

RESOLUTION NUMBER R- **314559**

DATE OF FINAL PASSAGE **JAN 09 2023**

A RESOLUTION OF THE COUNCIL OF THE CITY OF  
SAN DIEGO CERTIFYING ENVIRONMENTAL IMPACT  
REPORT NO. 658273/SCH NO. 2021030038, ADOPTING THE  
FINDINGS AND STATEMENT OF OVERRIDING  
CONSIDERATIONS, AND ADOPTING THE MITIGATION,  
MONITORING, AND REPORTING PROGRAM FOR PASEO  
MONTRIL – PROJECT NO. 658273.

WHEREAS, on March 30, 2020, Tri Pointe Homes, a California Corporation, submitted an application to the Development Services Department for a General Plan Amendment, Community Plan Amendment, Rezone, Site Development Permit, Neighborhood Development Permit, and Vesting Tentative Map with an Easement Vacation for Paseo Montril (Project); and

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

WHEREAS, the issue was heard by the City Council on January 9, 2023; and

WHEREAS, the City Council considered the issues discussed in Environmental Impact Report No. 658273 / SCH. No 2021030038 (Report) prepared for this Project; and

WHEREAS, the Office of the City Attorney has drafted this resolution based on the information provided by City staff, [including information provided by affected third parties and verified by City staff], with the understanding that this information is complete, true, and accurate; and

WHEREAS, under San Diego 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 and where a public hearing was required by law implicating due process rights of individuals

affected by the decision and where the City Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it is certified that the Report has been completed in compliance with the California Environmental Quality Act of 1970 (CEQA) (Public Resources Code Section 21000 et seq.), as amended, and the State CEQA Guidelines thereto (California Code of Regulations, Title 14, Chapter 3, Section 15000 et seq.), that the Report reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in said Report, together with any comments received during the public review process, has been reviewed and considered by the City Council in connection with the approval of the Project.

BE IT FURTHER RESOLVED, that pursuant to CEQA Section 21081 and State CEQA Guidelines Section 15091, the City Council hereby adopts the Findings made with respect to the Project, which are attached hereto as Exhibit A.

BE IT FURTHER RESOLVED, that pursuant to State CEQA Guidelines Section 15093, the City Council hereby adopts the Statement of Overriding Considerations with respect to the Project, which is attached hereto as Exhibit B.

BE IT FURTHER RESOLVED, that pursuant to CEQA Section 21081.6, the City Council hereby adopts the Mitigation Monitoring and Reporting Program, or alterations to implement the changes to the Project as required by this City Council in order to mitigate or avoid significant effects on the environment, which is attached hereto as Exhibit C.

BE IT FURTHER RESOLVED, that the Report and other documents constituting the record of proceedings upon which the approval is based are available to the public at the office of the City Clerk, 202 C Street, San Diego, CA 92101.

BE IT FURTHER RESOLVED, that the City Clerk staff is directed to file a Notice of Determination with the Clerk of the Board of Supervisors for the County of San Diego regarding the Project.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Corrine L. Neuffer  
Corrine L. Neuffer  
Chief Deputy City Attorney

CLN:nsf:cm  
December 15, 2022  
Or.Dept: DSD  
Doc. No. 3167465

Attachments:

- Exhibit A – Findings and Statement of Overriding Considerations
- Exhibit B – Mitigation, Monitoring, and Reporting Program (MMRP)

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## **EXHIBIT A**

### **Final Candidate Findings of Fact and Statement of Overriding Considerations For Paseo Montril**

**Project No. 658273 / SCH No. 2021030038**

**September 29, 2022**

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**DRAFT CANDIDATE FINDINGS OF FACT  
and STATEMENT OF OVERRIDING CONSIDERATIONS  
for  
PASEO MONTRIL  
Project No. 658273/SCH No. 2021030038**

**I. Introduction**

**a. Findings of Fact and Statement of Overriding Considerations**

The following Findings of Fact (Findings) and Statement of Overriding Considerations (SOC) are made for development of the Paseo Montril project (Project No. 658273) (Project). The environmental effects of the Project are addressed in the Final Environmental Impact Report (Final EIR) (SCH No. 2021030038) dated September 29, 2022, which is incorporated by reference herein.

The California Environmental Quality Act (Pub. Res. Code §§ 21000 *et seq.*) (CEQA) and the CEQA Guidelines (14 California Code of Regulations §§ 15000 *et seq.*) require that no public agency shall approve or carry out a project for which an environmental impact report has been completed which identifies one or more significant effects thereof, unless such public agency makes one or more of the following findings:<sup>1</sup>

- 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; or
- 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 final environmental impact report.

CEQA also requires that the Findings made pursuant to CEQA Guidelines section 15091 be supported by substantial evidence in the record.<sup>2</sup> 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 includes facts, reasonable assumptions predicted upon facts, and expert opinion supported by facts.<sup>3</sup>

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 the project. If the specific economic, legal, social,

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<sup>1</sup> Pub. Res. Code § 21081(a); 14 C.C.R. § 15091(a)

<sup>2</sup> CEQA Guidelines § 15091(b).

<sup>3</sup> CEQA Guidelines § 15384.

technological, or other benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable".<sup>4</sup> When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the environmental impact report (EIR) but are not avoided or substantially lessened, the agency shall state in writing in the SOC the specific reasons to support its actions based on the EIR or other information in the record.

The Findings and SOC have been submitted by the City of San Diego (City) as "Candidate Findings" to be made by the decision-making body. They are attached hereto to allow readers of this report an opportunity to review the Project applicant's position on this matter and to review potential reasons for approving the Project despite the significant and unavoidable effects identified in the Final EIR. It is the exclusive discretion of the decision-maker certifying the EIR. It is the role of City staff to independently evaluate the proposed the Candidate Findings, and to make a recommendation to the decision-maker regarding their legal adequacy.

#### **b. Record of Proceedings**

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

- The Notice of Preparation (NOP) and all other public notices issued by the City in conjunction with the Project;
- All comments to the NOP received by the City;
- The draft EIR for the Project (Draft EIR);
- The Final EIR;
- All written comments submitted by agencies or members of the public during the public review comment period on the Draft EIR;
- All responses to the written comments included in the Final EIR;
- All written and oral public testimony presented during a noticed public hearing for the Project at which such testimony was taken;
- The Mitigation Monitoring and Reporting Program associated with the Final EIR;
- The reports and technical memoranda included or referenced in any responses to comments in the Final EIR;
- All documents, studies, EIRs, or other materials incorporated by reference in, or otherwise relied upon during the preparation of, the Draft EIR and the Final EIR;
- Matters of common knowledge to the City, including, but not limited to, federal, state, and

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<sup>4</sup> CEQA Guidelines § 15093(a).

local laws and regulations;

- Any documents expressly cited in the Findings and SOC; 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 record of proceedings for the City's actions on the project are located at the offices of Development Services Department (DSD) at 1222 1st Avenue San Diego, California 92101. DSD is the custodian of the Project's Record of Proceedings. Copies of the documents that constitute the Record of Proceedings are and at all relevant times have been available upon request at the offices of DSD.

The Draft EIR was placed on the City's CEQA website at <https://www.sandiego.gov/ceqa/draft>; and the Final EIR was placed on City's CEQA website at <https://www.sandiego.gov/ceqa/final>. This information is provided in compliance with Public Resources Code section 21081.6(a)(2) and CEQA Guidelines section 15091(e).

## **II. Project Summary**

### **a. Project Objectives**

The objectives of the project include the following:

1. Assist the City in meeting state and local housing goals by providing new housing.
2. Provide new housing opportunities to the City by utilizing an underutilized site not currently planned for residential uses.
3. Provide an infill development.
4. Promote homeownership by providing for-sale units with entry-level housing market product types.
5. Provide a cohesive design that is compatible in use, scale and character with the surroundings.
6. Integrate the project into the existing topography of the site and cluster development in a manner that reduces the grading footprint as well as impacts to environmental resources.

### **b. Project Description**

The Project proposes development of 55 multi-family homes, open space, and supporting improvements and amenities. The Project will include two lots. Development would occur within Lot 1, and Lot 2 would be preserved as open space.

Residential land uses would be developed within five separate buildings within Lot 1. To accommodate this, Lot 1 would be graded into three terraces, with the lower terrace containing two residential buildings, the middle containing one residential building, and the upper terrace containing two residential buildings. Each proposed building would contain 11 dwelling units. The buildings would consist of one- to three-bedroom stacked flats and would include private garages. Approximately 10 units would be one bedroom, 10 units would be two bedroom, and 35 units would be three bedrooms. Each unit would range from 864 to 1,720 square feet, totaling approximately 65,000 square feet of livable space. Parking for the Project would include private 95 garage parking spaces and 47 surface parking spaces for a total of 142 spaces.

The Project proposes a modern architectural style that would incorporate Spanish Mission and Old West Ranch style features that are predominant in the existing neighborhood. Site design, as indicated in the Project goals, includes clustering development to minimize changes to the natural topography and environmental resources. The residential buildings would be three stories and up to 40 feet in height. This height requires a deviation from the 30-foot height limit required by Municipal Code Table 131-04G. The Project would also include deviations to side yard and front setback, steep hillsides, and retaining wall height regulations.

The Project would include establishing a Homeowners Association (HOA), which would be responsible for financing maintenance and operation of the Project. Additionally, the HOA and owners of individual units would be responsible for financing the maintenance all private roads, private utilities, and common amenities. The HOA would be required to contract with qualified professionals for the long-term care and maintenance of the bioretention basins and fuel modification zones. The HOA would also be responsible for enforcement of the Project's Covenants, Conditions, and Restrictions.

The Project includes recreational amenities, private open space, and common open space. Specifically, the Project would include a dog park in the northwest corner of Lot 1, a community bar-b-que area, an outdoor amenity space at the Project entrance, a central tot lot play area, and another outdoor amenity space at the northeastern corner of the Lot 1. These amenity spaces would total approximately 5,070 square feet.

### **Discretionary Actions**

The Project requires the following entitlements from the City:

- General Plan Amendment
- Community Plan Amendment
- Rezone
- Easement Vacation
- Vesting Tentative Map
- Site Development Permit
- Neighborhood Development Permit

### **III. Environmental Review Process and Public Participation**

The City is the lead agency approving the Project and conducting environmental review under CEQA and the State CEQA Guidelines. As lead agency, the City is primarily responsible for carrying out the Project.

In compliance with Section 15082 of the CEQA Guidelines, the City published a NOP on February 24, 2021, which began a 30-day period for comments on the appropriate scope of the Draft EIR. Consistent with Public Resources Code Section 21083.9 and Section 15082 of the CEQA Guidelines, a public scoping meeting was to be held to solicit comments regarding the scope and analysis of the EIR. However, due to the state of emergency related to the COVID-19 virus and in the interest of protecting public health and safety, the City followed health mandates from Governor Newsom and the County of San Diego (County) to slow the spread of the COVID-19 virus by limiting public meetings. Therefore, the City did not conduct the in-person scoping meeting. A pre-recorded presentation was made available on the City's Website on February 24, 2021 in addition to publication of the NOP.

The City published the Draft EIR on April 29, 2022. Pursuant to CEQA Guidelines section 15085, upon publication of the Draft EIR, the City filed a Notice of Completion with the Governor's Office of Planning and Research, State Clearinghouse, indicating that the Draft EIR had been completed and was available for review and comment by the public until June 13, 2022. At this time, the City also posted a Notice of Availability of the Draft EIR pursuant to CEQA Guidelines section 15087.

The Final EIR for the Project was published on September 29, 2022 and was in accordance with CEQA and the CEQA Guidelines.

