

Professional Commercial and North Commercial  
Zoning Code Amendment (ZA18-002)  
CITY OF DEL MAR

**CANDIDATE'S CEQA FINDINGS OF FACT**

**PROGAM ENVIRONMENTAL IMPACT REPORT**

(SCH #2019029058)

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## I. INTRODUCTION

### A. California Environmental Quality Act

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

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

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

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

The following Candidate Findings of Fact (Findings) have been submitted to the City Council of the City of Del Mar (City Council), as the decision making body, to be approved

for the above-referenced program pursuant to CEQA. The program, as detailed below, would not result in any significant and unmitigated impacts. Therefore, a Statement of Overriding Considerations is not required to be prepared.

Having received, reviewed, and considered the Final Program Environmental Impact Report for the Professional Commercial and North Commercial Zoning Code Amendment (ZA18-002) Project (program), State Clearinghouse No. 2019029058 (PEIR), as well as all other information in the Record of Proceedings (as defined below) on this matter, the following Findings are hereby adopted by the City of Del Mar (City) in its capacity as the CEQA lead agency. These Findings set forth the environmental basis for current and subsequent discretionary actions to be undertaken by the City and responsible agencies for the implementation of the program.

## **B. Project Background/Selected of Environmental Documentation**

Housing element law mandates that local governments adequately plan to meet the existing and projected housing needs of everyone in the community. To ensure adequacy of housing, the California Department of Housing and Community Development (HCD) is required to prepare a Regional Housing Needs Assessment (RHNA) for each Council of Governments in the State that identifies projected housing units needed for all economic segments of the community. The San Diego Association of Governments (SANDAG) is the Council of Governments for the San Diego region, including the City of Del Mar. SANDAG adopted the final RHNA Plan by resolution for the 5th Housing Element Cycle (January 1, 2013 – December 31, 2021) on October 28, 2011. The City was assigned a RHNA of 61 units (see Final PEIR Table 3-1). Additional details associated with the allocation and assignment of housing requirements is discussed in Final PEIR Section 3.1.1.

The City's most recent Housing Element (5th Cycle, 2013-2021) was adopted by City Council on May 20, 2013, and certified by HCD on June 6, 2013. The Housing Element evaluated ways to accommodate the housing requirement goals set by SANDAG. To this end, the City developed programs associated with key areas within the City to focus new housing opportunities including Programs 2-E and 2-F which required amending the provisions of the North Commercial (NC) zone and Professional Commercial (PC) zone, respectively, to allow residential development at a density of 20 dwelling units per acre (du/ac) for projects that include an affordable housing component. An additional Program 2-H, required the City to consider modifying the provisions of the Public Facilities (PF) zone to allow residential uses at appropriate locations.

The program discussed herein would implement the City's Housing Element Programs 2-E and 2-F that requires processing of a Zone Code Amendment and Community Plan Amendment to increase the City's housing capacity.

The City prepared a program-level EIR as defined in Section 15168 of the CEQA Guidelines. A PEIR is prepared for a series of actions that are characterized as one large project through reasons of geography, similar rules or regulations, or where individual activities will occur under the same regulatory process with similar environmental impacts that can be mitigated in similar ways. Because the program includes policies and actions

that will apply to future development proposals within the City, and this PEIR includes a mitigation framework that would be implemented by future projects, a program approach is appropriate. It is intended that the Final PEIR would serve as the environmental document for subsequent activities or implementing actions, including future development of public and private projects within the NC and PC zones. If, in examining future actions for development within the program area, the City finds no new effects could occur or no new mitigation measures would be required other than those analyzed and/or required in this PEIR, the City can approve the activity as being within the scope covered by this PEIR and no new environmental documentation would be required. If additional analysis is required, it can be streamlined by tiering from this PEIR pursuant to CEQA Guidelines Sections 15152, 15153, 15168, and 15183 (e.g., through preparation of a Mitigated Negative Declaration, Addendum, or Supplemental or Subsequent EIR).

These Findings are made relative to the specific conclusions of the Final PEIR prepared for the program.

### **C. Record of Proceedings**

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

- Project permit conditions; and
- Any other relevant materials required to be in the record of proceedings by CEQA section 21167.6(e).

The Draft PEIR and related technical studies were made available for review during the public review period at the following locations: City of Del Mar, 1050 Camino del Mar, Del Mar, California 92014; and at the Del Mar Branch Library, 1309 Camino Del Mar, Del Mar, California 92014. The Draft PEIR was also available for review online at <http://www.delmar.ca.us/NCPC>.

