AGENDA

ALISO VIEJO CITY COUNCIL REGULAR MEETING
WEDNESDAY, FEBRUARY 18, 2015
5:30 P.M. CLOSED SESSION
6:00 P.M. STUDY SESSION
7:00 P.M. PUBLIC MEETING / PUBLIC HEARINGS

City Hall
Council Chambers
12 Journey
Aliso Viejo, CA

Mayor William A. Phillips
Mayor Pro Tem Mike Munzing
Councilmember Ross Chun
Councilmember David C. Harrington
Councilmember Phillip B. Tsunoda

WELCOME to the City of Aliso Viejo City Council meeting. Those persons wishing to address the City Council are requested to complete and submit to the City Clerk a "Request to Address City Council" form available at the entrance to the City Council Chambers. Speakers will be called at the appropriate time as their interested matter is heard. COMMENTS WILL BE LIMITED TO THREE MINUTES PER SPEAKER. Council proceedings are recorded.

It is the City's intention to comply with the Americans with Disabilities Act (ADA). If you need special assistance to participate in the meeting, the City will make reasonable arrangements to ensure accessibility and/or accommodations. [28 CFR 35.102-35.104 ADA Title II] Please contact the City Clerk's Office at (949) 425-2505 at least 48 hours prior to the meeting.

Regular meetings of the City Council are held on the first and third Wednesday of the month at the City Hall Council Chambers, 12 Journey, Aliso Viejo. Copies of the agenda are available in the lobby at City Hall on the Thursday preceding a regularly scheduled City Council meeting. Supplemental documents relating to specific agenda items are available for review in the City Clerk's office, 12 Journey, Aliso Viejo. For more information, please contact City Hall at (949) 425-2505.

DAVID A. DOYLE	SCOTT C. SMITH	MITZI ORTIZ
CITY MANAGER	CITY ATTORNEY	CITY CLERK

PLEASE SILENCE ALL CELL PHONES AND OTHER
ELECTRONIC EQUIPMENT WHILE CITY COUNCIL IS IN SESSION

CALL TO ORDER: Convene Meeting to Closed Session and Roll Call - 5:30 p.m.

PRESENT:
ABSENT:

PUBLIC COMMENTS: At this time members of the public may address the City Council regarding any items appearing on the Closed Session agenda. Those persons wishing to address the City Council are requested to complete a "Request to Address City Council" form available on the table adjacent to the front door of the City Council Chambers. COMMENTS ARE LIMITED TO THREE MINUTES PER SPEAKER.

CLOSED SESSION

1. CONFERENCE LEGAL COUNSEL – ANTICIPATED LITIGATION
   Significant Exposure to Litigation Pursuant to Government Code Section 54956.9(d)(2)
   Number of Cases: 1

CALL TO ORDER: Reconvene Meeting to Study Session - 6:00 p.m.

PUBLIC COMMENTS: Public Comments relating to Study Session Item No. 1 will be heard during Public Hearing Item No. 7 as part of the public hearing proceedings. Persons wishing to address the City Council at that time are requested to complete a "Request to Address City Council" form available on the table adjacent to the front door of the City Council Chambers. COMMENTS ARE LIMITED TO THREE MINUTES PER SPEAKER.

1. ALISO VIEJO RANCH SITE (PA14-13) ENVIRONMENTAL ANALYSIS

   RECOMMENDATION: Accept the Staff presentation.

CALL TO ORDER: Reconvene Meeting to Open Session and Roll Call - 7:00 p.m.

PRESENT:
ABSENT:

PLEDGE OF ALLEGIANCE: Girl Scout Troup 2764

SPECIAL PRESENTATIONS

A. COUNCIL RECOGNITION AND PRESENTATION TO JULIA MOSS FOR CREATING THE "LET THE BEAT GO ON" PROJECT

ADDITIONS, DELETIONS, REORDERING TO THE AGENDA

CONSENT CALENDAR NOTICE: Any member of the public who wishes to discuss a Consent Calendar item should complete and submit to the City Clerk a "Request to Address City Council" form available at the entrance to the City Council Chambers. Speakers will be called at the appropriate time as their interested matter is heard. COMMENTS ARE LIMITED TO THREE MINUTES PER SPEAKER.

CONSENT CALENDAR ITEMS NOS. 1-5

All matters listed on the Consent Calendar will be acted upon by one vote unless members of the City Council, staff, or the public request a matter to be discussed and/or removed from the Consent Calendar for separate action. Items removed from the Consent Calendar will be discussed and voted upon immediately following City Council action on the remainder of the Consent Calendar.

1. WAIVE THE READING OF ALL ORDINANCES AND RESOLUTIONS

   RECOMMENDED ACTION: Approve the reading by title only of all ordinances and resolutions wherein the titles appear on the public agenda; said titles shall be determined to have been read by title, and further reading is waived.

2. APPROVAL OF MINUTES – FEBRUARY 4, 2015 REGULAR MEETING

   RECOMMENDED ACTION: Approve the subject Minutes as submitted.

3. ACCOUNTS PAYABLE

   RECOMMENDED ACTION:
   1. Ratify accounts payable checks issued January 29, 2015 in the amount of $224,652.88; and
   2. Ratify accounts payable checks issued January 22, 2015 in the amount of $138,098.68.

4. RESOLUTION REVERSING THE DIRECTOR OF PLANNING SERVICES' ACTION OF NOVEMBER 10, 2014, AND DENYING ADMINISTRATIVE USE PERMIT PA14-020, A REQUEST TO ESTABLISH A TYPE 41 ALCOHOLIC BEVERAGE CONTROL LICENSE FOR EDWARDS THEATER – ALISO VIEJO 20 AT 26701 ALISO CREEK ROAD IN ALISO VIEJO, CA

   RECOMMENDED ACTION: Adopt Resolution entitled:

   A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, REVERSING THE DIRECTOR OF PLANNING SERVICES' DECISION AND DENYING APPROVAL OF ADMINISTRATIVE USE PERMIT PA14-020, A REQUEST TO ESTABLISH A TYPE 41 ALCOHOLIC BEVERAGE CONTROL LICENSE FOR EDWARDS THEATER – ALISO VIEJO 20 AT 26701 ALISO CREEK ROAD IN ALISO VIEJO, CA

5. AQUATIC CENTER SPLASH PAD IMPROVEMENTS

RECOMMENDED ACTION:

1. Authorize the City Manager to reallocate funds currently in the FY 14-15 Budget towards the Aquatic Center Splash Pad;
2. Authorize Staff to obtain bids and select a contractor for the Aquatic Center Splash Pad Improvements project; and
3. Authorize the City Manager to execute the Aquatic Center Splash Pad Improvements Contract for the selected contractor.

END OF CONSENT CALENDAR

PUBLIC HEARING ITEM NO. 6

6. ALISO VIEJO RANCH SITE (PA14-13) ENVIRONMENTAL ANALYSIS

RECOMMENDED ACTION: Staff recommends the Council adopt the Resolution certifying the Aliso Viejo Ranch Site Mitigated Negative Declaration as adequate environmental documentation for the identified maximum contemplated scale of community center project.

DISCUSSION ITEMS NOS. 7-9

7. RESOLUTION APPROVING AFFORDABLE HOUSING AGREEMENT, REGULATORY AGREEMENT AND HOUSING INCENTIVES AGREEMENT TO ALLOW DEVELOPMENT AND OPERATION OF 200 SENIOR AFFORDABLE MULTI-FAMILY UNITS AND 2 MANAGER UNITS AT 2C LIBERTY FOR A PERIOD OF 55 YEARS

RECOMMENDED ACTION: Staff recommends the City Council approve the Resolution entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, APPROVING AN AFFORDABLE HOUSING AGREEMENT, REGULATORY AGREEMENT AND HOUSING INCENTIVES AGREEMENT FOR THE DEVELOPMENT AND OPERATION OF 200 SENIOR AFFORDABLE MULTI-FAMILY UNITS AND 2 MANAGER UNITS AT 2C LIBERTY FOR A PERIOD OF 55 YEARS.

8. REQUEST FOR CITY FUNDING FOR THE 8TH ANNUAL TASTE OF ALISO NIGUEL

RECOMMENDED ACTION:

1. Consideration of City Funding in the amount of $3,500 payable to the Parents for Aliso Niguel in support of the 8th Annual Taste of Aliso Niguel
2. If approved, authorize the appropriation of $3,500 from the General Fund unreserved fund balance.

9. AWARD CONTRACT TO ROY ALLAN SLURRY SEAL FOR THE FY 2014-15 SLURRY SEAL AND REHABILITATION

RECOMMENDED ACTION:

1. Award a contract in the amount of $451,092.85 to Roy Allan Slurry Seal as the lowest responsible bidder for the FY 2014-15 Slurry Seal and Rehabilitation Project;
2. Authorize the City Manager to execute a contract with Roy Allan Slurry Seal; and
3. Authorize City staff to make total compensation to Roy Allan Slurry Seal up to $451,092.85 plus $45,109.29 (10% of the contract amount) to allow for contingencies, totaling $496,202.14.

COMMUNITY INPUT

Members of the public wishing to address the City Council are requested to complete and submit to the City Clerk a "Request to Address City Council" form available at the entrance to the City Council Chambers. **IN COMPLIANCE WITH THE BROWN ACT, NO DISCUSSION OR ACTION MAY BE TAKEN ON COMMENTS RECEIVED AT THIS TIME, EXCEPT THE CITY COUNCIL MAY BRIEFLY RESPOND TO STATEMENTS MADE OR QUESTIONS POSED.** Comments are limited to three (3) minutes per speaker.

CITY MANAGER'S REPORT

ANNOUNCEMENTS / COUNCIL COMMENTS / COMMITTEE UPDATES

ADJOURNMENT: The next regularly scheduled meeting is March 4, 2015.

CITY COUNCIL MEETING OF FEBRUARY 18, 2015

STUDY SESSION:

1. ALISO VIEJO RANCH SITE (PA14-13) ENVIRONMENTAL ANALYSIS – ORAL PRESENTATION ONLY.

City of Aliso Viejo
Agenda Item

DATE: February 18, 2015

TO: Mayor and City Council

FROM: Kelly Tokarski, KT Community Relations

SUBJECT: COUNCIL RECOGNITION AND PRESENTATION TO JULIA MOSS FOR CREATING THE "LET THE BEAT GO ON" PROJECT

Recommended Action:

Present Certificate of Recognition.

Summary:

Aliso Niguel High School student Julia Moss has been supporting the Capistrano Unified School District music program since she was in the seventh grade by collecting unused musical instruments for students who cannot afford their own. She created the "Let The Beat Go On" project, which has since grown into a club at Aliso Niguel High School. Julia also enlisted the club's members to start a music tutoring program at her alma mater, Don Juan Avila Middle School. The middle school musicians receive tutoring on musicianship, auditioning for orchestra seats and other advice from club members who also perform monthly at senior care facilities.

Along with her club activities, Julia plays soccer and volunteers at Temple Beth El in Aliso Viejo.

APPROVED FOR SUBMITTAL TO THE CITY COUNCIL

Dave Doyle
City Manager

CITY OF ALISO VIEJO
CITY COUNCIL MINUTES
REGULAR MEETING
FEBRUARY 4, 2015, 7:00 P.M.
Council Chambers, City Hall, 12 Journey
Aliso Viejo, California

CALL TO ORDER: Mayor Phillips convened the Study Session at 6:08 p.m.

PRESENT:	MAYOR WILLIAM A. PHILLIPS MAYOR PRO TEM MIKE MUNZING COUNCILMEMBER ROSS CHUN
ABSENT:	COUNCILMEMBER DAVID C. HARRINGTON COUNCILMEMBER PHILLIP B. TSUNODA
STAFF PRESENT:	DAVID A. DOYLE, CITY MANAGER MITZI ORTIZ, CITY CLERK GLENN YASUI, ADMINISTRATIVE SERVICES DIRECTOR KAREN CROCKER, COMMUNITY SERVICES DIRECTOR GINA THARANI, FINANCE DIRECTOR SHAUN PELLETIER, PUBLIC WORKS DIRECTOR / CITY ENGINEER ALBERT ARMIJO, PLANNING DIRECTOR JENNIFER LOWE, ASSOCIATE PLANNER

STUDY SESSION

1. ALISO VIEJO TOWN CENTER CONCEPT PLAN

Planning Director Albert Armijo presented the staff report. Stan Hoffman and Greg Stoffel provided additional information related to the economic analysis. Rogier Goedecke provided additional information related to the traffic analysis. Staff and consultants responded to questions regarding Lowe's site, number of property owners, potential types of businesses, parking structure, and Aliso Viejo Community Association involvement. Mayor Phillips opened for public comment and the following persons spoke:

1. Robert Montgomery expressed support of the proposed concept plan.
2. Mike Balsamo commented on opportunities with the mixed use concept.

There were no other speakers.

The Study Session adjourned at 7:01 p.m.

CALL TO ORDER: Mayor Phillips called the Regular Meeting of the City Council of the City of Aliso Viejo to order at 7:12 p.m.

PRESENT:	MAYOR WILLIAM A. PHILLIPS MAYOR PRO TEM MIKE MUNZING COUNCILMEMBER ROSS CHUN COUNCILMEMBER PHILLIP B. TSUNODA
ABSENT:	COUNCILMEMBER DAVID C. HARRINGTON
STAFF PRESENT:	DAVID A. DOYLE, CITY MANAGER SCOTT SMITH, CITY ATTORNEY MITZI ORTIZ, CITY CLERK GLENN YASUI, ADMINISTRATIVE SERVICES DIRECTOR KAREN CROCKER, COMMUNITY SERVICES DIRECTOR GINA THARANI, FINANCE DIRECTOR SHAUN PELLETIER, PUBLIC WORKS DIRECTOR / CITY ENGINEER MOY YAHYA, ENVIRONMENTAL PROGRAMS MANAGER ALBERT ARMIJO, PLANNING DIRECTOR ERICA ROESS, SENIOR PLANNER JENNIFER LOWE, ASSOCIATE PLANNER LT. JOHN MACPHERSON, CHIEF OF POLICE SERVICES

PLEDGE OF ALLEGIANCE: Led by Kimberly Gomez, Aliso Viejo Boys & Girls Club Member

SPECIAL PRESENTATIONS

A. ALISO CREEK RESTORATION PROJECT PRESENTED BY ORANGE COUNTY WATERSHED STAFF

Mary Anne Skorpanich, Deputy Director of the Orange County Public Works Department/OC Environmental Resources provided the presentation. Ms. Skorpanich responded to questions regarding options, sediment, approval process and updates.

B. ALISO CREEK ARUNDO REMOVAL PROJECT PRESENTED BY LAGUNA CANYON FOUNDATION

Derek Ostensen, Project Manager of the Laguna Canyon Foundation provided the presentation. Mr. Ostensen responded to questions regarding disposal and projected timelines.

ADDITIONS, DELETIONS, REORDERING TO THE AGENDA

City Attorney Scott Smith recommended continuation of Consent Calendar Item No. 7 to February 18, 2015 for additional analysis related to correspondence received by the City from the applicant alleging flaws in City appeal process. Staff responded to questions regarding impact of continuation.

Mayor Phillips opened public comment on Consent Calendar Item No. 7.

The following persons spoke in support of the item: 1. Victoria Higginson; 2. Nancy Conley; 3. Ken Virgin; 4. Aurora Knight; 5. Mindy Frosto-Swank; 6. Natalie Affleck.

There were no other speakers. Council consensus approved the agenda as modified.

CONSENT CALENDAR ITEMS NOS. 1-8

Mayor Phillips asked if any member of the City Council, staff or the public wished to remove an item from the Consent Calendar.

Councilmember Chun requested to pull Item No. 8. There were no requests from staff or the public to remove any items on the Consent Calendar.

MOTION: COUNCILMEMBER TSUNODA MOVED AND MAYOR PRO TEM MUNZING SECONDED TO APPROVE CONSENT CALENDAR ITEMS 1 – 6, AS PRESENTED.

1. WAIVE THE READING OF ALL ORDINANCES AND RESOLUTIONS

   Approved the reading by title only of all ordinances and resolutions wherein the titles appear on the public agenda; said titles shall be determined to have been read by title, and further reading is waived.

2. APPROVAL OF MINUTES – JANUARY 21, 2015 REGULAR MEETING

   Approved the subject Minutes as submitted.

3. ADOPT ORDINANCE APPROVING ZONING CODE AMENDMENT – CHANGES TO STANDARDS FOR RESIDENTIAL ACCESSORY STRUCTURES, RECREATIONAL VEHICLES, AUTO RENTAL AGENCIES, MEDICAL OFFICE USES, OUTDOOR DINING, BUSINESS SIGNS, PARKING, HOUSING DEFINITIONS AND OTHER AMENDMENTS (PA15-001)

   Conducted second reading and adopted Ordinance No. 2015-165 entitled:

   AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, AMENDING TITLE 15 OF THE ALISO VIEJO MUNICIPAL CODE, INCLUDING CHANGES TO LAND USE REGULATIONS FOR

TRANSITIONAL AND SUPPORTIVE HOUSING, RESIDENTIAL ACCESSORY STRUCTURES, MEDICAL OFFICE AND AUTO RENTAL AGENCY USES, OUTDOOR DINING, PARKING REGULATIONS, RECREATIONAL VEHICLE PARKING, BUSINESS SIGNS AND OTHER AMENDMENTS (PA15-001)

4. ACCOUNTS PAYABLE

1. Ratified accounts payable checks issued January 15, 2015 in the amount of $219,087.09; and
2. Ratified accounts payable checks issued January 22, 2015 in the amount of $40,031.87.

5. TREASURER'S STATEMENT – DECEMBER 2014

Approved the December 2014 Treasurer's Statement.

6. AFFORDABLE HOUSING IN-LIEU STRATEGIC PLAN

Adopted Resolution No. 2015-08 approving the Affordable Housing In-Lieu Strategic Plan.

7. RESOLUTION REVERSING THE DIRECTOR OF PLANNING SERVICES' ACTION OF NOVEMBER 10, 2014, AND DENYING ADMINISTRATIVE USE PERMIT PA14-020, A REQUEST TO ESTABLISH A TYPE 41 ALCOHOLIC BEVERAGE CONTROL LICENSE FOR EDWARDS THEATER – ALISO VIEJO 20 AT 26701 ALISO CREEK ROAD IN ALISO VIEJO, CA

Item was continued.

8. UPGRADE EXISTING BIKE TRAILER TO MULTIMEDIA PUBLIC INFORMATION TRAILER

Item was removed from the Consent Calendar.

MOTION CARRIED 4-0 WITH COUNCILMEMBER HARRINGTON ABSENT

END OF CONSENT CALENDAR

REMOVED FROM CONSENT CALENDAR

8. UPGRADE EXISTING BIKE TRAILER TO MULTIMEDIA PUBLIC INFORMATION TRAILER

Staff responded to questions regarding the use of the existing bicycles.

MOTION: COUNCILMEMBER CHUN MOVED AND MAYOR PRO TEM MUNZING SECONDED TO APPROVE UPGRADING THE EXISTING PUBLIC SAFETY BIKE TRAILER TO A MULTIMEDIA PUBLIC INFORMATION TRAILER IN THE AMOUNT OF $29,000.

