

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

NEWPORT CROSSINGS MIXED USE PROJECT (PA2017-107) City of Newport Beach

Prepared for:

City of Newport Beach

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- Appendix A. FAA Determination of No Hazard to Air Navigation
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1. Introduction

1.1 INTRODUCTION

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

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

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

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

1.2 FORMAT OF THE FEIR

This document is organized as follows:

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

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

1. Introduction

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

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

1.3 CEQA REQUIREMENTS REGARDING COMMENTS AND RESPONSES

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

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

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

2. Response to Comments

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

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

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

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

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

2. Response to Comments

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2. Response to Comments

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



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

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

December 3, 2018

Jaime Murillo, Senior Planner
City of Newport Beach

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

Dear Mr. Murillo:

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

A1-1

Sincerely,

Patricia Martz, Ph.D.
President

2. Response to Comments

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2. Response to Comments

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

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

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

5.4 CULTURAL RESOURCES

Impact 5.4-2

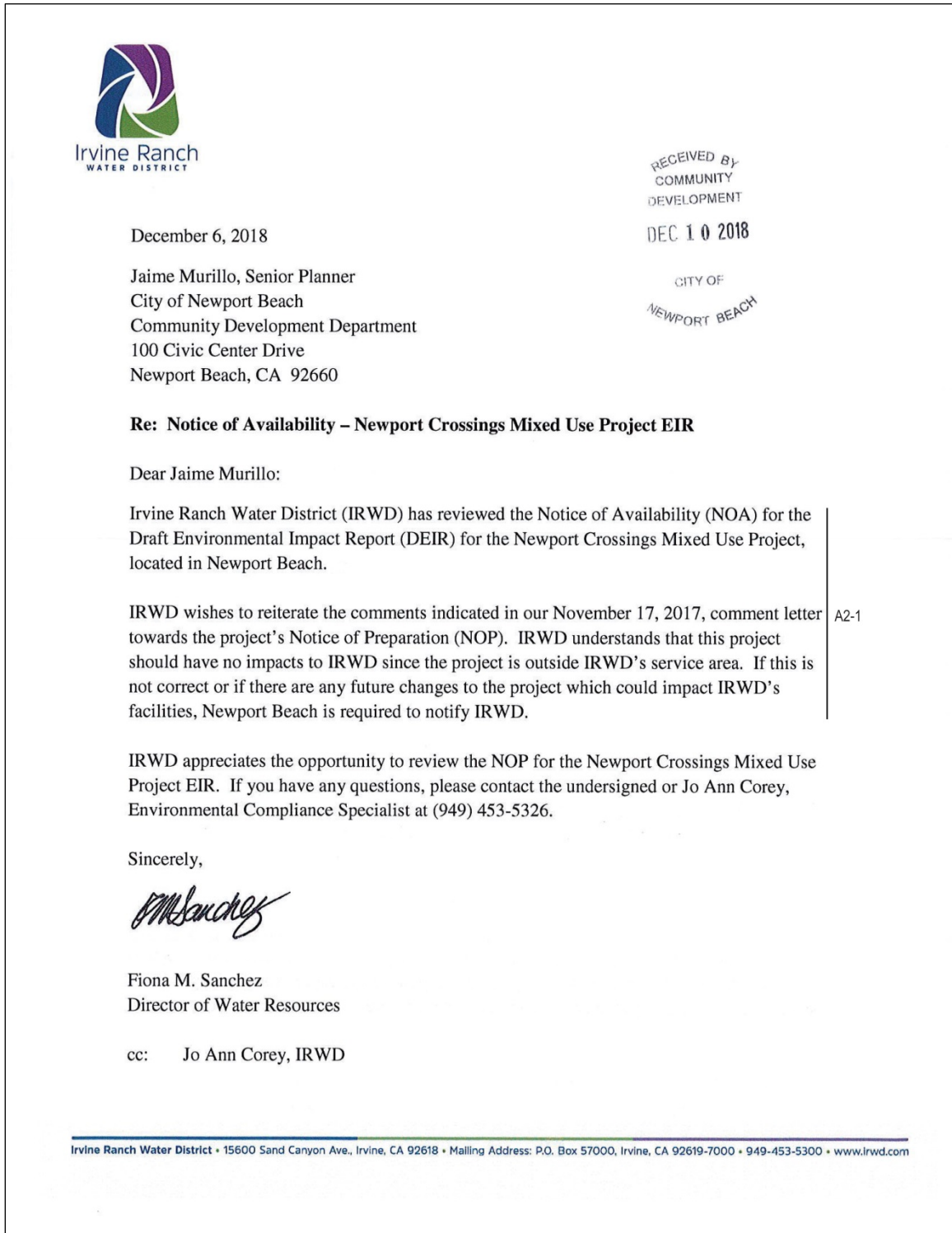
CUL-1 Prior to the issuance of a grading permit by the City of Newport Beach, the project applicant shall retain a qualified archaeologist to periodically monitor ground-disturbing activities onsite and provide documentation of such retention to the City of Newport Beach Community Development Director.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

2. Response to Comments

as the South Central Coastal Information Center at California State University, Fullerton.

2. Response to Comments

LETTER A2 – Irvine Ranch Water District (1 page)



2. Response to Comments

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2. Response to Comments

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

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

2. Response to Comments

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2. Response to Comments

LETTER A3– Orange County Fire Authority (1 page)

JoAnn Hadfield

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

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

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

Have a great day.

**Tamera Rivers**

Management Analyst
Orange County Fire Authority
Office: 714-573-6199
tamyivers@ocfa.org

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

2. Response to Comments

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2. Response to Comments

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

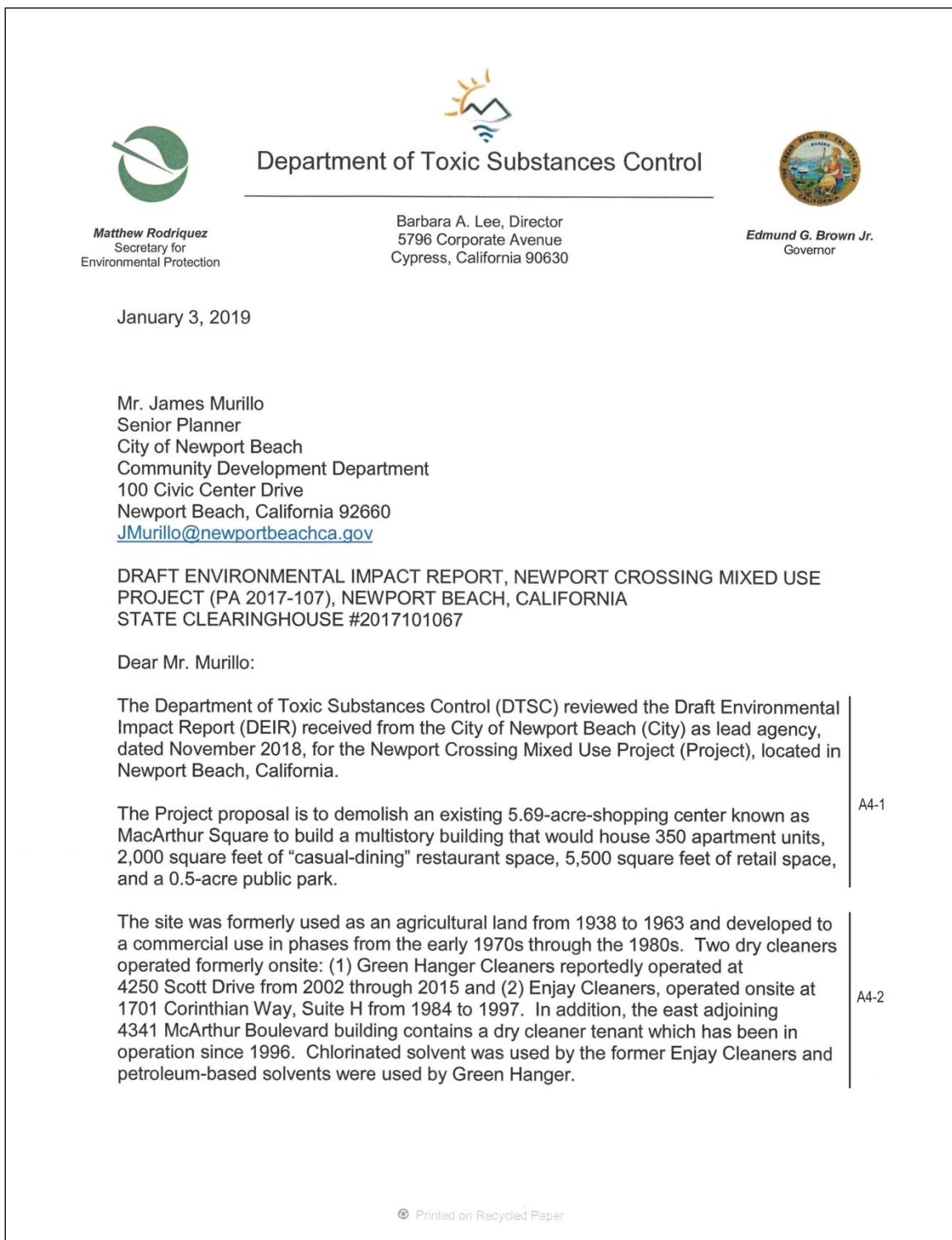
A3-1 The comment does not concern the content or adequacy of the Draft EIR. The comment is acknowledged.