### **IV. Summary of Impacts**

Impacts associated with specific issues areas (e.g., land use, transportation, air quality, etc.) resulting from approval of the Project and future implementation are discussed below.

The Final EIR concludes the Project will have no impacts with respect to the following issue areas:

- Agriculture and Forestry Resources
- Cultural Resources
- Mineral Resources
- Paleontological Resources
- Tribal Cultural Resources

The Final EIR concludes that the Project will have less than significant impacts and require no mitigation measures with respect to the following issues:

- Energy

- Geologic Conditions
- Health and Safety
- Hydrology
- Population and Housing
- Public Services
- Public Utilities
- Visual Effect/Neighborhood Character
- Water Quality
- Wildfire

Potentially significant impacts of the Project will be mitigated to below a level of significance with respect to the following issues:

- Air Quality
- Biological Resources
- Noise

The impacts of the Project could not be mitigated below a level of significance for the following issues:

- Land Use
- Transportation/Circulation
- Greenhouse Gas Emissions

## **V. Findings Regarding Impacts**

In making each of the findings below, the City has considered the Record of Proceedings. The "Plans, Programs, and Policies" discussed in the Final EIR are existing regulatory plans and programs to which the Project is subject, and analysis throughout the Final EIR demonstrates consistency.

### **a. Findings Regarding Impacts that Can Be Mitigated to Below a Level of Significance**

The City, having independently reviewed and considered the information contained in the Final EIR and the Record of Proceedings, finds pursuant to Public Resources Code section 21081(a)(1) and CEQA Guidelines Section 15091(a)(1) that changes or alterations have been required in, or incorporated into, the Project that avoid, mitigate, or substantially lessen the significant effects on the environment as identified in the Final EIR. The basis for this conclusion is as follows:

## 1. Air Quality

**Impact AIR-1:** Toxic Air Contaminant (TAC) emissions generated by equipment during Project construction would expose sensitive receptors to substantial pollutant concentrations and would result in a potentially significant impact.

**Facts:** The results of the Health Risk Assessment (HRA) (EIR Appendix C) demonstrate that the TAC exposure from construction diesel exhaust emissions would result in cancer risk of 22.63 in one million. The City's Significance Determination Thresholds (City of San Diego 2020) direct the use of the San Diego Air Pollution Control District's thresholds. As this exceeds the San Diego Air Pollution Control District recommended carcinogenic (cancer) risk threshold of 10 in one million, TAC emissions from construction of the Project would expose sensitive receptors to substantial pollutant concentrations.

**Mitigation Measure: MM-AQ-1** requires that, prior to the issuance of a grading permit, the grading and construction plan notes shall specify that all 50-horsepower or greater diesel-powered equipment is powered with California Air Resources Board (CARB)-certified Tier 4 Interim engines or better. An exemption from this requirement may be granted if (1) the applicant documents equipment with Tier 4 Interim engines or better are not reasonably available, and (2) the required corresponding reductions in diesel particulate matter (DPM) emissions can be achieved for the Project from other combinations of construction equipment. Before an exemption may be granted, the applicant's construction contractor shall: (1) demonstrate that at least two construction fleet owners/operators in the County were contacted and that those owners/operators confirmed Tier 4 Interim equipment or better could not be located within the County during the desired construction schedule; and (2) the proposed replacement equipment has been evaluated using California Emissions Estimator Model (CalEEMod) or other industry standard emission estimation method and documentation provided to the City to confirm that project-generated construction emissions do not exceed applicable San Diego Air Pollution Control District's carcinogenic (cancer) risk threshold.

**Finding:** As detailed in EIR Appendix C and summarized in EIR Section 5.3.4.4, MM-AQ-1 would reduce the cancer risk to 2.21 in one million, which would be less than the 10 in one million threshold set by San Diego Air Pollution Control District. As such, implementation of MM-AQ-1 would reduce air quality impacts to below a level of significance.

**Reference:** These findings incorporate by reference the information and analysis included in Final EIR Section 5.3, Air Quality, and Appendix C.

## 2. Biological Resources

**Impact BIO-1:** The Project would result in direct impacts to sensitive vegetation communities, consisting of 3.21 acres of Tier II Diegan coastal sage scrub (including disturbed forms). Direct impacts would be potentially significant.

**Facts:** The Project would result in direct impacts to sensitive vegetation communities, consisting of 3.21 acres of Tier II Diegan coastal sage scrub (including disturbed forms). As indicated in the City's Significance Determination Thresholds (City of San Diego 2020) and referenced City Biology

Guidelines, impacts to Tier II habitat may be considered significant. As detailed in EIR Section 5.4.3.1, the Project's impact to 3.21 acres of Tier II habitat is considered potentially significant.

**Mitigation Measure: MM-BIO-1a** requires that, prior to issuance of a Notice to Proceed or the first grading permit, the owner/permittee shall mitigate upland impacts in accordance with the City Biology Guidelines. Mitigation for impacts to 3.24 acres of Diegan coastal sage scrub (including disturbed) shall be accomplished on-site at a 1.5:1 mitigation ratio by on-site preservation of 4.86 acres of Tier II habitat also outside of the MHPA. A total of 9.91 acres of Diegan coastal sage scrub would remain on site following project implementation. This project would utilize 4.86-acres of that remaining area to mitigate for the project's direct impacts to Diegan coastal sage scrub. In accordance with ESL regulations, the owner/permittee shall convey a Covenant of Easement to be recorded against the title in over the remaining ESL area on the site.

**Mitigation Measure: MM-BIO-1b** requires implementation of the following resource protections during construction.

**I. Prior to Construction**

- A. Biologist Verification:** The owner/permittee shall provide a letter to the City's Mitigation Monitoring Coordination (MMC) section stating that a Project Biologist (Qualified Biologist) as defined in the City of San Diego's Biological Guidelines (2012), has been retained to implement the project's biological monitoring program. The letter shall include the names and contact information of all persons involved in the biological monitoring of the project.
- B. Preconstruction Meeting:** The Qualified Biologist shall attend the preconstruction meeting, discuss the project's biological monitoring program, and arrange to perform any follow up mitigation measures and reporting including site-specific monitoring, restoration or revegetation, and additional fauna/flora surveys/salvage.
- C. Biological Documents:** The Qualified Biologist shall submit all required documentation to MMC verifying that any special mitigation reports including but not limited to, maps, plans, surveys, survey timelines, or buffers are completed or scheduled per City Biology Guidelines, Multiple Species Conservation Program (MSCP), Environmentally Sensitive Lands Ordinance (ESL), project permit conditions; California Environmental Quality Act (CEQA); endangered species acts (ESAs); and/or other local, state or federal requirements.
- D. BCME:** The Qualified Biologist shall present a Biological Construction Mitigation/Monitoring Exhibit (BCME) which includes the biological documents in C above. In addition, include: restoration/revegetation plans, plant salvage/relocation requirements (e.g., coastal cactus wren plant salvage, burrowing owl exclusions, etc.), avian or other wildlife surveys/survey schedules (including general avian nesting and USFWS protocol), timing of surveys, wetland buffers, avian construction avoidance areas/noise buffers/ barriers, other impact avoidance areas, and any subsequent requirements determined by the Qualified Biologist and the City ADD/MMC. The BCME shall include a site plan, written and graphic depiction of the project's biological mitigation/monitoring program, and a schedule. The BCME shall be approved by MMC and referenced in the construction documents.



- E. Avian Protection Requirements:** To avoid any direct impacts to the coastal California gnatcatcher and western bluebird and any avian species that is listed, candidate, sensitive, or special status in the MSCP, removal of habitat that supports active nests in the proposed area of disturbance should occur outside of the breeding season for these species (February 1 to September 15). If removal of habitat in the proposed area of disturbance must occur during the breeding season, the Qualified Biologist shall conduct a pre-construction survey to determine the presence or absence of nesting birds on the proposed area of disturbance. The pre-construction survey shall be conducted within three (3) calendar days prior to the start of construction activities (including removal of vegetation). The applicant shall submit the results of the pre-construction survey to City DSD for review and approval prior to initiating any construction activities. If nesting birds are detected, a letter report in conformance with the City's Biology Guidelines and applicable State and Federal Law (i.e. appropriate follow up surveys, monitoring schedules, construction and noise barriers/buffers, etc.) shall be prepared and include proposed measures to be implemented to ensure that take of birds or eggs or disturbance of breeding activities is avoided. The report shall be submitted to the City for review and approval and implemented to the satisfaction of the City. The City's MMC Section and Biologist shall verify and approve that all measures identified in the report are in place prior to and/or during construction.
- F. Resource Delineation:** Prior to construction activities, the Qualified Biologist shall supervise the placement of orange construction fencing or equivalent along the limits of disturbance adjacent to sensitive biological habitats and verify compliance with any other project conditions as shown on the BCME. This phase shall include flagging plant specimens and delimiting buffers to protect sensitive biological resources (e.g., habitats/flora & fauna species, including nesting birds) during construction. Appropriate steps/care should be taken to minimize attraction of nest predators to the site.
- G. Education:** Prior to commencement of construction activities, the Qualified Biologist shall meet with the owner/permittee or designee and the construction crew and conduct an on-site educational session regarding the need to avoid impacts outside of the approved construction area and to protect sensitive flora and fauna (e.g., explain the avian and wetland buffers, flag system for removal of invasive species or retention of sensitive plants, and clarify acceptable access routes/methods and staging areas, etc.).

## **II. During Construction.**

- A. Monitoring:** All construction (including access/staging areas) shall be restricted to areas previously identified, proposed for development/ staging, or previously disturbed as shown on "Exhibit A" and/or the BCME. The Qualified Biologist shall monitor construction activities as needed to ensure that construction activities do not encroach into biologically sensitive areas, or cause other similar damage, and that the work plan has been amended to accommodate any sensitive species located during the pre-construction surveys. In addition, the Qualified Biologist shall document field activity via the Consultant Site Visit Record (CSVR). The CSVR shall be e-mailed to MMC on the 1st day of monitoring, the 1st week of each month, the last day of monitoring, and immediately in the case of any undocumented condition or discovery.

- B. Subsequent Resource Identification:** The Qualified Biologist shall note/act to prevent any new disturbances to habitat, flora, and/or fauna onsite (e.g., flag plant specimens for avoidance during access, etc). If active nests or other previously unknown sensitive resources are detected, all project activities that directly impact the resource shall be delayed until species specific local, state or federal regulations have been determined and applied by the Qualified Biologist.

### **III. Post Construction Measures**

- A.** In the event that impacts exceed previously allowed amounts, additional impacts shall be mitigated in accordance with City Biology Guidelines, ESL and MSCP, State CEQA, and other applicable local, state and federal law. The Qualified Biologist shall submit a final BCME/report to the satisfaction of the City ADD/MMC within 30 days of construction completion.

**Finding:** A total of 9.91 acres of Diegan coastal sage scrub would remain on-site following Project development. The Project would utilize 4.86-acres of that remaining area to mitigate for the Project's direct impacts to Diegan coastal sage scrub. In accordance with the City's Environmentally Sensitive Lands (ESL) regulations, the owner/permittee shall convey a Covenant of Easement to be recorded against the title in over the remaining ESL area on the site. Thus, the Project would provide mitigation for impacts to sensitive habitat in accordance with the City Biological Guidelines and ESL regulations. Implementation of MM-BIO-1 would reduce direct biological resource impacts to below a level of significance.

**Reference:** These findings incorporate by reference the information and analysis included in Final EIR Section 5.4, Biological Resources, and Appendix D.