MOTION CARRIED 4-0 WITH COUNCILMEMBER HARRINGTON ABSENT

DISCUSSION ITEMS NOS. 9-10

9. MID-YEAR BUDGET UPDATE

City Manager David Doyle introduced Finance Director Gina Tharani who presented the staff report. Staff responded to questions regarding iPad use and policies, replacement of Police Services motorcycle and property tax revenue.

MOTION: COUNCILMEMBER CHUN MOVED AND MAYOR PRO TEM MUNZING SECONDED TO

1. **ADOPT THE RECOMMENDED MID-YEAR BUDGET FOR FISCAL YEAR 2014-15; AND**
2. **AUTHORIZE CITY MANAGER TO EXECUTE THE DATA CENTER REBUILD CONTRACT.**

MOTION CARRIED 4-0 WITH COUNCILMEMBER HARRINGTON ABSENT

10. REQUEST FOR FIELD USAGE AT IGLESIA PARK – SCORPIONS BASEBALL CLUB AND CONSIDERATION OF ATHLETIC FIELD USE POLICY FOR IGLESIA PARK

City Manager David Doyle introduced Community Services Director Karen Crocker who presented the staff report. Staff responded to questions regarding adult vs. youth sports leagues, residency requirements, the Boys & Girls Club, insurance requirements, and use fees. Mayor Phillips opened for public comment and the following person spoke:

1. Nancy Conley expressed concern with the lack of parking in the area.

There were no other speakers.

MOTION: COUNCILMEMBER TSUNODA MOVED AND COUNCILMEMBER CHUN SECONDED TO

1. **AUTHORIZE THE CITY MANAGER TO ENTER INTO A FIELD USE AGREEMENT WITH THE SCORPIONS BASEBALL CLUB TO UTILIZE THE NEWLY RENOVATED BASEBALL FIELD AT IGLESIA PARK FROM FEBRUARY 5 THROUGH SEPTEMBER 1, 2015, ON SUNDAY AFTERNOONS AND ONE WEEKDAY AFTERNOON; AND**

2. **APPROVE THE ATHLETIC FIELD USE POLICY AT IGLESIA PARK AS AMENDED, ALLOWING THE COMMUNITY SERVICES DIRECTOR DISCRETION IN APPLYING POLICY AND ALLOWING FIELD RESERVATIONS FOR A MAXIMUM OF 25% OF THE TIME.**

MOTION CARRIED 4-0 WITH COUNCILMEMBER HARRINGTON ABSENT

COMMUNITY INPUT

1. Nancy Conley commented on various issues, including the relationship between the City and Aliso Viejo Community Association, the Aliso Viejo Exchange website, staff level project approvals, new businesses opening in the City and commended staff on Snowfest event.
2. Wayne Brown, representing South Orange County Economic Coalition, provided information regarding regional activities and upcoming events.

CITY MANAGER'S REPORT

None.

ANNOUNCEMENTS / COUNCIL COMMENTS / COMMITTEE UPDATES

Councilmember Chun:

- Attended Libations with Legislators event
- Attended OCFA Best and Bravest event
- Attended TCA Marketing Ad-Hoc Committee meeting and Environmental Ad-Hoc Committee meeting
- Attended Boys & Girls Club Youth of the Year event

Councilmember Harrington: Absent

Councilmember Tsunoda:

- Attended Aliso Viejo Girls Softball Opening Day

Mayor Pro Tem Munzing:

- Attended Libations with Legislators event
- Attended swearing-in ceremony of Incoming Commander Captain Lloyd Bumanglag of the Civil Air Patrol Squadron 150
- Attended Aliso Viejo Snowfest event
- Attended OCCOG meeting
- Attended meeting with Orange County Register
- Attended Broker Meet and Greet event
- Attended Boys & Girls Club Youth of the Year event

Mayor Phillips:

- Announced Lori Donchak will continue representing 5th District on OCTA
- Announced appointment to Executive Committee of the Library Advisory Board
- Attended Aliso Viejo Snowfest event
- Announced Aliso Viejo Chamber of Commerce Installation event to be held on Thursday, February 12, 2015
- Attended Boys & Girls Club Youth of the Year event
- Attended Aliso Viejo Girls Softball Opening Day

ADJOURNMENT: The Council meeting adjourned at 9:33 p.m. to the next regularly scheduled meeting of February 18, 2015.

Respectfully submitted:

_____

MITZI ORTIZ, MMC
CITY CLERK

Approved by:

_____

WILLIAM A. PHILLIPS
MAYOR

City of Aliso Viejo
Agenda Item

DATE: February 18, 2015

TO: Mayor and City Council

FROM: Gina M. Tharani, Director of Financial Services

SUBJECT: ACCOUNTS PAYABLE

Recommended Action:

1. Ratify accounts payable checks issued January 29, 2015 in the amount of $224,652.88 and
2. Ratify accounts payable checks issued February 5, 2015 in the amount of $138,098.68.

Fiscal Impact:

Expenditures in the amount of $362,751.56.

Background:

The City issues accounts payable checks on a bi-monthly basis and submits them to the City Council for review and approval prior to the creation of accounts payable checks. Special check runs are done on a weekly basis with the City Council ratification at its next regularly scheduled City Council Meeting.

Discussion:

The issued accounts payable checks were reviewed and approved for payment. The register is being presented to City Council for approval.

Gina Tharani

Gina M. Tharani
Director of Financial Services

APPROVED FOR SUBMITTAL TO THE CITY COUNCIL

David Doyle
City Manager

Attachment: Accounts Payable Reports

Accounts Payable

1/29/2015

	Vendor Name	Description (Item)	Amount
101 - GENERAL FUND			
	RYAN SMITH	R.S. - 2014 CCFLEX	192.30
	GRACIELA DURAN	G.D. - 2014 MDFLEX	38.46
	ERICA ROESS	E.R. - 2014 CCFLEX	115.38
	ERICA ROESS	E.R. - 2014 MDFLEX	19.23
	PAULA GARROW	P.G. - 2014 MDFLEX	38.46
	GLENN YASUI	G.Y. - 2014 MDFLEX	69.23
	CALPERS HEALTH	FEB'15 HEALTH PREMIUM	12,952.95
	CALPERS RETIREMENT	PERS PAY PERIOD 27	9,730.47
	COPOWER	FEB'15 DENTAL INSURANCE	1,586.59
	COPOWER	FEB'15 VISION INSURANCE	295.00
	AFLAC	PP 1 & 2 ACCT #CJ261	414.26
	UNITED OF OMAHA LIFE INSURANCE CO.	FEB'15 LIFE INSURANCE	642.97
			26,095.30
CITY COUNCIL			
	ROSS CHUN	R.C. - LOCC POLICY MTG EXP.	395.04
		CITY COUNCIL TOTAL:	**395.04**
CITY MANAGER			
	CITY OF TUSTIN	2015 OCHRC MEMBER DUES	250.00
		CITY MANAGER TOTAL:	**250.00**
FINANCE			
	CALPERS HEALTH	FEB'15 ADMIN CHARGES	49.41
	CSMFO	GT,RS - 2/26/15 CSMFO OC MTG	60.00
	COPOWER	FEB'15 ADMIN CHARGES	15.00
	SHEAKLEY PENSION ADMINISTRATION INC	DEC'14 ADMIN & ACH FEES	67.00
		FINANCE TOTAL:	**191.41**
NON-DEPARTMENTAL			
	MOULTON NIGUEL WATER DIST	11/10/14-1/13/15 RANCH WATER MTR #7757	155.38
	SIGMANET INC.	JAN'15 IT SERVICES	4,875.00
	JOVENVILLE LLC	OCT-DEC'14 AVX WEB MAINT	900.00
	CINTAS CORP.	FEB'15 FIRST AID MAINTENANCE	100.60
	NIEVES LANDSCAPE INC	JAN'15 RANCH LANDSCAPING	793.82
	U.S. TELEPACIFIC CORP.	12/9/14-1/8/15 CH PHONE SERVICE	1,228.43
	KONICA MINOLTA BUSINESS SOLUTIONS	10/11/14-1/10/15 COPY CHARGE	2,026.91
	DOCUMEDIA GROUP	1/15/15 CITY LETTERHEAD 2000	504.03
	NATIONAL BUSINESS FURNITURE	2-EOC STORAGE CABINETS	2,154.88
		NON-DEPARTMENTAL TOTAL:	**12,739.05**
C. S. ADMINISTRATION			
	ALISO VIEJO MIDDLE SCHOOL	AVMS HOMEWORK CLUB #2	1,000.00
	CALPERS HEALTH	FEB'15 HEALTH RETIRED	122.00
	COLD STAR INC	SNOW MAKING - SNOW FEST 2015	11,944.80
	PREMIER RECREATION SERVICES LLC	2015 Snow Fest Programming Services	1,350.00
	SOUTH COAST SYMPHONY	FY14-15 2ND SOUTH COAST SYMPHONY COMM GRANT	250.00
		C. S. ADMINISTRATION TOTAL:	**14,666.80**
IGLESIA PARK			
	SO CAL EDISON	12/11/14-1/12/15 PARK ELECTRIC	173.99
	EL TORO WATER DISTRICT	12/8/14-1/13/15 MTR#3499	505.88
	EL TORO WATER DISTRICT	12/8/14-1/13/15 MTR#4114	449.60
	NIEVES LANDSCAPE INC	JAN'15 IP LANDSCAPE	3,382.24
	BSN SPORTS INC	FRC VOLLEYBALL NET	77.63
	ANDY GUMP INC	1/8/-2/4/15	187.44
		IGLESIA PARK TOTAL:	**4,776.78**
IGLESIA BUILDING			
	SO CAL EDISON	12/11/14-1/12/15 BUILDING ELECTRIC	703.90

Vendor Name	Description (Item)	Amount
EL TORO WATER DISTRICT	12/8/14-1/13/15 MTR#1850	225.58
	IGLESIA BUILDING TOTAL:	**929.48**
FAMILY RESOURCE CENTER		
BOYS & GIRLS CLUB OF CAPISTRANO VALLEY	DEC'14 RECREATION EXPENSES	8,333.33
	FAMILY RESOURCE CENTER TOTAL:	**8,333.33**
PLANNING		
CALPERS HEALTH	FEB'15 HEALTH RETIRED	122.00
	PLANNING TOTAL:	**122.00**
ENGINEERING (GENERAL)		
SWRCB ACCOUNTING OFFICE	FY14-15 SWRCB ANNUAL PERMIT FEE	14,566.00
	ENGINEERING (GENERAL) TOTAL:	**14,566.00**
LAW ENFORCEMENT-OTHER		
RAY ULMER	R.U. - FOOD FOR SNOWFEST POLICE VOLUNTEERS	89.51
ALL CITY MANAGEMENT SERVICES	1/4-1/17/15 SCHOOL CROSSING GUARD SVCS	7,745.00
COUNTY OF ORANGE TREASURER-TAX COLLECTOR	FY14-15 2ND QTR COMM CHRG	1,023.76
	LAW ENFORCEMENT-OTHER TOTAL:	**8,858.27**
	GENERAL FUND TOTAL:	**91,923.46**
102 - GEN. FD-CITY HALL		
NON-DEPARTMENTAL		
SONITROL GOLD COAST LP	FEB'15 CITY HALL SECURITY SYS.	269.96
FOSTERS' GARDENS INC	JAN'15 CH PLANT MAINTENANCE	100.00
NIEVES LANDSCAPE INC	JAN'15 CITY HALL LANDSCAPING	427.26
WESTCON ELEVATOR	JAN'15 CH ELEVATOR MAINTENANCE	115.00
PACIFIC PARK II ASSOCIATION	FEB'15 HOA ASSESSMENT	329.40
	NON-DEPARTMENTAL TOTAL:	**1,241.62**
GOVERNMENT BUILDINGS		
TIM DONOGHUE	12/12/14 REPAIR OFFICE WINDOW LEAK	257.52
TIM DONOGHUE	11/2/14 REPAIR FRONT SLIDING DOOR	54.48
TIM DONOGHUE	12/8/14 REPAIR WATER TANK	159.48
	GOVERNMENT BUILDINGS TOTAL:	**471.48**
	GEN. FD-CITY HALL TOTAL:	**1,713.10**
203 - GAS TAX		
STREET MAINTENANCE		
SO CAL EDISON	DEC'14 STREET LIGHTS GS1	64.24
AT&T CALIFORNIA	JAN'15 TRAFFIC CONTROLLER ACCT #9167	172.39
EL TORO WATER DISTRICT	12/8/14-1/13/15 MTR#3335	55.47
SAN DIEGO GAS & ELECTRIC	DEC'14 STREET LIGHT ELECTRICITY	2,368.05
AEGIS ITS INC	DEC'14 TROUBLESSHOOTING TECH SUPPORT	3,784.65
AEGIS ITS INC	DEC'14 SIGNAL MAINTENANCE	2,728.82
AEGIS ITS INC	DEC'14 ROLLING REPORT	5,816.85
R F DICKSON CO INC	JAN'15 STREET SWEEPING	6,239.46
NIEVES LANDSCAPE INC	JAN'15 MEDIAN LANDSCAPING	310.49
	STREET MAINTENANCE TOTAL:	**21,540.42**
	GAS TAX TOTAL:	**21,540.42**
331 - CAPITAL IMPROVEMENTS		
CAPITAL IMPROVEMENTS		
HORIZONS CONSTRUCTION COMPANY INTL	IGLESIA PARK BASEBALL FIELD #098 PMT #2	84,744.98
HORIZONS CONSTRUCTION COMPANY INTL	IGLESIA PARK BASEBALL FIELD #098 CONTINGENCY	6,046.04
	CAPITAL IMPROVEMENTS TOTAL:	**90,791.02**
	CAPITAL IMPROVEMENTS TOTAL:	**90,791.02**
332 - STORM WATER		
DRAINAGE IMPROVEMENTS		
LSA ASSOCIATES INC	KICK-OFF MEETING SITE SURVEY PREP	1,756.80

Vendor Name	Description (Item)	Amount
LSA ASSOCIATES INC	CORREPSPONDENCE & APPLICATION PREP.	1,213.93
	DRAINAGE IMPROVEMENTS TOTAL:	**2,970.73**
	STORM WATER TOTAL:	**2,970.73**

711 - DEPOSIT ACCOUNTS FUND

CREW BUILDERS	P #72254 C&D REFUNDABLE DEPOSIT	1,500.00
SBR CONSTRUCTION	P #72409 C&D REFUNDABLE DEPOSIT	1,500.00
SOCORE ENERGY	P #72315 C&D REFUNDABLE DEPOSIT	1,500.00
		4,500.00
	DEPOSIT ACCOUNTS FUND TOTAL:	**4,500.00**

721 - COMMUNITY TRUST

TRUST FUND

BOYS & GIRLS CLUB OF CAPISTRANO VALLEY	DEC'14 TEEN PROGRAM	1,529.10
BOYS & GIRLS CLUB OF CAPISTRANO VALLEY	DEC'14 RECREATION EXPENSE	9,685.05
	TRUST FUND TOTAL:	**11,214.15**
	COMMUNITY TRUST TOTAL:	**11,214.15**

GRAND TOTAL: 224,652.88

Fund Summary

Fund	Expense Amount	Payment Amount
101 - GENERAL FUND	91,923.46	91,923.46
102 - GEN. FD-CITY HALL	1,713.10	1,713.10
203 - GAS TAX	21,540.42	21,540.42
331 - CAPITAL IMPROVEMENTS	90,791.02	90,791.02
332 - STORM WATER	2,970.73	2,970.73
711 - DEPOSIT ACCOUNTS FUND	4,500.00	4,500.00
721 - COMMUNITY TRUST	11,214.15	11,214.15
Grand Total:	**224,652.88**	**224,652.88**

Accounts Payable

2/5/2015

Vendor Name	Description (Item)	Amount
101 - GENERAL FUND		
CALPERS RETIREMENT	CC PERS PAY PERIOD 1	194.24
CALPERS RETIREMENT	PERS PAY PERIOD 1	10,593.99
JULIA HAMILTON	APPLICATION REFUND PA14-033	189.50
		10,977.73
CITY COUNCIL		
CALPERS HEALTH	CC - 14-15 PERS SURVIVOR BENEFIT	120.60
	CITY COUNCIL TOTAL:	**120.60**
CITY MANAGER		
CALPERS HEALTH	CM - 14-15 PERS SURVIVOR BENEFIT	160.80
STAPLES ADVANTAGE	CM - PASTEL,BATTERIES	24.28
	CITY MANAGER TOTAL:	**185.08**
ECONOMIC DEVELOPMENT		
KELLY TOKARSKI	JAN'15 ECONOMIC DEVELOPMENT	426.25
	ECONOMIC DEVELOPMENT TOTAL:	**426.25**
CITY CLERK		
CALPERS HEALTH	CCLK - 14-15 PERS SURVIVOR BENEFIT	40.20
STAPLES ADVANTAGE	C CLK - STENO PADS,STAMP,CDS,CD SLEEVES,LABELS	108.38
	CITY CLERK TOTAL:	**148.58**
CITY ATTORNEY		
BEST BEST & KRIEGER	SEP'14 BBK PRA DEMAND RECAP	8,563.40
BEST BEST & KRIEGER	SEP'14 BBK PRA DEMAND RECAP-CANDIDATES	5,532.20
BEST BEST & KRIEGER	NOV'14 BBK LEGAL SERVICES	17,692.95
BEST BEST & KRIEGER	NOV'14 BBK PROJECTS	539.40
BEST BEST & KRIEGER	NOV'14 BBK CODE ENFORCEMENT	581.65
BEST BEST & KRIEGER	NOV'14 BBK ZONING CODE	4,122.55
BEST BEST & KRIEGER	NOV'14 BBK RCSAV HOTEL	3,326.30
BEST BEST & KRIEGER	NOV'14 BBK NPDES	2,992.50
BEST BEST & KRIEGER	NOV'14 BBK GENERAL LITIGATION	790.80
	CITY ATTORNEY TOTAL:	**44,141.75**
FINANCE		
TYLER TECHNOLOGIES-INCODE DIVISION	FY14-15 INCODE MAINT-HR,PR,SS	2,715.94
CALPERS HEALTH	FIN - 14-15 PERS SURVIVOR BENEFIT	120.60
CALPERS HEALTH	FIN - 14-15 PERS SURVIOR BENEFIT	40.20
LIEBERT CASSIDY WHITMORE	GINA THARANI-LCW 2015 CONFERENCE	500.00
ROBERT HALF INTERNATIONAL INC	WE 1/02/15 14 HRS LIU	181.30
ROBERT HALF INTERNATIONAL INC	WE 1/09/15 28 HRS LIU	366.32
ROBERT HALF INTERNATIONAL INC	WE 1/16/15 28 HRS LIU	366.32
ROBERT HALF INTERNATIONAL INC	WE 1/23/15 28 HRS LIU	366.32
	FINANCE TOTAL:	**4,657.00**
NON-DEPARTMENTAL		
SIGMANET INC.	DATA CENTER REBUILD - PHS 1	6,585.60
MOULTON NIGUEL WATER DIST	12/23/14-1/25/15 RANCH WATER MTR#4746	55.25
INCONTACT INC	12/21/14-1/21/15 ACCT #3333	18.02
LIEBERT CASSIDY WHITMORE	2015 ERC MEMBERSHIP DUES	3,095.00
ALISO VIEJO SELF STORAGE	JAN'15 STORAGE UNIT 535	380.00
THOMAS E BYSTRY	1/29 COUNCIL VIDEO SYSTEM	500.00
LIEBERT CASSIDY WHITMORE	KAREN CROCKER-LCW 2015 CONFERENCE	350.00
LIEBERT CASSIDY WHITMORE	GLENN YASUI-LCW 2015 CONFERENCE	500.00
ERIC WINTER	OCT-DEC'14 A/V MONITORING AND ADMIN	731.51
NIGUEL DATA SERVICES INC.	1/15/15 AGENDA PACKETS PRINTING 12	545.73
SHAN M CRAWFORD	ALISO RIBBON CUTTING FLYER/BRANDING	105.00
STAPLES ADVANTAGE	CENTRAL - PAPER,CLIPS,SOAP,KITCHEN SUPPLIES	459.72
KELLY TOKARSKI	JAN'15 COMMUNITY RELATIONS	2,598.75
KELLY TOKARSKI	JAN'15MAYOR OUTREACH	1,086.25

