

DRAFT CANDIDATE FINDINGS OF FACT

REGARDING THE

FINAL ENVIRONMENTAL IMPACT REPORT FOR

THE PRESERVE AT TORREY HIGHLANDS

PROJECT NO. 442880 / SCH NO. 2016031026

July 2019

DRAFT CANDIDATE FINDINGS OF FACT

I. INTRODUCTION

A. Candidate Findings of Fact and Statement of Overriding Considerations

The following Candidate Findings of Fact (Findings) and Statement of Overriding Considerations are made for The Preserve at Torrey Highlands (Project). The environmental effects of the Project are addressed in the Final Environmental Impact Report (FEIR) dated March 19, 2019 and the Additional Information Statement (AIS) to the Final EIR dated July 17, 2019, which is incorporated by reference herein.

The California Environmental Quality Act (CEQA) [Section 21081(a)] and the State CEQA Guidelines [Section 15091(a)] require that no public agency shall approve or carry out a project for which an environmental impact report has been completed which identifies one or more significant effects thereof, unless such public agency makes one or more of the following findings:

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

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

CEQA further requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental effects when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable" (Section 15093(a) of the State CEQA Guidelines). When the lead agency approves a project, which will result in the occurrence of significant effects which are identified in the Final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its actions based on the Final EIR or other information in the record.

The Findings and Statement of Overriding Considerations (SOCs) have been submitted by the City of San Diego (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.

B. Record of Proceedings

For purposes of CEQA and these Candidate Findings and SOCs, 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 Final EIR;
- The Draft EIR;
- The Additional Information Statement(s) (AIS) to 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 any responses to comments in the Final EIR;
- All documents, studies, EIRs, or other materials incorporated by reference in, or otherwise relied upon during the preparation of, the Draft EIR and the Final EIR;
- Matters of common knowledge to the City, including, but not limited to, federal, state, and local laws and regulations;
- Any documents expressly cited in these Findings and Statement; and
- Any other relevant materials required to be in the record of proceedings by Public Resources Code Section 21167.6(e).

C. Custodian and Location of Records

The documents and other materials which constitute the record of proceedings for the City's actions on the project are located in the Office of the City Clerk, 202 C Street, San Diego CA 92101 and at the City's Development Services Department (DSD, 1222 1st Avenue, 5th Floor, San Diego, CA 92101. Both the City Clerk and DSD are the custodian of the project's administrative record. Copies of the document that constitute the record of on the City's website at proceedings are and at all relevant times have been available upon request at the offices of the City's DSD. The draft EIR was also placed on the City Clerk's web-site at <https://www.sandiego.gov/city-clerk/officialdocs/public-notices>; whereas the final EIR was placed on the DSD's website at <https://www.sandiego.gov/ceqa/final>. This information is provided in compliance with the Public Resources Code 21081.6(a)(2) and the CEQA Guidelines 15091(e).

II. PROJECT SUMMARY

A. Project Objectives

The objectives of the Preserve at Torrey Highlands Project include the following:

1. Adaptively use a vacant site by developing 450,000 square feet of business office campus that is consistent with the City of San Diego's General Plan and in proximity to nearby office and residential land uses.
2. Provide a cohesive design that is compatible in scale and character to other existing and planned office developments within the vicinity.
3. Develop a high-quality office campus and provide an employment base as a means to create a balance between the existing/proposed housing and the creation of places where those residents may work; create a jobs/housing balance.
4. Locate high-quality employment opportunities within the area to take advantage of the Camino del Sur and State Route 56 freeway interchange to help provide the critical mass that supports planned multimodal transportation linkages.

B. Project Description

The Preserve at Torrey Highlands Project proposes a Community Plan Amendment (CPA) to the Torrey Highlands Subarea Plan, Rezone from AR-1-1 to IP-3-1, a Planned Development Permit, and a Site Development Permit to construct a 420,000-square-foot business office development and a 3,850-square-foot amenity structure on an 11.1-acre (10.33-net-acre) site. Specifically, the project would construct three office buildings comprised of a 150,000- square-foot, five-story building (Building 1); 120,000-square-foot, four-story building (Building 2) that would include a 5,000-square-foot fitness center (including shower facilities); a 150,000-square-foot, five-story building (Building 3); an amenity building that would include a 3,850-square-foot café; and a 357,890-square-foot five-above ground story parking garage with a half subterranean level and surface parking (see Figure 3-1, Site Plan and Figure 3-2, Site Sections of the EIR, and the AIS for revised building elevations, Figures AIS-1 through AIS-3). Each office building would include subterranean parking spaces. The amenity building would include a private café that is linked to walking paths, outdoor seating, and various meeting/collaboration areas. Various site improvements would be constructed, including driveways, walkways, and landscaping. The project also includes on-site storm water conveyance system improvements. The project would also incorporate two conservation easements.

In addition, eight individual retaining walls, with a combined linear length of 1,093 feet, would be constructed in various locations across the project site. The retaining walls would range in height from 1 to 12 feet with the tallest retaining wall (12 feet) being located on the far western portion of the project site (refer to Figure 3-13, Landscape Plan of the EIR for retaining wall locations).

