

RESOLUTION NUMBER R- 300772

DATE OF FINAL PASSAGE APR 19 2011

CERTIFYING ENVIRONMENTAL IMPACT REPORT NO.  
172026 AND ADOPTING THE MITIGATION MONITORING  
AND REPORTING PROGRAM FOR THE FLOWER HILL  
PROMENADE PROJECT.

WHEREAS, on January 28, 2009, Protea Flower Hill Mall, L.L.C. and Protea Flower Hill West, L.L.C., both California Limited Liability Companies, Owners/Permittees, submitted an application to the City of San Diego Development Services Department for a coastal development permit, lot line adjustment, and easement abandonment for the Flower Hill Promenade Project;

WHEREAS, the matter was set for a public hearing to be conducted by the City Council of the City of San Diego; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body, a public hearing was required by law implicating due process rights of individuals affected by the decision, and the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, the issue was heard by the City Council on April 19, 2011; and

WHEREAS, the City Council of the City of San Diego considered the issues discussed in Environmental Impact Report No. 172026; NOW THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that it is certified that Environmental Impact Report No. 172026, on file in the office of the City Clerk, has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code section 21000 *et seq.*), as amended, and the State Guidelines thereto (California Administrative Code Section 15000 *et seq.*), that the declaration reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in the report, together with any comments received during the public review process, has been reviewed and considered by this City Council in connection with the approval of the Coastal Development Permit No. 619980, Lot Line Adjustment No. 826904, and Easement Abandonment No. 826905 for the Flower Hill Promenade Project;

BE IT FURTHER RESOLVED, that pursuant to California Public Resources Code Section 21081 and State Guidelines Section 15091, the City Council hereby adopts the applicant's proposed findings dated March 2011 as the findings made with respect to the project, a copy of which is attached hereto and incorporated herein by reference.

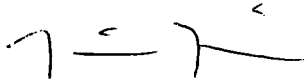
BE IT FURTHER RESOLVED, that pursuant to California State Guidelines Section 15093, the City Council hereby adopts the applicant's proposed Statement of Overriding Considerations dated March 2011 and as revised on page 19, paragraph B to mirror the third paragraph of the written motion regarding modified permit condition number 43 with respect to the project, a copy of which is attached hereto and incorporated herein by reference.

BE IT FURTHER RESOLVED, that pursuant to California Public Resources Code, Section 21081.6, the City Council hereby adopts the Mitigation Monitoring and Reporting Program with the elimination of mitigation measures 5.2-2 and 5.2-3, or alterations to implement the changes to the project as required by this body in order to mitigate or avoid significant effects on the environment, a copy of which is attached hereto and incorporated herein by reference.

BE IT FURTHER RESOLVED, that the City Clerk is directed to file a Notice of Determination [NOD] with the Clerk of the Board of Supervisors for the County of San Diego regarding above project.

APPROVED: Jan Goldsmith, City Attorney

By:



\_\_\_\_\_  
Nina M. Fain  
Deputy City Attorney

NMF: js  
03/18/11  
04/25/11 Revised  
Or.Dept:DSD  
R-2011-788  
PL#2010-00941

## EXHIBIT A

## MITIGATION MONITORING AND REPORTING PROGRAM

## PROJECT NO. 172026

This Mitigation Monitoring and Reporting Program is designed to ensure compliance with Public Resources Code Section 21081.6 during implementation of mitigation measures. This program identifies at a minimum: the department responsible for the monitoring, what is to be monitored, how the monitoring shall be accomplished, the monitoring and reporting schedule, and completion requirements. A record of the Mitigation Monitoring and Reporting Program will be maintained at the offices of the Land Development Review Division, 1222 First Avenue, Fifth Floor, San Diego, CA, 92101. All mitigation measures contained in the Environmental Impact Report (No. 172026) shall be made part of the covenant and recorded with the San Diego County Recorder's Office. The MMRP is further described below.

## MITIGATION, MONITORING AND REPORTING PROGRAM:

General

As Lead Agency for the proposed project under CEQA, the City of San Diego will administer the Mitigation Monitoring and Reporting Program (MMRP) for the following environmental issue areas as identified in the Flower Hill Promenade Project EIR: traffic/circulation; biological resources; paleontological resources; and public utilities (solid waste). The mitigation measures identified below include all applicable measures from the Flower Hill Promenade Project EIR (Project No. 172026; SCH No. 2009021078). This MMRP shall be made a requirement of project approval.

Section 21081.6 to the State of California Public Resources Code requires a Lead or Responsible Agency that approves or carries out a project where an EIR has identified significant environmental effects to adopt a "reporting or monitoring program for adopted or required changes to mitigate or avoid significant environmental effects." The City of San Diego is the Lead Agency for the Flower Hill Promenade Project EIR, and therefore must ensure the enforceability of the MMRP. An EIR has been prepared for this project that addresses potential environmental impacts and, where appropriate, recommends measures to mitigate these impacts. As such, an MMRP is required to ensure that adopted mitigation measures are implemented. Therefore the following general measures are included in this MMRP:

1. Prior to the commencement of work, a Pre-construction meeting (Pre-con) shall be conducted and include City of San Diego's Mitigation Monitoring and Coordination (MMC) staff, Resident Engineer, Applicant, Project Acoustician, Biologist, Project Paleontologist and other parties of interest.
2. Prior to Notice to Proceed (NTP) for any construction permits, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plans/Permits, the Assistant Deputy Director (ADD) of the City's Land Development Review Division (LDR) shall verify that the following statement is

shown on the grading and/or construction plans as a note under the heading **ENVIRONMENTAL MITIGATION REQUIREMENTS: “*The Flower Hill Promenade project is subject to a Mitigation Monitoring and Reporting Program and shall conform to the mitigation conditions as contained in Environmental Impact Report No. 172026.*”**.

## **TRAFFIC AND CIRCULATION**

***Mitigation Measure 5.2-1:*** Prior to issuance of a Certificate of Occupancy, Owner/Permittee shall provide a Letter of Credit, cash payment, or bond equal to 7.7 percent of the Black Mountain Ranch Facilities Financing Plan fiscal Year 2006 cost estimate to complete the planned improvements identified in the Black Mountain Ranch Public Facilities Financing Plan as Project No. T-32.1 for the widening of Via de la Valle between San Andres Drive to El Camino Real (West), from a two lane to a four lane roadway. Prior to the issuance of the first building permit for a structure, Owner/Permittee shall pay the estimated cost, approved by the City Engineer, to form a cost reimbursement district to collect any funds necessary to complete Black Mountain Ranch Facilities Financing Plan Project T-32.1.

***Mitigation Measure 5.2-4:*** Prior to issuance of the first building occupancy permit, a “Keep Clear” marking shall be painted on the pavement on-site where the driveway meets the east/west circulation aisle approximately 100 feet north of Via de la Valle. Additionally, no stop signs shall be placed facing northbound traffic at the location where the main project driveway meets the east/west circulation aisle.

## **BIOLOGICAL RESOURCES**

***Mitigation Measure 5.6-1:*** Prior to the issuance of any authorization to proceed the Assistant Deputy Director (ADD) Environmental designee shall ensure that the following measures are included as notes in the construction plans and grading plans:

If project grading or other construction activities are proposed during the raptor breeding season (Jan. 1-Sept. 15), the project biologist shall conduct a pregrading survey for active raptor nests within 500 feet of the development area and submit a letter report to the Mitigation Monitoring Coordinator (MMC) prior to the preconstruction meeting.

1. If active raptor nests are detected, the report shall include mitigation in conformance with the City’s Biology Guidelines (i.e. appropriate buffers, monitoring schedules, etc.) to the satisfaction of the ADD Environmental designee. Mitigation requirements determined by the project biologist and the ADD Environmental designee shall be incorporated into the project’s Biological Construction Monitoring Exhibit (BCME) and monitoring results incorporated in to the final biological construction monitoring report.
2. If no nesting raptors are detected during the pregrading survey, no mitigation is required.

## **PALEONTOLOGICAL RESOURCES**

***Mitigation Measure 5.9-1:*** The following shall be implemented:

### **I. Prior to Permit Issuance**

#### **A. Entitlements Plan Check**

1. Prior to issuance of any construction permits, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plans/Permits or a Notice to Proceed for Subdivisions, but prior to the first preconstruction meeting, whichever is applicable, the Assistant Deputy Director (ADD) Environmental designee shall verify that the requirements for Paleontological Monitoring have been noted on the appropriate construction documents.