#### **D. Custodian and Location of Records**

The documents and other materials which constitute the administrative record for the City's actions related to the program, as detailed above, are located at City of Del Mar Planning and Community Development Department, located at 1050 Camino del Mar, Del Mar, California 92014. The City Planning and Community Development 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 and required times have been and will be available upon request at the offices of the City Community Development Department. This information is provided in compliance with Public Resources Code section 21081.6(a)(2) and CEQA Guidelines section 15091(e).

## **II. PROJECT SUMMARY**

### **A. Project Location**

The City is located roughly 18 miles north of downtown City of San Diego. The jurisdictions that surround the City include the City of Solana Beach to the north and the City of San Diego to the east and south. To the west of the City lies the Pacific Ocean.

The program area consists of 32 individual parcels located throughout the City within the Professional Commercial (PC), North Commercial (NC), and Public Facility (PF) zones. The regional location of the program areas is shown in Final PEIR Figure 2-1. An aerial photograph of the program area is shown in Final PEIR Figure 2-2. Specific details of the parcels that comprise the program areas are listed in Final PEIR Sections 3.4.2 (NC zone), 3.4.3 (PC zone), and 3.4.4 (PF zone).

### **B. Project Description**

As detailed in Final PEIR Section 3.5, the program would add multiple-dwelling unit residential in the existing NC and PC zones as an allowed use (up to a maximum density of 20 du/ac). The addition of multiple-dwelling unit residential to the existing mix of allowed uses within the NC and PC zones would allow for properties to develop or redevelop with a mix of commercial and residential uses; or solely as multiple-dwelling unit residential, commercial development, or light-industrial development where allowed per the zoning code. The existing zoning setbacks, floor area ratio, lot coverage, and height limits that

currently apply within the respective zones would still apply. The program does not include any physical development or construction component. The program would result in the implementation of required Housing Element Programs 2-E and 2-F and would meet the objectives identified above (see Section 3.3). Future development that qualifies under the proposed program would be subject to discretionary review and approval consistent with the Del Mar Municipal Code (DMMC), which means that any residential or mixed-use development project pursued as a result of the amendments would be required to meet affordable housing requirements consistent with DMMC Chapter 24.21 (Dedication: Affordable Housing Mitigation).

In addition to analyzing the proposed amendments, the PEIR also analyzes the potential for future development of affordable housing (maximum 20 du/ac) within the PF zone (excluding Shores Park) per Housing Element Program 2-H. However, no change to the existing PF zone development or development potential is included in the program.

### **C. Discretionary Actions**

The program requires Planning Commission recommendation, and City Council approval for adoption of the General Plan Amendment (Community Plan Amendment) and Zoning Code Amendment. Additionally, the proposed amendments to the NC and PC land use designations and zones and associated land use plan policies would require a Local Coastal Program Amendment subject to certification by the California Coastal Commission. The process for required certification review and approval by the California Coastal Commission would follow any local approval action by the City Council.

### **D. Statement of Objectives**

As described in Section 3.3 of the Final PEIR, the following primary objectives are identified for the program:

- Implement Housing Element Programs 2-E and 2-F to provide the opportunity for future development of multiple-dwelling unit residential up to a maximum of 20 du/ac in the NC and PC zones.
- Ensure the community's land use designations for NC and PC can accommodate the potential for future construction of housing units.
- Minimize potential land use compatibility conflicts associated with the proposed change to existing land use designations and zoning.
- Increase the City's overall housing capacity and capability to accommodate housing as required per the certified Housing Element for the 2013-2012 housing cycle.
- Analyze potential environmental impacts per Housing Element Program 2-H to facilitate the opportunity for future development of affordable housing (maximum 20 du/ac) within the PF zone (excluding Shores Park) via future amendment to the Zoning Code and associated actions.

The City has considered the statement of objectives sought by the program as found in Section 3.3 of the Final PEIR. The City hereby adopts these objectives as part of the program.

### III. ENVIRONMENTAL REVIEW AND PUBLIC PARTICIPATION

#### **A. Notice of Preparation**

In accordance with CEQA Guidelines Section 15082, the City distributed an NOP of a Draft PEIR to the State Clearinghouse, local and regional responsible agencies, and other interested parties. The NOP was circulated for public comment from February 13, 2019, through March 15, 2019. Comment letters received during the NOP review period are included in the Final PEIR as Appendix A.

#### **B. Public Review of Program EIR**

The Draft PEIR for the program was prepared and circulated for review and comment by the public, agencies and organizations for a public review period that began on November 19, 2019, and concluded on February 18, 2020. A Notice of Completion of the Draft PEIR was sent to the State Clearinghouse and the Draft PEIR was circulated to state agencies for review through the State Clearinghouse, Office of Planning and Research.