Vendor Name	Description (Item)	Amount
COX COMMUNICATIONS ORANGE COUNTY	1/25-2/24/15 INTERNET SERVICE #3302	79.20
	NON-DEPARTMENTAL TOTAL:	**17,090.03**
C. S. ADMINISTRATION		
CALPERS HEALTH	CS - 14-15 PERS SURVIVOR BENEFIT	120.60
CA PARK & RECREATION SOCIETY DISTRICT X	GD-CPRS CONFERENCE	429.00
GRACIELA DURAN	G.D. - DEC-JAN'15 MILEAGE REIMBURSEMENT	35.50
DON JUAN AVILA MIDDLE SCHOOL	DJAMS - HOMEWORK CLUB GRANT #2	2,500.00
STAPLES ADVANTAGE	CS - PAPER,MENU,NOTES,DESKPAD,COVER,TISSUE,CARDS	275.75
BOYS & GIRLS CLUB OF LAGUNA BEACH	FY14-15 COMMUNITY GRANT B&G CLUB LAGUNA BEACH...	15,000.00
PURE GAME	FY14-15 COMMUNITY ASSISTANCE GRANT 2ND	750.00
LAURA'S HOUSE	FY14-15 COMMUNITY GRANT LAURA'S HOUSE 2ND	1,000.00
	C. S. ADMINISTRATION TOTAL:	**20,110.85**
IGLESIA PARK		
NIEVES LANDSCAPE INC	1/22/15 VALVE REPLACEMENT	1,225.00
	IGLESIA PARK TOTAL:	**1,225.00**
IGLESIA BUILDING		
PROTECTION ONE ALARM MONITORING INC	2/17-3/16/15 FRC ALARM SERVICE	63.49
ORANGE COUNTY FIRE PROTECTION	ANNUAL FIRE EXTINGUISHER MAINT/SVCS	61.00
	IGLESIA BUILDING TOTAL:	**124.49**
PLANNING		
CENTER FOR SUSTAINABLE ENERGY	OCT'14 ENERGY PROGRAM EDUCATION	1,384.21
CENTER FOR SUSTAINABLE ENERGY	DEC'14 ENERGY PROGRAM EDUCATION	584.37
CALPERS HEALTH	PLNG - 14-15 PERS SURVIVOR BENEFIT	160.80
RK ENGINEERING GROUP INC	JAN'15 RK AV TOWN CETER	18,231.00
ENVIRONMENTAL & REGULATORY SPECIALISTS INC	JAN'15 GENERAL PLAN UPDATE	2,835.00
STAPLES ADVANTAGE	PLANNING - NOTEBOOK,SANITIZER,BUS CARD	52.83
	PLANNING TOTAL:	**23,248.21**
BUILDING		
STAPLES ADVANTAGE	BLDG - PENS,DESKPAD,COVER,CALENDAR	58.23
	BUILDING TOTAL:	**58.23**
ENGINEERING (GENERAL)		
STAPLES ADVANTAGE	ENG - PAPER,STAPLE REMOVER,SIGNO GEL,WIPE,COVER,	111.28
	ENGINEERING (GENERAL) TOTAL:	**111.28**
LAW ENFORCEMENT-OTHER		
IACP	JM-2015 IACP MEMBERSHIP	150.00
THE TOLL ROADS	12/10/14-1/9/15 TOLL CHARGES	130.00
MATTHEW BENDER & CO INC	2015 CA PENAL/VEHICLE CODE BK	65.16
	LAW ENFORCEMENT-OTHER TOTAL:	**345.16**
CRIME PREVENTION		
STAPLES ADVANTAGE	CP - BATTERIES,INK,BINDER,DIVIDER,PAPER,PIN	246.54
	CRIME PREVENTION TOTAL:	**246.54**
	GENERAL FUND TOTAL:	**123,216.78**
102 - GEN. FD-CITY HALL		
NON-DEPARTMENTAL		
MOULTON NIGUEL WATER DIST	11/17/14-1/19/15 MTR #3630	193.48
MOULTON NIGUEL WATER DIST	11/17/14-1/19/15 MTR #6010	144.38
MOULTON NIGUEL WATER DIST	11/17/14-1/19/15 MTR #7051	100.48
CTJAMJT CORP.	JAN'15 PEST CONTROL SERVICES	100.00
	NON-DEPARTMENTAL TOTAL:	**538.34**
	GEN. FD-CITY HALL TOTAL:	**538.34**
203 - GAS TAX		
TRAFFIC ENGINEERING		
HARTZOG & CRABILL INC	DEC'14 TRAFFIC SIGNAL MONITORING	944.32
	TRAFFIC ENGINEERING TOTAL:	**944.32**
STREET MAINTENANCE		
MOULTON NIGUEL WATER DIST	JAN'15 WATER MTR #2551	55.25
MOULTON NIGUEL WATER DIST	JAN'15 WATER MTR #1683	34.53

Vendor Name	Description (Item)	Amount
MOULTON NIGUEL WATER DIST	JAN'15 WATER MTR #4551	55.25
	STREET MAINTENANCE TOTAL:	**145.03**
	GAS TAX TOTAL:	**1,089.35**

311 - STREET IMPROVEMENTS

STREETS & HIGHWAYS

FREEDOM COMMUNICATIONS INC	12/11 SLURRY SEAL BIDS NOTICE	94.05
	STREETS & HIGHWAYS TOTAL:	**94.05**
	STREET IMPROVEMENTS TOTAL:	**94.05**

711 - DEPOSIT ACCOUNTS FUND

IMAGINE BEYOND DEVELOPMENT INC	ENCROACHMENT DEPOSIT P #72644	3,000.00
DAN BROCKINGTON	C&D DEPOSIT P #71567	1,500.00
RJM DESIGN GROUP INC	#5027-VANTIS APT. LANDSCAPE PLANCHECK	897.20
RJM DESIGN GROUP INC	#5027-VANTIS COMM. LANDSCAPE PLANCHECK	764.57
ROBERT HALF INTERNATIONAL INC	WE 1/02/15 14 HRS LIU	77.70
ROBERT HALF INTERNATIONAL INC	WE 1/09/15 28 HRS LIU	157.00
ROBERT HALF INTERNATIONAL INC	WE 1/16/15 28 HRS LIU	157.00
ROBERT HALF INTERNATIONAL INC	WE 1/23/15 28 HRS LIU	157.00
BEST BEST & KRIEGER	NOV'14 BBK USA PROP 2C LIBERTY PA14-008	4,055.00
BEST BEST & KRIEGER	NOV'14 PA12-005 BBK SHEA VANTIS	2,261.04
FREEDOM COMMUNICATIONS INC	12/25 PA14-020 REGAL	133.65
		13,160.16
	DEPOSIT ACCOUNTS FUND TOTAL:	**13,160.16**

GRAND TOTAL: 138,098.68

Fund Summary

Fund	Expense Amount	Payment Amount
101 - GENERAL FUND	123,216.78	123,216.78
102 - GEN. FD-CITY HALL	538.34	538.34
203 - GAS TAX	1,089.35	1,089.35
311 - STREET IMPROVEMENTS	94.05	94.05
711 - DEPOSIT ACCOUNTS FUND	13,160.16	13,160.16
Grand Total:	**138,098.68**	**138,098.68**

City of Aliso Viejo

CITY COUNCIL
AGENDA ITEM

DATE: February 18, 2015

TO: City Council

FROM: Albert Armijo, Director of Planning Services
Jennifer Lowe, Associate Planner

SUBJECT: RESOLUTION REVERSING THE DIRECTOR OF PLANNING SERVICES' ACTION OF NOVEMBER 10, 2014, AND DENYING ADMINISTRATIVE USE PERMIT PA14-020 A REQUEST TO ESTABLISH A TYPE 41 ALCOHOLIC BEVERAGE CONTROL LICENSE FOR EDWARDS THEATER – ALISO VIEJO 20 AT 26701 ALISO CREEK ROAD IN ALISO VIEJO, CA

RECOMMENDED ACTION:

Adopt resolution entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, REVERSING THE DIRECTOR OF PLANNING SERVICES' DECISION AND DENYING APPROVAL OF ADMINISTRATIVE USE PERMIT PA14-020, A REQUEST TO ESTABLISH A TYPE 41 ALCOHOLIC BEVERAGE CONTROL LICENSE FOR EDWARDS THEATER – ALISO VIEJO 20 AT 26701 ALISO CREEK ROAD IN ALISO VIEJO, CA

DISCUSSION:

On January 21, 2015, the City Council directed Staff to return with a resolution reversing Director of Planning Services action of November 10, 2014, and deny Administrative Use Permit PA14-020.

The resolution provides findings indicating the proposed alcohol sales as accessory to the theater use are inconsistent with needs of the Aliso Viejo residents at this time who, based upon the substantial evidence of opposition to the proposed use presented at the public hearings, desire that the theater remain a venue that serves families and adults who prefer to attend an alcohol-free theater, especially in light of the increasing number of theaters in the general vicinity that allow alcohol sales.

Prepared by:

Jennifer Lowe
Associate Planner

Approved by:

Albert Armijo
Director of Planning Services

APPROVED FOR SUBMITTAL TO THE CITY COUNCIL

David A. Doyle
City Manager

Attachments:

Draft City Council Resolution No. 2015-XX

RESOLUTION NO. 2015-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, REVERSING THE DIRECTOR OF PLANNING SERVICES' DECISION AND DENYING APPROVAL OF ADMINISTRATIVE USE PERMIT PA14-020, A REQUEST TO ESTABLISH A TYPE 41 ALCOHOLIC BEVERAGE CONTROL LICENSE FOR EDWARDS THEATER – ALISO VIEJO 20 AT 26701 ALISO CREEK ROAD IN ALISO VIEJO, CA

WHEREAS, a City Council member of the City Council of the City of Aliso Viejo submitted a call up of action taken by the Director of Planning Services' ("Director") approval of Administrative Use Permit PA14-020, a request by Regal Entertainment Group, to establish a Type 41 Alcoholic Beverage Control (ABC) license for Edwards Theater – Aliso Viejo 20 at 26701 Aliso Creek Road; and

WHEREAS, on October 30, 2014, the Director sent a public notice to property owners within 300 feet of the Aliso Viejo Town Center and all tenants within Aliso Viejo Town Center stating the Director would be making a determination on the application made by Regal Entertainment Group to establish a Type 41 ABC License at 26701 Aliso Creek Road; and

WHEREAS, the Director considered the application, staff reports, and public testimony, and after considerable discussion and evaluation of the project, approved Administrative Use Permit PA14-020 on November 10, 2014; and

WHEREAS, on November 14, 2014, a City Council member of the City of Aliso Viejo called up the Director's decision pursuant to AVMC Section 15.70.080 and requested the project be reviewed by City Council; and

WHEREAS, the applicant was given notice of the call up in accordance with Section 15.70.080; and

WHEREAS, consistent with City Policy, a Council Member call up of a decision of the Director for full review by the City Council is not subject to payment of appeal fees, and need not be submitted on an "Appeal" form; and

WHEREAS, on January 7, 2015, the City Council conducted a public hearing and considered the staff report, public testimony both for and against Administrative Use Permit PA 14-020 and information from Planning, Economic Development and Police Services staff, discussed the project and thereafter, continued the public hearing to give Council Members the opportunity to visit movie theaters in other cities that allow sale of alcoholic beverages; and

WHEREAS, on January 21, 2015, the City Council held the continued public hearing and considered additional public testimony in favor and against Administrative Use Permit PA 14-020, and after considerable discussion and evaluation of the project, including all of the evidence and testimony presented at the January 7 and January 21 public hearings, reversed the Director's decision and denied Administrative Use Permit PA14-020.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. The City Council hereby finds and determines that all of the recitals set forth above are true and correct. The above recitals are hereby incorporated as substantive findings of this Resolution.

SECTION 2. Pursuant to Section 15.74.040 of the AVMC, the application for Administrative Use Permit PA14-020 (AUP) shall be denied subject to the following findings:

1. *Consistency with General Plan. The land use is consistent with the General Plan and any applicable specific plan.*

   The proposed use is not consistent with General Plan Goal LU-1: "Provide a diverse mix of land uses to meet the future needs of all residents and the business community." The Council finds that the proposed alcohol sales as accessory to the theater use are inconsistent at this time with needs of the Aliso Viejo residents who, based upon the substantial evidence of opposition to the proposed use presented at the public hearings, desire that the theater remain a venue that serves families and adults who prefer to attend an alcohol-free theater, especially in light of the increasing number of theaters in the general vicinity that allow alcohol sales.

2. *Consistency with Zoning Code. The land use and associated development conform to the permitted use provisions and development standards of this Zoning Code and is consistent with this Code and any applicable specific plan.*

   The location for a Type 41 ABC License is located within a Town Center Commercial zoning district. Aliso Viejo Municipal Code (AVMC) Section 15.22.200(D)(1) requires an administrative use permit for a new ABC license or any change in the type of license. As detailed below, the project is not consistent with provisions and development standards of the Zoning Code.

   In addition to the findings required in Section 15.74.040(C), pursuant to AVMC Section 15.22.200, the decision-making authority is required to find that the proposed sale of alcoholic beverages proposed by Administrative Use Permit PA14-020 (AUP) is consistent with the purpose and intent of that section, which is to protect the public health and safety for residents and businesses by establishing a set of consistent standards for safe operation of alcoholic beverage retail outlets

and prevent alcohol-related problems. In reviewing required findings, the decision-making authority shall also consider the following:

a. The crime rate in the reporting district and adjacent reporting districts as compared to other areas in the City;

b. The numbers of alcohol-related calls for service, crimes or arrests in the reporting district and in adjacent reporting districts; and,

c. The proximity of the alcoholic beverage outlet to residential districts, day care centers, park and recreation facilities, places of religious assembly, and schools.

d. Whether the permit will result in an overconcentration of alcoholic beverage outlets in the vicinity of the proposed outlet.

The Chief of Police Services for the City of Aliso Viejo provided a report that supplied crime rate and reportable incident data. After reviewing the data, the Chief of Police concluded the number of general and alcohol related crimes are within tolerable limits and recommended approval of the Type 41 ABC License. Notwithstanding this recommendation which focuses on criminal behavior, however, the City Council finds that the establishment of a Type 41 ABC License at 26701 Aliso Creek Road would not protect the health and safety of residents and would contribute to alcohol-related problems sufficient to justify denial. A theater is similar in nature to a recreation facility because of the substantial number of families and children who attend the theater, and, therefore, serving alcohol is an inconsistent use with that venue. Further, the City Council finds that serving alcohol in such a venue may contribute to the well-established negative effects of early exposure of alcohol to minors. Accordingly, the City Council finds that the establishment of a Type 41 ABC License at 26701 Aliso Creek Road, does not conform to the permitted use provisions and development standards of 15.22.200 of the Zoning Code.

3. *Compliance with CEQA. Processing and approval of the permit application are in compliance with the requirements of the California Environmental Quality Act.*

   The Director determined the Administrative Use Permit is Categorically Exempt from further environmental review per the California Environmental Quality Act (CEQA) and CEQA Guidelines under Class 1 (Existing Facilities, sec. 15301) because the administrative use permit involves operation, licensing, and minor alteration of existing private structures involving negligible or no expansion of the use beyond that existing at the time of the Director's determination.

4. *Surrounding Uses. Approval of the application will not create conditions materially detrimental to the public health, safety and general welfare or injurious to or incompatible with other properties or land uses in the vicinity.*

   Addition of alcohol service at the theater will create conditions materially detrimental to the public health, safety and general welfare based upon the following evidence and findings:

a. The size and layout of the theater is not compatible with sale of alcoholic beverages in that it will be difficult to adequately monitor and supervise the premises to ensure minors do not have access to and consume alcoholic beverages. The subject theater is substantially different from other theaters in Orange County which serve alcoholic beverages in that i) there is less seating in those theaters and the seats are farther apart from each other, ii) those establishments have servers that come into the theater and are able to better monitor who is drinking alcohol, and iii) given the higher ticket prices at those establishments, the patrons appear to be older and there is less risk of minors having access to alcohol.

b. In light of the fact that minors are able to convince adults to purchase alcohol for them at liquor stores and other retail establishments that sell alcohol for off-site consumption, it is reasonable to conclude that minors may be even more successful in requesting adults to purchase alcohol which can be delivered to them in the dark theater.

c. Allowing alcohol sales in the theater will detract from the family-friendly nature of the theater. Unlike restaurants where families are not required to sit with or in proximity to those who are drinking alcohol, in the theater it is virtually impossible for families with minors to ensure they will not be sitting next to persons who are drinking alcohol. Additionally, there was evidence presented that many adults prefer an alcohol-free experience at the theater, and unlike restaurant seating, cannot be assured that they will not be sitting next to a patron who is drinking alcohol. This problem is exacerbated by the close proximity of the seats in the theater.

d. Allowing alcohol sales in a theater which is frequented by minors, often unaccompanied by adults, may further the negative effects of early exposure of alcohol to minors.

SECTION 3. The City Council hereby reverses the decision of the Director of Planning Services' and denies the Administrative Use Permit PA14-020 to establish a Type 41 Alcoholic Beverage Control (ABC) license for Edwards Theater – Aliso Viejo 20 at 26701 Aliso Creek Road.

SECTION 4. Custodian of Records. The administrative record for the Project is maintained at City Hall located at 12 Journey, Suite 100, Aliso Viejo, CA 92656. The custodian of records is the City Clerk.

SECTION 5. The City Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 18th day of February, 2015.

_____
William Phillips
Mayor

ATTEST:

_____
Mitzi Ortiz, MMC
City Clerk

APPROVED AS TO FORM:

_____
Scott C. Smith
City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF ALISO VIEJO)

I, MITZI ORTIZ, City Clerk of the City of Aliso Viejo, California, DO HEREBY CERTIFY that foregoing Resolution No. 2015-XX was duly passed and adopted by the City Council of the City of Aliso Viejo at their regular meeting held on the 18th day of February, 2015, by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
MITZI ORTIZ, MMC
CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Resolution No. 2015-XX duly passed and adopted by the Aliso Viejo City Council at its regular meeting held February 18, 2015.

