutant projections for, at minimum, each of the approved projects listed in the DEIR and explain the projected cumulative impact of the Project in conjunction with additional development. Further, please provide a list of all past, present, and reasonably foreseeable future projects in the SCAB that have been found to result in significant and unavoidable air quality impacts.

### **III. The DEIR's Greenhouse Gas ("GHG") Emissions Analysis Is Insufficient.**

#### **A. The GHG analysis incorrectly relies on federal and statewide regulations that do not apply to individual projects.**

The Legislature and California Supreme Court have indicated that "an EIR is 'an informational document'... and that '[t]he purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment....'" (*Laurel Heights, supra*, 47 Cal.3d at 391, citing Cal. Pub. Resources Code § 21061 and Cal. Code Regs., tit. 14, § 15003(b)-(e).) Yet the DEIR's discussion of potential impacts on greenhouse gas emissions ("GHGs") fails to clearly identify or analyze applicable regulations and plans in the context of the Project.

A12-6

The City incorrectly relies on federal and statewide plans and regulations which were not designed to be applied at the project-level. (See *Center for Biological Diversity v. Dep't of Fish & Wildlife* (2015) 62 Cal.4th 204 ["*Newhall Ranch*"]; DEIR, pp. 5.6-5 - 5.6-15.) The City provides little analytical connection between these plans and requirements for the Project itself. (See *ibid.*) These plans, for example, discuss GHG emissions requirements for manufacturers of vehicles and suggestions for local governments, but do not provide project-specific standards for development projects. (*Id.* at pp. 5.6-6 – 5.6-9.) This information is unnecessary and undermines the DEIR's function as a transparent, educational document.

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The DEIR's discussion of Impact 5.6-2 does not clearly explain how it selected "applicable" plans. The City states that Impact 5.6-2, which provides "[i]mplementation of the proposed project would not conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of GHGs," would be "less than significant." (DEIR, pp. 5.6-22, 5.6-25.) In reaching this conclusion, the City discusses two policies: the California Air Resources Board ("CARB") Scoping Plan and the Southern California Association of Governments' ("SCAG") Regional Transportation Plan/Sustainable Communities Strategy. (*Id.* at pp. 5.6-23 – 5.6-25.) But the City does not explain why, of the many plans and regulations listed, these are "applicable" plans. (*Ibid.*) In fact, it admits that the CARB Scoping Plan "is not directly applicable to cities/counties and individual projects," and, is, thus, not a proper document against which to measure the impacts of Project. (*Id.* at p. 5.6-23.)

A12-6  
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**B. The GHG analysis does not clearly explain how certain measures would ensure that the Project would have less than a significant impact on GHG emissions.**

As discussed *supra*, an EIR is an "an informational document." (*Laurel Heights, supra*, 47 Cal.3d 376, 391, citing Pub. Resources Code § 21061 and Cal. Code Regs., tit. 14, § 15003(b)-(e).) An agency cannot simply state conclusions without analysis – it "must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order." (*Topanga, supra*, 11 Cal.3d 506, 511–512, 515.)

A12-7

The DEIR concludes that certain regulations and/or practices would ensure that the Project does not result in significant environmental impacts, but does not explain how. (See DEIR, p. 5.6-22.) The impact analysis states: "with implementation of RR GHG-1, RR GHG-2, RR GHG-3, and RR-GHG-4, Impact 5.6-1 would be less than significant." (*Ibid.*) In reaching this conclusion, the City does not explain what RR GHG-1 – RR GHG-4 are, nor how the implementation of these measures would ensure that Impact 5.6-1 would be "less than significant." (See *ibid.*; *id.* at p. 5.6-19 [describing briefly RR GHG-1 – RR GHG-4].) This makes it difficult for Southwest Carpenters to understand the City's conclusions about GHG emission impacts. Please update the discussion of GHG emissions to explain what the mitigation measures or impacts it references entail.

**C. The DEIR's cumulative Greenhouse Gas Emissions analysis is not sufficiently specific.**

According to the California Supreme Court:

With respect to climate change, an individual project's emissions will most likely not have any appreciable impact on the global problem by themselves, but they will

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contribute to the significant cumulative impact caused by greenhouse gas emissions from other sources around the globe. The question therefore becomes whether the project's incremental addition of greenhouse gases is 'cumulatively considerable' in light of the global problem, and thus significant.

(*Newhall Ranch, supra*, 62 Cal.4th 20'4, 219, citing Crockett, Addressing the Significance of Greenhouse Gas Emissions Under CEQA: California's Search for Regulatory Certainty in an Uncertain World (July 2011) 4 Golden Gate U. Env'tl. L.J. 203, 207-208.) The City does not provide sufficient information in the DEIR to determine whether the Project's incremental addition of greenhouse gasses would be cumulatively considerable and thus significant.

The City concludes that, because the Project does not exceed South Coast Air Quality Management District's ("SCAQMD") screening threshold for individual projects, "impacts would be less than significant." (DEIR, pp. 5.6-22, 5.6-25.) But the DEIR does not examine projected growth in the City of Newport Beach, estimate or examine what cumulative emissions from other concurrent projects might be, nor does it examine how this might relate to the Project's and the City's contributions to global GHG emissions. (*Ibid.*; see *id.* at pp. 4-13 – 4-14 [Cumulative Projects List, including other concurrent projected developments].)

Furthermore, the DEIR does not provide sufficient threshold information about existing GHG emissions in the City. (See Cal. Code Regs., tit. 14, § 15125(a); DEIR, § 5.6.) The DEIR does not analyze what the City's current per-capita GHG emissions are, or whether the City as a whole is on track to meet the 2030 GHG emission goals set forth in SB 32, as broadly outlined in the 2017 Climate Change Scoping Plan or provide any other quantitative benchmark to determine whether the Project, in conjunction with other development, would significantly impact GHG emissions. (See *id.* at § 5.6, p. 5.6-8.)

What are the projected GHG emissions from construction and operation of the other projects listed in the Cumulative Projects List? Is there additional projected growth in Newport Beach that would contribute to GHG emissions? If so, what are the estimated emissions from such growth? What are the cumulative estimated emissions? How would such emissions comply with quantitative GHG emissions thresholds? Are there any projects within the City or nearby jurisdictions that have been found to result in significant and unavoidable greenhouse gas impacts? Is the City of Newport Beach on track to meet GHG emissions SB 32 greenhouse gas reductions goals, as outlined in the 2017 Climate Change Scoping Plan? Are there other qualitative thresholds for GHG emissions that the City could use to determine the City's current contributions to GHGs and how the Project might impact this contribution in conjunction with other development? Please provide specific, estimates, data, and analysis.

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cont'd



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### **D. The DEIR does not provide adequate mitigation for GHG emissions.**

The City fails to provide adequate mitigation to reduce GHG-related impacts. The City's findings that the Project would result in less than significant impacts and, thus, not require mitigation measures are not supported by evidence in the record. (See DEIR, p. 5.6-25; Cal. Code Civ. Proc. § 1094.5; Cal. Pub. Resources Code § 21168.) The City, therefore, has failed to provide appropriate and enforceable mitigation for the greenhouse gas impacts of the Project. (Cal. Code Regs., tit. 14, § 15126.4(a)(1) ["An EIR shall describe feasible measures which could minimize significant adverse impacts, including where relevant, inefficient and unnecessary consumption of energy"]; Cal. Code Regs., tit. 14, § 15126.4(a)(2) ["Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments"].)

A12-9

Please revisit the GHG analysis, as described, *supra*, and update GHG mitigation measures accordingly.

### **IV. The DEIR Does Not Provide Sufficient Enforcement Mechanisms for Mitigation of Impacts to Biological or Cultural Resources.**

An agency "shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures," and must have a monitoring program to ensure the implementation of mitigation. (Cal. Pub. Resources Code, § 21081.6 (a) and (d).) *"The purpose of these requirements is to ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded."* (California Clean Energy Committee v. City of Woodland (2014) 225 Cal.App.4th 173, citing Federation of Hillside & Canyon Associations v. City of Los Angeles (2000) 83 Cal.App.4th 1252, 1260-1261, Cal. Pub. Resources Code, § 21002.1(b) [emphasis in original].)

A12-10

The DEIR's biological resources analysis states that the Project may have "potentially significant" impacts to nesting migratory birds, if nests exist in on-site trees. (DEIR, p. 5.3-4.) It proposes, as mitigation, that a biologist determine whether there are migratory bird nests in on-site trees, and, if there are, create a buffer zone around the nest until the nest is no longer active. (*Id.* at pp. 5.3-7 – 5.3-8.) It requires the biologist to submit documentation regarding whether there are migratory bird nests on site to the City, but does not require that the City monitor the protection of migratory bird nests, should they exist. (*Ibid.*) This does not ensure that mitigation will actually be implemented. Please update the EIR to include requirements that ensure that, should migratory bird nests exist on site, the City will ensure that a buffer zone around such nests

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is erected and construction does not occur within that buffer until these nests are no longer active.

In the DEIR's cultural resources analysis, the City finds that the Project has "potentially significant" impacts and has the potential to damage buried archeological resources and paleontological resources. (DEIR, p. 5.4-10.) It states that, if archeological resources are discovered during grading, "all construction work within 50 feet of the find shall cease and the archeologist will assess the find for importance." (*Ibid.*) If the find is not important, then the DEIR states that "work will be permitted to continue in the area." (*Id.* at pp. 5.4-10 – 5.4-11.) But the DEIR does not explain what should occur if the find is important or if the find is Native American in origin, and does not provide enforceable mitigation measures to protect such a find. (*Ibid.*) If paleontological resources are discovered during grading, the DEIR likewise provides that if the discovery is determined "not to be important" then work may continue, but does not explain what should occur if the find is important and does not provide enforceable mitigation measures to protect such a find. (*Id.* at p. 5.4-11.) This does not ensure enforceable protection of important resources. Please update the DEIR to provide enforceable mitigation mechanisms to provide for the protection of important archeological and paleontological resources.

A12-10  
cont'd

### V. The DEIR's Land Use Analysis is Inadequate.

#### A. The DEIR does not adequately explain how the Project complies with existing land use regulations.

An EIR that is unclear or omits key information fails to adequately inform the public about a potential project's impact on the environment. (See *Laurel Heights, supra*, 47 Cal.3d 376, 391 ["an EIR is an informational document" that should provide "detailed information about the effect which a proposed project is likely to have on the environment...."], citing Cal. Pub. Resources Code § 21061, Cal. Code Regs., tit. 14, § 15003(b)-(e) [citations omitted].)

A12-11

The DEIR appears to conflict with itself with respect to land use. In the Housing and Population component of the DEIR, the DEIR states "most of the proposed development is consistent with the general plan," yet Table 5.9-1, which analyzes land use consistency, states that the Project is consistent with all "Applicable Goals and Policies" of the Newport Beach General Plan ("General Plan"). (Compare DEIR, p. 5.11-10 with pp. 5.9-12 - 5.9-25.) Is the Project, in its entirety, consistent with the City's General Plan? If it is not, what components of the Project are not compliant with the General Plan? Please provide specific references to exact General Plan policies and provisions.

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The DEIR does not clearly explain how the Project complies with existing land use regulations. According to the DEIR Executive Summary, in order to be constructed, the Project must receive a “density bonus,” a development concession to allow the construction of more studios and one-bedroom units than are currently permitted under the building code, and a waiver of existing building requirements to permit the developer to construct a project that is 77 feet 9 inches in height, rather than 55 feet, as permitted by code. (DEIR, p. 1-4.) The DEIR discusses the density bonus in several places, but does not explain how the Project, in fact, meets the requirements for such a density bonus. (See *id.* at § 5.9.) In addition, when analyzing the Project’s compliance with the General Plan, the DEIR states that “[e]xact rent prices have not been determined at this time” for “affordable” units, and does not provide any assurance that the City will require that the Project provide an appropriate number of units that are actually affordable. (*Id.* at p. 5.9-12.) It is also unclear in the land use section what the requirements are for a mix of unit sizes, where these requirements are derived, nor why the project does not have to comply with these requirements. (*Id.* at § 5.9.) Nor does it explain how the Project qualifies for a waiver of existing height requirements, such that it may be constructed more than 20 feet higher than what is permitted by existing land use regulations. (*Ibid.*) All of these factors impact the Project’s consistency with land use requirements, and should be adequately explained in the land use analysis. Please update and recirculate the DEIR with this information, so that Southwest Carpenters can better understand how the Project does or does not comply with existing land use regulations and whether the Project qualifies for exemptions or exceptions from such regulations, and thus better understand how the Project will impact land use in Newport Beach.

A12-11  
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The DEIR states that the Project is consistent with the zoning code. (DEIR, p. 5.9-25.) It states that the code only permits a maximum of 50 dwelling units per acre under the MU-H2 land use designation. (*Ibid.*) But according to the DEIR, the Project site, after the dedication of a public park, is 5.19 acres, and the project includes 350 dwelling units. (*Ibid.*) This would result in 67.437 dwelling units per acre. (See *ibid.*) If the Project will have 67.437 dwelling units per acre, how does the it comply with the zoning code’s limitation of 50 dwelling units per acre?

**B. The DEIR does not explain how various regulations or practices would ensure that the Project will not result in significant land use impacts.**

As in other portions of the DEIR, the City concludes that certain regulations and/or practices would ensure that the Project would not result in significant environmental impacts, but does not explain how. (See DEIR, p. 5.9-26.) This makes it difficult for Southwest Carpenters to understand the City’s analysis of land use impacts. Please explain what the regulations, practices, and impacts referenced in this section of the DEIR entail and how these will minimize land use impacts.

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**C. The City's cumulative impacts conclusions are not supported by an analysis of the facts.**

The City's discussion of cumulative impacts to land uses does not bridge the analytic gap between raw evidence and its conclusions. (DEIR p. 5.9-27; see *Topanga, supra*, 11 Cal.3d at 511-512, 515; Cal. Code Civ. Proc. § 1094.5; Cal. Pub. Resources Code § 21168.) The City's cumulative impacts analysis also fails to provide a sufficient "summary of the expected environmental effects to be produced by those projects" on the Cumulative Projects List. (See Cal Code Regs., tit. 14, § 15130(b)(4).)

The DEIR makes conclusory statements, without analysis of individual projects, that the project would not contribute to cumulatively considerable impacts, because other developments "would be subject to compliance with regional and local plans." (DEIR p. 5.9-27.) But it does not examine any of the developments listed on the Cumulative Projects List, describe whether they are compatible with existing land uses, or discuss if, together, they would result in a considerably cumulative impact. (*Id.*) Likewise, it states that the area around the Project is "in transition from strictly nonresidential uses... to a wider range of mixed uses," but does not explain how this transition complies with an existing land use plan, the Newport Beach General Plan, or zoning regulations. (*Id.*) The DEIR also states that this "transition is creating rather than dividing a community," but this is illogical. (*Id.*) If developers are constructing projects with residences amid an area that is currently non-residential, how would this not divide an existing community? Please explain.

A12-13

Please update the cumulative impacts analysis to specifically examine and discuss the developments included on the Cumulative Projects List. Please explain how close these developments are to the Project; whether these developments, specifically, comply with applicable zoning, General Plan, and other land use designations; whether they are receiving density bonus or other variances, waivers, or incentives; and how these developments could foreseeably result in significant cumulative land use impacts.

**VI. The City's Conclusion that the Project Would Not Contribute to A Cumulative Effect on Traffic and Transportation is not Supported by Sufficient Analysis.**

An EIR's cumulative impacts analysis "shall reflect the severity of the impacts and their likelihood of occurrence . . ." (Cal. Code Regs., tit. 14, § 15130(b).) Providing incomplete information "concerning the severity and significance of cumulative impacts impedes meaningful public discussion and skews the decisionmaker's perspective concerning the environmental consequences of the project, the necessity for mitigation measures, and the

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appropriateness of project approval.” (*Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 431.)

The DEIR does not provide complete information to support its analysis that the Project would not result in cumulatively considerable impacts to traffic and transportation. The DEIR states that the “proposed project would not result in either project-specific significant or cumulatively considerable impacts” to traffic and transportation. (DEIR, p. 5.14-31.) But the City does not clearly explain how it reaches these conclusions. (*Ibid.*) It states that “the traffic study included traffic from 25 projects in Newport Beach,” but does not provide a direct citation or reference for the traffic study, nor does it discuss which projects were examined, where they were located, or what the objective traffic impacts are from each project. (See *ibid.*) The DEIR also does not mention or examine the Cumulative Projects List, or how developments on this list that are located in the immediate vicinity of the Project might impact traffic and transportation in conjunction with the existing project. (See *ibid.*)

Further, the City’s conclusions in the DEIR do not align with the information in the Traffic Impact Analysis. For instance, under a Future Year 2022 Plus Project scenario, the Traffic Impact Analysis found that MacArthur Boulevard/Michelson Drive and MacArthur Boulevard/Campus Drive intersections would operate at levels of service (LOS) of “F” and “E,” respectively. (DEIR, Appx. J, p. J-31.) Without further explanation, the Traffic Impact Analysis states “LOS E is acceptable” at these intersections. (*Ibid.*) No reasoning supports this conclusion, nor does this statement address that one of these intersections was found to operate at LOS F. Moreover, by only considering cumulative conditions from a “Future Year 2022 Plus Project” scenario, the Traffic Impact Analysis, and, thus, the DEIR entirely fails to provide an adequate evaluation of cumulative impacts. The Project will remain operational well beyond 2022. Crucially, *the Project will not even be constructed or occupied by 2022*, as “the project would be built in a single phase spanning approximately 38 months, from December 2019 to **February 2023**.” (DEIR, p. 3-33 (emphasis added).) Thus, the cumulative traffic impacts analysis fails to evaluate the traffic impacts from the vast majority of Project trips, including all of the traffic impacts generated during the decades of Project operation. This failure clearly results in an inadequate cumulative impacts analysis and must be revised.

In a recirculated DEIR, please evaluate the following: Which developments were examined/excluded in the cumulative traffic study? What are the quantitative traffic impacts? How will development listed on the Cumulative Projects List and located near the Project impact traffic and transportation with respect to project construction, operation, and as a whole? Please explain these topics in detail.

A12-14  
cont'd



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### VII. The DEIR's Alternatives Analysis is Incomplete.

The CEQA alternatives analysis has been described by the California Supreme Court as the "core of an EIR." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.) CEQA provides a "substantive mandate that public agencies refrain from approving projects for which there are feasible alternatives or mitigation measures" that can lessen the environmental impact of proposed projects. (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 134, citing Pub. Resources Code § 21081 [emphasis added].) It "compels government... to mitigate... adverse effects through... the selection of feasible alternatives." (*Sierra Club v. State Board of Forestry* (1994) 7 Cal.4th 1215, 1233; see also Pub. Resources Code § 21002.) A lead agency's ability to comply with this mandate is predicated on a clear analysis of correct findings of a project's impacts. "Without meaningful analysis of alternatives in the EIR, neither the courts nor the public can fulfill their proper roles in the CEQA process." (*Laurel Heights, supra*, 47 Cal.3d at 404; *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1350.)

An EIR's review of Project alternatives must analyze alternatives "which are capable of avoiding or substantially lessening any significant effects of the project." (Cal. Code Regs., tit. 14, § 15126.6(b).) An EIR's very purpose is to identify ways to reduce or avoid significant environmental impacts. (*Laurel Heights, supra*, 47 Cal.3d at 403.) In order to achieve this purpose, the EIR must correctly identify project impacts. Yet, the Project alternatives analysis, as drafted, does not adequately assess whether alternatives would avoid or substantially lessen significant Project effects, because the DEIR either does not provide a sufficient analysis or incorrectly finds impacts to be less than significant, including in the areas of air quality, greenhouse gases, land use, and traffic and transportation. The DEIR's alternatives analysis, therefore, does not identify feasible alternatives that lessen adverse impacts, nor does it sufficiently examine whether the alternatives listed would mitigate or avoid Project impacts. (See DEIR, § 7.) This is improper.

A12-15

Please revise the DEIR as requested throughout this correspondence. Should a reexamination of the DEIR result in altered findings or information, please concurrently update the alternatives analysis to include options that would lessen or avoid all significant and inadequately mitigated impacts.

### VIII. Conclusion

Southwest Carpenters thanks the City for providing an opportunity to comment on the DEIR. Please update the DEIR to adequately address the issues raised in these comments, then recirculate the revised DEIR.

A12-16

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Pursuant to Section 21092.2 of the Public Resources Code and Section 65092 of the Government Code, please notify Southwest Carpenters of all CEQA actions and notices of any public hearings concerning this Project, including any action taken pursuant to California Planning and Zoning Laws. In addition, pursuant to Public Resources Code section 21167(f), please provide a copy of each Notice of Determination issued by the City or any other public entity in connection with this Project and add Southwest Carpenters to the list of interested parties in connection with this Project. All notices should be directed to my attention. Please send all notices by email, or if email is unavailable, by U.S. Mail to:

A12-17

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Ashley McCarroll  
Wittwer Parkin LLP  
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Santa Cruz, CA 95060  
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Very truly yours,  
WITTWER PARKIN LLP



Nicholas Whipps

## 2. Response to Comments

### A12. Response to Comments from Wittwer Parkin LLP representing the Southwest Regional Council of Carpenters (Southwest Carpenters), Nicholas Whipps, dated January 14, 2019.

A12-1 The comment does not concern the content or adequacy of the Draft EIR. The comment is acknowledged.

A12-2 The commenter made a general statement that the significance conclusions provided in the Draft EIR are incorrect and that the Draft EIR is confusing, missing key analysis, and does not provide sufficient support for the less-than significant findings, as discussed in more detail in Comments A12-3 through A12-17. No evidence was provided in this comment to support this general statement. Please refer to responses to Comments A12-3 and A12-17 below.

A12-3 The Draft EIR adequately identifies all cumulative projects causing related impacts in the area that will be affected by the proposed project. See *Citizens to Preserve the Ojai v County of Ventura* (1985) 176 CA3d 421, 429. The information provided in the cumulative projects list is sufficient to identify reasonably foreseeable and approved projects and analyze the proposed project's potential cumulative impacts. Table 4-1, *Cumulative Projects List*, of Chapter 4, *Environmental Setting*, identifies all of the cumulative projects within the relevant geographic area, describes the land use for each project, and specifies the number of dwelling units and/or total non-residential square footage for each project. Figure 4-3, *Cumulative Developments Location Map*, illustrates the location of each cumulative project relative to the proposed project. Consistent with CEQA Guidelines Section 15130(b)(2), the cumulative analysis considers the nature of the resource affected and the location of the project, as well as the type of project under review. For example, the cumulative projects considered in connection with the public services analysis reflect the fact that potential public service impacts are specific to the boundaries of the project's service providers (e.g., Newport Beach Fire Department and Newport Beach Police Department).

Although not stated with the degree of specificity that the commenter may prefer, all of the information regarding each project is provided and may be used, as desired by the commenter, to seek additional information. Additional information regarding the cumulative projects is publicly available, much of it provided on the City's website. However, the information provided in the Draft EIR regarding the cumulative projects is sufficient to allow for analysis of the cumulative impacts and of the project's contribution to that cumulative impact. The commenter also has not identified how the omission of more detailed information regarding these projects has misled the public or otherwise resulted in prejudice.

A12-4 Draft EIR Section 5.2, *Air Quality*, provides a quantified analysis of the project's potential air quality impacts based on the methodology recommended by the South Coast Air Quality Management District (SCAQMD) for projects within the South Coast Air Basin

## 2. Response to Comments

(SoCAB) in order to inform decision-makers and the public about the project's potential environmental impacts.

The commenter states that the air quality analysis is not informative because the Draft EIR does not assess potential impacts associated with the increase in population from redevelopment of a commercial site under Impact 5.2-1. As stated under Impact 5.2-1, projects that are consistent with the local general plan are considered consistent with the air quality-related regional plan. Impact 5.2-1 refers readers to Draft EIR Section 5.9, *Land Use and Planning*, which concludes that the project would be permitted under the existing land use and zoning designations of the City's general plan (including bonus density units). Impact 5.2-1 also refers readers to Draft EIR Section 5.11, *Population and Housing*, which demonstrates that the project with the bonus density would not induce substantial population growth. Furthermore, the long-term emissions generated by the proposed project would not generate criteria air pollutants that exceed the SCAQMD significance thresholds, which also substantiates the conclusion that the project would not conflict with the AQMP.

The Draft EIR identified various regulatory requirements that the proposed project is required to adhere to. These regulations were adopted by SCAQMD, the California Air Resources Board, the California Energy Commission, and other agencies to reduce air pollutant, greenhouse gas (GHG) emissions, and energy use. Subsection 5.2-3, *Regulatory Requirements and Standard Conditions*, details the measures that are listed in the section under the Impact Statement, "Level of Significance before Mitigation". Subsection 5.2.1.1, *Regulatory Background*, also provides additional detail on the SCAQMD regulations that are in place that have the potential to reduce emissions associated with the proposed project. Table 5.2-10 shows the project's maximum daily regional operational emissions of the project with implementation of the regulatory requirements identified in Subsections 5.2.1.1 and 5.2-3 and demonstrates that impacts would be less than significant.

As substantiated under Impact 5.2-1, the proposed project is consistent with the SCAQMD air quality management plan.

A12-5 The commenter states that the Draft EIR does not adequately examine cumulative air quality impacts. In particular, the commenter claims that the evidence does not support a conclusion that the proposed project will result in less than cumulatively considerable impacts because the Draft EIR does not disclose whether any of the listed cumulative projects have been found to have significant and unavoidable impacts.

Page 5.2-1 of Section 5.2, *Air Quality*, states, "Cumulative impacts related to air quality are based on the regional boundaries of the SoCAB." Subsection 4.4, *Assumptions Regarding Cumulative Impacts*, of Draft EIR Section 4, *Environmental Setting*, also describe the methodology regarding cumulative impacts.

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Similar to GHG emissions impacts, the air quality impact analysis is also a cumulative impact analysis because regional emissions (lbs/day) generated by the proposed project describe the potential for the project to cumulatively contribute to the SoCAB's nonattainment designations (see page 5.2-31). Impact 5.2-2 (construction) and Impact 5.2-3 (operation) of Section 5.2 evaluate emissions of the project compared to the SCAQMD regional significance thresholds in order to determine if the project would result in project-level and cumulative impacts. The findings of these impact statements are reiterated in the subheadings under Subsection 5.2.5, *Cumulative Impacts*. As identified in this section, criteria air pollutants generated during construction (with mitigation) and operation of project would not exceed the SCAQMD regional significance thresholds; and therefore, would not make a cumulatively considerable contribution to the nonattainment designations of SoCAB.

Additionally, as stated on pages 4-14 and 5.2-31 of the Draft EIR, cumulative air quality impacts were analyzed based on the regional boundaries of the SoCAB, not by reference to the specific projects identified in Table 4-1. This type of approach is permissible under CEQA, which sets forth two methods for satisfying the cumulative impacts analysis requirement: the "list of projects" approach and the "summary of projections" approach. (CEQA Guidelines § 15130(b).) Consistent with the latter of these approaches, the Draft EIR analyzes cumulative air quality impacts in accordance with SCAQMD's methodology, which considers a project cumulatively significant when project-related emissions exceed the regional emissions thresholds shown in Table 5.2-5. Here, with incorporation of mitigation, the Draft EIR finds that the project's contribution to air quality impacts would not be cumulatively considerable.

The comment also states that the segregation of air quality impacts associated with construction from those associated with operations makes it difficult to understand the total emissions that will be produced. Again, the Draft EIR's analysis of cumulative air quality impacts was done in accordance with established SCAQMD methodology, which method is regularly used to assess air quality impacts in the SoCAB. The comment does not indicate that a potentially significant cumulatively considerable impact would result from using a different methodology, but instead insists that the EIR should have disclosed whether each project in the cumulative projects list, alone, would result in a cumulatively considerable contribution to a cumulatively significant impact. Such project-level analysis of the impacts of each project in the cumulative project list is not useful to the evaluation of the proposed project's cumulative impacts and is not required by CEQA. Further, such analysis of each of the cumulative projects is available to the public as part of each project's separate CEQA analysis.

To the extent that the comment reiterates concerns regarding the amount of information provided in the cumulative projects list in Table 4-1, please refer to Response to Comment A12-3.



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A12-6 The commenter states that the Draft EIR does not clearly identify or analyze applicable regulations and plans in the context of the project. Specifically, the commenter cited the Newhall Ranch decision where the court found there was no analytical connection between the state-wide reductions of the California Air Resources Board's (CARB) 2008 Scoping Plan (which applies to new development and existing development) and the percent reduction that would be needed for new projects. This decision is not directly applicable to the proposed project since the project does not utilize significance thresholds that are tied to CARB's GHG emissions forecasts and the Scoping Plan. As identified under Subsection 5.6.2, *Thresholds of Significance*, of Section 5, *Greenhouse Gas Emissions*, SCAQMD's Working Group identified a significance threshold of 3,000 metric tons of carbon dioxide-equivalent (MTCO<sub>2e</sub>) based on a 90 percent capture rate of CEQA projects in the SoCAB. This methodology was identified in the California Air Pollution Control Officer's Association 2008 Whitepaper, *CEQA & Climate Change, Evaluating and Addressing Greenhouse Gas Emissions From Project Subject to the California Environmental Quality Act*. Consequently, the threshold is both based on new projects and projects within the SoCAB region.

Impact 5.6-2 analyzes GHG plans that have been adopted for the purpose of reducing GHG emissions. The Draft EIR includes an analysis of the project's consistency with the 2017 Scoping Plan because it is a plan adopted for the purpose of reducing GHG emissions. The City of Newport Beach has not adopted a GHG reduction plan. As identified in the Draft EIR, the individual measures in the Scoping Plan are not directly applicable to local governments because they are mandates for state agencies. Nonetheless, the regulations adopted by the state agencies (e.g., CARB, California Energy Commission, etc.) have the potential to reduce existing and new emissions generated in California. These regulations are described in detail in Subsection 5.6.3, *Regulatory Requirements and Standard Conditions*, and under Subsection 5.6.1.2, *Regulatory Setting*.

Regarding the applicability of the targets of the Scoping Plan to new development, new development is substantially more energy efficient than existing development. The Scoping Plan forecast includes emissions from both new development and existing development. The state's goal is to reduce emissions below existing levels despite growth anticipated in the state. In order to achieve the GHG reductions goals, the state must substantially reduce emissions from existing development and implement increasingly more stringent building energy efficiency regulations to reduce emissions from new development. Efficiencies in building energy efficiency from new development alone do not achieve the steep reductions needed to achieve the State's GHG reduction goals of 40 percent below 1990 levels by 2030 and 80 percent below 1990 levels by 2050. To emphasize this point, the Scoping Plan relies on top-down measures, such as improvements in vehicle fuel efficiency standards, penetration of zero emission vehicles into the marketplace, low carbon fuel standards, renewables portfolio standard (RPS), and carbon neutrality in the energy sector which has a much greater effect on reducing the

## 2. Response to Comments

magnitude of emissions from existing land uses within the state than the magnitude of reductions in building energy efficiency that only apply to new development. If greater magnitude of reductions is needed from existing land uses to achieve the State GHG reduction goals, CEQA cannot disproportionately require that incremental increase from new development provide more than their fair share of reductions necessary to achieve this “gap” because the extractions must bear a “rough proportionality” to the project’s adverse impacts.

Despite new development being more efficient, the measures in the Scoping Plan affect existing development to a much greater extent because they are top down. Consequently, thresholds that are derived from the 2017 Scoping Plan and CARB’s emissions forecast may be applicable despite the fact that the measures in CARB’s scoping plan do not clearly identify the percent reduction achieved from existing and new development. While the Scoping Plan may assume that new development on a per capita basis may be more efficient than existing development because of the greater building energy efficiency, this diminishes over time as our energy system becomes carbon neutral under SB 100 (50 percent RPS by 2030) and Executive Order B-55-18 (carbon neutrality by 2045). Likewise, the reductions applied to the transportation sector apply evenly across new development and existing development. The per capita efficiency goals cited in the 2017 Scoping Plan reduce per capita emissions below existing levels. Since the measures in the Scoping Plan reduce existing emissions and a zero threshold is not an appropriate significance threshold (i.e., one molecule” of contribution to a cumulative condition is not significant); the efficiency thresholds identified in the Scoping Plan that result in a reduction from existing may be overly stringent if CEQA only requires emissions not result in a substantial increase.