**Impact BIO-2:** The Project would result in direct impacts to special-status wildlife species habitat, including coastal California gnatcatcher, western bluebird, orange-throated whiptail, and Blainville's horned lizard habitat. Impacts would be potentially significant.

**Facts:** The Project may result in direct impacts to special-status wildlife species habitat, including coastal California gnatcatcher, western bluebird, orange-throated whiptail, and Blainville's horned lizard habitat as detailed in EIR Section 5.4.3.1 and EIR Appendix D.

**Mitigation Measure: MM-BIO-1** requires that, prior to issuance of a Notice to Proceed or the first grading permit, the owner/permittee shall mitigate upland impacts in accordance with the City Biology Guidelines. Mitigation for impacts to 3.24 acres of Diegan coastal sage scrub (including disturbed) shall be accomplished on site at a 1.5:1 mitigation ratio by on-site preservation of 4.86 acres of Tier II habitat.

**Finding:** The Project would preserve 4.86-acres of the remaining 9.91 acres of Tier II habitat on-site to mitigate for the Project's direct impacts to coastal California gnatcatcher, western bluebird, orange-throated whiptail, and Blainville's horned lizard habitat, as it would provide habitat for the impacted species. In accordance with the City's ESL regulations, the owner/permittee shall convey a Covenant of Easement to be recorded against the title in over the remaining ESL area on the site.

Implementation of MM-BIO-1 would reduce direct sensitive species habitat impacts to below a level of significance.

**Reference:** These findings incorporate by reference the information and analysis included in Final EIR Section 5.4, Biological Resources, and Appendix D.

### 3. Noise

**Impact NOI-1:** Construction noise during allowable daytime hours has the potential for noise to exceed the 75 dBA Leq 12-hour City threshold at the nearest residential receiver on occasion. Thus, temporary construction-related noise impacts would be potentially significant.

**Facts:** Given the location of the Project site interspersed with and in proximity to existing residential land uses, construction operations associated with the Project have the potential to exceed the City's Municipal Code Section 59.5.0404 75 decibel (dB) 12-hour average property line noise level threshold. As detailed in EIR Appendix H and as summarized in EIR Section 5.10.3.1, the estimated construction noise levels are predicted to be as high as 79 dBA Leq over a 12-hour period at the nearest existing residences (as close as 60 feet away) when grading activities take place near the northern project boundaries.

**Mitigation Measure: MM-NOI-1** requires that prior to issuance of demolition, grading, or building permits, Mitigation Monitoring Coordination shall verify that applicant or its contractor shall implement one or more of the following options for on-site noise control and sound abatement means that, in aggregate, would yield a minimum of approximately 12 dBA of construction noise reduction during the grading phase of the Project:

- A. *Administrative controls* (e.g., reduce operating time of equipment and/or prohibit usage of equipment type[s] within certain distances to a nearest receiving occupied off-site property).
- B. *Engineering controls* (change equipment operating parameters [speed, capacity, etc.], or install features or elements that otherwise reduce equipment noise emission [e.g., upgrade engine exhaust mufflers]).
- C. *Install noise abatement on the site boundary fencing* (or within, as practical and appropriate) in the form of sound blankets or comparable temporary solid barriers to occlude construction noise emission between the site (or specific equipment operation as the situation may define) and the noise-sensitive receptor(s) of concern.

**Finding:** Short-term construction noise impacts would be less than significant with implementation of one or more options identified in MM-NOI-1. One of the options would be halving the operation time of an active on-site piece of construction equipment to obtain a 3 dB reduction in its noise emission over the 12-hour Leq period. Another option is to move equipment farther away from the nearby residences as possible, considering a doubling of the distance between an active piece of equipment and an off-site receiving residential property would yield a 6 dB reduction. Hence, the combination of such potential measures would net a 9 dB noise level reduction. Alternately, proper application of temporary noise barriers on-site (or at the boundary) or comparable sound abatement

due to implementation of **MM-NOI-1** also has the ability to reduce noise levels by 9 dB, which would correspondingly reduce the predicted 79 dBA 12-hour  $L_{eq}$  for the grading phase to less than 70 dBA  $L_{eq}$ , which would make the level compliant with the 75 dBA threshold. Overall, implementation of **MM-NOI-1** would reduce direct construction noise impacts to below a level of significance.

**Reference:** These findings incorporate by reference the information and analysis included in Final EIR Section 5.10, Noise, and EIR Appendix H.

**Impact NOI-2:** Predicted airborne noise levels from blasting could exceed the City's standard of 75 dBA  $L_{eq}$  12-hour for a blast event. Thus, blasting operation noise impacts would be considered potentially significant.

**Facts:** Predicted airborne noise levels from blasting would be approximately 80.8 to 82.6 dBA  $L_{eq}$  12-hour, which would exceed the City's Municipal Code Section 59.5.0404 construction noise standard of 75 dBA  $L_{eq}$  12-hour.

**Mitigation Measure: MM-NOI-2** requires that prior to issuance of building permit, Mitigation Monitoring Coordination shall verify that applicant or its contractor have prepared, and shall require the implementation of, a blasting plan that will reduce impacts associated with construction-related noise, drilling operations and vibrations related to blasting. The blasting plan shall be site specific, based on general and exact locations of required blasting and the results of a project-specific geotechnical investigation. The blasting plan shall include a description of the planned blasting methods, an inventory of receptors potentially affected by the planned blasting, and calculations to determine the area affected by the planned blasting. Noise calculations in the blasting plan shall account for blasting activities and all supplemental construction equipment. The final blasting plan and pre-blast survey shall meet the requirements provided below:

- Prior to blasting, a qualified geotechnical professional shall inspect and document the existing conditions of facades and other visible structural features or elements of the nearest neighboring off-site residential buildings. Should this inspector determine that some structural features or elements appear fragile or otherwise potentially sensitive to vibration damage caused by the anticipated blasting activity, the maximum per-delay charge weights and other related blast parameters shall be re-evaluated to establish appropriate quantified limits on expected blast-attributed peak particle velocity. The geotechnical professional shall consider geologic and environmental factors that may be reasonably expected to improve attenuation of groundborne vibration between the blast detonations and the receiving structure(s) of concern.

**Finding:** Blasting operation noise impacts would be less than significant with implementation of **MM-NOI-2**. The use of measures such steel or rubber blasting mats over sand/dirt during the use of explosives or installation of a temporary noise barrier (e.g., sound blankets of sufficient height, horizontal extent, and arrangement that occludes direct sound pathways between the blast event and the receptor[s] of concern) is capable of exhibiting 12 dBA of noise reduction would decrease the predicted 82.6 dBA 12-hour  $L_{eq}$  for the 1,500 cubic-yard scenario in EIR Table 5.10-8 to less than 71 dBA and thus comply with the City's standard of 75 dBA. Implementation of **MM-NOI-2** would reduce direct construction noise impacts to below a level of significance.

**Reference:** These findings incorporate by reference the information and analysis included in Final EIR Section 5.10, Noise, and Appendix H.

**Impact NOI-3:** There is the potential for the blasting associated with Project excavation to cause undue temporary annoyance and damage risk to receiving structures. Thus, vibration impacts due to blasting events would be considered potentially significant.

**Facts:** While the blast vibration magnitudes would be compatible with Caltrans guidance limits (0.3 to 0.5 inches per second peak particle velocity) for single-event or "transient" events, there is the potential for the blasting associated with project excavation to cause undue temporary annoyance and minor damage risk to the receiving structures.

**Mitigation Measure: MM-NOI-2** requires the preparation of a blasting plan which would help render vibration-related environmental impacts temporary and ensure that vibration from the blasting associated with project excavation would not cause undue temporary annoyance and minimize damage risk to the receiving structures.

**Finding:** Blasting event vibration impacts would be less than significant with implementation of **MM-NOI-2**. Implementation of the Blasting Plan introduced as MM-NOI-2 would help render vibration-related environmental impacts temporary and ensure that vibration from the blasting associated with project excavation would not cause undue temporary annoyance and minimize damage risk to the receiving structures. Implementation of **MM-NOI-2** would reduce direct construction noise impacts to below a level of significance.

**Reference:** These findings incorporate by reference the information and analysis included in Final EIR Section 5.10, Noise, and Appendix H.

#### **b. Findings Regarding Impacts That Are Significant and Unavoidable**

The City, having reviewed and considered the information contained in the Final EIR and the Record of Proceedings and pursuant to Public Resource Code section 21081(a)(3) and CEQA Guidelines section 15091(a)(3), finds that specific economic, legal, social, technological, or other considerations, make infeasible any mitigation measures for the Project's Land Use, Greenhouse Gas emissions (GHG), and Transportation/Circulation impacts as explained in more detail in the Final EIR.

"Feasible" is defined in Section 15364 of the CEQA Guidelines to mean "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." Public Resources Code section 21081 and CEQA Guidelines section 15091(a)(3) also provide that "other" considerations may form the basis for a finding of infeasibility. Case law makes clear that a mitigation measure or alternative can be deemed infeasible on the basis of its failure to meet project objectives or on related public policy grounds. These findings are appropriate because there are no feasible mitigation measures available that would reduce the identified Project impacts to below a level of significance.

#### **1. Land Use**

**Impact LND-1:** The Project would conflict with the Housing Element of the City of San Diego General Plan (General Plan) and Climate Action Plan (CAP), which would result in a significant secondary GHG

emissions impact per the City's Significance Determination Thresholds (City of San Diego 2020) and CAP Consistency Checklist (City of San Diego 2017). Thus, the Project land use impact would be significant.

**Facts:** The Project would conflict with Housing Element Goal 5 – Objective O of the Housing Element that states that housing policies should align with state and local GHG emissions reduction and climate adaptation strategies. Per the CAP Consistency Checklist, a project that was not accounted for in the CAP could have a significant impact with regards to GHG emissions. The CAP land use assumptions were based on the SANDAG Series 12 growth projections, which assumed the Project site was to remain vacant in perpetuity. As the site was assumed to remain undeveloped, the CAP assumed the site would generate no GHG emissions. To meet the assumptions in the CAP, the Project would have to obtain net zero or negative GHG emissions. As discussed in more detail below, to reduce GHG emissions, the Project proposes the following mitigation: **MM-TRA-1** (implementation of pedestrian improvements), **MM-TRA-2** (implementation of 10 bicycle parking spaces), **MM-TRA-3** (implementation of a transit subsidy program), **MM-TRA-4** (implementation of a commute trip reduction program), and **MM-TRA-5** (provide one bicycle per unit to the first buyer of each unit). Additionally, the Project would implement **MM-GHG-1** (implementation of cool roofs), **MM-GHG-2** (implementation of low flow plumbing fixtures), **MM-GHG-3** (implementation of electric vehicle [EV] charging stations), and **MM-GHG-4** (implementation of EV capable spaces).

**MM-GHG-1** and **MM-GHG-2** would reduce energy usage and associated GHG emissions. **MM-GHG-1** would reduce the energy usage required by heating ventilation air conditioning (HVAC) equipment at the Project site, which would reduce resulting GHG emissions from building energy demand.

**MM-GHG-2** would reduce water consumption at the Project, which would reduce resulting energy demand required to transport water to and from the Project, further reducing GHG emissions associated with the Project.

**MM-GHG-3** and **MM-GHG-4** would allow for additional on-site charging of EVs. Per Title 24 California Code of Regulations, Part 6 (California Energy Code), the Project will 12 EV capable spaces (i.e., 10% of on-site parking spaces), with six of those spaces equipped as EV charging stations per the CAP Consistency Checklist. An additional 5% would entail an additional 6 EV capable spaces, with 3 of those spaces equipped as EV charging stations. Overall, with mitigation, the Project would provide 9 spaces that are prewired for EV charging stations and 9 spaces that include full EV charging stations. While on-site charging would increase energy demand at the Project site, it would reduce overall energy demand and would encourage EV use by expanding vehicle charging locations. GHG emissions generated by gasoline-powered vehicles would also decrease.