Four retaining walls would be located interior to the project site, which would not be visible from public vantage points or to mobile viewers (one located directly north of Building 2; two located south of a proposed retaining wall at the northeastern periphery of the site; and one located near the southwestern edge of Building 3; see Figure 3-13 of the EIR). Four retaining walls would be located at the site's periphery; however, the retaining walls are situated below the street grade of Camino del Sur and landscape screening will be provided along any exposed portions of the walls. Moreover, the landscaping plan includes the installation of native vegetation and canopy trees in front of the retaining walls to partially screen views of the walls from Camino del Sur. Landscaping would also include large trees in the central portion of the site, and canopy trees would be planted along the project perimeter to provide shade as well as partially screen the parking structure, buildings and retaining walls from Camino del Sur.

III. ENVIRONMENTAL REVIEW PROCESS AND PUBLIC PARTICIPATION

In compliance with Section 15082 of the CEQA Guidelines, the City published a Notice of Preparation on March 8, 2016, which began a 30-day period for comments on the appropriate scope of the EIR. Consistent with Public Resources Code Section 21083.9, the City held a public agency scoping meeting on March 30, 2016 at the Rancho Peñasquitos Library. The purpose of these meetings was to seek input and concerns from the public regarding the environmental issues that may potentially result from the project.

The City published a draft EIR on June 21, 2018 in compliance with CEQA. Pursuant to CEQA Guidelines Section 15085, upon publication of the draft EIR, the City filed a Notice of Completion with the Governor's Office of Planning and Research, State Clearinghouse, indicating that the draft EIR had been completed and was available for review and comment by the public. The City also posted a Notice of Availability of the draft EIR at this time pursuant to CEQA Guidelines Section 15087. Subsequent to circulation of the draft environmental document, it was identified that a portion of the interested parties' distribution list was inadvertently omitted. To ensure that all interested parties had an opportunity to comment on the draft EIR, the public review was extended for an additional 12 days. During the public review period, the City received comments on the environmental document. After the close of public review period, the City provided responses in writing to all comments received on the draft EIR.

The Final EIR for the project was published on March 19, 2019. The Final EIR has been prepared in accordance with CEQA and the State CEQA Guidelines.

IV. SUMMARY OF IMPACTS

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

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

- Agriculture and Forestry Resources
- Geologic Conditions
- Health and Safety
- Hydrology
- Mineral Resources

- Public Services and Facilities
- Public Utilities
- Water Quality

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

- Land Use
- Noise
- Energy

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

- Air Quality and Odor
- Biological Resources
- Historical Resources
- Paleontological Resources
- Tribal Cultural Resources

No feasible mitigation measures are available to reduce impacts to below a level of significance for the following issues:

- Transportation/Circulation)
- Visual Effects and Neighborhood Character
- Greenhouse Gas Emissions
- Air Quality and Odor

V. 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.

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

The City, having independently reviewed and considered the information contained in the Final EIR and the record of proceedings, finds pursuant to CEQA Section 21081(a)(1) and State CEQA Guidelines Section 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, or substantially lessen the significant effects on the environment as identified in the Final EIR. The basis for this conclusion follows.

I. Air Quality and Odor

Impact: The project would result in daily construction emissions that would exceed the significance threshold for NO_x [oxides of nitrogen]. As shown in Table 5.5-6 of Section 5.5, Air Quality and Odor, NO_x emissions would exceed the maximum daily emission threshold and would potentially result in a violation of an air quality standard. All other criteria air pollutant emissions (VOC, CO, SO_x, PM₁₀, or PM_{2.5}) would be below the maximum daily emission thresholds.

Facts in Support of Finding: MM-AQ-2 requires the project owner/permittee, or its designee, to ensure that construction equipment meets the appropriate engine tier as certified by the California Air Resources Board (CARB) and that engine tier requirements are incorporated on all construction plans. Further, MM-AQ-1 requires the project owner/permittee to include engine tier requirements in construction contracts, in accordance with MM-AQ-2. As shown in Table 5.5-8 of Section 5.5, Air Quality and Odor, with implementation of mitigation (MM-AQ-1 and MM-AQ-2), resulting daily construction emissions of NO_x would be reduced to below a level of significance.

II. Air Quality and Odor

Impact: The project would expose sensitive receptors, including residential units at the presumed to be existing Merge 56 project, to substantial pollutant concentrations from construction activities.

Facts in Support of Finding: The results of the Health Risk Assessment (HRA) demonstrate that the diesel exhaust emissions from construction of the project exhibit cancer risks that exceed the 10 in 1 million threshold, but below the chronic hazard index less than 1. Therefore, impacts to residential units at the presumed to be existing Merge 56 project would be potentially significant. However, with implementation of MM-AQ-1 and MM-AQ-2, cancer risk and chronic hazard index were estimated at 8.50 in 1 million and 0.005, respectively (See Table 5.5-14 in Section 5.5, Air Quality and Odor). The results of the HRA demonstrate that the diesel exhaust emissions from construction of the project exhibit cancer risks below a level of significance following mitigation. Therefore, toxic air contaminant emissions from construction of the project would not expose sensitive receptors to substantial pollutant concentrations with mitigation, and impacts would be less than significant.

