

**CITY OF DANA POINT
PLANNING COMMISSION
AGENDA REPORT**

DATE: MAY 13, 2024

TO: DANA POINT PLANNING COMMISSION

**FROM: COMMUNITY DEVELOPMENT DEPARTMENT
BRENDA WISNESKI, DIRECTOR OF COMMUNITY DEVELOPMENT
JOHN CIAMPA, PRINCIPAL PLANNER**

SUBJECT: GENERAL PLAN AMENDMENT GPA20-0002, ZONE CHANGE ZC24-0001, SPECIFIC PLAN SP24-0001, LOCAL COASTAL PROGRAM AMENDMENT LCPA20-0002, COASTAL DEVELOPMENT PERMIT CDP20-0005, SITE DEVELOPMENT PERMIT SDP20-0007, VESTING TENTATIVE PARCEL MAP VTPM20-0001, DEVELOPMENT AGREEMENT DA24-0001, AND CERTIFICATION OF AN ENVIRONMENTAL IMPACT REPORT TO ALLOW THE SUBDIVISION OF THE SUBJECT SITE AND THE CONSTRUCTION OF A 306 UNIT APARTMENT COMPLEX, SIX LEVEL PARKING STRUCTURE, RECREATIONAL AMENITIES, AND SITE IMPROVEMENTS AT 26126 VICTORIA BOULEVARD

RECOMMENDATION: That the Planning Commission:

- (1) Adopt a Resolution recommending City Council approval and adoption General Plan Amendment GPA20-0002, (Action Document 1);
- (2) Adopt a Resolution recommending City Council approval and adoption Zone Change ZC24-0001, (Action Document 2);
- (3) Adopt a Resolution recommending City Council approval and adoption Local Coastal Program Amendment LCPA20-0002, (Action Document 3);
- (4) Adopt a Resolution, recommending City Council approval and adoption certification of Final Environmental Impact Report SCH#2021070304 (Action Document 4);
- (5) Adopt a Resolution recommending the City Council enter into a Development Agreement DA24-0001 with the property owners (Action Document 5);

(6) Adopt a Resolution recommending City Council approval of the Victoria Boulevard Specific Plan SP24-0001 (Action Document 6); and

(7) Adopt a Resolution approving Coastal Development Permit CDP20-0005, Site Development Permit SDP20-0007, and Vesting Tentative Parcel Map VTPM20-0001 (Action Document 7).

APPLICANT: Toll Brothers Apartment Living/Capistrano Unified School District

PROPERTY OWNER: Capistrano Unified School District

REQUEST: A request for a General Plan Amendment, Zone Change, Specific Plan, Local Coastal Program Amendment, Coastal Development Permit, Site Development Permit, Vesting Tentative Parcel Map and development agreement to allow a 306-unit apartment complex with a six level (one basement level) 586 space parking structure, recreational amenities, and site improvements.

LOCATION: 26126 Victoria Boulevard (APN: 668-361-01)

NOTICE: Public Hearing notices were mailed to property owners within 500 feet, and to occupants within 100 feet of the site on April 26, 2024. The same notice was published in the Dana Point Times on April 26, 2024, and notices were posted on April 26, 2024, at Dana Point City Hall, the Dana Point post office, and the Capistrano Beach post office.

ENVIRONMENTAL: Pursuant to the provisions of the California Environmental Quality Act (CEQA), an Environmental Impact Report (SCH# 2021070304) has been prepared for the proposed project and the Final EIR is available on the City's website for public review.

ISSUES:

- Are the objectives of the Victoria Boulevard Specific Plan in keeping with the City's objectives?
- Does Victoria Boulevard Specific Plan and project contribute and provide benefits to the surrounding neighborhood and the community as a whole?

- Is the Victoria Boulevard Specific Plan and project consistent with and not detrimental to the protection of public health, safety, and general welfare?

BACKGROUND:

On February 2, 2021, the City Council approved the initiation of a General Plan Amendment and a Specific Plan District for the Victoria Boulevard Apartments (Supporting Document 2) authorizing the review of a proposal for an apartment complex containing up to 365 total units provided the project included the following components:

To Ensure Building Mass/Bulk is compatible with the neighboring area,

- i. Along Victoria Boulevard and 50-feet of Sepulveda as measured from the Victoria Boulevard front property line, the building shall be no more than 50-feet in height and adequately setback at varying distances to create open space, a non-linear street frontage, minimize shadowing, and compatibility with neighboring properties, and
- ii. Building heights up to 65-feet (not including projections) may be permitted 40-feet from the front property line of Victoria Boulevard, and
- iii. An allowance of an additional 10-feet in height may be permitted for roof mounted equipment and recreational amenities, and
- iv. The project shall incorporate principles reflective of Crime Prevention Through Environmental Design (CPTED) to reduce opportunities for, and vulnerability to, criminal behavior and help create a sense of community.

Public Benefits provided by the project shall include, but are not limited to:

- i. Establishment of no less than 1.1 acres of public open space either on-site or within Doheny Village, a portion of which shall include active recreational uses which may be located along La Playa Avenue,
- ii. Off-site street improvements on Victoria Boulevard as well as other neighboring streets shall include, but are not limited to, 30 percent increase in public parking along project frontages and improved bike amenities in contribution to the City's effort to improve multi-modal connectivity.

Consistent with the goals of the City's Housing Element, the project shall:

- i. Create no less than 15 percent affordable housing units, which shall include not less than 5% very-low income units to be constructed on-site, and 5% low- and 5% moderate-income housing units to be constructed either on- or off-site in the City of Dana Point.

A Development Agreement shall be negotiated and considered for approval in combination with the legislative actions and project entitlement.

- i. The applicant shall enter into a Development Agreement with the City of Dana Point to provide greater certainty to the City and the applicant. The development agreement shall include public benefits that extend beyond those which may be forthcoming through project approvals, as well as other negotiated terms.
- ii. The Development Agreement shall specify the manner in which the developer chooses to exercise its rights under applicable density bonus laws and regulations.

The project site is situated at 26126 Victoria Boulevard, on the southeast corner of Victoria Boulevard and Sepulveda Boulevard in the southeastern portion of Doheny Village, with the Interstate 5 off-ramp to Pacific Coast Highway to the south. Currently, the site is split-zoned with 4.4 acres designated as Community Facilities District and 1.1 acres designated as Recreation District. The subject site is adjacent to San Felipe de Jesus Catholic Church and Capo Beach Church to the west, multi-family residential uses, institutional uses (such as OCFA and Cox Cable), and Nobis Preschool to the north. The site is bordered by the following zoning districts:

Table 1: Development Standards For Adjacent Properties

	West	North	South
Zoning District	CF; V-C/R	V-C/R	OS
Existing Uses	Religious Uses	MFR, Fire Station, Preschool	Caltrans ROW
Maximum Density	30 DU/AC	30-50 DU/AC	0 DU/AC
Maximum Building Height	35-40 feet 3 stories	35-50 feet 3 stories	18 feet 1 story
Floor Area Ratio	.4:1; N/A	N/A	.1:1
Minimum Front Setback	20 feet; 5 feet	5 feet	50 feet
Minimum Side Setback	10 feet; 0 feet	0 feet	25 feet
Minimum Rear Setback	20 feet; 0 feet	0 feet	
Minimum Open Space and Landscaping	200 SF/du; 100 SF/du 20%; 5%	100 SF/du 5%	90%

Community Outreach

On February 2, 2021, in the course of initiating the General Plan Amendment and a Specific Plan District, the City Council approved the contract with Michael Baker International to prepare the Environmental Impact Report (EIR) for the project. In July 2021, an Initial Study was prepared, and a Notice of Preparation was sent to various agencies and interested parties, in addition to an advertisement published in the Dana Point Times. An EIR scoping meeting was held on August 5, 2021, and a joint Planning Commission/City Council Community Workshop took place on November 16, 2022. During the Community Workshop, the applicant, Toll Brothers Apartment Living, provided a presentation at Dana Hills High School, and public comments were received with approximately 50 people in attendance.

On January 20, 2023, the Draft EIR (Supporting Document 4) was posted on the City's environmental webpage for public review. A Notice of Availability (NOA) was sent to property owners and occupants within 500' of the project area, regulatory agencies, and posted in the Dana Point Times. The Draft EIR, Appendices, NOA, and Notice of Completion (NOC) were also posted to the State Clearinghouse (SCH) CEQAnet web portal (<https://ceqanet.opr.ca.gov/>) under SCH No. 2021070304. On February 27, 2023, the Planning Commission conducted a Community Workshop during the Draft EIR public review period. The 45-day public comment period ended on March 6, 2023, though late letters were accepted through March 9, 2023.

In response to public comments received through the Draft EIR and the Applicant's community outreach efforts, a revised project application was submitted, modifying the Victoria Boulevard Specific Plan (Supporting Document 3) and the project. The City's consultant has prepared the response to comments and Final EIR (Supporting Document 5) based on the revised project.

On September 23, 2023, the Planning Commission received a project update for the Victoria Boulevard Specific Plan and Final EIR. The Final EIR, Draft EIR, technical reports in the Appendix can be found online: <https://www.danapoint.org/departments/community-development/planning/environmental-documents>

DISCUSSION:

Specific Plan

Section 9.33 of the Dana Point Zoning Code establishes the process and requirements to create Specific Plans. The purpose of a Specific Plan is to provide an orderly and efficient development of the project site, in accordance with the General Plan.

The Victoria Boulevard Specific Plan serves both planning and regulatory functions including land use regulations, circulation patterns, public facilities and infrastructure requirements, and development standards. Under the Specific Plan, development density within the project area would not exceed 55.5 dwelling units per acre, yielding a maximum of 306 dwelling units on the 5.51-acre project site. Of the total unit count, a minimum of five percent very low-, five percent low-, and five percent moderate-income units (yielding a total of no less than 46 affordable units) are required to be provided and distributed throughout the project.

The Specific Plan allows for a maximum building height of 65-feet, with an additional 10-feet permitted for roof-top equipment or architectural projections. Additionally, another 10-feet in height may be permitted for recreational structures.

To create visual interest and promote a pedestrian-friendly streetscape that is compatible with the surrounding community, the Specific Plan includes a “Reduced Building Height Zone” where no portion of the building would exceed a height of 50 feet within 40 feet of the Victoria Boulevard right-of-way, additionally, at least 2/3 of the building facade in this area shall be setback more than 10-feet.

A minimum of 1.065 acres of public open space and 0.80 acre of frontage open space shall be provided within the Specific Plan area.

Project frontage along Victoria Boulevard shall be reconfigured to include angled parking to provide additional parking and a Class 3 bike route. The sidewalk along Victoria Boulevard and Sepulveda Avenue will be a minimum 10-feet wide to accommodate pedestrian and bicycle travel.

The proposed project shall comply with the Specific Plan regulations, as well as all other applicable City regulations.

Proposed Project

The project proposes the demolition of the existing Capistrano Unified School District (CUSD) bus yard and a 306-unit apartment complex with an attached six-story (seven-level) parking structure. Forty-six (46) of the units would be rented to low income individuals, and subject to a 55 year deed restriction. The residential component of the apartment building would span two to five stories, while the rooftop would house recreational facilities, providing the sixth level. The project provides approximately 141,540 square feet (3.306 acres) of open space, including the proposed Victoria Shore Park (located at the southeastern corner of Sepulveda Avenue and Victoria Boulevard), a Dog Park, and two public paseos along the former La Playa Avenue right-of-way. Recreational amenities feature a rooftop garden, a fitness room, a pool deck, and a clubhouse.

The project is a Coastal Contemporary design with large, operable windows and glazed doors, balconies, terraces, loggias, and roof decks with overhangs, awnings, canopies, trellises, and plantings. Exterior colors and materials, roof forms, and primary architectural components are proposed to reinforce the architectural style of the building (Supporting Document 7).

The proposed structure varies in height from two-stories to five stories, with the rooftop recreational facilities providing the sixth level. Specifically, the structure is two- and three-stories along Victoria Boulevard, and three and five stories along Sepulveda Avenue. The roof deck recreational structures, where the structure is at its greatest height (6 stories or 82 feet), are located in the middle of the structure.

The proposed project design is well within the limits of the Reduced Building Height Zone with structures along Victoria Boulevard limited to two- and three-stories, ranging in height from approximately 26-feet to 36.44-feet. Additionally, the required setbacks provide greater articulation with the use of private courtyards and staggering the building front setbacks.

The project has undergone several years of review and has evolved based on feedback from the public and City staff. Initially, it was submitted as a 349-unit (including 53 affordable units) six-story apartment complex with 669 parking stalls. The project scope has been scaled back to enhance its compatibility with the community.

General Plan Amendment

Land Use Element

Doheny Village has a diverse range of housing types, including multi-family, mobile homes, affordable housing, and live/work units, which is a unique feature within the City. The project proposed General Plan Amendment to change the land use designation from Community Facilities (CF) and Recreation (REC) to the proposed Victoria Boulevard Specific Plan (Specific Plan). The proposed change would allow for an increase in density and height for the residential project. Importantly, the amendment aligns with the General Plan, as the CF land use designation permits residential uses, and the property is surrounded by both residential and institutional uses. This amendment and project would enhance the site's compatibility with adjacent uses over the current school bus yard use.

Exhibit 1: Site Comparison



Existing Bus Yard



Proposed Project

Housing Element

The proposed project was included in the City's General Plan Housing Element and projected the potential for construction of 57 income restricted units on the site, assuming a total of 365 units were constructed (38 low- and 19-moderate income). The project proposes 306 residential units, which results in 46 income restricted units (16 very-low, 15 low- and 15-moderate income). While the proposed project would result in eleven (11) fewer income restricted units than assumed would contribute towards meeting the City's 6th Cycle Regional Housing Needs Assessment (RHNA), the Housing Element identified a housing inventory *surplus* of 184 income restricted units (56 very low/low- and 128 moderate-income). The proposed project would reduce the housing inventory surplus to 175 income restricted units (49 low- and 170-moderate income). Therefore, the housing inventory remains sufficient to meet the City's RHNA and complies with the No Net Loss Law (Government Code 65863).

The project aligns with Housing Element Goal 1, which aims to "Provide a variety of residential developments and an adequate supply of housing to meet the existing and future needs of City residents." This alignment is evident in the project's diverse housing offerings, including various income limits offering 36 studios, 153 one-bedroom units, 105 two-bedroom units, and 12 three-bedroom units.

To fulfill Housing Element Goal 2, "Assisting in the provision of housing affordable to lower-income households," the project commits to 46 deed-restricted affordable units for a 55-year period. These units will include a minimum of five percent very low-income, five percent low-income, and five percent moderate-income units of the overall unit count.

For further details, refer to Table 2, which provides an analysis of the project's compliance with the applicable Housing Element policies.

Table 2: Housing Element Analysis

Policy	Compliance Analysis
Policy 1.1: Encourage affordable housing construction beyond levels identified by the RHNA.	Consistent. The project includes an affordable component consisting of a minimum of five percent very low-, five percent low-, and five percent moderate-income units of the overall unit count.
Policy 1.2: Provide a variety of housing opportunities for all income levels of the City through land uses and densities.	Consistent. The Specific Plan area would allow development of a combination of studio, one-, two-, and three-bedroom market rate and affordable unit types.
Policy 1.3: Coordinate new residential development with the provision of infrastructure and public services.	Consistent. The project would develop on-site infrastructure improvements as detailed in Section 3.4, Infrastructure Plan, of the Specific Plan. The existing public service facilities, including water, wastewater, stormwater, and solid waste services would adequately accommodate the proposed project.
Policy 1.4: Locate higher density residential development close to public transportation.	Consistent. The project is a high-density residential development. The closest bus stop is approximately 4,500 feet southwest of the Specific Plan area at the intersection of Del Obispo and Pacific Coast Highway and is serviced by OCTA routes 1 and 91.
Policy 2.1: Support innovative public, private, and nonprofit efforts in the development and financing of affordable housing, particularly for lower income households, the elderly, large families, the physically impaired, and single-parent households.	Consistent. The project applicant is a private developer and is proposing to develop a multi-family residential apartment community with a combination of market rate and affordable unit types. The project would provide a minimum of five percent very low-, five percent low-, and five percent moderate-income units of the overall unit count.
Policy 2.3: Require that housing constructed for lower and moderate income households is not concentrated in any single portion of the City.	Consistent. The project proposes both market rate and affordable unit types within the Specific Plan area and thus, would not be developed as only affordable housing.

Circulation Element

The Environmental Impact Report (EIR) assessed the project's alignment with the Circulation Element and its potential impacts on the community and concluded the project aligns with the adopted plans, programs, and policies. Project aspects that supported this conclusion include:

- The project is forecasted to result in approximately 2,920 new daily weekday trips, including 391 new trips during the Saturday midday peak hours, and 357 new trips during the Sunday peak hour.
- The project would result in no significant traffic impacts at the study intersections.

- Situated in an urban area, the project is near retail establishments, making it convenient for residents to walk to nearby amenities.
- The proposed project would introduce up to 796 additional residents to the City, representing a 2.4 percent increase from the current population of 32,943 persons. The increased population may increase the demand for transit facilities in the project vicinity, but would not require new or expanded facilities.
- The project would consolidate driveways along Victoria Boulevard and Sepulveda Avenue, minimizing conflicts between pedestrians and vehicles.
- In accordance with the DPZC, the project provides 586 parking stalls within the seven-level parking structure (including one basement level).
- A Class III bicycle route would be created along the project frontage of Victoria Boulevard and shared-use, 10-foot sidewalks would be located along Sepulveda Avenue and Victoria Boulevard allowing for bicycle travel.

The project complies with the Circulation Element Policies as discussed below:

Table 3: Circulation Element Analysis

Policy	Compliance Analysis
Policy 1.11: Require that proposal for major new developments include a future traffic impact analysis which identifies measures to mitigate any identified project impacts.	<p>Consistent. The traffic impact analysis concluded that, all study intersections are forecast to operate within acceptable LOS (D or better) during the peak hours, with the exception to the intersection of Camino Capistrano at Stonehill Drive/I-5 Northbound On-Ramp in Year 2045. Implementation of the recommended improvements at the Camino Capistrano at Stonehill Drive/I-5 NB On-Ramp would be minimized to acceptable LOS (D or better) during peak hours. Recommended improvements include:</p> <ul style="list-style-type: none"> • Restripe the northbound approach (and southbound approach, as necessary) to accommodate two northbound left turn lanes • Change north-south signal operation from split phasing to protected left-turn phasing; and • Install eastbound right-turn overlap signal phasing
Policy 1.12: Encourage new development which facilitates transit services, provides for non-automobile circulation, and minimizes vehicle miles traveled.	<p>Consistent. The proposed residential community would be located within Doheny Village that includes a number of various land use types, including commercial, retail, industrial, and other residential uses. Additionally, the site is served by existing OCTA transit service, pedestrian sidewalks, and existing and planned bicycle lanes along adjacent roadways. Thus, future project residents would be able to utilize multiple modes of transportation. The proposed land use type would encourage reduced vehicle miles traveled and minimized associated air pollution.</p>

Policy 1.13: Minimize pedestrian and vehicular conflicts.	Consistent. The driveways along Victoria Blvd. and Sepulveda Ave. would be reduced and consolidated to minimize pedestrian and vehicular conflicts. The Emergency Vehicle Access (EVA) road, which can be accessed by pedestrians and bicyclists, would be restricted to emergency vehicles only via removable bollards (or similar devices).
Policy 1.14: Establish landscaping buffers and building setback requirements along all roads where appropriate.	Consistent. Landscape along the site perimeter is proposed to provide a buffer between the existing roadway rights-of-way and 10-foot minimum building setbacks from Sepulveda Avenue and Victoria Boulevard are required.
Policy 4.5: Promote new development that is designed in a manner that (1) facilitates provision or extension of transit service, (2) provides on-site commercial and recreational facilities to discourage mid-day travel, and (3) provides non-automobile circulation within the development.	Consistent. Refer to responses below with corresponding numbers. (1) project site is located in an urbanized area with sidewalks and bike paths along roadways within project vicinity to facilitate non-automobile circulation from the project (2) While the project would not provide commercial uses on-site, the project would provide a number of recreational amenities. Refer to response to Land Use Element Policy 1.4. Additionally, the site is located within Doheny Village that has existing commercial uses in walking distance. (3) Refer to response to Land Use Element Policy 1.8.
Policy 4.7: Encourage the provision of safe, attractive, and clearly identifiable transit stops and related high quality pedestrian facilities throughout the community.	Consistent. High quality pedestrian facilities would be provided throughout the residential community. The project would develop a system of interior and exterior pathways that connect to existing sidewalks along Victoria Boulevard and Sepulveda Avenue. Additionally, enhanced paving, boardwalks, parkways, and landscaping would emphasize pedestrian pathways.
Policy 6.1: Consolidate parking, where appropriate, to reduce the number of ingress and egress points onto arterials.	Consistent. The project proposes an attached six-story (seven level) parking structure in the center of the site with 586 spaces. The parking structure would be accessed from the primary project entryway along Sepulveda Avenue or the secondary vehicular driveway along Victoria Boulevard.

Urban Design Element

The project was evaluated with the General Plan's Urban Design Element to ensure it complies with its goals and policies; however, the Element does not include guidance for unique, coastal, high-density projects. The Specific Plan Design Guidelines (Section 4) was created to address the unique scope to ensure a high-quality residential community that is compatible with the neighborhood.

The Specific Plan establishes a "Reduced building height zone" where no portion of the building would exceed a height of 50 feet within 40 feet of the Victoria Boulevard right-of-way. The height limitation along Victoria Boulevard reduces the overall mass and provide pedestrian scale, vertical breaks, and streetscapes; create barriers between the parking garage and the proposed dwelling units and the public; and encourage a high level of design to improve scenic quality at the project site.

Chapter 4 of the Specific Plan includes guidelines for site planning, architectural, landscaping, signage, lighting, art-in-public places, and sustainability. Site planning guidelines include elements to reduce the appearance of overall mass and provide pedestrian scale, vertical breaks, and streetscapes; create barriers between the parking garage and the proposed dwelling units and the public; and encourage a high level of design to improve scenic quality at the project site.

The project's primary community entry would occur along Sepulveda Avenue with an arrival promenade to serve as a gateway into the development. The Arrival Promenade provides an enhanced entry drive paving, an art wall, a synthetic turf, and parkway landscaping, among other amenities to provide a "sense of place" and function as Common Open Space. Similarly, the rooftop amenity area would serve as a Common Open Space for residents. The rooftop amenity area would be centrally located on the roof of the structure and designed to have limited visibility from Victoria Boulevard, Sepulveda Avenue, or surrounding properties. Courtyards, plazas, and open space areas on-site would occur on the interior of the residential community surrounded by residential units and building facilities, or along the exterior of the development facing a public street to provide visual interest.

The project complies with the Goals and Policies of the Urban Design Element as identified in the analysis table below.

TABLE 4: URBAN DESIGN ELEMENT ANALYSIS

Goal/Policy	Compliance Analysis
LUE Policy 1.1 “Develop citywide linkages through landscaping and lighting along major street corridors, the project would the proposed project would not impact existing landscaping and lighting along major street corridors”	Consistent. Public improvements associated with the project include a public park with active and passive recreation amenities (Victoria Shore Park) proposed at the southeastern corner of Victoria Boulevard and Sepulveda Avenue, enhanced landscape and streetscape amenities, additional public parking within the right-of-way areas, construction of a cul-de-sac at the Sepulveda Avenue terminus, a Dog Park, and two public paseos. Specifically, Landscape and Streetscape amenities would include ample landscaping and seating; new curb, gutter, and 10-foot sidewalk along Victoria Boulevard; new sidewalk along Sepulveda Boulevard; a cul-de-sac and sidewalk at Sepulveda Boulevard dead-end; and surf benches along sidewalk on Victoria Boulevard.
LUE Policy 1.2 “Improve the visual character of major street corridors.”	
Policy 1.7: Initiate a program for public art.	Consistent. Specific Plan Section 4.5, states that development within the Specific Plan area is subject to Municipal Code Section 9.05.240.
Policy 2.1: Consider the distinct architectural and landscape character of each community. To the maximum extent feasible, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.	Consistent. The proposed Specific Plan is an implementation tool that prioritizes preservation of the unique history and character of Doheny Village. One of the project objectives for the Specific Plan is to promote the character and surf heritage of the historical Doheny Village District. Thus, the proposed Specific Plan’s development standards and design guidelines encourage unified landscaping, open spaces, and architecture that contribute towards the Coastal Contemporary design theme of Doheny Village.
Policy 2.5: Encourage neighborhood street landscaping programs to improve the quality of public spaces in residential areas.	Consistent. The project proposes extensive landscaping, common open space areas, and recreational amenities throughout the Specific Plan area. Street trees, shrubs, and groundcover are also proposed along the site perimeter adjacent to Victoria Boulevard and Sepulveda Avenue.
Policy 4.2: Realize the opportunity for public open space throughout the City.	Consistent. The project construct approximately 144,018 square feet (3.306 acres) of open space. A total of 1.065 acres of public open space would include Victoria Shore Park (at the southeastern corner of Sepulveda Avenue and Victoria Boulevard) as well as a Dog Park and two public paseos along the former La Playa Avenue right-of-way

Policy 4.3: Develop stronger pedestrian, bicycle, and visual linkages between public spaces and to and along the shoreline and bluffs.	Consistent. The residential community is designed to be pedestrian-friendly with both public and private open spaces, outdoor amenities courtyard spaces, rooftop amenity areas, corner park and landscaping, and recreation spaces surrounding the residential components. Pedestrian circulation would be provided throughout the development by a system of interior and exterior pathways that connect the residential community to the City's adjacent sidewalks. The project would also implement a Class III bicycle route along Victoria Boulevard and provide bicycle storage in the private courtyards and at the Arrival Promenade to facilitate easy access between the City's existing bicycle network and the Specific Plan area.
Policy 5.2: Encourage site and building design that takes advantage of the City's excellent climate to maximize indoor-outdoor spatial relationships.	Consistent. The residential units surround outdoor courtyards throughout the site. The project includes a rooftop garden and extensive outdoor common open space areas recreational amenities that encourage residents to take advantage of the City's climate.
Policy 5.3: Encourage buildings and exterior spaces that are carefully-scaled to human size and pedestrian activity.	Consistent. The project constructs approximately 144,018 square feet (3.306 acres) of open space. A total of 1.065 acres of public open space would include Victoria Shore Park (at the southeastern corner of Sepulveda Avenue and Victoria Boulevard) as well as a Dog Park and two public paseos along the former La Playa Avenue right-of-way.
Policy 5.6: Encourage aesthetic roof treatment as an important architectural design feature.	Consistent. Specific Plan Section 4.8.2, Minimize Heat Island, includes guidelines to reduce the heat island effect by encouraging the use of low albedo materials in paving, roofing, and building materials, and encouraging utilizing green roofs.
Policy 6.3: Increase Doheny Village's economic vitality and its contribution to the City's economic development goals.	Consistent. The project would provide housing within Doheny Village and future residents would indirectly contribute towards the economic vitality of the City by shopping, dining, and working in Dana Point. The proposed development would also revitalize the underutilized property and address the Statewide housing crisis with a local approach by increasing density and availability of multi-family residential uses in Dana Point.

Zone Change

The project area falls under the CF and REC zoning districts of the Dana Point Zoning Code. The proposed Zone Change modifies the 1993 Zoning Map within the project area, transitioning the site's zoning from CF and REC to the Victoria Boulevard Specific Plan. The planned residential community will be situated within Doheny Village, which encompasses a mix of land use types, including commercial, retail, industrial, and other residential uses. Recently, the Doheny Village Plan was approved and certified, designating the area surrounding the project site as the Village Commercial/Residential District (V-C/R). This designation anticipates the potential implementation of a Specific Plan for this site, allowing for multi-family residential development.

While both the existing zoning designation and the Specific Plan permit residential uses, the proposal seeks to increase the allowed density and height (as outlined in Table 5: Existing and Proposed Development Standards). By replacing the current bus yard use with a multi-family residential project, the site's compatibility with the surrounding residential and institutional uses, as well as the Doheny Village Plan, would be improved. A portion of the site, 1.1 acres (47,916 sq. ft.), is currently zoned Recreation. The proposed project would result in 1.065 (46,399 sq. ft.) of public open space, including a park, dog park and public paseo.

Comparison of Development Standards

The following table summarizes the existing CF and REC Zoning Districts in comparison to the proposed Specific Plan:

TABLE 5: EXISTING AND PROPOSED DEVELOPMENT STANDARDS

	Existing (CF District) Lot Area: 4.4 ac (191,664 SF)	Existing (REC District) Lot Area: 1.1 ac (47,916 SF)	Proposed (Specific Plan) Lot Area: 5.5 ac (239,580 SF)(1)	Change
Maximum Lot Coverage	60% of lot area (114,998 SF)	20% of lot area (9,583 SF)	80% of lot area (191,664 SF)	+67,083 SF
Maximum Density	30 du/ac	0 du/ac	55.5 du/ac	+25.5 du/ac
Maximum Number of dwelling units	132 du	0	306 du	+174 du
Minimum Lot Area per dwelling unit			600 SF/du	
Floor Area Ratio	N/A	.1:1	1.6:1	

Maximum Height	31-35 feet 3 stories	31-35 feet 2 stories	65 feet (residential) plus 10 feet for architectural projections; 50 feet along Victoria, 85 feet (garage + amenity)*	+30 feet +15 feet
Minimum Front Setback (Sepulveda Blvd)	20 feet	50 feet	10 feet	-10 feet
Minimum Side Setback (Victoria Blvd)	10 feet	50 feet	10 feet	
Minimum Side Setback (PCH)	10 feet	50 feet	26 feet	+16 feet
Minimum Rear Setback	20 feet			
Minimum Building Separation	10 feet		6 feet or CBC	-4 feet
Minimum Landscape Coverage	20% of lot area (38,333 SF)	20% of lot area (9,583 SF)	10% of lot area (23,958 SF)	-10% (23,958 SF)
Minimum Open Space Private Common	200 SF/du 25% ac	80% of lot area (38,333 SF)	100 SF/du	-100 SF/du

The proposed project incorporates various design features to address the building's height and massing, including multiple courtyards, two- and three-stories along the Victoria Boulevard frontage, and strategically locating the sixth-floor recreation buildings in the middle of the structure. As a result, the residential portion of the structure reaches a maximum height of 57 feet, while the centrally positioned recreation buildings achieve a maximum height of 82 feet (Specific Plan maximum height is 85 feet). These design choices effectively reduce the overall massing of the building and enhance its compatibility with the surrounding area.

In comparison to the Doheny Village development standards, allow for a maximum height of 50 feet for the Village Commercial/Residential (V-C/R) zone, the proposed project's height remains within the permissible limits, allowing for a maximum height of 65 feet.

EXHIBIT: 2 SPECIFIC PLAN HEIGHT



Local Coastal Plan Amendment

Pursuant to DPZC Section 9.61.080, amendments may be proposed to the General Plan and zoning districts, modify district boundaries, create a Specific Plan or revise the provisions of the DPZC to add, remove, or modify regulations pursuant to the provisions of the Government Code. The project's proposed amendments to the General Plan, Zone Change, and Specific Plan all require an LCPA to permit the proposed project and are analyzed in this report. The analysis of the proposed amendments is identified in the report's sections above. The requested amendments are subject to Coastal Commission certification.

Final Environmental Impact Report SCH#2021070304

The City, as lead agency, determined that the Victoria Boulevard Apartments is a “Project” within the definition of the CEQA. CEQA requires the preparation of an EIR prior to approving any project that may have a significant impact on the environment. For the purposes of CEQA, the term “project” refers to the whole of an action, which has the potential for resulting in a direct physical change or a reasonably foreseeable indirect physical change in the environment (CEQA Guidelines Section 15378(a)).

An EIR must disclose the expected direct and indirect environmental impacts associated with a project, including impacts that cannot be avoided, growth-inducing effects, impacts found not to be significant, and significant cumulative impacts, as well as identify mitigation measures and alternatives to the proposed project that could reduce or avoid its adverse environmental impacts. CEQA requires government agencies to consider and, where feasible, minimize environmental impacts of the proposed development, and an obligation to balance a variety of public objectives, including economic, environmental, and social factors. The City’s third-party environmental consultant, Michael Baker International, worked with City staff to prepare the EIR.

A Notice of Preparation (NOP) was prepared and distributed for a 30-day public review period from July 19, 2021, through August 17, 2021. A public scoping meeting was held on August 5, 2021. Furthermore, in accordance with Senate Bill 18 and Government Code 69352.3, and Assembly Bill 52 and Government Code 21000, the City sent notification letters to the appropriate tribal organizations on April 15, 2021, to comply with the requirements for tribal consultation.

The Draft EIR was completed on March 6, 2023, which evaluates potential environmental impacts associated with the implementation of the Victoria Boulevard Apartments. The Draft EIR also discusses alternatives to the project, and proposes mitigation measures that will offset, minimize, or otherwise avoid significant environmental impacts. The Draft EIR was prepared in accordance with CEQA, California Resources Code Section 21000 et seq.; the Guidelines for the California Environmental Quality Act (California Code of Regulations, Title 14, Chapter 3).

All topical areas that were analyzed were determined to have:

- No Impact;
- Less than Significant Impact; or
- Less than Significant Impact with the Incorporation of Mitigation Measures.

No significant unavoidable impacts would occur as a result of the project.

A summary of the environmental issues and mitigation summary can be found in Section 1.4 of the Draft EIR. Mitigation measures would be required for the following: Tribal and Cultural Resources, Geology/Soils, Hazards/Hazardous Materials, Transportation, Air Quality, and Noise.

A Notice of Availability (NOA) for the Draft EIR was distributed for a 45-day public review period from January 20, 2023 to March 6, 2023. On February 27, 2023, a community workshop to receive public comments on the Draft EIR. A total of 80 comment letters were received during the public review period for the Draft EIR. Responses to those comments resulted in minor changes to the EIR which are documented in the Final EIR. The Final EIR consists of the Response to Comments, Errata, and Mitigation Monitoring and Reporting Program (MMRP). The MMRP checklist provides verification that all applicable mitigation measures relative to environmental impacts are monitored and reported to ensure compliance during project implementation.

The Final EIR was prepared in accordance with CEQA requirements to evaluate the potential environmental impacts in addition to an analysis that includes recent revisions to the Victoria Boulevard Apartments project.

The Final EIR consists of the following sections:

- Introduction;
- Revisions to Information Presented in the Draft EIR;
- Response to Comments;
- Errata; and
- Mitigation Monitoring and Reporting Program.

Development Agreement

An application for a Development Agreement has been submitted in accordance with DPZC Chapter 9.73. As authorized by Government Code Section 65864 et seq., Development Agreements provide for the vesting of the laws, statutes, ordinances, regulations, standards and policies in existence as of the effective date of the Development Agreement that will be applicable to the project. The Development Agreement can include public benefits that extend beyond those which may be forthcoming through project approvals, as well as other negotiated terms. If any physical improvements beyond those proposed to be constructed on the project site are identified in the Development Agreement, those improvements have been identified and evaluated in the EIR.

The parties to the Development Agreement include the City of Dana Point, the Capistrano Unified School District and Toll Brothers (the applicant) and has been negotiated and considered for approval in combination with the legislative actions and project entitlement.

The proposed Development Agreement includes an obligation to create a funding mechanism which yields a substantial contribution to be utilized exclusively on improvements to Dana Hills High School at the earliest commercially feasible time. In addition, the Development Agreement includes a substantial contribution to the City to be utilized for community benefits as directed by the City Council and include the following:

- Enhanced landscape and streetscape amenities
 - No less than 27 on-street parking spaces along the southside of Victoria Boulevard
 - No less than 13 on-street parking spaces along the eastside of Sepulveda Avenue
 - Street amenities to include landscaping and surf bench seating
 - New curb, gutter, and 10 feet wide sidewalk along Victoria Boulevard
 - New curb, gutter, driveways, and 10 feet wide sidewalk along Sepulveda Boulevard
 - Relocation of catch basin at the corner of Victoria and other storm drain modifications to accommodate street improvements
 - Caltrans drainage culvert to be modified/replaced with junction structure
 - Required upgrades to South Coast Water District system
 - Cul-de-sac and sidewalk at Sepulveda Boulevard dead-end
- Open space easement for Victoria Shore Park, public street and frontage, dog park, and paseos – improvements to be maintained by the developer in perpetuity
- Affordable Housing Agreement
 - 15 percent of total units subject to affordability
 - Minimum affordability period of 55 years
 - No less than 1/3 of the affordable units rented as Very Low Income
 - No less than 1/3 of the affordable units rented as Low Income
 - Remaining affordable units rented as Moderate Income
 - Quality and range of sizes/types shall be substantially equal to the quality and range of sizes in types of project's market rate units
 - Location of units shall be distributed throughout the project
- Community benefit of \$6,300,000 to satisfy all City park/recreation, park in-lieu, and public art fees.

Pursuant to DPZC Section 9.73.120, the Planning Commission must make the following findings in order to recommend approval of any development agreement:

1. *That the proposed development agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan and any applicable Specific Plan;*
2. *That the proposed development agreement is consistent with the City's Growth Management Element and adequately provides for the installation and operation of the infrastructure required to service each phase of the subject development;*
3. *That the development proposed in association with the subject development agreement is compatible with the uses authorized in the district in which the real property is located;*
4. *That the proposed development agreement is in conformity with the public necessity, public convenience, general welfare, and good land use practices;*
5. *That the proposed development agreement provides for public benefits to a degree which warrants any concessions granted by the City;*
6. *That the proposed development agreement will in no way be detrimental to the public health, safety, and general welfare;*
7. *That the proposed development agreement will not adversely affect the orderly development of property;*
8. *That the proposed development agreement will have a positive fiscal impact on the City.*

Coastal Development Permit

The proposed project is located within the City's Coastal Overlay District and is not located within the Appeals Jurisdiction of the California Coastal Commission (CCC). Section 9.69.020 of the DPZC states that a Coastal Development Permit (CDP) is required for all development located within the Coastal Overlay District. The multi-family apartment complex is proposed on a developed site with no environmentally sensitive habitat and is landward of the first public road, thereby not resulting in any impacts to coastal access. The project has completed an EIR to ensure that any potential project impacts would be mitigated.

Pursuant to Section 9.69.070 “Basis for Action on Coastal Development Permit Applications” of the DPZC, every Coastal Development Permit requires the following findings:

1. *That the proposed development is in conformity with the certified Local Coastal Program as defined in Chapter 9.75 of this Zoning Code; and,*
2. *That the proposed development, if located between the nearest public roadway and the sea or shoreline of any body of water, is in conformity with the public access and public recreation policies of Chapter Three of the Coastal Act; and,*
3. *That the proposed development conforms with Public Resources Code Section 21000 and following and that there are no feasible mitigation measures or feasible alternatives available which would substantially lessen any significant adverse impact that the activity may have on the environment; and,*
4. *That the proposed development be sited and designed to prevent adverse impacts to environmentally sensitive habitats and scenic resources located in adjacent parks and recreation areas, and will provide adequate buffer areas to protect such resources; and,*
5. *That the proposed development will minimize the alterations of natural landforms and will not result in undue risks from geologic and erosional forces and/or flood and fire hazards; and,*
6. *That the proposed development be visually compatible with the character of surrounding areas, and, where feasible, will restore and enhance visual quality in visually degraded areas; and*
7. *That the proposed development conforms to the General Plan, Local Coastal Program and Zoning Code.*

Staff finds the proposed project is consistent with the basis of approval for a CDP as outlined in Section 9.69.070 of the DPZC. Responses supporting approval of the project based on the above-quoted findings are detailed in the attached draft Planning Commission Resolution.

Site Development Permit

A Site Development Permit (SDP) is required per Section 9.71 of the DPZC because the project proposes a multi-family residential development. Additionally, Section 9.31 requires an SDP because the project is proposing development with the City’s Floodplain Overlay 2 (FP-2) District because the subject property is located in the 100 year (A) Flood Zone.

As stated in the sections above, the project requires a General Plan Amendment, Zone Change, Specific Plan, and LCPA to modify the land use and development standards from the underlying Community Facility and Recreation Open Space General Plan and Zoning designations to develop the 306-unit apartment complex. The proposed development is located in Doheny Village which has a mix of different housing types including single-family and multi-family. The design of the project includes multiple courtyards, a 50 foot height limit along the Victoria Boulevard frontage, and centrally locates the sixth-floor recreation buildings on the roof to establish a project that reduces its massing and is compatible with the area. Additionally, the context of the site adjacent to the I-5 freeway off-ramp reduces compatibility and visual concerns related to the project. The proposed use is consistent with the area in that the existing Community Facilities zone and the proposed Specific Plan both allow multi-family residential uses, and the proposed project is more compatible with the area than the bus yard.

Development within the Floodplain Overlay District

The City's Zoning Map identifies a portion of the property along Sepulveda Avenue that is located within the FP-2 Floodplain Overlay. The hydrology analysis for the project through the EIR concluded that the majority of the project site is located within the FEMA Flood Zone 'X' per FEMA Flood Insurance Rate Map (FIRM) No. 06059C0508K, which was revised on March 21, 2019. Flood Zone 'X' represents areas of minimum flood hazard. A portion of the site along Sepulveda Avenue is shown to be slightly within or adjacent to FEMA Flood Zone 'A' (no Base Flood Elevation determined). The City has provided a supplemental draft FEMA flood map and reference exhibits from a Letter of Map Revision (LOMR) for the San Juan Creek area that is in the process of being adopted. Per this updated study and FIRM, the Flood Zone 'A' is delineated to be retained almost completely within the public right-of-way of Sepulveda Avenue. The LOMR study determines the flooding depths within Sepulveda Avenue to be 1.5 feet, which is the best available data to determine the Base Flood Elevation within this zone.

Pursuant to Section 9.71.050 "Basis for Approval, Conditional Approval, or Denial of a Site Development Permit" of the DPZC, every Site Development Permit requires the following findings:

1. *That the site design is in compliance with the development standards of the Dana Point Zoning Code; and,*
2. *That the site is suitable of the site for the proposed use and development; and,*
3. *That the project is in compliance with all elements of the General Plan and all applicable provisions of the Urban Design Guidelines; and,*
4. *That the site and structural design is appropriate for the site and function of the proposed use, without requiring a particular style or type of architecture; and,*

5. *That the requirements of the California Environmental Quality Act have been satisfied in that the project qualifies for both Class 1 (Section 15301) and Class 3 (Section 15303) exemptions pursuant to the applicable provisions of the California Environmental Quality Act (CEQA).*

Staff finds the proposed project is consistent with the basis of approval for a SDP as outlined in Section 9.71.050 of the DPZC. Responses supporting approval of the project based on the above-quoted findings are detailed in the attached draft Planning Commission Resolution.

Vesting Tentative Parcel Map

Section 7.05 of the Dana Point Municipal Code requires a Tentative Parcel Map (TPM) to merge the 34 underlying lots of the site to form one lot for the project. The applicant is also proposing a Vesting Map per Section 7.03.070 of the Dana Point Municipal Code to ensure the existing regulations, conditions, and fees in place during at the time of submittal.

Section 7.05.060 of the Dana Point Municipal Code identifies the following findings to approve a subdivision of land, requiring:

1. *That the proposed map is consistent with the City's General Plan; and*
2. *That the design and improvement of the proposed subdivision is consistent with the City's General Plan; and*
3. *That the site is physically suitable for the proposed type of development; and*
4. *That the requirements of the California Environmental Quality Act have been satisfied; and*
5. *That the site is physically suitable for the proposed density of development;*
6. *That the design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage or substantial and avoidable injury to fish or wildlife or their habitat; and*
7. *That the design of the subdivision and the proposed improvements are not likely to cause serious public health problems; and*

8. *That the design of the subdivision and the proposed improvements will not conflict with easements of record or established by court judgment or acquired by the public at large for access through or use of property within the proposed subdivision; or, if such easements exist, that alternate easements for access or for use will be provided and these will be substantially equivalent to ones previously acquired by the public; and*
9. *That the design and improvement of the proposed subdivision are suitable for the uses proposed and the subdivision can be developed in compliance with the applicable zoning regulations pursuant to Section 7.05.055; and*
10. *That the subdivision is not located in a fee area or, if located in a fee area, the subdivider has met the requirements for payment of the applicable fees or the subdivision would not allow development of a project which would contribute to the need for the facility for which a fee is required; and*
11. *That the subdivision is located in an area which has access to adequate utilities and public services to support the development proposed within the subdivision or that the subdivision includes the provisions and improvements necessary to ensure availability of such utilities and services.*

Staff finds the proposed project is consistent with the basis of approval for a VTPM as outlined in Section 7.05.060 of the Dana Point Municipal Code. Responses supporting approval of the project based on the above-quoted findings are detailed in the attached draft Planning Commission Resolution.

CORRESPONDENCE: City staff received written correspondence that is provided as Supporting Documents 8 and 9.

NOTIFICATION/FOLLOW-UP: On May 7, 2024, email notifications of the project update were sent to interested parties on the notification list and agendas were posted at Dana Point City Hall, the Dana Point and Capistrano Beach Branch Post Offices.

CONCLUSION: Based on the above analysis, Staff recommends that the Planning Commission recommends adoption and approval of the proposed General Plan Amendment GPA20-0002, Zone Change ZC24-0001, and Development Agreement DA24-0001 to the City Council and approve the attached draft Resolutions containing required findings for approval of the EIR and ZC20-0002. Staff also recommends that the Planning Commission adopt the draft Resolution approving Coastal Development Permit CDP20-0005, Site Development Permit SDP20-0007, and Vesting Tentative Parcel Map VTPM20-0001 allowing the subdivision of the subject site and the construction of a 306 unit apartment complex, six level parking structure (one basement level), 46 affordable housing units, recreational amenities and site improvements.

ATTACHMENTS:

Action Documents

1. Draft Planning Commission Resolution No. 24-05-13-XX for GPA
2. Draft Planning Commission Resolution No. 24-05-13-XX for ZC
3. Draft Planning Commission Resolution No. 24-05-13-XX for LCPA
4. Draft Planning Commission Resolution No. 24-05-13-XX for EIR
5. Draft Planning Commission Resolution No. 24-05-13-XX for DA
6. Draft Planning Commission Resolution No. 24-05-13-XX for Specific Plan
7. Draft Planning Commission Resolution No. 24-05-13-XX for CDP, SDP, VTPM

Supporting Documents:

1. Vicinity Map
2. City Council Resolution 21-02-02-04
3. Draft Victoria Boulevard Specific Plan – October 2023 (Available Online: <https://www.danapoint.org/home/showpublisheddocument/37917/638506991837094173>)
4. Draft EIR (Available Online: <https://www.danapoint.org/home/showpublisheddocument/35574/638097230446700000>)
5. Final EIR (Available Online: <https://www.danapoint.org/home/showpublisheddocument/36955/638307976565700000>)
6. Traffic Impact Analysis (Available Online: <https://www.danapoint.org/home/showpublisheddocument/37911/638506695310147975>)
7. Project Sample Materials Board
8. Public Comments
9. Comments Provided by Toll Brothers
10. Project Plans (Available Online: <https://www.danapoint.org/home/showpublisheddocument/37746/638487933902570000>)

ACTION DOCUMENT 1: Draft Planning Commission Resolution No. 24-05-13-XX for GPA

RESOLUTION NO. 24-05-13-XX

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF DANA POINT, CALIFORNIA, RECOMMENDING CITY COUNCIL APPROVAL OF GENERAL PLAN AMENDMENT GPA20-0002, TO CHANGE THE LAND USE DESIGNATION FROM "COMMUNITY FACILITIES" AND "RECREATION/OPEN SPACE" AND CREATE A NEW LAND USE DESIGNATION OF "VICTORIA BOULEVARD SPECIFIC PLAN" AND SUBMISSION OF GPA20-0002 AS LOCAL COASTAL PROGRAM AMENDMENT LCPA20-0002 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION FOR THE PROPERTY AT 26126 VICTORIA BOULEVARD

Applicant: Toll Brothers Apartment Living
Owner: Capistrano Unified School District

The Planning Commission for the City of Dana Point does hereby resolve as follows:

WHEREAS, on July 9, 1991, the City of Dana Point adopted its General Plan; and

WHEREAS, the City of Dana Point has prepared, pursuant to the provisions of the California Environmental Quality Act (CEQA), an Environmental Impact Report (SCH# 2021070304) for the Victoria Boulevard Specific Plan which has been reviewed and considered by the Planning Commission; and

WHEREAS, the City may amend all or part of an adopted General Plan to promote the public interest up to four times during any calendar year pursuant to Government Code Section 65358; and

WHEREAS, General Plan Land Use Element serves as a portion of the Local Coastal Program, adopted by the City of Dana Point on June 27, 1995, and was certified by the California Coastal Commission and may be amended in whole or in part; and

WHEREAS, the General Plan Amendment GPA20-0002 is the first General Plan Amendment processed for 2024; and

WHEREAS, the proposed amendment would make changes to the Land Use Map within the Land Use Element of the General Plan by amending the land use designation of "Community Facility" and "Recreation/Open Space" and creating new land use designations of "Victoria Boulevard Specific Plan"; and

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
GPA20-0002
Page 2

WHEREAS, the amendment is internally consistent with the other elements of the General Plan; and

WHEREAS, the preparation and adoption of the Local Coastal Program Amendment has been evaluated in compliance with the California Environmental Quality Act pursuant to Section 21080.9 of the Public Resources Code; and

WHEREAS, the Planning Commission did on May 13, 2024 hold a duly noticed public hearing as prescribed by law to consider said General Plan Amendment and Local Coastal Plan Amendment; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, the Planning Commission considered all factors relating to GPA20-0002 and LCPA20-0002; and

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Dana Point as follows:

- A. That the above recitations are true and correct;
- B. That the proposed action complies with all other applicable requirements of State law and local Ordinances;
- C. That the General Plan Amendment under GPA20-0002 is in the public interest;
- D. That the Local Coastal Program Amendment LCPA20-0002 is consistent with, and will be implemented in full conformity with the Coastal Act;
- E. That the Planning Commission has reviewed and considered the Environmental Impact Report;
- F. That the Environmental Impact Report for the proposed project is complete and adequate for the consideration of the General Plan Amendment;
- G. That the Planning Commission adopts the following findings:
 - 1. That the public and affected agencies have had ample opportunity to participate in the LCPA process, **in that proper notice has been provided in accordance with the LCP Amendment procedures.**

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
GPA20-0002
Page 3

2. That all policies, objectives, and standards of the LCPA conform to the requirements of the Coastal Act, including that the land use plan as amended is in conformance with and adequate to carry out the Chapter Three policies of the Coastal Act **in that the General Plan amendment establishes the Victoria Boulevard Specific Plan land use designation, which includes provisions that are adequate to carry out the Chapter Three policies of the Coastal Act.**
3. That Coastal Act policies concerning specific coastal resources, hazard areas, coastal access concerns, and land use priorities have been applied to determine the kind, locations, and intensity of land and water uses. **The General Plan Amendment, Zone Change, Specific Plan, Local Coastal Program Amendment, and project for the development of a 306-unit apartment complex with recreation buildings, site improvements, and open space was evaluated with an EIR (SCH# 2021070304). The EIR evaluated coastal resources, hazard area, coastal access, land use priorities, intensity and water uses. The proposed amendments, Specific Plan, and development comply with the City's Local Coastal Program and do not result in any unmitigated environmental impacts.**
4. That the level and pattern of development proposed is reflected in the Land Use Plan, Zoning Code, and Zoning Map **in that the General Plan amendment establishes the Victoria Boulevard Specific Plan land use designation.**
5. That a procedure has been established to ensure adequate notice of interested persons and agencies of impending development proposed after the certification of the LCPA. **Proper notice in accordance with the LCP Amendment procedures has been followed.**
6. That zoning measures are in place which are in conformance with and adequate to carry out the coastal policies of the Land Use Plan. **The City's Zoning Code is being amended concurrently with the LCP Amendment.**

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
GPA20-0002
Page 4

- H. That the Planning Commission recommends that the City Council include the following in the City Council resolution:
 - 1. The City certifies that with the adoption of these amendments, the City will carry out the Local Coastal Program in a manner fully in conformity with Division 20 of the Public Resources Code as amended, the California Coastal Act of 1976.
 - 2. The City certifies that the Land Use Plan, as amended, is in conformity with and adequate to carry out the Chapter Three policies of the Coastal Act.
 - 3. The City certifies the implementing actions as amended, are in conformity with and adequate to carry out the provisions of the certified Land Use Plan.
 - 4. The Resolution of the City Council specifies that Local Coastal Program Amendment LCPA20-0002 be submitted to the Coastal Commission for certification.
- I. That the Planning Commission recommends to the City Council amend the Land Use Map within the Land Use Element of the General Plan changing the land use designation of the subject site from "Community Facility" and "Recreation/Open Space" and creating new land use designations of "Victoria Boulevard Specific Plan".
- J. That the Planning Commission recommends to the City Council amend the Land Use Plan of the Land Use Element which serves as a portion of the Local Coastal Program.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
GPA20-0002
Page 5

PASSED, APPROVED, AND ADOPTED at a regular meeting of the Planning Commission of the City of Dana Point, California, held on this 13th day of May, 2024, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Mary Opel, Chair
Planning Commission

Brenda Wisneski, Director
Community Development Department

General Plan Amendment GPA20-0002



ACTION DOCUMENT 2: Draft Planning Commission Resolution No. 24-05-13-XX for ZC

RESOLUTION NO. 24-05-13-XX

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF DANA POINT, CALIFORNIA, RECOMMENDING CITY COUNCIL APPROVAL OF ZONE CHANGE (ZC24-0001) TO CHANGE THE ZONING DESIGNATION FROM COMMUNITY FACILITY AND RECREATION TO "SPECIFIC PLAN OVERLAY", AND SUBMISSION AS PART OF LOCAL COASTAL PROGRAM AMENDMENT (LCPA20-0001) FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION AT 26126 VICTORIA BOULEVARD

Applicant: Toll Brother Apartment Living
Owner: Capistrano Unified School District

The Planning Commission of the City of Dana Point does hereby resolve as follows:

WHEREAS, in January 1994, the City of Dana Point adopted its Zoning Code and Zoning Map; and

WHEREAS, the Applicant seeks to amend the Zoning Map per Zone Change ZC24-0001 and Local Coastal Plan Amendment LCPA20-0002, affecting the property at 26126 Victoria Boulevard; and

WHEREAS, the proposal is for a Zone Change ZC24-0001 and Local Coastal Plan Amendment LCPA20-0002 to amend the zoning of the property located at 26126 Victoria Boulevard from Community Facilities (CF) and Recreation (REC) to Specific Plan Overlay; and

WHEREAS, the Zone Change will be consistent with and will provide for the orderly, systematic and specific implementation of the General Plan, as such General Plan and Local Coastal Program would be amended pursuant to the recommendations of the Planning Commission; and

WHEREAS, the Planning Commission held a duly noticed public hearing as prescribed by law on May 13, 2024, to consider said Zone Change, General Plan Amendment, and Local Coastal Plan Amendment; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, the Planning Commission considered all factors relating to Zone Change ZC24-0001 and Local Coastal Program Amendment LCPA20-0002; and

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
ZC24-0001
PAGE 2

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Dana Point as follows:

- A. That the above recitations are true and correct;
- B. The Zone Change ZC24-0001 would create "Victoria Boulevard Specific Plan" zoning designation and apply it to the property at 26126 Victoria Boulevard;
- C. That the proposed action complies with all other applicable requirements of State law and local Ordinances;
- D. That the Zone Change (ZC24-0001) are in the public interest;
- E. The Planning Commission has reviewed the Victoria Boulevard Apartments Environmental Impact Report (SCH# 2021070304) and forwarded it to the City Council for review and adoption;
- F. The preparation and adoption of the Local Coastal Program Amendment is statutorily exempt from the California Environmental Quality Act, pursuant to Section 21080.9 of the Public Resources Code;
- G. The proposed amendment to the Zoning Code and Zoning Map will be consistent with the amended General Plan, Specific Plan, and Local Coastal Program;
- H. The Planning Commission recommends that the City Council adopt Zone Change ZC24-0001 for the reasons outlined herein including but not limited to: creation of additional housing opportunities and residential density within the Coastal Overlay District near sources of employment or commercial and professional services, which is sited in a manner that minimizes vehicle miles traveled (VMT); creation of a 1.5 acres of park and open space, undergrounded utilities, \$6,300,000 million for public capital improvements, and lease payments received by CUSD from the developer are dedicated to facility improvements at CUSD's schools located in Dana Point;
- I. That the Planning Commission adopt the following findings:
 - 1. That the public and affected agencies have had ample opportunity to participate in the LCPA process, **in that proper notice has been provided in accordance with the LCP Amendment procedures.**
 - 2. That all policies, objectives, and standards of the LCPA conform to the requirements of the Coastal Act, including that the Land Use Plan as amended is in conformance with and adequate to carry out

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
ZC24-0001
PAGE 3

policies of Chapter Three of the Coastal Act. **The amendment to the Zoning Map is consistent with the Coastal Act policies that encourage coastal access and preservation of coastal and marine resources.**

3. That Coastal Act policies concerning specific coastal resources, hazard areas, coastal access concerns, and land use priorities have been applied to determine the kind, locations, and intensity of land and water uses in that **in that the Zone Change would establish the "Victoria Boulevard Specific Plan" zoning district will serve as the LCP for the Property and has been evaluated to ensure consistency with the Coastal Act related to coastal resources, hazard area, coastal access, land use priorities, intensity and water uses.**
 4. That the level and pattern of development proposed is reflected in the Zoning Code and Zoning Map. **The applicable sections are being amended accordingly to be consistent with state law.**
 5. That a procedure has been established to ensure adequate notice of interested persons and agencies of impending development proposed after the certification of the LCPA. **Proper notice in accordance with the LCP Amendment procedures has been followed.**
 6. That zoning measures are in place which are in conformance with and adequate to carry out the coastal policies of the Land Use Plan. **The City's Zoning Map is being amended concurrently with the LCP amendment.**
- J. That the Planning Commission recommends that the City Council include the following findings in the City Council resolution submitting the LCPA to the Coastal Commission:
1. The City certifies that with the adoption of these amendments, the City will carry out the Local Coastal Program in a manner fully in conformity with Division 20 of the Public Resources Code as amended, the California Coastal Act of 1976.
 2. The City include the proposed zoning district of "Victoria Boulevard Specific Plan" in its submittal to the Coastal Commission and state that the amendment to the Local Coastal Program is to both the land use plan and implementing actions.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
ZC24-0001
PAGE 4

3. The City certifies that the Land Use Plan, as amended, is in conformity with and adequate to carry out the Chapter Three policies of the Coastal Act.
 4. The City certifies that the implementing actions as amended, are in conformity with and adequate to carry out the provisions of the certified Land Use Plan.
 5. The Ordinance of the City Council include the General Plan Amendment GPA20-0002, Zone Change ZC24-0001, Specific Plan SP24-0001, and Local Coastal Program Amendment LCPA20-0002 when submitted to the Coastal Commission.
 6. The City certifies that the amendments will be submitted to the Coastal Commission for review and approval as an Amendment to the Local Coastal Program.
- K. That the Planning Commission recommends that the City Council adopt the amendments to the City Zoning Code and Zoning Map designating the project as "Victoria Boulevard Specific Plan".
- L. That the Planning Commission recommends that the City Council adopt General Plan Amendment GPA20-0002, Zone Change ZC24-0001, and Specific Plan SP24-0001, which would amend the Dana Point Local Coastal Program pursuant to LCPA20-0002. The Planning Commission recommends the amendment for the reasons outlined herein and in the new "Victoria Boulevard Specific Plan" zoning district, including but not limited to: creation of additional housing opportunities and residential density within the Coastal Overlay District near sources of employment or commercial and professional services, which is sited in a manner that minimizes vehicle miles traveled (VMT); creation of a 1.5 acres of park and open space, undergrounded utilities, \$6,300,000 million for public capital improvements, and lease payments received by CUSD from the developer are dedicated to facility improvements at CUSD's schools located in Dana Point. The amendment of the City's General Plan, Zoning District, and Specific Plan for the project area create the consistent regulatory framework to jointly modify the City's Local Coastal Plan for the project area to help facilitate the above goals.
- M. General Plan Amendment GPA20-0002, Zone Change ZC24-0001, and Specific Plan SP24-0001 shall constitute the Local Coastal Plan Amendment LCPA20-0002 for the project area.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
ZC24-0001
PAGE 5

PASSED, APPROVED, AND ADOPTED at a regular meeting of the Planning Commission of the City of Dana Point, California, held on this 13th day of May, 2024, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