**MM-TRA-1** would provide an improved pedestrian connection to transit and would encourage transit usage to reduce overall vehicular GHG emissions associated with the Project. **MM-TRA-3** would further encourage transit use by partially subsidizing transit passes for residents for five years. These measures are intended to reduce personal vehicle usage to reduce GHG emissions associated with the project. **MM-TRA-4** would require the annual provision of a one-page flyer to residents containing information regarding available transit, designated bicycle routes, local bicycle groups and programs, local walking routes and programs, and rideshare programs. This program is intended to encourage residents to utilize other methods of transportation and to carpool to reduce VMT and associated vehicular GHG emissions.

**MM-TRA-2** and **MM-TRA-5** would provide for additional bicycle parking and provide a bicycle to the first buyer for each unit, which would encourage residents to utilize bicycles instead of vehicles for transportation. In addition to the above measures, improvements to the local northbound and southbound bus stops at the Paseo Montril and Rancho Peñasquitos Boulevard intersections were considered to encourage future Project residents to utilize transit instead of personal vehicles, which would reduce GHG emissions generated by the Project. Such improvements were considered, however, Metropolitan Transit System managers<sup>5</sup> indicated that the existing and existing plus Project ridership is not expected to warrant the improvement and the bus stops already include adequate amenities suitable for these stops.

While these measures are expected to reduce GHG emissions, the GHG emission reductions are not quantified because the GHG reductions from these mitigation measures cannot be substantiated within an acceptable level of accuracy (California Air Pollution Control Officers Association [CAPCOA] 2009). While the proposed mitigation measures (**MM-GHG-1** to **MM-GHG-4** and **MM-TRA-1** to **MM-TRA-5**) would reduce GHG emissions, the associated reduction cannot be shown to result in net zero emissions. As the Project cannot demonstrate emissions would be reduced to net zero, it cannot be demonstrated that the Project would achieve emissions consistent with the CAP or Housing Element Goal 5, Objective O. Therefore, the Project's GHG emission impact (**Impact GHG-1**) would be significant and unavoidable after mitigation.

**Mitigation Measures:** The Project would implement **MM-TRA-1** (implementation of pedestrian improvements), **MM-TRA-2** (implementation of 10 bicycle parking spaces), **MM-TRA-3** (implementation of a transit subsidy program) **MM-TRA-4** (implementation of a commute trip reduction program), and **MM-TRA-5** (provide one bicycle per unit to the first buyer of each unit). Additionally, the project would implement **MM-GHG-1** (implementation of cool roofs), **MM-GHG-2** (implementation of low flow plumbing fixtures), **MM-GHG-3** (implementation of EV charging stations), and **MM-GHG-4** (implementation of EV capable spaces).

**Finding:** Impacts associated with consistency with the General Plan and the City's CAP would be significant and unavoidable even with implementation of all feasible mitigation measures.

Reference: These findings incorporate by reference the information and analysis included in Final EIR Section 5.1, Land Use, Section 6.1.1, Land Use, and Appendix C.

## **2. Transportation/Circulation**

**Impact TRA-1:** The Project is located in an area above the 85th percentile mean vehicle miles travelled (VMT) per capita for the region (122.8% of the regional mean), and project impacts associated with VMT would be significant and unavoidable.

**Facts:** The anticipated weekday trip generation of the residential component of the Project was determined per the City of San Diego's Trip Generation Manual. The Project is anticipated to generate approximately 440 average daily trips. The project is located within Census Tracts 170.18 containing the project site (170.18) has a VMT per capita of 23.3. This value is 122.8% of the regional mean of

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<sup>5</sup> Dawna Marshall (Dudek) personal communications with Rodrigo Carrasco and Clarke Peters at San Diego Metropolitan Transit System on January 14th, 2021.

18.9 VMT per capita. The Project would result in a significant VMT transportation impact because the Project's location in census tract 170.18 is above the 85th percentile mean VMT per capita for the region.

The City of San Diego Transportation Study Manual (September 2020) (TSM) provides a list of Transportation Demand Management strategies that can be incorporated as mitigation to reduce significant VMTs. In accordance with the TSM, the Permittee would implement mitigation measures **MM-TRA-1** to **MM-TRA-5** to reduce the Project's significant VMT impact to the extent feasible. To reduce the impact to below a level of significance per the City TSM, the VMT would need to be reduced to 85th percentile regional mean VMT per capita. Based on the CAPCOA Handbook (December 2021) and as shown in Table 1, the Project with the implementation of the mitigation measures identified would result in a VMT per capita reduction of 4.10% resulting in a 118.7% of the regional mean VMT per capita. Despite the incorporation of mitigation to the extent feasible, the Project's mitigated VMT per capita would continue to exceed the 85% regional mean VMT per capita, and impacts would remain **significant and unavoidable** after mitigation.

**Table 1**  
**Paseo Montril VMT Reductions**

Measure	Analysis	VMT per Capita Reduction
<b>2021 CAPCOA Handbook</b>		
T-1. Increase Residential Density	A project with increased density results in shorter and fewer trips by single-occupancy vehicles. Project is at 11.2 du/ac. The project density has been maximized to the extent feasible. Due to the site constraints and the intent to be consistent with surrounding development, additional increase in density is not possible.	-0.86%
T-4. Integrate Affordable and Below Market Rate Housing	The project includes 6 affordable housing units.	-3.12%
T-9 Implement Subsidized or Discounted Transit Program	Project is within 0.5 miles of bus stops. A 25% transit pass subsidy to tenants for 5 years is proposed as part of the project.	-0.13%

**Source:** EIR Appendix B.2

\* Note that percentages are not additive. Refer to Appendix B.2 for the combined VMT Reduction.

**Mitigation Measures:** The Project would implement **MM-TRA-1** (implementation of pedestrian improvements), **MM-TRA-2** (implementation of 10 bicycle parking spaces), **MM-TRA-3**



(implementation of a transit subsidy program), **MM-TRA-4** (implementation of a commute trip reduction program), and **MM-TRA-5** (provide one bicycle per unit to the first buyer of each unit).

**Finding:** Direct and cumulative impacts associated with VMT would be significant and unavoidable even with implementation of **MM-TRA-1** through **MM-TRA-5**.

**Reference:** These findings incorporate by reference the information and analysis included in Final EIR Section 5.2, Transportation/Circulation, and Section 6.1.2, Transportation/Circulation as well as EIR Appendix B.2.

### 3. Greenhouse Gas Emissions

**Impact:** The Project would not be consistent with City's CAP because of the changes in land use and zoning designation, and does not include a land use plan and/or zoning designation amendment that would result in an equivalent or less GHG-intensive project when compared to the existing designation. Therefore, the project would conflict with the City's CAP or any applicable plan, policy, or regulation for the purpose of reducing GHG emissions.

**Facts:** The Project is not consistent with the existing land use plan and zoning designations, and would include the following changes to the existing zoning:

- Lot 1 from RS-1-14 and RM-2-5 to RM-1-1
- Lot 2 from RM-2-5 to OC-1-1

Pursuant to Section C of Step 1 of the CAP Consistency Checklist, a GHG emissions analysis was prepared to evaluate if the project would include in a land use and zoning designation amendment that would result in an equivalent or less GHG-intensive project when compared to the existing conditions.

Estimated annual Project-generated GHG emissions in 2024 would be approximately 685.09 metric tons (MT) of carbon dioxide equivalent (CO<sub>2</sub>e) per year as a result of Project construction and operations. Because the Project site is currently vacant, the CAP assumed the site would generate no GHG emissions. As such, the Project would have to generate zero GHG emissions to be consistent with the CAP. Therefore, the Project would not result in an equivalent or less GHG-intensive project when compared to the existing conditions, and the Project must nonetheless incorporate each of the measures identified in Step 2 of the CAP consistency to mitigate cumulative GHG emissions impacts.

As the Project generates 685.09 MT CO<sub>2</sub>e per year, which is in excess of the emissions assumed in the CAP, the Project would not be consistent with the CAP and would result in a **potentially significant**. To reduce this impact, the proposed proposes **MM-GHG-1** through **MM-GHG-4**, as well as **MM-TRA-1** through **MM-TRA-5**.

**MM-GHG-1** and **MM-GHG-2** would reduce energy usage and associated GHG emissions. **MM-GHG-1** would reduce the energy usage required by HVAC equipment at the Project site, which would reduce resulting GHG emissions from building energy demand. **MM-GHG-2** would reduce water consumption at the Project site, which would reduce resulting energy demand required to transport water to and from the Project, further reducing GHG emissions associated with the project.

**MM-GHG-3** and **MM-GHG-4** would allow for additional on-site charging of EVs. B Per the California Energy Code, the Project will provide 12 EV capable spaces (i.e., 10% of on-site parking spaces), with six of those spaces equipped as EV charging stations per the CAP Consistency Checklist. An additional 5% would entail an additional 6 EV capable spaces, with 3 of those spaces equipped as EV charging stations. Overall, with mitigation, the Project would provide 9 spaces that are prewired for EV charging stations and 9 spaces that include full EV charging stations. While on-site charging would increase energy demand at the Project site, it would reduce overall energy demand and would encourage EV use by expanding vehicle charging locations. GHG emissions generated by gasoline-powered vehicles would also decrease.

**MM-TRA-1** would provide an improved pedestrian connection to transit and would encourage transit usage to reduce overall vehicular GHG emissions associated with the Project. **MM-TRA-3** would further encourage transit use by subsidizing transit passes for residents for 5 years. These measures are intended to reduce personal vehicle usage to reduce GHG emissions associated with the Project. **MM-TRA-4** would require the annual provision of a one-page flyer to Project residents with information regarding available transit, designated bicycle routes, local bicycle groups and programs, local walking routes and programs, and rideshare programs. This program is intended to encourage residents to utilize other methods of transportation and to carpool to reduce VMT and associated vehicular GHG emissions.

**MM-TRA-2** and **MM-TRA-5** would provide for additional bicycle parking and provide a bicycle to the first buyer of each unit, which would encourage residents to utilize bicycles instead of vehicles for transportation. The Project's vehicular GHG emissions would be reduced by this measure. In addition to the above measures, improvements to the local northbound and southbound bus stops at the Paseo Moniril and Rancho Peñasquitos Boulevard intersections were considered to encourage future Project residents to utilize transit instead of personal vehicles, which would reduce GHG emissions generated by the Project. Such improvements were considered, however, Metropolitan Transit System indicated that they would not be willing to accept the improvement considering the existing and existing plus Project ridership is not expected to warrant the improvement and the bus stops already include adequate amenities suitable for these stops.

While these measures are expected to reduce GHG emissions, the GHG emission reductions are not quantified because the GHG reductions from these mitigation measures cannot be substantiated within an acceptable level of accuracy (CAPCOA 2009). Per the City's CAP Consistency Checklist, a project that was not accounted for in the CAP would have a significant impact with regards to GHGs. As the site is undeveloped, the CAP assumed the site would generate no emissions. To meet the assumptions in the CAP, the Project would have to obtain net zero or negative GHG emissions. Because the Project would result in 685.09 MT CO<sub>2</sub>e per year, the Project's GHG emission impact would be **significant and unavoidable** after mitigation.