III. Biological Resources

Impact: The project would result in direct impacts to special-status plant and wildlife species as well as to Tier I and Tier IIIA vegetation.

Facts in Support of Finding: MM-BIO-1 would establish various measures to be implemented prior to, during, and after construction. Measures to be implemented prior to construction include: biologist verification, preconstruction meetings, review of biological documents, preparation of a Biological Construction Mitigation/Monitoring Exhibit (BCME), review and disclosure of avian protection requirements, resource delineation, and construction crew education. Measures to be implemented during and/or after construction include: biological monitoring, subsequent resource identification, and post construction measures, if necessary.

Further, MM-BIO-2 would mitigate impacts to scrub oak and chamise through a combination of on-site preservation and off-site purchase of Tier I and Tier IIIA habitat as illustrated in Table 5.6-3 of Section 5.6, Biological Resources.

Finally, MM-BIO-3 would require the project owner/permittee to convey a Covenant of Easement (COE), to be recorded against the title. The on-site preservation within the COE shall preserve 0.43 acres of chamise chaparral (Tier IIIA) at a 1:1 ratio. The COE also provides protection for the off-site vernal pool features and the watershed.

Implementation of MM-BIO-1 would reduce direct impacts to nesting Bell's sparrow during construction. Implementation of MM-BIO-2 and MM-BIO-3 would reduce direct impacts to 9.75 acres of sensitive vegetation and special-status plants that occur on site to below a level of significance.

IV. Biological Resources

Impact: Impacts to non-wetland waters would be potentially significant. The resource agencies would require the project to obtain necessary permits for the impacts to this ephemeral channel feature. The project would not result in direct impacts to City-defined wetlands.

Facts in Support of Finding: Although the project would not result in direct impacts to City-defined wetlands, the project would directly impact 0.02 acre of non-wetland waters of the United States, mapped as an unvegetated ephemeral channel in the central portion of the project site (See Figure 5.6-3). This channel is subject to the jurisdiction of all three wetland resource agencies (U.S. Army Corps of Engineers, Regional Water Quality Control Board, and California Department of Fish and Wildlife) but is not considered a wetland by the City.

MM-BIO-4 requires the project owner/permittee to provide evidence of the following permits: a 404 permit from the U.S. Army Corps of Engineers, 401 Certification from Regional Water Quality Control Board, and a 1602 Streambed Alteration Agreement from the California Department of Fish and Wildlife. Evidence of these permits would be required prior to a Notice to Proceed or the first grading permit. With implementation of MM-BIO-4, direct impacts to non-wetland waters would be less than significant.

V. Historical Resources

Impact: Implementation of the project could result in impacts to unanticipated surface or subsurface cultural resources during ground-disturbing activities. Therefore, impacts to historical resources would be potentially significant.

Facts in Support of Finding: MM-CUL-1 would require the project to implement measures prior to permit issuance; and prior to, during and after construction. Measures to be implemented prior to permit issuance include entitlements plan check and submit letters of qualification to the Assistant Deputy Director. Measures to be implemented prior to construction include: verification of records search, principal investigator to attend preconstruction meetings, identify areas to be monitored, and determine when monitoring will occur. Measures to be implemented during construction include: monitoring during grading/excavation/trenching, implementing the discovery notification process, and determining the significance of discovered resources. Additionally, as specified in MM-CUL-1, section IV, an identification, treatment and recovery program would be implemented in the event human remains are discovered during construction.

VI. Paleontological Resources

Impact: Based on the presence of formational units exhibiting high potential for the occurrence of sensitive paleontological resources within the project site, impacts from grading activities associated with the project would be potentially significant.

Facts in Support of Finding: Prior to construction within a formation with a moderate to high resource potential, monitoring would be required.

Incorporation of mitigation measure MM-PALEO-1 would reduce the potential for significant impacts to below a level of significance.

VII. Tribal Cultural Resources

Impact: The project area is located within an area identified as sensitive on the City of San Diego Historical Resources Sensitivity Maps. In addition, the Lipay Nation of Santa Isabel and the Jamul Indian Village tribes are affiliated traditionally and culturally with the project area. The area is considered sensitive for potential TCRs (buried cultural resources and/or subsurface deposits). Therefore, there is the potential for inadvertent discovery of a resource that could be impacted by project implementation. Impacts would be considered significant.

Facts in Support of Finding: MM-TCR-1 would require the project to implement measures prior to permit issuance; and prior to, during and after construction. Measures to be implemented prior to permit issuance include: entitlements plan check and submit letters of qualification to the Assistant Deputy Director. Measures to be implemented prior to construction include: verification of records search, principal investigator to attend preconstruction meetings, identify areas to be monitored, and determine when monitoring will occur. Measures to be implemented during construction include: monitoring during grading/excavation/trenching, implementing the discovery notification process, and determining the significance of discovered resources. Additionally, as specified in MM-TCR-1, section IV, an identification, treatment and recovery program would be implemented in the event human remains are discovered during construction.

