CITY OF NATIONAL CITY CARMAX PROJECT
ENVIRONMENTAL IMPACT REPORT
(SCH #2016111035)

CANDIDATE CEQA FINDINGS OF FACT

OCTOBER 2021

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I. INTRODUCTION

A. California Environmental Quality Act

The California Environmental Quality Act (CEQA) (Pub. Res. Code §§ 21000, et seq.) and the CEQA Guidelines (14 Cal. Code Regs. §§ 15000, et seq.) promulgated thereunder, require that the environmental impacts of a project or program be examined before a project is approved. In addition, CEQA and the State CEQA Guidelines require that certain findings be made before project approval. It is the exclusive discretion of the decision-maker certifying the Environmental Impact Report (EIR) to determine the adequacy of the proposed candidate findings. It is the role of staff to independently evaluate the proposed candidate findings and to make a recommendation to the decision-maker regarding their legal adequacy. Specifically, CEQA Section 15091(a) states that no public agency shall approve or carry out a project or program for which an EIR has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out, unless such public agency makes one or more of the following findings:

(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 environmental impact report.

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

When making the findings required in CEQA Section 15091 (a)(1), the agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects, if any have been identified. These measures, if included, must be fully enforceable through permit conditions, agreements, or other measures.

The following Candidate Findings of Fact (Findings) have been submitted to the City Council of the City of National City (City Council), as the decision making body, to be approved for the above-referenced project pursuant to CEQA. Having received, reviewed, and considered the Final Environmental Impact Report for the City of National City CarMax Project (project), State Clearinghouse No. 2016111035 (Final EIR), as well as all other information

in the Record of Proceedings (as defined below) on this matter, the following Findings are hereby adopted by the City of National City (City) in its capacity as the CEQA lead agency. These Findings set forth the environmental basis for current and subsequent discretionary actions to be undertaken by the City and responsible agencies for the implementation of the program.

B. Project Background

The City prepared a Project EIR as defined in Section 15161 of the CEQA Guidelines. In accordance with CEQA, this Project EIR examines the environmental impacts of a specific development project, and focuses on the physical changes in the environment that would result from the project.

These Findings are made relative to the specific conclusions of the Final EIR prepared for the project.

C. Record of Proceedings

For purposes of CEQA and these Findings, 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;
- Comments received on the NOP;
- The Draft EIR for the project;
- All written comments submitted by agencies or members of the public during the public review comment period on the Draft EIR;
- All responses to written comments submitted by agencies or members of the public during the public review and comment period for the Draft EIR;
- The Mitigation Monitoring and Reporting Program (MMRP);
- All documents, studies, EIRs, or other materials incorporated by reference or cited to in the Draft EIR and the Final EIR;
- All supplemental documents prepared for the EIR and submitted to the City Council prior to this hearing;
- Matters of common knowledge to the City, including but not limited to federal, state, and local laws and regulations;
- Any documents expressly cited in these Findings;
- City staff report prepared for this hearing related to the proposed project and any exhibits thereto;
- Project permit conditions; and
- Any other relevant materials required to be in the record of proceedings by CEQA section 21167.6(e).

The Draft EIR and related technical studies were made available for review during the public review period on the City's website at:

https://www.nationalcityca.gov/government/community-development/planning/current-projects

D. Custodian and Location of Records

The documents and other materials which constitute the administrative record for the City's actions related to the project, as detailed above, are at the offices of the City's Planning Division, located at 1243 National City Boulevard, 1st Floor, National City, CA 91950. The Planning Division is the custodian of the administrative record for the project. Copies of these documents, which constitute the Record of Proceedings, are available upon request at the offices of the Planning Division. 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 Location

The project site is situated along the Sweetwater River channel and is bordered to the west by Interstate 805 (I-805), to the north by State Route 54 (SR-54) and Sweetwater Road, to the east by Plaza Bonita Road and Westfield Plaza Bonita Mall, and to the south by the vegetated channel of the Sweetwater River. The CarMax facility and earthen channel would be constructed on the 15.08-acre project parcel (assessor parcel number 564-471-11). The project would also make frontage improvements along Plaza Bonita Road to add a sidewalk, and would relocate an existing sewer line that traverses the project site into the centerline of Plaza Bonita Road. The project would also manually remove invasive plant species from a portion of California Department of Transportation (Caltrans) right-of-way (ROW) immediately adjacent to the southwestern project boundary, and possibly relocate transmission lines crossing the I-805 ramp during construction. Additional details regarding the environmental setting are provided in Chapter 2.0 of the Final EIR.

B. Project Description

The proposed CarMax facility and earthen channel would be constructed on the 15.08-acre project parcel (assessor's parcel number 564-471-11). On the project parcel, the project proposes to construct an approximately 18,774-square-foot CarMax facility and associated parking lot on approximately 7.19 acres. The project would also make frontage improvements along Plaza Bonita Road to add a sidewalk, and would relocate an existing sewer line that traverses the project site into the centerline of Plaza Bonita Road. Additionally, the project would recontour and redirect approximately 2,012 linear feet of the unnamed creek located on the project site by constructing an earthen channel that would traverse the northwestern boundary of the property. Due to the elevation and adjacency to the unnamed creek, development of the project parcel would require grading of the property resulting in a net import of up to approximately 166,379 cubic yards.

The project would manually remove invasive plant species from a portion of Caltrans ROW immediately adjacent to the southwestern project boundary, and possibly relocate transmission lines crossing the I-805 ramp during construction. Removal of invasive plant species from this offsite location would ensure the success of biological mitigation completed on the project site. The applicant would obtain an encroachment permit for this work within Caltrans ROW. No permanent impacts would occur within Caltrans ROW.

The project includes a General Plan Amendment, Rezone, Tentative Parcel Map, Land Use Code (LUC) Amendment, and Conditional Use Permit (CUP) to allow development of a CarMax pre-owned automobile dealership, service building, non-public carwash, a customer/employee parking lot, a sales inventory lot, a staging lot, two public access driveways, one restricted access driveway, and landscaped areas.

The proposed General Plan Amendment and Rezone would change the existing land use designation and zoning of the CarMax facility portion of the project parcel from the Major Mixed-Use designation and the Major Mixed-Use District (MXD-2) zone to the Service Commercial land use designation and zone. The proposed General Plan Amendment and Rezone would also change the existing land use designation and zoning of the earthen channel portion of the project parcel from the Major Mixed-Use designation and the MXD-2 zone to the Open Space land use designation and zone. The LUC amendment is proposed to make automobile sales an allowed use in the Service Commercial (CS) zone subject to approval of a CUP. The project includes a CUP for the proposed CarMax facility. A tentative parcel map is proposed to subdivide the project parcel into two lots so that the proposed CarMax facility and the earthen channel would be on separate parcels. Additional details regarding the project description are provided in Chapter 3.0 of the Final EIR.