**Mitigation Measures:** The Project would implement **MM-GHG-1** (implementation of cool roofs), **MM-GHG-2** (implementation of low flow plumbing fixtures), **MM-GHG-3** (implementation of EV charging stations), and **MM-GHG-4** (implementation of EV capable spaces). These measures would reduce GHG emissions, but not enough to be consistent with the General Plan and the City's CAP.

**Finding:** GHG emission impacts would be significant and unavoidable.

**Reference:** These findings incorporate by reference the information and analysis included in Final EIR Section 5.7, Greenhouse Gas Emissions, and Section 6.1.7, Greenhouse Gas Emissions, as well as EIR Appendix C.

#### **VI. Findings Regarding Mitigation Measures Which are the Responsibilities of Another Agency**

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

#### **VII. Findings Regarding Alternatives**

In accordance with Section 15126.6(a) of the CEQA Guidelines, an EIR must contain a discussion of "a range of reasonable alternatives to a project, or the location of a project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives." Section 15126.6(f) further states that "the range of alternatives in an EIR is governed by the 'rule of reason' that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice." Thus, the following discussion focuses on project alternatives that are capable of eliminating significant environmental impacts or substantially reducing them as compared to the Project, even if the alternative would impede the attainment of some project objectives, or would be more costly. In accordance with Section 15126.6(f)(1), among the factors that may be taken into account when addressing the feasibility of alternatives are: (1) site suitability; (2) economic viability; (3) availability of infrastructure; (4) general plan consistency; (5) other plans or regulatory limitations; (6) jurisdictional boundaries; and (7) whether the applicant can reasonably acquire, control or otherwise have access to the alternative site.

"Feasible" is defined in Section 15364 of the CEQA Guidelines to mean "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." Public Resources Code section 21081 and CEQA Guidelines section 15019(a)(3) also provide that "other" considerations may form the basis for a finding of infeasibility. Case law makes clear that a mitigation measure or alternative can be deemed infeasible on the basis of its failure to meet project objectives or on related public policy grounds.

Because the Project will cause potentially significant environmental effects unless mitigated, the City must consider the feasibility of any environmentally superior alternatives to the Project, evaluating whether these alternatives could avoid or substantially lessen the potentially significant environmental effects while achieving most of the objectives of the project. The City, having reviewed and considered the information contained in the Final EIR and the Record of Proceedings, and pursuant to Public Resource Code section 21081(a)(3) and CEQA Guidelines Section 15091(a)(3), finds that specific economic, legal, social, technological, or other considerations make infeasible the alternatives identified in the Final EIR. These findings are appropriate because there are no feasible alternative available that would reduce the identified project impacts to below a level of significance.

**a. No Project/No Development Alternative**

CEQA Guidelines section 15126.6(e), requires that an EIR evaluate a "no project" alternative along with its impact. The purpose of describing and analyzing a no project alternative is to allow a lead agency to compare the impacts of approving the project to the impacts of not approving it.

Under the No Project/No Development Alternative, the Project would not be implemented, and the site would remain in its current condition.

**Potentially Significant Effects:** The No Project/No Development Alternative would avoid all of the significant and potentially significant impacts associated with the Project, including significant and unmitigated land use, transportation and greenhouse gas impacts, and significant but mitigated impacts related to air quality, biological resources, and noise.

**Finding:** The City rejects the No Project/No Development Alternative as it fails to satisfy the Project's underlying purpose and fails to meet any of the project objectives. Moreover, as discussed below, specific economic, legal, social, technological, or other considerations including matters of public policy make the alternative infeasible. The City finds that any of these grounds are independently sufficient to support rejection of this alternative.

**Rationale:** Under the No Project/No Development Alternative, the Project would not be implemented and the site would remain in its current condition. Under this alternative, none of the environmental impacts associated with construction and operation of the Project would occur.

While this alternative would avoid all significant impacts of the Project, the No Project/No Development Alternative would not meet any of the project objectives as set forth in Section 3.1 of the Final EIR. Specifically, this alternative would not assist the City in meeting state and local housing goals by providing new housing (Objective 1); provide new housing opportunities to the City by utilizing an underutilized site not currently planned for residential uses (Objective 2); it would not provide an infill development (Objectives 3); it would not promote homeownership by providing for-sale units with entry-level housing market product types (Objective 4), it would not provide a cohesive design that is compatible in use, scale and character with the surroundings (Objective 5); and integrate the project into the existing topography of the site and cluster development in a manner that reduces the grading footprint as well as impacts to environmental resources (Objective 6).

**Reference:** These findings incorporate by reference the information and analysis included in Final EIR Section 9.6.1, No Project/No Development Alternative.

**b. Reduced Density Alternative**

This alternative would have the same footprint of the Project, but the density would be reduced from 55 to 37 units. The same discretionary actions as would be required for the Project would be needed for this alternative, including a General Plan Amendment, Community Plan Amendment, and Rezone.

**Potentially Significant Effects:** A Reduced Density Alternative of development of 37 multi-family units would generate approximately 296 average daily trips using a rate of 8 trips per dwelling unit. This is below the City's 300 average daily trips threshold to be considered as a small project for VMT screening purposes. As discussed in more detail below, the City's TSM Screening Criteria indicate

residential projects of this size would typically screen out as presumed to have less than significant VMT transportation impact.

While this alternative would potentially avoid impacts to transportation, impacts to land use and GHG emissions would remain significant and unavoidable. The following issue areas that would be less than significant with or without mitigation under the Project, would be slightly reduced under the Reduced Density Alternative: air quality, energy, population and housing, public services and facilities, public utilities, and visual effects and neighborhood character. The following issue areas that would be less than significant with or without mitigation under the Project, would be the same under the Reduced Density Alternative: biological resources, geologic conditions, health and safety, hydrology, noise, paleontological resources, tribal cultural resources, water quality, and wildfire.

**Finding:** This alternative would potentially reduce significant transportation impacts and would satisfy most of the project objectives. As discussed below, specific economic, legal, social, technological or other considerations including matters of public policy render this alternative infeasible. Therefore, the City rejects this alternative and finds that any of these grounds are independently sufficient to support rejection of this alternative.

**Rationale:** The Reduced Development Alternative would meet most of the project objectives to the same extent as the Project. Project Objective 1, which involves assisting the City in meeting state and local housing goals by providing new housing, would have a reduced influence on meeting this goal due to the decreased number of units that would be provided as part of this alternative. The City portion of the County's Regional Housing Needs Assessment (RHNA) target for the 2021-2029 Housing Element period is 108,036 homes (City of San Diego 2020). While the City is planning for additional housing to meet the need and targeted to permit more than 88,000 new housing units between 2010 – 2020, less than half of those units were constructed (42,275) as of December 2019 (City of San Diego 2020). Considering this, as public policy, the City aims to maximize the number of new residential units due to the ongoing housing crisis. Thus, a reduction in the number of units provided renders the Reduced Development Alternative infeasible.

**Reference:** These findings incorporate by reference the information and analysis included in Final EIR Section 8.6.2, Reduced Density Alternative, as well as Section 5.12, Population and Housing.

### **c. Construction Noise Avoidance Alternative**

This alternative would result in a similar overall development to the Project and provide 55 multi-family units within five individual buildings. The internal drives and alleyways would be constructed in a similar manner compared to the Project, and on-site residential amenities would remain the same. However, the Construction Noise Avoidance Alternative would reduce grading by approximately 0.13 acres.

Similar to the Project, this alternative would require the same discretionary actions, including a General Plan Amendment, Community Plan Amendment, and Rezone.

The intent of this alternative is to reduce the severity of impacts associated with construction noise specific to grading. Grading for this alternative would vary from that under the Project, in that this alternative would require a deviation that includes a steeper slope (1.5:1) between residential

Building 3 through Building 5 and the single-family residential development to the northwest. However, impacts from construction noise were already less than significant with mitigation under the Project.

**Potentially Significant Effects:** The Construction Noise Avoidance Alternative would result in reduced impacts to noise and biological resources, because general construction noise would be avoided, but **Impact NOI-2** and **Impact NOI-3** related to blasting noise would remain significant. This alternative would not reduce the Project's significant and unavoidable impacts associated with land use, transportation and GHG emissions, because the project would still be inconsistent with the City's CAP, the same amount of residents would be added, and the same amount of traffic would be generated.

**Finding:** The Construction Noise Avoidance Alternative would meet all the project objectives and would reduce the Impact NOI-1. Specific economic, legal, social, technological or other considerations including matters of public policy render this alternative infeasible. Therefore, the City rejects this alternative and finds that any of these grounds are independently sufficient to support rejection of this alternative.

**Rationale:** The Construction Noise Avoidance Alternative would meet all of the project objectives. The site proposed to be utilized by this alternative is controlled by the applicant, and therefore it is feasible for the applicant to control it. In addition, this alternative would be economically feasible considering the reduced grading would result in less cost than the Project. However, the utilization of a steeper slope at a 1.5:1 ratio would require a deviation from the City's standards. This ordinance requires this slope ratio for various reasons, including slope stability and erosion. Due to this, the City rejects this alternative.

**Reference:** These findings incorporate by reference the information and analysis included in Final EIR Section 9.6.3, Construction Noise Avoidance Alternative.

## **VIII. Findings Regarding Other CEQA Considerations**

### **a. Growth Inducement**

Section 15126.2(e) of the CEQA Guidelines mandates that the growth-inducing impact of a project be discussed. This discussion is presented in Chapter 8, Mandatory Discussion Areas, of the Final EIR. The City finds that the Project would not result in short- or long-term growth-inducing impacts. Per the CEQA Guidelines, growth-inducing effects are not necessarily beneficial, detrimental, or of little significance to the environment.

### **b. Short-Term Growth Inducement**

During Project construction, demand for various construction trade skills and labor would increase. It is anticipated that this demand would be met predominantly by the local labor force and would not require importation of a substantial number of workers or cause an increased demand for temporary or permanent local housing. Further, construction of the Project is expected to take approximately 2 years. Since construction would be short term and temporary, it would not lead to an increase in

employment on site that would stimulate the need for additional housing or services. Accordingly, no associated substantial short-term growth-inducing effects would result.

### **c. Long-Term Growth Inducement**

The Project proposes to construct 55 multi-family homes with amenities and place the remaining open space within a covenant of easement. Specifically, Lot 1 would consist of 3.60 acres of residential land uses and amenities, and the remaining 1.3 acres of Lot 1 and all of Lot 2 would be open space covered by a covenant of easement. The Project would also include off-site improvements within Paseo Montril and a sewer easement.

As discussed in Section 5.1, Land Use, the Project site is designated as Park, Open Space, and Recreation in the City of San Diego's General Plan (City of San Diego 2008) and Open Space under the Rancho Peñasquitos Community Plan (City of San Diego 2011). The majority of the project site is zoned residential as RM-2-5, with smaller portions zoned as RS-1-13. The Project would require General Plan and Community Plan Amendments as well as a Rezone to allow for the proposed residential development on site.

Based on the population rate coefficient of 3.07 persons per household<sup>6</sup> for the Rancho Peñasquitos community, the 55-unit Project would introduce an estimated 169 people to the area (SANDAG 2013). As discussed in Section 5.12, Population and Housing, because the Project would help accommodate the existing and planned population and population growth anticipated in the City and help with the existing housing shortage, the Project would not directly induce substantial growth through the development of residential land uses within a vacant site.