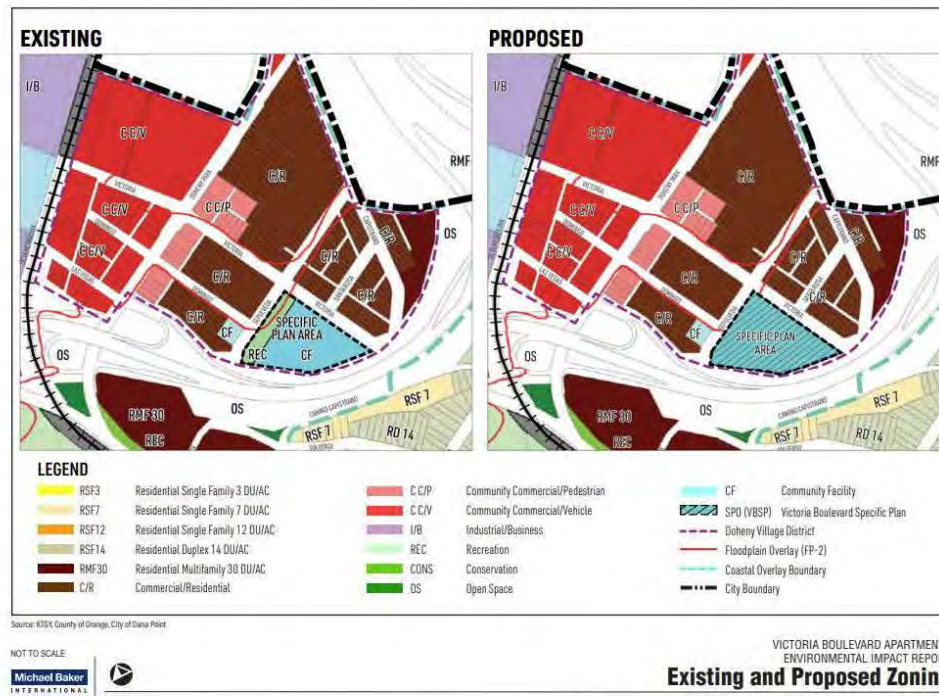
ATTEST:

Mary Opel, Chair
Planning Commission

Brenda Wisneski, Director
Community Development Department

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
ZC24-0001
PAGE 6

EXHIBIT "A"



ACTION DOCUMENT 3: Draft Planning Commission Resolution No. 24-05-13-XX for LCPA

RESOLUTION NO. 24-05-13-XX

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF DANA POINT, CALIFORNIA, RECOMMENDING CITY COUNCIL APPROVAL OF LOCAL COASTAL PROGRAM AMENDMENT LCPA20-0002, WHICH AMENDS THE GENERAL PLAN GPA20-0002 AND ZONING CODE ZC24-0001 AND ADOPTION OF SPECIFIC PLAN SP24-0001 AND SUBMISSION OF GENERAL PLAN AMENDMENT GPA20-0002, ZONING CODE ZC24-0001, SPECIFIC PLAN SP24-0001 AS LOCAL COASTAL PROGRAM AMENDMENT LCPA20-0002 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION FOR THE PROPERTY AT 26126 VICTORIA BOULEVARD

Applicant: Toll Brothers Apartment Living
Owner: Capistrano Unified School District

The Planning Commission for the City of Dana Point does hereby resolve as follows:

WHEREAS, Capistrano Unified School District (the "Owner"), owns the real property located at 26126 Victoria Boulevard and identified by Assessor's Parcel Number 668-361-01 (the "Property"); and

WHEREAS, the Toll Brothers Apartment Living (the "Applicant") filed a verified application to establish a Specific Plan at the subject property requiring a concurrent application with corresponding requests for a Coastal Development Permit to allow the proposed development within the Coastal Overlay District (Coastal Zone), Site Development Permits to allow the construction of a multi-family apartment complex and parking structure within the Floodplain Overlay (FP-2), and Vesting Tentative Parcel Map to consolidate the underlying lots, incumbent upon City Council approval General Plan Amendment GPA20-0002, Zone Change ZC24-0001, Specific Plan SP24-0001, Local Coastal Plan Amendment LCPA20-0002, and Development Agreement DA24-0001 at the Property; and

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
LCPA20-0002
Page 2

WHEREAS, in accordance with the requirements of the California Environmental Quality Act (CEQA), California Public Resources Code sections 21000 et seq., the State CEQA Guidelines, 14 C.C.R. section 15000 et seq, the City has prepared a Final Environmental Impact Report (EIR) for the Victoria Boulevard Apartments, State Clearinghouse No. 2021070304, (the "Final Project EIR"), a full, true and correct copy of which is on file with the City Clerk of the City of Dana Point; and

WHEREAS, on July 9, 1991, the City of Dana Point adopted its General Plan; and

WHEREAS, the City may amend all or part of an adopted General Plan to promote the public interest up to four times during any calendar year pursuant to Government Code Section 65358; and

WHEREAS, on June 27, 1995, the City of Dana Point adopted a Local Coastal Program, which was certified by the California Coastal Commission and may be amended in whole or in part; and

WHEREAS, the Local Coastal Program Amendment LCPA20-0002 is the first Local Coastal Program Amendment processed for 2024; and

WHEREAS, the proposed amendment GPA20-0002 would make changes to the Land Use Map within the Land Use Element of the General Plan by amending the land use designation of "Community Facility" and "Recreation/Open Space" and creating new land use designations of "Victoria Boulevard Specific Plan" for the Property. The Land Use Element is a component of the land use plan of the Local Coastal Program; and

WHEREAS, the proposed amendment ZC24-0001 would make changes to the Zoning Map by amending the zoning designation of "Community Facility" and "Recreation" and creating new zoning designations of "Victoria Boulevard Specific Plan" for the Property. The Zoning Code represents the implementation plan of the Local Coastal Program; and

WHEREAS, approval of SP24-0001 would establish the Victoria Boulevard Specific Plan which would serve both land use plan and implementation plan for the Property in that it provides planning and regulatory functions including land use regulations, circulation patterns, public facilities and infrastructure requirements, and development standards; and

WHEREAS, the amendment is internally consistent with the other elements of the General Plan; and

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
LCPA20-0002
Page 3

WHEREAS, the Planning Commission did on May 13th, 2024 hold a duly noticed public hearing as prescribed by law to consider said General Plan Amendment GPA20-0002, Zoning Change ZC24-0001, Specific Plan SP24-0001 and Local Coastal Plan Amendment LCPA20-0002; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, the Planning Commission considered all factors relating to General Plan Amendment GPA20-0002, Zoning Change ZC24-0001, Specific Plan SP24-0001 and Local Coastal Plan Amendment LCPA20-0002; and

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Dana Point as follows:

- A. That the above recitations are true and correct;
- B. That the proposed action complies with all other applicable requirements of State law and local Ordinances;
- C. That the General Plan Amendment GPA20-0002, Zoning Change ZC24-0001, Specific Plan SP24-0001 and Local Coastal Plan Amendment LCPA20-0002 is in the public interest;
- D. That the Local Coastal Program Amendment LCPA20-0002 is consistent with, and will be implemented in full conformity with the Coastal Act;
- E. That the Planning Commission has reviewed and considered the Victoria Boulevard Apartments Environmental Impact Report (SCH# 2021070304);
- F. That the Victoria Boulevard Apartments Environmental Impact Report (SCH# 2021070304) for the proposed project is complete and adequate for the consideration of the General Plan Amendment GPA20-0002, Zoning Change ZC24-0001, Specific Plan SP24-0001 and Local Coastal Plan Amendment LCPA20-0002;
- G. That the Planning Commission adopts the following findings:
 - 1. That the public and affected agencies have had ample opportunity to participate in the LCPA process, **in that proper notice has been provided in accordance with the LCP Amendment procedures.**

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
LCPA20-0002
Page 4

2. That all policies, objectives, and standards of the LCPA conform to the requirements of the Coastal Act, including that the Land Use Plan as amended is in conformance with and adequate to carry out the Chapter Three policies of the Coastal Act, **in that the Victoria Boulevard Specific Plan will serve as the LCP and has been evaluated to ensure consistency with the Coastal Act related to coastal resources, hazard area, coastal access, land use priorities, intensity and water uses.**
3. That Coastal Act policies concerning specific coastal resources, hazard areas, coastal access concerns, and land use priorities have been applied to determine the kind, locations, and intensity of land and water uses. **The General Plan Amendment, Zone Change, Specific Plan, Local Coastal Program Amendment, and project for the development of a 306-unit apartment complex with recreation buildings, site improvements, and open space was evaluated with an EIR (SCH# 2021070304). The EIR evaluated coastal resources, hazard area, coastal access, land use priorities, intensity and water uses. The proposed amendments, Specific Plan, and development comply with the City's Local Coastal Program and do not result in any unmitigated environmental impacts.**
4. That the level and pattern of development proposed is reflected in the Land Use Plan, Zoning Code, and Zoning Map. **The applicable sections are being amended accordingly to be consistent with state law. The project is consistent with the proposed General Plan Amendment, Zone Change, and Specific Plan. The project complies with the Specific Plan's standards related to height, setbacks, lot coverage, open space, and landscape coverage requirements. The project also conducted an EIR that concluded all environmental impacts would be mitigated. The project is located within Doheny Village which has a diverse range of housing types, including multi-family, mobile homes, affordable housing, and live/work units, which is a unique feature within the City.**
5. That a procedure has been established to ensure adequate notice of interested persons and agencies of impending development proposed after the certification of the LCPA. **Proper notice in accordance with the LCP Amendment procedures has been followed.**

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
LCPA20-0002
Page 5

6. That zoning measures are in place which are in conformance with and adequate to carry out the coastal policies of the Land Use Plan. **The City's Zoning Map is being amended concurrently and the Victoria Boulevard Specific Plan with the LCP amendment.**
- H. That the Planning Commission recommends that the City Council include the following in the City Council resolution:
 1. The City certifies that with the adoption of these amendments, the City will carry out the Local Coastal Program in a manner fully in conformity with Division 20 of the Public Resources Code as amended, the California Coastal Act of 1976.
 2. The City certifies that the Land Use Plan, as amended, is in conformity with and adequate to carry out the Chapter Three policies of the Coastal Act.
 3. The City certifies the implementing actions as amended, are in conformity with and adequate to carry out the provisions of the certified Land Use Plan.
 4. The Resolution of the City Council specifies that Local Coastal Program Amendment LCPA20-0002 be submitted to the Coastal Commission for certification.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
LCPA20-0002
Page 6

PASSED, APPROVED, AND ADOPTED at a regular meeting of the Planning Commission of the City of Dana Point, California, held on this 13th day of May, 2024, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

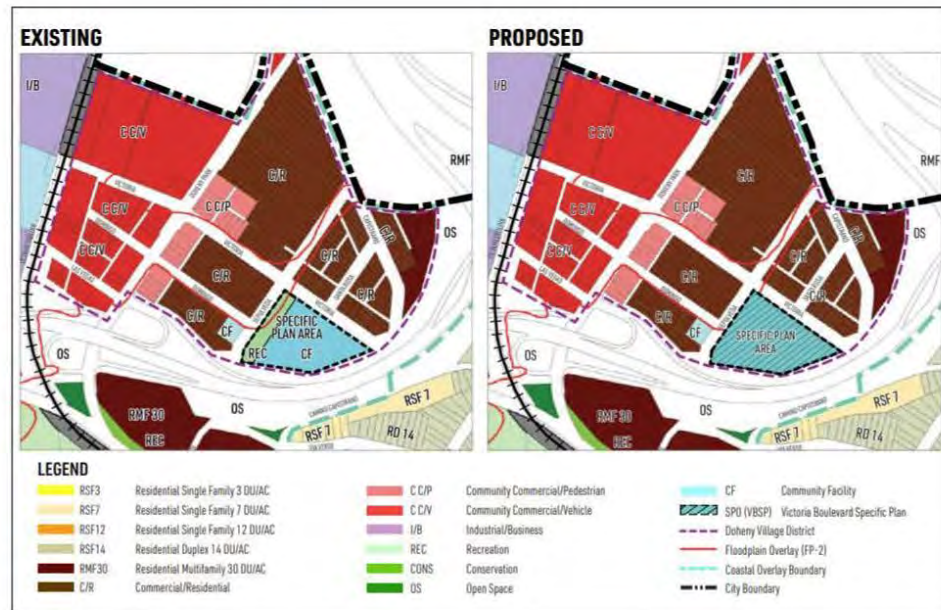
ATTEST:

Mary Opel, Chair
Planning Commission

Brenda Wisneski, Director
Community Development Department

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
LCPA20-0002
Page 7

EXHIBIT “A”



NOT TO SCALE

Michael Baker
INTERNATIONAL



VICTORIA BOULEVARD APARTMENTS
ENVIRONMENTAL IMPACT REPORT
Existing and Proposed Zoning

ACTION DOCUMENT 4: Draft Planning Commission Resolution No. 24-05-13-XX for EIR

RESOLUTION NO. 24-05-13-XX

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF DANA POINT, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL ADOPT THE VICTORIA BOULEVARD APARTMENTS ENVIRONMENTAL IMPACT REPORT (SCH# 2021070304) FOR GENERAL PLAN AMENDMENT GPA20-0002, ZONE CHANGE ZC24-0001, SPECIFIC PLAN SP24-0001, LOCAL COASTAL PLAN AMENDMENT LCPA20-0002, AND COASTAL DEVELOPMENT PERMIT CDP20-0005, SITE DEVELOPMENT PERMIT SDP20-0007, VESTING TENTATIVE PARCEL MAP VTPM20-0001 AND DEVELOPMENT AGREEMENT DA24-0001 FOR THE VICTORIA BOULEVARD APARTMENTS

Applicant: Toll Brothers Apartment Living
Owner: Capistrano Unified School District

The Planning Commission of the City of Dana Point does hereby resolve as follows:

WHEREAS, on August 15, 2010, the Applicant submitted a General Plan Amendment GPA20-0002, Zone Change ZC24-0001, Specific Plan SP24-0001, Local Coastal Plan Amendment LCPA20-0002, and Coastal Development Permit CDP20-0005, Site Development Permit SDP20-0007, Vesting Tentative Parcel Map VTPM20-0001 and Development Agreement DA24-0001 for the Victoria Boulevard Apartments ("Project"); and

WHEREAS, the Project is for a General Plan Amendment to Amend the General Plan Land Use Element; for a Zone Change and Specific Plan to establish the Victoria Boulevard Specific Plan; for a Development Agreement between the City, Capistrano Unified Schools District and Toll Brothers Apartment Living; for a Coastal Development Permit, Site Development Permit, Vesting Tentative Parcel Map, to allow for the proposed development; and for submittal of said applications as a Local Coastal Program Amendment for approval and certification by the California Coastal Commission; and

WHEREAS, said initiation constitutes legislative actions subject to the provisions of the California Environmental Quality Act (CEQA) as provided by Title 9 of the Dana Point Municipal Code; and

WHEREAS, an initial study was prepared for the Project and the City determined that an Environmental Impact Report was required to address significant potential environmental impacts; and

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 2

WHEREAS, in accordance with the requirements of the California Environmental Quality Act (CEQA), California Public Resources Code sections 21000 et seq., the State CEQA Guidelines, 14 C.C.R. section 15000 et seq, and the City's local CEQA Guidelines, the City has prepared a Final Environmental Impact Report, State Clearinghouse No. 2021070304, (the "Final Project EIR"), a full, true and correct copy of which is on file with the City Clerk of the City of Dana Point; and,

WHEREAS, a Notice of Preparation (NOP) was distributed for a 30-day public review period from July 19, 2021 through August 17, 2021 and a public scoping meeting was scheduled on August 5, 2021; and

WHEREAS, in accordance with Senate Bill 18 and Government Code 69352.3, and Assembly Bill 52 and Government Code 21000, the City sent notification letters to the appropriate tribal organizations on April 15, 2021 in compliance with the requirements for tribal consultation; and

WHEREAS, a Notice of Availability (NOA) for the Project Draft Environmental Impact Report (Draft EIR) was distributed for a 45-day public review period from January 20, 2023 through March 6, 2023. On February 27, 2023, the City held a community workshop to receive public comments on the Draft EIR; and

WHEREAS, the City of Dana Point, as the lead agency, has evaluated the comments received on the Draft EIR; and

WHEREAS, the City of Dana Point, as the lead agency, has prepared the Project's Final Environmental Impact Report SCH# 2021070304 (Final EIR) in accordance with the requirements of CEQA, the CEQA guidelines, and the City's local CEQA Guidelines. The attached Final EIR consists of the NOP, NOA, Draft EIR including technical appendices, Response to Comments, Errata, and Mitigation Monitoring and Reporting Program; and

WHEREAS, the Planning Commission did, on the 13th day of May, 2024, hold a duly noticed public hearing as prescribed by law to consider said request; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, examining the attached Environmental Impact Report, analyzing the information submitted by staff, and considering any written comments received, said Commission considered all factors relating to the Environmental Impact Report.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 3

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Planning Commission of the City of Dana Point as follows:

- A) That the above recitations are true and correct.
- B) That based on the evidence presented at the public hearing, the Planning Commission hereby recommends that City Council adopt an Environmental Impact Report for the proposed project and finds that:
 - A. That the above recitations are true and correct;
 - B. That the proposed action complies with all other applicable requirements of State law and local Ordinances;
 - C. That the Final Environmental Impact Report is in the public interest;
 - D. The Planning Commission has reviewed and adopted the Statement of Findings and Facts in Support of Findings and Mitigation Monitoring and Reporting Program;
 - E. That the Planning Commission recommends that the City Council certify the adequacy of Final EIR SCH# 2021070304 as the supporting environmental documentation for General Plan Amendment GPA20-0002, Zone Change ZC24-0001, Specific Plan SP24-0001, Local Coastal Plan Amendment LCPA20-0002, and Coastal Development Permit CDP20-0005, Site Development Permit SDP20-0007, Vesting Tentative Parcel Map VTPM20-0001 and Development Agreement DA24-0001.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 4

PASSED, APPROVED, AND ADOPTED at a regular meeting of the Planning Commission of the City of Dana Point, California, held on this 13th day of May, 2024, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mary Opel, Chair
Planning Commission

ATTEST:

Brenda Wisneski, Director
Community Development Department

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 5

EXHIBIT A

Draft EIR

LINK TO DOCUMENT ON CITY WEBSITE

<https://www.danapoint.org/home/showpublisheddocument/35574/638097230446700000>

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 6

EXHIBIT B

Final EIR

LINK TO DOCUMENT ON CITY WEBSITE

<https://www.danapoint.org/home/showpublisheddocument/36955/638307976565700000>

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 7

EXHIBIT C

Victoria Boulevard Apartments Traffic Impact Analysis

LINK TO DOCUMENT ON CITY WEBSITE

<https://www.danapoint.org/home/showpublisheddocument/37911/638506695310147975>

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 8

EXHIBIT D

**CEQA FINDINGS OF FACT FOR THE
FINAL ENVIRONMENTAL IMPACT REPORT
FOR THE
VICTORIA BOULEVARD APARTMENTS**

State Clearinghouse No. 2021070304

I. BACKGROUND

The California Environmental Quality Act (CEQA) requires that written findings be made by the lead agency in connection with certification of an environmental impact report (EIR) and approval of a project pursuant to Sections 15091 and 15093 of the *CEQA Guidelines* and Section 21081 of the Public Resources Code. This document provides the findings required by CEQA and the CEQA Guidelines and the specific reasons for considering a project for which significant impacts have been identified and analyzed in the EIR.

The lead agency is responsible for the adequacy and objectivity of the EIR. The City of Dana Point (City), as lead agency, has subjected the Draft EIR and Final EIR to the City's own independent review and analysis.

A. PROJECT SUMMARY

PROJECT LOCATION

The City of Dana Point is located in the southern portion of Orange County, midway between the cities of San Diego and Los Angeles. The community consists of coastal bluffs and rolling hills located along seven miles of the Pacific Ocean. Surrounding cities include Laguna Niguel and Laguna Beach to the north, San Juan Capistrano to the east, and San Clemente to the south.

The proposed Victoria Boulevard Apartments (project) site is located within an area commonly referred to as Doheny Village, which is an approximately 80-acre area located in the southeastern portion of the City. The project proposes the development of approximately 5.51-acre site located at 26126 Victoria Boulevard with up to 306 dwelling units. The project site is located on the southeast corner of Victoria Boulevard and Sepulveda Boulevard in the southeastern portion of Doheny Village. The project site is bound by Victoria Boulevard to the north, the Interstate 5 (I-5) off-ramp to Pacific Coast Highway on the east, Pacific Coast Highway on the south, and Sepulveda Avenue on the west. The project site consists of several underlying lots under one

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 9

parcel number (Assessor's Parcel Number [APN] 668-361-01) owned by the Capistrano Unified School District (CUSD). Regional access to the project site is provided via I-5 and Pacific Coast Highway. Local access is provided via Victoria Boulevard and Sepulveda Avenue.

PROJECT DESCRIPTION

The project involves the demolition of the existing CUSD bus yard and development of a two- to five-story, 306-unit apartment complex with an attached six-story (seven levels) parking structure and associated amenities in accordance with the proposed Victoria Boulevard Specific Plan (Specific Plan).

Victoria Boulevard Specific Plan

The Specific Plan is intended to provide an orderly and efficient development of the project site, in accordance with the General Plan. The Specific Plan would serve both planning and regulatory functions including land use regulations, circulation patterns, public facilities and infrastructure requirements, and development standards. All future development within the project area would be subject to compliance with the Specific Plan regulations, as well as all other applicable City regulations. Under the Specific Plan development density within the project area would not exceed 55.5 dwelling units per acre, yielding a maximum of 306 dwelling units on the 5.51-acre project site. Of the total unit count, a minimum of five percent very low-, five percent low-, and five percent moderate-income units (yielding a total of no less than 46 affordable units) are required to be provided and distributed throughout the project. The Specific Plan also includes the conceptual grading plan for the project, under which the proposed development would export approximately 19,585 cubic yards of earth material. Access to the project area would be limited to a proposed ingress/egress driveway along Sepulveda Avenue, an unsignalized entryway from Victoria Boulevard, and a third driveway in the southern terminus of Sepulveda Avenue that would only be used as an emergency access. Pedestrian access and circulation would be provided throughout the residential community. A Class III bicycle route with signage would be provided on the eastbound side of Victoria Boulevard. All sidewalks and bicycle paths would follow the design standards set forth in the Specific Plan. Additionally, the Specific Plan allows for garage parking, angled surface parking, and a surplus of on-street parking stalls on Victoria Boulevard and Sepulveda Avenue.

Design guidelines are provided for the proposed on-site development project. These guidelines provide directions on implementing the unique, coastal, contemporary, high-density concepts envisioned for the project area, ensuring cohesive, high-quality development of buildings, streetscapes, and other public spaces. Development standards include, but are not limited to, allowable development, density, lot area per residential unit, building height, building setbacks, and open space requirements.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 10

Victoria Boulevard Apartments

The project would be developed as a 306-unit apartment complex with an attached six-story (seven level) parking structure. The apartment building would be two- to five-stories. The project would include approximately 141,540 square feet (3.25 acres) of open space, including 47,916 square feet (1.065 acres) of public active open space, 34,719 square feet (0.797 acre) of public street and frontage open space, 44,644 square feet (1.025 acre) of private active open space, and 15,778 square feet (0.36 acre) of private passive (i.e., patio) open space. The 1.065 acres of public active open space would include Victoria Shore Park (at the southeastern corner of Sepulveda Avenue and Victoria Boulevard) as well as a Dog Park and two public paseos along the former La Playa Avenue right-of-way. Private active open space (residential common area) would include private courtyards (Doheny Garden, Salt Creek Court, Harbor Terrace, and Shower Court), as well as a rooftop garden with a fitness room, pool deck, and club house.

Victoria Shore Park would include an outdoor exercise station, activity lawn, fire pit lounge deck, canopy palms, and enhanced architectural features. The paseo features would include a public access walking/biking trail, seating area with benches, drivable grass with drivable turf, and architecturally enhanced hardscape features.

The Dog Park would include synthetic lawn dog run feature, dog water fountain, and trash/dog waste station.

The private courtyards would include various amenities such as a canopy palms, seating area with benches, boulder features, bike storage, Americans with Disabilities Act (ADA) lift, enhanced hardscape, surf wash down lawn, board storage, showers/hose-down, lounge seating with fire table, among others. In addition to the fitness room, pool, and club, the roof garden would include barbecues, dining tables, lounge seating, synthetic lawn, spa, among others. Landscape and Streetscape amenities would include, without limitation:

- i. Establishment of no less than 27 on-street angled and landscape enhanced parking spaces along the southside of Victoria Boulevard and 13 on-street parking spaces along the eastside of Sepulveda Avenue;
- ii. Ample landscaping and seating;
- iii. New curb, gutter, and 10-foot sidewalk along Victoria Boulevard (increasing sidewalk width from four feet existing to 10 feet to allow for bicycles and pedestrians);
- iv. New 10-foot sidewalk along Sepulveda Boulevard (increasing sidewalk from four feet to 10 feet to allow for bicycles and pedestrians);
- v. New curb and gutter to replace existing driveways on Sepulveda;
- vi. Relocation of catch basin at the corner of Victoria Boulevard and other storm drain modifications to accommodate street improvements;

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 11

- vii. Caltrans drainage culvert to be modified/replaced with junction structure; required upgrades to South Coast Water District (SCWD) system;
- viii. A cul-de-sac and sidewalk at Sepulveda Boulevard dead-end; and
- ix. Surf benches along sidewalk on Victoria Boulevard.

Development Agreement

An application for a Development Agreement has been submitted as one of the requested project entitlements as provided by Municipal Code Chapter 9.73, *Development Agreements*. Development Agreements are authorized by Government Code Section 65864 *et seq.*, and provide for the vesting of the laws, statutes, ordinances, regulations, standards and policies in existence as of the effective date of the Development Agreement that will be applicable to the project. The parties to the Development Agreement include the City, the project proponent, and the current landowner (CUSD). The Development Agreement has been negotiated and will be considered for approval in combination with the legislative actions and project entitlement. The Development Agreement includes public benefits that extend beyond those which may be forthcoming through project approvals, as well as other negotiated terms. If any physical improvements beyond those proposed to be constructed on the project site are identified in the Development Agreement, those improvements have been identified and evaluated in the EIR.

The Development Agreement includes an obligation to create a funding mechanism which yields a substantial contribution to be utilized exclusively on improvements to Dana Hills High School at the earliest commercially feasible time. In addition, the Development Agreement includes a substantial contribution to the City to be utilized for community benefits as directed by the City Council.

B. PROJECT OBJECTIVES

The proposed project objectives are outlined below:

1. Increase the supply and diversity of housing types in the City of Dana Point, consistent with the goals and policies of the Housing Element.
2. Implement infill development on underutilized parcels, consistent with the General Plan and Housing Element.
3. Ensure height and massing of future development within the project area is sensitive to the scale of existing streetscapes, especially along Victoria Boulevard.
4. Promote the character and surf heritage of the historical Doheny Village.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 12

5. Increase the supply of affordable housing by mandating that no less than 5% of the units be developed for very low-income level housing, 5% of the units be developed for low-income housing level housing, and 5% of the units be developed for moderate income housing.
6. Promote pedestrian-oriented development, consistent with the planned Doheny Village Zoning District Update Project by providing housing within walking distance of places of business and employment.
7. Utilize architectural and landscape design to create public street frontages with pedestrian interest.
8. Incorporate landscaping and streetscaping enhancements as a means of investing in City beautification.
9. Reinforce a sense of place through unique and project-specific identity signage that adds interest and variety to the public realm and complements the harbor and coastal zone features of Dana Point.
10. Incorporate public open spaces within the project area, including a focal element (Victoria Park) to enhance the public realm and public access at the corner of Sepulveda Avenue and Victoria Boulevard, all of which would be maintained by the project developer in perpetuity.
11. Create a funding mechanism which yields a substantial contribution to be utilized exclusively on improvements to Dana Hills High School at the earliest commercially feasible time.
12. Utility undergrounding for all utilities along the project frontages at Victoria Boulevard and Sepulveda Avenue.
13. Provide a substantial contribution to the City to be utilized for community benefits as directed by the City Council.

C. ENVIRONMENTAL REVIEW PROCESS

The Final EIR includes the Draft EIR (dated January 2023); clarification of modifications to the proposed project since the circulation of the Draft EIR; written comments received during the Draft EIR public review period; written responses to those comments; an Errata; and a Mitigation Monitoring and Reporting Program (State Clearinghouse No. 2021070304) (hereinafter referred to collectively as the Final EIR). In conformance with CEQA and the *CEQA Guidelines*, the City conducted an extensive environmental review of the proposed project. The following is a summary of the City's environmental review process:

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 13

- The City circulated a Notice of Preparation (NOP) to public agencies and members of the public who had requested such notice for a 30-day period. The NOP was submitted to the State Clearinghouse and posted at the Orange County Clerk's office on July 19, 2021, with the 30-day review period beginning on July 19, 2021 and ending on August 17, 2021. Copies of the NOP were made available for public review at the City of Dana Point Community Development Department and on the City's website.
- A public scoping meeting was held on August 5, 2021 at the City Council Chambers.
- A Draft EIR was prepared and distributed for a 45-day public review period beginning January 20, 2023 through March 6, 2023. A Notice of Availability (NOA) was submitted to the State Clearinghouse, sent to public agencies and interested persons and organizations, and posted at the Orange County Clerk's office on January 20, 2023. Copies of the Draft EIR were made available for public review at the City of Dana Point Community Development Department and on the City's website.
- A Community Workshop for the Draft EIR was held on February 27, 2023 at the Dana Point Community Center located at 34052 Del Obispo Street, Dana Point, CA 92629.
- A Final EIR was prepared, which included clarification of modifications to the proposed project since the Draft EIR; comment letters received on the Draft EIR, responses to those comment letters, an Errata, and a Mitigation Monitoring and Reporting Program. The Final EIR was released for a 10-day agency review period prior to certification of the Final EIR.
- Public hearings on the proposed project were held, including one Dana Point Planning Commission hearing on May 13, 2024 and one Dana Point City Council hearing on June 18, 2024.

D. RECORD OF PROCEEDINGS

For purposes of CEQA and these Findings, the Record of Proceedings for the proposed project includes, but is not limited to, the following documents and other evidence:

- The NOP, NOA, and all other public notices issued by the City in conjunction with the proposed project;
- The Draft EIR and the Final EIR for the proposed project;

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 14

- All application materials submitted by the project proponent and any and all clarifications of modifications to the proposed project submitted by the project proponent;
- All written comment letters submitted by agencies, organizations, or members of the public during the public review comment period on the Draft EIR;
- All responses to written comment letters submitted by agencies, organizations, or members of the public during the public review comment period on the Draft EIR;
- All written and verbal public testimony presented during noticed public hearing(s) for the proposed project;
- All transcripts or minutes of the proceedings of the Planning Commission and City Council;
- The Mitigation Monitoring and Reporting Program;
- The reports and technical memoranda included or referenced in the Final EIR;
- All documents, studies, EIRs, or other materials incorporated by reference in the Draft EIR and Final EIR;
- The Resolutions and Ordinances recommended by the Planning Commission and adopted by the City Council in connection with the proposed project, and all documents incorporated by reference therein, including staff reports and findings in support thereof;
- Matters of common knowledge to the City, including but not limited to Federal, State, and local laws and regulations; and
- Any documents expressly cited in these Findings.

E. CUSTODIAN AND LOCATION OF RECORDS

The documents and other materials that constitute the record of proceedings for the City's actions related to the Victoria Boulevard Apartments are located at the City of Dana Point Community Development Department, 33282 Golden Lantern, Dana Point, CA 92629. The City's Director of Community Development is the custodian of the record of proceedings for the Final EIR. Copies of these documents, which constitute the record of proceedings are, and at all relevant times have been and will be, available upon request at the offices of the City of Dana Point Community Development Department. This information is provided in compliance with Public Resources Code Section 21081.6(a)(2) and *CEQA Guidelines* Section 15091(e).

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCFA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 15

F. INDEPENDENT JUDGMENT AND FINDING

The City selected and retained Michael Baker International (Michael Baker) to prepare the EIR. Michael Baker prepared the EIR under the supervision and direction of the City. All findings set forth herein are based on substantial evidence in the record, as indicated, with respect to each specific finding.

Finding:

The City has exercised independent judgment in accordance with Public Resources Code Section 21082.1(c)(3) in retaining its own environmental consultant and directing the consultant in the preparation of the EIR. The City has independently reviewed and analyzed the EIR and finds that the report reflects the independent judgment of the City.

The City Council has considered all the evidence presented in its consideration of the proposed project and the EIR, including, but not limited to, the Final EIR, written and oral evidence presented at hearings on the project, and written evidence submitted to the City by individuals, organizations, agencies, and other entities. On the basis of such evidence, the City Council finds that with respect to each environmental impact identified in the review process, the impact: (1) is less than significant and would not require mitigation, or (2) is potentially significant but would be avoided or reduced to a less than significant level by implementation of identified mitigation measures. No impacts would be significant and unavoidable. Therefore, no Statement of Overriding Considerations as described in CEQA Guidelines Section 15093 is required.

II. FINDINGS AND FACTS

The City of Dana Point, as lead agency, is required under CEQA to make written findings concerning each alternative and each significant environmental impact identified in the Draft EIR and Final EIR.

Specifically, regarding findings, *CEQA Guidelines* Section 15091 provides:

- (a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:
 - 1. Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 16

2. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
 3. Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the Final EIR.
- (b) The findings required by subsection (a) shall be supported by substantial evidence in the record.
 - (c) The finding in subdivision (a)(2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives. The finding in subsection (a)(3) shall describe the specific reasons for rejecting identified mitigation measures and project alternatives.
 - (d) When making the findings required in subdivision (a)(1), the agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures.
 - (e) The public agency shall specify the location and custodian of the documents or other material which constitute the record of the proceedings upon which its decision is based.
 - (f) A statement made pursuant to Section 15093 does not substitute for the findings required by this section.

The "changes or alterations" referred to in *CEQA Guidelines* Section 15091(a)(1) may include a wide variety of measures or actions as set forth in *CEQA Guidelines* Section 15370, including:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 17

- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (e) Compensating for the impact by replacing or providing substitute resources or environments.

A. Format

This section summarizes the significant environmental impacts of the proposed project, describes how those impacts are to be mitigated, and discusses various alternatives to the proposed project, which were developed in an effort to reduce the remaining significant environmental impacts. All impacts are considered potentially significant prior to mitigation unless otherwise stated in the findings.

The remainder of this section is divided into the following subsections:

- **Section B, Findings on Impacts Determined to Be Less Than Significant**, presents the impacts of the proposed project that were determined in the EIR to be less than significant without the addition of mitigation measures and presents the rationales for these determinations.
- **Section C, Findings on Impacts Mitigated to Less Than Significant**, presents potentially significant impacts of the proposed project that were identified in the Final EIR, the mitigation measures identified in the EIR that would reduce such impacts to less than significant levels, and the rationales for the findings. The implementation of the identified mitigation measures would be assured through the Mitigation Monitoring and Reporting Program in the Final EIR.
- **Section D, Findings on Significant Unavoidable Impacts**, presents potentially significant impacts of the proposed project that were identified in the EIR, the mitigation measures identified in the Mitigation Monitoring and Reporting Program that would reduce impacts, the findings for significant unavoidable impacts, and the rationales for the findings. The Final EIR did not identify any significant and unavoidable impacts associated with the proposed project.
- **Section E, Findings on Recirculation**, presents the reasoning as to why recirculation is not required under *CEQA Guidelines* Section 15088.5.
- **Section F, Findings on Project Alternatives**, summarizes the alternatives to the project that were analyzed in the EIR, and evaluates them in relation to the purpose for analyzing alternatives to a proposed project set forth in *CEQA Guidelines* Section 15126.6, which requires a public agency to consider alternatives to a proposed project if those alternatives are feasible and could avoid or substantially lessen any of the significant impacts of the proposed project.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 18

B. FINDINGS ON IMPACTS DETERMINED TO BE LESS THAN SIGNIFICANT

Consistent with *CEQA Guidelines* Sections 15126.2 and 15128, the EIR focused its analysis on potentially significant impacts and limited discussion of other impacts for which it can be seen with certainty there is no potential for significant adverse environmental effects. *CEQA Guidelines* Section 15091 does not require specific findings to address environmental effects that an EIR identifies as “no impact” or as a “less than significant impact.”

Finding:

The City finds that based on substantial evidence in the record, the following potential impacts, to the extent they result from the proposed project, would be less than significant, or would have no impact, and would not require mitigation.

1. Aesthetics/Light and Glare

As discussed in pages 5.2-9 through 5.2-10 of the DEIR, the proposed project would modify the visible massing on-site, but would not block the view of the Pacific Ocean as experienced from public vantage points. As such, project implementation would not have a substantial adverse impact on a scenic vista.

As discussed in pages 5.2-14 through 5.2-15 of the DEIR, the proposed project would not block motorists existing coastal views when traveling southbound I-5 off-ramp onto westbound Pacific Coast Highway. Additionally, project implementation would not involve impacts to Pacific Coast Highway. As such, project implementation would not substantially damage scenic resources, including but not limited to, trees, rock outcroppings, and historic buildings within a State scenic highway.

As discussed in pages 5.2-15 through 5.2-23 of the DEIR, the proposed project would comply with Specific Plan Chapter 4, *Design Guidelines*, Specific Plan Chapter 4, *Development Standards*, the California Coastal Act, the City's Municipal Code, and applicable General Plan policies. As such, implementation of the proposed project would not conflict with applicable zoning and other regulations governing scenic quality.

As discussed in pages 5.2-23 through 5.2-24 of the DEIR, construction of the proposed project would involve temporary glare impacts as a result of construction equipment and materials and would be required to comply with the City's Municipal Code Section 11.10.014, *Special Provisions* for construction hours. Operation of the proposed project would increase lighting at the project site compared to existing conditions however, the nature of the lighting would be similar to the existing surrounding community and would comply with the proposed Specific Plan Design Guidelines and Municipal Code Section 9.05.220. As such, implementation of the proposed project would not create a new source

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 19

of substantial light or glare, which could adversely affect day or nighttime views in the area.

As discussed in pages 5.2-24 through 5.2-25 of the DEIR, the proposed project would modify the visible building massing on-site; however, project implementation would not result in substantial view blockage of scenic resources (the Pacific Ocean) as experienced from scenic corridors (motorists traveling along southbound I-5 travel lanes and the southbound I-5 off-ramp to northbound Pacific Coast Highway travel lanes). As such, the project combined with other cumulative projects would not result in significant impacts to scenic vistas.

As discussed in page 5.2-25 of the DEIR, the proposed project would be consistent with applicable General Plan Urban Design Element policies governing scenic quality. As such, the project combined with other cumulative projects would not substantially damage scenic resources, including but not limited to, trees, rock outcroppings, and historic buildings within a State scenic highway.

As discussed in page 5.2-26 of the DEIR, the proposed project would be consistent with applicable zoning and regulations related to scenic quality. Additionally, project implementation would be subject to the Specific Plan Design Guidelines and Development Standards. As such, the project combined with other cumulative projects would not conflict with applicable zoning and other regulations governing scenic quality.

As discussed in pages 5.2-26 through 5.2-27 of the DEIR, short-term and long-term impacts to lighting would be reduced to less than significant levels following conformance with Municipal Code Section 11.10.014 and Municipal Code Section 9.05.220. As such, the project combined with other cumulative projects would not create a new source of substantial light or glare, which would adversely affect day or nighttime views in the area.

2. Agriculture and Forestry Resources

As discussed in the page 8-1 of the DEIR, the project site is situated within an urban and built-up land. As such, project implementation would not convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use.

As discussed in page 8-1 of the DEIR, the project is zoned "community Facilities" and Recreation. As such, project implementation would not conflict with existing zoning for agricultural use, or a Williamson Act contract.

As stated in page 8-2 of the DEIR, the project site is not zoned for any forest land, timberland, or timberland production. Thus, the proposed project would not conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 20

section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g)).

As discussed in page 8-2 of the DEIR, the project site is zoned for any forest land, timberland, or timberland production and thus project implementation would not result in the loss of forest land or conversion of forest land to non-forest use.

As discussed in page 8-2 of the DEIR, the project site is located in an urban environment and is not zoned for any forest land, timberland, or timberland production. Thus, implementation of the project would not involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use.

3. Air Quality

As discussed in pages 5.8-11 through 5.8-14 of the DEIR, the proposed project would comply with the South Coast Air Quality Management District's 2022 Air Quality Management Plan. As such, implementation of the proposed project would not conflict with or obstruct implementation of the applicable air quality plan.

As discussed in pages 5.8-14 through 5.8-20 of the DEIR, the proposed project would not exceed the South Coast Air Quality Management District's adopted construction and operational emission thresholds. As such, implementation of the proposed project would not result in a cumulatively considerable net increase of criteria pollutants for which the project region is in non-attainment under an applicable federal or state ambient air quality standard.

As discussed in pages 5.8-20 through 5.8-23 of the DEIR, the proposed project would not exceed the South Coast Air Quality Management District's localized significance threshold for the site and would not result in a carbon monoxide hotspot. As such, development associated with implementation of the proposed project would not result in localized emissions impacts or expose sensitive receptors to substantial pollutant concentrations.

As discussed in page 8-2 of the DEIR, South Coast Air Quality Management District's *CEQA Air Quality Handbook*, establishes land use activities typically associated with odor complaints which includes agriculture uses, wastewater treatment plants, food processing plants, chemical plants, composting, refineries, landfills, dairies, and fiberglass molding. The proposed project would not consist of these uses and thus, would not result in other emissions (such as those leading to odors) adversely affecting a substantial number of people.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 21

As discussed in page 5.8-24 of the DEIR, the project would not result in short-term air quality impacts as the project-level emissions would not exceed the South Coast Air Quality Management District's adopted construction threshold. As such, short-term construction activities associated with the proposed project and other related cumulative projects, would not result in increased air pollutant emission impacts or expose sensitive receptors to increased pollutant concentrations.

As discussed in pages 5.8-24 through 5.8-25 of the DEIR, the project would not result in long-term air quality impacts, as the project's operational emissions would not exceed the South Coast Air Quality Management District's adopted operational thresholds. Implementation of the proposed project and other related cumulative projects would not result in increased impacts pertaining to operational air emissions.

As discussed in page 5.8-25 of the DEIR, future ambient carbon monoxide concentrations resulting from the project would be substantially below National and State standards, as the highest hourly recorded carbon monoxide value at the Mission Viejo – 26081 Via Pera monitoring station between 2017 and 2019 was 1.402 ppm, which is well below the 35-ppm 1-hour carbon monoxide Federal Standard. Implementation of the proposed project and related projects would not result in cumulatively considerable carbon monoxide hotspot impacts.

As discussed in page 5.8-25 of the DEIR, operational concentrations of criteria air pollutants of the project would be lower than South Coast Air Quality Management District's thresholds and would not conflict with the South Coast Air Quality Management District's and Southern California Association of Government's goals and policies. As such, implementation of the proposed project and related projects would not result in cumulatively considerable inconsistencies with the applicable air quality plan.

4. Biological Resources

As discussed in page 8-3 of the DEIR, the project site is developed with the existing CUSD bus yard and does not include any special-status plant species due to the developed, urban environment. As such, project implementation would not have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service.

As discussed in page 8-3 of the DEIR, no special-status vegetation communities occur within the Doheny Village area and project site due to the developed, urban environment. As such, the project would not have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 22

As discussed in page 8-3 of the DEIR, the project site is completely paved and developed with the CUSD bus yard and associated structures. No wetlands are present on-site. As such, the project would not 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.

As discussed in pages 8-3 through 8-4 of the DEIR, according to the Biological Resources Report prepared for the project, Doheny Village, including the project site, is not located within any identified wildlife corridors or habitat linkages in the *Orange County Southern Subregion Natural Community Conservation Plan/Master Streambed Alteration Agreement/Habitat Conservation Plan*. As such, implementation of project would not 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 sites.

As discussed in page 8-4 of the DEIR, the City's General Plan Conservation/Open Space Element does not contain a tree preservation policy or ordinance. Additionally, the project would not remove any existing street trees along Victoria Boulevard or Sepulveda Avenue. As such, the project would not conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.

As discussed in pages 8-4 through 8-5 of the DEIR, according to the Biological Resources Report prepared for the project, Doheny Village, including the project site, is not located within any identified wildlife corridors or habitat linkages in the *Orange County Southern Subregion Natural Community Conservation Plan/Master Streambed Alteration Agreement/Habitat Conservation Plan*. No other approved local, regional, or State habitat conservation plans apply to the site. As such, the project would not conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or State habitat conservation plan.

5. Cultural Resources

As discussed in pages 5.3-16 through 5.3-17 of the DEIR, the project site not considered a historical resource for the purposes of CEQA pursuant to Public Resource Code Section 21084.1. As such, the project would not cause a significant impact to a historical resource.

As discussed in page 8-5 of the DEIR, the project site was previously disturbed and is not anticipated to encounter human remains. However, if human remains are encountered, the remains would be given proper treatment in accordance with applicable laws and regulations. After following applicable laws and regulations, project implementation would not disturb any human remains, including those interred outside of formal cemeteries.

The project, combined with other related cumulative projects, would not cause a cumulatively considerable impact to historical resources.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 23

6. Energy

As discussed in pages 5.10-7 through 5.10-11 of the DEIR, the project would not result in a substantial increase in energy consumption over the existing County's annual consumption. As such, the project would not result in wasteful, inefficient, or unnecessary consumption of energy resources.

As discussed in pages 5.10-11 through 5.10-12 of the DEIR, the project would be consistent with the City's Energy Plan and General Plan. As such, the project would not conflict with or obstruct a State or local plan for renewable energy or energy efficiency.

As discussed in pages 5.10-12 through 5.10-13 of the DEIR, the project would comply with applicable plans. As such, implementation of the project and other cumulative projects would not result in wasteful, inefficient, or unnecessary consumption of energy resources or conflict with or obstruct a State or local plan for renewable energy or energy efficiency.

7. Geology and Soils

As discussed in pages 8-5 through 8-6 of the DEIR, the project site is not transected by known active or potential faults and the closest fault is the Newport-Inglewood/Offshore Zone of Deformation located three miles to the east. As such, the project would not directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault.

As discussed in pages 5.4-13 through 5.4-14 of the DEIR, the project would be required to comply with applicable California Building Code regulations and recommendations from the Geotechnical Investigation prepared for the project. As such, project implementation would not expose people and structures to potential substantial adverse effects, including the risk of loss, injury, or death involving strong seismic ground shaking.

As discussed in pages 5.4-14 through 5.4-15 of the DEIR, the project would be required to demonstrate compliance with the California Building Code regulations, including incorporation of recommendations included as part of the Geotechnical Investigation for the project. With incorporation of recommendation, project implementation would not expose people and structures to potential substantial adverse effects, including the risk of loss, injury, or death involving liquefaction.

As discussed in page 8-6 of the DEIR, the project is not located in an area susceptible to landslides and there are no known landslides near the site. As such, the project would not directly or indirectly cause potential substantial adverse effects, including the risk, injury, or death involving landslides.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCFA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 24

As discussed in pages 5.4-15 through 5.4-16 of the DEIR, the project would be required to comply with Municipal Code Section 8.01.390, *NPDES program requirements* and South Coast Air Quality Management District Rule 403. Compliance with these applicable regulations would ensure project implementation would not result in substantial soil erosion or loss of topsoil.

As discussed in pages 5.4-16 through 5.4-17 of the DEIR, the project would incorporate recommendation from the Geotechnical Investigation prepared for the project. As such, the project reduce impacts on soils that are unstable, or expansive, as a result of the project, and potentially result in geologic hazards.

As discussed in page 8-6 of the DEIR, the project would not include the installation of septic tanks or alternative wastewater disposal systems. The project would connect to the existing sewer mainlines and service lines.

As discussed in page 5.4-19 of the DEIR, the project would be required to conform with existing regulatory requirements (i.e., California Building Code, Municipal Code, South Coast Air Quality Management District Rule 403). As such, the proposed project, combined with other related cumulative projects, would not expose people or structures to potential substantial adverse effects involving strong seismic ground shaking, liquefaction, unstable or expansive soils, risk involving fault rupture, or potential substantial adverse effects involving landslides.

8. Greenhouse Gas Emissions

As discussed in pages 5.9-14 through 5.9-17 of the DEIR, the City has not adopted a numerical threshold of greenhouse gas emissions. However, the project would comply with applicable measures in regulatory documents that aim to reduce greenhouse gas emissions. As such, greenhouse gas emissions generated by the project would not have a significant impact on global climate change.

As discussed in pages 5.9-17 through 5.9-22 of the DEIR, the project would be consistent with the 2020-2045 *Regional Transportation Plan/Sustainable Communities Strategy*, 2017 Scoping Plan, and the City's General Plan and Energy Plan. As such, implementation of the proposed project would not conflict with an applicable greenhouse gas reduction plan, policy, or regulation.

As discussed in page 5.9-23 of the DEIR, the proposed project would be consistent with applicable measures in the 2020-2045 RTP/SCS, 2017 Scoping Plan Update, and the City's General Plan and Energy Plan. Greenhouse gas emissions generated by the project and other related cumulative projects would not have a significant impact on global climate change or would not conflict with an applicable greenhouse gas reduction plan, policy, or regulation.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 25

9. Hazards and Hazardous Materials

As discussed in pages 8-6 through 8-7 of the DEIR, the proposed project would consist of a residential development which would require minor cleaning products along with the occasional use of pesticides and herbicides for landscape maintenance of the project site are generally the extent of hazardous materials that would be routinely utilized on-site. However, these products would not be stored in substantial quantities. During construction, hazardous materials would be required to adhere to State and local standards and regulations for handling, storage, and disposal of hazardous substances. As such, project implementation would not create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials.

As discussed in page 8-7 of the DEIR, the closest public use airport is John Wayne Airport, approximately 17.5 miles northwest of the project site. As such, the project site is located outside of an airport land use plan and is not located within the vicinity of a private airstrip or within two miles of a public airport and, as such, would not result in a safety hazard or excessive noise for people residing or working in the project area.

As discussed in page 5.6-27 of the DEIR, the project proposes a residential development and would not affect the existing emergency service operations. As such, project implementation would not create a significant hazard to the public or environment through interference with an adopted emergency response or evacuation plan.

As discussed in pages 8-7 and 8-9 through 8-10 of the DEIR, the City is not located in or near a State responsibility area. Additionally, the closest area designated as a "Very High Fire Hazard Severity Zone" by the California Department of Forestry and Fire is located greater than 0.5-mile east of the project site. As such, project implementation would not expose people or structures, either directly or indirectly to a significant risk of loss, injury or death involving wildland fires.

As discussed in page 5.6-28 of the DEIR, the proposed project would not result in significant impacts involving hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing school. As such, the project, combined with other related projects, would not emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing school.

As discussed in page 5.6-29 of the DEIR, the proposed project would not result in significant impacts through interference with an adopted emergency response or evacuation plan, although temporary lane closure along Victoria Boulevard and Sepulveda Avenue may be required during project construction. While temporary lane closures may be required, travel along surrounding roadways would remain open and would not interfere with emergency access in the site vicinity. As such, the project combined with other related projects, would not create a significant hazard to the public or environment through interference with an adopted emergency response or evacuation plan.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 26

10. Hydrology and Water Quality

As discussed in pages 5.5-19 through 5.5-21 of the DEIR, the project would be required to comply with Municipal Code Chapter 8.01, *Grading and Excavation Control*, and Chapter 15.10, *Storm Water/Surface Runoff Water Quality*, both of which would ensure construction-related impacts to water quality would be minimized to less than significant levels. Additionally, the project would implement proposed best management practices to ensure stormwater runoff generated during long-term project operations would be adequately treated on-site prior to entering the City's existing storm drain system. As such, the project would not violate any water quality standards or waste discharge requirements, or otherwise substantially degrade water quality.

As discussed in page 8-7 of the DEIR, the project site is currently built out and developed with the existing CUSD bus yard which is mostly impervious. Additionally, there are no designated groundwater recharge basin or infrastructure around the project site. As such, project implementation would not substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin.

As discussed in pages 5.5-23 through 5.5-24 of the DEIR, project implementation would not substantially increase the amount or rate of runoff. As such, the project would not substantially alter the existing drainage pattern of the site or area, or substantially increase the rate or amount of surface runoff, in a manner that would result in substantial erosion or siltation.

As discussed in pages 5.5-23 through 5.5-24 of the DEIR, project implementation would not substantially increase the amount or rate of runoff. As such, the project would not substantially alter the existing drainage pattern of the site or area, or substantially increase the rate or amount of surface runoff, in a manner that would result in substantial flooding on- or off-site.

As discussed in page 5.5-25 of the DEIR, the proposed storm drain system would not have an adverse effect on any existing or proposed storm drain improvements within the project area. As such, the project would not create or contribute runoff water which could exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff.

As discussed in pages 5.5-23 through 5.5-24 of the DEIR, the project would not substantially alter the existing drainage pattern of the site or area, or substantially increase the rate or amount of surface runoff, in a manner that would impede or redirect flood flows.

As discussed in page 5.5-26 of the DEIR, the proposed grade of the project site along Sepulveda Boulevard would be required to be at least one foot above the Base Flood Elevation. As such, in flood hazard, tsunami, or seiche zones, the project would not risk release of pollutants due to project inundation.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCFA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 27

As discussed in page 5.5-27 of the DEIR, the project would comply with the *San Juan Basin Groundwater and Facilities Management Plan*. As such, the project would not conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan.

As discussed in page 5.5-28 of the DEIR, the project would implement site design, source control, and best management practices, which would ensure the proposed development does not adversely impact existing drainage courses and hydrologic flows in the project area. As such, the proposed project, combined with other related cumulative projects, would not violate any water quality standards or waste discharge requirements, or otherwise substantially degrade water quality.

As discussed in page 5.5-29 of the DEIR, the project would implement site design, source control, and best management practices. Additionally, the proposed storm drain design results in a slight decrease in stormwater runoff generated from the project site when compared to existing conditions. As such, the proposed project, combined with other related cumulative projects, would not substantially alter the existing drainage pattern of the site or area, or substantially increase the rate or amount of surface runoff, in a manner that would result in substantial erosion, siltation, or flooding on- or off-site.

As discussed in page 5.5-29 through 5.5-30 of the DEIR, project implementation would not exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff. As such, the proposed project, combined with other related cumulative projects, would not create or contribute runoff water which could exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff.

As discussed in page 5.5-29 of the DEIR, the project, combined with other related cumulative projects, would not substantially alter the existing drainage pattern of the site or area, or substantially increase the rate or amount of surface runoff, in a manner that would impede or redirect flood flows.

As discussed in page 5.5-30 of the DEIR, the proposed development would not exacerbate existing flood hazard conditions in the project area and would not be impacted by potential seiche or tsunamis. As such, the proposed project, combined with other related cumulative projects, would not risk release of pollutants due to project inundation.

As discussed in page 5.5-31 of the DEIR, the project would implement site design, source control, and best management practices. As such, the proposed project, combined with other related cumulative projects, would not conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 28

11. Land Use and Relevant Planning

As discussed in page 8-8 of the DEIR, the project is already physically separated from surrounding uses and the development of the proposed project would allow for the integration into the existing Doheny Village residential community. As such, the project would not physically divide an established community.

As discussed in page 5.1-9 through 5.1-33 of the DEIR, the project would not cause a significant environmental impact due to a -conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect, including the following:

The proposed project would not conflict with applicable General Plan policies.

The proposed project would not conflict with Dana Point Municipal Code standards and regulations.

The proposed project would not conflict with relevant sections of the California Coastal Act.

The proposed project would not conflict with policies provided in the 1986 Local Coastal Program.

The proposed project would not conflict with the Southern California Association of Governments' (SCAG) *2020-2045 Regional Transportation Plan/Sustainable Communities Strategy* (2020-2045 RTP/SCS) policies.

As discussed in page 5.1-33 of the DEIR, the proposed project would be consistent with relevant goals, policies, and/or standards from the General Plan, Municipal Code, Coastal Act, 1996 Local Coastal Program, and 2020-2045 Regional Transportation Plan and Sustainable Communities Strategy. As such, the proposed project, combined with other related projects, would not conflict with land use plans, policies or regulations adopted for the purpose of avoiding or mitigating an environmental effect.

12. Mineral Resources

As discussed in page 8-8 of the DEIR, the project site is mapped as Mineral Resource Zone 3 by the California Geological Survey, indicating that there are mineral resources in the area, the significance of which cannot be determined from available data. However, the site is currently not used as a mining site. As such, project implementation would not result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the State.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 29

As discussed in page 8-8 of the DEIR, the project site is mapped as Mineral Resource Zone 3 and is currently not used as a mining site. As such, project implementation would not result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan.

13. Noise

As discussed in pages 5.11-17 through 5.11-19 of the DEIR, construction activities would result in temporary noise increase but are exempt pursuant to Municipal Code Section 11.10.014. Nevertheless, the project would be required to implement the City's standard condition of approval to reduce noise. As such, construction-related activities within the project area would not result in temporary noise impacts to nearby noise sensitive receivers.

As discussed in pages 5.11-21 through 5.11-27, future noise levels from the proposed project (i.e., mobile sources, stationary sources, mechanical equipment, etc.) would not result in a substantial increase in ambient noise levels. As such, future noise levels associated with implementation of the proposed project would not result in a substantial permanent increase in ambient noise levels in the project vicinity and expose persons to or generate noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies.

As discussed in pages 5.11-19 through 5.11-20 of the DEIR, construction equipment operations that would be used during project construction range from 0.001 to 0.045 inch per second peak particle velocity which is below the threshold of 0.2 inch per second peak particle velocity. As such, project implementation would not result in significant vibration impacts to nearby sensitive receptors and structures.

As discussed in page 8-9 of the DEIR, the closest public use airport is John Wayne Airport, approximately 17.5 miles northwest of the project site. Additionally, the closest private airstrip is the Mission Hospital, located approximately 6.7 miles to the north. As such, the project is not located within the vicinity of a private airstrip or an airport land use plan or where such a plan has been adopted, within two miles of a public airport or public use airport, and would not expose people residing or working in the project area to excessive noise levels.

As discussed in page 5.11-27 of the DEIR, the closest cumulative project is a residential/mixed-use development (34202 Del Obispo Street), located approximately 0.55-mile west of the project site. Due to the distance, construction-related activities within the project area would not result in significant cumulatively considerable temporary noise impacts to nearby noise sensitive receivers.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 30

As discussed in pages 5.11-28 through 5.11-31 of the DEIR, cumulative traffic noise levels along surrounding roadways would not exceed the City's sensitive use exterior noise standards. As such, the proposed project would not result in a significant cumulatively considerable increase in operational mobile noise or long-term stationary ambient noise levels.

As discussed in page 5.11-28 of the DEIR, project operational activities would not generate substantial groundborne vibration and project construction activities would not generate groundborne vibration on-site above the significance criteria of 0.2 inch per second peak particle velocity. As such, project implementation would not result in significant cumulatively considerable vibration impacts to nearby sensitive receptors and structures.

14. Population and Housing

As discussed in pages 5.12-6 through 5.12-8 of the DEIR, the anticipated population growth associated with the project represents a 2.4 percent increase from the City's current population of 32,943 persons which would be within the Southern California Association of Government's growth forecasts for the City. As such, the project would not directly or indirectly induce substantial unplanned population growth.

As discussed in page 8-9 of the DEIR, the project would demolish the existing CUSD facility which does not have existing people or housing on-site. As such, the project would not displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere.

As discussed in pages 5.12-6 through 5.12-8 of the DEIR, the anticipated population growth associated with the project represents up to 796 additional residents and 349 dwelling units to the City, which would be within the Southern California Association of Government's growth forecasts for the City. As such, the proposed project, combined with other related projects, would not result in cumulatively considerable impacts related to substantial unplanned population growth.

15. Public Services

As discussed in pages 5.13-33 through 5.13-34 of the DEIR, project implementation would not result in the need for additional school facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable performance objectives.

As discussed in pages 5.13-34 through 5.13-35 of the DEIR, project implementation would not result in the need for additional parks and/or the increased use of existing neighborhood and regional parks such that substantial physical deterioration could occur or be accelerated.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCFA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 31

As discussed in pages 5.13-34 through 5.13-35 of the DEIR, project implementation would not result in the construction of parks which could have an adverse physical effect on the environment.

As discussed in page 5.13-35 of the DEIR, project implementation would not result in the need for additional public library facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable performance objectives.

As discussed in page 5.13-44 of the DEIR, the project, combined with other cumulative projects, would not create increased demand for school services that could cause significant environmental impacts.

As discussed in page 5.13-45 of the DEIR, the project combined with other cumulative projects would not create increased demand for parks that could cause significant environmental impacts.