A12-7 See also Response to Comment A12-4 above regarding the description of regulations applicable to the project. Regulations adopted by the state agencies (e.g., CARB, California Energy Commission, etc.) have the potential to reduce existing and new emissions generated in California. Subsection 5.6-3, *Regulatory Requirements and Standard Conditions*, details the measures that are listed in the section under the Impact Statement, “Level of Significance before Mitigation”. Subsection 5.6.1.2, *Regulatory Background*, also provides additional detail on the SCAQMD regulations that are in place that have the potential to reduce emissions associated with the proposed project. Table 5.6-7 shows the project’s operational GHG emissions with implementation of the identified regulatory requirements, and demonstrates that impacts would be less than significant.

A12-8 See also response to Comment A12-6 above regarding the threshold used to evaluate the proposed project’s cumulative contribution to GHG emissions impacts. Page 5.6-1 states, “Because no single project is large enough to result in a measurable increase in global concentrations of GHG, climate change impacts of a project are considered on a cumulative basis.” Subsection 4.4, *Assumptions Regarding Cumulative Impacts*, of the Draft EIR also describe the methodology regarding cumulative impacts. Emissions

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(MTCO<sub>2e</sub>/yr) generated by the project describe the potential for the project to cumulative contribute to the GHG emissions in California. Subsection 5.6.1, *California's GHG Sources and Relative Contribution*, describes existing GHG emissions based on the Scoping Plan sectors. Existing levels of GHG emissions in the City or in the vicinity of the project are not directly relevant for describing the project's cumulative contribution to GHG emissions impact in the State. The City has not adopted a GHG reduction plan.

A12-9 See responses to comments A12-6 through A12-8, above. The proposed project would have a less than significant contribution to GHG emissions impacts since emissions would not exceed the 3,000 MTCO<sub>2e</sub> significance threshold. As a result, mitigation measure are not warranted for GHG emissions impacts.

A12-10 The commenter stated that the Draft EIR does not provide sufficient enforcement mechanisms for mitigation of impacts to biological and cultural resources. The mitigation measure outlined in Section 5.3, *Biological Resources*, regarding impacts to migratory birds, and the mitigation measures outlined in Section 5.4, *Cultural Resources*, regarding archeological and paleontological resources, will be enforced by the City through the project's Mitigation Monitoring and Reporting Program (MMRP), which will be presented to the City's approval body for adoption. The measures will also be enforced by the City as conditions of approval, as all mitigation measures of the adopted MMRP will be included as conditions of approval. Therefore, sufficient enforcement will be provided and the applicant compliance with all mitigation measures of the MMRP will be ensured.

The commenter stated that Mitigation Measures BIO-1 does not provide a requirement for the City to monitor the protection of migratory birds. As noted in this mitigation measure, the completed survey report/memorandum, if one is required to be prepared, will be submitted to the City by the monitoring biologist. Pursuant to the adopted MMRP, the City will ensure that the monitoring and all related activities and findings have been conducted in accordance with this mitigation measure and under the purview of a qualified biologist.

The commenter stated that the Draft EIR, specifically Mitigation Measures CUL-1 and CUL-2, do not explain what would should occur if the find is identified as important or Native American in origin. Both of these mitigation measures provide clarification to this point. For example, as noted in Mitigation Measure CUL-1, if archaeological resources are encountered, the archaeologist is required to assess the find for importance and whether preservation in place without impacts is feasible. The measure further states that any resource that is not Native American in origin and that cannot be preserved in place shall be curated at a public, nonprofit institution with a research interest in the materials. Similarly, Mitigation Measure CUL-2 states that if fossils are encountered, the paleontologist shall assess the find for importance. The measure further states that any resource encountered is required to be curated at a public, nonprofit institution with a research interest in the materials.



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Additionally, Mitigation Measure CUL-1 on pages 5.4-10 and 5.4-11 of Draft EIR Section 5.4, *Cultural Resources*, has been revised to provide clarification that, consistent with CEQA's requirements, a culturally-related Native American monitor shall be allowed to monitor ground-disturbing activities at the project site, as follows. The revision is also provided in Chapter 3, *Revisions to the Draft EIR*, of the Final EIR. The revision does not change the findings or conclusions of the Draft EIR. Changes made to the Draft EIR are identified here in ~~strikeout~~ text to indicate deletions and in **bold underlined** text to signify additions.

### 5.4 CULTURAL RESOURCES

#### Impact 5.4-2

CUL-1 Prior to the issuance of a grading permit by the City of Newport Beach, the project applicant shall retain a qualified archaeologist to periodically monitor ground-disturbing activities onsite and provide documentation of such retention to the City of Newport Beach Community Development Director. The archaeologist shall train project construction workers on the types of archaeological resources that could be found in site soils. The archaeologist shall periodically monitor project ground-disturbing activities. **During construction activities, if Native American resources (i.e. Tribal Cultural Resources) are encountered, a Cultural Resource Monitoring and Discovery Plan (CRMDP) shall be created and implemented to lay out the proposed personnel, methods, and avoidance/recovery framework for tribal cultural resources monitoring and evaluation activities within the project area. A consulting Native American tribe shall be retained and compensated as a consultant/monitor for the project site from the time of discovery to the completion of ground disturbing activities to monitor grading and excavation activities.** If archaeological resources are encountered, all construction work within 50 feet of the find shall cease, and the archaeologist shall assess the find for importance and whether preservation in place without impacts is feasible. Construction activities may continue in other areas. If, in consultation with the City **and affected Native American tribe (as deemed necessary)**, the discovery is determined to not be important, work will be permitted to continue in the area. Any resource that is not Native American in origin and that cannot be preserved in place shall be curated at a public, nonprofit institution with a research interest in the materials, such as the South Central Coastal Information Center at California State University, Fullerton.

A12-11 The commenter states that conclusionary statements provided in Draft EIR Section's 5.9, *Land Use and Planning*, and 5.11, *Population and Housing*, are inconsistent. Specifically, the analysis in Table 5.9-1 of Section 5.9 concludes that the project is consistent with all

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applicable goals and policies of the Newport Beach General Plan; however, under Subsection 5.11.5, *Cumulative Impacts*, of Section 5.11, it is noted that “most of the proposed development is consistent with the general plan”. The statement provided in Subsection 5.11.5 is incorrect. As substantiated in Section 5.9, the project is consistent with all applicable goals and policies of the Newport Beach General Plan. The statement provided in Subsection 5.11.5 has been revised to correct this discrepancy, as follows. The revision is also provided in Chapter 3, *Revisions to the Draft EIR*, of the Final EIR. The revision does not change the findings or conclusions of the Draft EIR. Changes made to the Draft EIR are identified here in ~~strikeout~~ text to indicate deletions and in **bold underlined** text to signify additions.

The commenter also points out that Draft EIR Chapter 1, *Executive Summary*, states that in order to be constructed, the proposed project “must” receive a density bonus and accompanying development concessions and waivers. The commenter also states that the land use section of the Draft EIR does not explain how the project meets the requirements for density bonus units. The commenter is incorrect as a statement to this affect is not provided in Chapter 1, or anywhere else in the Draft EIR. As clearly stated in Subsection 1.4, *Project Summary*, the proposed project would be providing density bonus units and based on the provision of affordable housing, development incentives are available to developers pursuant to Chapter 20.32 of the City’s zoning code and Government Code Section 65915(d)(1). As further clarified in Subsection 3.3.1.3, *Affordable Housing and Development Incentives/Concessions and Waivers*, of Section 3, *Project Description*, “As encouraged by the Residential Overlay and pursuant to Chapter 20.32 (Density Bonus) of the City’s zoning code and Government Code Section 65915 (Density Bonus Law), with a 30 percent allocation for lower-income households, the proposed project is entitled to the maximum 35 percent density bonus...”. Through the provision of affordable units onsite, which is encouraged and permitted, the project is entitled to development incentives/concessions and waivers. Subsection 3.3.1.3 also clearly explains how the project qualifies for a density bonus. Further, in various places of Section 5.9, it clarifies how the project meets and qualifies for the density bonus. For example, refer to the consistency analysis text provided under Policy 6.2.3 of Table 5.9-1 (page 5.9-18).

The commenter pointed out a statement made in Table 5.9-1 of Section 5.9, regarding rent prices, and stated that the Draft EIR does not provide any assurance that the City will require that the project provide an appropriate number of affordable units. As noted in Table 5.9-1 (page 5.9-12) under Goal H2.1, “Exact rent prices have not been determined at this time.” This is a general statement provided in the response to Goal H2.1 of the General Plan Housing Element and is not needed to show consistency with this goal. Goal H2 states, “Encourage preservation of existing and provision of new housing affordable to extremely low-, very low-, low-, and moderate-income households”. As stated under the consistency analysis of this goal, the proposed project is consistent with this goal as the proposed project includes 78 new housing units that would be affordable to lower-

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income residents. Through its site development review process, the City is working with the developer to ensure that the appropriate number of affordable units are provided. Also, in order for the City to issue the development incentives/concessions and waivers requested for the project, the appropriate number of affordable units must be provided.

Further, to the extent the commenter is suggesting that the project cannot be consistent with the zoning code density limitations due to the application of the density bonus, that is incorrect. See *Wollmer v. City of Berkeley*, where the court determined that modifications required by the density bonus law do not render a density bonus project inconsistent with applicable development standards.

Finally, the commenter stated that Draft EIR Section 5.9 does not explain how the project qualifies for a waiver for building heights, or the requirements for unit size mixes, where these requirements are derived from, and why the project does not have to comply with them. The commenter is correct, this information was inadvertently left out of Section 5.9. In response to the commenter, the analysis under the zoning consistency analysis discussion on page 5.9-25 of Section 5.9 has been revised, as follows. The revision is also provided in Chapter 3, *Revisions to the Draft EIR*, of the Final EIR. The revision does not change the findings or conclusions of the Draft EIR. Changes made to the Draft EIR are identified here in ~~strikeout~~ text to indicate deletions and in **bold underlined** text to signify additions.

## 5.9 LAND USE AND PLANNING

### Zoning Code Consistency

As stated above, the project site is zoned Newport Place Planned Community (PC-11). PC-11 allows for residential development, with a minimum of 30 du/ac and a maximum of 50 du/ac, consistent with the MU-H2 land use designation. More specifically, the project site within PC-11 is designated General Commercial Site 6. The General Commercial designation allows retail commercial, office, and professional and business uses. The site also has a residential overlay option given its general plan designation of MU-H2. The projects consistency with the Residential Overlay development standards of the NPPC, which apply to the project site and function as zoning for the site, is discussed below.

The proposed retail, restaurant, and residential uses under the proposed project are allowed under the existing zoning, and no zone change is required or proposed. Thus, the proposed project would be consistent with the existing zoning on-site, and impacts would be less than significant. See also RR LU-1 and RR LU-2.

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### Newport Place Planned Community Development Standards Consistency

Development standards for utilization of the NPPC's ~~Residential Overlay~~, which applies to the project site, are found on Page 46 of the PCDP in the NPPC development standards. Table 5.9-2 demonstrates the proposed project's consistency with those development standards.

**Table 5.9-2 NPPC Consistency Analysis**

Development Standard	Required	Project Consistency
Minimum Site Area	None	N/A
Density (base units) <sup>1</sup>	30–50 units/acre	50 units/acre
Minimum Percent Affordable	30 percent	30 percent
Maximum Building Height	55 feet (exceptions allowed)	77 feet, 9 inches (livable space would be 55 feet max)
Minimum Street Setback	30 feet	30 feet
Minimum Interior Setback	10 feet	10 feet (to park)
Parking	See Chapter 3	See Chapter 3

<sup>1</sup> Density bonus units are allowed to increase a project's gross density to be higher than that required for the project's "base" units.

Additionally, as noted in Table 5.9-1, the Residential Overlay of the NPPC, which applies to the project site, implements General Plan Housing Element Program 3.2.2, which creates an exception to the 10-acre site requirement for residential development projects in the Airport Area that include a minimum of 30 percent of the units affordable to lower income households. Residential developments, such as the proposed project, that qualify for the residential overlay are subsequently exempt from General Plan Land Use Policy LU 6.15.6 and have no minimum site area requirement.

In addition to the site size exception and affordable housing requirements, the NPPC details additional residential development regulations addressing setbacks, building height, parking requirements, landscaping, signs, utilities requirements, and amenities and neighborhood integration. With the exception of the unit mix and building height requirements, the proposed project would be developed in accordance with the NPPC development regulations. As described in Chapter 3, *Project Description*, of this Draft EIR, the project's Affordable Housing Implementation Plan includes a request for one development concession for the unit mix and one waiver for the height, as described below.

- **Development Concession (Unit Mix).** Pursuant to Section V.F.1 of the Residential Overlay, "Affordable units shall reflect the range of numbers of bedrooms provided in the residential development project as a whole." In the case of the proposed project, the project applicant is requesting a unit mix that includes a greater percentage of studio and one-bedroom units, as illustrated in Table 3-2 of Chapter 3. Granting

## 2. Response to Comments

this incentive will result in identifiable, financially sufficient, and actual project cost reduction by reducing the long-term rental subsidy costs associated with the two-bedroom units and affording additional rental income for the project to ensure financial feasibility.

- **Waiver/Concession of Development Standard (Height Increase).** Pursuant to Section V.A of the Residential Overlay, the maximum building heights are limited to 55 feet, but may be increased with the approval of a site development review after making certain findings for approval. Government Code Section 65915(e)(1) provides that a city may not apply a development standard that will have the effect of physically precluding the construction of a density bonus project at the density permitted under the density bonus law. In the case of the proposed project, the project applicant is requesting a waiver of the 55-foot building height limit to 77 feet 9 inches in order to accommodate the parapet, roof-top mechanical equipment, elevator shafts, emergency staircase, rooftop terrace, and a portion of the parking garage. Without the height allowance for the stairs, elevators, mechanical equipment, and parapet, 63 of the 91 density bonus units would need to be eliminated. Furthermore, limiting heights to 55 feet would result in elimination of the rooftop amenity deck and upper level of parking structure, which are necessary for marketing purposes to meet expectations of prospective tenants and market-rate rents, provide the level of onsite amenities encouraged by the Residential Overlay, and reduce the impact of parking availability on neighboring streets.

Approval of the aforementioned concession and waiver would not result in a land use conflict with the regard to the NPPC development standards.

## 5.11 POPULATION AND HOUSING

### 5.11.5 Cumulative Impacts

The area considered for cumulative impacts is the City of Newport Beach. Impacts are analyzed using General Plan projections in SCAG's 2016 Growth Forecast. Development activity in the City includes residential projects (see Table 4-1 in Chapter 4, *Environmental Setting*). ~~Most of the proposed development~~ The proposed project is consistent with the City of Newport Beach General Plan and would therefore be expected to be consistent with SCAG's growth projections.

- A12-12 The analysis of the proposed project's compliance with regulatory requirements RR LU-1 and RR LU-2, which outline the City's development standards applicable to the project, is provided under Impact Statement 5.9-2 (see pages 5.9-25 and 5.9-26) of Draft EIR Section 5.9, *Land Use and Planning*. See also response to Comments A12-11 and A12-13.

## 2. Response to Comments

- A12-13 See response to comment A12-6 regarding the required scope of cumulative analysis and analysis of projects in cumulative projects list. As stated on pages 4-17 and 5.9-27 of the Draft EIR, cumulative land use and planning impacts were analyzed based on applicable jurisdictional boundaries and related plans, including the City of Newport Beach General Plan and applicable regional land use plans, not by reference to the specific projects identified in Table 4-1. This type of approach is permissible under CEQA, which sets forth two methods for satisfying the cumulative impacts analysis requirement: the “list of projects” approach and the “summary of projections” approach. (CEQA Guidelines § 15130(b).) Consistent with the latter of these two approaches, the Draft EIR finds that cumulative projects would be subject to the same regional and local plans, and that it is reasonable to assume these projects would implement local and regional planning goals and policies. Based on this regional analysis, the Draft EIR finds that, upon implementation of any cumulative development, cumulative adverse land use impacts would be less than significant.

With respect to the Draft EIR’s statement that the surrounding Airport Area is transitioning from strictly nonresidential uses to a wider range of mixed uses, including residential uses, the Draft EIR explains that such transition is anticipated by the Newport Beach General Plan and would not represent a cumulative adverse land use impact. The Draft EIR’s conclusion that this transition is “creating rather than dividing a community” is not illogical. This finding is described in more detail on page 5.9-10, which explains that, given the distance and physical separation of existing residential communities from the project site, development of the project would not divide an established residential community. Instead, over time, with development of mixed uses in the area, a more cohesive community actually would be created.

To the extent that the comment reiterates concerns regarding the amount of information provided in the cumulative projects list in Table 4-1, please refer to Response to Comment A12-3.

- A12-14 The commenter stated that the Draft EIR, specifically Section 5.14, *Transportation and Traffic*, does not clearly identify the cumulative projects included in the traffic analysis, nor does it explain how the City reached the less than significant conclusions. Draft EIR Section 4.4, *Assumptions Regarding Cumulative Impacts* summarizes the CEQA requirements for cumulative project analysis. As detailed in this section, the CEQA Guidelines (Section 15130[b][1]) state that the information utilized in an analysis of cumulative impacts should come from one of two sources:
- A. A list of past, present and probable future projects producing related cumulative impacts, including, if necessary, those projects outside the control of the agency.
  - B. A summary of projections contained in an adopted General Plan or related planning document designed to evaluate regional or area-wide conditions.



## 2. Response to Comments

The traffic analysis is based on Method A. As stated under Impact Statement 5.14-1 (page 5.14-15), the traffic study included traffic from 25 projects in Newport Beach and 30 projects in Irvine. The detailed lists and location maps for these projects are included in Draft EIR Appendix J, *Traffic Impact Analysis*, pages J20 to J27. In addition to evaluating the potential traffic impact of 55 related development projects, and traffic analysis conservatively added an ambient growth rate of traffic of 1 percent per year (5 percent total) for MacArthur Boulevard, Jamboree Road and Irvine Avenue. The analysis fully complies with CEQA requirements.

The commenter also stated that the conclusions in the Draft EIR do not align with the information in the traffic study. For example, the commenter stated that under the Future Year 2022 Plus Project scenario, the traffic study found that MacArthur Boulevard/Michelson Drive and MacArthur Boulevard/Campus Drive would operate at LOS F and E, respectively, and that no further explanation was provided in the traffic study regarding LOS E being acceptable. With respect to the MacArthur Blvd/Campus Drive intersection, LOS E is considered acceptable by the City of Irvine, as noted on page 6 of the traffic study. Under the year 2022 baseline (no project) and with project analysis, the MacArthur Boulevard/Michelson Drive intersection is forecasted to operate at LOS F with a V/C increase of 0.002, which is not considered a significant impact. Therefore, the analysis and significance findings and conclusions in the Draft EIR and traffic study are in alignment.

As explained under footnote 2 on Draft EIR page 5.14-15, the traffic analysis was based on a projected opening year of 2022 for the project. The estimated opening date was revised to 2023 after the draft traffic study was completed. To confirm whether the study results would still be valid for the updated opening year, an analysis was performed at key intersections for 2024 (since the City of Newport Beach evaluates potential conditions for one year after project opening). The analysis to verify conditions for the year 2024 is summarized on Draft EIR page 5.14-23 and the level of service calculations performed for this analysis are included as Appendix B of this FEIR.

- A12-15 The commenter states that the Draft EIR's alternatives analysis is insufficient because the underlying evaluation of environmental impacts is inadequate. Therefore, the commenter claims, the alternatives analysis does not identify feasible alternatives that lessen adverse impacts or examine whether the alternatives would mitigate or avoid impacts.

To the extent that the comment reiterates concerns regarding the Draft EIR's evaluation of environmental impacts, please refer to Responses to Comments A12-4 through A12-14, above. Given the adequacy of the underlying environmental analysis, the Draft EIR's evaluation of alternatives likewise is sufficient. An EIR only must evaluate a range of reasonable alternatives to the extent they would avoid or substantially lessen any of the project's significant effects and feasibly attain most of the basic objectives of the project. (CEQA Guidelines § 15126.6(a); see also *In re Bay-Delta Programmatic Environmental*

## 2. Response to Comments

Impact Report Coordinated Proceedings (2008) 43 Cal.4th 1143, 1163.) Here, the Draft EIR evaluated two alternatives: (1) a “no project” alternative; and (2) a “reduced height and density” alternative. Each alternative would lessen certain environmental impacts as compared to the proposed project. The “no project” alternative, however, would not achieve project objectives, and while the “reduced height and density alternative” would achieve project objectives, it would do so to a lesser extent. Together, these two alternatives comprise a reasonable range of alternatives, and the commenter does not otherwise allege any particular deficiency in the alternatives analysis


A12-16 The commenter requested that the Draft EIR be updated to address the comments raised in this comment letter and that the Draft EIR be recirculated. See individual responses to Comments A12-1 through A12-15, above. Based on responses provided to the individual comments, the revisions to the Draft EIR outlined above, and the findings and conclusions of the Draft EIR and this Final EIR, recirculation of the Draft EIR is not warranted. Additionally, none of this material indicates that there would be a substantial increase in the severity of a previously identified environmental impact that will not be mitigated, or that there would be any of the other circumstances requiring recirculation described in Section 15088.5.

A12-17 The commenter requested that they be notified of any additional notices related to the proposed project pursuant to Section 21092.2 of the Public Resources Code, Section 21167(f) of the Public Resources Code, and Section 65092 of the Government Code. The commenter also requested that they be added to the list of interested parties for the proposed project. The City will continue to provide the commenter with all planning and CEQA-related project notices and documents in accordance with these requirements. The City will also add the commenter to the list of interested parties.



## 2. Response to Comments

### LETTER A13 – Gabrieleño Band of Mission Indians – Kizh Nation (1 page)



GABRIELEÑO BAND OF MISSION INDIANS - KIZH NATION  
Historically known as The San Gabriel Band of Mission Indians / Gabrielino Tribal Council  
recognized by the State of California as the aboriginal tribe of the Los Angeles basin

City of Newport Beach  
100 Civic Center Dr.  
Newport Beach, CA 92660

December 17, 2018

Re: AB52 Consultation request for the Newport Crossings Mixed Use Project

Dear Mariners Branch,

Please find this letter as a written request for consultation regarding the above-mentioned project pursuant to Public Resources Code § 21080.3.1, subd. (d). Your project lies within our ancestral tribal territory, meaning belonging to or inherited from, which is a higher degree of kinship than traditional or cultural affiliation. Your project is located within a sensitive area and may cause a substantial adverse change in the significance of our tribal cultural resources. Most often, a records search for our tribal cultural resources will result in a "no records found" for the project area. The Native American Heritage Commission (NAHC), ethnographers, historians, and professional archaeologists can only provide limited information that has been previously documented about California Native Tribes. For this reason, the NAHC will always refer the lead agency to the respective Native American Tribe of the area. The NAHC is only aware of general information and are not the experts on each California Tribe. Our Elder Committee & tribal historians are the experts for our Tribe and can provide a more complete history (both written and oral) regarding the location of historic villages, trade routes, cemeteries and sacred/religious sites in the project area.


Additionally, CEQA now defines Tribal Cultural Resources (TCRs) as their own independent element separate from archaeological resources. Environmental documents shall now address a separate Tribal Cultural Resource section which includes a thorough analysis of the impacts to only Tribal Cultural Resources (TCRs) and includes independent mitigation measures created with Tribal input during AB-52 consultations. As a result, all mitigation measures, conditions of approval and agreements regarding TCRs (i.e. prehistoric resources) shall be handled solely with the Tribal Government and not through an Environmental/Archaeological firm.

In effort to avoid adverse effects to our tribal cultural resources, we would like to consult with you and your staff to provide you with a more complete understanding of the prehistoric use(s) of the project area and the potential risks for causing a substantial adverse change to the significance of our tribal cultural resources.

Consultation appointments are available on Wednesdays and Thursdays at our offices at 910 N. Citrus Ave. Covina, CA 91722 or over the phone. Please call toll free 1-844-390-0787 or email [admin@gabrielenoindians.org](mailto:admin@gabrielenoindians.org) to schedule an appointment.

*\*\* Prior to the first consultation with our Tribe, we ask all those individuals participating in the consultation to view a video produced and provided by CalEPA and the NAHC for sensitivity and understanding of AB52. You can view their videos at: <http://calepa.ca.gov/Tribal/Training/> or <http://nahc.ca.gov/2015/12/ab-52-tribal-training/>*

With Respect,

  
Andrew Salas, Chairman

Andrew Salas, Chairman	Nadine Salas, Vice-Chairman	Christina Swindall Martinez, secretary
Albert Perez, treasurer	Martha Gonzalez Lemos, treasurer	Richard Gradias, Chairman of the Council of Elders
PO Box 393, Covina, CA 91723	<a href="http://www.gabrielenoindians.org">www.gabrielenoindians.org</a>	<a href="mailto:gabrielenoindians@yahoo.com">gabrielenoindians@yahoo.com</a>

A13-1

## 2. Response to Comments

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## 2. Response to Comments

### A13. Response to Gabrieleño Band of Mission Indians – Kizh Nation, LLP, Nicholas Whipps, dated December 17, 2018.

A13-1 This letter requests tribal consultation with the City in accordance with AB52. However, dated December 17, 2018, it appears to be written in response to the Notice of Availability for the Draft EIR.

The AB 52 tribal consultation process conducted for this project is described in Draft EIR Section 5.15., *Tribal Cultural Resources*. Emails notifying tribes of the project and inviting early consultation were sent to each of the tribes on January 3, 2018. No comments or requests for consultation were received. The 30-day noticing requirement under AB 52 was completed on February 3, 2018. Therefore, the City completed its noticing requirements in accordance with the requirements of AB 52. (See Pub. Resources Code § 21082.3(d).)

In response to the current letter (12/17/18), on December 20, 2018, the City's Project Manager, Jaime Murillo, forwarded the commenter copies of Draft EIR Sections 5.4 and 5.15, *Cultural Resources*, and *Tribal Cultural Resources*, respectively. The Cultural Resources Technical Memo supporting the Draft EIR was also forwarded (Draft EIR, Appendix D). In the letter, Mr. Murillo also offered to meet with the commenter to discuss the EIR analysis and recommended mitigation in more detail. And finally, Mr. Murillo followed up with a phone call to Mr. Salas. To date, there has been no response back from the commenter.

Further, Mitigation Measure CUL-1 on pages 5.4-10 and 5.4-11 of Draft EIR Section 5.4, *Cultural Resources*, has been revised to provide clarification that a culturally-related Native American monitor shall be allowed to monitor ground-disturbing activities at the project site, as follows. The revision is also provided in Chapter 3, *Revisions to the Draft EIR*, of the Final EIR. The revision has shown below, does not change the findings or conclusions of the Draft EIR. Changes made to the Draft EIR are identified here in ~~strikeout~~ text to indicate deletions and in **bold underlined** text to signify additions.

## 5.4 CULTURAL RESOURCES

### Impact 5.4-2




CUL-1 Prior to the issuance of a grading permit by the City of Newport Beach, the project applicant shall retain a qualified archaeologist to periodically monitor ground-disturbing activities onsite and provide documentation of such retention to the City of Newport Beach Community Development Director. The archaeologist shall train project construction workers on the types of archaeological resources that could be found in site soils. The archaeologist shall periodically monitor project ground-disturbing activities. **During**

## 2. Response to Comments

construction activities, if Native American resources (i.e. Tribal Cultural Resources) are encountered, a Cultural Resource Monitoring and Discovery Plan (CRMDP) shall be created and implemented to lay out the proposed personnel, methods, and avoidance/recovery framework for tribal cultural resources monitoring and evaluation activities within the project area. A consulting Native American tribe shall be retained and compensated as a consultant/monitor for the project site from the time of discovery to the completion of ground disturbing activities to monitor grading and excavation activities. If archaeological resources are encountered, all construction work within 50 feet of the find shall cease, and the archaeologist shall assess the find for importance and whether preservation in place without impacts is feasible. Construction activities may continue in other areas. If, in consultation with the City and affected Native American tribe (as deemed necessary), the discovery is determined to not be important, work will be permitted to continue in the area. Any resource that is not Native American in origin and that cannot be preserved in place shall be curated at a public, nonprofit institution with a research interest in the materials, such as the South Central Coastal Information Center at California State University, Fullerton.

## 2. Response to Comments

LETTER A14 – State Clearinghouse (9 pages)

 Gavin Newsom Governor	<p>STATE OF CALIFORNIA Governor's Office of Planning and Research State Clearinghouse and Planning Unit</p>	
<p>January 15, 2019</p> <p>Jaime Murillo City of Newport Beach 100 Civic Center Drive Newport Beach, CA 92660</p> <p>Subject: Newport Crossings Mixed Use Residential Project SCH#: 2017101067</p> <p>Dear Jaime Murillo:</p> <p>The State Clearinghouse submitted the above named Draft EIR to selected state agencies for review. On the enclosed Document Details Report please note that the Clearinghouse has listed the state agencies that reviewed your document. The review period closed on January 14, 2019, and the comments from the responding agency (ies) is (are) enclosed. If this comment package is not in order, please notify the State Clearinghouse immediately. Please refer to the project's ten-digit State Clearinghouse number in future correspondence so that we may respond promptly.</p> <p>Please note that Section 21104(c) of the California Public Resources Code states that:</p> <p style="padding-left: 40px;">"A responsible or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation."</p> <p>These comments are forwarded for use in preparing your final environmental document. Should you need more information or clarification of the enclosed comments, we recommend that you contact the commenting agency directly.</p> <p>This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act. Please contact the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process.</p> <p>Sincerely,</p> <p style="text-align: center;"></p> <p>Seth Morgan Director, State Clearinghouse</p> <p>Enclosures cc: Resources Agency</p> <p style="text-align: center;">1400 TENTH STREET P.O. BOX 3044 SACRAMENTO, CALIFORNIA 95812-3044 TEL 1-916-445-0613 state.clearinghouse@opr.ca.gov www.opr.ca.gov</p>	<p>RECEIVED BY COMMUNITY DEVELOPMENT</p> <p><b>JAN 22 2019</b></p> <p>CITY OF NEWPORT BEACH</p>	<p>A14-1</p>

## 2. Response to Comments


Document Details Report State Clearinghouse Data Base				
<b>SCH#</b>	2017101067			
<b>Project Title</b>	Newport Crossings Mixed Use Residential Project			
<b>Lead Agency</b>	Newport Beach, City of			
<b>Type</b>	EIR Draft EIR			
<b>Description</b>	The proposed project would consist of 350 residential dwelling units, 2,000 square feet of 'casual dining' restaurant space, 5,500 square feet of commercial space, and a 0.5 - acre public park. A six-story parking structure (one level subterranean and five levels above ground) is proposed in the center of the site to be surrounded and screened from public views by the residential and commercial buildings on all sides. Outdoor residential amenities include pool, entertainment, and lounge courtyards and a rooftop terrace. A commercial /retail plaza would provide a social hub surrounding the retail and restaurant uses with fire pits, soft furniture, landscaping, and festival lighting. The community park would include a dog park, dining terrace, shade structures, games terrace, lawn area, pickleball courts, and a parking lot.			
<b>Lead Agency Contact</b>				
<b>Name</b>	Jaime Murillo			
<b>Agency</b>	City of Newport Beach			
<b>Phone</b>	(949) 644-3209	<b>Fax</b>		
<b>email</b>				
<b>Address</b>	100 Civic Center Drive			
<b>City</b>	Newport Beach	<b>State</b>	CA	<b>Zip</b> 92660
<b>Project Location</b>				
<b>County</b>	Orange			
<b>City</b>	Newport Beach			
<b>Region</b>				
<b>Lat / Long</b>	33° 39' 57" N / 117° 51' 57" W			
<b>Cross Streets</b>	Dove Street/Scott Drive, Scott Drive/Corinthian Way, Corinthian Way/Martingale Way			
<b>Parcel No.</b>	various			
<b>Township</b>	<b>Range</b>	<b>Section</b>	<b>Base</b>	
<b>Proximity to:</b>				
<b>Highways</b>	73,55, I-405			
<b>Airports</b>	John Wayne Airport			
<b>Railways</b>				
<b>Waterways</b>	Newport Bay, San Diego Creek, Paularino Channel			
<b>Schools</b>	Various			
<b>Land Use</b>	GP Destination - MU H2 (Mixed Use Horizontal); Zoning - PC -11 (Planned Community 11, Newport Place)			
<b>Project Issues</b>	Agricultural Land; Air Quality; Archaeologic-Historic; Biological Resources; Geologic/Seismic; Minerals; Noise; Population/Housing Balance; Public Services; Recreation/Parks; Toxic/Hazardous; Traffic/Circulation; Landuse; Other Issues; Aesthetic/Visual; Cumulative Effects; Drainage/Absorption; Economics/Jobs; Flood Plain/Flooding; Forest Land/Fire Hazard; Growth Inducing; Schools/Universities; Septic System; Sewer Capacity; Soil Erosion/Compaction/Grading; Solid Waste; Vegetation; Water Quality; Water Supply; Wetland/Riparian			
<b>Reviewing Agencies</b>	Resources Agency; Department of Fish and Wildlife, Region 5; Department of Parks and Recreation; Department of Water Resources; Caltrans, Division of Aeronautics; California Highway Patrol; Caltrans, District 12; Regional Water Quality Control Board, Region 8; Native American Heritage Commission; State Water Resources Control Board, Division of Water Quality; Department of Toxic Substances Control			
Note: Blanks in data fields result from insufficient information provided by lead agency.				