The City is currently in urgent need for housing and is experiencing a housing shortage, as discussed in the City's Housing Element. The City portion of the County's RHNA target for the 2021-2029 Housing Element period is 108,036 homes (City of San Diego 2020). While the City is planning for additional housing to meet the need and targeted to permit more than 88,000 new housing units between 2010 – 2020, less than half of those units were constructed (42,275) as of December 2019 (City of San Diego 2020). Considering this, the proposed construction of 55 units is anticipated to help accommodate the existing and planned population and population growth anticipated in the City and help with the existing housing shortage. Therefore, the Project would not directly induce substantial unplanned population growth to the area.

Regarding infrastructure, the properties surrounding the Project site consist of residential and commercial development that is served by existing public service and utility infrastructure. As discussed in Final EIR Section 5.14, Public Utilities, the proposed project would use existing utility connections that serve the surrounding community to accommodate the internal utility infrastructure needs of the development. No major new infrastructure facilities are required specifically to accommodate the Project. No existing capacity deficiencies were identified for water, wastewater, or storm drain facilities that would serve the Project. Furthermore, the Project would not generate sewage flow or stormwater that would exceed the capacity already planned for the sewer line or

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<sup>6</sup> There are multiple sources for estimations of a "person per household" rate. The analysis contained herein conservatively uses the SANDAG 2050 regional growth forecast rate for the Rancho Peñasquitos community for year 2035, which is the highest out of each forecasted year. By comparison, the City as a whole also has a forecasted rate of 2.65 persons per household in 2035 per SANDAG's regional growth forecast.

storm drain. In addition, the internal roadway network proposed to be constructed within the Project site would connect to the existing roadway network surrounding the project site. Since the Project site is surrounded by existing development, and would connect to existing utility infrastructure, implementation of the Project would not remove a barrier to economic or population growth through the construction or connection of new public utility infrastructure.

While the Project proposes housing on a site planned for open space, the Project would not induce substantial growth considering the housing shortage in the City and the need for additional housing to accommodate planned growth. Therefore, the Project would not directly induce substantial unplanned population growth to the area. Refer to Final EIR Section 5.12.3.1 for additional details.

**d. Significant Irreversible Environmental Changes that will be Caused by the Project**

CEQA Guidelines section 15126.2(c) requires the evaluation of the following significant irreversible environmental changes that would occur should a project be implemented:

- (1) Primary impacts, such as the use of nonrenewable resources (i.e., biological habitat, agricultural land, mineral deposits, water bodies, energy resources, and cultural resources);
- (2) secondary impacts, such as road improvements, which provide access to previously inaccessible areas; and
- (3) environmental accidents potentially associated with the project.

Furthermore, Section 15126.2(c) of the CEQA Guidelines states that irretrievable commitments of resources should be evaluated to ensure that current consumption of such resources is justified. Implementation of a project would not result in significant irreversible impacts to agricultural land, mineral resources, water bodies, historical resources, paleontological resources, or tribal cultural resources.

The Project site consists of vacant lots situated on a hillside between Interstate 15 and adjacent residential and commercial uses. The Project site is designated Park, Open Space, and Recreation in the General Plan (City of San Diego 2008), and as Open Space in the Rancho Peñasquitos Community Plan (City of San Diego 2011). The site is zoned for residential use (RM-2-5 and RS-1-14).

The Project site does not contain agricultural or forestry resources, as the Project site and immediate surroundings are classified as Urban and Built-Up Land under the California Department of Conservation's Farmland Mapping and Monitoring Program (CDC 2021). No Prime Farmland, Unique Farmland, or Farmland of Statewide Importance is present on site or would be impacted as a result of the project.

According to the Conservation Element of the City's General Plan, the Project site is designated as MRZ-3 (City of San Diego 2008). MRZ-3 areas contain mineral deposits, the significance of which cannot be evaluated from available data. Despite the known mineral resource designation of the Project site, the surrounding area has experienced increased urbanization and development with land uses (such as residential and commercial) incompatible with typical mineral extraction and processing operations. Similarly, the Project site and surrounding area are historically and currently designated by the City's General Plan and zoned for uses that would preclude mineral resource



operations. Additionally, as described in Final EIR Section 5.3, Air Quality and Odor, grading of the Project site would require import of soils. As such, the Project could use the potential construction grade aggregate located within the Project site to the extent feasible during grading operations. Therefore, it would not result in the loss of mineral resources of statewide or local importance.

The Project would require the commitment of energy and non-renewable resources, such as electricity, fossil fuels, natural gas, construction materials (e.g., concrete, asphalt, sand and gravel, steel, petrochemicals, and lumber), potable water, and labor during construction. New development within the Project site would be required to comply with the California Energy Code and Title 24 of the California Code of Regulations, Part 11 (California Green Building Standards Code). The Project features a number of sustainable elements (e.g., rooftop photovoltaic solar panels, energy-efficient lighting and appliances, cool roofs, energy-efficient windows) to minimize its consumption of energy and non-renewable resources (see Final EIR Section 5.7, Greenhouse Gas Emissions, and Final EIR Section 5.5, Energy, for further details). However, use of these resources on any level would have an incremental effect regionally and would, therefore, result in long-term irretrievable losses of non-renewable resources, such as fuel and energy.

The Project site does contain biological resources, including sensitive habitat and sensitive species. More specifically, the site contains Diegan coastal sage scrub habitat. The following sensitive wildlife species were determined to have moderate potential to occur within the project area: Southern California legless lizard, San Diegan tiger whiptail, red diamondback rattlesnake, Blainville's horned lizard, Coronado skink, coast patch-nosed snake, and Crotch bumble bee. Two special-status species and Multiple Species Conservation Program (MSCP) Covered Species, coastal California gnatcatcher and western bluebird, were observed on site. The Project would result in potentially significant impacts to 3.21 acres of Tier II Diegan coastal sage scrub (including disturbed forms) (Impact BIO-1). The Project was specifically designed to avoid the on-site non-wetland waters that crosses the central area of the site east to west. Thus, no significant irreversible impacts to water bodies would occur. Refer to Final EIR Section 5.4, Biological Resources, for additional details. The Project would implement habitat mitigation (**MM-BIO-1**) in accordance with the City's Biology Guidelines. With the implementation of these measures, biological resource impacts would be less than significant.

Implementation of the Project has the potential to result in health and safety impacts due to demolition and construction activities, which could expose people or workers to a cancer risk above the 10 in 1 million threshold. The Project would include **MM-AQ-1**, which requires use of Tier 4 Interim engines or better, to reduce this potential to below a level of significance, as detailed in Final EIR Section 5.3, Air Quality. All other health and safety impacts of the project would be less than significant (see Final EIR Section 5.8, Health and Safety). Specifically, the project would follow applicable health and safety related regulations to prevent any spills or hazardous material use, transport, or disposal from resulting in significant environmental accidents. While the project is located within Review Area 2 of the MCAS Miramar Airport Land Use Compatibility Plan, the Project would comply with the applicable noticing requirements and obtain a Determination of No Hazard from the Federal Airport Authority prior to construction as a Condition of Approval. Thus, no significant environmental accidents would occur as a result of the Project.

The Project would not involve a roadway or highway improvement that would provide access to previously inaccessible areas. The Project includes no additional public roadways, and access to the

site would be from the existing Paseo Montril roadway. Therefore, the proposed project would not result in significant irreversible environmental changes.

#### **IX. Findings Regarding Responses to Comments and Final EIR Revisions**

The Final EIR includes the comments received on the Draft EIR and responses to those comments. The focus of the responses to comments is on the disposition of significant environmental issues that are raised in the comments, as specified by CEQA Guidelines section 15088(c).

**Finding/Rationale:** Responses to comments made on the Draft EIR and revisions in the Final EIR merely clarify and amplify the analysis presented in the Draft EIR, and do not trigger the need to recirculate per CEQA Guidelines section 15088.5(b).

#### **X. Statement of Overriding Considerations**

Pursuant to Public Resources Code section 21081(b) and CEQA Guidelines section 15043 and 15093, CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered acceptable pursuant to Public Resources Code section 21081. CEQA further requires that when the lead agency approves a project that will result in the occurrence of significant effects identified in the EIR and not avoided or substantially lessened, the agency shall state in writing the specific reasons to support the action based on the EIR and/or other information in the record.

Pursuant to Public Resources Code section 21081(b) and CEQA Guidelines section 15093, the San Diego City Council (City Council), having considered all of the information presented herein and in the Record of Proceedings, finds that the following specific overriding economic, legal, social, technological, or other benefits associated with the Project outweigh unavoidable adverse direct impacts related to land use, transportation, and GHG emissions.

The City Council declares that it has adopted all feasible mitigation measures to reduce the Project's environmental impacts to an insignificant level; considered the entire Record of Proceedings, including the EIR; and weighed the proposed benefits against the Project's environmental impacts. This determination is based on the following specific benefits, each of which is determined to be, by itself and independent of the other Project benefits, a basis for overriding and outweighing all unavoidable adverse environmental impacts identified in the Final EIR. Substantial evidence supports the various benefits and can be found in the preceding sections (which are incorporated by reference into this section), the Final EIR, or in the Record of Proceedings for this matter.

As set forth above, the City's approval of the Project will result in significant land use, transportation/circulation and GHG emissions, and impacts that cannot be avoided, even with the adoption of all feasible mitigation measures. Whenever a lead agency adopts a project which will result in a significant and unavoidable impact, the agency must, pursuant to Public Resources Code sections 21002 and 21081(b) and CEQA Guidelines section 15093, declare in writing the specific reasons to support its action based on the Final EIR and/or other information in the Record of Proceedings.

The City Council: (i) having independently reviewed the information in the Final EIR and the Record of Proceedings; (ii) having made a reasonable and good faith effort to eliminate or substantially lessen the significant impacts resulting from the Project to the extent feasible by adopting the mitigation measures identified in the Final EIR; and (iii) having balanced the benefits of the Project against the significant environmental impacts, chooses to approve the Project, despite its significant environmental impacts, because, in the City Council's view, specific economic, legal, social, and other benefits of the Project render the significant environmental impacts acceptable.

The following statement identifies why, in the City Council's judgment, the benefits of the project outweigh the unavoidable significant impacts. Each of these public benefits serves as an independent basis for overriding all significant and unavoidable impacts. Any one of the reasons set forth below is sufficient to justify approval of the Project. Substantial evidence supports the various benefits and such evidence can be found either in the Findings which are provided above and incorporated by reference into this section, the Final EIR, and/or in documents that comprise the Record of Proceedings in this matter.

**a. Provide Critically-Needed Market-Rate Housing Consistent with the General Plan and Community Plan Housing Elements.**

The Housing Element identifies a total remaining capacity of approximately 893 housing units for the Rancho Peñasquitos community, with 308 of those identified as lower-income (City of San Diego 2020), as part of the site inventory. While the Project site was not identified as a potential site for housing, the Project would contribute 55 units to the 108,036 units allocated to the City under the RHNA target for the 2021-2029 Housing Element period.

The central objective of the Rancho Peñasquitos Community Plan Residential Element is to "provide housing opportunities for a variety of household types, lifestyles and income levels, while maximizing the health, safety and welfare of the community." The Rancho Peñasquitos Community Plan area contains a large number of single-family units and the introduction of more multi-family housing would provide a unique opportunity to further the General Plan and Community Plan's Housing Element goals and policies.