As discussed in pages 5.13-45 through 5.13-46 of the DEIR, the project combined with other cumulative projects would not create increased demand for other public facilities that could cause significant environmental impacts.

16. Recreation

As discussed in pages 5.13-34 through 5.13-35 of the DEIR, construction activities would increase the City's population which would require the expansion of existing parks or recreational facilities. The proposed project would contribute to this requirement by dedicating approximately 1.065 acres of public active open space on-site, meeting the project's required parkland demand pursuant of the City's Municipal Code and Park Master Plan. As such, project implementation would not result in the need for additional parks and recreational facilities and/or the increased use of existing neighborhood and regional parks such that substantial physical deterioration could occur or be accelerated.

As discussed in pages 5.13-34 through 5.13-35 of the DEIR, the proposed project would not require the expansion of existing parks or recreational facilities. The proposed project would construct 1.065 acres of public active open space on-site. Project implementation would not result in the construction or expansion of parks and recreational facilities which could have an adverse physical effect on the environment.

As discussed in page 5.13-45 of the DEIR, the proposed project is not anticipated to result in significant impacts to parks and recreational facilities. The project would provide approximately 1.065 acres of public active open space, and the Applicant would pay the appropriate park in-lieu fees pursuant to Municipal Code Section 7.36.050, *Payment of In-Lieu Fees for Park and Recreation Purposes*. As such, the project combined with other cumulative projects would not create increased demand for parks and recreational facilities that could cause significant environmental impacts.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 32

17. Transportation

As discussed in pages 5.7-7 through 5.7-9 of the DEIR, the proposed project would not conflict with adopted policies, plans, or programs related to transit, bicycle, or pedestrian facilities. As such, project implementation would not generate traffic volumes that would conflict with a program plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities.

As discussed in pages 5.7-9 through 5.7-12 of the DEIR, the project would result in 16.9 vehicle miles traveled per capita which would be well below the threshold of significance of 18.11 vehicle miles traveled per capita (approximately 7.23 percent lower). As such, project implementation would not conflict or be inconsistent with CEQA Guidelines Section 15064.3, subdivision (b).

As discussed in page 5.7-19 of the DEIR, the proposed project would result in an increase demand on the transportation system in the area however, compliance with the existing regulations and standards pertaining to pedestrian, bike, and transit services/facilities, cumulative impacts in this regard would be less than significant. As such, future development, combined with other related projects, would not conflict with a program plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities, and result in cumulative impacts.

As discussed in page 5.7-20 of the DEIR, the proposed project would result in less than significant VMT impacts and would be below the significance threshold. As such, future development, combined with other related projects, would not conflict and will be consistent with CEQA Guidelines Section 15064.3, subdivision (b).

18. Utilities and Service Systems

As discussed in pages 5.13-36 through 5.13-42 of the DEIR, the project would not require or result in the relocation or construction of new or expanded water, wastewater treatment or storm water drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects.

As discussed in pages 5.13-36 through 5.13-37 of the DEIR, project implementation would have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years, and would not require or result in the construction of new water treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects.

As discussed in pages 5.13-37 through 5.13-39 of the DEIR, the proposed project would not introduce additional need to upgrade the existing wastewater facility. As such, project implementation would not result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments, and would not

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 33

exceed wastewater treatment requirements of the applicable regional water quality control board, or result in the construction of new wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects.

As discussed in pages 5.13-39 through 5.13-40 of the DEIR, project implementation would be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs or otherwise impair the attainment of solid waste reduction goals.

As discussed in pages 5.13-39 through 5.13-40 of the DEIR, project implementation would comply with Federal, State, and local statutes and regulations related to solid waste.

As discussed in page 5.13-46 of the DEIR, the project, combined with other cumulative projects, would not create increased demand for water facilities that could cause significant environmental impacts.

As discussed in pages 5.13-46 through 5.13-47 of the DEIR, the project, combined with other cumulative projects, would not create increased demand for wastewater facilities that could cause significant environmental impacts.

As discussed in page 5.13-47 of the DEIR, the project, combined with other cumulative projects, would not create increased demand for stormwater drainage facilities that could cause significant environmental impacts.

As discussed in pages 5.13-47 through 5.13-48 of the DEIR, the project, combined with other cumulative projects, would not create increased demand for solid waste generation that could cause significant environmental impacts pertaining to capacity, impair the attainment of solid waste reduction goals, nor impede compliance with local statutes and regulations related to solid waste.

19. Wildfire

As discussed in pages 8-9 through 8-10 of the DEIR, the City is not located in or near a State responsibility area. Additionally, the closest area designated as a "Very High Fire Hazard Severity Zone" by the California Department of Forestry and Fire is located greater than 0.5-mile east of the project site. As such, project implementation would not substantially impair an adopted emergency response plan or emergency evacuation plan.

As discussed in page 8-10 of the DEIR, the project site is not located in a State responsibility area or in a "Very High Fire Hazard Severity Zone". Due to slope, prevailing winds, or other factors, project implementation would not exacerbate wildfire risks or expose project occupants to pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 34

As discussed in page 8-10 of the DEIR, the project site is not located in a State responsibility area or in a "Very High Fire Hazard Severity Zone". Project implementation would not require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment.

As discussed in page 8-10 of the DEIR, the project site is not located in a State responsibility area or in a "Very High Fire Hazard Severity Zone". The project would not expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes.

C. FINDINGS ON IMPACTS MITIGATED TO LESS THAN SIGNIFICANT

The following summary describes the potential impacts of the proposed project that, without mitigation, would result in significant adverse impacts. Upon implementation of the mitigation measures provided in the Draft EIR, these potential impacts would be reduced to less than significant levels.

1. Cultural Resources

CUL-2 The project could cause a significant impact to an archaeological resource on-site.

Support for this environmental impact conclusion is included in Section 5.3, *Tribal and Cultural Resources*, and in particular, starting on page 5.3-18 of the Draft EIR.

The results from the 26126 *Victoria Boulevard Historical Resources Assessment*, prepared by Rincon and dated July 2021, indicate that the project site does not contain known archaeological resources. However, the site could contain previously undiscovered archaeological resources. The proposed earthwork would involve approximately 40,100 cubic yards of cut and approximately 20,515 cubic yards of fill, resulting in approximately 19,585 cubic yards of export. Based upon field explorations, it is anticipated that artificial fill would be encountered at a maximum depth of five feet below existing ground surface throughout the majority of the site (with the exception of the northeast corner, which may have deeper artificial fill depths due to former underground storage tanks). Maximum excavation depths of up to 19 feet below the ground surface are proposed for construction of the underground parking structure. As such, project excavation could encounter native soils which have the potential to support unknown buried archaeological resources.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 35

In the unlikely event that archaeological resources are encountered during project construction, Mitigation Measure CUL-1 would require all project construction efforts to halt until an archaeologist examines the site, identifies the archaeological significance of the find, and recommends a course of action. If the archaeologist determines the resource constitutes a "unique archaeological resource", time allotment and funding sufficient to allow for implementation of avoidance measures, or appropriate mitigation would be made available to the Applicant. With implementation of Mitigation Measure CUL-1, the project would not cause a substantial adverse change in the significance of an archaeological resource or site pursuant to Section 15064.5 of the CEQA Guidelines, and impacts would be reduced to less than significant levels.

Mitigation Measures:

- CUL-1 **Unanticipated Discovery of Cultural Resources.** The project Applicant shall retain a qualified archaeologist who meets the Secretary of the Interior's Professional Qualifications Standards for archaeology to conduct Worker's Environmental Awareness Program (WEAP) training for archaeological sensitivity for all construction personnel prior to the commencement of any ground disturbing activities. Archaeological sensitivity training should include a description of the types of cultural resources that may be encountered, cultural sensitivity issues, regulatory issues, and the proper protocol for treatment of the materials in the event of a find. If archaeological resources are encountered during ground-disturbing activities, work in the immediate area should be halted and the archaeologist shall evaluate the find. If the resources are Native American human remains, the County Coroner and the Native American Heritage Commission shall be contacted as mandated by law. If necessary, the evaluation may require preparation of a treatment plan and archaeological testing for California Register of Historical Resources (CRHR) eligibility. The treatment plan shall be reviewed and approved by the qualified archaeologist. If the discovery proves to be significant under CEQA and cannot be avoided by the project, additional work may be warranted, such as data recovery excavation, and, if so, shall be identified by the archaeologist to mitigate any such significant impacts to cultural resources, if identified.

Finding:

Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. These changes are identified in the form of the mitigation measure above. Upon implementation of the required mitigation, the potentially significant impact would be reduced to a less than significant level. The City of Dana Point hereby finds that implementation of the mitigation measure is feasible, and the measure is therefore adopted.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 36

CUMULATIVE The project, combined with other related cumulative projects, could cause cumulatively considerable impacts to archaeological resources.

Support for this environmental impact conclusion is included in Section 5.3, *Tribal and Cultural Resources*, and in particular, starting on page 5.3-20 of the Draft EIR.

Project-related impacts to archeological resources have been determined to be less than significant with implementation of Mitigation Measures CUL-1. Future cumulative projects would be evaluated on a project-by-project basis to determine the extent of potential impacts to site-specific archaeological resources. Related projects would be required to adhere to State and Federal regulations, as well as project-specific mitigation measures.

Implementation of Mitigation Measures CUL-1 would reduce potentially significant project impacts to archaeological resources to less than significant levels. Thus, the project's less than significant impacts would not be cumulatively considerable.

Mitigation Measures:

CUL-1 Unanticipated Discovery of Cultural Resources. The project Applicant shall retain a qualified archaeologist who meets the Secretary of the Interior's Professional Qualifications Standards for archaeology to conduct Worker's Environmental Awareness Program (WEAP) training for archaeological sensitivity for all construction personnel prior to the commencement of any ground disturbing activities. Archaeological sensitivity training should include a description of the types of cultural resources that may be encountered, cultural sensitivity issues, regulatory issues, and the proper protocol for treatment of the materials in the event of a find. If archaeological resources are encountered during ground-disturbing activities, work in the immediate area should be halted and the archaeologist shall evaluate the find. If the resources are Native American human remains, the County Coroner and the Native American Heritage Commission shall be contacted as mandated by law. If necessary, the evaluation may require preparation of a treatment plan and archaeological testing for California Register of Historical Resources (CRHR) eligibility. The treatment plan shall be reviewed and approved by the qualified archaeologist. If the discovery proves to be significant under CEQA and cannot be avoided by the project, additional work may be warranted, such as data recovery excavation, and, if so, shall be identified by the archaeologist to mitigate any such significant impacts to cultural resources, if identified.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 37

Finding:

Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. These changes are identified in the form of the mitigation measure above. Upon implementation of the required mitigation, the potentially significant impact would be reduced to a less than significant level. The City of Dana Point hereby finds that implementation of the mitigation measure is feasible, and the measure is therefore adopted.

2. Geology and Soils

GEO-5 Project implementation could directly or indirectly destroy a unique paleontological resource or site or unique geologic feature.

Support for this environmental impact conclusion is included in Section 5.4, *Geology and Soils*, and in particular, starting on page 5.4-17 of the Draft EIR.

The project site is situated in the northwestern portion of the Peninsular Ranges geomorphic province characterized by fault block northwest trending mountain ranges with intervening valleys, plains, and basins. Based on field investigation and published geologic maps, the site is underlain by Holocene-age flood plain deposits. Fill soils of varying thickness and material types related to roadways and existing developments are also present over portions of the project area. There is potential for unknown paleontological resources to be located within the project area given the site's proximity to the coast. As such, project development could result in potential impacts to previously undiscovered paleontological resources. Municipal Code Section 9.05.160 requires site-specific studies to be prepared to identify the significance of any on-site cultural and natural resources (e.g., archaeological, paleontological, historical, and biological resources) and required mitigation measures to reduce such impacts. General Plan Conservation and Open Space Element Policy 8.1 requires reasonable mitigation measures where development may affect historical, archaeological, or paleontological resources, and Policy 8.2 ensures resources of significant historical, archaeological, or paleontological value are retained and protected for education, visitor-serving, and scientific purposes.

Mitigation Measure GEO-1 would require the project Applicant to prepare a technical paleontological assessment to evaluate the sensitivity of the project site for buried paleontological resources. If resources are known or reasonably anticipated, the paleontological assessment is required to provide a detailed mitigation plan, including a monitoring program and recovery and/or in situ preservation plan. This would ensure future development adequately evaluates and mitigates for potential paleontological resources on-site. Compliance with Mitigation Measure GEO-1 would reduce potential

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 38

paleontological resource impacts associated with the project to less than significant levels.

Mitigation Measure:

GEO-1 Prior to issuance of grading permits, the project Applicant shall provide a technical paleontological assessment prepared by a qualified paleontologist, defined as a paleontologist who meets the Society of Vertebrate Paleontology (SVP) standards for a Principal Investigator or Project Paleontologist, assessing the sensitivity of the project site for buried paleontological resources to the City of Dana Point Planning Division for review and approval.

If resources are known or reasonably anticipated, the assessment shall provide a detailed mitigation plan, including a monitoring program and recovery and/or in situ preservation plan, based on the recommendations of the qualified paleontologist. The mitigation plan shall include, but not be limited to, the following:

- A qualified paleontologist shall be retained for the project and shall be on call during grading and other significant ground-disturbing activities;
- Should any potentially significant fossil resources be discovered, no further grading shall occur in the area of the discovery until the qualified paleontologist and City of Dana Point Planning Division concurs in writing that adequate provisions are in place to protect these resources; and
- Unanticipated discoveries shall be evaluated for significance by the qualified paleontologist. If a resource is determined to be significant by the qualified paleontologist, the resource shall be collected and catalogued in accordance with SVP guidelines and adequately curated in an institution with appropriate staff and facilities.

A report of findings with an itemized accession inventory shall be prepared as evidence that monitoring has been successfully completed and shall be submitted and approved by the City of Dana Point Planning Division prior to the granting of occupancy permits.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 39

Finding:

Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. These changes are identified in the form of the mitigation measure above. Upon implementation of the required mitigation, the potentially significant impact would be reduced to a less than significant level. The City of Dana Point hereby finds that implementation of the mitigation measure is feasible, and the measure is therefore adopted.

CUMULATIVE The proposed project, combined with other related cumulative projects, could expose people or structures to potential substantial adverse effects involving geology and soils and could impact unknown paleontological resources.

Support for this environmental impact conclusion is included in Section 5.4, *Geology and Soils*, and in particular, starting on page 5.4-19 of the Draft EIR.

Cumulative projects would be located within proximity to similar fault zones as the proposed project. However, the intensity of the seismic ground shaking would vary by site based on earthquake magnitude, distance to epicenter, and geology of the area between the epicenter and the cumulative site. Additionally, potential paleontological resource impacts associated with the development of each cumulative project would be specific to each site. Cumulative projects would be required to comply with existing Federal, State, and local regulations and project-specific mitigation measures related to geologic hazards on a project-by-project basis.

As concluded above, geologic and seismic hazards associated with the proposed project would be reduced to less than significant levels following conformance with established regulatory requirements, including the California Building Code (CBC), Municipal Code, National Pollutant Discharge Elimination System requirements, and South Coast Air Quality Management District (SCAQMD) Rule 403. Additionally, compliance with the CBC regulations would ensure project design and construction plans incorporate recommended design features in the *Proposed Multi-Family Residential Development 26126 Victoria Boulevard Dana Point, California Geotechnical Investigation*, prepared by GeoCon West Inc. and dated August 11, 2022, and Mitigation Measure GEO-1 would ensure a site-specific paleontological assessment is prepared to reduce potential impacts to unknown paleontological resources on-site. As such, with compliance with the recommended mitigation, the proposed project would not result in cumulatively considerable impacts in this regard.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 40

Mitigation Measure:

GEO-1 Prior to issuance of grading permits, the project Applicant shall provide a technical paleontological assessment prepared by a qualified paleontologist, defined as a paleontologist who meets the Society of Vertebrate Paleontology (SVP) standards for a Principal Investigator or Project Paleontologist, assessing the sensitivity of the project site for buried paleontological resources to the City of Dana Point Planning Division for review and approval.

If resources are known or reasonably anticipated, the assessment shall provide a detailed mitigation plan, including a monitoring program and recovery and/or in situ preservation plan, based on the recommendations of the qualified paleontologist. The mitigation plan shall include, but not be limited to, the following:

- A qualified paleontologist shall be retained for the project and shall be on call during grading and other significant ground-disturbing activities;
- Should any potentially significant fossil resources be discovered, no further grading shall occur in the area of the discovery until the qualified paleontologist and City of Dana Point Planning Division concurs in writing that adequate provisions are in place to protect these resources; and
- Unanticipated discoveries shall be evaluated for significance by the qualified paleontologist. If a resource is determined to be significant by the qualified paleontologist, the resource shall be collected and catalogued in accordance with SVP guidelines and adequately curated in an institution with appropriate staff and facilities.

A report of findings with an itemized accession inventory shall be prepared as evidence that monitoring has been successfully completed and shall be submitted and approved by the City of Dana Point Planning Division prior to the granting of occupancy permits.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 41

Finding:

Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. These changes are identified in the form of the mitigation measure above. Upon implementation of the required mitigation, the potentially significant impact would be reduced to a less than significant level. The City of Dana Point hereby finds that implementation of the mitigation measure is feasible, and the measure is therefore adopted.

3. Hazards and Hazardous Materials

HAZ-1 Project implementation could create a significant hazard to the public or environment through reasonably foreseeable upset or accident conditions involving the release of hazardous materials into the environment.

Support for this environmental impact conclusion is included in Section 5.6, *Hazards and Hazardous Materials*, and in particular, starting on page 5.6-17 of the Draft EIR.

One of the means through which human exposure to hazardous substance could occur is through accidental release. Incidents that result in an accidental release of hazardous substances into the environment can cause contamination of soil, surface water, and groundwater, in addition to any toxic fumes that might be generated. Human exposure to contaminated soil or water can have potential health effects based on a variety of factors, such as the nature of the contaminant and the degree of exposure.

CONSTRUCTION

Construction activities could expose construction workers to accidental conditions as a result of existing potential contamination in on-site soils, soil gas, and/or groundwater. Potential construction-related impacts in this regard are discussed below.

South Transportation Yard

Fueling Area/Storage Shed

Existing Underground Storage Tanks

The fueling area recently included two underground storage tanks (USTs), two fuel dispenser islands, and associated piping, which were removed in 2022. According to the *Limited Phase II Environmental Site Assessment, Proposed Residential Development, 26126 Victoria Boulevard, Capistrano Beach, California 92624* (Limited

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 42

Phase II ESA), prepared by Leighton Consulting Inc. and dated March 13, 2019, results from soil and soil gas samples collected do not indicate contamination to subsurface soil and soil gas from the existing USTs, fuel dispenser islands, and associated piping. Other existing utilities on-site may also be associated with hazardous materials, such as hydraulic lifts, hydraulic fluid reservoir and associated piping, the bus wash clarifier, and other existing drums and containers of cleaners/solvents. As such, the project would require implementation of Mitigation Measure HAZ-1 prior to issuance of grading permits. Mitigation Measure HAZ-1 would require the removal of numerous features remaining on-site, including but not limited to the hydraulic lifts, hydraulic fluid reservoir and associated piping, the bus wash clarifier, and other existing drums and containers of cleaners/solvents. Removal activities shall adhere to applicable Federal, State, and local regulations. Specifically, all features removal activities associated with Mitigation Measure HAZ-1 are subject to the permanent closure requirements of the California Code of Regulations (CCR) Title 23, Division 3, Chapter 16, Underground Storage Tank Regulations, Article 7, *Closure Requirements*, under the oversight of Orange County Health Care Agency (OCHCA) Environmental Health Division. It should be noted that part of the UST program requires OCHCA Environmental Health staff to be onsite during removal activities to observe the condition of the UST(s) during removal and direct sampling to determine whether a reportable unauthorized release has occurred. Impacted soil identified during the removal of these features shall be removed and handled according to the Soil Management Plan (SMP), as described in Mitigation Measure HAZ-2. Mitigation Measure HAZ-2 would require a SMP to be prepared for the project site prior to issuance of grading permits. The SMP would provide guidelines for safety measures, soil management, and handling of disturbed soils. All residual liquid, solids, or sludge from implementation of Mitigation Measure HAZ-2 would be handled as hazardous waste or recyclable material in accordance with Chapters 6.5, *Hazardous Waste Control*, of the Health and Safety Code. The SMP would also be required to present a decision framework and specific risk management measures for managing soil in a manner protective of human health and consistent with applicable regulatory requirements. Confirmation soil samples would be required to be collected within the excavated areas to ensure all remaining on-site soils are not impacted by potentially hazardous materials uncovered during the removal activities.

According to the Limited Phase II ESA, implementation of Mitigation Measure HAZ-1 would constitute contaminant source removal and reduce associated chemical concentrations in soil gas in the vicinity of these existing features. Implementation of the Mitigation Measure HAZ-2, which includes the SMP and associated confirmation samples collected within the excavated areas, would confirm remaining soil is not impacted above regulatory screening levels and further reduce potential risks associated with these existing features. Based on the Limited Phase II ESA, future grading operations at the project site as part of project construction would further reduce any remnant soil gas concentrations in the upper five feet of shallow soil. With implementation of Mitigation Measures HAZ-1 and HAZ-2, impacts related to the existing hazardous materials-related features would be reduced to less than significant levels.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 43

Historical Underground Storage Tanks

As discussed above, four underground storage tanks were historically located in, or in proximity to, the fueling area. Two 550-gallon tanks were removed in 1989, one of which resulted in a release to soils. Impacted soils were excavated in 1998, concurrently with the removal of the two remaining USTs at the time. The remedial excavation resulted in the removal of 281.07 tons of petroleum-contaminated soil and introduction of 600 pounds of oxygen release compound (ORC) within the excavation pit to remove residual contamination in soil and groundwater. The OCHCA issued closure letter for the four USTs on July 26, 2000. Additionally, although elevated tetrachloroethylene (PCE) concentrations were identified in this area according to the Limited Phase II ESA, it was determined to be likely the result of vehicle maintenance operations in the former mechanic shop and unlikely to be associated with these former USTs. As such, impacted soils from these former USTs were removed and are no longer of concern. Impacts in this regard are less than significant.

Former Mechanic Shop

Automotive Maintenance Activities and Existing Hydraulic Lifts

The former on-site mechanic shop contained at least four in-ground hydraulic lifts with two trenches that were used for historical automotive maintenance activities. According to the *Phase I Environmental Site Assessment Report, 26126 Victoria Boulevard, APN 668-361-01, Capistrano Beach, CA 92624* (Phase I ESA), prepared by Leighton Consulting Inc. and dated March 13, 2019, the hydraulic lifts, hydraulic fluid reservoir, and associated piping were never removed, although automotive maintenance activities have not been performed at the project site for the past decade. According to the Limited Phase II ESA, results from soil gas samples indicated elevated concentrations of PCE exceeding regulatory Department of Toxic Substances Control (DTSC) screening levels of 460 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) for residential in the vicinity of the former mechanic shop. Based on the Limited Phase II ESA, the extent of PCE in soil gas above screening levels appears to be relatively well defined and centered on the mechanic shop and former 10,000-gallon gasoline-containing UST location. Removal of the existing hydraulic lifts, hydraulic fluid reservoir, and associated piping may result in the accidental release of hazardous chemicals including solvents and petroleum-based products. As discussed above, the project would require implementation of Mitigation Measure HAZ-1, which would mandate the removal of numerous features remained on-site, including the hydraulic lifts, hydraulic fluid reservoir, and associated piping. Based on the Limited Phase II ESA, implementation of Mitigation Measure HAZ-1 would constitute contaminant source removal and reduce associated chemical concentrations in soil gas, including PCE concentration, in the vicinity of the mechanic shop and former 10,000-gallon gasoline-containing UST location. Excavation and grading operations onsite would require the removal of 19,585 cubic yards of on-site soils. As such, excavation work would likely remove the upper five

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 44

feet in the vicinity of the former mechanic shop, where existing localized impacted soils are present. These excavated soils would be required to be removed and handled according to the SMP (Mitigation Measure HAZ-2). Such materials would be handled as hazardous waste or recyclable material in accordance with Chapters 6.5, *Hazardous Waste Control*, of the Health and Safety Code. With implementation of Mitigation Measures HAZ-1 and HAZ-2, impacts associated with PCE contamination in the vicinity of the former mechanic shop would be reduced to less than significant levels.

Existing Drums and Containers of Cleaners/Solvents

According to the Phase I ESA, the former mechanic shop contained approximately 15 empty or near empty 55-gallon drums, portable fuel containers, and pesticides. Materials identified to be storing in these containers include waste oil, HTC oil (petroleum base hydraulic fluid), diesel fuel catalyst, and tractor hydraulic fluid. No significant stains were observed on the concrete adjacent to the drums. As no evidence of spills or staining from these existing drums and containers of cleaners/solvents have been reported or observed, no contamination from these drums and containers are anticipated.

Nonetheless, the project would be required to comply with Mitigation Measure HAZ-1. Mitigation Measure HAZ-1 would require the removal of numerous features remained on-site, including the existing drums and containers of cleaners/solvents. As discussed under "Existing Underground Storage Tanks", removal activities would adhere to the applicable regulations and requirements and be under the supervision of OCHCA Environmental Health Division. Removal activities would occur under supervision of the OCHCA and/or other relevant agencies. Impacted soil identified during the removal of these features would be required to be removed and handled according to the SMP, as described in Mitigation Measure HAZ-2. Confirmation soil samples would be required to be collected within the excavated areas to ensure all remaining on-site soils are not impacted by potentially hazardous materials uncovered during the removal activities. Implementation of Mitigation Measures HAZ-1 and HAZ-2 would ensure impacts as a result of the removal of existing on-site features be reduced to less than significant levels.

Bus Wash Area

The bus/vehicle wash area features a floor drain and in-ground clarifier and is currently used for cleaning various CUSD vehicles. According to the Phase I ESA, a leak in the clarifier or associated piping may result in contamination to soil and soil gas below the bus/vehicle washing area. Based on the Limited Phase II ESA, results from the soil samples do not indicate elevated concentration of Total Petroleum Hydrocarbons (TPHs) and Volatile Organic Compounds (VOCs) above regulatory levels exist in the subsurface soil and groundwater within the bus/vehicle wash area. Nonetheless, the project would be required to comply with Mitigation Measure HAZ-1, which would

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 45

ensure that impacts regarding the accidental condition associated with the bus wash clarifier would be reduced to less than significant levels.

Grounds Department

Grounds Dispatch Building

According to the Limited Phase II ESA, results of soil samples indicated TPH concentration below regulatory screening levels with the exception of the one-foot soil samples collected outside of the ground dispatch building. Elevated Diesel Range Organics (DRO) concentration above regulatory screening level was detected and soil was noted to have an odor. As a soil sample collected at three feet bgs does not contain DRO concentration above regulatory levels, the Limited Phase II ESA determined that a limited surface spill occurred in this area. Concentration of TVOCs were detected below regulatory screening levels. Results of soil gas samples indicate elevated naphthalene concentration above regulatory screening level (i.e., the Department of Toxic Substances Control modified screening levels [DTSC-SL]) at five feet bgs. According to the Limited Phase II ESA, the elevated soil gas concentrations are most likely due to the visually impacted soil identified in the two feet of soil below asphalt pavement from a limited chemical release adjacent to the Grounds Dispatch Building.

In order to mitigate the limited surface spill in area just outside the ground dispatch building, the project would be required to comply with Mitigation Measure HAZ-3. Visually impacted soil in the vicinity of the grounds dispatch building would be removed to approximately three feet bgs, and confirmational soil samples from excavation walls and floor would be collected prior to initiation of grading activities. According to the Limited Phase II ESA, removal of the contaminant source in soil in accordance with Mitigation Measure HAZ-3 would reduce the concentration of VOCs in soil gas within the vicinity of the grounds dispatch building, which would reduce risk of naphthalene indoor vapor intrusion for future residents. Future grading operations at the project site as part of project construction should further reduce any remnant soil gas concentrations in the upper five feet in the vicinity of the former mechanic shop. Further, the project would be required to comply with Mitigation Measure HAZ-4, which would require additional verification soil gas sampling(s) to be conducted in the vicinity of the grounds dispatch building and mechanic shop upon building demolition and prior to site grading to confirm that no impacts to soil gas at the current grounds dispatch building area would post a significant risk to future occupants via vapor intrusion. Should any samples determine that residual contamination in either soil or soil gas exceed the thresholds for residential use (i.e., DTSC-SL of 83 µg/m³ for naphthalene, and DTSC-SL of 460 µg/m³ for PCE), the project Applicant would be required to install appropriate vapor barrier(s), as necessary, prior to construction of the on-site building foundation (Mitigation Measure HAZ-4). Vapor barrier, typically a chemically rated membrane installed sub-slab, is a standard typical engineering control for minimization of vertical soil gas migration. As the project would be required to implement Mitigation Measures HAZ-1 through HAZ-3, which would require removal of on-site impacted soils during

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 46

project excavation activities, Mitigation Measure HAZ-4 would ensure residual contamination in either soil or soil gas, if any, would not negatively impacts building occupants. As discussed above, Mitigation Measure HAZ-2 would require a SMP to be prepared for the project site prior to issuance of grading permits. The SMP would provide guidelines for safety measures, soil management, and handling of disturbed soils. With implementation of the Mitigation Measures HAZ-2 through HAZ-4, impacts regarding accidental condition associated with existing contamination to soils beneath the grounds dispatch building would be reduced to less than significant levels.

Existing Groundwater Monitoring Well

According to the Phase I ESA, a groundwater monitoring well (referred to as MW1) is located between the former tire storage building and mechanic shop. Although there are currently no active environmental cases associated with the project site, elevated concentration of 1,2-dichloroethane was detected above regulatory screening level. As such, MW1 would represent a potential vertical pathway for future groundwater contamination and, as such, would be required to be removed (Mitigation Measure HAZ-5). Mitigation Measure HAZ-5 would require the project Applicant to obtain a monitoring well deconstruction permit from OCHCA prior to issuance of grading permits for the proposed project in accordance with Orange County Well Ordinance (County Ordinance No. 2607). Orange County Well Ordinance requires that a monitoring well deconstruction permit be obtained from OCHCA Health Officer or his/her designee prior to the construction or destruction of any well. Upon receipt of the monitoring well deconstruction permit, the project Applicant would be required to retain a qualified environmental professional with Phase II/Site Characterization experience to properly seal and abandon MW1, in accordance with State of California Bulletin 74-81, *Water Well Standards and Bulletin 74-90, California Well Standards* (California Well Standards). Specifically, Part III, *Destruction of Monitoring Wells*, of the California Well Standards describes specifications for destruction of monitoring wells. These activities include, but are not limited to:

- A preliminary investigation on the monitoring well to be conducted before it is destroyed to determine its condition and details of its construction;
- Sealing conditions are met;
- Exploratory borings are completely filled with appropriate sealing material from bottom to top (if located in areas of known or suspected contamination or pollution);
- Placement of sealing material for monitoring wells and exploratory borings comply with Section 23 of the Water Well Standards and Part III of the California Well Standards; and

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 47

- Materials used for sealing to be low in permeabilities and compatible with the chemical environment into which it is placed and must have mechanical properties consistent with present and future site uses.

Implementation of Mitigation Measure HAZ-5 would ensure impacts regarding the existing groundwater monitoring well be reduced to less than significant levels.

On-Site Structures

The project site is currently developed with six structures, built prior to 1979. Structures constructed between the 1940s and the 1970s may be associated with hazardous building materials (e.g., Asbestos-Containing Material [ACM], and/or Lead-Based Paint [LBP]). Additionally, Organochlorine-Containing termiticides (OCPs) may have been used to treat wooden buildings constructed prior to 1989, and universal waste (certain categories of hazardous waste such as batteries, pesticides, mercury-containing equipment, and lamps that are commonly generated by a wide variety of establishments) are often present in sites with historical uses.

Demolition of the structures could expose construction personnel and the public to ACMs or LBPs. Federal and State regulations govern the renovation and demolition of structures where ACMs and LBPs are present. All demolition that could result in the release of ACMs or LBPs would be conducted according to Federal and State regulations which govern the renovation and demolition of structures where ACMs and LBPs are present. Specifically, the National Emission Standards for Hazardous Air Pollutants establishes that building owners conduct an asbestos survey to determine the presence of ACMs prior to the commencement of any remedial work, including demolition.

Based on the Limited Phase II ESA, results from soil samples screened for asbestos did not indicate elevated concentration of asbestos in on-site soils. Based on the Phase I ESA, there is a potential that lead-based paint (LBPs) is present in on-site buildings and shallow soil in proximity to these buildings. Due to the presence of structures built between the 1940s and the 1970s and the various historical uses of the site, the Limited Phase II ESA indicated the potential for on-site structure to contain ACM, LBP, and/or universal waste. The project would be required to comply with Mitigation Measure HAZ-6, which would require surveys of ACM, LBP, and universal waste to be conducted by a qualified specialists or contractors and submitted to the OCHCA for review and comment, and to the project Engineer for approval, prior to demolition of existing structures (including piping materials).

Specifically, if ACMs are located, abatement of asbestos would be required to be completed prior to any activities that would disturb ACMs or create an airborne asbestos hazard. Asbestos removal shall be performed by a State certified asbestos containment contractor in accordance with the SCAQMD Rule 1403. In accordance with Rule 1403, abatement of asbestos would be required prior to any demolition activities if ACM

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 48

material is found. If paint is separated from building materials (chemically or physically) during demolition of the structures, the paint waste would be required to be evaluated independently from the building material by a qualified environmental professional in accordance with CCR Title 8, Section 1529, Asbestos. If LBPs are found, abatement shall be completed by a qualified Lead Specialist prior to any activities that would create lead dust or fume hazard. LBP removal and disposal shall be performed in accordance with CCR Title 8, Section 1532.1, *Lead*, which specifies exposure limits, exposure monitoring and respiratory protection, and mandates good worker practices by workers exposed to lead. Specialists or contractors performing ACM, LBP, and/or universal waste removal shall provide evidence of abatement activities to the OCHCA and Director of Public Works. The project Applicant would be required to inform the Director of Public Works, via the monthly compliance report, of the date when all ACMs, LBPs, and universal waste are removed from the site. Compliance with existing regulations related to ACMs and LBPs and implementation of Mitigation Measure HAZ-6 would reduce potential impacts in this regard to a less than significant level.

Additionally, based on the Limited Phase II ESA, soil samples collected adjacent to current and historical structures indicated no evidence of elevated levels of OCPs or Title 22 metals above regulatory screening levels. Impacts in this regard are less than significant.

Unknown Contamination

Project implementation would involve grading and excavation activities which could also reveal unknown contamination. Potential risks would be minimized by compliance with all existing federal, State, and local laws related to the hazardous materials/waste, as discussed above. Based on the Limited Phase II ESA, observations would be required to be made during project construction for potential contamination source or indicator such as, but not limited to, the presence of underground facilities, buried debris, waste drum tanks, and stained or odorous soils (Mitigation Measure HAZ-7). Mitigation Measure HAZ-7 would require contractor to establish procedures if unknown wastes or contamination source or indicator are encountered during construction. If unknown wastes or suspect materials are discovered during construction, the construction contractor would be required to halt work in the vicinity of the suspected contaminant, notify the Director of Public Works and OCHCA, and perform remedial activities as required under existing regulatory agency standards. Compliance with Mitigation Measure HAZ-1 would further minimize potential risks related to accidental release of hazardous materials from unknown contamination discovered during construction. With compliance with recommended mitigation, impacts in this regard would be reduced to less than significant levels.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 49

Off-Site Regulatory Properties

It is acknowledged that surrounding off-site properties within the project area also handle/store/transport hazardous materials that could have affected soil, soil gas, and groundwater at the project site. According to the Phase I ESA, Orange County Fire Station No. 29, located approximately 0.01-mile (70 feet) north of the project site at 26111 Victoria Boulevard, had reported instance of a leaking diesel-containing UST. An environmental cleanup case was opened in 1993 and closed in 1998 under OCHCA oversight. Based on the relatively short clean up period, the released chemical (diesel fuel), and the relative distance between Orange County Fire Station No. 29 and the project site (70 feet), the Phase I ESA concluded that the former leaking UST at Orange County Fire Station No. 29 has not resulted in impacts to soil, soil gas, or groundwater beneath the projects site. No impacts are anticipated in this regard.

Cortese Database

According to the Phase I ESA, the project site was historically reported pursuant to Government Code Section 65962.5 under several different site names with the street address of 26126 Victoria Boulevard and reference to either Capistrano Beach or Dana Point as the city. These listings were primarily for instances of historical records of leaking USTs to soil or groundwater, records of existing USTs, or as an industrial facility that treats and/or disposes of liquid or semisolid wastes. However, according to the California Environmental Protection Agency, the site is not currently listed pursuant to Government Code Section 65962.5.3.

As discussed above, contaminations to soil and soil gas as a result of historical and existing uses of the site are present in certain portions of shallow soils on-site.

Overall, compliance with all existing Federal, State, and local laws related to the hazardous materials and Mitigation Measures HAZ-1 through HAZ-7 would reduce potential impacts as a result of existing and past uses of the project site to less than significant levels.

OPERATIONS

Substantial risks associated with hazardous materials are not typically associated with residential uses. Minor cleaning products along with the occasional use of pesticides and herbicides for landscape maintenance of the project site are generally the extent of hazardous materials that would be routinely utilized on-site. Thus, as the presence and on-site storage of these materials are common for residential uses and would not be stored in substantial quantities (quantities required to be reported to a regulatory agency), impacts in this regard are less than significant.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 50

Mitigation Measures:

- HAZ-1 On-site Features Removal. Prior to issuance of grading permits, the project Applicant shall retain a qualified environmental professional with Phase II/Site Characterization experience to remove numerous features remaining on-site, including but not limited to the hydraulic lifts, hydraulic fluid reservoir and associated piping, and the bus wash clarifier. Impacted soil identified during the removal of these features shall be removed and handled according to the Soil Management Plan (Mitigation Measure HAZ-2). Confirmation soil samples shall be collected within the excavated areas. Removal activities shall adhere to applicable federal, State, and local regulations, and shall occur under supervision of the Orange County Health Care Agency and/or other relevant agencies.
- HAZ-2 Soil Management Plan. Prior to issuance of a grading permit, a Soil Management Plan (SMP) shall be prepared by a qualified environmental professional with Phase II/Site Characterization experience. The SMP shall include guidelines for safety measures and soil management in the event that soils are to be disturbed, and for handling soil during any planned earthwork activities. The SMP shall also include a decision framework and specific risk management measures for managing soil, including any soil import/export activities, in a manner protective of human health and consistent with applicable regulatory requirements. The SMP shall be submitted to, reviewed, and approved by the Director of Public Works prior to issuance of grading permit. Upon approval, the SMP shall be made available to the contractor and the Director of Public Works for use during grading activities.
- HAZ-3 Remediation for Shallow Soil. Prior to initiation of grading activities, the project Applicant shall retain a qualified environmental professional with Phase II/Site Characterization experience to conduct shallow soil remediation in the vicinity of the grounds dispatch building. Visually impacted soil in the vicinity of the grounds dispatch building shall be removed to an adequate depth as determined by the specialist. Confirmation soil samples from excavation walls and floor shall be collected and analyzed. Remedial activities shall adhere to applicable federal, State, and local regulations, and under supervision of the Orange County Health Care Agency, San Diego Regional Water Quality Control Board, and/or other relevant agencies, as applicable.
- HAZ-4 Additional Verification Sampling. Upon completion of building demolition and prior to and during site grading, the project Applicant shall retain a qualified environmental professional with Phase II/Site Characterization experience to conduct verification soil gas sampling(s) in the vicinity of the grounds dispatch building and mechanic shop. Should any samples determine that residual contamination in either soil or soil gas exceed the

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 51

- thresholds for residential use (i.e., the Department of Toxic Substances Control modified screening levels [DTSC-SL] of 83 $\mu\text{g}/\text{m}^3$ for naphthalene, and DTSC-SL of 460 $\mu\text{g}/\text{m}^3$ for PCE, or otherwise specified by the oversight agency), the project Applicant shall install vapor barrier(s), if determined necessary, prior to construction of the on-site building foundation.
- HAZ-5 Monitoring Well Deconstruction. Prior to issuance of grading permits, the project Applicant shall obtain a monitoring well deconstruction permit from Orange County Health Care Agency and/or the Regional Water Quality Control Board. Upon receipt of the monitoring well deconstruction permit, the project Applicant shall obtain a qualified environmental professional with Phase II/Site Characterization experience to properly seal and abandon the existing monitoring well (MW1) on-site in accordance with the existing laws and regulations.
- HAZ-6 Asbestos/Lead-Based Paint Surveys. Prior to demolition of existing structures (including piping materials), the project Applicant shall retain a qualified specialists or contractor to conduct surveys of ACM, LBP, and universal waste and submitted to the City Director of Public Works for approval. If ACMs are located, abatement of asbestos shall be completed prior to any activities that would disturb ACMs or create an airborne asbestos hazard. Asbestos removal shall be performed by a State certified asbestos containment contractor in accordance with the South Coast Air Quality Management District (SCAQMD) Rule 1403. If LBPs are found, abatement shall be completed by a qualified Lead Specialist prior to any activities that would create lead dust or fume hazard. LBP removal and disposal shall be performed in accordance with California Code of Regulation Title 8, Section 1532.1, which specifies exposure limits, exposure monitoring and respiratory protection, and mandates good worker practices by workers exposed to lead. Specialists or contractors performing ACM, LBP, and/or universal waste removal shall provide evidence of abatement activities to the City Director of Public Works, if applicable. The project Applicant shall inform the Director of Public Works, via the monthly compliance report, of the date when all ACMs, LBPs, and universal waste are removed from the site, if applicable.
- HAZ-7 Unknown Waste. Prior to initiation of construction activities, contractor shall establish procedures in the event that unknown wastes or contamination source or indicator are encountered during construction. Observations shall be made during project construction for potential contamination source or indicator such as, but not limited to, the presence of underground facilities, buried debris, waste drum tanks, and stained or odorous soils. If unknown wastes or suspect materials are discovered during construction, the contractor shall comply with the following:

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 52

- Immediately cease work in the vicinity of the suspected contaminant, and remove workers and the public from the area;
- Notify the Director of Public Works;
- Secure the area as directed by the Director of Public Works; and
- Notify the implementing agency's Hazardous Waste/Materials Coordinator.
- The Hazardous Waste/Materials Coordinator shall advise the responsible party of further actions that shall be taken, if required.

Finding:

Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. These changes are identified in the form of the mitigation measures above. Upon implementation of the required mitigation, the potentially significant impact would be reduced to a less than significant level. The City of Dana Point hereby finds that implementation of the mitigation measures are feasible, and the measures are therefore adopted.

HAZ-2 Project implementation could emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing school.

Support for this environmental impact conclusion is included in Section 5.6, *Hazards and Hazardous Materials*, and in particular, starting on page 5.6-26 of the Draft EIR.

Three existing schools are located within a 0.25-mile radius of the project site:

- Nobis Preschool, located at 26153 Victoria Boulevard, is approximately 0.01-mile (75 feet) north of the site;
- Capo Beach Christian School, located at 25975 Domingo Avenue, is approximately 0.04-mile (220 feet) west of the site; and

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 53

- Little Thinkers Montessori Academy, located at 34240 Camino Capistrano, is approximately 0.1-mile (520 feet) north of the site.

The proposed project is anticipated to involve the demolition of existing structures and potential soil management activities that may require the handling of hazardous materials at the project site as well as the transport of these materials off-site to an approved landfill facility. These activities would be required to comply with federal, State, and local laws and regulations regarding the handling and transport of hazardous materials. With compliance with federal, State, and local laws and regulations as well as implementation of the recommended Mitigation Measures HAZ-1 through HAZ-7, the project is not anticipated to result in any significant impacts involving the handling of hazardous materials, substances, or waste within the vicinity of these schools. Impacts in this regard would be reduced to less than significant levels.

Mitigation Measures:

- HAZ-1 On-site Features Removal. Prior to issuance of grading permits, the project Applicant shall retain a qualified environmental professional with Phase II/Site Characterization experience to remove numerous features remaining on-site, including but not limited to the hydraulic lifts, hydraulic fluid reservoir and associated piping, and the bus wash clarifier. Impacted soil identified during the removal of these features shall be removed and handled according to the Soil Management Plan (Mitigation Measure HAZ-2). Confirmation soil samples shall be collected within the excavated areas. Removal activities shall adhere to applicable federal, State, and local regulations, and shall occur under supervision of the Orange County Health Care Agency and/or other relevant agencies.
- HAZ-2 Soil Management Plan. Prior to issuance of a grading permit, a Soil Management Plan (SMP) shall be prepared by a qualified environmental professional with Phase II/Site Characterization experience. The SMP shall include guidelines for safety measures and soil management in the event that soils are to be disturbed, and for handling soil during any planned earthwork activities. The SMP shall also include a decision framework and specific risk management measures for managing soil, including any soil import/export activities, in a manner protective of human health and consistent with applicable regulatory requirements. The SMP shall be submitted to, reviewed, and approved by the Director of Public Works prior to issuance of grading permit. Upon approval, the SMP shall be made available to the contractor and the Director of Public Works for use during grading activities.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 54

- HAZ-3 Remediation for Shallow Soil. Prior to initiation of grading activities, the project Applicant shall retain a qualified environmental professional with Phase II/Site Characterization experience to conduct shallow soil remediation in the vicinity of the grounds dispatch building. Visually impacted soil in the vicinity of the grounds dispatch building shall be removed to an adequate depth as determined by the specialist. Confirmation soil samples from excavation walls and floor shall be collected and analyzed. Remedial activities shall adhere to applicable federal, State, and local regulations, and under supervision of the Orange County Health Care Agency, San Diego Regional Water Quality Control Board, and/or other relevant agencies, as applicable.
- HAZ-4 Additional Verification Sampling. Upon completion of building demolition and prior to and during site grading, the project Applicant shall retain a qualified environmental professional with Phase II/Site Characterization experience to conduct verification soil gas sampling(s) in the vicinity of the grounds dispatch building and mechanic shop. Should any samples determine that residual contamination in either soil or soil gas exceed the thresholds for residential use (i.e., the Department of Toxic Substances Control modified screening levels [DTSC-SL] of 83 µg/m³ for naphthalene, and DTSC-SL of 460 µg/m³ for PCE, or otherwise specified by the oversight agency), the project Applicant shall install vapor barrier(s), if determined necessary, prior to construction of the on-site building foundation.
- HAZ-5 Monitoring Well Deconstruction. Prior to issuance of grading permits, the project Applicant shall obtain a monitoring well deconstruction permit from Orange County Health Care Agency and/or the Regional Water Quality Control Board. Upon receipt of the monitoring well deconstruction permit, the project Applicant shall obtain a qualified environmental professional with Phase II/Site Characterization experience to properly seal and abandon the existing monitoring well (MW1) on-site in accordance with the existing laws and regulations.
- HAZ-6 Asbestos/Lead-Based Paint Surveys. Prior to demolition of existing structures (including piping materials), the project Applicant shall retain a qualified specialists or contractor to conduct surveys of ACM, LBP, and universal waste and submitted to the City Director of Public Works for approval. If ACMs are located, abatement of asbestos shall be completed prior to any activities that would disturb ACMs or create an airborne asbestos hazard. Asbestos removal shall be performed by a State certified asbestos containment contractor in accordance with the South Coast Air Quality Management District (SCAQMD) Rule 1403. If LBPs are found, abatement shall be completed by a qualified Lead Specialist prior to any activities that would create lead dust or fume hazard. LBP removal and

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 55

disposal shall be performed in accordance with California Code of Regulation Title 8, Section 1532.1, which specifies exposure limits, exposure monitoring and respiratory protection, and mandates good worker practices by workers exposed to lead. Specialists or contractors performing ACM, LBP, and/or universal waste removal shall provide evidence of abatement activities to the City Director of Public Works, if applicable. The project Applicant shall inform the Director of Public Works, via the monthly compliance report, of the date when all ACMs, LBPs, and universal waste are removed from the site, if applicable.

HAZ-7

Unknown Waste. Prior to initiation of construction activities, contractor shall establish procedures in the event that unknown wastes or contamination source or indicator are encountered during construction. Observations shall be made during project construction for potential contamination source or indicator such as, but not limited to, the presence of underground facilities, buried debris, waste drum tanks, and stained or odorous soils. If unknown wastes or suspect materials are discovered during construction, the contractor shall comply with the following:

- Immediately cease work in the vicinity of the suspected contaminant, and remove workers and the public from the area;
- Notify the Director of Public Works;
- Secure the area as directed by the Director of Public Works; and
- Notify the implementing agency's Hazardous Waste/Materials Coordinator.
- The Hazardous Waste/Materials Coordinator shall advise the responsible party of further actions that shall be taken, if required.

Finding:

Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. These changes are identified in the form of the mitigation measures above. Upon implementation of the required mitigation, the potentially significant impact would be reduced to a less than significant level. The City of Dana Point hereby finds that implementation of the mitigation measures are feasible, and the measures are therefore adopted.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 56

CUMULATIVE The proposed project, combined with other related projects, could create a significant hazard to the public or environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment, or through the routine transport, use, or disposal of hazardous materials.

Support for this environmental impact conclusion is included in Section 5.6, *Hazards and Hazardous Materials*, and in particular, starting on page 5.6-28 of the Draft EIR.

Cumulative projects could result in creating a significant hazard to the public or environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment. However, as discussed above, with implementation of existing laws and regulations established by the OCHCA, San Diego Regional Water Quality Control Board (RWQCB), DTSC, Department of Transportation, California Department of Transportation (Caltrans), and California Division of Occupational Safety and Health (Cal/OSHA), among others, these cumulative impacts would be minimized. As discussed above, with implementation of the recommended Mitigation Measures HAZ-1 through HAZ-7, implementation of the proposed project would not result in significant impacts involving hazards and hazardous materials. As such, the project would not result in a cumulatively considerable impact in this regard and impacts would be less than significant.

Mitigation Measure:

- HAZ-1 On-site Features Removal. Prior to issuance of grading permits, the project Applicant shall retain a qualified environmental professional with Phase II/Site Characterization experience to remove numerous features remaining on-site, including but not limited to the hydraulic lifts, hydraulic fluid reservoir and associated piping, and the bus wash clarifier. Impacted soil identified during the removal of these features shall be removed and handled according to the Soil Management Plan (Mitigation Measure HAZ-2). Confirmation soil samples shall be collected within the excavated areas. Removal activities shall adhere to applicable federal, State, and local regulations, and shall occur under supervision of the Orange County Health Care Agency and/or other relevant agencies.
- HAZ-2 Soil Management Plan. Prior to issuance of a grading permit, a Soil Management Plan (SMP) shall be prepared by a qualified environmental professional with Phase II/Site Characterization experience. The SMP shall include guidelines for safety measures and soil management in the event that soils are to be disturbed, and for handling soil during any planned earthwork activities. The SMP shall also include a decision framework and specific risk management measures for managing soil,

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 57

- including any soil import/export activities, in a manner protective of human health and consistent with applicable regulatory requirements. The SMP shall be submitted to, reviewed, and approved by the Director of Public Works prior to issuance of grading permit. Upon approval, the SMP shall be made available to the contractor and the Director of Public Works for use during grading activities.
- HAZ-3 Remediation for Shallow Soil. Prior to initiation of grading activities, the project Applicant shall retain a qualified environmental professional with Phase II/Site Characterization experience to conduct shallow soil remediation in the vicinity of the grounds dispatch building. Visually impacted soil in the vicinity of the grounds dispatch building shall be removed to an adequate depth as determined by the specialist. Confirmation soil samples from excavation walls and floor shall be collected and analyzed. Remedial activities shall adhere to applicable federal, State, and local regulations, and under supervision of the Orange County Health Care Agency, San Diego Regional Water Quality Control Board, and/or other relevant agencies, as applicable.
- HAZ-4 Additional Verification Sampling. Upon completion of building demolition and prior to and during site grading, the project Applicant shall retain a qualified environmental professional with Phase II/Site Characterization experience to conduct verification soil gas sampling(s) in the vicinity of the grounds dispatch building and mechanic shop. Should any samples determine that residual contamination in either soil or soil gas exceed the thresholds for residential use (i.e., the Department of Toxic Substances Control modified screening levels [DTSC-SL] of 83 µg/m³ for naphthalene, and DTSC-SL of 460 µg/m³ for PCE, or otherwise specified by the oversight agency), the project Applicant shall install vapor barrier(s), if determined necessary, prior to construction of the on-site building foundation.
- HAZ-5 Monitoring Well Deconstruction. Prior to issuance of grading permits, the project Applicant shall obtain a monitoring well deconstruction permit from Orange County Health Care Agency and/or the Regional Water Quality Control Board. Upon receipt of the monitoring well deconstruction permit, the project Applicant shall obtain a qualified environmental professional with Phase II/Site Characterization experience to properly seal and abandon the existing monitoring well (MW1) on-site in accordance with the existing laws and regulations.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 58

HAZ-6 Asbestos/Lead-Based Paint Surveys. Prior to demolition of existing structures (including piping materials), the project Applicant shall retain a qualified specialists or contractor to conduct surveys of ACM, LBP, and universal waste and submitted to the City Director of Public Works for approval. If ACMs are located, abatement of asbestos shall be completed prior to any activities that would disturb ACMs or create an airborne asbestos hazard. Asbestos removal shall be performed by a State certified asbestos containment contractor in accordance with the South Coast Air Quality Management District (SCAQMD) Rule 1403. If LBPs are found, abatement shall be completed by a qualified Lead Specialist prior to any activities that would create lead dust or fume hazard. LBP removal and disposal shall be performed in accordance with California Code of Regulation Title 8, Section 1532.1, which specifies exposure limits, exposure monitoring and respiratory protection, and mandates good worker practices by workers exposed to lead. Specialists or contractors performing ACM, LBP, and/or universal waste removal shall provide evidence of abatement activities to the City Director of Public Works, if applicable. The project Applicant shall inform the Director of Public Works, via the monthly compliance report, of the date when all ACMs, LBPs, and universal waste are removed from the site, if applicable.

HAZ-7 Unknown Waste. Prior to initiation of construction activities, contractor shall establish procedures in the event that unknown wastes or contamination source or indicator are encountered during construction. Observations shall be made during project construction for potential contamination source or indicator such as, but not limited to, the presence of underground facilities, buried debris, waste drum tanks, and stained or odorous soils. If unknown wastes or suspect materials are discovered during construction, the contractor shall comply with the following:

- Immediately cease work in the vicinity of the suspected contaminant, and remove workers and the public from the area;
- Notify the Director of Public Works;
- Secure the area as directed by the Director of Public Works; and
- Notify the implementing agency's Hazardous Waste/Materials Coordinator.
- The Hazardous Waste/Materials Coordinator shall advise the responsible party of further actions that shall be taken, if required.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 59

Finding:

Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. These changes are identified in the form of the mitigation measures above. Upon implementation of the required mitigation, the potentially significant impact would be reduced to a less than significant level. The City of Dana Point hereby finds that implementation of the mitigation measures are feasible, and the measures are therefore adopted.

CUMULATIVE The proposed project, combined with other related projects, could emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing school.

Support for this environmental impact conclusion is included in Section 5.6, *Hazards and Hazardous Materials*, and in particular, starting on page 5.6-28 of the Draft EIR.

Cumulative projects that result in hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing school would be required to go through CEQA clearance to ensure that no significant impacts to sensitive receptors would result. Further, with compliance with the laws and regulations established by the OCHCA, San Diego RWQCB, DTSC, DOT, Caltrans, and Cal/OSHA, among others, these cumulative impacts would be minimized. As the proposed project would not result in significant impacts involving hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing school with implementation of Mitigation Measures HAZ-1 through HAZ-7 and compliance with existing regulations, the project would not significantly contribute to a cumulatively considerable impact in this regard. Impacts in this regard would be less than significant.

Mitigation Measures:

HAZ-1 On-site Features Removal. Prior to issuance of grading permits, the project Applicant shall retain a qualified environmental professional with Phase II/Site Characterization experience to remove numerous features remaining on-site, including but not limited to the hydraulic lifts, hydraulic fluid reservoir and associated piping, and the bus wash clarifier. Impacted soil identified during the removal of these features shall be removed and handled according to the Soil Management Plan (Mitigation Measure HAZ-2). Confirmation soil samples shall be collected within the excavated areas. Removal activities shall adhere to applicable federal, State, and local regulations, and shall occur under supervision of the Orange County Health Care Agency and/or other relevant agencies.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 60

- HAZ-2 Soil Management Plan. Prior to issuance of a grading permit, a Soil Management Plan (SMP) shall be prepared by a qualified environmental professional with Phase II/Site Characterization experience. The SMP shall include guidelines for safety measures and soil management in the event that soils are to be disturbed, and for handling soil during any planned earthwork activities. The SMP shall also include a decision framework and specific risk management measures for managing soil, including any soil import/export activities, in a manner protective of human health and consistent with applicable regulatory requirements. The SMP shall be submitted to, reviewed, and approved by the Director of Public Works prior to issuance of grading permit. Upon approval, the SMP shall be made available to the contractor and the Director of Public Works for use during grading activities.
- HAZ-3 Remediation for Shallow Soil. Prior to initiation of grading activities, the project Applicant shall retain a qualified environmental professional with Phase II/Site Characterization experience to conduct shallow soil remediation in the vicinity of the grounds dispatch building. Visually impacted soil in the vicinity of the grounds dispatch building shall be removed to an adequate depth as determined by the specialist. Confirmation soil samples from excavation walls and floor shall be collected and analyzed. Remedial activities shall adhere to applicable federal, State, and local regulations, and under supervision of the Orange County Health Care Agency, San Diego Regional Water Quality Control Board, and/or other relevant agencies, as applicable.
- HAZ-4 Additional Verification Sampling. Upon completion of building demolition and prior to and during site grading, the project Applicant shall retain a qualified environmental professional with Phase II/Site Characterization experience to conduct verification soil gas sampling(s) in the vicinity of the grounds dispatch building and mechanic shop. Should any samples determine that residual contamination in either soil or soil gas exceed the thresholds for residential use (i.e., the Department of Toxic Substances Control modified screening levels [DTSC-SL] of 83 µg/m³ for naphthalene, and DTSC-SL of 460 µg/m³ for PCE, or otherwise specified by the oversight agency), the project Applicant shall install vapor barrier(s), if determined necessary, prior to construction of the on-site building foundation.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 61

- HAZ-5 Monitoring Well Deconstruction. Prior to issuance of grading permits, the project Applicant shall obtain a monitoring well deconstruction permit from Orange County Health Care Agency and/or the Regional Water Quality Control Board. Upon receipt of the monitoring well deconstruction permit, the project Applicant shall obtain a qualified environmental professional with Phase II/Site Characterization experience to properly seal and abandon the existing monitoring well (MW1) on-site in accordance with the existing laws and regulations.
- HAZ-6 Asbestos/Lead-Based Paint Surveys. Prior to demolition of existing structures (including piping materials), the project Applicant shall retain a qualified specialists or contractor to conduct surveys of ACM, LBP, and universal waste and submitted to the City Director of Public Works for approval. If ACMs are located, abatement of asbestos shall be completed prior to any activities that would disturb ACMs or create an airborne asbestos hazard. Asbestos removal shall be performed by a State certified asbestos containment contractor in accordance with the South Coast Air Quality Management District (SCAQMD) Rule 1403. If LBPs are found, abatement shall be completed by a qualified Lead Specialist prior to any activities that would create lead dust or fume hazard. LBP removal and disposal shall be performed in accordance with California Code of Regulation Title 8, Section 1532.1, which specifies exposure limits, exposure monitoring and respiratory protection, and mandates good worker practices by workers exposed to lead. Specialists or contractors performing ACM, LBP, and/or universal waste removal shall provide evidence of abatement activities to the City Director of Public Works, if applicable. The project Applicant shall inform the Director of Public Works, via the monthly compliance report, of the date when all ACMs, LBPs, and universal waste are removed from the site, if applicable.
- HAZ-7 Unknown Waste. Prior to initiation of construction activities, contractor shall establish procedures in the event that unknown wastes or contamination source or indicator are encountered during construction. Observations shall be made during project construction for potential contamination source or indicator such as, but not limited to, the presence of underground facilities, buried debris, waste drum tanks, and stained or odorous soils. If unknown wastes or suspect materials are discovered during construction, the contractor shall comply with the following:
- Immediately cease work in the vicinity of the suspected contaminant, and remove workers and the public from the area;
 - Notify the Director of Public Works;

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 62

- Secure the area as directed by the Director of Public Works; and
- Notify the implementing agency's Hazardous Waste/Materials Coordinator.
- The Hazardous Waste/Materials Coordinator shall advise the responsible party of further actions that shall be taken, if required.