**Document Details Report**  
**State Clearinghouse Data Base**

Note: Blanks in data fields result from insufficient information provided by lead agency.



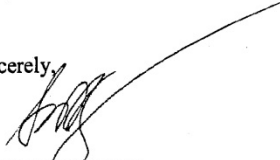
## 2. Response to Comments

<small>STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY</small>		<small>EDMUND G. BROWN Jr., Governor</small>
<b>DEPARTMENT OF TRANSPORTATION</b> DISTRICT 12 1750 EAST FOURTH STREET, SUITE 100 SANTA ANA, CA 92705 PHONE (657) 328-6267 FAX (657) 328-6510 TTY 711 <a href="http://www.dot.ca.gov">www.dot.ca.gov</a>	<div style="font-size: 1.5em; transform: rotate(-15deg); display: inline-block;">clear 1/14/19 E</div> <div style="border: 1px solid black; padding: 5px; display: inline-block;"><b>STATE CLEARINGHOUSE</b></div>	 <small>Making Conservation a California Way of Life.</small>
January 11, 2019	<small>Governor's Office of Planning &amp; Research</small> <b>JAN 14 2019</b>	File: IGR/CEQA SCH#: 2017101067 12-ORA-2018-01031 SR 73, PM 25.198
<div style="display: flex; justify-content: space-between;"><div style="width: 60%;"><p>Jaime Murillo City of Newport Beach 100 Civic Center Drive Newport Beach, CA 92660</p><p>Dear Mr. Murillo,</p><p>Thank you for including the California Department of Transportation (Caltrans) in the review of the Draft Environmental Impact Report for the Newport Crossings Mixed Use project in the City of Newport Beach. The mission of Caltrans is to provide a safe, sustainable, integrated and efficient transportation system to enhance California's economy and livability.</p><p>The proposed project consists of the development of a multistory building that would house 350 apartment units, 2,000 square feet of "casual-dining" restaurant space, 5,500 square feet of retail space, and a 0.5-acre public park. The project site is approximately 0.6 miles north of State Route (SR) 73 and 1.3 miles south of Interstate 405 (I-405). Caltrans is a commenting agency on this project and upon review, we have the following comments:</p><p><b><u>Transportation Planning</u></b> The City's Bicycle Master Plan (2014) recommends that Class II facilities be constructed on several streets surrounding the project site, including Birch Street, MacArthur Boulevard, Westerly Place, and Dove Street. Please consider these recommended facilities when developing the project's circulation element.</p><p><b><u>Encroachment Permit</u></b> Please be advised that any project work proposed in the vicinity of the State Highway System (SHS) will require an Encroachment Permit and all environmental concerns must be adequately addressed. If the environmental documentation for the project does not meet Caltrans' requirements, additional documentation would be required before the approval of the Encroachment Permit. For specific details for Encroachment Permits procedure, please refer to the Caltrans' Encroachment Permits Manual. The latest edition of the Manual is available on the web site: <a href="http://www.dot.ca.gov/hq/traffops/developserv/permits/">http://www.dot.ca.gov/hq/traffops/developserv/permits/</a></p><p>Please continue to keep us informed of this project and any future developments which could potentially impact the SHS. If you have any questions, please do not hesitate to contact Joseph Jamoralin, at (657) 328-6276 or <a href="mailto:Joseph.Jamoralin@dot.ca.gov">Joseph.Jamoralin@dot.ca.gov</a>.</p></div><div style="width: 35%; text-align: right; vertical-align: top;">A14-2</div></div>		
<small>"Provide a safe, sustainable, integrated and efficient transportation system to enhance California's economy and livability"</small>		

## 2. Response to Comments

Newport Crossings Mixed Use Project  
January 11, 2019  
Page 2

Sincerely,




SCOTT SHELLEY  
Branch Chief, Regional-IGR-Transit Planning  
District 12


A14-2  
cont'd


*"Provide a safe, sustainable, integrated and efficient transportation system  
to enhance California's economy and livability"*

## 2. Response to Comments

*Handwritten:* 1/14/2019 E

  
**Matthew Rodriguez**  
Secretary for  
Environmental Protection

  
**Department of Toxic Substances Control**

  
**Edmund G. Brown Jr.**  
Governor

January 3, 2019

Mr. James Murillo  
Senior Planner  
City of Newport Beach  
Community Development Department  
100 Civic Center Drive  
Newport Beach, California 92660  
[JMurillo@newportbeachca.gov](mailto:JMurillo@newportbeachca.gov)

**DRAFT ENVIRONMENTAL IMPACT REPORT, NEWPORT CROSSING MIXED USE  
PROJECT (PA 2017-107), NEWPORT BEACH, CALIFORNIA  
STATE CLEARINGHOUSE #2017101067**

Dear Mr. Murillo:

The Department of Toxic Substances Control (DTSC) reviewed the Draft Environmental Impact Report (DEIR) received from the City of Newport Beach (City) as lead agency, dated November 2018, for the Newport Crossing Mixed Use Project (Project), located in Newport Beach, California.

The Project proposal is to demolish an existing 5.69-acre-shopping center known as MacArthur Square to build a multistory building that would house 350 apartment units, 2,000 square feet of "casual-dining" restaurant space, 5,500 square feet of retail space, and a 0.5-acre public park.

The site was formerly used as an agricultural land from 1938 to 1963 and developed to a commercial use in phases from the early 1970s through the 1980s. Two dry cleaners operated formerly onsite: (1) Green Hanger Cleaners reportedly operated at 4250 Scott Drive from 2002 through 2015 and (2) Enjay Cleaners, operated onsite at 1701 Corinthian Way, Suite H from 1984 to 1997. In addition, the east adjoining 4341 McArthur Boulevard building contains a dry cleaner tenant which has been in operation since 1996. Chlorinated solvent was used by the former Enjay Cleaners and petroleum-based solvents were used by Green Hanger.

*Stamp:* Governor's Office of Planning & Research  
JAN 03 2019  
STATE CLEARINGHOUSE

A14-3

Printed on Recycled Paper

## 2. Response to Comments

Jamie Murillo  
Re: Newport Crossings Mixed Use Project DEIR  
January 14, 2018  
Page 7

contribute to the significant cumulative impact caused by greenhouse gas emissions from other sources around the globe. The question therefore becomes whether the project's incremental addition of greenhouse gases is 'cumulatively considerable' in light of the global problem, and thus significant.

(*Newhall Ranch, supra*, 62 Cal.4th 20'4, 219, citing Crockett, Addressing the Significance of Greenhouse Gas Emissions Under CEQA: California's Search for Regulatory Certainty in an Uncertain World (July 2011) 4 Golden Gate U. Env'tl. L.J. 203, 207-208.) The City does not provide sufficient information in the DEIR to determine whether the Project's incremental addition of greenhouse gasses would be cumulatively considerable and thus significant.

The City concludes that, because the Project does not exceed South Coast Air Quality Management District's ("SCAQMD") screening threshold for individual projects, "impacts would be less than significant." (DEIR, pp. 5.6-22, 5.6-25.) But the DEIR does not examine projected growth in the City of Newport Beach, estimate or examine what cumulative emissions from other concurrent projects might be, nor does it examine how this might relate to the Project's and the City's contributions to global GHG emissions. (*Ibid.*; see *id.* at pp. 4-13 – 4-14 [Cumulative Projects List, including other concurrent projected developments].)

Furthermore, the DEIR does not provide sufficient threshold information about existing GHG emissions in the City. (See Cal. Code Regs., tit. 14, § 15125(a); DEIR, § 5.6.) The DEIR does not analyze what the City's current per-capita GHG emissions are, or whether the City as a whole is on track to meet the 2030 GHG emission goals set forth in SB 32, as broadly outlined in the 2017 Climate Change Scoping Plan or provide any other quantitative benchmark to determine whether the Project, in conjunction with other development, would significantly impact GHG emissions. (See *id.* at § 5.6, p. 5.6-8.)

What are the projected GHG emissions from construction and operation of the other projects listed in the Cumulative Projects List? Is there additional projected growth in Newport Beach that would contribute to GHG emissions? If so, what are the estimated emissions from such growth? What are the cumulative estimated emissions? How would such emissions comply with quantitative GHG emissions thresholds? Are there any projects within the City or nearby jurisdictions that have been found to result in significant and unavoidable greenhouse gas impacts? Is the City of Newport Beach on track to meet GHG emissions SB 32 greenhouse gas reductions goals, as outlined in the 2017 Climate Change Scoping Plan? Are there other qualitative thresholds for GHG emissions that the City could use to determine the City's current contributions to GHGs and how the Project might impact this contribution in conjunction with other development? Please provide specific, estimates, data, and analysis.

A12-8  
cont'd



## 2. Response to Comments

Mr. James Murillo  
January 3, 2019  
Page 3

DTSC recommends the soil gas investigations be conducted in accordance with DTSC Advisory-Active Soil Gas Investigation ([https://www.dtsc.ca.gov/SiteCleanup/upload/VI\\_ActiveSoilGasAdvisory\\_FINAL.pdf](https://www.dtsc.ca.gov/SiteCleanup/upload/VI_ActiveSoilGasAdvisory_FINAL.pdf)) and Final Guidance for Evaluation and Mitigation of Subsurface Vapor Intrusion to Indoor Air ([https://www.dtsc.ca.gov/AssessingRisk/upload/Final\\_VIG\\_Oct\\_2011.pdf](https://www.dtsc.ca.gov/AssessingRisk/upload/Final_VIG_Oct_2011.pdf))

3. Human Health Risk Assessment 2017, Page 5.7-9. Based on the Appendix F3a, only soil vapor samples at 5 feet bgs were used for human health risk assessment. The human health risk assessment should include soil gas samples taken at 15 feet bgs. Groundwater should also be considered in the human health risk assessment if it is impacted by PCE. Risk to human health should be re-assessed after the extent of soil gas and groundwater contamination is fully defined. This assessment will then be used to design the vapor mitigation system and associated monitoring program. DTSC recommends the multi-media human health risk assessment be conducted in accordance with the Preliminary Endangerment Assessment Guidance Manual, section 2.5 ([https://www.dtsc.ca.gov/PublicationsForms/upload/PEA\\_Guidance\\_Manual.pdf](https://www.dtsc.ca.gov/PublicationsForms/upload/PEA_Guidance_Manual.pdf)) and Human Health Risk Assessment (HHRA) Note 4 (<https://www.dtsc.ca.gov/AssessingRisk/upload/NOTE-4-HHRA-Number-4-October-2016-revision-2016-10-26-FINAL-2.pdf>)
4. Section 5.7.3.1 Regulatory Requirements, Page 5.7.15. RR HAZ-1 addresses the transportation of any project-related hazardous materials and hazardous waste. Please note that transportation of hazardous waste should also be transported in accordance with California Code of Regulations, title 22, division 4.5, chapter 13.
5. Section 5.7.7 Mitigation Measures, Page 5.7-21. MM HAZ-1 requires a passive ventilation system for the proposed project. Please note that a land use covenant and long-term monitoring is required because the site was not remediated to meet the residential land use. In addition, confirmation sampling (e.g., indoor sampling or sub-slab sampling) is recommended after the installation of a vapor mitigation measure to verify the effectiveness of the mitigation measure. DTSC recommends any vapor intrusion mitigation be implemented in accordance with DTSC Vapor Intrusion Mitigation Advisory ([https://www.dtsc.ca.gov/SiteCleanup/upload/VIMA\\_Final\\_Oct\\_20111.pdf](https://www.dtsc.ca.gov/SiteCleanup/upload/VIMA_Final_Oct_20111.pdf)).
6. Any further investigation, human health risk assessment, vapor intrusion mitigation measures and remediation should be overseen by a regulatory agency with jurisdiction to oversee hazardous substance cleanup. Due to the potential of vapor intrusion into residential properties, DTSC's oversight is recommended. A request for DTSC's oversight can be found at:

A14-3  
cont'd


## 2. Response to Comments

Mr. James Murillo  
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<https://www.dtsc.ca.gov/SiteCleanup/Brownfields/voluntary-agreements-guide.cfm> (click on "Request for lead Agency Oversight Application").

DTSC looks forward to a conference call or a meeting to discuss further DTSC's concerns regarding this project. Should you have any questions regarding this letter, please contact me at (714) 484-5392 or e-mail [chiarin.yen@dtsc.ca.gov](mailto:chiarin.yen@dtsc.ca.gov).

Sincerely,



Chia Rin Yen  
Environmental Scientist  
Brownfields Restoration and School Evaluation Branch  
Site Mitigation and Restoration Program

ara/cy/yg

cc: Governor's Office of Planning and Research (via e-mail)  
State Clearinghouse  
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[State.clearinghouse@opr.ca.gov](mailto:State.clearinghouse@opr.ca.gov)

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A14-3  
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## 2. Response to Comments

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## 2. Response to Comments

### **A14. Response to State Clearinghouse, Scott Morgan, Director, dated January 15, 2019.**

- A14-1 The comment acknowledges that the City of Newport Beach has complied with State Clearinghouse review requirements for the Draft EIR, pursuant to CEQA. The comment also acknowledges that the State Clearinghouse received the Draft EIR and accompanying Notice Availability and submitted them to select state agencies for review. The comment is acknowledged and no response is necessary.
- A14-2 Please refer to comment letter A9 for responses to comments raised by Caltrans.
- A14-3 Please refer to comment letter A4 for responses to comment raised by DTSC.

## 2. Response to Comments

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## 2. Response to Comments

LETTER I1 – Jim Mosher (6 pages)

### Comments on Newport Crossings DEIR

The following comments on items on the [Draft EIR \(SCH #2017101067\)](#) are submitted by:  
Jim Mosher ( [jimmosher@yahoo.com](mailto:jimmosher@yahoo.com) ), 2210 Private Road, Newport Beach 92660 (949-548-6229)

1. For at least this member of the public, reviewing the Newport Crossings DEIR in its electronic form has been a more daunting task than it needed to be. The main document consists of a 493-page PDF file, reproducing the 10-page printed Table of Contents, but providing no bookmarks and no links to the items highlighted in it. Readers are apparently expected to somehow locate chapters of interest within the 493 pages, and then the pages within the chapters. It seems to me the lack of an effort to make the information more accessible diminishes the information-imparting function of an EIR.
2. Whatever the format, the text seems focused more on repetitive, methodical thoroughness than on clarity of presentation. For example, on page 5-2, under "Organization of Environmental Analysis" we see a pattern repeated 14 times in the Table of Contents for Chapter 5, and another 8 times in the two sections (5.12 PUBLIC SERVICES and 5.16 UTILITIES AND SERVICE SYSTEMS) where, for reasons that are not explained, the standard pattern doesn't seem to be followed, but is applied to sub-topics.
  - a. That may seem very methodical. The problem is that while the logic behind this methodology may be understood by CEQA practitioners, it is not, as best I can tell, and despite the DEIR's great length, explained to the public.
  - b. As an example of the confusion this creates for the public, after each "Impact" presented under the third bullet of the announced method ("Environmental Impacts") we see a statement of "*Level of Significance before Mitigation*" (for example, on page 5.1-7). But this seems redundant with the fifth bullet of the method, which comes after the fourth bullet ("Cumulative Impacts"), and is itself titled "*Level of Significance before Mitigation*" (for example, on page 5.1-16). One can only guess one of these is the City and consultant's estimate of the significance before the cumulative impacts have been considered and the other is after that has been factored in – but it is not explained.
  - c. Moreover, and more importantly, while citing thresholds of significance from Appendix G of the CEQA Guidelines, the "Impact Analysis" seems to be confined to what look like a series of project-specific "Impact" statements whose source (like much else) is unexplained.
    - i. We are repeatedly told (at least 21 times) "*The following impact analysis addresses thresholds of significance for which the Notice of Preparation (see Appendix A) disclosed potentially significant impacts.*" That would imply the Impact Statements were developed in the NOP. But there is no trace of them in the NOP or Appendix A. As best I can tell, it contains only the generalized list of standard CEQA topics (on page A-5).
  - d. In addition, many of the Impact statements are reduced to insignificance, even without mitigation, by citing "Regulatory Requirements and Standard Conditions." As

I1-1

I1-2

## 2. Response to Comments

Comments on Newport Crossing DEIR - Jim Mosher

Page 2 of 6

best I can tell, the DEIR does not explain where the "Standard Conditions" and, to a lesser extent, the specific "Regulatory Requirements," come from, and what assurance there is any will be adhered to.

- i. Without further explanation, this is particularly confusing because page 4-2 of the Harbor Pointe Senior Living DEIR (also currently circulating in Newport Beach, but seemingly not relying on standard conditions) says *"The City of Newport Beach does not have an adopted set of standard conditions; however, they may impose additional conditions during the approval process, as appropriate. These requirements may be specific to the proposed Project or standard to all projects."*
  - ii. Apparently there is an unwritten assumption that the project will include all the Regulatory Requirements and Standard Conditions mentioned in the EIR, but taking that logic to an extreme, it would seem the City could dispense with EIR's entirely if it simply passed an overarching regulation saying "approved projects shall not have significant impacts," or more simply, by adding a standard condition to the project saying "all significant impacts must be avoided."
3. Regarding the Notice of Preparation/Scoping process, I see from Table 2-2 that I asked about consistency with the City's General Plan and about the consistency of the 0.5 acre park with the City's requirement for 5 acres per 1,000 residents.
  - a. Regarding GP consistency, it is good to see the extensive listing in Table 5.9-1.
    - i. Many of the policies, however, seem quite subjective, and the conclusions rather arbitrary.
    - ii. As an example, despite the DEIR's conclusion to the contrary, I am unable to find the proposed park consistent with GP Policy LU 6.15.14, stating *"Each park shall be surrounded by public streets on at least two sides (preferably with on-street parking to serve the park)."*
      1. The policy appears intended to ensure the required park will be highly visible to the public.
      2. The proposed park is, instead, situated on the least visible frontage of the project site, surrounded by private development to the south and flowing into the project's private pool and recreation area on the north.
      3. The relatively tiny frontages on Dove and Martingale (which may even be masked by landscaping), hardly seem to fit the policy. How will the park be made inviting and readily identifiable as a public amenity from those sides? And is there even on-street parking on Dove? I don't think the EIR explains, yet it concludes the park is consistent with LU 6.15.14 (on page 5.9-21). I would think placing the park on any of the site's four other sides would be a better fit with LU 6.15.14.

I1-2  
cont'd

I1-3

## 2. Response to Comments

Comments on Newport Crossing DEIR - Jim Mosher

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- iii. The proposal similarly seems clearly inconsistent with GP Policy LU 6.15.6, calling for Airport Area *"mixed-use residential villages, each containing a minimum of 10 acres and centered on a neighborhood park."*
1. I believe the analysis on page 5.9-20 may be misstating the later-adopted Housing Element Program HP 3.2.2 as *"waiving the minimum 10-acre site requirement for affordable housing projects."*
  2. As adopted in November 22, 2011, Program HP 3.2.2 called for the City to *"amend the General Plan and/or establish a waiver or exception to the minimum 10-acre site requirement."*
  3. As revised on September 24, 2013, the Housing Element claimed that *"This program has been implemented with the adoption of Ordinance No. 2012-14 that amended the Newport Place Planned Community (PC-11) to allow residential development that includes a minimum of 30 percent of the units affordable to lower-income households, and also created a waiver to the 10-acre site requirement for such projects."* However, the 10-acre requirement of Policy LU 6.15.6 has never been amended, so the City appears to have created an internal inconsistency in its General Plan – with zoning regulations claiming to waive the GP.
  4. In addition, Program HP 3.2.2 requires *"design considerations for the future integration into a larger residential village, and a requirement to ensure collaboration with future developers in the area."* The concept appears to be that although the initial project may be less than 10 acres, over time the 10-acre threshold will be achieved through effective combination with neighboring projects. I cannot find either of the requirements needed to achieve this – the design features and the collaboration -- addressed in the DEIR. It assumes they are somehow ensured by the amended PC-11, but I don't see them adequately addressed in PC-11, either.
- b. Regarding the City's requirement of 5 acres per 1,000 residents, we are referred to Section 5.13, which tells us first, on page 5.13-2, that Newport Beach has more than 5 acres of parkland per 1,000 residents, and on page 5.13-6 that the requirement applies only to residential subdivisions.
- i. While that is helpful, I believe the DEIR is misstating the intent of the regulation, which is to ensure *new* parkland is added as *new* residents are added, irrespective of the current balance.
  - ii. As to the project not requiring subdivision, it might be noted:
    1. The City's case log indicates the application originally included a request for a tentative tract map.

I1-3  
cont'd

I1-4



## 2. Response to Comments

Comments on Newport Crossing DEIR - Jim Mosher		Page 4 of 6
2. It seems now to involve only a lot line adjustment, apparently necessary to avoid the proposed structures not spanning across lot lines.		I1-4 cont'd
3. Setting aside that the authors of the 5 acres per 1000 requirement may not have envisioned that substantial numbers of new residents could be added without subdivision, is a lot line adjustment not a variety of subdivision?		
4. In connection with the lot line adjustment, the Project Description on page 3-33 is confusing in referring to " <i>the <b>three</b> existing parcels</i> " when the Notice of Availability indicates the County Assessor regards the site as consisting of <b>four</b> parcels (APN 427-172-02, 03, 05, and 06), not three, with, according to the City's GIS mapping, the building at 4220 Scott Dr. being on a 0.2 acre parcel of its own (APN 427-172-05), a kind of island within the surrounding APN 427-172-06.		I1-5
5. In connection with SCAG's 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy, page 4-2 promises " <i>The proposed project's consistency with the applicable 2016-2040 RTP/SCS policies is analyzed in detail in Section 5.9, Land Use and Planning.</i> " In apparent contradiction to this, the paragraph at the top of page 5.9-2 says " <i>this section <b>does not</b> address the proposed project's consistency with SCAG's regional planning guidelines and policies</i> " [emphasis added].		I1-6
6. The Cumulative Projects List provided in Table 4-1 is similarly confusing.		
a. As acknowledged in the DEIR, it lists Newport Beach projects only, even though projects outside Newport Beach (or conducted by other agencies within Newport Beach) may be equally, or more, important in assessing many kinds of impacts.		
b. Even for projects within the exclusive jurisdiction of Newport Beach, the list appears to be outdated and inaccurate – and the rules for whether a project is on the list, or not, do not seem to be explained.		
i. For example, the 4-unit Ullman Sail Lofts is listed as "foreseeable" project F3, but it was approved by the Planning Commission on <a href="#">July 20, 2017</a> . And it seems to be left to the reader to guess why it is more important to list than many other projects that have passed through the Planning Commission.		I1-7
ii. Several of the other "foreseeable" projects similarly, appear to have been approved some time ago, while new foreseeable projects (such as the 21-unit <a href="#">Ford Road Residential</a> ) don't seem to be listed.		
iii. As for additional inaccuracies:		
1. The ENC Preschool certainly has a "non-residential area."		
2. Villas Fashion Island consists of 524 apartments, not 94.		
7. Also in Chapter 4, in describing the overall Environmental Setting, Subsection 4.3.3.3 (PREVIOUS DEVELOPMENT APPLICATION FOR THE PROJECT SITE) mentions the similar earlier proposal for the 380-unit Residences at Newport Place at the same site, but it		I1-8

## 2. Response to Comments

Comments on Newport Crossing DEIR - Jim Mosher

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does not mention that a Mitigated Negative Declaration was prepared for that, which might be relevant for comparison with the current analysis.

I1-8  
con't

8. As for Chapter 5:

a. In Section 5.1, the treatment of Aesthetics Threshold AE-3 seems weak. Much is said about the change in the appearance of the site in comparison to what is presently there, but little, if anything, is provided as to how the new construction, once the old is gone, will blend into its surroundings. Why aren't there any simulations accurately showing how the project will look from various vantage points in both the immediate area and the larger Airport Area in juxtaposition to the existing buildings?

I1-9

b. In Section 5.7:

i. In describing the contamination of the soil with perchloroethylene (PCE) from dry cleaning businesses, on page 5.7-8, under "Soil Vapor Sampling and Testing: 2013," the DEIR preparer says 0.73 µg/L is the same as "**0.73 part per billion**." That suggests the preparer is not familiar with his or her field. 1 µg/L **is** roughly equivalent to 1 ppb for something like pollutants in water, where 1 L = 1000 g. But it is not at all true for vapors, where 1 L of air weighs much less than 1000 g, and where ppb is conventionally expressed in terms of relative "partial volumes" (closely proportional to number of molecules) rather than relative weights. The EPA's [unit conversion calculator](#) indicates that for tetrachloroethylene (another name for PCE), 0.73 µg/L would, by volume, be about 0.11 parts per million, or **111 parts per billion** (not 0.73 part per billion).

ii. Given the preparer's lack of understanding of the basic units of vapor measurement, one has to wonder how accurate his or her estimates of the effectiveness of the mitigation measures are. One also has to wonder how long-lasting the proposed membrane barrier will be, and, should it fail, whether the subslab ventilation system will, by itself, be adequate.

I1-10

iii. Page 5.7-16 says "*Thresholds HAZ-7 and HAZ-8 have no impacts and will be included under Chapter 8.*" Judging from Page 5.7-15, this was intended to read "*Thresholds H-7 and H-8 have no impacts and will be included under Chapter 8*" – but even then, it's difficult to understand how "thresholds" could have "impacts." The City is possibly trying to say "*As will be explained in Chapter 8, no impacts exceeding thresholds H-7 and H-8 were identified.*" The reference, incidentally, appears to be to Section 8.5 (pages 8-4 & 5) where two statements vaguely similar to the H-7 and H-8 of page 5.7-15 appear as "A" and "B."

c. Page 5.10-15 indicates that a noise study will be conducted prior to construction. What mitigation will be possible if the exterior noise levels at the site are found to exceed City thresholds?

I1-11



## 2. Response to Comments

Comments on Newport Crossing DEIR - Jim Mosher

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d. In Chapter 5.12:

- i. Why do the Fire, School and Library subsections all cite a Regulatory Requirement that "*New development shall pay a property excise tax per the City's Municipal Code Chapter 3.12, Property Development Tax*," but the Regulatory Requirements part of the Police subsection says "*No existing regulations are applicable to police protection impacts of the proposed project*"? Doesn't part of the same property tax that goes to fund fire, school and library services go to fund police services? l1-12
- ii. With regard to subsection 5.12.3, the fact that residents in Newport Beach's Airport Area are not in the Newport-Mesa Unified School District has been regarded as an issue. Is it not still an issue or matter of controversy? l1-12

- e. Table 5.13-1 refers to "acers" (as does the second bullet under Section 5.13.6 on page 5.13-8). Shouldn't that be "acres"? l1-13

- f. Subsection 5.16.1.4 projects a massive increase in wastewater generation. Despite 5.16.1 being titled "Waster Treatment **and Collection**," the required CEQA analysis appears to be confined to wastewater **treatment**. Would this increased flow overwhelm the City's collection infrastructure, requiring construction of new sewer mains? l1-14

9. Regarding Chapter 7:

- a. The description of Alternatives and the CEQA requirements surrounding them is so muddled that I, at least, was unable to tell if CEQA actually requires an alternative to be considered when, as here, the City claims the project itself has no significant impacts. l1-15
- b. I was similarly baffled trying to reconcile with Table 7-6 the statement at the end of Section 7.7 that "*the No Project alternative would **not** be considered environmentally superior*." The "No Project Alternative" column of Table 7-6 has many more minuses (meaning, it says, "*The alternative would result in less of an impact than the proposed project*") than pluses. Given the preponderance of minuses for the "No Project Alternative" I have trouble, without further explanation, understanding why it is worse, environmentally, than the project. Apparently some of the pluses or minuses are more important than others? l1-15

10. Regarding Chapter 9:

- a. Four questions regarding growth-inducing impacts are posed on page 9-2. l1-16
- b. Only three of the questions appear to be answered on page 9-3.
- c. What is the answer to the missing one?

## 2. Response to Comments

### **II. Response to Comments from Jim Mosher, dated January 14, 2019.**

I1-1 The Draft EIR (including the format) was prepared in accordance with the requirements of Article 9 (Contents of Environmental Impact Reports) of the CEQA Guidelines, which covers Sections 15120 to 15132. As stated in Section 15120, “Environmental Impact Reports shall contain the information outlined in this article, *but the format of the document may be varied*. Each element must be covered, and when these elements are not separated into distinct sections, the document shall state where in the document each element is discussed.” As further stated in in Section 15122, “An EIR shall contain at least a table of contents or an index to assist readers in finding the analysis of different subjects and issues.” A table of contents is provided at the beginning of the Draft EIR, which helps guide readers to the various chapters and sections of the Draft EIR. Also, the digital version (PDF) of the Draft EIR provided on the City’s website allows the reader to use the “search and find” tool to help navigate the reader through the Draft EIR. Further, the CEQA Guidelines do not enumerate a page limit (either minimum of maximum) for EIRs.

I1-2 The commenter seems unhappy with the overall format, organization, and content of the Draft EIR. However, the format, organization, and content are in line with the requirements of Article 9 of the CEQA Guidelines, as noted in response to Comment I1-1, above. Also, the format and pattern of the Draft EIR topical sections is consistent with and follows the outline provided on page 5-2, under Organization of Environmental Analysis.

The commenter appears confused as to the source of the impact statements used in the Draft EIR. However, as noted by commenter, the source of the impact statements is noted as being Appendix G of the CEQA Guidelines. Commenter does not challenge or otherwise question the use of these thresholds of significance for the analysis in the Draft EIR. With respect to the NOP, as noted by the commenter, the Draft EIR states that “The following impact analysis addresses thresholds of significance for which the Notice of Preparation disclosed potential impacts.” Commenter seems to confuse this statement as meaning that the thresholds are contained in the NOP, when, in fact, the statement is noting only that the NOP did not scope out the impact thresholds from detailed analysis in the Draft EIR because the NOP disclosed that the impacts could be potentially significant and so required further analysis in the EIR. This is consistent with Public Resources Code § 21080.4.

Regarding standard conditions and regulatory requirements, these will be enforced by the City as conditions of approval, which will be required to be adhered to through its site development review and building plan check process. Therefore, sufficient enforcement will be provided and the applicant compliance with all standard conditions and regulatory requirements will be ensured.

## 2. Response to Comments

- I1-3      No evidence was provided in this comment to support the commenters general statement that many of the policies noted in Table 5.9-1 of Draft EIR Section 5.9, *Land Use and Planning*, are subjective and the conclusions rather arbitrary. The comment is acknowledged.

In response to the comment about the projects consistency with General Plan Policy LU 6.15.14, the proposed location, layout, and improvements of the 0.5-acre park are consistent with the requirements of this policy. As stated in Table 5.9-1 under the consistency analysis of Policy LU 6.15.14, the proposed park space would be clearly public due to the lack of perimeter fencing and signage and would be easily accessible to residents and the neighboring community through pedestrian connections. The park would be bordered by streets on two sides, would include a parking area, and would be visible (and accessible) from Dove Street and Martingale Way.