#### **B. Letters of Qualification have been submitted to ADD**

1. The applicant shall submit a letter of verification to Mitigation Monitoring Coordination (MMC) identifying the Principal Investigator (PI) for the project and the names of all persons involved in the paleontological monitoring program, as defined in the City of San Diego Paleontology Guidelines.
2. MMC will provide a letter to the applicant confirming the qualifications of the PI and all persons involved in the paleontological monitoring of the project.
3. Prior to the start of work, the applicant shall obtain approval from MMC for any personnel changes associated with the monitoring program.

### **II. Prior to Start of Construction**

#### **A. Verification of Records Search**

1. The PI shall provide verification to MMC that a site specific records search has been completed. Verification includes, but is not limited to a copy of a confirmation letter from San Diego Natural History Museum, other institution or, if the search was in-house, a letter of verification from the PI stating that the search was completed.
2. The letter shall introduce any pertinent information concerning expectations and probabilities of discovery during trenching and/or grading activities.

#### **B. PI Shall Attend Precon Meetings**

1. Prior to beginning any work that requires monitoring; the Applicant shall arrange a Precon Meeting that shall include the PI, Construction Manager (CM) and/or Grading Contractor, Resident Engineer (RE), Building Inspector (BI), if

appropriate, and MMC. The qualified paleontologist shall attend any grading/excavation related Precon Meetings to make comments and/or suggestions concerning the Paleontological Monitoring program with the Construction Manager and/or Grading Contractor.

- a. If the PI is unable to attend the Precon Meeting, the Applicant shall schedule a focused Precon Meeting with MMC, the PI, RE, CM or BI, if appropriate, prior to the start of any work that requires monitoring.

## 2. Identify Areas to be Monitored

Prior to the start of any work that requires monitoring, the PI shall submit a Paleontological Monitoring Exhibit (PME) based on the appropriate construction documents (reduced to 11x17) to MMC identifying the areas to be monitored including the delineation of grading/excavation limits. The PME shall be based on the results of a site specific records search as well as information regarding existing known soil conditions (native or formation).

## 3. When Monitoring Will Occur

- a. Prior to the start of any work, the PI shall also submit a construction schedule to MMC through the RE indicating when and where monitoring will occur.
- b. The PI may submit a detailed letter to MMC prior to the start of work or during construction requesting a modification to the monitoring program. This request shall be based on relevant information such as review of final construction documents which indicate conditions such as depth of excavation and/or site graded to bedrock, presence or absence of fossil resources, etc., which may reduce or increase the potential for resources to be present.

### III. During Construction

#### A. Monitor Shall be Present During Grading/Excavation/Trenching

1. The monitor shall be present full-time during grading/excavation/trenching activities as identified on the PME that could result in impacts to formations with high and moderate resource sensitivity. **The Construction Manager is responsible for notifying the RE, PI, and MMC of changes to any construction activities such as in the case of a potential safety concern within the area being monitored. In certain circumstances OSHA safety requirements may necessitate modification of the PME.**
2. The PI may submit a detailed letter to MMC during construction requesting a modification to the monitoring program when a field condition such as trenching activities that do not encounter formational soils as previously assumed, and/or when unique/unusual fossils are encountered, which may reduce or increase the potential for resources to be present.

3. The monitor shall document field activity via the Consultant Site Visit Record (CSVSR). The CSVSR's shall be faxed by the CM to the RE the first day of monitoring, the last day of monitoring, monthly (**Notification of Monitoring Completion**), and in the case of ANY discoveries. The RE shall forward copies to MMC.

**B. Discovery Notification Process**

1. In the event of a discovery, the Paleontological Monitor shall direct the contractor to temporarily divert trenching activities in the area of discovery and immediately notify the RE or BI, as appropriate.
2. The Monitor shall immediately notify the PI (unless Monitor is the PI) of the discovery.
3. The PI shall immediately notify MMC by phone of the discovery, and shall also submit written documentation to MMC within 24 hours by fax or email with photos of the resource in context, if possible.

**C. Determination of Significance**

1. The PI shall evaluate the significance of the resource.
  - a. The PI shall immediately notify MMC by phone to discuss significance determination and shall also submit a letter to MMC indicating whether additional mitigation is required. The determination of significance for fossil discoveries shall be at the discretion of the PI.
  - b. If the resource is significant, the PI shall submit a Paleontological Recovery Program (PRP) and obtain written approval from MMC. Impacts to significant resources must be mitigated before ground disturbing activities in the area of discovery will be allowed to resume.
  - c. If resource is not significant (e.g., small pieces of broken common shell fragments or other scattered common fossils) the PI shall notify the RE, or BI as appropriate, that a non-significant discovery has been made. The Paleontologist shall continue to monitor the area without notification to MMC unless a significant resource is encountered.
  - d. The PI shall submit a letter to MMC indicating that fossil resources will be collected, curated, and documented in the Final Monitoring Report. The letter shall also indicate that no further work is required.

**IV. Night and/or Weekend Work**

- A. If night and/or weekend work is included in the contract



1. When night and/or weekend work is included in the contract package, the extent and timing shall be presented and discussed at the precon meeting.
2. The following procedures shall be followed.

- a. No Discoveries

In the event that no discoveries were encountered during night and/or weekend work, The PI shall record the information on the CSVr and submit to MMC via fax by 8AM on the next business day.

- b. Discoveries

All discoveries shall be processed and documented using the existing procedures detailed in Sections III - During Construction.

- c. Potentially Significant Discoveries

If the PI determines that a potentially significant discovery has been made, the procedures detailed under Section III - During Construction shall be followed.

- d. The PI shall immediately contact MMC, or by 8AM on the next business day to report and discuss the findings as indicated in Section III-B, unless other specific arrangements have been made.

B. If night work becomes necessary during the course of construction

1. The Construction Manager shall notify the RE, or BI, as appropriate, a minimum of 24 hours before the work is to begin.
2. The RE, or BI, as appropriate, shall notify MMC immediately.

C. All other procedures described above shall apply, as appropriate.

**V. Post Construction**

A. Preparation and Submittal of Draft Monitoring Report

1. The PI shall submit two copies of the Draft Monitoring Report (even if negative), prepared in accordance with the Paleontological Guidelines which describes the results, analysis, and conclusions of all phases of the Paleontological Monitoring Program (with appropriate graphics) to MMC for review and approval within 90 days following the completion of monitoring.
  - a. For significant paleontological resources encountered during monitoring, the Paleontological Recovery Program shall be included in the Draft Monitoring Report.

b. Recording Sites with the San Diego Natural History Museum

The PI shall be responsible for recording (on the appropriate forms) any significant or potentially significant fossil resources encountered during the Paleontological Monitoring Program in accordance with the City's Paleontological Guidelines, and submittal of such forms to the San Diego Natural History Museum with the Final Monitoring Report.

2. MMC shall return the Draft Monitoring Report to the PI for revision or, for preparation of the Final Report.
3. The PI shall submit revised Draft Monitoring Report to MMC for approval.
4. MMC shall provide written verification to the PI of the approved report.
5. MMC shall notify the RE or BI, as appropriate, of receipt of all Draft Monitoring Report submittals and approvals.

B. Handling of Fossil Remains

1. The PI shall be responsible for ensuring that all fossil remains collected are cleaned and catalogued.
2. The PI shall be responsible for ensuring that all fossil remains are analyzed to identify function and chronology as they relate to the geologic history of the area; that faunal material is identified as to species; and that specialty studies are completed, as appropriate

C. Curation of fossil remains: Deed of Gift and Acceptance Verification

1. The PI shall be responsible for ensuring that all fossil remains associated with the monitoring for this project are permanently curated with an appropriate institution.
2. The PI shall include the Acceptance Verification from the curation institution in the Final Monitoring Report submitted to the RE or BI and MMC.

D. Final Monitoring Report(s)

1. The PI shall submit two copies of the Final Monitoring Report to MMC (even if negative), within 90 days after notification from MMC that the draft report has been approved.
2. The RE shall, in no case, issue the Notice of Completion until receiving a copy of the approved Final Monitoring Report from MMC which includes the Acceptance Verification from the curation institution.

**PUBLIC UTILITIES (SOLID WASTE)**

***Mitigation Measure 9.1-1:*** The following shall be implemented:

I. **Prior to Preconstruction (Precon) Meeting**

Land Development Review (LDR) Plan Check - Prior to issuance of any permit, including but is not limited to, any grading or any other construction permit, the ADD shall verify that all the requirements of the Refuse and Recyclable Materials Storage Regulations, Construction and Demolition Debris Diversion Deposit Program and all of the requirements of the waste management plan have been shown and/or noted on the Grading Plans (construction documents).