Finding:

Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. These changes are identified in the form of the mitigation measures above. Upon implementation of the required mitigation, the potentially significant impact would be reduced to a less than significant level. The City of Dana Point hereby finds that implementation of the mitigation measures are feasible, and the measures are therefore adopted.

4. Public Services

PSRU-1 Project implementation could result in the need for additional fire protection facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives.

Support for this environmental impact conclusion is included in Section 5.13, *Public Services/Recreation and Utilities*, and in particular, starting on page 5.13-30 of the Draft EIR.

CONSTRUCTION

The project would not result in the need for the construction of any new or physically altered fire protection facilities. Construction activities associated with the project could temporarily result in an incrementally increased demand for Orange County Fire Authority (OCFA) fire protection services. However, all construction activities would be subject to compliance with applicable State and local regulations in place to reduce risk of construction-related fire (i.e., installation of temporary construction fencing to restrict site access and maintenance of a clean construction site). Additionally, the project would be required to comply with Municipal Code Chapter 8.02, *California Building Code*, which adopts by reference the CBC standards regarding site access requirements and fire safety precautions. Further, as discussed in Draft EIR Section 5.7,

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCFA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 63

Transportation, Mitigation Measure TRA-1 would require the project Applicant to implement a Construction Management Plan (CMP). The CMP would require implementing alternative routes for emergency vehicles during the construction phase of the project to ensure adequate emergency access. With implementation of Mitigation Measure TRA-1, and compliance with State and local regulations, construction-related impacts to fire protection services from the project would be less than significant in this regard.

OPERATIONS

The project would be designed in accordance with Municipal Code Chapter 8.02, *California Building Code*, as well as Municipal Code Chapter 8.24, *California Fire Code*, which adopts by reference the 2016 edition of the California Fire Code. The California Fire Code includes fire safety-related building standards for construction, access, water mains, fire flows, and hydrants. Further, in conformance with General Plan Public Safety Element Policies 4.4, 4.5, and 7.1, the proposed project would be required to comply with building code requirements related to fire protection and prevention. Additionally, the project would be required to comply with General Plan Land Use Element Policy 3.1 and pay the respective fire-related development fees and exactions to the City.

Further, the City and OCFA would review the project's site plans to confirm that the proposed primary and secondary access driveways and emergency vehicle access (EVA) driving aisle meet the applicable State and local codes and standards pertaining to emergency access.

Potable water would be used for fire suppression and provided by SCWD. The proposed project would install one new fire hydrant along Sepulveda Avenue, three new fire hydrants along Victoria Boulevard and the eastern side of the project site, and one new fire hydrant along the proposed EVA drive aisle that meet OCFA standards. Additionally, the project Applicant has prepared a Fire Master Plan that was approved by OCFA on February 15, 2022. The Fire Master Plan details the expected emergency exits within the proposed structures, the proposed on-site locations for fire hydrants, and the proposed locations of drought-resistant on-site vegetation. Lastly, as a standard condition of approval, the project Applicant would be required to enter into a Secured Fire Protection Agreement with OCFA. The agreement would specify the Applicant's pro-rata fair share funding of capital improvements necessary to establish adequate fire protection facilities and equipment, and/or personnel.

Project implementation would not induce significant unplanned population growth. Therefore, although the proposed project is expected to increase demand for OCFA services, the demand would not be substantial or result in the need for additional fire protection facilities, and would not adversely impact service ratios, response times, or other OCFA performance standards. Additionally, the increase in demand for OCFA services would not require the construction of new fire protection facilities or expansion

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 64

of existing fire protection facilities. Therefore, the project would result in a less than significant impact in this regard.

Mitigation Measures:

TRA-1 Prior to issuance of any grading and/or demolition permits, whichever occurs first, the Applicant (Developer) shall prepare a Construction Management Plan (CMP) to be submitted for review and approval by the City of Dana Point Director of Public Works. The requirement for a CMP shall be incorporated into the Project specifications and subject to verification by the Director of Public Works prior to final plan approval. The CMP shall include, at a minimum, the following measures, which shall be implemented during all construction activities as overseen by the Construction Contractor:

- Meet the standards established in the current California Manual on Uniform Traffic Control Device (MUTCD) as well as City of Dana Point requirements. The CMP shall be prepared by the contractor and submitted to the Director of Public Works for approval pertaining to off-site work, including sidewalk construction, building façade, underground utilities, and any work that would require temporary curb lane closures. The plan shall be developed according to the MUTCD (latest edition) guidelines, including plans for traffic signs, traffic cone arrangements, and flaggers to assist with pedestrian and traffic.
- Submit the CMP to the California Department of Transportation (Caltrans) and City of San Juan Capistrano for review and comment, prior to approval by the Director of Public Works, should construction hauling utilize facilities within these jurisdictions.
- Identify traffic control for any street closure, detour, or other disruption to traffic circulation, including the necessary traffic controls to allow for construction-related traffic to enter and exit the site.
- Should project construction activities require temporary vehicle lane, bicycle lane, and/or sidewalk closures, the Applicant (Developer) shall coordinate with the Director of Public Works regarding timing and duration of proposed temporary lane and/or sidewalk closures to ensure the closures do not impact operations of adjacent uses or emergency access.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 65

- Identify the routes that construction vehicles must utilize for the delivery of construction materials (i.e., lumber, tiles, piping, windows, etc.), to access the site, traffic controls and detours, and proposed construction phasing plan for the project.
- Specify all grading and equipment operations shall not be conducted between the hours of 8:00 p.m. and 7:00 a.m. Monday through Saturday, and/or any time on Sunday or a Federal holiday, pursuant to Section 11.10.014, Special Provisions, of the Dana Point Municipal Code.
- Should project construction activities occur during general drop-off and pick-up hours for nearby schools (i.e., Nobis Preschool), traffic signs, traffic cone arrangements, and flaggers shall assist with ensuring safe pedestrian access along the project frontage for students.
- Require the Applicant (Developer) to keep all haul routes clean and free of debris including, but not limited to, gravel and dirt, as a result of its operations. The Applicant (Developer) shall clean adjacent streets, as directed by the Director of Public Works, of any material which may have been spilled, tracked, or blown onto adjacent streets or areas.
- All construction-related parking and staging of vehicles shall be kept out of the adjacent public roadways and shall occur on-site.
- Traffic controls shall be implemented for any street closure, detour, or other disruption to traffic circulation and shall maintain emergency access to the site.

Finding:

Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. These changes are identified in the form of the mitigation measure above. Upon implementation of the required mitigation, the potentially significant impact would be reduced to a less than significant level. The City of Dana Point hereby finds that implementation of the mitigation measure is feasible, and the measure is therefore adopted.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 66

PSRU-2 Project implementation could result in the need for additional police protection facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives.

Support for this environmental impact conclusion is included in Section 5.13, *Public Services/Recreation and Utilities*, and in particular, starting on page 5.13-32 of the Draft EIR.

CONSTRUCTION

The project would not result in the need for the construction of any new or physically altered police protection facilities. As discussed in Draft EIR Section 5.7, *Transportation*, Mitigation Measure TRA-1 would require a CMP, which would include construction-related best management practices to minimize project-related construction traffic impacts on the local circulation system, including emergency access. Therefore, construction activities would not substantially impact police response times. Construction activities would also be subject to compliance with applicable State and local regulations to reduce impacts to police protection services, including Municipal Code Chapter 8.02 (adopts by reference the 2019 CBC), which includes site access requirements and other relevant safety precautions. As such construction-related impacts concerning police protection services would be less than significant.

OPERATIONS

Project implementation would result in additional demands on existing police protection services, and may result in the need for one additional deputy sheriff in the area. Project buildout would result in the construction 306 dwelling units on the 5.51-acre project site. Although the proposed residential development would increase demand for police protection services, the proposed project is not anticipated to result in substantial unplanned population growth.

The proposed project would also be subject to conformance with several General Plan policies intended to reduce impacts to police protection services. In conformance with General Plan Public Facilities/Growth Management Element Policies 4.1 and 4.5, the City would ensure desirable level of police services is maintained by periodically evaluating services and service criteria and coordinating with other agencies; and in conformance with General Plan Public Safety Element Policies 4.4, 4.5, and 7.1, the City would establish and maintain mutual said agreements with surrounding cities for police protection, encourage building code requirements that assure police protection, and adopt Orange County level of service standards for law enforcement. Additionally, as detailed in Specific Plan Section 6.2.1, *Financing Mechanisms*, and in congruence with General Plan Land Use Element Policy 3.1, impact fees and/or exactions would be utilized to offset

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 67

project demands on existing services, including police protection services. The Applicant would be required to work with the City to determine appropriate fees and exactions, which may be identified in a formal written agreement that is acceptable to both the City and Applicant. The Applicant, developer, and/or owner of the project would be required to pay its fair share of all applicable impact fees. Compliance with relevant legislations and General Plan policies would ensure the project's additional demand for police protection services do not adversely impact OCSD's ability to meet its established response times and police staffing levels. As such, operational impacts concerning police protection services would be less than significant.

Mitigation Measures:

TRA-1 Prior to issuance of any grading and/or demolition permits, whichever occurs first, the Applicant (Developer) shall prepare a Construction Management Plan (CMP) to be submitted for review and approval by the City of Dana Point Director of Public Works. The requirement for a CMP shall be incorporated into the Project specifications and subject to verification by the Director of Public Works prior to final plan approval. The CMP shall include, at a minimum, the following measures, which shall be implemented during all construction activities as overseen by the Construction Contractor:

- Meet the standards established in the current California Manual on Uniform Traffic Control Device (MUTCD) as well as City of Dana Point requirements. The CMP shall be prepared by the contractor and submitted to the Director of Public Works for approval pertaining to off-site work, including sidewalk construction, building façade, underground utilities, and any work that would require temporary curb lane closures. The plan shall be developed according to the MUTCD (latest edition) guidelines, including plans for traffic signs, traffic cone arrangements, and flaggers to assist with pedestrian and traffic.
- Submit the CMP to the California Department of Transportation (Caltrans) and City of San Juan Capistrano for review and comment, prior to approval by the Director of Public Works, should construction hauling utilize facilities within these jurisdictions.
- Identify traffic control for any street closure, detour, or other disruption to traffic circulation, including the necessary traffic controls to allow for construction-related traffic to enter and exit the site.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 68

- Should project construction activities require temporary vehicle lane, bicycle lane, and/or sidewalk closures, the Applicant (Developer) shall coordinate with the Director of Public Works regarding timing and duration of proposed temporary lane and/or sidewalk closures to ensure the closures do not impact operations of adjacent uses or emergency access.
- Identify the routes that construction vehicles must utilize for the delivery of construction materials (i.e., lumber, tiles, piping, windows, etc.), to access the site, traffic controls and detours, and proposed construction phasing plan for the project.
- Specify all grading and equipment operations shall not be conducted between the hours of 8:00 p.m. and 7:00 a.m. Monday through Saturday, and/or any time on Sunday or a Federal holiday, pursuant to Section 11.10.014, Special Provisions, of the Dana Point Municipal Code.
- Should project construction activities occur during general drop-off and pick-up hours for nearby schools (i.e., Nobis Preschool), traffic signs, traffic cone arrangements, and flaggers shall assist with ensuring safe pedestrian access along the project frontage for students.
- Require the Applicant (Developer) to keep all haul routes clean and free of debris including, but not limited to, gravel and dirt, as a result of its operations. The Applicant (Developer) shall clean adjacent streets, as directed by the Director of Public Works, of any material which may have been spilled, tracked, or blown onto adjacent streets or areas.
- All construction-related parking and staging of vehicles shall be kept out of the adjacent public roadways and shall occur on-site.
- Traffic controls shall be implemented for any street closure, detour, or other disruption to traffic circulation and shall maintain emergency access to the site.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 69

Finding:

Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. These changes are identified in the form of the mitigation measure above. Upon implementation of the required mitigation, the potentially significant impact would be reduced to a less than significant level. The City of Dana Point hereby finds that implementation of the mitigation measure is feasible, and the measure is therefore adopted.

CUMULATIVE The project combined with other cumulative projects could create increased demand for fire protection services that could create significant environmental impacts.

Support for this environmental impact conclusion is included in Section 5.13, *Public Services/Recreation and Utilities*, and in particular, starting on page 5.13-42 of the Draft EIR.

Cumulative development projects within the OCFA's service area in City would have the potential to result in the need for additional OCFA resources (i.e., additional staffing, equipment, expanded/new facilities). However, cumulative projects would be subject to all applicable laws, ordinances, and regulations in place for fire protection and emergency services. Development occurring within the City would be required to demonstrate compliance with all applicable regulations, including the Municipal Code Chapter 8.24 (adopts by reference the 2016 edition of the California Fire Code) requirements regarding construction, access, water mains, fire flows, and hydrants. In conformance with General Plan Public Facilities/Growth Management Element Policies 4.1 and 4.5, the City would ensure desirable level of fire protection services is maintained by periodically evaluating services and service criteria and coordinate with OCFA and other agencies. In conformance with General Plan Public Safety Element Policies 4.4 and 4.5, the City would establish and maintain mutual said agreements with surrounding cities for fire protection and encourage building code requirements that assure fire protection. Further, in conformance with General Plan Land Use Element Policy 3.1, the City would ensure cumulative development pays the cost of its infrastructure and services needs and require new development to pay the capital costs of public facilities and services needed to serve those development. Cumulative projects would be reviewed by the City and the OCFA to determine specific fire requirements (e.g., fire hydrant spacing, sprinkler requirements in certain types of construction, safe vehicular access for evacuation or response, and ensuring the development does not negatively impact response times) applicable to the specific development and to ensure compliance with all applicable requirements as discussed.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCFA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 70

The proposed project is not anticipated to result in significant impacts to fire protection services following the inclusion of an EVA driveway for emergency service as well as implementation of the proposed Fire Master Plan for the project. Additionally, Mitigation Measure TRA-1 would require implementation of a CMP to ensure adequate access for emergency vehicles during the construction phase of the project. Further, the proposed project would conform with the applicable laws, ordinances, and regulations in place for fire protection and emergency services as detailed above. As such, the proposed project would not result in cumulatively considerable impacts to fire protection services. Impacts in this regard would be less than significant.

Mitigation Measures:

TRA-1 Prior to issuance of any grading and/or demolition permits, whichever occurs first, the Applicant (Developer) shall prepare a Construction Management Plan (CMP) to be submitted for review and approval by the City of Dana Point Director of Public Works. The requirement for a CMP shall be incorporated into the Project specifications and subject to verification by the Director of Public Works prior to final plan approval. The CMP shall include, at a minimum, the following measures, which shall be implemented during all construction activities as overseen by the Construction Contractor:

- Meet the standards established in the current California Manual on Uniform Traffic Control Device (MUTCD) as well as City of Dana Point requirements. The CMP shall be prepared by the contractor and submitted to the Director of Public Works for approval pertaining to off-site work, including sidewalk construction, building façade, underground utilities, and any work that would require temporary curb lane closures. The plan shall be developed according to the MUTCD (latest edition) guidelines, including plans for traffic signs, traffic cone arrangements, and flaggers to assist with pedestrian and traffic.
- Submit the CMP to the California Department of Transportation (Caltrans) and City of San Juan Capistrano for review and comment, prior to approval by the Director of Public Works, should construction hauling utilize facilities within these jurisdictions.
- Identify traffic control for any street closure, detour, or other disruption to traffic circulation, including the necessary traffic controls to allow for construction-related traffic to enter and exit the site.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 71

- Should project construction activities require temporary vehicle lane, bicycle lane, and/or sidewalk closures, the Applicant (Developer) shall coordinate with the Director of Public Works regarding timing and duration of proposed temporary lane and/or sidewalk closures to ensure the closures do not impact operations of adjacent uses or emergency access.
- Identify the routes that construction vehicles must utilize for the delivery of construction materials (i.e., lumber, tiles, piping, windows, etc.), to access the site, traffic controls and detours, and proposed construction phasing plan for the project.
- Specify all grading and equipment operations shall not be conducted between the hours of 8:00 p.m. and 7:00 a.m. Monday through Saturday, and/or any time on Sunday or a Federal holiday, pursuant to Section 11.10.014, Special Provisions, of the Dana Point Municipal Code.
- Should project construction activities occur during general drop-off and pick-up hours for nearby schools (i.e., Nobis Preschool), traffic signs, traffic cone arrangements, and flaggers shall assist with ensuring safe pedestrian access along the project frontage for students.
- Require the Applicant (Developer) to keep all haul routes clean and free of debris including, but not limited to, gravel and dirt, as a result of its operations. The Applicant (Developer) shall clean adjacent streets, as directed by the Director of Public Works, of any material which may have been spilled, tracked, or blown onto adjacent streets or areas.
- All construction-related parking and staging of vehicles shall be kept out of the adjacent public roadways and shall occur on-site.
- Traffic controls shall be implemented for any street closure, detour, or other disruption to traffic circulation and shall maintain emergency access to the site.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 72

Finding:

Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. These changes are identified in the form of the mitigation measure above. Upon implementation of the required mitigation, the potentially significant impact would be reduced to a less than significant level. The City of Dana Point hereby finds that implementation of the mitigation measure is feasible, and the measure is therefore adopted.

CUMULATIVE The project combined with other cumulative projects could create increased demand for police protection services that could create significant environmental impacts.

Support for this environmental impact conclusion is included in Section 5.13, *Public Services/Recreation and Utilities*, and in particular, starting on page 5.13-43 of the Draft EIR.

Cumulative development in the Dana Point Police Department's service area within the City has the potential to result in the need for additional OCSD resources (i.e., additional staffing, equipment, expanded/new facilities). However, cumulative development would be subject to all applicable laws, ordinances, and regulations in place for police services. Site-specific development would be reviewed by the City and the OCSD to determine specific safety requirements applicable to the individual development proposals and to ensure compliance with these requirements under including the Municipal Code Chapter 8.02 (adopts by reference the 2019 CBC), which includes site access requirement and other relevant safety precautions. In conformance with General Plan Public Facilities/Growth Management Element Policies 4.1 and 4.5, the City would ensure desirable level of police protection services is maintained by periodically evaluating services and service criteria and coordinate with other agencies; and in conformance with General Plan Public Safety Element Policies 4.4, 4.5, and 7.1, the City would establish and maintain mutual said agreements with surrounding cities for police protection, encourage building code requirements that assure police protection, and adopt Orange County level of service standards for law enforcement. During the development review process of potential buildout, the City would coordinate with the project applicant to ensure the project is designed with public safety in mind to prevent crime and minimize impacts on police protection facilities. Further, in conformance with General Plan Land Use Element Policy 3.1, the City would ensure cumulative development pays the cost of its infrastructure and services needs and require new development to pay the capital costs of public facilities and services needed to serve those development.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 73

The proposed project is not anticipated to involve significant impacts to police protection services, as the project would not induce substantial population growth. Additionally, Mitigation Measure TRA-1 would require a CMP be prepared and implemented to minimize project-related construction traffic impacts on the local circulation system. Further, the proposed project would conform with the applicable laws, ordinances, and regulations in place for police protection services as detailed above. Therefore, the proposed project would not result in cumulatively considerable impacts to police protection services. Impacts in this regard would be less than significant.

Mitigation Measures:

TRA-1 Prior to issuance of any grading and/or demolition permits, whichever occurs first, the Applicant (Developer) shall prepare a Construction Management Plan (CMP) to be submitted for review and approval by the City of Dana Point Director of Public Works. The requirement for a CMP shall be incorporated into the Project specifications and subject to verification by the Director of Public Works prior to final plan approval. The CMP shall include, at a minimum, the following measures, which shall be implemented during all construction activities as overseen by the Construction Contractor:

- Meet the standards established in the current California Manual on Uniform Traffic Control Device (MUTCD) as well as City of Dana Point requirements. The CMP shall be prepared by the contractor and submitted to the Director of Public Works for approval pertaining to off-site work, including sidewalk construction, building façade, underground utilities, and any work that would require temporary curb lane closures. The plan shall be developed according to the MUTCD (latest edition) guidelines, including plans for traffic signs, traffic cone arrangements, and flaggers to assist with pedestrian and traffic.
- Submit the CMP to the California Department of Transportation (Caltrans) and City of San Juan Capistrano for review and comment, prior to approval by the Director of Public Works, should construction hauling utilize facilities within these jurisdictions.
- Identify traffic control for any street closure, detour, or other disruption to traffic circulation, including the necessary traffic controls to allow for construction-related traffic to enter and exit the site.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 74

- Should project construction activities require temporary vehicle lane, bicycle lane, and/or sidewalk closures, the Applicant (Developer) shall coordinate with the Director of Public Works regarding timing and duration of proposed temporary lane and/or sidewalk closures to ensure the closures do not impact operations of adjacent uses or emergency access.
- Identify the routes that construction vehicles must utilize for the delivery of construction materials (i.e., lumber, tiles, piping, windows, etc.), to access the site, traffic controls and detours, and proposed construction phasing plan for the project.
- Specify all grading and equipment operations shall not be conducted between the hours of 8:00 p.m. and 7:00 a.m. Monday through Saturday, and/or any time on Sunday or a Federal holiday, pursuant to Section 11.10.014, Special Provisions, of the Dana Point Municipal Code.
- Should project construction activities occur during general drop-off and pick-up hours for nearby schools (i.e., Nobis Preschool), traffic signs, traffic cone arrangements, and flaggers shall assist with ensuring safe pedestrian access along the project frontage for students.
- Require the Applicant (Developer) to keep all haul routes clean and free of debris including, but not limited to, gravel and dirt, as a result of its operations. The Applicant (Developer) shall clean adjacent streets, as directed by the Director of Public Works, of any material which may have been spilled, tracked, or blown onto adjacent streets or areas.
- All construction-related parking and staging of vehicles shall be kept out of the adjacent public roadways and shall occur on-site.
- Traffic controls shall be implemented for any street closure, detour, or other disruption to traffic circulation and shall maintain emergency access to the site.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 75

Finding:

Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. These changes are identified in the form of the mitigation measure above. Upon implementation of the required mitigation, the potentially significant impact would be reduced to a less than significant level. The City of Dana Point hereby finds that implementation of the mitigation measure is feasible, and the measure is therefore adopted.

5. Transportation

TRA-3 Project implementation could increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment).

Support for this environmental impact conclusion is included in Section 5.7, *Transportation*, and in particular, starting on page 5.7-12 of the Draft EIR.

Development of the proposed project would result in a new apartment community at the project site, which is situated within an urban residential area of Dana Point and would not introduce any new incompatible uses. The increased vehicles on-site and potential interaction with bicyclists and pedestrians would occur. The following analysis considers the project's proposed circulation system safety design considerations.

SITE ACCESS

A 42-foot-wide full access driveway on Sepulveda Avenue (Sepulveda Avenue Driveway) and a gated full access driveway on Victoria Boulevard (Victoria Boulevard Driveway) would serve as the primary vehicular access to the project site. Additionally, a third driveway would be located at the southern end of Sepulveda Avenue and would only be used as emergency access and enforced through the use of bollards and/or similar devices (i.e., Knox key boxes). The new project driveway at Sepulveda Avenue would be stop controlled at the proposed parking garage exit. The project driveway at Victoria Boulevard would be stop controlled as motorists leave the project site. Bicycle and pedestrian access would be afforded along the project boundaries and into the proposed development.

Based on the *Highway Design Manual* (California Department of Transportation, July 2018), the stopping sight distance for a 25 mile per hour design speed is 150 feet. All proposed driveways achieve a minimum of 150 feet, with the exception of the proposed Victoria Avenue driveway looking east. At this location there is only approximately 114 feet of sight distance available before reaching the intersection at Camino Capistrano.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 76

There are no posted speed limits at this location. Assuming vehicles turning from the intersection on Victoria Boulevard (eastward) are travelling at approximately 15 miles per hour, the necessary stopping sight distance is reduced to 100 feet; therefore, adequate stopping sight distance appears to be provided. Nonetheless, as part of the City's entitlement process, the City would review all proposed site access points to confirm compliance with all applicable safety standards and considerations concerning the proposed access configurations. Additionally, the project would comply with all site access requirements for residential developments detailed in the Municipal Code Chapter 9.35, *Access, Parking and Loading*, including the required curb-to-curb roadway width for access on streets from parking facilities and spacing standard for driveways of residential developments. Lastly, site plans of the project would also be reviewed by OCFA for review to ensure that inadequate design features or incompatible uses, for the purpose of emergency access, do not occur.

GATE STACKING ANALYSIS

Residential gate stacking evaluation has been performed based on the County of Orange Standard Plan 1107 requirements, which states that there should be one foot of stacking for each dwelling unit. When two or more gated access points are provided, the number of residential dwelling units served by each access should be estimated.

This standard was originally developed for gated entries staffed by a guard. With technological advancements, residents are typically provided with remote gate operating devices so that they do not have to stop and speak with a guard, swipe a card, or punch a code. Therefore, gate stacking is primarily associated with visitors who would have to stop at a guard shack or call box. Since guest parking typically accounts for approximately 10 to 20 percent of the total parking supply, the length of the visitor lane is conservatively estimated on the higher end as 20 percent of the stacking required, but in no case should the visitor lane be less than two car lengths.

A turn around should be provided for vehicles that are turned away at the gate. The turnaround should have a minimum radius of 38 feet to accommodate trucks and passenger vehicles. Where it is not possible, a minimum radius of 30 feet may be considered, on a case-by-case basis. Exceptions to this rule of providing a turnaround are as follows:

- When all visitor parking is provided outside of the gates and vacant striped-out stalls are provided for turning around at the dead end.
- When all visitor parking is provided at a completely separate location.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 77

- When the parking structure is for residents only, and the gate is situated very close to the street with signage "Residents Only" and the signage depicts where visitors should enter and if a call box is available for a visitor to use to contact the manager and the manager could open the gate to allow the visitor inside the site to turn around.

A resident only access gate is proposed at the bottom of the ramp between the ground level parking area and level two resident only parking. A second access driveway is proposed at Victoria Boulevard for residents and service vehicles only. All visitors would enter from the primary access driveway at Sepulveda Avenue. Upon entering from Sepulveda Avenue, access to the visitor parking area (at the ground level of the parking garage) is uncontrolled and therefore does not require any stacking length. On-site residents would utilize remotes to operate the gates. As such, no stacking length is necessary for the resident only gate (for level two of the parking garage). A Condition of Approval would require the project to install "Do Not Enter" directional signage and/or one-way pavement markings at the Sepulveda entry area to ensure exiting visitor vehicles do not unintentionally enter the inbound driveway lane.

The Victoria Boulevard gate is estimated to require 25 feet of stacking length to accommodate one service vehicle. The required stacking length for the Victoria Boulevard entrance would be 25 feet. The required stacking length for the Victoria Boulevard entrance would be accommodated on-site without backing into the public right-of-way and adequate turn around areas are provided in front of the gates. As such, impacts would be less than significant in this regard.

CONSTRUCTION

Construction activities associated with the project would generate traffic as a result of construction equipment being transported to and from the site, and vehicular traffic from construction workers, export of construction debris, and delivery of materials to the site. Staging areas for construction equipment and materials storage would be established on-site. The construction activities would include demolition, site preparation, grading/excavation, trenching, building construction, and paving.

Construction-related trips associated with trucks and employees traveling to and from the site in the morning and afternoon may result in some minor temporary and short-term traffic delays to vehicles traveling along Victoria Boulevard and/or Sepulveda Avenue. However, in accordance with Municipal Code Section 11.10.014, *Special Provisions*, construction noise is prohibited between the hours of 8:00 p.m. and 7:00 a.m. Monday through Saturday, and/or any time on Sunday or a Federal holiday. Further, Mitigation Measure TRA-1 would require a CMP, which would minimize project-related construction traffic impacts on the local circulation system. Per Mitigation Measure TRA-1, all construction vehicles would carry the required hauling permits and would use the most direct route via the project site to I-5. The exact haul routes would be confirmed with the City of Dana Point Director of Public Works and/or the adjacent

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 78

jurisdictions (e.g., Caltrans and the City of San Juan Capistrano) prior to approval. Construction may require temporary closures of vehicle lanes, bicycle lanes, and/or sidewalks. Mitigation Measure TRA-1 would require the Applicant (Developer) coordinate with the Director of Public Works regarding timing and duration of proposed temporary lane and/or sidewalk closures to ensure the closures would not impact operations of adjacent uses or emergency access. In addition, Mitigation Measure TRA-1 would ensure traffic signs, traffic cone arrangements, and flaggers are present during general drop-off and pick-up hours for nearby schools (i.e., Nobis Preschool, San Clemente Christian School) to ensure safe pedestrian access along the Project frontage for students. Overall, construction-related traffic impacts would be short-term and temporary, and implementation of Mitigation Measure TRA-1 would ensure construction-related project impacts are less than significant.

Mitigation Measures:

TRA-1 Prior to issuance of any grading and/or demolition permits, whichever occurs first, the Applicant (Developer) shall prepare a Construction Management Plan (CMP) to be submitted for review and approval by the City of Dana Point Director of Public Works. The requirement for a CMP shall be incorporated into the Project specifications and subject to verification by the Director of Public Works prior to final plan approval. The CMP shall include, at a minimum, the following measures, which shall be implemented during all construction activities as overseen by the Construction Contractor:

- Meet the standards established in the current California Manual on Uniform Traffic Control Device (MUTCD) as well as City of Dana Point requirements. The CMP shall be prepared by the contractor and submitted to the Director of Public Works for approval pertaining to off-site work, including sidewalk construction, building façade, underground utilities, and any work that would require temporary curb lane closures. The plan shall be developed according to the MUTCD (latest edition) guidelines, including plans for traffic signs, traffic cone arrangements, and flaggers to assist with pedestrian and traffic.
- Submit the CMP to the California Department of Transportation (Caltrans) and City of San Juan Capistrano for review and comment, prior to approval by the Director of Public Works, should construction hauling utilize facilities within these jurisdictions.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 79

- Identify traffic control for any street closure, detour, or other disruption to traffic circulation, including the necessary traffic controls to allow for construction-related traffic to enter and exit the site.
- Should project construction activities require temporary vehicle lane, bicycle lane, and/or sidewalk closures, the Applicant (Developer) shall coordinate with the Director of Public Works regarding timing and duration of proposed temporary lane and/or sidewalk closures to ensure the closures do not impact operations of adjacent uses or emergency access.
- Identify the routes that construction vehicles must utilize for the delivery of construction materials (i.e., lumber, tiles, piping, windows, etc.), to access the site, traffic controls and detours, and proposed construction phasing plan for the project.
- Specify all grading and equipment operations shall not be conducted between the hours of 8:00 p.m. and 7:00 a.m. Monday through Saturday, and/or any time on Sunday or a Federal holiday, pursuant to Section 11.10.014, Special Provisions, of the Dana Point Municipal Code.
- Should project construction activities occur during general drop-off and pick-up hours for nearby schools (i.e., Nobis Preschool), traffic signs, traffic cone arrangements, and flaggers shall assist with ensuring safe pedestrian access along the project frontage for students.
- Require the Applicant (Developer) to keep all haul routes clean and free of debris including, but not limited to, gravel and dirt, as a result of its operations. The Applicant (Developer) shall clean adjacent streets, as directed by the Director of Public Works, of any material which may have been spilled, tracked, or blown onto adjacent streets or areas.
- All construction-related parking and staging of vehicles shall be kept out of the adjacent public roadways and shall occur on-site.
- Traffic controls shall be implemented for any street closure, detour, or other disruption to traffic circulation and shall maintain emergency access to the site.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 80

Finding:

Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. These changes are identified in the form of the mitigation measure above. Upon implementation of the required mitigation, the potentially significant impact would be reduced to a less than significant level. The City of Dana Point hereby finds that implementation of the mitigation measure is feasible, and the measure is therefore adopted.

TRA-4 Project implementation could result in inadequate emergency access.

Support for this environmental impact conclusion is included in Section 5.7, *Transportation*, and in particular, starting on page 5.7-17 of the Draft EIR.

Emergency access would be provided via a secondary EVA driveway located at the southern end of Sepulveda Avenue. Emergency access only would be enforced through the use of bollards and/or similar devices (i.e., Knox key boxes). The EVA would also be accessible from the Victoria Boulevard Driveway as well and would include appropriate hammerhead turnaround for emergency vehicles.

Implementation of Mitigation Measure TRA-1 would require the project Applicant to submit a CMP that would detail plans emergency access to the site. Additionally, compliance with Municipal Codes 8.02 and 8.04, the project would comply with design standards outlined under the California Building Code and the California Fire Code regarding for emergency ingress/egress. As discussed above site plans for the proposed project would subject to review by the City and OCFA to ensure that adequate emergency access or emergency response would be provided. Lastly the project site plans would be subject to review by OCFA and OCSD for compliance with fire and emergency access standards and requirements. With the implementation of Mitigation Measure TRA-1, and by complying with Municipal Code regulations for emergency access design, impacts to the emergency access of the project site would be reduced to less than significant levels.

Mitigation Measures:

- TRA-1 Prior to issuance of any grading and/or demolition permits, whichever occurs first, the Applicant (Developer) shall prepare a Construction Management Plan (CMP) to be submitted for review and approval by the City of Dana Point Director of Public Works. The requirement for a CMP shall be incorporated into the Project specifications and subject to verification by the Director of Public Works prior to final plan approval. The CMP shall include, at a minimum, the following measures, which shall be implemented during all construction activities as overseen by the Construction Contractor:

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 81

- Meet the standards established in the current California Manual on Uniform Traffic Control Device (MUTCD) as well as City of Dana Point requirements. The CMP shall be prepared by the contractor and submitted to the Director of Public Works for approval pertaining to off-site work, including sidewalk construction, building façade, underground utilities, and any work that would require temporary curb lane closures. The plan shall be developed according to the MUTCD (latest edition) guidelines, including plans for traffic signs, traffic cone arrangements, and flaggers to assist with pedestrian and traffic.
- Submit the CMP to the California Department of Transportation (Caltrans) and City of San Juan Capistrano for review and comment, prior to approval by the Director of Public Works, should construction hauling utilize facilities within these jurisdictions.
- Identify traffic control for any street closure, detour, or other disruption to traffic circulation, including the necessary traffic controls to allow for construction-related traffic to enter and exit the site.
- Should project construction activities require temporary vehicle lane, bicycle lane, and/or sidewalk closures, the Applicant (Developer) shall coordinate with the Director of Public Works regarding timing and duration of proposed temporary lane and/or sidewalk closures to ensure the closures do not impact operations of adjacent uses or emergency access.
- Identify the routes that construction vehicles must utilize for the delivery of construction materials (i.e., lumber, tiles, piping, windows, etc.), to access the site, traffic controls and detours, and proposed construction phasing plan for the project.
- Specify all grading and equipment operations shall not be conducted between the hours of 8:00 p.m. and 7:00 a.m. Monday through Saturday, and/or any time on Sunday or a Federal holiday, pursuant to Section 11.10.014, Special Provisions, of the Dana Point Municipal Code.
- Should project construction activities occur during general drop-off and pick-up hours for nearby schools (i.e., Nobis Preschool), traffic signs, traffic cone arrangements, and flaggers shall assist with ensuring safe pedestrian access along the project frontage for students.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCFA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 82

- Require the Applicant (Developer) to keep all haul routes clean and free of debris including, but not limited to, gravel and dirt, as a result of its operations. The Applicant (Developer) shall clean adjacent streets, as directed by the Director of Public Works, of any material which may have been spilled, tracked, or blown onto adjacent streets or areas.
- All construction-related parking and staging of vehicles shall be kept out of the adjacent public roadways and shall occur on-site.
- Traffic controls shall be implemented for any street closure, detour, or other disruption to traffic circulation and shall maintain emergency access to the site.

Finding:

Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. These changes are identified in the form of the mitigation measure above. Upon implementation of the required mitigation, the potentially significant impact would be reduced to a less than significant level. The City of Dana Point hereby finds that implementation of the mitigation measure is feasible, and the measure is therefore adopted.

CUMULATIVE Future development, combined with other related projects, could substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment), and result in cumulative impacts.

Support for this environmental impact conclusion is included in Section 5.7, *Transportation*, and in particular, starting on page 5.7-20 of the Draft EIR.

Cumulative projects could result in an increase in hazards due to a geometric design feature or incompatible use. However, cumulative projects would be evaluated on a case-by-case basis through the development review process of their respective cities to determine the appropriate land use permit for authorizing their use and the conditions for their establishment and operation. The development review would ensure that safe access and circulation to and within the development area would be provided. Additionally, access to development sites would be required to comply with all applicable Municipal Code and City design standards and would be reviewed by the City and the OCFA to ensure that inadequate design features or incompatible uses do not occur as development occurs.

The proposed project would involve an increase in residential development above existing conditions. The proposed residential development is not anticipated to result in significant safety design hazards during project operations. Implementation of Mitigation Measure

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 83

TRA-1 would be required during construction activities to ensure safety practices during construction. The project would also be subject to applicable Municipal Code and City design standards and would be reviewed by the Director of Public Works and the OCFA to ensure that inadequate design features or incompatible uses do not occur. As such, the proposed project would not significantly contribute to a cumulative impact involving inadequate design features or incompatible uses. Impacts in this regard would be less than significant.

Mitigation Measures:

TRA-1 Prior to issuance of any grading and/or demolition permits, whichever occurs first, the Applicant (Developer) shall prepare a Construction Management Plan (CMP) to be submitted for review and approval by the City of Dana Point Director of Public Works. The requirement for a CMP shall be incorporated into the Project specifications and subject to verification by the Director of Public Works prior to final plan approval. The CMP shall include, at a minimum, the following measures, which shall be implemented during all construction activities as overseen by the Construction Contractor:

- Meet the standards established in the current California Manual on Uniform Traffic Control Device (MUTCD) as well as City of Dana Point requirements. The CMP shall be prepared by the contractor and submitted to the Director of Public Works for approval pertaining to off-site work, including sidewalk construction, building façade, underground utilities, and any work that would require temporary curb lane closures. The plan shall be developed according to the MUTCD (latest edition) guidelines, including plans for traffic signs, traffic cone arrangements, and flaggers to assist with pedestrian and traffic.
- Submit the CMP to the California Department of Transportation (Caltrans) and City of San Juan Capistrano for review and comment, prior to approval by the Director of Public Works, should construction hauling utilize facilities within these jurisdictions.
- Identify traffic control for any street closure, detour, or other disruption to traffic circulation, including the necessary traffic controls to allow for construction-related traffic to enter and exit the site.
- Should project construction activities require temporary vehicle lane, bicycle lane, and/or sidewalk closures, the Applicant (Developer) shall coordinate with the Director of Public Works regarding timing and duration of proposed temporary lane and/or

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 84

sidewalk closures to ensure the closures do not impact operations of adjacent uses or emergency access.

- Identify the routes that construction vehicles must utilize for the delivery of construction materials (i.e., lumber, tiles, piping, windows, etc.), to access the site, traffic controls and detours, and proposed construction phasing plan for the project.
- Specify all grading and equipment operations shall not be conducted between the hours of 8:00 p.m. and 7:00 a.m. Monday through Saturday, and/or any time on Sunday or a Federal holiday, pursuant to Section 11.10.014, Special Provisions, of the Dana Point Municipal Code.
- Should project construction activities occur during general drop-off and pick-up hours for nearby schools (i.e., Nobis Preschool), traffic signs, traffic cone arrangements, and flaggers shall assist with ensuring safe pedestrian access along the project frontage for students.
- Require the Applicant (Developer) to keep all haul routes clean and free of debris including, but not limited to, gravel and dirt, as a result of its operations. The Applicant (Developer) shall clean adjacent streets, as directed by the Director of Public Works, of any material which may have been spilled, tracked, or blown onto adjacent streets or areas.
- All construction-related parking and staging of vehicles shall be kept out of the adjacent public roadways and shall occur on-site.
- Traffic controls shall be implemented for any street closure, detour, or other disruption to traffic circulation and shall maintain emergency access to the site.

Finding:

Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. These changes are identified in the form of the mitigation measure above. Upon implementation of the required mitigation, the potentially significant impact would be reduced to a less than significant level. The City of Dana Point hereby finds that implementation of the mitigation measure is feasible, and the measure is therefore adopted.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCFA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 85

CUMULATIVE Future development, combined with other related projects, could result in inadequate emergency access.

Support for this environmental impact conclusion is included in Section 5.7, *Transportation*, and in particular, starting on page 5.7-21 of the Draft EIR.

Cumulative projects could result in inadequate emergency access in the area. However, future projects would be required to comply with the City's development review process on a case-by-case basis, including review for compliance with the City's Municipal Code pertaining to maintaining/providing emergency access. New developments would also be required to comply with all applicable fire and building codes and ordinances for construction and access to the site during both construction and operational phases. Individual projects would be reviewed by the Director of Public Works and OCFA to determine the specific fire requirements applicable to the specific development and to ensure compliance with these requirements. This would ensure that new developments would provide adequate emergency access to and from each site. Further, the City and OCFA would review any modifications to existing roadways to ensure that adequate emergency access or emergency response would be maintained. Emergency response and evacuation procedures would be coordinated through the City in coordination with the OCSD and OCFA.

The project would involve an increase in residential development above existing conditions. Project operations are not anticipated to significantly affect emergency access. Further, implementation of Mitigation Measure TRA-1 would ensure emergency access to the project site during construction activities. The project would comply with Municipal Codes 8.02 and 8.04 and comply with design standards outlined under the California Building Code and the California Fire Code. Additionally, the project would be subject to site plan review under the OCFA and the OCSD to ensure compliance with regional fire and emergency access standards and requirements. With the implementation of Mitigation Measure TRA-1, as well as compliance with State, regional, and local standards and regulations, the project would not significantly contribute to a cumulatively considerable impact regarding emergency access. As such, a less than significant impact would result in this regard.

Mitigation Measures:

- TRA-1 Prior to issuance of any grading and/or demolition permits, whichever occurs first, the Applicant (Developer) shall prepare a Construction Management Plan (CMP) to be submitted for review and approval by the City of Dana Point Director of Public Works. The requirement for a CMP shall be incorporated into the Project specifications and subject to verification by the Director of Public Works prior to final plan approval. The CMP shall include, at a minimum, the following measures, which shall be

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 86

implemented during all construction activities as overseen by the Construction Contractor:

- Meet the standards established in the current California Manual on Uniform Traffic Control Device (MUTCD) as well as City of Dana Point requirements. The CMP shall be prepared by the contractor and submitted to the Director of Public Works for approval pertaining to off-site work, including sidewalk construction, building façade, underground utilities, and any work that would require temporary curb lane closures. The plan shall be developed according to the MUTCD (latest edition) guidelines, including plans for traffic signs, traffic cone arrangements, and flaggers to assist with pedestrian and traffic.
- Submit the CMP to the California Department of Transportation (Caltrans) and City of San Juan Capistrano for review and comment, prior to approval by the Director of Public Works, should construction hauling utilize facilities within these jurisdictions.
- Identify traffic control for any street closure, detour, or other disruption to traffic circulation, including the necessary traffic controls to allow for construction-related traffic to enter and exit the site.
- Should project construction activities require temporary vehicle lane, bicycle lane, and/or sidewalk closures, the Applicant (Developer) shall coordinate with the Director of Public Works regarding timing and duration of proposed temporary lane and/or sidewalk closures to ensure the closures do not impact operations of adjacent uses or emergency access.
- Identify the routes that construction vehicles must utilize for the delivery of construction materials (i.e., lumber, tiles, piping, windows, etc.), to access the site, traffic controls and detours, and proposed construction phasing plan for the project.
- Specify all grading and equipment operations shall not be conducted between the hours of 8:00 p.m. and 7:00 a.m. Monday through Saturday, and/or any time on Sunday or a Federal holiday, pursuant to Section 11.10.014, Special Provisions, of the Dana Point Municipal Code.
- Should project construction activities occur during general drop-off and pick-up hours for nearby schools (i.e., Nobis Preschool), traffic signs, traffic cone arrangements, and flaggers shall assist with

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 87

ensuring safe pedestrian access along the project frontage for students.

- Require the Applicant (Developer) to keep all haul routes clean and free of debris including, but not limited to, gravel and dirt, as a result of its operations. The Applicant (Developer) shall clean adjacent streets, as directed by the Director of Public Works, of any material which may have been spilled, tracked, or blown onto adjacent streets or areas.
- All construction-related parking and staging of vehicles shall be kept out of the adjacent public roadways and shall occur on-site.
- Traffic controls shall be implemented for any street closure, detour, or other disruption to traffic circulation and shall maintain emergency access to the site.

Finding:

Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. These changes are identified in the form of the mitigation measure above. Upon implementation of the required mitigation, the potentially significant impact would be reduced to a less than significant level. The City of Dana Point hereby finds that implementation of the mitigation measure is feasible, and the measure is therefore adopted.

6. Tribal Cultural Resources

CUL-3 The project could cause a significant impact to a tribal cultural resource.

Support for this environmental impact conclusion is included in Section 5.3, *Tribal and Cultural Resources*, and in particular, starting on page 5.3-19 of the Draft EIR.

The City sent letters inviting tribes to consult on the project per Assembly Bill 52 and Senate Bill 18 on April 15, 2021. The Rincon Band of Luiseño Indians (Rincon Band) responded on April 30, 2021, stating that the project site is not located within Rincon Band's specific Area of Historic Interest. As such, no consultation was requested. No other responses from the Native American Heritage Commission individuals or tribal organizations were received.

Based on the records search, literature review, field survey results, and tribal consultation results, there is low potential for unknown tribal cultural resources to be discovered on-site.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 88

during site disturbance activities. The project proposes excavation activities for the purpose of the underground parking structure. As such, project excavation could encounter native soils which has the potential to support undiscovered tribal cultural resources. If tribal cultural resources are encountered during project construction, Mitigation Measure CUL-1 would require all project construction efforts to halt until an archaeologist examines the site, identifies the archaeological significance of the find, and recommends a course of action which must be implemented. Implementation of Mitigation Measures CUL-1 would ensure that appropriate protocols are in place in the event unknown cultural resources, including archaeological and tribal cultural resources, are discovered during ground-disturbing activities. As such, impacts to tribal cultural resources would be reduced to less than significant levels.

Mitigation Measures:

- CUL-1 Unanticipated Discovery of Cultural Resources. The project Applicant shall retain a qualified archaeologist who meets the Secretary of the Interior's Professional Qualifications Standards for archaeology to conduct Worker's Environmental Awareness Program (WEAP) training for archaeological sensitivity for all construction personnel prior to the commencement of any ground disturbing activities. Archaeological sensitivity training should include a description of the types of cultural resources that may be encountered, cultural sensitivity issues, regulatory issues, and the proper protocol for treatment of the materials in the event of a find. If archaeological resources are encountered during ground-disturbing activities, work in the immediate area should be halted and the archaeologist shall evaluate the find. If the resources are Native American human remains, the County Coroner and the Native American Heritage Commission shall be contacted as mandated by law. If necessary, the evaluation may require preparation of a treatment plan and archaeological testing for California Register of Historical Resources (CRHR) eligibility. The treatment plan shall be reviewed and approved by the qualified archaeologist. If the discovery proves to be significant under CEQA and cannot be avoided by the project, additional work may be warranted, such as data recovery excavation, and, if so, shall be identified by the archaeologist to mitigate any such significant impacts to cultural resources, if identified.

Finding:

Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. These changes are identified in the form of the mitigation measure above. Upon implementation of the required mitigation, the potentially significant impact would be reduced to a less than significant level. The City of Dana Point hereby finds that implementation of the mitigation measure is feasible, and the measure is therefore adopted.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 89

CUMULATIVE The project, combined with other related cumulative projects, could cause a cumulatively considerable impacts to tribal cultural resources.

Support for this environmental impact conclusion is included in Section 5.3, *Tribal and Cultural Resources*, and in particular, starting on page 5.3-20 of the Draft EIR.

Project-related impacts to tribal cultural resources have been determined to be less than significant with implementation of Mitigation Measures CUL-1. Future cumulative projects would be evaluated on a project-by-project basis to determine the extent of potential impacts to site-specific tribal cultural resources. Related projects would be required to adhere to State and Federal regulations, as well as project-specific mitigation measures.

Implementation of Mitigation Measures CUL-1 would reduce potentially significant project impacts to tribal cultural resources to less than significant levels. Thus, the project's less than significant impacts would not be cumulatively considerable.

Mitigation Measures:

CUL-1 Unanticipated Discovery of Cultural Resources. The project Applicant shall retain a qualified archaeologist who meets the Secretary of the Interior's Professional Qualifications Standards for archaeology to conduct Worker's Environmental Awareness Program (WEAP) training for archaeological sensitivity for all construction personnel prior to the commencement of any ground disturbing activities. Archaeological sensitivity training should include a description of the types of cultural resources that may be encountered, cultural sensitivity issues, regulatory issues, and the proper protocol for treatment of the materials in the event of a find. If archaeological resources are encountered during ground-disturbing activities, work in the immediate area should be halted and the archaeologist shall evaluate the find. If the resources are Native American human remains, the County Coroner and the Native American Heritage Commission shall be contacted as mandated by law. If necessary, the evaluation may require preparation of a treatment plan and archaeological testing for California Register of Historical Resources (CRHR) eligibility. The treatment plan shall be reviewed and approved by the qualified archaeologist. If the discovery proves to be significant under CEQA and cannot be avoided by the project, additional work may be warranted, such as data recovery excavation, and, if so, shall be identified by the archaeologist to mitigate any such significant impacts to cultural resources, if identified.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 90

Finding:

Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. These changes are identified in the form of the mitigation measure above. Upon implementation of the required mitigation, the potentially significant impact would be reduced to a less than significant level. The City of Dana Point hereby finds that implementation of the mitigation measure is feasible, and the measure is therefore adopted.

D. FINDINGS ON SIGNIFICANT UNAVOIDABLE IMPACTS

Significant and unavoidable impacts are those impacts in which mitigation measures were found to be infeasible or would not lessen impacts to less than significant levels. The Draft EIR did not identify any significant and unavoidable impacts associated with the proposed project.

E. FINDINGS ON RECIRCULATION

CEQA Guidelines Section 15088.5(a) requires a lead agency to "recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the Draft EIR for public review under Section 15087 but before certification. As used in this section, the term 'information' can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not 'significant' unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement."

Comment letters received on the Draft EIR and responses to those comment letters provided in the Final EIR do not identify any significant new information requiring recirculation. Further, it is acknowledged that the project Applicant has proposed slight modifications to the proposed project. Such changes have been documented in Final EIR Section 2.0, Revisions to Information Presented in the Draft EIR. Based on the analysis presented in Final EIR Section 2.0, these revisions to the project do not change the conclusions presented in the Draft EIR. These modifications are not considered to result in any new or substantially greater significant impacts as compared to those identified in the Draft EIR, or the consideration of new or different alternatives or mitigation measures. As a result, pursuant to *CEQA Guidelines* Section 15088.5, a recirculation of the Draft EIR is not required.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 91

F. FINDINGS ON PROJECT ALTERNATIVES

CEQA requires that the discussion of alternatives focus on alternatives to the project or its location that are capable of avoiding or substantially lessening any significant effects of the project, as well as an analysis of what the environmental effects of not proceeding with the project would be as part of the "no project" alternative analysis. As discussed above, all environmental impacts could be mitigated below a level of significance and no significant and unavoidable impacts would result.

The Draft EIR analyzed two alternatives to the proposed project that could avoid or substantially lessen the project's potentially significant impacts.

1. "No Project" Alternative

In accordance with the *CEQA Guidelines*, "the no project analysis shall discuss the existing conditions ..., as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services." The *CEQA Guidelines* continue to state that "in certain instances, the no project alternative means 'no build' wherein the existing environmental setting is maintained." The No Project Alternative includes a discussion and analysis of the existing baseline conditions at the time the Notice of Preparation was published on July 19, 2021. The "No Project" scenario is described and analyzed to enable the decision-makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project.

Therefore, the "No Project" Alternative assumes the circumstance under which the proposed project does not proceed, and the project site's current General Plan land use designations and zoning remain as is. Based on the General Plan Land Use Map, the project site is designated "Community Facility" (CF) and "Recreation/Open Space" (R/OS) and is situated within the Coastal Overlay District boundary. Based on the City's Zoning Map, the project site is zoned "Community Facilities" (CF) and "Recreation" (REC). The northwestern portion of the project site is also located in the Floodplain Overlay District (FP-2) boundary.

Given that the site is currently developed with uses consistent with the existing land use designations and zoning (i.e., CUSD Grounds Department facilities), it is reasonably expected that buildout of the site under existing designations and zoning would be the existing CUSD facilities. Thus, the "No Project" Alternative is essentially a 'no build' alternative wherein the existing environmental setting is maintained. Specifically, the site would continue to operate as a CUSD Grounds Department facility for operations, maintenance, storage, bus/vehicle wash area, and refueling of school buses and other district vehicles. The existing structures on-site would remain, and no new development would occur.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 92

Unlike the proposed project, the "No Project" Alternative would not require a General Plan Amendment, Zone Change, Specific Plan, Vesting Tentative Parcel Map, Local Coastal Program Amendment, Coastal Development Permit, Site Development Permit, Development Agreement, or Site Plan Review.

Finding:

The City Council rejects the No Project Alternative for the following reasons: (1) this alternative is essentially a "no build" alternative in which no new development would occur; and (2) this alternative would not achieve any of the project's basic objectives. In addition, this alternative would not provide any of the community benefits to the City and CUSD that would be provided through the development agreement to be approved concurrent with the proposed project.

2. "Village Commercial/ Residential Zoning District Development" Alternative

The "Village Commercial/Residential Zoning District Development" Alternative aims to develop the project site assuming the portion of the site currently designated and zoned CF is redesignated to Commercial/Residential and rezoned to Village Commercial/Residential (V-C/R), similar to adjacent properties to the north and west. The adjacent properties to the north and west were redesignated and rezoned to Commercial/Residential and V-C/R, respectively, as part of the Doheny Village Zoning District Update Project (approved by Dana Point City Council in July 2021). As such, it is reasonable to include an alternative to the proposed project in which the site is redesignated and rezoned and developed similar to its adjacent properties within Doheny Village. As part of this development alternative, the 1.1-acre on-site parcel along Sepulveda Avenue, currently designated Open Space and zoned REC, would not be redesignated or rezoned.

Based on the V-C/R zoning district development standards, the V-C/R Zoning District Development Alternative would demolish the existing CUSD Grounds Department facility and allow for construction of a multi-family residential development.

The "V-C/R Zoning District Development" Alternative would develop a 114-unit multi-family residential development on 4.4 acres of the project site. The remaining 1.1-acre parcel along Sepulveda Avenue would be graded and landscaped with turf, to serve as public open space to be owned and maintained by the City of Dana Point Parks Division.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX

Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001

PAGE 93

The multi-family residential development would construct seven three-story apartment buildings and one leasing/amenity building. The one-story, 5,500-square foot leasing/amenity building would be located near the main entry at Victoria Boulevard and Via Santa Rosa. A secondary gated entry would be provided at a second driveway along Victoria Boulevard at the northeast corner of the site. The seven apartment buildings would be three-stories (ranging from 35 to 40 feet in height) and would include 87 tuck-under (covered) parking spaces on the ground level. Carports and uncovered parking spaces (75 and 64 spaces, respectively) would also be provided throughout the site and along the eastern and southern project boundary. In addition to the amenity and leasing building, a community pool is proposed in the center of the site.

This alternative would develop 192 fewer residential units than the proposed project at a substantially lower density of 20.7 dwelling units per acre. However, it is noted that the V-C/R district would allow a maximum density of 30 dwelling units per acre, up to 132 dwelling units at the project site. The residential buildings would be three stories in height. This Alternative would also construct off-street surface parking spaces and "tuck-under" garage spaces to accommodate the new apartment complex.

While this alternative would provide 1.1 acres of public open space along Sepulveda Avenue, it would provide less private open space compared to the project. Additionally, this alternative would not develop the private courtyards or the dual-purposed landscaped emergency vehicle access road along the eastern and southern project boundary provided by the proposed project. The various private residential amenities proposed under the project in the southern portion of the site would not be provided.

Similar to the proposed project, the "V-C/R Zoning District Development" Alternative would require a General Plan Amendment, Zone Change, Local Coastal Program Amendment, Coastal Development Permit, Vesting Tentative Parcel Map, and Site Plan Review. This alternative would not require a Specific Plan. The CUSD property is public land subject to the provisions of the Surplus Land Act, which requires at least 15 percent lower income units. As such, similar to the proposed project, this alternative would also be required to provide at least 15 percent affordable units. However, given the lower density proposed, the affordable units would be proportionately decreased.

Finding:

The City Council rejects the "V-C/R Zoning District Development" Alternative for the following reasons: (1) the project would achieve 11 of the project's basic objectives but not to the extent as the proposed project for some objectives; and (2) this alternative's reduced density would result in fewer affordable units and fewer public and private amenities compared to the proposed project. In addition, this alternative would not provide any of the community benefits to the City and CUSD that would be provided through the development agreement to be approved concurrent with the proposed project.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
Final EIR - GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 94

ENVIRONMENTALLY SUPERIOR ALTERNATIVE

The No Project Alternative is the environmentally superior alternative, as it would avoid or lessen most of the project's environmental impacts. However, according *CEQA Guidelines* Section 15126.6(e), "if the environmentally superior alternative is the "no project" alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives." Accordingly, the "V-C/R Zoning District Development" Alternative is considered environmentally superior to the proposed project.

It is acknowledged that the "No Project" Alternative would not meet any of the project's basic objectives. This alternative would not provide new housing in the City and would not redevelop an underutilized parcel. No pedestrian-oriented development would be provided under this alternative. Beautification methods, such as landscaping and streetscaping enhancements, would not be provided. Although the existing landscaped area (along the project site's western boundary) would remain designated and zoned open space, the "No Project" Alternative would not provide any new active open space areas at the northwest corner or southern portion of the project site.

Accordingly, because the fewer number of units would result in correspondingly reduced impacts for specific environmental issues, the "V-C/R Zoning District Development" Alternative is considered environmentally superior to the proposed project. The "V-C/R Zoning District Development" Alternative would result in reduced environmental impacts regarding tribal and cultural resources; air quality; greenhouse gas emissions; energy; noise; and public services and recreation. This alternative would achieve the project's basic objectives, although not to the extent of the to the proposed project. This alternative would develop a 114-unit multi-family development with at least 15 percent affordable units (i.e., at least 17 low-income units). However, the proposed project would provide a 306-unit development and provide substantially more affordable housing units. The "V-C/R Zoning District Development" Alternative would maintain the existing perimeter sidewalks, provide landscaping along Victoria Boulevard, and provide a 1.1-acre public open space along Sepulveda Avenue. However, the proposed landscaping along Victoria Boulevard and Sepulveda Avenue under this alternative would not be as substantive as the proposed project. The proposed open space under this alternative would not provide as much of a focal element for the public realm as the project. Specifically, the Victoria Shore Park proposed as the corner of Sepulveda Avenue and Victoria Boulevard would not be implemented. Additionally, this alternative would not provide other open space and recreational amenities such as the Arrival Promenade, rooftop garden, public paseos, private courtyards, and dog park.

ACTION DOCUMENT 5: Draft Planning Commission Resolution No. 24-05-13-XX for DA

RESOLUTION NO. 24-05-13-XX

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF DANA POINT, CALIFORNIA, RECOMMENDING APPROVAL BY ORDINANCE OF THE CITY COUNCIL OF DEVELOPMENT AGREEMENT DA24-0001 BETWEEN THE CITY, TOLL BROTHERS APARTMENT LIVING, AND CAPISTRANO UNIFIED SCHOOL DISTRICT FOR THE VICTORIA BOULEVARD APARTMENTS PROJECT

Applicant: Toll Brothers Apartment Living
Owner: Capistrano Unified School District

The Planning Commission of the City of Dana Point does hereby resolve as follows:

WHEREAS, the Planning Commission of the City of Dana Point considered the proposed development of the Victoria Boulevard Apartments pursuant to the Victoria Boulevard Specific Plan; and

WHEREAS, on May 13, 2024, the Planning Commission held duly noticed public hearings to consider the Victoria Boulevard Apartments which includes a General Plan Amendment GPA20-0002, Zone Change ZC24-0001, Specific Plan SP24-0001, Local Coastal Plan Amendment LCPA20-0002, and Coastal Development Permit CDP20-0005, Site Development Permit SDP20-0007, Vesting Tentative Parcel Map VTPM20-0001, Development Agreement DA24-0001 and EIR Certification (SCH#2021070304); and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, the Planning Commission considered all factors relating to the Victoria Boulevard Apartments project; and

That the Planning Commission adopt the following findings:

- A. The proposed Development Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan including the proposed amendments to the General Plan, Zone Change, and objectives, policies, Victoria Boulevard Apartments Specific Plan;

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 2

- B. The proposed Development Agreement is consistent with the City's Growth Management Element and adequately provides for the installation and operation of the infrastructure required to service the subject development;
- C. The development proposed in association with the Development Agreement is compatible with the uses authorized in the district in which the real property is located;
- D. That the proposed Development Agreement is in conformity with the public necessity, public convenience, general welfare, and good land use practices;
- E. The proposed Development Agreement provides for public benefits to a degree which warrants any concessions granted by the City;
- F. The proposed Development Agreement will in no way be detrimental to the public health, safety and general welfare;
- G. The proposed Development Agreement will have a positive fiscal impact on the City;
- P. That the Planning Commission recommends that the City Council adopt the Development Agreement as shown in Exhibit "A" of this Resolution, attached hereto and incorporated herein by this reference.

