

MAY 2025



**FINAL
ENVIRONMENTAL IMPACT REPORT**

HIVE LIVE



PREPARED FOR:



PREPARED BY:

Michael Baker
INTERNATIONAL

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FINAL ENVIRONMENTAL IMPACT REPORT

Hive Live

State Clearinghouse No. 2024060115

LEAD AGENCY:



City of Costa Mesa
77 Fair Drive
Costa Mesa, California 92626
Contact: Chris Yeager
714.754.4883

May 2025

JN 200230

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Chapter 1 Introduction



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1. Introduction

1.1 PURPOSE OF THE ENVIRONMENTAL IMPACT REPORT

1.1.1 California Environmental Quality Act Compliance

In accordance with the *California Environmental Quality Act Guidelines* (CEQA Guidelines) Section 15088, the City of Costa Mesa, as the Lead Agency, has evaluated the comments received on the *Hive Live Draft Environmental Impact Report* (Draft EIR).

The Draft EIR for the proposed Hive Live (herein referenced as the project) was distributed to potential responsible and trustee agencies, interested groups, and organizations. The Draft EIR was made available for public review and comment for a period of 45 days. The public review period for the Draft EIR established by the CEQA Guidelines commenced on February 14, 2025, ended on March 31, 2025.

The Final EIR consists of the following components:

- Chapter 1 – Introduction;
- Chapter 2 – Response to Comments; and
- Chapter 3 – Errata
- Chapter 4 – Mitigation Monitoring and Reporting Program.

Due to its length, the text of the Draft EIR is not included with this document; however, it is included by reference in this Final EIR. None of the corrections or clarifications to the Draft EIR identified in this document constitutes “significant new information” pursuant to CEQA Guidelines Section 15088.5. As a result, a recirculation of the Draft EIR is not required.



1. Introduction

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Chapter 2 Response to Comments



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2. Response to Comments

In accordance with the *California Environmental Quality Act Guidelines* (CEQA Guidelines) Section 15088, the City of Costa Mesa, as the Lead Agency, evaluated the written comments received on the Draft Environmental Impact Report (EIR) (State Clearinghouse No. 2024060115) for Hive Live (herein referenced as the project) and has prepared the following responses to the comments received. This Response to Comments chapter is part of the Final EIR in accordance with CEQA Guidelines Section 15132.

A list of public agencies, tribes, and organizations that provided comments on the Draft EIR is presented below. Each comment letter is assigned a letter number. Individual comments within each communication have been numbered so comments can be cross-referenced with specific responses. Following this list, the text of the communication is reprinted and followed by the corresponding response.

Table 2-1 Comment Letters Received

COMMENTER	DATE	LETTER NUMBER
AGENCIES		
Orange County Public Works	March 25, 2025	A1
TRIBES		
Gabrielino Tongva Indians of California	February 14, 2025	T1
Juaneño Band of Mission Indians Acjachemen Nation - Belardes	February 19, 2025 March 13, 2025	T2
ORGANIZATIONS		
Lozeau Drury LLP (on behalf of Supporters Alliance for Environmental Responsibility [SAFER])	March 21, 2025	O1
WITHDRAWN		
Mitchell M. Tsai Law Firm (on behalf of Western States Regional Council of Carpenters [WSRCC])	March 31, 2025 March 31, 2025	O2



County Administration South
601 North Ross Street
Santa Ana, CA 92701

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Santa Ana, CA 92702

(714) 667-8800

info@ocpw.ocgov.com

OCPublicWorks.com



Administrative
Services



OC Development
Services



OC Facilities Design
& Construction
Management



OC Facilities
Maintenance
& CUF



OC Fleet Services



OC Construction



OC Environmental
Resources



OC Operations &
Maintenance



OC Infrastructure
Programs



OC Survey



March 25, 2025

Attn: Hive Live Draft EIR
Chris Yeager, Senior Planner
City of Costa Mesa
Economic & Development Services Department
77 Fair Drive, Costa Mesa, CA 92626

Subject: NCL25-0001 – Notice of Availability of a Draft Environmental Impact Report (SCH No. 2024060115) for the Hive Live Project

Dear Chris Yeager,

Thank you for the opportunity to comment on the Notice of Availability of a Draft Environmental Impact Report (SCH No. 2024060115) for the Hive Live Project. The County offers the following comments for your consideration:

OC Infrastructure Programs:

The Orange County Flood Control District (OCFCD) has two facilities located adjacent to the project site, Facility Number Do3 (Greenville-Banning Channel) and Do3Po8 (Times Storm Drain). Any potential impacts to OCFCD facilities (hydraulics, structures, right-of-way, a new agreement or an amendment to an existing agreement, access, operations and maintenance, future repairs, or improvements, etc.) should be identified and appropriately mitigated in consultation with OC Public Works thru application of a Flood Encroachment Permit. For information regarding the permit application process, please refer to the Encroachment Permits website <https://myoceservices.ocgov.com/>. Technical reviews and approvals for the proposed work will be accomplished within the permit process.

If you have any questions regarding this comment, please contact Nick Zamarripa at (714) 647-3985 or Giatho (Tho) Tran at (714) 647-3972. in OC Infrastructure, or Virginia Gomez at (714) 667-1614 in OC Development Services.

Please continue to keep the County of Orange on the distribution list for future notifications related to the Project.

Sincerely,

DocuSigned by:

Virginia Gomez
ED76DCA58AD94B6...

Virginia Gomez, Senior Planner
OC Public Works /OC Development Services
601 North Ross Street
Santa Ana, California 92701
Virginia.Gomez@ocpw.ocgov.com

cc: Cindy Salazar, Planning Division Manager, OC Development Services
Giatho Tran, Senior Civil Engineer, OC Infrastructure Programs

A1-1



2. Response to Comments

A1. RESPONSES TO COMMENTS FROM ORANGE COUNTY PUBLIC WORKS, MARCH 25, 2025.

- A1-1 The commenter, Orange County Public Works (OC Public Works), acknowledges that the Orange County Flood Control District (OCFCD) has two facilities located adjacent to the project site, Facility Number Do3 (Greenville banning channel) and Do3Po8 (Times Storm Drain). OC Public works clarifies that any potential project-related impacts to OCFCD facilities (such as hydraulics, structures, right-of-way, a new agreement or an amendment to an existing agreement, access, operations and maintenance, future repairs, or improvements, etc.) should be identified and appropriately mitigated in consultation with OC Public Works thru application of a Flood Encroachment Permit.

Potential impacts to OCFCD facilities are discussed in Draft EIR Sections 5.9, *Hydrology and Water Quality*, and 5.17, *Utilities and Service Systems*. Specifically, as discussed in Draft EIR Section 5.9 (page 5.9-9), the site is currently divided into six drainage management areas (DMA), of which, three eventually connect to OCFCD facilities. Draft EIR Section 5.9 (pages 5.9-23 through 5.9-27), on-site storm drains would connect to existing storm drain lines along Susan Street and Sunflower Street, and ultimately drain to the Greenville banning channel at two locations (Facility Number Do3 [Greenville banning channel] and Do3Po8 [Times Storm Drain]), as shown in Exhibit 5.9-2, Proposed Drainage. As detailed in Draft EIR Table 5.9-2, *Existing and Proposed Drainage Conditions*, the implementation of the proposed on-site storm drain system would help reduce flows in some portions of the site, but slightly increase flows in other portions of the site. Based on the discussion with the City, slightly increased flows would result in nominal increases and would not affect permitted flow capabilities of the City's MS4 Permit. Based on the *Hive Live 3333 Susan Street, Costa Mesa, CA 92626, Preliminary Drainage Analysis*, prepared by FUSCOE Engineering Incorporated, dated April 2024 (Draft EIR Appendix H, *Hydrology and Water Quality Studies*), the existing pipe capacities are sufficient to accommodate the project's proposed flows in these lateral connections. Further, while some points of discharge at the project site would increase flows, the overall site would experience a reduction of flows into storm drains downstream. As such, the proposed project would not substantially alter the existing drainage pattern of the site, would ultimately reduce flows downstream, and does not involve the alteration of any natural drainage channels, streams, or rivers. Impacts would be less than significant in this regard.

Nonetheless, as detailed in Draft EIR Section 3.6, *Permits and Approvals*, the anticipated discretionary approvals and ministerial actions include, but are not limited to, issuance of an Encroachment Permit from OCFCD. The Encroachment Permit is used for a broad range of activities that occur in or upon County of Orange right-of-way, including the use of OCFCD facilities.¹ The Encroachment Permit would be subject to approval from OCFCD as part of the permitting process (i.e., prior to issuance of building permits).

¹ Orange County Public Works, *Encroachment Permit*, <https://ocds.ocpublicworks.com/service-areas/oc-development-services/permitting-services/encroachment-permits>, accessed April 1, 2025.



2. Responses to Comments

The commenter also requests to keep the County of Orange on the distribution list for future notifications related to the proposed project. The County of Orange will remain on the City's distribution list for public notices pertaining to the proposed project.

COMMENT LETTER T1

From: Christina Marsden Conley <christina.marsden@alumni.usc.edu>

Sent: Friday, February 14, 2025 9:45 AM

To: YEAGER, CHRISTOPHER <CHRISTOPHER.YEAGER@costamesaca.gov>

Cc: DRAPKIN, SCOTT <SCOTT.DRAPKIN@costamesaca.gov>

Subject: Re: Notice of Availability – Draft EIR for Hive Live Project at 3333 Susan Avenue, Costa Mesa, CA

Good morning,

We are in receipt of this project - thank you for the follow up. We have a concern with respect to the APE as it sits within a village site and is positive for tribal cultural resources. We will need to be involved for the monitoring of all ground disturbances. If there is more than one interested tribe, a rotation may be implemented.

Please keep me updated on the progress.

Thank you and take care,

Christina

tehoovet taamet

CHRISTINA CONLEY

•Tribal Cultural Resource Administrator Under Tribal Chair, Robert Dorame

•Native American Heritage Commission contact

•UCLA Scholar-in-Residence

•CSUDH NAGPRA Oversight Committee

•Catalina Tribal Coalition

•Coalition of California of State Tribes, Executive Board

https://file.lacounty.gov/SDSInter/lac/1137966_AREPORTONHARMSCountyofLosAngeles.pdf

T1-1



GABRIELINO TONGVA INDIANS OF CALIFORNIA

The Gabrielino Tongva Indians of California tribe is a direct descendant, traditionally and culturally recognized in the State of California as the aboriginal tribe to encompass the entire Los Angeles Basin area to Laguna Beach, extending to the Channel Islands of Santa Catalina, San Nicholas and San Clemente Islands

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T1-1
cont'd



2. Response to Comments

T1. RESPONSES TO COMMENTS FROM GABRIELINO TONGVA INDIANS OF CALIFORNIA, FEBRUARY 14, 2025.

T1-1 The commenter states the project site sits within a village site and is positive for tribal cultural resources and thus, requests the Gabrielino Tongva Indians of California tribe provide monitoring for all ground disturbing activities. Pursuant to Public Resources Code Section 21080.3.1, “[w]ithin 14 days of determining that an application for a project is complete or a decision by a public agency to undertake a project, the lead agency shall provide formal notification to the designated contact of, or a tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, which shall be accomplished by means of at least one written notification that includes a brief description of the proposed project and its location, the lead agency contact information, and a notification that the California Native American tribe has 30 days to request consultation pursuant to this section.” As detailed in Draft EIR Section 5.16, *Tribal Cultural Resources* (page 5.16-8), the City sent SB 18/AB 52 notification letters to applicable tribes, including the Gabrielino Tongva Indians of California, formally inviting tribes to consult with the City on the proposed project. However, City staff received no requests for consultation on the proposed project, other than the Gabrieleño Band of Mission Indians – Kizh Nation. No request for consultation was received from the Gabrielino Tongva Indians of California. Pursuant to Public Resources Code Section 21082.3(d), if “[t]he lead agency has complied with subdivision (d) of Section 21080.3.1 and the California Native American tribe has failed to request consultation within 30 days” the “lead agency may certify an environmental impact report... for a project with a significant impact on an identified tribal cultural resource.”

Although City staff did not receive a response from the Gabrielino Tongva Indians of California to consult on the project regarding potential tribal cultural resources, consultation efforts with the Gabrieleño Band of Mission Indians – Kizh Nation was conducted, as documented in the Draft EIR (pages 5.16-8 through 5.16-10). Based on consultation efforts, the City acknowledges the sensitivity of the area for potential tribal cultural resources to be present in the general area and the sensitivity of potential unknown tribal cultural resources to be present on-site. As such, Draft EIR Mitigation Measure TCR-1 would require the applicant to retain a Native American monitor from the Native American tribe that is culturally and ancestrally affiliated with the project site: such as the Gabrieleño Band of Mission Indians – Kizh Nation, as approved by the City (herein referenced as the Native American Monitor). Per Draft EIR Mitigation Measure TCR-1, the Native American Monitor is required to monitor the proposed project’s ground disturbing activities (e.g., demolition, grubbing/clearing, rough grading, precise grading, mass grading, trenching, excavation, boring, auguring, and weed abatement on previously disturbed and undisturbed ground). The Native American Monitor would be required to prepare daily monitoring logs that include descriptions of the relevant ground disturbing activities, locations of such activities, observed soil types, and the presence or absence of tribal cultural-related materials. In the event resources are discovered during any phase of ground disturbing activities, and it is determined by the Native American Monitor, in consultation with the City, to be Native American in origin, then all construction work within 50 feet (15 meters) of the find must cease until the Native American Monitor can assess the find. Work would be allowed to



2. Responses to Comments

continue outside of the buffer zone. The Native American Monitor would determine the appropriate treatment of the discovered resource that is consistent with the tribe's cultural practices, including reinternment on site in an appropriate area determined by the tribe in consultation with the City and the applicant, or retention of the discovered resource for educational purposes. Construction work within the buffer area surrounding a tribal cultural resource discovery shall resume only after the Native American Monitor has (1) appropriately inventoried and documented the resource and any surrounding material of significance to the tribe, and (2) completed the appropriate treatment of the resource. Monitoring for tribal cultural resources by the Native American Monitor would be considered concluded upon the City's receipt of written confirmation from the Native American Monitor that ground disturbing activities with potential impacts to discovered and/or undiscovered tribal cultural resources are complete.

Further, State Health and Safety Code Section 7050.5 states no further disturbance shall occur until the County coroner has made a determination of origin and disposition pursuant to State Public Resources Code Section 5097.98 (PPP TCR-1). The County coroner must be notified of the find immediately. If the remains are determined to be Native American, the County coroner would notify the NAHC, which would determine and notify a Most Likely Descendent (MLD). With the permission of the landowner or his/her authorized representative, the MLD may inspect the site of the discovery. The MLD shall complete the inspection and make recommendations or preferences for treatment within 48 hours of being granted access to the site. The MLD recommendations may include scientific removal and nondestructive analysis of human remains and items associated with Native American burials, preservation of Native American human remains and associated items in place, relinquishment of Native American human remains and associated items to the descendants for treatment, or any other culturally appropriate treatment. Following implementation of Draft EIR Mitigation Measure TCR-1 and compliance with existing State regulations (PPP TCR-1), impacts to tribal cultural resources would be reduced to less than significant levels.

COMMENT LETTER T2

From: Joyce Perry <kaamalam@gmail.com>

Sent: Wednesday, February 19, 2025 2:02 PM

To: YEAGER, CHRISTOPHER <CHRISTOPHER.YEAGER@costamesaca.gov>

Cc: DRAPKIN, SCOTT <SCOTT.DRAPKIN@costamesaca.gov>

Subject: Re: Notice of Availability – Draft EIR for Hive Live Project at 3333 Susan Avenue, Costa Mesa, CA

Good Afternoon,

I am writing on behalf of the Juaneno Band of Mission Indians, Acjachemen Nation- Belardes. Thank you for providing the DEIR for the project. Due to the determination that there is a potential for disturbing previously unknown archaeological resources during excavation into native soil, we ask that native american monitoring by representatives of our tribe, as well as the creation of an inadvertent discovery plan be included as mitigation measures.

Please provide any draft mitigation measures for review.

Thank you

Joyce Stanfield Perry

Húu'uni 'óomaqati yáamaqati- Teach peace



Payomkawichum Kaamalam - President

kaamalam.com

Juaneño Band of Mission Indians, Acjachemen Nation

Cultural Resource Director

T2-1

From: Joyce Perry <kaamalam@gmail.com>

Sent: Thursday, March 13, 2025 12:18 PM

To: YEAGER, CHRISTOPHER <CHRISTOPHER.YEAGER@costamesaca.gov>

Cc: DRAPKIN, SCOTT <SCOTT.DRAPKIN@costamesaca.gov>

Subject: Re: Notice of Availability – Draft EIR for Hive Live Project at 3333 Susan Avenue, Costa Mesa, CA

Good Afternoon,

We object to the language of the mitigation measures regarding Tribal Cultural Resources requiring a retention of a monitor for the Kizh Nation.

This project is taking place within our territory. It is inappropriate to adopt mitigation measures excluding our tribe from monitoring ground disturbing activities on our lands. Please see the below requested mitigation measures on behalf of our tribe. We request to review any finalized mitigation measures before adoption. Thank you

TCR-1: Retention of a Native American Monitor Prior to Commencement of Ground-Disturbing Activities.

a) The Project applicant shall retain a Native American Monitor from or approved by the Juaneno Band of Mission Indians, Acjachemen Nation- Belardes. The monitor shall be retained prior to the commencement of any ground-disturbing activity for the subject project at all project locations (i.e., both on-site and any off-site locations that are included in the project description/definition and/or required in connection with the project, such as public improvement work). "Ground-disturbing activity" shall include, but is not limited to, demolition, pavement removal, potholing, auguring, grubbing, tree removal, boring, grading, excavation, drilling, and trenching.

b) A copy of the executed monitoring agreement shall be submitted to the (City) prior to the commencement of any ground-disturbing activity, or the issuance of any permit necessary to commence grounddisturbing activity.

c) The monitor will complete daily monitoring logs that will provide descriptions of the relevant ground-disturbing activities, the type of construction activities performed, locations of ground-disturbing activities, soil types, cultural-related materials, and any other facts, conditions, materials, or discoveries of significance to the Tribe. Monitor logs will identify and describe any discovered tribal cultural resources (TCRs), including but not limited to, Native American cultural and historical artifacts, remains, places of significance, etc., as well as any discovered Native American (ancestral) human remains and burial goods. Copies of monitor logs will be provided to the Project applicant upon written request to the Tribe.

d) On-site tribal monitoring shall conclude upon the latter of the following (1) written confirmation to the Tribe or Tribal monitoring agency from a designated point of contact for the Project applicant that all ground-disturbing activities and phases that may involve the Project are complete; or (2) a determination and written notification by the Tribe or Tribal monitoring agency to the Director of Community Development, or designee that no future, planned construction activity and/or development/construction phase at the Project site possesses the potential to impact TCRs.