C. Statement of Objectives

As described in Section 3.1 of the Final EIR, the following primary objectives are identified for the project:

- Develop an economically viable automobile sales (CarMax) facility that would create jobs and provide additional commercial opportunities for National City (City) and the San Diego region.
- Generate revenue for the City through sales tax and property tax.
- Increase commercial activity at the Westfield Plaza Bonita Mall and surrounding area by introducing a new commercial use nearby.
- Develop a project that is architecturally compatible with the surrounding properties.

The City has considered the statement of objectives sought by the project and hereby adopts these objectives as part of the project.

III. ENVIRONMENTAL REVIEW AND PUBLIC PARTICIPATION

A. Notice of Preparation

In accordance with CEQA Guidelines Section 15082, the City distributed a Notice of Preparation (NOP) of a Draft EIR to the State Clearinghouse, local and regional responsible agencies, and other interested parties. The NOP was circulated for public comment from November 14, 2016 to December 14, 2016. Comment letters received during the NOP review period are included in the Final EIR as Appendix A.

B. Public Review of Draft EIR

The Draft EIR for the project was prepared and circulated for review and comment by the public, agencies, and organizations for a public review period that began on November 6, 2020, and concluded on December 21, 2020. A Notice of Completion of the Draft EIR was sent to the State Clearinghouse and the Draft EIR was circulated to state agencies for review through the State Clearinghouse, Office of Planning and Research.

A Notice of Availability of the Draft EIR for review was mailed to organizations and parties expressing interest in the project. Comments submitted to the City during the public review of the Draft EIR have received formal responses as required by CEQA. Those responses to comments have been incorporated into the Final EIR.

C. Decision Making Process

The project will be formally heard before the City Council on November 2, 2021 when an ultimate disposition (approval/denial of the project and certification of the Final EIR) will be determined.

IV. GENERAL FINDINGS

The City hereby finds as follows:

- Pursuant to CEQA Guidelines Sections 15050 and 15051, the City is the "lead agency" for the project.
- The Draft EIR and Final EIR were prepared in compliance with CEQA, CEQA Guidelines, and any City Significance Determination Thresholds.
- The City has independently reviewed and analyzed the Draft EIR and Final EIR, and these documents reflect the independent judgment of the City.
- An MMRP has been prepared for the project, which the City has adopted or made a condition of approval of the project. That MMRP is incorporated herein by reference and is considered part of the Record of Proceedings for the project.
- The MMRP designates responsibility and anticipated timing for the implementation of mitigation measures. The City will serve as the MMRP Coordinator.

- In determining whether the project has a significant impact on the environment, and in adopting these Findings pursuant to Section 21081 of CEQA, the City has based its decision on substantial evidence and has complied with CEQA Sections 21081.5 and 21082.2 and CEQA Guidelines Section 15901(b).
- The impacts of the project have been analyzed to the extent feasible at the time of certification of the Final EIR.
- The City reviewed the comments received on the Draft EIR and the responses thereto and has determined that neither the comments received nor the responses to such comments add significant new information regarding environmental impacts associated with the project. The City has based its actions on full appraisal of all viewpoints, including all comments received up to the date of adoption of these Findings concerning the environmental impacts identified and analyzed in the Final EIR.

  The responses to comments on the Draft EIR, which are contained in the Final EIR, clarify and amplify the analysis in the Draft EIR.
- The City has made no decisions that constitute an irretrievable commitment of resources toward the project prior to certification of the Final EIR, nor has the City previously committed to a definite course of action with respect to the project.
- Copies of all the documents incorporated by reference in the Draft EIR and/or Final EIR are and have been available upon request at all times at the offices of the City, custodian of record for such documents or other materials.
- Having received, reviewed, and considered all information and documents in the record, the City hereby conditions the project and finds as stated in these Findings.

V. FINDINGS REQUIRED UNDER CEQA

CEQA Section 21002 provides that "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available that would substantially lessen the significant environmental effects of such projects[...]." The same statute states that the procedures required by CEQA "are intended to assist public agencies in systematically identifying both the significant effects of proposed projects or programs and the feasible alternatives or feasible mitigation measures that will avoid or substantially lessen such significant effects." CEQA Section 21002 goes on to state that "in the event [that] specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects."

The mandate and principles announced in CEQA Section 21002 are implemented, in part, through the requirement that agencies must adopt findings before approving projects or programs for which EIRs are required. For each significant environmental effect identified in an EIR for a proposed project or program, the approving agency must issue a written finding reaching one or more of three permissible conclusions. The first such finding is that "changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR"

(CEQA Guidelines Section 15091(a)(1)). The second permissible finding is that "such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency" (CEQA Guidelines Section 15091 (a)(2)). The third potential conclusion is that "specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the Final EIR" (CEQA Guidelines Section 15091(a)(3)). CEQA Section 21061.1 defines "feasible" to mean "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors." CEQA Guidelines Section 15364 adds another factor: "legal" considerations (see also *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 565).

The concept of "feasibility" also questions of a particular alternative or mitigation measure promotes the underlying goals and core objectives of a project (see *San Diego Citizenry Group v. County of San Diego* (2013) 219 Cal.App.4th 1, 18; see also *City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417). "[F]easibility' under CEQA encompasses 'desirability' to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, and technological factors" (Ibid).

The CEQA Guidelines do not define the difference between "avoiding" a significant environmental effect and merely "substantially lessening" such an effect. The City must therefore glean the meaning of these terms from the other contexts in which the terms are used. CEQA Section 21081, on which CEQA Guidelines Section 15091 is based, uses the term "mitigate" rather than "substantially lessen." The CEQA Guidelines therefore equate "mitigating" with "substantially lessening." Such an understanding of the statutory term is consistent with the policies underlying CEQA, which include the policy that "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects" (CEQA Section 21002).

For purposes of these Findings, the term "avoid" refers to the effectiveness of one or more mitigation measures to reduce an otherwise significant effect to a less than significant level. In contrast, the term "substantially lessen" refers to the effectiveness of such measure or measures to substantially reduce the severity of a significant effect, but not to reduce that effect to a less than significant level. These interpretations appear to be mandated by the holding in *Laurel Hills Homeowners Association v. City Council* (1978) 83 Cal.App.3d 515, 519-527, in which the Court of Appeal held that an agency had satisfied its obligation to substantially lessen or avoid significant effects by adopting numerous mitigation measures, not all of which rendered the significant impacts in question less than significant.

Although CEQA Guidelines Section 15091 requires only that approving agencies specify that a particular significant effect is "avoid[ed] or substantially lessen[ed]," these Findings, for purposes of clarity, in each case will specify whether the effect in question has been reduced to a less-than-significant level or has simply been substantially lessened but remains significant. Moreover, although CEQA Guidelines Section 15091, read literally, does not

require findings to address environmental effects that an EIR identifies as merely "potentially significant," these Findings will nevertheless fully account for all such effects identified in the Final EIR.

In short, CEQA requires that the lead agency adopt mitigation measures or alternatives, where feasible, to substantially lessen or avoid significant environmental impacts that would otherwise occur. Project modifications or alternatives are not required, however, where such changes are infeasible or where the exclusive jurisdiction and responsibility for modifying the project lies with some other agency (CEQA Guidelines, § 15091, subd. (a), (b), and (c)).