- A. Prior to issuance of a demolition or grading permit, the permittee shall be responsible to arrange a Precon Meeting. This meeting shall be coordinated with MMC to verify that implementation of the waste management plan shall be performed in compliance with the plan approved by LDR and the ESD, to ensure that impacts to solid waste facilities are mitigated to below a level of significance.
- B. The plan (construction documents) shall include the following elements for grading, construction and occupancy phases of the project as applicable:
  - 1. Tons of waste anticipated to be generated
  - 2. Material type of waste to be generated
  - 3. How materials will be reused on site
  - 4. Name and location of recycling, reuse or landfill facilities where waste will be taken if not reused on site
  - 5. How C&D waste will be source separated if a mixed C&D facility is not used for recycling
  - 6. A “buy recycled” program
  - 7. How the project will aim to reduce the generation of construction/demolition debris
  - 8. A plan of how waste reduction and recycling goals will be communicated to subcontractors
  - 9. A timeline for each of the three main phases of the project (demolition, construction and occupancy)
  - 10. How the Refuse and Recyclable Materials Storage Regulations (Land Development Manual Chapter 14, Article 2 Division 8) will be incorporated into design of building's waste storage area

11. How compliance with the Recycling Ordinance (Municipal Code Chapter 6, Article 6, Division 7) will be incorporated in the operational phase

12. International Standards of Operation (ISO)<sup>1</sup>, or other certification, if any

C. The plan shall require a 75 percent diversion rate for construction and demolition debris, consistent with the requirements of Chapter 6, Article 6, Division 6 of the Municipal Code (the Construction and Demolition Debris Diversion Deposit Program).

D. The plan shall include specific performance measures based on the Waste Management Form (required as part of the Construction and Demolition Debris Diversion Deposit Program) which provides a general estimate of the total waste generated by the project including how much will be recycled for each material type. The performance measures shall be assessed upon the completion of the project to measure success in achieving waste minimization goals discussed in No. 3 above. The permittee shall notify MMC and ESD when: (1) a construction permit is issued; and (2) construction begins.

The permittee shall arrange for progress inspections and a final inspection, as specified in the plan and shall contact both MMC and ESD to perform these periodic site visits during construction to inspect the process of the project's waste diversion efforts. Notification shall be sent to:

Mitigation Monitoring  
Coordination  
9601 Ridgehaven Court  
Suite 320, MS 1102B  
San Diego, CA 92123-1636  
(619) 980-7122

Environmental Services  
Department  
9601 Ridgehaven Court  
Suite 320, MS 1103B  
San Diego, CA 92123-1636  
(858) 492-5010

E. Prior to the issuance of a demolition or grading permit, the applicant shall receive approval from the ADD that the waste management plan has been prepared, approved and implemented. Also prior to the issuance of the grading permit, the applicant shall submit evidence to the ADD that the final construction report has been approved by MMC and ESD. This report shall summarize the results of implementing the above waste management plan elements, including: the actual waste generated and diverted from the project, the waste reduction percentage achieved, how that goal was achieved, etc.

## II. Precon Meeting

A. At least 10 days prior to beginning any work on the site, for the implementation of the Mitigation Monitoring and Reporting Program (MMRP), the permittee is responsible to arrange a Precon Meeting that shall include: the Construction Manager or Grading

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<sup>1</sup> ISO certification means there has been a commitment to reduce ongoing waste.

Contractor, MMC and ESD, as well as the Resident Engineer (RE), if there is an engineering permit.

- B. At the Precon Meeting, the permittee shall submit reduced copies (11" x 17") of the approved waste management plan to MMC (two copies) and ESD (one copy).
- C. Prior to the start of construction, the permittee or Construction Manager shall submit a construction schedule to MMC and ESD.

The above mitigation monitoring and reporting program will require additional fees and/or deposits to be collected prior to the issuance of building permits, certificates of occupancy and/or final maps to ensure the successful completion of the monitoring program.

**APPLICANT'S PROPOSED**

**CANDIDATE FINDINGS OF FACT  
AND  
STATEMENT OF OVERRIDING CONSIDERATIONS  
REGARDING THE  
FINAL ENVIRONMENTAL IMPACT REPORT  
FOR THE  
FLOWER HILL PROMENADE PROJECT**

STATE CLEARINGHOUSE NO. 2009021078

March 2011

**FINDINGS  
AND  
STATEMENT OF OVERRIDING CONSIDERATIONS**

The California Environmental Quality Act (CEQA) (California Public Resources Code §§21000 et. seq. and the State CEQA Guidelines (Title 14, California Code of Regulations, §§15000 et. seq.) require that no public agency shall approve or carry out a project which identifies one or more significant environmental effects of a project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:

- (1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant environmental effects on the environment.
- (2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been or can or should be adopted by that other agency.
- (3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the EIR.

(CEQA, §21081(a); Guidelines, §15091(a).)

CEQA also requires that the findings made pursuant to Section 15091 be supported by substantial evidence in the record (Section 15091(b) of the State CEQA Guidelines). Under CEQA, substantial evidence means enough relevant information has been provided (and reasonable inferences from this information may be made) that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Substantial evidence must include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts (Section 15384 of the State CEQA Guidelines).

CEQA further requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental effects when determining whether to approve a project. If the specific economic, legal, social, technological, or other benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered “acceptable” (Section 15093(a) of the State CEQA Guidelines). When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its actions based on the final EIR and/or other information in the record. This statement of overriding considerations shall be supported by substantial evidence in the record and does not substitute for, and shall be in addition to, the findings required pursuant to Section 15091 (Sections 15093(b) and (c) of the State CEQA Guidelines).

The following Findings and Statement of Overriding Considerations have been submitted by the project applicant as candidate findings to be made by the decision-making body. The, Environmental Analysis Section of the Entitlements Division, does not recommend that the discretionary body either adopt or reject these findings. They are attached to allow readers of this report an opportunity to review potential reasons for approving the project despite the significant unmitigated effects identified in the EIR.

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# I. INTRODUCTION

## A. Findings of Fact and Statement of Overriding Considerations

The California Environmental Quality Act (CEQA) (Pub. Res. Code §§ 21000, et seq.) and the State CEQA Guidelines (Guidelines) (14 Cal. Code Regs. §§ 15000, et seq.) promulgated thereunder, require that the environmental impacts of a project be examined before a project is approved. Specifically, regarding findings, Guidelines Section 15091 provides:

- (a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:
  - 1. Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.
  - 2. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
  - 3. Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.
- (b) The findings required by subdivision (a) shall be supported by substantial evidence in the record.
- (c) The finding in subdivision (a)(2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives. The finding in subdivision (a)(3) shall describe the specific reasons for rejecting identified mitigation measures and project alternatives.
- (d) When making the findings required in subdivision (a)(1), the agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures.
- (e) The public agency shall specify the location and custodian of the documents or other materials which constitute the record of the proceedings upon which its decision is based.

- (f) A statement made pursuant to Section 15093 does not substitute for the findings required by this section.

The “changes or alterations” referred to in Section 15091(a)(1) above, that are required in, or incorporated into, the project which mitigate or avoid the significant environmental effects of the project, may include a wide variety of measures or actions as set forth in Guidelines Section 15370, including:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (e) Compensating for the impact by replacing or providing substitute resources or environments.

Regarding a Statement of Overriding Considerations, Guidelines Section 15093 provides:

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

Having received, reviewed and considered the Final Environmental Impact Report (FEIR) for the Coastal Development Permit, Lot Line Adjustment, and Easement Vacation for the Flower Hill Promenade Project, State Clearinghouse No. 2009021078, as well as all other information in the record of proceedings on this matter, the following Findings of Fact and Statement of Overriding Considerations (Findings) are hereby adopted by the City of San Diego (City) in its capacity as the CEQA Lead Agency. These Findings set forth the environmental basis for current and

subsequent discretionary actions to be undertaken by the City and responsible agencies for the implementation of the proposed project.