2. Response to Comments

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2. Response to Comments

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



2. Response to Comments

Mr. James Murillo
January 3, 2019
Page 2

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

A4-2
cont'd

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

A4-3

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

A4-4

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

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

A4-5

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

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Mr. James Murillo
January 3, 2019
Page 3

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

A4-5
cont'd

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

A4-6

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

A4-7

5. Section 5.7.7 Mitigation Measures, Page 5.7-21. MM HAZ-1 requires a passive ventilation system for the proposed project. Please note that a land use covenant and long-term monitoring is required because the site was not remediated to meet the residential land use. In addition, confirmation sampling (e.g., indoor sampling or sub-slab sampling) is recommended after the installation of a vapor mitigation measure to verify the effectiveness of the mitigation measure. DTSC recommends any vapor intrusion mitigation be implemented in accordance with DTSC Vapor Intrusion Mitigation Advisory (https://www.dtsc.ca.gov/SiteCleanup/upload/VIMA_Final_Oct_2011.pdf).

A4-8

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

A4-9

2. Response to Comments

Mr. James Murillo
January 3, 2019
Page 4

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

A4-9
cont'd

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

Sincerely,



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

ara/cy/yg

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

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

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

2. Response to Comments

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

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

Soil Vapor Sampling and Testing: 2013

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

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

2. Response to Comments

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

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

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

1 Sources: https://iavi.rti.org/attachments/Resources/Hartman_-_Soil_Gas_Sampling_Methods_and_Approaches_for_VI_Assessments.pdf and <file:///C:/Users/jestrada/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/S840ZOHA/The%20Downward%20Migration%20of%20Vapors.htm>.

2. Response to Comments

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

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

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

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

2. Response to Comments

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

5.7.7 Mitigation Measures

Impact 5.7-2

MM HAZ-2 Prior to issuance of the first building permit, soil and soil vapor samples shall be collected from beneath the former Enjay Cleaners and soil samples shall be collected from beneath the proposed 0.5-acre public park site and tested for PCE and OCPs, respectively. The results shall be submitted to the Orange County Health Care Agency and City Building Official. In the event that soil concentrations exceed site-specific cleanup goals, affected soils shall be removed and properly treated/disposed of. Should soil vapor concentrations exceed site-specific cleanup goals, short-term soil vapor extraction and treatment shall be performed to reduce soil vapor concentrations.

2. Response to Comments

LETTER A5 – City of Irvine (2 pages)



Community Development

1 Civic Center Plaza, Irvine, CA 92606-5208

cityofirvine.org

949-724-6000

January 7, 2019

Mr. Jamie Murillo
City of Newport Beach
Community Development Department
100 Civic Center Drive
Newport Beach, CA 92660

Subject: Draft Environmental Impact Report (PA2017-107) for the Newport Crossings Mixed Use Project located in the City of Newport Beach

Dear Mr. Murillo:

Staff reviewed the Draft Environmental Impact Report (DEIR) for the Newport Crossings Mixed Use project in the City of Newport Beach. The project site is within the Newport Place Planned Community of the Airport Area, and bounded by Corinthian Way to the northeast, Martingale Way to the east, Scott Drive to the northwest, and Dove Street to the southwest. The proposed project involves demolishing an approximately 58,277 square-foot shopping center to develop a mixed use site consisting of 350 residential units, 2,000 square feet of casual dining restaurant space, 5,500 square feet of commercial space, and a 0.5-acre public park.

A5-1

Staff completed its review and offers the following comments on the project:

1. The City recommends including the following study area intersections:
 - Jamboree/I-405 ramps
 - Jamboree/Michelson
 - Jamboree/Dupont

A5-2

Additionally, the arterial segments should include City of Irvine roadways that are bounded by I-405 to the north, MacArthur to the west, and Jamboree to the east.

2. On Page 5.14-4, under the City of Irvine section, discuss how a significant impact also occurs when the proposed project causes the study area intersection to operate from an acceptable level of service to an unacceptable level of service.

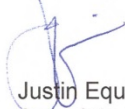
A5-3

2. Response to Comments

Mr. Jamie Murillo
January 7, 2019
Page 2

If you have any questions, you may contact me at 949-724-6364 or at
jequina@cityofirvine.org.

Sincerely,



Justin Equina
Associate Planner

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

2. Response to Comments

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

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

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

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

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

5.14 TRANSPORTATION AND TRAFFIC

City of Irvine

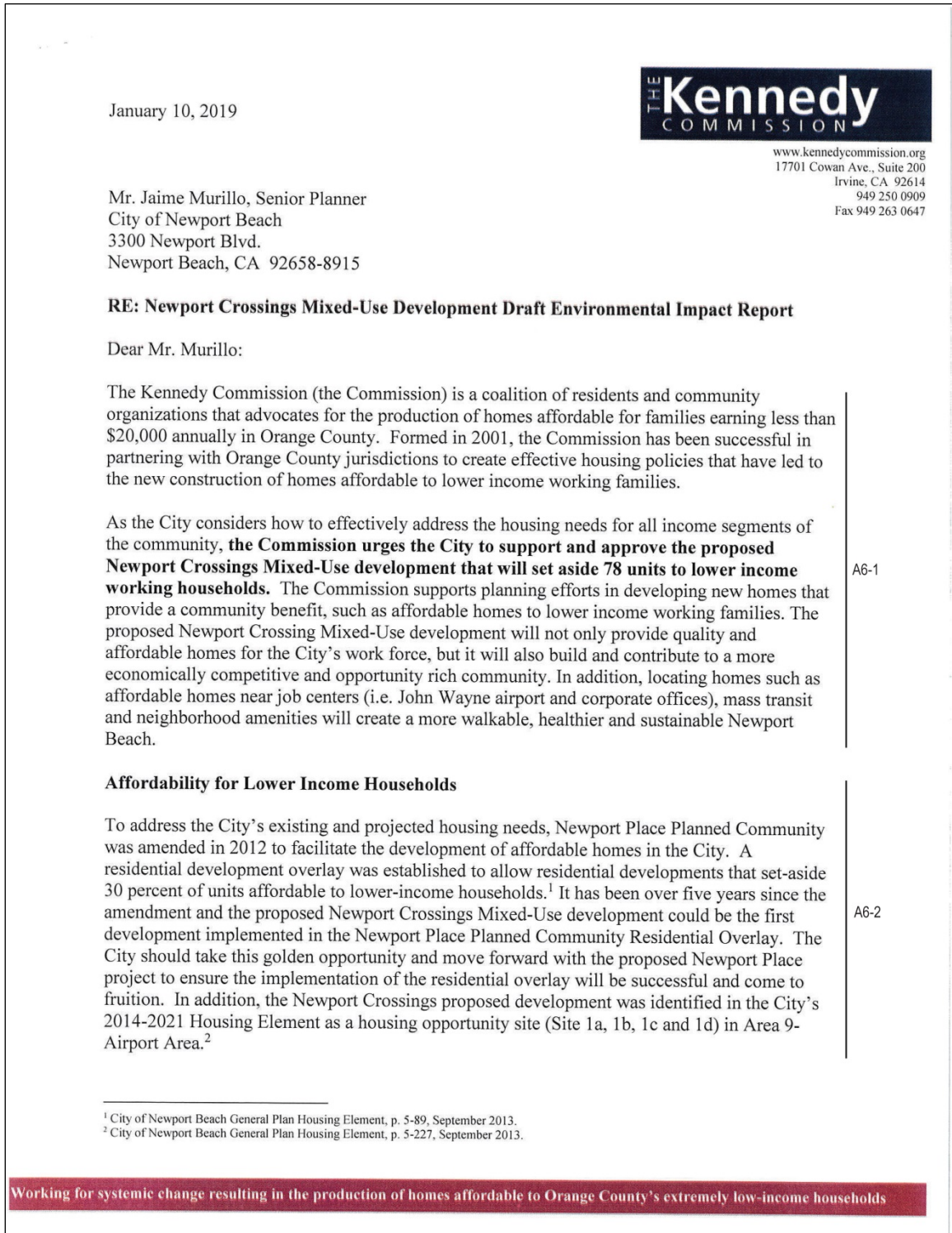
In Irvine, LOS E (peak hour ICU less than or equal to 1.00) is considered acceptable in the Irvine Business Complex (IBC) intersections. At other study area intersections in Irvine, LOS D (peak hour ICU less than or equal to 0.90) is acceptable. ~~At Irvine intersections, if the intersection would operate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

2. Response to Comments

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

2. Response to Comments

LETTER A6 – The Kennedy Commission (3 pages)



2. Response to Comments

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

Ranked among the top ten least affordable metropolitan areas in the country³, Orange County is suffering from an affordable housing crisis. A resident must earn at least \$36.08 per hour to afford a two-bedroom apartment at a fair market rent of \$1,876 a month.⁴ Over the past seven years, Orange County renters have paid an average of \$355 more a month and rents are projected to continually rise.⁵ During 2000 to 2015, Orange County's inflation-adjusted median rent increased by 28 percent while the median renter income decreased by 9 percent.⁶

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

A6-2
cont'd

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

In Newport Beach, tourism is one of the City's leading industries and it generates substantial revenue and jobs for the City. Of the top 12 principal employers in the City, four provide leisure and hospitality services⁹; however, jobs related to leisure and hospitality services, restaurants and retail that greatly contributes to the City's tourism market typically offers lower wages. The average salary for occupations in the tourism market is approximately less than \$30,000 a year¹⁰, which is not enough to rent an apartment home in the City without overpaying and being rent burdened.