As noted in Table 5.9-1 of Section 5.9, the Residential Overlay of the NPPC that applies to the project site, implements General Plan Housing Element Program 3.2.2, which states that the City shall maintain an exception to the 10-acre site requirement for residential development projects in the Airport Area that include a minimum of 30 percent of the units affordable to lower income households. As the comment states, Ordinance No. 2012-14 amended the Newport Place Planned Community to include the Residential Overlay and includes the 10-acre site exception required to be maintained by General Plan Housing Element Program 3.2.2. Residential developments, such as the proposed project, that qualify for the residential overlay are subsequently exempt from General Plan Land Use Policy LU 6.15.6 and have no minimum site area requirement.

Section V.F (Amenities and Neighborhood Integration) of the Residential Overlay includes a requirement that the residential development include sufficient amenities (e.g. parks, clubhouse, pool, etc.) for the use of the residents and incorporate necessary improvements (e.g. pedestrian walkways, open space, recreational space, pedestrian, and bicycle connections) to allow integration into the existing community and larger residential developments in the future. This determination is implemented through the City's site development review process. In addition to the 0.5-acre public park and as detailed in Subsection 3.3.1.6 of Draft EIR Chapter 3, *Project Description*, the project provides extensive onsite recreational amenities, including separate pool, entertainment, and lounge courtyards with eating, seating, and barbeque space; a rooftop terrace; a fifth-level view deck; a club room for entertainment and gatherings; and a fitness facility. In addition, a public plaza is located in front of the retail shops facing the main corner of the project at Corinthian Way and Martingale Way. The provided amenities total 22,696 square feet (65 square feet per unit), exceeding the 15,400 square-foot (44 square feet per unit) onsite recreational amenities requirement, and lessening the demand on existing recreational facilities in the City.

## 2. Response to Comments

- I1-4 The Draft EIR is not misstating the intent of the park acreage per resident requirement. As stated under Impact Statement 5.13-1 (page 5.13-6), "...the City's five acres of parkland per 1,000 persons requirement, as set forth in the City's Park Dedication Fee Ordinance (Chapter 19.52 [Park Dedication and Fees] of the City's Municipal Code) and General Plan Policy R1.1 do not apply to the proposed project, as the project is not a residential subdivision. The project does not involve or require a subdivision map because it is a for-lease apartment development. Subdivision maps are associated with for-sale residential developments, both single- and multifamily. Therefore, the ordinance is not applicable to the proposed project. However, as detailed above, the proposed project would provide a half-acre park in accordance with the requirement of General Plan Policy LU 6.15.13."

Further, the City's case log indicates that the application originally included a request for a tentative tract map because the initial request included the ability to sell each unit as a condominium, which would have necessitated a tentative tract map approval; however, the application was later revised to include for-rent apartment units only. Therefore, a tentative tract map was no longer required and a lot line adjustment is only needed to reconfigure the existing underlying parcels.

- I1-5 In response to the commenter, the project site consists of three legal lots (Lot 1 of Tract No. 7770, M.M. 299/15-16, and Parcels 1 and 2 of P.M.B. 53-13), but four tax parcels (APNs 427-172-02, 03, -05, and -06). Therefore, the information provided in the NOA and Draft EIR are correct and no discrepancy exists.

- I1-6 Subsection 4.2.2, *Regional Planning Considerations*, of Draft EIR Section 4.2, *Environmental Setting*, states (not "promises", as noted by the commenter) that the proposed project's consistency with SCAG's regional planning guidelines and policies is provided in Section 5.9, *Land Use and Planning*. As stated on page 5.9-2 of Section 5.9, "The proposed project is not considered a project of "regionwide significance" pursuant to the criteria in SCAG's Intergovernmental Review Procedures Handbook (November 1995) and Section 15206 of the CEQA Guidelines. Therefore, this section does not address the proposed project's consistency with SCAG's regional planning guidelines and policies." In response to the commenter and the statement provided in Section 5.9, the text in Subsection 4.2.2 (page 4-2) has been revised, as follows. The revisions are also provided in Chapter 3, *Revisions to the Draft EIR*, of the Final EIR. Changes made to the Draft EIR are identified here in ~~strikeout~~ text to indicate deletions and in **bold underlined** text to signify additions.

## 4. Environmental Setting

### SCAG Regional Transportation Plan/Sustainable Communities Strategy

The SCS outlines a development pattern for the region, which, when integrated with the transportation network and other transportation measures and policies, would reduce

## 2. Response to Comments

GHG emissions from transportation (excluding goods movement). The SCS is meant to provide growth strategies that will achieve the regional GHG emissions reduction targets identified by the California Air Resources Board. However, the SCS does not require that local general plans, specific plans, or zoning be consistent with the SCS; instead, it provides incentives to governments and developers for consistency. The proposed project's ~~consistency with the applicable~~ relation to SCAG's 2016-2040 RTP/SCS ~~policies is analyzed in detail~~ discussed in Section 5.9, *Land Use and Planning*.

- I1-7 Table 4-1, *Cumulative Projects List*, of Draft EIR Chapter 4, *Environmental Setting*, identifies all of the cumulative projects within the relevant geographic area of the project site. Figure 4-3, *Cumulative Developments Location Map*, illustrates the location of each cumulative project relative to the proposed project. Consistent with CEQA Guidelines Section 15130(b)(2), the cumulative projects consider the nature of the resource affected and the location of the project, as well as the type of project under review. As stated on page 4-14 of Chapter 4, "Cumulative impact analyses for several topical sections are also based on the most appropriate geographic boundary for the respective impact." With regard to cumulative traffic impacts, Section 5.14, *Transportation and Traffic*, identifies the cumulative projects included in the traffic analysis, which includes projects in the City of Irvine. As stated on page 4-14 of Chapter 4, "Several potential cumulative impacts that encompass regional boundaries (e.g., air quality and traffic) have been addressed in the context of various regional plans and defined significance thresholds."

Additionally, the list of cumulative projects provided in Table 4-1 of Draft EIR are not outdated or inaccurate. The list of cumulative projects listed in Table 4-1 were provided by the City of Newport Beach and are those that were available at the time of release of the Notice of Preparation (NOP), as further detailed below. As noted on page 4-13 of the Draft EIR, "The City compiled a list of cumulative projects for analysis under CEQA. ...The list has two parts: Reasonably Foreseeable Projects and Approved Projects."

The comment states that the Ford Road project should have been included in the Draft EIR's list of reasonably foreseeable projects for purposes of conducting a cumulative impacts analysis. While an application for Ford Road was submitted on October 30, 2017, it was not entered into the City's records system until November 3, 2017, two days after circulation of the NOP for the proposed project. The City treated circulation of the NOP as the cutoff date pursuant to the CEQA Guidelines; therefore, the Ford Road project was not identified in the cumulative projects list. Similar approaches have been upheld by courts. (See *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1127 [holding that lead agency has discretion to set date of application as a reasonable cutoff date for determining what other projects are pending and should be included in the cumulative impacts analysis]; *San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61 [same].) In addition, the Ford Road project proposes only 21 residential condominium units, which represents a very small percentage (less than 1%) of the total number of dwelling units identified in the cumulative projects list and

## 2. Response to Comments

utilized for purposes of analyzing cumulative impacts. (See *Concerned Citizens of South Central L.A. v. Los Angeles Unified School Dist.* (1994) 24 Cal.App.4th 826, 837-838 [upholding cumulative housing impacts analysis where petitioners were able to show only a small amount of housing loss in addition to that identified in the cumulative impact analysis].)

The ENC Preschool project was a minor use permit approval to allow a preschool/general day care with approximately 72 students. The development includes the construction of a 6,498-square-foot facility. The cumulative traffic analysis of the proposed project's traffic study analyzed the addition of 72 students (see Appendix J of the Draft EIR).

The Villas Fashion Island project was a 524 apartment project. However, the project referenced in the table was the 2012 approval of an amendment to the North Newport Center Planned Community Plan (NNCPC) increasing the residential development allocation from 430 units to a total of 524 units (increase of 94 units) and allocating the units to the San Joaquin Plaza sub-area of the NNCPC. The addendum to the General Plan Update EIR and traffic study analyzed the 94 unit increase. The construction permits for the Villas Fashion Island apartments was finalized on October 6, 2017. As also noted above, the City treated circulation of the NOP as the relevant date for identifying those projects that would be included as cumulative projects. Although Villas Fashion Island was listed as an "approved project" on the cumulative projects list, construction permits for that project actually were finalized on October 6, 2017 (as noted above), approximately four weeks prior to circulation of the NOP. Therefore, with final construction permits in place prior to issuance of the NOP, Villas Fashion Island was an existing condition and not a cumulative project for purposes of the Draft EIR's environmental analysis.

- I1-8 The environmental document (Mitigated Negative Declaration) that was prepared for the 380-unit Residences at Newport Place project has no relevance to the proposed Newport Crossings project or the environmental analysis conducted as a part of an included in the project's Draft EIR.
- I1-9 No evidence was provided in this comment to support the commenters general statement that the aesthetic analysis provided in Section 5.1, Aesthetics, does not provide adequate discussion as to how the propose project will blend in with its surroundings. A detailed discussion that describes the visual change in the environment due to project development as well as how the project would fit in to the surrounding environment is provided under Impact Statement 5.1-2, starting on page 5.1-8.
- I1-10 The commenter is correct that 0.73 ug/L of PCE is equivalent to approximately 110 ppbV. However, this does not affect the vapor intrusion risk assessment results (as concentrations in ug/L are used) and is not expected to impact the design of the vapor mitigation system membrane at these relatively low levels.



## 2. Response to Comments

Also, the statement provided on page 5.7-16 of Draft EIR Section 5.7 is correct. Thresholds HAZ-7 and HAZ-8 were determined to have no impacts, as substantiated in Draft EIR Chapter 8, *Impacts Found Not to Be Significant*.

In response to this comment and to correct a minor error, the text on page 5-7-8 of Draft EIR Section 5.7, *Hazards and Hazardous Materials*, has been revised, as follows. The revisions are also provided in Chapter 3, *Revisions to the Draft EIR*, of the Final EIR. The text revisions do not change the findings or conclusions of the Draft EIR. Changes made to the Draft EIR are identified here in ~~strikeout~~ text to indicate deletions and in **bold underlined** text to signify additions.

### 5.7 Hazards and Hazardous Materials

#### *Soil Vapor Sampling and Testing: 2013*

The 2013 Phase II investigation included three subslab soil-vapor samples collected from directly beneath the slab below the former dry cleaner at 4250 Scott Drive. In addition, seven subsurface soil vapor samples were collected from the property perimeter at depths of 5 feet bgs. The PCE concentration in one of the three subslab samples was 0.73 µg/L (~~that is, 0.73 part per billion~~), above the California Health Hazard Screening Level (CHHSL) of 0.48 µg/L for residential land use; concentrations in the other two samples were below the CHHSL. The location this sample was taken from is shown in Figure 5.7-1, *Soil and Soil Vapor Sampling Locations*. Soil vapor samples from two of the seven locations sampled on the site perimeter yielded PCE concentrations of 1.5 and 1.4 µg/L, respectively, also above the CHHSL for residential use. One location is on the northwest site boundary, and the other is on the northern part of the eastern site boundary (see Figure 5.7-1). The concentrations of PCE detected indicated groundwater contamination may be present.

- I1-11 CEQA requires that a project's impact on the environment be analyzed; however, it does not require an analysis of the environments impacts on a project be analyzed. Also, the requirement for the preparation of an acoustic study is pursuant to the provisions of City's the Noise Ordinance and Municipal Code Section 20.48.130.E, Mixed-Use Projects Sound Mitigation, as stated on page 5.10-14 of the Draft EIR Section 5.10, *Noise*. The City requires acoustic studies to be prepared for projects such as the proposed Newport Crossing project to ensure that future project residents will not be exposed to excessive noise sources and that the buildings are designed and constructed to meet the City's noise regulations. The acoustic study is required to be submitted to the Community Development Department prior to the issuance of building permits for each structure. Through its review process, the City will ensure that all noise attenuation measures are incorporated into the project's buildings, in compliance with the findings of the acoustic study.



## 2. Response to Comments

- I1-12 As stated on page 5.12-2 of Draft EIR Section 5.12, *Public Services*, Chapter 3.12 (Property Development Tax) of the City's Municipal Code outlines the need for collecting necessary funds to provide adequate fire stations and fire-fighting equipment, public City libraries, and public City parks—which cannot be met by the City's ordinary revenues—through an excise tax upon the construction and occupancy of residential, commercial, and industrial units or buildings in the City. The funds collected under Chapter 3.12 do not apply to police services or facilities.
- I1-13 As discussed in Draft Section 5.12, the project site is within the boundaries of and would be served by the Santa Ana Unified School District (District). The District has indicated that it can serve the school needs of the students generated by the project. Section 5.12 also substantiates the District's schools that serve the project site have capacity for to accommodate the project's students. Further, irrelevant of the school district that serves the project site, the project applicant/developer will be required to pay school impact fees under per Senate Bill 50.
- I1-14 The analysis provided under Impact Statement 5.16-6 of Draft EIR Section 5.16, *Utilities and Service Systems*, is in response to the Appendix G CEQA Guidelines questions regarding wastewater treatment which are listed on page 5.14-6. As stated on Page 5.14-6, according to Appendix G of the CEQA Guidelines, a project would normally have a significant effect on the environment if the project (*emphasis added*).
- U-2 Would require or result in the construction of new water or *wastewater treatment* facilities or expansion of existing facilities, the construction of which could cause significant environmental effects.
- U-5 Would result in a determination by the *wastewater treatment* provider which serves or may serve the project that it has inadequate capacity to serve the project's projected demand in addition to the provider's existing commitments.
- I1-15 No evidence was provided in this comment to support the commenters general statement that the description of alternatives provided in Draft EIR Chapter 7, *Alternatives*, is muddled. The comment is acknowledged.
- In response to the commenter's confusion of how the environmental superior alternative is selected and why the No Project Alternative was not selected as the superior alternative over the proposed project, please refer to the explanation provided in Subsections 7.1.1, *Purpose and Scope*, of Draft EIR Chapter 7. As stated in the third bullet point of Subsection 7.1.1 (page 7-1), "...If the environmentally superior alternative is the 'no project' alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives." (CEQA Guidelines Section 15126.6[e][2]).

## 2. Response to Comments

- I1-16 In response to the commenter, the missing response to the fourth question regarding growth-inducing impacts outlined on page 9-2 of Draft EIR Chapter 9, *Other CEQA Considerations*, is probed below. The revision is also provided in Chapter 3, *Revisions to the Draft EIR*, of the Final EIR. The revision does not change the findings or conclusions of the Draft EIR. Changes made to the Draft EIR are identified here in ~~strikeout~~ text to indicate deletions and in **bold underlined** text to signify additions.

### 9. Other CEQA Considerations

Would this project encourage or facilitate economic effects that could result in other activities that could significantly affect the environment?

Implementation of the proposed project would encourage or facilitate economic effects. During project construction, a number of design, engineering, and construction-related jobs would be created. This would last until the project is constructed over two years. Construction related jobs would not result in a significant population increase because they would be filled by workers in the region. The construction phase would be temporary and the buildings are being developed based on market demand.

Buildout of the proposed project would not increase employment in the project area by a substantial amount. The project's 7,500 square feet of retail and restaurant uses is estimated to generate approximately 12 permanent jobs, while the apartment complex is estimated to generate approximately 4 permanent jobs. Total estimated employment generation by the proposed project is about 16 jobs. Also, the proposed apartments would introduce up to 550 additional residents. The increase in residents could spur new economic investment in commercial uses serving the project site. Future residents would also represent an increased demand for economic goods and services and could, therefore, encourage the creation of new businesses and/or the expansion of existing businesses in the area. While the proposed project would have an indirect growth-inducing effect, this would be accommodated by the surrounding Airport Area and its ability to absorb local business growth.

## 3. Revisions to the Draft EIR

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### 3.1 INTRODUCTION

This section contains revisions to the DEIR based on (1) additional or revised information required to prepare a response to a specific comment; (2) applicable updated information that was not available at the time of DEIR publication; and/or (3) typographical errors. This section also includes additional clarification and/or revisions to mitigation requirements included in the DEIR. The provision of these revised mitigation measures does not alter any impact significance conclusions as disclosed in the DEIR. Changes made to the DEIR are identified here in ~~strikeout~~ text to indicate deletions and in underlined text to signify additions.

### 3.2 DEIR REVISIONS IN RESPONSE TO WRITTEN COMMENTS

The following text has been revised in response to comments received on the DEIR.

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Pages 2-10 and 2-11, Chapter 1, *Executive Summary*. The following text is revised to correct a minor error.

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### 2.5 FINAL EIR CERTIFICATION

This DEIR is being circulated for public review for 45 days. Interested agencies and members of the public are invited to provide written comments on the DEIR to the City address shown on the title page of this document. Upon completion of the 45-day review period, the City will review all written comments received and prepare written responses for each. A Final EIR (FEIR) will incorporate the received comments, responses to the comments, and any changes to the DEIR that result from comments. The FEIR will be presented to the Newport Beach City Council Planning Commission for potential certification as the environmental document for the project. All persons who comment on the DEIR will be notified of the availability of the FEIR and the date of the public hearing before the City.

### 2.6 MITIGATION MONITORING

Public Resources Code, Section 21081.6, requires that agencies adopt a monitoring or reporting program for any project for which it has made findings pursuant to Public Resources Code 21081 or adopted a Negative Declaration pursuant to 21080(c). Such a program is intended to ensure the implementation of all mitigation measures adopted through the preparation of an EIR or Negative Declaration.

### 3. Revisions to the Draft EIR

The Mitigation Monitoring Program for the Newport Crossings Mixed Use project will be completed in conjunction with the Final EIR, prior to consideration of the project by the Newport Beach ~~City Council~~ **Planning Commission**.

Pages 1-9, 1-10, 1-13, 1-15 and 1-16 of Table 1-2, Chapter 1, *Executive Summary*. The following mitigation measures are revised/added in response to Comment A1-1 from the California Cultural Resource Preservation Alliance, Comment A4-9 from the Department of Toxic Substances Control, and Comment A8-7 from the South Coast Air Quality Management District.

**Table 1-2 Summary of Environmental Impacts, Mitigation Measures and Levels of Significance After Mitigation**

Environmental Impact	Level of Significance Before Mitigation	Mitigation Measures	Level of Significance After Mitigation
<b>5.2 Air Quality</b>			
<b>Impact 5.2-2:</b> Construction activities associated with the proposed project would generate short-term emissions in exceedance of SCAQMD'S threshold criteria for NO <sub>x</sub> .	Potentially significant	AQ-3  Construction contractors shall, at minimum, use equipment that meets the EPA's Tier <del>34</del> emissions standards for off-road diesel-powered construction equipment <del>with more than</del> of 50 horsepower <del>or greater</del> for all <del>building and asphalt demolition, building and asphalt demolition debris hauling, rough grading, and rough grading soil hauling activities</del> <u>phases of construction activity</u> , unless it can be demonstrated to the City of Newport Beach Building Division <u>with substantial evidence</u> that such equipment is not available. Any emissions control device used by the contractor shall achieve emissions reductions that are no less than what could be achieved by Tier <del>34</del> emissions standards for a similarly sized engine, as defined by the California Air Resources Board's regulations.  Prior to construction, the project engineer shall ensure that all construction (e.g., demolition and grading) plans clearly show the requirement for EPA Tier <del>34</del> emissions standards for construction equipment <del>over</del> <u>of 50 horsepower or greater</u> for the specific activities stated above. During construction, the construction contractor shall maintain a list of all operating equipment in use on the construction site for verification by the City of Newport Beach. The construction equipment list shall state the makes, models, and numbers of construction equipment onsite. Equipment shall be properly serviced and maintained in accordance with the manufacturer's recommendations. Construction contractors shall also ensure that all nonessential idling of construction equipment is restricted to 5 minutes or less in compliance with Section 2449 of the California Code of Regulations, Title 13, Article 4.8, Chapter 9.	Less than significant with mitigation

### 3. Revisions to the Draft EIR

**Table 1-2 Summary of Environmental Impacts, Mitigation Measures and Levels of Significance After Mitigation**

Environmental Impact	Level of Significance Before Mitigation	Mitigation Measures	Level of Significance After Mitigation
<b>5.4 CULTURAL RESOURCES</b>			
<b>Impact 5.4-2:</b> Project development could result in an impact on archaeological resources.	Potentially significant	<p>CUL-1 Prior to the issuance of a grading permit by the City of Newport Beach, the project applicant shall retain a qualified archaeologist to periodically monitor ground-disturbing activities onsite and provide documentation of such retention to the City of Newport Beach Community Development Director. The archaeologist shall train project construction workers on the types of archaeological resources that could be found in site soils. The archaeologist shall periodically monitor project ground-disturbing activities. <u>During construction activities, if Native American resources (i.e. Tribal Cultural Resources) are encountered, a Cultural Resource Monitoring and Discovery Plan (CRMDP) shall be created and implemented to lay out the proposed personnel, methods, and avoidance/recovery framework for tribal cultural resources monitoring and evaluation activities within the project area. A consulting Native American tribe shall be retained and compensated as a consultant/monitor for the project site from the time of discovery to the completion of ground disturbing activities to monitor grading and excavation activities.</u> If archaeological resources are encountered, all construction work within 50 feet of the find shall cease, and the archaeologist shall assess the find for importance and whether preservation in place without impacts is feasible. Construction activities may continue in other areas. If, in consultation with the City and affected Native American tribe (as deemed necessary), the discovery is determined to not be important, work will be permitted to continue in the area. Any resource that is not Native American in origin and that cannot be preserved in place shall be curated at a public, nonprofit institution with a research interest in the materials, such as the South Central Coastal Information Center at California State University, Fullerton.</p>	Less than significant with mitigation
<b>5.7 HAZARDS AND HAZARDOUS MATERIALS</b>			
<b>Impact 5.7-2:</b> The project site is on a list of hazardous materials sites.	Potentially significant	<p>HAZ-2 Prior to issuance of the first building permit, soil and soil vapor samples shall be collected from beneath the former Enjay Cleaners and soil samples shall be collected from beneath the proposed 0.5-acre public park site and tested for Volatile Organic Compounds (VOC) and Organochlorine Pesticides (OCP), respectively. The results shall be submitted to the Orange County Health Care Agency and City Building Official. <u>In the event that soil concentrations exceed site-specific cleanup goals, affected soils shall be</u></p>	Less than significant with mitigation

### 3. Revisions to the Draft EIR

**Table 1-2 Summary of Environmental Impacts, Mitigation Measures and Levels of Significance After Mitigation**

Environmental Impact	Level of Significance Before Mitigation	Mitigation Measures	Level of Significance After Mitigation
		<u>removed and properly treated/disposed of. Should soil vapor concentrations exceed site-specific cleanup goals, short-term soil vapor extraction and treatment shall be performed to reduce soil vapor concentrations. Institutional controls will be required if the soil and soil gas cannot achieve the cleanup goals for residential land use, and/or vapor mitigation measure (e.g., passive ventilation system) are implemented to protect the future building receptors.</u>	

Pages 5.2-32 and 5.2-33, Section 5.2, *Air Quality*. The following mitigation measure is revised in response to Comment A8-7 from the Air Quality Management District.

## 5.2.7 Mitigation Measures

### Impact 5.2-2

AQ-3

Construction contractors shall, at minimum, use equipment that meets the EPA's Tier ~~34~~ emissions standards for off-road diesel-powered construction equipment ~~with more than of 50 horsepower or greater for all building and asphalt demolition, building and asphalt demolition debris hauling, rough grading, and rough grading soil hauling activities~~ phases of construction activity, unless it can be demonstrated to the City of Newport Beach Building Division with substantial evidence that such equipment is not available. Any emissions control device used by the contractor shall achieve emissions reductions that are no less than what could be achieved by Tier ~~3~~ 4 emissions standards for a similarly sized engine, as defined by the California Air Resources Board's regulations.

Prior to construction, the project engineer shall ensure that all construction (e.g., demolition and grading) plans clearly show the requirement for EPA Tier ~~34~~ emissions standards for construction equipment ~~over of~~ 50 horsepower or greater for the specific activities stated above. During construction, the construction contractor shall maintain a list of all operating equipment in use on the construction site for verification by the City of Newport Beach. The construction equipment list shall state the makes, models, and numbers of construction equipment onsite. Equipment shall be properly serviced and maintained in accordance with the manufacturer's recommendations. Construction contractors shall also ensure that all nonessential idling of construction equipment is restricted to 5 minutes or less in compliance with Section 2449 of the California Code of Regulations, Title 13, Article 4.8, Chapter 9.

### 3. Revisions to the Draft EIR

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Pages 5.4-10 and 5.4-11, Section 5.4, *Cultural Resources*. The following mitigation measure is revised in response to Comment A1-1 from the California Cultural Resource Preservation Alliance.

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#### 5.4.7 Mitigation Measures

##### Impact 5.4-2

CUL-1 Prior to the issuance of a grading permit by the City of Newport Beach, the project applicant shall retain a qualified archaeologist to periodically monitor ground-disturbing activities onsite and provide documentation of such retention to the City of Newport Beach Community Development Director. The archaeologist shall train project construction workers on the types of archaeological resources that could be found in site soils. The archaeologist shall periodically monitor project ground-disturbing activities. During construction activities, if Native American resources (i.e. Tribal Cultural Resources) are encountered, a Cultural Resource Monitoring and Discovery Plan (CRMDP) shall be created and implemented to lay out the proposed personnel, methods, and avoidance/recovery framework for tribal cultural resources monitoring and evaluation activities within the project area. A consulting Native American tribe shall be retained and compensated as a consultant/monitor for the project site from the time of discovery to the completion of ground disturbing activities to monitor grading and excavation activities. If archaeological resources are encountered, all construction work within 50 feet of the find shall cease, and the archaeologist shall assess the find for importance and whether preservation in place without impacts is feasible. Construction activities may continue in other areas. If, in consultation with the City and affected Native American tribe (as deemed necessary), the discovery is determined to not be important, work will be permitted to continue in the area. Any resource that is not Native American in origin and that cannot be preserved in place shall be curated at a public, nonprofit institution with a research interest in the materials, such as the South Central Coastal Information Center at California State University, Fullerton.

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Page 5.7-8, Section 5.7, *Hazards and Hazardous Materials*. The following text is revised in response to Comment A4-4 from the Department of Toxic Substances Control and Comment I1-10 from Jim Mosher.

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##### *Soil Vapor Sampling and Testing: 2013*

The 2013 Phase II investigation included three subslab soil-vapor samples collected from directly beneath the slab below the former dry cleaner at 4250 Scott Drive. In addition, seven subsurface soil vapor samples were collected from the property perimeter at depths of 5 feet bgs. The PCE concentration in one of the three subslab samples was 0.73 µg/L ~~(that is, 0.73 part per billion)~~, above the California ~~Human~~ Human Health ~~Hazard~~ Screening Level (CHHSL) of 0.48 µg/L for residential land use; concentrations in the other two samples were below the CHHSL. The location this sample was taken from is shown in Figure 5.7-1, *Soil and Soil Vapor Sampling Locations*. Soil vapor samples from two of the seven locations sampled on the site perimeter yielded PCE concentrations of 1.5 and 1.4 µg/L, respectively, also above the CHHSL for residential use. One location is on



### 3. Revisions to the Draft EIR

the northwest site boundary, and the other is on the northern part of the eastern site boundary (see Figure 5.7-1). The concentrations of PCE detected indicated groundwater contamination may be present.

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Page 5.7-14, Section 5.7, *Hazards and Hazardous Materials*. The following text is revised in response to Comment A10-3 from the Airport Land Use Commission.

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#### Airport-Related Hazards

The proposed project is in Safety Zone 6 designated in the Airport Environs Land Use Plan (AELUP) for John Wayne Airport (JWA) issued by the Orange County Airport Land Use Commission in 2008. Outdoor stadiums and similar uses with very high intensities are prohibited in Zone 6. Children's schools, large day care centers, hospitals, and nursing homes should be avoided. Residential uses and most nonresidential uses are permitted (OCALUC 2008).

There are no heliports within one mile of the project site other than JWA (Airnav.com 2018).

The proposed project is also in an area surrounding JWA where structure heights are regulated under Federal Aviation Administration (FAA) Regulations Part 77 for preservation of navigable airspace. The maximum structure height permitted at the project site is 206 feet above mean sea level (amsl) (OCALUC 2008). The elevation onsite ranges from 48 feet amsl at the southwest corner of the site to 53 feet amsl at the northeast corner. Thus, the maximum structure height proposed onsite would be based on the higher of those two elevations, the maximum structure height permitted on site is about 153 feet above ground level plus the proposed building height.

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Pages 5.7-15 and 5.7-16, Section 5.7, *Hazards and Hazardous Materials*. The following text is revised in response to Comment A4-4 from the Department of Toxic Substances Control.

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RR HAZ-2      Any project-related hazardous waste generation, transportation, treatment, storage, and disposal will be conducted in compliance with the Subtitle C of the Resource Conservation and Recovery Act (Code of Federal Regulations, Title 40, Part 263), including the management of nonhazardous solid wastes and underground tanks storing petroleum and other hazardous substances. The proposed project will be designed and constructed in accordance with the regulations of the Orange County Environmental Health Department, which serves as the designated Certified Unified Program Agency and which implements state and federal regulations for the following programs: (1) Hazardous Waste Generator Program, (2) Hazardous Materials Release Response Plans and Inventory Program, (3) California Accidental Release Prevention, (4) Aboveground Storage Tank Program, and (5) Underground Storage Tank Program. **Transportation of hazardous waste will also be transported in accordance with California Code of Regulations, Title 22, Division 4.5, Chapter 13.**

### 3. Revisions to the Draft EIR

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Page 5.7-20, Section 5.7, *Hazards and Hazardous Materials*. The following text is revised in response to Comment A10-3 from the Airport Land Use Commission.

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**Impact Analysis:** The project site is in Safety Zone 6 designated in the Airport Environs Land Use Plan for John Wayne Airport. Outdoor stadiums and similar uses with very high intensities are prohibited in Zone 6. Children's schools, large day care centers, hospitals, and nursing homes should be avoided. Residential uses and most nonresidential uses are permitted (OCALUC 2008). The proposed project does not propose any land uses prohibited or discouraged by the AELUP and would not subject people on the ground to substantial hazards from crashes of aircraft approaching or departing JWA.

The project site also in an area surrounding JWA where structure heights are regulated under FAA Regulations Part 77 for preservation of navigable airspace. The maximum structure height permitted at the project site is 206 feet amsl (OCALUC 2008). The elevation onsite ranges from 48 feet amsl at the southwest corner of the site to 53 feet amsl at the northeast corner. Thus, based on the higher of those two elevations, the maximum structure height permitted onsite is about 153 feet above ground level is approximately 130 amsl, which is the sum of the maximum proposed building height of 77 feet 9 inches (tallest structure proposed) plus the highest elevation of the site of 53 feet amsl. This would put the proposed building height well below the 206 foot amsl height limit for the site. The proposed buildings would be approximately 55 feet high for residential living spaces, with limited ancillary structures to 77 feet 9 inches for stair towers architectural features (including parapets), parking, roof decks, elevator shafts, and mechanical equipment. The proposed project would conform with structure heights permitted on-site under FAA regulations and would not adversely affect navigable airspace surrounding JWA.

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Page 5.7-22, Section 5.7, *Hazards and Hazardous Materials*. The following mitigation measures has been added in response to Comment A4-9 from the Department of Toxic Substances Control.

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#### 5.7.7 Mitigation Measures

##### Impact 5.7-2

MM HAZ-2 Prior to issuance of the first building permit, soil and soil vapor samples shall be collected from beneath the former Enjay Cleaners and soil samples shall be collected from beneath the proposed 0.5-acre public park site and tested for Volatile Organic Compounds (VOC) and Organochlorine Pesticides (OCP), respectively. The results shall be submitted to the Orange County Health Care Agency and City Building Official. In the event that soil concentrations exceed site-specific cleanup goals, affected soils shall be removed and properly treated/disposed of. Should soil vapor concentrations exceed site-specific cleanup goals, short-term soil vapor extraction and treatment shall be performed to reduce soil vapor concentrations. Institutional controls will be required if the soil and soil gas cannot achieve the cleanup goals for residential land use, and/or vapor mitigation measure (e.g., passive ventilation system) are implemented to protect the future building receptors.