B. Findings Regarding Impacts that Are Unavoidable

The City, having reviewed and considered the information contained in the Final EIR and the Record of Proceedings and pursuant to Public Resource Code §21081(a)(3) and State CEQA Guidelines §15091(a)(3), makes the following findings regarding Transportation/Circulation, Visual Impacts and Neighborhood Character, Greenhouse Gas Emissions, and Air Quality and Odor.

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. 442880 / SCH No. 2016031026) 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 CEQASTATUTE (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.

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 because there are no feasible mitigation measures available that would reduce the identified impacts to below a level of significance.

VIII. Transportation/Circulation

Impact: The project would generate significant cumulative impacts to five intersections, one street segment and three freeway mainline segments resulting in significant impacts associated with an increase in traffic relative to existing capacity and an addition of substantial traffic to congested roadway.

Facts in Support of Finding: The project does not propose construction of Camino Del Sur; however, access to the project site would be provided via two signalized driveways off Camino del Sur. Prior to the issuance of any building permits, the owner/permittee shall submit documentation that the extensions of Camino del Sur and Carmel Mountain Road as described below have been assured by permit and bond, satisfactory to the City Engineer. Additionally, the connection of Camino Del Sur between Torrey Santa Fe Road and Dormouse Road and the connection of Carmel Mountain Road between Via Las Lenas and Camino Del Sur shall be completed and open to traffic to the satisfaction of the City Engineer prior to the issuance of any occupancy permit. The project would align properly and would not conflict with this planned transportation system. However, as discussed in Section 5.2.4.2 of Chapter 5.2, Transportation/ Circulation, the project would generate significant cumulative impacts to five intersections, one street segment and three freeway mainline segments in the Year 2035. If MM-TRA-1 through MM-TRA-9 are fully implemented, impacts to Street Segment No. 19 (Black Mountain Road from SR-56 EB Ramps to Park Village Road), Freeway Mainlines No. 1 (SR-56 from Carmel Valley Road to Camino del Sur) and 2 (SR-56 from Camino del Sur to Black Mountain Road), and Intersection Numbers 6 (Camino del Sur/SR-56 WB Ramps), 7 (Camino del Sur/SR-56 EB Ramps), 17 (Black Mountain Road/SR-56 WB Ramps), 18 (Black Mountain Road/SR-56 EB Ramps), and 19 (Black Mountain Road/Park Village Road) would be reduced to below a level of significance.

Certain factors contribute to the uncertainty of the required intersection improvements cited in the above mitigation measures. Specifically, the timing in the SANDAG RTP does not contemplate completion of the SR-56 widening, including the ramp improvements and related intersection improvements, until Year 2040 (after the cumulative impact would occur in Year 2035). Because neither the City nor the owner/permittee can assure the timely completion of these improvements, the improvements outlined in TRA-1 and TRA-2 are not certain. Thus, payment of fair share contributions would not fully mitigate the project's cumulative impact to the SR-56 interchanges and the project's cumulative impacts would remain significant and unmitigated.

The certainty of Mitigation Measures (MM) TRA-3, TRA-4, and TRA-5, which recommend improvements to intersections along Black Mountain Road, the Black Mountain Ranch applicant initiated a CPA to the Rancho Peñasquitos Community Plan to downgrade the roadway classification of Black Mountain Road from six lanes to four lanes. The reclassification is currently under review by the City. If the proposed CPA is approved, the planned road widening would not be implemented and the Project's cumulative impacts to the ramps at the Black Mountain Road/SR-56 interchange, as well as the Black Mountain Road/Park Village intersection, would remain significant and unmitigated. If the CPA is not approved, the Project's cumulative impacts to the SR-56 interchange with Black Mountain Road would be partially mitigated by the fair share contribution in MM-TRA-3 and MM-TRA-4 (as discussed in the preceding paragraph regarding Caltrans facilities) and partially mitigated by the fair share contribution at the Black Mountain Road/Park Village Road intersection by MM-TRA-5. Neither the City or the applicant can assure the completion of these improvements in a timely manner, therefore impacts would remain significant and not fully mitigated.

Regarding the implementation of MM-TRA-7, MM-TRA-8, and MM-TRA-9, the timing in the SANDAG RTP does not contemplate completion of the SR-56 widening until Year 2040 (after the cumulative impact occurs in Year 2035). Because neither the City nor the applicant can assure the completion of these improvements in a timely manner, the impacts would remain significant and not fully mitigated.

IX. Visual Effects and Neighborhood Character

Impact: The project would alter more than 2,000 cubic yards of earth per graded acre and create manufactured slopes in excess of 10 feet. Therefore, the project would result in a substantial change in the existing landform and impacts would be significant. No mitigation is available to reduce anticipated landform alteration effects to a less-than-significant level. Impacts related to alteration of an existing landform would remain significant and unavoidable.

