

ATTACHMENT A
Carkel San Marcos Commercial Project
Summary of Potential Impacts and Mitigation Measures

Biological Resources

Six trees will need to be removed to make room for project infrastructure. Trees can provide nesting places for species protected under the Migratory Bird Treaty Act. If trees are removed during the breeding season, a potential impact could occur (**Impact BIO-1**). Implementation of mitigation measures MM-BIO-1a and MM-BIO-1b, which would be required as a condition of project approval, would reduce this potential impact to below a level of significance.

- MM-BIO-1a** In order to avoid and minimize impacts to nesting birds (pursuant to the Migratory Bird Treaty Act), no removal of ornamental trees will occur during the avian breeding season (February 15 through August 31) within the project area, unless preconstruction surveys indicate that active nests are not present on the site or in surrounding areas. If surveys show that nesting birds are present, mitigation measure MM-BIO-1b would be implemented.
- MM-BIO-1b** If nesting birds are found during the preconstruction survey performed under MM-BIO-1a, a no-work buffer would be placed around the nest. The no-work buffer size would be determined by a qualified biologist and would vary based on site conditions and type of work to be conducted and what species are nesting. The no-work buffer would be maintained until the end of the breeding season or until surveys by a qualified biologist confirm that fledglings are no longer dependent on nest. If no nesting birds are detected during pre-construction surveys, no restrictions would be necessary and construction may proceed as planned.

Cultural Resources/Tribal Cultural Resources

It is possible that subsurface cultural deposits are still present under the surface and construction activities could impact these resources if they are present. This represents a significant impact and mitigation is required. (**Impact CR-1**). Implementation of mitigation measures MM-CR-1a through MM-CR-1d would reduce this impact to below a level of significance.

- MM-CR-1a** Pre-Excavation Agreement: Prior to the issuance of a Grading Permit, or ground disturbing activities, the Applicant/Owner shall enter into a Tribal Cultural Resources Treatment and Repatriation Agreement (Pre-Excavation Agreement) with a Traditionally and Culturally Affiliated Native American Tribe (TCA Tribe), identified in consultation with the City. The purpose of the Pre-Excavation Agreement shall be to formalize protocols and procedures between the Applicant/Owner and the TCA Tribe for the protection, treatment, and repatriation of Native American human remains, funerary objects, cultural and/or religious landscapes, ceremonial items, traditional gathering areas, and other tribal cultural resources. Such resources may be located within and/or discovered during ground disturbing and/or construction activities for the proposed project, including any additional culturally appropriate archaeological studies, excavations, geotechnical investigations, grading, preparation for wet and dry infrastructure, and other

ground disturbing activities. Any project-specific Monitoring Plans and/or excavation plans prepared by the project archaeologist shall include the TCA Tribe requirements for protocols and protection of tribal cultural resources that were agreed to during the tribal consultation.

The landowner shall relinquish ownership of all non-burial related tribal cultural resources collected during construction monitoring and from any previous archaeological studies or excavations on the project site to the TCA Tribe for proper treatment and disposition per the Pre-Excavation Agreement, unless ordered to do otherwise by responsible agency or court of competent jurisdiction. The requirement and timing of such release of ownership, and the recipient thereof, shall be reflected in the Pre-Excavation Agreement. If the TCA Tribe does not accept the return of the cultural resources, then the cultural resources will be subject to curation.

MM-CR-1b

Construction Monitoring: Prior to the issuance of a Grading Permit or ground disturbing activities, the Applicant/Owner or Grading Contractor shall provide written documentation (either as signed letters, contracts, or emails) to the City's Planning Division stating that a Qualified Archaeologist and Traditionally and Culturally Affiliated Native American monitor (TCA Native American monitor) have been retained at the Applicant/Owner or Grading Contractor's expense to implement the construction monitoring program, as described in the Pre-Excavation Agreement.

