

**DRAFT FINDINGS OF FACT AND STATEMENT OF OVERRIDING CONSIDERATIONS  
REGARDING THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE  
PALM & HOLLISTER APARTMENTS PROJECT**

PRJ-0698277  
SCH No. 2022060468

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## **1.0 INTRODUCTION**

### **1.1 Findings of Fact and Statement of Overriding Considerations**

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

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

- (e) The public agency shall specify the location and custodian of the documents or other materials which constitute the record of the proceedings upon which its decision is based.
- (f) A statement made pursuant to Section 15093 does not substitute for the findings required by this section.

These requirements also exist in Section 21081 of the CEQA statute. The “changes or alterations” referred to in Section 15091(a)(1), above, that are required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effects of the project may include a wide variety of measures or actions as set forth in Guidelines Section 15370’s definition of mitigation, including:

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

Should significant and unavoidable impacts remain after changes or alterations are applied to the project, a Statement of Overriding Considerations (SOC) must be prepared. The statement provides the lead agency’s views on whether the benefits of a project outweigh its unavoidable adverse environmental effects. Regarding an SOC, Guidelines Section 15093 provides:

- (a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or state-wide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits, including region-wide or state-wide environmental benefits, of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered “acceptable.”
- (b) When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the Final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the Final EIR

and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.

- (c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.

Having received, reviewed, and considered the Final EIR for the Palm & Hollister Apartments project (project), Project No. PRJ-0698277/State Clearinghouse No. 2022060468, as well as all other information in the record of proceedings on this matter, the following Findings of Fact (Findings) are made, and an SOC is adopted by the City of San Diego (City) in its capacity as the CEQA Lead Agency. These Findings and SOC 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 project.

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

## **1.2 Record of Proceedings**

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

- The Notice of Preparation (NOP) and all other public notices issued by the City in conjunction with the project;
- All responses to the NOP received by the City;
- The Draft EIR;
- The Final EIR;
- All written comments submitted by agencies or members of the public during the public review comment period on the Draft EIR;
- All responses to the written comments included in the Final EIR;
- All written and oral public testimony presented during a noticed public hearing for the project at which such testimony was taken;
- The Mitigation Monitoring and Reporting Program;

- The reports and technical memoranda included or referenced in the Draft EIR, the Final EIR, and any responses to comments in the Final EIR;
- The revised and/or updated reports and technical memoranda included or referenced in the Final EIR;
- All documents, studies, EIRs, or other materials incorporated by reference in, or otherwise relied upon during the preparation of, the Draft EIR and the Final EIR;
- Matters of common knowledge to the City, including, but not limited to, Federal, State, and local laws and regulations;
- Any documents expressly cited in these Findings and SOC; and
- Any other relevant materials required to be in the record of proceedings by Public Resources Code Section 21167.6(e).

### **1.3 Custodian and Location of Records**

The documents and other materials that constitute the administrative record for the City's actions related to the project are located at the City, Development Services Department, 1222 First Avenue, San Diego, California 92101. The Development Services Department is the custodian of the administrative record for the project. Copies of these documents, which constitute the Record of Proceedings, are and at all relevant times have been and will be available upon request at the offices of the Development Services Department. This information is provided in compliance with Public Resources Code Section 21081.6(a)(2) and Guidelines Section 15091(e).

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

## **2.0 PROJECT SUMMARY**

### **2.1 Project Location**

The 5.92-acre Palm & Hollister Apartments project site is located within the Otay Mesa-Nestor community in the City of San Diego, San Diego County. The Otay Mesa-Nestor community is located in the southern portion of the City of San Diego, immediately east of Imperial Beach and south of Chula Vista. The project site is identified as within the Palm City Neighborhood of the Otay Mesa-Nestor community. The project site is situated north of the Palm Avenue Trolley Station, south of the Otay Valley Regional Park (OVRP), and east of Hollister Street. A nursery operates immediately north of the project site within the OVRP; and the Palm Avenue Trolley Station parking lot, mobile home park and Ocean View Christian Academy sports field are to the south of the project site. To the west lies the San Diego & Arizona Eastern (SD&AE) Railroad line and Hollister Street. Regional access to the

site is provided by Interstate 5 (I-5), approximately one mile west of the project site. Local access to the site is via Palm Avenue through the Palm Avenue Trolley Station Metropolitan Transit System (MTS) site.

The Palm & Hollister Apartments project site has been previously graded for prior agricultural use and is undeveloped, with the exception of a vacant residential structure, a garage, a canopy structure, and two storage containers. Landscaping is minimal, consisting of non-native plant species, and is mostly confined to the perimeter of the property. A water supply well is located in the northernmost portion of the project site. Elevations on the site range from 23 feet to 54 feet above mean seal level (AMSL). The project site has been and is currently partially used for staging by the MTS and some delivery services. A 10-foot-wide County of San Diego easement is located along the northern boundary of the project site. The purpose of this easement is to provide access to the OVRP. The site also includes San Diego Gas and Electric (SDG&E) easements and the site is partially located with the City's Multiple Species Conservation Program (MSCP) Multi-Habitat Planning Area (MHPA).

## **2.2 Project Description**

### **2.2.1 Statement of Objectives**

Pursuant to Guidelines Section 15124(b) and as described in Section 3.1.2 of the Final EIR, the project has the following objectives:

1. Assist the City in meeting State and local housing goals by providing rental housing stock and contributing to a diverse range of housing opportunities and affordabilities.
2. Provide affordable housing on-site in a location proximate to employment and institutional uses, multi-modal transit, and regional transportation amenities, thereby reducing reliance on the personal automobile to go about daily life.
3. Maximize site utilization by providing medium-high density residential uses that contribute to meeting the dual housing affordability/availability needs of the City.
4. Create a coherent and cohesive site design for the project; with low-rise buildings to provide a transition between existing and planned development to the south and the Otay Valley Regional Park to the north.
5. Provide for redevelopment of an underutilized site within an urbanizing area, where public facilities and amenities are readily available.

6. Increase recreational opportunities for residents by providing a public trail at the southwest corner of the project site, connecting off-site to the future public trail system within the OVRP.

### **2.2.2 Project Components**

The project proposes 198 residential units in 13 buildings. The project includes eight affordable housing units, to be distributed throughout the project, which would be provided at 30 percent to 60 percent Average Median Income. Residential units for the project would be provided in one-bedroom, two-bedroom, and three-bedroom configurations. All units would have private outdoor space in the form of balconies or patios. Buildings would be one, two, and three levels with tuck-under garages and one-level units over carports.

Common space amenities would be provided in the western and central portions of the project site. The project would include a separate stand-alone building for residential amenities in the western portion of the project site and would feature fitness center, co-working spaces, and the leasing office. Exterior amenities adjacent to the proposed amenity building would include a pool, spa, fire pit, and patio/bar-b-que areas. An additional resident amenity area would be provided in the central portion of the project site, incorporated as an open courtyard in the center of the largest building. This resident amenity would feature a bar-b-que pavilion, fire table, turf area incorporating a nature playground, game courts, and sofa seating areas. A pedestrian landscaped walkway along the top of the northern slope would provide a continuous connection from the residential buildings to the project amenity areas. In total, 20,967 square feet of common open space would be provided. The proposed landscape plan includes the use of low water use plant materials and meets all current codes and requirements. Landscaping would include a mix of trees, shrubs, and accent planting. Additionally, the project proposes a nine-foot pedestrian easement to the west of the project site to allow for an additional access point to the OVRP as well as the project site. The project also includes removal and/or modifications to the SDG&E easements that would require approval through the California Public Utilities Commission.

The project would provide a total of 262 parking spaces, where none are required by SDMC Section 142.0525. The parking spaces would be provided in garages (100 spaces), carports (48 spaces), and surface parking (114 spaces). Ten percent, or 27 of the parking spaces provided, would be electric vehicle parking spaces. The project would also provide 48 bicycle parking spaces and 50 percent of the required 46 bicycle parking spaces, or 23 spaces, would be supplied with individual outlets for electric charging of e-bikes.