Facts in Support of Finding: The project as proposed would require a substantial amount of cut and fill during grading and excavation activities and would exceed the City's threshold of 2,000 cubic yards of grading per acre for excavation and fill. As shown in Figure 5.3-10, the gently rolling and gradually sloping site would be graded and manufactured slopes would be constructed along the northern and western site boundary and in the southeastern corner of the site. Additionally, the project would create manufactured slopes in excess of 10 feet. Although the project would incorporate variation in building pad elevation and grading to simulate the natural landforms, the project would result in a substantial change in the existing landform consistent with MM-VIS-1.

Because the project site is currently undeveloped land, no project alternative which proposes construction would result in less than significant impacts with regard to landform alterations and impacts would remain significant and unavoidable.

X. Greenhouse Gas Emissions

Impact: Emissions from the project buildout would be greater than buildout of the land use inventoried in the Climate Action Plan (CAP). All feasible mitigation measures have been applied through compliance with Step 2 of the City's CAP Consistency Checklist (MM-GHG-3 through MM-GHG-13) as well as additional mitigation measures beyond those required as part of the CAP Consistency Checklist (MM-GHG-1, MM-GHG-

2, and MM-GHG-14, and MM-GHG-15). However, even with implementation of MM-GHG-1 through MM-GHG-15, impacts would remain significant and unavoidable.

Facts in Support of Finding: The project proposes both a Community Plan amendment and a rezone that would result in a more GHG-intensive project located outside of a Transit Priority Area (TPA) when compared to existing land use and zone designations; the project would be inconsistent with the growth projections utilized in the CAP. The estimated project-generated GHG impacts would be reduced following implementation of MM-GHG-1 through MM-GHG-13; however, the majority of measures listed in Step 2 of the City's CAP Consistency Checklist (MM-GHG-3 through MM-GHG-13) cannot be correlated with a quantifiable reduction. Thus, GHG emissions would still exceed emissions associated with the Our Lady of Mount Carmel project as allowed under existing land uses, as analyzed in Section 5.4 of the EIR, impacts would be significant and not fully mitigated.

However, MM-GHG-14 and MM-GHG-15 would require the Applicant to purchase and retire carbon credits, in a quantity sufficient to offset 100 percent of the Project's construction GHG emissions and a quantity sufficient to offset for a 30-year period, to reduce the project's net operational GHG emissions to equal the emissions associated with the Our Lady of Mount Carmel project allowed under existing land use and zone designations. Impacts following implementation of MM-GHG-1 through MM-GHG-15 would result in no net increase in GHG impact emissions when compared to the Our Lady of Mount Carmel project.

The CAP identifies several local strategies to reduce GHG emissions to achieve the 2020 and 2035 targets as defined by the California Air Resources Board Climate Change Scoping Plan. These local strategies include energy and water efficient buildings; clean and renewable energy; bicycling, walking, transit and land use; zero waste; and climate resiliency measures that are applied on a project specific basis. They are implemented through a combination of ordinances, City Council policies, resolutions, programs, and incentives. The CAP also relies upon proper staffing, financing, and resource allocation to ensure the success of each mechanism included in the CAP (City of San Diego 2015). Successful CAP implementation is dependent on assessing and monitoring each of the various mechanisms used to discharge the policies and strategies set forth in the CAP. Although the CAP may be amended from time to time to incorporate new GHG reduction techniques, such new measures would require feasibility studies, coordination with other agencies, or funding sources to be secured before they can be implemented. Currently, the City's CAP does not identify a mechanism for assessing and monitoring the successful implementation of a carbon offset program that includes the purchase of carbon credits, nor does the City's CAP Consistency Checklist include such a carbon offset program that can be implemented on a project-by-project basis to ensure that the specified emission targets identified in the CAP are achieved.

The CAP does not require that a project rely only upon the listed reduction strategies, and it does allow for flexibility in meeting the stated GHG reduction targets, however, it also requires that the City reduce its GHG emissions 50 percent by 2035 within the City's jurisdictional boundary, and as previously stated there are currently no City-recognized offset programs available for purchase. The City is unable to assure that the purchase of offsets through a carbon registry would result in GHG emission reductions within the City or region. GHG impacts associated with the project, therefore, would not be reduced to below a level of significance, and would remain significant and unavoidable.

XI. Air Quality and Odor

Impact: The project would be considered inconsistent with the County of San Diego's Regional Air Quality Strategy (RAQS); therefore, impacts would be significant. As this impact would occur as a result of a change in land use, there is no mitigation available to reduce the impact. When the RAQS and SIP are updated, projects that are approved through General Plan/Community Plan amendments would be included in the SANDAG growth projections, and therefore updated in the RAQS and SIP.

Facts in Support of Finding: The project proposes an amendment to the Community Plan (CPA) and a rezone to allow for the development. The CPA would redesignate the site from Commercial Limited (CL) to Employment Center (EC) and a rezone from AR-1-1 to IP-3-1 (industrial park, which allows for research and development, office, and residential uses). The proposed CPA and rezone would allow a greater amount of development than the adopted community plan, and therefore, the project would not be consistent with the SANDAG projections for emissions in the area. No mitigation is available; therefore, impacts would remain significant and unavoidable.