Affordable Homes Decreases Environmental Impacts

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

A6-3

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

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

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

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

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

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

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

¹⁰ OC Community Indicators 2018, p. 31, 2018.

2. Response to Comments

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

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

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

A6-3
cont'd

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

Sincerely,



Cesar Covarrubias
Executive Director

¹¹ Profile of Orange County, Southern California Association of Governments, p. 18, May 2017.

2. Response to Comments

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2. Response to Comments

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


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

2. Response to Comments

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2. Response to Comments

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



Santa Ana Unified School District

Facilities & Governmental Relations
Jeremy Cogan, Director of Facilities Planning

January 10, 2019

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

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

RECEIVED BY
COMMUNITY
DEVELOPMENT
JAN 11 2019
CITY OF
NEWPORT BEACH

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

Dear Mr. Murillo:

The Santa Ana Unified School District (“District”) appreciates the opportunity to provide the following comments with respect to the Environmental Impact Report (EIR) for the Newport Crossings Mixed Use Project (hereafter, “the Project”). The proposed project consists of the development of 350 multi-story residential units in addition to other retail/mixed use, and is located on a 5.69-acre project site. The site is currently within the “Airport Area” planning subarea of the City of Newport Beach. A7-1

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

Table 1 – District Schools

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

A7-2

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

Table 2 – Student Generation

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

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

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

2. Response to Comments

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

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

A7-3

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

Table 3 – Impact Fee

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

A7-4

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

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

A7-5

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

A7-6

Sincerely,



Jeremy Cogan
Director of Facilities Planning
Facilities and Governmental Relations

cc:

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

BOARD OF EDUCATION

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

2. Response to Comments

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

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

5.12 PUBLIC SERVICES

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

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

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

Source: Cogan 2018**2019**.

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

2. Response to Comments

Table 5.12-4 Project Impacts on School Capacities

School	Existing Available Capacity (from Table 5.12-2) ¹	Project Student Generation (from Table 5.12-3)	Available Capacity After Project Student Generation
Monroe Elementary School	191	22 <u>83</u>	469 <u>108</u>
McFadden Intermediate School	609	8 <u>43</u>	604 <u>566</u>
Century High School	127	9 <u>54</u>	448 <u>76</u>

Source: Cogan 2018.

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

A7-4

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

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

2. Response to Comments

5.12 PUBLIC SERVICES

Regulatory Background

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

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

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

2. Response to Comments

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2. Response to Comments

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



SENT VIA E-MAIL AND USPS:

January 11, 2019

jmurillo@newportbeachca.gov

Jaime Murillo, Senior Planner

City of Newport Beach, Community Development Department

100 Civic Center Drive

Newport Beach, CA 92660

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

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

SCAQMD Staff's Summary of Project Description

The Lead Agency is proposing to demolish 58,277 square feet of the existing structures for the construction of a mixed-use development consisting of 350 residential units, a 2,000-square-foot restaurant, and 5,500 square feet of retail uses on 5.69 acres (Proposed Project). The Proposed Project is located on the southeast corner of Corinthian Way and Scott Drive. Construction of the Proposed Project is expected to occur over approximately 38 months, beginning in December 2019¹.

A8-1

SCAQMD Staff's Summary of Air Quality Analysis

In the Air Quality Analysis section, the Lead Agency quantified the Proposed Project's construction and operational emissions and compared those emissions to SCAQMD's regional and localized air quality CEQA significance thresholds. The Proposed Project would result in a daily maximum of 217 pounds per day (lbs/day) of NOx emissions during construction, which would exceed SCAQMD's regional air quality CEQA significance threshold of 100 lbs/day for NOx. After the implementation of mitigation measures (MM) AQ-1 through MM AQ-3, construction-related NOx emissions would be mitigated to be less than significant². MM AQ-1 would limit the hauling of soil to a maximum 269 trucks per day and restrict overlapping between rough grading and associated soil hauling activities and other construction activities³. MM AQ-2 would limit the hauling of building demolition debris to a maximum 47 trucks per day and restrict overlapping between demolition and associated debris hauling activities and other construction activities such as rough grading and site preparation⁴. MM AQ-3 would require that construction equipment meet or exceed the U.S. EPA Tier 3 emissions standards for off-road diesel-powered construction equipment with more than 50 horsepower⁵.

A8-2

SCAQMD's 2016 Air Quality Management Plan

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

A8-3

¹ DEIR. Page 5.2-21.

² DEIR. Table 5.2-12. Pages 5.2-34 and 35.

³ DEIR. Page 5.2-32.

⁴ *Ibid.*

⁵ *Ibid.* Pages 5.2-32 and 33.

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

2. Response to Comments

Jaime Murillo

-2-

January 11, 2019

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

A8-3
con't

SCAQMD Staff's General Comments

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

A8-4

Conclusion

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

A8-5

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

Sincerely,

Lijin Sun

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

Attachment
LS:RD
ORC181205-10
Control Number

2. Response to Comments

Jaime Murillo

-3-

January 11, 2019

ATTACHMENT

Air Quality Analysis

Overlapping Construction and Operation Scenario

1. According to the Draft EIR⁷, construction of the Proposed Project would occur over 38 months beginning in December 2019 and be completed by the end of January 2023. However, based on a review of the CalEEMod output file, SCAQMD staff found that the Proposed Project would be operational in 2022⁸. Therefore, it is recommended that the Lead Agency clarify in the Final EIR if any of the construction activities would overlap with operation. In the event that there is an overlapping construction and operation scenario, SCAQMD staff recommends that the Lead Agency identify the overlapping phases, combine construction emissions with operational emissions, and compare the combined emissions to SCAQMD's regional and localized air quality CEQA significance thresholds for operation to determine the level of significance in the Final EIR. Should the Lead Agency, after revising the Air Quality Analysis, find that the Proposed Project's air quality impacts would be significant, the Lead Agency is required to consider feasible mitigation measures and determine if new mitigation measures would be warranted in addition to the existing Mitigation Measure (MM) AQ-1 through MM AQ-3.

A8-6

Mitigation Measures

Recommended Changes to Existing MM AQ-3

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

AQ-3

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

A8-7

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

⁷ DEIR, Page 5.2-31.

⁸ DEIR, Appendix B, *Air Quality and Greenhouse Gas Modeling*.

2. Response to Comments

Jaime Murillo

-4-

January 11, 2019

Additional Recommended Mitigation Measures

3. CEQA requires that all feasible mitigation measures that go beyond what is required by law be utilized to minimize or eliminate any significant adverse air quality impacts. SCAQMD staff recommends that the Lead Agency incorporate the following mitigation measures in the Final EIR.
- Require zero-emissions or near-zero emission on-road haul trucks such as heavy-duty trucks with natural gas engines that meet the CARB's adopted optional NOx emissions standard at 0.02 grams per brake horsepower-hour (g/bhp-hr), if and when feasible. At a minimum, require that construction vendors, contractors, and/or haul truck operators commit to using 2010 model year trucks (e.g., material delivery trucks and soil import/export) that meet CARB's 2010 engine emissions standards at 0.01 g/bhp-hr of particulate matter (PM) and 0.20 g/bhp-hr of NOx emissions or newer, cleaner trucks. Operators shall maintain records of all trucks associated with project construction to document that each truck used meets these emission standards. The Lead Agency should include this requirement in applicable bid documents, purchase orders, and contracts. Operators shall maintain records of all trucks associated with project construction to document that each truck used meets these emission standards, and make the records available for inspection. The Lead Agency should conduct regular inspections to the maximum extent feasible to ensure and enforce compliance.
 - Suspend all on-site construction activities when wind speeds (as instantaneous gusts) exceed 25 miles per hour.
 - All trucks hauling dirt, sand, soil or other loose materials are to be covered, or should maintain at least two feet of freeboard in accordance with California Vehicle Code Section 23114 (freeboard means vertical space between the top of the load and top of the trailer).
 - Enter into applicable bid documents, purchase orders, and contracts to notify all construction vendors, contractors, and/or haul truck operators that vehicle and construction equipment idling time will be limited to no longer than five minutes, consistent with the California Air Resources Board's policy⁹. For any idling that is expected to take longer than five minutes, the engine should be shut off. Notify construction vendors, contractors, and/or haul truck operators of these idling requirements at the time that the purchase order is issued and again when vehicles enter the Proposed Project site. To further ensure that drivers understand the vehicle idling requirement, post signs at the Proposed Project entry gate and throughout the Proposed Project site, where appropriate, stating that idling longer than five minutes is not permitted.