The project proposes retaining walls on the west, north, and east perimeters of the development area for a total length of 1,870 feet. Specifically, the project proposes 1,360 feet of plantable mechanically stabilized earth (MSE) retaining wall and 510 feet of concrete block (CMU) wall. The MSE



retaining wall would start at the western side of Building A and would have a maximum height of 18 feet. A CMU wall would be located on the south side of Building B with a maximum height of five feet.

Security and safety fencing would be provided throughout the project. Specifically, a 42-inch tubular steel fence along would be placed west and north of the sidewalk around the pool and recreation area at the leasing office (Building A); and a 42-inch-tall tubular steel fence would be placed atop plantable retaining walls along the northern property line and slope, north of Building C and Building B. On the eastern perimeter of the project site, the project proposes a similar 42-inch-tall tubular steel fencing atop plantable retaining wall.

Access to the project site is proposed from the south through property owned by the MTS. An existing access easement has been established with MTS to allow for vehicular and pedestrian access to and from Palm Avenue through the Palm Avenue Trolley Station parking lot to the project entrance. Bicycle access to the Palm Avenue Trolley Station and Palm Avenue would also be provided within the access easement along the drive aisle through MTS property. The project would provide access improvements to the drive aisle within the MTS easement. These include upgrading the existing curb return where the drive aisle and Palm Avenue meet to comply with Americans with Disabilities Act (ADA) requirements, replacing curb ramps, restriping portions the drive aisle, and addition of a six-inch curb along a portion of the eastern side of the drive aisle. The easement would also allow for utility connections and project signage, as well as the addition of landscaping along the eastern border of the drive aisle.

Pedestrian access would also be provided within the MTS easement. The project would provide a five-foot-wide concrete sidewalk parallel to the project site and project property line within a nine-foot-wide pedestrian access easement that would tie into the existing MTS sidewalk. The MTS sidewalk runs through the MTS property and connects to existing sidewalks on Palm Avenue. Within the access easement drive aisle, the project would provide a five-foot-wide running track that runs from the project site property line along a portion of the eastern side of the drive aisle through the MTS parcel.

The project also includes grading, landscaping, and drainage facilities within the 10-foot-wide County easement, located along the project site's north property boundary, as well as with the off-site access easement through the MTS property. Landscaping in County easement area would include low fuel native plant materials. Improvements within the easement would be coordinated with the County to ensure suitability. Landscaping in the off-site access easement through the MTS property would include adding trees and shrubs.

### **2.3 Discretionary Actions**

For the Palm & Hollister Apartments project, the following discretionary actions are being requested.

### **2.3.1 Community Plan Amendment**

An amendment to the Otay Mesa-Nestor Community Plan to change the existing land use from Open Space, Mixed Use, and Residential Low Density [5-<10 dwelling units per acre (du/ac)], Mixed-Use, and Open Space to Residential Medium-High Density (20 - 35 du/ac) to allow for increased residential density adjacent to transit. Additionally, the Community Plan Amendment includes modifications to Appendix C, *View Corridors and View and Access Points*, of the Community Plan to include the removal of View and Access Points A and B.

### **2.3.2 Rezone**

The project requires a rezone to the Residential Multiple (RM-2-6 zone) in order to provide 198 residential units on the 5.92-acre project site. The RM-2-6 zone permits a maximum density of one dwelling unit for each 1,250 square feet of lot area, which would permit up to a maximum density of 34.85 du/ac and would support up to 206 dwelling units on the proposed project site.

### **2.3.3 Vesting Tentative Map**

The project includes a Vesting Tentative Map.

### **2.3.4 Site Development Permit**

A Site Development Permit (SDP) is required to allow for the development of the project within Environmentally Sensitive Land (ESL). ESL regulations specify development requirements inside and outside of the Multi-Habitat Planning Area (MHPA) and floodplains. The northern portion of the project site is mapped within the MHPA and a floodplain.

### **2.3.5 Neighborhood Development Permit**

A Neighborhood Development Permit (NDP) is required for development that deviates from the regulations in the underlying zones. The project includes deviations for retaining wall height, setbacks, and structure height as described below.

Municipal Code Section 142.0340(d)(1)

- Two retaining walls with a maximum height of six feet each are permitted in the required side and rear yard if the two retaining walls are separated by a minimum horizontal distance equal to the height of the upper wall. The project includes a deviation from the Municipal Code for the proposed single retaining wall up to 24.5 feet in height.

Municipal Code Section 131.0443(e)(1)(A)

- Up to 50 percent of the width of the building envelope may observe the minimum 15-foot front setback, provided the remaining percentage of the building envelope width observes the standard 20-foot setback. This may occur on a floor-by-floor basis. The project proposes a deviation to allow for 100 percent of the building envelope to observe the minimum 15-foot front setback.

Municipal Code Section 131.0443(e)(2)(A)

- The minimum side setback is five feet or 10 percent of the premises width, whichever is greater. The project includes a deviation for the proposed building encroachment into the required side setback where 7.9 feet is proposed.

Municipal Code Section Table 131-04G

- Maximum structure height is 40 feet. The project proposes a maximum structure height of 59 feet, six inches (from the existing grade structure height).

### **2.3.6 MHPA Boundary Line Adjustment**

Pursuant to Sections 143.0142 and 131.0250(b) of the Land Development Code and pages 13-15 of the City's Biology Guidelines, an MHPA boundary line adjustment (BLA) is required as a part of the project. The BLA would remove 2.2 acres of disturbed land from the MHPA on-site and add 2.48 acres of higher quality coastal sage scrub habitat via the off-site 9.92-acre Najor Parcel (APN 366-031-12) located in the East Elliott community. More specifically, the Najor Parcel is located in the MHPA and is currently 75 percent preserved. The project would preserve the remaining 25 percent (2.48 acres) by dedicating the entire 9.92-acre parcel in fee title to the City. The City would manage and maintain this parcel as a part of the Mission Trails Regional Park.

### **2.3.7 Utility Easements**

The project includes removal of and/or modifications to SDG&E easements that would require approval through the California Public Utilities Commission.

## **3.0 ENVIRONMENTAL REVIEW AND PUBLIC PARTICIPATION**

The City conducted an environmental review under CEQA (California Public Resources Code Sections 21000, et seq.) and the Guidelines promulgated thereunder in the California Code of Regulations, Title 14. Further, the City as the lead agency shall be primarily responsible for carrying out the project. In compliance with Section 15082 of the State CEQA Guidelines, the City published a Notice of Preparation on June 22, 2022, which began a 30-day period for comments on the appropriate scope of the EIR. Consistent with CEQA Section 21083.9, the City held a virtual public agency scoping meeting, allowing

the public to provide comments from June 22, 2022, through July 22, 2022. The purpose of this meeting was to seek input from the public regarding the environmental effects that may potentially result from the project. Various agencies and other interested parties responded to the NOP. The NOP, comment letters, and transcript of comments made during the scoping meeting are included as Appendix A of the Final EIR.

The City prepared and published a Draft EIR, which was circulated for a 45-day public review and comment period beginning on March 26, 2024, in compliance with CEQA. Pursuant to State CEQA Guidelines Section 15085, upon publication of the Draft EIR, the City filed a Notice of Completion with the Governor's Office of Planning and Research, State Clearinghouse, indicating that the Draft EIR had been completed and was available for review and comment by the public. The City also posted a Notice of Availability of the Draft EIR at this time pursuant to State CEQA Guidelines Section 15087.

During the public review period, the City received comments on the environmental document. After the close of public review period on May 9, 2024, the City provided responses in writing to all comments received on the Draft EIR. The Final EIR and the response to comments for the project was published on August 12, 2024. The Final EIR has been prepared in accordance with CEQA and the State CEQA Guidelines.

#### **4.0 SUMMARY OF IMPACTS**

Impacts associated with specific environmental issues resulting from approval of the project and future implementation are discussed below.