That the Planning Commission recommends that the City Council adopt Development Agreement DA24-0001 as included in Exhibit "A."

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 3

PASSED, APPROVED, AND ADOPTED at a regular meeting of the Planning Commission of the City of Dana Point, California, held on this 13th day of May, 2024, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mary Opel, Chair
Planning Commission

ATTEST:

Brenda Wisneski
Director of Community Development

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 4

EXHIBIT A

Development Agreement

PLEASE RECORD AND WHEN RECORDED RETURN
TO:

CITY OF DANA POINT
33282 Golden Lantern
Dana Point, CA 92629
Attn: City Attorney

VICTORIA BOULEVARD APARTMENTS

DEVELOPMENT AGREEMENT

This Development Agreement (hereinafter "*Agreement*") is entered into on _____, 2024, by and between (1) the CITY OF DANA POINT (hereinafter "*City*"), a municipal corporation of the State of California, and (2) TOLL BROS., INC., a Pennsylvania corporation ("*Toll Bros.*" or "*Developer*") and CAPISTRANO UNIFIED SCHOOL DISTRICT, a public school district duly organized and validly existing under the Constitution and the laws of the State of California ("*CUSD*").

RECITALS

A. CUSD is the fee owner of all of the real property described on Exhibit A and depicted on Exhibit B, consisting of approximately 5.51 gross acres of land area located in the City of Dana Point, County of Orange, State of California ("*Property*").

B. Toll Bros., as optionee, and CUSD, as optionor, have entered into an agreement entitled "Option to Lease Real Property, dated January 15, 2019, as amended (hereinafter the "*Option Agreement*")", which provides Toll Bros., as optionee, the right to exercise an option to lease the Property from CUSD, as optionor, pursuant to the terms of a Ground Lease which is Exhibit B to the Option Agreement, and which Ground Lease provides for the development of the Property with a multi-family apartment complex with associated public and private open space and amenities on the Property ("*Property Lease*").

C. The Planning and Zoning approvals for the development of Developer's proposed project on the Property obtained prior to or concurrent with the Effective Date of this Agreement (collectively, the "*Development Approvals*") include, but are not limited to, the following:

- i. General Plan Amendment: To ensure that the General Plan land use designations are consistent with the portions of the General Plan that function as the Coastal Element of the Local Coastal Plan, the General Plan has been amended to change the land use designation on the Property from CF and R/OS to "Specific Plan Overlay."

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 5

ii. Zone Change: The Zoning Code has been amended to rezone the Property from CF and REC to "Victoria Boulevard Specific Plan" VBSP.

iii. Local Coastal Plan Amendment: An amendment to the Local Coastal Plan is required to make the Victoria Boulevard Specific Plan consistent with the Local Coastal Plan ("Local Coastal Plan Amendment"). After approval by the City, the Local Coastal Plan Amendment must be approved and certified by the California Coastal Commission in order for the approval to be deemed final, and any modification thereto approved by the City.

iv. Victoria Boulevard Specific Plan: The Victoria Boulevard Specific Plan has been adopted in accordance with Chapter 9.33 of the Zoning Code. It serves both planning and regulatory functions including without limitation land use regulations, circulation pattern, public facilities/infrastructure, and development standards. All future development within the Specific Plan area, which includes the Property, shall be subject to compliance with the Specific Plan regulations.

v. Environmental Clearance Document: Victoria Boulevard Apartments Environmental Impact Report, State Clearinghouse Number 2021070304, together with its associated findings of fact and mitigation monitoring and reporting program has been certified by the City Council.

D. Subject to the Development Approvals, Developer intends to develop a project on the Property that shall remain within the following parameters (collectively, "*Core Project Characteristics*");

i. Unit and Height Limit: Two (2) to five (5) story apartment complex, not to exceed three hundred six (306) total units, consisting of no more than 260 market rate units and no less than forty-six (46) affordable units ("*Affordable Units*"), with an attached six-story (seven level) parking structure. Project height shall be limited to fifty (50) feet high within forty (40) feet of the Victoria Boulevard right of way. In all other areas, Project height shall be limited to sixty five (65) feet; provided, however, that roof mounted equipment and rooftop recreation amenities may extend to a height of seventy five (75) feet and recreational structures to eighty five (85) feet provided they are located in the middle or rear of the property.

ii. Affordable Unit Mix: No less than one-third (1/3) of the Affordable Units shall be rented as Very Low Income Housing. No less than one-third (1/3) of the Affordable Units shall be rented as Low Income Housing. The remaining Affordable Units shall be rented as Moderate Income Housing. Developer shall agree to record a deed restriction and covenant acceptable to City to maintain the continued affordability of all Affordable Units for a minimum of fifty-five (55) years.

iii. Victoria Shore Park: A total of 17,666 square feet (0.406 acres) of public open space shall include Victoria Shore Park (at the southeastern corner of Sepulveda Avenue and Victoria Boulevard), which shall include exercise equipment, a shaded surf pavilion with seating and an art wall, and shall be maintained by Developer in perpetuity and in accordance with all applicable City park standards, shall not be gated, and shall include public access easements for pedestrians, bicyclists and emergency access, which shall be in a

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 6

form acceptable to the City and shall be recorded upon completion of the physical construction of the park and its improvements. The physical construction of the park shall be in accordance with Dana Point Public Works standards, and the owner retained licensed landscape architect's recommendations, subject to City review and approval, inspected by the City at the owner's expense.

iv. Additional Public Open Space: 63,452 square feet (1.457 acres) of public street and frontage open space, as well as a dog park and public paseos along the former La Playa Avenue right-of-way (the public paseo shall be no less than 26,289 square feet at the rear of the building (improved with six (6) feet of sidewalk with landscaping) and shall also include children's play elements, boulders, and other amenities acceptable to the City. The public paseos and other hardscape areas of La Playa Avenue shall be enhanced pavement in accordance with Orange County Fire Authority standards and shall not be asphalt. All of the foregoing shall be maintained by Developer in perpetuity and in accordance with all applicable City public works and parks standards, shall not be gated, and shall include public access easements for pedestrians, bicyclists and emergency access, which shall be in a form acceptable to the City and shall be recorded upon completion of the physical construction of the open space and its improvements.

v. Private Open Space: 44,644 square feet (1.025 acres) of private active open space, and an additional 15,778 square feet (0.36 acre) of private passive open space, all of which shall be maintained by Developer in perpetuity.

vi. Enhanced Landscape and Streetscape Amenities: All improvements as specified in the Development approvals, including without limitation (i) Establishment of no less than 27 on-street parking spaces along the southside of Victoria Boulevard and 13 on-street parking spaces along the eastside of Sepulveda Avenue, reflecting a 38 percent increase (11 stalls) from existing conditions, parking along Victoria shall be angled parking and shall be landscape enhanced; (ii) Street amenities to include ample landscaping and other amenities acceptable to the City; (iii) New curb, gutter, and ten (10) foot sidewalk along Victoria Blvd (increasing sidewalk width from four (4) feet existing to ten (10) feet to allow for bicycles and pedestrians; (iv) New ten (10) foot sidewalk along Sepulveda Blvd (increasing sidewalk from four (4) feet to ten (10) feet to allow for bicycles and pedestrians; (v) new curb and gutter to replace existing driveways on Sepulveda; (vi) Relocation of catch basin at the corner of Victoria and other storm drain modifications to accommodate street improvements; (vii) Caltrans drainage culvert to be modified/replaced with junction structure; required upgrades to SCWD system; (viii) a cul-de-sac and sidewalk at Sepulveda dead-end, and (ix) other amenities acceptable to the City along sidewalk on Victoria.

Development consistent with and subject to all of the Development Approvals, the Core Project Characteristics, the Development Plan, the proposed site plan attached as Exhibit C, the Mitigation Measures specified in Exhibit D, and the Land Use Regulations is hereinafter referred to as the "Project."

F. Government Code Sections 65864 *et seq.* ("Development Agreement Law") authorize City to enter into binding development agreements with persons having a legal or equitable interest in real property for the development of such property, all for the purpose of strengthening the public planning process, encouraging private participation and comprehensive planning, and reducing

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 7

the economic costs of such development. Toll Bros., CUSD and City have agreed to enter into this Development Agreement in order to memorialize and secure the respective expectations of the City and Toll Bros. that Toll Bros. may proceed with the Project in accordance with the existing policies, rules, and regulations as set forth in this Development Agreement.

F. The City Council has found that this Agreement is in the best public interest of the City and its residents. Adopting this Agreement constitutes a present exercise of the City's police power, and reflects the findings by the City that the Project is consistent with the goals and policies of the City's General Plan, zoning and Victoria Boulevard Specific Plan, and imposes appropriate standards and requirements with respect to the Development of the Property in order to maintain the overall quality of life and of the environment within the City. Prior to its approval of this Agreement, City considered the environmental impacts of the Project and completed its environmental review of the Project.

G. On _____, the Planning Commission of City held a public hearing on the Developer's application for approval of this Agreement, made certain findings and determinations with respect thereto, and adopted Planning Commission Resolution No. _____ recommended to the City Council that this Agreement be approved. On _____, the City Council held a public hearing on the Developer's application for approval of this Agreement, considered the recommendations of the Planning Commission, and found that this Agreement is consistent with City's General Plan. On _____, the City Council introduced Ordinance No. _____, approving this Development Agreement for first reading. On _____, the City Council approved Ordinance No. _____, which takes effect as of _____.

COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

I. DEFINITIONS AND EXHIBITS.

1.1 **Definitions.** This Agreement uses a number of terms having specific meanings, as defined below. These specially defined terms are distinguished by having the initial letter capitalized, or all letters capitalized, when used in the Agreement. The defined terms include the following:

1.1.1 "*Adjusted for household size appropriate to the unit*" means a household of one person in the case of a studio unit, a household of two persons in the case of a one-bedroom unit, a household of three persons in the case of a two-bedroom unit, a household of four persons in the case of a three-bedroom unit, and a household of five persons in the case of a four-bedroom unit.

1.1.2 "*Agreement*" means this Development Agreement.

1.1.3 "*Affiliate*" means a person or entity that, directly or indirectly controls the Developer, is controlled by the Developer, or is, with the Developer, under common control of another person or entity. Indicia of control include, without limitation, interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees; and use of substantially the same management, ownership or principals as the Developer.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 8

1.1.4 "*Affordable Housing*" means housing which is rented for an amount that is limited by the requirements imposed by Health and Safety Code Section 50053.

1.1.5 "*Affordable Housing Agreement*" means an agreement between City and Developer substantially and substantively in the form attached hereto as Exhibit E.

1.1.6 "*Affordable Rent*" means for a Very Low Income Household the maximum monthly rent that does not exceed the amount of rent (including a reasonable utility allowance) for a Very Low Income Household authorized pursuant to Health and Safety Code Section 50053 as such statute exists on the date hereof, which is the product of thirty percent (30%) times fifty percent (50%) of Median Income, adjusted for household size appropriate to the unit. "*Affordable Rent*" means for a Low Income Household the maximum monthly rent that does not exceed the amount of rent (including a reasonable utility allowance) for a Lower Income Household authorized pursuant to Health and Safety Code Section 50053 as such statute exists on the date hereof, which is the product of thirty percent (30%) times sixty percent (60%) of Median Income, adjusted for household size appropriate to the unit. "*Affordable Rent*" means for a Moderate Income Household the maximum monthly rent that does not exceed the amount of rent (including a reasonable utility allowance) for a Moderate Income Household authorized pursuant to Health and Safety Code Section 50053 as such statute exists on the date hereof, which is the product of thirty percent (30%) times one hundred ten percent (110%) of Median Income, adjusted for household size appropriate to the unit.

1.1.7 "*Affordable Units*" means the no less than 46 apartment units to be developed as part of the Project on the Property as Affordable Housing, consisting of a mix of sizes and bedroom numbers that is substantially equal to the size and bedroom number of market rate units in the Project, and to be distributed throughout the Project.

1.1.8 "*Applicable Law*" means all federal, state, and local laws and regulations applicable to the Project as of the Effective Date.

1.1.9 "*Certificate*" means the "Certificate of Agreement Compliance" referred to in Section 4.4 of this Agreement.

1.1.10 "*City Council*" means the City Council of the City.

1.1.11 "*City Parties*" means the City, City Council, City officers, employees, attorneys and agents.

1.1.12 "*Claim*" means any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind (including consultant and expert fees, Legal Costs, and expenses and investigation costs of whatever kind or nature), and any judgment caused or initiated by a third party. Without limiting the foregoing, "Claims" include any matter that results or arises in any way from any of the following: (1) the noncompliance by Developer or its contractor with any applicable local, state and/or federal law or regulation, including, without limitation, any applicable federal and/or state labor laws or regulations (including, without limitation, if applicable, the requirement to pay state and/or federal prevailing wages and hire apprentices); (2) the implementation of Labor Code Section 1781

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 9

and/or any other similar law or regulation; and/or (3) failure by Developer to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law or regulation.

1.1.13 “*Costs*” means quantifiable expenses of any kind, including without limitation the allocated value of staff time, amounts expended for consultant and/or legal services, acquisition expenses, and allocated overhead.

1.1.14 “*Core Project Characteristics*” means those core characteristics of the Project described in Recital D.

1.1.15 “*CUSD*” means Capistrano Unified School District, a public school district duly organized and validly existing under the Constitution and the laws of the State of California.

1.1.16 “*CUSD Parties*” means CUSD, and its Board of Trustees, administration, employees, attorneys, and agents.

1.1.17 “*Dana Hills High School*” means the high school site and all associated buildings, structures, facilities and amenities, located at 33333 Golden Lantern, Dana Point, CA 92629, and which is one of the schools within the jurisdiction, control, and responsibility of CUSD.

1.1.18 “*Dana Hills High School Improvements*” means the improvement/rebuild of Dana Hills High School and which may include the modernizing and/or replacement of school buildings to improve infrastructure and instructional capacity and opportunities, and to comply with seismic building requirements.

1.1.19 “*Default*” means the failure to perform any material duty or obligation set forth in this Agreement or to comply in good faith with the terms of this Agreement.

1.1.20 “*Developer*” means Toll Bros., Inc., and its respective successors in interest to all or any part of the Property.

1.1.21 “*Development*” means the improvement of the Property for the purposes of completing the structures, improvements and facilities comprising the Project including, but not limited to: Grading; the construction of infrastructure and public facilities related to the Project whether located within or outside the Property; the construction of buildings and structures; and the installation of landscaping and park facilities and improvements. “*Development*” also includes the maintenance, repair, reconstruction or redevelopment of any building, structure, improvement, landscaping or facility after the construction and completion thereof.

1.1.22 “*Development Approvals*” means all permits, licenses, consents, rights and privileges, and other actions subject to approval or issuance by City in connection with Development of the Project on the Property issued by City on or before the Effective Date, including but not limited to the Development Approvals. The Development Approvals shall include the certification of the City’s Local Coastal Plan Amendment and any modifications made by the California Coastal Commission and incorporated into the certified Local Coastal

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 10

Plan Amendment and the Victoria Boulevard Specific Plan, and the City's approval of said Coastal Commission modifications.

1.1.23 "**Development Fees**" means the monetary consideration charged by City in connection with a development project for the purpose of defraying all or a portion of the cost of mitigating the impacts of the Project and development of the public facilities related to Development of the Project. Development Fees shall not include: (i) City's normal fees for processing, environmental assessment/review, tentative tracts/parcel map review, plan checking, site review, site approval, administrative review, building permit (plumbing, mechanical, electrical, building), inspection, and similar fees imposed to recover City's Costs associated with processing, review, and inspection of applications, plans, specifications, etc.; and/or (ii) fees and charges levied by any other public agency, utility, district, or joint powers authority, whether or not such fees are collected by City.

1.1.24 "**Development Plan**" means the plan for Development of the Project on the Property which shall be subject to the Development Approvals, the Core Project Characteristics, the proposed site plan attached as Exhibit C, the Mitigation Measures attached as Exhibit D, and the Land Use Regulations.

1.1.25 "**Development Requirement**" means any requirement of City in connection with or pursuant to any Development Approval for the dedication of land, the construction or improvement of public facilities, the payment of fees (including Development Fees) or assessments in order to lessen, offset, mitigate or compensate for the impacts of Development on the environment, or the advancement of the public interest.

1.1.26 "**Effective Date**" means the later of (i) the date that the ordinance approving this Agreement becomes effective; or (ii) the date that this Agreement is executed by the City; provided, however, that Toll Bros. and CUSD shall have delivered three fully executed and notarized copies of this Agreement to the City on or before the second reading/adoption of the ordinance approving this Agreement.

1.1.27 "**Force Majeure Delay**" means, pursuant to Section 11.12, a delay in performance of this Agreement caused by strikes; acts of God; a declaration of emergency as a result of a public health issue, including the occurrence of any pandemic; enemy action; civil disturbances; wars; terrorist acts; fire; unavoidable casualties; referenda; or mediation, arbitration, litigation, or other administrative or judicial proceeding commenced by a third party and involving the Development Approvals or Subsequent Development Approvals or this Agreement.

1.1.28 "**Funding Certification**" means a certification prepared and provided by CUSD confirming that, unless all capital improvements needs for CUSD schools in the City are fully satisfied and provided CUSD successfully obtains funding from a future voter-approved district-wide general obligation bond or a future voter-approved school facilities improvement district associated with any smaller CUSD geographical area which includes any areas within the City (in either instance, or both, "Future Bond Funds"), the proportion of available Future Bond Funds provided toward capital improvements of Dana Hills High School and/or projects identified in the School Facilities Assessments plus all CUSD funds attributed towards such improvements beginning from the Effective Date of the Option

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 11

Agreement equals or exceeds the proportion of the total square footage of all CUSD school space (including charter schools) and administrative buildings in the City as compared to the total square footage of all CUSD school space (including charter schools) and administrative buildings district-wide (the "**Non-Lease Revenue Proportionate Funding Obligation**"). The Funding Certification by CUSD shall also summarize CUSD's efforts regarding any possible future Dana Hills High School Improvements in excess of funding related to the School Financing Mechanism.

1.1.29 "**Initial Lease Revenues**" means the Property Lease Revenues to be received by CUSD over the first 30 years of the Property Lease.

1.1.30 "**Joinder Agreement**" means an agreement evidencing, *inter alia*, CUSD's consent to the Affordable Housing Agreement and its agreement that the Affordable Housing Agreement bind the fee simple interest in the Property and the leasehold interest created by the Ground Lease, substantially and substantively in the form attached hereto as **Exhibit F**.

1.1.31 "**Land Use Regulations**" means all ordinances, resolutions, codes, rules, regulations, City adopted plans (including, but not limited to, trail plans and park master plans) and official policies of City adopted and effective on or before the Effective Date governing Development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement, grading, and construction standards and specifications applicable to the Development of the Property.

1.1.32 "**Land Use Regulations**" does not include any City ordinance, resolution, code, rule, regulation or official policy, governing:

- (a) the conduct of businesses, professions, and occupations;
- (b) taxes and assessments;
- (c) the control and abatement of nuisances;
- (d) the granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property;
- (e) the exercise of the power of eminent domain; and
- (f) the amount of processing fees.

1.1.33 "**Legal Costs**" means for any Person, all actual and reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys' fees, court costs and expenses, including in or as a result of any: (a) bankruptcy proceeding; (b) litigation between the Parties; (c) negotiating or documenting any agreement with a third party requested by the other Party; (d) requirement or request that such Person or its employees act as a witness in any proceeding regarding this Agreement or the other Party; and (e) review or approval that the other Party requests of such Person. All references to Legal Costs shall

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 12

include the salaries, benefits and costs of in-house or contract general counsel to City or Developer, respectively, and the lawyers employed in the office of such general counsel who provide legal services regarding a particular matter, adjusted to or billed at an hourly rate and multiplied by the time spent on such matter rounded to increments of one-tenth (1/10) of an hour, in addition to Legal Costs of outside counsel retained by City or Developer, respectively, for such matter.

1.1.34 "**Low Income Household**" shall have the meaning ascribed to "lower income household" in Health and Safety Code Section 50079.5.

1.1.35 "**Low Income Housing**" means housing which is restricted for rental to and occupancy by Low Income Households at an Affordable Rent.

1.1.36 "**Median Income**" means the Orange County area median income, as established by the United States Department of Housing and Urban Development, and as published periodically by the California Department of Housing and Community Development in Section 6932 of Title 25 of the California Code of Regulations, or successor regulation(s).

1.1.37 "**Mitigation Measures**" means those requirements imposed on the Project contained in the Mitigation Monitoring and Reporting Plan for the Project, which is attached hereto as **Exhibit D**.

1.1.38 "**Moderate Income Household**" shall have the meaning ascribed to "persons and families of moderate income" in Health and Safety Code Section 50093.

1.1.39 "**Moderate Income Housing**" means housing which is restricted for rental to and occupancy by Moderate Income Households at an Affordable Rent.

1.1.40 "**Mortgagee**" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security device, a lender or each of their respective successors and assigns.

1.1.41 "**Municipal Code**" means the Dana Point Municipal Code as it existed on the Effective Date.

1.1.42 "**Party**" and "**Parties**" mean and refer to City, CUSD and/or Developer, as context dictates, and their respective successors, assigns, and Affiliates.

1.1.43 "**Person**" means any association, corporation, government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization or other entity of any kind.

1.1.44 "**Project**" means the Development of the Property consistent with and subject to the Development Approvals, the Core Project Characteristics as described and defined in Recital D., above, the Development Plan, the proposed site plan attached as **Exhibit C**, the Mitigation Measures attached as **Exhibit D**, and the Land Use Regulations.

1.1.45 "**Property**" means the real property described in **Exhibit A** and shown on **Exhibit B** to this Agreement.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 13

1.1.46 "*Property Lease*" means the Ground Lease described in Recital B above, and substantially and substantively in the form attached hereto as Exhibit G, which provides, *inter alia*, for the development of the Property with a multi-family apartment complex with associated public and private open space and amenities on the Property.

1.1.47 "*Property Lease Revenue*" means all payments, funding, revenues and other consideration provided to CUSD, or any Affiliate or designee of CUSD, under and/or pursuant to the Property Lease.

1.1.48 "*Property Lease Revenue Fund*" means a separate fund created and maintained by CUSD, into which all Property Lease Revenue will be deposited and from which expenditures shall be made only as otherwise authorized by this Agreement.

1.1.49 "*Property Lease Revenue Expenditure Plan*" means a plan that has been developed by CUSD within two (2) years after CUSD's first receipt of Property Lease Revenues, and which will be updated every twelve (12) months thereafter (unless and until one or more School Financing Mechanisms are established that, in combination with Property Lease Revenues expended under a Property Lease Revenue Expenditure Plan, provide for the utilization of all of the Initial Lease Revenues), for the expenditure of all funds then in the Property Lease Revenue Fund on the Dana Hills High School Improvements and/or facilities identified in the School Facilities Assessment within the time period described in such adopted or updated, as the case may be, plan.

1.1.50 "*Reservation of Authority*" means the rights and authority excepted from the assurances and rights provided to Developer under this Agreement and reserved to the City.

1.1.51 "*School Facilities Assessment*" means the school facilities review described in Section 5.4.

1.1.52 "*School Financing Mechanism*" means a financing strategy that utilizes Property Lease Revenue, in whole or in substantial part, as a stream of revenue to secure bonds, certificates of participation, or another source of funds, in the maximum commercially feasible amount (estimated to be between Thirty Five Million Dollars (\$35,000,000) and Forty Five Million Dollars (\$45,000,000)). Funds received through the School Financing Mechanism shall be used entirely to fund the Dana Hills High School Improvements and/or facilities identified in the School Facilities Assessment.

1.1.53 "*Specific Plan*" means the Victoria Boulevard Specific Plan, as approved by the City Council by Ordinance No. _____, on _____, and effective as of _____.

1.1.54 "*Subsequent Development Approvals*" means all permits, licenses, consents, rights and privileges, and other actions subject to approval or issuance by City in connection with Development of the Project on the Property issued by City after the Effective Date.

1.1.55 "*Subsequent Land Use Regulations*" means all ordinances, codes, rules, regulations, City adopted plans and official policies of City adopted and effective after the Effective Date of this Agreement governing Development and use of the Property, including, without limitation, the permitted use of the Property, the density or intensity of use,

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 14

subdivision requirements, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement, and construction standards and specifications applicable to the Development of the Property; provided, however, that "Subsequent Land Use Regulations" do not include any City ordinance, resolution, code, rule, regulation or official policy, governing:

- (a) the conduct of business, professions, and occupations;
- (b) taxes and assessments;
- (c) the control and abatement of nuisances;
- (d) the granting of encroachment permits and the conveyance of rights and interests which provide for the use of or entry upon public property;
- (e) the exercise of the power of eminent domain; and
- (f) the amount of processing fees.

1.1.56 "**Term**" means the period of time from the Effective Date until the expiration of this Agreement as provided in Section 2.3, or earlier termination as provided in Section 8.3.

1.1.57 "**Toll Bros.**" means Toll Bros., Inc., a Pennsylvania corporation.

1.1.58 "**Transfer**" means sell, assign, or transfer.

1.1.59 "**Unaffiliated**" means and refers to a person or entity that is not an Affiliate.

1.1.60 "**Very Low Income Household**" shall have the meaning ascribed thereto in Health and Safety Code Section 50105.

1.1.61 "**Very Low Income Housing**" means housing which is restricted for rental to and occupancy by Low Income Households at an Affordable Rent.

1.1.62 "**Zoning Code**" means the Title 9, Zoning of the Municipal Code.

1.2 **Exhibits.** The following documents are attached to, and by this reference made a part of, this Agreement:

- Exhibit A** Legal Description of the Property;
- Exhibit B** Map showing Property and its location;
- Exhibit C** Site Plan
- Exhibit D** Mitigation Monitoring and Reporting Program
- Exhibit E** Affordable Housing Agreement
- Exhibit F** Joinder Agreement

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 15

Exhibit G Property Lease

2. GENERAL PROVISIONS.

2.1 **Binding Effect of Agreement.** From and following the Effective Date, Development of the Project and City actions on applications for Subsequent Development Approvals respecting the Development of the Project shall be subject to the terms and provisions of this Agreement.

2.2 **Assignment.**

2.2.1 *Release of Transferring Developer.* Upon the Transfer in whole or in part, of Developer's right and interest to all or any portion of the Property, Developer may, at least thirty (30) days prior to completion of the Transfer, apply to City for a release from its obligations hereunder with respect to the portion of the Property so Transferred. City shall approve the partial or full release if: (i) Developer is not in Default of this Agreement at the time of the request for release, or provides adequate assurances to City that it will cure any Default prior to the Transfer; (ii) with respect to the Transfer of any lot that has not been fully improved; the transferee executes and delivers to City a written assumption agreement in substance and form which is approved by City's Attorney, which approval shall not be unreasonably denied, and in which: (A) the name and address of the transferee is set forth; (B) the transferee expressly assumes the obligations of Developer under this Agreement as to the portion of the Property transferred; (C) the transferee provides commercially reasonable assurances of its performance of the obligations of the Developer that transferee proposes to assume; and (D) the assumption agreement adequately allocates to the transferee (or justifies the non-allocation) credits, reimbursements, or other benefits provided to Developer under this Agreement that relate to the portion of the Property transferred. Failure to obtain City approval of a written assumption agreement hereunder shall not negate, modify or otherwise affect the liability under this Agreement of any transferee or future owner of any portion of the Property. Developer shall remain responsible for all obligations set forth in the Agreement that are not subject to an assignment approved by the City in accordance with this paragraph. Notwithstanding the foregoing, the Parties acknowledge and agree that CUSD's obligations as set forth in Section 5, below, regarding the funding of Dana Point schools may not be assigned to, assumed by, or apportioned to any other party unless the City, in its sole and absolute discretion, consents to such assignment, assumption, or apportionment in writing.

2.3 **Term.**

2.3.1 The term of this Agreement ("**Term**") shall commence on the later of the Effective Date or the date upon which the City's Local Coastal Plan Amendment for the Project is deemed effective and certified pursuant to Section 13544(b)-(c) of Title 14 of the California Code of Regulations, and shall continue thereafter for a period of fifteen (15) years ("**Original Term**"), unless this Agreement is terminated, modified, or extended by circumstances set forth in this Agreement or by mutual written consent of the Parties; provided, however, that Parties' respective rights and obligations under Sections 5 and Section 6 shall survive the expiration of this Agreement and continue until fully discharged and satisfied.

2.3.2 Where a shorter term is not mandated by Applicable Law, the term of any and all discretionary Development Approvals and discretionary Subsequent Development

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 16

Approvals shall automatically be extended for the longer of the Term of this Agreement or the term otherwise applicable to such discretionary Development Approvals or discretionary Subsequent Development Approvals. For the avoidance of doubt, the following categories of Development Approvals and Subsequent Development Approvals shall be deemed "not discretionary" for purposes of this Section: grading permits, building permits, improvement permits, landscape permits, wall and fence plans, and signage permits and programs.

2.3.3 Notwithstanding Sections 2.3.1 and 2.3.2, this Agreement shall automatically terminate if any of the following occur: (i) vertical development of the Project on the Property has not commenced within five (5) years following the later of the Effective Date or the date upon which the Coastal Commission's certification of the City's Local Coastal Plan Amendment for the Project is deemed effective as described in Section 2.3.1, above, (ii) certificates of occupancy and/or completion have not been issued for the entirety of the Project on the Property within ten (10) years following the later of the Effective Date or the date upon which the Coastal Commission's certification of the City's Local Coastal Plan Amendment for the Project is deemed effective as described in Section 2.3.1, above, and (iii) certificates of acceptance have been issued within ten (10) years following the later of the Effective Date or the date upon which the Coastal Commission's certification of the City's Local Coastal Plan Amendment for the Project is deemed effective as described in Section 2.3.1, above, for all public improvements required in connection with the development of the Project on the Property. For purposes of this Section 2.3.3 "vertical development" means commencement of construction of core project buildings on site; construction of ancillary buildings and/or parking garages, and grading and underground infrastructure work shall not, by themselves, constitute "vertical development."

3. DEVELOPMENT OF THE PROPERTY.

3.1 **Rights to Develop.** Subject to the terms of this Agreement, Developer shall upon entering into the Property Lease have a vested right to develop the Project on the Property in accordance with, subject to, and to the extent of, the Development Plan. If at any time during the Term, Toll Bros. determines that it will not develop the Project on the Property or will not seek to entitle a modification to the Project and terminates its option to enter into the Property Lease or the Property Lease itself with CUSD, Toll Bros. and the City acknowledge and agree that CUSD may substitute another developer party in Toll Bros.' place for all purposes related to this Agreement, which substitution shall be subject to approval by the City (and which shall not be unreasonably withheld) so long as such substitution is, prior to becoming effective, (i) approved by City in writing in accordance with Section 2.2, and (ii) consistent with the Development Plan and the Land Use Regulations. Should Toll Bros. determine that it will not develop the Project on the Property or will not seek to entitle a modification to the Project and terminates its option to enter into the Property Lease or the Property Lease itself with CUSD, the City and CUSD agree that any and all rights and obligations of Toll Bros. under this Agreement shall be terminated if a new party is substituted in pursuant to this Section 3.1 and assumes all rights and obligations of Toll Bros. under this Agreement. City and Toll Bros. agree that, for purposes of this Agreement generally, and Section 2.2.1 specifically, "Developer's right and interest to all or any portion of the Property" shall include Toll Bros.' option to enter into the Property Lease and not merely the Property Lease itself. Notwithstanding the foregoing, the Parties acknowledge and agree that CUSD's obligations as set forth in Section 5, below, regarding the funding of Dana Hills High School may not be assigned to

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 17

or assumed by or apportioned to any other party unless the City, in its sole and absolute discretion, consents to such assignment, assumption, or apportionment in writing.

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement, the rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to Development of the Property, shall be those contained in the Development Plan and the Land Use Regulations.

3.3 [RESERVED]

3.4 Timing of Development. The Parties acknowledge that Developer cannot at this time predict when or the rate at which phases of the Property will be developed. Such decisions depend upon numerous factors which are not within the control of Developer, such as market orientation and demand, interest rates, absorption, completion and other similar factors. Since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the Parties' intent to cure that deficiency by acknowledging and providing that Developer shall have the right to develop the Property in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment. Nothing in this Section is intended to alter the standard durational limits of any applicable permits issued to Developer.

3.4.1 Entitlement Expiration Date: Notwithstanding any other provision of this Agreement, the Parties agree that Developer shall commence vertical development of the apartment buildings on the Property within five (5) years following the later of the Effective Date or the date upon which the Coastal Commission certifies the City's Local Coastal Plan Amendment for the Project; provided, however that the City may extend such five (5) year deadline in writing in its sole and absolute discretion. Developer acknowledges and agrees that upon the expiration of such five (5) year deadline (or such longer period as may be authorized by the City in writing in its reasonable direction) City shall have the option to terminate this Development Agreement.

3.5 Changes and Amendments. The Parties acknowledge that Development of the Project will likely require Subsequent Development Approvals, and that in connection therewith Developer may determine that changes are desirable in the existing Development Approvals or Development Plan. If Developer finds that such a change is desirable, Developer may apply, in writing, for an amendment to prior Development Approvals or the Development Plan to effectuate such change, and City shall process and act on such application in the normal manner for processing such matters. City shall have no obligation to grant any such application for a Subsequent Development Approval by Developer (including, without limitation, General Plan amendments, zone changes, or variances) that increases the overall intensity or density of Development or, in the sole and absolute discretion of the City's City Manager, otherwise causes a substantial modification of the Development Plan. Except as provided in the preceding sentence, if approved in a form to which Developer and City have both, in their respective sole and absolute discretion, consented in writing, any application effectuating a change in the Development Approvals or Development Plan shall be incorporated herein and any resulting modifications to the Exhibits to this Agreement, shall

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 18

be administratively appended to this Agreement for tracking purposes, and a notice thereof shall be recorded in the Official Records of the County of Orange.

3.6 Reservation of Authority.

3.6.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the following Subsequent Land Use Regulations shall apply to the Development of the Project on the Property:

- (a) Processing fees and charges of every kind and nature imposed by City to cover the estimated actual Costs to City of processing applications for Development Approvals, or Subsequent Development Approvals, or for monitoring compliance with any Development Approvals or Subsequent Development Approvals granted or issued. Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearing, reports, recommendations, appeals and any other matter of procedure.
- (b) Changes adopted by the California Building Standards Commission to the California Building Code, from time to time, as well as local modifications to the California Building Code adopted by City as Subsequent Land Use Regulations.
- (c) Regulations imposed by the City which may be in conflict with the Development Plan but which are reasonably necessary to protect the public health or safety. To the extent reasonable and feasible, any such regulations shall be applied and construed consistent with Section 3.6.2 below so as to provide Developer with the rights and assurances provided under this Agreement.
- (d) Regulations imposed by the City which are not in conflict with the Development Plan and this Agreement.
- (e) Regulations which are in conflict with the Development Plan provided Developer and City have given written consent to the application of such regulations to Development of Property.
- (f) Laws and regulations imposed by Federal, State, regional, or other governmental authorities, or imposed directly by the City as necessary to comply with Federal, State, regional or other governmental authorities' regulations, which City is required to enforce against the Property or the Development of the Property.

For purposes of this Section 3.6 the word "conflict" means any City-imposed modification that: (a) changes the permitted uses of the Property, the density and intensity of use (including, but not limited to, floor area ratios of buildings and the maximum number of units), or the maximum height and size of proposed buildings in a manner that is not consistent with the Development Plan; (b) imposes new or additional requirements, or changes existing requirements, for reservation or dedication of land for public purposes or requirements for infrastructure, public improvements, or public utilities that are not otherwise provided for pursuant Development Plan (subject to the reservation of authority in this Section 3.6.1); (c) changes conditions upon Development of the Project on the Property other than as permitted by this Section 3.6.1; (d) expressly limits the timing, phasing, or rate of Development of the

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 19

Property in a manner that is not consistent with the Development Plan; (e) limits the location of building sites, grading, or other improvements on the Property in a manner that is not consistent with the Development Plan; (f) unreasonably limits the processing or procuring of applications and approvals of Subsequent Development Approvals; or (g) changes, as against the Project, any obligations regarding affordable housing not specifically required by the Development Plan (except to the extent otherwise necessary to comply with a mandate or law imposed by another governmental authority).

3.6.2 Future Discretion of City. This Agreement shall not prevent City, in acting on Subsequent Development Approvals, from applying Subsequent Land Use Regulations which do not conflict with the Development Plan, nor shall this Agreement prevent City from denying or conditionally approving any Subsequent Development Approval on the basis of the Land Use Regulations or any Subsequent Land Use Regulation not in conflict with the Development Plan.

3.6.3 Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations, and this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce.

3.6.4 Taxes and Assessments; Reservation of Rights. This Agreement shall not prevent the City from enacting, levying or imposing any new or increased taxes or assessments that are imposed City-wide and from applying those City-wide taxes or assessments to the Project and/or the Property. Developer shall timely pay all applicable City-wide assessments, and special and general taxes validly imposed in accordance with the Constitution and laws of the State of California. Notwithstanding the foregoing, nothing set forth herein is intended or shall be construed to limit or restrict whatever right the Developer might otherwise have to challenge any fee, charge, assessment, or tax either adopted and imposed by City after the Effective Date.

3.7 Regulation by Other Public Agencies. It is acknowledged by the Parties that other public agencies not subject to control by City possess authority to regulate aspects of the Development of the Project on the Property, and this Agreement does not limit the authority of such other public agencies.

3.8 Compliance with Government Code Section 66473.7. As mandated by Government Code Section 65867.5, any tentative map prepared for the subdivision(s) included within the Project will comply with Government Code Section 66473.7.

3.9 Vesting Tentative Maps. If any tentative or final subdivision map, or tentative or final parcel map, heretofore or hereafter approved in connection with Development of the Project on the Property, is a vesting map under the Subdivision Map Act (Government Code Section 66410, *et seq.*), and if this Agreement is determined by a final judgment to be invalid or unenforceable insofar as it grants a vested right to develop to Developer, then and to that extent the rights and protection afforded Developer under the laws and ordinances applicable to vesting maps shall

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 20

supersede the provisions of this Agreement. Except as set forth immediately above, Development of the Property shall occur only as provided in this Agreement, and the provisions in this Agreement shall be controlling over any conflicting provision of law or ordinance concerning vesting maps.

3.9.1 *Term of Vesting Tentative Map.* If any tentative subdivision map or tentative parcel map, whether vesting or non-vesting, is hereafter approved in connection with Development of the Project on the Property, the term of said tentative vesting or non-vesting subdivision or parcel map shall be extended to the same as the Term of this Development Agreement.

4. REVIEW FOR COMPLIANCE.

4.1 **Periodic Review.** During the Term, the City Council or, at City's election City's City Manager, shall review this Agreement annually during May of each year following the Effective Date of this Agreement, in order to ascertain the good faith compliance by Developer with the terms of the Agreement. As part of that review, Developer shall submit an annual monitoring review statement describing its actions in compliance with this Agreement, in a form acceptable to the City's City Manager, by April 10 of that year. The statement shall be accompanied by an annual review and administration fee sufficient to defray the estimated costs of review and administration of the Agreement during the succeeding year. The amount of the annual review and administration fee shall be set by resolution of the City Council. City shall not hold an annual review pursuant to this Section unless it provides Developer at least thirty (30) days written notice of such annual review.

4.2 **Special Review.** The City Council may order a special review of compliance with this Agreement at any time. Developer shall cooperate with the City in the conduct of such special reviews.

4.3 **Procedure.** In connection with any periodic or special review, each Party shall have a reasonable opportunity to assert matters which it believes have not been undertaken in accordance with the Agreement, to explain the basis for such assertion, and to receive from the other Party a justification of its position on such matters. If on the basis of the Parties' review of any terms of the Agreement, any Party concludes that the other Party has not complied in good faith with the terms of the Agreement, then such Party may issue a written "*Notice of Non-Compliance*" specifying the grounds therefor and all facts demonstrating such non-compliance. The Party receiving a Notice of Non-Compliance shall have thirty (30) days to respond in writing to said Notice. If a Notice of Non-Compliance is contested, the Parties shall have up to sixty (60) days to arrive at a mutually acceptable resolution of the matters occasioning the Notice. In the event that the Parties are not able to arrive at a mutually acceptable resolution of the matter(s) by the end of the sixty (60) day period, the Party alleging the non-compliance may thereupon pursue the remedies provided in Section 8.

4.4 **Certificate of Agreement Compliance.** If, at the conclusion of a periodic review pursuant to Section 4.1 or special review pursuant to Section 4.2, Developer is found to be in compliance with this Agreement, City shall, upon request by Developer, issue a "Certificate of Agreement Compliance" ("*Certificate*") to Developer stating that after the most recent periodic or special review and based upon the information known or made known to the City's City Manager and City Council that (1) this Agreement remains in effect and (2) Developer is in compliance. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 21

after a Periodic or Special Review and shall state the anticipated date of commencement of the next Periodic Review. Developer may record the Certificate with the County Recorder. Additionally, Developer may at any time request from the City a Certificate stating, in addition to the foregoing, which obligations under this Agreement have been fully satisfied with respect to the Property, or any lot or parcel within the Property.

5. MINIMUM FUNDING FOR DANA POINT SCHOOLS.

5.1 **Property Lease Revenue Fund Expenditures – First Thirty (30) Years.** For the first thirty (30) years following the receipt of the first Property Lease Revenues CUSD shall use all Initial Lease Revenues toward capital improvements at Dana Hills High School and/or facilities identified in the School Facilities Assessment.

5.1.1 *School Financing Mechanism:* From and after the Effective Date, CUSD shall diligently and expeditiously seek to enter into one or more School Financing Mechanisms.

5.1.2 *Property Lease Revenues Received Prior to Forming a School Financing Mechanism:* Until such time as CUSD has entered into a School Financing Mechanism, it shall hold the Property Lease Revenue in the Property Lease Revenue Fund. Funds in the Property Lease Revenue Fund may be expended from time to time on Dana Hills High School Improvements and/or facilities identified in the School Facilities Assessment, provided, however, that, if CUSD has not entered into a School Financing Mechanism within two (2) years after the later of the Effective Date or the date on which the first Property Lease Revenues are received by CUSD, CUSD shall develop a Property Lease Revenue Expenditure Plan, and shall at all times diligently pursue implementation of the Property Lease Revenue Expenditure Plan.

5.1.3 *Property Lease Revenues Received After the Repayment of Debt Associated with the School Financing Mechanism(s).* If the School Financing Mechanism(s) do(es) not, in combination with Property Lease Revenues obtained prior to the establishment of the School Financing Mechanism(s), result in the expenditure of all of the Initial Lease Revenues on Dana Hills High School Improvements and/or facilities identified in the School Facilities Assessment, then within one (1) year following the expiration of the School Financing Mechanism(s), CUSD shall develop a Property Lease Revenue Expenditure Plan, and shall at all times diligently pursue implementation of the Property Lease Revenue Expenditure Plan.

5.2 **Property Lease Revenue Fund Expenditures – After First Thirty (30) Years.** Following receipt of all Initial Lease Revenues, CUSD may continue to use future Property Lease Revenues for the Dana Hills High School Improvements and/or facilities identified in the School Facilities Assessment, and/or for any other CUSD capital outlay and facilities needs CUSD-wide; provided, however, CUSD agrees that, unless all capital improvements needs for CUSD schools in the City are fully satisfied, the proportion of such future Property Lease Revenue expenditures for CUSD schools and administrative buildings in the City shall equal or exceed, in total, the proportion of the total square footage of all CUSD school space (including charter schools) and administrative buildings in the City as compared to the total square footage of all CUSD school space (including charter schools) and administrative buildings district-wide.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 22

5.3 **Reporting.** CUSD shall, upon written request by City, (i) promptly provide a Funding Certification, and/or (ii) an annual update regarding the balance of any debt secured by the Property Lease Revenue, the balance in the Property Lease Revenue Fund, the expenditures from the Property Lease Revenue Fund, and anticipated future amounts to be deposited into the Property Lease Revenue Fund.

5.4 **CUSD Facilities Review.** Within two (2) years following the Effective Date CUSD shall complete and certify its review and assessment of the specific capital outlay needs of school sites located in the City. First priority projects shall only include needs in CUSD's School Facilities Assessment and projects identified through site stakeholder engagement (including without limitation parent teacher associations) for schools located in the City.

6. AFFORDABLE HOUSING COMMITMENTS

6.1 **Affordable Housing Agreement.** Concurrent with the execution of this Agreement, the City and Toll Bros. shall enter into an Affordable Housing Agreement in the form attached hereto as **Exhibit E**, which contains the following non-exhaustive list of essential terms:

6.1.1 No less than one-third (1/3) of the Affordable Units shall be rented as Very Low Income Housing.

6.1.2 No less than one-third (1/3) of the Affordable Units shall be rented as Low Income Housing.

6.1.3 The remaining Affordable Units shall be rented as Moderate Income Housing.

6.1.4 The Affordable Housing Agreement shall be recorded as a covenant against the Property and shall remain in place for and ensure continued affordability for a minimum period of fifty-five (55) years.

6.1.5 The quality, and range of sizes and types of Affordable Units (expressed in square footage and number of bedrooms) shall be substantially equal to the quality and range of sizes and types of market rate units in the Project.

6.1.6 The Affordable Units shall be distributed throughout the Project, such that the Affordable Units are blended in with market rate units.

6.2 **Waiver of Bonuses and Incentives.** The Parties acknowledge and agree that development of the Project on the Property shall not be augmented or modified with additional density bonus units or the exercise of incentive and/or concession rights under any current or future law, including without limitation the State Density Bonus Law (Government Code Section 65915 *et seq.*), and/or the Municipal Code provisions implementing the State Density Bonus Law (Municipal Code Section 4.40.10 *et seq.*). For the avoidance of doubt, CUSD and Toll Bros. each specifically waive and relinquish any rights they may have under the State Density Bonus Law, Municipal Code Section 4.40.10 *et seq.*, and any other current or future law providing bonuses, incentives, and/or concessions in connection with the development of housing (including affordable housing).

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 23

6.3 **Property Lease.** Within seven (7) days of execution of the Property Lease, CUSD and Toll Bros. shall deliver to City a fully executed copy of the Property Lease. The Property Lease may be modified upon written agreement of CUSD and Toll Bros.; however, any future amendment(s) shall be provided to the City to confirm that such amendment(s) do not adversely impact the material economic and/or affordable housing terms of this Agreement.

6.4 **Joinder Agreement.** Concurrent with the execution of this Agreement, CUSD shall execute and deliver to City and Toll Bros the Joinder Agreement, which thereafter shall be recorded in the Official Records of the County of Orange.

7. **ADDITIONAL PUBLIC BENEFITS.**

7.1 **Community Benefit.** Within ten (10) days following the City's issuance of the first building permit for the construction of the Project's main structure, Toll Bros. shall deliver to City a single lump sum payment in the amount of Six Million Three Hundred Thousand Dollars (\$6,300,000) which, in addition to providing considerable community benefit opportunities to the City, satisfies any all City park and recreation fees and public art fees.

7.2 **Park In Lieu Obligations.** Provision of the community benefit payment specified in Section 7.1, coupled with the timely provision of park and open space amenities as specified in the Development Plan shall be deemed to fully satisfy the requirements of Municipal Code Section 7.36.010 *et. seq.*

8. **DEFAULT AND REMEDIES.**

8.1 **Specific Performance Available.** The Parties acknowledge that money damages and remedies at law generally are inadequate and specific performance is a particularly appropriate remedy for the enforcement of this Agreement and should be available to Developer and City because the size, nature and scope of the Project, make it impractical or impossible to restore the Property to its natural condition once implementation of this Agreement has begun. After such implementation, Developer and/or City may be foreclosed from other choices they may have had to utilize or condition the uses of the Property or portions thereof. Developer and City have invested significant time and resources in performing extensive planning and processing for the Project and in negotiating and agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, such that it would be extremely difficult to determine the sum of money which would adequately compensate Developer and/or City for such efforts. The Parties therefore agree that specific performance shall be the sole remedy available for a breach of this Agreement.

8.2 **Money Damages Unavailable.** Neither Developer nor City shall not be entitled to any monetary compensation, whether characterized as money damages or injunctive or other relief compelling the payment of money, including attorney fees, from the other Party by reason of, arising out of, based upon, or relating to (a) the interpretation, enforcement, performance, or breach of any provision of this Agreement, or (b) the respective rights or duties of any of the Parties under the Development Approvals, the Subsequent Development Approvals, any Development Requirement, the Land Use Regulations, or the Subsequent Land Use Regulations. Notwithstanding the foregoing, City may recover from Developer any fees owed under or pursuant to this Agreement; and Developer

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 24

may recover from City the right to exercise any credits and the right to receive any reimbursements under or pursuant to this Agreement.

8.3 Termination of Agreement.

8.3.1 Termination of Agreement for Default of Developer. City in its discretion may terminate this Agreement for any failure of Default by Developer; provided, however, City may terminate this Agreement pursuant to this Section only after following the procedure set forth in Section 4.3 and thereafter providing written notice to Developer of the Default setting forth the nature of the Default and the actions, if any, required by Developer to cure such Default and, where the Default can be cured, Developer has failed to take such actions and cure such Default within thirty (30) days after the effective date of such notice or, in the event that such Default cannot be cured within such thirty (30) day period but can be cured within a longer time, as reasonably determined by the City in its sole discretion, Developer has failed to commence the actions necessary to cure such Default within such thirty (30) day period and to diligently proceed to complete such actions and cure such Default.

8.3.2 Termination of Agreement for Default of City. Developer in its discretion may terminate this Agreement for any Default by City; provided, however, Developer may terminate this Agreement pursuant to this Section only after providing written notice by Developer to the City of the Default setting forth the nature of the Default and the actions, if any, required by City to cure such Default and, where the Default can be cured, the failure of City to cure such Default within thirty (30) days after the effective date of such notice or, in the event that such Default cannot be cured within such thirty (30) day period, the failure of City to commence to cure such Default within such thirty (30) day period and to diligently proceed to complete such actions and to cure such Default.

8.3.3 Rights and Duties Following Termination. Upon the termination of this Agreement, no Party shall have any further right or obligation hereunder except with respect to (i) any obligations to have been performed prior to said termination, or (ii) any Default in the performance of the provisions of this Agreement which has occurred prior to said termination.

9. INDEMNIFICATION AND THIRD PARTY LITIGATION.

9.1 Indemnities by Developer.

9.1.1 General Indemnity. Developer agrees to indemnify, protect, defend, and hold harmless the City Parties and CUSD Parties from and against any and all Claims which may arise directly from the acts, omissions, or operations of Developer or Developer's agents, contractors, subcontractors, agents, or employees pursuant to this Agreement, but excluding any loss resulting solely from the intentional or active negligence of the City Parties or CUSD Parties. Notwithstanding the foregoing, (i) City or CUSD, as applicable, shall have the right to select and retain counsel to defend any such action or actions and Developer shall pay the cost thereof; provided, however, that the Parties agree to attempt in good faith to coordinate and/or consolidate their defense of any Claim that is subject to the indemnification provisions of this Section; and (ii) this indemnity obligation shall not apply to any Claim for which

9.1.2 *Prevailing Wage Indemnity and Notice to Developer of Labor Code Section 1781.* In connection with, but without limiting, the indemnification obligations set forth in Section 9.1.1, Developer hereby expressly acknowledges and agrees that the City or CUSD is not by this Agreement affirmatively representing, and has not previously affirmatively represented, to the Developer or any contractor(s) of Developer for any construction on or Development on or adjacent to the Property, in writing or otherwise, in a call for bids or any agreement or otherwise, that any work to be undertaken on the Property, as may be referred to in this Agreement or construed under this Agreement, is *not* a "public work," as defined in Labor Code Section 1720, or under any similar existing or hereinafter enacted law or regulation. The Parties agree that, in connection with the Development and construction (as defined by Applicable Law) of the Project, including, without limitation, any and all public works (as defined by Applicable Law), Developer shall bear all risks of payment or non-payment of prevailing wages under California law and/or federal law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law. With respect to the foregoing, Developer shall be solely responsible, expressly or impliedly and legally and financially, for determining and effectuating compliance with all applicable federal, state and local public works requirements, prevailing wage laws, and labor laws and standards, and City or CUSD makes no representation, either legally and/or financially, as to the applicability or non-applicability of any federal, state and local laws to the construction of the Project as it may be amended pursuant hereto or otherwise.

Without limiting the foregoing, Developer shall indemnify, protect, defend and hold harmless the City Parties and CUSD Parties, with counsel reasonably acceptable to City or CUSD, as applicable, from and against "increased costs" as defined in Labor Code Section 1781 (including City's and CUSD's, as applicable, reasonable attorneys' fees, court and litigation costs, and fees of expert witnesses) in connection with the Development or construction (as defined by Applicable Law) of or on the Property, that results or arises in any way from (1) non-compliance by Developer of the requirement, if and to the extent applicable, to pay federal or state prevailing wages and hire apprentices, or (2) failure by Developer to provide any required disclosure or identification as required by Labor Code Section 1720 *et seq.* including without limitation specifically Labor Code Section 1781, as the same may be amended from time to time. The foregoing indemnity shall survive the expiration or earlier termination of this Agreement.

9.2.1 *Prompt Notice.* City and/or CUSD, as applicable, shall promptly notify Developer in writing of any Claim.

9.2.2 *Cooperation.* City and/or CUSD, as applicable, shall reasonably cooperate with Developer's defense, provided Developer reimburses City's and/or CUSD's, as applicable, actual reasonable out of pocket expenses (including Legal Costs) of such cooperation.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 26

9.2.3 *Settlement.* Any settlement shall require the prior written consent of both City and/or CUSD, as applicable, and Developer, which consent shall not be unreasonably withheld if the settlement is objectively financially reasonable. If City and/or CUSD, as applicable, refuses to authorize a settlement that is objectively financially reasonable, it shall be responsible for costs and damages of the Claim that are in excess of those incurred through the date of the City's and/or CUSD, as applicable, rejection of the proposal, plus the amount of the proposal.

9.2.4 *City and/or CUSD Cooperation.* City and/or CUSD, as applicable, shall reasonably cooperate with Developer's defense, provided Developer reimburses City and/or CUSD, as applicable, for its actual reasonable out of pocket expenses (including Legal Costs) of such cooperation.

9.2.5 *Insurance Proceeds.* Developer's obligations shall be reduced by net insurance proceeds City and/or CUSD, as applicable, actually receives for the matter giving rise to indemnification.

9.3 **Third Party Litigation.** City and/or CUSD, as applicable, shall promptly notify Developer of any Claim against City and/or any City Party, and/or CUSD and/or any CUSD Party, as applicable, and/or any other administrative or judicial action to challenge, set aside, void, annul, limit or restrict the approval and continued implementation and enforcement of this Agreement. Developer agrees to reimburse the City and/or CUSD, as applicable, for its reasonable Legal Costs incurred in connection with the defense of the Claim and to fully defend and indemnify City and/or CUSD, as applicable, for all costs of defense and/or judgment obtained in any such action or proceeding. City and/or CUSD, as applicable, and Developer agree to cooperate in the defense of such action(s).

9.4 **Challenge to Enforceability of Specific Obligations.** The Parties have determined in good faith that each of the provisions of this Agreement are valid and enforceable. Notwithstanding, if a court of competent jurisdiction finds invalid or unenforceable any provision of this Agreement purporting to supersede or otherwise render ineffectual any federal, state, or local law or regulation in existence as of the Effective Date, Developer shall perform its obligations under such law or regulation as it existed on the Effective Date, or as otherwise specifically directed by a court of competent jurisdiction.

10. **MORTGAGEE PROTECTION.**

10.1 **Encumbrances.** The Parties hereto agree that this Agreement shall not prevent or limit Developer from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property, unless otherwise determined by the Property Lease which shall control. City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with Developer and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. Subject to compliance with Applicable Laws, City will not unreasonably withhold its consent to any such requested interpretation or modification provided City determines such interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 27

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Property made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, which Mortgagee has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written notification from City of any Default by Developer in the performance of Developer's obligations under this Agreement.

(c) If City timely receives a request from a Mortgagee requesting a copy of any notice of Default given to Developer under the terms of this Agreement, City shall make a good faith effort to provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of Default to Developer. The Mortgagee shall have the right, but not the obligation, to cure the Default during the remaining cure period allowed such Party under this Agreement.

(d) Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement. However, no Mortgagee (including one who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination, eviction or otherwise) shall have any obligation to construct or complete construction of improvements, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to develop the Property or receive any benefit provided under this Agreement unless it first agrees in writing to fully comply with this Agreement and the Development Plan.

11. MISCELLANEOUS PROVISIONS.

11.1 **Option to Terminate Due to Litigation or Referendum.** If (1) a lawsuit is filed challenging the Development Approvals or the ordinance approving this Agreement within the time periods for the filing of such lawsuits under the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*) or the State Planning and Zoning Law (Government Code Section 65000 *et seq.*), or (2) if a referendum seeking rescission of some or all of the Development Approvals is circulated, qualifies for voter consideration at a City-wide election and is either approved by the voters or the Development Approvals rescinded by the City Council, the Parties shall meet and confer concerning the potential impact of the lawsuit on this Agreement and the Development of the Project. Within thirty (30) days of such meeting, if Developer determines that such litigation may have an unacceptable adverse impact on the Project or its rights under this Agreement, Developer may in its discretion terminate this Agreement by sending City a written notice of such termination, and the Parties shall be relieved of any further obligations to this Agreement, to the extent that such obligations have not been performed or have been incurred prior to such termination. Developer acknowledges and agrees that if this Agreement is terminated, other than by court order, City shall have the option to restore the General Plan, the Specific Plan, and zoning to the condition that existed prior to the adoption of the Development Approvals or ordinance approving this Agreement. In no event, however, shall Developer bring or cause to bring a lawsuit in any court against City to invalidate any

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 28

provision in this Agreement that would result in the ability of Developer to keep the Development Approvals without having to comply with the terms and conditions of this Agreement.

11.2 Recordation of Agreement. This Agreement shall be recorded with the County Recorder by the City Clerk within the period required by Section 65868.5 of the Government Code. Amendments approved by the Parties, and any termination, shall be similarly recorded.

11.3 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the Parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

11.4 Estoppel Certificate. Any Party hereunder may, at any time, deliver written notice to any other Party requesting such Party to certify in writing that, to the best knowledge of the certifying Party, (i) this Agreement is in full force and effect and a binding obligation of the Party; (ii) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments; and (iii) the requesting Party is not in Default in the performance of its obligations set forth in this Agreement or, if in Default, to describe therein the nature and amount of any such Defaults. A Party receiving a request hereunder shall execute and return such Certificate within sixty (60) days following the receipt thereof. Any third party including a Mortgagee shall be entitled to rely on the Certificate.

11.5 Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect, unless and to the extent the rights and obligations of any Party has been materially altered or abridged by such holding.

11.6 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. Any dispute between City, CUSD and/or Developer over this Agreement shall be filed, and tried, in the Superior Court of the County of Orange, and the Parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting Party or in favor of City shall not be employed in interpreting this Agreement, each of the Parties having been represented by counsel in the negotiation and preparation hereof.

11.7 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

11.8 Singular and Plural. As used herein, the singular of any word includes the plural.

11.9 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 29

11.10 **Waiver.** Failure of a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or the failure by a Party to exercise its rights upon the Default of the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Party with the terms of this Agreement thereafter.

11.11 **No Third Party Beneficiaries.** This Agreement is made and entered into for the sole protection and benefit for the Parties and their successors and assigns. No other Person shall have any right of action based upon any provision of this Agreement.