## **B. Record of Proceedings**

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

- The Notice of Preparation (NOP), dated February 18, 2009, and all other public notices issued by the City in conjunction with the proposed project;
- The FEIR for the proposed project;
- The original Draft EIR circulated for public review between March 10, 2010 to April 23, 2010;
- The Recirculated Draft EIR circulated for public review between November 24, 2010 and January 11, 2011;
- All written comments submitted by agencies or members of the public during both public review comment periods on the original Draft EIR and Recirculated Draft EIR;
- All responses to written comments submitted by agencies or members of the public during the public review comment periods on the original Draft EIR and Recirculated Draft EIR;
- All written and verbal public testimony presented during a noticed public hearing for the proposed project at which such testimony was taken;
- The Mitigation Monitoring and Reporting Program (MMRP);
- The reports and technical memoranda included or referenced in Responses to Comments in the FEIR;
- All documents, studies, EIRs, or other materials incorporated by reference in the original and Recirculated Draft EIR, and the FEIR;
- Matters of common knowledge to the City, including but not limited to federal, state and local laws and regulations;
- Any documents expressly cited in these Findings; and
- Any other relevant materials required to be in the record of proceedings by Public Resources Code Section 21167.6(e).

## **C. Custodian and Location of Records**

The documents and other materials which constitute the administrative record for the City's actions related to the project are located at the City of San Diego, Development Services Center,

1222 First Avenue, Fifth Floor, San Diego, CA 92101. The City Development Services Center is the custodian of the administrative record for the project. Copies of these documents, which constitute the record of proceedings, are and at all relevant times have been and will be available upon request at the offices of the City Development Services Center. This information is provided in compliance with Public Resources Code Section 21081.6(a)(2) and Guidelines Section 15091(e).

## **II. PROJECT SUMMARY**

### **A. Project Location**

The approximately 15-acre Flower Hill Promenade project site is located in the northern portion of the City of San Diego (City), but not within a specific community plan area. The site is within the coastal zone, as designated by the California Coastal Commission (FEIR Figures 2.1-1, Regional Location Map, and 2.1-2, Project Vicinity Map), within the City's jurisdiction under the City's approved Local Coastal Program. The trade area for the Flower Hill Promenade shopping center extends from Carlsbad to Mission Valley and from the coast to inland North County communities (FEIR Figure 2-3, Primary Trade Area Map). The project site is developed with the existing shopping center, which features specialty retail shops, restaurants, a movie theater, surface parking lots and ancillary services. (FEIR Figure 3.2-1, Existing Site Plan). The property is flanked by a number of public roads, including Interstate 5 to the west, Via de la Valle to the south and San Andres Drive to the east. Vehicular access to the site occurs from two separate driveways on Via de la Valle and San Andres Drive. Pedestrian access is available from sidewalks within the public rights-of-way fronting the site.

### **B. Project Background**

The Flower Hill Promenade (proposed project) is the proposed redevelopment and renovation of a shopping center that was originally constructed in the City of San Diego in the late 1974. The existing open-air center features specialty retail shops, restaurants, a movie theater, parking and ancillary services, with a total center size of 112,116 square feet (sf) within approximately 15 developed acres.

For more than two decades, Flower Hill Promenade has served as community retail center for the City of San Diego, Encinitas, Solana Beach, Del Mar and unincorporated areas of the County of San Diego. Only minor renovations have occurred since Flower Hill first opened and the center is in need of revitalization to enhance the community services and maintain economic stability for the shopping center, while maintaining the existing community character.

### **C. Project Description**

The proposed project will upgrade the existing commercial center by providing a specialty food market, office space and additional parking conveniently located to serve an unmet need in the local community. The upgrade will also support the existing merchants and provide economic stability for the shopping center. The proposed project includes demolition of the existing movie theater building, construction of new commercial office space and a parking structure. The proposed project also includes site renovation improvements, driveway improvements, re-striping of Via de la Valle, surface parking re-striping, signage, grading, landscaping, utility improvements and sustainable design features.

The proposed project is situated in the northern portion of the City, but not within any specific community plan area. The site is bordered by the following public roads: Interstate 5, Via de la Valle and San Andres Drive. The project site is surrounded by urban development, including multi-family residential, single-family residential, retail commercial, and major transportation corridors.

To accomplish the project, the project applicant is requesting approval of a Coastal Development Permit (CDP), Lot Line Adjustment, and Easement Vacation. The requested approvals are discussed in detail in Section 3.0 of the FEIR.

The proposed project would allow for the development of an additional 43,754 square feet of retail stores including a 35,000 square-foot major food market and 8,754 square feet of new retail space. A total of 28,941 square feet of office space is also proposed. The new retail space would be located in two, two-story buildings connected by a covered breezeway. The new buildings would be located at the west end of the existing center. A three-story, four-level parking structure, comprised of 94,275 square feet and containing 397 parking spaces would be constructed north of the proposed new retail and office buildings. To accommodate the new development, the existing movie theater would be demolished. The revitalization project includes site improvements, grading, circulation improvements, driveway improvements and landscaping. The proposed project is illustrated in Figure 3.2-1 of the FEIR.

#### **D. Discretionary Actions**

The applicant has submitted applications for a CDP, Lot Line Adjustment, and Easement Vacation.

To approve the project, the City must take the following actions, as discussed in Section 3.0 of the FEIR:

- (1) Certify the FEIR;
- (2) Approve of these Findings and Statement of Overriding Considerations;
- (3) Adopt the MMRP;
- (4) Approve the CDP;
- (5) Approve the Lot Line Adjustment; and
- (6) Approve the Easement Vacation.

In addition, the City may use the FEIR to approve other discretionary actions, including but not limited to: an amendment to the municipal service agreements, a development agreement, subdivision maps, master plans, park plans, an affordable housing plan, grading permits, conditional use permits, reimbursement agreement and approval of assessment districts. The FEIR may also be used by responsible and trustee agencies in connection with project-related approvals, including without limitations the utility service permits, connections and improvements, as necessary from the City of Solana Beach, and a National Pollutant Discharge Elimination System (NDPES) General Construction permit approval from the Regional Water Quality Control Board (RWQCB).

## **E. Statement of Objectives**

As described in Section 3.1 of the FEIR, the objectives sought by the project include:

- (1) Provide a conveniently located, high-end/specialty food market to serve an unmet need in the local community, to support the existing merchants, and provide economic stability for the shopping center;
- (2) Provide office space opportunities for residents of the local community to work close to where they live and provide services for the community;
- (3) Expand and enhance the variety of goods and services offered to the community by increasing retail shops and allowing residents to shop closer to home;
- (4) Improve parking by providing additional parking spaces to make it easier for customers to use the shopping center;
- (5) Maintain the existing Flower Hill Drive access for the residents of Spindrift Condominiums located immediately north of the project site.

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

The City prepared an Initial Study (IS) for the proposed project and, based on that IS, determined that the proposed project may have a significant effect on the environment and that an EIR should be prepared to analyze the potential impacts associated with approval and implementation of the proposed project.

On February 18, 2009, in accordance with Guidelines Section 15082, the City distributed a Notice of Preparation (NOP) of an Environmental Impact Report to the State Clearinghouse, local and regional responsible agencies, and other interested parties. Various agencies and other interested parties responded to the NOP. The NOP, NOP distribution list, and NOP comments received during the 30-day public review period are contained in Appendix A to the FEIR. On March 9, 2009, the City held an advertised public scoping meeting to provide: (i) information regarding the proposed project, and (ii) an opportunity for public input regarding project issues that should be addressed in the Draft EIR. Comments received during the public involvement process and the IS/NOP scoping period were considered in the preparation of the Draft EIR.

The original Draft EIR for the proposed project was then prepared and circulated for review and comment by the public, agencies and organizations for a public review period that began on March 10, 2010 and concluded on April 23, 2010. During this public review period, a number of nearby residents expressed major concerns about the proposal to realign the Flower Hill Drive/San Andres Drive intersection approximately 160 feet to the north. These concerns came primarily from the Spindrift Homeowner's Association whose residents' only access is from Flower Hill Drive. Their concerns were related to traffic safety and increased traffic noise on nearby residences. In addition, the Carmel Valley Community Planning Group indicated that it would only support the project if the alignment of Flower Hill Drive was unchanged. In response to these concerns, the project applicant modified the project to retain Flower Hill Drive in its present location.



The original Draft EIR was revised to modify the proposed project to maintain the current alignment of Flower Hill Drive. The “No Realignment” alternative was replaced by an alternative that would include realignment of Flower Hill Drive. In addition to revisions related to Flower Hill Drive, the original Draft EIR was revised to include additional information in response to other public comments. In particular, the discussion of visual and greenhouse gas impacts as well as police and fire protection were expanded.