The Final EIR concludes that the project will have no impacts with respect to the following issues:

- Agricultural Resources and Forestry
- Mineral Resources
- Paleontological Resources

The Final EIR concludes that the project will have a less than significant impact and requires no mitigation measures with respect to the following issues:

- Land Use
- Transportation/Circulation
- Biological Resources
- Energy
- Geologic Conditions
- Greenhouse Gas Emissions
- Health and Safety
- Hydrology
- Noise
- Population and Housing
- Public Services and Facilities
- Public Utilities
- Visual Effects and Neighborhood Character
- Water Quality
- Wildfire

The Final EIR concludes the project will potentially have a **significant impact but mitigated to below a level of significance** with respect to the following issue areas:

- Air Quality (DPM Emissions)
- Historical Resources
- Tribal Cultural Resources

The Final EIR concludes the project will potentially have a **significant unmitigated impact** and no feasible mitigation measures are available to reduce impacts to below a level of significance for the following issue area:

- Air Quality (DPM Emissions under CPA and Rezone)

## **5.0 FINDINGS REGARDING SIGNIFICANT IMPACTS**

In making each of the findings below, the City has considered the plans, programs, and policies discussed in the Final EIR. The plans, programs, and policies discussed in the Final EIR are existing regulatory plans and programs the project is subject to, and, likewise, are explicitly made conditions of the project's approval.

### **5.1 Findings Regarding Impacts that will be Mitigated to Below a Level of Significance [CEQA § 21081(a)(1) and CEQA Guidelines § 15091(a)(1)]**

The City, having independently reviewed and considered the information contained in the Final EIR and the Record of Proceedings pursuant to Public Resource Code § 21081(a)(1) and State CEQA Guidelines § 15091(a)(1), adopts the following findings regarding the significant effects of the project, as follows:

Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant effects on the environment as identified in the Final EIR (PRJ-0698277/ SCH No. 2022060468) as described below.

#### **5.1.1 Air Quality – Direct and Cumulative Impact: Construction**

##### **5.1.1.1 Potentially Significant Effect**

The Health Risk Assessment prepared for the project evaluated potential risk to sensitive receivers located proximate to the project site, including the La Paloma apartments and a single-family home southwest of the site, students/children at Ocean View School, as well as future residents, employees and daycare children at the MTS Palm Avenue Trolley Station project. The noncancer chronic and

acute risks due to the construction of the project are below the SDAPCD CEQA thresholds. The cancer risk, however, exceeds the SDAPCD CEQA thresholds, which is considered a significant impact. Refer to Final EIR Sections 5.3.3 and 6.3.3; and Appendix E for additional details.

#### **5.1.1.2 Facts in Support of Finding**

SDAPCD Rule 1200 (Toxic Air Contaminants – New Source Review) adopted on June 12, 1996, requires evaluation of potential health risks for any new, relocated, or modified emission unit that may increase emissions of one or more toxic air contaminants. The rule requires projects that propose to increase cancer risk to between one- and 10-in-one-million implement toxics best available control technology (T-BACT) or impose the most effective emission limitation, emission control device or control technique to reduce the cancer risk. At no time shall the project increase the incremental cancer risk to over 10-in-one-million or a health hazard index (chronic and acute HI) greater than one. Projects creating cancer risks less than one-in-one-million are not required to implement T-BACT technology.

As shown in Table 5.3-13, *Screening HRA Risk Impacts from Construction DPM*, of the Final EIR, construction activities associated with the project contribute diesel emissions, which result in exceeding the 30-year cancer risk threshold. If construction of the MTS Palm Avenue Trolley Station project were to occur during the time the project is under construction, cumulatively significant impacts to sensitive receptors could occur (EIR Section 6.3.3). Reducing diesel exhaust emissions from all construction equipment greater than 100 horse power, as well as employing other measures to reduce diesel particulate matter, such as reduction in the number and/or horsepower rating of construction equipment, limiting the number of daily construction haul truck trips to and from the proposed project using cleaner vehicle fuel, and/or limiting the number of individual construction project components occurring simultaneously, is required to ensure that health risk impacts from construction do not exceed significance levels.

#### **Mitigation Measures:**

**Mitigation Measure AQ-1:** Prior to the Notice to Proceed (NTP) for any construction permits, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plans/Permits, the Development Services Department (DSD) Director's Environmental Designee shall verify the construction plans include a note requiring the Owner/Permittee reduce diesel exhaust emissions from all construction equipment greater than 100 hp with use of Tier 4 Final equipment, including equipment with an installed diesel particulate filter (DPF). Construction equipment greater than 100 hp that is certified less than Tier 4 Final may only be used if unavailable from vendors, in which case equipment with DPFs installed shall be used whenever possible and other measures shall be employed to reduce DPM emissions to achieve a below 10 in one million cancer risk from

construction DPM to the satisfaction of the Mitigation Monitoring Coordinator. Such additional measures may include, but would not be limited to, reduction in the number and/or horsepower rating of construction equipment and use of construction haul trucks that utilize cleaner vehicle fuel (generates less DPM).

### **5.1.2.3 Finding**

With implementation of MM-AQ-1, potentially significant direct and cumulative impacts due to diesel particulate emissions during construction will be reduced to below a level of significance for the proposed development project subject to the SDP and NDP. This is demonstrated in Final EIR Table 5.3-14, *Screening HRA Risk Impacts from Construction DPM with Mitigation*, which shows the project would result in a less than 10 in one million risk at all sensitive receptors with the implementation of MM-AQ-1.

**Reference:** Final EIR § 5.3, Air Quality; Final EIR § 6.3.3; and Appendix E.

## **5.1.2 Historical Resources**

### **5.1.2.1 Potentially Significant Effect**

While there are no known significant archaeological resources on the site or off-site impact area, there is potential for buried significant cultural resources that would meet the significance criteria in Section 15064.5 of the State CEQA Guidelines. Refer to Final EIR Section 5.9.3, and Final EIR Appendix M for additional details.

### **5.1.2.2 Facts in Support of Finding**

The records search conducted for the project identified 38 previously recorded cultural resources within the one-mile search radius. None of these resources intersect the project area. However, due to the presence of cultural resources in the area of the project site, the possibility remains that intact cultural deposits may exist subsurface of the project site and could be encountered during grading and excavation activities, including trenching for utility connections in the off-site easement owned by MTS. Impacts to historical resources (archaeology) would be potentially significant (EIR Section 5.9.3 and EIR Appendix M).

**Mitigation Measures:**

**MM-HIS-1**

**ARCHAEOLOGICAL RESOURCES**

**I. Prior to Permit Issuance**

- A. Entitlements Plan Check
  - 1. Prior to issuance of any construction permits, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plans/Permits or a Notice to Proceed for Subdivisions, but prior to the first preconstruction meeting, whichever is applicable, the Assistant Deputy Director (ADD) Environmental designee shall verify that the requirements for Archaeological Monitoring and Native American monitoring have been noted on the applicable construction documents through the plan check process.
- B. Letters of Qualification have been submitted to ADD
  - 1. The applicant shall submit a letter of verification to Mitigation Monitoring Coordination (MMC) identifying the Principal Investigator (PI) for the project and the names of all persons involved in the archaeological monitoring program, as defined in the City of San Diego Historical Resources Guidelines (HRG). If applicable, individuals involved in the archaeological monitoring program must have completed the 40-hour HAZWOPER training with certification documentation.
  - 2. MMC will provide a letter to the applicant confirming the qualifications of the PI and all persons involved in the archaeological monitoring of the project meet the qualifications established in the HRG.
  - 3. Prior to the start of work, the applicant must obtain written approval from MMC for any personnel changes associated with the monitoring program.

**II. Prior to Start of Construction**

- A. Verification of Records Search
  - 1. The PI shall provide verification to MMC that a site-specific records search (1/4 mile radius) has been completed. Verification includes, but is not limited to a copy of a confirmation letter from South Coastal Information Center, or, if the search was in-house, a letter of verification from the PI stating that the search was completed.
  - 2. The letter shall introduce any pertinent information concerning expectations and probabilities of discovery during trenching and/or grading activities.
  - 3. The PI may submit a detailed letter to MMC requesting a reduction to the ¼ mile radius.
- B. PI Shall Attend Precon Meetings
  - 1. Prior to beginning any work that requires monitoring; the Applicant shall arrange a Precon Meeting that shall include the PI, Native American



consultant/monitor (where Native American resources may be impacted), Construction Manager (CM) and/or Grading Contractor, Resident Engineer (RE), Building Inspector (BI), if appropriate, and MMC. The qualified Archaeologist and Native American Monitor shall attend any grading/excavation related Precon Meetings to make comments and/or suggestions concerning the Archaeological Monitoring program with the Construction Manager and/or Grading Contractor.