A. Legal Effects of Findings

To the extent that these Findings conclude that various design features incorporated into the program and mitigation measures outlined in the Final EIR are feasible and have not been modified, superseded, or withdrawn, the City hereby binds itself to implement these design features and mitigation measures. These Findings, therefore, constitute a binding set of obligations that will come into effect when the City formally approves the project.

VI. MITIGATION MONITORING AND REPORTING PROGRAM

As required by Public Resources Code Section 21081.6 (a)(1), the City, in adopting these Findings, also concurrently adopts an MMRP. The program is designed to ensure that during project implementation, all responsible parties comply with the feasible mitigation measures identified below. The MMRP is described in the document entitled "Mitigation Monitoring and Reporting Program," included as Chapter 10 of the Final EIR. The City will use the MMRP to track compliance with required mitigation measures. The MMRP will be available for the public to review by request during the mitigation compliance period, which is an ongoing following program approval and through buildout of future projects implemented under the conditions of the program.

The MMRP will serve the dual purpose of verifying completion of the mitigation measures for the program and generating information on the effectiveness of the mitigation measures to guide future decisions.

VII. SUMMARY OF IMPACTS

The Final EIR contains an environmental analysis of the potential impacts associated with project implementation. The Final EIR concludes that the project would have **no significant impacts and require no mitigation measures** associated with the following issue areas:

- Aesthetics (Issue 1-Scenic Vistas, 2-Scenic Resources, Issue 3-Visual Character or Quality, and Issue 4-Light or Glare)
- Air Quality (Issue 1-Air Quality Plan Implementation, Issue 2- Criteria Pollutants, Issue 3-Sensitive Receptors and Issue 4-Odors)
- Biological Resources (Issue 4-Wildlife Corridors, Issue 5-Local Ordinances, and Issue 6-Habitat Conservation Plans)

- Cultural and Tribal Cultural Resources (Issue 1-Historic Resources and Issue 3-Human Remains)
- Energy (Issue 1- Energy Resources and Issue 2-Conflicts with Plans or Policies)
- Geology and Soils (Issue 1- Seismic Hazards, Issue 2-Erosion or Loss of Topsoil, Issue 3-Soil Stability, Issue 4-Expansive Soils, and Issue 5-Septic Systems)
- Greenhouse Gas (Issue 1-GHG Emissions, Issue 2-Consistency with Plans, Policies, and Regulations)
- Hazards (Issues 1 and 2-Hazardous Materials Use, Issue 3-Hazards Within One-Quarter Mile of a School, Issue 4-Hazardous Materials Sites, Issue 5-Airport Hazards, Issue 6-Emergency Response Plans, and Issue 7-Wildland Fires)
- Hydrology and Water Quality (Issue 1-Water Quality Standards, Issue 2-Groundwater Supplies, Issue 3-Drainage Patterns, Issue 4-Flood Hazards, and Issue 5-Water Quality Control Plan and Groundwater Management Plan)
- Land Use (Issue 1-Physically Divide an Established Community and Issue 2-Conflicts with Applicable Plans and Zoning)
- Noise (Issue 1-Ambient Noise and Issue 2-Ground Borne Vibration)
- Public Services and Recreation (Issues 1 and 2-Public Services and Recreation)
- Transportation (Issue 1- Circulation System, Issue 2-VMT Analysis, Issue 3- Hazards Due to a Design Feature, and Issue 4-Emergency Access)
- Utilities and Service Systems (Issues 1, 2, and 3-Utilities and Issues 4 and 5-Solid Waste)
- Wildfire (Issue 1-Emergency Response Plans, Issue 2-Pollutants from Wildfire, Issue 3-Infrastructure, and Issue 4-Flooding or Landslides)

The Final EIR concludes that implementation of the project would result in **significant direct impacts that would be mitigated to less than significant levels** with respect to the following issue areas:

- Biological Resources (Issue 1-Sensitive Species, Issue 2-Sensitive Riparian Habitats, and Issue 3-Jurisdictional Wetlands and Waters) (Direct and Cumulative)
- Cultural and Tribal Resources (Issue 2-Archeological Resources and Issue 4-Tribal Cultural Resources) (Direct and Cumulative)
- Paleontological Resources (Issue 1-Paleontological Resources) (Direct and Cumulative)

The Final EIR concludes that implementation of the project would not result in any **significant and unavoidable impacts**.

VIII. FINDINGS RELATED TO LESS THAN SIGNIFICANT IMPACTS

The City finds the characterization of impacts in the Final EIR with respect to issue areas identified as less than significant have been described accurately and would result in less than significant impacts as so described in the Final EIR. This finding applies to the impacts evaluated in the Final EIR and determined to be less than significant, as stated under VII, Summary of Impacts, and listed below:

- Aesthetics (Issue 1-Scenic Vistas, 2-Scenic Resources, Issue 3-Visual Character or Quality, and Issue 4-Light or Glare)
- Air Quality (Issue 1-Air Quality Plan Implementation, Issue 2- Criteria Pollutants, Issue 3-Sensitive Receptors and Issue 4-Odors)
- Biological Resources (Issue 4-Wildlife Corridors, Issue 5-Local Ordinances, and Issue 6-Habitat Conservation Plans)
- Cultural and Tribal Cultural Resources (Issue 1-Historic Resources and Issue 3-Human Remains)
- Energy (Issue 1- Energy Resources and Issue 2-Conflicts with Plans or Policies)
- Geology and Soils (Issue 1- Seismic Hazards, Issue 2-Erosion or Loss of Topsoil, Issue 3-Soil Stability, Issue 4-Expansive Soils, and Issue 5-Septic Systems)
- Greenhouse Gas (Issue 1-GHG Emissions, Issue 2-Consistency with Plans, Policies, and Regulations)
- Hazards (Issues 1 and 2-Hazardous Materials Use, Issue 3-Hazards Within One-Quarter Mile of a School, Issue 4-Hazardous Materials Sites, Issue 5-Airport Hazards, Issue 6-Emergency Response Plans, and Issue 7-Wildland Fires)
- Hydrology and Water Quality (Issue 1-Water Quality Standards, Issue 2-Groundwater Supplies, Issue 3-Drainage Patterns, Issue 4-Flood Hazards, and Issue 5-Water Quality Control Plan and Groundwater Management Plan)
- Land Use (Issue 1-Physically Divide an Established Community and Issue 2-Conflicts with Applicable Plans and Zoning)
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- Utilities and Service Systems (Issues 1, 2, and 3-Utilities and Issues 4 and 5-Solid Waste)
- Wildfire (Issue 1-Emergency Response Plans, Issue 2-Pollutants from Wildfire, Issue 3-Infrastructure, and Issue 4-Flooding or Landslides)

IX. SIGNIFICANT EFFECTS AND MITIGATION MEASURES

A. Impacts Mitigated to Less than Significant Levels: Findings Pursuant to CEQA Guidelines Section 15091(a)(1)

1. Biological Resources

Significance Determinations Threshold 1: Sensitive Species

Pursuant to Issue 1, a significant impact would occur if the project would result in a substantial adverse impact, either directly or through habitat modifications, to any species identified as a candidate, sensitive, or special status species in local or regional plans, policies or regulations, or by the California Department of Fish and Wildlife (CDFW) or U.S. Fish and Wildlife Service (USFWS).