(SEAL)

City of Aliso Viejo
Agenda Item

DATE: February 18, 2015

TO: Mayor and City Council

FROM: Shaun Pelletier, City Engineer

SUBJECT: AQUATIC CENTER SPLASH PAD IMPROVEMENTS

Recommended Action:

1. Authorize the City Manager to reallocate funds currently in the FY 14-15 Budget towards the Aquatic Center Splash Pad; and
2. Authorize Staff to obtain bids and select a contractor for the Aquatic Center Splash Pad Improvements project; and
3. Authorize the City Manager to execute the Aquatic Center Splash Pad Improvements Contract for the selected contractor

Fiscal Impact:

The total cost for the Splash Pad Improvements is estimated to be $123,000 including construction ($110,000), contingency ($10,000) and construction management ($3,000). $17,200 was included in the FY 14-15 budget for repairs, but staff is instead recommending full replacement. Funds already included in the FY 14-15 budget can be reallocated from the Conference Center patio furniture ($6,000) and patio improvements ($100,000) to cover the remaining costs. Staff is recommending the patio improvements be delayed to coincide with the selection of an operator for the Conference Center.

The recommended reallocations provide no net change to the FY 14-15 budget.

It should be noted that Action 3 only be enacted if the bid from the selected contractor is within the appropriated total budget amount of $123,000. Should the bids exceed that amount the contract will be brought back to City Council for approval.

Background:

The Aquatic Center construction was completed in 2009 and opened for its first full season in 2010. During its first six years staff has made several minor repairs that over time have cost over $7,000 for the splash pad. More significant repairs are now necessary this offseason to maintain the facility in safe and working order.

Discussion:

Staff had obtained quotes to make only the necessary repairs to the splash pad totaling about $17,000. It is staff's opinion, however, that these repairs will not prevent the recurring problems that exist and repairs will continue to be necessary in an ongoing fashion. It has been determined that the material used for the splash pad was not appropriate for the conditions at the pool and better materials are available that are expected to have a longer life.

The splash pad project is proposed to include removal of the existing rubber material and spray jets, and replace them with a concrete base properly graded for drainage, new spray jets and a chlorine resistant rubber safety surface. Alternate bid items will include additional water features such as a water mushroom and dumping buckets that could be included if the bid prices are within the total project budget.

Staff is currently advertising for bids. Given the time constraints to complete the work prior to the start of the summer pool season, staff is recommending Council authorize staff to execute the contract of the selected contractor at this time so long as the amount is within the approved budget.

The schedule for this project will be as follows:

- Council approve obtaining quotes	February 18, 2015
- Award of contracts	March 11, 2015
- Start construction	March 16, 2015
- Complete construction	May 22, 2015

Shaun S. Pelletier
City Engineer

APPROVED FOR SUBMITTAL TO THE CITY COUNCIL

David A. Doyle
City Manager

Attachment: Aquatic Center Splash Pad Scope of Work

SCOPE OF WORK FOR

AQUATIC CENTER SPLASH PAD IMPROVEMENTS

1. GENERAL

The Contractor shall furnish all labor, materials and equipment to perform reconstruction of the existing splash pad and water features.

2. QUALIFICATIONS

The Contractor shall have the capability to provide design, grading, concrete and pool services as required to complete the scope of work and hold a valid Class A, Class C12, or Class C53 license.

3. SCOPE OF WORK

A. Splash Pad – Base Bid
   a. Prepare and submit permit documents to City's Building Department.
   b. Remove and dispose of existing rubber surface and buffings, concrete deck around wading pool, spray jets, etc. Wading pool to remain.
   c. Modify existing underdrain system to properly capture and recycle surface water.
   d. Modify existing plumbing to meet manufacturer's specifications for new water feature equipment.
   e. Prepare and compact subgrade for 4" minimum slab thickness.
   f. Install approximately 1,200 SF of non-slip PCC slab with rebar meeting manufacturer's specifications at water feature locations. Grade for proper drainage to underdrain system.
   g. Install approximately 1,200 SF of 1/4"–3/8" thick chlorine resistant rubber safety surface (Aqua Flex or approved equal). Design and colors to be determined by Engineer.
   h. Purchase and install the following water feature equipment per manufacturer's specifications at locations approved by the Engineer.
      i. 16 Assorted Spray Jets (Rain Deck or approved equal)
      ii. Activation Bollard with Timer Box (Rain Deck or approved equal)
      iii. Electronic Controller with Multi-Zone Manifold (Rain Deck or approved equal)
   i. All required parts, pipe, solenoids, electrical components, etc. shall be considered incidental to the project bid items.

B. Splash Pad – Alternate Bid
   a. Alternate bid items shall each be considered standalone items. The City reserves the right to select any individual item, all items, or no items.
   b. Purchase and install the following water feature equipment per manufacturer's specifications at the location approved by the Engineer.
      i. 60" Stainless Steel Water Mushroom (Rain Deck RDS303-0 or approved equal)
      ii. Stainless Steel Dumping Bucket 3 (Rain Deck RDS316-0 or approved equal)

iii. Stainless Steel Flower Shower 2 (Rain Deck RDS335-0 or approved equal)
iv. Stainless Steel Wavy Palm (Rain Deck RDS339-1 or approved equal)
v. Stainless Steel Fire Hydrant (Rain Deck RDS327-0 or approved equal)
vi. Stainless Steel Shower Sprayer (Rain Deck RDS340-0 or approved equal)

c. All required parts, pipe, solenoids, electrical components, etc. shall be considered incidental to the alternate bid items.

C. Warranty
   a. Contractor shall provide 3 year limited warranty on all equipment and surfaces.

D. Concrete Decking
   a. Saw cut, remove and dispose of concrete areas designated by the Engineer.
   b. Prepare and compact subgrade at depth to match existing concrete.
   c. Install Portland Cement Concrete with finish to match existing concrete.

E. Water Pollution Control Plan
   a. The Contractor shall implement the 'Best Management Practices (BMP)' described in the Water Pollution Control Plan (WPCP) of this document. The included template must be completed prior to the start of construction. The Contractor may request an electronic version of the template from the Engineer. The Engineer may direct the Contractor to implement additional measures to prevent or reduce the discharge of pollutants from the construction activities to the storm drain system or watercourses. The completion and implementation of the WPCP and those BMP requested by the Engineer shall be included in the unit price bid for Water Pollution Control Plan & Implementation and no additional compensation will be allowed therefore.

4. <u>SCHEDULE OF COMPLETION</u>

A. Work shall commence on the date indicated in the Notice to Proceed.
B. Application, drawings and other required permit documents shall be prepared and submitted to the City's Building Department within 10 working days of contract award.
C. Construction shall be completed within 30 working days of permit issuance.

City of Aliso Viejo
Agenda Item

DATE: **February 18, 2015**

TO: **Mayor and City Council**

FROM: **Albert Armijo, Director of Planning Services**

SUBJECT: **ALISO VIEJO RANCH SITE (PA14-13) ENVIRONMENTAL ANALYSIS**

Recommended Action

Staff recommends the Council adopt the attached Resolution certifying the Aliso Viejo Ranch Site Mitigated Negative Declaration as adequate environmental documentation for the identified maximum contemplated scale of community center project.

Background

The City Council approved the Aliso Viejo Ranch Master Plan (reference Attachment F) in 2009 after an extensive public outreach program. Subsequently, staff supervised preparation of a draft Site Plan (reference Attachment E) for the Aliso Viejo Ranch Community Center that reflected and further defined the originally-approved Concept Master Plan. The draft Site Plan incorporated uses contemplated in the Concept Master Plan as well as design elements reflecting the historic "character" and rustic nature of Aliso Viejo Ranch.

On August 6, 2014, the City Council conducted a public hearing on the environmental documentation for the draft Site Plan. That documentation, an Initial Study/Mitigated Negative Declaration (reference Attachment B), elicited a host of oral comments made at the public hearing (reference Attachment D for a transcript of the Agenda Item) and several written comments. The Council continued the public hearing to a date uncertain and directed staff to post a corrected Mitigation Monitoring & Reporting Program and re-open the public comment period for an additional 30 days. That review period ended September 15, 2014. Subsequently, staff prepared responses to public comments (reference Attachment C).

Certification of the attached Mitigated Negative Declaration that is the subject of this Staff Report does not approve or imply approval of any development of the 7.7-acre Aliso Viejo Ranch property. Rather, the environmental document analyzes potential environmental impacts of the most extensive community center contemplated. Thereby, once City Council certifies the environmental document that environmental document also will be appropriate for any project of lesser scope the Council may wish to consider in the future.

Discussion

Project Description

The project (Project) analyzed in the Initial Study and referenced in the accompanying Mitigated Negative Declaration proposes removal and/or reuse of materials from the seven structures existing on the 7.7-acre Aliso Viejo Ranch property (Property) and construction of a multi-purpose community facility serving as an educational and activity center providing classes, workshops and activities to community members of all ages. The Project also includes community gardens and areas to host community and youth sporting events. Proposed community facility buildings include the following: a 10,250 square foot enclosed Youth Wing; a 5,850 square foot enclosed Teen Wing; an 11,000 square foot Basketball Pavilion; a 7,800 square foot Multi-Purpose Room; a 1,125 square foot Restroom and Storage Building; a 625 square foot Maintenance Building; and, 6,950 square feet of covered porch space. Community gardens, outdoor recreational areas, landscaping and on-site parking for approximately 102 automobiles would occupy 260,885 square feet. Anticipated community facility normal operating hours would be from 8 a.m. to 8 p.m., Monday through Friday, 8 a.m. to 5 p.m. Saturday and closed Sundays and holidays. One of the main functions of the Project would be to provide after-school and weekend activities for school-age children between 1 p.m. and 8 p.m., Monday through Friday, and between 9 a.m. and 4 p.m. Saturday. The Project would include low-level lighting and landscaping that would reflect the intent of the Master Plan.

The Project includes special considerations for pedestrian and vehicle safety and parking management to minimize vehicular congestion impacts to surrounding land uses and to ensure public safety.

Environmental Analyses

Consulting staff produced technical analyses of existing site and (as appropriate) vicinity conditions and anticipated Project-related impacts related to the following environmental topics: traffic; noise; air quality; greenhouse gas emissions; cultural/historic resources; geology; hydrology; biological resources; photometrics (lighting); and, viewshed. The technical analyses did not identify any potentially significant environmental impacts that would result from project development that could not be mitigated to a less than significant level. Key findings of the Initial Study and related technical studies follow.

Aesthetics (Viewshed and Lighting)

Development of the maximum scale Project will involve removal and repurposing of existing buildings, grading, construction of new buildings and lighted parking areas, and installation of landscaping. This will alter the existing visual character of the Aliso Viejo Ranch property. In addition, development on the Property will impact views onto the Property from surrounding properties within the California Reflections development northwest of the Property, non-adjacent Barcelona Apartments to the west of the Property, Aliso Viejo Middle School to the east of the Property, and Aliso Viejo Community Park to the south of the Property. The City determined Project development would not substantially degrade existing visual character or quality of the Property or its surroundings because any development on the Property would maintain a Ranch theme, would incorporate landscape berms, together with the fact views to the Property from residences along the northwest and west Property boundaries are limited due to existing

vegetation along the northwest Property boundary (reference Figures 21 – 23 in the Initial Study).

Introduction of pole lights and bollard lights and resultant night lighting will affect visual character/quality of the Property. However, as indicated in Project Design Feature PDF-2, lighting fixtures and placement have been designed to reduce light and glare affecting surrounding land uses through incorporation of architectural features, shielded lighting and limitation on operation hours of any future development on the property. Normal hours of operation were judged to be 8 a.m. – 8 p.m., Monday – Friday, 8 a.m. – 5 p.m., Saturday, and closed Sundays and holidays. This means lighting use will be minimized during Spring, Summer and early Fall.

The Photometric Study is included (Attachment A) with the Initial Study. The Study is based on a worst-case scenario with worst-case receptors being the nearest residences in the California Reflections development adjacent to the northwest edge of the property and select residences in the Barcelona Apartments west of the property. Based on a worst-case condition, the Project will increase existing nighttime light levels by less than 0.1 foot candle along the Property perimeter fence and by less than detectable foot candles along existing residential developments to the northwest, north and northeast (reference Figure 28 in the Initial Study). Existing berms and mature vegetation that will remain after any development contemplated on the property combined with proposed vegetation and existing differences in elevations (10 – 40 feet) are anticipated to block light and glare from impacting off-site residences. Therefore, the Project will not create a new source of substantial light or glare that would adversely affect day or nighttime views in the area.

Air Quality/ Greenhouse Gas Emissions

The Project would not conflict with or obstruct implementation of the South Coast Air Quality Management District Air Quality Management Plan. Emissions associated with the Project are within amounts already accounted for in the Air Quality Management Plan.

The Air Quality/Greenhouse Gas Emissions study for contemplated development on the Property indicates construction emissions in all phases of development will be below South Coast Air Quality Management District thresholds of significance, with standard required control measures (South Coast Air Quality Management District Rules 402 and 403).

Long-term air pollutant emission impacts are those associated with stationary and mobile sources. Stationary source emissions would come from additional natural gas consumption of on-site buildings and electricity for lighting in new buildings and parking areas. Using automobile trip generation from the Initial Study Traffic Impact Analysis and from the Institute of Transportation Engineers' Trip General Manual (9th edition) determined contemplated development of a community center on the property will not result in significant Regional Operation emissions and will not result in significant Localized Operational emissions.

In addition, the Project will not expose sensitive receptors to substantial pollutant concentrations because construction and operational emissions will be below South Coast Air Quality Management District thresholds of significance. Sensitive receptors in the vicinity of the Property include residential land uses to the north, northeast and west of the property, Aliso Viejo Community Park south of the property, and Aliso Viejo Middle School east of the property.

Furthermore, the Air Quality/Greenhouse Gas Emissions Analysis concluded "with the implementation of energy efficient programs and state and federal vehicle emission reduction programs, the [maximum contemplated] project would be consistent with the goals of AB 32...." Each project in the City has an allotment of greenhouse gas emissions as allocated by the South Coast Air Quality Management District Tier 3 Plan and the Project "...consumes well below its share."

Biological Resources

A Biological Resources Technical Report was prepared for contemplated development of a community center on the Property. Aliso Viejo Ranch is located within the Coastal sub-region of the Orange County Natural Community Conservation Plan and Habitat Conservation Plan, which designates three species as "target Species" to be used as umbrella species to guide design of a permanent habitat system within the Central and Coastal sub-regions. This Plan provides for long-term protection for habitat required by the coastal California Gnatcatcher, Coastal Cactus Wren and Orange-Throated Whiptail Lizard, all of which are on the federal list of threatened or endangered species. Aliso Viejo Ranch is designated as Non-Reserve Open Space under the Orange County Central-Coastal Natural Community Conservation Plan/Habitat Conservation Plan. Non-Reserve Open Spaces are those areas not within the Plan's nature reserve system, not within a special linkage area, and not in a sensitive resource area. Aliso and Wood Canyons Wilderness Park borders Aliso Viejo to the east, south and west and holds the majority of the nearly 25 percent of City land set aside as open space. Aliso and Wood Canyons Wilderness Park is a significant location for ecological and biological resources.

Aliso Viejo Ranch is disturbed with scattered patches of ruderal vegetation and ornamental landscaping. No sensitive habitats are located within or immediately adjacent to the Aliso Viejo Ranch Property. No sensitive plant species were detected or are expected to occur on or adjacent to the Property. No wetlands exist on the Property. No sensitive animal species were detected or are expected to occur on or adjacent to the Property. The property is not a local or regional wildlife corridor. However, large western sycamore trees, ornamental trees and shrubs within and adjacent to the property occasionally may represent roosting/nesting and foraging habitat for species tolerant of extensive indirect impacts (e.g. light and noise). Also, trees and buildings on-site may represent suitable roosting habitat for sensitive bat species known to occur within the region.

Impact assessment indicated loss of a sensitive bat species that may occur from removal of trees and structures during the breeding season, construction noise, and human disturbance. In addition, loss of an active nest of common or sensitive migratory bird species would be considered a violation of the California Department of Fish and Wildlife Code and federal Migratory Bird Treaty Act and therefore would be considered a potentially significant impact.

Temporary increases in noise levels on the Property associated with construction have the potential to disrupt foraging, nesting and roosting of passerines, raptors and bats know or expected to occur on or adjacent to the Property. These impacts are considered adverse, but not significant for most bird and bat species because construction would be temporary and localized and would not impact a substantial population of bird or bat species. Initial clearing of ornamental landscaping will be conditioned to occur outside the nesting/breeding season to avoid impacts to nesting birds and roosting bats. However, passerines, raptors and bats

potentially would incur temporary short-term impacts from construction noise if nesting/roosting occurs in the vicinity of the property. This impact would be considered potentially significant.

There are three Mitigation Measures proposed that would lessen potentially significant impacts to roosting bat species and migratory bird nests a non-significant level. These are noted on pages 61 and 62 of the Initial Study and pertain generally to the following: requiring pre-construction surveys for sensitive bat species during the breeding season (March 1 – August 31) and establishing a "no-disturbance" buffer by a qualified bat biologist in consultation with California Department of Fish and Wildlife around active roosts during the breeding season; conducting nesting bird surveys within and adjacent to the property prior to and during all proposed development actions conducted between January 31 and September 15; conducting pre-construction survey(s) prior to any development actions during the breeding season (January 31 – September 15) to identify any active nesting locations in or near the property no more than 3 days prior to development initiation and delineation of an appropriate buffer zone around the nest; mapping any active nests observed during the survey(s) on a recent aerial photograph including documentation of GPS coordinates within which only specified activities approved by the qualified biologist may occur until the nest is vacated; conducting surveys for active raptor nests in all ornamental landscaping no more than 3 days prior to commencement of any development activity during the raptor nesting season (January 31 to June 30) and mapping of observed active raptor nests on a recent aerial photograph; placement of restrictions on activities in the vicinity of the nest until the nest is no longer active as determined by a qualified biologist; and, evaluating and mitigating potential construction noise impacts to nesting birds and bats.

All identified potential significant impacts to biological resources will be reduced to a less than significant level with implementation of the identified three Mitigation Measures.

Cultural Resources

The Cultural Resource Reconnaissance conducted for the potential contemplated community center indicated none of the existing structures on the Property "...would qualify individually for listing on the National Register of Historic Places or the California Register of Historic Places or the California Register of Historic Resources since they are not individually associated with a significant event or person or are not a rare architectural type." The Reconnaissance also indicated that "...while the original Moulton Ranch complex of structures could be considered a significant resource based on its association with the history of ranching in the Aliso Viejo area and Orange County generally, only four buildings from this complex remain and they do not collectively represent all aspects of a functioning historic ranch. Accordingly, the complex would not qualify for listing on the National Register of Historic Places or the California Register of Historic Resources...."

Although there are no known archaeological resources on the Property and any contemplated development on the Property will not disturb soils outside the alluvium deposit area on the Property, and there are no known human remains on the Property, there are seven Mitigation Measures proposed that pertain to archaeological, paleontological and Native American monitoring of all earthmoving activities and to treatment of any resources or human remains that may be found on the Property during site preparation and development of any contemplated project. Implementation of these Mitigation Measures will ensure potential impacts associated with archaeological resources will be reduced to a less than significant level.