11.12 **Force Majeure.** Subject to the limitations set forth below, the Term of this Agreement and the time within which any Party shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably and beyond the reasonable control of the Party seeking the delay by: strikes; acts of God; a declaration of emergency as a result of a public health issue, including the occurrence of any pandemic; enemy action; civil disturbances; wars; terrorist acts; fire; unavoidable casualties; referenda; or mediation, arbitration, litigation, or other administrative or judicial proceeding commenced by a third party and involving the Development Approvals or Subsequent Development Approvals or this Agreement (each a "*Force Majeure Delay*"). An extension of time shall be for the period of the Force Majeure Delay and shall commence to run from the time of the commencement of the cause, if written notice by the Party claiming such extension is sent to the other Parties within ten (10) days of the commencement of the cause. If written notice is sent after such ten (10) day period, then the extension shall commence to run no sooner than ten (10) days prior to the giving of such notice. The cumulative extensions of time for Force Majeure Delays for individual performance obligations hereunder shall not exceed six (6) months, and the cumulative extensions of the expiration of this Agreement as a result of Force Majeure Delays shall not exceed one (1) year, unless otherwise agreed to in writing in accordance with Section 11.13.

11.13 **Extension of Time Limits.** The time limits set forth in this Agreement may be extended by mutual consent in writing of the Parties without amendment to this Agreement. Except as otherwise specified in this Agreement, each Party may agree or refuse to agree to any extension of time in its sole and absolute discretion.

11.14 **Mutual Covenants.** The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the Party benefited thereby of the covenants to be performed hereunder by such benefited Party.

11.15 **Successors in Interest.** As provided in Government Code Section 65868.5, and except as otherwise provided in this Agreement, all of the terms, provisions, covenants and obligations contained in this Agreement shall be binding upon, and inure to the benefit of, City and Developer, and their respective successors and assigns. In no event shall this Agreement impose obligations on individual unit owners or residents of the Project who are not otherwise affiliated with Developer. From and after the date that certificates of occupancy have been issued (or a final inspection is completed when no certificate of occupancy is required) for all buildings and improvements to be constructed on a parcel within the Project (or with respect to a single-family dwelling unit on a single-family residential lot), such parcel shall not be burdened with the obligations of Developer under this Agreement.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 30

11.16 **Counterparts.** This Agreement may be executed by the Parties in counterparts, which counterparts shall be construed together and have the same effect as if each of the Parties had executed the same instrument.

11.17 **Project as a Private Undertaking.** It is specifically understood and agreed by and between the Parties hereto that the Development of the Project is a private Development, that no Party is acting as the agent of the other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between City and Developer is that of a government entity regulating the Development of private property and the owner of such property.

11.18 **Further Actions and Instruments.** Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of any Party at any time, the other Parties shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

11.19 **Eminent Domain.** No provision of this Agreement shall be construed to limit or restrict the exercise by City of its power of eminent domain.

11.20 **Amendments in Writing/Cooperation.** This Agreement may be amended only by written consent of both Parties specifically approving the amendment and in accordance with the Government Code provisions for the amendment of Development Agreements. The Parties shall cooperate in good faith with respect to any amendment proposed in order to clarify the intent and application of this Agreement, and shall treat any such proposal on its own merits, and not as a basis for the introduction of unrelated matters.

11.21 **Authority to Execute.** The Person or Persons executing this Agreement on behalf of Developer warrants and represents that he/she has the authority to execute this Agreement on behalf of his/her corporation, partnership or business entity and warrants and represents that he/she has the authority to bind Developer to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first set forth above:

[Signatures Attached]

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 31

City: City OF DANA POINT

By _____
Mayor

ATTEST:

By _____
City Clerk

APPROVED AS TO FORM

By _____
City Attorney

(SEAL)

Developer: TOLI BROS., INC., a
corporation

By _____

Title _____

By _____

Title _____

By _____

Title _____

CUSD: CAPISTRANO UNIFIED
SCHOOL
DISTRICT

By _____

Title _____

By _____

Title _____

By _____

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 32

Title _____

**PLANNING COMMISSION AGENDA REPORT
VICTORIA BOULEVARD APARTMENTS
MAY 13, 2024
PAGE 172**

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 33

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss:
COUNTY OF)

On _____, 2024 before me,
Notary Public (insert name and title of the officer),

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal:

Signature: _____

[Seal]

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 34

EXHIBIT A

Legal Description of the Property

Real property in the City of Dana Point, County of Orange, State of California, described as follows:
ALL OF BLOCKS FOUR AND FIVE OF TRACT NO. 735, AS SHOWN ON A MAP RECORDED IN BOOK 22,
PAGES 21 TO 28, INCLUSIVE, MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA;
TOGETHER WITH THE VACATED ALLEYS IN SAID BLOCKS FOUR AND FIVE, AS ABANDONED BY
RESOLUTIONS OF THE BOARD OF SUPERVISORS OF ORANGE COUNTY, CALIFORNIA, CERTIFIED
COPIES OF WHICH RESOLUTIONS WERE RECORDED SEPTEMBER 11, 1939 IN BOOK 1009, PAGE 367 OF
OFFICIAL RECORDS, AND MAY 19, 1953 IN BOOK 2505, PAGE 505 OF OFFICIAL RECORDS; AND ALSO
THAT PORTION OF AMERICAN AVENUE EXTENDING FROM THE SOUTHWESTERLY LINE OF VICTORIA
BOULEVARD SOUTHWESTERLY TO THE NORTHERLY LINE OF LA PLAYA AVENUE, AS SHOWN ON THE
MAP OF SAID TRACT NO. 735, AS ABANDONED BY RESOLUTION OF THE BOARD OF SUPERVISORS OF
ORANGE COUNTY, CALIFORNIA, A CERTIFIED COPY OF WHICH RESOLUTION WAS RECORDED
SEPTEMBER 11, 1939 IN BOOK 1009, PAGE 367 OF OFFICIAL RECORDS AND ALSO TOGETHER WITH
THAT PORTION OF LA PLAYA AVENUE, 80.00 FEET IN WIDTH, AS SHOWN ON SAID MAP OF TRACT NO.
735, AS ABANDONED BY RESOLUTION NO. 71-454 OF THE BOARD OF SUPERVISORS OF ORANGE
COUNTY, CALIFORNIA, A CERTIFIED COPY OF WHICH WAS RECORDED MAY 03, 1971 IN BOOK 9627,
PAGE 691 OF SAID OFFICIAL RECORDS, SAID PORTION BEING BOUNDED NORTHEASTERLY BY THE
SOUTHEASTERLY PROLONGATION OF THE SOUTHWESTERLY LINE OF VICTORIA BOULEVARD, 80.00
FEET IN WIDTH, AS SHOWN ON SAID MAP AND BOUNDED WESTERLY BY A LINE WHICH IS AT RIGHT
ANGLES TO THE SOUTHERLY LINE OF BLOCK 4 OF TRACT NO. 735 AND WHICH PASSES THROUGH THE
WESTERLY CORNER OF SAID BLOCK.
EXCEPTING FROM LOTS FOUR, SEVEN, EIGHT AND NINE IN SAID BLOCK FOUR ANY AND ALL COAL, OIL
AND OTHER MINERALS WITHIN OR UNDERLYING SAID LAND AND THE RIGHTS RELATING TO SAID
SUBSTANCES, AS EXCEPTED IN THE DEED FROM CONSOLIDATED PACIFIC INVESTMENT CO.,
RECORDED DECEMBER 06, 1945 IN BOOK 1364, PAGE 445 OF OFFICIAL RECORDS, THE RIGHTS SO
EXCEPTED PERTAINING TO THE REMOVAL OF SUCH SUBSTANCES HAVING BEEN MODIFIED BY AN
INSTRUMENT RECORDED MARCH 17, 1947 IN BOOK 1482, PAGE 421 OF OFFICIAL RECORDS, WHICH
PROVIDES, AMONG OTHER THINGS, THAT CONSOLIDATED PACIFIC INVESTMENT CO. SHALL NOT
HAVE THE RIGHT TO USE THE SURFACE OF SAID LAND.

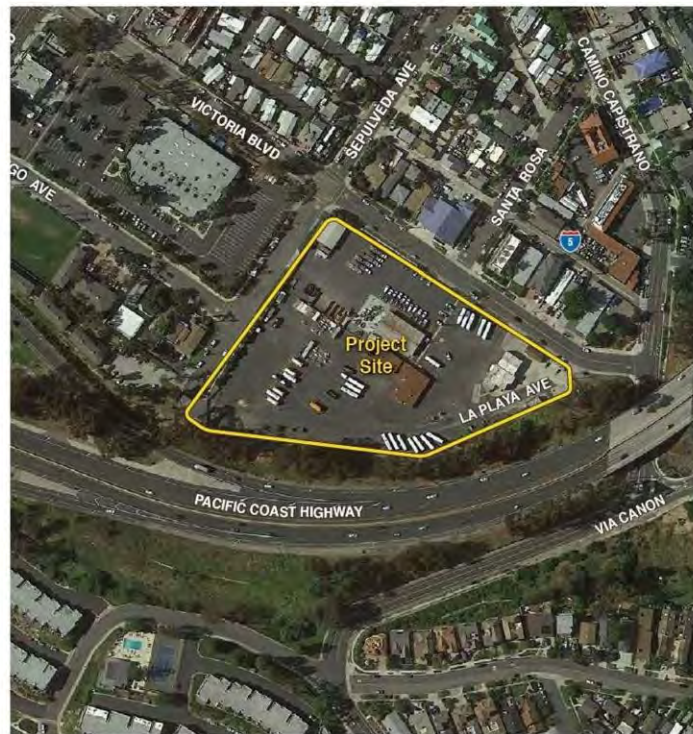
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PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 35

EXHIBIT B

Map Showing Property and Its Location



PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 36

EXHIBIT C

Site Plan



PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 37

EXHIBIT D

Mitigation Measures

[SEE FOLLOWING PAGES]

**PLANNING COMMISSION AGENDA REPORT
VICTORIA BOULEVARD APARTMENTS
MAY 13, 2024
PAGE 177**

**PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 38**



Environmental Impact Report
Victoria Boulevard Apartments

**Table 5-1
Mitigation Monitoring and Reporting Checklist**

Mitigation Number	Mitigation Measure	Implementation Responsibility	Timing	Monitoring Responsibility	Timing	VERIFICATION OF COMPLIANCE		
						Initials	Date	Remarks
Cultural Resources								
DUL-1	Unanticipated Discovery of Cultural Resources: The project Applicant shall retain a qualified archaeologist who meets the Secretary of the Interior's Professional Qualifications Standards for archaeology to conduct Worker's Environmental Awareness Program (WEAP) training for archaeological sensitivity for all construction personnel prior to the commencement of any ground disturbing activities. Archaeological sensitivity training should include a description of the types of cultural resources that may be encountered, cultural sensitivity issues, regulatory issues, and the proper protocol for treatment of the materials in the event of a find. If archaeological resources are encountered during ground-disturbing activities, work in the immediate area should be halted and the archaeologist shall evaluate the find. If the resources are Native American human remains, the County Coroner and the Native American Heritage Commission shall be contacted as mandated by law. If necessary, the evaluation may require preparation of a treatment plan and archaeological testing for California Register of Historical Resources (CRHR) eligibility. The treatment plan shall be reviewed and approved by the qualified archaeologist. If the discovery proves to be significant under CEQA and cannot be avoided by the project, additional work may be warranted such as data recovery excavation, and, if so, shall be identified by the archaeologist to mitigate any such significant impacts to cultural resources, if identified.	Qualified Archaeologist, Construction Contractor	Prior to Ground-Disturbing Activities, During Grading Activities	City Planning Division	Prior to Ground-Disturbing Activities			
Geology and Soils								

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 39



Environmental Impact Report
Victoria Boulevard Apartments

Mitigation Number	Mitigation Measure	Implementation Responsibility	Timing	Monitoring Responsibility	Timing	VERIFICATION OF COMPLIANCE		
						Initials	Date	Remarks
GEO-1	<p>Prior to issuance of grading permits, the project Applicant shall provide a technical paleontological assessment prepared by a qualified paleontologist, defined as a paleontologist who meets the Society of Vertebrate Paleontology (SVP) standards for a Principal Investigator or Project Paleontologist, assessing the sensitivity of the project site for buried paleontological resources to the City of Dana Point Planning Division for review and approval.</p> <p>If resources are known or reasonably anticipated, the assessment shall provide a detailed mitigation plan including a monitoring program and recovery and/or in situ preservation plan, based on the recommendations of the qualified paleontologist. The mitigation plan shall include, but not be limited to, the following:</p> <ul style="list-style-type: none"> A qualified paleontologist shall be retained for the project and shall be on call during grading and other significant ground-disturbing activities; Should any potentially significant fossil resources be discovered, no further grading shall occur in the area of the discovery until the qualified paleontologist and City of Dana Point Planning Division concurs in writing that adequate provisions are in place to protect these resources; and Unanticipated discoveries shall be evaluated for significance by the qualified paleontologist. If a resource is determined to be significant by the qualified paleontologist, the resource shall be collected and catalogued in accordance with SVP guidelines and adequately curated in an institution with appropriate staff and facilities. 	Applicant, Qualified Paleontologist	Prior to Issuance of Grading Permits During Grading Activities	City Planning Division	Prior to Issuance of Grading Permits			

**PLANNING COMMISSION AGENDA REPORT
VICTORIA BOULEVARD APARTMENTS
MAY 13, 2024
PAGE 179**

**PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 40**



Environmental Impact Report
Victoria Boulevard Apartments

Mitigation Number	Mitigation Measure	Implementation Responsibility	Timing	Monitoring Responsibility	Timing	VERIFICATION OF COMPLIANCE		
						Initiate	Date	Remarks
	A report of findings with an itemized accession inventory shall be prepared as evidence that monitoring has been successfully completed and shall be submitted and approved by the City of Dana Point Planning Division prior to the granting of occupancy permits.							
Hazards and Hazardous Materials								
HAZ-1	On-site Features Removal: Prior to issuance of grading permits, the project Applicant shall retain a qualified environmental professional with Phase II/III Site Characterization experience to remove numerous features remaining on-site, including but not limited to the hydraulic lifts, hydraulic fluid reservoir and associated piping, and the bus wash clarifier. Impacted soil identified during the removal of these features shall be removed and handled according to the Soil Management Plan (Mitigation Measure HAZ-2). Confirmation soil samples shall be collected within the excavated areas. Removal activities shall adhere to applicable federal, State, and local regulations, and shall occur under supervision of the Orange County Health Care Agency and/or other relevant agencies.	Applicant, Qualified Environmental Professional with Phase II/III Site Characterization experience	Prior to Issuance of Grading Permit	Director of Public Works, Orange County Health Care Agency and/or Other Relevant Agencies	Prior to Issuance of Grading Permit During Construction			
HAZ-2	Soil Management Plan: Prior to issuance of a grading permit, a Soil Management Plan (SMP) shall be prepared by a qualified environmental professional with Phase II/III Site Characterization experience. The SMP shall include guidelines for safety measures and soil management in the event that soils are to be disturbed, and for handling soil during any planned earthwork activities. The SMP shall also include a decision framework and specific risk management measures for managing soil, including any soil import/export activities, in a manner protective of human health and consistent with applicable regulatory requirements. The SMP shall be submitted to, reviewed, and approved by the Director of Public Works prior to issuance of grading permit. Upon approval, the SMP shall be made available to the contractor and the Director of Public Works for use during grading activities.	Qualified Environmental Professional with Phase II/III Site Characterization experience	Prior to Issuance of Grading Permit	Director of Public Works	Prior to Issuance of Grading Permit During Construction			

**PLANNING COMMISSION AGENDA REPORT
VICTORIA BOULEVARD APARTMENTS
MAY 13, 2024
PAGE 180**

**PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 41**



Environmental Impact Report
Victoria Boulevard Apartments

Mitigation Number	Mitigation Measure	Implementation Responsibility	Timing	Monitoring Responsibility	Timing	VERIFICATION OF COMPLIANCE		
						Initiate	Date	Remarks
HA2-3	Remediation for Shallow Soil: Prior to initiation of grading activities, the project Applicant shall retain a qualified environmental professional with Phase I/II Site Characterization experience to conduct shallow soil remediation in the vicinity of the grounds dispatch building. Visually impacted soil in the vicinity of the grounds dispatch building shall be removed to an adequate depth as determined by the specialist. Confirmation soil samples from excavation wells and floor shall be collected and analyzed. Remedial activities shall adhere to applicable federal, state, and local regulations, and under supervision of the Orange County Health Care Agency, San Diego Regional Water Quality Control Board, and/or other relevant agencies as applicable.	Applicant, Qualified Environmental Professional with Phase I/II Site Characterization experience	Prior to initiation of Grading Activities	Director of Public Works, Orange County Health Care Agency, San Diego Regional Water Quality Control Board, and/or Other Relevant Agencies	Prior to initiation of Grading Activities			
HA2-4	Additional Verification - Sampling: Upon completion of building demolition and prior to and during site grading, the project Applicant shall retain a qualified environmental professional with Phase I/II Site Characterization experience to conduct verification soil gas sampling(s) in the vicinity of the grounds dispatch building and mechanic shop. Should any samples determine that residual contamination in either soil or soil gas exceed the thresholds for residential use (i.e., the Department of Toxic Substances Control modified screening levels (DTSC-SL) of 83 µg/m ³ for naphthalene, and DTSC-SL of 450 µg/m ³ for PCE, or otherwise specified by the oversight agency), the project Applicant shall install vapor barrier(s), if determined necessary prior to construction of the on-site building foundation.	Applicant, Qualified Environmental Professional with Phase I/II Site Characterization experience	Completion of Building Demolition; Prior to and During Site Grading	Director of Public Works	Completion of Building Demolition; Prior to and During Site Grading			
HA2-5	Monitoring Well Deconstruction: Prior to issuance of grading permits, the project Applicant shall obtain a monitoring well deconstruction permit from Orange County Health Care Agency and/or the Regional Water Quality Control Board. Upon receipt of the monitoring well deconstruction permit, the project Applicant shall obtain a qualified environmental professional with Phase I/II Site Characterization experience to properly seal and abandon the existing monitoring well.	Applicant, Qualified Environmental Professional with Phase I/II Site Characterization experience	Prior to Issuance of Grading Permits	Director of Public Works	Prior to Issuance of Grading Permits, During Construction			

**PLANNING COMMISSION AGENDA REPORT
VICTORIA BOULEVARD APARTMENTS
MAY 13, 2024
PAGE 181**

**PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 42**



Environmental Impact Report
Victoria Boulevard Apartments

Mitigation Number	Mitigation Measure	Implementation Responsibility	Timing	Monitoring Responsibility	Timing	VERIFICATION OF COMPLIANCE		
						Initiate	Date	Remarks
HAZ-6	(MVI) on-site in accordance with the existing laws and regulations. Asbestos and Lead Paint Surveys: Prior to demolition of existing structures (including piping materials), the project Applicant shall retain a qualified specialist or contractor to conduct surveys of ACM, LBP, and universal waste and submit to the City Director of Public Works for approval. If ACMs are located, abatement of asbestos shall be completed prior to any activities that would disturb ACMs or create an airborne asbestos hazard. Asbestos removal shall be performed by a State certified asbestos containment contractor in accordance with the South Coast Air Quality Management District (SCAQMD) Rule 1403. If LBPs are found, abatement shall be completed by a qualified Lead Specialist prior to any activities that would create lead dust or fume hazard. LBP removal and disposal shall be performed in accordance with California Code of Regulation Title 8, Section 15321, which specifies exposure limits, exposure monitoring and respiratory protection, and mandates good worker practices by workers exposed to lead. Specialists or contractors performing ACM, LBP, and/or universal waste removal shall provide evidence of abatement activities to the City Director of Public Works, if applicable. The project Applicant shall inform the Director of Public Works, via the monthly compliance report, of the date when all ACMs, LBPs, and universal waste are removed from the site, if applicable.	Applicant, Qualified Asbestos/Lead Specialist(s) or Contractor	Prior to Demolition of Existing Structures	Director of Public Works	Prior to and During Demolition of Existing Structures			
HAZ-7	Unknown Waste: Prior to initiation of construction activities, contractor shall establish procedures in the event that unknown wastes or contamination source or indicator are encountered during construction. Observations shall be made during project construction for potential contamination source or indicator such as, but not limited to, the presence of underground facilities, buried debris, waste drum tanks, and stained or odorous soils. If unknown wastes or suspect	Construction Contractor	Prior to Initiation of Construction Activities	Director of Public Works	During Project Construction			

PLANNING COMMISSION AGENDA REPORT
VICTORIA BOULEVARD APARTMENTS
MAY 13, 2024
PAGE 182

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 43



Environmental Impact Report
 Victoria Boulevard Apartments

Mitigation Number	Mitigation Measure	Implementation Responsibility	Timing	Monitoring Responsibility	Timing	VERIFICATION OF COMPLIANCE		
						Initials	Date	Remarks
	<p>materials are discovered during construction, the contractor shall comply with the following:</p> <ul style="list-style-type: none"> Immediately cease work in the vicinity of the suspected contaminant, and remove workers and the public from the area; Notify the Director of Public Works; Secure the area as directed by the Director of Public Works; and Notify the implementing agency's Hazardous Waste/Materials Coordinator. The Hazardous Waste/Materials Coordinator shall advise the responsible party of further actions that shall be taken, if required. 							
Transportation								
TRA-1	<p>Prior to issuance of any grading and/or demolition permits, whenever occurs first, the Applicant (Developer) shall prepare a Construction Management Plan (CMP) to be submitted for review and approval by the City of Dana Point Director of Public Works. The requirement for a CMP shall be incorporated into the Project specifications and subject to verification by the Director of Public Works prior to final plan approval. The CMP shall include, at a minimum, the following measures, which shall be implemented during all construction activities as overseen by the Construction Contractor:</p> <ul style="list-style-type: none"> Meet the standards established in the current California Manual on Uniform Traffic Control Devices (MUTCD) as well as City of Dana Point requirements. The CMP shall be prepared by the contractor and submitted to the Director of Public Works for approval pertaining to off-site work, including sidewalk construction, building facade, underground utilities, and any work that would require temporary curb lane closures. The plan 	Applicant	Prior to Issuance of Any Grading and/or Demolition Permits	Director of Public Works	Prior to Issuance of Any Grading and/or Demolition Permits (During Construction)			

PLANNING COMMISSION AGENDA REPORT
VICTORIA BOULEVARD APARTMENTS
MAY 13, 2024
PAGE 183

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 44



Environmental Impact Report
Victoria Boulevard Apartments

Mitigation Number	Mitigation Measure	Implementation Responsibility	Timing	Monitoring Responsibility	Timing	VERIFICATION OF COMPLIANCE		
						Initials	Date	Remarks
	<p>shall be developed according to the MUTCD (latest edition) guidelines including plans for traffic signs, traffic cone arrangements, and flaggers to assist with pedestrian and traffic.</p> <ul style="list-style-type: none"> Submit the CMP to the California Department of Transportation (Caltrans) and City of San Juan Capistrano for review and comment, prior to approval by the Director of Public Works, should construction hauling utilize facilities within these jurisdictions. Identify traffic control for any street closure, detour, or other disruption to traffic circulation including the necessary traffic controls to allow for construction-related traffic to enter and exit the site. Should project construction activities require temporary vehicle lane, bicycle lane, and/or sidewalk closures, the Applicant (Developer) shall coordinate with the Director of Public Works regarding timing and duration of proposed temporary lane and/or sidewalk closures to ensure the closures do not impact operations of adjacent users or emergency access. Identify the routes that construction vehicles must follow for the delivery of construction materials (i.e., lumber, tiles, piping, windows, etc.) to access the site, traffic controls and detours, and proposed construction phasing plan for the project. Specify all grading and equipment operations shall not be conducted between the hours of 6:00 							

PLANNING COMMISSION AGENDA REPORT
VICTORIA BOULEVARD APARTMENTS
MAY 13, 2024
PAGE 184

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 45



Environmental Impact Report
 Victoria Boulevard Apartments

Mitigation Number	Mitigation Measure	Implementation Responsibility	Timing	Monitoring Responsibility	Timing	VERIFICATION OF COMPLIANCE		
						Initials	Date	Remarks
	<p>6 a.m. and 7:00 a.m. Monday through Saturday, and/or any time on Sunday or a Federal holiday, pursuant to Section 11.10.014, Special Provisions, of the Dana Point Municipal Code.</p> <ul style="list-style-type: none"> Should project construction activities occur during general drop-off and pick-up hours for nearby schools (i.e., Noble Preschool), traffic signs, traffic cone arrangements, and flaggers shall be used with ensuring safe pedestrian access along the project frontage for students. Require the Applicant (Developer) to keep all haul routes clean and free of debris including, but not limited to, gravel and dirt, as a result of its operations. The Applicant (Developer) shall clean adjacent streets, as directed by the Director of Public Works, of any material which may have been spilled, tracked, or blown onto adjacent streets or areas. All construction-related parking and staging of vehicles shall be kept out of the adjacent public roadways and shall occur on-site. Traffic control shall be implemented for any street closure, detour, or other disruption to traffic circulation and shall maintain emergency access to the site. 							
Noise								
SC-NOI-1	<p>The Construction Contractor shall implement the following measures to reduce construction-related noise impacts:</p> <ul style="list-style-type: none"> Ensure all construction equipment is equipped with properly operating and maintained mufflers (which would result in a sound reduction of 5 	Construction Contractor	During Construction	City Planning Division	During Construction			

**PLANNING COMMISSION AGENDA REPORT
VICTORIA BOULEVARD APARTMENTS
MAY 13, 2024
PAGE 185**

**PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 46**



Environmental Impact Report
Victoria Boulevard Apartments

Mitigation Number	Mitigation Measure	Implementation Responsibility	Timing	Monitoring Responsibility	Timing	VERIFICATION OF COMPLIANCE		
						Initials	Date	Remarks
	<p>dBA).</p> <ul style="list-style-type: none"> Use temporary walls or noise barriers at the discretion of the Director of Public Works to block and deflect noise to ensure a sound reduction of up to 20 dBA. Locate stationary construction equipment so that emitted noise is directed away from the nearest noise sensitive receptors. Locate equipment staging in areas furthest away from sensitive receptors; and Limit haul truck deliveries to the same hours specified for construction equipment (between the hours of 7:00 a.m. to 6:00 p.m. Monday through Saturday). 							
Public Services								
SC PS-1	The project Applicant shall enter into a Secured Fire Protection Agreement with the Orange County Fire Authority (OCFA). The agreement shall specify the Applicant's pro-rata fair share funding of capital improvements necessary to establish adequate fire protection facilities and equipment, and/or personnel at the discretion of OCFA.	Applicant	Prior to Issuance of Grading Permit	City Planning Division	Prior to Issuance of Grading Permits			

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 47

EXHIBIT F

Affordable Housing Agreement

[SEE FOLLOWING PAGES]

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 48

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

CITY OF DANA POINT
33282 Golden Lantern
Dana Point, CA 92629
Attn: City Attorney

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

[This Regulatory Agreement and Declaration of Covenants and Restrictions is recorded at the request and for the benefit of the City of Dana Point and is exempt from the payment of a recording fee pursuant to Government Code Sections 6103 and 27363.]

**REGULATORY AGREEMENT AND
DECLARATION OF COVENANTS AND RESTRICTIONS
(Victoria Boulevard Apartments)**

This REGULATORY AGREEMENT AND DECLARATION OF COVENANTS AND RESTRICTIONS ("Agreement") is entered into as of this _____ day of _____, 20____ (the "Effective Date"), by and between the CITY OF DANA POINT, a California municipal corporation ("City"), and TOLL BROS., INC., a Pennsylvania corporation ("Developer") (hereinafter, City and Developer are sometimes referred to collectively as "Parties" and individually as a "Party").

RECITALS

A. Capistrano Unified School District, a public school district duly organized and validly existing under the Constitution and the laws of the State of California ("CUSD") is the fee owner of all of the real property described on Exhibit A and depicted on Exhibit B, consisting of approximately five and fifty-one hundredths (5.51) gross acres of land area located in the City of Dana Point, County of Orange, State of California ("Property").

B. Developer, as optionee, and CUSD, as optionor, have entered into an agreement entitled "Option to Lease Real Property, dated January 15, 2019, as amended (hereinafter the "Option Agreement"), which provides Developer, as optionee, the right to exercise an option to lease the Property from CUSD, as optionor, pursuant to the terms of a ground lease which is Exhibit B to the Option Agreement (the "Ground Lease"), and which Ground Lease provides for the development of the Property with a multi-family apartment complex containing not more than three hundred six (306) residential dwelling units, with not less than forty-six (46) of such units restricted to occupancy by income-restricted households, and with associated public and private open space and amenities (the "Project").

C. On or about the Effective Date, City, Developer, and CUSD have entered into and recorded against CUSD's fee interest in the Property that certain Development

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 49

Agreement, which sets forth the respective expectations of City, Developer and CUSD with respect to the Project, including, without limitation, the required approvals, the development limitations, and the required private and public open space and recreational amenities (the "Development Agreement").

D. The Development Agreement requires Developer to enter into this Agreement with City to place certain covenants and restrictions on the Property and use and operation of the Project, including the imposition of affordability covenants requiring that no less than sixteen (16) residential units will be used and occupied or available for use and occupancy by "Very Low Income Households" as defined in Health and Safety Code Section 50105 at the time of this Agreement, no less than fifteen (15) residential units will be used and occupied or available for use and occupancy by "Lower Income Households" (referred to herein as "Low Income Households") as defined in Health and Safety Code Section 50079.5 at the time of this Agreement, and no less than fifteen (15) residential units will be used and occupied or available for use and occupancy by "Persons and Families of Moderate Income" (referred to herein as "Moderate Income Households") as defined in Health and Safety Code Section 50093 at the time of this Agreement at affordable rent for the "Total Affordability Term" (as defined below).

E. It is the intent of the City, Developer and CUSD that CUSD's fee interest in the Property shall be subject to this Agreement as further set forth in that certain Joinder Agreement entered into and recorded against the Property substantially concurrently herewith by and among City, Developer and CUSD (the "Joinder Agreement") and that the terms hereof shall be binding on the Developer, CUSD (to the extent set forth in the Joinder Agreement), and their respective successors in interest in the Property for so long as this Agreement shall remain in effect.

AGREEMENT

Based upon the foregoing Recitals, which are incorporated herein by this reference, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **DEFINITIONS.** Except as defined elsewhere in this Agreement, capitalized terms used in this Agreement shall have the meanings given below:

1.1 **"Adjusted for household size appropriate to the unit"** means a household of one person in the case of a studio unit, a household of two persons in the case of a one-bedroom unit, a household of three persons in the case of a two-bedroom unit, a household of four persons in the case of a three-bedroom unit.

1.2 **"Affordable Rent"** means for a Very Low Income Household the maximum Monthly Rent that does not exceed the amount of rent (including a reasonable utility allowance) for a Very Low Income household authorized pursuant to Health and Safety Code Section 50053 as such statute exists on the date hereof, which is the product of thirty percent (30%) times fifty percent (50%) of Median Income, adjusted for household size appropriate to the unit. **"Affordable Rent"** means for a Low Income Household the

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 50

maximum Monthly Rent that does not exceed the amount of rent (including a reasonable utility allowance) for a Low Income Household authorized pursuant to Health and Safety Code Section 50053 as such statute exists on the date hereof, which is the product of thirty percent (30%) times sixty percent (60%) of Median Income, adjusted for household size appropriate to the unit. "Affordable Rent" means for a Moderate Income Household the maximum Monthly Rent that does not exceed the amount of rent (including a reasonable utility allowance) for a Moderate Income Household authorized pursuant to Health and Safety Code Section 50053 as such statute exists on the date hereof, which is the product of thirty percent (30%) times one hundred ten percent (110%) of Median Income, adjusted for household size appropriate to the unit. A sample calculation of Affordable Rent for the Project is attached hereto and incorporated herein as Exhibit C.

1.3 "Affordable Units" means the Units within the Project to be rented by Developer to a Very Low Income Household, a Low Income Household, or a Moderate Income Household at an Affordable Rent in accordance with this Agreement. The Affordable Units shall be comprised of sixteen (16) Units restricted for rental to and occupancy by Very Low Income Households, fifteen (15) Units restricted for rental to and occupancy by Low Income Households, and fifteen (15) Units restricted for rental to and occupancy by Moderate Income Households.

1.4 "Certification of Continuing Program Compliance" means an annual recertification form substantially in the form attached hereto and incorporated herein as Exhibit D, as more fully described in Section 8 of this Agreement.

1.5 "City" means the City of Dana Point, California, and the City's successors and assigns.

1.6 "City Attorney" means the City Attorney for the City of Dana Point.

1.7 "City Manager" means the City Manager for the City of Dana Point or his or her designee.

1.8 "Developer" means Toll Bros., Inc., a Pennsylvania corporation, and its successors and assigns to all or any part of the Property.

1.9 "Development Agreement" means the agreement referenced in Recital C of this Agreement.

1.10 "Effective Date" means the date set forth in the preamble of this Agreement.

1.11 "Eligible Tenant" means a Household who complies with all income verification requirements of this Agreement and, for Affordable Units restricted for rental to and occupancy by Very Low Income Households, a Household that qualifies as a Very Low Income Household as defined herein, for Affordable Units restricted for rental to and occupancy by Low Income Households, a Household that qualifies as a Low Income Household as defined herein, and for Affordable Units restricted for rental to and

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 51

occupancy by Moderate Income Households, a Household that qualifies as a Moderate Income Household as defined herein.

1.12 "Home Office" means a separate area or room in an Affordable Unit used for business purposes and claimed as a business expense pursuant to federal and state income tax laws. Any room used for business purposes shall not reduce the number of bedrooms that are required to be within an Affordable Unit pursuant to this Agreement.

1.13 "Household" means all persons residing in a Unit.

1.14 "Housing Regulations" means the regulations published from time to time by the California Department of Housing and Community Development pursuant to Health and Safety Code Section 50093, as they exist as of the Effective Date.

1.15 "Low Income Household" means a Household whose income does not exceed the qualifying limits for lower income households, adjusted for household size, pursuant to Health and Safety Code Section 50079.5 as such statute exists on the Effective Date. The income level of a Household shall be determined in accordance with the Housing Regulations.

1.16 "Market Rate Units" means the Units within the Project that may be rented by Developer to a Household without restriction.

1.17 "Median Income" means the Orange County area median income, as published periodically by the California Department of Housing and Community Development in Section 6932 of Title 25 of the California Code of Regulations, or successor regulation.

1.18 "Moderate Income Household" means a Household whose income does not exceed the qualifying limits for moderate income households, adjusted for household size, pursuant to Health and Safety Code Section 50093 as it exists on the Effective Date. The income level of a Household shall be determined in accordance with the Housing Regulations.

1.19 "Monthly Rent" means the total of monthly payments for (a) use and occupancy of each Affordable Unit and land and facilities associated therewith, (b) any separately charged fees or service charges assessed by Developer which are required of all tenants, other than security deposits, (c) a reasonable allowance for an adequate level of service of utilities not included in (a) or (b) above, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuels, if such utilities are paid for separately by the tenant and which allowance shall be based on the schedules determined by the Orange County Housing Authority; but not including telephone, internet or cable service, and (d) possessory interest, taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than Developer. In the event that all utility charges are paid by the landlord rather than the tenant, no utility allowance shall be deducted from the rent.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 52

1.20 "Project" means that certain housing development as more particularly described in Recital B of this Agreement.

1.21 "Property" means that certain real property more particularly described in the legal description in Exhibit A and depicted in Exhibit B to this Agreement, and improvements thereon.

1.22 "Substitute Affordable Unit" means an equivalent Unit in terms of level of affordability restriction (Very Low Income Household, Low Income Household, or Moderate Income Household, as applicable) and number of bedrooms for a previously designated Affordable Unit, as further explained in Section 3.1 of this Agreement.

1.23 "Tenant Income Verification Form" shall mean the forms used to determine and certify whether a potential tenant is an Eligible Tenant, which forms are attached hereto and incorporated herein as Exhibit E to this Agreement.

1.24 "Total Affordability Term" means the fifty-five (55) year period for which an Affordable Unit shall be restricted for use and occupancy by a Very Low Income Household, a Low Income Household, or a Moderate Income Household, as applicable.

1.25 "Unit" means a residential dwelling unit within the Project.

1.26 "Very Low Income Household" means a Household whose income does not exceed the qualifying limits for very low income households, adjusted for household size, pursuant to Health and Safety Code Section 50105 as it exists on the Effective Date. The income level of a Household shall be determined in accordance with the Housing Regulations.

2. DEVELOPMENT OF THE PROJECT. Developer shall commence and complete the construction and development of the Project on the Property subject to the terms and conditions set forth in the Development Agreement and all applicable approvals and requirements of all entities with jurisdiction over the Property and/or Project.

3. TERMS.

3.1 Terms of Affordability Covenants. Each Affordable Unit designated for Very Low Income Households shall be restricted to use and occupancy by a Very Low Income Household, each Affordable Unit designated for Low Income Households shall be restricted to use and occupancy by a Low Income Household, and each Affordable Unit designated for Moderate Income Households shall be restricted for use and occupancy by a Moderate Income Household, for a total period of no less than fifty-five (55) years (the "Total Affordability Term"). The Total Affordability Term for an Affordable Unit shall commence on the date that the Affordable Unit receives all required occupancy permits from the City. By way of explanation of the foregoing two sentences, it is possible that the Total Affordability Term for one Affordable Unit will neither commence on the same date nor terminate on the same date as another Affordable Unit, and it is possible that the Total Affordability Terms for all Affordable Units will commence on different days and terminate on different days. Developer may elect to substitute an

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 53

equivalent Unit in terms of the number of bedrooms (the "**Substitute Affordable Unit**"), and in such event, (i) the Substitute Affordable Unit shall be restricted at the same level of affordability restriction (Very Low Income Household, Low Income Household, or Moderate Income Household) as the previously designated Affordable Unit, and (ii) the remaining portion of the Total Affordability Term for the Affordable Unit shall be transferred to the Substitute Affordable Unit.

Developer shall keep detailed records of the commencement date of the Total Affordability Term for each Affordable Unit and each Substitute Affordable Unit.

3.2 Total Regulatory Agreement Term. The term of this Agreement ("**Total Regulatory Agreement Term**") shall commence on the Effective Date and shall continue and remain binding and in full force and effect until the expiration of the Total Affordability Term with respect to each Affordable Unit. Termination of the Development Agreement shall not terminate or affect in any way this Agreement, including, without limitation, the Total Regulatory Agreement.

4. USE: AFFORDABILITY COVENANTS. For the entirety of the Total Regulatory Agreement Term, Developer shall own, operate, and maintain the Project in accordance with the covenants and conditions of this Section 4.

4.1 General. Developer shall devote the Property for use as a residential rental community with no less than sixteen (16) Units to be rented to and occupied or held available for occupancy by Eligible Tenants who are Very Low Income Households at an Affordable Rent, no less than fifteen (15) Units to be rented to and occupied or held available for occupancy by Eligible Tenants who are Low Income Households at an Affordable Rent, and no less than fifteen (15) Units to be rented to and occupied or held available for occupancy by Eligible Tenants who are Moderate Income Households at an Affordable Rent (collectively, the "**Affordable Units**").

4.2 Use of Affordable Rental Units. The Affordable Units shall not at any time be utilized on a transient basis or rented for a period of less than thirty (30) consecutive days, nor shall they be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, rest home day care facilities, or non-residential uses (other than to maintain a Home Office); provided that the use of the Affordable Units for guests on an intermittent basis shall not be considered transient use for purposes of this Agreement. All of the Affordable Units shall be available for rental on a continuous basis to members of the general public, and Developer shall not give preference to any particular class or group in renting the Affordable Units, except to the extent that Affordable Units are required to be rented to Eligible Tenants. A vacated Affordable Unit shall be held vacant until re-leased to an Eligible Tenant or until another Unit at the Property with the same number of bedrooms is leased to an Eligible Tenant and therefore becomes a Substitute Affordable Unit hereunder. Developer shall exercise diligent efforts to lease any such vacated Affordable Unit to an Eligible Tenant in an expeditious manner.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 54

4.3 Location and Designation of Affordable Units. Subject to the terms of this Section 4.3, the Affordable Units shall be permitted to float among all three hundred six (306) Units in the Project. The proportional mix of studio, one-, two-, and three-bedroom Affordable Units shall be consistent with the proportional mix of studio, one-, two-, and three-bedroom Market Rate Units, and the average square footage for the Affordable Units shall be approximately the same as the average square footage for Market Rate Units of the same number of bedrooms. The Affordable Units shall be located and distributed throughout all buildings in the Project so that no one area or building of the Project has a disproportionate concentration of Affordable Units. The Affordable Units shall be constructed with the same exterior appearance and interior features, fixtures, and amenities and shall use the same type and quality of materials as provided for the Market Rate Units in the Project.

4.4 Income Eligibility Certification. The Affordable Units shall be rented to and occupied only by Eligible Tenants. Immediately prior to any occupancy of an Affordable Unit, Developer shall obtain from each applicant for the Affordable Unit and maintain on file an Tenant Income Verification Form, certifying the income of the applicant based upon the current income of each member of the Household. The Tenant Income Verification Form shall be dated immediately prior to the date of initial occupancy of the Affordable Unit by the applicant. Developer shall use diligent efforts to verify that the income provided by an applicant is accurate by obtaining the following as a part of the verification process: (a) three (3) pay stubs for the most recent pay periods; (b) three most recent statements for all asset accounts, including checking, savings, retirement, 401K, etc. for all household members; (c) copies of the federal and state income tax returns if filed by the applicant for the prior two (2) calendar years; (d) a written verification of income and employment from the applicant's current employer if the applicant is employed; (e) an income verification form from the Social Security Administration and/or California Department of Social Services if the applicant receives assistance from either agency; (f) a certification as to the income and household size of the applicant; (g) if an applicant is unemployed or did not file an income tax return for the previous calendar year, such other information as reasonably necessary to verify the applicant's income; and (g) any other information reasonably required to verify the income of the proposed tenant. Developer shall maintain on file a copy of each Tenant Income Verification Form along with the information obtained to verify the applicant's income for a period of five (5) years. Developer shall provide such information to City upon request by City. An Affordable Unit occupied by a tenant who qualifies as an Eligible Tenant at the commencement of the occupancy shall be treated as occupied by an Eligible Tenant until a recertification of such Eligible Tenant's income demonstrates that such tenant no longer qualifies as an Eligible Tenant, as further set forth in Section 4.5 below.

4.5 Recertification. Annually, during the term hereof, on or before the anniversary of the move-in date for each Eligible Tenant with respect to an Affordable Unit, Developer shall recertify the income of each Eligible Tenant by obtaining a completed Tenant Income Verification Form and all necessary supporting documentation based upon the current income of each member of the Household of the Affordable Unit. Developer shall annually notify each Eligible Tenant of such requirement with the notice of annual tenant recertification attached hereto and incorporated herein as Exhibit F.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 55

4.5.1 In the event that recertification demonstrates that a Household's income exceeds the income permitted for the Household's Affordable Unit, but meets one of the other restricted income levels permitted at the Project pursuant to this Agreement, the Household shall continue to be permitted to reside in their Affordable Unit, and the following shall occur (i) the Household's Affordable Unit shall be redesignated as an Affordable Unit restricted at the Household's new income level, and (ii) Developer shall restrict and redesignate subsequent available Affordable Units as necessary to obtain the affordability mix required by this Regulatory Agreement.

4.5.2 In the event that recertification demonstrates that a Household's income exceeds the income permitted for Eligible Tenant status at any of the restricted income levels permitted at the Project pursuant to this Agreement, Developer shall perform either of the following: (i) to the extent permitted by applicable law, the occupants' lease shall not be renewed and said occupants shall be required to vacate the unit within one hundred eighty (180) days after the recertification; or (ii) the next available Market Rate Unit in the Project with the same number of bedrooms shall be leased as an Affordable Unit at Affordable Rent to an Eligible Tenant so that the Project will be in compliance with the covenants and conditions of this Agreement, and the previous Affordable Unit shall be re-designated as a Market Rate Unit and the occupants thereof may be charged the amount of rent for a Market Rate Unit.

4.6 Qualification by Housing Consultant. Developer shall retain an affordable housing consultant approved by City in City's reasonable discretion to review and qualify Developer's proposed tenants pursuant to the requirements of Section 4.4 above and to annually recertify then-existing Eligible Tenants pursuant to the requirements of Section 4.5 above.

4.7 Selection of Tenants. The Affordable Units shall be available for rental on a continuous basis and Developer shall not give preference to any particular class or group in renting Affordable Units, except to the extent that Affordable Units are required to be rented to Eligible Tenants. Developer shall market the Affordable Units to the residents of the City of Dana Point on a nonexclusive basis. Developer shall not refuse to lease to (i) a holder of a certificate of family participation under 24 CFR part 882 (Rental Certificate Program) or a rental voucher under 24 CFR part 887 (Rental Voucher Program) or to the holder of a comparable document evidencing participation in a Section 8 program or other tenant-based assistance program, who is otherwise qualified to be a tenant in accordance with the approved tenant selection criteria (and in such event Developer shall be permitted to receive the "Fair Market Rent," as determined by the Department of Housing and Urban Development, from such tenant), or (ii) an applicant who would be qualified to be a tenant in accordance with the approved tenant selection criteria but for a poor credit rating resulting from a foreclosure of a mortgage on a single family home previously owned by the applicant.

4.8 Initial Lease-Up of Affordable Units by Lottery System. Developer agrees to commence to market the Affordable Units at the earliest feasible time, but not later than one hundred twenty (120) days prior to issuance of a final building permit and lease-up of any Affordable Unit/or Market Rate Units. Developer shall use its best efforts

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 56

to market the Affordable Units to persons who live and/or work within the City of Dana Point. Developer shall rent the Affordable Units pursuant to a lottery system. Prior to implementation of any such lottery system, Developer shall submit its proposed lottery system to City for review and approval, which approval shall not be unreasonably withheld, conditioned or denied. None of (i) Developer or CUSD or their respective officials, or the immediate family members of their respective officials, or (ii) Developer's employees or the immediate family members of Developer's employees, shall be eligible to participate in the lottery for the initial lease-up of the Affordable Units (the "Developer/CUSD Eligibility Prohibition"). All of Developer's advertising and marketing materials pertaining to the Affordable Units, including, without limitation, postings or publications on the Internet, shall contain a statement regarding the Developer/CUSD Eligibility Prohibition. As used herein, the term "immediate family member" shall mean and include a parent or step-parent, grandparent or step-grandparent, sibling or step-sibling, and child or step-child. A representative from the City may, but shall not be obligated to, attend the lottery. Promptly upon the completion of the lottery, Developer shall distribute the final tenant selection list via email to all parties present and to City.

4.9 Affordable Unit Waiting List. Following the initial lease-up of the Affordable Units, Developer shall maintain a waiting list of persons interested in renting an Affordable Unit. Subject to Section 4.11 below, at such time as an Affordable Unit becomes available for rental, Developer shall rent such Affordable Unit to the first person on the waiting list that qualifies as an Eligible Tenant to rent the Affordable Unit. Developer shall use commercially reasonable efforts to lease Affordable Units that become available as quickly as possible.

4.10 Affordable Rent. The rent for the Affordable Units shall not exceed Affordable Rent.

4.11 Occupancy Levels. The number of persons permitted to occupy each Affordable Unit shall not exceed the occupancy standard as established by the California Department of Fair Employment and Housing which, as of the Effective Date, is two persons per bedroom, plus one person (e.g., for a two bedroom unit the maximum number of persons residing in the unit can be five persons). The lease for each Affordable Unit shall include a provision limiting the number of persons permitted to occupy each Affordable Unit in accordance with the preceding sentence and Developer shall enforce such occupancy restrictions. Further, the minimum household size permitted for the lease of an Affordable Unit shall be one (1) person per bedroom, such as, for example, that a two (2) bedroom Affordable Unit may not be leased to a household consisting of less than two (2) persons.

4.12 Principal Residence. The lease for each Affordable Unit shall provide that the Affordable Unit shall be used as the principal residence of the Affordable Unit's Eligible Tenant and for no other purpose. The lease for an Affordable Unit may allow the Eligible Tenant to have a Home Office so long as the Affordable Unit is the Eligible Tenant's principal residence. The lease shall further provide that the Eligible Tenant shall not lease or sublease any part of its Affordable Unit or its right of occupancy. Developer shall enforce such restrictions.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 57

4.13 Rental Agreement. The form of the lease used by Developer for the rental of the Affordable Units shall obligate the Eligible Tenants to comply with the provisions set forth in this Agreement that are applicable to the Eligible Tenants, and an Eligible Tenant who violates such requirements shall be in default under the lease. Each lease entered into with an Eligible Tenant shall include a provision to the effect that the Developer has relied on the information provided by the Eligible Tenant on the Tenant Income Certification Form and Questionnaire and all other supporting information supplied by the Eligible Tenant in determining qualification for occupancy of the applicable Affordable Unit, and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease. Each lease for an Affordable Unit (or addendum thereto) also shall contain a provision that failure to cooperate with the annual recertification process may disqualify the Eligible Tenant as such and will be cause for immediate termination of such lease. In addition, each lease for an Affordable Unit (or addendum thereto) shall contain a provision requiring the Eligible Tenant to waive any right to relocation assistance from City. Any termination shall be subject to fair housing laws and other laws designed to protect the rights of tenants.

4.14 Records and Reports: Inspection. Developer shall maintain complete and accurate records pertaining to the Affordable Units and the matters pertaining to this Agreement for a period of no less than five (5) years (unless a longer period of time is expressly set forth herein), and shall permit any duly authorized representative of City to inspect the books and records of Developer pertaining to the tenants and rents of the Affordable Units.

5. NO DISCRIMINATION. In addition to any other nondiscrimination provisions applicable to the Property under federal, state or local law, Developer by and for itself and any successor in interest covenants that there shall be no discrimination against, or segregation of, any persons, or group of persons, on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the enjoyment, sale, lease or development of the Property, nor shall Developer itself, or any person claiming under or through it, establish or permit any such practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property or any portion thereof. The foregoing covenants shall run with the land.

6. REPAIR AND MAINTENANCE OF PROPERTY. Developer shall maintain or cause to be maintained the Property and all improvements on the Property, including the Affordable Units, in good condition and repair (and, as to landscaping, in a healthy condition) and in accordance with all applicable laws, rules, ordinances, orders, and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having jurisdiction. City places prime importance on quality maintenance to ensure that affordable housing projects within the City of Dana Point are not allowed to deteriorate due to substandard maintenance. Developer shall make all repairs and replacements necessary to keep the improvements in good condition and repair and shall promptly eliminate all graffiti and any accumulation of debris or waste material and

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 58

replace dead and diseased plants and landscaping with comparable approved materials. In the event that Developer breaches any of the covenants contained in this Section 6, and such default continues for a period of five (5) days after written notice from City (with respect to landscaping, graffiti, debris, waste material, and general maintenance) or thirty (30) days after written notice from City (with respect to building improvements) (provided, that if such building improvement default cannot reasonably be cured within such thirty (30) day period, such period shall be extended for the time reasonably necessary to cure the default if Developer commences to cure within said thirty (30) day period and diligently prosecutes such cure to completion) then City in addition to whatever other remedy it may have at law or in equity, shall have the right to enter upon the Property and perform or cause to be performed all such acts and work necessary to cure the default. Pursuant to such right of entry, City shall be permitted (but is not required) to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and landscaped areas on the Property, and to attach a lien on the Property, or to assess the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by City and/or costs of such cure, including a ten percent (10%) administrative charge, which amount shall be promptly paid by Developer to City upon demand.

7. **MANAGEMENT.** Developer shall manage or cause to be managed the Project in accordance with this Agreement and the standards and practices of prudent and qualified managers that manage properties similar to the Property. Developer may contract with a management company or manager to operate the Project and maintain the Property ("Property Manager"); provided, however, that in the event of "Gross Mismanagement" (as that term is defined below), City shall have the authority to require that such Gross Mismanagement cease immediately, and further to require the immediate replacement of the Property Manager, whether that Property Manager is Developer or a third party. The replacement Property Manager shall be required to operate and maintain the Property in accordance with the terms of this Agreement and the standards and practices of prudent and qualified managers that manage properties similar to the Property. In the event of such a replacement, the costs to retain the replacement Property Manager shall be the responsibility of Developer. For purposes of this Agreement the term "Gross Mismanagement" shall mean management of the Project in a manner which materially violates the terms of this Agreement and shall include, but is not limited to, the following:

- (i) knowingly allowing an Affordable Unit to be occupied by a person who does not qualify as an Eligible Tenant or renting an Affordable Unit for more than the Affordable Rent;
- (ii) knowingly allowing the prescribed occupancy levels to be exceeded without taking immediate action to stop such overcrowding;
- (iii) failure to maintain the Property in the manner prescribed in Section 6 after notice and an opportunity to cure, as set forth in said Section 6;

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 59

(iv) failure to timely submit reports required under this Agreement after notice, and an opportunity to cure, as set forth in Section 13.1; and

(v) failure to reasonably cooperate with the Orange County Sheriff's Department in maintaining a crime free environment on the Property after notice and an opportunity to cure, as set forth in Section 13.1.

8. CERTIFICATION OF CONTINUING PROGRAM COMPLIANCE. During the term of this Agreement, on or before each July 1, Developer shall annually advise the City of the status of the occupancy of the Affordable Units during the immediately prior April 1 – March 31 period. Developer shall advise City of the status of the occupancy of the Affordable Units by delivering a Certification of Continuing Program Compliance that provides, among other information, (a) whether the Affordable Units in the Project have been rented to and are occupied by Eligible Tenants, and (b) whether either (i) no unremedied default has occurred under this Agreement, or (ii) a default has occurred, in which event the Certification of Continuing Program Compliance shall describe the nature of the default and set forth the measures being taken by the Developer to remedy such default. Developer shall have the obligation to conduct a reasonable investigation of the Affordable Units to ensure the information in the Certification of Continuing Program Compliance, to the best of Developer's knowledge, is true and correct.

9. COMPLIANCE WITH LAWS; RIGHT TO INSPECT. Developer shall comply with all applicable laws, regulations, and rules of any governmental agencies having jurisdiction with regard to any activities conducted on the Property and the Project. Developer shall indemnify City for any relocation obligations arising from the performance or implementation of this Agreement. City shall have the right to inspect the Property and the Affordable Units for purposes of assuring compliance with this Agreement during normal business hours on not less than seventy-two (72) hours written notice. Developer shall include such City inspection right in Developer's form of lease.

10. INDEMNIFICATION. Developer shall defend (with counsel of City's choosing and the reasonable consent of Developer, which may be joint defense counsel upon City's and Developer's consent, in each of their sole and absolute discretion), indemnify and hold harmless City and City's officers, officials, members, agents, employees, representatives, and volunteers (each, an "Indemnitee") from and against any loss, damage, costs, expenses, liability, claim, or judgment (collectively, "claims") relating in any manner to the Property and/or the operation of the Project and Units as rental properties thereon, and/or Developer's performance under this Agreement, except to the extent any such claims are caused by the gross negligence or willful misconduct of an Indemnitee.

11. INSURANCE. Upon completion of construction of the Project and in no event later than the date upon which the first Unit has received all required occupancy permits from City and for the duration of the Total Affordability Term of this Agreement, Developer shall procure and keep in full force and effect, or cause to be procured and kept in full force and effect for the mutual benefit of Developer and City, and shall provide

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 60

City evidence reasonably acceptable to City, of insurance policies meeting the minimum requirements set forth in this Section 11:

11.1 Commercial General Liability Insurance. Commercial General Liability insurance with respect to the Property and the operations of or on behalf of Developer, in an amount not less than Three Million Dollars (\$3,000,000.00) per occurrence combined single limit including products, completed operations, contractual, bodily injury, personal injury, death and property damage liability, subject to such increases in amount as City may reasonably require from time to time; provided, that (i) City shall not require any such increase prior to the fifth (5th) anniversary of the Effective Date, and following any such initial increase, City shall not require any subsequent increase prior to the fifth (5th) anniversary of the prior increase, and (ii) the percentage increase in coverage shall not be required to exceed the percentage increase in the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics, for Urban Wage Earners and Clerical Workers, Los Angeles-Long Beach-Anaheim Average, All Items (1984 = 100) (the "Index"), from and after the Effective Date, or, if said Index is discontinued, such official index as may then be in existence and which is most nearly equivalent to said Index (the "CPI Adjustment"). Unless otherwise approved in advance by City, the insurance to be provided by Developer may provide for a deductible or self-insured retention of not more than Ten Thousand Dollars (\$10,000.00), with such maximum amount to increase at the same rate as the periodic increases in the minimum amount of total insurance coverage set forth above. City and its officers, officials, employees, volunteers, agents, and representatives shall be named as additional insureds under such policy or policies.

11.2 All-Risk Property Insurance. With respect to the improvements and any fixtures and furnishings to be owned or leased by Developer on the Property, property insurance covering all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, special extended perils ("all risk" or "special causes of loss," as such terms are used in the insurance industry), with the standard form fire insurance coverage in an amount equal to full actual replacement cost thereof, as the same may change from time to time. The above insurance policy or policies shall include coverage for earthquakes to the extent generally and commercially available at commercially reasonable rates, if such insurance is generally obtained for rental apartment projects of this size and type in Orange County, California. Such insurance shall contain a replacement cost endorsement.

11.3 General Insurance Requirements. A certificate of the insurer, certifying that each such policy has been issued, providing the coverage required herein, and containing the provisions specified herein, shall be delivered to City within five (5) days after the Effective Date, and thereafter, upon renewals, not less than thirty (30) days prior to the expiration of coverage. Developer shall provide written notice to City in the event of the cancellation of any policy within thirty (30) days of such cancellation. Notice shall be by certified mail, return receipt requested. City may, at any time, and from time to time, inspect and/or copy any and all insurance policies required to be procured by Developer hereunder. In no event shall the limits of any policy be considered as limiting the liability of Developer hereunder. In addition to the requirements

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 61

set forth in this Section 11, each insurance policy required to be carried by Developer pursuant to this Agreement:

(i) shall be primary insurance and not contributory with any other insurance which City or its officers, officials, employees, volunteers, agents, or representatives may have;

(ii) shall contain no special limitations on the scope of protection afforded to City or its officers, officials, employees, volunteers, agents, and representatives;

(iii) shall be "per occurrence" rather than "claims made" insurance;

(iv) shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability;

(v) shall provide that the policy will not be cancelled by the insurer or Developer unless there is a minimum of thirty (30) days (10 days for nonpayment of premium) prior written notice by certified mail, return receipt requested to City;

(vi) shall be written by a California licensed insurer with a Best rating of not less than A:VII;

(vii) shall be endorsed to state that any failure to comply with the reporting provisions of the policies shall not affect coverage provided to City and its officers, officials, employees, volunteers, agents, and representatives; and

(viii) shall contain a waiver by the insurer of any right to subrogation against City, and its officers, officials, employees, volunteer and agents, which arises or might arise by reason of any payment under such policy or policies except to the extent that any such claims arise from City's gross negligence.

12. REPAIR OF DAMAGE. If any improvements on the Property shall be totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty, Developer shall promptly proceed to obtain insurance proceeds (if any) and take all steps necessary to begin reconstruction and, (i) immediately upon receipt of insurance proceeds, if the casualty is the type for which Developer was required to obtain insurance, or (ii) within three (3) months following the casualty if (a) the casualty is the type for which Developer was not required to obtain insurance, or (b) the casualty is the type for which Developer was required to obtain insurance but did not so obtain, to promptly and diligently commence the repair or replacement of the Affordable Units to substantially the same condition as the Affordable Units are required to be maintained pursuant to this Agreement, and Developer shall complete the same as soon as possible thereafter so

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 62

that the Affordable units can continue to be operated and occupied in accordance with this Agreement. In no event shall the repair, replacement, or restoration period exceed three (3) years from the date of the destruction subject to events of force majeure unless City, in its sole and absolute discretion, approves a longer period of time. City shall have the right to extend the Total Affordability Term of any Affordable Unit for which the repair and restoration exceeds one (1) year from the date of the destruction. Subject to written approval by City, which approval shall not be unreasonably withheld or delayed, Developer may construct the Affordable Units on other real property located in the City of Dana Point. In such event, the Parties shall execute and record appropriate documentation prepared by the City Attorney to reflect the extended Total Affordability Term and/or revised site for the Affordable Units.

13. DEFAULTS AND REMEDIES.

13.1 Defaults. The failure or delay by either party to perform any term or provision of this Agreement shall constitute a default. Except where a shorter period of time is specified in this Agreement, the defaulting party shall have thirty (30) days after receipt of written notice from the other party specifying the nature of the default to cure, correct or remedy the default, or for defaults that cannot reasonably be cured, corrected, or remedied within such thirty (30) day time period, the defaulting party shall have thirty (30) days after receipt of the notice to commence to cure such failure or delay and shall diligently prosecute such cure, correction or remedy to completion within an additional sixty (60) days following the conclusion of such thirty (30) day period (for a total of ninety (90) days). Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. Except as required to protect against further damages, the injured party may not institute legal proceedings against the party in default until expiration of the cure period.