Impact BIO-1

As described in Section 4.3.3 of the Final EIR, the project would impact 1.39 acres of riparian woodland habitat that may function as suitable habitat for least Bell's vireo (LBV), coastal California gnatcatcher (CAGN), and southwestern willow flycatcher (SWFL). Additionally, this riparian woodland habitat is located near the cattail marsh habitat where light-footed Ridgway's rail was observed. Protocol surveys of the area were conducted in 2015; no SWFL, LBV or CAGN were observed. Protocol level surveys were conducted for light-footed Ridgway's rail in 2017; the species was documented adjacent to the project site within the cattail marsh patch by the existing bike path adjacent to the Sweetwater River. Although none of these species were observed within the project site, there is a possibility that sensitive species are supported by the on-site habitat (see Impact BIO-2); therefore, the loss of 1.39 acres of riparian woodland habitat is a significant impact.

Mitigation

Impacts to sensitive species due to habitat loss would be mitigated through restoration and revegetation of native habitat within the project site as detailed in MM-BIO-1:

MM-BIO-1 Habitat Restoration and Habitat Mitigation and Monitoring Plan

Impacts to wildlife species and sensitive habitats would be mitigated through restoration and revegetation of native habitat within the channel area of the project site. The following habitats and acreages would be created:

- 1.24 acres of arroyo willow thickets habitat
- 2.36 acres of cattail marshes
- 0.38 acre of mule-fat thickets
- 1.16 acres of San Diego sunflower scrub/coastal sage scrub

All non-native habitat within the channel area would be revegetated with native plant species. Because the channel area currently supports non-native and disturbed vegetation, there would be a net gain of 2.09 acres of native habitat following habitat restoration. In

order to ensure successful revegetation/creation of self-sustaining riparian and upland habitats, a Habitat Mitigation and Monitoring Plan shall be prepared to ensure the ecological functions and values of the impacted habitats are restored. The Habitat Mitigation and Monitoring Plan shall include:

- Sufficient restoration or creation of habitat to fulfill the mitigation obligations.
- The planting plan shall be designed to ensure that the appropriate restored/created habitat is suitable for the coastal California gnatcatcher and least Bell's vireo, and allows for wildlife movement (e.g., appropriate width and vegetative cover).
- The planting design shall also include adequate wetland buffers as determined in consultation with the agencies.
- A native planting palette appropriate for each vegetation type being mitigated and appropriate to local conditions. No non-native plant species shall be planted in the project site.
- Irrigation for upland and wetland habitat types for the first two to three years following installation. Irrigation is to be removed during the final two years of restoration to ensure that the habitat is self-sustaining.
- A 120-day plant establishment period plus five-year restoration maintenance period (or until success criteria are met).
- Qualitative and quantitative monitoring methods to ensure that success criteria are met.
- Five-year maintenance methods.
- Success criteria for establishment period and years 1–5.
- Responsibilities and qualifications of restoration and maintenance contractor(s) and restoration ecologist.

Finding

Pursuant to State CEQA Guidelines Section 15091(a)(1), changes or alterations are required in, or incorporated into, the project that will substantially lessen or avoid the significant effect as identified in the Final EIR to a level less than significant. Specifically, mitigation measure MM-BIO-1 is feasible and shall be required to be implemented.

Rationale

Implementation of MM-BIO-1 would reduce significant direct and cumulative impacts to sensitive species due to habitat loss to a level less than significant. This mitigation measure would require the restoration and revegetation of sensitive habitats at ratios approved by the wildlife agencies to represent adequate values to ensure viable regrowth of the lost acreages. The mitigation measure also requires the preparation of a Habitat Mitigation and Monitoring Plan to ensure the restored habitat supports its ecological functions into the future. Because implementation of the mitigation measure would ensure that values of the impacted habitats are restored, impacts would be reduced to a level less than significant.

Impact BIO-2

As described in Section 4.3.3 of the Final EIR, the project may impact the nesting success of tree-nesting raptors and nesting birds protected by the federal Migratory Bird Treaty Act and the California Fish and Game Code (Section 3500 et seq.) if grading, vegetation clearing, and/or noise generating activities such as construction are conducted during the breeding season for these taxa (February 15–August 31). Specifically, construction activities could result in removal of active nests of tree-nesting birds or raptors or disruption in breeding success resulting in the disturbance of breeding behaviors. This would be considered a significant impact.

Mitigation

Impacts to raptors and nesting birds protected by the federal Migratory Bird Treaty Act and the California Fish and Game Code would be mitigated through implementation of MM-BIO-2 and MM-BIO-3:

MM-BIO-2 Protocol and Pre-construction Surveys

To avoid and minimize impacts to nesting birds and raptors, vegetation removal and grading shall occur outside of the nesting bird season (February 1 through August 31). If the breeding season cannot be avoided, the following measures shall be implemented in coordination with the CDFW and USFWS:

1. Updated protocol-level surveys for light-footed Ridgway's rail, southwestern willow flycatcher, coastal California gnatcatcher, and least Bell's vireo commenced in spring 2021 to determine the presence or absence of these species. If any of these species are determined to be present, additional avoidance and minimization measures would be implemented consistent with bullets 2 and 3 below and in consultation with the USFWS during the Section 7 permitting process, as well as with CDFW, if state-listed species are present and the breeding season cannot be avoided. Impacts on occupied habitat for listed species (e.g., coastal California gnatcatcher, least Bell's vireo and/or Ridgway's rail) will be mitigated through the Federal Endangered Species Act and/or California Endangered Species Act permitting process (e.g., Section 7, Section 2081) and implementation of all required permit conditions and conservation measures therein.

2. During the avian breeding season, a qualified Project Biologist shall conduct a preconstruction avian nesting survey no more than 3 days prior to vegetation disturbance or site clearing. If there is a break of 5 days or more in construction activities during the breeding season, a new nesting bird survey shall be conducted before these activities begin again.

3. The preconstruction survey shall cover all reasonably potential nesting locations on and within 300 feet of the proposed construction activities areas, including off-site areas. If an active nest is found during the preconstruction avian nesting survey, a qualified Project Biologist shall implement a 300-foot minimum avoidance buffer for

light-footed Ridgway's rail, southwestern willow flycatcher, coastal California gnatcatcher, least Bell's vireo, and other passerine birds, and a 500-foot minimum avoidance buffer for all raptor species. The nest site area shall not be disturbed until the nest becomes inactive or the young have fledged. Final avoidance buffers required during construction, pre-construction surveys, as well as avoidance and minimization measures specific to this species, will be set in coordination with USFWS and/or CDFW.