A8-8

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

2. Response to Comments

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

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

2. Response to Comments

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

5.2 AIR QUALITY

Impact 5.2-2

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

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

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

2. Response to Comments

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

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

2. Response to Comments

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2. Response to Comments

LETTER A9 – California Department of Transportation (2 pages)

STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY

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

EDMUND G. BROWN Jr., Governor



*Making Conservation
a California Way of Life.*

January 11, 2019

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

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

Dear Mr. Murillo,

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

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

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

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

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

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

A9-1

A9-2

A9-3

2. Response to Comments

Newport Crossings Mixed Use Project
January 11, 2019
Page 2

Sincerely,

A handwritten signature in blue ink, appearing to read 'Scott Shelley', with a long, sweeping horizontal line extending to the right.

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

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

2. Response to Comments

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

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

2. Response to Comments

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2. Response to Comments

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



AIRPORT LAND USE COMMISSION

FOR ORANGE COUNTY

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

January 14, 2019

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

Subject: DEIR for Newport Crossings Mixed Use Project

Dear Mr. Murillo:

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

A10-1

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

A10-2

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

A10-3

2. Response to Comments

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

penetrate the 206 feet AMSL elevation, the ALUC does not recommend that structures be built to this elevation.

A10-3
cont'd

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

A10-4

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

A10-5

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

A10-6

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

Sincerely,



Kari A. Rigoni
Executive Officer

2. Response to Comments

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

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

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

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

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

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

2. Response to Comments

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

5.7 HAZARDS AND HAZARDOUS MATERIALS

Airport-Related Hazards

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

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

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

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

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

2. Response to Comments

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

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

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LETTER A11 – OC Public Works (1 page)



January 14, 2019

NCL-18-061

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

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

Dear Mr. Murillo:

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

A11-1

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

Sincerely,

Richard Vuong, Manager, Planning Division
OC Public Works Service Area/OC Development Services
300 North Flower Street
Santa Ana, California 92702-4048
Richard.Vuong@ocpw.ocgov.com

300 N. Flower Street, Santa Ana, CA 92703
P.O. Box 4048, Santa Ana, CA 92702-4048

www.ocpublicworks.com
714.667.8800 | Info@OCPW.ocgov.com

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2. Response to Comments

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

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

2. Response to Comments

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

wittwer / parkin

January 14, 2019

VIA E-MAIL

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

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

Dear Ms. Murillo:

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

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

A12-1

WITTWER PARKIN LLP / 147 S. RIVER ST., STE. 221 / SANTA CRUZ, CA / 95060 / 831.429.4055

WWW.WITTWERPARKIN.COM / LAWOFFICE@WITTWERPARKIN.COM

2. Response to Comments

Jamie Murillo
Re: Newport Crossings Mixed Use Project DEIR
January 14, 2018
Page 2

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

A12-2

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

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

A12-3

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

A. The air quality analysis is uninformative.

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

A12-4

The Project is located in the South Coast Air Basin (“SCAB”). (DEIR, p. 5.2-1.) The SCAB is in non-attainment for California Ambient Air Quality Standards for ozone (“O₃”), inhalable particulate matter (“PM₁₀”), and fine particulate matter (“PM_{2.5}”), and is in non-attainment for PM_{2.5} and the 8-hour standards for O₃ under the National Ambient Air Quality Standards. (*Id.* at pp. 5.2-5 – 5.2-7, 5.2-12.)

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Jamie Murillo
Re: Newport Crossings Mixed Use Project DEIR
January 14, 2018
Page 3

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

A12-4
cont’d

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

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Jamie Murillo
Re: Newport Crossings Mixed Use Project DEIR
January 14, 2018
Page 4

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

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

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

A12-5

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

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

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

A12-5
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In an FEIR or a recirculated DEIR, please provide specific pollutant projections for, at minimum, each of the approved projects listed in the DEIR and explain the projected cumulative impact of the Project in conjunction with additional development. Further, please provide a list of all past, present, and reasonably foreseeable future projects in the SCAB that have been found to result in significant and unavoidable air quality impacts.

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

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

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

A12-6

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

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

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

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

A12-7

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

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

According to the California Supreme Court:

A12-8

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

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

(*Newhall Ranch, supra*, 62 Cal.4th 20⁴, 219, citing Crockett, Addressing the Significance of Greenhouse Gas Emissions Under CEQA: California's Search for Regulatory Certainty in an Uncertain World (July 2011) 4 Golden Gate U. Env'tl. L.J. 203, 207-208.) The City does not provide sufficient information in the DEIR to determine whether the Project's incremental addition of greenhouse gasses would be cumulatively considerable and thus significant.

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

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

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

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

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

A12-9

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

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

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

A12-10

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

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

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

A12-10
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V. The DEIR's Land Use Analysis is Inadequate.

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

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

A12-11

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

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

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

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

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

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

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

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

A12-13

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

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

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

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

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

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

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

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VII. The DEIR's Alternatives Analysis is Incomplete.

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

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

A12-15

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

VIII. Conclusion

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

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

A12-17

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Very truly yours,
WITTWER PARKIN LLP



Nicholas Whipps

2. Response to Comments

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.4 CULTURAL RESOURCES

Impact 5.4-2

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

A12-11 The commenter states that conclusionary statements provided in Draft EIR Section's 5.9, *Land Use and Planning*, and 5.11, *Population and Housing*, are inconsistent. Specifically, the analysis in Table 5.9-1 of Section 5.9 concludes that the project is consistent with all applicable goals and policies of the Newport Beach General Plan; however, under Subsection 5.11.5, *Cumulative Impacts*, of Section 5.11, it is noted that "most of the proposed development is consistent with the general plan". The statement provided in

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

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

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

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Also, in order for the City to issue the development incentives/concessions and waivers requested for the project, the appropriate number of affordable units must be provided.

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

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

5.9 LAND USE AND PLANNING

Zoning Code Consistency

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

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

Newport Place Planned Community Development Standards Consistency

Development standards for utilization of the NPPC's ~~Residential~~ Overlay, which applies to the project site, are found ~~on Page 46 of the PCDP~~ in the NPPC development

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standards. Table 5.9-2 demonstrates the proposed project's consistency with those development standards.

Table 5.9-2 NPPC Consistency Analysis

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

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

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

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

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

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bedroom units and affording additional rental income for the project to ensure financial feasibility.

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

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

5.11 POPULATION AND HOUSING

5.11.5 Cumulative Impacts

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

- A12-12 The analysis of the proposed project's compliance with regulatory requirements RR LU-1 and RR LU-2, which outline the City's development standards applicable to the project, is provided under Impact Statement 5.9-2 (see pages 5.9-25 and 5.9-26) of Draft EIR Section 5.9, *Land Use and Planning*. See also response to Comments A12-11 and A12-13.
- A12-13 See response to comment A12-6 regarding the required scope of cumulative analysis and analysis of projects in cumulative projects list. As stated on pages 4-17 and 5.9-27 of the Draft EIR, cumulative land use and planning impacts were analyzed based on applicable

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

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

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

A12-14 The commenter stated that the Draft EIR, specifically Section 5.14, *Transportation and Traffic*, does not clearly identify the cumulative projects included in the traffic analysis, nor does it explain how the City reached the less than significant conclusions. Draft EIR Section 4.4, *Assumptions Regarding Cumulative Impacts* summarizes the CEQA requirements for cumulative project analysis. As detailed in this section, the CEQA Guidelines (Section 15130[b][1]) state that the information utilized in an analysis of cumulative impacts should come from one of two sources:

- A. A list of past, present and probable future projects producing related cumulative impacts, including, if necessary, those projects outside the control of the agency.
- B. A summary of projections contained in an adopted General Plan or related planning document designed to evaluate regional or area-wide conditions.

The traffic analysis is based on Method A. As stated under Impact Statement 5.14-1 (page 5.14-15), the traffic study included traffic from 25 projects in Newport Beach and 30

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projects in Irvine. The detailed lists and location maps for these projects are included in Draft EIR Appendix J, *Traffic Impact Analysis*, pages J20 to J27. In addition to evaluating the potential traffic impact of 55 related development projects, and traffic analysis conservatively added an ambient growth rate of traffic of 1 percent per year (5 percent total) for MacArthur Boulevard, Jamboree Road and Irvine Avenue. The analysis fully complies with CEQA requirements.