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

#### **C. Decision Making Process**

In addition to the Scoping Meeting held on February 21, 2019, the City held two informational hearings on December 2, 2019 before City Council and on December 3, 2019 before the Planning Commission. The program will be formally heard before the Planning Commission who will make recommendations for approval or denial prior to a final hearing before the City Council when an ultimate disposition (approval/denial of the program and certification of the Final PEIR) will be determined.

### IV. GENERAL FINDINGS

The City hereby finds as follows:

- Pursuant to CEQA Guidelines Sections 15050 and 15051, the City is the “lead agency” for the program.
- The Draft PEIR and Final PEIR were prepared in compliance with CEQA, CEQA Guidelines, and any City Significance Determination Thresholds.
- The City has independently reviewed and analyzed the Draft PEIR and Final PEIR, and these documents reflect the independent judgment of the City.

- An MMRP has been prepared for the program, which the City has adopted or made a condition of approval of the program. That MMRP is incorporated herein by reference and is considered part of the Record of Proceedings for the program.

The MMRP designates responsibility and anticipated timing for the implementation of mitigation measures. The City will serve as the MMRP Coordinator.

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

The responses to comments on the Draft PEIR, which are contained in the Final PEIR, clarify and amplify the analysis in the Draft PEIR.

- The City has made no decisions that constitute an irretrievable commitment of resources toward the program prior to certification of the Final PEIR, nor has the City previously committed to a definite course of action with respect to the program.

Copies of all the documents incorporated by reference in the Draft PEIR and/or Final PEIR are and have been available upon request at all times at the offices of the City, custodian of record for such documents or other materials.

- Having received, reviewed, and considered all information and documents in the record, the City hereby conditions the program and finds as stated in these Findings.

## V. FINDINGS REQUIRED UNDER CEQA

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

The mandate and principles announced in CEQA Section 21002 are implemented, in part, through the requirement that agencies must adopt findings before approving projects or programs for which EIRs are required. For each significant environmental effect identified in an EIR for a proposed project or program, the approving agency must issue a written finding reaching one or more of three permissible conclusions. The first such finding is that “changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR” (CEQA Guidelines Section 15091(a)(1)). The second permissible finding is that “such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency” (CEQA Guidelines Section 15091 (a)(2)). The third potential conclusion is that “specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the Final EIR” (CEQA Guidelines Section 15091(a)(3)). CEQA Section 21061.1 defines “feasible” to mean “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.” CEQA Guidelines Section 15364 adds another factor: “legal” considerations (see also *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 565).

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

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

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

to substantially lessen or avoid significant effects by adopting numerous mitigation measures, not all of which rendered the significant impacts in question less than significant.

Although CEQA Guidelines Section 15091 requires only that approving agencies specify that a particular significant effect is “avoid[ed] or substantially lessen[ed],” these Findings, for purposes of clarity, in each case will specify whether the effect in question has been reduced to a less-than-significant level or has simply been substantially lessened but remains significant. Moreover, although CEQA Guidelines Section 15091, read literally, does not require findings to address environmental effects that an EIR identifies as merely “potentially significant,” these Findings will nevertheless fully account for all such effects identified in the Final SEIR.

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

#### **A. Legal Effects of Findings**

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

The project design features and adopted mitigation measures are included in the MMRP adopted concurrently with these Findings and will be effectuated both through the process of constructing and implementing the program.

### **VI. MITIGATION MONITORING AND REPORTING PROGRAM**

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

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

## VII. SUMMARY OF IMPACTS

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

- Land Use (Threshold LU-1: Consistency with Applicable Plans, Policies, and Regulations)
- Aesthetics (Threshold Aes-2: Scenic Resources)
- Cultural Resources (Threshold Cul-1: Historical Resources)
- Traffic (Threshold Traf-1: Circulation System)
- Air Quality (Threshold Air-1: Air Quality Plan Consistency; Threshold Air-2: Increase of Criteria Pollutant; Threshold Air-3: Sensitive Receptors; Threshold Air-4: Other Emissions)
- Greenhouse Gas (Threshold GHG-1: GHG Emissions; Threshold GHG-2: GHG Plans, Policies, and Regulations Consistency)
- Noise (Threshold Nos-2: Vibration; Threshold Nos-3: Ambient Noise Levels)
- Hazards and Hazardous Materials (Threshold Haz-1: Upset and Accident Conditions; Threshold Haz-2: Hazardous Materials Site)

Likewise, the Final PEIR concludes **that no significant cumulative impacts** would occur.