### 3. Revisions to the Draft EIR

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Page 5.9-25, Section 5.9, *Land Use and Planning*. The following text is revised in response to Comment A12-11 from Wittwer Parkin, LLP.

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#### Zoning Code Consistency

As stated above, the project site is zoned Newport Place Planned Community (PC-11). PC-11 allows for residential development, with a minimum of 30 du/ac and a maximum of 50 du/ac, consistent with the MU-H2 land use designation. More specifically, the project site within PC-11 is designated General Commercial Site 6. The General Commercial designation allows retail commercial, office, and professional and business uses. The site also has a residential overlay option given its general plan designation of MU-H2. The projects consistency with the Residential Overlay development standards of the NPPC, which apply to the project site and function as zoning for the site, is discussed below.

The proposed retail, restaurant, and residential uses under the proposed project are allowed under the existing zoning, and no zone change is required or proposed. Thus, the proposed project would be consistent with the existing zoning on-site, and impacts would be less than significant. See also RR LU-1 and RR LU-2.

#### Newport Place Planned Community Development Standards Consistency

Development standards for utilization of the NPPC's ~~Residential~~ Overlay, which applies to the project site, are found ~~on Page 46 of the PCDP in the NPPC development standards.~~ Table 5.9-2 demonstrates the proposed project's consistency with those development standards.

For example, as noted in Table 5.9-2, the Residential Overlay of the NPPC, which applies to the project site, implements General Plan Housing Element Program 3.2.2, which creates an exception to the 10-acre site requirement for residential development projects in the Airport Area that include a minimum of 30 percent of the units affordable to lower income households. Residential developments, such as the proposed project, that qualify for the residential overlay are subsequently exempt from General Plan Land Use Policy LU 6.15.6 and have no minimum site area requirement.

In addition to the site size exception and affordable housing requirements, the NPPC details additional residential development regulations addressing setbacks, building height, parking requirements, landscaping, signs, utilities requirements, and amenities and neighborhood integration. With the exception of the unit mix and building height requirements, the proposed project would be developed in accordance with the NPPC development regulations. As described in Chapter 3, *Project Description*, of this Draft EIR, the project's Affordable Housing Implementation Plan includes a request for one development concession for the unit mix and one waiver for the height, as described below.

- **Development Concession (Unit Mix).** Pursuant to Section V.F.1 of the Residential Overlay, "Affordable units shall reflect the range of numbers of bedrooms provided in the residential development project as a whole." In the case of the proposed project, the project applicant is requesting a unit mix that includes a greater percentage of studio and one-bedroom units, as illustrated in Table 3-2 of Chapter 3. Granting this incentive will result in identifiable, financially sufficient, and actual project cost reduction by reducing the

### 3. Revisions to the Draft EIR

long-term rental subsidy costs associated with the two-bedroom units and affording additional rental income for the project to ensure financial feasibility.

- **Waiver/Concession of Development Standard (Height Increase).** Pursuant to Section V.A of the Residential Overlay, the maximum building heights are limited to 55 feet, but may be increased with the approval of a site development review after making certain findings for approval. Government Code Section 65915(e)(1) provides that a city may not apply a development standard that will have the effect of physically precluding the construction of a density bonus project at the density permitted under the density bonus law. In the case of the proposed project, the project applicant is requesting a waiver of the 55-foot building height limit to 77 feet 9 inches in order to accommodate the parapet, roof-top mechanical equipment, elevator shafts, emergency staircase, rooftop terrace, and a portion of the parking garage. Without the height allowance for the stairs, elevators, mechanical equipment, and parapet, 63 of the 91 density bonus units would need to be eliminated. Furthermore, limiting heights to 55 feet would result in elimination of the rooftop amenity deck and upper level of parking structure, which are necessary for marketing purposes to meet expectations of prospective tenants and market-rate rents, provide the level of onsite amenities encouraged by the Residential Overlay, and reduce the impact of parking availability on neighboring streets.

Approval of the aforementioned concession and waiver would not result in a land use conflict with the regard to the NPPC development standards.

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Page 5.11.10, Section 5.11, *Population and Housing*. The following text is revised in response to Comment A12-11 from Wittwer Parkin, LLP and to provide a minor revision.

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#### 5.11.5 Cumulative Impacts

The area considered for cumulative impacts is the City of Newport Beach. Impacts are analyzed using General Plan projections in SCAG's 2016 Growth Forecast. Development activity in the City includes residential projects (see Table 4-1 in Section 4.0, Environmental Setting). ~~Most of the proposed development~~ The proposed project is consistent with the City of Newport Beach General Plan and would therefore be expected to be consistent with SCAG's growth projections.

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Page 5.12-11, Section 5.12, *Public Services*. The following text is revised in response to Comment A7-4 from the Santa Ana Unified School District.

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### Regulatory Background

#### *Senate Bill 50 (Chapter 407 of Statutes of 1998) (SB 50)*

SB 50 sets forth a state school facilities construction program that includes restrictions on a local jurisdiction's ability to impose mitigation for a project's impacts on school facilities in excess of fees set forth in Education Code 17620. It establishes three potential limits for school districts, depending on the availability of new school

### 3. Revisions to the Draft EIR

construction funding from the state and the particular needs of the individual school districts. Level one is the general school facilities fees imposed in accordance with Government Code Section 65995 as amended. Level two and three fees are alternate fees that are intended to represent 50 percent or 100 percent of a school district's school facility construction costs per new residential construction as authorized by Government Code Sections 65995.5, 65995.6, and 65995.7. On ~~February 24, 2016~~ September 17, 2018, the State Allocation Board adjusted the maximum level-one residential school fee to be ~~\$3.48~~ \$3.79 per square foot for residential development; ~~\$0.56~~ and \$0.61 per square foot for commercial, industrial, and senior housing projects; ~~and \$0.406 per square foot for hotel/motel projects.~~ Development fees authorized by SB 50 are deemed by Section 65996 of the California Government Code to be "full and complete school facilities mitigation."

Page 5.12-13, Section 5.12, *Public Services*. The following text is revised in response to Comments A7-3 and A7-5 from the Santa Ana Unified School District.

**Impact Analysis:** The proposed project is estimated to generate about ~~39~~ 180 students—using SAUSD student generation factors for multifamily units—consisting of ~~22~~ 83 elementary school students, ~~8~~ 43 intermediate students, and ~~9~~ 54 high school students (see Table 5.12-3).

**Table 5.12-3 Estimated Project Student Generation (350 Proposed Multifamily Units)**

School Level	Generation Factor per Household (multifamily attached units) <sup>1</sup>	Students Generated
Elementary (K-5)	<del>0.0620</del> <u>0.2367</u>	<del>22</del> <u>83</u>
Intermediate (6-8)	<del>0.0229</del> <u>0.1218</u>	<del>8</del> <u>43</u>
High (9-12)	<del>0.0251</del> <u>0.1533</u>	<del>9</del> <u>54</u>
<b>Total</b>	<del>0.11</del> —	<del>39</del> <u>180</u>

Source: Cogan 2018/2019.

The three schools serving the project site have sufficient capacities for the proposed project's student generation, as shown in Table 5.12-4. Project development would not require SAUSD to add school capacity as the schools serving the project site would have more than adequate capacity.

**Table 5.12-4 Project Impacts on School Capacities**

School	Existing Available Capacity (from Table 5.12-2) <sup>1</sup>	Project Student Generation (from Table 5.12-3)	Available Capacity After Project Student Generation
Monroe Elementary School	191	<del>22</del> <u>83</u>	<del>169</del> <u>108</u>
McFadden Intermediate School	609	<del>8</del> <u>43</u>	<del>601</del> <u>566</u>
Century High School	127	<del>9</del> <u>54</u>	<del>118</del> <u>76</u>

Source: Cogan 2018.

Additionally, the need for additional school services and facilities is addressed by compliance with school impact assessment fees per Senate Bill 50, also known as Proposition 1A. SB 50—codified in California Government

### 3. Revisions to the Draft EIR

Code Section 65995—was enacted in 1988 to address how schools are financed and how development projects may be assessed for associated school impacts. To address the increase in enrollment at ~~LAUSD~~ SAUSD schools that would serve the Proposed Project, the project applicant/developer would be required to pay school impact fees to reduce any impacts to the school system, in accordance with SB 50. These fees are collected by school districts at the time of issuance of building permits. As stated in Government Code Section 65995(h),

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Page 5.14-4, Section 5.14, *Transportation and Traffic*. The following text is revised in response to Comment A5-3 from the City of Irvine.

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#### *City of Irvine*

In Irvine, LOS E (peak hour ICU less than or equal to 1.00) is considered acceptable in the Irvine Business Complex (IBC) intersections. At other study area intersections in Irvine, LOS D (peak hour ICU less than or equal to 0.90) is acceptable. ~~At Irvine intersections, if the intersection would operate at unacceptable levels of service and the project contribution is 0.02 or greater, mitigation is required to bring intersection back to an acceptable level of service or to no project conditions.~~ At Irvine intersections and, if project traffic causes the study area intersection level of service to drop from acceptable to unacceptable level of service, mitigation is required, where feasible, to bring the intersection back to an acceptable level of service or to no project conditions. Also, if the intersection would operate at unacceptable level of service and the project contribution is 0.02 or greater, mitigation is required, where feasible, to bring intersection back to an acceptable level of service or to no project conditions.

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Page 9-3, Chapter 9, *Other CEQA Considerations*. The following text is revised in response to Comment I1-16 from Jim Mosher.

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#### **Would this project encourage or facilitate economic effects that could result in other activities that could significantly affect the environment?**

Implementation of the proposed project would encourage or facilitate economic effects. During project construction, a number of design, engineering, and construction-related jobs would be created. This would last until the project is constructed over two years. Construction related jobs would not result in a significant population increase because they would be filled by workers in the region. The construction phase would be temporary and the buildings are being developed based on market demand.

Buildout of the proposed project would not increase employment in the project area by a substantial amount. The project's 7,500 square feet of retail and restaurant uses is estimated to generate approximately 12 permanent jobs, while the apartment complex is estimated to generate approximately 4 permanent jobs. Total estimated employment generation by the proposed project is about 16 jobs. Also, the proposed apartments would introduce up to 550 additional residents. The increase in residents could spur new economic investment in commercial uses serving the project site. Future residents would also represent an increased demand for economic goods and services and could, therefore, encourage the creation of new businesses and/or the

### 3. Revisions to the Draft EIR

expansion of existing businesses in the area. While the proposed project would have an indirect growth-inducing effect, this would be accommodated by the surrounding Airport Area and its ability to absorb local business growth.



### 3. Revisions to the Draft EIR

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## Appendix

# Appendix A. FAA Determination of No Hazard to Air Navigation

## Appendix

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Mail Processing Center  
Federal Aviation Administration  
Southwest Regional Office  
Obstruction Evaluation Group  
10101 Hillwood Parkway  
Fort Worth, TX 76177

Planning Commission - February 21, 2019  
Item No. 2a Additional Materials Received  
Aeronautical Study No.  
Newport Crossings Mixed Use Project (PA2017-107)  
2018-AWP-17902-OE  
Prior Study No.  
2014-AWP-7280-OE

Issued Date: 02/07/2019

Dan Vittone  
Starboard Realty Partners  
1301 Dove Street  
Suite 1080  
Newport Beach, CA 92660

**\*\* DETERMINATION OF NO HAZARD TO AIR NAVIGATION \*\***

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure:	Building Newport Crossings
Location:	Newport Beach, CA
Latitude:	33-39-59.30N NAD 83
Longitude:	117-51-57.56W
Heights:	50 feet site elevation (SE)
	80 feet above ground level (AGL)
	130 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the project is abandoned or:

- ☐ At least 10 days prior to start of construction (7460-2, Part 1)  
☒ Within 5 days after the construction reaches its greatest height (7460-2, Part 2)

Based on this evaluation, marking and lighting are not necessary for aviation safety. However, if marking/lighting are accomplished on a voluntary basis, we recommend it be installed in accordance with FAA Advisory circular 70/7460-1 L Change 2.

This determination expires on 08/07/2020 unless:

- the construction is started (not necessarily completed) and FAA Form 7460-2, Notice of Actual Construction or Alteration, is received by this office.
- extended, revised, or terminated by the issuing office.
- the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application.

NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE E-FILED AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE. AFTER RE-EVALUATION OF CURRENT OPERATIONS IN THE AREA OF THE STRUCTURE TO DETERMINE THAT NO SIGNIFICANT AERONAUTICAL CHANGES HAVE OCCURRED, YOUR DETERMINATION MAY BE ELIGIBLE FOR ONE EXTENSION OF THE EFFECTIVE PERIOD.

This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights, and frequencies or use of greater power, except those frequencies specified in the Colo Void Clause Coalition; Antenna System Co-Location; Voluntary Best Practices, effective 21 Nov 2007, will void this determination. Any future construction or alteration, including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA. This determination includes all previously filed frequencies and power for this structure.

If construction or alteration is dismantled or destroyed, you must submit notice to the FAA within 5 days after the construction or alteration is dismantled or destroyed.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

If we can be of further assistance, please contact our office at (424) 405-7643, or karen.mcdonald@faa.gov. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2018-AWP-17902-OE.

**Signature Control No: 391674963-396012618**

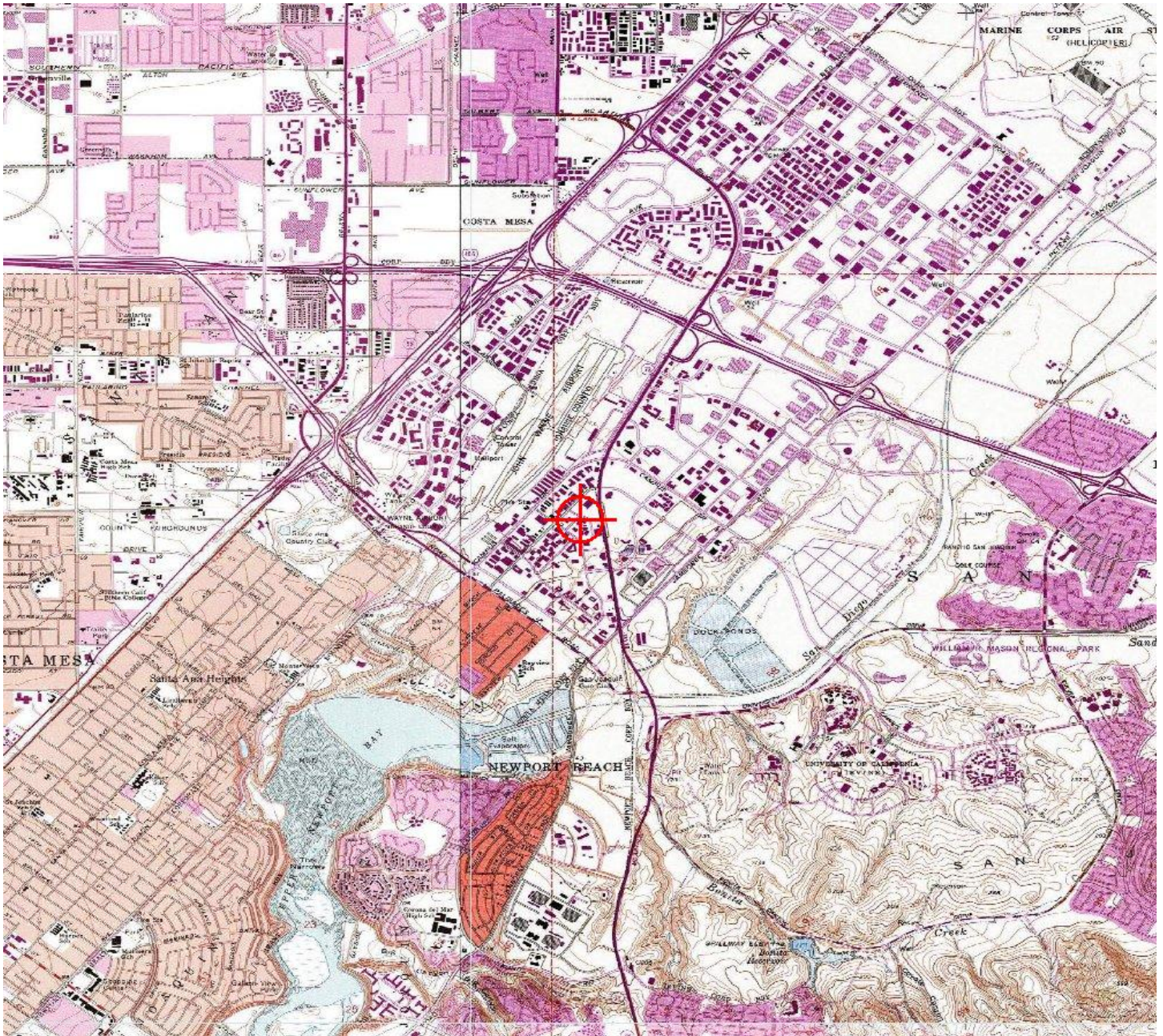
( DNE )

Karen McDonald  
Specialist

Attachment(s)

Map(s)









## Appendix

# Appendix B. Evaluation of Key Intersections and Roadways for 2024 With Project Conditions

## Appendix

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**Summary Table**

	Future Year 2022*			Future Year 2024			Sig Impact?
	No Project V/C	With Project LOS	With Project V/C	No Project V/C	With Project V/C	With Project LOS	
<b>Intersections</b>							
1. MacArthur Blvd/Campus Dr (PM Peak Hour)	0.917	E	0.917	0.929	0.929	E	No
13. MacArthur Blvd/Jamboree Rd (PM Peak Hour)	0.811	D	0.813	0.825	0.826	D	No
18. MacArthur/I-405 NB (AM peak hour, <b>HCM</b> )	42.0	D	41.9	42.7	42.7	D	No
20. MacArthur/Michelson Dr (PM peak hour).	<b>1.050</b>	<b>F</b>	<b>1.052</b>	<b>1.058</b>	<b>1.059</b>	<b>F</b>	No
<b>Roadway Segment</b>							
1. MacArthur Blvd between I-405 SB Ramps to Michelson Dr	0.88	D	0.88	0.89	0.90	D	No

\*From LSA Study

### Intersection Capacity Utilization

LOCATION: City of Newport Beach  
MacArthur Blvd  
EAST-WEST STREET : Campus Dr

TRAFFIC SCENARIO: Future 2024 (+ Proj)  
PM Peak Hour  
Existing

GEOMETRIC : \_\_\_\_\_

Date: 09/19/2018

Movement	Number of Lanes	Capacity	P.M. Peak Hour		
			Volumes	V/C Ratio	Critical V/C
Northbound	Left	1	1,600	0.09	0.09
	Thru	4	6,400	0.23	-
	Right	1	1,600	0.05	-
Southbound	Left	1	1,600	0.13	-
	Thru	4	6,400	0.22	-
	Right	1	1,600	0.48	0.48
Eastbound	Left	2	3,200	0.11	0.11
	Thru	3	4,800	0.13	-
	Right	1	1,600	0.04	-
Westbound	Left	2	3,200	0.06	-
	Thru	3	4,800	0.25	0.25
	Right	0	0	-	-
Sum of Critical V/C Ratios			0.929		
Adjustment for Lost Time			0.00		
Intersection Capacity Utilization (ICU)			0.929		
Level of Service ( LOS )			E		

### Intersection Capacity Utilization

LOCATION: City of Newport Beach  
MacArthur Blvd  
EAST-WEST STREET : Campus Dr

TRAFFIC SCENARIO: Future 2024 (No Proj)  
PM Peak Hour  
Existing

GEOMETRIC : \_\_\_\_\_

Date: 09/19/2018

Movement	Number of Lanes	Capacity	P.M. Peak Hour		
			Volumes	V/C Ratio	Critical V/C
Northbound	Left	1	1,600	0.09	0.09
	Thru	4	6,400	0.22	-
	Right	1	1,600	0.05	-
Southbound	Left	1	1,600	0.13	-
	Thru	4	6,400	0.21	-
	Right	1	1,600	0.48	0.48
Eastbound	Left	2	3,200	0.11	0.11
	Thru	3	4,800	0.13	-
	Right	1	1,600	0.04	-
Westbound	Left	2	3,200	0.06	-
	Thru	3	4,800	0.25	0.25
	Right	0	0	-	-
Sum of Critical V/C Ratios			0.929		
Adjustment for Lost Time			0.00		
Intersection Capacity Utilization (ICU)			0.929		
Level of Service ( LOS )			E		

Intersection Capacity Utilization

LOCATION: City of Newport Beach  
MacArthur Blvd  
Jamboree Rd  
NORTH-SOUTH ST.  
EAST-WEST STREET :  
  
TRAFFIC SCENARIO: Future 2024 (No Proj)  
PM Peak Hour  
Existing  
GEOMETRIC :  
  
Date: 09/19/2018

Movement	Number of Lanes	Capacity	P.M. Peak Hour			Critical V/C
			Volumes	V/C	Ratio	
Northbound	Left	2 3,200	341	0.11	0.11	0.11
	Thru	3 4,800	911	0.19	-	-
	Right	1 1,600	398	0.25	>>	>>
Southbound	Left	2 3,200	192	0.06	-	-
	Thru	3 4,800	1904	0.40	0.40	0.40
	Right	0 0	0	-	-	-
Eastbound	Left	2 3,200	280	0.09	0.09	0.09
	Thru	4 6,400	1110	0.17	-	-
	Right	1 1,600	137	0.09	-	-
Westbound	Left	3 4,800	596	0.12	-	-
	Thru	3 4,800	1116	0.23	0.23	0.23
	Right	1 1,600	176	0.11	-	-
Sum of Critical V/C Ratios			0.825			
Adjustment for Lost Time			0.00			
Intersection Capacity Utilization (ICU)			0.825			
Level of Service ( LOS )			D			

Intersection Capacity Utilization

LOCATION: City of Newport Beach  
MacArthur Blvd  
Jamboree Rd  
NORTH-SOUTH ST.  
EAST-WEST STREET :  
  
TRAFFIC SCENARIO: Future 2024 (+ Proj)  
PM Peak Hour  
Existing  
GEOMETRIC :  
  
Date: 09/19/2018

Movement	Number of Lanes	Capacity	P.M. Peak Hour			Critical V/C
			Volumes	V/C	Ratio	
Northbound	Left	2 3,200	341	0.11	0.11	0.11
	Thru	3 4,800	915	0.19	-	-
	Right	1 1,600	398	0.25	>>	>>
Southbound	Left	2 3,200	192	0.06	-	-
	Thru	3 4,800	1907	0.40	0.40	0.40
	Right	0 0	0	-	-	-
Eastbound	Left	2 3,200	284	0.09	0.09	0.09
	Thru	4 6,400	1110	0.17	-	-
	Right	1 1,600	137	0.09	-	-
Westbound	Left	3 4,800	596	0.12	-	-
	Thru	3 4,800	1116	0.23	0.23	0.23
	Right	1 1,600	176	0.11	-	-
Sum of Critical V/C Ratios			0.826			
Adjustment for Lost Time			0.00			
Intersection Capacity Utilization (ICU)			0.826			
Level of Service ( LOS )			D			

HCM 6th Signalized Intersection Summary  
18: MacArthur Boulevard & I-405 NB Ramps

09/18/2018



Movement	WBL	WBR	NBT	NBR	SBL	SBT
Lane Configurations	W	W	W	W	W	W
Traffic Volume (veh/h)	904	1203	1959	477	170	1540
Future Volume (veh/h)	904	1203	1959	477	170	1540
Initial Q (Ob), veh	0	0	0	0	0	0
Ped-Bike Adj(A_pbT)	1.00	1.00	1.00	1.00	1.00	1.00
Parking Bus Adj	1.00	1.00	1.00	1.00	1.00	1.00
Work Zone On Approach	No	No	No	No	No	No
Adj Sat Flow, veh/h/ln	1673	1673	1673	1673	1673	1673
Adj Flow Rate, veh/h	952	1266	2062	502	179	1621
Peak Hour Factor	0.95	0.95	0.95	0.95	0.95	0.95
Percent Heavy Veh, %	2	2	2	2	2	2
Cap, veh/h	1299	1048	2153	934	204	2792
Arrive On Green	0.42	0.42	0.75	0.75	0.07	0.49
Sat Flow, veh/h	3092	2496	5991	2496	3092	5991
Grp Volume(v), veh/h	952	1266	2062	502	179	1621
Grp Sat Flow(s)/veh/ln	1546	1248	1439	1248	1546	1439
Q Serve(Q_s), s	25.8	42.0	31.8	8.5	5.7	20.2
Cycle Q Clear(g_c), s	25.8	42.0	31.8	8.5	5.7	20.2
Prop In Lane	1.00	1.00	1.00	1.00	1.00	1.00
Lane Grp Cap(c), veh/h	1299	1048	2153	934	204	2792
V/C Ratio(X)	0.73	1.21	0.96	0.54	0.88	0.58
Avail Cap(c_a), veh/h	1299	1048	2153	934	204	2792
HCM Platoon Ratio	1.00	1.00	2.00	2.00	1.00	1.00
Upstream Filter(f)	1.00	1.00	0.51	0.51	1.00	1.00
Uniform Delay (d), s/veh	24.3	29.0	11.9	9.0	46.3	18.5
Incr Delay (d2), s/veh	2.2	102.5	7.0	1.1	32.2	0.9
Initial Q Delay(d3), s/veh	0.0	0.0	0.0	0.0	0.0	0.0
%ile BackOfQ(50%), veh/ln	9.0	26.3	4.4	1.6	3.0	6.1
Unsig. Movement Delay, s/veh						
LnGrp Delay(d), s/veh	26.5	131.5	18.9	10.1	78.4	19.3
LnGrp LOS	C	F	B	B	E	B
Approach Vol, veh/h	2218		2564			1800
Approach Delay, s/veh	86.4		17.2			25.2
Approach LOS	F		B			C
Timer - Assigned Phs	1	2				8
Phs Duration (G+Y+Rc), s	11.1	42.9				54.0
Change Period (Y+Rc), s	4.5	5.5				4.0
Max Green Setting (Gmax), s	6.7	37.3				48.5
Max Q Clear Time (g_c+H), s	7.7	33.8				22.2
Green Ext Time (p_c), s	0.0	3.2				12.5
Intersection Summary						
HCM 6th Ctrl Delay			42.7			
HCM 6th LOS			D			

HCM 6th Signalized Intersection Summary  
18: MacArthur Boulevard & I-405 NB Ramps

09/18/2018



Movement	WBL	WBR	NBT	NBR	SBL	SBT
Lane Configurations	W	W	W	W	W	W
Traffic Volume (veh/h)	889	1203	1954	463	170	1538
Future Volume (veh/h)	889	1203	1954	463	170	1538
Initial Q (Ob), veh	0	0	0	0	0	0
Ped-Bike Adj(A_pbT)	1.00	1.00	1.00	1.00	1.00	1.00
Parking Bus Adj	1.00	1.00	1.00	1.00	1.00	1.00
Work Zone On Approach	No	No	No	No	No	No
Adj Sat Flow, veh/h/ln	1673	1673	1673	1673	1673	1673
Adj Flow Rate, veh/h	946	1266	2057	487	179	1619
Peak Hour Factor	0.95	0.95	0.95	0.95	0.95	0.95
Percent Heavy Veh, %	2	2	2	2	2	2
Cap, veh/h	1299	1048	2147	931	207	2792
Arrive On Green	0.42	0.42	0.75	0.75	0.07	0.49
Sat Flow, veh/h	3092	2496	5991	2496	3092	5991
Grp Volume(v), veh/h	946	1266	2057	487	179	1619
Grp Sat Flow(s)/veh/ln	1546	1248	1439	1248	1546	1439
Q Serve(Q_s), s	25.6	42.0	31.8	8.1	5.7	20.2
Cycle Q Clear(g_c), s	25.6	42.0	31.8	8.1	5.7	20.2
Prop In Lane	1.00	1.00	1.00	1.00	1.00	1.00
Lane Grp Cap(c), veh/h	1299	1048	2147	931	207	2792
V/C Ratio(X)	0.73	1.21	0.96	0.52	0.86	0.58
Avail Cap(c_a), veh/h	1299	1048	2147	931	207	2792
HCM Platoon Ratio	1.00	1.00	2.00	2.00	1.00	1.00
Upstream Filter(f)	1.00	1.00	0.49	0.49	1.00	1.00
Uniform Delay (d), s/veh	24.2	29.0	12.0	9.0	46.2	18.5
Incr Delay (d2), s/veh	2.1	102.5	6.9	1.0	29.4	0.9
Initial Q Delay(d3), s/veh	0.0	0.0	0.0	0.0	0.0	0.0
%ile BackOfQ(50%), veh/ln	8.9	26.3	4.3	1.6	2.9	6.1
Unsig. Movement Delay, s/veh						
LnGrp Delay(d), s/veh	26.3	131.5	18.9	10.0	75.6	19.3
LnGrp LOS	C	F	B	B	E	B
Approach Vol, veh/h	2212		2544			1798
Approach Delay, s/veh	86.5		17.2			24.9
Approach LOS	F		B			C
Timer - Assigned Phs	1	2				8
Phs Duration (G+Y+Rc), s	11.2	42.8				54.0
Change Period (Y+Rc), s	4.5	5.5				4.0
Max Green Setting (Gmax), s	6.7	37.3				48.5
Max Q Clear Time (g_c+H), s	7.7	33.8				22.2
Green Ext Time (p_c), s	0.0	3.2				12.5
Intersection Summary						
HCM 6th Ctrl Delay			42.7			
HCM 6th LOS			D			



### Intersection Capacity Utilization

LOCATION: City of Irvine  
NORTH-SOUTH ST.  
EAST-WEST STREET :  
MacArthur Blvd  
Michelson

TRAFFIC SCENARIO: Future 2024 (+ Proj)  
PM Peak Hour  
Existing

GEOMETRIC: Existing

Date: 09/19/2018

Movement	Number of Lanes	Capacity	P.M. Peak Hour		
			Volumes	V/C Ratio	Critical V/C
Northbound	Left	1	187	0.11	-
	Thru	4	2315	0.34	0.34
	Right	1	147	0.09	-
Southbound	Left	2	502	0.15	0.15
	Thru	4	1578	0.23	-
	Right	0	6	-	-
Eastbound	Left	2	351	0.10	0.10
	Thru	1	95	0.06	-
	Right	1	117	0.07	-
Westbound	Left	2	406	0.12	-
	Thru	1	119	0.07	-
	Right	1	711	0.42	0.42
Sum of Critical V/C Ratios			1.009		
Adjustment for Lost Time			0.05		
Intersection Capacity Utilization (ICU)			1.059		
Level of Service ( LOS )			F		

### Intersection Capacity Utilization

LOCATION: City of Irvine  
NORTH-SOUTH ST.  
EAST-WEST STREET :  
MacArthur Blvd  
Michelson

TRAFFIC SCENARIO: Future 2024 (No Proj)  
PM Peak Hour  
Existing

GEOMETRIC: Existing

Date: 09/19/2018

Movement	Number of Lanes	Capacity	P.M. Peak Hour		
			Volumes	V/C Ratio	Critical V/C
Northbound	Left	1	187	0.11	-
	Thru	4	2303	0.34	0.34
	Right	1	147	0.09	-
Southbound	Left	2	502	0.15	0.15
	Thru	4	1564	0.23	-
	Right	0	6	-	-
Eastbound	Left	2	351	0.10	0.10
	Thru	1	95	0.06	-
	Right	1	117	0.07	-
Westbound	Left	2	406	0.12	-
	Thru	1	119	0.07	-
	Right	1	711	0.42	0.42
Sum of Critical V/C Ratios			1.008		
Adjustment for Lost Time			0.05		
Intersection Capacity Utilization (ICU)			1.058		
Level of Service ( LOS )			F		

	Capacity	Future Year 2024			Project ADT	Future Year 2024 With Project			V/C increase
		ADT	V/C	LOS		ADT	V/C	LOS	
1. MacArthur Blvd between I-405 southbound ramps to Michelson Drive	72,000	64,274	0.893	D	377	64,651	0.898	D	0.005

## **ATTACHMENT D**

Revised Draft Resolution No. PC2019-004  
Certifying the Environmental Impact Report

## RESOLUTION NO. PC2019-004

### A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA, CERTIFYING ENVIRONMENTAL IMPACT REPORT NO. ER2017-001, MAKING FACTS AND FINDINGS, AND APPROVING A MITIGATION MONITORING AND REPORTING PROGRAM FOR THE NEWPORT CROSSINGS MIXED-USE PROJECT LOCATED AT 1701 CORINTHIAN WAY; 4251, 4253 AND 4255 MARTINGALE WAY; 4200, 4220 AND 4250 SCOTT DRIVE; AND 1660 DOVE STREET (PA2017-107)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Starboard MacArthur Square, LP, 1701 Corinthian Way; 4251, 4253 and 4255 Martingale Way; 4200, 4220 and 4250 Scott Drive; and 1660 Dove Street and legally described as Lots 1 of Tract 7770, and Parcels 1 and 2 of Book 53, Page 13 of Parcel Maps ("Subject Property") requesting an approval for the development of a mixed use residential project ("Project"). The following approvals are requested or required in order to implement the project as proposed:
  - A. **Site Development Review:** To ensure the site is developed in accordance with the Newport Place Planned Community Development Plan and Zoning Code development standards and regulations pursuant to Newport Beach Municipal Code ("NBMC") Section 20.52.080 (Site Development Reviews);
  - B. **Lot Line Adjustment:** A lot line adjustment to reconfigure the three (3) underlying parcels that comprise the site, pursuant to NBMC Chapter 19.76 (Lot Line Adjustments). Specifically, the site would be reconfigured to create a 0.5-acre parcel for public park purposes to be deeded to the City; a 5.08-acre parcel for the proposed mixed-use development; and an 0.11-acre parcel (to be owned by the Project applicant) for emergency access improvements needed to serve the proposed mixed-use building. The 0.11-acre parcel would also include an easement dedicated to the City for access and parking for the public park. With dedication of the 0.5-acre public park, the net project site area would be 5.19 acres; and
  - C. **Affordable Housing Implementation Plan:** A program specifying how the Project would meet the City's affordable housing requirements, pursuant to the Residential Overlay of the Newport Place Planned Community. Under the Affordable Housing Implementation Plan, seventy eight (78) units would be set aside as affordable units to lower-income households. Providing the affordable housing required by the Residential Overlay of the Newport Place Planned Community qualifies the Project for a density bonus and

incentives/concessions pursuant to Chapter 20.32 (Density Bonus) of the NBMC and Government Code Section 65915 (Density Bonus Law). The AHIP includes a request for one development concession related to the bedroom mix of the affordable units and a development waiver of the 55-foot building height limit to allow a height of 77 feet 9 inches to accommodate the parapet, rooftop mechanical equipment, elevator shafts, emergency staircase, rooftop amenity terrace, and a portion of the parking garage.