TCR-2: Unanticipated Discovery of Tribal Cultural Resource Objects (Non-Funerary/Non-Ceremonial).

a) Upon discovery of any tribal cultural resources (TCRs), all construction activities in the immediate

T2-2

vicinity of the discovery shall cease (i.e., not less than the surrounding 50 feet) and shall not resume until the discovered TCR has been fully assessed by the Native American Monitor. The Tribe or Tribal monitoring agency will recover and retain all discovered TCRs in the form and/or manner the Tribe deems appropriate, in the Tribe's sole discretion, and for any purpose the Tribe deems appropriate, including for educational, cultural and/or historic purposes.

TCR-3: Unanticipated Discovery of Human Remains and Associated Funerary or Ceremonial Objects.

- a) Native American human remains are defined in PRC 5097.98 (d)(1) as an inhumation or cremation, and in any state of decomposition or skeletal completeness. Funerary objects, called associated grave goods in Public Resources Code Section 5097.98, are also to be treated according to this statute.
- b) If Native American human remains and/or grave goods are discovered or recognized on the project site, then Public Resource Code 5097.9 as well as Health and Safety Code Section 7050.5 shall be followed.
- c) Human remains and grave/burial goods shall be treated alike per California Public Resources Code section 5097.98(d)(1) and (2).
- d) Preservation in place (i.e., avoidance) is the preferred manner of treatment for discovered human remains and/or burial goods.
- e) Any discovery of human remains/burial goods shall be kept confidential to prevent further disturbance.

Thank you, and please let me know if you have any questions.

Joyce Stanfield Perry
Húu'uni 'óomaqati yáamaqati- Teach peace



Payomkawichum Kaamalam - President
kaamalam.com

Juaneño Band of Mission Indians, Acjachemen Nation
Cultural Resource Director

T2-2
cont'd

Mitigation Measure Draft

Hive Live Project
3333 Susan Avenue
Costa Mesa, CA

TCR-1: Retention of a Native American Monitor Prior to Commencement of Ground-Disturbing Activities.

a) The Project applicant shall retain a Native American Monitor from or approved by the Juaneno Band of Mission Indians, Acjachemen Nation- Belardes. The monitor shall be retained prior to the commencement of any ground-disturbing activity for the subject project at all project locations (i.e., both on-site and any off-site locations that are included in the project description/definition and/or required in connection with the project, such as public improvement work). "Ground-disturbing activity" shall include, but is not limited to, demolition, pavement removal, potholing, auguring, grubbing, tree removal, boring, grading, excavation, drilling, and trenching.

b) A copy of the executed monitoring agreement shall be submitted to the (City) prior to the commencement of any ground-disturbing activity, or the issuance of any permit necessary to commence grounddisturbing activity.

c) The monitor will complete daily monitoring logs that will provide descriptions of the relevant ground-disturbing activities, the type of construction activities performed, locations of ground-disturbing activities, soil types, cultural-related materials, and any other facts, conditions, materials, or discoveries of significance to the Tribe. Monitor logs will identify and describe any discovered tribal cultural resources (TCRs), including but not limited to, Native American cultural and historical artifacts, remains, places of significance, etc., as well as any discovered Native American (ancestral) human remains and burial goods. Copies of monitor logs will be provided to the Project applicant upon written request to the Tribe.

d) On-site tribal monitoring shall conclude upon the latter of the following (1) written confirmation to the Tribe or Tribal monitoring agency from a designated point of contact for the Project applicant that all ground-disturbing activities and phases that may involve the Project are complete; or (2) a determination and written notification by the Tribe or Tribal monitoring agency to the Director of Community Development, or designee that no future, planned construction activity and/or development/construction phase at the Project site possesses the potential to impact TCRs.

TCR-2: Unanticipated Discovery of Tribal Cultural Resource Objects (Non-Funerary/Non-Ceremonial).

a) Upon discovery of any tribal cultural resources (TCRs), all construction activities in the immediate vicinity of the discovery shall cease (i.e., not less than the surrounding 50 feet) and shall not resume until the discovered TCR has been fully assessed by the Native American Monitor. The Tribe or Tribal monitoring agency will recover and retain all discovered TCRs in the

T2-2
cont'd

form and/or manner the Tribe deems appropriate, in the Tribe's sole discretion, and for any purpose the Tribe deems appropriate, including for educational, cultural and/or historic purposes.

TCR-3: Unanticipated Discovery of Human Remains and Associated Funerary or Ceremonial Objects.

- a) Native American human remains are defined in PRC 5097.98 (d)(1) as an inhumation or cremation, and in any state of decomposition or skeletal completeness. Funerary objects, called associated grave goods in Public Resources Code Section 5097.98, are also to be treated according to this statute.
- b) If Native American human remains and/or grave goods are discovered or recognized on the project site, then Public Resource Code 5097.9 as well as Health and Safety Code Section 7050.5 shall be followed.
- c) Human remains and grave/burial goods shall be treated alike per California Public Resources Code section 5097.98(d)(1) and (2).
- d) Preservation in place (i.e., avoidance) is the preferred manner of treatment for discovered human remains and/or burial goods.
- e) Any discovery of human remains/burial goods shall be kept confidential to prevent further disturbance.

T2-2
cont'd



2. Responses to Comments

T2. RESPONSES TO COMMENTS FROM JUANEÑO BAND OF MISSION INDIANS ACJACHEMEN NATION - BELARDES, FEBRUARY 19, 2025 AND MARCH 13, 2025.

T2-1 Refer to Response to Comment T1-1.

T2-2 As discussed in Response to Comment T1-1, the City notified tribes of the project, for the purpose of SB 18 and AB 52. For those tribes that requested consultation pertaining to potential impacts to tribal cultural resources, the City conducted consultations and agreed upon appropriate mitigation to reduce potential impacts to less than significant levels. Refer to Response to Comment T1-1 regarding recommended mitigation measures. Following implementation of Draft EIR Mitigation Measure TCR-1 and compliance with existing State regulations (PPP TCR-1), impacts to tribal cultural resources as well as human remains, if any, would be reduced to less than significant levels.



T 510.836.4200
F 510.836.4205

1939 Harrison Street, Ste. 150
Oakland, CA 94612

www.lozeaudrury.com
richard@lozeaudrury.com

COMMENT LETTER 01

Via Email

March 21, 2025

Christopher Yeager, Senior Planner
Planning Division
Economic and Development Services Department
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
christopher.yeager@costamesaca.gov

**Re: Comment on Draft Environmental Impact Report, Hive Live Project
(SCH 2024060115)**

Dear Mr. Yeager:

This comment is submitted on behalf of Supporters Alliance for Environmental Responsibility ("SAFER") regarding the Draft Environmental Impact Report ("DEIR") prepared for the Hive Live Project (SCH 2024060115), which proposes the development of a three-building, five-story, mixed use apartment and commercial complex with three wrap around parking garages, one for each apartment building. Building A would contain 315 residential units, Building B would contain 346 residential units, and Building C would contain 389 residential units. The project is located at the cross streets of Susan Street and South Coast Drive on Assessor Parcel Numbers 140-041-61 in the City of Costa Mesa ("Project").

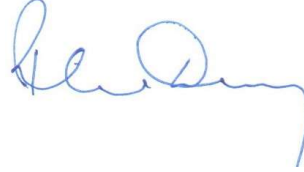
SAFER is concerned that the DEIR fails as an informational document and fails to impose all feasible mitigation measures to reduce the Project's impacts. SAFER requests that the Community Development Department address these shortcomings in a revised draft environmental impact report ("RDEIR") and recirculate the RDEIR prior to considering approvals for the Project.

SAFER reserves the right to supplement these comments during the administrative process. *Galante Vineyards v. Monterey Peninsula Water Management Dist.*, 60 Cal. App. 4th 1109, 1121 (1997).

01-1

March 21, 2025
Comment on Draft Environmental Impact Report, Hive Live Project
(SCH 2024060115)
Page 2 of 2

Sincerely,

A handwritten signature in blue ink, appearing to read 'Richard Drury', with a stylized, cursive script.

Richard Drury
Lozeau Drury LLP

01-1
cont'd



2. Response to Comments

01. RESPONSES TO COMMENTS FROM LOZEAU DRURY LLP (ON BEHALF OF SUPPORTERS ALLIANCE FOR ENVIRONMENTAL RESPONSIBILITY [SAFER]), MARCH 21, 2025.

- O1-1 The commenter is writing on behalf of Supporters Alliance for Environmental Responsibility (SAFER). The commenter claims that the Draft EIR is not informative and fails to impose all feasible mitigation measures to reduce the project's significant environmental impacts. However, the commenter does not specifically raise any concerns on how the document is not informative, nor how the City did not apply mitigation in a manner that does not reduce the project's potentially significant impacts. The commenter does not directly challenge specific information provided in the Draft EIR. It is unclear what clarifications the commenter is requesting.

The Draft EIR addresses the environmental effects associated with the implementation of the proposed project. CEQA requires that local government agencies consider the environmental consequences before taking action on projects over which they have discretionary approval authority. The intent of this EIR is to analyze the potential environmental consequences of the project, inform the public, and support informed decisions by the City of Costa Mesa and other local and State governmental agency decision makers. Issues considered potentially significant are addressed in Chapter 5, *Environmental Analysis*; issues determined to have no impact and how the determinations were made are provided in Chapter 8, *Impacts Found Not to Be Significant*.

This Draft EIR has been prepared pursuant to the requirements of CEQA and the City of Costa Mesa's CEQA procedures. The City of Costa Mesa, as the lead agency, has reviewed and revised all submitted drafts, technical studies, and reports as necessary to reflect its own independent judgment, including reliance on City technical personnel from other departments and review of all technical subconsultant reports.

Data for this Draft EIR are derived from field observations; discussions with affected agencies; analysis of adopted plans and policies; review of available studies, reports, data, and similar literature; and specialized environmental assessments (air quality and greenhouse gas emissions, cultural resources, geological resources, hazards and hazardous materials, hydrology and water quality, noise, transportation, and water supply).

Each environmental topic is analyzed in a separate section that discusses: the thresholds used to determine if a significant impact would occur; the methodology to identify and evaluate the potential impacts of the project; the existing environmental setting; the potential adverse and beneficial effects of the project; the level of impact significance before mitigation; the mitigation measures for the proposed project; the level of significance after mitigation is incorporated; and the potential cumulative impacts of the proposed project and other existing, approved, and proposed development in the area. Draft EIR Table 1-1, *Summary of Environmental Impacts, Mitigation Measures and Levels of Significance After Mitigation*, summarizes the project impacts, mitigation measures, and levels of significance before and after mitigation. Upon implementation of mitigation measures proposed throughout the Draft EIR, no significant and unavoidable impacts have been identified. All recommended mitigation measures,



2. Responses to Comments

determined by the City to be reasonable and feasible, would reduce the project's potentially significant impacts to less than significant levels.

As discussed throughout this Final EIR, none of the clarifications made in this document constitutes "significant new information" pursuant to CEQA Guidelines Section 15088.5. As a result, a recirculation of the Draft EIR is not required.

The commenter also states that SAFER reserves the right to provide supplemental comments during the project's administrative process.



COMMENT LETTER 02

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VIA E-MAIL

March 31, 2025

Chris Yeager
Senior Planner
Economic & Development Services Dept.
City of Costa Mesa
77 Fair Drive, 2nd Floor
Em :christopher.yeager@costamesa.gov

RE: **City of Costa Mesa, Hive Live Project – Draft Environmental
Impact Report (SCH# 2024060115)**

Dear Chris Yeager:

On behalf of the Western States Regional Council of Carpenters (“**Western Carpenters**” or “**WSRCC**”), my Office is submitting these comments regarding the City of Costa Mesa’s (“**City**”) March 6, 2025 Draft Environmental Impact Report (“**DEIR**”) for the Hive Live (SCH# 2024060115) (“**Project**”).

WSRCC would like to withdraw their prior March 31, 2025 Comment Letter.

Should the City have any questions or concerns, please feel free to contact my Office.

Sincerely,

Omar Corona
Attorneys for Western States Regional Council of Carpenters

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139 South Hudson Avenue
Suite 200
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VIA E-MAIL

March 31, 2025

Chris Yeager
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77 Fair Drive, 2nd Floor
Costa Mesa, CA 92626
Em: christopher.yeager@costamesaca.gov

**RE: City of Costa Mesa's Hive Live Project –
Draft Environmental Impact Report (SCH# 2024060115)**

Dear Chris Yeager,

On behalf of the Western States Regional Council of Carpenters (“**Western States Carpenters**” or “**WSRCC**”), our firm is submitting these comments in connection with the City of Costa Mesa’s (“**City**”) Draft Environmental Impact Report (“**DEIR**”) for the Hive Live Project (“**Project**”).

According to the DEIR, the Project as proposed would be constructed on an approximately 14.25-acre site located at 3333 Susan Street, Costa Mesa, 92626 (the “**Project Site**”), bounded by bound Sunflower Avenue to the north, Susan Street to the east, South Coast Drive to the south, and a public trail (the “Rail Trail”), a pump station, and Anduril Industries to the west. The Project would demolish the existing Hive Creative Office Campus and former Los Angeles Chargers practice field on the Project Site and construct a new multi-phased master-planned residential community with up to 1,050 dwelling units (rental/apartment units) in three buildings, 3,692 square feet of retail uses, and 335,958 square feet of open space. The Project will require approval of a General Plan Amendment, Zoning Amendment, Specific Plan Amendment, Tentative Parcel Map, Master Plan, Development Agreement and Density Bonus Agreement. (DEIR at pp. 1-3 – 4.)

The Western States Carpenters is a labor union representing over 90,000 union carpenters in 12 states, including California, and has a strong interest in well-ordered

land use planning and in addressing the environmental impacts of development projects. Individual members of the Western States Carpenters live, work, and recreate in the City and surrounding communities and would be directly affected by the Project's environmental impacts.

WSRCC expressly reserves the right to supplement these comments at or prior to hearings on the Project, and at any later hearing and proceeding related to this Project. Gov. Code, § 65009, subd. (b); Pub. Res. Code, § 21177, subd. (a); see *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal.App.4th 1184, 1199-1203; see also *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal.App.4th 1109, 1121.

WSRCC incorporates by reference all comments related to the Project or its CEQA review, including the prior Mitigated Negative Declaration and the Environmental Impact Report. See *Citizens for Clean Energy v City of Woodland* (2014) 225 Cal.App.4th 173, 191 (finding that any party who has objected to the project's environmental documentation may assert any issue timely raised by other parties).

Moreover, WSRCC requests that the City provide notice for any and all notices referring or related to the Project issued under the California Environmental Quality Act (**CEQA**) (Pub. Res. Code, § 21000 *et seq.*), and the California Planning and Zoning Law ("**Planning and Zoning Law**") (Gov. Code, §§ 65000–65010). California Public Resources Code Sections 21092.2, and 21167(f) and California Government Code Section 65092 require agencies to mail such notices to any person who has filed a written request for them with the clerk of the agency's governing body.

I. THE CITY SHOULD REQUIRE THE USE OF A LOCAL WORKFORCE TO BENEFIT THE COMMUNITY'S ECONOMIC DEVELOPMENT AND ENVIRONMENT

The City should require the Project to be built by contractors who participate in a Joint Labor-Management Apprenticeship Program approved by the State of California and make a commitment to hiring a local workforce.

Community benefits such as local hire can also be helpful to reduce environmental impacts and improve the positive economic impact of the Project. Local hire provisions requiring that a certain percentage of workers reside within 10 miles or less of the Project site can reduce the length of vendor trips, reduce greenhouse gas emissions, and provide localized economic benefits. As environmental consultants Matt Hagemann and Paul E. Rosenfeld note:

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[A]ny local hire requirement that results in a decreased worker trip length from the default value has the potential to result in a reduction of construction-related GHG emissions, though the significance of the reduction would vary based on the location and urbanization level of the project site.

March 8, 2021 SWAPE Letter to Mitchell M. Tsai re Local Hire Requirements and Considerations for Greenhouse Gas Modeling.

Workforce requirements promote the development of skilled trades that yield sustainable economic development. As the California Workforce Development Board and the University of California, Berkeley Center for Labor Research and Education concluded:

[L]abor should be considered an investment rather than a cost—and investments in growing, diversifying, and upskilling California’s workforce can positively affect returns on climate mitigation efforts. In other words, well-trained workers are key to delivering emissions reductions and moving California closer to its climate targets.¹

Furthermore, workforce policies have significant environmental benefits given that they improve an area’s jobs-housing balance, decreasing the amount and length of job commutes and the associated greenhouse gas (GHG) emissions. In fact, on May 7, 2021, the South Coast Air Quality Management District found that that the “[u]se of a local state-certified apprenticeship program” can result in air pollutant reductions.²

Locating jobs closer to residential areas can have significant environmental benefits. As the California Planning Roundtable noted in 2008:

People who live and work in the same jurisdiction would be more likely to take transit, walk, or bicycle to work than residents of less balanced

¹ California Workforce Development Board (2020) Putting California on the High Road: A Jobs and Climate Action Plan for 2030 at p. ii, *available at* <https://laborcenter.berkeley.edu/wp-content/uploads/2020/09/Putting-California-on-the-High-Road.pdf>.