- a. If the PI is unable to attend the Precon Meeting, the Applicant shall schedule a focused Precon Meeting with MMC, the PI, RE, CM or BI, if appropriate, prior to the start of any work that requires monitoring.
2. Identify Areas to be Monitored
  - a. Prior to the start of any work that requires monitoring, the PI shall submit an Archaeological Monitoring Exhibit (AME) (with verification that the AME has been reviewed and approved by the Native American consultant/monitor when Native American resources may be impacted) based on the appropriate construction documents (reduced to 11x17) to MMC identifying the areas to be monitored including the delineation of grading/excavation limits.
  - b. The AME shall be based on the results of a site-specific records search as well as information regarding existing known soil conditions (native or formation).
3. When Monitoring Will Occur
  - a. Prior to the start of any work, the PI shall also submit a construction schedule to MMC through the RE indicating when and where monitoring will occur.
  - b. The PI may submit a detailed letter to MMC prior to the start of work or during construction requesting a modification to the monitoring program. This request shall be based on relevant information such as review of final construction documents which indicate site conditions such as depth of excavation and/or site graded to bedrock, etc., which may reduce or increase the potential for resources to be present.

### **III. During Construction**

- A. Monitor(s) Shall be Present During Grading/Excavation/Trenching
  1. The Archaeological Monitor shall be present full-time during all soil disturbing and grading/excavation/trenching activities which could result in impacts to archaeological resources as identified on the AME. The Construction Manager is responsible for notifying the RE, PI, and MMC of changes to any construction activities such as in the case of a potential safety concern within the area being monitored. In certain circumstances OSHA safety requirements may necessitate modification of the AME.

2. The Native American consultant/monitor shall determine the extent of their presence during soil disturbing and grading/excavation/trenching activities based on the AME and provide that information to the PI and MMC. If prehistoric resources are encountered during the Native American consultant/monitor's absence, work shall stop and the Discovery Notification Process detailed in Section III.B-C and IV.A-D shall commence.
  3. The PI may submit a detailed letter to MMC during construction requesting a modification to the monitoring program when a field condition such as modern disturbance post-dating the previous grading/trenching activities, presence of fossil formations, or when native soils are encountered that may reduce or increase the potential for resources to be present.
  4. The archaeological and Native American consultant/monitor shall document field activity via the Consultant Site Visit Record (CSV). The CSV's shall be faxed by the CM to the RE the first day of monitoring, the last day of monitoring, monthly (Notification of Monitoring Completion), and in the case of ANY discoveries. The RE shall forward copies to MMC.
- B. Discovery Notification Process
1. In the event of a discovery, the Archaeological Monitor shall direct the contractor to temporarily divert all soil disturbing activities, including but not limited to digging, trenching, excavating or grading activities in the area of discovery and in the area reasonably suspected to overlay adjacent resources and immediately notify the RE or BI, as appropriate.
  2. The Monitor shall immediately notify the PI (unless Monitor is the PI) of the discovery.
  3. The PI shall immediately notify MMC by phone of the discovery, and shall also submit written documentation to MMC within 24 hours by fax or email with photos of the resource in context, if possible.
  4. No soil shall be exported off-site until a determination can be made regarding the significance of the resource specifically if Native American resources are encountered.
- C. Determination of Significance
1. The PI and Native American consultant/monitor, where Native American resources are discovered shall evaluate the significance of the resource. If Human Remains are involved, follow protocol in Section IV below.
    - a. The PI shall immediately notify MMC by phone to discuss significance determination and shall also submit a letter to MMC indicating whether additional mitigation is required.
    - b. If the resource is significant, the PI shall submit an Archaeological Data Recovery Program (ADRP) which has been reviewed by the Native American consultant/monitor, and obtain written approval from MMC. Impacts to

significant resources must be mitigated before ground disturbing activities in the area of discovery will be allowed to resume. Note: If a unique archaeological site is also an historical resource as defined in CEQA, then the limits on the amount(s) that a project applicant may be required to pay to cover mitigation costs as indicated in CEQA Section 21083.2 shall not apply.

- c. If the resource is not significant, the PI shall submit a letter to MMC indicating that artifacts will be collected, curated, and documented in the Final Monitoring Report. The letter shall also indicate that that no further work is required.

#### **IV. Discovery of Human Remains**

If human remains are discovered, work shall halt in that area and no soil shall be exported off-site until a determination can be made regarding the provenance of the human remains; and the following procedures as set forth in CEQA Section 15064.5(e), the California Public Resources Code (Sec. 5097.98) and State Health and Safety Code (Sec. 7050.5) shall be undertaken:

##### **A. Notification**

1. Archaeological Monitor shall notify the RE or BI as appropriate, MMC, and the PI, if the Monitor is not qualified as a PI. MMC will notify the appropriate Senior Planner in the Environmental Analysis Section (EAS) of the Development Services Department to assist with the discovery notification process.
2. The PI shall notify the Medical Examiner after consultation with the RE, either in person or via telephone.

##### **B. Isolate discovery site**

1. Work shall be directed away from the location of the discovery and any nearby area reasonably suspected to overlay adjacent human remains until a determination can be made by the Medical Examiner in consultation with the PI concerning the provenance of the remains.
2. The Medical Examiner, in consultation with the PI, will determine the need for a field examination to determine the provenance.
3. If a field examination is not warranted, the Medical Examiner will determine with input from the PI, if the remains are or are most likely to be of Native American origin.

##### **C. If Human Remains ARE determined to be Native American**

1. The Medical Examiner will notify the Native American Heritage Commission (NAHC) within 24 hours. By law, ONLY the Medical Examiner can make this call.
2. NAHC will immediately identify the person or persons determined to be the Most Likely Descendent (MLD) and provide contact information.
3. The MLD will contact the PI within 24 hours or sooner after the Medical Examiner has completed coordination, to begin the consultation process in

accordance with CEQA Section 15064.5(e), the California Public Resources and Health & Safety Codes.

4. The MLD will have 48 hours to make recommendations to the property owner or representative, for the treatment or disposition with proper dignity, of the human remains and associated grave goods.
5. Disposition of Native American Human Remains will be determined between the MLD and the PI, and, if:
  - a. The NAHC is unable to identify the MLD, OR the MLD failed to make a recommendation within 48 hours after being granted access to the site, OR;
  - b. The landowner or authorized representative rejects the recommendation of the MLD and mediation in accordance with PRC 5097.94 (k) by the NAHC fails to provide measures acceptable to the landowner, the landowner shall reinter the human remains and items associated with Native American human remains with appropriate dignity on the property in a location not subject to further and future subsurface disturbance, THEN
  - c. To protect these sites, the landowner shall do one or more of the following:
    - (1) Record the site with the NAHC;
    - (2) Record an open space or conservation easement; or
    - (3) Record a document with the County. The document shall be titled "Notice of Reinternment of Native American Remains" and shall include a legal description of the property, the name of the property owner, and the owner's acknowledged signature, in addition to any other information required by PRC 5097.98. The document shall be indexed as a notice under the name of the owner.

#### **V. Night and/or Weekend Work**

- A. If night and/or weekend work is included in the contract
  1. When night and/or weekend work is included in the contract package, the extent and timing shall be presented and discussed at the precon meeting.
  2. The following procedures shall be followed.
    - a. No Discoveries  
In the event that no discoveries were encountered during night and/or weekend work, the PI shall record the information on the CSV and submit to MMC via fax by 8AM of the next business day.
    - b. Discoveries  
All discoveries shall be processed and documented using the existing procedures detailed in Sections III - During Construction, and IV - Discovery of Human Remains. Discovery of human remains shall always be treated as a significant discovery.
    - c. Potentially Significant Discoveries

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

- d. The PI shall immediately contact MMC, or by 8AM of the next business day to report and discuss the findings as indicated in Section III-B, unless other specific arrangements have been made.
- B. If night and/or weekend work becomes necessary during the course of construction
  1. The Construction Manager shall notify the RE, or BI, as appropriate, a minimum of 24 hours before the work is to begin.
  2. The RE, or BI, as appropriate, shall notify MMC immediately.
- C. All other procedures described above shall apply, as appropriate.