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

- Aesthetics (Threshold Aes-1: Scenic Vistas; Threshold Aes-3: Visual Character and Conflicts with Scenic Quality Regulations; Threshold Aes-4: Light and Glare)
- Cultural Resources (Threshold Cul-2: Archeological Resources; Threshold Cul-3: Human Remains)
- Noise (Threshold Nos-1: Exceedance of Noise Standards)
- Biological Resources (Threshold Bio-1: Special-Status Species; Threshold Bio-2: Riparian Habitat; Threshold Bio-3: Federal Wetlands; Threshold Bio-4: Migratory Birds)
- Geology and Soils (Threshold Pal-1: Paleontological Resources)

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

## VIII. SIGNIFICANT EFFECTS AND MITIGATION MEASURES

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

#### 1. Aesthetics

##### *Threshold of Significance Aes-1: Scenic Vistas*

Pursuant to Threshold Aes-1, a significant impact would occur if the program resulted in a substantial adverse effect on a scenic vista.

##### Impacts

Although no specific projects are included in the program, future development pursuant to the program could result in structures larger in bulk and scale than currently existing (no more so than allowed under existing development regulations). Therefore, at this program level of analysis potential impacts to views throughout the NC, PC, and PF zones would be potentially significant due to uncertainty of actual development projects. As detailed in Final PEIR Section 4.3.5.1, the following direct impacts were identified:

- Impact Aes-1: potential impact from Key View #NC1, as shown on Figure 4.2-2 (After-All Redevelopment)
- Impact Aes-2: potential impact from key View #NC2, as shown on Figure 4.2-3 (After)
- Impact Aes-3: potential impact from key View #PC1, as shown on Figure 4.2-4 (After-All Redevelopment)
- Impact Aes-4: potential impact from key View #PC2, as shown on Figure 4.2-5 (After-All Redevelopment)
- Impact Aes-5: potential impact from key View #PF1, as shown on Figure 4.2-6 (After)
- Impact Aes-6: potential impacts associated with each individual parcel within the PF zone

##### Mitigation

**MM-Aes-1:** Future development within the NC, PC, and PF zones would undergo review by the Design Review Board, which requires projects to comply with existing scenic resource and development regulations identified within the DMMC, the City's Design Guidelines, and the Community Plan.

##### Finding

Pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations are required in, or incorporated into, the project that will substantially lessen or avoid the significant effect as identified in the Final PEIR to a level less than significant. Specifically, mitigation measure **MM-Aes-1** is feasible and shall be required as a condition of approval and made binding on the applicant and enforced by the City.

## Rationale

Future projects within the NC, PC, and PF zones would be required to implement mitigation measures MM-Aes-1 to ensure that any development projects occurring within the program area would comply with applicable scenic quality regulations. The inclusion of this mitigation measure, as conditions of future project approvals, would serve to reduce potentially significant direct impacts associated with scenic views to a level of less than significant.

### *Threshold of Significance Aes-3: Visual Character and Conflicts with Scenic Quality Regulations*

Pursuant to Threshold Aes-3, a significant impact would occur, in non-urbanized areas, if it would substantially degrade the existing visual character or quality of public views of the site and its surroundings; or, if the program is in an urbanized area, the program would conflict with applicable zoning and other regulations governing scenic quality.

## Impacts

Although no specific projects are included in the program, future development pursuant to the program could result in structures larger in bulk and scale than currently existing (no more so than allowed under existing development regulations). Therefore, at this program level of analysis, direct impacts to visual character and scenic quality regulations would be potentially significant due to uncertainty of actual development projects (Impact Aes-6).

## Mitigation

See **MM-Aes-1**.

## Finding

Pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations are required in, or incorporated into, the project that will substantially lessen or avoid the significant effect as identified in the Final PEIR to a level less than significant. Specifically, mitigation measure **MM-Aes-1** is feasible and shall be required as a condition of approval and made binding on the applicant and enforced by the City.

## Rationale

Future projects within the NC, PC, and PF zones would be required to implement mitigation measures MM-Aes-1 to ensure that any development projects occurring within the program area would comply with applicable scenic quality regulations. The inclusion of this mitigation measure, as conditions of future project approvals, would serve to reduce potentially significant direct impacts associated with visual character and scenic quality regulations to a level of less than significant.

### *Threshold of Significance Aes-4: Light and Glare*

Pursuant to Threshold Aes-4, a significant impact would occur if the program would result in a new source of substantial light or glare that would adversely affect day or nighttime views.

#### Impacts

No specific projects are included in the program; however, at this program level of analysis, direct impacts from light and glare would be potentially significant due to uncertainty of actual development plans with specifics relating to lighting speculations for indoor and outdoor lighting design (Impact Aes-7).

#### Mitigation

See **MM-Aes-1**.