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

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

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

To the extent that the comment reiterates concerns regarding the Draft EIR's evaluation of environmental impacts, please refer to Responses to Comments A12-4 through A12-14, above. Given the adequacy of the underlying environmental analysis, the Draft EIR's evaluation of alternatives likewise is sufficient. An EIR only must evaluate a range of reasonable alternatives to the extent they would avoid or substantially lessen any of the project's significant effects and feasibly attain most of the basic objectives of the project. (CEQA Guidelines § 15126.6(a); see also *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1163.) Here, the Draft EIR evaluated two alternatives: (1) a "no project" alternative; and (2) a "reduced height

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and density” alternative. Each alternative would lessen certain environmental impacts as compared to the proposed project. The “no project” alternative, however, would not achieve project objectives, and while the “reduced height and density alternative” would achieve project objectives, it would do so to a lesser extent. Together, these two alternatives comprise a reasonable range of alternatives, and the commenter does not otherwise allege any particular deficiency in the alternatives analysis

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

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

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



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

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

December 17, 2018

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

Dear Mariners Branch,

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


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

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

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

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

With Respect,


Andrew Salas, Chairman

Andrew Salas, Chairman	Nadine Salas, Vice-Chairman	Christina Swindall Martinez, secretary
Albert Perez, treasurer I	Martha Gonzalez Lemos, treasurer II	Richard Gradias, Chairman of the Council of Elders
PO Box 393, Covina, CA 91723	www.gabrielenoindians.org	gabrielenoindians@yahoo.com

A13-1

2. Response to Comments

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2. Response to Comments

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

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

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

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

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

5.4 CULTURAL RESOURCES

Impact 5.4-2




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

2. Response to Comments

construction activities, the project applicant shall allow representatives of cultural organizations, including traditionally-/culturally-affiliated Native American tribes (e.g., Gabrieleño Band of Mission Indians-Kizh Nation, Juaneno Band of Mission Indians Acjachemen Nation), to access the project site on a volunteer basis to monitor grading and excavation activities. If archaeological resources are encountered, all construction work within 50 feet of the find shall cease, and the archaeologist shall assess the find for importance and whether preservation in place without impacts is feasible. Construction activities may continue in other areas. If, in consultation with the City and affected Native American tribe (as deemed necessary), the discovery is determined to not be important, work will be permitted to continue in the area. Any resource that is not Native American in origin and that cannot be preserved in place shall be curated at a public, nonprofit institution with a research interest in the materials, such as the South Central Coastal Information Center at California State University, Fullerton.

2. Response to Comments

LETTER A14 – State Clearinghouse (9 pages)

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


2. Response to Comments

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

Date Received 11/29/2018 **Start of Review** 11/29/2018 **End of Review** 01/14/2019

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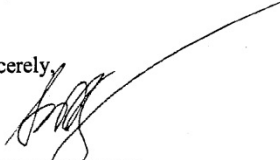
2. Response to Comments

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

2. Response to Comments

Newport Crossings Mixed Use Project
January 11, 2019
Page 2

Sincerely,





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

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cont'd


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

2. Response to Comments


Department of Toxic Substances Control


Matthew Rodriguez
Secretary for
Environmental Protection

Barbara A. Lee, Director
5796 Corporate Avenue
Cypress, California 90630


Edmund G. Brown Jr.
Governor

January 3, 2019

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

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

Dear Mr. Murillo:

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

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

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

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

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2. Response to Comments

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

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

(*Newhall Ranch*, *supra*, 62 Cal.4th 20⁴, 219, citing Crockett, Addressing the Significance of Greenhouse Gas Emissions Under CEQA: California's Search for Regulatory Certainty in an Uncertain World (July 2011) 4 Golden Gate U. Env'tl. L.J. 203, 207-208.) The City does not provide sufficient information in the DEIR to determine whether the Project's incremental addition of greenhouse gasses would be cumulatively considerable and thus significant.

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

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

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

A12-8
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2. Response to Comments

Mr. James Murillo
January 3, 2019
Page 3

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

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

A14-3
cont'd


2. Response to Comments

Mr. James Murillo
January 3, 2019
Page 4

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

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

Sincerely,



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

ara/cy/yg

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

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

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

A14-3
cont'd

2. Response to Comments

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2. Response to Comments

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

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

2. Response to Comments

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2. Response to Comments

LETTER I1 – Jim Mosher (6 pages)

Comments on Newport Crossings DEIR

The following comments on items on the [Draft EIR \(SCH #2017101067\)](#) are submitted by:

Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229)

1. For at least this member of the public, reviewing the Newport Crossings DEIR in its electronic form has been a more daunting task than it needed to be. The main document consists of a 493-page PDF file, reproducing the 10-page printed Table of Contents, but providing no bookmarks and no links to the items highlighted in it. Readers are apparently expected to somehow locate chapters of interest within the 493 pages, and then the pages within the chapters. It seems to me the lack of an effort to make the information more accessible diminishes the information-imparting function of an EIR. I1-1
2. Whatever the format, the text seems focused more on repetitive, methodical thoroughness than on clarity of presentation. For example, on page 5-2, under "Organization of Environmental Analysis" we see a pattern repeated 14 times in the Table of Contents for Chapter 5, and another 8 times in the two sections (5.12 PUBLIC SERVICES and 5.16 UTILITIES AND SERVICE SYSTEMS) where, for reasons that are not explained, the standard pattern doesn't seem to be followed, but is applied to sub-topics.
 - a. That may seem very methodical. The problem is that while the logic behind this methodology may be understood by CEQA practitioners, it is not, as best I can tell, and despite the DEIR's great length, explained to the public.
 - b. As an example of the confusion this creates for the public, after each "Impact" presented under the third bullet of the announced method ("Environmental Impacts") we see a statement of "*Level of Significance before Mitigation*" (for example, on page 5.1-7). But this seems redundant with the fifth bullet of the method, which comes after the fourth bullet ("Cumulative Impacts"), and is itself titled "*Level of Significance before Mitigation*" (for example, on page 5.1-16). One can only guess one of these is the City and consultant's estimate of the significance before the cumulative impacts have been considered and the other is after that has been factored in – but it is not explained. I1-2
 - c. Moreover, and more importantly, while citing thresholds of significance from Appendix G of the CEQA Guidelines, the "Impact Analysis" seems to be confined to what look like a series of project-specific "Impact" statements whose source (like much else) is unexplained.
 - i. We are repeatedly told (at least 21 times) "*The following impact analysis addresses thresholds of significance for which the Notice of Preparation (see Appendix A) disclosed potentially significant impacts.*" That would imply the Impact Statements were developed in the NOP. But there is no trace of them in the NOP or Appendix A. As best I can tell, it contains only the generalized list of standard CEQA topics (on page A-5).
 - d. In addition, many of the Impact statements are reduced to insignificance, even without mitigation, by citing "Regulatory Requirements and Standard Conditions." As