The Qualified Archaeologist and TCA Native American monitor shall be invited to attend all applicable pre-construction meetings with the General Contractor and/or associated subcontractors to present the construction monitoring program. The Qualified Archaeologist and TCA Native American monitor shall be present on site during grubbing, grading, trenching, and/or other ground disturbing activities that occur in areas of native soil or other permeable natural surfaces that have the potential to unearth any evidence of potential archaeological resources or tribal cultural resources. In areas of artificial paving, the Qualified Archaeologist and TCA Native American monitor shall be present on site during grubbing, grading, trenching, and/or other ground disturbing activities that have the potential to disturb more than six inches below the original pre-project ground surface to identify any evidence of potential archaeological or tribal cultural resources. No monitoring of fill material, existing or imported, will be required if the General Contractor or developer can provide documentation to the satisfaction of the City that all fill materials being utilized at the site are either: 1) from existing commercial (previously permitted) sources of materials; or 2) are from private or other non-commercial sources that have been determined to be absent of tribal cultural resources by the Qualified Archaeologist and TCA Native American monitor.

The Qualified Archaeologist and TCA Native American monitor shall maintain ongoing collaborative coordination with one another during all ground disturbing activities. The requirement for the construction monitoring program shall be noted on all applicable construction documents, including demolition plans, grading plans, etc. The Applicant/Owner or Grading Contractor shall provide written notice to the Planning Division and the TCA Tribe, preferably through e-mail, of the start and end of all ground disturbing activities.

Prior to the release of any grading bonds, or prior to the issuance of any project Certificate of Occupancy, an archaeological monitoring report, which describes the results, analysis, and conclusions of the construction monitoring shall be submitted by the Qualified Archaeologist, along with any TCA Native American monitor's notes and comments received by the Qualified Archaeologist, to the Planning Division Manager for approval. Once approved, a final copy of the archaeological monitoring report shall be retained in a confidential City project file and may be released, as a formal condition of Assembly Bill (AB) 52 consultation, to [INSERT TRIBE] or any parties involved in the project specific monitoring or consultation process. A final copy of the report, with all confidential site records and appendices, will also be submitted to the South Coastal Information Center after approval by the City.

MM-CR-1c

Unanticipated Discovery Procedures: Both the Qualified Archaeologist and the TCA Native American monitor may temporarily halt or divert ground disturbing activities if potential archaeological resources or tribal cultural resources are discovered during construction activities. Ground disturbing activities shall be temporarily directed away from the area of discovery for a reasonable amount of time to allow a determination of the resource's potential significance. Isolates and clearly non-significant archaeological resources (as determined by the Qualified Archaeologist, in consultation with the TCA Native American monitor) will be minimally documented in the field. All unearthed archaeological resources or tribal cultural resources will be collected, temporarily stored in a secure location (or as otherwise agreed upon by the Qualified Archaeologist and the TCA Tribe), and repatriated according to the terms of the Pre-Excavation Agreement, unless ordered to do otherwise by responsible agency or court of competent jurisdiction.

If a determination is made that the archaeological resources or tribal cultural resources are considered potentially significant by the Qualified Archaeologist, the TCA Tribe, and the TCA Native American monitor, then the City and the TCA Tribe shall determine, in consultation with the Applicant/Owner and the Qualified Archaeologist, the culturally appropriate treatment of those resources.

If the Qualified Archaeologist, the TCA Tribe, and the TCA Native American monitor cannot agree on the significance or mitigation for such resources, these issues will be presented to the Planning Division Manager for decision. The Planning Division Manager shall make a determination based upon the provisions of CEQA and California Public Resources Code Section 21083.2(b) with respect to archaeological resources and California Public Resources Section 21704 and 21084.3 with respect to tribal cultural resources, and shall take into account the religious beliefs, cultural beliefs, customs, and practices of the TCA Tribe.