² South Coast Air Quality Management District (May 7, 2021) Certify Final Environmental Assessment and Adopt Proposed Rule 2305 – Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce Emissions Program, and Proposed Rule 316 – Fees for Rule 2305, Submit Rule 2305 for Inclusion Into the SIP, and Approve Supporting Budget Actions, *available at* <http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2021/2021-May7-027.pdf?sfvrsn=10>.

communities and their vehicle trips would be shorter. Benefits would include potential reductions in both vehicle miles traveled and vehicle hours traveled.³

Moreover, local hire mandates and skill-training are critical facets of a strategy to reduce vehicle miles traveled (VMT). As planning experts Robert Cervero and Michael Duncan have noted, simply placing jobs near housing stock is insufficient to achieve VMT reductions given that the skill requirements of available local jobs must match those held by local residents.⁴ Some municipalities have even tied local hire and other workforce policies to local development permits to address transportation issues. Cervero and Duncan note that:

In nearly built-out Berkeley, CA, the approach to balancing jobs and housing is to create local jobs rather than to develop new housing. The city's First Source program encourages businesses to hire local residents, especially for entry- and intermediate-level jobs, and sponsors vocational training to ensure residents are employment-ready. While the program is voluntary, some 300 businesses have used it to date, placing more than 3,000 city residents in local jobs since it was launched in 1986. When needed, these carrots are matched by sticks, since the city is not shy about negotiating corporate participation in First Source as a condition of approval for development permits.

Recently, the State of California verified its commitment towards workforce development through the Affordable Housing and High Road Jobs Act of 2022, otherwise known as Assembly Bill No. 2011 (“**AB2011**”). AB2011 amended the Planning and Zoning Law to allow ministerial, by-right approval for projects being built alongside commercial corridors that meet affordability and labor requirements.

³ California Planning Roundtable (2008) Deconstructing Jobs-Housing Balance at p. 6, available at <https://cproundtable.org/static/media/uploads/publications/cpr-jobs-housing.pdf>

⁴ Cervero, Robert and Duncan, Michael (2006) Which Reduces Vehicle Travel More: Jobs-Housing Balance or Retail-Housing Mixing? Journal of the American Planning Association 72 (4), 475-490, 482, available at <http://reconnectingamerica.org/assets/Uploads/UTCT-825.pdf>.

The City should consider utilizing local workforce policies and requirements to benefit the local area economically and to mitigate greenhouse gas, improve air quality, and reduce transportation impacts.

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II. THE CITY SHOULD IMPOSE TRAINING REQUIREMENTS FOR THE PROJECT'S CONSTRUCTION ACTIVITIES TO PREVENT COMMUNITY SPREAD OF COVID-19 AND OTHER INFECTIOUS DISEASES

Construction work has been defined as a Lower to High-risk activity for COVID-19 spread by the Occupations Safety and Health Administration. Recently, several construction sites have been identified as sources of community spread of COVID-19.⁵

The Western States Carpenters recommend that the City adopt additional requirements to mitigate public health risks from the Project's construction activities. The Western States Carpenters requests that the City require safe on-site construction work practices as well as training and certification for any construction workers on the Project Site.

In particular, based upon the Western States Carpenters' experience with safe construction site work practices, the Western States Carpenters recommends that the City require that while construction activities are being conducted at the Project Site:

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Construction Site Design:

- The Project Site will be limited to two controlled entry points.
- Entry points will have temperature screening technicians taking temperature readings when the entry point is open.
- The Temperature Screening Site Plan shows details regarding access to the Project Site and Project Site logistics for conducting temperature screening.
- A 48-hour advance notice will be provided to all trades prior to the first day of temperature screening.

⁵ Santa Clara County Public Health (June 12, 2020) COVID-19 CASES AT CONSTRUCTION SITES HIGHLIGHT NEED FOR CONTINUED VIGILANCE IN SECTORS THAT HAVE REOPENED, *available at* <https://www.sccgov.org/sites/covid19/Pages/press-release-06-12-2020-cases-at-construction-sites.aspx>.

- The perimeter fence directly adjacent to the entry points will be clearly marked indicating the appropriate 6-foot social distancing position for when you approach the screening area. Please reference the Apex temperature screening site map for additional details.
- There will be clear signage posted at the project site directing you through temperature screening.
- Provide hand washing stations throughout the construction site.

Testing Procedures:

- The temperature screening being used are non-contact devices.
- Temperature readings will not be recorded.
- Personnel will be screened upon entering the testing center and should only take 1-2 seconds per individual.
- Hard hats, head coverings, sweat, dirt, sunscreen or any other cosmetics must be removed on the forehead before temperature screening.
- Anyone who refuses to submit to a temperature screening or does not answer the health screening questions will be refused access to the Project Site.
- Screening will be performed at both entrances from 5:30 am to 7:30 am.; main gate [ZONE 1] and personnel gate [ZONE 2]
- After 7:30 am only the main gate entrance [ZONE 1] will continue to be used for temperature testing for anybody gaining entry to the project site such as returning personnel, deliveries, and visitors.
- If the digital thermometer displays a temperature reading above 100.0 degrees Fahrenheit, a second reading will be taken to verify an accurate reading.

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- If the second reading confirms an elevated temperature, DHS will instruct the individual that he/she will not be allowed to enter the Project Site. DHS will also instruct the individual to promptly notify his/her supervisor and his/her human resources (HR) representative and provide them with a copy of Annex A.

Planning

- Require the development of an Infectious Disease Preparedness and Response Plan that will include basic infection prevention measures (requiring the use of personal protection equipment), policies and procedures for prompt identification and isolation of sick individuals, social distancing (prohibiting gatherings of no more than 10 people including all-hands meetings and all-hands lunches) communication and training and workplace controls that meet standards that may be promulgated by the Center for Disease Control, Occupational Safety and Health Administration, Cal/OSHA, California Department of Public Health or applicable local public health agencies.⁶

The United Brotherhood of Carpenters and Carpenters International Training Fund has developed COVID-19 Training and Certification to ensure that Carpenter union members and apprentices conduct safe work practices. The City should require that all construction workers undergo COVID-19 Training and Certification before being allowed to conduct construction activities at the Project Site.

The Western States Carpenters has also developed a rigorous Infection Control Risk Assessment (“**ICRA**”) training program to ensure it delivers a workforce that understands how to identify and control infection risks by implementing protocols to

⁶ See also The Center for Construction Research and Training, North America’s Building Trades Unions (April 27 2020) NABTU and CPWR COVID-19 Standards for U.S. Construction Sites, available at https://www.cpw.com/sites/default/files/NABTU_CPWR_Standards_COVID-19.pdf; Los Angeles County Department of Public Works (2020) Guidelines for Construction Sites During COVID-19 Pandemic, available at https://dpw.lacounty.gov/building-and-safety/docs/pw_guidelines-construction-sites.pdf.

protect themselves and all others during renovation and construction projects in healthcare environments.⁷

ICRA protocols are intended to contain pathogens, control airflow, and protect patients during the construction, maintenance and renovation of healthcare facilities. ICRA protocols prevent cross contamination, minimizing the risk of secondary infections in patients at hospital facilities.

The City should require the Project to be built using a workforce trained in ICRA protocols.

III. THE CITY SHOULD EXERCISE ITS AUTHORITY IN NEGOTIATING A DEVELOPMENT AGREEMENT TO OBTAIN ADDITIONAL COMMUNITY BENEFITS, ENVIRONMENTAL MITIGATION, AND PROJECT IMPROVEMENTS

Development agreements are a tool for municipalities to capture and receive community benefits while granting project proponents certainty for project entitlements.⁸ The City should exercise its lawful authority to enter into a Development Agreement with the Project applicant to secure additional community benefits (including local hire and apprenticeship requirements to spur local economic development) and additional environmental mitigation for the impacted community as well as project revisions that ameliorate potential environmental impacts consistent with this comment letter.

IV. THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

CEQA is a California statute designed to inform decision-makers and the public about the potential significant environmental effects of a project. 14 California Code of Regulations (“**CEQA Guidelines**”), § 15002, subd. (a)(1).⁹ At its core, its purpose is to “inform the public and its responsible officials of the environmental consequences of

⁷ For details concerning the Western States Carpenters’ ICRA training program, *see* <https://icrahealthcare.com/>.

⁸ Hanson Hom, Vivian Kahn, and Matt Taecker (2017) *Best Practices for Implementing a Community Benefits Program* California Planning Roundtable, available at https://cproundtable.org/static/media/uploads/infill/community_benefits_final_07152017.docx.pdf

⁹ The CEQA Guidelines, codified in Title 14 of the California Code of Regulations, section 15000 et seq., are regulatory guidelines promulgated by the state Natural Resources Agency for the implementation of CEQA. Pub. Res. Code, § 21083. The CEQA Guidelines are given “great weight in interpreting CEQA except when . . . clearly unauthorized or erroneous.” *Center for Biological Diversity v. Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204, 217.

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their decisions *before* they are made. Thus, the EIR ‘protects not only the environment but also informed self-government[.]’ *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564 (internal citation omitted).

To achieve this purpose, CEQA mandates preparation of an Environmental Impact Report (“**EIR**”) for projects so that the foreseeable impacts of pursuing the project can be understood and weighed. *Communities for a Better Environment v. Richmond* (2010) 184 Cal. App. 4th 70, 80. The EIR requirement “is the heart of CEQA.” CEQA Guidelines, § 15003(a).

CEQA directs public agencies to avoid or reduce environmental damage, when possible, by requiring alternatives or mitigation measures. CEQA Guidelines, § 15002, subds. (a)(2)-(3); see also *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners of the City of Oakland* (2001) 91 Cal.App.4th 1344, 1354; *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 400. The Environmental Impact Report (EIR) serves to provide public agencies and the public in general with information about the effect that a proposed project is likely to have on the environment and to “identify ways that environmental damage can be avoided or significantly reduced.” CEQA Guidelines, § 15002, subd. (a)(2).

A public agency must prepare an EIR whenever substantial evidence supports a “fair argument” that a proposed project “may have a significant effect on the environment.” Pub. Res. Code, §§ 21100, 21151; CEQA Guidelines, §§ 15002, subds. (f)(1)-(2), 15063; *No Oil, supra*, 13 Cal.App.3d at p. 75; *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 111-112. If the project has a significant effect on the environment, the agency may approve the project only upon finding that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns” specified in Public Resources Code section 21081. See CEQA Guidelines, §§ 15092, subds. (b)(2)(A)-(B).

Essentially, should a lead agency be presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect. CEQA Guidelines, §§ 15064(f)(1)-(2); see *No Oil, supra*, 13 Cal.App.3d at p. 75 (internal citations and quotations omitted). Substantial evidence includes “enough relevant information and reasonable inferences from this information

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that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.” CEQA Guidelines, § 15384, subd. (a).

The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.” *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal. App. 4th 1344, 1354 (“*Berkeley Jets*”); *County of Inyo v. Yorty* (1973) 32 Cal. App. 3d 795, 810.

The preparation and circulation of an EIR is more than a set of technical hurdles for agencies and developers to overcome. *Communities for a Better Environment v. Richmond* (2010) 184 Cal.App.4th 70, 80 (quoting *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449-450). The EIR’s function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been considered. *Id.* For the EIR to serve these goals it must present information so that the foreseeable impacts of pursuing the project can be understood and weighed, and the public must be given an adequate opportunity to comment on that presentation before the decision to go forward is made. *Id.*

A strong presumption in favor of requiring preparation of an EIR is built into CEQA. This presumption is reflected in what is known as the “fair argument” standard under which an EIR must be prepared whenever substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment. *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602; *Friends of “B” St. v. City of Hayward* (1980) 106 Cal.3d 988, 1002.

Further, it is the duty of the lead agency, not the public, to conduct the proper environmental studies. “The agency should not be allowed to hide behind its own failure to gather relevant data.” *Sundstrom, supra*, 202 Cal.App.3d at p. 311. “Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences.” *Ibid*; see also *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1382 (lack of study enlarges the scope of the fair argument which may be made based on the limited facts in the record).

Thus, refusal to complete recommended studies lowers the already low threshold to establish a fair argument. The court may not exercise its independent judgment on the

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omitted material by determining whether the ultimate decision of the lead agency would have been affected had the law been followed. *Environmental Protection Information Center v. Cal. Dept. of Forestry* (2008) 44 Cal.4th 459, 486 (internal citations and quotations omitted). The remedy for this deficiency would be for the trial court to issue a writ of mandate. *Ibid.*

While the courts review an EIR using an ‘abuse of discretion’ standard, the reviewing court is not to *uncritically* rely on every study or analysis presented by a project proponent in support of its position. *Berkeley Keep Jets, supra*, 91 Cal.App.4th at p. 1355 (quoting *Laurel Heights, supra*, 47 Cal.3d at pp. 391, 409 fn. 12) (internal quotations omitted). A clearly inadequate or unsupported study is entitled to no judicial deference. *Ibid.* Drawing this line and determining whether the EIR complies with CEQA’s information disclosure requirements presents a question of law subject to independent review by the courts. *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 515; *Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48, 102, 131. As the First District Court of Appeal has previously stated, prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process. *Berkeley Keep Jets, supra*, 91 Cal.App.4th at p. 1355 (internal quotations omitted).

Both the review for failure to follow CEQA’s procedures and the fair argument test are questions of law, thus, the de novo standard of review applies. *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435. Whether the agency’s record contains substantial evidence that would support a fair argument that the project may have a significant effect on the environment is treated as a question of law. *Consolidated Irrigation Dist., supra*, 204 Cal.App.4th at p. 207; Kostka and Zischke, *Practice Under the Environmental Quality Act* (2017, 2d ed.) at § 6.76.

Section 15088.5(a) of the CEQA Guidelines provides that an EIR must be recirculated whenever there is disclosure of significant new information. Significant new information includes: (1) disclosure of a new significant environmental impact resulting from the project or from a new proposed mitigation measure; (2) disclosure of a substantial increase in the severity of an environmental impact unless mitigation measures are adopted that reduce the impact to a level of insignificance; and (3) disclosure of a feasible project alternative or mitigation measure considerably different from others previously analyzed which would clearly lessen the significant

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environmental impacts of the project which the project proponents decline to adopt. *Id.*

Additionally, an EIR must be recirculated when it is so fundamentally inadequate and conclusory in nature that meaningful public review and comment is precluded. *Id.* [citing *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043].

Here, as discussed below, the DEIR fails to substantiate all of its conclusions to allow meaningful public review and comment, provide adequate mitigation measures, and fully assess all pertinent environmental factors. Accordingly, this comment letter discloses significant new information, necessitating revision and recirculation of the DEIR.

V. THE DEIR IS INADEQUATE UNDER CEQA AND SHOULD BE REVISED AND RECIRCULATED

A. The DEIR Fails to Support Various Findings Regarding Environmental Impacts with Substantial Evidence

CEQA requires that an EIR identify and discuss the significant effects of a Project, how those significant effects can be mitigated or avoided. CEQA Guidelines § 15126.2; PRC §§ 21100(b)(1), 21002.1(a). If a project has a significant effect on the environment, an agency may approve the project only upon finding that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.” CEQA Guidelines § 15092(b)(2) (A–B). Such findings must be supported by substantial evidence. CEQA Guidelines § 15091(b).

When new information is brought to light showing that an impact previously discussed in the DEIR but found to be insignificant with or without mitigation in the DEIR’s analysis has the potential for a significant environmental impact supported by substantial evidence, the DEIR must consider and resolve the conflict in the evidence. See *Visalia Retail, L.P. v. City of Visalia* (2018) 20 Cal. App. 5th 1, 13, 17; see also *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, 1109. While a lead agency has discretion to formulate standards for determining significance and the need for mitigation measures—the choice of any standards or thresholds of significance must be “based to the extent possible on scientific and factual data and an exercise of reasoned judgment based on substantial evidence. CEQA Guidelines § 15064(b); *Cleveland Nat’l Forest Found. v. San Diego Ass’n of Gov’ts* (2017) 3 Cal. App. 5th 497, 515; *Mission Bay Alliance v. Office of Community Inv. & Infrastructure* (2016) 6 Cal. App. 5th 160,

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206. And when there is evidence that an impact could be significant, an EIR cannot adopt a contrary finding without providing an adequate explanation along with supporting evidence. *East Sacramento Partnership for a Livable City v. City of Sacramento* (2016) 5 Cal. App. 5th 281, 302.

In addition, a determination that regulatory compliance will be sufficient to prevent significant adverse impacts must be based on a project-specific analysis of potential impacts and the effect of regulatory compliance. In *Californians for Alternatives to Toxics v. Department of Food & Agric.* (2005) 136 Cal. App. 4th 1, the court set aside an EIR for a statewide crop disease control plan because it did not include an evaluation of the risks to the environment and human health from the proposed program but simply presumed that no adverse impacts would occur from use of pesticides in accordance with the registration and labeling program of the California Department of Pesticide Regulation. *See also Ebbetts Pass Forest Watch v Department of Forestry & Fire Protection* (2008) 43 Cal. App. 4th 936, 956 (fact that Department of Pesticide Regulation had assessed environmental effects of certain herbicides in general did not excuse failure to assess effects of their use for specific timber harvesting project).

Here, for the reasons discussed in detail below, the DEIR fails to comply with the foregoing requirements.

1. *Air Quality, including Greenhouse Gases and Particulate Matter*

While the DEIR acknowledges the Project's potentially significant impacts on Air Quality, it fails to provide sufficient evidence or supporting analysis for the public to adequately discern and evaluate those impacts. For instance, while the DEIR acknowledges that the Project may expose sensitive receptors to substantial pollutant concentrations, it fails to describe with sufficient specificity what those sensitive receptors are and how they would be affected, and further fails to provide sufficient analysis regarding the potential pollutant concentrations and associated risks. Without fully understanding the Project's potential impacts on air quality, it may be practically impossible to determine the adequacy of the Project's proposed mitigation measures regarding air quality impacts.

Regarding Greenhouse Gas (GHG) emissions specifically, the DEIR only cursorily acknowledges and evaluates these impacts instead of providing detailed analysis and

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evidence as required by the CEQA Guidelines. For instance, the DEIR does not provide a comprehensive analysis of the potential GHG emissions.