#### Finding

Pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations are required in, or incorporated into, the project that will substantially lessen or avoid the significant effect as identified in the Final PEIR to a level less than significant. Specifically, mitigation measure **MM-Aes-1** is feasible and shall be required as a condition of approval and made binding on the applicant and enforced by the City.

#### Rationale

Future projects within the NC, PC, and PF zones would be required to implement mitigation measures MM-Aes-1 to ensure that any development projects occurring within the program area would comply with applicable visual quality regulations, including lighting regulations. The inclusion of this mitigation measure, as conditions of future project approvals, would serve to reduce potentially significant direct impacts associated with light and glare to a level of less than significant.

#### Reference

Final PEIR Chapter 4.2, Aesthetics.

## **2. Cultural and Paleontological Resources**

### *Thresholds of Significance Cul-2: Archeological Resources*

Pursuant to Threshold Cul-2, a significant impact would occur if the program resulted in a substantial adverse change in the significance of an archeological resource as defined in CEQA Guidelines Section 15064.5.

#### Impacts

Although no specific projects are included in the program, future development pursuant to the program could result in the destruction of subsurface prehistoric/historic archaeological resources through grading of parcel number 299-071-02 (located within the NC zone).

Therefore, at this program level of analysis, direct impacts to cultural resources within parcel 299-071-02 would be potentially significant (Impact Cul-1).

#### Mitigation

**MM-Cul-1:** A qualified archaeological monitor and a Native American monitor shall be present during ground-disturbing activities within parcels 299-071-02. The monitors would have the authority to stop and/or divert grading, trenching, or excavating if an archaeological resource is encountered. The qualified archaeologist, and Native American monitor if the discovery is prehistoric, shall evaluate the significance of the discovery. If it is significant, a data recovery program would be implemented in order to mitigate impacts to the resource.

#### Finding

Pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations are required in, or incorporated into, the project that will substantially lessen or avoid the significant effect as identified in the Final PEIR to a level less than significant. Specifically, mitigation measure MM-Cul-1 is feasible and shall be required as a condition of approval and made binding on the applicant and enforced by the City.

#### Rationale

Implementation of MM-Cul-1 would reduce significant direct impacts to archaeological resources because the measure requires the presence of a qualified archaeological monitor and a Native American monitor at all grading activities. These specialists would ensure that if an artifact is discovered, it is evaluated and steps are taken to document or otherwise preserve the importance of the discovery. For these reasons, implementation of this mitigation measure would reduce significant impacts related to archaeological resources to a level less than significant.

#### *Thresholds of Significance Cul-3: Human Remains*

Pursuant to Threshold Cul-3, a significant impact would occur if the program would disturb any human remains, including those interred outside of formal cemeteries.

#### Impacts

Although there are no known burial sites or cemeteries within the vicinity of the program area human remains could be uncovered during grading activities within parcel number 299-071-02 (NC zone) due to its less disturbed nature and limited grading. Therefore, at this program level of analysis, direct impacts to human remains within parcel 299-071-02 would be potentially significant (Impact Cul-2).

#### Mitigation

See **MM-Cul-1**.

## Finding

Pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations are required in, or incorporated into, the project that will substantially lessen or avoid the significant effect as identified in the Final PEIR to a level less than significant. Specifically, mitigation measure MM-Cul-1 is feasible and shall be required as a condition of approval and made binding on the applicant and enforced by the City.

## Rationale

Implementation of MM-Cul-1 would reduce significant direct impacts to human remains. Should relics be discovered during grading, the resource would be identified and significance determined. For these reasons, implementation of this mitigation measure would reduce significant impacts related to human remains to a level less than significant.

## Reference

Final PEIR Chapter 4.3, Cultural Resources.

## 3. Noise

### *Threshold Nos-1: Exceedance of Noise Standards*

Pursuant to Threshold Nos-1, a significant impact would occur if the program would cause significant noise impacts if it would generate or expose persons to noise levels in excess of applicable standards.

## Impact

Although no specific projects are included in the program, future development pursuant to the program could result in redevelopment of parcel numbers 299-071-07 and 299-071-06 (NC zone) from commercial/retail to residential. Due to these parcels proximity to Jimmy Durante Boulevard and the railroad tracks, noise levels would exceed regulatory standards for residential uses. Therefore, at this program level of analysis, without specific exterior noise levels and construction details, direct noise impacts would be potentially significant (Impact Nos-1).

Likewise, future development pursuant to the program could result in residential construction within parcel number 299-030-12 (PF zone). Due to this parcel's proximity to the railroad tracks, noise levels would exceed regulatory standards for residential uses. Therefore, at this program level of analysis, without specific exterior noise levels and construction details, direct noise impacts would be potentially significant (Impact Nos-2).