All sacred sites, significant tribal cultural resources, and/or unique archaeological resources encountered within the project area shall be avoided and preserved as the preferred mitigation. If avoidance of the resource is determined to be infeasible by the City as the Lead Agency, then the City shall require additional culturally appropriate mitigation to address the negative impact to the resource, such as, but not limited to, the funding of an ethnographic study and/or a data recovery plan, as determined by the City in consultation with the Qualified Archaeologist and the TCA Tribe. The TCA Tribe shall be notified and consulted regarding the determination and implementation of culturally appropriate mitigation and the

drafting and finalization of any ethnographic study and/or data recovery plan, and/or other culturally appropriate mitigation. Any archaeological isolates or other cultural materials that cannot be avoided or preserved in place as the preferred mitigation shall be temporarily stored in a secure location on site (or as otherwise agreed upon by the Qualified Archaeologist and TCA Tribe), and repatriated according to the terms of the Pre-Excavation Agreement, unless ordered to do otherwise by responsible agency or court of competent jurisdiction. The removal of any artifacts from the project site will be inventoried with oversight by the TCA Native American monitor.

If a data recovery plan is authorized as indicated above and the TCA Tribe does not object, then an adequate artifact sample to address research avenues previously identified for sites in the area will be collected using professional archaeological collection methods. If the Qualified Archaeologist collects such resources, the TCA Native American monitor must be present during any testing or cataloging of those resources. Moreover, if the Qualified Archaeologist does not collect the cultural resources that are unearthed during the ground disturbing activities, the TCA Native American monitor may, at their discretion, collect said resources for later reburial or storage at a local curation facility, as described in the Pre-Excavation Agreement.

In the event that curation of archaeological resources or tribal cultural resources is required by a superseding regulatory agency, curation shall be conducted by an approved local facility within San Diego County and the curation shall be guided by California State Historical Resources Commission's Guidelines for the Curation of Archaeological Collections. The City shall provide the Applicant/Owner final curation language and guidance on the project grading plans prior to issuance of the grading permit, if applicable, during project construction. The Applicant/Owner shall be responsible for all repatriation and curation costs and provide to the City written documentation from the TCA Tribe or the curation facility, whichever is most applicable, that the repatriation and/or curation have been completed.

MM-CR-1d

Human Remains: As specified by California Health and Safety Code Section 7050.5, if human remains, or remains that are potentially human, are found on the project site during ground disturbing activities or during archaeological work, the person responsible for the excavation, or his or her authorized representative, shall immediately notify the San Diego County Medical Examiner's Office by telephone. No further excavation or disturbance of the discovery or any nearby area reasonably suspected to overlie adjacent remains (as determined by the Qualified Archaeologist and/or the TCA Native American monitor) shall occur until the Medical Examiner has made the necessary findings as to origin and disposition pursuant to Public Resources Code 5097.98.

If such a discovery occurs, a temporary construction exclusion zone shall be established surrounding the area of the discovery so that the area would be protected (as determined by the Qualified Archaeologist and/or the TCA Native American monitor), and consultation and treatment could occur as prescribed by law. As further defined by State law, the Medical Examiner will determine within two working days of being notified if the remains are subject to his or her authority. If the Medical Examiner recognizes the remains to be Native American, and not under his or her jurisdiction, then he or she shall contact the Native American

Heritage Commission by telephone within 24 hours. The Native American Heritage Commission will make a determination as to the Most Likely Descendent, who shall be afforded 48 hours from the time access is granted to the discovery site to make recommendations regarding culturally appropriate treatment.

If suspected Native American remains are discovered, the remains shall be kept in situ (in place) until after the Medical Examiner makes its determination and notifications, and until after the Most Likely Descendent is identified, at which time the archaeological examination of the remains shall only occur on site in the presence of the Most Likely Descendent. The specific locations of Native American burials and reburials will be proprietary and not disclosed to the general public. According to California Health and Safety Code, six or more human burials at one location constitute a cemetery (Section 8100), and disturbance of Native American cemeteries is a felony (Section 7052). In the event that the Applicant/Owner and the Most Likely Descendant are in disagreement regarding the disposition of the remains, State law will apply, and the mediation process will occur with the NAHC. In the event that mediation is not successful, the landowner shall rebury the remains at a location free from future disturbance (see Public Resources Code Section 5097.98(e) and 5097.94(k)).