#### **VI. Post Construction**

- A. Preparation and Submittal of Draft Monitoring Report
  1. The PI shall submit two copies of the Draft Monitoring Report (even if negative), prepared in accordance with the Historical Resources Guidelines (Appendix C/D) which describes the results, analysis, and conclusions of all phases of the Archaeological Monitoring Program (with appropriate graphics) to MMC for review and approval within 90 days following the completion of monitoring. It should be noted that if the PI is unable to submit the Draft Monitoring Report within the allotted 90-day timeframe resulting from delays with analysis, special study results or other complex issues, a schedule shall be submitted to MMC establishing agreed due dates and the provision for submittal of monthly status reports until this measure can be met.
    - a. For significant archaeological resources encountered during monitoring, the Archaeological Data Recovery Program shall be included in the Draft Monitoring Report.
    - b. Recording Sites with State of California Department of Parks and Recreation  
The PI shall be responsible for recording (on the appropriate State of California Department of Park and Recreation forms-DPR 523 A/B) any significant or potentially significant resources encountered during the Archaeological Monitoring Program in accordance with the City's Historical Resources Guidelines, and submittal of such forms to the South Coastal Information Center with the Final Monitoring Report.
  2. MMC shall return the Draft Monitoring Report to the PI for revision or, for preparation of the Final Report.
  3. The PI shall submit revised Draft Monitoring Report to MMC for approval.
  4. MMC shall provide written verification to the PI of the approved report.
  5. MMC shall notify the RE or BI, as appropriate, of receipt of all Draft Monitoring Report submittals and approvals.

- B. Handling of Artifacts
  1. The PI shall be responsible for ensuring that all cultural remains collected are cleaned and catalogued
  2. The PI shall be responsible for ensuring that all artifacts are analyzed to identify function and chronology as they relate to the history of the area; that faunal material is identified as to species; and that specialty studies are completed, as appropriate.
  3. The cost for curation is the responsibility of the property owner.
- C. Curation of artifacts: Accession Agreement and Acceptance Verification
  1. The PI shall be responsible for ensuring that all artifacts associated with the survey, testing and/or data recovery for this project are permanently curated with an appropriate institution. This shall be completed in consultation with MMC and the Native American representative, as applicable.
  2. The PI shall include the Acceptance Verification from the curation institution in the Final Monitoring Report submitted to the RE or BI and MMC.
  3. When applicable to the situation, the PI shall include written verification from the Native American consultant/monitor indicating that Native American resources were treated in accordance with state law and/or applicable agreements. If the resources were reinterred, verification shall be provided to show what protective measures were taken to ensure no further disturbance occurs in accordance with Section IV – Discovery of Human Remains, Subsection 5.
- D. Final Monitoring Report(s)
  1. The PI shall submit one copy of the approved Final Monitoring Report to the RE or BI as appropriate, and one copy to MMC (even if negative), within 90 days after notification from MMC that the draft report has been approved.
  2. The RE shall, in no case, issue the Notice of Completion and/or release of the Performance Bond for grading until receiving a copy of the approved Final Monitoring Report from MMC which includes the Acceptance Verification from the curation institution.

### **5.1.2.3 Finding**

With the implementation of MM-HIS-1, impacts to historical resources would be reduced to below a level of significance. The mitigation monitoring program would ensure impacts are reduced through monitoring conducted by a qualified archaeologist and Native American monitor for ground disturbing activities during the project construction phase. If a resource is found, grading activities would be limited to allow for proper recovery and review by qualified archaeologists and Native American monitor. Any significant resources found would be curated at a qualified institution or repatriated as applicable per the measure, and associated information preserved. Implementation of

this monitoring program would ensure that the development of the Palm & Hollister Apartment project would mitigate direct project impacts to cultural resources to below a level of significance.

**Reference:** Final EIR § 5.9 and Final EIR Appendix M.

### **5.1.3 Tribal Cultural Resources**

#### **5.1.3.1 Potentially Significant Effect**

The project area is located within an area identified as sensitive on the City of San Diego Historical Resources Sensitivity Maps. In addition, the Kumeyaay tribes are affiliated traditionally and culturally with the project area. The project area has the possibility for potential tribal cultural resources (in the form of unknown subsurface archaeological resources). Therefore, there is the potential for inadvertent discovery of a resource that could be impacted by project grading activities. Impacts to tribal cultural resources would potentially significant. Refer to Final EIR Section 5.15.3, and Final EIR Appendix M for additional details.

#### **5.1.3.2 Facts in Support of Finding**

The cultural resources survey conducted for the Palm & Hollister project by ASM was negative for historical resources. No artifacts or other cultural features were observed during the survey, except for the previously assessed buildings that were not included in the present study. The possibility remains that intact subsurface cultural deposits may exist within the proposed project site considering the sensitivity rating of the area and that cultural resources have been identified in the area of the project site (Final EIR Section 5.15.3; Final EIR Appendix M). Proposed grading would potentially disturb or destroy such subsurface resources. Impacts to tribal cultural resources would be potentially significant. Construction monitoring by a qualified archaeologist and Native American monitor would be required for ground disturbing activities during the project construction phase.

#### **Mitigation Measures:**

MM-HIS-1 listed above in 5.1.2.2 requires a monitoring program and would be implemented to mitigate this impact.

#### **5.1.3.3 Finding**

With implementation of MM-HIS-1, impacts to tribal cultural resources would be reduced to below a level of significance through monitoring conducted by a qualified archaeologist and Native American monitor for ground disturbing activities during the project construction phase. If a resource is found, grading activities would be limited to allow for proper recovery and review by qualified archaeologists

and Native American monitor. Any significant resources found would be curated at a qualified institution or repatriated as applicable per the measure, and associated information preserved.

**Reference:** Final EIR § 5.15 and Final EIR Appendix M.

## **5.2 Findings Regarding Mitigation Measures that Are Significant and Unavoidable [CEQA § 21081(a)(3) and CEQA Guidelines § 15091(a)(3)]**

The City, having reviewed and considered the information contained in the Final EIR and the Record of Proceedings and pursuant to Public Resource Code §21081(a)(3) and State CEQA Guidelines §15091(a)(3), makes the following findings regarding air quality impacts associated with sensitive receptors:

*Specific economic, legal, social, technological, or other considerations, including considerations of the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the Final EIR (Project No. 658548/SCH No. 2021040374) as described below.*

"Feasible" is defined in Section 15364 of the CEQA Guidelines to mean *capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors*. The CEQA statute (Section 21081) and Guidelines (Section 15019(a)(3)) also provide that "other" considerations may form the basis for a finding of infeasibility. Case law makes clear that a mitigation measure or alternative can be deemed infeasible on the basis of its failure to meet project objectives or on related public policy grounds. This finding is appropriate with respect to the project because there are no feasible mitigation measures available that would reduce the identified impacts to below a level of significance.

### **5.2.1 Air Quality**

#### **5.2.1.1 Potentially Significant and Unavoidable Impact**

A future ministerial project allowed under the proposed CPA and Rezone would expose sensitive receptors to DPM pollutant concentrations associated with ministerial project construction. Direct and cumulative impacts from construction-related DPM emissions from a future ministerial project that could construct up to 26 units at the site would be significant. Refer to Final EIR Sections 5.3.3 and 6.3.3; and Appendix E for additional details.



### **5.2.1.2 Facts in Support of Finding**

Cancer risk thresholds are exceeded at three nearby sensitive receptor locations, and DPM emissions associated with project construction would need to be reduced by approximately 85 percent to avoid the significant impact. As discussed under Findings Section 5.1.1.2 above, MM-AQ-1 would reduce the proposed development project impacts to less than significant. However, MM-AQ-1 is not feasible, if a project proceeds ministerially under the proposed CPA and Rezone, as no CEQA review would be required and there would be no mechanism in the City's control to reduce construction-related DPM emissions.

The project includes a CPA and Rezone that would allow for the site to be developed in the future with up to 206 residential units ministerially. Should the proposed development project not proceed and if future development were to occur ministerially in accordance with the RM-2-6 zone and without a discretionary action and, therefore, CEQA review, an air quality analysis would not be required. There is also no mechanism to condition a CPA and Rezone. Thus, there would be no feasible mechanism to require MM-AQ-1 to reduce cancer risk impacts due to DPM emissions from construction activities to below a level of significance.