**b. Provide Opportunities for Entry-Level Housing Homeownership and Providing Units That Have a More Modest Price Point.**

As the price of housing increases, the stacked flats and single level condominiums provided by this Project allow for opportunity for people to own a home at an entry-level. The Project would provide 55 entry-level housing units as part of the Project which would allow for opportunities to increase the total housing stock in the area as well as increase opportunities for homeownership and provide several units that will provide a different and more affordable housing type in the area. According to a report by the Greater San Diego Association of Realtors<sup>7</sup>, the 2022 median home sales price for detached homes in the 92129 ZIP code area is \$1,425,000, while the median home sales price for stacked flats/condos is \$625,000. By contrast, based on today's economy, which is subject to change,

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<sup>7</sup> Greater San Diego Association of Realtors. Local Market Update for July 2022 (current as of August 5, 2022). Accessed August 17, 2022. <http://sda:stats.10kresearch.com/docs/lmu/2022-07/x/92129-Penasquitos?src=page>

we envision the stacked flats/condos proposed under the Project to be priced from approximately the high \$500,000 range to low \$700,000 range, with most inventory available in the \$600,000 range, providing the public an opportunity for entry-level housing homeownership. The San Diego Housing Commission reports the City's Median Income to be \$106,900 for a family of four.<sup>8</sup> The City defines middle income as between 80 percent and 150 percent of the region's median income, or \$85,520 to \$160,350. Assuming a 36% debt to income ratio, a 4% interest rate on a 30-year fixed mortgage, and a standard down payment, a family can afford a house between \$516,893 and \$827,428, which would allow first-time buyers to purchase a new moderately-priced home at Paseo Montril.

**c. Affordable Housing.**

The Project exceeds the required affordable housing requirements. Per the requirements in place at the time the Project was initiated, the Project is required to provide two affordable units. The Project will provide two affordable housing units on the site and, in addition, four affordable housing units at the Del Mar Highlands Estates located at the western end of the State Route 56 Corridor within the City. The two on-site affordable housing units would be provided at 100% area median income (AMI) while the off-site units would be provided at 60% AMI.

**d. Provision of Housing Adjacent to Existing Commercial.**

The Project would place housing adjacent to existing commercial, which would allow future residents of the site to potentially work near their home. This provision of potential workforce housing would potentially reduce vehicle miles travelled and greenhouse gas emissions. In addition, this would support the local business and employment centers.

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<sup>8</sup> U.S. Department of Housing and Urban Development. 2022 San Diego Median Income. Accessed August 17, 2022. <https://www.sdhc.org/wp-content/uploads/2022/AMIncomeLimits.pdf>

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## **EXHIBIT B**

### **MITIGATION MONITORING AND REPORTING PROGRAM**

#### **AMENDMENTS TO THE GENERAL PLAN AND RANCHO PEÑASQUITOS COMMUNITY PLAN NO. 2513172; REZONE NO. 2513174; SITE DEVELOPMENT PERMIT NO. 2416738; NEIGHBORHOOD DEVELOPMENT PERMIT NO. 2513173; and VESTING TENTATIVE MAP NO. 2416742 INCLUDING EASEMENT VACATION NO. 2513171; PROJECT NO. 658273**

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. 658273/SCH No. 2021030038 shall be made conditions of the Amendment to the General Plan and Rancho Peñasquitos Community Plan No. 2513172; Rezone No. 2513174; Site Development Permit No. 2416738; Neighborhood Development Permit No. 2513173; and Vesting Tentative Map No. 2416742 including Easement Vacation No. 2513171 as may be further described below.

#### **A. GENERAL REQUIREMENTS—PART I - Plan Check Phase (prior to permit issuance)**

1. Prior to the issuance of a Notice To Proceed (NTP) for a subdivision, or any construction permits, such as Demolition, Grading or Building, or beginning any construction related activity on-site, the Development Services Department (DSD) Director's Environmental Designee (ED) shall review and approve all Construction Documents (CD), (plans, specification, details, etc.) to ensure the MMRP requirements are incorporated into the design.
2. In addition, the ED shall verify that the MMRP Conditions/Notes that apply ONLY to the construction phases of this project are included VERBATIM, under the heading, "ENVIRONMENTAL/MITIGATION REQUIREMENTS."
3. These notes must be shown within the first three (3) sheets of the construction documents in the format specified for engineering construction document templates as shown on the City website: <http://www.sandiego.gov/development-services/industry/standtemp.shtml>.
4. The TITLE INDEX SHEET must also show on which pages the "Environmental/Mitigation Requirements" notes are provided.
5. SURETY AND COST RECOVERY - The Development Services Director or City Manager may require appropriate surety instruments or bonds from private Permit Holders to ensure the long-term performance or implementation of required mitigation measures or programs. The City is authorized to recover its cost to offset the salary, overhead, and expenses for City personnel and programs to monitor qualifying projects.

**B. GENERAL REQUIREMENTS—Part II – Post-Plan Check (after permit issuance/prior to start of construction)**

PRE-CONSTRUCTION MEETING IS REQUIRED TEN (10) WORKING DAYS PRIOR TO BEGINNING ANY WORK ON THIS PROJECT. The PERMIT HOLDER/OWNER is responsible to arrange and perform this meeting by contacting the CITY RESIDENT ENGINEER (RE) of the Field Engineering Division and City staff from MITIGATION MONITORING COORDINATION (MMC). Attendees must also include the Permit holder's Representative(s), Job Site Superintendent, and the following consultants:

Qualified Acoustician, Archaeologists(s), Native American Monitor(s), and Biologist(s)

**NOTE: Failure of all responsible Permit Holder's representatives and consultants to attend shall require an additional meeting with all parties present.**

**CONTACT INFORMATION:**

- a. The PRIMARY POINT OF CONTACT is the RE at the **Field Engineering Division - 858.627.3200**
  - b. For Clarification of ENVIRONMENTAL REQUIREMENTS, it is also required to call RE and MMC at **858.627.3360**
1. **MMRP COMPLIANCE:** This Project, Project Tracking System (PTS) Number 658273 and/or Environmental Document Number 658273, shall conform to the mitigation requirements contained in the associated Environmental Document and implemented to the satisfaction of the DSD's Environmental Designee (MMC) and the City Engineer (RE). The requirements may not be reduced or changed but may be annotated (i.e., to explain when and how compliance is being met and location of verifying proof, etc.). Additional clarifying information may also be added to other relevant plan sheets and/or specifications as appropriate (i.e., specific locations, times of monitoring, methodology, etc.).

**NOTE: Permit Holder's Representatives must alert RE and MMC if there are any discrepancies in the plans or notes, or any changes due to field conditions. All conflicts must be approved by RE and MMC BEFORE the work is performed.**

2. **OTHER AGENCY REQUIREMENTS:** Evidence of compliance with all other agency requirements or permits shall be submitted to the RE and MMC for review and acceptance prior to the beginning of work or within one week of the Permit Holder obtaining documentation of those permits or requirements. Evidence shall include copies of permits, letters of resolution or other documentation issued by the responsible agency:
  - a. *Regional Water Quality Control Board: National Pollutant Discharge Elimination System General Construction Permit*
3. **MONITORING EXHIBITS** All consultants are required to submit, to RE and MMC, a monitoring exhibit on a 11"x17" reduction of the appropriate construction plan, such as site plan, grading, landscape, etc., marked to clearly show the specific areas including the LIMIT OF WORK, scope of that discipline's work, and notes indicating when in the construction

schedule that work will be performed. When necessary for clarification, a detailed methodology of how the work will be performed shall be included.

**NOTE: Surety and Cost Recovery – When deemed necessary by the Development Services Director or City Manager, additional surety instruments or bonds from the private Permit Holder may be required to ensure the long-term performance or implementation of required mitigation measures or programs. The City is authorized to recover its cost to offset the salary, overhead, and expenses for City personnel and programs to monitor qualifying projects.**

4. **OTHER SUBMITTALS AND INSPECTIONS:** The Permit Holder/Owner's representative shall submit all required documentation, verification letters, and requests for all associated inspections to the RE and MMC for approval per the following schedule:

**Table 10-1.**

**Document Submittal/Inspection Checklist**

<b>Issue Area</b>	<b>Document Submittal</b>	<b>Associated Inspection/ Approvals/Notes</b>
General	Consultant Qualification Letters	Prior to Preconstruction Meeting
General	Consultant Construction Monitoring Exhibits	Prior to or at Preconstruction Meeting
Air Quality	Grading Plans	Grading Permit Issuance
Biology	Biologist Limit of Work Verification  Grading Plans	Limit of Work Inspection  Grading Permit
Greenhouse Gas Emissions	Building Plans	Building Permit Issuance
Noise	Grading Plan Acoustical Reports	Grading Permit Issuance
Transportation	Building Plans	Traffic Features On-site  Paseo Montril Sidewalk Inspection
Bond Release	Request for Bond Release Letter	Final MMRP Inspections Prior to Bond Release Letter



## **Specific MMRP Issue Area Conditions/Requirements**

### **AIR QUALITY**

**MM-AQ-1** Prior to the issuance of a grading permit, the grading and construction plan notes shall specify that all 50-horsepower or greater diesel-powered equipment is powered with California Air Resources Board (CARB)-certified Tier 4 Interim engines or better. An exemption from this requirement may be granted if (1) the applicant documents equipment with Tier 4 Interim engines or better are not reasonably available, and (2) the required corresponding reductions in diesel particulate matter (DPM) emissions can be achieved for the project from other combinations of construction equipment. Before an exemption may be granted, the applicant's construction contractor shall: (1) demonstrate that at least two construction fleet owners/operators in San Diego County were contacted and that those owners/operators confirmed Tier 4 Interim equipment or better could not be located within San Diego County during the desired construction schedule; and (2) the proposed replacement equipment has been evaluated using California Emissions Estimator Model (CalEEMod) or other industry standard emission estimation method and documentation provided to the City of San Diego to confirm that project-generated construction emissions do not exceed applicable San Diego Air Pollution Control District's carcinogenic (cancer) risk threshold.

### **BIOLOGY**

**MM-BIO-1a Habitat Mitigation.** Prior to issuance of a Notice to Proceed or the first grading permit, the owner/permittee shall mitigate upland impacts in accordance with the City of San Diego Biology Guidelines. Mitigation for impacts to 3.24 acres of Diegan coastal sage scrub (including disturbed) shall be accomplished on site at a 1.5:1 mitigation ratio by on-site preservation of 4.81 acres of Tier II habitat. A total of 9.91 acres of Diegan coastal sage scrub would remain on site following project implementation. This project would utilize 4.86-acres of that remaining area to mitigate for the project's direct impacts to Diegan coastal sage scrub. In accordance with ESL regulations, the owner/permittee shall convey a Covenant of Easement to be recorded against the title in over the remaining ESL area on the site.

#### **MM-BIO-1b Resource Protections During Construction.**

##### **I. Prior to Construction**

- A. Biologist Verification:** The owner/permittee shall provide a letter to the City's Mitigation Monitoring Coordination (MMC) section stating that a Project Biologist (Qualified Biologist) as defined in the City of San Diego's Biological Guidelines (2012), has been retained to implement the project's biological monitoring program. The letter shall include the names and contact information of all persons involved in the biological monitoring of the project.
- B. Preconstruction Meeting:** The Qualified Biologist shall attend the preconstruction meeting, discuss the project's biological monitoring program, and arrange to perform any follow up mitigation measures and reporting including site-specific monitoring, restoration or revegetation, and additional fauna/flora surveys/salvage.