CEQA Guidelines § 15064.4 allow a lead agency to determine the significance of a project's GHG impact via a qualitative analysis (e.g., extent to which a project complies with regulations or requirements of state/regional/local GHG plans), and/or a quantitative analysis (e.g., using model or methodology to estimate project emissions and compare it to a numeric threshold). So too, CEQA Guidelines allow lead agencies to select what model or methodology to estimate GHG emissions so long as the selection is supported with substantial evidence, and the lead agency "should explain the limitations of the particular model or methodology selected for use." CEQA Guidelines § 15064.4(c).

Here, the DEIR appears to invoke both qualitative and quantitative analyses. However, the DEIR does not rely on any quantitative analysis to determine compliance with any numerical thresholds and instead relies on the Project's purported consistency with various land use plans and regulatory schemes, in making a determination that the Project's GHG impacts are less than significant.

CEQA Guidelines sections 15064.4(b)(3) and 15183.5(b) allow a lead agency to consider a project's consistency with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of GHG emissions.

CEQA Guidelines §§ 15064.4(b)(3) and 15183.5(b)(1) make clear qualified GHG reduction plans or CAP should include the following features:

- (1) **Inventory:** Quantify GHG emissions, both existing and projected over a specified time period, resulting from activities (e.g., projects) within a defined geographic area (e.g., lead agency jurisdiction);
- (2) **Establish GHG Reduction Goal:** Establish a level, based on substantial evidence, below which the contribution to GHG emissions from activities covered by the plan would not be cumulatively considerable;
- (3) **Analyze Project Types:** Identify and analyze the GHG emissions resulting from specific actions or categories of actions anticipated within the geographic area;

- (4) **Craft Performance Based Mitigation Measures:** Specify measures or a group of measures, including performance standards, that substantial evidence demonstrates, if implemented on a project-by-project basis, would collectively achieve the specified emissions level;
- (5) **Monitoring:** Establish a mechanism to monitor the CAP progress toward achieving said level and to require amendment if the plan is not achieving specified levels;

Collectively, the above-listed features tie qualitative measures to quantitative results, which in turn become binding via proper monitoring and enforcement by the jurisdiction—all resulting in real GHG reductions for the jurisdiction as a whole, and the substantial evidence that the incremental contribution of an individual project is not cumulatively considerable.

Second, it is not enough for an environmental document to conclude there are no significant GHG emissions impacts based upon a determination of consistency with a GHG Reduction Plan, without also making a determination based upon substantial evidence of the project’s actual cumulative contributions to GHG emissions. In other words, a determination of consistency is only a starting point.¹⁰ Compliance or non-compliance is merely one factor to be considered. The lead agency must explain how reliance on any particular plan or regulation addresses a potential impact.

Here, however, the DEIR fails to demonstrate that the GHG Reduction Plan includes the above-listed requirements to be considered a qualified CAP or GHG Reduction Plan for the City. As such, the DEIR leaves an analytical gap showing that compliance with said plans can be used for a project-level significance determination for the Project. The DEIR also fails to explain how compliance with the GHG Reduction Plan leads to a less than significant impact.¹¹

¹⁰ Cal. Nat. Res. Agency, Final Statement of Reasons for Regulatory Action, Amendments to the State CEQA Guidelines, OAL Notice File No. Z-2018-0116-12 (Nov. 2018), at p. 95; see also *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal. App. 4th 1170, 1207 (“[A]n inconsistency between a project and other land use controls does not in itself mandate a finding of significance. [Citations.]”)

¹¹ Natural Resources Agency (Nov. 2018) Final Statement of Reasons For Regulatory Action: Amendments To The State CEQA Guidelines (“2018 Final Statement of Reason”), p. 19 (adding reference to section 15183.5 to section 15064.4(b)(3) because it was “needed to clarify that lead agencies may rely on plans prepared pursuant to section 15183.5 in evaluating a project’s greenhouse gas emissions[,] ... [which] is consistent with the Agency’s Final Statement of Reasons for the

Additionally, regarding particulate matter, the DEIR summarily concludes that the Project “would generate nominal particulate matter emissions during operation,” but does not provide sufficient evidence or analysis to verify the veracity of that conclusion. (DEIR, p. 5.2-27). While the DEIR describes in greater detail the current composition and distribution of particulate matter at the Project site, it does not explain how the Project would impact, or perhaps exacerbate, current metrics of particulate matter. The DEIR also provides scarce analysis regarding particulate matter emissions during Project construction and eventual operation, yet concludes that any such impacts can be appropriately mitigated and therefore understates their significance.

O2-9

Lastly, the DEIR does not contain sufficient analysis regarding air quality impacts stemming from the use of diesel trucks and other diesel-operated vehicles and equipment during construction and operation. Instead, it provides only estimations

addition of section 15064.4, which states that ‘proposed section 15064.4 is intended to be read in conjunction with . . . proposed section 15183.5. Those sections each indicate that local and regional plans may be developed to reduce GHG emissions.’”), http://resources.ca.gov/ceqa/docs/2018_CEQA_Final_Statement_of%20Reasons_111218.pdf; see also Natural Resources Agency (Dec. 2009) Final Statement of Reasons for Regulatory Action (“2009 Final Statement of Reason”), p. 27 (“Those sections each indicate that local and regional plans may be developed to reduce GHG emissions. If such plans reduce community-wide emissions to a level that is less than significant, a later project that complies with the requirements in such a plan may be found to have a less than significant impact.”), http://resources.ca.gov/ceqa/docs/Final_Statement_of_Reasons.pdf; 2009 Final Statement of Reason, pp. 14-17 (To qualify, the plan “must . . . include *binding* requirements to address a cumulative problem[;] . . . such plans contain *specific requirements* with respect to resources that are *within the agency’s jurisdiction* to avoid or substantially lessen the agency’s contributions to GHG emissions . . . consistency with plans that are *purely aspirational* (i.e., those that include only *unenforceable goals without mandatory reduction measures*), and provide no assurance that emissions within the area governed by the plan will actually address the cumulative problem[;] . . . by *requiring that lead agencies draw a link* between the project and the specific provisions of a binding plan or regulation, section 15064(h)(3) would ensure that cumulative effects of the project are actually addressed by the plan or regulation in question.”) 35 SCAG (Dec. 2015) 2016 RTP/SCS Program EIR (“PEIR”), p. 3.8-12 – 3.8-13 (“SB 375 provides that the SCS developed as part of the RTP *does not regulate the use of land or dictate local land use policies*, and *further expressly provides that a city’s or county’s* land use policies and regulations, including its general plan, are *not required to be consistent with the SCS*. Rather, SB 375 is intended to provide a regional policy foundation that local government may build upon, *if they so choose*.” Emphasis added), http://scagrtpscs.net/Documents/2016/peir/draft/2016dPEIR_3_8_GreenhouseGases.pdf.

O2-10

and projections of potential diesel use without much further analysis on resulting environmental impacts. The DEIR should be revised in accordance with CEQA Guidelines to adequately identify and address any potential impacts stemming from diesel use.

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B. The DEIR's Mitigation Measures Are Insufficient

A fundamental purpose of an EIR is to identify ways in which a proposed project's significant environmental impacts can be mitigated or avoided. Pub. Res. Code §§ 21002.1(a), 21061. To implement this statutory purpose, an EIR must describe any feasible mitigation measures that can minimize the project's significant environmental effects. PRC §§ 21002.1(a), 21100(b)(3); CEQA Guidelines §§ 15121(a), 15126.4(a).

If the project has a significant effect on the environment, the agency may approve the project only upon finding that it has “eliminated or substantially lessened all significant effects on the environment where feasible” PRC §§ 21002; 21002.1, 21081; CEQA Guidelines §§ 15091, 15092(b)(2)(A); and find that ‘specific overriding economic, legal, social, technology or other benefits of the project outweigh the significant effects on the environment.’ PRC §§ 21002; 21002.1, 21081; CEQA Guidelines §§ 15091, 15092(b)(2)(B). “A gloomy forecast of environmental degradation is of little or no value without pragmatic, concrete means to minimize the impacts and restore ecological equilibrium.” *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018, 1039.

O2-11

CEQA mitigation measures proposed and adopted are required to describe what actions will be taken to reduce or avoid an environmental impact. (CEQA Guidelines § 15126.4(a)(1)(B) [providing “[f]ormulation of mitigation measures should not be deferred until some future time.”].) While the same Guidelines section 15126.5(a)(1)(B) acknowledges an exception to the rule against deferrals, such exception is narrowly proscribed to situations where it is impractical or infeasible to include those details during the project's environmental review.

According to CEQA Guidelines, “[w]hen an EIR has been prepared for a project, the Responsible Agency shall not approve the project as proposed if the agency finds any feasible alternative or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment.” CEQA Guidelines Section 15096(g)(2).

Here, the EIR’s mitigation measures for the Project are inadequate as described below.

1. The DEIR’s Mitigation Measures Are Improperly Deferred Long Term for Various Impact Categories

CEQA forbids deferred mitigation. Guidelines § 15126.4(a)(1)(B). CEQA allows deferral of details of a mitigation measure only “when it is impractical or infeasible to include those details during the project’s environmental review.” (*Id.*) CEQA further requires: “that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard...” Guidelines § 15126.4(a)(1)(B). Deferring formulation of a Project’s actual mitigation measures to some undefined time after the Project’s approval is improper and cannot be used as a substitute for proper mitigation under CEQA. Impermissible deferral can occur when an EIR calls for mitigation measures to be created based on future studies or describes mitigation measures in general terms but the agency fails to commit itself to specific performance standards. (*Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 281 [city improperly deferred mitigation to butterfly habitat by failing to provide standards or guidelines for its management].)

Here, the EIR improperly defers critical details of the Project’s mitigation measures for various environmental impacts. Specifically, various mitigation measures are deferred *until after* the City’s approval of the Project. For instance, the DEIR’s proposed mitigation measure for air quality impacts merely requires that “prior to initiation of any construction activities” the project applicant provide “documentation to the City that all off-road diesel-powered vehicles... during construction would meet the Tier 4 emission standards.” (DEIR, p. 1-16). Similarly, the DEIR posits as a potential mitigation measure to address impacts to biological resources a “pre-construction nesting bird clearance survey” that would only be required “*if* project related-activities are to be initiated during the nesting season period (January 1 to August 31).” (DEIR, p. 1-17). Further, the DEIR suggests mitigating any impacts to cultural resources by requiring that the project applicant retain a “qualified archaeologist” after project approval but “prior to issuance of grading permits.” (DEIR, p. 1-18). Notably, the DEIR does not sufficiently analyze the impacts that said paleontologist would eventually be required to evaluate pursuant to this mitigation measure. The DEIR also proposes a similar mitigation measure for

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impacts regarding geology and soils because it requires consultation “with a geologist or paleontologist” after project approval but “prior to issuance of a grading permit and any ground-disturbing activities.” (DEIR, p. 1-27). Lastly, the project proposes mitigating any significant impacts to cultural resources by requiring that the applicant “retain a Native American monitor” after project approval but “prior to issuance of any grading permits.” (DEIR, p. 1-31).

The postponement of these mitigation measures, and their corresponding analyses, denies the public and the City’s decisionmakers the opportunity to assess the adequacy of analyses to be conducted, and the Project’s overall impact on various environmental media. Indeed, because of this deferment, coupled with the lack of clarity in the DEIR regarding environmental impacts, the City’s decisionmakers may be denied the opportunity to fully consider the scope of the Project’s impacts to these environmental media and whether such impacts have been adequately mitigated, while the general public has also been denied the opportunity to assess and comment upon the associated impacts and the adequacy of the mitigation plans.

Thus, the City has failed to meet CEQA’s preconditions and requirements concerning mitigation, as the DEIR has failed to show why the Project’s mitigation measures, and a comprehensive analysis of the Project’s anticipated environmental impacts, cannot be completed or achieved at this time prior to adoption of the EIR. The deferment of this study and analysis also improperly constrains the DEIR’s assessment of the impacts that the measure will have individually or cumulatively, and the specific performance criteria the Applicant will have to meet with regard to the measures. Accordingly, the proposed mitigation measures are improperly deferred because they defer the formulation of components of the mitigation to a later time and further does not explain how the measures will clearly reduce the Project’s environmental impacts to a level of insignificance.

2. The DEIR Fails to Consider and Deploy All Feasible Mitigation Measures

A fundamental purpose of an EIR is to identify ways in which a proposed project's significant environmental impacts can be mitigated or avoided. Pub. Res. Code §§ 21002.1(a), 21061. To implement this statutory purpose, an EIR must describe any feasible mitigation measures that can minimize the project's significant environmental effects. PRC §§ 21002.1(a), 21100(b)(3); CEQA Guidelines §§ 15121(a), 15126.4(a).

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O2-12

If the project has a significant effect on the environment, the agency may approve the project only upon finding that it has “eliminated or substantially lessened all significant effects on the environment where feasible” PRC §§ 21002; 21002.1, 21081; CEQA Guidelines §§ 15091, 15092(b)(2)(A); and find that ‘specific overriding economic, legal, social, technology or other benefits of the project outweigh the significant effects on the environment.” PRC §§ 21002; 21002.1, 21081; CEQA Guidelines §§ 15091, 15092(b)(2)(B). “A gloomy forecast of environmental degradation is of little or no value without pragmatic, concrete means to minimize the impacts and restore ecological equilibrium.” *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018, 1039.

CEQA mitigation measures proposed and adopted are required to describe what actions will be taken to reduce or avoid an environmental impact. (CEQA Guidelines § 15126.4(a)(1)(B) [providing “[f]ormulation of mitigation measures should not be deferred until some future time.”].) While the same Guidelines section 15126.5(a)(1)(B) acknowledges an exception to the rule against deferrals, such exception is narrowly proscribed to situations where it is impractical or infeasible to include those details during the project's environmental review.

According to CEQA Guidelines, “[w]hen an EIR has been prepared for a project, the Responsible Agency shall not approve the project as proposed if the agency finds any feasible alternative or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment.” CEQA Guidelines Section 15096(g)(2).

However, an impact can only be labeled as significant-and-unavoidable after all available, feasible mitigation is considered and the EIR lacks substantial evidence to support a finding that no other feasible mitigation existed to mitigate Project’s

3. The DEIR Improperly Mischaracterizes Mitigation Measures as “Project Design Features”

The DEIR improperly labels mitigation measures, which the DEIR identifies as “plans, policies, programs (“PPP”) or “standard conditions of approval” (“SCA”) for “Project Design Features” or “PDFs,” described which the DEIR purports will minimize any potentially significant environmental impacts.

Relying on the PDFs, the DEIR concludes in many instances that the Project’s impacts are less than significant and that no mitigation is required.

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However, it is established that “[a]voidance, minimization and / or mitigation measure’ . . . are not ‘part of the project.’ . . . compressing the analysis of impacts and mitigation measures into a single issue . . . disregards the requirements of CEQA.” (*Lotus v. Department of Transportation* (2014) 223 Cal. App. 4th 645, 656.)

When “an agency decides to incorporate mitigation measures into its significance determination, and relies on those mitigation measures to determine that no significant effects will occur, that agency must treat those measures as though there were adopted following a finding of significance.” (*Lotus, supra*, 223 Cal. App. 4th at 652 [*citing* CEQA Guidelines § 15091(a)(1) and Cal. Public Resources Code § 21081(a)(1).])

By labeling mitigation measures as project design features, the City violates CEQA by failing to disclose “the analytic route that the agency took from the evidence to its findings.” (Cal. Public Resources Code § 21081.5; CEQA Guidelines § 15093; *Village Laguna of Laguna Beach, Inc. v. Board of Supervisors* (1982) 134 Cal. App. 3d 1022, 1035 [*quoting Topanga Assn for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 515.]

The DEIR’s use of “Project Design Features” further violates CEQA because such measures would not be included in the Project’s Mitigation Monitoring and Reporting Program CEQA requires lead agencies to adopt mitigation measures that are fully enforceable and to adopt a monitoring and/or reporting program to ensure that the measures are implemented to reduce the Project’s significant environmental effects to the extent feasible. (PRC § 21081.6; CEQA Guidelines § 15091(d).) Therefore, using Project Design Features in lieu of mitigation measures violates CEQA.

The DEIR is laden with mitigation measures that are improperly characterized as PDFs. For example, regarding aesthetic impacts, the DEIR identifies several “PDFs,” including “provision of sufficient setbacks,” “use of low-reflective materials,” and “provision for architectural design, hardscape features, and landscaping open space areas...” (DEIR, p. 1-5). However, each of these PDFs should more appropriately be considered a mitigation measure and should be analyzed accordingly. Similarly, regarding hazards and hazardous materials, the DEIR frames a “comprehensive asbestos and lead-based (LBP) survey” as a PDF whereas it likely constitutes a mitigation measure. Lastly, regarding energy, the DEIR addresses reduction of water demands and associated energy by proposing “plumbing fixtures” that meet certain regulatory criteria as a PDF rather than a mitigation measure. Thus, by improperly

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characterizing several mitigation measures as PDFs, the project avoids and contravenes the CEQA Guidelines. The DEIR should be revised to address this discrepancy.

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4. *Similarly, the Project Improperly Relies on Model or Optional Rules that are Not Legally Enforceable or Binding Rather Than Mandatory Mitigation Measures*

CEQA Guidelines generally require that mitigation measures for significant impacts be mandatory or legally enforceable on a project applicant rather than permissive or voluntary. However, in several instances, the DEIR merely invokes model or optional rules that the project applicant *may* comply with to address potentially significant environmental impacts. For example, regarding air quality, the DEIR posits conducting “construction activities... as specified in the California Department of Resources Recycling and Recovery Sustainable Green Building Program.” (DEIR, p 1-6). Similarly, regarding energy, the DEIR identifies compliance with the “California Building Energy and Efficiency Standards... and the California Green Building Standards Code” as applicable rules. However, both Standards may likely be optional and should therefore be more appropriately characterized as mandatory mitigation measures. Thus, the DEIR avoids requiring strict compliance with mandatory mitigation measures by instead requiring voluntary compliance with optional or model rules, potentially contravening the CEQA Guidelines.