The revised Draft EIR was recirculated for public review from November 24, 2010 to January 11, 2011 to allow government agencies and the public an opportunity to review and comment on the revised project which proposes leaving Flower Hill Drive in its present location.

Notices of Completion for the original and Recirculated Draft EIRs were sent to the State Clearinghouse and the Draft EIRs were circulated to State agencies for review through the State Clearinghouse, Office of Planning and Research (SCH No. 2009021078). Separate public notices of the availability of the two Draft EIRs were sent to governmental agencies and interested parties, as identified in the respective public notices. The public notices of availability were also filed with the City Clerk.

As noted, the public comment period on the Recirculated Draft EIR concluded on January 11, 2011. The City received numerous comments on the proposed project. The City completed responses to those comments in February 2011. Those responses have been incorporated into the FEIR.

On [DATE], the City of San Diego Planning Commission held a public hearing and recommended approval of the project and certification of the FEIR, adoption of the MMRP, and approval of these Findings and the accompanying Statement of Overriding Considerations. On [DATE], the City Council held a public hearing to consider the project and voted to certify the FEIR, approve these Findings of Fact and the accompanying Statement of Overriding Considerations, adopt the MMRP, and approve the project.

#### **IV. GENERAL FINDINGS**

The City hereby finds as follows:

- The City is the “Lead Agency” for the proposed project evaluated in the FEIR;
- The original and Recirculated Draft EIRs and Final EIR were prepared in compliance with CEQA and the Guidelines;
- The City has independently reviewed and analyzed the original and Recirculated Draft EIRs and the FEIR, and these documents reflect the independent judgment of the City Council and the City of San Diego;
- The City of San Diego’s review of the original and Recirculated Draft EIR and the FEIR is based upon CEQA, the CEQA Guidelines, and the City’s January 2007 Significance Determination Thresholds.
- An MMRP has been prepared for the proposed project, which the City has adopted or made a condition of approval of the proposed project. That MMRP is incorporated

herein by reference and is considered part of the record of proceedings for the proposed project;

- The MMRP designates responsibility and anticipated timing for the implementation of mitigation. The City will serve as the MMRP Coordinator;
- In determining whether the proposed project has a significant impact on the environment, and in adopting these Findings pursuant to Section 21081 of CEQA, the City has complied with CEQA Sections 21081.5 and 21082.2;
- The impacts of the proposed project have been analyzed to the extent feasible at the time of certification of the FEIR;
- The City reviewed the comments received on the original Draft EIR, Recirculated Draft EIR and FEIR and the responses thereto, and has determined that neither the comments received nor the responses to such comments add significant new information regarding environmental impacts to the Recirculated Draft EIR or FEIR. The City has based its actions on full appraisal of all view points, including all comments received up to the date of adoption of these Findings concerning the environmental impacts identified and analyzed in the FEIR;
- The responses to the comments on the Recirculated Draft EIR, which are contained in the FEIR, clarify and amplify the analysis in the Recirculated Draft EIR;
- The City has made no decisions that constitute an irretrievable commitment of resources toward the proposed project prior to certification of the FEIR, nor has the City previously committed to a definite course of action with respect to the proposed project;
- Copies of all the documents incorporated by reference in the FEIR are and have been available upon request at all times at the offices of the City, custodian of record for such documents or other materials; and
- Having received, reviewed, and considered all information and documents in the record, the City hereby conditions the proposed project and finds as stated in these Findings.

## **V. SUMMARY OF IMPACTS**

The FEIR concludes that the proposed project will have no significant direct and/or cumulative impacts with respect to the following issues:

- Air Quality(Direct and Cumulative);
- Biological Resources (Cumulative);
- Greenhouse Gases(Direct and Cumulative);
- Hydrology(Direct and Cumulative);

- Land Use (Direct and Cumulative);
- Noise (Direct and Cumulative);
- Paleontological Resources (Cumulative);
- Parking (Direct and Cumulative);
- Public Services;
- Visual Effects and Neighborhood Character(Direct and Cumulative); and
- Water Quality (Direct and Cumulative).

As described in Section VI. of these Findings, potentially significant and/or cumulative impacts could occur with respect to the following issues:

- Biological Resources (Raptors) (Direct);
- Paleontological Resources (Direct);
- Public Services (Solid Waste) (Cumulative); and
- Transportation/Circulation (Direct and Cumulative).

Direct impacts from the proposed project on the biological and paleontological resources will be mitigated to below a level of significance by existing regulations/standard conditions, project design features/special development requirements, and/or mitigation measures that will be made conditions of project approval. Some, but not all, of the direct and cumulative impacts of the project on transportation/circulation/parking would be reduced to below a level of significance by mitigation measures identified in Section VI. Potentially significant cumulative impacts related to public services (solid waste) would be mitigated to below a level of significance by existing regulations/standard conditions, project design features/special development requirements.

## **VI. FINDINGS REGARDING SIGNIFICANT IMPACTS**

In making each of the findings below, the City has considered the project design features (PDFs), plans, programs and policies (PPPs) and mitigation measures listed in the FEIR. The PDFs described in the FEIR are part of the Project that the City has considered, and are explicitly made conditions of Project approval. The PPPs discussed in the FEIR are existing regulatory plans and programs the Project is subject to, and, likewise, are explicitly made conditions of Project approval. The mitigation measures will be made conditions of project approval and included in the MMRP.

**A. Findings Regarding Impacts that can be Mitigated to Below a Level of Significance (Public Resources Code §21081(a)(1))**

The City, having reviewed and considered the information contained in the Final EIR, finds pursuant to CEQA §21081(a)(1) and CEQA Guidelines §15091(a)(1) that changes or alterations have been required in, or incorporated into, the project which would mitigate, avoid, or substantially lessen to below a level of significance the following potential significant environmental effects identified in the EIR:

- Transportation/Circulation (Direct increase in queuing at the Via de la Valle and Flower Hill Promenade main driveway intersection and cumulative impact on Via de la Valle between San Andres Drive and El Camino Real [West]);
- Biological resources (Indirect impact on raptors);
- Paleontological resources (Direct impact on paleontological resources); and
- Public services (Cumulative impact on landfill capacity).

The basis for this conclusion follows.

**1. Transportation/Circulation (Direct increase in queuing at the Via de la Valle and Flower Hill Promenade main driveway intersection)**

**Significant Impact:** Increased queuing could lead to a significant direct and cumulative traffic safety impact at the Via de la Valle/Flower Hill Promenade driveway intersection. A post-expansion queuing analysis was completed for the southbound approach at the traffic signal to determine on-site queues expected during the AM and PM peak hours in both the direct and cumulative conditions (EIR Table 5.2-14). This analysis found that sufficient lane lengths exist to “store” vehicles under the near-term and horizon year scenarios with the project except at the southbound left-turn lane. This potential access impact is considered significant.

**Finding:** Significant but mitigated.

**Facts in Support of Finding:** Mitigation Measure 5.2-4 would ensure that increased queuing related to the proposed project would not impact the Via de la Valle/Flower Hill Promenade driveway. This measure would require “Keep Clear” pavement signage on-site where the driveway meets the east/west circulation aisle approximately 100 feet north of Via de la Valle. Additionally, no stop signs would be allowed to northbound traffic at the location where the main project driveway meets the east/west circulation aisle. Inclusion of these mitigation measures in the Project would reduce impacts on the Via de la Valle/Flower Hill Promenade Driveway intersection to below a level of significance.

**2. Transportation/Circulation (Cumulative increase in traffic on Via de la Valle between San Andres Drive and Via de la Valle [West] and at the Via de la Valle/El Camino Real [West] intersection)**

**Significant Impact:** Project traffic would have a significant cumulative impact on the level of service on Via de la Valle between San Andres Drive and El Camino Real (West) as well as the Via de la Valle/El Camino Real (West) intersection, when combined with other planned projects. This potential increase impact is considered cumulatively significant. A horizon-year segment level of service analysis was completed as a part of the traffic analysis (EIR Table 5.2-11). This analysis found that the volume would exceed the capacity on the Via de la Valle segment between San Andres Drive and El Camino Real (West) and the LOS would be unacceptable LOS F in the cumulative condition. Since the project would contribute over 0.1 to the volume to capacity ratio at this segment operating at LOS F in the horizon year, the project contribution was considered a significant cumulative impact.

The analysis also found that the intersection of Via de la Valle and El Camino Real (West) would operate at unacceptable LOS F, and traffic would experience a significant delay at this intersection under the cumulative condition. Since the project would contribute over a one second of delay to this intersection that would operate at LOS F in the horizon year, the project traffic contribution was considered to result in a significant cumulative impact at the Via de la Valle and El Camino Real (West) intersection.