2. The Subject Property is located within General Commercial Site 6 and the Residential Overlay of the Newport Place Planned Community (PC-11) Zoning District and the General Plan Land Use Element category is Mixed-Use District Horizontal-2 (MU-H2).
3. The Subject Property is not located within the coastal zone; therefore, a coastal development permit is not required.
4. A study session was held on December 6, 2018, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California, to introduce the Project to the City of Newport Beach Planning Commission ("Planning Commission"). No action was taken at the study session. Although not required, the City mailed a courtesy public notice of this study session to property owners within a three hundred (300)-foot radius of the Subject Property.
5. On Tuesday, February 5, 2019, a meeting was held with the Parks, Beaches, and Recreation Commission in the City Council Chambers, at 100 Civic Center Drive, Newport Beach, California 92660. A notice of time, place and purpose of the hearing was given in accordance with the NBMC. The Project park design and staff report were presented to the Parks, Beaches, and Recreation Commission for their comment and recommendations. Public comments regarding the park design were also taken. The agenda for the meeting was posted at City Hall and on the City's website.
6. The Planning Commission held a public hearing on February 21, 2019, in the City Hall Council Chambers, 100 Civic Center Drive, Newport Beach, California. A notice of the time, place and purpose of the aforesaid meeting was provided in accordance with CEQA and the NBMC. The environmental documents for the Project comprised of the DEIR, Final Environmental Impact Report ("FEIR") which consists of Responses to Comments, Revisions to DEIR (collectively, the "EIR"), and Mitigation Monitoring and Reporting Program ("MMRP"), the draft Findings and Facts in Support of Findings ("Findings"), staff report, and evidence, both written and oral, were presented to and considered by the Planning Commission at this hearing.

## SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. Pursuant to California Public Resources Code Section 21080.3.1 (AB52), the City is required to consult with California Native American tribes that have requested in writing to be informed of proposed projects in the geographic area that is traditionally and culturally affiliated with the tribe. Two tribes have requested notification in writing. The tribal contacts were provided notice on January 3, 2018. The thirty (30)-day noticing requirement under AB52 was completed on February 2, 2018 and none of the tribes responded to the City's request.
2. Pursuant to CEQA, Public Resources Code Sections 21000, *et seq.*, the State CEQA Guidelines (14 Cal. Code of Regulations, Sections 15000 *et seq.*), and City Council Policy K-3 (Implementation Procedures for the California Environmental Quality Act), it was determined that the Project could have a significant adverse effect on the environment, and thus warranted the preparation of an EIR.
3. On November 1, 2017, the City, as lead agency under CEQA, prepared a Notice of Preparation ("NOP") of the EIR and mailed that NOP to responsible and trustee public agencies, organizations likely to be interested in the potential impacts, property owners within a three hundred (300) foot radius of the Property, and any persons who had previously requested notice in writing.
4. On November 16, 2017, the City held a public scoping meeting to present the project and to solicit input from interested individuals, organizations, and responsible and trustee public agencies regarding environmental issues that should be addressed in the EIR.
5. The City thereafter caused to be prepared a Draft Environmental Impact Report (No. ER2017-001, SCH No. 2017101067) ("DEIR") in compliance with CEQA, the State CEQA Guidelines and City Council Policy K-3, which, taking into account the comments it received on the NOP, described the Project and discussed the environmental impacts resulting therefrom.
6. The DEIR was circulated for a forty-five (45) day comment period beginning on November 30, 2018, and ending on January 14, 2019.
7. Staff of the City of Newport Beach reviewed the comments received on the DEIR during the public comments and review period, and prepared full and complete responses thereto, and on February 11, 2019, distributed the responses to comments in accordance with CEQA.
8. The environmental documents for the Project comprised of the DEIR, Final Environmental Impact Report (as defined below) which consists of Responses to Comments, Revisions to DEIR (collectively, the "EIR"), and Mitigation Monitoring and Reporting Program ("MMRP"), the draft Findings and Facts in Support of Findings ("Findings"), staff report, and evidence, both written and oral, were presented to and considered by the Planning Commission.

9. The Final EIR ("FEIR"), consisting of the NOP, DEIR, Responses to Comments, and Mitigation Monitoring and Reporting Program attached hereto as Exhibits "A" and "C," and incorporated herein by reference, were considered by the Planning Commission in its review of the proposed Project.
10. The FEIR does not identify any significant impacts to the environment, which are unavoidable.
11. Based on the entire environmental review record, the Project, with mitigation measures, will have a less than significant impact upon the environment and there are no known substantial adverse effects on human beings that would be caused. Additionally, there are no long-term environmental goals that would be compromised by the Project, nor cumulative impacts anticipated in connection with the Project. The mitigation measures identified and incorporated in the Mitigation Monitoring and Reporting Program attached at Exhibit C), are feasible and will reduce the potential environmental impacts to a less than significant level.
12. The Planning Commission has reviewed the Revisions to the DEIR Section of the FEIR (SCH No. 2017101067) and determined that none of the new material contained in this section constitutes the type of significant new information that requires recirculation of the DEIR for further public comment pursuant to CEQA, specifically CEQA Guidelines Section 15088.5. None of the new material indicates that the project will result in a significant new environmental impact not previously disclosed in the DEIR. Additionally, none of this material indicates that there would be a substantial increase in the severity of a previously identified environmental impact that will not be mitigated, or that there would be any of the other circumstances requiring recirculation described in Section 15088.5.
13. The Planning Commission has read and considered the EIR and has found that the EIR considers all potentially significant environmental effects of the Project and is complete and adequate, and fully complies with all requirements of CEQA and the State and local CEQA Guidelines.
14. The Planning Commission finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, Project opponents often seek an award of attorneys' fees in such challenges. As Project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger.

### SECTION 3. DECISION.

### **NOW, THEREFORE, BE IT RESOLVED:**

1. The Planning Commission of the City of Newport Beach hereby certifies Environmental Impact Report No. ER2017-001 (SCH No. 2017101067), which is



attached hereto as Exhibit "A" and incorporated herein by reference. EIR No. ER2017-001 consists of the NOP, Draft EIR, appendices, Responses to Comments, and Revisions to the Draft EIR.

2. The Planning Commission has reviewed and hereby adopts the "CEQA Findings of Fact for the Newport Crossings Mixed Use Project, Final Environmental Impact Report," attached hereto as Exhibit "B" and incorporated herein by reference in accordance with 14 California Code of Regulations, Section 15091 and the California Public Resources Code Section 21081.
3. The Planning Commission of the City of Newport Beach hereby approves the Mitigation Monitoring Report Program attached hereto as Exhibit "C" and incorporated herein by reference.
4. The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.
5. If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The Planning Commission hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.
6. This action shall become final and effective fourteen (14) days following the date this resolution was adopted unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

**PASSED, APPROVED, AND ADOPTED THIS 21ST DAY OF FEBRUARY, 2019.**

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: \_\_\_\_\_  
Peter Zak, Chairman

BY: \_\_\_\_\_  
Lee Lowrey, Secretary

Exhibit A: Environmental Impact Report No. ER2017-001

Exhibit B: CEQA Findings of Fact for the Newport Crossings Mixed Use Project Final  
Environmental Impact Report

Exhibit C: Mitigation Monitoring Report Program

## **Exhibit “A”**

### **Environmental Impact Report EIR SCH No. 2017101067**

- **Notice of Preparation**
- **Environmental Analysis**
- **Alternatives Analysis**
- **Appendices**
- **Responses to Comments**
- **Revisions to Draft EIR**

*(Available separate due to bulk and at  
<http://newportbeachca.gov/ceqa>)*

**Exhibit “B”**

**CEQA Findings of Fact for the**

**Newport Crossings Mixed Use Project**

**Final Environmental Impact Report**

**Exhibit B**  
**CEQA FINDINGS OF FACT**  
**FOR THE**  
**NEWPORT CROSSINGS MIXED USE PROJECT**  
**FINAL ENVIRONMENTAL IMPACT REPORT**  
**City of Newport Beach**

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**STATE CLEARINGHOUSE NO. 2017101067**

**I. INTRODUCTION**

The California Environmental Quality Act ("CEQA") requires that a number of written findings be made by the lead agency in connection with certification of an environmental impact report ("EIR") prior to approval of the project pursuant to Sections 15091 and 15093 of the CEQA Guidelines and Section 21081 of the Public Resources Code. The State CEQA Guidelines Section 15091 provides:

- (a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:
  - 1. Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the EIR.
  - 2. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can or should be adopted by such other agency.
  - 3. Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.
- (b) The findings required by subdivision (a) shall be supported by substantial evidence in the record.
- (c) The finding in subdivision (a)(2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives. The finding in subsection (a)(3) shall describe the specific reasons for rejecting identified mitigation measures and project alternatives.

- (d) When making the findings required in subdivision (a)(1), the agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures.
- (e) The public agency shall specify the location and custodian of the documents or other materials which constitute the record of the proceedings upon which its decision is based.
- (f) A statement made pursuant to Section 15093 does not substitute for the findings required by this section.

Public Resources Code Section 21061.1 defines “feasible” to mean “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.” CEQA Guidelines section 15364 adds another factor: “legal” considerations. (See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 565 (*Goleta II*).)

The concept of “feasibility” also encompasses the question of whether a particular alternative or mitigation measure promotes the underlying goals and objectives of a project. (*California Native Plant Soc. v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 1001 [“an alternative ‘may be found infeasible on the ground it is inconsistent with the project objectives as long as the finding is supported by substantial evidence in the record’”].) An alternative may also be rejected because it “would not ‘entirely fulfill’ [a] project objective.” *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 314-315.) “[F]easibility” under CEQA encompasses ‘desirability’ to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, and technological factors.” (*City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417; see also *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 715.)

With respect to a project for which significant impacts are not avoided or substantially lessened, a public agency, after adopting proper findings, may nevertheless approve the project if the agency first adopts a statement of overriding considerations setting forth the specific reasons why the agency found that the project's “benefits” rendered “acceptable” its “unavoidable adverse environmental effects.” (CEQA Guidelines, §§ 15093, 15043, subd. (b); see also Pub. Resources Code, § 21081, subd. (b).) The California Supreme Court has stated, “[t]he wisdom of approving . . . any development project, a delicate task which requires a balancing of interests, is necessarily left to the sound discretion of the local officials and their constituents who are responsible for such decisions. The law as we interpret and apply it simply requires that those decisions be informed, and therefore balanced.” (*Goleta II, supra*, 52 Cal.3d at p. 576.)

When adopting Statements of Overriding Considerations, State CEQA Guidelines Section 15093 further provides:

- (a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered “acceptable.”
- (b) Where the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. This statement of overriding considerations shall be supported by substantial evidence in the record.
- (c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.

Having received, independently reviewed, and considered the Draft Environmental Impact Report (“DEIR”) and the Final Environmental Impact Report (“FEIR”) for the Newport Crossings Mixed Use Project, SCH No. 2017101067 (collectively, the “EIR”), as well as all other information in the record of proceedings on this matter, the following Findings of Facts (“Findings”) are hereby adopted by the City of Newport Beach (“City”) in its capacity as the CEQA Lead Agency.

These Findings set forth the environmental basis for the discretionary actions to be undertaken by the City for adoption and implementation of the Newport Crossings Mixed Use Project (“Proposed Project”). This action includes the certification of the following:

- Newport Crossings Mixed Use Project Environmental Impact Report, SCH No. 2017101067

#### **A. DOCUMENT FORMAT**

These Findings have been organized into the following sections:

- 1) Section 1 provides an introduction.
- 2) Section 2 provides a summary of the project, overview of the discretionary actions required for approval of the project, and a statement of the project’s objectives.
- 3) Section 3 provides a summary of previous environmental reviews related to the project area that took place prior to the environmental review done specifically for the project, and a summary of public participation in the environmental review for the project.
- 4) Section 4 sets forth findings regarding the environmental impacts that were determined to be—as a result of the Notice of Preparation (NOP) and consideration of comments received during the NOP comment period—either not relevant to the project or clearly not at levels that



were deemed significant for consideration given the nature and location of the Proposed Project.

- 5) Section 5 sets forth findings regarding significant or potentially significant environmental impacts identified in the DEIR that the City has determined are either not significant or can feasibly be mitigated to a less than significant level through the imposition of project design features and/or mitigation measures. In order to ensure compliance and implementation, all of these measures are included in the Mitigation Monitoring and Reporting Program ("MMRP") for the project and adopted as conditions of the project by the Lead Agency. Where potentially significant impacts can be reduced to less than significant levels through adherence to project design features and/or mitigation measures, these findings specify how those impacts were reduced to an acceptable level. Section 5 also includes findings regarding those significant or potentially significant environmental impacts identified in the DEIR that will or may result from the project and which the City has determined cannot feasibly be mitigated to a less than significant level.
- 6) Section 6 sets forth findings regarding alternatives to the Proposed Project.

## **B. RECORD OF PROCEEDINGS**

For purposes of CEQA and these Findings, the Record of Proceedings for the Proposed Project consists of the following documents and other evidence, at a minimum:

- The NOP and all other public notices issued by the City in conjunction with the Proposed Project
- The DEIR for the Proposed Project
- The FEIR for the Proposed Project
- All written comments submitted by agencies or members of the public during the public review comment period on the DEIR
- All responses to written comments submitted by agencies or members of the public during the public review comment period on the DEIR
- All written and verbal public testimony presented during a noticed public hearing for the Proposed Project
- The Mitigation Monitoring and Reporting Program
- The reports and technical memoranda included or referenced in the Response to Comments
- All documents, studies, EIRs, or other materials incorporated by reference in the DEIR and FEIR
- The Resolutions adopted by the City of Newport Beach in connection with the Proposed Project, and all documents incorporated by reference therein, including comments received after the close of the comment period and responses thereto
- Matters of common knowledge to the City of Newport Beach, including but not limited to federal, state, and local laws and regulations

- Any documents expressly cited in these Findings
- Any other relevant materials required to be in the record of proceedings by Public Resources Code Section 21167.6(e)

The documents and other material that constitute the record of proceedings on which these findings are based are located at the City of Newport Beach Community Development Department. The custodian for these documents is the City of Newport Beach. This information is provided in compliance with Public Resources Code Section 21081.6(a)(2) and 14 California Code Regulations Section 15091(e).

## **C. CUSTODIAN AND LOCATION OF RECORDS**

The documents and other materials that constitute the administrative record for the City's actions related to the project are at the City of Newport Beach Community Development Department, 100 Civic Center Drive, Newport Beach, California 92660. The City's Community Development Department is the custodian of the administrative record for the project. Copies of these documents, which constitute the record of proceedings, are and at all relevant times have been and will be available upon request at the offices of the Community Development Department. This information is provided in compliance with Public Resources Code Section 21081.6(a)(2) and 14 California Code Regulations Section 15091(e).

## **II. PROJECT SUMMARY**

### **A. PROJECT LOCATION**

The approximately 5.69-acre project site is in the northern end of the City of Newport Beach ("City"). The City is in the western part of Orange County in southern California. It is bordered by Huntington Beach to the northwest, Costa Mesa to the north, Irvine to the northeast, unincorporated areas (Crystal Cove State Park) of Orange County to the southeast, and the Pacific Ocean to the south. Regional access to the project site is provided via Interstate 405 (I-405), State Route 55 (SR-55), State Route 73 (SR-73) (San Joaquin Hills Transportation Corridor), and Highway 1 (Pacific Coast Highway).

The project site is in the City's "Airport Area" planning subarea, which is bounded by Campus Drive to the north and west, SR-73 to the south, and Jamboree Road to the east. Within the Airport Area are established planned community development plans. The project site is in the Newport Place Planned Community. The site is generally bounded by Corinthian Way to the northeast, Martingale Way to the east, Scott Drive to the northwest, and Dove Street to the southwest. The site is approximately 0.2 mile east of John Wayne Airport.

The project site is pentagonal-shaped area comprised of three (3) legal parcels (four Assessor Parcel Numbers (APNs): 427-172-02, -03, -05, and -06). Given the odd shape of the property, it does not have a definable width or depth.

## **B. PROJECT DESCRIPTION**

The site is currently improved with the 58,277-square foot MacArthur Square shopping center, which was built in 1974. The shopping center consists of eight (8) single-story commercial/retail buildings, surface parking, and various landscape (e.g., ornamental trees, shrubs) and hardscape improvements. MacArthur Square is characterized as an aging, underutilized, and underperforming shopping center that supports a variety of retail and commercial business, including restaurants and retail shops. Current tenants include several restaurants, a dance studio, retail stores, and professional and medical offices.

Project development includes demolition of approximately 58,277 square feet of existing buildings, surface parking for 462 vehicles, and hardscape improvements of MacArthur Square. Project development also requires removal of a number of ornamental trees and other landscape improvements.

Upon clearing, the approximately 5.69-acre project site would be redeveloped with the proposed Newport Crossings Mixed Use project ("Proposed Project"). The Proposed Project would consist of the development of a multistory building that would house 350 apartment units, 2,000 square feet of "casual-dining" restaurant space, and 5,500 square feet of retail space. The project also includes the development of a 0.5-acre public park, which is described in detail below.

The proposed building and public park fit into the overall layout of the project site. The proposed building would follow the pentagonal shape of the project site, with building façades fronting all site frontages. The pentagonal building is designed as a single structure; however, it includes multiple buildings with various heights and massing that are connected to each other through common/shared walls, covered pedestrian corridors and breezeways, and various building elements and architectural features. Centrally located within the multistory building is a six-level, five-story parking structure (one semi-subterranean level), which would be surrounded and screened from public view by the proposed building. Various courtyards and recreational and entertainment amenities would be introduced to break up the overall building plane; these features and amenities would also help break up the massing of the building as seen from the ground level. Various elements of the proposed building would exceed the base height limit of 55 feet; specifically, building heights would reach up to 77 feet 9 inches for stair towers, architectural features (including parapets), parking structure, roof decks, elevator shafts, and mechanical equipment. However, all portions of the building's residential living areas would be under 55 feet in height.

The proposed retail space and plaza would front onto Corinthian Way, serving as a walkable and pedestrian-friendly connection between the Proposed Project's retail uses and existing commercial and retail uses to the north, across Corinthian Way. Also, the elongated, roughly rectangular public park in the southern portion of the project site would help provide a physical and visual buffer between the proposed apartment units and the office uses to the south.

### **Affordable Housing and Development Incentives/Concessions and Waivers**

The established Newport Place Planned Community Development Standards (“Residential Overlay”) allow for a maximum residential density of fifty (50) dwelling units per net acre; a minimum of thirty percent (30%) of the units in residential developments are required to be affordable to lower-income households.

After dedication of the 0.5-acre public park, the net acreage of the project site would be 5.19 acres, which results in a maximum allowed density of 259 units. Of the 259 units allowed, 78 units (thirty percent (30%)) are proposed to be reserved for lower-income households. As encouraged by the Residential Overlay and pursuant to Chapter 20.32 (Density Bonus) of the City’s zoning code and Government Code Section 65915 (Density Bonus Law), with a thirty percent (30%) allocation for lower-income households, the Proposed Project is entitled to the maximum thirty five percent (35%) density bonus (91 additional units), increasing the total project density to 350 units. Therefore, of the Proposed Project’s 350 apartment units, 259 are considered “base” units and ninety one (91) are “density bonus” units.

In addition to the ninety one (91) density bonus units, development incentives are available to developers pursuant to Chapter 20.32 of the City’s zoning code and Government Code Section 65915(d)(1). Specifically, the Proposed Project is entitled to up to three (3) incentives or concessions that would result in identifiable, financially sufficient, and actual cost reductions. Government Code Section 65915(e)(1) also entitles a development to waivers or modifications of development standards that, if applied, would physically preclude development of the housing development with the proposed density bonus.

To illustrate compliance with the Residential Overlay affordable housing requirements and density bonus allowances of the City zoning code and state law, the Proposed Project includes preparation of an Affordable Housing Implementation Plan (“AHIP”) (see Section 3.3.3, *Discretionary Actions and Approvals*). The AHIP includes a request for one development concession for the unit mix and one waiver for the height.

- **Development Concession (Unit Mix).** Pursuant to Section V.F.1 of the Residential Overlay, “Affordable units shall reflect the range of numbers of bedrooms provided in the residential development project as a whole.” In the case of the Proposed Project, the project applicant is requesting a unit mix that includes a greater percentage of studio and one-bedroom units, as illustrated in Table 3-2.
- **Waiver/Concession of Development Standard (Height Increase).** Pursuant to Section V.A of the Residential Overlay, the maximum building heights are limited to 55 feet, but may be increased with the approval of a site development review after making certain findings for approval. Government Code Section 65915(e)(1) provides that a city may not apply a development standard that will have the effect of physically precluding the construction of a density bonus project at the density permitted under the density bonus law. In the case of the Proposed Project, the project applicant is requesting a waiver of the 55-foot building height limit to 77 feet 9 inches in order to accommodate the parapet, roof-top mechanical equipment, elevator shafts, emergency staircase, rooftop terrace, and a portion of the parking garage.

## **Architectural Features**

The proposed architectural style would be Contemporary, and design elements (e.g., roof style, window fenestration and details, building materials) would be consistent with this architectural style. For example, design elements would include light sand-finish stucco walls; architectural metal and acrylic panels; wood plank tiles; glass railings; vinyl windows; aluminum storefronts; and metal awnings, sun shades, horizontal slats, and trellises. Building pop-outs and offsets; variations in building heights, rooflines, materials, colors, and landscaping; and balconies would be added and modulated to offset the building's massing, provide human scale, promote visual interest and articulation, and provide relief to and variation in the building form and style. The final building design and architectural style are subject to review and approval by the City's Planning Commission.

## **Landscaping and Lighting**

Ornamental trees, shrubs, and groundcover would be planted along the site perimeter and in the public gathering areas, such as the entertainment courtyard, pool courtyard, lounge, view deck, and rooftop terrace in the residential development portion as well as the retail plaza. The half-acre public park in the southern portion of the site would also be landscaped with ornamental trees surrounding the proposed park amenities. Additionally, existing Italian Stone pines along Martingale Way would be preserved in place. The proposed plant palette would include noninvasive, medium-/low-water consumptive varieties. The proposed plants would be water conserving and have deep root systems that enable soil stabilization and minimize erosion.

Project development requires removal of the majority of existing trees onsite (minus the aforementioned Italian Stone pines), as well as other landscape improvements associated with the existing MacArthur Square shopping center. Although the majority of existing trees would be removed (approximately 76 trees), the Proposed Project would provide a greater number of trees (approximately 174 new trees, including the public park and retail plaza) than currently exist. All landscaped areas, including the public park and retail plaza, would be maintained by the property management company.

Project lighting would consist of building-mounted light fixtures; lighting for pedestrian walkways and corridors; decorative lighting for landscape and architectural features; signage lighting; interior lighting for the apartment units, leasing office, retail uses, and parking structure; lighting for the courtyards, rooftop terrace, common areas, and public park; and security lighting.

## **Amenities, Recreation and Entertainment Areas, and Services**

### **Residential**

Future project residents and their guests would have access to a number of amenities, recreation and entertainment areas and services, including:

**Pool Courtyard:** The pool courtyard includes a community pool and spa, a clubroom, an outdoor terrace, barbecue grills, and an outdoor fireplace. Chaise lounges and cabanas provide for poolside seating, and the spa terrace would be developed with lounging on deck or synthetic turf

with a fireplace. A round metal trellis at the south end of the pool courtyard is intended for hanging “pod” chairs with views back to the clubroom. This courtyard would provide a direct connection to the proposed public park (described below) via a gated entry.

**Entertainment Courtyard:** The entertainment courtyard is intended for the passive user and bisected by a pedestrian corridor. Uses in this courtyard would include a fire pit, barbecue grills, soft seating, and overhead festival lights. Ground-level units surrounding the entertainment courtyard would have private patios fronting the courtyard.

**Lounge Courtyard:** The lounge courtyard is intended for the passive user and bisected by a pedestrian corridor. Uses in this courtyard would include a lounge cabana with fire pit, barbecue grills, communal dining tables, and soft seating. Ground-level units surrounding the lounge courtyard would have private patios fronting the courtyard.

**Rooftop Terrace at Level 7:** The rooftop terrace would be on the seventh floor of the apartment building, on the north side of the proposed parking structure. The terrace would provide direct views of the retail plaza below, John Wayne Airport, and surrounding commercial areas. The terrace would include a spa with a cabana and sunning furniture. A fireside lounge with a three-sided fireplace, group shade structure, lounge seating, and overhead festival lights would be provided at the center of the terrace. The rooftop would also include a dining terrace with barbecue grills, communal tables and outdoor kitchen, and a game lawn with synthetic turf, game tables, and overhead festival lighting.

**View Deck at Level 5:** The view deck would be on the fifth floor of the apartment building. The view deck would include an outdoor kitchen, lounge chairs, and a fireplace.

Other amenities and services available to future residents include a club room for entertainment and gatherings; fitness facility; leasing office; centralized mail room; and washer and dryer in each apartment unit. Also, each apartment unit would feature a private patio or balcony. Ground-level units would feature patios, and units on the second floor and above would feature balconies.

## **Retail**

A retail plaza would be directly adjacent to the proposed ground-level retail uses fronting Corinthian Way. The retail plaza would be available to future retail employees and patrons of the retail uses and to future project residents and their guests. The retail plaza would include designated outdoor dining areas for restaurants with tables, chairs, and low fencing; an open dining plaza with tables, chairs, and festival lights; a fireside lounge with a firepit, soft seating, and festival lights; a water feature that would include a wall and reflection pool with water steps; and palm trees and other landscape features and elements throughout.

## **Public Park**

In addition, the Proposed Project includes development of a half-acre public park. An elongated, rectangular-shaped public park would be at the southern end of the project site with frontages on Dove Street and Martingale Way. Upon completion, the park would be dedicated to the City for public use; however, it would be managed and operated by the property management company.



The park would serve future project residents, employees, and patrons. It is also intended to serve the existing offices and business in the surrounding vicinity as a recreation and activity area and respite from the daily work environment. Anticipated park amenities include a play lawn featuring playground equipment, shade structure, benches, and synthetic turf; fenced and separated dog parks for large and small dogs featuring synthetic turf; fitness terrace with fitness equipment and shade trellis; central dining terrace with overhead trellis, tables, and chairs; bocce ball court with shade cabanas; fenced pickleball court; and seat walls throughout. An off-street parking lot for park users is also proposed on the eastern end of the park. The public park would be landscaped with low-water-use plants. A tree and shrub hedge would be provided along the southern boundary to provide a visual and physical buffer between the park and the adjacent office parking lot to the south.

### **Access, Circulation, and Parking**

#### **Vehicular Access and Circulation**

Vehicular access to the project site would be via full-access driveways (all turning movements permitted) off Scott Drive and Martingale Way. The driveways would lead to internal private drive aisles with decorative pavers, which would direct vehicles to the parking structure's gated entries. The parking structure would be restricted to apartment residents, guests, and employees, and to employees and patrons of the retail uses. Once inside the parking structure, vehicles would circulate via internal drive aisles and vehicle ramps; wayfinding signs would be provided. The parking structure's gated entries would be accessed by emergency service vehicles via remote opening devices.

The public park would have a separate full-access driveway at the southern end of Martingale Way, which would lead into a separate parking lot area for the park.

#### **Pedestrian and Bicycle Access and Circulation**

Pedestrians and bicyclists would access the project site along the perimeter roadways. Pedestrian corridors and walkways that lead into the retail, residential, and public park areas line the perimeter of the project site. Pedestrian corridors and walkways would also be provided internal to the site, between the apartment buildings and courtyards; these would connect to the public sidewalks along the perimeter roadways. Resident access to the individual apartment units, site amenities, retail plaza, and parking structure would be provided via internal pedestrian corridors/walkways on each level of the apartment building, as well as via elevators and stairwells.

As a part of the Proposed Project, the existing public sidewalks along Dove Street, Scott Drive, Corinthian Way, and Martingale Way would be demolished and reconstructed to City standards. Additionally, new ADA-compliant curb access ramps would be constructed at Dove Street/Scott Drive, Scott Drive/Corinthian Way, and Corinthian Way/Martingale Way intersections in accordance with City standards.



## **Parking**

A six-level, five-story parking structure (one semi-subterranean level) is proposed in the center of the project site. It would be surrounded and screened from public view by the proposed multistory building. The parking structure would be restricted to apartment residents, guests, and employees, and to retail employees and patrons. The parking structure would provide a total of 740 parking spaces, including assigned and open spaces for residences and their visitors, required spaces for ADA-accessible parking and electric vehicle charging stations, and open spaces for retail patrons and employees. Of the total 740 parking spaces provided, five (5) uncovered surface parking spaces would be provided in front of the leasing office, 661 would be designated/assigned for apartment use and the remaining seventy four (74) for the retail uses. The seventy four (74) spaces for retail use would all be provided on the ground level of the parking structure. Levels two through five of the parking structure would contain the parking spaces for apartment residents and visitors; a few resident parking spaces would also be provided on the ground level. The project provides 655 assigned residential parking stalls (1.87/unit), which is less than the City requires for non-density bonus projects (2/unit plus 0.5 space per unit for guest parking), but in excess of the City's parking stall requirement for density bonus projects that request a parking reduction. The City's density bonus regulations establish parking requirements consistent with the requirements under state density bonus law. Under that law, if a developer so requests, a city cannot require a parking ratio that would exceed one space for each studio and one-bedroom unit and two spaces for each two-bedroom unit. (Gov't Code § 65915(p)(1).) With the project's mix of units, this would result in a parking ratio of 1.35 parking spaces per unit (or 474 spaces).