### **5.3.1.2 Finding**

As there would be no mechanism to require future ministerial development projects on the site to implement mitigation to reduce the potentially significant air quality impact. The impact would remain significant and unavoidable.

**Reference:** Final EIR § 5.3.3, Final EIR § 6.3.3 and Final EIR Appendix E.

## **5.3 Findings Regarding Mitigation Measures Which are the Responsibility of Another Agency (CEQA § 21081(a)(2)) and CEQA Guidelines § 15091(a)(2))**

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

## **5.4 Findings Regarding Alternatives (CEQA § 21081(a)(3) and CEQA Guidelines § 15091(a)(3))**

Because the project has the potential to cause one or more significant environmental effects, the City must make findings with respect to the alternatives to the project considered in the Final EIR, evaluating whether these alternatives could feasibly avoid or substantially lessen the project's

significant environmental effects while achieving most of its objectives (listed in Section 2.3, above, and Section 3.1.2 of the Final EIR).

The City, having reviewed and considered the information contained in the Final EIR and the Record of Proceedings, and pursuant to Public Resource Code § 21081(a)(3) and State CEQA Guidelines §15091(a)(3), makes the following findings with respect to the alternatives identified in the Final EIR (PRJ-0698277/ SCH No. 2022060468):

*Specific economic, legal, social, technological, or other considerations, including considerations of the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the Final EIR (PRJ-0698277/ SCH No. 2022060468) as described below.*

“Feasible” is defined in Section 15364 of the CEQA Guidelines to mean *capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors*. The CEQA statute (Section 21081) and Guidelines (Section 15019(a)(3)) also provide that “other” considerations may form the basis for a finding of infeasibility. Case law makes clear that a mitigation measure or alternative can be deemed infeasible on the basis of its failure to meet project objectives or on related public policy grounds. This finding is appropriate with respect to the project because there are no feasible mitigation measures available that would reduce the identified impacts to below a level of significance.

#### **5.4.1 Alternative 1 – No Project/No Build**

CEQA Guidelines Section 15126.6(e) requires that an EIR evaluate a “no project” alternative, along with its impacts. The purpose of describing and analyzing a no project alternative is to allow a lead agency to compare the impacts of approving the project to the impacts of not approving it. Specifically, Section 15126.6(e)(3)(B) requires that an EIR for a development project on an identifiable property address the no project alternative as circumstances under which the project does not proceed. In other words, the No Project/No Build alternative assumes that the project site would not be developed with the project.

Under the *No Project/No Build* alternative, the project would not be implemented on the site. The existing vacant structure and out buildings would not be demolished; and the site would be left as it exists today. No redevelopment of the site to include residential buildings, amenities, associated landscaping, and other improvements would occur.

#### 5.4.1.1 Potentially Significant Effects

When compared to the project, the *No Project/No Build* alternative would eliminate the potential for impacts to air quality, historical resources (archaeology) and tribal cultural resources associated with the project, as no grading or construction would occur. The *No Project/No Build* alternative would not expose sensitive receptors to substantial pollutant concentrations and no mitigation would be required. The *No Project/No Build* alternative would also avoid environmental effects associated with transportation and circulation, geologic conditions, GHG, health and safety, water quality, hydrology, energy, noise, biological resources, population and housing, wildfire, and visual effects and neighborhood character. There would also be less impacts to public services and public utilities, as well as no impacts to schools, libraries, and recreation, as no residential development would occur.

#### 5.4.1.2 Finding and Supporting Facts

**Finding:** The *No Project/No Build* alternative is rejected because it fails to satisfy the project's underlying purpose and basic project objectives. Social considerations, including matters of public policy and housing needs, make this alternative infeasible. The City finds that these grounds are independently sufficient to support rejection of this alternative.

**Rationale:** Under the *No Project/No Build* alternative, no new development would be implemented on the site. The existing vacant structure and out buildings would not be demolished; and the site would be left as it exists today. No redevelopment would occur.

The *No Project/No Build* would not satisfy the purpose of the project to create a transit-oriented residential development adjacent to an existing trolley line that would provide market rate and affordable housing units to help the City meet its housing goals and to accommodate the transit-oriented vision for the Palm City in the Otay Mesa-Nestor Community Plan. Furthermore, the *No Project/No Build* alternative would not meet any of the project objectives. This alternative would not provide additional market rate and affordable housing to serve the urgent needs of the City and would not assist the City in State and local housing goals by providing rental housing stock and contributing to a diverse range of housing opportunities and affordabilities. Market rate and affordable housing would not be constructed at a location proximate to employment and institutional uses, multi-modal transit, and regional transportation amenities. As such, the *No Project/No Build* alternative would not aid in reducing reliance on the personal automobile to go about daily life and would not assist the City in attaining its sustainability goals and reducing greenhouse gas emissions. The *No Project/No Build* alternative would not feasibly accomplish the basic objectives of the project. Social considerations, including matters of public policy and housing needs, make this alternative infeasible.

**Reference:** Final EIR § 10.6.2.

#### **5.4.2 Alternative 2 - No Project/Build under Existing Land Use Designation and Zoning**

CEQA Guidelines Section 15126.6(e)(3) states: *when the project is the revision of an existing land use or regulatory plan, policy or ongoing operation, the "no project" alternative will be the continuation of the existing plan, policy or operation into the future.* Therefore, Alternative 2 consists of the *No Project/Build Under Existing Land Use Designation and Zoning* alternative.

The project site is designated as Mixed Use, Low Density Residential, and Open Space in the Otay Mesa-Nestor Community Plan (see Figure 2-6, Otay Mesa-Nestor Community Plan Land Use Map). The site is also zoned AR-1-2, RM-1-1 and RS-1-7 (see Figure 2-7, Existing Zoning). The RM-1-1 zone allows for residential development of up to one dwelling unit per a minimum lot size of 3,000 square feet (14.52 du/ac). The RS-1-7 zone allows for residential development of one dwelling unit per minimum 5,000 square foot lot (8.71 du/ac). The AR-1-2 zone allows for one dwelling unit per a minimum one-acre lot (one du/ac). Development within the AR-1-2 zone would occur as three custom home sites; the 12 units that would occur in the RM-1-1 zone would be attached rental units; and 17 lots that could occur in the RS-1-7 zone would be detached homes on approximately 5,000 square foot lots; similar to a typical urban subdivision. Although the Mixed-Use land use category allows commercial uses, due to the very low development potential that could occur under this alternative and the project site's location a distance from a public street, this alternative assumes no commercial space. Additionally, for the Open Space area (approximately 2.92 acres), this alternative assumes no development would occur, as the Community Plan does not identify any use of the Open Space designated areas of the Community, other than specific recommendations for the OVRP area to the north and the off-site Salt Ponds.

##### **5.4.2.1 Potentially Significant Effects**

The *No Project/Build Under Existing Land Use Designation and Zoning* alternative would result in a maximum of 32 units, composed of three custom home sites, 12 multi-family units, and 17 single family lots; and approximately 2.92 acres of open space. Overall, when compared to the project, the *No Project/Build Under Existing Land Use Designation and Zoning* alternative would result in less environmental effects. This alternative would result in an 84 percent reduction from the maximum of 206 units of the proposed project, to 32 units. This alternative would also result in a 45 percent reduction of the graded area from 5.50 acres to 3.00 acres, which would reduce associated construction-related emissions. As indicated in the EIR Section 5.3.3, an 85 percent reduction is needed to reduce cancer impacts to below the significance threshold. The *No Project/Build Under Existing Land Use Designation and Zoning* alternative would not achieve the 85 percent reduction required to avoid the cancer risk impact. This *No Project/Build Under Existing Land Use Designation and Zoning* alternative would expose sensitive receptors to pollutant concentrations that exceed the 10 in a million cancer risk threshold. The project's direct and cumulative impact to air quality (sensitive receptors) would not be avoided by this alternative and mitigation would be required. The significant

not mitigated CPA and Rezone direct and cumulative air quality (sensitive receptors) impact related to future ministerial projects would be significant under both the proposed project and this alternative.

The *No Project/Build Under Existing Land Use Designation and Zoning* alternative would reduce environmental effects associated with GHG, energy, and noise, as less construction and traffic would occur. Under this alternative, impacts to historical resources (archaeology) and tribal cultural resources would remain significant, and mitigation would be required.