02-14

5. *DEIR Relies on Speculative Segmentation of Construction Phases that are Not Mandatory or Legally Enforceable*

Additionally, the DEIR relies on, and assumes that, the Project will be implemented via sequential construction phases, even though these phases are not mandatory or legally enforceable. For instance, it is conceivable that an earlier construction phase may be delayed due to unforeseen reasons, and therefore delay or impact subsequent phases. In that case, the DEIR’s analysis of impacts and other project aspects would be brought into question because the construction phases it currently anticipates may not materialize as expected. As a potential resolution, the City should adopt a project schedule or description that is binding on the project applicant, specifically as to the timing and completion of each construction phase.

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C. *The DEIR Fails to Adequately Evaluate the Project’s Cumulative Impacts.*

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A DEIR must discuss cumulative impacts when they are significant and the project's incremental contribution is "cumulatively considerable." CEQA Guidelines §15130(a). A project's incremental contribution is cumulatively considerable if the incremental effects of the project are significant "when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." 14 Cal Code Regs §15065(a)(3).

An EIR must discuss a cumulative impact if the project's incremental effect combined with the effects of other projects is "cumulatively considerable." 14 C.C.R. §15130(a). This determination is based on an assessment of the project's incremental effects "viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." 14 C.C.R. §15065(a)(3)(emphasis added); *Banning Ranch Conservancy v City of Newport Beach* (2012) 211 CA4th 1209, 1228. See also 14 C.C.R. §15355(b).

The CEQA Guidelines require that an EIR implement the provisions of Pub. Res. Code §21083(b)(2), which specifies that the Guidelines must include criteria requiring public agencies to find that a project may have a significant effect on the environment if its possible effects "are individually limited but cumulatively considerable."

The purpose of the cumulative impacts analysis is to avoid considering projects in a vacuum, because failure to consider cumulative harm may risk environmental disaster. *Whitman v. Board of Supervisors* (1979) 88 Cal.App.3d 397, 408 (*citing Natural Resources Defense Council v. Callaway* (2d Cir 1975) 524 F2d 79). Without this analysis, piecemeal approval of several projects with related impacts could lead to severe environmental harm. *Golden Door Props., LLC v. County of San Diego* (2020) 50 Cal.App.5th 467, 527; *San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 720; *Las Virgenes Homeowners Fed'n v County of Los Angeles* (1986) 177 Cal.App.3d 300, 306. An adequate analysis of cumulative impacts is particularly important when another related project might significantly worsen the project's adverse environmental impacts. *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 CA4th 859.

CEQA mandates that a project's impacts be evaluated in a holistic context, including impacts from other nearby projects. While the DEIR currently acknowledges other "related projects," it contains little to no analysis on their independent impacts, and therefore little to no analysis on any potential cumulative impacts as required by CEQA. Specifically, the DEIR acknowledges several other projects in the vicinity of the Project site, including other high-scale development projects: Home Ranch, One

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Metro West, Fam Vans, and South Coast Technology Center. (DEIR, p. 4-17, Table 4-2). However, beyond identifying and naming these projects, the DEIR contains scarcely any analysis on their potential impacts. Thus, the DEIR contains insufficient evidence regarding the Project’s cumulative impacts, especially in light of other nearby projects. Without an adequate analysis of cumulative impacts as required by CEQA, the public’s ability to understand and meaningfully address such impacts is significantly undermined. The DEIR should be revised to adequately address the Project’s cumulative impacts, with careful regard and analysis of impacts stemming from other nearby projects.

Despite the wide scope of significant impacts presented by the Project both individually and cumulatively, the DEIR contains no reference to or consideration whatsoever of nearby past development projects (as required by 14 C.C.R. §15065(a)(3)) that have already been completed. Indeed, Table 4-2 of the DEIR lists the projects that the DEIR supposedly considered, in conjunction with the proposed Project, as part of its cumulative impacts analysis. However, the DEIR’s Related Projects list may omit a number of previously completed large-scale projects within the 6-mile radius of the Project, and their associated environmental impacts.

These significant omissions taint and effectively undermine the validity of much of the cumulative impacts analysis set forth in the DEIR. Indeed, the failure to consider these previously-completed, significant, large-scale, industrial development projects in the immediate vicinity of the proposed Project calls into question the DEIR’s cumulative impacts analysis in various impact categories. The DEIR must now be revised with respect to each of the foregoing impact categories (and potentially others) to incorporate any significant past projects within the 6-mile cumulative projects radius in its cumulative impacts analysis. Absent such revision, the DEIR in its current form violates CEQA and cannot permissibly be certified by the City.

D. *The Project is Inconsistent and in Conflict with Land Use Plans for the Project Site, including the General Plan, Housing Element, etc.*

Each California city and county must adopt a comprehensive, long-term general plan governing development. *Napa Citizens for Honest Gov. v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 352, *citing* Gov. Code §§ 65030, 65300. The general plan sits at the top of the land use planning hierarchy, and serves as a “constitution” or “charter” for all future development. *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 773; *Leshner Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540.

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General plan consistency is “the linchpin of California’s land use and development laws; it is the principle which infused the concept of planned growth with the force of law.” *Debottari v. Norco City Council* (1985) 171 Cal.App.3d 1204, 1213. It is well established that development projects may not be approved if they interfere with, or frustrate, the general plan’s policies and objectives. *See Napa Citizens*, 91 Cal.App.4th at 378-79; *see also, Lesher*, 52 Cal.3d at 544. Thus, CEQA requires EIRs to analyze the consistency of a project with the general plan. CEQA Guidelines § 15125(d); *see also, Families Unafraid to Uphold Rural El Dorado County v. El Dorado County Bd. of Sup’rs* (1998) 62 Cal.App.4th 1332, 1336 (“Because an EIR must analyze inconsistencies with the general plan (14 Cal. Code Regs § 15125(d)), deficiencies in the plan may affect the legal adequacy of the EIR. If the general plan does not meet state standards, an EIR analysis based on the plan may also be defective.

CEQA also mandates “good faith effort in full disclosure.” Guidelines § 15204. An agency is not acting in good faith when “it gives conflicting signals to decision makers and the public about the nature and scope of the activity being proposed.” *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 655–656.

Here, despite the importance of ensuring that the Project is consistent with the General Plan, as noted above, the DEIR fails to support its consistency finding with substantial evidence as required. (CEQA Guidelines § 15384 [requiring agency findings be supported by substantial evidence, i.e. “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion”]).

Specifically, although the DEIR acknowledges that the Project seeks to modify various land use plans relating to the Project site, the DEIR overall fails to analyze eligibility for these proposed modifications and instead offers only conclusory statements.

These blanket statements are inadequate because the Project cannot rely upon approval of its requested changes to conclude that the Project is consistent with the General and Specific Plans given that approval of the changes has not yet occurred and is speculative at this stage. Simply put, there is a logical disconnect in the finding that future amendments establish that the Project is consistent with the existing plans absent some sort of analysis or explanation as to why the future change is consistent and warranted. In the words of the Court, “The Planning and Zoning Law does not contemplate that general plans will be amended to conform to zoning ordinances. The

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tail does not wag the dog. The general plan is the charter to which the ordinance must conform.” *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 389.

Thus, the DEIR’s land use consistency analysis is not supported by substantial evidence and is based on the flawed assumption that general plan consistency can be achieved by amending the General Plan itself. The DEIR must be revised to provide sufficient analysis and good faith disclosures about the General Plan consistencies as well as mitigate the impacts of the acknowledged land use inconsistencies before any Project approvals occurred.

E. The DEIR Improperly Relies on Future Compliance with Regulatory Standards to Support its Findings Regarding Lack of Significant Impacts

In many instances, the DEIR relies on downstream and speculative compliance with various regulatory rules and standards to support its conclusory determinations, including as to significant impacts. However, “[c]ompliance with the law is not enough to support a finding of no significant impact under . . . CEQA.” (*Californians for Alternatives to Toxics v. Department of Food & Agriculture* (2005) 136 Cal. App. 4th 1, 15 – 17 [finding that a lead agency “abused its discretion by relying on DPR’s regulatory scheme as a substitute for performing its own evaluation of the environmental impacts of using pesticides.”]).

As the Court noted in *East Sacramento Partnerships for a Livable City v. City of Sacramento* (2016) 5 Cal. App. 5th 281, 301, compliance with a regulatory scheme “in and of itself does not insulate a project from the EIR requirement, where it may be fairly argued that the project will generate significant environmental effects.” (Internal quotations omitted.) A project’s effects can be significant even if they are not greater than those deemed acceptable in a general plan or other regulatory law. (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1416; *see also Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 732 [finding that a full environmental impact report is required “if substantial evidence supports a fair argument that the Project may have significant unmitigated noise impacts, even if other evidence shows the Project will not generate noise in excess of the County’s noise ordinance and general plan.”]).

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A public agency cannot apply a threshold of significance or regulatory standard “in a way that forecloses the consideration of any other substantial evidence showing there may be a significant effect.” (*Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 342.)

An agency must “explain how the particular requirements of that environmental standard reduce project impacts, including cumulative impacts, to a level that is less than significant, and why the environmental standard is relevant to the analysis of a project that is less than significant.” CEQA Guidelines § 15067.7.

Furthermore, a determination that regulatory compliance will be sufficient to prevent significant adverse impacts must be based on a project-specific analysis of potential impacts and the effect of regulatory compliance. In *Californians for Alternatives to Toxics v. Department of Food & Agric.* (2005) 136 Cal. App. 4th 1, the court set aside an EIR for a statewide crop disease control plan because it did not include an evaluation of the risks to the environment and human health from the proposed program but simply presumed that no adverse impacts would occur from use of pesticides in accordance with the registration and labeling program of the California Department of Pesticide Regulation. *See also Ebbetts Pass Forest Watch v Department of Forestry & Fire Protection* (2008) 43 Cal. App. 4th 936, 956 (fact that Department of Pesticide Regulation had assessed environmental effects of certain herbicides in general did not excuse failure to assess effects of their use for specific timber harvesting project).

Here, for example, regarding geology and soils, the DEIR suggests that “adherence to the most recent edition of the CBC would preclude significant adverse effects associated with seismic hazards.” (DEIR, p. 1-8). However, this mere assertion that future compliance will adequately prevent any significant impacts on geology and soils goes against the clear commands of CEQA and is unsupported by relevant case law.

F. *The DIER Fails to Adequately Describe the Project’s Eligibility for a Density Bonus Agreement*

The DEIR characterizes the Project applicant’s requested Density Bonus Agreement as follows:

“The applicant is requesting a Density Bonus Agreement to allow a 20 percent density bonus for projects that include an amount of very low income units equal to five percent of the total base density (pursuant to California Government Code Section 65915[f][2]).” (DEIR, p. 3-19).

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Upon approval of the General Plan Amendment, the project site would allow for a site-specific density up to 62.3 dwelling units per acre. The proposed project would include a base density of 844 units. With the inclusion of 45 affordable units (i.e., very low income units), the proposed project qualifies for a 20 percent density bonus (pursuant to California Government Code Section 65915[f][2]) resulting in a maximum of 1,060 total residential units on-site. Thus, the proposed 1,050 units would be within the allowed total residential units on-site.” (DEIR, p. 3-19).

The DEIR also determines that the Project is consistent with the Housing Element and State Density Bonus Law based on the following “consistency analysis:”

“The proposed project would include a base density of 844 units. With the inclusion of 45 affordable units (i.e., very low income units), the proposed project qualifies for a 20 percent density bonus (pursuant to California Government Code Section 65915[f][2]) resulting in a maximum of 1,060 total residential units on-site. Thus, the proposed 1,050 residential units would be within the allowed total residential units on-site per State density bonus provisions.” (DEIR, p. 5.10-12).

Beyond these conclusory statements, the DEIR fails to adequately describe the Project’s eligibility for Density Bonus Laws, forcing the public to speculate whether the Project is actually eligible for the requested density bonus. Whether the 20% density bonus amount was calculated correctly pursuant to Government Code sections 65915(b) and (f) largely depends on analysis and factors that are absent from the DEIR. To ensure that the State Density Bonus Law is correctly applied to the Project, the DEIR should be revised with further analysis regarding the Project’s density bonus eligibility.

VI. CONCLUSION

Based on the foregoing concerns, the City should require revision and recirculation of the DEIR for the Project pursuant to CEQA. Absent doing so, the DEIR in its current form directly violates CEQA in multiple respects.

If the City should have any questions or concerns, please do not hesitate to contact this office.

Sincerely,

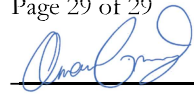
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A handwritten signature in blue ink, appearing to read "Omar Corona", is positioned above a horizontal line.

Omar Corona

Attorneys for Western States Regional

Council of Carpenters

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2. Response to Comments

02. RESPONSES TO COMMENTS FROM MITCHELL M. TSAI LAW FIRM, (WESTERN STATES REGIONAL COUNCIL OF CARPENTERS [WSRCC]), MARCH 31, 2025. (WITHDRAWN)

- O2-1 This comment states that the Western States Regional Council of Carpenters (WSRCC, or Western Carpenters) would like to withdraw their prior March 31, 2025 Comment Letter, enclosed following this letter. This request is acknowledged. Nonetheless, in a good faith effort in considering all public comments made for the purposes of CEQA, City staff have provided responses to the prior March 31, 2025 Comment Letter herein; refer to Responses to Comments O2-2 through O2-20, below.
- O2-2 This comment summarizes the proposed project description and introduces the Western Carpenters, noting that members of the Western Carpenters live and work in the City and surrounding communities. The comment states that the commenter reserves the right to supplement these comments at or before hearings on the project, incorporates by reference all comments regarding the prior Mitigated Negative Declaration and the Environmental Impact Report, and requests notification of all future notices issued under CEQA regarding the project. It is acknowledged that no prior Mitigated Negative Declaration applies to the proposed project for the purpose of this CEQA analysis; an Environmental Impact Report was prepared for the project. The commenter is included on the City's list for future public notices regarding the proposed project.
- O2-3 In regard to the comment's request to require the hire of local workers to achieve several environmental benefits, there is no CEQA provision, nor any City or other law, applicable to the project that mandates the hiring or use of such construction labor. Furthermore, the commenter does not present any evidence of a project-specific air quality, greenhouse gas (GHG), or transportation impact that such a condition would mitigate. As demonstrated in the Draft EIR, the project would not result in any significant air quality, GHG, transportation, or other impacts. Per the analysis presented in the Draft EIR, the project would not result in potentially significant impacts pertaining to GHG emissions, nor did it identify any potentially significant air quality or transportation impacts that could not be reduced to less than significant levels with implementation of all applicable regulations and mitigation measures. As detailed in the Draft EIR Section 5.2, *Air Quality*, diesel particulate matter (DPM) emissions generated from the project's construction off-road equipment could potentially cause air quality related health risk impacts to the nearest sensitive receptors. Specifically, due to the proximity of the project site to nearby sensitive receptors and the extended period of construction activities, DPM emissions generated from the project's construction off-road equipment would be approximately 0.296 pounds per day (the average daily on-site exhaust; refer to Draft EIR Appendix C, *Air Quality/Greenhouse Gas Emissions/Energy Data*) and could potentially cause air quality related health risk impacts to the nearest sensitive receptors (located 105 feet east of the project site). Therefore, Mitigation Measure AQ-1 would be required to reduce DPM emissions and associated health impacts. Mitigation Measure AQ-1 would require that all off-road diesel-fueled construction vehicles and equipment



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greater than 50 horsepower meet Tier 4 emissions standards. The Tier 4 emission standards would reduce DPM emissions to approximately 0.038 pounds per day, which is an approximately 87 percent reduction compared to the unmitigated emissions, refer to Draft EIR Appendix C for detail modeling and calculations. With implementation of Mitigation Measures AQ-1, impacts in this regard would be reduced to less than significant levels and no further mitigation would be required. It should be noted based on analyses conducted, the project would not generate substantial air quality impacts from mobile source emissions. As such, the commenter's suggested mitigation in the form of employing local construction workers would not be necessary. As such, the commenter's suggested mitigation in the form of employing local construction workers would not change the conclusions presented in the Draft EIR.

CEQA Guidelines Section 15126.4(a)(3) provides that mitigation measures are not required for effects determined to be less than significant. As such, no local labor workforce condition or other mitigation measure is warranted for the project's air quality, GHG, transportation, or other impacts.

Additionally, the comment refers to a *March 8, 2021 SWAPE letter to Mitchell M. Tsai re. Local Hire Requirements and Considerations for Greenhouse Gas Modeling*, but this referenced written correspondence was not provided in the comment letter.