MM-BIO-3 Construction Activities Oversight

A qualified Biologist shall be responsible for monitoring the limits of construction activity, mitigation measures, design considerations, and project conditions during all phases of the project. The Project Biologist shall conduct the following:

1. Attend the preconstruction meeting with the contractor and other key construction personnel prior to clearing, grubbing, or grading.

2. Conduct worker training prior to all phases of construction; this shall include meetings with the contractor and other key construction personnel to explain the importance of restricting work to designated areas prior to clearing, grubbing, or grading. Discussions shall include procedures for minimizing harm to or harassment of wildlife encountered during construction activities prior to clearing, grubbing, and/or grading.

3. Conduct pre-construction clearance surveys to detect the presence of nesting birds and sensitive terrestrial wildlife species, such as coast horned lizard, orange-throated whiptail, and two-striped garter snake.

4. Be present on-site to monitor initial vegetation clearing, grubbing, and grading to ensure that mitigation measures are being appropriately followed.

5. Periodically monitor the limits of construction as needed to ensure that the construction boundaries are marked and not breached.

6. Prepare a post-construction monitoring report for submittal to the City. The report shall substantiate the supervision of the clearing, grubbing, and/or grading activities, and shall provide a final assessment of biological impacts.

Finding

Pursuant to State CEQA Guidelines Section 15091(a)(1), changes or alterations are required in, or incorporated into, the project that will substantially lessen or avoid the significant effect as identified in the Final EIR to a level less than significant. Specifically, mitigation measures MM-BIO-2 and MM-BIO-3 are feasible and shall be required to be implemented.

Rationale

Implementation of MM-BIO-2 and MM-BIO-3 would reduce significant direct and cumulative impacts to raptors and nesting birds protected by the federal Migratory Bird Treaty Act and the California Fish and Game Code to a level less than significant. These mitigation measures would require surveys to identify whether raptors and nesting birds are on-site and ensure implementation of appropriate measures to protect these species should they be discovered. MM-BIO-2 would also require implementation of a 300-foot minimum avoidance buffer for light-footed Ridgway's rail, SWFL, CAGN, LBV, and other passerine birds, and a 500-foot minimum avoidance buffer for all raptor species. The nest site area shall not be disturbed until the nest becomes inactive or the young have fledged. MM-BIO-3 includes monitoring of initial vegetation clearing, grubbing, and grading to ensure that mitigation measures are being appropriately followed, and periodically monitoring the limits of construction as needed to ensure that the construction boundaries are marked and not breached. Because implementation of these mitigation measures would ensure that raptors and nesting birds are protected, impacts would be reduced to a level less than significant.

Impact BIO-3

As described in Section 4.3.3 of the Final EIR, project construction may impact roosting bats that may occur within palms or other trees within the development footprint if vegetation removal activities occurred during bat roosting season, which is generally between March 1 and October 14. Specifically, construction activities could cause a disruption of maternal roosting behavior and/or mortality of immature bats resulting in a significant impact.

Mitigation

Impacts to roosting bats would be mitigated through implementation of MM-BIO-4:

MM-BIO-4 Bat Avoidance Measures

To avoid the bat maternity season, impacts on individual colonial bats using trees for temporary roosts, and obligate tree bats, tree removal shall occur between October 15 and March 1, unless a focused survey is conducted within 30 days of vegetation removal activities by a qualified bat biologist. The survey shall consist of a daytime pedestrian survey to inspect for indications of bat use (e.g., occupancy, guano, staining, smells, or sounds) and a night roost/emergence survey. If the bat biologist determines that project areas are currently used or are likely to be used as a bat maternity roost, and tree removal activities must occur between October 15 and March 1, a two-stage tree removal process over two consecutive days shall be implemented for trees that may support colonial roosts (i.e., trees with cavities, crevices, or exfoliating bark):

Step 1: Small branches and small limbs containing no cavity, crevice, or exfoliating bark are removed with chainsaws under field supervision by a qualified bat biologist; and

Step 2: The remainder of the tree is to be removed the following day. The disturbance caused by chainsaw noise and vibration, coupled with the physical alteration, has the effect of causing colonial bat species to abandon the roost tree after nightly emergence for

foraging. Removing the tree the next day prevents re-habituation and re-occupation of the altered tree.

If these procedures are followed and it is determined that construction activities or site development still may cause roost abandonment, vegetation removal activities shall cease and not commence until roost sites have been replaced. To replace tree roosts, elevated bat houses shall be installed outside of, but near, the construction area. Placement and height will be determined by a qualified wildlife biologist, but the bat house would be at least 15 feet high. The number of bat houses required will depend on the size and number of colonies found, but at least one bat house will be installed for each pair of bats (if occurring individually), or of sufficient size and number to accommodate each colony of bats to be relocated.

Finding

Pursuant to State CEQA Guidelines Section 15091(a)(1), changes or alterations are required in, or incorporated into, the project that will substantially lessen or avoid the significant effect as identified in the Final EIR to a level less than significant. Specifically, mitigation measure MM-BIO-4 is feasible and shall be required to be implemented.

Rationale

Implementation of MM-BIO-4 would reduce significant direct and cumulative impacts to roosting bats to a level less than significant. This mitigation measure would require tree removal to occur between October 15 and March 1, unless a focused survey is conducted within 30 days of vegetation removal activities by a qualified bat biologist. If roosting bats are discovered, the mitigation measure includes a two-step process to avoid impacts to roosting bats. If these procedures are followed and it is determined that construction activities or site development still may cause roost abandonment, vegetation removal activities shall cease and not commence until roost sites have been replaced per specific guidelines. Because implementation of this mitigation measure would ensure that roosting bats are protected, impacts would be reduced to a level less than significant.

Impact BIO-4

As described in Section 4.3.3 of the Final EIR, potential increased exposure of vegetation communities to non-native exotic plant species could impact special status wildlife species who rely on these vegetation communities as habitat resulting in a significant impact.

Mitigation

Impacts associated with increased exposure of vegetation communities to non-native exotic plant species would be mitigated through implementation of MM-BIO-1 described above.

Finding

Pursuant to State CEQA Guidelines Section 15091(a)(1), changes or alterations are required in, or incorporated into, the project that will substantially lessen or avoid the significant

effect as identified in the Final EIR to a level less than significant. Specifically, mitigation measure MM-BIO-1 is feasible and shall be required to be implemented.

Rationale

Implementation of MM-BIO-1 would reduce significant direct and cumulative impacts associated with increased exposure of vegetation communities to non-native exotic plant species to a level less than significant. This mitigation measure would require the onsite restoration and revegetation of sensitive habitats at ratios approved by the wildlife agencies to represent adequate values to ensure viable regrowth of the lost acreages. The restoration and revegetation activities would include targeting the removal of invasive non-native species within the entire parcel as well as a requirement to utilize native planting palette appropriate for each vegetation type. Additionally, the required five-year restoration maintenance period (or until success criteria are met) would include measures to prevent the spread of invasives by actively removing them. Furthermore, the success criteria for the establishment period and subsequent five-year restoration maintenance period would include measures to ensure invasives are kept at a low percentage. Once the five-year restoration maintenance period is over, the restoration and revegetation areas would transition into long-term management and would continue to be maintained in perpetuity, thereby further preventing the spread of invasives. Because implementation of this mitigation measure would include measures to prevent the spread of invasives, impacts would be reduced to a level less than significant.