2. Response to Comments

Comments on Newport Crossing DEIR - Jim Mosher

Page 2 of 6

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

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

I1-2
cont'd

I1-3

2. Response to Comments

Comments on Newport Crossing DEIR - Jim Mosher

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

I1-3
cont'd

I1-4

2. Response to Comments

Comments on Newport Crossing DEIR - Jim Mosher

Page 4 of 6

- | | |
|---|------------------------|
| <p>2. It seems now to involve only a lot line adjustment, apparently necessary to avoid the proposed structures not spanning across lot lines.</p> <p>3. Setting aside that the authors of the 5 acres per 1000 requirement may not have envisioned that substantial numbers of new residents could be added without subdivision, is a lot line adjustment not a variety of subdivision?</p> | <p>I1-4
cont'd</p> |
| <p>4. In connection with the lot line adjustment, the Project Description on page 3-33 is confusing in referring to "<i>the three existing parcels</i>" when the Notice of Availability indicates the County Assessor regards the site as consisting of four parcels (APN 427-172-02, 03, 05, and 06), not three, with, according to the City's GIS mapping, the building at 4220 Scott Dr. being on a 0.2 acre parcel of its own (APN 427-172-05), a kind of island within the surrounding APN 427-172-06.</p> | <p>I1-5</p> |
| <p>5. In connection with SCAG's 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy, page 4-2 promises "<i>The proposed project's consistency with the applicable 2016-2040 RTP/SCS policies is analyzed in detail in Section 5.9, Land Use and Planning.</i>" In apparent contradiction to this, the paragraph at the top of page 5.9-2 says "<i>this section does not address the proposed project's consistency with SCAG's regional planning guidelines and policies</i>" [emphasis added].</p> | <p>I1-6</p> |
| <p>6. The Cumulative Projects List provided in Table 4-1 is similarly confusing.</p> <p style="margin-left: 40px;">a. As acknowledged in the DEIR, it lists Newport Beach projects only, even though projects outside Newport Beach (or conducted by other agencies within Newport Beach) may be equally, or more, important in assessing many kinds of impacts.</p> <p style="margin-left: 40px;">b. Even for projects within the exclusive jurisdiction of Newport Beach, the list appears to be outdated and inaccurate – and the rules for whether a project is on the list, or not, do not seem to be explained.</p> <p style="margin-left: 80px;">i. For example, the 4-unit Ullman Sail Lofts is listed as "foreseeable" project F3, but it was approved by the Planning Commission on July 20, 2017. And it seems to be left to the reader to guess why it is more important to list than many other projects that have passed through the Planning Commission.</p> <p style="margin-left: 80px;">ii. Several of the other "foreseeable" projects similarly, appear to have been approved some time ago, while new foreseeable projects (such as the 21-unit Ford Road Residential) don't seem to be listed.</p> <p style="margin-left: 40px;">iii. As for additional inaccuracies:</p> <p style="margin-left: 80px;">1. The ENC Preschool certainly has a "non-residential area."</p> <p style="margin-left: 80px;">2. Villas Fashion Island consists of 524 apartments, not 94.</p> | <p>I1-7</p> |
| <p>7. Also in Chapter 4, in describing the overall Environmental Setting, Subsection 4.3.3.3 (PREVIOUS DEVELOPMENT APPLICATION FOR THE PROJECT SITE) mentions the similar earlier proposal for the 380-unit Residences at Newport Place at the same site, but it</p> | <p>I1-8</p> |

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

I1-8
con't

8. As for Chapter 5:

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

I1-9

b. In Section 5.7:

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

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

I1-10

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

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

I1-11

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- | | |
|---|--------------|
| <p>d. In Chapter 5.12:</p> <ul style="list-style-type: none"> i. Why do the Fire, School and Library subsections all cite a Regulatory Requirement that <i>"New development shall pay a property excise tax per the City's Municipal Code Chapter 3.12, Property Development Tax,"</i> but the Regulatory Requirements part of the Police subsection says <i>"No existing regulations are applicable to police protection impacts of the proposed project"</i>? Doesn't part of the same property tax that goes to fund fire, school and library services go to fund police services? ii. With regard to subsection 5.12.3, the fact that residents in Newport Beach's Airport Area are not in the Newport-Mesa Unified School District has been regarded as an issue. Is it not still an issue or matter of controversy? | <p>l1-12</p> |
| <p>e. Table 5.13-1 refers to "acers" (as does the second bullet under Section 5.13.6 on page 5.13-8). Shouldn't that be "acres"?</p> | <p>l1-13</p> |
| <p>f. Subsection 5.16.1.4 projects a massive increase in wastewater generation. Despite 5.16.1 being titled "Waster Treatment and Collection," the required CEQA analysis appears to be confined to wastewater treatment. Would this increased flow overwhelm the City's collection infrastructure, requiring construction of new sewer mains?</p> | <p>l1-14</p> |
| <p>9. Regarding Chapter 7:</p> | |
| <p>a. The description of Alternatives and the CEQA requirements surrounding them is so muddled that I, at least, was unable to tell if CEQA actually requires an alternative to be considered when, as here, the City claims the project itself has no significant impacts.</p> | |
| <p>b. I was similarly baffled trying to reconcile with Table 7-6 the statement at the end of Section 7.7 that <i>"the No Project alternative would not be considered environmentally superior."</i> The "No Project Alternative" column of Table 7-6 has many more minuses (meaning, it says, <i>"The alternative would result in less of an impact than the proposed project"</i>) than pluses. Given the preponderance of minuses for the "No Project Alternative" I have trouble, without further explanation, understanding why it is worse, environmentally, than the project. Apparently some of the pluses or minuses are more important than others?</p> | <p>l1-15</p> |
| <p>10. Regarding Chapter 9:</p> | |
| <p>a. Four questions regarding growth-inducing impacts are posed on page 9-2.</p> | |
| <p>b. Only three of the questions appear to be answered on page 9-3.</p> | <p>l1-16</p> |
| <p>c. What is the answer to the missing one?</p> | |

2. Response to Comments

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

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

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

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

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

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

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

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

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

2. Response to Comments

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

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

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

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

4. Environmental Setting

SCAG Regional Transportation Plan/Sustainable Communities Strategy

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

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

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

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

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

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

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

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

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

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

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

5.7 Hazards and Hazardous Materials

Soil Vapor Sampling and Testing: 2013

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

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

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

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

9. Other CEQA Considerations

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

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

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

3. Revisions to the Draft EIR

3.1 INTRODUCTION

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

3.2 DEIR REVISIONS IN RESPONSE TO WRITTEN COMMENTS

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

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

2.5 FINAL EIR CERTIFICATION

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

2.6 MITIGATION MONITORING

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

3. Revisions to the Draft EIR

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

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

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

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

3. Revisions to the Draft EIR

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

Environmental Impact	Level of Significance Before Mitigation	Mitigation Measures	Level of Significance After Mitigation
5.4 CULTURAL RESOURCES			
Impact 5.4-2: Project development could result in an impact on archaeological resources.	Potentially significant	<p>CUL-1 Prior to the issuance of a grading permit by the City of Newport Beach, the project applicant shall retain a qualified archaeologist to periodically monitor ground-disturbing activities onsite and provide documentation of such retention to the City of Newport Beach Community Development Director. The archaeologist shall train project construction workers on the types of archaeological resources that could be found in site soils. The archaeologist shall periodically monitor project ground-disturbing activities. <u>During construction activities, the project applicant shall allow representatives of cultural organizations, including traditionally-/culturally-affiliated Native American tribes (e.g., Gabrieleño Band of Mission Indians-Kizh Nation, Juaneno Band of Mission Indians Acjachemen Nation), to access the project site on a volunteer basis to monitor grading and excavation activities.</u> If archaeological resources are encountered, all construction work within 50 feet of the find shall cease, and the archaeologist shall assess the find for importance and whether preservation in place without impacts is feasible. Construction activities may continue in other areas. If, in consultation with the City and affected Native American tribe (as deemed necessary), the discovery is determined to not be important, work will be permitted to continue in the area. Any resource that is not Native American in origin and that cannot be preserved in place shall be curated at a public, nonprofit institution with a research interest in the materials, such as the South Central Coastal Information Center at California State University, Fullerton.</p>	Less than significant with mitigation
5.7 HAZARDS AND HAZARDOUS MATERIALS			
Impact 5.7-2: The project site is on a list of hazardous materials sites.	Potentially significant	<p>HAZ-2 Prior to issuance of the first building permit, soil and soil vapor samples shall be collected from beneath <u>the former Enjay Cleaners and soil samples shall be collected from beneath the proposed 0.5-acre public park site and tested for PCE and OCPs, respectively. The results shall be submitted to the Orange County Health Care Agency and City Building Official. In the event that soil concentrations exceed site-specific cleanup goals, affected soils shall be removed and properly treated/disposed of. Should soil vapor concentrations exceed site-specific cleanup goals, short-term soil vapor extraction and treatment shall be performed to reduce soil vapor concentrations.</u></p>	Less than significant with mitigation

3. Revisions to the Draft EIR

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

5.2.7 Mitigation Measures

Impact 5.2-2

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

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

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

5.4.7 Mitigation Measures

Impact 5.4-2

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

3. Revisions to the Draft EIR

/culturally-affiliated Native American tribes (e.g., Gabrieleño Band of Mission Indians-Kizh Nation, Juaneno Band of Mission Indians Acjachemen Nation), to access the project site on a volunteer basis to monitor grading and excavation activities. If archaeological resources are encountered, all construction work within 50 feet of the find shall cease, and the archaeologist shall assess the find for importance and whether preservation in place without impacts is feasible. Construction activities may continue in other areas. If, in consultation with the City and affected Native American tribe (as deemed necessary), the discovery is determined to not be important, work will be permitted to continue in the area. Any resource that is not Native American in origin and that cannot be preserved in place shall be curated at a public, nonprofit institution with a research interest in the materials, such as the South Central Coastal Information Center at California State University, Fullerton.

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

Soil Vapor Sampling and Testing: 2013

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

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

Airport-Related Hazards

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

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

3. Revisions to the Draft EIR

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

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

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

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

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

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

3. Revisions to the Draft EIR

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

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

5.7.7 Mitigation Measures

Impact 5.7-2

MM HAZ-2 Prior to issuance of the first building permit, soil and soil vapor samples shall be collected from beneath the former Enjay Cleaners and soil samples shall be collected from beneath the proposed 0.5-acre public park site and tested for PCE and OCPs, respectively. The results shall be submitted to the Orange County Health Care Agency and City Building Official. In the event that soil concentrations exceed site-specific cleanup goals, affected soils shall be removed and properly treated/disposed of. Should soil vapor concentrations exceed site-specific cleanup goals, short-term soil vapor extraction and treatment shall be performed to reduce soil vapor concentrations.