The public park would have a separate parking lot (four parking spaces) for park users, which would be accessed from Martingale Way.

Bicycle racks would be provided in key locations of the retail plaza area and public park. At a minimum, four open rack bicycle spaces for short term parking and four secured lockers for long-term parking would be provided. Project residents would also be able to store their bicycles in their apartment units.

## **Infrastructure Improvements**

**Water.** The City's Water Services Department currently provides potable water to the existing commercial and retail uses on the project site and would continue to do so for the Proposed Project. Potable water is provided via internal water lines that connect to the existing off-site water lines in the perimeter roadways. As a part of the Proposed Project, the on-site potable water lines would be removed and replaced with a series of new potable water lines that would connect to the existing off-site water lines in the perimeter roadways. Additionally, fire hydrants would be installed onsite at key locations, as required by the City of Newport Beach Fire Department to meet hose-pull requirements and provide adequate fire access.

**Wastewater.** The City's Water Services Department currently provides wastewater collection service to the existing commercial and retail uses on the project site and would continue to do so

for the Proposed Project. Wastewater collection is provided via internal sewer lines that connect to the off-site sewer lines in the perimeter roadways.

**Drainage.** Under existing conditions, approximately 90 percent of the project site consists of impervious areas (e.g., buildings, paving), and the remainder is pervious (e.g., landscaping). Under proposed conditions, approximately 77 percent of the project site would consist of impervious areas and the remainder would be pervious. Runoff from the project site would be conveyed similar to existing conditions, continuing to flow southerly via a new onsite drainage collection and treatment system. Site drainage improvements needed to accommodate the Proposed Project would include new storm drain pipes, catch basins, and best management (BMP) practices (e.g., modular wetland system).

### **C. DISCRETIONARY ACTIONS AND APPROVALS**

Project development requires the following discretionary actions and approvals from the City:

- Certification of the Newport Crossings Mixed Use Project Environmental Impact Report, SCH No. 2017101067 Adoption of the Findings of Fact
- Adoption of a Mitigation Monitoring and Reporting Program
- Approval of Lot Line Adjustment No. LA2018-004
- Approval of Affordable Housing Implementation Plan No. AH2018-001
- Approval of Site Development Review No. SD2017-004

### **D. STATEMENT OF PROJECT OBJECTIVES**

The statement of objectives sought by the project and set forth in the EIR is provided as follows:

1. To develop a multiunit mixed-use project that includes affordable housing units that will serve the various populations of the City of Newport Beach.
2. To develop a mixed-use project that is consistent with and furthers the policies of the General Plan for the Airport Area without the need for a General Plan amendment.
3. To locate additional housing within an area identified by the General Plan as an opportunity area for future housing.
4. To develop a mixed-use project that contributes to a walkable and pedestrian-friendly community.
5. To generate temporary employment in the construction industry.
6. To improve the jobs-housing balance in Newport Beach and to provide new housing within close proximity to jobs and services.

7. To provide beneficial site and area improvements, including extensive onsite private recreation amenities and the dedication of a public park to the City of Newport Beach.
8. To develop a project that implements and is consistent with the intent of the Newport Place Planned Community Residential Overlay and that take advantage of the Density Bonus allowed under both the City's zoning code and Government Code Section 65915.

### **III. ENVIRONMENTAL REVIEW AND PUBLIC PARTICIPATION PROCESS**

In conformance with CEQA, the State CEQA Guidelines, and the City of Newport Beach CEQA Guidelines, the City conducted an extensive environmental review of the Proposed Project.

- The City of Newport Beach determined that an EIR would be required for the Proposed Project and issued a Notice of Preparation ("NOP") on November 1, 2017. The NOP was sent to all responsible agencies, trustee agencies, and the Office of Planning Research and posted at the Orange County Clerk-Recorder's office and on the City's website on November 1, 2017. The thirty (30)-day public review period extended from November 1, 2017, to November 30, 2017.
- A scoping meeting was held during the NOP review period to solicit additional suggestions on the scope of the DEIR. Attendees were provided an opportunity to identify verbally or in writing the issues they felt should be addressed in the DEIR. The scoping meeting was held on Thursday, November 16, 2017, at the OASIS Senior Center at 801 Narcissus Avenue, Corona Del Mar, California 92625. The notice of the public scoping meeting was included in the NOP.
  - The scope of the DEIR was determined based on the City's comments received in response to the NOP, and comments received at the scoping meeting conducted by the City on November 16, 2017. Section 2.3 of the DEIR describes the issues identified for analysis in the DEIR.
  - The City of Newport Beach prepared a DEIR, which was made available for a forty five (45)-day public review period beginning Friday, November 20, 2018 and ending Monday, January 14, 2019.
    - The complete DEIR consists of the analysis of the Newport Crossings Mixed Use Project and all referenced appendices. The Notice of Availability ("NOA") for the DEIR was sent to all interested persons, agencies, and organizations. The Notice of Completion ("NOC") was sent to the State Clearinghouse in Sacramento for distribution to public agencies. The NOA was posted at the Orange County Clerk-Recorder's office on November 28, 2018. Copies of the DEIR were made available for public review at the City of Newport Beach Community Development Department and three Newport Beach Public Library facilities (Central Library, Mariners Branch, and Balboa Branch,). The DEIR was also made available for download via the City's website: <https://www.newportbeachca.gov/ceqa>
  - One study session was held by the Planning Commission on Thursday, December 6, 2018 in the City's Council Chambers, located at 100 Civic Center Drive, Newport Beach, California 92660. Notice of time, place, and purpose of the aforesaid meeting was provided in accordance with CEQA and the City's Municipal Code. The Newport Crossings Mixed Use Project and staff report were presented to the Planning Commission at this

study session. Public comments regarding the Proposed Project were also taken. The agenda for the study session was posted at City Hall and on the City's website.

- On Tuesday, February 5, 2019, a meeting was held with the Parks, Beaches, and Recreation Commission in the City's Council Chambers, located at 100 Civic Center Drive, Newport Beach, California 92660. Notice of time, place, and purpose of the aforesaid meeting was provided in accordance with CEQA and the City's Municipal Code. The Newport Crossings Mixed Use Project park design and staff report was presented to the Parks, Beaches, and Recreation Commission for their comment and recommendations. Public comments regarding the park design were also taken. The agenda for the meeting was posted at City Hall and on the City's website.
- Preparation of the FEIR includes comments on the DEIR, responses to those comments, clarifications/revisions to the DEIR, and revised figures. The FEIR was released on February 8, 2019, and posted on the City's website. A Planning Commission Public Hearing was held on February 21, 2019 in the City's Council Chambers, at 100 Civic Center Drive, Newport Beach, California 92660. A notice of time, place, and purpose of the aforementioned meeting was provided in accordance with CEQA and the City's Municipal Code. The DEIR, FEIR, staff report, and evidence, both written and oral, were presented to and considered by the Planning Commission at this hearing.
  - Notice of the Planning Commission Public Hearing was a one-eighth page advertisement in the Daily Pilot newspaper on February 9, 2019.
  - Additionally, notices were mailed to nearby property owners and interested parties consistent with the environmental review process required under the California Environmental Quality Act. The item was on the agenda for the noticed Planning Commission Public Hearing, which was posted at City Hall and on the City's website.
- In compliance with Section 15088(b) of Title 14 of the California Code of Regulations (State CEQA Guidelines), the City has met its obligation to provide written Responses to Comments to public agencies at least 10 days prior to certifying the FEIR.

#### **IV. ENVIRONMENTAL ISSUES THAT WERE DETERMINED NOT TO BE POTENTIALLY AFFECTED BY THE PROPOSED PROJECT**

##### **A. IMPACTS DETERMINED TO BE LESS THAN SIGNIFICANT DURING THE SCOPING PROCESS**

Based on the public scoping process (including review of NOP responses and input at the public scoping meeting), in addition to analysis prepared for the DEIR, the City determined, based upon the threshold criteria for significance, that the project would have no impact or a less than significant impact on the following potential environmental issues (see DEIR, Chapter 8, *Impacts Found Not to be Significant*). It was determined, therefore, that these potential environmental issues would be precluded from detailed discussion in the DEIR. Based upon the environmental analysis presented in the DEIR, and the comments received by the public on the DEIR, no substantial evidence was submitted to or identified by the City which indicated that the project would have an impact on the following environmental areas:

- (a) **Agriculture and Forestry Resources:** The project site does not contain Prime Farmland, Unique Farmland, or Farmland of Statewide Importance. No portion of the project area includes forest resources, and the site is not zoned for forest land, timberland, or timberland production.
- (b) **Biological Resources:** The project site is fully developed and in a highly urbanized area of the City and would not adversely impact candidate, sensitive or special status species; riparian habitat or other sensitive natural communities. The project also would not conflict with any local ordinances protecting biological resources, adopted Habitat Conservation Plan or Natural Community Conservation Plan.
- (c) **Mineral Resources:** The project would not result in the loss of availability of a known mineral resource or locally important mineral resource recovery site.
- (d) **Geology and Soils:** The Proposed Project would not use septic systems or alternative waste water disposal systems.
- (e) **Hazards and Hazardous Materials:** The project would not impair implementation of or physically interfere with an adopted emergency response/evacuation plan or expose people or structures to potential wildland fire hazards.
- (f) **Hydrology and Water Quality:** The project site is not located within a 100-year flood hazard zone and is not close or low enough to sea level to be exposed to potential inundation by seiche or tsunami. The project area is mostly flat and would not be prone to mudslides, and there are no nearby dams or levees that could expose people or structures to flood hazards as a result of dam or levee failure.
- (g) **Land Use and Planning:** The project would not conflict with a habitat conservation plan or natural community conservation plan.
- (h) **Population and Housing:** The project would not displace any housing or residents.

All other topical areas of evaluation included in the Environmental Checklist were determined to require further assessment in the DEIR.

## **B. IMPACTS DETERMINED TO BE LESS THAN SIGNIFICANT IN THE DEIR**

This section identifies impacts of the Proposed Project determined to be less than significant without implementation of project-specific mitigation measures. This determination, however, does assume compliance with existing regulations as detailed in each respective topical section of Chapter 5 in the DEIR.

- (a) **Aesthetics:** The project would not result in a substantial adverse effect on a scenic vista or alter scenic resources within a state scenic highway. The project would alter the visual appearance of the project site and its surroundings but would not substantially degrade the existing visual character or quality. The project would also create new sources of light or glare in the project area, but none of these would adversely affect day or nighttime views in the area.
- (b) **Air Quality:** The project is consistent with the applicable Southern Coast Air Quality Management District's Air Quality Management Plan. The long-term operation of the project would not generate additional vehicle trips and associated emissions in exceedance of

SCAQMD's threshold criteria. The Proposed Project would not expose sensitive receptors to substantial pollutant concentrations. Operation of the Proposed Project would not expose sensitive receptors to substantial pollutant concentrations and would not create objectionable odors.

- (c) **Biological Resources:** The project would not result in an impact on federally designated wetlands through direct removal, filling, hydrological interruption, or other means. Development of the project would not conflict with the City's local policies or ordinances protecting biological resources.
- (d) **Cultural Resources:** Development of the project would not impact an identified historic resource. The likelihood that human remains may be discovered during clearing and grading activities is considered extremely low. In the unlikely event human remains are uncovered, impacts would be less than significant upon compliance with California and Safety Code Section 7050.5.
- (e) **Geology and Soils:** The project would expose people to strong ground shaking. The project site is not subject to surface rupture and would not subject people or structures to substantial hazards from surface rupture of a known active fault and liquefaction impacts would be less than significant. No impacts would occur with earthquake-induced landslides. Project development would not cause substantial soil erosion. Impacts related to collapsible and expansive soils would be less than significant and development would not subject people or structures to substantial hazards from ground subsidence.
- (f) **Greenhouse Gas Emissions:** The project would not generate a net increase in GHG emissions, either directly or indirectly, that would have a significant impact on the environment. The project would not conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of GHGs.
- (g) **Hazards and Hazardous Materials:** Substantial hazards to the public or the environment arising from the routine use, storage, transport, and disposal of hazardous materials during long-term operation of the Proposed Project would not occur. The project would not create an obstruction to air navigation or cause safety hazards to people working or residing on the project site due to its proximity to the John Wayne Airport.
- (h) **Hydrology and Water Quality:** The project would not violate water quality standards or waste discharge requirements or otherwise degrade water quality. The project would not reduce groundwater recharge or quality and would have less than significant impacts to the storm drain system and the potential for flooding. The project would also not substantially alter the existing drainage pattern to result in potentially significant erosion or situation impacts.
- (i) **Land Use Planning:** The project would not divide an established community and would not conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including the City of Newport Beach General Plan policies, Newport Planned Community zoning, or the Airport Environs Land Use Plan for John Wayne Airport,) adopted for the purpose of avoiding or mitigating an environmental effect. The project would also not conflict with an adopted habitat conservation plan.
- (j) **Noise:** Construction activities would create temporary noise increases in the vicinity of the Proposed Project site but would be in compliance with the City's noise ordinance. The project would not expose sensitive uses to strong levels of groundborne vibration or operational



traffic and stationary noises and would not result in long-term operation-related noise that would exceed local standards. The proximity of the project site to John Wayne Airport would result in exposure of future residents and workers to airport-related noise but would cause less than significant impacts.

- (k) **Population and Housing:** The Proposed Project would not substantially induce population or housing beyond SCAG's forecast population and housing growth anticipated for the City of Newport Beach by 2040.
- (l) **Public Services:** The project would not create significant impacts related to emergency services, police protection, school services, or library services.
- (m) **Recreation:** Residents would have ample recreational facilities onsite, and therefore are not expected to use City parks or recreational facilities such that substantial deterioration would occur or be accelerated. Therefore, the Proposed Project would not result in a significant impact on existing park and recreational facilities. Development of a 0.5-acre public community park and private recreational amenities under the Proposed Project would not result in environmental impact.
- (n) **Transportation and Traffic:** The project would not impact levels of service for the existing roadway system and would not conflict with applicable plans governing the performance of the City's circulation system, including the Newport Beach traffic phasing ordinance and Orange County Congestion Management Plan. The project would also not impact state highway intersections in the study area. The project would not increase hazards due to design features, result in inadequate emergency access, or conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities. The project would not result in a change in air traffic patterns or an increase in traffic levels that would cause substantial safety risks.
- (o) **Tribal Cultural Resources:** The project would not cause a substantial adverse change in the significance of a tribal cultural resource.
- (p) **Utilities and Service Systems:** Project-generated wastewater would be adequately collected and treated by the City and Orange County Sanitation District, respectively. Water demands of the project would be adequately served by existing and proposed water supply and delivery systems and stormwater flow would be adequately served by existing and proposed drainage systems. The project would not exceed the capacity of the existing storm drain system and no new stormwater drainage facilities would need to be constructed or expanded.

## **V. FINDINGS REGARDING POTENTIALLY SIGNIFICANT ENVIRONMENTAL IMPACTS**

The following potentially significant environmental impacts were analyzed in the DEIR, and the effects of the project were considered. Because of environmental analysis of the project and the identification of relevant General Plan policies; compliance with existing laws, codes, and statutes; and the identification of feasible mitigation measures, some potentially significant impacts have been determined by the City to be reduced to a level of less than significant, and the City has found—in accordance with CEQA Section 21081(a)(1) and State CEQA Guidelines Section 15091(a) (1)—that “Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.” This is referred to herein as **“Finding 1.”**



Where the City has determined—pursuant to CEQA Section 21081(a)(2) and State CEQA Guidelines Section 15091(a)(2)—that “Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency,” the City’s finding is referred to herein as “**Finding 2.**”

Where, as a result of the environmental analysis of the project, the City has determined that either (1) even with the identification of project design features, compliance with existing laws, codes and statutes, and/or the identification of feasible mitigation measures, potentially significant impacts cannot be reduced to a level of less than significant, or (2) no feasible mitigation measures or alternatives are available to mitigate the potentially significant impact, the City has found in accordance with CEQA Section 21081(a)(3) and State CEQA Guidelines Section 15091(a)(3) that “Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.” This is referred to herein as “**Finding 3.**”

## **A. IMPACTS MITIGATED TO LESS THAN SIGNIFICANT**

The following summary describes impacts of the Proposed Project that, without mitigation, would result in significant adverse impacts. Upon implementation of the mitigation measures provided in the DEIR, the impacts would be considered less than significant.

### **1. Air Quality**

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#### **Impact 5.2-2: Construction activities associated with the Proposed Project would generate short-term emissions in exceedance of SCAQMD’S threshold criteria for NO<sub>x</sub>.**

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Construction activities produce combustion emissions from various sources, such as on-site heavy-duty construction vehicles, vehicles hauling materials to and from the site, and motor vehicles transporting the construction crew. Site preparation activities produce fugitive dust emissions (PM<sub>10</sub> and PM<sub>2.5</sub>) from demolition and soil-disturbing activities, such as grading and excavation. Air pollutant emissions from construction activities onsite would vary daily as construction activity levels change.

As stated, the Proposed Project is anticipated to be constructed over an approximately 38-month period from December 2019 through January 2023. Construction air pollutant emissions are based on the preliminary information provided by the project applicant. Construction would entail demolition of existing asphalt and structures; site preparation, grading, and excavation; off-site hauling of demolition debris and soil; street improvements; utilities installation; construction of the proposed building; architectural coating; and asphalt paving.

Implementation of Mitigation Measure AQ-1, AQ-2 and AQ-3 would reduce air quality impacts related to construction activities to less than significant.

## Mitigation Measures

AQ-1 The construction contractor shall implement the following measure to reduce construction exhaust emissions during rough grading and rough grading soil hauling activities:

- Hauling of soil generated from rough grading activities shall be limited to a maximum of 269 trucks per day (538 one-way haul trips per day if 14-cubic-yard trucks are used) assuming a one-way haul distance of 20 miles. If the one-way truck haul distance for export of soil from rough grading activities is greater than 20 miles, as identified by the contractor(s), hauling shall be restricted to no more than 10,760 miles per day.
- Rough grading and rough grading soil hauling activities shall not overlap with other construction activities (demolition, site preparation, utilities, etc.).

These requirements shall be noted on all construction management plans and verified by the City of Newport Beach prior to issuance of any construction permits and during rough grading and rough grading soil hauling activities.

AQ-2 The construction contractor shall implement the following measure to reduce construction exhaust emissions during demolition and demolition debris material export activities:

- Hauling of building demolition debris shall be limited to a maximum of 47 trucks per day (94 one-way haul trips per day if 18-cubic-yard trucks are used) assuming a one-way haul distance of 30 miles. If the one-way truck haul distance for export of building demolition debris is greater than 30 miles, as identified by the contractor(s), hauling shall be restricted to no more than 2,850 miles per day.
- All demolition and demolition debris (building asphalt) hauling activities shall not overlap with other non-demolition construction activities (rough grading, site preparation, utilities, etc.).

These requirements shall be noted on all construction management plans and verified by the City of Newport Beach prior to issuance of any construction permits and during demolition and demolition debris hauling activities.

AQ-3 Construction contractors shall, at minimum, use equipment that meets the EPA's Tier 4 emissions standards for off-road diesel-powered construction equipment of 50 horsepower or greater for all phases of construction activity, unless it can be demonstrated to the City of Newport Beach Building Division with substantial evidence that such equipment is not available. Any emissions control device used by the contractor shall achieve emissions reductions that are no less than what could be achieved by Tier 4 emissions standards for a similarly sized engine, as defined by the California Air Resources Board's regulations.

Prior to construction, the project engineer shall ensure that all construction (e.g., demolition and grading) plans clearly show the requirement for EPA Tier 4 emissions standards for construction equipment of 50 horsepower or greater for the specific activities stated above. During construction, the construction contractor shall maintain

a list of all operating equipment in use on the construction site for verification by the City of Newport Beach. The construction equipment list shall state the makes, models, and numbers of construction equipment onsite. Equipment shall be properly serviced and maintained in accordance with the manufacturer's recommendations. Construction contractors shall also ensure that all nonessential idling of construction equipment is restricted to 5 minutes or less in compliance with Section 2449 of the California Code of Regulations, Title 13, Article 4.8, Chapter 9.

## Finding

**Finding 1** – The City hereby makes Finding 1. Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the DEIR. These changes are identified in the form of the mitigation measures above. The City of Newport Beach hereby finds that implementation of the mitigation measures is feasible, and the measures are therefore adopted.

## 2. Biological Resources

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### **Impact 5.3-2: Removal of trees and shrubs onsite during site clearance could impact nesting migratory birds.**

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The project site is fully developed and in a highly urbanized area of the City and is surrounded by a mix of commercial, retail and office development. The project site and its surroundings do not provide habitat for the movement of any native resident or migratory fish or wildlife species. Although the Proposed Project may provide some habitat for limited wildlife movement and live-in habitat—particularly for reptile and avian species and small to medium mammals that are adapted to urban settings—the Proposed Project does not function as a wildlife corridor. Additionally, the site and environs have not been identified or designated as a wildlife corridor in the Natural Resources Element of the Newport Beach General Plan.

The project site does, however, include a number of large ornamental trees along the site boundaries and internal to the site, the majority of which would be removed under the Proposed Project. These trees may be used for nesting by migratory birds protected under the federal MBTA and Section 3513 et seq. of the California Fish and Game Code.<sup>1</sup> Section 3513 provides protection to the birds listed under the MBTA, essentially all native migratory birds. Additionally, Section 3503 of the code makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird. Under the provisions of the MBTA, it is unlawful “by any means or manner to pursue, hunt, take, capture (or) kill” any migratory birds except as permitted by regulations issued by USFWS. The term “take” is defined by USFWS regulation to mean to “pursue, hunt, shoot, wound, kill, trap, capture or collect” any migratory bird or any part, nest or egg of any migratory bird covered by the conventions, or to attempt those activities. USFWS administers permits to take migratory birds in accordance with the MBTA.

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<sup>1</sup> The MBTA covers 1,026 bird species (see Code of Federal Regulations, Title 50, Section 10.13); that is, about 90 percent of the bird species occurring in the United States.

Mitigation Measure BIO-1 requires a qualified biologist to identify any active nests in and adjacent to the Proposed Project site no more than three days prior to initiation of the action and would reduce impacts to less than significant.

### **Mitigation Measures**

**BIO-1** Prior to the commencement of any proposed actions (e.g., site clearing, demolition, grading) during the breeding/nesting season (September 1 through February 15), a qualified biologist contracted by the project applicant shall conduct a preconstruction survey(s) to identify any active nests in and adjacent to the Proposed Project site no more than three days prior to initiation of the action. If the biologist does not find any active nests that would be potentially impacted, the proposed action may proceed. However, if the biologist finds an active nest within or directly adjacent to the action area (within 100 feet) and determines that the nest may be impacted, the biologist shall delineate an appropriate buffer zone around the nest using temporary plastic fencing or other suitable materials, such as barricade tape and traffic cones. The buffer zone shall be determined by the biologist in consultation with applicable resource agencies and in consideration of species sensitivity and existing nest site conditions, and in coordination with the construction contractor. The qualified biologist shall serve as a construction monitor during those periods when construction activities occur near active nest areas to ensure that no inadvertent impacts on these nests occur. Only specified construction activities (if any) approved by the qualified biologist shall take place within the buffer zone until the nest is vacated. At the discretion of the qualified biologist, activities that may be prohibited within the buffer zone include but not be limited to grading and tree clearing. Once the nest is no longer active and upon final determination by the biologist, the proposed action may proceed within the buffer zone.

The qualified biologist shall prepare a survey report/memorandum summarizing his/her findings and recommendations of the preconstruction survey. Any active nests observed during the survey shall be mapped on a current aerial photograph, including documentation of GPS coordinates, and included in the survey report/memorandum. The completed survey report/memorandum shall be submitted to the City of Newport Beach Community Development Department prior to construction-related activities that have the potential to disturb any active nests during the nesting season

### **Finding**

**Finding 1** – The City hereby makes Finding 1. Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the DEIR. These changes are identified in the form of the mitigation measures above. The City of Newport Beach hereby finds that implementation of the mitigation measures is feasible, and the measures are therefore adopted.

### **3. Cultural Resources**

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#### **Impact 5.4-2: Proposed development could result in an impact on archaeological resources.**

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The project site is developed with MacArthur Square commercial center. The project site is in a highly-urbanized area of the City and is surrounded by a mix of retail, commercial, hotel, and

professional office development. While unlikely, the presence of subsurface archaeological resources on the project site remains possible, and these could be affected by ground-disturbing activities associated with grading and construction at the site. It is possible that subsurface disturbance might occur at levels not previously disturbed (e.g., deeper excavation than previously performed) or may uncover undiscovered archeological resources at the site. For example, project site grading would involve removal of existing soils to depths of about 5 feet bgs on most of the site, and utility trenches would extend up to 8 feet bgs. Site soils are also considered moderately sensitive for buried archaeological resources due to the presence of 10 archaeological sites within about one mile of the project site and the presence of several wetlands near the site before the area was developed. Therefore, ground disturbance during site grading and construction could damage archaeological resources that may be buried in site soils.

Implementation of Mitigation Measure CUL-1 would ensure impacts to archaeological resources would remain less than significant.

### **Mitigation Measures**

CUL-1 Prior to the issuance of a grading permit by the City of Newport Beach, the project applicant shall retain a qualified archaeologist to periodically monitor ground-disturbing activities onsite and provide documentation of such retention to the City of Newport Beach Community Development Director. The archaeologist shall train project construction workers on the types of archaeological resources that could be found in site soils. The archaeologist shall periodically monitor project ground-disturbing activities. During construction activities, if Native American resources (i.e. Tribal Cultural Resources) are encountered, a Cultural Resource Monitoring and Discovery Plan (CRMDP) shall be created and implemented to lay out the proposed personnel, methods, and avoidance/recovery framework for tribal cultural resources monitoring and evaluation activities within the project area. A consulting Native American tribe shall be retained and compensated as a consultant/monitor for the project site from the time of discovery to the completion of ground disturbing activities to monitor grading and excavation activities. If archaeological resources are encountered, all construction work within 50 feet of the find shall cease, and the archaeologist shall assess the find for importance and whether preservation in place without impacts is feasible. Construction activities may continue in other areas. If, in consultation with the City and affected Native American tribe (as deemed necessary), the discovery is determined to not be important, work will be permitted to continue in the area. Any resource that is not Native American in origin and that cannot be preserved in place shall be curated at a public, nonprofit institution with a research interest in the materials, such as the South Central Coastal Information Center at California State University, Fullerton.

### **Finding**

**Finding 1** – The City hereby makes Finding 1. Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the DEIR. These changes are identified in the form of the mitigation measures above. The City of Newport Beach hereby finds that implementation of the mitigation measures is feasible, and the measures are therefore adopted.

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**Impact 5.4-3: The Proposed Project could result in an impact on paleontological resources.**

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The project site is fully developed and in a highly-urbanized area of the City. However, the Pleistocene-age marine terrace deposits underlying the project site are considered moderately sensitive for fossils. Excavations during project construction are expected to extend to about eight feet bgs, while fossils in similar sediments in the region are typically found at depths of 8 to 10 feet or more bgs. This impact would be significant in the event that ground disturbance during project construction encountered fossils. With recommendations for a qualified paleontologist to be available on-call as per Mitigation Measure CUL-2, impacts remain less than significant.

**Mitigation Measures**

CUL-2 Prior to the issuance of a grading permit by the City of Newport Beach, the project applicant shall retain a qualified paleontologist to be available on-call during ground-disturbing activities onsite and provide documentation of such retention to the City of Newport Beach Community Development Director. If fossils are encountered, all construction work within fifty (50) feet of the find shall cease, and the paleontologist shall assess the find for importance. Construction activities may continue in other areas. If, in consultation with the City, the discovery is determined to not be important, work will be permitted to continue in the area. Any resource shall be curated at a public, nonprofit institution with a research interest in the materials, such as the Natural History Museum of Los Angeles County or the Cooper Center (a partnership between California State University, Fullerton and the County of Orange).

**Finding**

**Finding 1** – The City hereby makes Finding 1. Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the DEIR. These changes are identified in the form of the mitigation measures above. The City of Newport Beach hereby finds that implementation of the mitigation measures is feasible, and the measures are therefore adopted.

**4. Hazards and Hazardous Materials**

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**Impact 5.7-2: The project site is on a list of hazardous materials sites.**

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**Onsite Soil and Soil Vapor Testing Results**

The 2017 Phase I ESA identified historical dry cleaners onsite and an existing dry cleaner across Corinthian Way from the northeast site boundary as a REC for the project site.

The 2017 soil vapor testing identified perchloroethylene (PCE) concentrations above the CHHSL for residential land use (0.48 µg/L) from all four soil vapor probes in the north end of the project site; concentrations at 5 feet bgs ranged from 1.1 to 1.3 µg/L. PCE concentrations in soil vapor samples from 15 feet bgs ranged from 3.9 to 4.4 µg/L, suggesting that the PCE detected was likely associated with regional groundwater contamination. PCE is toxic and listed as a carcinogen under Proposition 65 (DTSC 2018). Groundwater was encountered under the site at about 30 feet bgs in borings made as part of a 2014 geotechnical investigation of the site (Geocon West 2014).



A human health risk assessment based on the 2017 soil vapor testing found that cancer risk estimated for the highest soil vapor concentration of each chemical from the entire project site is four in one million (0.000004), above the state standard of one in one million (0.000001) for residential land use. The corresponding cancer risk for the three soil vapor concentrations from the southern part of the project site was one in one million, considered acceptable for residential use. The noncancer hazard indices were well below 1.0, the level considered acceptable for residential use.

The 2017 soil and soil gas investigation technical memorandum recommended mitigation for soil vapor consisting of a passive vapor barrier with the following components:

**Subslab Ventilation System:** A subslab collection and ventilation system should be installed under the five-story section of the residential building along Scott Drive. The system should consist of a series of PVC (polyvinyl chloride) gas collection pipes embedded in a permeable gravel layer. The collection pipes should be networked together and vented to the atmosphere. The purpose of the vent system will be to prevent the buildup or accumulation of VOCs in the underlying soil; the gases instead are passively diverted into the venting system and safely discharged to the atmosphere away from occupied areas and air intake vents.

**Membrane Barrier:** A horizontal synthetic membrane or a sprayed-on liner should be placed over the granular collection layer. The membrane provides a barrier to the intrusion of subsurface gases.

**Utility Trench Dams and Conduit Seals:** Gas barriers should be installed in the permeable backfill of utility trenches or the hollow spaces of electrical or cable conduit piping to prevent gases from migrating laterally into the soils beneath the building. The conduit seals can consist of polyurethane foam that is injected into the conduit piping at the point where the conduit enters the structure to prevent the infiltration of subsurface gases into interior space.

The 2017 Phase I ESA also stated that a vapor barrier would be needed below an underground parking structure.

The Phase II ESA completed on-site in 2013 found a concentration of 0.73 µg/L—exceeding the CHHSL for residential use, 0.48 µg/L—in one of three subslab soil vapor samples collected from beneath the site of two former dry-cleaning businesses in the north end of the project site. Concentrations above the CHHSL—1.5 and 1.4 µg/L, respectively—were also identified in two of seven soil vapor samples collected from the site perimeter. The historical uses of the property and adjoining properties are considered an REC.

Hazards from PCE contamination in soil vapor underneath the site would be a potentially significant impact unless mitigated.

#### **Asbestos-Containing Materials and Lead-Based Paint**

The 2017 ESA included a limited visual screening for ACM onsite. Suspect ACM onsite included vinyl flooring, vinyl flooring mastic, textured coatings, lay-in ceiling panels, roofing materials, wallboard, and joint compound. An asbestos survey and abatement, containment, and disposal



of ACM would be required under CFR Title 40 Section 61 Subpart M; SCAQMD Rule 1403; and 8 CCR Section 1529.

Lead-based paint could be present onsite. Lead must be contained during demolition activities pursuant to California Health and Safety Code Sections 17920.10 and 105255. Such work would also be subject to occupational exposure limits set forth in 8 CCR Section 1532.1.

### **Hazardous Materials Site Listings**

MacArthur Square Cleaners, formerly at 1701-H Corinthian Way, was identified on the Emissions Inventory Data (EMI), Resource Conservation and Recovery Act Small-Quantity Generator (RCRA-SQG), Enforcement and Compliance History Online (ECHO), Facility Index System (FINDS), HAZNET, and EDR Historical Cleaner databases. MacArthur Cleaners was present by 1986 and through at least 2005.