Noise

Consulting staff conducted a Noise Impact Study that evaluated anticipated short-term (existing traffic and future construction) noise as well as long-term (future operational and traffic) noise for a maximum contemplated development of a community center on the Aliso Viejo Ranch property. A noise impact is considered "significant" if there is a substantial increase above the baseline case. The human ear can detect 3dBA changes; less than this is not readily discernible in an outdoor environment. Thus, 3dBA is the threshold. Development of the maximum contemplated project would increase existing traffic noise levels by 0-1.1 dBA. Therefore, long-term operational and traffic noise increases also would be below the threshold. Short-term construction noise will comply with City Municipal Code restrictions on work hours (8 p.m. to 7 a.m., weekdays, 8 p.m. to 8 a.m., Saturdays, and no construction allowed on Sundays and holidays. Furthermore, anticipated short-term noise increases associated with construction activities will not create a substantial temporary or periodic increase in ambient noise levels in the Project vicinity above levels existing without any Project development.

Public Services

The impact assessment related to potential impacts to Orange County Fire Authority and Orange County Sheriff service indicate representatives of both groups "...approved the [maximum contemplated potential] Project subject to Standard Conditions of Approval the Project will be required to complete prior to issuance of building permits. These standard conditions will insure Project impacts to police and fire services are less than significant...Thus, the [maximum contemplated] Project would not result in a potentially significant impact related to police or fire protection services."

Transportation/Traffic

Consulting staff completed a Traffic Impact Study for the maximum contemplated development of a community center on Aliso Viejo Ranch Property. Findings of the Traffic Impact Study are as follows.

The Cedarbrook (N-S)/Windsong (E/W) intersection would operate at an unacceptable level of service (LOS D) upon build out of the City General Plan in 2035 <u>without</u> any development on the Aliso Viejo Ranch Property. The Project thereby incorporates a Project Design Feature to remedy this situation and that requires providing an all-way stop (stop sign and striping) at the Cedarbrook/Windsong intersection and restricting parking along Cedarbrook and Windsong for approximately 200 feet in each direction to accommodate the improvements.

Anticipated project development includes Special Considerations for Pedestrian and Traffic Safety and Parking Management designed to allow a community center of maximum contemplated size to operate without adverse traffic hazard-related impacts to surrounding land uses. There are fourteen Special Considerations delineated on page 110 of the Initial Study. Some Considerations are the following.

- Provision of 102 parking spaces on-site (27 more than needed to meet City requirements)
- Creation of a drop-off area near the Park Avenue entrance to the Property with a turn-around area radius of sufficient size to accommodate a standard 40-foot school bus

• Prohibition of bus unloading of children on Cedarbrook or Park Avenue
• Provision of a short-term (10-minute) parking area next to the front entrance of the Property
• Enhancement of the Park Avenue crosswalk to improve pedestrian safety

Traffic circulation design incorporates a parking lot circulation plan that would allow both driveways to be fully accessed and allow the internal drive aisle to serve 2-way traffic. The traffic circulation plan would allow easy access/exiting for vehicles and reduce traffic proceeding onto Park Avenue near Aliso Viejo Middle School.

Orange County Fire Authority and Orange County Sheriff's Office staff reviewed the maximum contemplated development (site) plan for the Property and determined development would be consistent with the City General Plan and Municipal Code and therefore will not result in inadequate emergency access.

Mitigation Measures

In summary, the Initial Study identifies Mitigation Measures that would reduce potentially significant environmental impacts to a less than significant level for the following CEQA-analysis topics.

• Biological Resources (Sensitive Bats; Federal Migratory Bird Treaty Act; Nesting Birds/Bats – Noise)
• Cultural Resources (archaeological resources)

In addition, the Initial Study identifies Project Design Features that ensure any impacts related to Aesthetics and Transportation/Traffic would remain at a less than significant level.

Certification of the Mitigated Negative Declaration as adequate environmental documentation for the identified maximum contemplated scale of community center Project would ensure adequate environmental documentation for a lesser-scale project.

Responses to Comments

Planning and Consultant Staff prepared Responses to Comments in compliance with California Environmental Quality Act requirements. The Responses address 13 written comments received. Oral comments made at the August 6 Public Hearing voiced identical or similar concerns as the written comments. The more detailed of the comments were focused to the potential historical importance of the Aliso Viejo Ranch property and the commenters' desire for preservation and/or adaptive reuse of the buildings and property. In addition, traffic safety and potential scale of any future contemplated community center project were concerns. Staff reviewed each comment received to determine if that comment addressed adequacy of the Initial Study/Mitigated Negative Declaration under provisions of the California Environmental Quality Act. Responses to comments about adequacy of the draft Initial Study/Mitigated Negative Declaration are provided individually following chronological order received. If the comment did not address adequacy of the Initial Study/Mitigated Negative Declaration, the comment was noted.

The Initial Study/Mitigated Negative Declaration, Responses to Comments, and all technical studies related to the environmental documentation have been posted on the City web site. In

addition, printed copies of all documents were made available for public review at the Planning counter in City Hall, through the office of the City Clerk and through the Director of Planning Services.

Recommendation

Staff recommends the Council adopt the attached Resolution (reference Attachment A) certifying the Aliso Viejo Ranch Site Mitigated Negative Declaration as adequate environmental documentation for the identified maximum contemplated scale of community center project.

Albert Armijo
Director of Planning Services

APPROVED FOR SUBMITTAL TO THE CITY COUNCIL

David A. Doyle
City Manager

Attachments:

A. **Resolution, with Mitigation & Monitoring Reporting attached**
B. **Mitigated Negative Declaration/Initial Study**
C. **Responses to Comments, including written comments**
D. **Transcript of August 6, 2014 Agenda Item**
E. **Draft Site Plan**
F. **2009 Master Plan**

RESOLUTION NO. 2015-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, APPROVING AND ADOPTING A MITIGATED NEGATIVE DECLARATION AND A MITIGATION MONITORING AND REPORTING PROGRAM FOR THE ALISO VIEJO RANCH SITE DEVELOPMENT PERMIT PROJECT

WHEREAS, The Aliso Viejo Ranch Site Development Permit Project ("Project") is the application for a Site Development Permit for the Aliso Viejo Ranch property; and

WHEREAS, The Project is located on, a 7.7 gross acre parcel at 100 Park Avenue at the northeast corner of Cedarbrook and Park Avenue in the City of Aliso Viejo ("City"); and

WHEREAS, The Project proposes removal of the seven structures and construction of a multi-purpose community facility serving as an educational and activity center providing classes, workshops and activities to community members of all ages. The Project includes community gardens and areas to host community and youth sporting events. Proposed community facility buildings include a 10,250 square feet (sq. ft.) enclosed Youth Wing, a 5,850 sq. ft. enclosed Teen Wing, an 11,000 sq. ft. open air Basketball Pavilion, a 7,800 sq. ft. Multi-Purpose Room, a 1,125 sq. ft. Restroom and Storage Building, 6,950 sq. ft. of covered porch space and a 625 sq. ft. Maintenance Building. Enclosed building square footage totals 36,650 sq. ft. Community gardens, outdoor recreational areas, onsite parking and landscaping total 260,885 sq. ft.; and

WHEREAS, pursuant to the California Public Resources Code section 21067 and the State CEQA Guidelines (Cal. Code Regs., tit. 14 § 15000 et seq.) section 15367, the City is the lead agency for the proposed Project; and

WHEREAS, City staff reviewed the Project and prepared an Initial Study pursuant to State CEQA Guidelines section 15063 to determine if the Project could have a significant effect on the environment; and

WHEREAS, on the basis of the Initial Study, which concluded that the Project would have potentially significant impacts but that those impacts could be reduced to less than significant levels with implementation of the proposed mitigation measures, the City determined that a Mitigated Negative Declaration ("MND") should be prepared for the Project, and an MND was prepared pursuant to Public Resources Code sections 21064.5 and 21080, subdivision (c), and the State CEQA Guidelines section 15070 et seq.; and

WHEREAS, the City distributed a Notice to Intent to Adopt a Mitigated Negative Declaration on June 26, 2014 pursuant to State CEQA Guidelines section 15072; and

WHEREAS, the City provided copies of the draft MND and Initial Study to the public and the State Clearinghouse for a thirty-day review and comment period beginning on June 26, 2014 and ending on July 28, 2014, and for a second thirty-day review beginning on August 14, 2014 and ending on September 15, 2014, pursuant to Public Resources Code section 21091(b) and State CEQA Guidelines section 15073, and thirteen comment letters were received by the City; and

WHEREAS, on August 6, 2014, at its regularly-scheduled meeting, the public was afforded an opportunity to comment on the Project and the MND and the Initial Study, and the City Council discussed and considered the Project and the MND and the Initial Study; and

WHEREAS, the City prepared written responses to all comment letters, responses that were made available to the public and the City Council; and

WHEREAS, on November 6, 2014, the City conducted a Public Workshop to discuss the environmental documentation and answer public questions about the environmental documentation; and

WHEREAS, pursuant to Public Resources Code section 21081.6 and State CEQA Guidelines section 15074(d), the City has prepared a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to mitigate or avoid significant environmental effects (the "Mitigation Monitoring and Reporting Program," attached hereto as Exhibit "A"); and

WHEREAS, the City Council has reviewed the MND, Initial Study, and all other relevant information contained in the record regarding the Project; and

WHEREAS, as contained herein, the City has endeavored in good faith to set forth the basis for its decision on the proposed Project; and

WHEREAS, the City has endeavored to take all steps and impose all conditions necessary to ensure that impacts to the environment would not be significant; and

WHEREAS, all the requirements of the Public Resources Code and the State CEQA Guidelines have been satisfied by the City in connection with the preparation of the MND, which is sufficiently detailed so that all of the potentially significant environmental effects of the Project, as well as feasible mitigation measures, have been adequately evaluated; and

WHEREAS, the MND prepared in connection with the Project sufficiently analyzes the feasible mitigation measures necessary to avoid or substantially lessen the Project's potentially significant environmental impacts; and

WHEREAS, all of the findings and conclusions made by the City Council pursuant to this Resolution are based upon the oral and written evidence presented to it as a whole and the entirety of the administrative record for the Project, which are

incorporated herein by this reference, and not based solely on the information provided in this Resolution; and

WHEREAS, prior to taking action, the City Council has heard, been presented with, reviewed and considered all of the information and data in the administrative record, including but not limited to the Initial Study, MND, and Mitigation Monitoring and Reporting Program, and all oral and written evidence presented to it during all meetings and hearings; and

WHEREAS, the MND reflects the independent judgment of the City Council and is deemed adequate for purposes of making decisions on the merits of the Project; and

WHEREAS, no comments made in the public hearings conducted by the City Council and no additional information submitted to the City have produced substantial new information requiring recirculation of the MND or additional environmental review of the Project under State CEQA Guidelines section 15073.5; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred;

NOW THEREFORE, the City Council does hereby resolve as follows:

SECTION 1. Recitals. The City Council hereby finds that the foregoing recitals are true and correct and are incorporated herein as substantive findings of this Resolution.

SECTION 2. Compliance with the California Environmental Quality Act. As the decisionmaking body for the Project, the City Council has reviewed and considered the information contained in the MND, Initial Study, Mitigation and Monitoring Reporting Program, comments received, and other documents contained in the administrative record for the Project, on file with the City and available for review at City Hall, 12 Journey, Suite 100, Aliso Viejo, California. The City Council finds that the MND, Initial Study, and the Mitigation and Monitoring Reporting Program have been completed in compliance with the California Environmental Quality Act (Pub. Res. Code § 21000 et seq., "CEQA") and the State CEQA Guidelines.

SECTION 3. Findings on Environmental Impacts. In the City's role as the lead agency under CEQA, and based on the whole record before it, the City Council finds that the MND, Initial Study, Mitigation and Monitoring Reporting Program, and the administrative record contain a complete and accurate reporting of the environmental impacts associated with the Project. The City further finds that all environmental impacts of the Project are either insignificant or can be mitigated to a less than significant level pursuant to the mitigation measures outlined in the MND, Initial Study, and the Mitigation Monitoring and Reporting Program. The City Council further finds that there is no substantial evidence in the record supporting a fair argument that the Project may result in significant environmental impacts, and that any comments received regarding the Project have been examined and determined to not modify the

conclusions of the MND or the City Council. Furthermore, the City Council finds that the MND has not been substantially revised after public notice of its availability, and recirculation is not required. (State CEQA Guidelines, § 15073.5.) The City Council finds that the MND contains a complete, objective, and accurate reporting of the environmental impacts associated with the Project and reflects the independent judgment of the City Council.

SECTION 4. Wildlife Resources. Pursuant to Fish and Game Code section 711.4(c), all project applicants and public agencies subject to the California Environmental Quality Act shall pay a filing fee for each proposed project, as specified in subdivision 711.4(d) for any adverse effect on wildlife resources or the habitat upon which wildlife depends unless a "no effect" finding is made by the California Department of Fish and Game. This fee is due and payable as a condition precedent to the County Clerk's filing of a Notice of Determination.

SECTION 5. Adoption of Mitigated Negative Declaration. The City Council hereby approves and adopts the MND prepared for the Project.

SECTION 6. Adoption of the Mitigation Monitoring and Reporting Program. The City Council hereby approves and adopts the Mitigation Monitoring and Reporting Program prepared for the Project, attached hereto as Exhibit "A".

SECTION 7. Custodian of Records. The documents and materials that constitute the record of proceedings on which these findings are based are located at City Hall for the City of Aliso Viejo, located at 12 Journey, Suite 100, Aliso Viejo, California. The Director of Planning Services is the custodian of the record of proceedings.

SECTION 8. Notice of Determination. Staff is directed to file a Notice of Determination with the County of Orange and the State Clearinghouse within five (5) working days of approval of the Project.

SECTION 9. Execution of Resolution. The Mayor of the City of Aliso Viejo shall sign this Resolution and the City Clerk shall attest and certify to the passage and adoption thereof.

SECTION 10. Effective Date. This Resolution shall become effective immediately upon its adoption.

PASSED, APPROVED, AND ADOPTED this ___ day of _____, 2015.

AYES:

NOES:

ABSENT:

ABSTAINED:

_____
William A. Phillips, Mayor

ATTEST:

_____
Mitzi Ortiz, MMC
City Clerk

APPROVED AS TO FORM:

_____
Scott C. Smith, City Attorney

EXHIBIT "A"

MITIGATION MONITORING & REPORTING PROGRAM

[Inserted Behind This Page]

City of Aliso Viejo

Mitigation Monitoring & Reporting Program

Project Title:
Aliso Viejo Ranch Community Center
Site Development Permit

Date:
February 18, 2015

City of Aliso Viejo
Planning Department
12 Journey, Suite 100
Aliso Viejo, CA 92656
949/425-2527

INTRODUCTION

The California Environmental Quality Act (CEQA), Public Resources Code Section 21081, and Section 15074 of the CEQA Guidelines require a Mitigation Monitoring and Reporting Program (MMRP) be adopted when the Lead Agency (the City of Aliso Viejo) adopts a Negative Declaration. The purpose of the MMRP is to assign responsibility for implementation, monitoring, and timing of each mitigation measure identified to reduce an identified environmental impact to a less than significant level. The City is required to ensure compliance with each adopted mitigation measure outlined in the MMRP because additional significant environmental impacts could result from project development if mitigation measures are not implemented.

The attached table lists mitigation measures required to reduce or eliminate potentially significant environmental impacts resulting from project development, where possible. The first column on the left side of the table lists the applicable mitigation measure to be implemented. The three adjacent columns to the right list the method of verification, the timing of verification and the department(s) responsible for ensuring verification of the mitigation measure being implemented. The far right column is left blank to allow staff to add the verification date of each mitigation measure. This column should be used as a reference for verifying each mitigation measures is implemented and ongoing mitigation measures are regularly checked. Once the project is constructed, a report should be submitted to the Planning Commission reporting on project compliance with mitigation measures.

Mitigation Monitoring and Reporting Program

Mitigation Measure	Monitoring Action	Responsible Implementation Agency	1. Monitoring Phase 2. Enforcement Agency 3. Monitoring Agency	Date of Compliance
4.4 <u>Biological Resources</u>				
MM 4-1: Project implementation shall avoid disturbance to the maternity roosts of sensitive bats during the breeding season. No more than two weeks prior to construction-related activities that would commence during the breeding season (March 1st to August 31st), a qualified biologist acceptable to CDFW will conduct pre-construction surveys of all potential sensitive bat breeding habitat in the vicinity of the Site. Pre-construction surveys are not required for construction-related activities scheduled to occur during the non-breeding season (September 1st through February 28th). **If active roosts are identified during pre-construction surveys, a no-disturbance buffer will be created by the qualified bat biologist in consultation with CDFW around active roosts during the breeding season. The size of the buffer will be determined by fctors including noise and disturbance levels at the roost site, distance and amount of vegetation or other screening between the construction activity and the roost and sensitivity/behavior of the individual nesting species.** **If pre-construction surveys indicate that no roosts of sensitive bat species are present, or that roosts are inactive or potential habitat is unoccupied, no further mitigation is required.**	Monitoring during pre-grading and grading	Public Works and Engineering Department	1. Pre-Construction (grading permit) 2. Engineering Department 3. Engineering Department	
MM 4-2: Impacts to nesting passerine and raptor bird species are prohibited under the MBTA. The MBTA makes it unlawful to take, possess, buy, sell, purchase, or barter any migratory bird listed in 50 C.F.R. Part 10, including feathers or other parts, nests, eggs, or products, except as allowed by implementing regulations (50 C.F.R. 21). Suitable nesting bird habitat has been documented within and immediately adjacent to the proposed action area within the ornamental landscaping. Therefore, to remain in compliance with CDFW Code, Section 3503.3503.5, 3513 and the MBTA, nesting bird surveys will be conducted within and adjacent to the action area prior to and during all proposed actions conducted between	Monitoring during pre-grading, grading and construction	Public Works and Engineering Department	1. Project Grading and Construction 2. Engineering Department 3. Engineering Department	