- C. Biological Documents:** The Qualified Biologist shall submit all required documentation to MMC verifying that any special mitigation reports including but not limited to, maps, plans, surveys, survey timelines, or buffers are completed or scheduled per City Biology Guidelines, Multiple Species Conservation Program (MSCP), Environmentally Sensitive Lands Ordinance (ESL), project permit conditions; California Environmental Quality Act (CEQA); endangered species acts (ESAs); and/or other local, state or federal requirements.
- D. BCME:** The Qualified Biologist shall present a Biological Construction Mitigation/Monitoring Exhibit (BCME) which includes the biological documents in C above. In addition, include: restoration/revegetation plans, plant salvage/relocation requirements (e.g., coastal cactus wren plant salvage, burrowing owl exclusions, etc.), avian or other wildlife surveys/survey schedules (including general avian nesting and USFWS protocol), timing of surveys, wetland buffers, avian construction avoidance areas/noise buffers/ barriers, other impact avoidance areas, and any subsequent requirements determined by the Qualified Biologist and the City ADD/MMC. The BCME shall include a site plan, written and graphic depiction of the project's biological mitigation/monitoring program, and a schedule. The BCME shall be approved by MMC and referenced in the construction documents.
- E. Avian Protection Requirements:** To avoid any direct impacts to the coastal California gnatcatcher and western bluebird and any avian species that is listed, candidate, sensitive, or special status in the MSCP, removal of habitat that supports active nests in the proposed area of disturbance should occur outside of the breeding season for these species (February 1 to September 15). If removal of habitat in the proposed area of disturbance must occur during the breeding season, the Qualified Biologist shall conduct a pre-construction survey to determine the presence or absence of nesting birds on the proposed area of disturbance. The pre-construction survey shall be conducted within three (3) calendar days prior to the start of construction activities (including removal of vegetation). The applicant shall submit the results of the pre-construction survey to City DSD for review and approval prior to initiating any construction activities. If nesting birds are detected, a letter report in conformance with the City's Biology Guidelines and applicable State and Federal Law (i.e. appropriate follow up surveys, monitoring schedules, construction and noise barriers/buffers, etc.) shall be prepared and include proposed measures to be implemented to ensure that take of birds or eggs or disturbance of breeding activities is avoided. The report shall be submitted to the City for review and approval and implemented to the satisfaction of the City. The City's MMC Section and Biologist shall verify and approve that all measures identified in the report are in place prior to and/or during construction.
- F. Resource Delineation:** Prior to construction activities, the Qualified Biologist shall supervise the placement of orange construction fencing or equivalent along the limits of disturbance adjacent to sensitive biological habitats and verify compliance with any other project conditions as shown on the BCME. This phase shall include flagging plant specimens and delimiting buffers to protect sensitive biological resources (e.g., habitats/flora & fauna species, including nesting birds) during construction. Appropriate steps/care should be taken to minimize attraction of nest predators to the site.

- G. Education:** Prior to commencement of construction activities, the Qualified Biologist shall meet with the owner/permittee or designee and the construction crew and conduct an on-site educational session regarding the need to avoid impacts outside of the approved construction area and to protect sensitive flora and fauna (e.g., explain the avian and wetland buffers, flag system for removal of invasive species or retention of sensitive plants, and clarify acceptable access routes/methods and staging areas, etc.).

## **II. During Construction**

- A. Monitoring:** All construction (including access/staging areas) shall be restricted to areas previously identified, proposed for development/ staging, or previously disturbed as shown on "Exhibit A" and/or the BCME. The Qualified Biologist shall monitor construction activities as needed to ensure that construction activities do not encroach into biologically sensitive areas, or cause other similar damage, and that the work plan has been amended to accommodate any sensitive species located during the pre-construction surveys. In addition, the Qualified Biologist shall document field activity via the Consultant Site Visit Record (CSVR). The CSVR shall be e-mailed to MMC on the 1st day of monitoring, the 1st week of each month, the last day of monitoring, and immediately in the case of any undocumented condition or discovery.
- B. Subsequent Resource Identification:** The Qualified Biologist shall note/act to prevent any new disturbances to habitat, flora, and/or fauna onsite (e.g., flag plant specimens for avoidance during access, etc). If active nests or other previously unknown sensitive resources are detected, all project activities that directly impact the resource shall be delayed until species specific local, state or federal regulations have been determined and applied by the Qualified Biologist.

## **III. Post Construction Measures**

- A.** In the event that impacts exceed previously allowed amounts, additional impacts shall be mitigated in accordance with City Biology Guidelines, ESL and MSCP, State CEQA, and other applicable local, state and federal law. The Qualified Biologist shall submit a final BCME/report to the satisfaction of the City ADD/MMC within 30 days of construction completion.

## **GREENHOUSE GAS EMISSIONS**

**MM-GHG-1 CAP Strategy 1- Cool Roofs.** Prior to the issuance of residential building permits, the project applicant or its designee shall submit building plans illustrating that residential structures shall meet the U.S. Green Building Council standards for cool roofs. This is defined as achieving a three-year solar reflectance index (SRI) of 64 for a low-sloped roof and an SRI of 32 for a high-sloped roof.

**MM-GHG-2 CAP Strategy 1 - Low Flow Plumbing Fixtures.** Prior to the issuance of residential building permits, the project applicant or its designee shall submit building plans illustrating that residential structures shall have low flow fixtures including; kitchen faucets with a maximum flow rate not to exceed 1.5 gallons per minute at 60psi; standard dishwashers at 4.25 gallons per cycle; compact dishwashers at 3.5 gallons per cycle and clothes washers with a water factor of 6 gallons per cubic feet of drum capacity.

**MM-GHG-3 CAP Strategy 2 - Electrical Vehicle Charging Stations.** Prior to the issuance of building permits, the proposed project applicant or its designee shall submit building plans illustrating that the project provides electrical vehicle charging stations at 5% of the on-site parking (6 spaces).

**MM-GHG-4 Beyond CAP Strategy 2 - Electrical Vehicle Charging Stations.** Prior to the issuance of building permits, the proposed project applicant or its designee shall submit building plans illustrating that the project provides an additional 5% of on-site parking as EV capable spaces above Title 24 code and half of those additional spaces as EV charging stations.

## **NOISE**

**MM-NOI-1 Temporary Construction Noise.** Prior to issuance of demolition, grading, or building permits, Mitigation Monitoring Coordination shall verify that project applicant or its contractor shall implement one or more of the following options for on-site noise control and sound abatement means that, in aggregate, would yield a minimum of approximately 12 dBA of construction noise reduction during the grading phase of the Project:

- A. Administrative controls (e.g., reduce operating time of equipment and/or prohibit usage of equipment type[s] within certain distances to a nearest receiving occupied off-site property).
- B. Engineering controls (change equipment operating parameters [speed, capacity, etc.], or install features or elements that otherwise reduce equipment noise emission [e.g., upgrade engine exhaust mufflers]).
- C. Install noise abatement on the site boundary fencing (or within, as practical and appropriate) in the form of sound blankets or comparable temporary solid barriers to occlude construction noise emission between the site (or specific equipment operation as the situation may define) and the noise-sensitive receptor(s) of concern.

**MM-NOI-2 Blasting Vibration and Noise Plan.** Prior to issuance of building permit, Mitigation Monitoring Coordination shall verify that project applicant or its contractor have prepared, and shall require the implementation of, a blasting plan that will reduce impacts associated with construction-related noise, drilling operations and vibrations related to blasting. The blasting plan shall be site specific, based on general and exact locations of required blasting and the results of a project-specific geotechnical investigation. The blasting plan shall include a description of the planned blasting methods, an inventory of receptors potentially affected by the planned blasting, and calculations to determine the area affected by the planned blasting. Noise calculations in the blasting plan shall account for blasting activities and all supplemental construction equipment. The final blasting plan and pre-blast survey shall meet the requirements provided below:

- Prior to blasting, a qualified geotechnical professional shall inspect and document the existing conditions of facades and other visible structural features or elements of the nearest neighboring off-site residential buildings. Should this inspector determine that some structural features or elements appear fragile or otherwise potentially sensitive to vibration damage caused by the anticipated blasting activity, the maximum per-delay charge weights and other related blast parameters shall be re-evaluated to establish appropriate quantified limits on expected blast-attributed PPV. The geotechnical professional shall consider geologic and environmental factors that may be reasonably expected to improve attenuation of groundborne vibration between the blast detonations and the receiving structure(s) of concern.
- All blasting shall be designed and performed by a blast contractor and blasting personnel licensed to operate per appropriate regulatory agencies.
- Each blast shall be monitored and recorded with an air-blast overpressure monitor and groundborne vibration accelerometer that is located outside the closest residence to the blast. This data shall be recorded, and a post-blast summary report shall be prepared and be available for public review or distribution as necessary.
- Blasting shall not exceed 1 ips PPV (transient or single-event), or a lower PPV determined by the aforesaid inspector upon completion of the pre-blast inspection, at the façade of the nearest occupied residence.
- To ensure that potentially impacted residents are informed, the applicant will provide notice by mail to all property owners within 500 feet of the project at least 1 week prior to a scheduled blasting event.
- Where a blast event may be expected to cause an airborne noise level that exceeds the City's 12-hour Leq standard, the proposed project applicant or its contractor(s) shall coordinate with the potentially affected neighboring property owner-occupant for permission to install at or near the proposed project property line (to the extent feasible, given the terrain of the proposed project vicinity) a field-erected temporary noise wall (e.g., sound blankets suspended from framing members, such as those provided by Behrens & Associates, Pacific Sound Control, or other vendors of comparable equipment). The installing contractor shall be responsible for determining the height and extent of the temporary noise barrier, so that its proper on-site implementation can be expected to provide up to 15 dBA of noise reduction and thus enable the 12-hour Leq representing the blast event noise level to comply with the City's standard of 75 dBA.
- Where a blast event may be expected to cause an airborne noise level that contributes to exceedance of the City's 12-hour Leq standard, the proposed project applicant or its contractor(s) shall utilize blasting noise abatement techniques (at the discretion of the blast contractor) such as steel or rubber blasting mats over sand/dirt, so that its proper on-site implementation can be expected to provide approximately 15 dBA of noise reduction and thus enable the 12-hour Leq representing the blast event noise level to comply with the City's standard of 75 dBA.

## **TRANSPORTATION**

**MM-TRA-1 Pedestrian Improvements.** Prior to the issuance of the first building permit, Permittee shall assure by permit and bond the construction/improvement of standard City sidewalk along the south side Paseo Montril, satisfactory to the City Engineer. The improvements shall be completed and operational prior to first occupancy. This includes providing a continuous concrete sidewalk from the project access to Rancho Peñasquitos Boulevard.

**MM-TRA-2 Bike Parking.** Prior to the issuance of the first occupancy permit, the Permittee shall provide 10 short term bike parking spaces on site.

**MM-TRA-3 Transit Passes.** Prior to first occupancy, the Permittee shall implement a transit subsidy program. The subsidy value will be limited to the equivalent value of 25% of the cost of an MTS "Regional Adult Monthly/30-Day Pass" (currently \$72, which equates to a subsidy value of \$18 per month). Subsidies will be available on a per unit basis to residential tenants for a period of five years (five years after issuance of the first occupancy permit). Permittee shall provide an annual report to the City Engineer in each of the first five years demonstrating how the offer was publicized to residents and documenting the results of the program each year, including number of participants and traffic counts at the project entrance.

**MM-TRA-4 Commute Trip Reduction Program.** Prior to first occupancy, the Permittee shall develop and implement a commute trip reduction program that requires each homeowner and tenant to be provided with a one page flyer every year that provides information regarding available transit, designated bicycle routes, local bicycle groups and programs, local walking routes and programs, and rideshare programs.

**MM-TRA-5 Bicycle Micromobility Fleet.** Prior to first of occupancy, the Permittee shall provide one bicycle (up to a \$400 value) per unit to the first buyer of each unit.

Passed by the Council of The City of San Diego on JAN 09 2023, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kent Lee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JAN 09 2023.

**(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)**

AUTHENTICATED BY:

TODD GLORIA

Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

By Carrie Patterson Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- **314559**