## Mitigation

**MM-Nos-1:** Prior to the issuance of building permits for residential development proposed in the NC zone at 2002 Jimmy Durante Boulevard (APN 299-071-07), 2010 Jimmy Durante Boulevard (APN 299-071-06), and in the PF zone at 2809 28th Street (APN 299-030-12), a noise analysis shall be submitted demonstrating the exterior noise levels at any exterior use areas do not exceed 65 CNEL.

## Finding

Pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations are required in, or incorporated into, the program that will substantially lessen or avoid the significant effects as identified in the Final PEIR to a level of insignificance. Specifically, mitigation measure MM-Nos-1 is feasible and shall be required as a condition of approval and made binding on the applicant and enforced by the City.

## Rationale

Implementation of mitigation measure MM-Nos-1 would reduce significant direct impacts related to the exceedance of noise standards because a noise analysis associated with project specific plans would be required, which ensure noise compatibility with City noise standards. For these reasons, implementation of this mitigation measure would reduce significant direct noise impacts to a less than significant level.

## 3. Biological Resources

### *Threshold Bio-1: Special Status Species*

Pursuant to Threshold Bio-1, a significant impact would occur if the program would have a substantial adverse effect, either directly or through habitat modifications, on any candidate, sensitive, or special status species listed in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife (CDFW) or U.S. Fish and Wildlife Service (USFWS).

### Impact

Although no specific projects are included in the program, future development pursuant to the program could result in significant direct impacts to sensitive habitat and wildlife within parcels 299-071-02 and 299-100-33 (NC zone) due to the mapping of sensitive resources supported within those parcels (Impact Bio-1).

Likewise, future development pursuant to the program area within the NC zone could also result in potentially significant indirect impacts to sensitive species residing in vegetation adjacent to development areas due to increased noise during construction and operational activities (Impact Bio-2).

### Mitigation

**MM-Bio-1:** Future development applications for projects within parcels 299-071-02 and 299-100-33 shall be required to submit site-specific biological surveys to delineate the precise location of sensitive habitat and assess project-specific impacts. The biological survey shall include identification of temporary and permanent impacts to sensitive habitat and include mitigation measures in accordance with federal, state, and City requirements.

**MM-Bio-2:** Future development applications for projects throughout the NC zone would restrict removal of sensitive habitat and vegetation to outside the breeding seasons of any

sensitive species identified within adjacent properties. If vegetation clearing must begin during the breeding season, the following measures would be required:

**Before Construction:**

- A qualified biologist shall attend the pre-construction meeting to discuss biological resource issues of the project and identify measures to avoid impacts to sensitive species during construction.
- A qualified biologist shall conduct surveys to determine if active nests are present in the impact area or within the relevant number of distance as dictated by rules set for breeds identified. If active nests are found, a no-activity buffer zone shall be established at the discretion of the qualified biologist in consultation with the City, until the nest is vacated and juveniles have fledged, and there is no evidence of a second attempt at nesting. If active nests of any sensitive avian species for which a noise threshold has been established (i.e., coastal California gnatcatcher, least Bell's vireo, etc.) then a noise study shall be conducted to determine the anticipated construction noise levels and attenuation measures to be implemented to reduce noise levels at the nest to below the threshold. If no nests are found, no mitigation will be needed.

**During Construction:**

- On the first day of construction, a qualified biologist shall attend the on-site meeting and conduct training for contractors and construction personnel, including explaining the purpose for protecting biological resources and any avoidance measures that should be implemented during project construction.
- A qualified biologist shall monitor construction activities full time during vegetation clearing and grubbing, and weekly thereafter to direct crews on avoidance measures. The biological monitor shall verify the following:
  - Any installed construction fencing or silt fencing shall remain intact, and movement of construction personnel, vehicles, and equipment shall be confined to existing roads and areas within the defined project footprint.
  - Equipment maintenance, staging, and fuel dispensing areas shall be situated such that runoff from these areas remains outside of the lake basins or any other areas of sensitive habitat.
  - All trash (including, but not limited to, food scraps, wrappers, and beverage containers) shall be removed from work sites or completely secured in a wildlife-proof container at the end of each workday.

**After Construction:**

- The biological monitor shall provide a letter to the City describing monitoring activities and any biological issues identified.

**Finding**

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

effects as identified in the Final PEIR to a level of insignificance. Specifically, mitigation measures MM-Bio-1 and MM-Bio-2 are feasible and shall be required as a condition of approval and made binding on the applicant and enforced by the City.