13.2 Liquidated Damages for Certain Defaults; Remedy For Excessive Rent Charge. It shall constitute a default for Developer to charge or accept for any Affordable Unit rent amounts in excess of the Affordable Rent. In the event that Developer charges or receives such higher rental amounts, in addition to any other equitable remedy City shall have for such default, Developer shall be required to pay to City an amount equal to two times the difference between the Affordable Rent that should have been charged and the amount of the rent received from the tenant. It shall also constitute a default for Developer to knowingly (or without investigation as required herein) initially rent any Affordable Unit to a tenant who is not an Eligible Tenant. In the event Developer violates this provision, in addition to any other equitable remedy City shall have for such default, Developer, for each separate violation, shall be required to pay to City an amount equal to (i) two times the total rent Developer received from such ineligible tenant, plus (ii) any relocation expenses incurred by City as a result of Developer having rented to such ineligible person.

THE PARTIES HERETO AGREE THAT THE AMOUNTS SET FORTH IN THIS SECTION 13.2 (THE "DAMAGE AMOUNTS") CONSTITUTE A REASONABLE APPROXIMATION OF THE ACTUAL DAMAGES THAT CITY WOULD SUFFER DUE TO THE DEFAULTS BY DEVELOPER SET FORTH IN THE FIRST PARAGRAPH OF

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 63

THIS SECTION 13.2, CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE EFFECTIVE DATE OF THIS AGREEMENT, INCLUDING THE RELATIONSHIP OF THE DAMAGE AMOUNTS TO THE RANGE OF HARM TO CITY AND ACCOMPLISHMENT OF CITY'S PURPOSE OF PROVIDING AFFORDABLE HOUSING TO ELIGIBLE TENANTS THAT REASONABLY COULD BE ANTICIPATED AND THE ANTICIPATION THAT PROOF OF ACTUAL DAMAGES WOULD BE COSTLY OR INCONVENIENT. THE AMOUNTS SET FORTH IN THIS SECTION 13.2 SHALL BE THE SOLE MONETARY DAMAGES REMEDY FOR THE DEFAULTS SET FORTH IN THIS SECTION 13.2, BUT NOTHING IN THIS SECTION 13.2 SHALL BE INTERPRETED TO LIMIT CITY'S REMEDY FOR SUCH DEFAULT TO SUCH A DAMAGES REMEDY. IN PLACING ITS INITIAL AT THE PLACE PROVIDED HEREIN BELOW, DEVELOPER SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT IT HAS BEEN REPRESENTED BY COUNSEL WHO HAS EXPLAINED THE CONSEQUENCES OF THE LIQUIDATED DAMAGES PROVISION AT OR PRIOR TO THE TIME EACH EXECUTED THIS AGREEMENT.

DEVELOPER'S INITIALS: _____

Notwithstanding anything herein to the contrary, in the event Developer charges an Eligible Tenant of an Affordable Unit more than the Affordable Rent, to the extent the tenant from whom Developer charged the excess rent still resides in the Project at the time City discovers this violation, or Developer knows the location of such tenant, Developer shall, in lieu of paying damages to City as described in this Section 13.2 above, refund the tenant the entire amount of excess rent charged to such tenant, calculated with interest at the lesser of the maximum legal rate or ten percent (10%). Developer shall provide evidence to City that such payment has been made, within thirty (30) days after City provides notice to Developer of the default hereunder or Developer otherwise becomes aware of such default.

14. LEGAL ACTIONS.

14.1 Specific Performance. Subject to notice and cure provisions in Section 13.1 above, either party shall be permitted, but not obligated, to commence an action for specific performance of the terms of this Agreement, or to cure, correct or remedy any default hereunder or to obtain any other legal or equitable remedy consistent with the purpose of this Agreement. City shall also have the right to pursue damages for Developer's defaults but in no event shall Developer be entitled to damages of any kind from City, including, without limitation, damages for economic loss, lost profits, or any other economic or consequential damages of any kind.

14.2 Institution of Legal Actions; Attorney's Fees and Costs. Any legal actions must be instituted in the Superior Court of the County of Orange, State of California, or in any other court in that county, and the Parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court. In the event of any litigation between the parties hereto, the prevailing party shall be entitled to receive, in addition to the relief granted, its reasonable attorney's fees (provided, however, that

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 64

the attorneys' fees awarded pursuant to this Section shall not exceed the hourly rate paid by City for legal services multiplied by the reasonable number of hours spent by the prevailing Party in the conduct of the litigation) and costs and such other costs incurred in investigating the action and prosecuting the same, including costs for expert witnesses, costs on appeal, and for discovery.

14.3 Applicable Law, Interpretation. The internal laws of the State of California shall govern the interpretation and enforcement of this Agreement, without regard to conflict of law principles. This Agreement shall be construed according to its fair meaning and as if prepared by both of the parties hereto.

14.4 Acceptance of Service of Process. In the event that any legal action is commenced by the Developer against the City, service of process on the City shall be made in such manner as provided by law. In the event that any legal action is commenced by the City against the Developer, service of process on the Developer shall be made by personal service upon any officer or director of the Developer or via Developer's registered service agent, and shall be valid whether made within or without the State of California or in such other manner as may be provided by law.

14.5 Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative; and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

15. MISCELLANEOUS.

15.1 Entire Agreement. With this exception of the Development Agreement, this Agreement and all of the exhibits and attachments hereto set forth and contain the entire understanding and agreement of the Parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein or therein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

15.2 Release of Transferring Developer. Upon the sale, transfer or assignment (any of the foregoing a "Transfer") in whole or in part, of Developer's right and interest to all or any portion of the Property, Developer may, at least thirty (30) days prior to completion of the Transfer, apply to City for a release from its obligations hereunder with respect to the portion of the Property so Transferred. City shall approve the partial or full release if: (i) Developer is not in default of this Agreement or of the Development Agreement at the time of the request for release, or provides adequate assurances to City that it will cure any default prior to the Transfer; and (ii) the transferee executes and delivers to City a written assumption agreement in substance and form which is approved by City's Attorney, which approval shall not be unreasonably denied, and in which: (A) the name and address of the transferee is set forth; (B) the transferee

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 65

expressly assumes the obligations of Developer under this Agreement, under the Development Agreement, and under the Ground Lease as to the portion of the Property transferred; (C) the transferee provides evidence reasonably satisfactory to City that the transferee has experience in developing (applicable only if the Transfer occurs prior to completion of the construction of the Project), owning and operating affordable housing with similar requirements and restrictions as the requirements and restrictions set forth in this Agreement; and (D) if the Transfer is for only a portion of the Property, the agreement specifies to City's reasonable approval how the affordable housing requirements herein will be satisfied and allocated to each parcel. Failure to obtain City approval of a written assumption agreement hereunder shall not negate, modify or otherwise affect the liability under this Agreement of any transferee or future owner of any portion of the Property. Developer shall remain responsible for all obligations set forth in the Agreement that are not subject to an assignment approved by the City in accordance with this paragraph. As used in this Agreement, the term "Developer" shall be deemed to include any such transferee or assignee after the date such Transfer occurs in compliance with this Agreement.

15.3 Assignment by City. City shall have the right to assign in its sole and absolute discretion all or any part of its interests in this Agreement without Developer's approval to a non-profit organization of its choosing. City shall provide notice to Developer of any such assignment.

15.4 Interpretation; Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California without regard to conflict of law principles. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

15.5 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement.

15.6 Notices

15.6.1 Delivery. As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder. All notices shall be in writing and shall be considered given either: (i) when delivered in person to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below; or (iii) two (2) days after deposit in the United States mail in a sealed envelope, first class mail and postage prepaid, and

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 66

addressed to the recipient named below; or (iv) one (1) day after deposit with a known and reliable next-day document delivery service (such as FedEx), charges prepaid and delivery scheduled next-day to the recipient named below, provided that the sending party receives a confirmation of delivery from the delivery service provider. All notices shall be addressed as follows:

If to CITY: City of Dana Point
33282 Golden Lantern
Dana Point, CA 92629
Attn: City Attorney

With a copy to: Rutan & Tucker, LLP
18575 Jamboree Road, 9th Floor
Irvine, CA 92612
Attn: A. Patrick Muñoz

If to DEVELOPER: Toll Bros., Inc.

15.6.2 Change of Address. Either Party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

15.7 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

15.8 Singular and Plural. As used herein, the singular of any word includes the plural, and vice versa, as context so dictates. Masculine, feminine, and neuter forms of any word include the other as context so dictates.

15.9 Joint and Several Obligations. If at any time during the term of this Agreement the Property and/or Project is owned, in whole or in part, by more than one Developer, all obligations of such Developer under this Agreement shall be joint and several, and the default of any such Developer shall be the default of all such Developers.

15.10 Computation of Days. Unless otherwise specified in this Agreement, the term "days" shall mean calendar days. For purposes of this Agreement, "business days" shall mean every day of the week that City Hall of the City is open for business to the general public.

15.11 Waiver. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or the failure by a Party to

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 67

exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Party with the terms of this Agreement thereafter.

15.12 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the Party benefited thereby of the covenants to be performed hereunder by such benefited Party.

15.13 Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property and the Project; (b) runs with the Property and the Project and each portion thereof; and, (c) is binding upon each Party and each successor in interest during ownership of the Property and the Project or any portion thereof.

15.14 Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement. City hereby authorizes City Manager to take such other actions and negotiate and execute any additional agreements as may be necessary or proper to fulfill the City's obligations under this Agreement. The City Manager may delegate her or his powers and duties under this Agreement to an authorized management level employee of the City.

15.15 Covenants Run with the Land. The Property shall be held, sold, conveyed, hypothecated, encumbered, used, occupied and improved subject to the covenants, conditions, and restrictions set forth herein. The covenants, conditions, restrictions, reservations, equitable servitudes, liens and charges set forth in this Agreement shall run with the Property and shall be binding upon Developer and all persons having any right, title or interest in the Property, or any part thereof, their heirs, and successive owners and assigns, shall inure to the benefit of City and its successors and assigns, and may be enforced by City and its successors and assigns. The covenants established in this Agreement shall, without regard to technical classification and designation, be binding for the benefit and in favor of City and its successors and assigns, and the parties hereto expressly agree that this Agreement and the covenants herein shall run in favor of City, without regard to whether City is or remains an owner of any land or interest therein to which such covenants relate. However, all such covenants and restrictions shall be deemed to run in favor of all real property owned by City which

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 68

real property shall be deemed the benefited property of such covenants and this Agreement shall create equitable servitudes and covenants appurtenant to all real property owned by City and running with the Property in accordance with the provisions of Civil Code Section 1468. Furthermore, all of the covenants, conditions, and restrictions contained herein shall also constitute easements in gross running in favor of City. City is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. Developer hereby declares its understanding and intent that the burden of the covenants set forth herein touch and concern the land and that the Developer's interest in the Property is rendered less valuable thereby. Developer hereby further declares its understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Property by the residents of City and by furthering the health, safety, and welfare of the residents of City.

15.16 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

15.17 Authority to Execute. The person or persons executing this Agreement on behalf of Developer warrants and represents that he or she/they have the authority to execute this Agreement on behalf of his or her/their corporation, partnership or business entity and warrants and represents that he or she/they has/have the authority to bind Developer to the performance of its obligations hereunder.

15.18 Counterparts. This Agreement may be executed by the Parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the Parties had executed the same instrument.

[Signatures on next page]

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 69

IN WITNESS WHEREOF, City and Developer have caused this instrument to be executed on their behalf by their respective officers or agents herein duly authorized as of the date set forth above.

"CITY"

CITY OF DANA POINT,
a California municipal corporation

By: _____
Michael Killebrew, City Manager

ATTEST:

Shayna Sharke, City Clerk

"DEVELOPER"

TOLL BROS., INC.,
a Pennsylvania corporation

By: _____

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 70

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California
that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California
that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 71

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Real property in the City of Dana Point, County of Orange, State of California,
described as follows:

[INSERT]

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 72

EXHIBIT B

DEPICTION OF THE PROPERTY

[INSERT]

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EXHIBIT B

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 73

EXHIBIT C

SAMPLE CALCULATION OF AFFORDABLE RENT

[See Attached]

PLANNING COMMISSION AGENDA REPORT
VICTORIA BOULEVARD APARTMENTS
MAY 13, 2024
PAGE 213

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 74

AFFORDABLE RENT CALCULATIONS
2023 INCOME STANDARDS
VICTORIA BOULEVARD APARTMENTS
DANA POINT, CALIFORNIA

		Studio Units	One-Bedroom Units	Two-Bedroom Units	Three-Bedroom Units
I. General Assumptions					
Area Median Income (AMI)	¹	\$88,450	\$102,250	\$115,000	\$127,800
Monthly Utilities Allowance	²	\$95	\$111	\$148	\$183
II. Affordable Rent Calculations	³				
A. Very Low Income - Rent Based on 50% AMI					
Benchmark Annual Household Income		\$44,725	\$51,125	\$57,500	\$63,900
Percentage of Income Allotted to Housing Expenses		30%	30%	30%	30%
Annual Income Available for Housing Expenses		\$13,418	\$15,338	\$17,250	\$19,170
Monthly Income Available for Housing Expenses		\$1,118	\$1,278	\$1,438	\$1,598
(Less) Monthly Utilities Allowance		(95)	(111)	(148)	(183)
Maximum Allowable Rent		\$1,023	\$1,167	\$1,290	\$1,415
B. Low Income - Rent Based on 60% AMI					
Benchmark Annual Household Income		\$53,670	\$61,350	\$69,000	\$76,680
Percentage of Income Allotted to Housing Expenses		30%	30%	30%	30%
Annual Income Available for Housing Expenses		\$16,101	\$18,405	\$20,700	\$23,004
Monthly Income Available for Housing Expenses		\$1,342	\$1,534	\$1,725	\$1,917
(Less) Monthly Utilities Allowance		(95)	(111)	(148)	(183)
Maximum Allowable Rent		\$1,247	\$1,423	\$1,577	\$1,734
C. Moderate Income - Rent Based on 80% AMI					
Benchmark Annual Household Income		\$98,395	\$112,475	\$126,500	\$140,580
Percentage of Income Allotted to Housing Expenses		30%	30%	30%	30%
Annual Income Available for Housing Expenses		\$29,519	\$33,743	\$37,950	\$42,174
Monthly Income Available for Housing Expenses		\$2,460	\$2,812	\$3,163	\$3,515
(Less) Monthly Utilities Allowance		(95)	(111)	(148)	(183)
Maximum Allowable Rent		\$2,365	\$2,701	\$3,015	\$3,332

- ¹ Based on the 2023 Orange County household incomes published by the California Department of Housing & Community Development (HCD). The benchmark household size is set at the number of bedrooms in the unit plus one.
- ² Based on the Orange County Housing Authority utilities allowance schedule effective as of October 1, 2023. Assumes: Electric Cooking, Electric Heating, and Electric Water Heater; and Basic Electric.
- ³ Based on the calculation methodology defined in California Health & Safety Code Section 50053.

Prepared by: Kayser Marston Associates
File name: 1.23.24.2023 HSC 50053 Rents; Aff Rent

Page 1 of 1

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EXHIBIT C
-1-

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 75

EXHIBIT D

CERTIFICATION OF CONTINUING PROGRAM COMPLIANCE

[See Attached]

EXHIBIT D

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PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 76

CERTIFICATION OF CONTINUING PROGRAM COMPLIANCE

The undersigned, being duly authorized to execute this certificate on behalf of _____, owner of the _____ Project, hereby represents and warrants that:

1. He/she has read and is thoroughly familiar with the provisions of the Regulatory Agreement and Declaration of Covenants and Restrictions between City and _____

2. As of June 30, 20____, the following number of residential units in the Project (i) are currently occupied by tenants qualifying as _____ Income Households at Affordable Rents; (ii) are currently occupied by tenants qualifying as _____ Income Households at Affordable Rents; (iii) are currently occupied by tenants qualifying as _____ Income Households at Affordable Rents; or (iv) are currently vacant and being held available for occupancy by Eligible Tenants and have been so held continuously since the date Eligible Tenants vacated such unit, as indicated:

- i. _____ Units occupied by _____ Income Households
- ii. _____ Units occupied by _____ Income Households
- iii. _____ Units occupied by _____ Income Households
- vi. _____ vacant Units

3. The unit number, unit size, rental amount charged and collected, number of occupants, and the income of the occupants for each Affordable Unit in the Project are set forth on the attached list. All Affordable Units in the Project are rented at Affordable Rent.

DEVELOPER NAME

a _____

Dated: _____, 20____

By: _____

(Printed name and title)

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 77

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PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 78

EXHIBIT E

TENANT INCOME VERIFICATION FORM

[See Attached]

PLANNING COMMISSION AGENDA REPORT
VICTORIA BOULEVARD APARTMENTS
MAY 13, 2024
PAGE 218

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 79

TENANT INCOME VERIFICATION FORM
VICTORIA BOULEVARD APARTMENTS

Table 1: Annual Household Gross Earned Income ¹			
List All Sources of Earned Income for all Adult Household Members Living in the Inclusionary Unit			
	Head of Household	Other Adult Household Members	Total
1. Gross amount, before payroll deductions of wages, salaries, overtime pay, commissions, fees, tips and bonuses	\$	\$	\$
2. Net income from business	\$	\$	\$
3. Social security, annuities, insurance policies, pension/retirement funds, disability or death benefits received periodically	\$	\$	\$
4. Payment in lieu of earnings, such as unemployment, disability compensation, worker's compensation and severance pay	\$	\$	\$
5. Public assistance, welfare payments	\$	\$	\$
6. Alimony, child support, other periodic allowances	\$	\$	\$
7. Regular pay, special pay and allowances of members of the Armed Forces	\$	\$	\$
8. Other	\$	\$	\$
Subtotal: Monthly Earned Income			\$
Total Monthly Earned Income x 12 = \$			Total Annual Household Gross Earned Income:

¹ The following items are not considered income: casual or sporadic gifts; amounts specifically for or in reimbursement of medical expenses; lump sum payments such as inheritances, insurance payments, capital gains and settlement for personal or property losses; educational scholarships paid directly to the student or educational institution; special pay to a serviceman head of family away from home and under hostile fire; relocation payments under federal, state or local law; foster child care payments; value of coupon allotments for purpose of food under Food Stamp Act of 1964 which is in excess of amount actually charged the eligible household; payments received pursuant to participation in the following programs: VISTA, Service Learning Programs, and Special Volunteer Programs; SCORE, A.C.E. Retired Senior Volunteer Program, Foster Grandparent Program, Older American Community Services Program, and National Volunteer Program to Assist Small Business Experience.

Page 2
January 24, 2024

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EXHIBIT E
-1-

PLANNING COMMISSION AGENDA REPORT
VICTORIA BOULEVARD APARTMENTS
MAY 13, 2024
PAGE 219

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 80

Table 2A: Household Assets ¹				
List the Value of All Assets Owned by all Adult Household Members Living in the Inclusionary Unit				
	Head of Household	Other Adult Household Members	Total	Return @ 10% of Total
1. Bank & savings accounts	\$	\$	\$	\$
2. Stocks and bonds	\$	\$	\$	\$
3. Real property	\$	\$	\$	\$
4. Other	\$	\$	\$	\$

Table 2B: Income Earned Annually from Household Assets			
List the Actual Annual Return on All Assets			
Owned by all Adult Household Members Living in the Inclusionary Unit			
	Head of Household	Other Adult Household Members	Total
1. Bank and savings accounts	\$	\$	\$
2. Stocks and bonds	\$	\$	\$
3. Real property	\$	\$	\$
4. Other	\$	\$	\$

The return on household assets to be included in the Gross Income calculation is set at the greater of the two amounts shown on the following page:

¹ Necessary items, such as furniture and automobiles, used for personal use are excluded from household assets. Collections of items for hobby, investment or business purposes must be included in household assets. Under California Government Code Section 52714, if the total value of household assets exceeds \$5,000, the calculation of the household's annual income shall include the greater of the actual amount of income, if any, derived from all of the household assets; or 10% of the total value of the assets.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 81

Table 2C. Annual Asset Income to be Added to Annual Household Gross Earned Income			
	10% Annual Return	Actual Return	Return to be Applied
1. Bank and savings accounts	\$	\$	\$
2. Stocks and bonds	\$	\$	\$
3. Real property	\$	\$	\$
4. Other	\$	\$	\$
Total Annual Return to be Added to Annual Household Gross Earned Income:			\$

The total Gross Household Income is equal to the sum of the following:

Table 3: Calculation of the Household's Total Annual Gross Income	
Annual Household Gross Earned Income (Table 1)	\$
Annual Asset Income (Table 2C)	\$
Total Annual Household Gross Income	\$

Income Documentation	
Attach True Copies of the Relevant Documents Listed Below:	
Paycheck stubs from two most recent pay periods	Bank/Savings account verification
Employment verification:	Self-employment verification:
Income tax return	Unemployment verification
Social security verification	Welfare verification
Alimony/child support verification	Disability income verification
Other (Describe):	

PLANNING COMMISSION AGENDA REPORT
VICTORIA BOULEVARD APARTMENTS
MAY 13, 2024
PAGE 221

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 82

AFFIDAVIT

This Affidavit is made with the knowledge that it will be relied upon by the _____ City of Dana Point, our landlord and the owner of our apartment building, to determine maximum income for eligibility. (I/we) warrant that all information set forth in this document is true, correct and complete and based upon information (I/we) deem reliable and based upon such investigation as (I/we) deemed necessary.

(I/We) acknowledge that (I/we) have been advised that the making of any misrepresentation or misstatement in this affidavit will constitute a material breach of (my/our) rental agreement with the property owner to rent the unit and will additionally enable the property owner to initiate and pursue all applicable legal and equitable remedies with respect to the unit and to me/us.

(I/We) do hereby swear under penalty of perjury that the foregoing statements are true and correct and that this affidavit has been executed as of the date specified below by each adult member of the household which intends to occupy an Inclusionary Unit located at: _____, Dana Point, California.

Signature _____

Date _____

Printed Name _____

Executed at _____, Dana Point, California

Signature _____

Date _____

Printed Name _____

Executed at _____, Dana Point, California

EXHIBIT E

-4-

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 83

EXHIBIT F

ANNUAL TENANT RECERTIFICATION LETTER

[See Attached]

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EXHIBIT F

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 84

ANNUAL TENANT RECERTIFICATION
VICTORIA BOULEVARD APARTMENTS

Date:

Tenant Name:

Unit Address:

Dear _____:

In accordance with the requirements imposed by the Victoria Boulevard Apartments Regulatory Agreement, and your lease, the City of Dana Point requires that we review your income and household composition every year. To complete our review, the project owner or property manager will set up a meeting with you to receive the necessary information.

When you attend the meeting with the project owner or property manager you must bring documents that verify the income of all the adult members of your household. This information can include income tax returns, employment verification, wage statements, interest statements, and/or unemployment compensation statements.

Cooperation with the recertification requirement is a condition of continuing tenancy in an Affordable Unit. You must report the required information to enable the project owner to process the recertification by **Month/Day**.

Sincerely,

Property Manager / Project Owner

Page 1
January 24, 2024

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EXHIBIT F
-1-

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 85

EXHIBIT F

Joinder Agreement

[SEE FOLLOWING PAGES]

PLANNING COMMISSION AGENDA REPORT
VICTORIA BOULEVARD APARTMENTS
MAY 13, 2024
PAGE 225

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 86

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

CITY OF DANA POINT
33282 Golden Lantern
Dana Point, CA 92629
Attn: City Attorney

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

[This Joinder Agreement is recorded at the request and for the benefit of the City of Dana Point and is exempt from the payment of a recording fee pursuant to Government Code Sections 6103 and 27383]

JOINDER AGREEMENT

THIS JOINDER AGREEMENT ("Joinder Agreement") is executed as of _____, 20____, by CAPISTRANO UNIFIED SCHOOL DISTRICT, a public school district duly organized and validly existing under the Constitution and the laws of the State of California ("Joining Party" or "Ground Lessor"), and delivered to CITY OF DANA POINT, a California municipal corporation ("City"), as Ground Lessor of that certain ground lease agreement (the "Ground Lease") between the Ground Lessor and TOLL BROS., INC., a Pennsylvania corporation (the "Developer").

RECITALS

A. Ground Lessor owns that certain real property located within the City of Dana Point, County of Orange, State of California, and more particularly described in Exhibit "A" attached hereto and incorporated herein (the "Property") and has agreed to lease the Property to the Developer for the purposes of the Project, as defined below.

B. Developer intends to develop and operate on the Property a multi-family apartment complex containing not more than three hundred six (306) residential dwelling units, with not less than forty-six (46) of such units restricted to occupancy by very low income, low income, and moderate income households, and with associated public and private open space and amenities (collectively, the "Project").

C. On or about the same date hereof, City, Developer, and CUSD have entered into that certain Development Agreement which sets forth the respective expectations of City, Developer and CUSD with respect to the Project, including, without limitation, the required approvals, the development limitations, and the required private and public open space and recreational amenities (the

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 87

"Development Agreement").

D. Pursuant to and as a condition of City entering into the Development Agreement, on or about the same date hereof City and Developer have entered into that certain Regulatory Agreement and Declaration of Covenants and Restrictions, which imposes the foregoing affordability requirements (the "Regulatory Agreement").

E. Under the terms of the Ground Lease, the Developer has the right to encumber the Property.

F. Joining Party expects to realize direct and indirect benefits as a result of the Regulatory Agreement.

G. Terms used but not defined in this Joinder Agreement shall have the meanings defined for those terms in the Regulatory Agreement.

NOW, THEREFORE, Joining Party agrees as follows:

AGREEMENT

1. Joinder-Regulatory Agreement. Joining Party hereby agrees to evidence its consent to the Regulatory Agreement and its agreement that the Regulatory Agreement bind the fee simple interest in the Property and the leasehold interest created by the Ground Lease, and further agrees that the Regulatory Agreement run with the land; provided that, by recording the Regulatory Agreement, the City, on behalf of itself and its successors, and assigns and on behalf of all other parties who, pursuant to the terms of the Regulatory Agreement, shall be entitled to the benefit thereof, shall be deemed to have agreed that: (i) Ground Lessor's execution of this joinder to the Regulatory Agreement shall not give rise to any personal liability or obligation under the Regulatory Agreement on the part of the Ground Lessor, its successors and assigns or any present or future officer, director, employee, trustee, member, agent or advisor of any of the foregoing, and (ii) all notices of default hereunder and under the Regulatory Agreement to the Developer shall also be given to the Ground Lessor, and the Ground Lessor shall have the right to cure any such default on the terms and conditions set forth in the Regulatory Agreement and City shall accept or reject such cure on the same basis as if made by the Developer.

2. Further Assurances. Joining Party agrees to execute and deliver such other instruments and documents and take such other action, as the City may reasonably request, in connection with the transaction contemplated by this Joinder Agreement.

3. Governing Law and Venue. This Joinder Agreement and the Regulatory Agreement and other instruments given pursuant hereto shall be construed in accordance with and be governed by the laws of the State of

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 88

California. In the event of any legal action to enforce or interpret this Joinder Agreement or the Regulatory Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394.

4. Notices. If at any time after the execution of this Joinder Agreement it shall become necessary or convenient for one of the parties hereto to serve any notice, demand or communication upon the other party, such notice, demand or communication shall be in writing and shall be served personally or by depositing the same in the registered United States mail, return receipt requested, postage prepaid and:

To the City:

City of Dana Point
33282 Golden Lantern
Dana Point, CA 92629
Attn: City Attorney

With a copy to:

Rutan & Tucker, LLP
18575 Jamboree Road, 9th Floor
Irvine, CA 92612
Attn: A. Patrick Muñoz

To the Joining Party/Ground Lessor:

5. Effective Date. The effective date (the "**Effective Date**") of this Joinder Agreement concurs with the earlier of the date the Memorandum of the Ground Lease or the Development Agreement is recorded in the office of the County Recorder of Orange County, California.

IN WITNESS WHEREOF, Joining Party has executed this Joinder Agreement under seal as of the day and year first above written.

Signature Follows

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 90

APPROVED AS TO FORM:
RUTAN & TUCKER, LLP

By: _____
A. Patrick Muñoz, City Attorney

Dated: _____

**PLANNING COMMISSION AGENDA REPORT
VICTORIA BOULEVARD APARTMENTS
MAY 13, 2024
PAGE 230**

**PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 91**

**Exhibit A
LEGAL DESCRIPTION**

Real property in the City of Dana Point, County of Orange, State of California, described as follows:
ALL OF BLOCKS FOUR AND FIVE OF TRACT NO. 735, AS SHOWN ON A MAP RECORDED IN BOOK 22, PAGES 21 TO 28, INCLUSIVE, MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA; TOGETHER WITH THE VACATED ALLEYS IN SAID BLOCKS FOUR AND FIVE, AS ABANDONED BY RESOLUTIONS OF THE BOARD OF SUPERVISORS OF ORANGE COUNTY, CALIFORNIA, CERTIFIED COPIES OF WHICH RESOLUTIONS WERE RECORDED SEPTEMBER 11, 1939 IN BOOK 1009, PAGE 367 OF OFFICIAL RECORDS, AND MAY 19, 1953 IN BOOK 2505, PAGE 505 OF OFFICIAL RECORDS; AND ALSO THAT PORTION OF AMERICAN AVENUE EXTENDING FROM THE SOUTHWESTERLY LINE OF VICTORIA BOULEVARD SOUTHWESTERLY TO THE NORTHERLY LINE OF LA PLAYA AVENUE, AS SHOWN ON THE MAP OF SAID TRACT NO. 735, AS ABANDONED BY RESOLUTION OF THE BOARD OF SUPERVISORS OF ORANGE COUNTY, CALIFORNIA, A CERTIFIED COPY OF WHICH RESOLUTION WAS RECORDED SEPTEMBER 11, 1939 IN BOOK 1009, PAGE 367 OF OFFICIAL RECORDS AND ALSO TOGETHER WITH THAT PORTION OF LA PLAYA AVENUE, 80.00 FEET IN WIDTH, AS SHOWN ON SAID MAP OF TRACT NO. 735, AS ABANDONED BY RESOLUTION NO. 71-454 OF THE BOARD OF SUPERVISORS OF ORANGE COUNTY, CALIFORNIA, A CERTIFIED COPY OF WHICH WAS RECORDED MAY 03, 1971 IN BOOK 9627, PAGE 691 OF SAID OFFICIAL RECORDS, SAID PORTION BEING BOUNDED NORTHEASTERLY BY THE SOUTHEASTERLY PROLONGATION OF THE SOUTHWESTERLY LINE OF VICTORIA BOULEVARD, 80.00 FEET IN WIDTH, AS SHOWN ON SAID MAP AND BOUNDED WESTERLY BY A LINE WHICH IS AT RIGHT ANGLES TO THE SOUTHERLY LINE OF BLOCK 4 OF TRACT NO. 735 AND WHICH PASSES THROUGH THE WESTERLY CORNER OF SAID BLOCK.
EXCEPTING FROM LOTS FOUR, SEVEN, EIGHT AND NINE IN SAID BLOCK FOUR ANY AND ALL COAL, OIL AND OTHER MINERALS WITHIN OR UNDERLYING SAID LAND AND THE RIGHTS RELATING TO SAID SUBSTANCES, AS EXCEPTED IN THE DEED FROM CONSOLIDATED PACIFIC INVESTMENT CO., RECORDED DECEMBER 06, 1945 IN BOOK 1364, PAGE 445 OF OFFICIAL RECORDS, THE RIGHTS SO EXCEPTED PERTAINING TO THE REMOVAL OF SUCH SUBSTANCES HAVING BEEN MODIFIED BY AN INSTRUMENT RECORDED MARCH 17, 1947 IN BOOK 1482, PAGE 421 OF OFFICIAL RECORDS, WHICH PROVIDES, AMONG OTHER THINGS, THAT CONSOLIDATED PACIFIC INVESTMENT CO. SHALL NOT HAVE THE RIGHT TO USE THE SURFACE OF SAID LAND.

APN: 668-361-01

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PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
DA24-0001
Page 92

EXHIBIT G

Property Lease

[NOTE: Form of Lease to be as approved by CUSD Board of Directors, consistent with Exhibit B to Option Agreement dated January 15, 2019, as amended. To include the following additional provision as provided by the Fourth Amendment to Option to Lease Real Property between CUSD and Toll Bros. (and wherein "Intended Final Project Unit Count" means the unit count in the "Core Project Characteristics" defined by the Development Agreement between the parties): Toll Bros. and its successors and assigns will not (i) seek a density bonus or other incentive in connection with the development of the Property beyond the maximum unit counts specified in the Intended Final Project Unit Count, (ii) apply for or allow the addition of any accessory dwelling units on the Property, (iii) apply for or allow an urban lot split on the Property, or (iv) exercise any right to augment the density or intensity of the Project on the Property beyond the maximum unit counts specified in the Intended Final Project Unit Count.

ACTION DOCUMENT 6: Draft Planning Commission Resolution No. 24-05-13-XX for Specific Plan

RESOLUTION NO. 24-05-13-XX

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF DANA POINT, CALIFORNIA, RECOMMENDING CITY COUNCIL APPROVE THE VICTORIA BOULEVARD SPECIFIC PLAN (SP24-0001) AND INCORPORATE IT AS APPENDIX G OF THE ZONING CODE, AND SUBMISSION AS PART OF LOCAL COASTAL PROGRAM AMENDMENT (LCPA20-0002) FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION FOR THE PROPERTY LOCATED AT 26126 VICTORIA BOULEVARD

Applicant: Toll Brothers Apartment Living
Owner: Capistrano Unified Schools District

The Planning Commission of the City of Dana Point does hereby resolve as follows:

WHEREAS, Toll Brothers Apartment Living has submitted the proposed Victoria Boulevard Specific Plan, which would serve both planning and regulatory functions including land use regulations, circulation patterns, public facilities and infrastructure requirements, and development standards; and

WHEREAS, the Planning Commission held a duly noticed public hearing as prescribed by law on May 13, 2024, to consider the Victoria Boulevard Specific Plan as an amendment Local Coastal Program LCPA20-0002; and

WHEREAS, at said public hearings, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, the Planning Commission considered all factors relating to the Victoria Boulevard Specific Plan and Local Coastal Program LCPA20-0002; and

WHEREAS, the Victoria Boulevard Specific Plan will be consistent with and will provide for the orderly, systematic and specific implementation of the General Plan, as such General Plan, Zoning, and Local Coastal Program would be amended pursuant to the recommendations of Planning Commission Resolution No. 24-05-13-XX, which is contingent on City Council approval; and

WHEREAS, the Specific Plan promotes creative approaches to the redevelopment of the property to address California's and Dana Point's housing shortage with a development of land while modifying the use of the property to a desirable use of open space area, variety in the physical development pattern of the City, and utilization of innovative land use programs; and

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
SP24-0001
PAGE 2

WHEREAS, the Victoria Boulevard Specific Plan is generally compatible with the character and density of the surrounding neighborhood through the incorporation of regulations to guide development and the provision of public facilities to serve the anticipated population and the surrounding area; and

WHEREAS, pursuant to the provisions of the California Environmental Quality Act (CEQA), an Environmental Impact Report (SCH# 2021070304) has been prepared for the proposed project; and

WHEREAS, the preparation and adoption of the Local Coastal Program Amendment is statutorily exempt from the California Environmental Quality Act, pursuant to Section 21080.9 of the Public Resources Code.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Dana Point as follows:

- A. That the above recitations are true and correct;
- B. That the proposed action complies with all other applicable requirements of State law and local Ordinances;
- C. That the adoption of the proposed Victoria Boulevard Specific Plan as an amendment to the Local Coastal Program is in the public interest;
- D. Pursuant to the provisions of the California Environmental Quality Act (CEQA), an Environmental Impact Report (SCH# 2021070304) has been prepared for the proposed project and is complete and adequate for the consideration of the Specific Plan;
- E. That the Planning Commission adopt the following findings:
 1. That the public and affected agencies have had ample opportunity to participate in the LCPA process, **in that proper notice has been provided in accordance with the LCP Amendment procedures.**
 2. That all policies, objectives, and standards of the LCPA conform to the requirements of the Coastal Act, including that the Land Use Plan as amended is in conformance with and adequate to carry out the Chapter Three policies of the Coastal Act, **in that the Victoria Boulevard Specific Plan will serve as the LCP and has been evaluated to ensure consistency with the Coastal Act related to coastal resources, hazard area, coastal access, land use priorities, intensity and water uses.**

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
SP24-0001
PAGE 3

3. That Coastal Act policies concerning specific coastal resources, hazard areas, coastal access concerns, and land use priorities have been applied to determine the kind locations, and intensity of land and water uses. **The Victoria Boulevard Specific Plan serves both planning and regulatory functions including land use regulations, circulation patterns, public facilities and infrastructure requirements, and development standards. The location and intensity of development allowed per the Victoria Boulevard Specific Plan is appropriate in that the location is in an urbanized area, predominantly built out, and is approximately 0.26 miles from the coast and is physically separated from the coast by Pacific Coast Highway. As such, there are no coastal resources in the site vicinity.**
4. That the level and pattern of development proposed is reflected in the Land Use Plan, Zoning Code, and Zoning Map. The applicable sections are being amended accordingly to be consistent with state law. **The location and intensity of development allowed per the Victoria Boulevard Specific Plan is appropriate in that the location is in an urbanized area, predominantly built out, and is approximately 0.26 miles from the coast and is physically separated from the coast by Pacific Coast Highway.**
5. That a procedure has been established to ensure adequate notice of interested persons and agencies of impending development proposed after certification of the LCPA. **Proper notice in accordance with the LCP Amendment procedures has been followed.**
6. That zoning measures are in place which are in conformance with and adequate to carry out the coastal policies of the Land Use Plan. **The City's Zoning Code is being amended concurrently with the LCP amendment.**
- G. That the Planning Commission recommends that the City Council include the following findings in the City Council resolution:
 1. The City certifies that the City will carry out the Local Coastal Program in a manner fully in conformity with Division 20 of the Public Resources Code as amended, the California Coastal Act of 1976.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
SP24-0001
PAGE 4

2. The actual wording of the Victoria Boulevard Specific Plan serves as both the land use plan and implementation plan for the project site.
 3. The City certifies that the Land Use Plan, as amended, is in conformity with and adequate to carry out the Chapter Three policies of the Coastal Act.
 4. The City certifies the implementing actions as amended, are in conformity with and adequate to carry out the provisions of the certified Land Use Plan.
 5. The Resolution of the City Council shall include the General Plan and Zone Change when submitted to the Coastal Commission.
 6. The City certifies that the Victoria Boulevard Specific Plan will be submitted to the Coastal Commission for review and approval.
- H. That the Planning Commission recommends that the City Council adopt the Victoria Boulevard Specific Plan SP24-0001 as shown in Exhibit "A" of this Resolution, attached hereto and incorporated herein by this reference; and

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
SP24-0001
PAGE 5

PASSED, APPROVED, AND ADOPTED at a regular meeting of the Planning Commission of the City of Dana Point, California, held on this 13th day of May, 2024, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mary Opel, Chair
Planning Commission

ATTEST:

Brenda Wisneski
Director of Community Development

ACTION DOCUMENT 7: Draft Planning Commission Resolution No. 24-05-13-XX for CDP, SDP, VTPM

RESOLUTION NO. 24-05-13-XX

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING COASTAL DEVELOPMENT PERMIT CDP20-0005, SITE DEVELOPMENT PERMIT SDP20-0007, AND VESTING TENTATIVE PARCEL MAP VTPM20-0001 TO CONSTRUCT A 306 UNIT APARTMENT COMPLEX WITH AN ATTACHED SIX STORY PARKING STRUCTURE, ASSOCIATED AMENITIES, AND SITE IMPROVEMENTS AT 26126 VICTORIA BOULEVARD

Applicant: Toll Brothers Apartment Living

Owner: Capistrano Unified School District

The Planning Commission for the City of Dana Point does hereby resolve as follows:

WHEREAS, Capistrano Unified School District (the "Owner"), owns the real property located at 26126 Victoria Boulevard and identified by Assessor's Parcel Number 668-361-01 (the "Property"); and

WHEREAS, the Toll Brothers Apartment Living (the "Applicant") filed a verified application to establish a Specific Plan at the subject property with corresponding requests for a Coastal Development Permit to allow the proposed development within the Coastal Overlay District (Coastal Zone), Site Development Permits to allow the construction of a multi-family apartment complex and parking structure within the Floodplain Overlay (FP-2), and Vesting Tentative Parcel Map to consolidate the underlying lots, all of which is contingent upon City Council approval of General Plan Amendment GPA20-0002, Zone Change ZC24-0001, Specific Plan SP24-0001, Local Coastal Plan Amendment LCPA20-0002, and Development Agreement DA24-0001 for the subject property; and

WHEREAS, said verified application constitutes a request as provided by Title 9 of the Dana Point Municipal Code; and

WHEREAS, the project was noticed and the Planning Commission held a dully noticed public hearing as prescribed by law on May 13, 2025, to consider a General Plan Amendment GPA20-0002, Zone Change ZC24-0001, Specific Plan SP24-0001, Local Coastal Plan Amendment LCPA20-0002, and Coastal Development Permit CDP20-0005, Site Development Permit SDP20-0007, Vesting Tentative Parcel Map VTPM20-0001, and Development Agreement DA24-0001; and

WHEREAS, in accordance with the requirements of the California Environmental Quality Act (CEQA), California Public Resources Code sections 21000 et seq., the State CEQA Guidelines, 14 C.C.R. section 15000 et seq, the City has prepared a Final Environmental Impact Report (EIR) for the Victoria Boulevard Apartments, State Clearinghouse No. 2021070304, (the "Final Project EIR"), a full, true and correct copy of which is on file with the City Clerk of the City of Dana Point; and,

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 2

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, said Commission considered all factors relating to Coastal Development Permit CDP20-0005, Site Development Permit SDP20-0007, Vesting Tentative Parcel Map VTPM20-0001; and

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Planning Commission of the City of Dana Point as follows;

- A) The above recitations are true and correct.

Findings:

- B) Based on the evidence presented at the public hearing, the Planning Commission adopts the following findings and approves Vesting Tentative Parcel Map VTPM20-0001, subject to conditions
- 1) That the proposed map is consistent with the City's General Plan in that, the subdivision of the existing property is consistent with the proposed GPA, ZC, Specific Plan, and LCPA that are being processed concurrently with this application, and if approved, would result in a permitted density of 55.5 dwelling units per acre, which is consistent with the density proposed by the project. The project increases the supply and diversity of housing types, including providing 46 affordable residential units in the City of Dana Point to comply with the goals and policies of the Housing Element. The project promotes pedestrian-oriented development, consistent with the goals of the Doheny Village by providing housing within walking distance of places of business, employment, and public transportation, consolidating the driveways on Victoria and Sepulveda Blvd. to minimize pedestrian and vehicle conflicts, constructing new and wider public sidewalks and a new Class III bicycle lane.
 - 2) That the design and improvement of the proposed subdivision is consistent with the City's General Plan in that, the project design conforms to the proposed General Plan Amendment and Victoria Boulevard Specific Plan, which is being processed concurrently with this VTM. Specifically, the design and improvement of the subdivision is consistent with the proposed Victoria Boulevard Specific Plan's development standards for the multi-family apartment complex, parking structure, recreation buildings, and site improvements. The property has been utilized as one parcel as a school bus yard for several decades with the 34 underlying lots never merged into one parcel which is achieved with the TPM.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 3

The project is consistent with Urban Design Element Policy 2.1: "Consider the distinct architectural and landscape character of each community. To the maximum extent feasible, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses" in that, the project promotes the character and surf heritage of the historic Doheny Village District by constructing new open spaces, new public parking, new and widened public sidewalks adorned with surf benches, a new Class III bicycle lane, and consolidating the driveways on Victoria and Sepulveda Blvd to minimize conflicts between pedestrians and vehicles and encourage the development of a pedestrian friendly recreational uses. The proposed VTM is consistent with the proposed Specific Plan's development standards and design guidelines, which encourage unified landscaping, open spaces, and architecture that contribute towards the Coastal Contemporary design theme of Doheny Village.

The project also complies with Urban Design Element Policy 5.3 "Encourage buildings and exterior spaces that are carefully scaled to human size and pedestrian activity." The Project creates approximately 141,540 square feet (3.3 acres) of open space. A total of 17,666 square feet of public open space would include Victoria Shore Park (at the corner of Sepulveda Avenue and Victoria Boulevard) as well as a Dog Park and a public paseos along the former La Playa Avenue right-of-way. The project also creates a new 10 foot pedestrian sidewalk along Victoria Blvd. and Sepulveda Blvd., that replaces the existing four foot wide sidewalk, creates a new Class III bicycle lane, and consolidates the driveways on Victoria and Sepulveda Blvd., and thus minimizes conflicts between pedestrians and vehicles. The project is limited to two- and three-stories along Victoria Boulevard. The project design incorporates courtyards and a public park at the intersection of Victoria Boulevard and Sepulveda Avenue. The roof top recreational buildings are centrally located to reduce the visibility and massing of the Project from the adjacent public right of way.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 4

- 3) That the site is physically suitable for the proposed type of development in that, the property is appropriately located and sized to accommodate the 306-unit multi-family residential complex. More specifically, The project is surrounded by a mixture of multi-family residential and commercial uses and the EIR that was prepared for the project determined any and all potential impacts would be mitigated. In addition, the project provides all required parking on-site, increases the amount of public parking available in the right of way, and maintains existing public views of the ocean. Moreover, in addition to the 306 residential units on the Property, construction of the proposed project will result in approximately 141,540 square feet (3.3 acres) of open space including recreation areas, one public park, two courtyards, and two public paseos, as well as an additional public sidewalk along Sepulveda Blvd., a widened public sidewalk along Victoria Blvd., and a Class III bicycle lane.

The project also provides the necessary improvements to create vehicular, pedestrian, and bicycle access associated with the project without resulting in any unmitigated traffic impacts. The project complies with Circulation Element Policy 4.5 which states: "Promote new development that is designed in a manner that (1) facilitates provision or extension of transit service, (2) provides on-site commercial and recreational facilities to discourage mid-day travel, and (3) provides non-automobile circulation within the development" in that, the project site is located in an urbanized area with sidewalks and bike paths along roadways within project vicinity to facilitate non-automobile circulation related to the project. While the project would not provide commercial uses on-site, the project would provide a number of new recreational and open space amenities, including one public park, two courtyards, and two public paseos, a new and a widened public sidewalk(s), and a new Class III bicycle lane. Additionally, the site is located within Doheny Village that has existing commercial uses within walking distance.

- 4) That the requirements of the California Environmental Quality Act (CEQA) have been satisfied in that, a EIR (State Clearinghouse No. 2021070304) was prepared in accordance with Section 15080 of the California Environmental Quality Act (CEQA), which assessed the impacts of the project on the environment and determined that implementation of the proposed project would not result in any significant and unavoidable adverse impacts, and all potentially significant impacts will be mitigated.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 5

- 5) That the site is physically suitable for the proposed density of development in that, the project is consistent with the proposed General Plan Amendment, Zoning Change, and Specific Plan that are being processed concurrently with this application, and if approved, would allow for 55.5 dwelling units per acre. Construction of the project not only results in 306 multi-family residential units but also results in the development of approximately 141,540 square feet (3.3 acres) of open space including recreation areas, one public park, two courtyards, and two public paseos. In addition, the project provides all required parking on-site, creates additional public parking in the right of way, and will maintain existing public views of the ocean. An EIR was completed for the project which concluded that there are no environmental impacts related to traffic, utilities, and infrastructure for the proposed 306-unit apartment complex, recreational amenities, and site improvements.
- 6) That the design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage or substantial and avoidable injury to fish or wildlife habitat in that, the project's EIR (State Clearinghouse No. 2021070304) was prepared in accordance with Section 15080 of the California Environmental Quality Act (CEQA), which assessed the impacts of the project on the environment, and determined that implementation of the proposed project would not result in any significant and unavoidable adverse impacts, and that all potentially significant impacts will be mitigated. Additionally, the existing site is currently developed with hardscape, asphalt, and buildings for the current school bus yard that has no fish or wildlife habitat on site.
- 7) That the design of the subdivision and the proposed improvements are not likely to cause serious public health problems in that, the subdivision results in the consolidation of 34 underlying lots which is reflective of the current use of the site as what appears to be one parcel. The project is designed in accordance with all applicable codes which will be reviewed during rough and precise grading and building plan check prior to issuance of grading or building permits to implement the proposed improvements associated with the tentative parcel map. In addition, the proposed project will result in additional open space and public recreational opportunities including the construction of a new and a widened public sidewalk(s), a new Class III bicycle lane, approximately 141,540 square feet (3.3 acres) of open space including recreation areas, one public park, two courtyards, and two public paseos.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 6

- 8) That the design of the subdivision and the proposed improvements will not conflict with easements of record or established by court judgment or acquired by the public at large for access through or use of property within the proposed subdivision; or, if such easements exist, that alternate easements for access or for use will be provided and these will be substantially equivalent to ones previously acquired by the public in that, existing easements on the property are in the process of being abandoned or quitclaimed or will be as part of recordation of the final map; none of which have been established by court judgment or acquired by the public at large for access through or use of the Property within the proposed subdivision.
- 9) That the design and improvement of the proposed subdivision are suitable for the uses proposed and the subdivision can be developed in compliance with the applicable zoning regulations in that, the proposed project is consistent with surrounding multi-family residential and commercial uses, and provides all required parking on-site, creates new public parking in the right of way, results in approximately 141,540 square feet (3.3 acres) of open space including recreation areas, one public park, two courtyards, two public paseos, one new and one widened public sidewalk, a new Class III bicycle lane, and maintains existing public views of the ocean. Moreover, the proposed subdivision has been designed in conformance with the standards contained in the proposed General Plan Amendment, Zone Change, Specific Plan, and Local Coastal Program Amendment, which are being processed concurrently with this application, and if approved, would be constructed in compliance with those regulations. Specifically, the project complies with the proposed Specific Plan's standards related to height, setbacks, lot coverage, open space, and landscape coverage requirements. Additionally, the City completed an EIR for the project and concluded any potential environmental impacts would be mitigated.
- 10) That the subdivision is not located in a fee area, or if located in a fee area, the subdivider has met the requirements or payment of the applicable fees or the subdivision would not allow development of a project which would contribute to the need for the facility for which a fee is required in that, the approval of the proposed project will be conditioned upon the applicant's payment of all applicable fees for the development of the project to City, in compliance with the City's regulations and/or the terms and provisions contained in Development Agreement DA24-0001.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 7

- 11) That the subdivision is located in an area which has access to adequate utilities and public services to support the development proposed within the subdivision or that the subdivision includes the provisions and improvements necessary to ensure availability of such utilities and services **in that, the project is an infill development with adequate utilities and public services to support the proposed development. The City completed an EIR for the project which concluded that there would be no environmental impacts related to traffic, utilities, and infrastructure for the proposed 306-unit apartment complex, recreational amenities, and site improvements.**
- C) Based on the evidence presented at the public hearing, the Planning Commission adopts the following findings and approves Site Development Permit SDP20-0007, subject to conditions:
- 1) That the site design is in compliance with the development standards of the Dana Point Zoning Code **in that, the project complies with the proposed General Plan Amendment, Zone Change, Specific Plan, and Local Coastal Program Amendment which are being processed concurrently with this application. The Specific Plan establishes specific standards related to height, setbacks, lot coverage, open space, and landscape coverage requirements. The Specific Plan limits height along Victoria Boulevard to be under 50 foot for the first 40 feet from the street. The project design is under this height limitation, with two- and three-stories along Victoria Boulevard, and the project design incorporates courtyards and a public park at the intersection of Victoria Boulevard and Sepulveda Avenue. The roof top recreational buildings are centrally located to reduce the visibility and massing of the project and will be 82 feet which is three feet under the maximum height of 85 feet per the proposed Victoria Boulevard Specific Plan.**
 - 2) That the site is suitable for the proposed use and development **in that, Doheny Village has a diverse range of housing types, including multi-family, mobile homes, affordable housing, and live/work units, which is a unique feature within the City. The project would enhance the site's compatibility with adjacent uses as compared to the current school bus yard use.**

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 8

The project site is situated adjacent to the I-5 freeway and is designed to maintain existing public views of the ocean. The project is designed with two- and three-stories along Victoria Boulevard and the project design incorporates courtyards, a public park at the intersection of Victoria Boulevard and Sepulveda Avenue, and a public paseo adjacent to the I-5 offramp. The roof top recreational buildings are centrally located to reduce the visibility and massing of the project. Moreover, construction of the project not only results in 306 multi-family residential units, courtyards and a public park, but also creates additional public parking in the right of way, one new and one wider public sidewalk, a new Class III bicycle lane, and the consolidation of the driveways on Victoria and Sepulveda Blvd., all of which encourage safe pedestrian, vehicular, and bicycle access to the project and the surrounding neighborhood. .

- 3) That the project is in compliance with all elements of the General Plan and all applicable provisions of the Urban Design Guidelines in that, in that, the project complies with the proposed General Plan Amendment, Zone Change, Specific Plan, and Local Coastal Program Amendment, which are being processed concurrently with this application. More specifically, the project complies with Land Use Element Goal 1, which states: "Achieve a desirable mixture of land uses to meet the residential, commercial, industrial, recreational, open space, cultural and public service needs of the City residents" and Goal 2, which provides: "Achieve compatibility and enhance relationships among land uses in the community" in that the project would modify the industrial bus yard use to multi-family residential, a use which is consistent with the mix of uses in Doheny Village and in the immediate vicinity of the project site. The project complies with Housing Element Goal 1 which aims to "Provide a variety of residential developments and an adequate supply of housing to meet the existing and future needs of City residents." This alignment is evident in the project's diverse housing offerings, including 36 studios, 153 one-bedroom units, 105 two-bedroom units, 12 three-bedroom units, and 46 affordable units.

The project was evaluated with the General Plan's Urban Design Element and Design Guidelines to ensure it complies with its goals and policies; however, the Urban Design Element does not include guidance for unique, coastal, high-density projects. The Specific Plan Design Guidelines (Section 4) were created to address the unique scope to ensure a high-quality residential community that is compatible with the neighborhood. The Specific Plan also establishes a "Reduced building height zone" where no portion of the building would exceed a height

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 9

of 50 feet within 40 feet of the Victoria Boulevard right-of-way, and projections in excess of 50 feet are not permitted. The project proposes two- and three-stories, which would be well within the height allowed in the "Reduced building height zone," and results in reducing the overall mass and creates a pedestrian scale, vertical breaks, and streetscapes; barriers between the parking garage and the proposed dwelling units and the public; and encourages a high level of design to improve scenic quality at the project site.

- 4) That the site and structural design is appropriate for the site and function of the proposed use, without requiring a particular style or type of architecture in that, the proposed development includes several site improvements necessary to implement development on the property. The project will be reviewed by Building, Planning, Public Works, and OCFA to ensure the structural design complies with all the applicable codes and the Victoria Boulevard Specific Plan. The project plans for Building Permit review will be evaluated by the City departments to ensure the project complies with the Design Guidelines established in the Victoria Boulevard Specific Plan.

To ensure the project is appropriate for the site in terms of scale, the project provides ample open space and recreational uses (such as, courtyards, a private park, and a public paseo), and a height along the Victoria Boulevard frontage is limited to two- and three-stories. The project also centrally locates the sixth story recreational buildings on the roof to limit their visibility from the street. The height limitation, courtyards and location of sixth floor recreational buildings reduces the massing and bulk of the project.

- D) Based on the evidence presented at the public hearing, the Planning Commission adopts the following findings and approves Coastal Development Permit CDP20-0005, subject to conditions:
 - 1) That the project is in conformity with the certified Local Coastal Program as defined in Chapter 9.75 of this Zoning Code. (Coastal Act/30333, 30604(b); 14 Cal. Code of Regulations/13096) in that, the project is consistent with the proposed General Plan Amendment, Zone Change, Specific Plan, and LCPA, that are being processed concurrently with this application, and which if approved, would change the land use designation from Community Facilities (CF) and Recreation (REC) to the proposed Victoria Boulevard Specific Plan (Specific Plan), which would allow for the development of the proposed project to occur. These amendments align with the General Plan, as the

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 10

current CF land use designation for 4.4 acres of the 5.5 acre site permits residential uses, and the property is surrounded by both residential and institutional uses. These amendments, and the development of the project consistent with these amendments, would enhance the site's compatibility with adjacent uses as compared to the current school bus yard use and would be in conformance with the certified LCPA, if and when it is approved by the City Council.

- 2) That the proposed development, if located between the nearest public roadway and the sea or shoreline of any body of water, is in conformity with the public access and public recreation policies of Chapter Three of the Coastal Act. (Coastal Act/30333, 30604(c); 14 Cal. Code of Regulations/13096) **in that, the project site is located landward of the nearest public roadway and the sea and is not required to provide public access. Moreover, the project does not impact public access to the coast as nearby coastal access is 1,050 feet away at Doheny State Beach. The project would result in the creation of 306 residential units, of which, 46 units would be deed restricted affordable for a period of 55 years (five percent very low-, five percent low-, and five percent moderate-income units of the overall unit count) and create more affordable housing within the City of Dana Point in the Coastal Zone. For the reasons stated the project conforms to the public access and recreation policies of Chapter Three of the California Coastal Act.**
- 3) That the proposed development conforms with Public Resources Code Section 21000 and following and that there are no feasible mitigation measures or feasible alternatives available which would substantially lessen any significant adverse impact that the activity may have on the environment. (Coastal Act/30333; 14 Cal. Code of Regulations/13096) **in that, the project's EIR (State Clearinghouse No. 2021070304) was prepared in accordance with Section 15080 of the California Environmental Quality Act (CEQA), and it assessed the impacts of the project on the environment and determined that implementation of the proposed project would not result in any significant and unavoidable adverse impacts, and all potentially significant impacts will be mitigated. Additionally, the existing site is developed with hardscape, asphalt, and buildings for the current school bus yard that has no habitat or wildlife on site.**

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 11

- 4) That the project is exempt from providing public access in that, no public access ways exist (lateral or vertical) on or near the project site, and as a result, no public access to the public tidelands and coast would be adversely affected by the implementation of the proposed project. Public access to Trust lands (the beach and ocean) exists 1,050 feet from the subject property to the southwest at Doheny State Beach. Additional public access is also available to the northwest at the Dana Point Harbor. Public access would be unaffected by the implementation of the project.
- 5) That the proposed development will be sited and designed to prevent adverse impacts to environmentally sensitive habitats and scenic resources located in adjacent parks and recreation areas, and will provide adequate buffer areas to protect such resources in that, the project site is developed with an asphalt paving, hardscape, and buildings for the Capistrano Unified School District bus yard and there is no sensitive habitat or scenic resources that exist on-site or adjacent to the property. Additionally, the project completed an EIR (State Clearinghouse No. 2021070304) to evaluate the project and determined that any potential environmental impacts would be mitigated.
- 6) That the proposed development will minimize the alterations of natural landforms and will not result in undue risks from geologic and erosional forces and/or flood and fire hazards in that, the project site is generally flat with no natural land formations and is fully developed with an asphalt paving, hardscape, and buildings for the Capistrano Unified School District bus yard. Additionally, the project completed an EIR (State Clearinghouse No. 2021070304) to evaluate the project and determined that any potential impacts would be mitigated. The EIR evaluated the site's geology and soil conditions to ensure there are no geological and erosional forces.

The City's Zoning Map identifies a portion of the property along Sepulveda Avenue that is located within the FP-2 Floodplain Overlay. The hydrology analysis for the project in the EIR concluded that the majority of the project site is located within the FEMA Flood Zone 'X' per FEMA Flood Insurance Rate Map (FIRM) No. 06059C0508K, which was revised on March 21, 2019. Flood Zone 'X' represents areas of minimum flood hazard. A portion of the site along Sepulveda Avenue is shown to be slightly within or adjacent to FEMA Flood Zone 'A' (no Base Flood Elevation determined). The City has provided a supplemental draft FEMA flood map and reference exhibits from a Letter of Map Revision (LOMR) for the San Juan Creek area that is in the process of being adopted. Per this updated study

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 12

and FIRM, the Flood Zone 'A' is delineated to be retained almost completely within the public right-of-way of Sepulveda Avenue. The LOMR study determines the flooding depths within Sepulveda Avenue to be 1.5 feet, which is the best available data to determine the Base Flood Elevation within this zone.