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

Zoning Code Consistency

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

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

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Newport Place Planned Community Development Standards Consistency

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

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

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

- **Development Concession (Unit Mix).** Pursuant to Section V.F.1 of the Residential Overlay, "Affordable units shall reflect the range of numbers of bedrooms provided in the residential development project as a whole." In the case of the proposed project, the project applicant is requesting a unit mix that includes a greater percentage of studio and one-bedroom units, as illustrated in Table 3-2 of Chapter 3. Granting this incentive will result in identifiable, financially sufficient, and actual project cost reduction by reducing the long-term rental subsidy costs associated with the two-bedroom units and affording additional rental income for the project to ensure financial feasibility.
- **Waiver/Concession of Development Standard (Height Increase).** Pursuant to Section V.A of the Residential Overlay, the maximum building heights are limited to 55 feet, but may be increased with the approval of a site development review after making certain findings for approval. Government Code Section 65915(e)(1) provides that a city may not apply a development standard that will have the effect of physically precluding the construction of a density bonus project at the density permitted under the density bonus law. In the case of the proposed project, the project applicant is requesting a waiver of the 55-foot building height limit to 77 feet 9 inches in order to accommodate the parapet, roof-top mechanical equipment, elevator shafts, emergency staircase, rooftop terrace, and a portion of the parking garage. Without the height allowance for the stairs, elevators, mechanical equipment, and parapet, 63 of the 91 density bonus units would need to be eliminated. Furthermore, limiting heights to 55 feet would result in elimination of the rooftop amenity deck and upper level of parking structure, which are necessary for marketing purposes to meet expectations of prospective tenants and market-rate rents, provide the level of onsite amenities encouraged by the Residential Overlay, and reduce the impact of parking availability on neighboring streets.

3. Revisions to the Draft EIR

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

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

5.11.5 Cumulative Impacts

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

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

Regulatory Background

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

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

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

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

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

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

Source: Cogan 2018/2019.

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

Table 5.12-4 Project Impacts on School Capacities

School	Existing Available Capacity (from Table 5.12-2) ¹	Project Student Generation (from Table 5.12-3)	Available Capacity After Project Student Generation
Monroe Elementary School	191	22 <u>83</u>	169 <u>108</u>
McFadden Intermediate School	609	8 <u>43</u>	604 <u>566</u>
Century High School	127	9 <u>54</u>	118 <u>76</u>

Source: Cogan 2018.

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

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

City of Irvine

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

3. Revisions to the Draft EIR

conditions. Also, if the intersection would operate at unacceptable level of service and the project contribution is 0.02 or greater, mitigation is required, where feasible, to bring intersection back to an acceptable level of service or to no project conditions.

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

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

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

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

3. Revisions to the Draft EIR

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Appendix

Appendix A. FAA Determination of No Hazard to Air Navigation

Appendix

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

Aeronautical Study No.
2018-AWP-17902-OE
Prior Study No.
2014-AWP-7280-OE

Issued Date: 02/07/2019

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

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

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

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

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

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

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

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

This determination expires on 08/07/2020 unless:

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

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

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

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

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

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

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

Signature Control No: 391674963-396012618

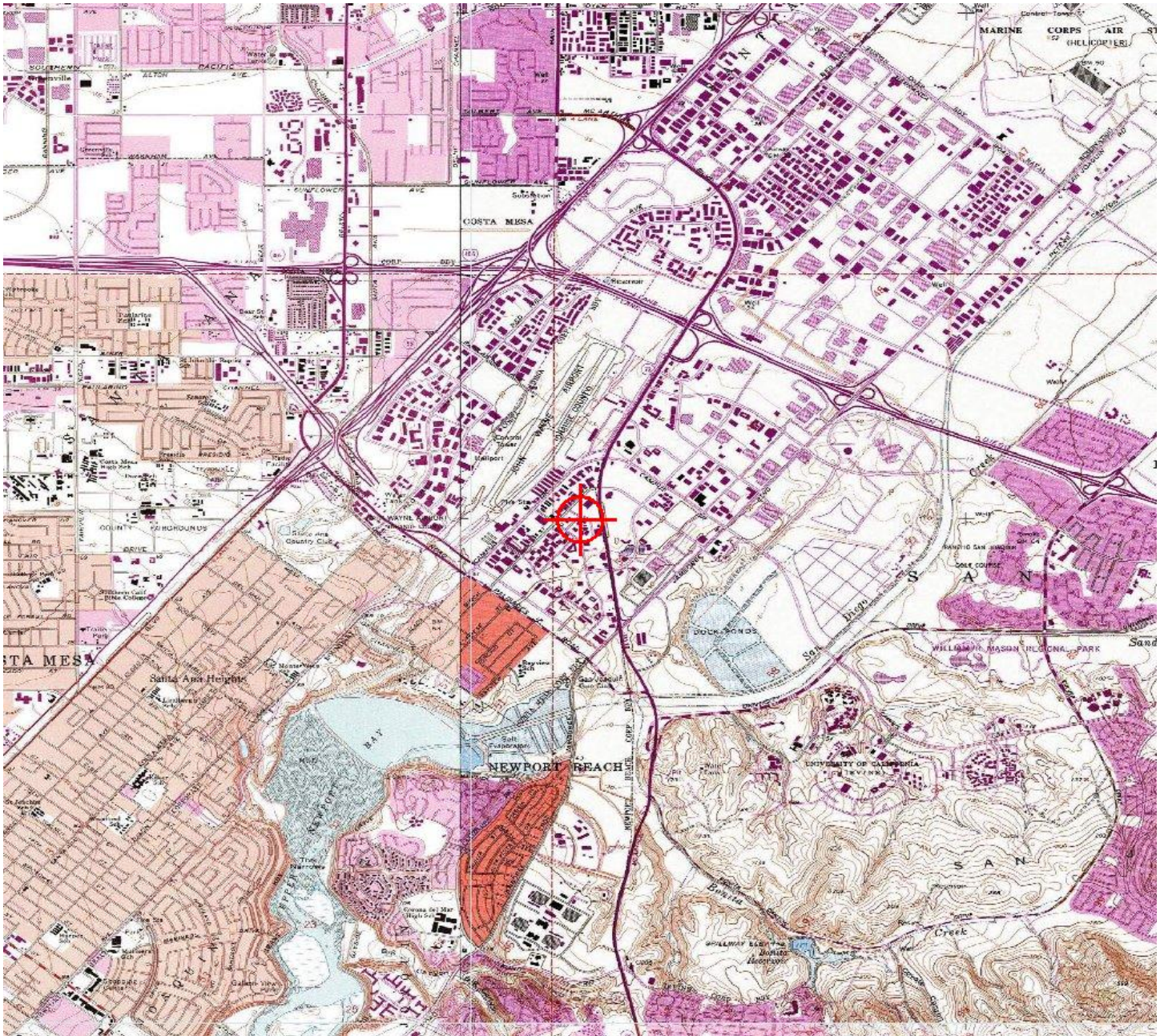
(DNE)

Karen McDonald
Specialist

Attachment(s)

Map(s)

TOPO Map for ASN 2018-AWP-17902-OE



Appendix

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

Appendix

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Summary Table

	Future Year 2022*				Future Year 2024					
	No Project V/C	LOS	With Project V/C	LOS	No Project V/C	LOS	With Project V/C	LOS	ICU Increase	Sig Impact?
Intersections										
1. MacArthur Blvd/Campus Dr (PM Peak Hour)	0.917	E	0.917	E	0.929	E	0.929	E	0.000	No
13. MacArthur Blvd/Jamboree Rd (PM Peak Hour)	0.811	D	0.813	D	0.825	D	0.826	D	0.001	No
18. MacArthur/I-405 NB (AM peak hour, HCM)	42.0	D	41.9	D	42.7	D	42.7	D	0.000	No
20. MacArthur/Michelson Dr (PM peak hour).	1.050	F	1.052	F	1.058	F	1.059	F	0.001	No
Roadway Segment										
1. MacArthur Blvd between I-405 SB Ramps to Michelson Dr	0.88	D	0.88	D	0.89	D	0.90	D	0.01	No

*From LSA Study

Intersection Capacity Utilization

LOCATION: City of Newport Beach
NORTH-SOUTH ST. MacArthur Blvd
EAST-WEST STREET : Campus Dr

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

GEOMETRIC :

Date: 09/19/2018

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

Intersection Capacity Utilization

LOCATION: City of Newport Beach
NORTH-SOUTH ST. MacArthur Blvd
EAST-WEST STREET : Campus Dr

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

GEOMETRIC :

Date: 09/19/2018

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

Intersection Capacity Utilization

LOCATION: City of Newport Beach
MacArthur Blvd
NORTH-SOUTH ST. Jamboree Rd
EAST-WEST STREET :