Mitigation Measure	Monitoring Action	Responsible Implementation Agency	1. Monitoring Phase 2. Enforcement Agency 3. Monitoring Agency	Date of Compliance
January 31st and September 15th. Prior to conducting any proposed actions during the breeding season (January 31st and September 15th), the monitoring biologist will conduct a pre-construction survey/surveys to identify any active nesting locations in and near the project area no more than three (3) days prior to project initiation. If the biologist does not find any active nests that would be potentially impacted, the proposed action may proceed. If the biologist finds an active nest within or adjacent to the action area and determines that the nest may be impacted, the biologist will delineate an appropriate buffer zone around the nest. Any active nests observed during the survey will be mapped on a recent aerial photograph including documentation of GPS coordinates. Only specified activities (if any), as approved by the qualified biologist, will take place within the buffer zone until the nest is vacated. The proposed action area is located adjacent to an open space area favored by several resident and migratory raptor species. Surveys for active raptor nests will be performed in all ornamental landscaping including trees and shrubs no more than three (3) days prior to commencement of any activities during the raptor nesting season generally extending from January 31st to June 30th. Active raptor nests observed during the survey will be mapped on a recent aerial photograph including documentation of GPS coordinates. Restrictions on activities will be required in the vicinity of the nest until the nest is no longer active as determined by the qualified biologist. Typically, a 300 to 500 foot buffer zone will be designated around a nest to allow activities to proceed while minimizing disturbance to the active nest. Once the nest is no longer active, the proposed action may proceed within the buffer zone. Impacts on active raptor nests will be avoided.				
MM 4-3: Nesting Bird/Bats – Noise. If A) nesting birds/bats are found onsite during pre-construction surveys and B) construction-related impacts occur between January 321st and September 15th, an acoustical consultant shall evaluate the construction equipment/phases and estimate noise levels anticipated during clearing, grubbing and grading activities. The acoustical consultant shall identify appropriate measures for reducing	Monitoring during pre-grading, grading and construction	Public Works and Engineering Department	1. Project Grading and Construction 2. Engineering Department 3. Engineering Department	

Mitigation Measure	Monitoring Action	Responsible Implementation Agency	1. Monitoring Phase 2. Enforcement Agency 3. Monitoring Agency	Date of Compliance
construction noise levels to below 60 dB(A) hourly Equivalent Continuous Noise Level (Leq) or prevent any increases in the ambient noise levels at nesting location of existing noise levels are 60 dB(A) hourly Leq or greater. Noise reduction measures may include operational adjustments, including: **1. Construction cannot take place between the hours of 8:00 PM and 7:00 AM on weekdays, and between 8:00 PM and 8:00 AM on Saturday, or at any time on Sunday or a federal holiday.** **2. Stationary construction noise sources such as generators or pumps should be located at least 100 feet from sensitive land uses, as feasible.** **3. Construction staging areas should be located as far from noise sensitive land uses as feasible.** **4. During construction, the contractor shall ensure all construction equipment is equipped with appropriate noise attenuating devices.** **5. Idling equipment shall be turned off when not in use.** **6. Equipment shall be maintained so that vehicles and their loads are secured from rattling and banging.** **If noise reduction measures are required, bi-weekly monitoring of the nesting species shall be conducted by the qualified biologist to observe if the birds/bats are being affected by construction activities. The acoustical consultant shall confirm through noise measurements that the noise reduction measures are effective at preventing noise levels in excess of 60 dB(A) hourly Leq or an increase in ambient noise levels.** **Noise reduction measures are not required from September 16th through January 31st.**				
<u>Cultural Resources</u> **MM 5-1: An archaeologist will monitor all earthmoving activities.**	Monitored during grading and construction	Public Works and Engineering Department	1. Project Grading and Construction 2. Engineering Department 3. Engineering Department	

Mitigation Measure	Monitoring Action	Responsible Implementation Agency	1. Monitoring Phase 2. Enforcement Agency 3. Monitoring Agency	Date of Compliance
MM 5-2: Native American monitors will be present during earthmoving activities.	Monitored during grading	Public Works and Engineering Department	1. Project Grading and Construction 2. Engineering Department 3. Engineering Department	
MM 5-3: Prior to construction of the proposed Project, archaeological sensitivity training shall be conducted by a qualified archaeologist approved by the City of Aliso Viejo. The purpose of this training is to provide the contractor with an understanding of what is required under State law and PRC Section 21083.2(i), which is related to the possibility that archaeological deposits may be accidentally encountered during construction activities.	Monitored during pre-grading and grading	Public Works and Engineering Department	1. Project Grading and Construction 2. Engineering Department 3. Engineering Department	
MM 5-4: If cultural resources are encountered during construction of the proposed project, the Contractor shall flag the find and create a defined 100-foot wide buffer zone around the find. Earthmoving equipment shall be redirected around the buffer zone, and a qualified archaeologist shall be retained to conduct an investigation of the find(s). Earthmoving activities shall be permitted to continue outside of the 100-foot buffer zone while the find is investigated.	Monitored during grading and construction	Public Works and Engineering Department	1. Project Grading and Construction 2. Engineering Department 3. Engineering Department	
MM 5-5: Any find determined by the qualified archaeologist to be of cultural significance shall be recovered and prepared to the point of identification and permanent preservation, including washing of sediments to recover small invertebrates and vertebrates. Preparation and stabilization of all recovered fossils shall occur.	Monitored during grading and construction	Public Works and Engineering Department; Planning Department	1. Project Grading and Construction 2. Engineering Department 3. Planning Department	
MM 5-6: The identification and curation of specimens into an established, accredited museum repository with permanent retrievable paleontologic/archaeologic storage shall occur. These procedures shall	Monitored during grading and	Planning Department	1. Post Construction 2. Planning Department	

Mitigation Measure	Monitoring Action	Responsible Implementation Agency	1. Monitoring Phase 2. Enforcement Agency 3. Monitoring Agency	Date of Compliance
be deemed necessary steps in effective paleontologic/archaeologic mitigation and CEQA compliance. Prior to the initiation of any mitigation activity, the qualified archaeologist shall have a written repository agreement in writing. Mitigation shall not be deemed complete until such curation into a museum repository has been fully completed and documented.	construction		3. Planning Department	
MM 5-7: The qualified archaeologist shall prepare a findings report with an appended inventory of recovered specimens. The report and inventory, when submitted to the City of Aliso Viejo, along with confirmation of the curation of specimens into an established, accredited museum repository, shall signify completion of the mitigation program to reduce impacts to significant paleontologic/archaeologic resources.	Monitored during construction	Planning Department	1. Post Construction 2. Planning Department 3. Planning Department	

Mitigation Measure	Monitoring Action	Responsible Implementation Agency	1. Monitoring Phase 2. Enforcement Agency 3. Monitoring Agency	Date of Compliance
4.7 Hazards and Hazardous Materials				
HAZ-1: Prior to City of Yorba Linda approval of final construction plans, the City of Yorba Linda shall publish Best Management Practices and shall incorporate said Best Management Practices into project development at appropriate stages of project development.	Prior to Grading Permit and on Construction Plans	Engineering Department	1. Project Grading and Construction 2. Engineering Department 3. Engineering Department	
4.8 Hydrology and Water Quality				
HYD/WQ-1: The Applicant shall demonstrate coverage has been obtained under the California State General Construction Activity NPDES Permit by providing a copy of the Notice of Intent (NOI) submitted to the California State Water Resources Control Board (SWRCB) and a copy of the subsequent notification of issuance of a Waste Discharge Identification (WDID) Number or other proof of filing to the Director of Public Works and the Director of Community Development. The Storm Water Pollution Prevention Plan shall be prepared by a Civil or Environmental Engineer and will be reviewed and approved by the City of Yorba Linda Public Works Division prior to issuance of a grading or building permit. The plan shall reduce pollutant discharge to the maximum feasible extent using Best Management Practices, control techniques and systems, design and engineering methods, and other appropriate provisions. A copy of the Storm Water Pollution Prevention Plan shall be kept at the project site.	Prepare a SWPPP and provide a copy of the NOI from the SWRCB and subsequent WDID Number or other proof of filing.	Engineering Department	1. Pre-Construction (grading permit) 2. Engineering Department 3. Engineering Department	
HYD/WQ-2: The Applicant will incorporate the following into determined specific locations within the project site as part of project development: 1) Street trees in areas with sufficient setbacks from the roadbed 2) Vegetated swales and filter strips within appropriate landscaping areas and setback areas 3) Sidewalks constructed to sheet flow into landscaped parkway areas	WQMP		1. Pre-Construction	

Mitigation Measure	Monitoring Action	Responsible Implementation Agency	1. Monitoring Phase 2. Enforcement Agency 3. Monitoring Agency	Date of Compliance
4) Proprietary bio-treatment and cartridge media filters within areas of sufficient depth to tie into existing catch basins and within areas where not conflicts with existing/planned utilities would occur. These types of filters will be implemented upstream of the existing and proposed catch basins to provide sufficient treatment of project runoff subject to treatment requirements. **HYD/WQ-3**: The Applicant shall prepare a Water Quality Management Plan (WQMP) in accordance with the model WQMP prepared by the County of Orange and the City municipal NPDES permit. The WQMP shall be reviewed and approved by the Director of Public Works prior to issuance of a grading permit. The WQMP shall identify all non-structural and structural Best Management Practices to be implemented as part of project development to reduce impacts to water quality to the maximum extent practicable. BMP in the WQMP shall pertain to the following: 1) Erosion and sediment control practices 2) Non-storm water management 3) Post-construction storm water management 4) Maintenance inspection and repair	WQMP	Engineering Department	(grading permit) 2. Engineering Department 3. Engineering Department	
NOI-1: The hours of construction operation shall be limited to be between the hours of 7 a.m. and 7 p.m., Monday to Saturday. No construction activity is allowed on Sundays or federal holidays.		Engineering Department	1. Pre-Construction (grading permit) 2. Engineering Department 3. Engineering Department	
NOI-2: Staging areas shall be located as far as possible from existing residences.	Monitored during grading and construction	Engineering Department	1. Grading and Construction 2. Engineering Department and Code Enforcement 3. Engineering	
NOI-3: All construction equipment shall use properly operating mufflers.				

Mitigation Measure	Monitoring Action	Responsible Implementation Agency	1. Monitoring Phase 2. Enforcement Agency 3. Monitoring Agency	Date of Compliance
			Department and Code Enforcement	
NOI-4: Impulsive noise, such as jack-hammering, should be scheduled to affect the fewest number of noise-sensitive homes.	Monitored during grading and construction	Engineering Department	1.Grading and Construction 2.Engineering Department 3.Engineering Department	
	Monitored during grading and construction	Engineering Department	1.Grading and Construction 2.Engineering Department 3.Engineering Department	
	Monitored during grading and construction	Engineering Department	1.Grading and Construction 2.Engineering Department 3.Engineering Department	

CITY OF ALISO VIEJO
MITIGATED NEGATIVE DECLARATION
THE RANCH SITE DEVELOPMENT PERMIT

Project Title

The Aliso Viejo Ranch Site
Development Permit

Project Sponsor

City of Aliso Viejo
12 Journey, Aliso Viejo, CA 92656

Project Location

100 Park Avenue
City of Aliso Viejo CA 92656

(Northeast corner of Cedarbrook
and Park Avenue)

Lead Agency

City of Aliso Viejo
12 Journey, Aliso Viejo, CA 92656

Contact Person

Attn: Albert Armijo
aarmijo@cityofalisoviejo.com

General Plan Designation

Community Facilities

Zoning Classification

Community Facilities

PROJECT DESCRIPTION

The Project is the application for a Site Development Permit for the Aliso Viejo Ranch property.

SUMMARY

The Project is a refinement of the approved Conceptual Master Plan for the Ranch Property, a 7.7 gross acre parcel located at 100 Park Avenue, City of Aliso Viejo CA 92656. The Property is designated Community Facilities by the General Plan Land Element Land Use Policy Map and Community Facilities on the City of Aliso Viejo Official Zoning Map. The Property is owned by the City and is used occasionally for community events. Access onto the Property is restricted. Seven structures totaling 11,244 square feet exist on the Property. These structures include the original Mission Viejo Ranch House.

The Project proposes removal of the seven structures and construction of a multi-purpose community facility serving as an educational and activity center providing classes, workshops and activities to community members of all ages. The Project includes community gardens and areas to host community and youth sporting events. Proposed community facility buildings include a 10,250 sq. ft. enclosed Youth Wing, a 5,850 sq. ft. enclosed Teen Wing, an 11,000 sq. ft. open air Basketball Pavilion, a 7,800 sq. ft. Multi-Purpose Room, a 1,125 sq. ft. Restroom and Storage Building, 6,950 sq. ft. of covered porch space and a 625 sq. ft. Maintenance Building. Enclosed building square footage totals 36,650. Community gardens, outdoor recreational areas, onsite parking and landscaping total 260,885 square feet.

Normal hours of operation will be from 8 a.m. to 8 p.m., Monday thru Friday, 8 a.m. to 5 p.m. Saturday and closed Sundays and holidays. The Project will include low-level lighting and landscaping reflecting the intent of the Master Plan. One of the main functions will be to provide after-school and weekend activities for school-aged children. The peak period of operations is expected from 1 p.m. to 8 p.m. Monday through Friday and 9 a.m. to 4 p.m. Saturdays. The Project will have enough onsite parking for day-to-day use. On-street public parking is available on Cedarbrook and Park Avenue adjacent to the Site. To minimize vehicular congestion impacts to surrounding land uses and ensure public safety, the Project includes special considerations for pedestrian and vehicle safety and parking management.

INITIAL STUDY PREPARER

Environmental & Regulatory Specialists, Inc. (www.earsi.com)
223 62nd Street, Newport Beach, CA 92663
Contact Person: David Tanner, President
949-646-8958, dave@earsi.com

ENVIRONMENTAL DETERMINATION

The Aliso Viejo Ranch Site Development Permit has been evaluated by the City of Aliso Viejo in accordance with the Section 21080(c) of the California Environmental Quality Act (CEQA). The City prepared an Initial Study pursuant to Section 15063 of the California Environmental Quality Act Guidelines. The attached Initial Study for the Project reflects that although the proposed project could have a significant effect on the environment, with the implementation of recommended mitigation measures each potentially significant impact will be reduced to a less than significant impact. Therefore, the City concludes it would be appropriate to proceed with a Mitigated Negative Declaration for the proposed Project.

Copies of the Initial Study and Mitigated Negative Declaration may be obtained from the City Planning Department located at 12 Journey, Suite 100, Aliso Viejo, California, 92656, or by contacting Albert Armijo, the City Director of Planning Services. Mr. Armijo can be reached at: aarmijo@cityofalisoviejo.com or at 949 425-2500.

_____ _____
Albert Armijo, Director of Planning Services Date

cc:	County Clerk
	California State Clearinghouse
Posting:	Aliso Viejo City Hall
	Aliso Viejo Public Library

CITY OF ALISO VIEJO
INITIAL STUDY

Project Title

The Aliso Viejo Ranch Site Development Permit

Lead Agency

City of Aliso Viejo
12 Journey, Aliso Viejo, CA 92656

Project Sponsor

City of Aliso Viejo
12 Journey, Aliso Viejo, CA 92656

Contact Person

Albert Armijo, Director of Planning Services
City of Aliso Viejo
12 Journey, Aliso Viejo, CA 92656
Attn: aarmijo@cityofalisoviejo.com

Project Location

100 Park Avenue
City of Aliso Viejo, CA 92656
(Northeast corner of Cedarbrook and Park Avenue)

General Plan/Zoning Designations

Community Facilities

EXISTING CONDITIONS

The Aliso Viejo Ranch Property occupies 7.7± gross acres located at 100 Park Avenue in the City of Aliso Viejo, CA 92656. Refer to Figure 1, Location Map. The Property is located on the northeast corner of Cedarbrook and Park Avenue and is triangular in shape, relatively flat and generally slopes from the northwest to the southeast. Refer to Figure 2, USGS Topographic Map. The Property was previously subdivided into two lots. Refer to Figure 3, Tract 13687 Map. Seven structures exist on Property: two barns, two storage sheds, kitchen building, bunkhouse and storage shed, which total roughly 11,244 square feet. The Property has trees along its perimeter and open, flat areas in the interior. A landscaped berm exists along the northwest, south and east property lines. The perimeter trees and landscaped berms restrict views onto the Property. Several pieces of old farm equipment including wagons, black smith tools, hay rakes and cattle shoot are located in the barn and around other buildings. The interior of the Property has scattered trees and a cactus near its main access point on Park Avenue. The entire Site has been disturbed. In addition to the structures, there are interior dirt roads and a graded area. See Figure 4, Aerial Photos and the Site Photos shown on Figures 5 through 11.

The Site has two ingress/egress points. Vehicular access to the Property is via Cedarbrook and Park Avenue. Both are collector streets. The southeast entry, Park Avenue, has served as the main entrance to the Ranch. The northwest entry, Cedarbrook, is used as a service entry.

The City of Aliso Viejo owns the Property. The Community Services Department oversees use and maintenance of the Property. The Property has been used for special events, the largest of

which is the annual one-day Founders Day Fair held each October. Other uses have included a Summer Camp catering to youth's (age 4 to 14 years). The Summer Camp occurs annually during June (from 9 a.m. to 3 p.m. Monday through Friday).

Surrounding Land Uses and Setting

Residential land uses exist to the northwest, north and northeast of the Property. Aliso Viejo Community Park is located to the south of the Property across Cedarbrook. Aliso Viejo Middle School is located to the southeast of the Property across Park Avenue. A regional multi-use trail follows Aliso Creek through Aliso and Wood Canyons Wilderness Park east of the Ranch and Aliso Viejo Middle School.

Aliso Viejo Ranch 2009 Concept Master Plan

This document is on file at the City of Aliso Viejo Planning Department.

The City Council approved the Aliso Viejo Ranch Master Plan in 2009. RJM design Group developed the Conceptual Master Plan in conjunction with the City after collecting relevant data, investigating community needs and identifying site constraints and planning opportunities. The Master Plan in large part emphasizes preservation, restoration and enhancement of the historic character and rustic nature of Aliso Viejo Ranch. The Master Plan included a "farm yard" and garden framed by existing structures and a new community center building (approximately 15,000-20,000 square feet in area) in the central portion of the Property. Large open areas for play and special events flanked the central farmyard court. A small amphitheater was depicted adjacent to the south side of the community center. Various gardens were onsite and were connected by a decomposed granite loop trail network. Opportunities for historical interpretive displays and implements were provided along the path system. A naturally landscaped bioswale would collect and filter runoff from the special event area. Picnic facilities were located near the historic buildings. The two existing vehicular access points would remain and would be connected by a small, rustic, natural surface parking area accommodating approximately 80 vehicles along the south and east perimeter. A pedestrian link was depicted extending to Aliso Viejo Community Park south of the Property.

Aliso Viejo Ranch Community Center 2013 concept Site Plan

On May 1, 2013 the City Council reviewed a concept Site Plan and instructed City staff to prepare a Planning Application for a Site Development Permit for Project. The 2013 concept Site Plan reflects and further defines the original 2009 concept Master Plan.

The 2013 concept Site Plan described a project where the existing seven structures will not be retained, but, existing materials may be reclaimed for re-use. Key elements of the 2013 concept Site Plan (Figure 12) include:

- A Farm Yard in the north-central portion of the Site (surrounded on 3½ sides by structures) with a vegetable garden, farm implements display and open space
- A Covered Porch space surrounding the Farm Yard
- A Multi-Purpose Room bordering the Farm Yard in the west-central part of the Site
- A "Reception Garden" bordering the Multi-Purpose Room to the south

- A Basketball Pavilion bordering the Farm Yard to the south
- Enclosed and separately accessed Teen Wing and Youth Wing bordering the Farm Yard to the east and northeast and separated by an entry from the parking area/drop off area to the Farm Yard
- Restrooms and Storage space
- A Community Garden
- A Maintenance Building
- An Open Field Activity Area
- A Loop Trail network of decomposed granite linking to existing open space trails
- A naturally landscaped Bioswale and Rain Garden along a portion of the Loop Trail
- A shaded Picnic Area near the Farm Yard and Community Garden
- A Landscape Buffer along Cedarbrook and Park Avenue
- Two vehicular access points connected by a small natural surface parking area along the south and east perimeters of the Site to accommodate 102 cars

The four primary structures (Youth Wing, Teen Wing, Basketball Pavilion and Multi-Purpose Room/Event Center) are organized around the original "farm yard" and connected by a covered walkway or trellis. Proposed maximum building heights are Youth and Teen Wings: 26 feet - 4 inches, Multi-Purpose building: 20 feet and Basketball Pavilion: 42 feet. Areas of the various components are indicated as follows.