VI. FINDINGS REGARDING MITIGATION MEASURES WHICH ARE THE RESPONSIBILITIES OF ANOTHER AGENCY (CEQA 21081(a)(2) AND CEQA GUIDELINES 15091 (a)(s))

Certain factors contribute to the uncertainty of the required intersection improvements cited in the above mitigation measures. Specifically, the timing in the SANDAG RTP does not contemplate completion of the SR-56 widening, including the ramp improvements and related intersection improvements, until Year 2040 (after the cumulative impact would occur in Year 2035). Because neither the City nor the applicant can assure the timely completion of these improvements as they are the responsibility of another agency, Caltrans; therefore, the improvements outlined in TRA-1 and TRA-2 are not certain. Thus, payment of fair share contributions would not fully mitigate the project's cumulative impact to the SR-56 interchanges and the project's cumulative impacts would remain significant and unmitigated.

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 which could reduce significant impacts that are within the responsibility and jurisdiction of another public agency.

VII. FINDINGS REGARDING ALTERNATIVES (CEQA 21081(a)(3) and CEQA Guidelines 15091 (a)(3))

In accordance with Section 15126.6(a) of the Guidelines, an environmental impact report (EIR) must contain a discussion of "a range of reasonable alternatives to a project, or the location of a project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives." Section 15126.6(f) further states that "the range of alternatives in an EIR is governed by the 'rule of reason' that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice." Thus, the following discussion focuses on project alternatives that are capable of eliminating significant environmental impacts or substantially reducing them as compared to the proposed Project, even if the alternative would impede the attainment of some

project objectives, or would be more costly. In accordance with Section 15126.6(f)(1) of the Guidelines, among the factors that may be taken into account when addressing the feasibility of alternatives are: (1) site suitability; (2) economic viability; (3) availability of infrastructure; (4) general plan consistency; (5) other plans or regulatory limitations; (6) jurisdictional boundaries; and (6) whether the proponent can reasonably acquire, control or otherwise have access to the alternative site.

As required in Section 15126.6(a), in developing the alternatives to be addressed in this section, consideration was given to an alternative's ability to meet most of the basic objectives of the project. Because the Preserve at Torrey Highlands project will cause potentially significant environmental effects unless mitigated, the City must consider the feasibility of any environmentally superior alternatives to the project, evaluating whether these alternatives could avoid or substantially lessen the potentially significant environmental effects while achieving most of the objectives of the project.

The City, having reviewed and considered the information contained in the Final EIR and the Record of Proceedings, and pursuant to Public Resource Code §21081(a)(3) and State CEQA Guidelines §15091(a)(3), makes the following findings with respect to the alternatives identified in the Final EIR (Project No. 442880 / SCH No. 2016031026):

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. 442880 / SCH No. 2016031026) 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.

A. Alternatives under Consideration

The project alternatives are summarized below along with the findings relevant to each alternative.

1. No Project/No Development Alternative

CEQA Guidelines, Section 15126.6(e), requires that an EIR evaluate a "no project" alternative along with its impact. The purpose of describing and analyzing a no project alternative is to allow a lead agency to compare the impacts of approving the project to the impacts of not approving it. Under the No Project/No Development Alternative, the project would not be implemented and the site would remain in its current condition.

Potentially Significant Effects:

The No Project/No Development Alternative would avoid all of the significant and potentially significant impacts associated with the project, including: significant and unmitigated Transportation/Circulation, Visual Effects/Neighborhood Character, Greenhouse Gas Emissions, and Air Quality impacts; and significant but mitigable impacts related to Air Quality, Biological Resources, Historical Resources, Paleontological Resources, and Tribal Cultural Resources, of which would be avoided or reduce to below a level of significance through identified mitigation measures or design features.

Findings and Supporting Facts:

The City finds that although this alternative would avoid impacts associated with the project, specific economic, legal, social, technological, or other considerations make the No Project/No Development Alternative infeasible and is therefore rejected on such grounds.

The No Project/No Development Alternative would not meet any of the project objectives as set forth in Section 3.2 of the Final EIR and in Section II above.

2. No Project/Development Under Existing Plans Alternative

The project site is currently designated as Commercial Employment, Retail, and Services in the City of San Diego's General Plan (City of San Diego 2008) and Commercial Limited within the Torrey Highlands Subarea Plan (community plan) (City of San Diego 1996). Under these designations, an alternative could be developed that is consistent with these plans and would develop Commercial Limited use, which is stated in the Subarea Plan as uses that are somewhat dependent on automobiles but are appropriate for the more isolated location of this site. This category of land use includes religious facilities, trade schools, storage facilities, nurseries, garden centers, and veterinary clinics (City of San Diego 1996).