**Finding:** Significant but mitigated.

**Facts in Support of Finding:** Mitigation Measure 5.2-1 would require the project applicant to make a financial contribution sufficient to cover the unfunded cost of planned improvements to Via de la Valle between San Andres Drive and El Camino Real (West). This contribution would also cover the unfunded cost of planned improvements to the Via de la Valle/El Camino Real (West) intersection. The City has adopted the Black Mountain Ranch Public Facilities Financing Plan (PFFP) and Facilities Benefit Assessment, Fiscal Year 2006, which includes PFFP Project No. T-32.1 for the widening of Via de la Valle between San Andres Drive to El Camino Real (West). In addition to advance funding from the Black Mountain Ranch development, additional funding implementing Project No. T-32.1 is expected to be borne by the fronting property owners or others with development contributing to transportation impacts to Via de la Valle as conditions of those projects' approval. However, no additional funds have been obtained. With the payment of up to \$3.8 million required by Mitigation Measure 5.2-1, the project applicant would be providing the other funding source for PFFP Project No. T-32.1.

**3. Biological Resources (Indirect impact on raptors)**

**Significant Impact:** The proposed project could potentially indirectly impact nesting raptors. Two sensitive animal species have potential to occur (nest) onsite: Cooper's hawk and the white-tailed kite. The site contains eucalyptus trees that provide suitable nesting habitat for these two sensitive raptor species. Nesting raptors are protected by California Fish and Game Code 3503.5 and the Migratory Bird Treaty Act. The project would remove some of the eucalyptus trees onsite, which could potentially cause a significant, direct impact to nesting raptors. The construction activities would generate noise and could indirectly impact nesting raptors in the

remaining eucalyptus trees. These potential indirect impacts to nesting raptors are considered significant.

**Finding:** Significant but mitigated.

**Facts in Support of Finding:** Mitigation Measure 5.6-1 would avoid potential significant indirect impacts to nesting raptors by requiring either: (1) avoidance of tree removal and construction during the raptor breeding season or (2) completion of a preconstruction raptor nest survey prior to construction within the breeding season to confirm that no raptors could be adversely impacted by construction activities. If a nest is located within the direct or indirect impact area of the project, mitigation in conformance with the City's Biology Guidelines will be completed to avoid impacts. Inclusion of this mitigation measure in the Project would reduce potential impacts to raptors to below a level of significance.

#### **4. Paleontological Resources (Direct impact on paleontological resources)**

**Significant Impact:** The proposed Project grading and excavation could have a potentially significant impact on paleontological resources. The proposed Project grading would excavate into Delmar-Torrey Sandstone and potentially Bay Point Formation, which have high potential to possess significant fossils. Considering that the project grading would involve 27,700 cubic yards (cy) of cut to a maximum depths of 42.1 feet, the City's Significance Determination Thresholds (2007) for paleontological resources would be exceeded. Thus, the project could have a direct significant impact to paleontological resources.

**Finding:** Significant but mitigated.

**Facts in Support of Finding:** Mitigation Measure 5.9-1 would assure that any significant paleontological resources encountered during site grading would be detected and salvaged. This measure requires a qualified paleontological monitor to observe grading activities and to provide the appropriate documentation. If paleontological resources are located, the resources will be required to be recorded by the paleontologist at the San Diego Natural History museum to ensure no significant paleontological information is lost. Inclusion of this mitigation measure in the Project would reduce impacts on the paleontological resources to below a level of significance.

#### **5. Public Services (Cumulative impact on landfill capacity)**

**Significant Impact:** The project would have a significant cumulative impact to solid waste. As solid waste generated by the expanded project would exceed 60 tons per year, the proposed project was determined to have a potentially significant cumulative impact to landfill capacity.

**Finding:** Significant but mitigated.

**Facts in Support of Finding:** Mitigation Measure 9.1-1 requires that the project construction plans include a waste management plan. The waste management plan will require 50 percent of the construction and demolition debris to be diverted away from the landfill. It is noted that the project would also include several design features to reduce waste and promote recycling during the operation of the project. Implementation of the waste management plan would reduce the project's cumulative impact on solid landfill capacity to below a level of significance.

**B. Findings Regarding Mitigation Measures Which are the Responsibility of Another Agency (CEQA §21081(A)(2))**

The City, having reviewed and considered the information contained in the Final EIR, finds pursuant to CEQA §21081(a)(2) and CEQA Guidelines §15091(a)(2), no changes or alterations which could reduce significant impacts that are within the responsibility and jurisdiction of another public agency.

**C. Findings Regarding Infeasible Mitigation Measures and Alternatives (CEQA §21081(A)(3))**

The City, having reviewed and considered the information contained in the Final EIR, finds pursuant to CEQA §21081(a)(3) and CEQA Guidelines §15091(a)(3) that (i) the EIR considers a reasonable range of project alternatives, and (ii) specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible specific mitigation measures and project alternatives identified in the Final EIR which could reduce the following significant transportation/circulation impacts:

- Via de la Valle between San Andres Drive and El Camino Real (West) (Direct); and
- San Andres Drive between Via de la Valle and Highland Drive (Direct and Cumulative).

The basis for this conclusion follows.

**1. Infeasibility of Mitigation for Significant Unmitigated Impacts**

**a. Transportation/circulation (Direct increase in traffic volume on Via de la Valle between San Andres Drive and El Camino Real [West])**

**Significant Impact:** The proposed project would have a significant direct traffic impact along the segment of Via de la Valle, between San Andres Drive and El Camino Real (West). A near-term segment level of service analysis was completed as a part of the traffic analysis (EIR Table 5.2-7). This analysis found that the volume would exceed the capacity on the Via de la Valle segment between San Andres Drive and El Camino Real (West) and the LOS would be unacceptable LOS F in the near-term condition. Since the project would contribute over 0.1 to the volume to capacity ratio at this segment operating at LOS F, the project was considered to have a significant direct impact.

**Finding:** Significant not mitigated.

**Facts in Support of Finding:** In order to avoid the direct impact on Via de la Valle, implementation of the project would need to be delayed until the planned improvements Via de la Valle have been initiated. This requirement is reflected in Mitigation Measure 5.2-2. The applicant's project is conditioned to provide a contribution of up to \$3.8 million for the unfunded portion of Public Facilities Financing Plan (PFFP) Project No. T-32.1 for the widening of Via de la Valle between San Andres Drive to El Camino Real (West); however, the start of construction

is not controlled of the applicant. As a result, the project applicant could be forced to delay the start of construction for an unknown period of time. A prolonged delay in construction could represent an economic hardship on the project applicant. Such a delay could create an economic burden because the applicant's contract for the specialty grocery store requires an occupancy permit by June 1, 2012. In order to meet this deadline, project construction must begin by mid-2011. The applicant could be left without a specialty grocer and with an un-leasable space if the Via de la Valle widening did not move forward in a timely manner. As a result, there is potential for this direct impact to remain significant and unmitigated.

**b. Transportation/Circulation (Direct and cumulative increase in traffic on the segment of San Andres Drive between Via de la Valle and Highland Drive)**

**Significant Impact:** Increased traffic would lead to a significant direct and cumulative capacity impact to the San Andres Drive segment between Via de la Valle and Highland Drive. A near-term and horizon-year segment level of service analysis was completed as a part of the traffic analysis (EIR Tables 5.2-7 and 5.2-11). This analysis found that the traffic volumes would exceed the capacity at the San Andres Drive segment and the level of service (LOS) would be an unacceptable LOS F in both the near-term and horizon-year conditions. Since the project would contribute over 0.1 to the volume to capacity ratio at this segment operating at LOS F in both the near-term and horizon-year condition, the project contribution was considered a significant direct and cumulative impact.

**Finding:** Significant not mitigated.

**Facts in Support of Finding:** Mitigation Measure 5.2-3 would alleviate the congestion created by new left turns from the northbound side of San Andres Drive into the shopping center at Flower Hill Drive. This mitigation would add a northbound, left-turn lane on San Andres Drive to allow northbound motorists wishing to enter the shopping center to move out of the main travel lane before turning onto Flower Hill Drive to access the center. The installation of the northbound, left-turn lane will allow San Andres Drive to carry the anticipated project traffic increase and would reduce the project's segment capacity impact to below a level of significance. However, in order to construct the left-turn lane, five of the additional 10 feet of right-of-way required to install the new left-turn lane is anticipated to be required to be obtained from the adjacent property owner.