**Finding:** The *No Project/Build Under Existing Land Use Designation and Zoning* alternative would result in reduced exposure of sensitive receptors to pollutant concentrations, as well as reduced potential for impacts to historic (archaeology) and tribal cultural resources due to the reduced footprint. This alternative would contribute 84 percent less units than the project and would not meet the project's Objective 3 to maximize site efficiency by providing medium-high density residential uses at the site that contribute to meeting the dual housing affordability/availability needs of the City, and would also satisfy Objective 5 to a substantially lesser extent since development would not be maximized. Social and housing need considerations, including matters of public policy, render this alternative infeasible. Therefore, the City rejects this alternative and finds that any of these grounds are independently sufficient to support rejection of this alternative.

**Rationale:**

The *No Project/Build Under Existing Land Use Designation and Zoning* alternative would meet five of the six project objectives, though to a lesser extent than the project. Specifically, this alternative would meet Objective 1 and Objective 2 by providing needed housing in a range of affordability levels near regional transportation amenities (Palm Avenue Trolley Station). However, this alternative would contribute 32 units while the proposed project would develop 198 units, and allow up to 206 units (84 percent more units than this alternative). As such, this alternative would not meet the project's Objective 3 to maximize site efficiency by providing medium-high density residential uses at the site that contribute to meeting the dual housing affordability/availability needs of the City. This alternative could be designed similarly to the project utilizing architecture and design elements and would, therefore, meet project Objective 4 by creating a coherent and cohesive site design. This alternative would also meet project Objective 5 by providing infill redevelopment on an underutilized site, though to a lesser extent considering it would not utilize the site to the degree of the proposed project. Lastly, the *No Project/Build Under Existing Land Use Designation and Zoning* alternative would meet Objective 6, as it would provide the trail connections from the site to the existing trail system. This alternative would meet the basic project objectives; however, it would meet the project objectives to a substantially lesser extent than the proposed project considering it would include 84 percent fewer residential units.

The goals of the General Plan Land Use Element include increasing the City's supply of land designated for various residential densities and ensuring diverse and balanced neighborhoods and

communities with housing available for households of all income levels. The General Plan's Housing Element has policies that aim to provide a variety of housing types and sizes with varying levels of affordability in residential and village developments (HE-I.1 and HE-I.2). The unit mix also accommodates the needs of a variety of potential residents, as they can select a unit that meets their size and budgetary needs (LU-H.1, LU-H.2). Although this alternative would provide new housing that relies on and supports transit use (HE-O.2), as stated above, it would not do so at a substantially reduced level when compared with the project considering it would provide 84 percent fewer units.

The Housing Element identifies a total remaining capacity of approximately 873 housing units for the Otay Mesa-Nestor community, with 66 of those identified as lower-income (City of San Diego 2020). While the project site was not identified as a potential site for housing, the project would contribute 198 units to the 108,036 units allocated to the City under the County's Regional Housing Needs Assessment (RHNA) for the 2021-2029 Housing Element period. While the City is planning for additional housing to meet the need and targeted to permit more than 88,000 new housing units between 2010 – 2020, less than half of those units were constructed (42,275) as of December 2019 (City of San Diego 2020). Considering this, as public policy, the City aims to maximize the number of new residential units due to the ongoing housing crisis. This alternative would not maximize the number of units and would not fulfill City policy to the extent of the proposed project.

The housing vision of the Otay Mesa-Nestor Community Plan includes "multifamily units, rehabilitated unique older units in the Palm City and Nestor areas, mobile homes, and senior housing in mixed-use transit-oriented developments near the trolley stations." The site is uniquely located in the Palm City area along the trolley corridor. This Palm City area is also stated as "an ideal location for pedestrian-oriented developments incorporating commercial, residential and civic uses." The Community Plan further states a main strategy should be to "[d]evelop the Palm Avenue transit center site, including the Park-and-Ride lot and, if possible, other adjoining parcels, as the cornerstone of the Palm City neighborhood center." The site is an adjoining parcel to the Palm Avenue transit center. While the *No Project/Build under Existing Land Use Designation and Zoning* alternative would include 32 units with one affordable unit, it would be substantially less than the project's 198 units with eight affordable units. The *No Project/Build under Existing Land Use Designation and Zoning* alternative would not meet the Otay Mesa-Nestor Community Plan vision and strategies to the extent of the proposed project.

As indicated above, the City is in a housing crisis and needs additionally housing supply. Considering the City's Housing Element and 2022 Climate Action Plan, the City policy is to locate additional housing within transit priority areas to the extent possible in order to reduce vehicle miles travelled and associated emissions. The greater increase in housing within these areas would result in greater reductions in vehicle miles travelled. Thus, although the *No Project/Build under Existing Land Use Designation and Zoning* alternative would increase the number of residential units within a transit priority area, the proposed project would further increase the number of residential units within a

transit priority area and promote the City's goals of providing housing and reducing greenhouse gas emissions to a greater extent.

The reduction in the proposed number of units renders the *No Project/Build under Existing Land Use Designation and Zoning* alternative infeasible based on social considerations and City's housing needs.

**Reference:** Final EIR § 10.6.2.

## **6.0 FINDINGS REGARDING OTHER CEQA CONSIDERATIONS**

### **6.1 Growth Inducement**

#### **6.1.1 Short-term Growth Inducing Effects**

During construction activities associated with the project, demand for various construction trade skills and labor would increase. However, it is anticipated that this demand would be met by the local labor force and would not require the importation of a substantial number of workers, which could cause an increased demand for temporary or permanent housing in this area. Further, construction of the project would be short-term and temporary. It would not lead to an increase in employment on-site that would stimulate the need for additional housing or services. Therefore, no associated substantial short-term growth-inducing effects would result.

#### **6.1.2 Long-term Growth Inducing Effects**

The project site is designated as Open Space, Mixed-Use, and Low-Density Residential in the Otay Mesa-Nestor Community Plan. The project site is zoned RM-1-1, RS-1-7, and AR-1-2. The project would require a Community Plan Amendment and a Rezone to allow for the proposed residential development on-site. The proposed rezone would allow up to 206 units. The project proposes the construction of 198 multi-family dwelling units in 13 buildings with amenities.

Based on SANDAG's 2050 Regional Growth Forecast rate for the Otay Mesa Community for the year 2035, the population rate coefficient is 3.81 persons per household. Thus, the 198-unit development would introduce an estimated 754 people to the site. The full buildout of the site per the rezone would include 206 units and would introduce an estimated 784 people to the site. As discussed in Section 5.12, *Population and Housing*, the project would help accommodate the existing and planned population and population growth anticipated in the City and would aid the existing housing shortage by providing market-rate and affordable rental units. The proposed project would not directly induce substantial growth through the development of residential land uses.

The City of San Diego is experiencing a housing shortage as discussed in the City of San Diego General Plan Housing Element 2021-2029. The City's The City of San Diego's portion of the County's

RHNA target for the 2021-2029 Housing Element period is 108,036 homes (City of San Diego 2020). While the City is planning for additional housing to meet the need and targeted to permit more than 88,000 new housing units between 2010 – 2020, less than half of those units were constructed (42,275) as of December 2019 (City of San Diego 2020). The project's proposed construction of 198 units is anticipated to help accommodate the existing and planned population and population growth anticipated in the City and help with the existing housing shortage. Therefore, the project would not directly induce substantial unplanned population growth in the area.

The project would not induce extensions of roads or other infrastructure. The project site is surrounded by residential and commercial development to the east, south and west that is served by existing public services and utility infrastructure. The proposed project would connect to existing utilities and include improvements that only service the project. No new major infrastructure facilities are required to accommodate the proposed project. The project would not remove an obstacle to growth or expand public services and facilities to accommodate additional economic or population growth beyond that proposed for the site. Roadways already exist to serve the project and no improvements would be needed as a result of the project. Additionally, the project site would be fully served by public services and would not introduce any public services that are currently an obstacle to growth.

The project would not result in a substantial alteration to the planned location, distribution, density, or growth rate of the Otay Mesa-Nestor community, adjacent communities, or the City as a whole. The project would not result in significant impacts associated with growth inducement.