BUILDINGS	AREA (Square Feet)
Youth Wing (Enclosed)	10,250
Teen Wing (Enclosed)	5,850
Basketball Pavilion	11,000
Multi-Purpose Room	7,800
Restroom and Storage	1,125
Covered Porch Space	6,950
Maintenance Building	625
Total Enclosed Building	**36,650**
Total Open Air Covered Building	**6,950**
LANDSCAPE & OPEN AREAS	
Farm Yard	23,000
Open Field/Activity Area	49,170
Reception Garden	14,500
Community Garden	2,900
Picnic Area	9,500
Landscape Buffer along Cedarbrook/Park Avenue	50,120
Other Landscaping (Bioswale; trees; native plants)	60,775
Parking (102 spaces)	50,920
Total Landscape Area	**260,885**

PROJECT DESCRIPTION

Site Development Permit

The Project requests approval of a Site Development Permit, which requires approval of a Site Plan (a precise plan of design). The proposed Site Plan (Figure 13) refines the design of the 2013 concept Site Plan in a manner consistent with the Aliso Viejo Municipal Code.

Municipal Code Section 15.74.020.A requires a Site Development Permit to ensure that new development conforms to the development and design provisions of this Zoning Code, including but not limited to permitted uses, development standards and supplemental regulations. Upon approval, the Site Development Permit will constitute a precise plan of development. All development authorized under a Site Development Permit must be in compliance with the plans, specifications, and conditions of approval shown on and/or attached to the approved permit.

Community Center Operations

The City of Aliso Viejo and/or a youth organization(s) will operate all or portions of the Aliso Viejo Community Center. Normal hours of operation will be from 8 a.m. to 8 p.m. on Monday through Friday, from 8 a.m. to 5 p.m. on Saturday and closed Sundays and holidays.

Grading

Grading will be required over 5.68± acres of the 7.7± gross acre Site. Proposed grading elevations are shown on the Site Plan (Figure 13). Based on the Project's preliminary grading plan, it is estimated 6,291 cubic yards of cut and 6,072 cubic yards of fill will be required to complete the Project. It is anticipated that the final grading plan will balance earthwork onsite.

Tree Removal, Preservation and Planting

Site development will impact 5.68± acres of the 7.7± gross acre Site. The Project's development footprint is shown on Figure 14. All perimeter trees/landscape will be preserved. Most interior trees will be removed as shown on Figure 15. The cactus at the Project entry will be preserved. Figure 16 shows the proposed Tree Planting Plan.

Architectural Elements

The architectural intent is to preserve and enhance the existing "character" of the Site by incorporating elements and atmosphere of a working ranch. Renderings of the proposed buildings are shown on Figures 17-19. View simulations are shown on Figures 20-22.

Parking

Access onto the Site will be via the two existing entries/exits on Cedarbrook and Park Avenue.

The Project design incorporates a parking lot circulation plan designed to allow both driveways to be full access (ingress and egress) and to allow the internal drive to serve 2-way traffic flow. The circulation plan allows easy access for vehicles and minimizes driver confusion. Additionally, it reduces traffic to Park Avenue near the Aliso Viejo Middle School. School buses shall be instructed to enter at the Park Avenue driveway and exit at the Cedarbrook

driveway during non-peak times. Site distance standards conform to the Orange County Highway Design and the Caltrans Highway Design Manual.

The peak period of operations for the Project is expected to be from 1:00 p.m. to 8:00 p.m. Monday through Friday and 9:00 a.m. to 4:00 p.m. on Saturdays. Additional community related programs would occur daily on both weekday and weekends. Staff would be employed onsite at all times during operation.

The City of Aliso Viejo Zoning Code Section 15.38.040, Non-Residential Parking Requirements, states community centers should provide one space per each four persons based on the maximum capacity of all facilities capable of simultaneous use as determined by the Planning Director. The Project is expected to have approximately 275 attendants and 25 staff onsite during a typical weekday, for a total of 300 person's onsite during simultaneous use. This would necessitate a minimum of 75 parking spaces per the City's zoning code. Based on the proposed design, the Site will provide 102 un-striped parking spaces, 27 more than needed to meet the City's requirement. The parking areas will use a permeable pavement (non-asphalt) and will be located adjacent to Cedarbrook and Park Avenue. In addition, on-street non-metered public parking is available adjacent to the Site on Cedarbrook and Park Avenue. Vehicles visiting the Aliso Viejo Middle School and Cedarbrook Park periodically utilize this on-street parking.

Special Considerations for Pedestrian and Traffic Safety and Parking Management

The following special considerations have been incorporated into the Project to alleviate potential vehicular congestion and ensure public safety:

1) Provide approximately 102 parking spaces.
2) Create a drop-off area near the Park Avenue entrance. The turn around area shall be designed to accommodate the turning radius of a standard 40-foot school bus.
3) Provide sufficient space in the loading zone for two buses to queue onsite.
4) At no time permit a bus unload children on Park Avenue or Cedarbrook.
5) Restrict the drop-off area to the immediate loading and unloading of passengers.
6) Erect signage to prohibit long-term parking in the drop-off area.
7) Provide a short-term (10-minute) parking area with signage next to the front entrance of the Site to encourage visitors to use the short-term parking spaces instead of parking in the drop-off area.
8) Instruct staff to park in the furthest available parking spaces from the front entrance.
9) Direct students to use the existing crosswalk on Park Avenue to walk to the Ranch from Aliso Viejo Middle School and provide a crossing guard at this crosswalk during peak times.
10) Enhance the Park Avenue crosswalk to improve pedestrian safety. The following options may be employed: active warning of pedestrian presence, in roadway lighting, textured/painted crosswalk and raised crosswalk and roadway chokers.
11) Install an internal pedestrian pathway to direct pedestrians from Park Avenue to the front entrance. Install signage at all pedestrian crossings within the internal drive aisle to alert drivers.

12) Install secure bicycle racks to accommodate at least 30 bicycles. The racks will be located in a much traveled, convenient and secure area, such as the front entrance to alert visitors and staff to the racks availability.
13) Inform visitors and staff of local bicycling resources, including bicycle routes, organizations and events.
14) Offer cycling safety courses to the community.

Lighting

Lighting will be provided around interior parking areas and walkways as shown on the Lighting Plan (Figure 24). The Lighting Plan proposes use of shielded lighting surrounding the parking area and low level lighting along interior walkways. Proposed lighting for the Community Center includes 48 bollards and 18 pole light fixtures. Each bollard will be 45 inches tall. Each pole lamp will be 24 feet tall. Bollards will be positioned along the north and northeast perimeter of the Site adjacent to walkways within the Site interior. Pole lamps are proposed to surround the parking area in the south and southeast areas of the Site. For normal hours of operation (8 a.m. to 8 p.m., Monday thru Friday, 8 a.m. to 5 p.m. Saturday, closed Sundays and holidays) use of lighting will be minimized, occurring primarily during fall and winter months.

Drainage, Water Quality and Wastewater Disposal

Project development will require grading over roughly 5.68 acres of the Site. The Project will continue to drain by gravity flow to the southeast. Project development will not increase the rate or volume of runoff. The Project is designed to conform to San Diego Regional Water Quality Control Board requirements and City of Aliso Viejo water quality design standards. The Project proposes an infiltration basin below a permeable (non-asphalt) parking area in the southwest portion of the Site. The infiltration basin will capture runoff and reduce the amount of low-flow pollutants leaving the Site. The Project is also designed to capture low-flow runoff onsite through a series of naturally landscaped bioswales that will collect and filter site runoff.

Moulton Niguel Water District will supply drinking water through existing distribution lines.

Project wastewater will be transported using existing sewer lines to facilities operated by the Moulton Niguel Water District. The Project will not utilize an onsite septic system. Project wastewater will be moved to a regional wastewater treatment facility. The Project will comply with all standards established by the Moulton Niguel Water District and South Orange County Wastewater Authority.

Landscaping

The central "Farm Yard" is the main gathering and circulation space between the structures. A small vegetable garden and ranch implements display will provide for interactive interpretive and educational opportunities. A shaded area beneath proposed trees will provide picnic facilities. Tree species proposed to be part of Project development include: Chitalpa, London Plane, Chilean Mesquite, Holly Oak and California Pepper. Gardens will be located around the Site, including a cactus garden, vegetable garden, community garden and reception garden. The gardens will be connected by a loop trail constructed of decomposed granite. The trail will be constructed in accord with Americans with Disabilities Act requirements. A large open field

activity area in the northeast area of the Site will be intended for informal active play and special community events. The Planting Plan is shown on Figure 23.

Project Phasing

The Project could be constructed in phases. However, this analysis assumes the Project will be built in one phase beginning in 2014 with build-out by 2016. Should the Project be built in phases, the first phase would consist of grading, installation of underground utilities, erosion control and landscaping. One or more buildings could be constructed along with required parking and lighting.

Project Design Features

The following Project Design Features (PDF's) have been incorporated into the Project.

PDF-1: The Project will emphasize the rich ranching history of the City of the Aliso Viejo area as exemplified by the Ranch. Displays in the Project buildings will be used to engage the public in this setting.

PDF-2: Lighting plans shall ensure that 1) direct lighting is shielded from residential areas and other light sensitive receptors, 2) lighting is directed to the specific location intended for illumination (e.g., roads, walkways, or recreation fields), 3) non-essential lighting and stray light spillover is minimized, 4) low intensity lamps are used except when high intensity illumination is required, such as for a recreational field and 5) night lighting shall not be used during the course of construction unless determined to be absolutely necessary. If night lighting is necessary, the lights shall be shielded to minimize lighting of neighboring properties.

PDF-3: The Project will provide an all-way stop (stop sign and striping) at the intersection of Cedarbrook and Windsong as described below:

- Install all-way stop control (a stop sign)
- Restripe northbound approach on Cedarbrook to include left turn lane
- Restripe Cedarbrook, north of Windsong, to include a painted median
- Restripe eastbound approach to Windsong to include left turn lane
- Parking will be restricted along Cedarbrook and Windsong for roughly 200 feet in each direction to accommodate the improvements

PDF-4: The Project will include parapet walls and equipment enclosures to shield any potential HVAC equipment noise.

LIST OF FIGURES

The following graphics are provided starting on the next page.

1 Location Maps
2 USGS Topographic Map
3 Tract 13687 Map
4 Aerial Site Photos
5 Photo Location Map
6 Site Photos 1 & 2
7 Site Photos 3 & 4
8 Site Photos 5 & 6
9 Site Photos 7 & 8
10 Site Photos 9 & 10
11 Site Photos 11 & 12
12 2013 concept Site Plan
13 Proposed Site Development Permit - Site Plan
14 Development Impact Map
15 Tree Removal Plan
16 Tree Planting Plan
17 Architectural Renderings, Multi Purpose Building
18 Architectural Renderings, Basketball Pavilion
19 Architectural Renderings, Youth & Teen Wings
20 View Simulation Location Map
21 View Simulation #1
22 View Simulation #2
23 View Simulation #3
24 Lighting Plan
25 Light Measurement Locations
26 Night Time Lighting Cross Sections
27 Existing Night Time Lighting Levels
28 Projected Night Time Light Levels
29 Noise Monitoring Locations

OTHER PUBLIC AGENCIES WHOSE APPROVAL IS REQUIRED

None

INITIAL STUDY PREPARED BY

Environmental & Regulatory Specialists, Inc. (earsi.com)
223 62nd Street, Newport Beach, CA 92663
Contact Person: David Tanner, President (949-646-8958, dave@earsi.com)

DATE OF PUBLIC HEARING BY CITY COUNCIL

Date:

Figure 1 - Location Maps

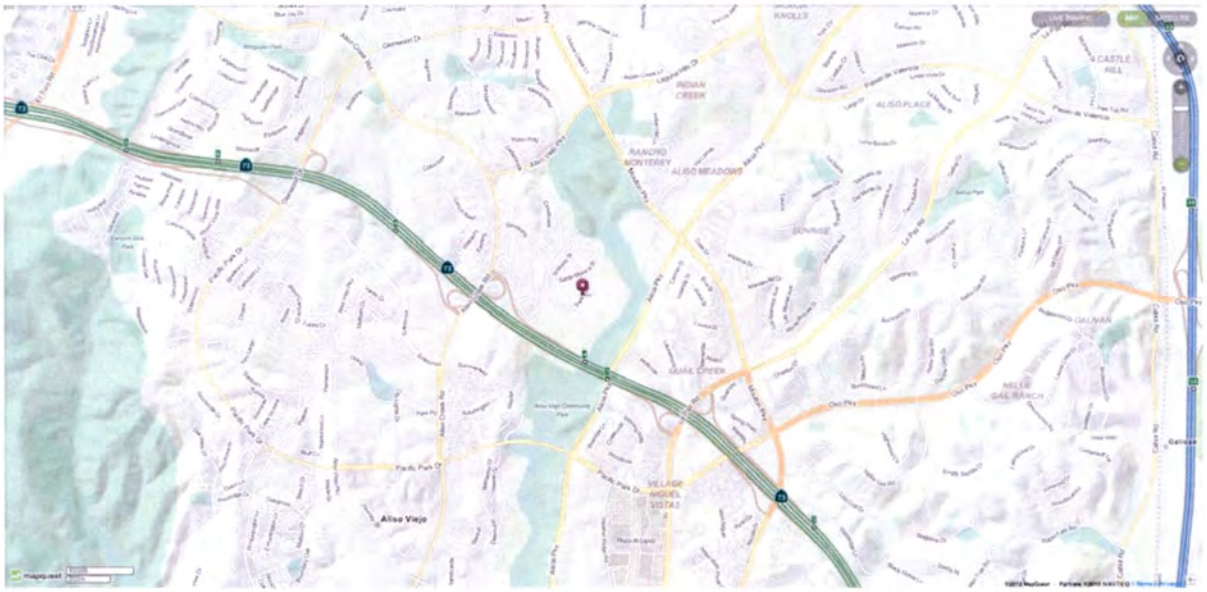


Figure 2 - USGS Topographic Map (1981)