This mitigation is infeasible because the adjacent property owner has indicated an unwillingness to make the required five feet of right of way available. The applicant has reached out to the adjacent owner on numerous occasions in an effort to resolve this issue, but the adjacent owner continues to refuse access to her property. This is consistent with the adjacent owner's testimony before the Carmel Valley Community Planning Board and City of San Diego Planning Commission, both of which voted in support of the project with the condition that no right of way be taken from the east side of San Andres Drive without the owner's consent. Moreover, the use of eminent domain in this instance would have negative economic, legal and social impacts for the City and the community. The City would likely incur substantial legal costs, as well as the cost of the condemned property, at a time when it is facing a budget deficit of nearly \$57 million. Pursuing eminent domain would also set a negative precedent of seizing private property for the benefit of private developers. The minor public benefit of constructing a



substandard left turn lane to mitigate just 11 peak hour trips does not outweigh the significant social, legal and economic costs of condemnation.

Due to the costs associated with condemnation, the applicant explored the possibility of taking all of the additional right of way needed to construct a left turn lane from the project site. Among these options is an eight-foot widening proposed by the adjacent property owner, as well as a 10-foot widening. The applicant's traffic engineer conducted an extensive analysis and concluded that the taper lengths would be too short, based on speeds on San Andres Drive, and a 50-foot, two-way left turn lane would be short and awkward. Placing all of the additional right-of-way on the subject property would also prevent the southbound lanes on San Andres Drive from aligning property with the receiving lanes. However, in an effort to mitigate the project's impacts while avoiding eminent domain, the applicant met with the City to discuss the possibility of taking the needed right of way from the left side. City staff rejected this option as technically infeasible and determined that there is no way to construct a left turn lane on San Andres Drive without condemnation, which has negative social, legal and economic costs as noted above. As a result, the potential direct and cumulative impact of the project on San Andres Drive between Via de la Valle and Highland Drive may be considered unmitigated.

## **2. Infeasibility of Project Alternatives to Reduce or Avoid Significant Impacts**

The Final EIR for the project examines project alternatives in terms of their ability to meet the primary objectives of the project and eliminate or further reduce significant environmental effects. In addition, an alternative was developed to accommodate a longer left-turn lane on San Andres Drive. Based on these parameters, the following alternatives were considered:

- No Project;
- No Market;
- Reduced Market/No Retail/No Office;
- Market Only; and
- Flower Hill Drive Realignment.

The Final EIR concludes that the No Project Alternative would be the environmentally preferred alternative because it would eliminate all project-related impacts. However, State CEQA Guidelines Section 15126.6(e)(2) states that "if the environmentally superior alternative is the "No Project" alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives". In this case, the environmentally superior alternative is the No Market Alternative since it would reduce several impacts (traffic and solid waste) to the greatest degree. The basis for these conclusions follows.

### **a. No Project**

The No Project Alternative assumes that the Flower Hill Promenade remains in its current configuration. No improvements would occur onsite and the site would remain in its current condition.

## Findings

Although this alternative would have no impacts, it was rejected because it would not fulfill the basic objective to redevelop the existing Flower Hill Promenade center.

### **b. No Market**

#### Project Description

The No Market alternative would eliminate the 30,000 sf of proposed market uses. With the elimination of the market, it is assumed that the office uses would occupy a single-story building. All other features of this alternative would remain the same generally the same as the proposed project.

#### Findings

This alternative would reduce segment and intersection traffic impacts to less than significant levels; and reduce cumulative solid waste impacts, but not to less than significant levels. Biological and paleontological resource impacts would remain the same as the proposed project. The potential queuing impact at the main project driveway may also still occur under this alternative. This alternative was rejected because it would not fulfill the basic objective to provide a market and would significantly reduce the project's economic benefits. A study conducted by the National University System Institute for Policy Research (NUSIPR) in May 2010 found that the market is expected to have sales of \$31.6 million in 2012, with approximately 30.8 percent of sales being subject to California sales and use tax. As such, the market alone could generate more than \$170,000 annually for the City's General Fund and nearly \$73,000 for regional transportation. That represents more than 40 percent of the new sales tax revenues generated by the project. The market will also create numerous jobs that would not be realized under this alternative. In addition, the market will meet an unmet need and enhance the variety of goods offered to the community, allowing residents to shop closer to home and keeping the shopping center viable.

### **c. Reduced Market/No Retail/No Office**

#### Project Description

The Reduced Market/No Retail/No Office Alternative would reduce the market to 17,000 sf and eliminate the retail and office uses. All other features of this alternative would remain the same as the proposed project.

#### Findings

This alternative would reduce the Via de la Valle segment impact to less than significant, but the other traffic impacts would remain significant. The cumulative solid waste impacts would also be reduced, but not to less than significant levels. The biological and paleontological resource impacts would remain the same as the proposed project. This alternative was rejected because the market would be too small to attract a high end/specialty foods market tenant. The NUSIPR

economic study found that, without the specialty market, new sales tax revenues allocated toward the City's General Fund would be reduced by more than \$170,000 annually. Eliminating the additional retail would further reduce sales tax revenues for the City of San Diego by \$190,000 annually. The market and retail are also needed to create more than 200 new permanent, full-time jobs at the center. With regard to office space, this alternative would not meet the basic objective to provide opportunities for residents of the local community to work close to where they live and provide services for the community. Placing jobs and housing in proximity to one another would help to address the City's jobs/housing balance, as outlined in the City of San Diego General Plan's Strategic Framework.

#### **d. Market Only**

##### Project Description

The Market Only Alternative would eliminate the retail and office uses, but would retain the market at 30,000 sf in a single-story structure. All other features of this alternative would remain the same as the proposed project.

##### Findings

This alternative would reduce traffic impacts and reduce cumulative solid waste impacts of the proposed project, but not to less than significant levels. Biological and paleontological resource impacts would remain the same as the proposed project under this alternative. This alternative was rejected because it would not fulfill the basic objective to provide office uses and it would not avoid any significant project impacts.

#### **e. Flower Hill Drive Realignment**

##### Project Description

This alternative would move the current intersection of Flower Hill Drive and San Andres Drive approximately 160 feet of its current location in order to accommodate a longer northbound, left-turn lane. There would be no need to acquire additional right of way. The land uses associated with the Flower Hill Drive Realignment Alternative would be the same as the proposed project. Grading would be greater with this alternative, as additional grading into the hillside would be required to accommodate the realignment of Flower Hill Drive.

##### Findings

This alternative would eliminate the direct and cumulative impact of the proposed project on San Andres Drive by including a northbound left-turn lane. Traffic impacts on Via de la Valle, solid waste, biological resource, and paleontological resources would remain the same as the proposed project under this alternative. Although traffic noise along Flower Hill Drive would remain within allowable levels, traffic noise impacts near the realignment area would be greater than the proposed project since less noise attenuation would be provided through topography.

This alternative was rejected because of concerns expressed by the residents to the north of the project which currently use Flower Hill Drive for access. These residents and others have stated concerns about perceived safety issues related to moving Flower Hill Drive due to higher southbound speeds characteristic of the roadway to the north of the relocated roadway which result from the steepened grade to the north.

## **VII. STATEMENT OF OVERRIDING CONSIDERATIONS**

Pursuant to Public Resources Code Section 21081(b) and Guidelines Section 15093, the City has balanced the benefits of the proposed project against unmitigated adverse impacts to Aesthetics/Visual Quality, Transportation/Circulation, Air Quality, and Public Utilities (Solid Waste) associated with the proposed project, and has adopted all feasible mitigation measures with respect to these significant and unmitigable impacts. The City also has examined alternatives to the proposed project, none of which is both environmentally preferable to the proposed project and meets the basic project objectives.

The City, after balancing the specific economic, legal, social, technological, and other benefits of the proposed project, has determined that the unmitigated adverse transportation/circulation impacts identified above are considered “acceptable” due to the following specific considerations which outweigh the unmitigated adverse environmental impacts of the proposed project. Each of the separate benefits of the proposed project, as stated herein, is determined to be, unto itself and independent of the other project benefits, a basis for overriding all unmitigated adverse environmental impacts identified in these Findings.