- O2-4 Effects of the environment on a project are not subject to CEQA review (Public Resources Code Sections 21065 and 21068). The effects the existing environment might have on proposed projects are generally not treated as changes in the physical environment under CEQA (*California Bldg. Indus. Assn. v. Bay Area Air Quality Mgmt. Dist.*, 62 Cal. 4th 369, 378 (2015)). (CEQA does not require analysis of impact that existing environmental conditions might have on project, its residents, or its users, except when required by specific statutory exception). Therefore, the City does not have to analyze the impact of COVID-19, an existing condition, on the proposed project. Nonetheless, the City recognizes the unprecedented nature of COVID-19 and the potential public health impacts associated with it. Any projects being constructed during a period of time in which emergency measures or orders are in place would be required to adhere to the Center for Disease Control and Prevention's (CDC) workplace guidelines for construction workers, including the Construction COVID-19 Checklist for Employers and Employees. It is acknowledged that the Governor of California, Gavin Newsom, terminated the State's COVID-19 State of Emergency on March 1, 2023. Adherence to these measures would ensure that potential health impacts during the period of time in which emergency measures or orders are in place would be minimized during construction. Furthermore, any projects being developed are required to adhere to the City of Costa Mesa and County of Orange workplace guidelines at the time of groundbreaking.
- O2-5 The project applicant is requesting a Development Agreement with the City pursuant to California Government Code Sections 65864 et seq. Pursuant to California Government Code Section 65864(b) and upon approval of the proposed project, the Development Agreement would vest the applicant's right to proceed with on-site development subject to the terms and conditions of the Development Agreement and consistency with the Master Plan and Specific Plan. Physical



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- improvements identified in the Development Agreement are identified and evaluated in the Draft EIR. The commenter does not raise issues with the adequacy of the Draft EIR. No further response is warranted.
- O2-6 WSRCC makes general statements about CEQA and CEQA Guidelines. The Draft EIR was prepared following CEQA mandates, imposing appropriate significance thresholds, following prescribed methodologies and of which are supported by numerous expert technical reports contained in the Draft EIR Appendices. Thus, the Draft EIR analyses, and technical appendices provide substantial evidence supporting the City's impact determinations and findings. Responses to the commenter's specific comments on the Draft EIR are provided and responded to below (Responses O2-7 through O2-10). The Draft EIR is comprehensive, and none of the circumstances requiring recirculation of a draft EIR set forth in CEQA Guidelines Section 15088.5 have been met. Additionally, as the Draft EIR has been prepared for the project, substantial evidence standard of review applies.
- O2-7 As detailed above and in the Draft EIR Section 5.2, *Air Quality*, the nearest sensitive receptors (located 105 feet east of the project site) where impacts would be the greatest has been clearly identified and relevant air quality health impacts are clearly analyzed (Draft EIR pages 5.2-10, 5.2-24, 5.2-25). Specifically, Draft EIR Impact Statement 5.2-3 addressed the potential for project construction to expose sensitive receptors to substantial pollutant concentrations and determined that the impact would be less than significant with mitigation (Draft EIR pages 5.2-24 through 5.2-26). Similarly, Draft EIR Impact Statement 5.2-3 addressed the potential for project operations to expose sensitive receptors to substantial pollutant concentrations and determined that the impact would be less than significant (Draft EIR pages 5.2-26 and 5.2-27). These analyses are thorough and implement the required methodology from the South Coast Air Quality Management District (SCAQMD). As such, the commenter provides no credible evidence of missing analysis.
- O2-8 Regarding GHG emissions, the Draft EIR contains detailed GHG impact analysis that complies with CEQA Guidelines Section 15064.4. As detailed in the Draft EIR Section 5.7, *Greenhouse Gas Emissions*, CEQA Guidelines Section 15064.4 does not establish a threshold of significance. CEQA Guidelines Section 15064.6 provides lead agencies the discretion to establish significance thresholds for their respective jurisdictions, and in establishing those thresholds, a lead agency may appropriately look to thresholds developed by other public agencies or suggested by other experts, if any threshold chosen is supported by substantial evidence. The City of Costa Mesa has not adopted a numerical significance threshold or climate action plan (CAP). Similarly, the South Coast Air Quality Management District (SCAQMD), the Governor's Office of Planning and Research (OPR), California Air Resources Board (CARB), California Air Pollution Control Officers Association (CAPCOA), or any other State or applicable regional agency has yet to adopt a numerical significance threshold for assessing GHG emissions that is applicable to the project. Throughout the State, air districts are moving from a numerical significance threshold to qualitative significance threshold that focuses on project features to reduce GHG emissions or consistency with GHG reduction plans. For example, in the Bay Area Air Quality Management District



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(BAAQMD) *2022 CEQA Guidelines*, the GHG thresholds of significance are either whether land use projects include certain project design elements related to buildings and transportation or whether the project is consistent with a local GHG reduction strategy that meets the criteria under State CEQA Guidelines Section 15183.5(b). This is a major update to BAAQMD's *2017 CEQA Guidelines*, where a numerical significance threshold was required. To reduce GHG emissions impact, it is more effective for development projects to include project features that directly or indirectly reduce GHG emissions, than relying on a numerical significance threshold, which highly depends on the type and size of the development. Per CEQA Guidelines Section 15064(h)(3), a project's incremental contribution to a cumulative impact can be found not cumulatively considerable if the project would comply with an approved plan or mitigation program that provides specific requirements that would avoid or substantially lessen the cumulative problem in the geographic area of the project. To qualify, such plans or programs must be specified in law or adopted by the public agency with jurisdiction over the affected resources through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency. Examples of such programs include a water quality control plan, air quality attainment or maintenance plan, integrated waste management plan, habitat conservation plan, natural community conservation plans, and plans or regulations for the reduction of GHG emissions. Therefore, a lead agency can make a finding of less-than-significant for GHG emissions if a project complies with adopted programs, plans, policies, and/or other regulatory strategies to reduce GHG emissions.

As the City of Costa Mesa has not adopted a numeric significant threshold or CAP, as permitted under Guidelines Section 15064.4, a qualitative assessment of GHG impacts was conducted which looked at consistency with applicable plans, policies, and programs. Further, the Draft EIR has demonstrated a good faith effort by quantifying the project's projected GHG emissions for informational purposes (Draft EIR Tables 5.7-2 and 5.7-3).

WSRCC makes various claims regarding analysis of consistency with a GHG Reduction Plan, yet fails to identify what that plan is. As detailed in the Draft EIR Section 5.7, the project analyzed consistency with the Southern California Association of Governments' (SCAG's) *Connect SoCal 2024* and the CARB's *2022 Scoping Plan*. Connect SoCal 2024 outlines a vision for a more resilient and equitable future, with investment, policies, and strategies for achieving the region's shared goals through 2050. The 2022 Scoping Plan contains the GHG reductions, technology, and clean energy mandated by statutes." Therefore, these plans are plans that provide specific requirements that would avoid or substantially lessen the cumulative problem in the geographic area of the project, adopted by the regional agencies affected by climate change within the region. The consistency analysis is set forth in detailed tables (Draft EIR Tables 5.7-4 and 5.7-5), which demonstrate that the project would be consistent with the GHG emission reduction strategies contained in the Connect SoCal 2024 and consistent with or exceed reduction actions/strategies outlined in the 2022 Scoping Plan (Draft EIR pages 5.7-20 through 5.7-23). As the project is consistent with these GHG reduction plans, the project would be consistent with the State's long-term goal to achieve statewide carbon neutrality (zero-net emissions). As such, GHG impacts



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would be less than significant. WSRCC provides no credible evidence of inconsistencies, or that Connect SoCal 2024 and the 2022 Scoping Plan were inappropriate plans to be included in the analysis.

- O2-9 Project-generated particulate matter emissions during operations are provided in Draft EIR Table 5.2-8, *Operational Criteria Pollutant Emissions*, with modeling output provided in Draft EIR Appendix C, *Emission Calculation Details for CalEEMod*. Particulate matter is a type of criteria pollutant whose emissions are analyzed as PM₁₀ and PM_{2.5}. Particulate matter emissions result from certain activities that release particles. For example, demolition and construction tend to be associated with PM releases and as such, the Draft EIR contains a detailed construction criteria pollutant emissions analysis, which determined that the maximum daily PM emissions for all phases of construction would be below the SCAQMD significant thresholds (Draft EIR Table 5.2-7). With respect to operational emissions, a similar analysis was conducted addressing operational criteria pollutant emissions (which included PM₁₀ and PM_{2.5}) and similarly determined that the PM emissions were below the SCAQMD significant thresholds (Draft EIR Table 5.2-8). The model runs and outputs contained in Draft EIR Appendix C provides the data and substantial evidence supporting the impact determination. WSRCC fails to provide any credible evidence that the detailed analysis and modeling contains any error or flaws.
- O2-10 Diesel particulate matter (DPM) is not individually identified as a criteria pollutant by the SCAQMD. However, mobile emissions are assessed for all criteria pollutants, which include volatile organic compounds (VOC) from diesel fuel combustion for regional emissions and nitric oxides (NO_x) for localized emissions. The Draft EIR contains construction and operational VOC and NO_x emissions analysis and determined that the emissions would be below the SCAQMD VOC and NO_x significant thresholds with mitigation. (See Draft EIR Tables 5.2-7, 5.2-8, 5.2-9, 5.2-10.) With respect to localized operational DPM emissions, the project is not considered a significant source of DPM emissions, as it is a residential use as opposed to a distribution facility. Diesel trucks and other diesel-operated vehicles and equipment associated with project construction and operations are specifically included in the modeling assumptions of the California Emissions Estimator Model (CalEEMod), and detailed in the CalEEMod User Guide Appendix C.² As detailed in the Draft EIR, the proposed project would involve the development of a multi-phased residential development that would result in very limited operational activities, including landscaping maintenance operations, emergency generators, and boilers for the apartment buildings, that would generate DPM or other TAC emissions. As shown in Draft EIR Table 5.2-8 and Table 5.2-9, the project would generate nominal particulate matter emissions during operation. Furthermore, the emergency generators would be subject to the applicable SCAQMD permitting process. Therefore, operation of the proposed project is not anticipated to result in an elevated cancer or other health risk to nearby sensitive receptors, and, as such, the health impact during operation of the proposed project would be less than significant (Draft EIR page 5.2-7). WSRCC provided no credible evidence that the analysis of DPM, VOCs, NO_x, or any of the

² California Air Pollution Control Officers Association, *CalEEMod User Guide, Appendix C, Emission Calculation Details for CalEEMod*, April 2022.



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criteria pollutants was erroneous. Overall, as the project has provided all of the information the commenter mentioned, the Draft EIR has provided sufficient and substantial evidence in its impact findings in regard to air quality.

- O2-11 It should be acknowledged that project impacts do not occur if the project is not approved. Environmental impacts associated with a project under CEQA could be direct or indirect, but always after initiation of some form of physical improvements and/or foreseeable physical improvements after project approval. As such, mitigation measures that are provided in the Draft EIR are not deferring mitigation to a later time after significant environmental impacts have occurred. As such, WSRCC's claims that the proposed mitigation measures are being "improperly deferred" are meritless. Specifically, in regard to Mitigation Measure AQ-1, this measure contains the necessary performance standard (Tier 4) to be CEQA compliant; nothing is deferred; rather the documentation must be provided prior to the start of construction, i.e., prior to any construction emissions. WSRCC also claims Mitigation Measure BIO-1 is improper because a pre-construction nesting bird survey is only required if project construction is scheduled to commence during the nesting season (January 1 to August 31). This measure too contains the necessary performance standards and criteria (the period of time when the survey is to take place and what happens should an active nest be discovered (no disturbance buffer area established, etc.). As such, Mitigation Measure BIO-1 is not an improper mitigation measure. Further, WSRCC's claim that Mitigation Measure CUL-1 is improperly deferred because the qualified archeologist is to be retained after project approval but before issuance of grading permits. Not identifying the actual archeologist in the Draft EIR is not improper deferral. The measure sets forth the performance criteria for the archeologist: "qualified archaeologist who meets the Secretary of the Interior's Standards for professional archaeology." Same is true regarding consultation with a qualified geologist or paleontologist as required by Mitigation Measure GEO-1 and retention of Native American monitor as required by Mitigation Measure TCR-1. Overall, none of WSRCC's claims of improper deferred mitigation withstand scrutiny; specific performance criteria and timing are set forth in each measure, and no analysis was deferred.
- O2-12 The commenter does not specify any mitigation measures that are feasible for the proposed project but were intentionally left out, nor does the commenter directly challenge specific mitigation measures or analysis provided in the Draft EIR in need of additional mitigation. Further, as detailed in the Draft EIR, no significant and unavoidable impacts were identified in the Draft EIR; all impacts were determined to be less than significant or less than significant with mitigation.
- O2-13 WSRCC claims the Draft EIR mischaracterized mitigation measures as "Project Design Features" in violation of *Lotus v. Department of Transportation* (2014) 223 Cal. App. 4th 645. This is not correct. In *Lotus*, the issue was that a mitigation measure was recommended, but the underlying impact assessment was absent from the EIR. Here, WSRCC fails to identify any missing impact analysis for which mitigation is recommended; rather each impact area where mitigation is recommended is supported by analysis showing a potential significant impact absent mitigation. WSRCC also claims that project design features are not enforceable. As detailed in Draft EIR Section 1.6.1, *Applicable PPPs and SCAs*, PPPs are plans, policies, programs that are based on federal, States, or



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local regulations currently in place. Similarly, SCAs are typically imposed by the lead agency or other public agencies and may include a wide range of requirements that may have no impacts on the environment but serves the lead agency or fulfill the lead agency's goals. Project design features are similar to SCAs but typically initiated by the project Applicant to fulfill private objectives that may or may not have any impacts on the environment. As such, PPPs and SCAs are not project design features, but existing laws, regulations, and conditions of approval imposed on the project upon approval. None of the examples provided by the commenter represent an instance where a potentially significant impact was identified, as the identified impacts would be reduced to less than significant level after consideration of existing laws, regulations, and conditions of approval imposed on the project upon approval (PPPs and/or SCAs). WSRCC falsely claims three PPPs should "likely" be considered mitigation measures, not understanding that PPPs are mandatory regulatory requirements, not mitigation measures to be considered for reducing certain identified environmental impacts. For example, regarding aesthetic impacts, "provision of sufficient setbacks" and "use of low-reflective materials" per PPP AES-2 are typical local jurisdiction's regulatory requirements that would be enforced during site plan review; failure of the project to comply would not necessarily constitute a significant and unavoidable aesthetics impact. Similarly, asbestos and lead-based paint abatements per PPP HAZ-1 are required by State laws and pursuant to SCAQMD Rule 1403, and is a regulatory compliance measure, not a mitigation measure. Furthermore, WSRCC takes issue with PPP EN-3 for requiring the use of plumbing fixtures that meet certain Federal and State standards. Such considerations are regulatory compliance requirements on proposed design features, and are not mitigation for the purpose of CEQA. Regulatory compliance measures have been upheld as appropriate as part of the impact analysis (e.g., *Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal. App. 3d 1337 [County may rely on the fact that a project would be required to comply with environmental laws on registering hazardous materials and monitoring underground tanks for leaks in concluding that there would be no significant impacts from a leaking tank]; *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal. App. 4th 884, 904).

- O2-14 WSRCC cites no law or regulation making compliance with the identified program, standards and code optional. It should be noted that the "optional standards" the comment referenced, including California Department of Resources Recycling and Recovery Sustainable Green Building Program, California Building Energy and Efficiency Standards, and California Green Building Standards Code, are all existing regulations which project compliance is mandatory, not voluntary. Overall, all projects under CEQA are subject to federal, State, and local regulations, and may be subject to SCAs if the lead agency desires. All projects would be designed in such a way that some design features impact environmental analysis required under CEQA and are therefore discussed in the Draft EIR. In summary, the Draft EIR adequately described applicable regulations, lead agency's conditions for project approval, and mitigation measures that serve to minimize those specific environmental impacts identified in the analysis. As set forth in the Draft EIR, the project would comply with these programs, standards and codes, and regulatory compliance has been upheld; refer to Response to Comment O2-13.



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- O2-15 The project, as proposed, would be a phased construction. As such, the Draft EIR analyzed the proposed construction phasing.³ A minor modification in construction schedule would not typically result in any new substantially adverse environmental effects not previously considered and addressed in the Draft EIR. Specifically, as detailed in the Draft EIR Table 5.2-7, *Construction Criteria Pollutant Emissions*, maximum daily construction emissions for each criteria pollutant are not anywhere near SCAQMD's regional thresholds, even with the more conservative assumption of overlapping construction phases. Similarly, Draft EIR Table 5.2-10, *Construction Localized Significance Modeling Results*, also did not identify any significant impacts. Furthermore, the Draft EIR analyzed potential construction-related impacts from toxic air contaminant (TACs) emissions to on- and off-site residents with the proposed phased construction schedule. Primary TAC emissions would result from DPM from off-road heavy-duty diesel equipment exhaust, and a mitigation measure (Mitigation Measure AQ-1) has been proposed to mitigate that effect to reduce localized construction air quality health impacts. Overall, there is no substantial evidence that a minor modification in construction schedule would impact the Draft EIR findings such that a binding construction schedule is necessary under CEQA.
- O2-16 WSRCC admits the Draft EIR contained cumulative impact analyses and a list of related projects used for the cumulative impact analyses located at Draft EIR Table 4-2, *Cumulative Project List*, but makes the unsupported claim that "the Draft EIR's Related Projects list may omit a number of previously completed large-scale projects within the 6-mile radius of the Project, and their associated environmental impacts." WSRCC fails to identify any omitted related projects and provides no basis for the use of a six-mile radius. It should be acknowledged that Draft EIR Table 4-2 identifies 21 related projects within the vicinity of the project site as provided by the City as well as neighboring cities of Fountain Valley and Santa Ana. The Draft EIR included qualitative cumulative impact analysis within each topic area considered and quantitative analysis where summative data is available. All cumulative impacts analyses in the Draft EIR specifically considered the project's incremental contribution to cumulative impacts, as per standard practice under CEQA. As such, WSRCC's claims are without merit.
- O2-17 WSRCC claims the land use consistency cannot assume that requested discretionary approvals will be granted and thus inconsistency must be concluded. Yet, discretionary approvals, including General Plan Amendment, Zoning Amendment, Specific Plan Amendment, Tentative Parcel Map, Master Plan, Development Agreement, and Density Bonus Agreement are part of the proposed project, and if they are not approved, there is no approved project. Thus, the land use consistency analysis appropriately considers the project applied for, including the discretionary approvals, to determine land use consistency. Further, by the commenter's logic, a General Plan Amendment would not be logically conceivable as amending a General Plan would imply inconsistency with the General Plan. It should be acknowledged that under CEQA, the Draft EIR shall analyze how project implementation would or would not conflict with applicable plans adopted for the purpose

³ The construction schedule was provided by the applicant, an experienced developer, and is the basis for the assessment of impacts from project construction. (See Draft EIR, Table 5.2-6, Construction assumptions, Source: "Provided by the Project Applicant in July 24.")