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

Date: 09/19/2018

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

Intersection Capacity Utilization

LOCATION: City of Newport Beach
MacArthur Blvd
NORTH-SOUTH ST. Jamboree Rd
EAST-WEST STREET :







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

Date: 09/19/2018

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







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

09/18/2018

Movement	WBL	WBR	NBT	NBR	SBL	SBT
Lane Configurations						
Traffic Volume (veh/h)	904	1203	1959	477	170	1540
Future Volume (veh/h)	904	1203	1959	477	170	1540
Initial Q (Ob), veh	0	0	0	0	0	0
Ped-Bike Adj(A_pbT)	1.00	1.00	1.00	1.00	1.00	1.00
Parking Bus Adj	1.00	1.00	1.00	1.00	1.00	1.00
Work Zone On Approach	No	No	No	No	No	No
Adj Sat Flow, veh/h	1673	1673	1673	1673	1673	1673
Adj Flow Rate, veh/h	952	1266	2062	502	179	1621
Peak Hour Factor	0.95	0.95	0.95	0.95	0.95	0.95
Percent Heavy Veh, %	2	2	2	2	2	2
Cap, veh/h	1299	1048	2153	934	204	2792
Arrive On Green	0.42	0.42	0.75	0.75	0.07	0.49
Sat Flow, veh/h	3092	2496	5991	2496	3092	5991
Grp Volume(v), veh/h	952	1266	2062	502	179	1621
Grp Sat Flow(s)/veh/h	1546	1248	1439	1248	1546	1439
Q Serve(Q_s), s	25.8	42.0	31.8	8.5	5.7	20.2
Cycle Q Clear(g_c), s	25.8	42.0	31.8	8.5	5.7	20.2
Prop In Lane	1.00	1.00	1.00	1.00	1.00	1.00
Lane Grp Cap(c), veh/h	1299	1048	2153	934	204	2792
V/C Ratio(X)	0.73	1.21	0.96	0.54	0.88	0.58
Avail Cap(c_a), veh/h	1299	1048	2153	934	204	2792
HCM Platoon Ratio	1.00	1.00	2.00	2.00	1.00	1.00
Upstream Filter(f)	1.00	1.00	0.51	0.51	1.00	1.00
Uniform Delay (d), s/veh	24.3	29.0	11.9	9.0	46.3	18.5
Incr Delay (d2), s/veh	2.2	102.5	7.0	1.1	32.2	0.9
Initial Q Delay(d3), s/veh	0.0	0.0	0.0	0.0	0.0	0.0
%ile BackOfQ(50%), veh/h	9.0	26.3	4.4	1.6	3.0	6.1
Unsig. Movement Delay, s/veh						
LnGrp Delay(d), s/veh	26.5	131.5	18.9	10.1	78.4	19.3
LnGrp LOS	C	F	B	B	E	B
Approach Vol, veh/h	2218	2564	2564	1800		
Approach Delay, s/veh	86.4	17.2	17.2	25.2		
Approach LOS	F	B	B	C		
Timer - Assigned Phs	1	2			6	8
Phs Duration (G+Y+Rc), s	11.1	42.9			54.0	46.0
Change Period (Y+Rc), s	4.5	5.5			5.5	4.0
Max Green Setting (Gmax), s	6.7	37.3			48.5	42.0
Max Q Clear Time (g_c+H), s	7.7	33.8			22.2	44.0
Green Ext Time (p_c), s	0.0	3.2			12.5	0.0
Intersection Summary						
HCM 6th Ctrl Delay			42.7			
HCM 6th LOS			D			

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

09/18/2018

Movement	WBL	WBR	NBT	NBR	SBL	SBT
Lane Configurations						
Traffic Volume (veh/h)	889	1203	1954	463	170	1538
Future Volume (veh/h)	889	1203	1954	463	170	1538
Initial Q (Ob), veh	0	0	0	0	0	0
Ped-Bike Adj(A_pbT)	1.00	1.00	1.00	1.00	1.00	1.00
Parking Bus Adj	1.00	1.00	1.00	1.00	1.00	1.00
Work Zone On Approach	No	No	No	No	No	No
Adj Sat Flow, veh/h	1673	1673	1673	1673	1673	1673
Adj Flow Rate, veh/h	946	1266	2057	487	179	1619
Peak Hour Factor	0.95	0.95	0.95	0.95	0.95	0.95
Percent Heavy Veh, %	2	2	2	2	2	2
Cap, veh/h	1299	1048	2147	931	207	2792
Arrive On Green	0.42	0.42	0.75	0.75	0.07	0.49
Sat Flow, veh/h	3092	2496	5991	2496	3092	5991
Grp Volume(v), veh/h	946	1266	2057	487	179	1619
Grp Sat Flow(s)/veh/h	1546	1248	1439	1248	1546	1439
Q Serve(Q_s), s	25.6	42.0	31.8	8.1	5.7	20.2
Cycle Q Clear(g_c), s	25.6	42.0	31.8	8.1	5.7	20.2
Prop In Lane	1.00	1.00	1.00	1.00	1.00	1.00
Lane Grp Cap(c), veh/h	1299	1048	2147	931	207	2792
V/C Ratio(X)	0.73	1.21	0.96	0.52	0.86	0.58
Avail Cap(c_a), veh/h	1299	1048	2147	931	207	2792
HCM Platoon Ratio	1.00	1.00	2.00	2.00	1.00	1.00
Upstream Filter(f)	1.00	1.00	0.49	0.49	1.00	1.00
Uniform Delay (d), s/veh	24.2	29.0	12.0	9.0	46.2	18.5
Incr Delay (d2), s/veh	2.1	102.5	6.9	1.0	29.4	0.9
Initial Q Delay(d3), s/veh	0.0	0.0	0.0	0.0	0.0	0.0
%ile BackOfQ(50%), veh/h	8.9	26.3	4.3	1.6	2.9	6.1
Unsig. Movement Delay, s/veh						
LnGrp Delay(d), s/veh	26.3	131.5	18.9	10.0	75.6	19.3
LnGrp LOS	C	F	B	B	E	B
Approach Vol, veh/h	2212	2544	2544	1798		
Approach Delay, s/veh	86.5	17.2	17.2	24.9		
Approach LOS	F	B	B	C		
Timer - Assigned Phs	1	2			6	8
Phs Duration (G+Y+Rc), s	11.2	42.8			54.0	46.0
Change Period (Y+Rc), s	4.5	5.5			5.5	4.0
Max Green Setting (Gmax), s	6.7	37.3			48.5	42.0
Max Q Clear Time (g_c+H), s	7.7	33.8			22.2	44.0
Green Ext Time (p_c), s	0.0	3.2			12.5	0.0
Intersection Summary						
HCM 6th Ctrl Delay			42.7			
HCM 6th LOS			D			

Intersection Capacity Utilization

LOCATION: City of Irvine
MacArthur Blvd
Michelson

NORTH-SOUTH ST.

EAST-WEST STREET :

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

GEOMETRIC :

Date: 09/19/2018

Movement	Number of Lanes	Capacity	P.M. Peak Hour		
			Volumes	V/C Ratio	Critical V/C
Northbound	Left	1 1,700	187	0.11	-
	Thru	4 6,800	2303	0.34	0.34
	Right	1 1,700	147	0.09	-
Southbound	Left	2 3,400	502	0.15	0.15
	Thru	4 6,800	1564	0.23	-
	Right	0 0	6	-	-
Eastbound	Left	2 3,400	351	0.10	0.10
	Thru	1 1,700	95	0.06	-
	Right	1 1,700	117	0.07	-
Westbound	Left	2 3,400	406	0.12	-
	Thru	1 1,700	119	0.07	-
	Right	1 1,700	711	0.42	0.42
Sum of Critical V/C Ratios			1.008		
Adjustment for Lost Time			0.05		
Intersection Capacity Utilization (ICU)			1.058		
Level of Service (LOS)			F		

Intersection Capacity Utilization

LOCATION: City of Irvine
MacArthur Blvd
Michelson

NORTH-SOUTH ST.

EAST-WEST STREET :

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

GEOMETRIC :

Date: 09/19/2018

Movement	Number of Lanes	Capacity	P.M. Peak Hour		
			Volumes	V/C Ratio	Critical V/C
Northbound	Left	1 1,700	187	0.11	-
	Thru	4 6,800	2315	0.34	0.34
	Right	1 1,700	147	0.09	-
Southbound	Left	2 3,400	502	0.15	0.15
	Thru	4 6,800	1578	0.23	-
	Right	0 0	6	-	-
Eastbound	Left	2 3,400	351	0.10	0.10
	Thru	1 1,700	95	0.06	-
	Right	1 1,700	117	0.07	-
Westbound	Left	2 3,400	406	0.12	-
	Thru	1 1,700	119	0.07	-
	Right	1 1,700	711	0.42	0.42
Sum of Critical V/C Ratios			1.009		
Adjustment for Lost Time			0.05		
Intersection Capacity Utilization (ICU)			1.059		
Level of Service (LOS)			F		

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