For purposes of this CEQA analysis, a religious facility use was assumed for the site. In fact, a religious use project was previously contemplated for the site in 2004 for the Our Lady of Mount Carmel Catholic Church and school (K-8th grade), which provides the best comparative analysis to the project's impacts. The religious facility campus would likely include an on-site school (K-8th grade), large sanctuary/worship center containing 1,000 to 3,500 seats, administration buildings, playground, and other structures. The parking structure would be the same as the project, and surface parking on site would be expanded. See Figure 9-1 for a conceptual site plan for this alternative. The development footprint would occupy the entire site, as with the project. This alternative would not require a Community Plan Amendment; however, a rezone from AR-1-1 would be required to allow for religious and educational uses on site, and site development permit would be required, similar to the project.

Potentially Significant Effects:

The No Project/Development Under Existing Plans Alternative would result in reduced impacts to land use, greenhouse gas emissions, transportation/circulation, visual effects and

neighborhood character, air quality and odor, and energy. Similar impacts would result to biological, historical, paleontological, and tribal cultural resources. Greater impacts would result from operational noise.

Findings to Support Facts:

The City finds that although this alternative would reduce impacts associated with land use, greenhouse gas emissions, transportation/circulation, visual effects and neighborhood character, air quality and odor, and energy, specific economic, legal, social, technological, or other considerations make the No Project/Development Under Existing Plans Alternative infeasible, and is therefore rejected on such grounds.

3. Subterranean Parking Alternative

The Subterranean Parking Alternative would construct a 450,000-square-foot business park campus within three buildings and would eliminate the project's proposed seven-story parking structure. Additional levels of subterranean parking would be added to each building to accommodate parking as well as an expanded surface parking lot on the eastern portion of the site; however, the same number of overall parking spaces (1,781) would be developed as the project. All other project components, such as the private café (3,850-square-foot, one-story amenity building) and achieving LEED Silver Certification, would be employed similar to the project. Additionally, the same discretionary actions as would be required for the project would be required for this alternative, including a Community Plan Amendment to redesignate the site from Commercial Limited (CL) to Employment Center (EC), a rezone from AR-1-1 to IP-3-1 (industrial park), and a site development permit. The intent of this alternative is to reduce visual impacts by placing parking underground and reduce the amount of surficial ground disturbance compared to the project, leaving the area where the proposed parking structure would be located undeveloped in its natural state (see Figure 9-2 of the FEIR).

All three buildings would include eight levels of subterranean parking. Building 1 would be four stories, 120,000 square feet, and accommodate 515 parking spaces; Building 2 would be five stories, 150,000 square feet, and accommodate 602 parking spaces; and Building 3 would be six stories, 180,000 square feet, and accommodate 602 parking spaces. See Figure 9-2 of the FEIR for a conceptual site plan for this alternative.

The Subterranean Parking Alternative would require approximately 257,000 additional cubic yards of soil export (approximately 86,000 cubic yards for each of the three buildings) when compared to the project.

Potentially Significant Effects:

The Subterranean Parking Alternative would result in reduced impacts to visual effects and neighborhood character, and biological resources. Similar impacts would result to land use, historical and tribal cultural resources, and noise. Greater impacts would result to transportation/circulation, landform alteration, greenhouse gas emissions, air quality and odor,

and paleontological resources associated with construction activities; and slightly greater impacts associated with energy during operation would result.

Findings to Support Facts:

The City finds that although this alternative would reduce impacts associated with visual effects and neighborhood character, and biological resources, specific economic, legal, social, technological, or other considerations make the Subterranean Parking Alternative infeasible, and is therefore rejected on such grounds.

4. Reduced Footprint Alternative

The Reduced Footprint Alternative would result in the elimination of one office building and moving its office square footage into two office towers of six and nine stories. This alternative would develop 450,000 square feet of business office space and associated components, same as the project. This alternative would also maintain the same parking program as the project, including the same number of overall parking spaces (1,781); however, 69 parking spaces would be relocated in the parking structure with the elimination of one office building, thereby increasing the height of the parking structure by approximately 10 feet, 6 inches. The subterranean parking underneath the two office towers and the surface parking would be the same as the project. See Figure 9-3 for a conceptual site plan for this alternative.

Additionally, the same discretionary actions as would be required for the project would be required for this alternative, including a Community Plan Amendment to re-designate the site from Commercial Limited (CL) to Employment Center (EC), a rezone from AR-1-1 to IP-3-1 (industrial park), and a site development permit. The intent of this alternative is to reduce the amount of land disturbance than what would be required under the project. Less land contouring would be required to construct the building pads, driveways, retaining walls, and on-site drainage facilities, and thus, this alternative would reduce potential significant impacts to historic resources, paleontological resources, tribal cultural resources, and biological resources.

Potentially Significant Effects:

The Reduced Footprint Alternative would result in reduced impacts to biological, historical, paleontological, and tribal cultural resources. Similar impacts would result to land use, greenhouse gas emissions, transportation/circulation, air quality and odor, noise, and energy. Greater impacts would result to visual effects and neighborhood character.