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- of avoiding or mitigating an environmental effect, and not assumed significant environmental impacts for any project that were not originally planned for the site. As analyzed in Draft EIR Table 5.10-1, *Project Consistency with General Plan*, the project would be generally consistent with applicable General Plan policies, including those related to land use, circulation, growth management, housing, conservation, noise, safety, community design, open space and recreation, and historical and cultural resources. As such, there is no basis for the proposition that the analysis of project impacts and land use consistency should assume disapproval of the project. WSRCC has provided no credible evidence to the contrary.
- O2-18 WSRCC incorrectly claims that regulatory compliance is an unacceptable form of impact analysis; regulatory compliance has been upheld; refer to Response to Comment O2-13. The cases cited by WSRCC do not come to a contrary conclusion. Rather, in those instances, regulatory compliance was used as a surrogate for the impact analysis. Here, the impact analyses were thorough and complete and the determinations of a less than significant impacts were supported by regulatory compliance; there was no missing analysis and WSRCC identified none. WSRCC's citation to Draft EIR page 1-8 regarding the one of the PPPs ignores the lengthy and thorough Geology and Soils analysis contained in Draft EIR Section 5.6, *Geology and Soils*. As detailed in Draft EIR Section 5.6, impact findings rely on findings of a project-specific technical report (*Geotechnical Investigation, The Hive – Proposed Multi-Family Residential Development, Susan Street and West Sunflower Street, Costa Mesa, California* [Geotechnical Investigation], prepared by NOVA Services, dated February 29, 2024), which includes site-specific recommendations pertaining to minimizing seismic-related risks. Further, the CEQA thresholds in question are whether development of the proposed project would directly or indirectly cause potential substantial adverse effects involving seismic-related hazards. Based on substantial information as provided in the site-specific Geotechnical Investigation, as well as mandatory compliance with State law (i.e., the California Building Code) in a seismic-prone regional of southern California, the Draft EIR concludes that development of the proposed project would not directly or indirectly cause potential substantial adverse effects involving seismic-related hazards, and impacts would be less than significant.
- O2-19 The commenter states that Draft EIR fails to describe how the State Density Bonus Law is correctly applied to the project. Eligibility for a Density Bonus is not a CEQA environmental impact topic. The inclusion of additional units based on the Density Bonus was analyzed as part of the overall project as proposed, but eligibility for a Density Bonus award is not within the scope of the CEQA analysis. This comment is general opposition comment to the requested entitlements and thus, is not related to the adequacy of the Draft EIR analyses. WSRCC's comment does not raise CEQA issues with respect to the Draft EIR or any of the impact analyses therein. No additional response is required as part of the CEQA process/CEQA response to comments. The comment has been provided to the City decisionmakers for consideration.
- O2-20 The commenter concludes that the Draft EIR shall be revised and recirculated. As detailed above, the Draft EIR has adequately analyzed the proposed project and evaluated and disclosed the potential environmental impacts associated with the proposed project, consistent with the requirements of CEQA. None of the circumstances requiring recirculation of a draft EIR set forth



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in CEQA Guidelines Section 15088.5 have been met. Specifically, based on the comments and responses within the Final EIR, no new significant impacts or substantial increases in already identified significant impacts have been identified.



Chapter 3 Errata



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3. Errata

Changes to the Draft Environmental Impact Report (EIR) are noted below. A double-underline indicates additions to the text; ~~strike through~~ indicates deletions to the text. These clarifications and modifications are not considered to result in any new or substantially greater significant impacts as compared to those identified in the Draft EIR. The changes to the Draft EIR do not affect the overall conclusions of the environmental document. Changes are listed by page and, where appropriate, by paragraph.

Page 1-4, First Paragraph

... Amendment, Zoning Amendment, Specific Plan Amendment, Tentative Parcel Map, Master Plan, ~~Development Agreement~~, and Density Bonus Agreement.

Pages 1-6 and 1-7, Subsection *Air Quality*, PPP AIR-3

PPP AIR-3 Construction activities are required to recycle/reuse at least ~~50~~65 percent of the construction material including, but not limited to, soil, mulch, vegetation, concrete, lumber, metal, and cardboard, and to use green building materials such as those materials that are rapidly renewable or resource efficient, and recycled and manufactured in an environmentally friendly way, for at least ten percent of the project, as specified in the California Department of Resources Recycling and Recovery Sustainable Green Building Program.

Page 1-11, Subsection *Public Services*, PPP FS-3

PPP FS-3 The project is required to pay development impact fees established based on the Costa Mesa Fire Protection System Fee Study ~~and as required in the Development Agreement~~ and required pro-rata share of fees for services.

Page 1-11, Subsection *Public Services*, PPP R-1

PPP R-1 The proposed project shall comply with Government Code Section 66477 (Quimby Act) and Measure Z ~~as required by the Development Agreement~~, related to payment of an open space and public park impact fee.

Page 1-12, Subsection *Recreation*, PPP R-1

PPP R-1 The proposed project shall comply with Government Code Section 66477 (Quimby Act) and Measure Z ~~as required by the Development Agreement~~, related to payment of an open space and public park impact fee.



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Page 1-12, Subsection *Transportation*, PPP T-2

PPP T-2 The City of Costa Mesa has a traffic impact fee program. This is a cumulative impact fee which would be determined in consultation with City of Costa Mesa Transportation Services Division staff to be paid in addition to direct project improvements required of the applicant. The City of Costa Mesa Transportation Services Division shall collect the project's traffic impact fee prior to issuance of the project's first residential building permit ~~or as otherwise agreed to in the project's Development Agreement.~~

Page 1-37, Fourth Paragraph

Discretionary actions required under this alternative would include re-approval of the Master Plan. Unlike the proposed project, this alternative would not require a General Plan Amendment, Zone Change, Specific Plan Amendment, Tentative Tract Map approval, ~~Development Agreement approval,~~ and Density Bonus Agreement.

Page 1-38, Second Paragraph

Discretionary actions required under this alternative would include a General Plan Amendment, Zone Change, Specific Plan Amendment, Master Plan approval, Tentative Tract Map approval, ~~Development Agreement approval,~~ and Density Bonus Agreement.

Page 1-38, Section 1.7.4, Reduced Development Intensity Alternative, Third Paragraph

Discretionary actions required under this alternative would be similar to the proposed project, and would include a General Plan Amendment, Zone Change, Specific Plan Amendment, Master Plan approval, Tentative Tract Map approval, ~~Development Agreement approval,~~ and Density Bonus Agreement.

Page 3-8, Section 3.5.1, Description of the Project, Second Paragraph

The proposed project requires approval of a General Plan Amendment, Zoning Amendment, Specific Plan Amendment, Tentative Parcel Map, Master Plan, ~~Development Agreement,~~ and Density Bonus Agreement.

Page 3-19, Section 3.5.1.7, Development Agreement

~~3.5.1.7 DEVELOPMENT AGREEMENT~~

~~The applicant is requesting a Development Agreement with the City pursuant to California Government Code Sections 65864 et seq. Pursuant to California Government Code Section 65864(b) and upon approval of the proposed project, the Development Agreement would vest the applicant's right to proceed with on-site development subject to the terms and conditions of the Development Agreement and consistency with the Master Plan and Specific Plan. Physical improvements identified in the Development Agreement are identified and evaluated in this EIR.~~



3. Errata

3.5.1.87 DENSITY BONUS AGREEMENT

The applicant is requesting a Density Bonus Agreement to allow a 20 percent density bonus for projects that include an amount of very low income units equal to five percent of the total base density (pursuant to California Government Code Section 65915[f][2]).

Page 3-23, Section 3.6, Permits and Approvals

This Draft EIR is a project-level EIR that examines the environmental impacts of the proposed project. This Draft EIR also addresses various actions by the City and others to adopt and implement the proposed project. It is the intent of this Draft EIR to evaluate the environmental impacts of the proposed project, thereby enabling the City, responsible agencies, and interested parties to make informed decisions with respect to the requested entitlements. The anticipated discretionary approvals (in addition to ministerial actions such as demolition permit, grading permit, building permits, encroachment permits, certificates of occupancy, etc.) requested by the applicant for this project include, but are not limited to:

Agency	Action
City of Costa Mesa	<ul style="list-style-type: none">▪ Certification of the EIR▪ Approval of the General Plan Amendment▪ Approval of the Zoning Amendment▪ Approval of the Specific Plan Amendment▪ Approval of the Tentative Parcel Map▪ Adoption of the Master Plan▪ Approval of the Development Agreement▪ Approval of the Density Bonus Agreement
Orange County Flood Control District (OCFCD)	<ul style="list-style-type: none">▪ Issuance of an Encroachment Permit within OCFCD right-of-way
Santa Ana Regional Water Quality Control Board	<ul style="list-style-type: none">▪ Issuance of a National Pollution Discharge Elimination System (NPDES) Permit
Southern California Edison (SCE)	<ul style="list-style-type: none">▪ Approval of proposed easement modifications/encroachment
Costa Mesa Sanitary District	<ul style="list-style-type: none">▪ Approval of proposed sewer improvements
Orange County Airport Land Use Commission	<ul style="list-style-type: none">▪ Determination of Consistency with Airport Environs Land Use Plan for John Wayne Airport

Page 4-13, Section 4.3.9, Land Use and Planning, Last Paragraph

The proposed project requires approval of a General Plan Amendment, Zoning Amendment, Specific Plan Amendment, Tentative Parcel Map, Master Plan, ~~Development Agreement~~ and Density Bonus Agreement. Refer to Section 5.10, Land Use and Planning, for an analysis of project impacts related to land use and planning.

Page 5.2-19, First Paragraph, First Sentence

The project would be required to comply with 13 CCR Section 2499 (limiting idling to five minutes or less), limit fugitive dust and VOC emissions, and recycle/reuse of at least ~~50~~65 percent of the construction material (refer to PPP AIR-1, PPP AIR-2, and PPP AIR-3).



3. Errata

Page 5.2-20, Subsection *Plans, Programs, Policies*, PPP AIR-3

PPP AIR-3 Construction activities are required to recycle/reuse at least ~~50~~⁶⁵ percent of the construction material including, but not limited to, soil, mulch, vegetation, concrete, lumber, metal, and cardboard, and to use green building materials such as those materials that are rapidly renewable or resource efficient, and recycled and manufactured in an environmentally friendly way, for at least ten percent of the project, as specified in the California Department of Resources Recycling and Recovery Sustainable Green Building Program.

Page 5.2-29, Third Paragraph, Last Sentence

The project would require approval of a General Plan Amendment, Zoning Amendment, Specific Plan Amendment, Tentative Parcel Map, Master Plan, ~~Development Agreement~~, and ~~Public Art Plan~~ Density Bonus Agreement.

Page 5.10-5, Impact 5.10-1, First Paragraph

Impact Analysis: Project implementation would require the following discretionary approvals: General Plan Amendment, Zoning Amendment, Specific Plan Amendment, Tentative Parcel Map, Master Plan, ~~Development Agreement~~, and Density Bonus Agreement. An evaluation of the proposed project's consistency with applicable regional and local plans and programs that have been adopted for the purpose of avoiding or mitigating an environmental effect is provided below.

Page 5.10-10, Table 5.10-1 (Continued), *Project Consistency with General Plan, Policy C-5.15*

Policy C-5.15: Consider the needs of the transportation and infrastructure system early for large developments and coordinate with developers to design projects that minimize traffic impacts and infrastructure demands, and implement complete streets wherever feasible. Alternatively, address transportation and infrastructure system impacts through the implementation of development agreements.	Consistent: The project's transportation impacts are analyzed in <u>Section 5.15. The proposed project would implement PPP T-1 through PPP T-3.</u> PPP T-1 through PPP T-3 would be implemented as part of the project's Development Agreement.
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Page 5.10-21, Table 5.10-1 (Continued), *Project Consistency with General Plan, Policy OSR-1.18*

Policy OSR-1.18: Provide a minimum of 4.26 acres of parkland per 1,000 residents.	Consistent: As detailed in Section 5.13, the project would be required to dedicate land and/or pay in-lieu fees sufficient for acquisition and development of parkland in accordance with the Quimby Act and Ordinance No. 2016-07 (Measure Z), or as otherwise required by the terms and conditions of the Development Agreement.
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3. Errata

Page 5.10-25, Table 5.10-1 (Continued), Project Consistency with General Plan, Last Row, 22

<p>22: Future development plans and environmental analyses for Home Ranch shall include an analysis regarding the future fire station in the North Harbor area; i.e.; location and timing of construction. Joint use with surrounding Central Net cities should also be considered in order to defray the costs of an additional fire station. A study could also reexamine the need/demand for the seventh station.</p>	<p>Consistent: As detailed in <u>Section 5.13, Public Services</u>, the City is concurrently conducting a Development Impact Fee Study to account for changes of use that result in net increases to call volumes. In the meantime, to mitigate the impacts of the project-generated increase in anticipated calls for service, CMFD has accepted PPP FS-3, which requires the negotiation of fees through the Development Agreement with an understanding that the developer will be required to pay its pro-rata share of additional staffing, apparatus, and facilities. The project would be required to pay development impact fees established based on the Citywide Standards of Coverage Assessment and the Development Impact Fee Study and as required in the Development Agreement in accordance with PPP FS-3 and Municipal Code Section 13-270, <i>Establishment of Development Impact Fee</i>. The revenues raised by the development impact fee, <u>pro-rata (fair share) fees</u> the Development Agreement, and the proportionate revenues generated through the project's ongoing payment of taxes (and other similar project-related revenues) would fund fire protection staffing, facilities, and equipment and would offset the project's incremental impacts to fire services.</p>
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Page 5.13-12, Second and Third Paragraphs

Although the project proposes adequate emergency access to the residential buildings, as well as appropriate fire flow utilities, the increase in residents on-site would increase the calls for service. In accordance with the City's existing laws and regulations pertaining to appropriate fees to cover a project's fair share contributions to potential impacts to general fire services responses to any given area in the City, PPP FS-3 would require ~~the negotiation of fees through the Development Agreement with an understanding that the developer would be required to pay its pro-rata share for the purpose of serving the project and surrounding area for fire service.~~ The proposed project would also be required to pay its fair share of development impact fees in accordance with the Costa Mesa Fire Protection System Fee Study and Municipal Code Section 13-270, *Establishment of Development Impact Fee* (collectively PPP FS-3); such fees are utilized for CMFD staffing support. Last, the proposed project would generate tax revenue benefiting the City's General Fund, another contributor to CMFD staffing.

Other than those improvements described above, no other physical improvements have been identified by CMFD in order to specifically serve the project site. The fair share fees, as established in the ~~Development Agreement and~~ Municipal Code Section 13-270, allow for increased operation of the Fire Department as needed at that time each phase of the project is reviewed for the building permit process. As such, the proposed project would not result in significant adverse physical impacts associated with the provisions of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the CMFD public services. With compliance with existing laws and regulations, impacts in this regard would be less than significant. No mitigation measures are required.



3. Errata

Page 5.13-12, Subsection *Plans, Programs, Policies*, PPP FS-3

PPP FS-3 The project is required to pay development impact fees established based on the Costa Mesa Fire Protection System Fee Study and required pro-rata share of fees for services ~~and as required in the Development Agreement.~~

Page 5.14-5, Impact 5.14-1, Last Paragraph

The project is also required to comply with the Quimby Act and Measure Z, which require dedication of parkland and/or payment of in-lieu fees and payment of impact fees related to open space (refer to PPP R-1). Specifically, the City would require the payment of \$5,000 per dwelling units as outlined in the Parkland Impact Fees. Payment of such fees would be required and utilized by the City for maintenance and/or renovating existing facilities, including at Wakeham Park. Therefore, the project applicant would be required to dedicate land and/or pay in-lieu fees ~~under the terms and conditions of the Development Agreement.~~ Compliance with these regulatory requirements and payment of required impact fees, would ensure project impacts to park and recreational services are less than significant.

Page 5.14-6, Subsection *Plans, Programs, Policies*, PPP R-1

PPP R-1 The proposed project shall comply with Government Code Section 66477 (Quimby Act) and Measure Z ~~as required by the Development Agreement,~~ related to payment of an open space and public park impact fee.

Page 5.15-14 and 5.15-15, Subsection *Plans, Programs, Policies*, PPP T-2

PPP T-2 The City of Costa Mesa has a traffic impact fee program. This is a cumulative impact fee which would be determined in consultation with City of Costa Mesa Transportation Services Division staff to be paid in addition to direct project improvements required of the applicant. The City of Costa Mesa Transportation Services Division shall collect the project's traffic impact fee prior to issuance of the project's first residential building permit ~~or as otherwise agreed to in the project's Development Agreement.~~

Pages 7-7, Section 7.4.10, Land Use and Planning, Last Paragraph First Sentence

Given that the proposed project would not be developed, this alternative would not require a General Plan Amendment, Zone Change, Specific Plan Amendment, Tentative Tract Map approval, Master Plan adoption, ~~Development Agreement approval,~~ and Density Bonus Agreement approval.



3. Errata

Page 7-12, Last Paragraph

Discretionary actions required under this alternative would include re-approval of the Master Plan. Unlike the proposed project, this alternative would not require a General Plan Amendment, Zone Change, Specific Plan Amendment, Tentative Tract Map approval, ~~Development Agreement approval~~, and Density Bonus Agreement.

Page 7-15, Section 7.5.10, Land Use and Planning, Last Paragraph

The No Project/Existing Zoning Alternative would only require re-approval of the Master Plan. Unlike the proposed project, this alternative would not require a General Plan Amendment, Zone Change, Specific Plan Amendment, Tentative Tract Map approval, ~~Development Agreement approval~~, and Density Bonus Agreement approval.

Page 7-20, Last Paragraph

Discretionary actions required under this alternative would include a General Plan Amendment, Zone Change, Specific Plan Amendment, Master Plan approval, Tentative Tract Map approval, ~~Development Agreement approval~~, and Density Bonus Agreement.

Page 7-23, Section 7.6.10, Land Use and Planning, Last Paragraph, First Sentence

The Commercial Building Alternative would require a General Plan Amendment, Zone Change, Specific Plan Amendment, Master Plan approval, Tentative Tract Map approval, ~~Development Agreement approval~~, and Density Bonus Agreement.

Page 7-28, Second Paragraph

Discretionary actions required under this alternative would be similar to the proposed project, and would include a General Plan Amendment, Zone Change, Specific Plan Amendment, Master Plan approval, Tentative Tract Map approval, ~~Development Agreement approval~~, and Density Bonus Agreement.

Page 7-31, Section 7.7.10, Land Use and Planning, Last Paragraph, First Sentence

The Reduced Development Intensity Alternative would require a General Plan Amendment, Zone Change, Specific Plan Amendment, Master Plan approval, Tentative Tract Map approval, ~~Development Agreement approval~~, and Density Bonus Agreement.

Page 10-2, Removal of an Impediment to Growth, Subsection *Changes in Existing Land Use Regulations*, First Sentence

As detailed in Section 3.5.1, *Description of the Project*, the project requires several discretionary approvals related to land use regulations, including a General Plan Amendment, Zoning Amendment, Specific Plan Amendment, Tentative Parcel Map, Master Plan, ~~Development Agreement~~, and ~~Public Art Plan~~ Density Bonus Agreement.