## **6.2 Significant Irreversible Environmental Changes that Will Be Caused by the Project**

As required by Section 15126.2(c) of the California Environmental Quality Act (CEQA) Guidelines, the significant irreversible environmental changes of a project shall be identified. Irreversible commitments of non-renewable resources are evaluated to assure that their use is justified. Irreversible environmental changes typically fall into three categories: primary impacts, such as the use of nonrenewable resources; secondary impacts, such as highway improvements that provide access to previously inaccessible areas; and environmental accidents associated with a project. Section 15126.2(d) of the CEQA Guidelines states that irretrievable commitments of resources should be evaluated to ensure that the current consumption of resources is justified.

### **6.2.1 Impacts Related to Nonrenewable Resources**

Development would occur as a result of the project, which would entail the commitment of energy and natural resources. The primary energy sources would be electricity, natural gas, and fossil fuels. The use of electricity, natural gas, and fossil fuels represents an irreversible commitment of these resources. Construction of the project would also require the use of various raw materials, including



cement, concrete, lumber, steel, etc. These resources would also be irreversibly committed. Once constructed, the operation of the project would entail a further commitment of energy resources in the form of fossil fuels and electricity. This commitment would be a long-term obligation since the project would result in the development of structures that are likely to have a useful life of 20 to 30 years or more.

The project would increase demand for energy in the project area and SDG&E's service area. However, no adverse effects on non-renewable resources are anticipated. The project would follow Uniform Building Code (UBC) and Title 24 requirements for energy efficiency and would incorporate sustainable design features directed at reducing energy consumption. The impact of increased energy usage would not result in a significant adverse environmental impact.

Additionally, the project would be consistent with the City's Climate Action Plan (CAP) (2022) by complying with the CAP Consistency Regulations. Specifically, the project would comply with the *Mobility and Land Use Regulations* of the CAP Consistency Regulations by providing at least 50 percent of all required bicycle parking spaces with individual outlets for charging electric bikes. The project would not be subject to other *Mobility and Land Use Regulations*, including those requiring pedestrian enhancements on property abutting a public right-of-way and publicly accessible pedestrian amenities, because the project site does not abut a public street. Additionally, the project would comply with the *Resilient Infrastructure and Healthy Ecosystems Regulations* by providing two trees for every 5,000 square feet of lot area. The project lot area is approximately 5.92 acres (approximately 257,875 square feet) in size and would require the planting of 103 trees per the CAP Consistency Regulations. The project's *Landscape Development Plan* (see Figure 3-4) provides for planting 187 trees, which would exceed the CAP Consistency Regulations by providing 84 trees more than required.

### **6.2.2 Other Environmental Changes**

Implementation of the project would not result in significant irreversible impacts on agricultural, mineral resources, and paleontological resources. The project site is currently accessible via regional transportation facilities and local roadways. The immediate vicinity is a mostly developed, urbanized area of the City with a transit parking lot to the east, a mobile home park, and school sports fields to the south, and single-family residential across Palm Avenue to the south and commercial uses to the west beyond Hollister Street. No new freeways or roadways are proposed that would provide access to currently inaccessible areas. Therefore, the implementation of the project would not result in a significant irreversible commitment with regard to unplanned land use.

## **7.0 FINDINGS REGARDING RESPONSES TO LETTERS OF COMMENTS AND FINAL EIR REVISIONS**

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

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

## **8.0 STATEMENT OF OVERRIDING CONSIDERATIONS**

Pursuant to Section 21081(b) of CEQA and Sections 15093 and 15043(b) of the State CEQA Guidelines, the City is required to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or state-wide benefits, of a proposed project against its unavoidable significant environmental impacts when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered acceptable pursuant to Public Resources Code Section 21081.

Pursuant to Public Resources Code Section 21081(b) and the State CEQA Guidelines Section 15093, the City has balanced the benefits of the project against potential unavoidable significant impacts to Air Quality (DPM Emissions – Full. Buildout of Zone) associated with the project and has examined alternatives to the project that could avoid these significant impacts and has rejected them as infeasible, finding that none of them would fully meet the basic project objectives.

Each of the separate benefits of the project, as stated herein, is determined to be, unto itself and independent of the other project benefits, a basis for overriding all potential unavoidable significant environmental impacts identified in these findings. Any one of the reasons set forth below is sufficient to justify approval of the project. Substantial evidence supports the various benefits and such evidence can be found whether in the preceding section, which are by reference in this section, the Final EIR, or in documents that comprise the Records of Proceedings in this matter.

Having considered the entire administrative record on the project, and (i) made a reasonable and good faith effort to eliminate or substantially mitigate the impacts resulting from the project, adopting all feasible mitigation measures; (ii) examined a reasonable range of alternatives to the project and, based on this examination, determined that all those alternatives are either environmentally inferior, fail to meet the basic project objectives, or are not feasible, and therefore should be rejected; (iii) recognized all significant, unavoidable impacts; and (iv) balanced the benefits of the project against the project's significant and unavoidable effects, the City hereby finds that the following economic, legal, social, technological, or other benefits, including region-wide benefits, of the project outweigh the potential unavoidable adverse environmental impacts and render those

potential adverse environmental impacts acceptable based upon the following considerations, set forth below.

## **8.1 Considerations**

### **8.1.2 Provide Much Needed Housing**

The Palm & Hollister Apartments project will add 198 residential units, including eight affordable housing units that will be provided at 30 percent to 60 percent Average Median Income. Developing the existing project site as a transit-oriented residential development will serve the growing needs of the Otay Mesa-Nestor community and the City of San Diego by meeting critical housing needs and supporting current and future employment centers.

### **8.1.2 Increase Recreational Opportunities**

The project will provide a public trail at the southwest corner of the project site connecting off-site to the future public trail system within the Otay Valley Regional Park. Future development of the region park is planned to include paying fields, picnic areas, hiking, biking, and horse trails, and areas for protection of open space, wildlife, historic, agricultural, and archaeological resources. Development of the project will increase access to recreational opportunities for residents and the public.

### **8.1.3 Contributes to Community Character**

The project contributes to the emerging character of the Otay Mesa-Nestor neighborhood of the Uptown community through redevelopment of an underutilized site with architectural elements, enhanced landscaping, and design components that further contribute to the emerging character of this neighborhood. Project design includes low-rise buildings to provide a transition between existing and planned development and the Otay Valley Regional Park to the north.

### **8.1.4 Provide Housing Proximate to Transit**

The project will provide affordable housing adjacent to the Blue Line Palm Avenue Trolley Station. The project would also provide housing near employment and institutional uses, multi-modal transit, and regional transportation amenities. This would assist in reducing reliance on the personal automobile to go about daily life.

### **8.1.6 Implements the City's Climate Action Plan**

The City's CAP is a proactive step toward addressing and reducing the City's GHG emissions. The CAP provides a road map for the City to collaborate with communities in assessing vulnerability to future

climate change, developing overarching adaptation strategies and implementing measures to enhance resilience. Compliance with the CAP is determined via the CAP Consistency Regulations which ensure that the specified emissions targets identified in the CPA are achieved, and land use. The project will comply with the *Mobility and Land Use Regulations* of the CAP Consistency Regulations by providing at least 50 percent of all required bicycle parking spaces with individual outlets for charging EV bikes. The project would not be subject to other *Mobility and Land Use Regulations*, including those requiring pedestrian enhancements on property abutting a public right-of way and public accessible pedestrian amenities, because the project site does not abut a public street. Additionally, the project would comply with the *Resilient Infrastructure and Healthy Ecosystems Regulations* by providing two trees for every 5,000 square feet of lot area. The project lot area is approximately 5.92 acres (approximately 257,875 square feet) in size and would require the planting of 103 trees per the CAP Consistency Regulations. The project's *Landscape Development Plan* provides for planting 187 trees, which would exceed the CAP Consistency Regulations by providing 84 trees more than required.

## **8.2 CONCLUSION**

For the foregoing reasons, the City Council finds in accordance with Public Resources Code 21081(b) and 21085.5 and CEQA Guidelines 15093 and 15043, that the project's adverse, unavoidable environmental impacts are outweighed by the noted benefits, any of which individually would be sufficient to reach the conclusion that overriding findings justify the significant, unmitigated effects that were found. Therefore, the City Council has adopted this SOC.