- 7) That the proposed development will be visually compatible with the character of surrounding areas, and, where feasible, will restore and enhance visual quality in visually degraded areas, in that the project incorporates multiple design features to ensure visual compatibility and quality, including specifically, the Specific Plan, which establishes a "Reduced building height zone" where no portion of the building would exceed a height of 50 feet within 40 feet of the Victoria Boulevard right-of-way and no projections in excess of 50 feet are not permitted. The proposed project design complies with the Specific Plan standards with a limited height of two-and three-stories along Victoria Boulevard which reduces the overall mass and provides a pedestrian scale, vertical breaks, and enhanced streetscape in order to be visually compatible with and enhance the character of the surrounding areas.

In addition, Chapter 4 of the Specific Plan includes guidelines for site planning, architectural, landscaping, signage, lighting, art-in-public places, and sustainability, which ensure visual compatibility and enhance visual quality. Specifically, the Site planning guidelines include elements to reduce the appearance of overall mass and provide pedestrian scale, vertical breaks, and streetscapes; create barriers between the parking structure, dwelling units, and the public; and encourage a high level of design to improve scenic quality at the project site.

Moreover, the project's primary community entry would occur along Sepulveda Avenue with an arrival promenade to serve as a gateway into the development. The Arrival Promenade enhances visual quality by providing an enhanced entry drive paving, an art wall, synthetic turf, and parkway landscaping, among other amenities to provide a "sense of place" and function as Common Open Space. Similarly, the rooftop amenity area serves as Common Open Space for residents. The rooftop amenity area would be centrally located on the roof of the structure and designed to have limited visibility from Victoria Boulevard, Sepulveda Avenue, or surrounding properties. Courtyards, plazas, and open space areas on-site would occur on the interior of the residential community surrounded by residential units and building facilities, or along the exterior of the development facing a public street to provide visual interest, and likewise would be

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 13

compatible with and enhance the visual quality of the surrounding community.

- 8) That the proposed development will conform with the General Plan, Zoning Code, applicable Specific Plan, Local Coastal Program, or any other applicable adopted plans and programs **in that, the project is consistent with the proposed General Plan Amendment, Zone Change, Specific Plan, and LCPA, which are being processed concurrently with this application, and which if approved, would allow for the proposed development to occur by changing the land use designation from Community Facilities (CF) and Recreation (REC) to the proposed Victoria Boulevard Specific Plan (Specific Plan). These amendments align with the General Plan, as the CF land use designation permits residential uses, and the property is surrounded by both residential and institutional uses. These amendments, and the development of the project consistent with these amendments, would enhance the site's compatibility with adjacent uses over the current school bus yard use and would be in conformance with City's plans and programs.**
- E) The No Net Loss Law, or Government Code 65863, requires cities to ensure that development opportunities remain available throughout the planning period to accommodate a jurisdiction's regional housing need assessment (RHNA). In the event a city approves a project with a lower density than that which is identified in the city's housing element, the city must make findings that the remaining sites identified in the housing element are adequate to meet the city's RHNA. Here, development of the Property at a lower density (306 total units, and 46 affordable units) than that which was identified in the Housing Element (365 total units, and 57 affordable units) is consistent with Government Code Section 65863(b) in that **(1) the reduced density is consistent with the General Plan Amendment, which is being processed concurrently with this application, and (2) the remaining sites identified in the City's housing element are adequate to meet the City's RHNA. More Specifically, the subject site was included in the City's General Plan Housing Element, and projected the potential for construction of 57 income restricted units (38 low- and 19-moderate income), assuming a total of 365 units were constructed. The project proposes 306 residential units, which results in 46 income restricted units (31 low- and 15-moderate income). The proposed project would result in 59 fewer total units, and eleven (11) fewer income restricted units (7 fewer low- and 4 fewer moderate-income) than assumed would to contribute towards meeting the City's 6th Cycle Regional Housing Needs Assessment (RHNA). However, the Housing Element identified a housing inventory surplus of 184 income**

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 14

restricted units (56 low- and 128 moderate-income). This surplus has not been impacted or utilized by any other project in the City. As a result, there are adequate sites remaining to accommodate the City's RHNA. Approval of the proposed project, however, would reduce the City's housing inventory surplus to 175 income restricted units (49 low- and 170-moderate income). In sum, the housing inventory remains sufficient to meet the City's RHNA and complies with the No Net Loss Law (Government Code 65863).

Conditions:

A. General:

1. Approval of this application allows a Vesting Tentative Parcel Map VTPM20-0001 to merge the underlying parcels into one lot and a Coastal Development Permit CDP20-0005, and Site Development Permit SDP20-0007 construct a 306 unit apartment complex with a parking structure with one level of subterranean parking, rooftop recreational buildings, and site improvements that is contingent upon City Council approval of all of the following: General Plan Amendment GPA20-0002, Zone Change ZC24-0001, Specific Plan SP24-0001, Development Agreement DA24-0001, Local Coastal Program Amendment No. LCPA20-0002, and EIR No. 2021070304 at the subject property identified by Assessor's Parcel Number 668-361-01. In the event the City Council does not approve any one of the above-listed entitlements, approval of this VTPM20-0001, CDP20-0005, SDP20-0007 shall be null and void. (PLN)
2. The discretionary permit(s) shall be subject to the terms outline in the Development Agreement DA24-0001. (PLN)
3. The application is approved for the location and design of the uses, structures, features, and materials, shown on the approved plans. Any relocation, alteration, or addition to any use, structure, feature, or material, not specifically approved by this application, will nullify this approving action. If any changes are proposed regarding the location or alteration to the appearance or use of any structure, an amendment to this permit shall be submitted for approval by the Director of Community Development. If the Director of Community Development determines that the proposed change complies with the provisions and the spirit and intent of this approval action, and that the action would have been the same for the amendment as for the approved plans, the Director may approve the amendment without requiring a new public hearing. (PLN)

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 15

4. Failure to abide by and faithfully comply with any and all conditions attached to the granting of this permit shall constitute grounds for revocation of said permit. (PLN)
5. The applicant or any successor-in-interest shall defend, indemnify, and hold harmless the City of Dana Point ("CITY"), its agents, officers, or employees from any claim, action, or proceeding against the CITY, its agents, officers, or employees to attack, set aside, void, or annul an approval or any other action of the CITY, its advisory agencies, appeal boards, or legislative body concerning the project. Applicant's duty to defend, indemnify, and hold harmless the City shall include paying the CITY's attorney's fees, costs and expenses incurred concerning the claim, action, or proceeding.

The applicant or any successor-in-interest shall further protect, defend, indemnify and hold harmless the City, its officers, employees, and agents from any and all claims, actions, or proceedings against the City, its officers, employees, or agents arising out of or resulting from the negligence of the applicant or the applicant's agents, employees, or contractors. Applicant's duty to defend, indemnify, and hold harmless the City shall include paying the CITY's attorney's fees, costs and expenses incurred concerning the claim, action, or proceeding.

The applicant shall also reimburse the City for City Attorney fees and costs associated with the review of the proposed project and any other related documentation, and in the event of a legal challenge associated with the project, the applicant shall provide the City with a deposit or other security deemed sufficient by the City Manager to insure that its defense and indemnification obligations are satisfied. (PLN)

6. The applicant and applicant's successors in interest shall be fully responsible for knowing and complying with all conditions of approval, including making known the conditions to City staff for future governmental permits or actions on the project site. (PLN)
7. The applicant and applicant's successors in interest shall be responsible for payment of all applicable fees along with reimbursement for all City expense in ensuring compliance with these conditions. (PLN)

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 16

8. Planning Commission approval of Coastal Development Permit CDP20-0005, Site Development Permit SDP20-0007, Vesting Tentative Parcel Map VTPM20-0001 shall be null and void until City Council approval of General Plan Amendment GPA20-0002, Zone Change ZC24-0001, Specific Plan SP24-0001, Development Agreement DA24-0001 and approval and adoption of the Environmental Impact Report (State Clearinghouse No. 2021070304) Development Agreement DA24-0001, and approval and adoption of the Environmental Impact Report (State Clearinghouse No. 2021070304), and subsequent certification of LCPA20-0002 by the California Coastal Commission. (PLN)
9. The applicant shall be responsible for coordination with SDG&E, AT&T California, SCWD, Southern California Gas Company, Cox Communication Services, and all other applicable utilities for the provision of all utility services. (PWE)
10. All utilities shown to be relocated or required to be relocated per the development shall be relocated underground. (PWE)
11. All proposed utilities within the project shall be installed underground. (PWE)
12. Building materials, unlicensed vehicles, construction equipment, portable toilets, and related items shall not be placed in the public right-of-way, unless a separate encroachment permit is secured. (PWE)
13. The applicant shall exercise special care during the construction phase of this project to prevent any off-site siltation or dust. The applicant shall provide erosion control measures and temporary desiltation/detention basins as required and use water or other measures to control dust. The applicant shall maintain the temporary basins and erosion control devices until the Director of Public Works/City Engineer approves of the removal of said facilities. Failure to do so shall obligate the City to repair/replace as appropriate and charge the applicant. (PWE)
14. Prior to the issuance of any grading or building permits, the applicant shall demonstrate that coverage has been obtained under the State of California's General Permit for Stormwater Discharges Associated with Construction Activity. (PWE)
15. A Water Quality Management Plan (WQMP) is required as a part of all phases of this project. The applicant shall meet all current NPDES Permit requirements, including a construction SWPPPP. (PWE)

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 17

16. The applicant shall submit a haul route plan and secure Director of Public Works/City Engineer approval and a separate Encroachment permit before any trucking commences on the Project. The City Engineer may restrict the number of daily trucks allowed to avoid traffic impacts. Further, the applicant shall only truck during weekday, non-peak hour traffic periods, excluding weekends, City events, and holidays. (PWE)
17. Any damage to existing public or adjacent private property facilities shall be repaired or replaced to the satisfaction of the City Engineer, and per City Standards. (PWE)
18. All proposed work within California State Department of Transportation (Caltrans) right-of-way will require an encroachment permit from Caltrans. (PWE)
19. Temporary fencing with decorative screening shall be provided around work areas for each Phase, unless otherwise approved by the City Engineer. (PWE)
20. The Applicant shall keep the Project area and all surrounding streets free of trash and debris. The applicant shall collect trash as needed to the satisfaction of the Director of Public Works/City Engineer. (PWE)
21. Prior to the issuance of the applicable permits, the applicant shall complete and provide documentation that the applicable mitigation measures for Environmental Impact Report (State Clearinghouse No. 2021070304). (PWE)

B. Prior to recordation of the final tract map for any phase or combination thereof the applicant shall meet the following conditions:

22. A proposed Final Map shall be submitted for review and approval in accordance with the requirements of the Public Works Department and Community Development Department. The final map must be in substantial compliance with Tentative Tract Map as determined by the Director of Community Development and the Director of Public Works/City Engineer. Said map shall be prepared as required by the City of Dana Point Subdivision Code. (PWE)
23. Any and all taxes and fees required to be paid to the County of Orange shall be paid to the County of Orange. The Final Map submitted to the City for signatures shall have the County Treasurer-Tax Collector's Certificate signed. Please note this separate process is required. (PWE)

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 18

24. All existing and proposed easements shall be shown and labeled on the Final Map clearly indicating the easement ownership, location, purpose and width. A copy of the recorded easements shall be included along with the plan submittal for review by the Director of Public Works/City Engineer. The Final Map shall also include a note to identify any easements proposed to be vacated with the Map. (PWE)
25. All easements vacated, relocated, or released per separate instrument shall be noted on the map. The separate instrument or quit-claim documents from the governing utility shall be submitted. (PWE)
26. Utility easements shall be provided to the specifications of the appropriate utility companies and subject to review and approval by the Director of Public Works/City Engineer. (PWE)
27. The applicant shall submit the Final Map to the County of Orange for review and Approval. A copy of the approval shall be submitted to the Public Works Department. (PWE)
28. Applicant shall provide to the City a copy of a current title report not less than six months old and any other survey documentation in relation to the subject subdivision. (PWE)
29. Applicant shall provide to the City a subdivision guarantee not less than six months old from the title company. (PWE)
30. The applicant shall enter into any encroachment agreement with the City of Dana Point for any private improvements in the public right-of-way, as needed. (PWE)
31. The applicant shall submit "will serve" letters from the applicable utility districts or agencies providing services to the property. (PWE)
32. The applicant shall submit evidence of the availability of an adequate water supply for fire protection for review and approval by the Fire Chief. A copy of the documentation shall be submitted to the Public Works and Engineering Department. (PWE)
33. The approved Fire Master Plan shall be submitted to the City of Dana Point Public Works Department. (PWE)
34. All monuments shall be set, or a security provided, to ensure all monuments will be set in accordance with the County of Orange and City of Dana Point standards. (PWE)

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 19

35. As required, the applicant shall enter into a Subdivision Improvement Agreement for the design, construction, and installation of the private and public improvements in accordance with plans and specifications, meeting the approval of the Director of Public Works/City Engineer. A security to guarantee the performance of work described in the Subdivision Improvement Agreement will be required, up to 100% of the value of the work shall be posted to the satisfaction of the Director of Public Works/City Engineer and the City Attorney. (PWE)
- C. Prior to issuance of any grading permit applicant shall meet the following conditions:**
36. The applicant shall apply for a Grading Permit. The application will include grading plans, in compliance with City standards, the City's municipal code, and the Grading Manual, for review and approval by the Director of Public Works/City Engineer. The applicant shall include all plans and documents in their submittal as required by the current Public Works Department's plan check policies. All grading work must be in compliance with the approved plan and completed to the satisfaction of the Director of Public Works/City Engineer. (PWE)
37. The application shall include a Construction Staging Plan for the grading activities of the project. The Construction Staging Plans shall include the location of all planned activities and all remaining portions of the site not under construction. It shall include (at minimum) all stockpile locations, entrances, erosion and sediment controls, parking, delivery areas, as well as construction staging areas. The staging plan shall take into account all noise regulations and the separation of construction activities to neighboring residences. (PWE)
38. A detailed design level geotechnical report shall be prepared, submitted and reviewed by the Director of Public Works/City Engineer. (PWE)
39. The applicant shall prepare all needed reports and implement all required actions, for each phase, to meet current water quality regulations including, but not limited to, a Water Quality Management Plan (WQMP), a Storm Water Pollution Prevention Program, and all other required reports/actions for NPDES Permit compliance. (PWE)
40. The applicant shall provide any and all compliance documents and reports related to the removal of all contaminants or soil mitigation measures required on-site. Final clearance letter for site required to be submitted to Public Works. (PWE)

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 20

41. The project Applicant shall retain a qualified environmental professional with Phase II/Site Characterization experience to remove and handle all hazardous materials and structures according to the Soil Management Plan Confirmation soil samples shall be collected within the excavated areas. (PWE)
42. Prior to initiation of construction activities, the contractor shall establish procedures in the event that unknown wastes or contamination source or indicator are encountered during construction. If unknown wastes or suspect materials are discovered during construction, the contractor shall immediately cease work in the vicinity of the suspected contaminant, remove workers and the public from the area, and notify the Director of Public Works. (PWE)
43. The project Applicant shall provide a technical paleontological assessment prepared by a qualified paleontologist, assessing the sensitivity of the project site for buried paleontological resources to the City of Dana Point Planning Division for review and approval. (PWE)
44. Surety to guarantee the completion of the project grading, including erosion control, up to 100% of the approved Engineer's cost estimate shall be posted to the satisfaction of the City Engineer and the City Attorney. (PWE)
45. The City of Dana Point and/or applicant shall retain a qualified archaeological monitor. The monitor shall be retained by the applicant and shall prepare a monitoring plan for construction activities in conformance with the project Mitigation Measures and State regulations. The monitor shall be present at the pre-grade meeting. (PWE)
46. The applicant shall submit a final landscape and irrigation plan for review and approval by the Engineering Department. The landscape and irrigation plans shall include work in the public right of way adjacent to the Project. (PWE)

D. Prior to Building Plan Check Submittal for any phase:

47. The cover sheet of the building construction documents shall contain the City's conditions of approval and it shall be attached to each set of plans submitted for City approval or shall be printed on the title sheet verbatim. (PLN)
48. Building plan check submittal shall be submitted electronically online through the City's [Digital Portal](#). Electronic plan review submittal requirements and the Digital Portal may be found on the City's website here: [City of Dana Point Building & Safety](#). (BLD)

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 21

- E. **Prior to issuance of a building permit or release on certain related inspections for any phase, the applicant shall meet the following conditions:**
49. The project requires a building permit which shall comply with the 2022 Building Code or the current Building Code adopted by the City. (BLD)
 50. Orange County Fire Authority (OCFA) approval shall be obtained prior to the issuance of all applicable permits.(OCFA)
 51. The applicant shall prepare and process a Final Map. The applicant shall submit a Final Map, in compliance with City standards, for review and approval by the Director of Public Works/City Engineer and the County of Orange Surveyor's office. Upon City and County review and approval, the Final Map will be recorded with the County Recorder. (PWE)
 52. The applicant shall obtain a Grading Permit and complete all associated work. (PWE)
 53. The applicant shall submit a rough grade certification for review and approval by the Director of Public Works/City Engineer by separate submittal. The rough grade certification by the civil engineer (along with the City's standard Civil Engineer's Certification Form for Rough Grading) shall approve the grading as being substantially completed in conformance with the approved grading plan. (PWE)
 54. The applicant shall submit a rough grade certification from the geotechnical professional for review and approval by the Director of Public Works/City Engineer by separate submittal. The rough grade certification by the geotechnical professional (City's standard Geotechnical Engineer's Certification Template for Rough Grading) shall approve the grading as being substantially completed in conformance with the approved grading plans and report. (PWE)
 55. A licensed land surveyor shall document all pad grades to the nearest 0.1-feet to the satisfaction of the Director of Public Works/City Engineer and the Director of Community Development. The civil engineer and/or surveyor shall specifically certify that the elevation of the graded pad is in compliance with the vertical (grade) position approved for the project. (PWE)

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 22

56. An as-graded geotechnical report and certification shall be prepared by the project geotechnical consultant following grading of the subject site. The report should include the results of all field density testing, depth of reprocessing and recompaction, as well as a map depicting the limits of grading. Locations of all density testing, restricted use zones, settlement monuments, and geologic conditions exposed during grading. The report should include conclusions and recommendations regarding applicable setbacks, foundation recommendations, erosion control and any other relevant geotechnical aspects of the site. The report shall state that grading of the site, including associated appurtenances, as being completed in conformance with the recommendations of the preliminary geotechnical report. (PWE)
57. All pending fees shall be paid in full. (PWE)
58. The applicant shall provide all required information and obtain necessary approvals to satisfy the requirements of 9.05.240 of the Dana Point Municipal Code regarding the "Art in Public Places" program, unless otherwise indicated in the Development Agreement DA24-0001. (PLN)
59. Building address shall be located facing street fronting property.
60. Prior to commencement of framing, the applicant shall submit a foundation certification, by survey that the structure will be constructed in compliance with the dimensions shown on plans approved by the Planning Commission, including finish floor elevations and setbacks to property lines included as part of CDP20-0005, SDP20-0007, VTPM20-0001. The City's standard "Setback Certification" form shall be prepared by a licensed civil engineer/surveyor and be delivered to the City of Dana Point Building and Planning Divisions for review and approval. (PLN)
61. Prior to release of the roof sheathing inspection, the applicant shall certify by a survey or other appropriate method that the height of the structures and any encroachments above the height limit are in compliance with plans approved by the Planning Commission and the structure heights included as part of CDP20-0005, SDP20-0007, VTPM20-0001. The City's standard "Height Certification" form shall be prepared by a licensed civil engineer/surveyor and be delivered to the City of Dana Point Building and Planning Divisions for review and approval before release of final roof sheathing is granted. (PLN)

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 23

F. Prior to issuance of an Encroachment or Improvement Permit for any phase:

62. The applicant shall obtain a Grading Permit. (PWE)
63. All public right-of-way improvements require advanced approval by the Director of Public Works/City Engineer. All proposed improvements within the City of Dana Point streets right-of-way require an approved encroachment permit, prior to commencement of work. (PWE)
64. All improvements within the public right-of-way shall be constructed per City Standards, the City Standard Encroachment Permit Conditions, and as indicated by the Director of Public Works/City Engineer. (PWE)
65. The applicant shall apply for an Encroachment/Improvement Permit. The application will include street improvement plans and utility improvement plans, in compliance with City standards, for review and approval by the Director of Public Works/City Engineer. The applicant shall include all plans and documents in their submittal as required by the current Public Works Department's plan check policies. All improvements must be in compliance with the approved plan and completed to the satisfaction of the Director of Public Works/City Engineer. (PWE)
66. The application shall include a Construction Staging Plan for the improvements to the project. The Construction Staging Plans for the improvement permit or encroachment permit shall include the location of all planned activities and all remaining portions of the site not under construction. It shall include (at minimum) all material stockpile locations, entrances, erosion and sediment controls as well as construction staging areas. The staging plan shall consider all noise regulations and the separation of construction activities to neighboring residences. (PWE)
67. The proposed Emergency Vehicle Access (EVA) and Public Open Space (Public Paseo) shall be constructed of decorative concrete or pavers meeting all requirements of OCFA as approved by the Director of Community Development. The final pavement of the EVA and Public Paseo shall not be asphalt. (PWE)
68. The applicant shall provide a City of Dana Point and OCFA turnaround at the dead end of Sepulveda Avenue. The preferred option shall include the developer shall provide design and application materials for a Caltrans Encroachment permit application. Should the design proposal on Caltrans right of way be approved the applicant shall construct the cul-de-sac and all associated improvements. (PWE)

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 24

69. The applicant shall design and construct a minimum of 10-foot sidewalks along Victoria Boulevard and Sepulveda Boulevard per the Director of Public Works/City Engineer. (PWE)
70. The applicant shall provide a minimum of 10-foot separation between all storm drain facilities and proposed trees within the Sepulveda Boulevard and Victoria Boulevard parkways. (PWE)
71. The applicant shall provide a designated loading and unloading zone for delivery services to the satisfaction of the Director of Public Works/City Engineer. (PWE)
72. The applicant shall design and construct improvements along Victoria Boulevard and Sepulveda Boulevard to provide for public parking in accordance with the recommendations of the Director of Public Works/City Engineer and Community Development Director. (PWE)
73. The applicant shall design and construct additional street lighting and all associated infrastructure along Victoria Boulevard and Sepulveda Boulevard with the proposed improvements and parking along the street frontages, per the approval of Director of Public Works/City Engineer. All lighting infrastructure and street lighting in this area shall be owned and maintained by the applicant and any successor of interest. (PWE)
74. The applicant shall coordinate improvements at the intersection of Doheny Park Rd at Las Vegas Ave/State Route 1 (SR-1) Northbound On/Off Ramps with the City of Dana Point and Caltrans to improve the level of service. (PWE)
75. The applicant shall be responsible for all coordination and requirements in accordance with City of San Juan Capistrano TS Policy 310 for any impacts at the intersection at Camino Capistrano at Stonehill Drive/I-5 Northbound On-Ramp. (PWE)
76. The improvement plan shall include a final utility plan as approved by South Coast Water District, San Diego Gas and Electric, and all other utilities identifying all improvements, including off-site improvements, required to provide adequate services to the proposed development, for each phase. (PWE)
77. The applicant shall provide approved plans from South Coast Water District for all utility improvements to the Public Works Department. (PWE)

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 25

78. The applicant shall provide approval from South Coast Water District for the upsizing of approximately 55 Lineal Feet of 10-inch water line to 12-inch water line near the intersection of Camino Capistrano and Via Canon. All costs of improvements to upsize this facility shall be borne by the applicant. (PWE)
 79. The applicant shall provide approval from South Coast Water District for the project cost share of the project to the Lift Station 12 upgrades. (PWE)
 80. The final utility plan(s) shall include the final approved location of all meters, backflow prevention devices, vaults, and other associate equipment for all utilities and fire prevention, for all phases. All fire prevention equipment, utility meters, utility equipment, etc, servicing the development (each phase) shall be within the proposed development and not in the public right-of-way. (PWE)
 81. A final Drainage Study will be submitted for review and approval to the Director of Public Works/City Engineer. The drainage study shall provide area wide information on storm flows and provide assurances that the existing storm drainage system in the area is adequate to support drainage of the site. (PWE)
 82. Surety to guarantee the completion of the project street improvements and drainage improvements, including erosion control, up to 100% of the approved Engineer's cost estimate shall be posted to the satisfaction of the City Engineer and the City Attorney. (PWE)
 83. All pending fees shall be paid in full. (PWE)
- G. Prior to the issuance of a certificate of use and occupancy or during operation of the project for any phase the applicant shall meet the following:**
84. The applicant shall incorporate principles reflective of Crime Prevention Through Environmental Design (CPTED) to reduce opportunities for, and vulnerability to, criminal behavior and help create a sense of community. (PLN & OCSD)

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 26

85. All landscaping and irrigation shall be installed per the approved final landscape and irrigation plan. The State licensed landscape architect that prepared the approved plans shall provide the "Landscape Installation Certificate of Completion" form required by the City's *Submittal Requirements and Guidelines* for implementation of the Chapter 9.55 (Water Efficient Landscape Standards and Requirements) and all required information required of subsection (4) thereon to the Director of Community Development. The Community Development Department shall inspect the site to ensure that the landscaping has been installed in accordance with the approved plans. (PLN) (PWE)
86. **Final Occupancy Inspections:** Prior to issuance of temporary or final certificate of occupancy, all OCFA inspections shall be completed to the satisfaction of the OCFA inspector and be in substantial compliance with codes and standards applicable to the project and commensurate with the type of occupancy (temporary or final) requested. Inspections shall be scheduled at least five days in advance by calling OCFA Inspection Scheduling at 714-573-6150. (OCFA)
87. Prior to the issuance of certificates of use and occupancy, the applicant/owner shall install the public art component subject to the provisions of with Section 9.05.240 of the Dana Point Municipal Code or pay the required fee. (PLN)
88. The applicant shall schedule a final inspection with the Community Development Department at the site that shall include a review of, among other things, landscaping, finish architecture/materials, approved through discretionary action, and compliance with any outstanding project conditions of approval. (PLN)
89. The proposed parks and right-of-way improvements shall be constructed and approved by the Parks Department and Public Works Department.
90. A Final Geotechnical Report shall be prepared by the project geotechnical consultant in accordance with the City of Dana Point Grading Manual.
91. A written certification per City standards and approval by the Geotechnical Engineer approving the precise grading as being substantially in conformance with the approved precise grading plan.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 27

92. A written certification per City standards and approval by the Civil Engineer approving the precise grading as being substantially in conformance with the approved precise grading plan and which specifically approves construction of line and grade for all engineered drainage devices, utility work, retaining walls, and all other improvements.
93. An As-Built Grading Plan shall be prepared by the Civil Engineer of Record.
94. Any and all outstanding fees associated with any part of the entire project shall be paid.
95. The applicant shall submit, to the Public Works and Engineering Department, a copy of the recorded Final Map as approved by the City Council and recorded with the Office of the County Recorder.
96. The applicant shall obtain all utility agencies' final approval of the project improvement plans.
97. All works of improvements outlined in the Subdivision Improvement Agreement are completed and approved by the City of Dana Point.
98. The applicant shall dedicate and process all required easement, including, but not limited to, public access easements.
99. A written certification per City standards and approval by the Civil Engineer approving any street improvements as being substantially in conformance with the approved street improvement plans including all improvements thereon.
100. The applicant shall complete all of the landscaping, irrigation and tree installation work per the approved Landscape Plans, including work on both public and private property.
101. The applicant shall provide a full WQMP which:
 - a. Demonstrate that all structural best management practices (BMPs) described in the Project WQMP have been constructed and installed in conformance with approved plans and specifications.
 - b. Demonstrate that applicant is prepared to implement all non-structural BMPs described in the Project WQMP.
 - c. Demonstrate that an adequate number of copies of the approved Project WQMP are available onsite.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 28

- d. Submit for review, and receive approval by the City for an Operations and Maintenance (O&M) Plan for all BMPs.
- e. Certification from the project Civil Engineer or Landscape Architect of Record that all BMPs and WQMP elements have been constructed and installed as designed with the approved plans and WQMP.

PLANNING COMMISSION RESOLUTION NO. 24-05-13-XX
CDP20-0005, SDP20-0007, VTPM20-0001
PAGE 29

PASSED, APPROVED, AND ADOPTED at a regular meeting of the Planning Commission of the City of Dana Point, California, held on this 13th day of May, 2024, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mary Opel, Chair
Planning Commission

ATTEST:

Brenda Wisneski, Director
Community Development Department

SUPPORTING DOCUMENT 1: Vicinity Map



Vicinity Map

26126 Victoria Boulevard (APN:668-361-01)
GPA20-0002, ZC24-0001, SP24-0001, LCPA20-0002, DA24-0001,
CDP20-0005, SDP20-0007, VTPM20-0001



SUPPORTING DOCUMENT 2: City Council Resolution 21-02-02-04

RESOLUTION NO. 21-02-02-04

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
DANA POINT, CALIFORNIA INITIATING A GENERAL PLAN
AMENDMENT AND THE VICTORIA BOULEVARD
SPECIFIC PLAN**

The City Council for the City of Dana Point does hereby resolve as follows:

WHEREAS, Chapter 9.61.080(b) of the Zoning Code states that the City Council may initiate General Plan Amendments; and

WHEREAS, Chapter 9.33.020 of the Zoning Code states that the City Council shall initiate the preparation of all Specific Plans; and

WHEREAS, John Hyde of Toll Brothers Apartment Living, ("Applicant") has filed a Specific Plan and General Plan Amendment request on behalf of Capistrano Unified School District ("Property Owner"), the owners of real property, commonly referred to as 26126 Victoria Boulevard (APN 668-361-02) ("Property"); and

WHEREAS, the Applicant filed a General Plan Amendment request for conversion of 4.4 acres of Community Facilities District and 1.1 acres of Recreation District to Specific Plan District, for a total of 5.5 acres, allow an increase of residential density from 30.0 to up to 66.4 dwelling units per acre, and policies related to affordable housing; and

WHEREAS, the project shall be limited to 365 total units including affordable units on site, and any units authorized in accordance with state density bonus requirements, as set forth in California Government Code Section 65915, with the total number of units and methodology for exercising density bonus rights to be set forth in a development agreement.

WHEREAS, the Applicant submitted the draft Victoria Boulevard Specific Plan, which specifically addresses changes in the Zoning Code and would supersede and/or supplement land use applicable to the subject Property, including the previously adopted ordinances, standards, and guidelines.

NOW, THEREFORE, the City Council of the City of Dana Point, California, does resolve, declare, determine and order as follows:

1. That a General Plan Amendment and Specific Plan District are authorized to be initiated in order to review a proposal for an apartment complex containing up to 365 total units (including those authorized as part of a density bonus requirement) at 26126 Victoria Boulevard provided the project incorporates the components detailed below:

Resolution 21-02-02-04
Initiating GPA for Victoria Blvd
Page 2

To Ensure Building Mass/Bulk is compatible with the neighboring area,

- i. Along Victoria Boulevard and 50-feet of Sepulveda as measured from the Victoria Boulevard front property line, the building shall be no more than 50-feet in height and adequately setback at varying distances to create open space, a non-linear street frontage, minimize shadowing, and compatibility with neighboring properties, and
- ii. Building heights up to 65-feet may be permitted 40-feet from the front property line of Victoria Boulevard, and
- iii. An allowance of an additional 10-feet in height may be permitted for roof mounted equipment and recreational amenities; additionally, another 10-feet in height may be permitted for recreational structures provided they are located in the middle to rear of the property, and
- iv. The project shall incorporate principles reflective of Crime Prevention Through Environmental Design (CPTED) to reduce opportunities for, and vulnerability to, criminal behavior and help create a sense of community.

Public Benefits provided by the project shall include, but are not limited to:

- i. Establishment of no less than 1.1 acres of public open space either on-site or within Doheny Village, a portion of which shall include active recreational uses which may be located along La Playa Avenue,
- ii. Off-site street improvements on Victoria Boulevard as well as other neighboring streets shall include, but are not limited to, 30 percent increase in public parking along project frontages and improved bike amenities in contribution to the City's effort to improve multi-modal connectivity.

Consistent with the goals of the City's Housing Element, the project shall:

- i. Create no less than 15 percent affordable housing units, which shall include not less than 5% very-low income units to be constructed on-site, and 5% low- and 5% moderate-income housing units to be constructed either on- or off-site in the City of Dana Point.

A Development Agreement shall be negotiated and considered for approval in combination with the legislative actions and project entitlement.

- i. The applicant shall enter into a Development Agreement with the City of Dana Point to provide greater certainty to the City and the applicant. The development agreement shall include public benefits that extend beyond those which may be forthcoming through project approvals, as well as other negotiated terms.
- ii. The Development Agreement shall specify the manner in which the developer chooses to exercise its rights under applicable density bonus laws and regulations.

2. That the requested Victoria Boulevard Specific Plan and amendments to the General Plan require further analysis of potential impacts in accordance with the applicable provisions of State Law and Dana Point Zoning Code Chapters 9.33 and 9.61.
3. That the establishment of the Specific Plan District before the adoption of the

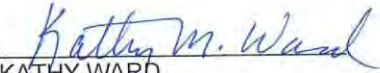
Resolution 21-02-02-04
Initiating GPA for Victoria Blvd
Page 3

Specific Plan prohibits the issuance of grading permits, building permits, or land use permits, and do not in any way predispose land use or development.

PASSED, APPROVED and ADOPTED at a regular meeting of the City Council of the City of Dana Point, California, held on this 2nd day of February, 2021.


JAMEY FEDERICO
MAYOR

ATTEST:


KATHY WARD
CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF DANA POINT)

I, Kathy Ward, City Clerk of the City of Dana Point, California do hereby certify that the foregoing Resolution No. 21-02-02-04 was duly adopted and passed at a regular meeting of the City Council on the 2nd day of February, 2021, by the following roll-call vote, to wit:

AYES: Council Member Mike Frost, Council Member Michael Villar, and
Mayor Jamey M. Federico

NOES: Council Member Richard A. Viczorek, and Mayor Pro Tem Joseph L.
Muller

ABSENT: None

ABSTAIN: None


KATHY WARD
CITY CLERK

SUPPORTING DOCUMENT 3: Draft Victoria Boulevard Specific Plan – October 2023

LINK TO DOCUMENT ON CITY WEBSITE

<https://www.danapoint.org/home/showpublisheddocument/37917/638506991837094173>

SUPPORTING DOCUMENT 4: Draft EIR

LINK TO DOCUMENT ON CITY WEBSITE

<https://www.danapoint.org/home/showpublisheddocument/35574/638097230446700000>

SUPPORTING DOCUMENT 5: Final EIR

LINK TO DOCUMENT ON CITY WEBSITE

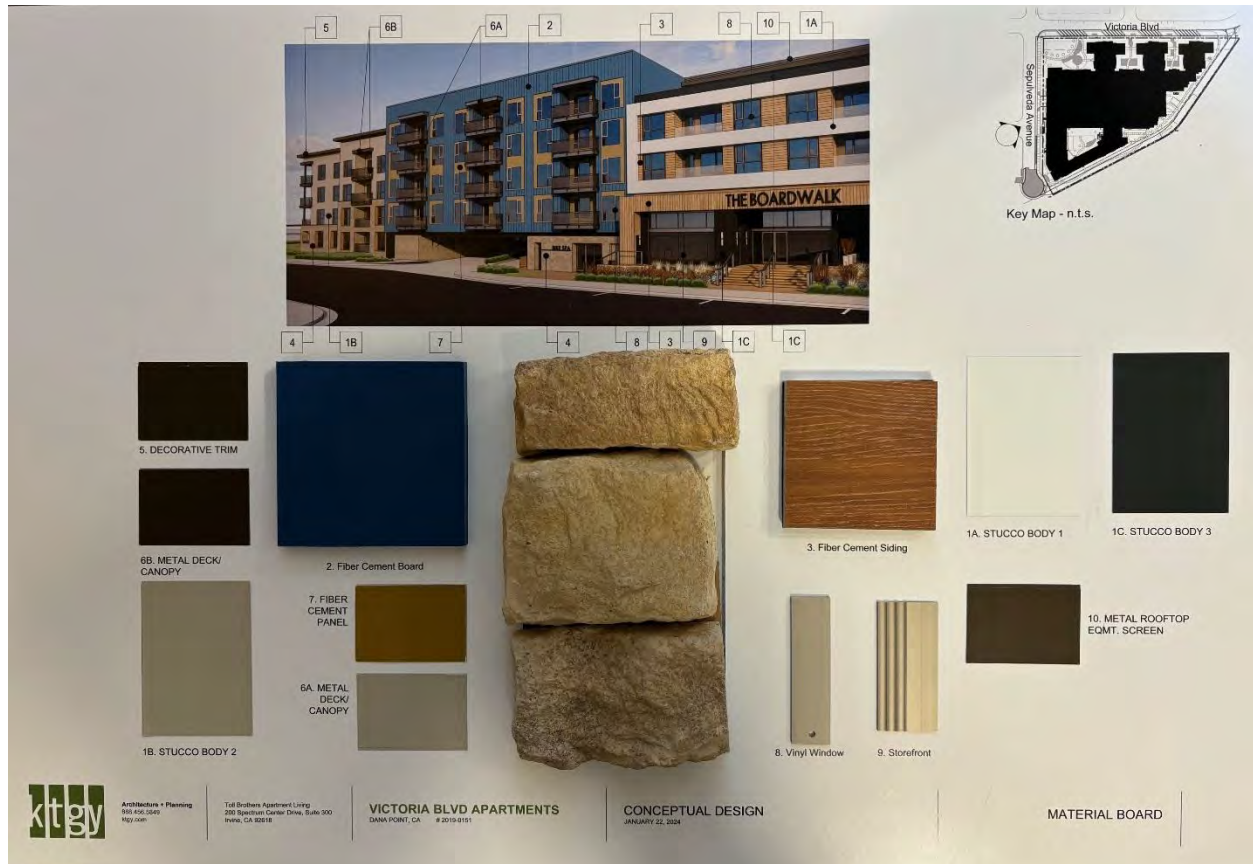
<https://www.danapoint.org/home/showpublisheddocument/36955/638307976565700000>

SUPPORTING DOCUMENT 6: Traffic Impact Analysis

LINK TO DOCUMENT ON CITY WEBSITE

<https://www.danapoint.org/home/showpublisheddocument/37911/638506695310147975>

SUPPORTING DOCUMENT 7: Project Sample Materials



SUPPORTING DOCUMENT 8: Public Comments

From: [Comment](#)
To: [Brenda Wisneski](#); [Martha Ochoa](#)
Subject: FW: Support for Victoria Blvd Apts
Date: Thursday, March 7, 2024 4:06:26 PM

Shayna Sharke, CMC
City Clerk | City of Dana Point

From: donatella polizzi <donatellapolizzi@hotmail.com>
Sent: Thursday, March 7, 2024 3:34 PM
To: Comment <Comment@DanaPoint.org>
Subject: Support for Victoria Blvd Apts

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Mayor Federico and members of the City Council,

As property owners in Doheny Village, we support the Victoria Blvd Apartments project proposed by Toll Brothers Apartment Living.

We are satisfied with Toll Brothers' efforts to modify the project to maximize its compatibility with the existing Victoria Boulevard homes and commercial sites, in terms of building height and frontage density. It will add open space and additional parking along the street and help beautify what is now a blighted area.

We own two properties on Victoria Boulevard directly across from the current bus yard and are pleased to see the plans include improvements to the streetscape frontage and landscaping. We understand the project will also result in funding of public improvements and we hope the City will direct some of these funds to undergrounding utilities and street improvements on Victoria.

We believe the project will positively affect our property and all of Doheny Village, because quality development such as this will naturally lead others to invest in improving surrounding properties.

Sincerely,

Donatella Polizzi (owner of 26139 and 26141 Victoria Blvd)
cell. (909) 344-7102

From: [Shayna Sharke](#)
To: [Brenda Wisneski](#); [Martha Ochoa](#); [Deanna Despot](#)
Subject: FW: Planning Commission - Victoria Boulevard Apartments Support Letter
Date: Friday, May 3, 2024 10:52:28 AM
Attachments: [Victoria Boulevard Apartments Support Letter DPPC \(2024-0501\).pdf](#)

Shayna Sharke, CMC
City Clerk | City of Dana Point

From: David Cordero <cordero@aaoc.com>
Sent: Friday, May 3, 2024 10:37 AM
To: Mary Opel <MOpel@DanaPoint.org>
Cc: Jamey Federico <JFederico@DanaPoint.org>; Shayna Sharke <SSHARKE@DanaPoint.org>; Chip Ahlswede <Chip@aaoc.com>
Subject: Planning Commission - Victoria Boulevard Apartments Support Letter

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Chair Opal,

Attached is the Apartment Association of Orange County's (AAOC) letter of support for the proposed Victoria Boulevard Apartments, which will be heard by the Planning Commission on May 13, 2024.

If you have any questions, please contact me or Chip Ahlswede at chip@aaoc.com.

-David



David J. Cordero
Executive Director
Apartment Association of Orange
County
Phone: 714.245.9500 x1420
Email: cordero@aaoc.com
1601 E. Orangewood Ave., Ste. 125
Anaheim, CA 92805
www.aaoc.com



1601 E. Orangewood Avenue, Suite 125
Anaheim, CA 92805
(714) 245-9500

May 1, 2024

Mr. Mary Opal
Chair
Dana Point Planning Commission
City of Dana Point
33282 Golden Lantern
Dana Point, CA 92629-1805

RE: Support for Proposed Victoria Boulevard Apartments

Dear Chair Opal and Commissioners,

The Apartment Association of Orange County (AAOC) wishes to express its support for the proposed Victoria Boulevard Apartments and encourages planning commission approval of the applicant's project.

AAOC represents 2,000 rental housing providers and industry suppliers who own, operate, or service more than 120,000 rental units in Orange and Riverside Counties. The association provides education and training, policy engagement, operational assistance, and other services to facilitate housing provider excellence and quality rental housing. AAOC also advocates for new multi-family housing that will help communities meet existing and projected future demand.

The Victoria Boulevard Apartments would be a high-quality, market-rate rental community with affordable units to ensure a cross-section of families and individuals could call Dana Point home. It would also bring new energy and life to a blighted plot of land that has detracted from the character of the neighborhood and the city for far too long. Additionally, the project would serve as a visually appealing gateway to Dana Point from the south with a design that would be compatible with the surrounding community and feature reduced building heights and density along Victoria Boulevard.

The project would also provide significant financial benefits to the community, including generating millions of dollars in direct city funding that would facilitate streetscape improvements and improved beach connectivity, and \$40 million in reinvestment into Dana Hills High School that will enhance the school and benefit the students. The Dana Point community stands to gain much from this project.

Thank you for your favorable consideration of the applicant's proposal and the benefits the Victoria Boulevard Apartments would offer Dana Point and its residents.

Sincerely,

A handwritten signature in blue ink, reading "David J. Cordero".

David J. Cordero
Executive Director

Cc: Hon. Jamey Federico, Mayor
Ms. Shayna Sharke, City Clerk

From: [Johnathan Ciampa](#)
To: [Deanna Despot](#); [Martha Ochoa](#)
Subject: Fw: Dana Point Planning Commission-Public Hearing-Victoria Boulevard Apartments
Date: Monday, May 6, 2024 7:32:23 AM
Attachments: Doheny Village Discussion Outline - (Final)-29.pdf

Here is another comment letter for Victoria.

John Ciampa
Principal Planner
33282 Golden Lantern
City of Dana Point
949-248-3591
JCiampa@DanaPoint.org

From: Richard Law <rlaw1@mac.com>
Sent: Sunday, May 5, 2024 6:25 PM
To: Brenda Wisneski <bwisneske@danapoint.org>; Johnathan Ciampa <JCiampa@DanaPoint.org>
Cc: Ashok Dhingra <adhingra@danapoint.org>; Mary Opel <MOpel@DanaPoint.org>; Luke Boughen <LBoughen@danapoint.org>; Eric Nelson <ENelson@DanaPoint.org>; Deana Christakes <dchristakes@danapoint.org>; Steven Carpenter <steve.carpenter@flash.net>; Richard Law <rlaw1@mac.com>
Subject: Dana Point Planning Commission-Public Hearing-Victoria Boulevard Apartments

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Hello Brenda, John,

Please forward this information to the Planning Commissioners prior to the Public Hearing.

Successful development of the School Bus Yard offers a great opportunity for a project that fits seamlessly into Doheny Village while providing vital amenities such as a Community Park and funding for the schools.

Earlier this year we put together this outline to help describe the context of the project and identify important planning relationships that should occur between the Victoria Boulevard Apartments and Doheny Village. Most of the issues we have with the project have to do with failures of these planning relationships. There have been some modifications to the project since then but all the principles still apply.

Richard Law
rlaw1@mac.com

**The Important Relationships between
Victoria Boulevard Apartments and Doheny Village**

Date: January 1, 2024

From: Richard Law

Subject: The Important Relationships between Victoria Boulevard Apartments and Doheny Village

DOHENY VILLAGE PLAN UPDATE

The Doheny Village Plan and Zoning Code we have today is the result of a successful community-driven work effort with the City that continued over several years. We take great pride in the outcome.

A. Form-Based Code

1. Doheny Village is one of the oldest parts of Dana Point.
2. The Village is almost entirely built out.
3. The existing zoning was from the County of Orange prior to the City's Incorporation in 1993.
4. The City brought in Consultants who advocated and developed plans and standards using a form-based code. In 2016, the draft code was informally distributed.
5. This plan would have changed the Village's land uses, building forms, and development standards.
6. Most existing uses would become nonconforming, and modifications or new projects would have to conform to the new code.
7. The property owners and residents of Doheny Village overwhelmingly rejected this approach.
8. The City wisely abandoned the Form-Based Code in 2016.

B. Community-Driven Village Plan

1. In 2017, the City staff initiated a community engagement process.
2. The City developed an action plan to address short-term measures and a longer-term effort to complete a zoning code update to support the vision for the future of the Village.
3. The City initiated monthly workshops to gather community input through mid-2021.
4. The City and Community developed following Guiding Principles.
 - i. The Community must drive a planning process.
 - ii. Adapt zoning that aligns with the respects existing uses.
 - iii. Keep jobs and services in the Community.
 - iv. Offer incentives for rehabilitation and new development.
 - v. Increase connectivity to the Village
 - vi. Invest in beautification.
 - vii. Consider options for traffic calming.
 - viii. Explore parking opportunities.
 - ix. Preserve the character and enhance the Village's vitality.

**The Important Relationships between
Victoria Boulevard Apartments and Doheny Village**

5. We recognized the rich, eclectic character of the Village, the mixed land uses, residential, commercial, industrial, and artisan uses, close to each other or even on the same site.
6. We noted the Village's scale and the varied form and massing of the buildings, predominantly 1 and 2 stories and occasionally 3 stories. These are the qualities we want to retain in the Village.
7. In 2018, with community input, the Zoning Code Update was authorized.
8. In 2021, the Dana Point Planning Commission and City Council approved the Doheny Village Zoning Code Update, and the California Coastal Commission approved it in February 2023.

VICTORIA BOULEVARD APARTMENTS

The sensitive development of the School Bus Yard offers a tremendous opportunity for a project to fit seamlessly into Doheny Village while providing vital amenities such as a Community Park and much-needed school funding. Sadly, it appears to be falling far short.

A. Selection of Developer

1. In 2018, the Capistrano Unified School District sent RFPs to multi-family developers for proposals for a long-term lease and development of their 5.5-acre property, which is currently used as a bus yard and maintenance storage yard.
2. Toll Brothers Apartment Living submitted the proposal to the School District, which was accepted.

B. Planning and Design

1. Toll Brothers requested, and the City Council agreed to a separate process from the Doheny Village Planning and Zoning Update.
2. Toll Brothers committed to working closely with the City and Community throughout the planning and design of the project.
3. Toll Brothers submitted for a (GPA) General Plan Amendment and Specific Plan District for the Victoria Boulevard Apartment in 2021.
4. Toll Brothers proposed a project of more than 400 apartment units up to 5 stories in height.
5. There have been several modifications to this plan.

C. Project Issues

1. Early in the process, it became evident that the massive size and scale of the project did not fit well in the Community.
2. The 1.1-acre Recreational area was broken into smaller segments that would not function well for Community use or a Park.

**The Important Relationships between
Victoria Boulevard Apartments and Doheny Village**

3. We were far apart on the proposed size and scale of the project, the location and size of the Recreational/Park area, and traffic impacts.
4. For the School District, the bigger the project, the more revenue for the schools. The bigger the project, the more harm is done to the surrounding Village community.
5. Despite all of our efforts, we have only been able to bring about modest changes to the project's massive size and scale while other negative impacts remain.
6. The project should be a part of the Community fabric, not starkly contrasting it.
7. Separating this project from the Doheny Village Planning process has made good planning difficult, if not impossible.
8. A former Dana Point City Councilman acknowledges that allowing the Victoria Boulevard Apartments to have a separate planning process "was our greatest mistake."

D. Next Step possibilities

1. The current approach is not working, not resolving the issues. We think it is time for a pause and a reset of the process and project direction.
2. There may be an approach in plain sight, so far overlooked, for a project that would fit very well into the Community.
3. CEQA requires that the EIR look at project alternates.
4. The EIR's "Village Residential/Commercial Zoning District Development Alternative" does precisely that. See EIR Exhibit 7-1 [here](#).
5. The existing 4.1 acre "Community Facilities "(CF) Zone could be re-designated as "Village Commercial/Residential (VC/R)" Zone in the surrounding Community.
6. The zoning designation allows for 30 Units/acre, up to 3-story buildings, and up to 132 residential units with possible density bonuses.
7. The 1.1-acre "recreation/Open Space" Zone would become a Community Park.
8. The project would be totally compatible with the surrounding Community, and in the EIR, it is found to be environmentally superior to the proposed project.

E. Building Staking

1. It is essential that everyone has the same understanding of the proposed building heights and massing.
2. It will require the staking of the proposed buildings on site. At a minimum, it shall include staking ALL building corners and high points with poles that extend to the full height of the building.
3. It should occur when the Planning Commission and Developer agree the plan is ready for submission but before the Commission must take action on the project plan.

F. Moving Forward

1. We urge the Planning Commission to recommend that the proposed project not move forward in its present form and that approval be denied.
2. This would allow for a pause and a reset of the process and project direction.

**The Important Relationships between
Victoria Boulevard Apartments and Doheny Village**

3. The existing zoning would remain in place* and serve as a starting point for a renewed effort in planning and design in harmony with the surrounding Village Community.
4. We ask for the Planning Commission's support.

* **Doheny Village Code Update**
Ordinance 21-04
Section 9.14.050(e)

From: [Johnathan Ciampa](#)
To: [Martha Ochoa](#); [Deanna Despot](#)
Subject: FW: Victoria apartments project comments
Date: Tuesday, May 7, 2024 12:20:36 PM

Please add this comment to the list for the Victoria Project.

John Ciampa
Principal Planner
33282 Golden Lantern
City of Dana Point
949-248-3591
JCiampa@DanaPoint.org

From: richard morgan <rgmretail@gmail.com>
Sent: Tuesday, May 7, 2024 12:19 PM
To: Johnathan Ciampa <JCiampa@DanaPoint.org>
Subject: Victoria apartments project comments

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John,

I am a resident of Capo Beach up in the Palisades area. I have come to several meetings with many residents in Capo Beach area who object to the very large size of the project in relation to the local neighborhood area. I have read the EIR and traffic study - which approved the traffic flow generated by the apts. I spoke with the Mayor, who referred me to the CUSD rep who I spoke with. Many agree that housing is needed in the area, but not to the point where it overwhelms the streets and neighborhood.

Original project proposed for 349 units, and then reduced a little to 306 units, which is still too high. What can be done to get the project size down to about 230 + - units, which is the typical size of many new apartment projects recently built in California. I will bring data to the PC meeting on the 13th to support these project sizes. If the parties work together, the project can be adjusted to a lower size and still be profitable and beneficial for all involved - including the residents.

Thanks,

Rick Morgan

(949) 350-3327

rgmretail@gmail.com

From: [Johnathan Ciampa](#)
To: [Martha Ochoa](#)
Subject: FW: Victoria Boulevard Apartments Project Planning Commission Hearing May 13, 2024 at 6:00pm in the City Council Chambers
Date: Tuesday, May 7, 2024 2:10:08 PM

Martha,

Here is another comment.

John Ciampa
Principal Planner
33282 Golden Lantern
City of Dana Point
949-248-3591
JCiampa@DanaPoint.org

From: Jacob Vander Zanden <jakevz@mac.com>
Sent: Tuesday, May 7, 2024 2:04 PM
To: Johnathan Ciampa <JCiampa@DanaPoint.org>
Subject: Re: Victoria Boulevard Apartments Project Planning Commission Hearing May 13, 2024 at 6:00pm in the City Council Chambers

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Johnathan -

I believe I'm on record several times as being in support of the project. I am a father of 4+ one all whom have attended or are currently attending Daniel Hills high school. I'm also the past president of the Dolphin Foundation which supports the high school in all their efforts that are not currently funded by the state.

This construction project is extremely important for obvious reasons to Dana Hills high school but also to me as a resident. I like seeing the bus yard area of Dana point being developed finally into something that shows better as people enter our town from the south end.

Lastly as the son of a developer myself, very familiar with the challenges, I also want to give my thank you and congratulations to you for doing such an outstanding job working with the developers to ensure that the project meets everyone's expectations. I frankly don't believe you could've done any better and you should be congratulated for your patience and your incredible effort. Thank you for all that you're doing. Good luck to all

of us on Monday night!

Jake

Jake Vander Zanden
VZ Family
M +1.949.541.5000
jakevz@mac.com

This email and any attachments contain confidential information. If you are not the intended recipient, please notify the sender immediately by return email, delete this email and destroy any copies. Thank you.

On May 7, 2024, at 11:38, Johnathan Ciampa <JCiampa@danapoint.org> wrote:

Dear Victoria Boulevard Apartments Interested Party,

Attached is the public hearing notice for the Victoria Boulevard Apartments Project that is scheduled for public hearing with the Planning Commission on May 13, 2024, at 6:00pm in the City Council Chambers. The project involves the demolition of the existing Capistrano Unified School District (CUSD) bus yard and development of a two- to five-story, 306-unit apartment complex with an attached six-story (seven-level) parking structure and associated amenities in accordance with the proposed Victoria Boulevard Specific Plan (Specific Plan). The project would provide both public and private open space, ornamental landscaping, utility infrastructure, and public right-of-way improvements. The Planning Commission will provide a recommendation to the City Council as it related to the General Plan Amendment, Zone Change, Specific Plan, and Development Agreement.

Additional information for the project can be found on the City's website provided in the link below.

<https://www.danapoint.org/departments/community-development/planning/victoria-blvd-specific-plan>

Comments on the project can be delivered to the Project Planner John Ciampa at jciampa@danapoint.org

John Ciampa
Principal Planner
33282 Golden Lantern
City of Dana Point

949-248-3591

JCiampa@DanaPoint.org

SUPPORTING DOCUMENT 9: Comments Provided by Toll Brothers

From: [Comment](#)
To: [Brenda Wisneski](#); [Martha Ochoa](#)
Subject: FW: Form Submission - Vic SYS
Date: Wednesday, March 13, 2024 3:10:43 PM

Please see email below regarding the Toll Brothers project.

Shayna Sharke, CMC
City Clerk | City of Dana Point

From: Squarespace <form-submission@squarespace.info>
Sent: Wednesday, March 13, 2024 12:40 PM
To: Comment <Comment@DanaPoint.org>
Subject: Form Submission - Vic SYS

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Sent via form submission from [Toll Brothers Apartment Living - Victoria Blvd.](#)

Name: John Kaye

Email: johnkaye@gmail.com

Address: 24512 Alta Vista, Dana Point, CA 92629, United States

Comments entered here will be included in a support email to the City: I am very supportive of this project as it brings much need housing to Dana Point and to California as a whole. The new development that has occurred in Dana Point over the last 10 years has brought new energy and life, and new development such as this will continue to make Dana Point a better place to live.

I support the redevelopment of the Capistrano Unified School District school bus yard because: : The project renovates a currently under-utilized property and cleans up existing environmental issues for the community's benefit. , Millions of dollars in funding will be generated and earmarked for capital improvements at Dana Hills High School which will benefit generations of students for years to come. , The Victoria Blvd. Apartments provide new, modern homes, including 46 units designated for lower income households. , New recreation options, including a 1-acre park at the corner of Victoria Blvd. and Sepulveda, will benefit the existing community.

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Does this submission look like spam? [Report it here.](#)

From: [Comment](#)
To: [Brenda Wisneski](#); [Martha Ochoa](#)
Subject: FW: Form Submission - Vic SYS
Date: Monday, March 18, 2024 11:00:05 AM

Please let me know if I should be sending these to anyone else.

Thanks!

Shayna Sharke, CMC
City Clerk | City of Dana Point

From: Squarespace <form-submission@squarespace.info>
Sent: Monday, March 18, 2024 7:23 AM
To: Comment <Comment@DanaPoint.org>
Subject: Form Submission - Vic SYS

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Sent via form submission from [Toll Brothers Apartment Living - Victoria Blvd.](#)

Name: Melina Pellini

Email: melinapellini1@gmail.com

Address: 33841 Niguel Shores Drive, Dana Point, CA 92629, United States

Comments entered here will be included in a support email to the City: This project is necessary for the much-needed improvement of our only High School. Please support our students, our community, and our town by renovating areas that have long been ignored. It is a win-win situation!

I support the redevelopment of the Capistrano Unified School District school bus yard because: : The project renovates a currently under-utilized property and cleans up existing environmental issues for the community's benefit. , Millions of dollars in funding will be generated and earmarked for capital improvements at Dana Hills High School which will benefit generations of students for years to come. , The Victoria Blvd. Apartments provide new, modern homes, including 46 units designated for lower income households. , New recreation options, including a 1-acre park at the corner of Victoria Blvd. and Sepulveda, will benefit the existing community.

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From: [Comment](#)
To: [Deanna Despot](#); [Brenda Wisneski](#); [Johnathan Ciampa](#); [Martha Ochoa](#)
Subject: FW: Form Submission - Vic SYS
Date: Wednesday, April 10, 2024 4:23:36 PM

Shayna Sharke, CMC
City Clerk | City of Dana Point

From: Squarespace <form-submission@squarespace.info>
Sent: Wednesday, April 10, 2024 3:01 PM
To: Comment <Comment@DanaPoint.org>
Subject: Form Submission - Vic SYS

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Sent via form submission from [Toll Brothers Apartment Living - Victoria Blvd.](#)

Name: Pepi Stoicheva

Email: pgstoicheva@yahoo.com

Address: 34235 Doheny park road, Capistrano beach, Ca 92672, United States

Comments entered here will be included in a support email to the City: I support this project it would clean up the city and help family owned business

I support the redevelopment of the Capistrano Unified School District school bus yard because: : The project renovates a currently under-utilized property and cleans up existing environmental issues for the community's benefit. , Millions of dollars in funding will be generated and earmarked for capital improvements at Dana Hills High School which will benefit generations of students for years to come. , The Victoria Blvd. Apartments provide new, modern homes, including 46 units designated for lower income households. , New recreation options, including a 1-acre park at the corner of Victoria Blvd. and Sepulveda, will benefit the existing community.

[Manage Submissions](#)

Does this submission look like spam? [Report it here.](#)

From: [Comment](#)
To: [Brenda Wisneski](#); [Martha Ochoa](#); [Deanna Despot](#)
Subject: FW: Form Submission - Vic SYS
Date: Thursday, May 2, 2024 3:06:38 PM

Shayna Sharke, CMC
City Clerk | City of Dana Point

From: Squarespace <form-submission@squarespace.info>
Sent: Thursday, May 2, 2024 12:10 PM
To: Comment <Comment@DanaPoint.org>
Subject: Form Submission - Vic SYS

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Sent via form submission from [Toll Brothers Apartment Living - Victoria Blvd.](#)

Name: Lisa McCoy

Email: lisa@barvinodp.com

Address: 35242 Camino Capistrano, DANA POINT, CA 92624, United States

Comments entered here will be included in a support email to the City: Let's beautify the community!

I support the redevelopment of the Capistrano Unified School District school bus yard because: : The project renovates a currently under-utilized property and cleans up existing environmental issues for the community's benefit. , The Victoria Blvd. Apartments provide new, modern homes, including 46 units designated for lower income households. , Millions of dollars in funding will be generated and earmarked for capital improvements at Dana Hills High School which will benefit generations of students for years to come. , New recreation options, including a 1-acre park at the corner of Victoria Blvd. and Sepulveda, will benefit the existing community.

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SUPPORTING DOCUMENT 10: Project Plans

LINK TO DOCUMENT ON CITY WEBSITE

<https://www.danapoint.org/home/showpublisheddocument/37746/638487933902570000>