Green Hanger Cleaners at 4250 Scott Drive, was identified on the EDR Historical Cleaner and DRYCLEANERS databases. Both former dry cleaners are considered RECs for the project site. The subslab soil vapor samples described above were taken from below the sites of these two former cleaners.

Bacons Airport Photo Inc., which formerly operated onsite at 4251-B Martingale Way, was identified on the RCRA-SQG database. This former business is not considered a REC (see Appendix F.1 for further discussion).

The Phase I ESA discussed 10 off-site hazardous materials sites within about 0.8 mile of the project site.

After implementation of Mitigation Measures HAZ-1 and HAZ-2, project impacts would be less than significant.

### **Mitigation Measures**

HAZ-1 Before the City of Newport Beach issues a grading permit for the Proposed Project, the City of Newport Beach Chief Building Official or his/her designee shall verify that a passive ventilation system conforming to the following specifications has been included on project building plans. The City of Newport Beach Community Development Department shall verify that the ventilation system is built to such specifications during project construction.

- **Subslab Ventilation System:** A subslab collection and ventilation system shall be installed under the residential building. The system shall consist of a series of PVC (polyvinyl chloride) gas collection pipes embedded in a permeable gravel layer. The collection pipes shall be networked together and vented to the atmosphere. The purpose of the vent system will be to prevent the buildup or accumulation of VOCs (Volatile organic compounds) in the underlying soil; the gases instead are passively diverted into the venting system and safely discharged to the atmosphere away from occupied areas and air intake vents.

- **Membrane Barrier:** A horizontal synthetic membrane or a sprayed-on liner shall be placed over the granular collection layer. The membrane provides a barrier to the intrusion of subsurface gases.
- **Utility Trench Dams and Conduit Seals:** Gas barriers shall be installed in the permeable backfill of utility trenches or the hollow spaces of electrical or cable conduit piping to prevent gases from migrating laterally into the soils beneath the building. The conduit seals can consist of polyurethane foam that is injected into the conduit piping at the point where the conduit enters the structure to prevent the infiltration of subsurface gases into interior space.

HAZ-2 Prior to issuance of the first building permit, soil and soil vapor samples shall be collected from beneath the former Enjay Cleaners and soil samples shall be collected from beneath the proposed 0.5-acre public park site and tested for Volatile Organic Compounds (VOC) and Organochlorine Pesticides (OCP), respectively. The results shall be submitted to the Orange County Health Care Agency and City Building Official. In the event that soil concentrations exceed site-specific cleanup goals, affected soils shall be removed and properly treated/disposed of. Should soil vapor concentrations exceed site-specific cleanup goals, short-term soil vapor extraction and treatment shall be performed to reduce soil vapor concentrations. Institutional controls will be required if the soil and soil gas cannot achieve the cleanup goals for residential land use, and/or vapor mitigation measure (e.g., passive ventilation system) are implemented to protect the future building receptors.

## Finding

**Finding 1** – The City hereby makes Finding 1. Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the DEIR. These changes are identified in the form of the mitigation measures above. The City of Newport Beach hereby finds that implementation of the mitigation measures is feasible, and the measures are therefore adopted.

## 5. Public Services

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**Impact 5.12-1:**      **The Proposed Project would introduce new residents, workers, and structures into Newport Beach Fire Department’s service boundaries, thereby increasing the requirement for fire protection apparatus and personnel, but not resulting in the need for new or physically altered fire facilities.-related construction worker, delivery, and construction vehicle trips would not adversely affect the operations of intersections and roadways in the study area. [Threshold T-1]**

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The proposed development of 350 apartments and 7,500 square feet of commercial space is expected to combine with other Airport Area developments to generate an increased demand for fire protection and emergency medical services. The increase in population and employees and the proposed multistory residential buildings and ground-level retail uses may result in increased demand for service from NBFD in order to provide adequate fire protection and emergency medical services, including additional staffing, facilities, and equipment. The additional population

anticipated with the Proposed Project could also potentially affect NBFD's response time to the project site.

A paramedic unit would be dispatched from Fire Station 3 (Fashion Island), which is the closest paramedic unit to the site. In addition, Fire Station 7 has adequate space to support more personnel if required to serve the project. Therefore, the project would not result in a need for a new or physically altered fire station for the Newport Beach Fire Department ("NBFD") to maintain acceptable service ratios, response times or other performance objectives for fire protection services.

NBFD's operating budget is generated through tax revenues. Facilities, personnel, and equipment expansion and acquisition are tied to the City budget process and tax-base expansion. The project applicant/developer would be required to pay excise taxes to the City under Municipal Code Chapter 3.12, which was established for public improvements and facilities associated with NBFD, public libraries, and public parks. A portion of the taxes paid would be allocated for fire stations and firefighting apparatus. The project uses would also generate increased sales taxes and property taxes for the City's General Fund, some of which would be available to fund NBFD operations, including the needed staffing increase.

The City also involves NBFD in the development review process in order to ensure that the necessary fire prevention and emergency response features are incorporated into development projects. All site and building improvements proposed under the project would be subject to review and approval by NBFD prior to building permit and/or certificate of occupancy issuance.

Project development is required to comply with the current adopted fire codes, building codes, and nationally recognized fire and life safety standards of the City and NBFD, such as those outlined in Chapter 9.04 (Fire Code) of the Newport Beach Municipal Code, which impose design standards and requirements that seek to minimize and mitigate fire risk. Compliance with these codes and standards is ensured through the City's and NBFD's development review and building plan check process. For example, fire hydrants would be installed at key locations within the project site, as required by NBFD to meet the hose-pull requirements and provide adequate fire access for the land uses of the Proposed Project. Knox boxes would also be required where necessary (i.e., stairwells where the doors are locked for entry, vehicular and parking structure gated entries) to provide access for NBFD personnel.

After implementation of PS-1, project impacts would be less than significant.

### **Mitigation Measures**

PS-1        The project applicant/developer shall comply with the following measures related to fire protection and emergency services:

Prior to the issuance of a building permit, the project applicant/developer shall provide payment to the City of Newport Beach equivalent to the cost for purchasing and equipping a new rescue ambulance with patient transport and advanced life support ("ALS") capabilities to be located at Santa Ana Heights Fire Station No. 7. Because the cost of the ambulance exceeds the Project's

pro rata contribution to its cumulative impact, the Project applicant shall be entitled to reimbursement from the City on a pro rata share basis, as determined by the City.

The project applicant/developer shall participate, on a pro-rata basis, in any City-approved funding program for up to an additional six firefighter/paramedic personnel, as may be needed to fund staff for the new paramedic unit. The funding program may be a community facilities district or other funding program. Prior to the issuance of a building permit, the project applicant/developer shall execute a written agreement with the City of Newport Beach to participate in such a funding program if the City determines one is necessary and forms it prior to the City's issuance of the Project's first Certificate of Occupancy.

## **B. SIGNIFICANT UNAVOIDABLE ADVERSE IMPACTS**

There are no significant unavoidable adverse impacts.

## **VI. FINDINGS REGARDING ALTERNATIVES**

CEQA requires that an EIR include a discussion of reasonable project alternatives that would "feasibly attain most of the basic objectives of the project, but would avoid or substantially lessen any significant effects of the project, and evaluate the comparative merits of the alternatives" (CEQA Guidelines § 15126.6[a]).

The Proposed Project would result in potentially significant environmental effects prior to mitigation in the areas of air quality, biological resources, cultural resources, hazards and hazardous materials, and public services (fire protection and emergency services). However, with mitigation, impacts to these three topical areas would be avoided or reduced to less than significant levels. No significant and unavoidable impact would occur under implementation of the Proposed Project.

## **A. ALTERNATIVES CONSIDERED AND REJECTED DURING THE SCOPING/PROJECT PLANNING PROCESS**

The following is a discussion of the alternative considered during the scoping and planning process and the reasons why it was not selected for detailed analysis in the DEIR.

**Alternative Development Areas.** CEQA requires that the discussion of alternatives focus on alternatives to the project or its location that are capable of avoiding or substantially lessening any significant effects of the project. The key question and first step in the analysis is whether any of the significant effects of the project would be avoided or substantially lessened by putting the project in another location. Only locations that would avoid or substantially lessen any of the significant effects of the project need be considered for inclusion in the EIR (CEQA Guidelines Section 15126.6[f][2][A]). Key factors in evaluating the feasibility of potential offsite locations for EIR project alternatives include:

- If it is in the same jurisdiction.
- Whether development as proposed would require a General Plan Amendment.

- Whether the project applicant could reasonably acquire, control, or otherwise have access to the alternative site (or the site is already owned by the proponent). (CEQA Guidelines Section 15126.6[f][1])

The project applicant does not own or control other comparable property in the City, and the Proposed Project does not require a General Plan Amendment or Planned Community Development Plan Amendment. Moreover, the Proposed Project does not result in any significant, unavoidable impacts. Impacts that would be potentially significant prior to mitigation include air quality, biological resources, cultural resources, hazards and hazardous materials, and public services (fire protection and emergency services). Air quality measures are associated with the project's construction phase. Biological resource mitigation is limited to measures to protect migratory birds (potentially nesting birds at construction), and cultural resources mitigation includes archaeological and paleontological monitoring. These mitigation measures are likely to be required at any comparable alternative site in the City. The potential hazard is the detection of perchloroethylene (PCE), listed as a carcinogen under Proposition 65, in soil vapor from under the site at concentrations above the California Human Health Screening Level for residential land use. This will be mitigated to less than significant by required structural improvements (subslab ventilation system, membrane barrier and trench dams and conduit seals). For public services, the mitigation is to provide funding for an ambulance and to provide a pro rata share of the cost of increasing firefighter staffing. This measure likely would be required for any project that would increase demand for fire services and prompt a need for increased staffing in the City.

Conclusion: Based on this review, there are no feasible alternative project sites within the City that would accommodate the Proposed Project and reduce or eliminate significant environmental impacts. Therefore, this alternative was considered but rejected from further consideration.

## **B. ALTERNATIVES SELECTED FOR FURTHER ANALYSIS**

Based on the CEQA criteria, the following two alternatives were determined to represent a reasonable range of alternatives which have the potential to feasibly attain most of the basic objectives of the project but which may avoid or substantially lessen any the environmental effects of the project.

### **No Project Alternative**

This alternative assumes that the existing commercial development on the site would remain, and leases would be extended/renewed to continue commercial operations at the site. Under this alternative, no demolition of existing buildings would occur.

**Finding:** The City Council rejects the No Project/No Development Alternative on the basis of policy and economic factors as explained herein. (See Pub. Resources Code, § 21061.1; CEQA Guidelines, § 15364; see also *City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417; *California Native Plant Soc. v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 1001; *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 715.) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible this project alternative identified in the

FEIR. The No Project alternative would lessen environmental impacts in the areas of air quality, biological resources, cultural resources, geology and soils, greenhouse gas emissions, hazards and hazardous materials, public services, tribal cultural resources, and utilities and service systems. Compared to the Proposed Project, this alternative would have greater impacts related to aesthetics, hydrology and water quality, land use and planning, population and housing, and recreation. Overall, the No Project alternative would reduce impacts for nine environmental categories and increase impacts for six categories. Assuming full occupancy for the existing commercial buildings under the No Project alternative, this alternative could introduce a new significant impact for traffic. The inconsistency with the goals of the Newport Beach General Plan and Residential Overlay of the Newport Place Planned Community Development Plan vision for this area is an important land use consideration (impact greater than Proposed Project). Overall, the No Project alternative would result in a similar level of environmental impacts, but very different impacts. It would not be considered environmentally superior.

Moreover, the No Project alternative would prevent redevelopment of the project site. Therefore, none of the project objectives would be achieved under this alternative. The No Project alternative would not provide any of the project benefits that would occur with implementation of the Proposed Project, including enhancement of the site's character and design, dedication of publicly-accessible park space, sustainable development improvements (such as low-impact development, source control, site design, and treatment control best management practices that would improve drainage and water quality); economic revitalization, and affordable housing

### **Reduced Height and Density Alternative**

Under this alternative, the project's building height would be kept under the 55 feet. As a result, the fifth floor of residential units (63 units), 7,955 square-foot amenity deck, a top of parking structure would all be eliminated. The retail, park, and residential amenities would remain the same as the Proposed Project. As shown in Table 1-1, this alternative would include a total of 287 residential units, and the maximum structure height would be 55 feet.

**Finding:** The City Council rejects the Reduced Height and Density Alternative on the basis of policy and economic factors as explained herein. (See Pub. Resources Code, § 21061.1; CEQA Guidelines, § 15364; see also *City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417; *California Native Plant Soc. v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 1001; *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 715.) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible this project alternative identified in the FEIR.

The Reduced Height and Density alternative would lessen environmental impacts in the areas of air quality, greenhouse gas emissions, noise (operational), public services, recreation, transportation and traffic, and utilities and service systems. Impacts would be very similar for aesthetics, biological and cultural resources, geology and soils, hazards, hydrology and water quality, and land use and planning. This alternative would increase impacts to population and housing (jobs-housing balance). As with the Proposed Project, all impacts would be mitigated to less than significant. Overall, impacts under this alternative would be reduced in comparison to the Proposed Project.



The Reduced Height and Density alternative would represent a similar project as the Proposed Project, only with fewer housing units and less overall development intensity. Accordingly, as shown in Table 7-7, several of the project objectives would be achieved, but to a lesser extent. These includes objectives related to provision of housing, local jobs-housing balance, and onsite private recreation amenities. In addition, the Reduced Height and Density alternative would not allow for the provision of the 91 density bonus units allowed under both the City's zoning code and Government Code Section 65915 for the project. Instead, only 28 units associated with this alternative would be density bonus units.



## **Exhibit “C”**

### **Mitigation Monitoring Report Program**

February 2019 | Mitigation Monitoring and Reporting Program  
State Clearinghouse No. 2017101067

# NEWPORT CROSSINGS MIXED USE PROJECT

for City of Newport Beach

*Prepared for:*

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# 1. Mitigation Monitoring and Reporting Program

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## 1.1 PURPOSE OF MITIGATION MONITORING AND REPORTING PROGRAM

This Mitigation Monitoring and Reporting Program has been developed to provide a vehicle by which to monitor mitigation measures and conditions of approval outlined in the Newport Crossings Mixed Use Project Draft Environmental Impact Report (DEIR), State Clearinghouse No. 2017101067. The Mitigation Monitoring and Reporting Program (MMRP) has been prepared in conformance with Section 21081.6 of the Public Resources Code and City of Newport Beach Monitoring Requirements. Section 21081.6 states:

- (a) When making findings required by paragraph (1) of subdivision (a) of Section 21081 or when adopting a mitigated negative declaration pursuant to paragraph (2) of subdivision (c) of Section 21080, the following requirements shall apply:
  - (1) The public agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation. For those changes which have been required or incorporated into the project at the request of a responsible agency or a public agency having jurisdiction by law over natural resources affected by the project, that agency shall, if so requested by the lead or responsible agency, prepare and submit a proposed reporting or monitoring program.
  - (2) The lead agency shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based.

The State CEQA Guidelines Section 15097 provides clarification of mitigation monitoring and reporting requirements and guidance to local lead agencies on implementing strategies. The reporting or monitoring program must be designed to ensure compliance during project implementation. The City of Newport Beach is the lead agency for the Newport Crossings Mixed Use project and is therefore responsible for implementing the MMRP. The MMRP has been drafted to meet the requirements of Public Resources Code Section 21081.6 as a fully enforceable monitoring program.

The MMRP consists of the mitigation program and the measures to implement and monitor the mitigation program. The MMRP defines the following for the mitigation measure outlined in Table 1, *Mitigation Monitoring Requirements*:

- **Definition of Mitigation.** The mitigation measure contains the criteria for mitigation, either in the form of adherence to certain adopted regulations or identification of the steps to be taken in mitigation.

## Mitigation Monitoring and Reporting Program

- **Responsible Party or Designated Representative.** Unless otherwise indicated, the project applicant is the responsible party for implementing the mitigation, and the City of Newport Beach or a designated representative is responsible for monitoring the performance and implementation of the mitigation measures. To guarantee that the mitigation measure will not be inadvertently overlooked, a supervising public official acting as the Designated Representative is the official who grants the permit or authorization called for in the performance. Where more than one official is identified, permits or authorization from all officials shall be required.
- **Time Frame.** In each case, a time frame is provided for performance of the mitigation measure or review of evidence that mitigation has taken place. The performance points selected are designed to ensure that impact-related components of project implementation do not proceed without establishing that the mitigation is implemented or ensured. All activities are subject to the approval of all required permits from local, state, and federal agencies with permitting authority over the specific activity.

The numbering system in Table 1 corresponds with the numbering system used in the DEIR. The last column of the MMRP table will be used by the parties responsible for documenting when implementation of the mitigation measure has been completed. The ongoing documentation and monitoring of mitigation compliance will be completed by the City of Newport Beach. The completed MMRP and supplemental documents will be kept on file at the City of Newport Beach Community Development Department Planning Division.

## 1.2 PROJECT LOCATION

The approximately 5.69-acre project site is in the northern end of the City of Newport Beach (City). The project site is in the City's "Airport Area" planning subarea, which is bounded by Campus Drive to the north and west, SR-73 to the south, and Jamboree Road to the east. Within the Airport Area are established planned community development plans. The project site is in the Newport Place Planned Community. The site is generally bounded by Corinthian Way to the northeast, Martingale Way to the east, Scott Drive to the northwest, and Dove Street to the southwest. The site is approximately 0.2 mile east of John Wayne Airport.

The project site is pentagonal-shaped area comprising three legal lots; four Assessor Parcel Numbers (APNs): 427-172-02, -03, -05, and -06. Given the odd shape of the property, it does not have a definable width or depth.

## 1.3 PROJECT SUMMARY

The site is currently improved with the 58,277-squarefoot MacArthur Square shopping center, which was built in 1974. The shopping center consists of eight single-story commercial/retail buildings, surface parking, and various landscape (e.g., ornamental trees, shrubs) and hardscape improvements. MacArthur Square is characterized as an aging, underutilized, and underperforming shopping center that supports a variety of retail and commercial business, including restaurants and retail shops. Current tenants include several restaurants, a dance studio, retail stores, and professional and medical offices.

Project development includes demolition of approximately 58,277 square feet of existing buildings, surface parking for 462 vehicles, and hardscape improvements of MacArthur Square. Project development also requires removal of a number of ornamental trees and other landscape improvements.

## Mitigation Monitoring and Reporting Program

Upon clearing, the approximately 5.69-acre project site would be redeveloped with the proposed Newport Crossings Mixed Use project (proposed project). The proposed project would consist of the development of a multistory building that would house 350 apartment units, 2,000 square feet of “casual-dining” restaurant space, and 5,500 square feet of retail space. The project also includes the development of a 0.5-acre public park.

The established Newport Place Planned Community Development Standards (Residential Overlay) allow for a maximum residential density of 50 dwelling units per net acre; a minimum of 30 percent of the units in residential developments are required to be affordable to lower-income households. With a 30 percent allocation for lower-income households, the proposed project is entitled to the maximum 35 percent density bonus (91 additional units), increasing the total project density to 350 units.

## Mitigation Monitoring and Reporting Program

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## Mitigation Monitoring and Reporting Program

**Table 1 Mitigation Monitoring Requirements**

Mitigation Measure		Responsibility for Implementation	Timing	Responsibility for Monitoring	Monitor (Signature Required) (Date of Compliance)
<b>5.1 AIR QUALITY</b>					
AQ-1	<p>The construction contractor shall implement the following measure to reduce construction exhaust emissions during rough grading and rough grading soil hauling activities:</p> <ul style="list-style-type: none"> <li>Hauling of soil generated from rough grading activities shall be limited to a maximum of 269 trucks per day (538 one-way haul trips per day if 14-cubic-yard trucks are used) assuming a one-way haul distance of 20 miles. If the one-way truck haul distance for export of soil from rough grading activities is greater than 20 miles, as identified by the contractor(s), hauling shall be restricted to no more than 10,760 miles per day.</li> <li>Rough grading and rough grading soil hauling activities shall not overlap with other construction activities (demolition, site preparation, utilities, etc.)</li> </ul> <p>These requirements shall be noted on all construction management plans and verified by the City of Newport Beach prior to issuance of any construction permits and during rough grading and rough grading soil hauling activities.</p>	Project Applicant; Construction Contractor	During grading and construction	City of Newport Beach Community Development Department – Planning Division	
AQ-2	<p>The construction contractor shall implement the following measure to reduce construction exhaust emissions during demolition and demolition debris material export activities:</p> <ul style="list-style-type: none"> <li>Hauling of building demolition debris shall be limited to a maximum of 47 trucks per day (94 one-way haul trips per day if 18-cubic-yard trucks are used) assuming a one-way haul distance of 30 miles. If the one-way truck haul distance for export of building demolition debris is greater than 30 miles, as identified by the contractor(s), hauling shall be restricted to no more than 2,850 miles per day.</li> </ul>	Project Applicant; Construction Contractor	During grading and construction	City of Newport Beach Community Development Department – Planning & Building Division	

## Mitigation Monitoring and Reporting Program

**Table 1 Mitigation Monitoring Requirements**

Mitigation Measure		Responsibility for Implementation	Timing	Responsibility for Monitoring	Monitor (Signature Required) (Date of Compliance)
	<ul style="list-style-type: none"> <li>All demolition and demolition debris (building asphalt) hauling activities shall not overlap with other non-demolition construction activities (rough grading, site preparation, utilities, etc.).</li> </ul> <p>These requirements shall be noted on all construction management plans and verified by the City of Newport Beach prior to issuance of any construction permits and during demolition and demolition debris hauling activities.</p>				
AQ-3	<p>Construction contractors shall, at minimum, use equipment that meets the EPA's Tier 4 emissions standards for off-road diesel-powered construction equipment of 50 horsepower or greater for all phases of construction activities, unless it can be demonstrated to the City of Newport Beach Building Division with substantial evidence that such equipment is not available. Any emissions control device used by the contractor shall achieve emissions reductions that are no less than what could be achieved by Tier 4 emissions standards for a similarly sized engine, as defined by the California Air Resources Board's regulations.</p> <p>Prior to construction, the project engineer shall ensure that all construction (e.g., demolition and grading) plans clearly show the requirement for EPA Tier 4 emissions standards for construction equipment of 50 horsepower or greater for the specific activities stated above. During construction, the construction contractor shall maintain a list of all operating equipment in use on the construction site for verification by the City of Newport Beach. The construction equipment list shall state the makes, models, and numbers of construction equipment onsite. Equipment shall be properly serviced and maintained in accordance with the manufacturer's recommendations. Construction contractors shall also ensure that all nonessential idling of construction equipment is restricted to 5 minutes or less in compliance with Section 2449 of the California Code of Regulations, Title 13, Article 4.8, Chapter 9.</p>	Project Applicant, Construction Contractor	Prior to construction	City of Newport Beach Community Development Department – Planning & Building Division	

## Mitigation Monitoring and Reporting Program

**Table 1 Mitigation Monitoring Requirements**

Mitigation Measure		Responsibility for Implementation	Timing	Responsibility for Monitoring	Monitor (Signature Required) (Date of Compliance)
<b>5.2 BIOLOGICAL RESOURCES</b>					
BIO-1	<p>Prior to the commencement of any proposed actions (e.g., site clearing, demolition, grading) during the breeding/nesting season (September 1 through February 15), a qualified biologist contracted by the project applicant shall conduct a preconstruction survey(s) to identify any active nests in and adjacent to the proposed project site no more than three days prior to initiation of the action. If the biologist does not find any active nests that would be potentially impacted, the proposed action may proceed. However, if the biologist finds an active nest within or directly adjacent to the action area (within 100 feet) and determines that the nest may be impacted, the biologist shall delineate an appropriate buffer zone around the nest using temporary plastic fencing or other suitable materials, such as barricade tape and traffic cones. The buffer zone shall be determined by the biologist in consultation with applicable resource agencies and in consideration of species sensitivity and existing nest site conditions, and in coordination with the construction contractor. The qualified biologist shall serve as a construction monitor during those periods when construction activities occur near active nest areas to ensure that no inadvertent impacts on these nests occur. Only specified construction activities (if any) approved by the qualified biologist shall take place within the buffer zone until the nest is vacated. At the discretion of the qualified biologist, activities that may be prohibited within the buffer zone include but not be limited to grading and tree clearing. Once the nest is no longer active and upon final determination by the biologist, the proposed action may proceed within the buffer zone.</p> <p>The qualified biologist shall prepare a survey report/memorandum summarizing his/her findings and recommendations of the preconstruction survey. Any active nests observed during the survey shall be mapped on a current aerial photograph, including documentation of GPS coordinates, and included in the survey report/memorandum. The completed survey report/memorandum shall be submitted to the City of Newport Beach Community</p>	Project Applicant; Certified Biologist; Construction Contractor	Prior to commencement of any proposed actions (e.g., site clearing, demolition, grading)	City of Newport Beach Community Development Department – Planning Division	

## Mitigation Monitoring and Reporting Program

**Table 1 Mitigation Monitoring Requirements**

Mitigation Measure		Responsibility for Implementation	Timing	Responsibility for Monitoring	Monitor (Signature Required) (Date of Compliance)
	Development Department prior to construction-related activities that have the potential to disturb any active nests during the nesting season.				
<b>5.3 CULTURAL RESOURCES</b>					
CUL-1	Prior to the issuance of a grading permit by the City of Newport Beach, the project applicant shall retain a qualified archaeologist to periodically monitor ground-disturbing activities onsite and provide documentation of such retention to the City of Newport Beach Community Development Director. The archaeologist shall train project construction workers on the types of archaeological resources that could be found in site soils. The archaeologist shall periodically monitor project ground-disturbing activities. During construction activities, if Native American resources (i.e. Tribal Cultural Resources) are encountered, a Cultural Resource Monitoring and Discovery Plan (CRMDP) shall be created and implemented to lay out the proposed personnel, methods, and avoidance/recovery framework for tribal cultural resources monitoring and evaluation activities within the project area. A consulting Native American tribe shall be retained and compensated as a consultant/monitor for the project site from the time of discovery to the completion of ground disturbing activities to monitor grading and excavation activities. If archaeological resources are encountered, all construction work within 50 feet of the find shall cease, and the archaeologist shall assess the find for importance and whether preservation in place without impacts is feasible. Construction activities may continue in other areas. If, in consultation with the City and affected Native American tribe (as deemed necessary), the discovery is determined to not be important, work will be permitted to continue in the area. Any resource that is not Native American in origin and that cannot be preserved in place shall be curated at a public, nonprofit institution with a research interest in the materials, such as the South Central Coastal Information Center at California State University, Fullerton.	Project Applicant; Certified Archaeologist; Construction Contractor	Prior to issuance of grading permits	City of Newport Beach Community Development Department – Planning & Building Division	

## Mitigation Monitoring and Reporting Program

**Table 1 Mitigation Monitoring Requirements**

	Mitigation Measure	Responsibility for Implementation	Timing	Responsibility for Monitoring	Monitor (Signature Required) (Date of Compliance)
CUL-2	Prior to the issuance of a grading permit by the City of Newport Beach, the project applicant shall retain a qualified paleontologist to be available on-call during ground-disturbing activities onsite and provide documentation of such retention to the City of Newport Beach Community Development Director. If fossils are encountered, all construction work within 50 feet of the find shall cease, and the paleontologist shall assess the find for importance. Construction activities may continue in other areas. If, in consultation with the City, the discovery is determined to not be important, work will be permitted to continue in the area. Any resource shall be curated at a public, nonprofit institution with a research interest in the materials, such as the Natural History Museum of Los Angeles County or the Cooper Center (a partnership between California State University, Fullerton and the County of Orange)..	Project Applicant; Certified Paleontologist; Construction Contractor	Prior to issuance of grading permits	City of Newport Beach Community Development Department – Planning Division	
<b>5.4 HAZARDS AND HAZARDOUS MATERIALS</b>					
HAZ-1	<p>Before the City of Newport Beach issues a grading permit for the proposed project, the City of Newport Beach Chief Building Official or his/her designee shall verify that a passive ventilation system conforming to the following specifications has been included on project building plans. The City of Newport Beach Community Development Department shall verify that the ventilation system is built to such specifications during project construction.</p> <ul style="list-style-type: none"> <li>▪ <b>Subslab Ventilation System:</b> A subslab collection and ventilation system shall be installed under the residential building. The system shall consist of a series of PVC (polyvinyl chloride) gas collection pipes embedded in a permeable gravel layer. The collection pipes shall be networked together and vented to the atmosphere. The purpose of the vent system will be to prevent the buildup or accumulation of VOCs in the underlying soil; the gases instead are passively diverted into the venting system and safely discharged to the atmosphere away from occupied areas and air intake vents.</li> </ul>	Project Applicant; Construction Contractor	Prior to issuance of grading permits	City of Newport Beach Community Development Department – Building Division	

## Mitigation Monitoring and Reporting Program

**Table 1 Mitigation Monitoring Requirements**

Mitigation Measure		Responsibility for Implementation	Timing	Responsibility for Monitoring	Monitor (Signature Required) (Date of Compliance)
	<ul style="list-style-type: none"> <li>▪ <b>Membrane Barrier:</b> A horizontal synthetic membrane or a sprayed-on liner shall be placed over the granular collection layer. The membrane provides a barrier to the intrusion of subsurface gases.</li> <li>▪ <b>Utility Trench Dam and Conduit Seals:</b> Gas barriers shall be installed in the permeable backfill of utility trenches or the hollow spaces of electrical or cable conduit piping to prevent gases from migrating laterally into the soils beneath the building. The conduit seals can consist of polyurethane foam that is injected into the conduit piping at the point where the conduit enters the structure to prevent the infiltration of subsurface gases into interior space.</li> </ul>				
HAZ-2	<p>Prior to issuance of the first building permit, soil and soil vapor samples shall be collected from beneath the former Enjay Cleaners and soil samples shall be collected from beneath the proposed 0.5-acre public park site and tested for Volatile Organic Compounds (VOC) and Organochlorine Pesticides (OCP), respectively. The results shall be submitted to the Orange County Health Care Agency and City Building Official. In the event that soil concentrations exceed site-specific cleanup goals, affected soils shall be removed and properly treated/disposed of. Should soil vapor concentrations exceed site-specific cleanup goals, short-term soil vapor extraction and treatment shall be performed to reduce soil vapor concentrations. Institutional controls will be required if the soil and soil gas cannot achieve the cleanup goals for residential land use, and/or vapor mitigation measure (e.g., passive ventilation system) are implemented to protect the future building receptors.</p>	Project Applicant; Construction Contractor	Prior to issuance of the first building permit	City of Newport Beach Community Development Department – Building Division	

## Mitigation Monitoring and Reporting Program

**Table 1 Mitigation Monitoring Requirements**

Mitigation Measure		Responsibility for Implementation	Timing	Responsibility for Monitoring	Monitor (Signature Required) (Date of Compliance)
<b>5.5 PUBLIC SERVICES</b>					
PS-1	<p>The project applicant/developer shall comply with the following measures related to fire protection and emergency services:</p> <ul style="list-style-type: none"> <li>Prior to the issuance of a building permit, the project applicant/developer shall provide payment to the City of Newport Beach equivalent to the cost for purchasing and equipping a new rescue ambulance with patient transport and advanced life support (ALS) capabilities to be located at Santa Ana Heights Fire Station No. 7. Because the cost of the ambulance exceeds the Project's pro rata contribution to its cumulative impact, the Project applicant shall be entitled to reimbursement from the City on a pro rata share basis, as determined by the City.</li> <li>The project applicant/developer shall participate, on a pro-rata basis, in any City-approved funding program for up to an additional six firefighter/paramedic personnel, as may be needed to fund staff for the new paramedic unit. The funding program may be a community facilities district or other funding program. Prior to the issuance of a building permit, the project applicant/developer shall execute a written agreement with the City of Newport Beach to participate in such a funding program if the City determines one is necessary and forms it prior to the City's issuance of the Project's first Certificate of Occupancy.</li> </ul>	Project Applicant	Prior to issuance of building permits	City of Newport Beach Community Development Department – Planning Division	



## Mitigation Monitoring and Reporting Program

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