#### Rationale

Implementation of mitigation measures MM-Bio-1 and MM-Bio-2 would reduce significant direct and indirect impacts related to sensitive species because mitigation measures MM-Bio-1 would ensure that all on-site sensitive species would be identified and impacts mitigated at ratios consistent with federal and state guidelines. Additionally, implementation of MM-Bio-2 would ensure that nesting birds residing in habitat outside of impact areas are protected during their breeding season. For these reasons, implementation of this mitigation measure would reduce significant direct and indirect biological impacts to a less than significant level.

#### *Threshold Bio-2: Riparian Habitat*

Pursuant to Threshold Bio-2, a significant impact would occur if the program would have a substantial adverse effect on any riparian habitat or other community identified in local or regional plans, policies, and regulations or by the CDFW or USFWS.

#### Impact

Although no specific projects are included in the program, future development pursuant to the program could result in significant direct impacts to riparian habitat within parcels 299-071-02 and 299-100-33 (NC zone) due to the mapping of sensitive resources identified specifically as alkali marsh habitat and open water habitat supported within those parcels (Impact Bio-3).

#### Mitigation

See **MM-Bio-1** and **MM-Bio-2**.

#### Finding

Pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations are required in, or incorporated into, the program that will substantially lessen or avoid the significant effects as identified in the Final PEIR to a level of insignificance. Specifically, mitigation measures MM-Bio-1 and MM-Bio-2 are feasible and shall be required as a condition of approval and made binding on the applicant and enforced by the City.

#### Rationale

Implementation of mitigation measures MM-Bio-1 and MM-Bio-2 would reduce significant direct and indirect impacts related to sensitive species because these mitigation measures ensure that all on-site riparian habitat areas would be identified and impacts mitigated at ratios consistent with federal and state guidelines. For these reasons, implementation of

this mitigation measure would reduce significant direct and indirect riparian habitat to a less than significant level.

#### *Threshold Bio-3: Federal Wetlands*

Pursuant to Threshold Bio-3, a significant impact would occur if the program would have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means.

#### Impact

Although no specific projects are included in the program, future development pursuant to the program could result in significant direct impacts to federally protected riparian habitat within parcels 299-071-02 and 299-100-33 (NC zone) (Impact Bio-4).

#### Mitigation

**MM-Bio-3:** Future development applications for projects within parcels 299-071-02 and 299-100-33 shall be required to submit site-specific wetland delineation reports to identify the precise locations of riparian habitat (including jurisdictional waters) and assess project specific impacts.

**MM-Bio-4:** Permanent and temporary impacts to wetland and riparian habitat shall be mitigated in accordance with federal and state requirements.

#### Finding

Pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations are required in, or incorporated into, the program that will substantially lessen or avoid the significant effects as identified in the Final PEIR to a level of insignificance. Specifically, mitigation measures MM-Bio-3 and MM-Bio-4 are feasible and shall be required as a condition of approval and made binding on the applicant and enforced by the City.

#### Rationale

Implementation of mitigation measures MM-Bio-3 and MM-Bio-4 would reduce significant direct impacts related to federally protected wetlands sensitive species because these mitigation measures would ensure that all on-site federal wetland areas are mitigated at ratios consistent with federal guidelines. For these reasons, implementation of this mitigation measure would reduce significant direct and indirect riparian habitat to a less-than-significant level.

#### *Threshold Bio-4: Migratory Birds*

Pursuant to Threshold Bio-4, a significant impact would occur if the program would interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery site.

## Impact

Although no specific projects are included in the program, future development pursuant to the program has the potential to impact birds of prey, protected under the Migratory Bird Treaty Act, which have acclimated to urban life and nest and forage in the local trees and shrubs. If vegetation clearing would occur during the bird breeding season (February 1 to July 15 for raptors and January 15 to August 31 for other birds), direct impacts to nesting birds could occur (Impact Bio-5).

## Mitigation

See **MM-Bio-2**.

## Finding

Pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations are required in, or incorporated into, the program that will substantially lessen or avoid the significant effects as identified in the Final PEIR to a level of insignificance. Specifically, mitigation measure MM-Bio-2 is feasible and shall be required as a condition of approval and made binding on the applicant and enforced by the City.

## Rationale

Implementation of mitigation measure MM-Bio-2 would reduce significant direct impacts to nesting birds because pre-construction surveys would be required to ensure that impacts to species protected under the MBTA are avoided during their breeding season. For these reasons, implementation of this mitigation measure would reduce significant direct impacts to nesting birds to a less than significant level.

## Reference

Final PEIR Chapter 4.9 Biological Resources.

## 4. Geology and Soils

### *Threshold Pal-1: Paleontological Resources*

Pursuant to Threshold Pal-1, a significant impact would occur if the program would directly or indirectly destroy a unique paleontological resource or site or unique geologic feature.