### **A. The Project Complies with the Community’s Desire to Maintain the Alignment of Flower Hill Drive**

The project originally called for relocating Flower Hill Drive to the north of Taste of Thai restaurant at the request of City staff. The project applicant amended the plans to eliminate the realignment of Flower Hill Drive in response to the community’s wishes. Numerous members of the community, including homeowners associations, nearby property owners and the Carmel Valley Community Planning Board, expressed opposition to the relocation of Flower Hill Drive at public meetings and presentations. The Spindrift Homeowners Association particularly opposed the realignment due to perceived safety concerns and worked closely with the applicant to reach a resolution. Spindrift is a community of 144 homes located north of Flower Hill Promenade. Flower Hill Drive serves as Spindrift’s only point of access through an existing easement. These factors support the decision to approve the project despite the significant unmitigated impacts to transportation/circulation.

**Reference:** Spindrift Del Mar Homeowners Association Presentation to City of San Diego Development Services, March 2010.

**B. The Project's Contribution to Planned Public Improvements to Via de la Valle**

Prior to issuance of a Certificate of Occupancy, Owner/Permittee shall provide a Letter of Credit, cash payment, or bond equal to 7.7 percent of the Black Mountain Ranch Facilities Financing Plan fiscal Year 2006 cost estimate to complete the planned improvements identified in the Black Mountain Ranch Public Facilities Financing Plan as Project No. T-32.1 for the widening of Via de la Valle between San Andres Drive to El Camino Real (West), from a two lane to a four lane roadway. Prior to the issuance of the first building permit for a structure, Owner/Permittee shall pay the estimated cost, approved by the City Engineer, to form a cost reimbursement district to collect any funds necessary to complete Black Mountain Ranch Facilities Financing Plan Project T-32.1.

This specific factor supports the decision to approve the project despite the significant unmitigated impacts to transportation/circulation.

**Reference:** Recirculated DEIR §§ ES-6, 5.2-19.

**C. The Project Will Create New Jobs for San Diegans**

The proposed project is projected to add 206 permanent jobs, bringing full-time employment at the center to 526. There would be an estimated 304 full-time equivalent (FTE) jobs created during construction, with average annual wages of \$43,700. In addition, the proposed project is estimated to create 103 indirect and induced full-time positions. The jobs created by the proposed project would contribute to a reduction in San Diego County's unemployment rate, which was 10.1 percent in December 2010.

These specific factors support the decision to approve the project despite the significant unmitigated impacts to Transportation/Circulation.

**Reference:** *Economic Impact of Flower Hill Promenade*, National University System Institute for Policy Research, May 2010. California Employment Development Department.

**D. The Project Addresses the City's Jobs/Housing Balance**

The City of San Diego General Plan's Strategic Framework seeks to reduce traffic and increase livability by placing jobs and housing in proximity to one another, while encouraging the use of public transit. The proposed project would increase the amount of retail and office jobs available within close proximity to residential areas, thereby enhancing the jobs/housing balance in the City of San Diego.

These specific factors support the decision to approve the project despite the significant unmitigated impacts to Transportation/Circulation.

**Reference:** Recirculated DEIR §§ 3-1.

**E. The Project Will Increase Economic Output for the Regional Economy**

The proposed project is projected to have a significant impact on the regional economy. The annual direct economic output from the proposed project is expected to grow from the current

\$14.9 million to \$28.7 million, an increase of \$13.8 million, after the completion of the proposed renovation. Adding direct and induced economic impacts, the project is projected to provide a total economic impact of \$54.9 million annually.

These specific factors support the decision to approve the project despite the significant unmitigated impacts to Transportation/Circulation.

**Reference:** *Economic Impact of Flower Hill Promenade*, National University System Institute for Policy Research, May 2010.

**F. The Project Will Generate Substantial New Tax Revenues for the City**

The proposed project is estimated to generate a total of \$5.2 million per year in revenue from sales taxes, up 55 % from the current \$3.4 million. A significant portion of the total sales tax revenue, \$450,000 annually, is estimated to go toward transportation projects through the TransNet program. The project is estimated to contribute additional property tax revenue of \$366,000 annually. The provision of the aforementioned revenue streams for the City General Fund will help the City to maintain police and fire protection, parks, roads, and other infrastructure around the City. The project's revenue generation will positively impact the entire City and not just the area around the project site.

These specific factors support the decision to approve the project despite the significant unmitigated impacts to Transportation/Circulation.

**Reference:** *Economic Impact of Flower Hill Promenade*, National University System Institute for Policy Research, May 2010.

**G. The Project Will Revitalize the Shopping Center and Create Community Space**

Flower Hill Promenade has not received a significant renovation since it was built in 1976. The proposed project would serve to refresh and revitalize the shopping center to prevent it from deteriorating to a level that negatively impacts the surrounding community. Expanded entrances, new landscaping, improved facades, enhanced paving and improved signage proposed for the project would serve to restore the shopping center. The proposed project would be completed in the North County Coastal architectural style. Additionally, the proposed restoration of Flower Hill Promenade would add community gathering areas including, a public courtyard with a fountain and seating.

These specific factors support the decision to approve the project despite the significant unmitigated impacts to Transportation/Circulation.

**Reference:** Recirculated DEIR §§ 3-2.

**H. The Project Will Incorporate Environmentally Sustainable Building Features to Reduce Greenhouse Gas Emissions**

Numerous environmentally sustainable building features have been incorporated into the proposed project to reduce greenhouse gas emissions. The proposed renovation of Flower Hill Promenade will include the installation of efficient lighting and lighting control systems. Energy-efficient heating and cooling systems, appliances, equipment and controls will be

installed. The hours of operation of outdoor lighting will be limited to conserve energy. Thermal-efficient glazing/fenestration systems will be used, as will “cool roof” materials. Filters will be installed on drain inlets to prevent pollution from runoff. The proposed project’s use of “green” building and operational standards will enhance sustainability of San Diego development and serve as a model for future projects.

These specific factors support the decision to approve the project despite the significant unmitigated impacts to Transportation/Circulation.

**Reference:** Recirculated DEIR §§ 3-6

#### **I. Water Conservation Measures Will be Utilized in the Project**

The proposed project would adhere to water-conservation building standards for plumbing and landscaping. Water-conservation design features such as the use of water-efficient landscaping would be incorporated into the proposed project. Water-efficient irrigation systems and devices, such as soil moisture-based irrigation controls, would be installed. The use of turf would also be minimized. These efforts will help the City comply with the Long Term Water Resource Plan, which calls for 11% of demand to be met through conservation.

These specific factors support the decision to approve the project despite the significant unmitigated impacts to Transportation/Circulation.

**Reference:** Recirculated DEIR §§ 5.10-9

#### **J. The Project Will Include Recycling Benefits**

A comprehensive recycling program for construction waste and tenants and shoppers would reduce waste sent to area landfills. The Integrated Waste Management Act of 1989 (AB 939) was enacted by the California Legislature to reduce the landfilling of solid waste, and to ensure an effective and integrated approach to the safe management of all solid waste generated within the state. One of the largest contributors of land fill waste is construction and demolition waste material.

The Flower Hill Promenade project will implement a comprehensive recycling program that will divert 50% of construction and demolition waste from the project away from local landfills and help the City to meet its AB 939 mandates. Reusable building materials will also be salvaged and recycled before demolition. Participation in this program will provide a significant benefit to the City and help prolong land fill capacity.

The proposed project will provide interior and exterior storage areas for recyclables. Recycling containers will be placed in public areas. Tenants and consumers will also be provided education regarding the necessity of recycling. Landscape companies will be mandated to recycle or mulch green waste to the greatest extent possible.

These specific factors support the decision to approve the project despite the significant unmitigated impacts to Transportation/Circulation.

**Reference:** Recirculated DEIR §§ ES-21, 3-6

**K. The Project Will Expand Retail Shopping Opportunities for Residents in North City, Solana Beach and Del Mar**

The proposed revitalization of Flower Hill Promenade will offer expanded and enhanced retail shopping opportunities for nearby residents with the addition of a 35,000 square foot specialty grocery store. Additionally the proposed project will provide space for boutique retail outlets and dining opportunities. The additional retail square footage will create added opportunities for customers to find the goods they are looking for while creating a competitive marketplace to keep prices reasonable.

These specific factors support the decision to approve the project despite the significant unmitigated impacts to Transportation/Circulation.

**Reference:** Recirculated DEIR §§ 3-1, 3-2

For the foregoing reasons, the City of San Diego concludes that the proposed Flower Hill Promenade project will result in numerous public benefits beyond those required to mitigate project impacts, each of which individually is sufficient to outweigh the unmitigated environmental impacts of the proposed project. Therefore, the City of San Diego has adopted this Statement of Overriding Considerations.

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