Impact BIO-5

As described in Section 4.3.3 of the Final EIR, potential increased exposure of vegetation communities to invasive shot hole borer (ISBH) could impact special status wildlife species who rely on these vegetation communities as habitat resulting in a significant impact.

Mitigation

Impacts associated with increased exposure of vegetation communities to ISBH would be mitigated through implementation of MM-BIO-5:

MM-BIO-5 Invasive Shot Hole Borer Avoidance Measure

The Project Proponent and/or City shall implement the following measures to reduce the potential for spreading ISHBs because of project activities:

1. A qualified Biologist shall be responsible for monitoring for signs of infestation from ISHBs on-site, within 500 feet of the project site, and within restoration materials used for restoration activities.

2. The Biologist shall conduct an environmental awareness training prior to vegetation clearing and prior to the commencement of restoration activities for on-site workers regarding ISHB and its spread.

3. Signs of ISHB infestation shall be reported to CDFW and University of Riverside's Eskalen Lab (eskalenlab.ucr.edu); this includes sugary exudate ("weeping") on trunks or branches and ISHB entry/exit-holes (about the size of the tip of a ballpoint pen).

4. If signs of ISHB infestation are noted on-site, additional best management practices shall be required, including but not limited to:

    - Equipment disinfection.
    - Pruning in infested areas where project activities may occur.
    - Avoidance and minimization of transport of potential host tree materials.
    - Chipping potential host materials to less than 1 inch prior to delivering to a landfill.
    - Chipping potential host materials to less than 1 inch prior to composting on-site.
    - Solarization of cut logs and/or burning of potential host tree materials.

Finding

Pursuant to State CEQA Guidelines Section 15091(a)(1), changes or alterations are required in, or incorporated into, the project that will substantially lessen or avoid the significant effect as identified in the Final EIR to a level less than significant. Specifically, mitigation measure MM-BIO-5 is feasible and shall be required to be implemented.

Rationale

Implementation of MM-BIO-5 would reduce significant direct and cumulative impacts associated with increased exposure of vegetation communities to ISBH to a level less than significant. This mitigation measure would include measures to prevent the spread of ISBH such as monitoring for signs of infestation from ISHBs on-site and conducting an environmental awareness training prior to vegetation clearing and prior to the commencement of restoration activities for on-site workers regarding ISHB and its spread. If signs of ISHB infestation are noted on-site, additional best management practices shall be required to prevent their spread. Because implementation of this mitigation measure would include measures to prevent the spread of ISHB, impacts would be reduced to a level less than significant.

Significance Determinations Threshold 2: Sensitive Riparian Habitats

Pursuant to Issue 2, a significant impact would occur if the project would result in a substantial adverse impact on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the CDFW or USFWS.

Impact BIO-6

As described in Section 4.3.4 of the Final EIR, project grading, clearing, and other construction-related activities would result in temporary and permanent removal of sensitive riparian habitats that would consist of 0.73 acre of arroyo willow thickets, 0.07 acre of cattail marsh, 0.02 acre of coyote brush scrub, 0.07 acre of mule fat thickets, 0.07 acre of San Diego sunflower scrub, and 0.08 acre of sycamore trees. Impacts to these sensitive habitats would be significant.

Mitigation

Impacts to sensitive riparian habitats would be mitigated through implementation of MM-BIO-1 and MM-BIO-3 described above.

Finding

Pursuant to State CEQA Guidelines Section 15091(a)(1), changes or alterations are required in, or incorporated into, the project that will substantially lessen or avoid the significant effect as identified in the Final EIR to a level less than significant. Specifically, mitigation measures MM-BIO-1 and MM-BIO-3 are feasible and shall be required to be implemented.

Rationale

Implementation of MM-BIO-1 and MM-BIO-3 would reduce significant direct and cumulative impacts to sensitive riparian habitats to a level less than significant. MM-BIO-1 would require the restoration and revegetation of sensitive habitats at ratios approved by the wildlife agencies to represent adequate values to ensure viable regrowth of the lost acreages. The mitigation measure also requires the preparation of a Habitat Mitigation and Monitoring Plan to ensure the restored habitat supports its ecological functions into the future. MM-BIO-3 includes measures to monitor initial vegetation clearing, grubbing, and grading and periodically monitor the limits of construction as needed to ensure that the construction boundaries are not breached in order to avoid unnecessary impacts to sensitive riparian habitats. Because implementation of the mitigation measure would ensure that values of the impacted riparian habitats are restored, impacts would be reduced to a level less than significant.

Significance Determinations Threshold 3: Jurisdictional Wetlands and Waters

Pursuant to Issue 3, a significant impact would result in a substantial adverse impact on federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means.

Impact BIO-7

As described in Section 4.3.5 of the Final EIR, the project would impact 1.23 acres of USACE/RWQCB non-wetland waters, 1.68 acres of waters of the State under RWQCB jurisdiction, and 2.49 acres of CDFW jurisdictional waters. Impacts to jurisdictional wetlands and waters would be significant.

Mitigation

Impacts to jurisdictional wetlands and waters would be mitigated through implementation of MM-BIO-6:

MM-BIO-6 Compensatory Mitigation for Jurisdictional Waters

Impacts to jurisdictional wetlands and waters shall be mitigated on-site by constructing a 4.39-acre earthen channel traversing the northwestern boundary of the project site and connecting to the existing storm drain that outlets to the Sweetwater River. This earthen

channel shall recontour and redirect approximately 2,012 linear feet of the unnamed creek, preserve the existing drainage pattern and jurisdictional wetlands and waters resources where feasible, and mitigate temporary and permanent impacts through compensatory mitigation.

Direct impacts on jurisdictional wetlands and waters shall be mitigated through implementation of the Habitat Mitigation and Monitoring Plan described in MM-BIO-1, resulting in habitat creation and restoration of higher quality than the habitat that is being impacted. Up to 0.49 acre of waters of the U.S. and an additional 0.60 acre of waters of the State is proposed for rehabilitation. Additionally, a total of 1.22 acres of CDFW jurisdictional waters is also proposed for rehabilitation. Restoration credits are proposed for the remainder of the restored channel. Up to 4.04 acres of waters of the U.S. and State and up to 4.72 acres of CDFW jurisdictional waters will be re-established. On-site mitigation would be protected in-perpetuity, recording a land protection mechanism over the site. On-site mitigation would enter into long-term management once five-year success criteria are met. CarMax would be responsible for funding the long-term management through the funding of a non-wasting endowment.

In addition to the on-site restoration activities, a minimum of 0.78 acre of offsite mitigation in the form of waters of the U.S and State restoration credits would also be purchased at an Approved Mitigation Bank. Final offsite mitigation requirements will be determined through the approval process with the resource agencies.