3. Errata

Page 10-4, Establishment of A Precedent-Setting Action, First Sentence

As stated above, the proposed project would require a General Plan Amendment, Zoning Amendment, Specific Plan Amendment, Tentative Parcel Map, Master Plan, ~~Development Agreement, and Public Art Plan~~Density Bonus Agreement.



Chapter 4 Mitigation Monitoring and Reporting Program



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4. Mitigation Monitoring and Reporting Program

The California Environmental Quality Act (CEQA) requires that when a public agency completes an environmental document which includes measures to mitigate or avoid significant environmental effects, the public agency must adopt a reporting or monitoring program. This requirement ensures that environmental impacts found to be significant will be mitigated. The reporting or monitoring program must be designed to ensure compliance during project implementation (Public Resources Code Section 21081.6).

In compliance with Public Resources Code Section 21081.6, Table 4-1, *Mitigation Monitoring and Reporting Checklist*, has been prepared for the proposed Hive Live (project). This Mitigation Monitoring and Reporting Checklist is intended to provide verification that all applicable mitigation measures relative to significant environmental impacts are monitored and reported. Monitoring will include: 1) verification that each mitigation measure has been implemented; 2) recordation of the actions taken to implement each mitigation; and 3) retention of records in the City of Costa Mesa Hive Live Project file.

This Mitigation Monitoring and Reporting Program (MMRP) delineates responsibilities for monitoring the project, but also allows the City of Costa Mesa (City) flexibility and discretion in determining how best to monitor implementation. Monitoring procedures vary according to the type of mitigation measure. Adequate monitoring consists of demonstrating that monitoring procedures took place and that mitigation measures were implemented. This includes the review of all monitoring reports, enforcement actions, and document disposition, unless otherwise noted in the Mitigation Monitoring and Reporting Checklist (Table 3-1). If an adopted mitigation measure is not being properly implemented, the designated monitoring personnel shall require corrective actions to ensure adequate implementation.

Reporting consists of establishing a record that a mitigation measure is being implemented, and generally involves the following steps:

- The City distributes reporting forms to the appropriate entities for verification of compliance.
- Departments/agencies with reporting responsibilities will review the Draft EIR and Final EIR, which provide general background information on the reasons for including specified mitigation measures.
- Problems or exceptions to compliance will be addressed to the City as appropriate.
- Periodic meetings may be held during project implementation to report on compliance of mitigation measures.
- Responsible parties provide the City with verification that monitoring has been conducted and ensure, as applicable, that mitigation measures have been implemented. Monitoring compliance may be

4. Mitigation Monitoring and Reporting Program

documented through existing review and approval programs such as field inspection reports and plan review.

- The City prepares a reporting form periodically during the construction phase for all project mitigation monitoring efforts.
- Appropriate mitigation measures will be included in construction documents and/or conditions of permits/approvals.

Minor changes to the MMRP, if required, must be made in accordance with CEQA and would be permitted after further review and approval by the City. No change is permitted unless the MMRP continues to satisfy the requirements of Public Resources Code Section 21081.6.



4. Mitigation Monitoring and Reporting Program

Table 4-1
Mitigation Monitoring and Reporting Checklist

Mitigation Number	Mitigation Measure	Implementation Responsibility	Timing	Monitoring Responsibility	Timing	VERIFICATION OF COMPLIANCE		
						Initials	Date	Remarks
5.2 AIR QUALITY								
AQ-1	Prior to initiation of any construction activities, the project applicant shall provide documentation to the City of Costa Mesa Building Safety Division that all off-road diesel-powered construction equipment greater than 50 horsepower to be utilized during construction would meet the Tier 4 emission standards. A copy of each unit's certified tier specification and California Air Resources Board (CARB) or South Coast Air Quality Management District (SCAQMD) operating permit shall be provided to the City of Costa Mesa Building Safety Division at the time of mobilization of each applicable unit of equipment.	Project Applicant; Construction Contractor	Prior to Construction Activities	City of Costa Mesa Building Safety Division	At The Time of Construction Equipment Mobilization			
5.3 BIOLOGICAL RESOURCES								
BIO-1	If project-related activities are to be initiated during the nesting season (January 1 to August 31), a pre-construction nesting bird clearance survey shall be conducted by a qualified biologist retained by the project applicant no more than three days prior to the start of any vegetation removal or ground disturbing activities. The qualified biologist shall survey all suitable nesting habitat within the project impact area, and areas within a biologically defensible buffer zone surrounding the project impact area. If no active bird nests are detected during the clearance survey, project activities may begin, and no additional avoidance and minimization measures shall be required. If an active bird nest is found, the species shall be identified, and a "no-disturbance" buffer shall be	Project Applicant; Construction Contractor; Qualified Biologist	Prior to and During Any Vegetation Removal or Ground Disturbing Activities (If Conducted Between January 1 and August 31)	City of Costa Mesa Development Services	Prior to and During Any Vegetation Removal or Ground Disturbing Activities (If Conducted Between January 1 and August 31)			



4. Mitigation Monitoring and Reporting Program

Table 4-1
Mitigation Monitoring and Reporting Checklist

Mitigation Number	Mitigation Measure	Implementation Responsibility	Timing	Monitoring Responsibility	Timing	VERIFICATION OF COMPLIANCE		
						Initials	Date	Remarks
	established around the active nest. The size of the “no-disturbance” buffer shall be increased or decreased based on the judgement of the qualified biologist and level of activity and sensitivity of the species. The qualified biologist shall periodically monitor any active bird nests to determine if project-related activities occurring outside the “no-disturbance” buffer disturb the birds and if the buffer shall be increased. Once the young have fledged and left the nest, or the nest otherwise becomes inactive under natural conditions, project activities within the “no-disturbance” buffer may occur following an additional survey by the qualified biologist to search for any new bird nests in the restricted area.							
5.4 CULTURAL RESOURCES								
CUL-1	<p>Prior to issuance of grading permits, the City of Costa Mesa shall ensure a qualified archaeologist who meets the Secretary of the Interior’s Standards for professional archaeology has been retained for the project and shall be on-call during all demolition and grading/excavation. The qualified archaeologist shall ensure the following measures are followed for the project:</p> <ul style="list-style-type: none"> ▪ Prior to any ground disturbance, the qualified archaeologist, or their designee, shall provide worker environmental awareness protection training to construction personnel regarding regulatory requirements for the protection of cultural (prehistoric and historic) resources. As part of this training, 	Project Applicant; Construction Contractor; Qualified Archaeologist; Native American Monitor	Prior to Issuance of Grading Permit; Prior to and During Ground Disturbing Activities	City of Costa Mesa Development Services	Prior to Issuance of Grading Permit; Prior to and During Ground Disturbing Activities			



4. Mitigation Monitoring and Reporting Program

Table 4-1
Mitigation Monitoring and Reporting Checklist

Mitigation Number	Mitigation Measure	Implementation Responsibility	Timing	Monitoring Responsibility	Timing	VERIFICATION OF COMPLIANCE		
						Initials	Date	Remarks
	<p>construction personnel shall be briefed on proper procedures to follow should resources of a potentially cultural nature be discovered during construction. Workers shall be provided contact information and protocols to follow in the event that inadvertent discoveries are made. The training can be in the form of a video or PowerPoint presentation. Printed literature (handouts) can accompany the training and can also be given to new workers and contractors to avoid the necessity of continuous training over the course of the project.</p> <ul style="list-style-type: none">▪ Prior to any ground disturbance, the applicant shall submit a written Project Monitoring Plan (PMP) to the City of Costa Mesa's Development Services Director for review and approval. The monitoring plan shall include monitor contact information (including the qualified archeologist and the Native American Monitor per Mitigation Measure TCR-1), specific procedures for field observation, diverting and grading to protect finds, and procedures to be followed in the event of significant finds.▪ In the event resources of a potentially Native American nature are discovered during any stage of project construction, all construction work within 50 feet (15 meters) of the discovered tribal cultural resource ("TCR") shall cease and the Monitor shall assess the discovery. Construction activities outside the							



4. Mitigation Monitoring and Reporting Program

Table 4-1
Mitigation Monitoring and Reporting Checklist

Mitigation Number	Mitigation Measure	Implementation Responsibility	Timing	Monitoring Responsibility	Timing	VERIFICATION OF COMPLIANCE		
						Initials	Date	Remarks
	<p>buffer zone may continue during the Monitor's assessment.</p> <ul style="list-style-type: none"> ○ <u>Non-Native American (Non-TCR) Discoveries:</u> If warranted based on the qualified archaeologist's evaluation of the archaeological (but non-TCR) discovery, the archaeologist shall collect the resource and prepare a test-level report describing the results of the investigation. The test-level report shall evaluate the site including discussing the significance (depth, nature, condition, and extent of the resource), identifying final Cultural Mitigation Measures, if any, that the City of Costa Mesa's Development Services Director shall verify are incorporated into future construction plans, and providing cost estimates. ○ <u>Conjoined Archaeological and Native American (TCR) Discoveries:</u> If, following consultation with the Monitor, it is determined that a historic or prehistoric discovery includes Native American materials or resources, then the Monitor shall determine the appropriate treatment of the discovered TCR(s) consistent with Mitigation Measure TCR-1. The Monitor shall prepare a TCR discovery report, which may include descriptions and evaluations of the area and conditions 							



4. Mitigation Monitoring and Reporting Program

Table 4-1
Mitigation Monitoring and Reporting Checklist

Mitigation Number	Mitigation Measure	Implementation Responsibility	Timing	Monitoring Responsibility	Timing	VERIFICATION OF COMPLIANCE		
						Initials	Date	Remarks
	<p>at the site of the discovery (i.e., depth, nature, condition, and extent of the resources), as well as a discussion of the significance to the Kizh Nation.</p> <ul style="list-style-type: none">The requirements of Section 15064.5 of the CEQA Guidelines shall be followed. Construction work within the buffer area surrounding a TCR discovery shall resume only after the Monitor has (1) appropriately inventoried and documented the resource and any surrounding material of significance to the Kizh Nation, and (2) completed the appropriate treatment of the resource consistent with Mitigation Measure TCR-1.							
5.6 GEOLOGY AND SOILS								
GEO-1	Prior to issuance of a grading permit and any ground-disturbing activities, the project applicant shall consult with a geologist or paleontologist to confirm whether anticipated grading would occur at depths that could encounter highly sensitive sediments for paleontological resources. If confirmed that underlying sediments may have high sensitivity, construction activity shall be monitored by a qualified paleontologist retained by the project applicant and a written Project Monitoring Plan (PMP) shall be submitted to the City of Costa Mesa's Development Services Director for review and approval. The monitoring plan shall include monitor contact information, specific procedures for field observation, diverting	Project Applicant; Construction Contractor; Qualified Geologist; Qualified Paleontological Monitor	Prior to Issuance of Grading Permit; Prior to and During Ground Disturbing Activities	City of Costa Mesa Development Services Director	Prior to Issuance of Grading Permit; Prior to and During Ground Disturbing Activities			



4. Mitigation Monitoring and Reporting Program

Table 4-1
Mitigation Monitoring and Reporting Checklist

Mitigation Number	Mitigation Measure	Implementation Responsibility	Timing	Monitoring Responsibility	Timing	VERIFICATION OF COMPLIANCE		
						Initials	Date	Remarks
	and grading to protect finds, and procedures to be followed in the event of significant finds. The paleontologist shall have the authority to halt construction during construction activity. Because the project area is immediately underlain by Holocene sediments (low sensitivity) and the depth of these sediments is unknown, spot-check monitoring shall be conducted to identify potential fossils and the lithological transition to Pleistocene sediments. If Pleistocene-aged sediments are discovered at depth, monitoring shall transition to full-time as ground-disturbing activities occur at or below this identified depth because these Pleistocene units have been identified as having high sensitivity for paleontological resources.							
GEO-2	In the event of any fossil discovery, regardless of depth or geologic formation, construction work shall halt within a 50-foot radius of the find until a qualified paleontologist retained by the project applicant can determine its significance. Significant fossils shall be recovered, prepared to the point of curation, identified by qualified experts, listed in a database to facilitate analysis, and deposited in a designated paleontological curation facility in accordance with the standards of the Society of Vertebrate Paleontology (2010). The most likely repository is the Natural History Museum of Los Angeles County (NHMLAC). The repository shall be identified, and a curatorial arrangement shall be signed prior to the collection of the fossils.	Construction Contractor; Qualified Paleontological Monitor	During Ground Disturbing Activities	City of Costa Mesa Development Services Director	During Ground Disturbing Activities			
5.8 HAZARDS AND HAZARDOUS MATERIALS								



4. Mitigation Monitoring and Reporting Program

Table 4-1
Mitigation Monitoring and Reporting Checklist

Mitigation Number	Mitigation Measure	Implementation Responsibility	Timing	Monitoring Responsibility	Timing	VERIFICATION OF COMPLIANCE		
						Initials	Date	Remarks
HAZ-1	At least three business days prior to any lane closure, the construction contractor shall notify the Costa Mesa Police Department and Costa Mesa Fire Department, along with the City of Costa Mesa Public Services Director, as well as relevant departments associated with the City of Santa Ana, of construction activities that would impede movement (such as road or lane closures), to allow for uninterrupted emergency access of evacuation routes.	Project Applicant; Construction Contractor	Prior to Any Lane Closure	Costa Mesa Police Department; Costa Mesa Fire Department; City of Costa Mesa Public Services Director; City of Santa Ana	Prior to Any Lane Closure			
5.13 PUBLIC SERVICES AND RECREATION								
PS-1	The applicant shall coordinate with the Costa Mesa Police Department for the installation and operation of an Automated License Plate Reader on all vehicle entrances to the project site. The applicant shall be responsible for the initial and future funding of the Automated License Plate Reader program on the property.	Project Applicant	Prior to Issuance of First Occupancy Permit	Costa Mesa Police Department	Prior to Issuance of First Occupancy Permit			
5.15 TRANSPORTATION								
TRA-1	Community-Based Travel Planning. The project applicant shall provide community-based travel planning (CBTP) to project residents, including but not limited to customized information, incentives, and support to encourage the use of transportation alternatives in place of single occupancy vehicles. At minimum, this shall include providing each prospective tenant with detailed and tailored information regarding various transportation options specific to the project site and surrounding area, such as public transit,	Project Applicant	During Project Operation	City of Costa Mesa Public Services Director	During Project Operation			



4. Mitigation Monitoring and Reporting Program

Table 4-1
Mitigation Monitoring and Reporting Checklist

Mitigation Number	Mitigation Measure	Implementation Responsibility	Timing	Monitoring Responsibility	Timing	VERIFICATION OF COMPLIANCE		
						Initials	Date	Remarks
	carpooling, pedestrian and bicycle facilities, and ride hailing opportunities.							
5.16 TRIBAL CULTURAL RESOURCES								
TCR-1	Prior to issuance of any grading permits, the Applicant shall formally retain a Native American monitor from the Native American tribe that is culturally and ancestrally affiliated with the Project location: the Gabrieleño Band of Mission Indians – Kizh Nation. The Applicant shall allow at least 45 days from initial contact with the first preference tribe (Kizh Nation) to enter into a contract for monitoring services. If the Applicant can demonstrate they were unable to secure an agreement with the first preference tribe after a good faith effort, or if the contracted tribe fails to fulfill its obligation under the contract terms, then the Applicant may retain an alternative qualified tribal monitor approved by the City. The City approved qualified tribal monitor (the "Monitor"), shall monitor all "ground-disturbing" Project activities, which includes but is not limited to: demolition, grubbing/clearing, rough grading, precise grading, mass grading, trenching, excavation, boring, auguring, and weed abatement on previously disturbed and undisturbed ground (collectively "ground disturbing activities"). A copy of the executed contract shall be submitted to the Costa Mesa Development Services Department prior to the issuance of any permit necessary to commence ground-disturbing activities.	Native American Monitor	Prior to Issuance of Grading Permit; During Ground Disturbing Activities	Costa Mesa Development Services Director	Prior to Issuance of Grading Permit; Prior to and During Ground Disturbing Activities			



4. Mitigation Monitoring and Reporting Program

Table 4-1
Mitigation Monitoring and Reporting Checklist

Mitigation Number	Mitigation Measure	Implementation Responsibility	Timing	Monitoring Responsibility	Timing	VERIFICATION OF COMPLIANCE		
						Initials	Date	Remarks
	The Monitor shall prepare daily monitoring logs that include descriptions of the relevant ground disturbing activities, locations of such activities, observed soil types, and the presence or absence of tribal cultural-related materials. Should tribal cultural-related resources be discovered, monitor logs shall identify and describe such resources, including but not limited to, Native American cultural and historical artifacts, as well as any discovered Native American (ancestral) human remains and burial goods. Copies of monitor logs shall be provided to the City of Costa Mesa and maintained as confidential. In the event resources are discovered during any phase of ground disturbing activities, and it is determined by the Monitor, in consultation with the City, to be Native American in origin, then all construction activity within fifty (50) feet (15 meters) of the find shall cease until the Monitor can assess the find. Work shall be allowed to continue outside of the buffer zone. The Monitor shall determine the appropriate treatment of the discovered resource that is consistent with the tribe's cultural practices, including reinternment on site in an appropriate area determined by the tribe in consultation with the City and the Applicant, or retention of the discovered resource for educational purposes. Construction work within the buffer area surrounding a TCR discovery shall resume only after the Monitor has (1) appropriately inventoried and documented the resource and any surrounding material of significance to the Kizh Nation, and (2) completed the appropriate treatment of the resource.							



4. Mitigation Monitoring and Reporting Program

Table 4-1
Mitigation Monitoring and Reporting Checklist

Mitigation Number	Mitigation Measure	Implementation Responsibility	Timing	Monitoring Responsibility	Timing	VERIFICATION OF COMPLIANCE		
						Initials	Date	Remarks
	Monitoring for tribal cultural resources ("TCR") shall conclude upon the City's receipt of written confirmation from the Monitor that ground disturbing activities with potential impacts to discovered and/or undiscovered TCRs are complete.							