Geology/Soils

Higher expansive soils may be encountered during the grading of the site. This represents a significant impact (**Impact GEO-1**). Implementation of mitigation measures MM-GEO-1 will reduce this impact to below a level of significance.

- MM-GEO-1** The project applicant shall implement the geotechnical recommendations identified beginning on pages 7 – 19 of the Preliminary Geotechnical Evaluation Report prepared by GeoTeck for the project site. These recommendations address earthwork activities, excavations, foundation and slab considerations, retaining wall design, concrete flatwork, and pavement design.

The project site contains Pleistocene old alluvial floodplain deposits. These deposits have an unproven/undetermined sensitivity and there is a potential that the site could contain paleontological resources that could be disturbed during grading activities for the project. This represents a potentially significant impact (**Impact GEO-2**), and mitigation is required. Implementation of mitigation measure MM-GEO-2 would reduce this impact to below a level of significance.

- MM-GEO-2** Prior to project grading the project applicant shall retain a qualified paleontologist to prepare a paleontological identification and evaluation report. If the report indicates there is no potential for paleontological resources on the site, then grading may proceed without monitoring. The report shall be provided to the Planning Manager prior to issuance of the grading permit.

If the report indicates that paleontological resources may be present, then a paleontological mitigation and monitoring plan shall be developed and implemented concurrent with project grading. The mitigation and monitoring plan shall be provided to the Planning Director and the plan shall be implemented during project grading.

Land Use

Project traffic will result in an increase in delay greater than 2 seconds at the San Marcos Boulevard / Bent Avenue intersection. This represents a **significant impact (Impact LU-1)** related to inconsistency with the level of service (LOS) guidance identified in the Mobility Element of the City's General Plan. Implementation of mitigation measure LU-1, which will be required as a condition of project approval will reduce this impact to below a level of significance:

- MM-LU-1** The developer shall construct the striping improvements associated with the dedicated right-hand turn lane from northbound Bent along the Bent Avenue property frontage at San Marcos Boulevard as per the capital Creek District Project (IP15-00016) sheet SS-07. A separate engineered plan set, consistent with the City's capital drawings, shall be prepared by developer's engineer and permitted by the City. The improvements shall be operational prior to the issuance of any certificate of occupancy. Alternately, if the improvements will be constructed by the City's forces prior to issuance of occupancy for the project, the developer shall instead make a fair-share contribution to the improvements and appurtenances associated with the widening to accommodate a left turn, through, and right-turn lane at Bent Avenue. Such contribution shall be made in full prior to issuance of any grading or improvement permit for the project. The contribution may be deferred until prior to certificate of occupancy if developer posts a cash security with the City for the full contribution amount, and the deferral request is approved by the City Engineer.

Public Services

However, development of the project will contribute to the incremental increase in demand for fire protection services City-wide. This represents a significant impact (**Impact PS-1**) and mitigation is required. Implementation of mitigation measure MM-PS-2, which will be required as a condition of project approval, will reduce this impact to below a level of significance.

- MM-PS-1** Prior to the issuance of a grading permit, the applicant/developer/property owner shall submit an executed version of petition to annex into and establish, with respect to the property, the special taxes levied by the following Community Facility District: CFD 2001-01 (Fire and Paramedic).

Development of the project will contribute to the incremental increase in demand for police protection services City-wide. This represents a significant impact (**Impact PS-2**) and mitigation is required. Implementation of mitigation measure MM-PS-2, which will be required as a condition of project approval, will reduce this impact to below a level of significance.

- MM-PS-2** Prior to the issuance of a grading permit, the applicant/developer/property owner shall submit an executed version of petition to annex into and establish, with respect to the property, the special taxes levied by the following Community Facility District: CFD 98-01, Improvement Area No. 1 (Police).