Finding

Pursuant to State CEQA Guidelines Section 15091(a)(1), changes or alterations are required in, or incorporated into, the project that will substantially lessen or avoid the significant effect as identified in the Final EIR to a level less than significant. Specifically, mitigation measure MM-BIO-6 is feasible and shall be required to be implemented.

Rationale

Implementation of MM-BIO-6 would reduce significant direct and cumulative impacts to jurisdictional wetlands and waters to a level less than significant. This mitigation measure would require that direct impacts on jurisdictional wetlands and waters shall be mitigated through implementation of the Habitat Mitigation and Monitoring Plan described in MM-BIO-1, resulting in habitat creation and restoration of higher quality than the habitat that is being impacted. On-site mitigation would be protected in-perpetuity and enter into long-term management once five-year success criteria are met. CarMax would be responsible for funding the long-term management through the funding of a non-wasting endowment. In addition to the on-site restoration activities, a minimum of 0.78 acre of offsite mitigation in the form of waters of the U.S and State restoration credits would also be purchased at an Approved Mitigation Bank. Because implementation of the mitigation measure would ensure that values of the impacted jurisdictional wetlands and waters are restored, impacts would be reduced to a level less than significant.

2. Cultural and Tribal Cultural Resources

Significance Determinations Threshold 2: Archaeological Resources

Pursuant to Issue 2, a significant impact would occur if the project would cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5.

Significance Determinations Threshold 4: Tribal Cultural Resources

Pursuant to Issue 4, a significant impact would occur if the project would cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:

a) Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k), or

b) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American.

Impact CUL-1

As described in Section 4.4.4 of the Final EIR, the earth work activities within the project site could unearth unknown archaeological resources and tribal cultural resources during construction. Impacts to unknown resources would be significant.

Mitigation

Impacts to archaeological resources and tribal cultural resources would be mitigated through implementation of MM-CUL-1:

MM-CUL-1 Archaeological Monitoring

An archaeological resources monitoring program shall be implemented, which shall include the following:

1. Prior to issuance of a grading permit, the applicant shall provide written verification to the City that a qualified archaeologist has been retained to implement the monitoring program. This verification shall be presented in a letter from the project archaeologist to the City. The City, prior to any preconstruction meeting, shall approve all persons involved in the monitoring program.

2. The qualified archaeologist and a Native American representative shall attend the pre-grading meeting with the grading contractors to explain and coordinate the requirements of the monitoring program.
3. During the original cutting of previously undisturbed deposits, the archaeological monitor(s), including a Native American monitor, shall be on-site full time to perform inspections of the excavations. The frequency of inspections will depend upon the rate of excavation, the materials excavated, and any discoveries of prehistoric artifacts and features.
4. Isolates and clearly non-significant deposits will be minimally documented in the field so the monitored grading can proceed.
5. In the event that previously unidentified cultural resources are discovered, the archaeologist shall have the authority to divert or temporarily halt ground disturbance operation in the area of discovery to allow for the evaluation of potentially significant cultural resources. The archaeologist shall contact the City project manager at the time of discovery. The archaeologist, in consultation with the project manager for the lead agency, shall determine the significance of the discovered resources. The lead agency must concur with the evaluation before construction activities will be allowed to resume in the affected area. For significant cultural resources, a Research Design and Data Recovery Program to mitigate impacts shall be prepared by the consulting archaeologist and approved by the lead agency, then carried out using professional archaeological methods.
6. Before construction activities are allowed to resume in the affected area, the artifacts shall be recovered and features recorded using professional archaeological methods. The archaeological monitor(s) shall determine the amount of material to be recovered for an adequate artifact sample for analysis.
7. All cultural material collected during the grading monitoring program shall be processed and curated according to the current professional repository standards. The collections and associated records shall be transferred, including title, to an appropriate curation facility within San Diego County, to be accompanied by payment of the fees necessary for permanent curation.
8. A report documenting the field and analysis results and interpreting the artifact and research data within the research context shall be completed and submitted to the satisfaction of the lead agency prior to the issuance of any building permits. The report will include Department of Parks and Recreation (DPR) Primary and Archaeological Site Forms.
9. In the event of the discovery or recognition of any human remains, protocols and procedures noted in the Public Resources Code Section 5097.98, the California Government Code Section 27491, the Health and Safety Code Section 7050.5, and the County of San Diego Historical Resources Guidelines for the treatment of human remains encountered at archaeological sites will be followed, as summarized below:
    a. There shall be no further excavation or disturbance of the burial location and a reasonable distance around the burial until:

i. A City official is contacted;

ii. The coroner is contacted to determine that no investigation of the cause of death is required; and

iii. If the coroner determines the remains are Native American, the coroner shall contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC shall identify the person or persons it believes to be the most likely descendant (MLD) from the deceased Native American. The MLD may make recommendations to the landowner or the City regarding the excavation work.

b. Native American human remains and associated funerary items that are removed from the project area of potential effect may be reburied at a location mutually agreed upon by the City, the project applicant/developer, and the MLD. If reinternment of human remains cannot be accomplished at the time of discovery, the MLD shall either take temporary possession of the remains or identify a location for the temporary, but secure, storage of the remains.

c. For the purposes of this document, human remains are defined as:

i. Cremations including the soil surrounding the deposit;
ii. Interments including the soil surrounding the deposit; or
iii. Associated funerary items.

Finding

Pursuant to State CEQA Guidelines Section 15091(a)(1), changes or alterations are required in, or incorporated into, the project that will substantially lessen or avoid the significant effect as identified in the Final EIR to a level less than significant. Specifically, mitigation measure MM-CUL-1 is feasible and shall be required to be implemented.

Rationale

Implementation of MM-CUL-1 would reduce significant direct and cumulative impacts to archaeological resources and tribal cultural resources to a level less than significant. This mitigation measure would require implementation of specific monitoring actions prior to the start of construction, during construction, and upon completion of construction. Implementation of the mitigation measure would ensure that should archaeological resources or tribal cultural resources be discovered, steps are taken to preserve, document, and record such resources. Because implementation of the mitigation measure would preserve archaeological resources and tribal cultural resources that may be unearthed during construction, impacts would be reduced to a level less than significant.

3. Paleontological Resources

Significance Determinations Threshold 1: Paleontological Resources

Pursuant to Issue 1, a significant impact would occur if the project would directly or indirectly destroy a unique paleontological resource or site or unique geologic feature.

Impact PAL-1

As described in Section 4.12.3 of the Final EIR, project excavation and grading within portions of the project site assigned a high paleontological resource sensitivity could destroy undiscovered paleontological resources. Impacts to unknown resources would be significant.

Mitigation

Impacts to paleontological resources would be mitigated through implementation of MM-PAL-1.

PAL-1: Paleontological Monitoring

1. Monitoring Plan

   Prior to any grading on any portion of the project site, a qualified paleontologist shall be retained by the City to prepare a Monitoring Plan. A qualified paleontologist is an individual with an MS or PhD in paleontology or geology who is familiar with paleontological procedures and techniques. No grading permits shall be issued until the monitoring plan has been approved by the Planning Director.