## Impact

Although no specific projects are included in the program, future development pursuant to the program could result in significant direct impacts to sensitive resources should future projects require deeper excavation than existing (Impact Pal-1).

## Mitigation

**MM-Pal-1:** A qualified paleontological monitor shall be on-site during grading of future programs within the program area. The monitor would have the authority to stop and/or

divert grading, trenching, or excavating if a significant paleontological resource is encountered. An excavation plan would be implemented to mitigate the discovery. Excavation would include the salvage of the fossil remains (simple excavation or plaster-jacketing of larger and/or fragile specimens); recording stratigraphic and geologic data; and transport of fossil remains to laboratory for processing and curation.

#### Finding

Pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations are required in, or incorporated into, the program that will substantially lessen or avoid the significant effects as identified in the Final PEIR to a level of insignificance. Specifically, mitigation measure MM-Pal-1 is feasible and shall be required as a condition of approval and made binding on the applicant and enforced by the City.

#### Rationale

Implementation of mitigation measure MM-Pal-1 would reduce significant direct and indirect impacts to paleontological resources on-site. Grading monitors would halt construction activities if a paleontological resource is encountered until it can be further evaluated for significance. For this reason, implementation of this mitigation measure would reduce significant impacts to paleontological resources to a less than significant level.

#### Reference

Final PEIR Chapter 4.10 Geology and Soils.

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

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

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

No impacts would remain significant and unavoidable.

### IX. FINDINGS REGARDING ALTERNATIVES

In accordance with Section 15126.6(a) of the CEQA Guidelines, an EIR must contain a discussion of “a range of reasonable alternatives to a project, or the location of a project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.” Section 15126.6(f) further states that “the range of alternatives in an EIR is governed by the 'rule of reason' that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice.”

The objectives of the proposed project are stated above.

The City Council must consider the feasibility of any alternatives to the program, evaluating whether these alternatives could avoid or substantially lessen significant environmental effects while achieving most of the objectives of the program. The Final PEIR includes an analysis of three alternative program scenarios: No Project (Buildout under Existing Zoning) Alternative; Lower Density Alternative; and Half Commercial-Half Residential Alternative.

Under the No Project (Buildout under Existing Zoning) Alternative there would be no new development allowances for residential or mixed use within the program sites and implementation of required Housing Element Programs 2-E and 2-F would not occur. This alternative would result in the same potentially significant impacts compared to the program (see Final PEIR Table 7-1), with the exception of noise which would be less. This alternative was rejected because it would result in greater traffic impacts and would not attain most of the basic objectives of the program.

Under the Lower Density Alternative a maximum of 174 dwelling units could be constructed. This equates to 261 fewer residential dwelling units than could be allowed under the program. Implementation of the Lower Density Alternative would result in the same potentially significant impacts compared to the program (see Final PEIR Table 8-1), with the exception of traffic generation which would be greater. This alternative was rejected because it would neither avoid nor substantially lessen significant impacts compared to the program, and it would not feasibly attain the most basic objectives of the proposed program.

Under the Half Commercial-Half Residential Alternative a minimum of 50 percent of the buildable space would be required to be commercial uses (50 percent Floor to Area Ratio) within each of the program sites, with the remainder residential. This would result in a fewer dwelling units compared to the proposed program. Implementation of the Half Commercial-Half Residential Alternative would result in the same potentially significant impacts compared to the program (see Final PEIR Table 8-1), with the exception of traffic generation which would be greater. This alternative was rejected because it would neither avoid nor substantially lessen significant impacts compared to the program, and it would not feasibly attain the most basic objectives of the proposed program.

## Finding

The City Council, having reviewed and considered the information contained in the Final PEIR, finds pursuant to CEQA Guidelines Section 15091(a)(3) that the alternatives presented and considered in the Final PEIR constitute a reasonable range of alternatives necessary that would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project to permit a reasoned choice among the options available to the City and/or the project proponent.

## X. CONCLUSIONS

The City has independently reviewed and analyzed the Final PEIR as required by CEQA. Prior to that review and analysis, the City circulated the Draft PEIR and appendices and those documents also reflect the City's independent review, analysis, and judgment pursuant to CEQA.

As part of the certification of the Final PEIR, the City finds that the Final PEIR reflects the independent judgment of the City, acting in its capacity as the lead agency. As required by CEQA, the City in adopting these Findings, also adopts the MMRP. The City hereby finds that the MMRP meets the requirements of Public Resources Code Section 21081.6 by providing for the implementation and monitoring of the project mitigation measures set forth herein, which mitigate the identified significant impacts associated with the project and are fully enforceable through permit conditions, agreements, these findings, and other measures.