Findings to Support Facts:

The City finds that although this alternative would reduce impacts associated with biological, historical, paleontological, and tribal cultural resources, specific economic, legal, social, technological, or other considerations make the Reduced Footprint Alternative infeasible, and is therefore rejected on such grounds.

5. Reduced Development Alternative

This alternative would result in development of a 204,000-square-foot project in a three-building configuration: two buildings of two stories and 60,000 square feet each, and one building with 84,000 square feet. The parking program for this alternative would involve the reduction of one subterranean level in each of the three office buildings and the reduction of four levels of parking within the parking structure. The surface parking would be the same as the project. Additionally, the same discretionary actions as would be required for the project would be required for this alternative, including a Community Plan Amendment to redesignate the site from Commercial Limited (CL) to Employment Center (EC), a rezone from AR-1-1 to IP-3-1 (industrial park), and a site development permit. The intent of this alternative is to reduce significant transportation/circulation impacts of the project. See Figure 9-4 of the FEIR for a conceptual site plan for this alternative.

Potentially Significant Effects:

The Reduced Development Alternative would result in reduced impacts to greenhouse gas emissions, transportation/circulation, visual effects and neighborhood character, air quality and odor, noise, and energy. Similar impacts would result to land use, biological, historical, paleontological, and tribal cultural resources. None of the impacts associated with this alternative would be greater than those of the project. This alternative is also considered the environmentally superior alternative.

Findings Supporting Facts:

The City finds that although this alternative would reduce impacts associated with greenhouse gas emissions, transportation/circulation, visual effects and neighborhood character, air quality and odor, noise, and energy, specific economic, legal, social, technological, or other considerations make the Reduced Footprint Alternative infeasible, and is therefore rejected on such grounds.

STATEMENT OF OVERRIDING CONSIDERATIONS

(PUBLIC RESOURCES CODE SECTION 21081(b))

Pursuant to Section 21081(b) of CEQA and CEQA Guidelines §15093 and 15043, CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project.

If the specific economic, legal, social, technological, or other benefits outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered acceptable pursuant to Public Resources Code §21081. CEQA further requires that when the lead agency approves a project which will result in the occurrence of significant effects which are identified in the Environmental Impact Report (EIR) but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the EIR and/or other information in the record.

Pursuant to the Public Resources Code §21081(b) and Guidelines § 15093, the City Council, having considered all of the foregoing, finds that the following specific overriding economic, legal, social, technological, or other benefits associated with the project outweigh unavoidable adverse direct impacts related to transportation/circulation, visual effects (landform alteration), greenhouse gas emissions, and air quality.

The City Council declares that it has adopted all feasible mitigation measures to reduce the proposed environmental impacts to an insignificant level; considered the entire administrative record, including the EIR; and weighed the proposed benefits against its environmental impacts. This determination is based on the following specific benefits, each of which is determined to be, by itself and independent of the other project benefits, a basis for overriding and outweighing all unavoidable adverse environmental impacts identified in the Final EIR.

1. Development of a Sustainably Designed Research & Development Campus

The project will develop an employment center within a campus setting targeted for research and development activities and related office uses. The project is configured to be consistent with the Torrey Highlands Subarea Plan's Community Design Guidelines for land designated Employment Center (EC), which is located adjacent to Deer Canyon/Del Mar Mesa Preserve.

The project will further the goals of the City of San Diego's General Plan "City of Villages" smart growth strategy and Climate Action Plan (CAP) by creating the potential for bringing high-quality, well-paying employment opportunities closer to residential communities where employees of businesses located in the project area may reside, thus potentially reducing vehicle miles travelled by persons in the community who would otherwise be required to commute to more distant employment opportunities and locations.

2. Employment and Fiscal Benefits

The development and construction of the Project will deliver numerous employment and fiscal benefits to the City of San Diego that would otherwise not be provided by a development of one of the types specifically mentioned in the Commercial Limited land use designation in the Torrey Highlands Subarea Plan, including:

- Approximately 1,397 full-time equivalent jobs during the construction period.
- Approximately 1,939 full-time equivalent jobs after completion of project development and full occupancy.
- Generation of recurring revenues to the City of San Diego of approximately \$610,720 annually and a fiscal surplus to the City of San Diego of approximately \$214,573 annually.

3. Quality Employment Opportunities

The development of approximately 11.1 acres of employment related uses is consistent with General Plan policies that promote a diversified economy with a focus on providing quality employment opportunities and self-sufficient wages for all San Diegans. The proposal would be consistent with Economic Prosperity Element policies that encourage a broader geographic distribution of high technology businesses throughout the City. The site also takes advantage of one of the two freeway interchange locations (Camino Del Sur and SR-56) within the North City Future Urbanizing Area by siting employment uses in the southern portion of Torrey Highlands where there is an absence of comparable uses in the adjacent community of Rancho Peñasquitos.

The City Council finds in accordance with Public Resources Code §21081(b) and 21081.5, and CEQA Guidelines §15093 and 15043, that any, or any combination of, the Statement of Overriding Consideration benefits noted above would be sufficient to reach the conclusion that overriding findings justify the significant, unmitigable impacts that were found.