2. Pre-Grading Conference and Paleontological Monitor

   a. A qualified paleontological monitor shall be present at a pre-grading conference with the developer, grading contractor, and the environmental review coordinator. The purpose of this meeting will be to consult and coordinate the role of the paleontologist in the grading of the site. A qualified paleontologist is an individual with adequate knowledge and experience with fossilized remains likely to be present to identify them in the field and is adequately experienced to remove the resources for further study.

   b. A paleontologist or designate shall be present during those relative phases of grading as determined at the pre-grading conference. The monitor shall have the authority to temporarily direct, divert or halt grading to allow recovery of fossil remains. At the discretion of the monitor, recovery may include washing and picking of soil samples for micro-vertebrate bone and teeth. The developer shall authorize the deposit of any resources found on the project site in an institution staffed by qualified paleontologists as may be determined by the Planning Director. The contractor shall be aware of the random nature of fossil occurrences and the possibility of a discovery of remains of such scientific and/or educational importance which might warrant a long-term salvage operation or preservation. Any conflicts regarding the role of the paleontologist and/or recovery times shall be resolved by the Planning Director.

3. Fossil Recovery and Curation

   a. If fossils are discovered, the paleontologist (or paleontological monitor) shall recover them. In most cases, this fossil salvage can be completed in a short period of time. However, some fossil specimens (such as complete large mammal skeleton) may require an extended salvage period. In these instances the paleontologist (or paleontological monitor) shall be allowed to temporarily direct, divert, or halt grading to allow recovery of fossil remains in a timely manner. Because of the potential for the recovery of small fossil remains, such as isolated mammal teeth, it may be necessary in certain instances, to set up a screen-washing operation on the site.

   b. Fossil remains collected during the monitoring and salvage portion of the mitigation program shall be cleaned, repaired, sorted, and cataloged.

   c. Prepared fossils, along with copies of all pertinent field notes, photos, and maps, shall either be deposited (as a donation) in a scientific institution with permanent paleontological collections such as the San Diego Natural History Museum or retained by the City and displayed to the public at an appropriate location such as a library or City Hall.

4. Monitoring Report

   Prior to occupancy of any buildings a paleontological monitoring report shall be submitted to the Planning Director. This report shall describe all the materials recovered and provide a tabulation of the number of hours spent by paleontological monitors on the site.

Finding

Pursuant to State CEQA Guidelines Section 15091(a)(1), changes or alterations are required in, or incorporated into, the project that will substantially lessen or avoid the significant effect as identified in the Final EIR to a level less than significant. Specifically, mitigation measure MM-PAL-1 is feasible and shall be required to be implemented.

Rationale

Implementation of MM-PAL-1 would reduce significant direct and cumulative impacts to paleontological resources to a level less than significant. This mitigation measure would require implementation of specific monitoring actions prior to start of construction, during construction, and upon completion of construction. Implementation of the mitigation measure would ensure that should paleontological resources be discovered, steps are taken to preserve, document, and record such resources. Because implementation of the mitigation measure would preserve paleontological resources that may be unearthed during construction, impacts would be reduced to a level less than significant.

B. Impacts that can only be Mitigated to Less than Significant Levels by Another Jurisdiction: Findings Pursuant to CEQA Guidelines Section 15091(a)(2)

No impacts that could only be mitigated to less than significant through the actions of another jurisdiction or public agency were identified in the Final EIR.

C. Impacts that would remain Significant and Unavoidable Findings Pursuant to CEQA Guidelines Section 15091(a)(3)

No impacts in which specific economic, legal, social, technological, or other considerations, which would make mitigation infeasible were identified in the Final EIR.

X. 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."

The objectives of the project are presented above.

The City Council must consider the feasibility of any alternatives to the project, evaluating whether these alternatives could avoid or substantially lessen significant environmental effects while achieving most of the objectives of the program. The Final EIR includes an analysis of two alternative program scenarios: No Project/No Development Alternative and the Reduced Development Alternative.

The No Project/No Development Alternative would avoid the project's significant impacts requiring mitigation associated with biological resources, cultural and tribal cultural resources, and paleontological resources. While adoption of the No Project/No Development Alternative would maintain the existing undeveloped condition of the site and avoid impacts associated with the project, none of the project objectives would be attained. Therefore, this alternative is rejected as infeasible because it fails to meet any of the project objectives.

Impacts associated with the Reduced Development Alternative associated with biological, cultural and tribal cultural resources, and paleontological resources would still occur under this alternative, but would be slightly reduced due to the smaller project footprint. However, the Reduced Development Alternative would not completely meet all project objectives. The Reduced Development Alternative would only partially meet the objectives of developing an economically viable automobile sales (CarMax) facility that would provide additional commercial opportunities for the City and the San Diego region, generating revenue for the City through sales tax and property tax, and increasing commercial activity at the Westfield Plaza Bonita Mall and surrounding area by introducing new commercial use nearby. The reduced size of the CarMax facility would not achieve these objectives to the same degree as

the project due to reduced volume of sales and reduced commercial activity that would occur under the Reduced Development Alternative.

Finding

The City Council, having reviewed and considered the information contained in the Final EIR, finds pursuant to CEQA Guidelines Section 15091(a)(3) that the alternatives presented and considered in the Final EIR constitute a reasonable range of alternatives necessary that 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 to permit a reasoned choice among the options available to the City and/or the project proponent.

XI. FINDINGS REGARDING OTHER CEQA CONSIDERATIONS

A. Growth Inducement

Based on the discussion presented in Chapter 6.0, the City finds that the project would not result in significant growth-inducing impacts. The project would construct a CarMax facility on an undeveloped parcel and does not propose to construct any housing. Therefore, the project would not alter the planned location, distribution, or growth of the human population in the area either directly or indirectly. Although the project would result in an incremental increase in demand for fire protection and emergency medical services, police protection, water demand, wastewater treatment, and solid waste services, these anticipated increases would not significantly burden existing community services facilities or require construction of new facilities. Because the project is located in an urbanized area surrounded by existing commercial, residential, and transportation facilities, project implementation would not remove obstacles to population growth. Access to the site would be obtained from existing major roadways and the primary public infrastructure (e.g., water and sewer pipelines) are already in place and have sufficient capacity to support buildout of the project. Therefore, the project would not require extension of roads or other infrastructure that could induce population growth either directly or indirectly, and impacts would be less than significant. (Final PEIR Section 6.0).

B. Significant Irreversible Environmental Changes

Section 15126.2(c) of the State CEQA Guidelines requires an EIR to address any significant irreversible environmental changes that may occur because of project implementation. Consistent with the analysis presented in Chapter 5.0, the City finds that implementation of the project would not result in significant irreversible impacts to non-renewable resources. Additionally, the City finds, consistent with the Final EIR, that the project would not result in secondary impacts from environmental changes resulting from the construction of new infrastructure, nor would environmental accidents potentially occur associated with buildout.