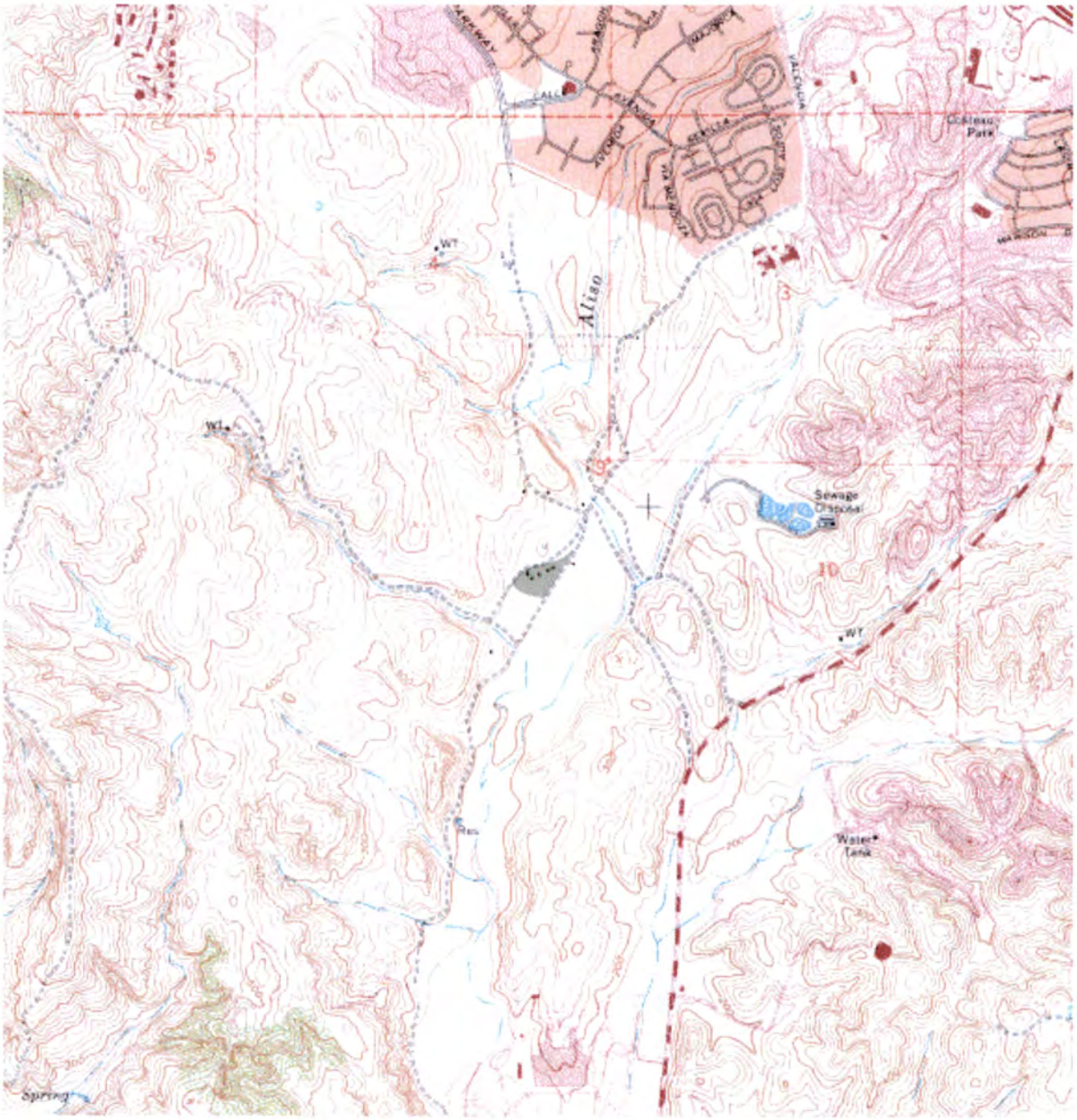


Figure 3 - Tract 13687 Map

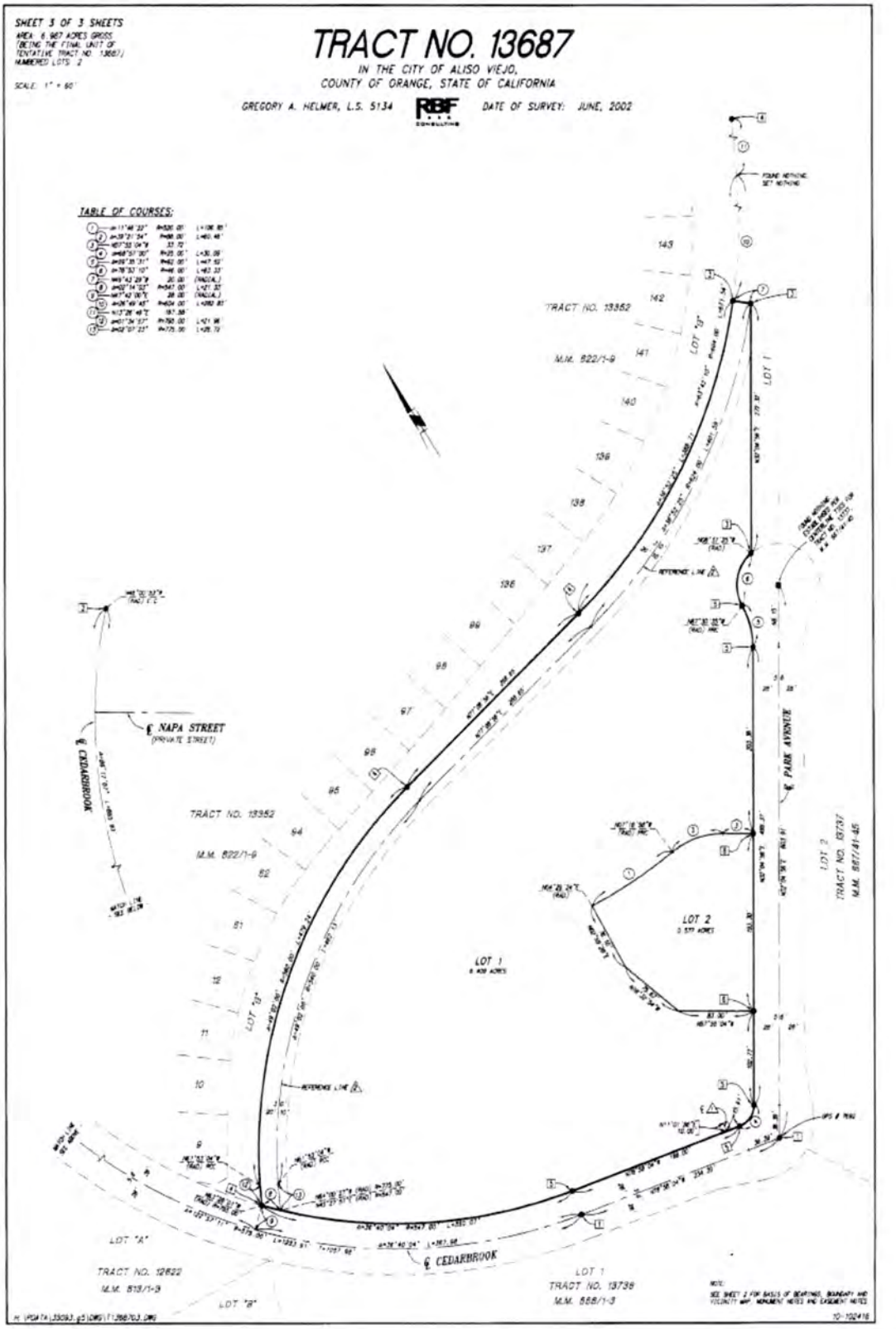


Figure 4 - Aerial Site Photos

Figure 5 - Photo Location Map

Figure 6 - Site Photos 1 & 2

View looking southwest across the Site from the northeast corner of the Property

View looking west across the Site from inside the entry gate along Park Street

Figure 7 - Site Photos 3 & 4

View looking northwest across the Site from inside the entry gate along Park Street

View looking north across the Site from inside the entry gate along Park Street

Figure 8 - Site Photos 5 & 6

View looking northeast across the Site from inside the entry gate along Park Street

Mobile home/caretaker residence

Figure 9 - Site Photos 7 & 8

Temporary storage container

Barn/garage adjacent to caretaker unit

Figure 10 - Site Photos 9 & 10

Barns/garage

Ranch house

Figure 11 - Site Photos 11 & 12

Storage shed

Storage shed/barn

Figure 12 - 2013 concept Site Plan

Figure 13 - Proposed Site Development Permit – Site Plan

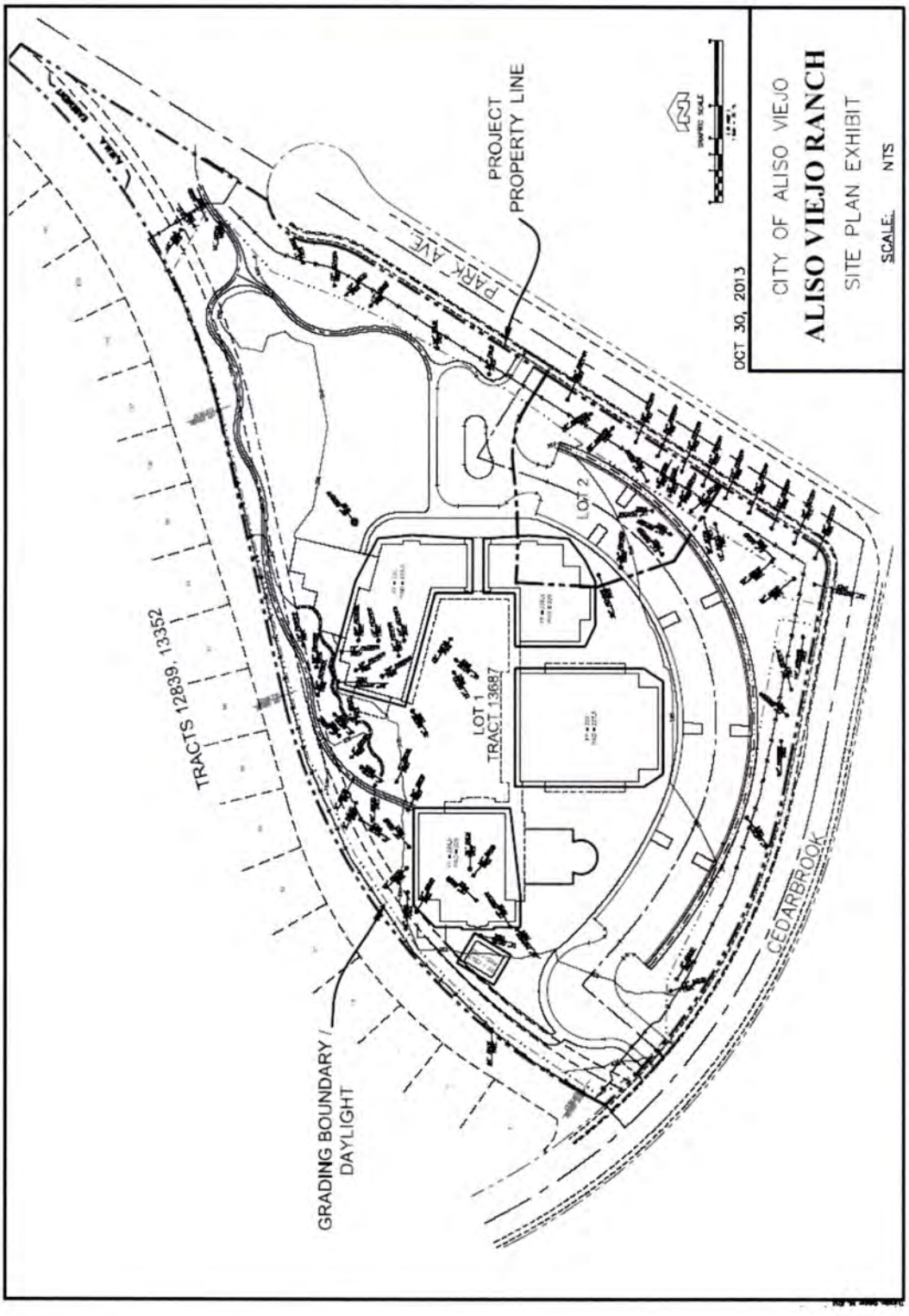


Figure 14 - Development Impact Map

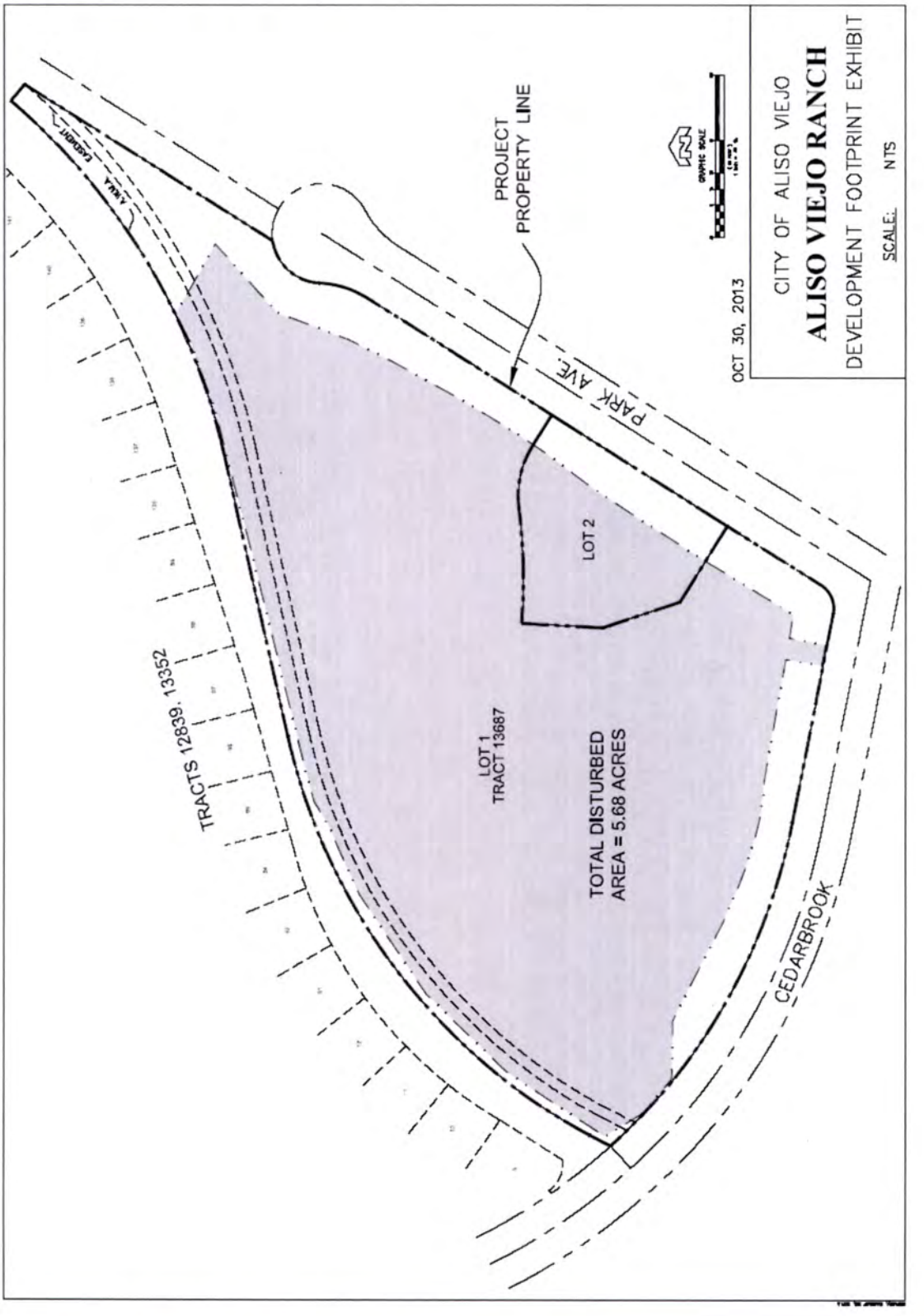


Figure 15 - Tree Removal Plan

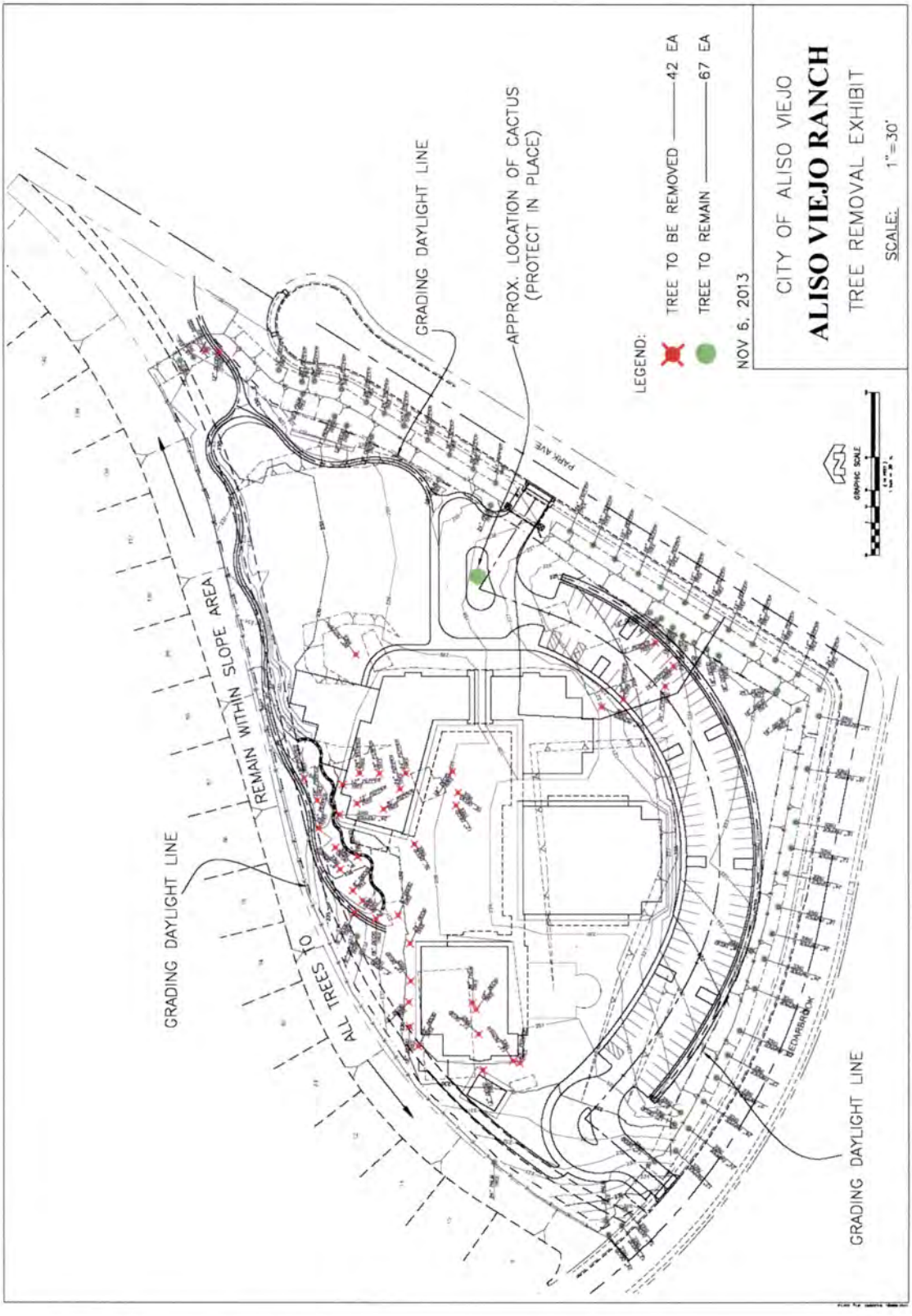


Figure 16 - Tree Planting Plan

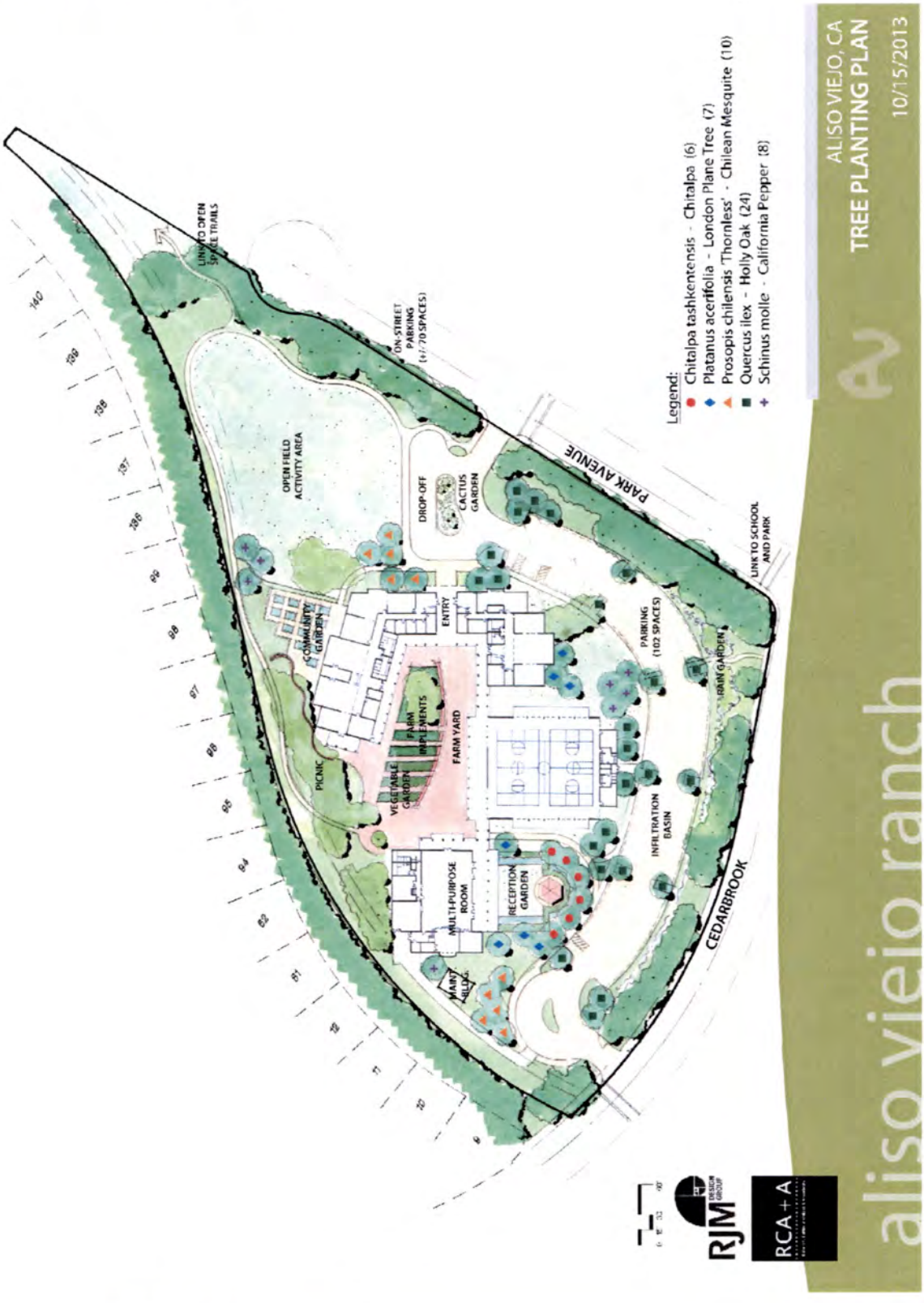


Figure 17 - Architectural Elevations - Multi Purpose Building

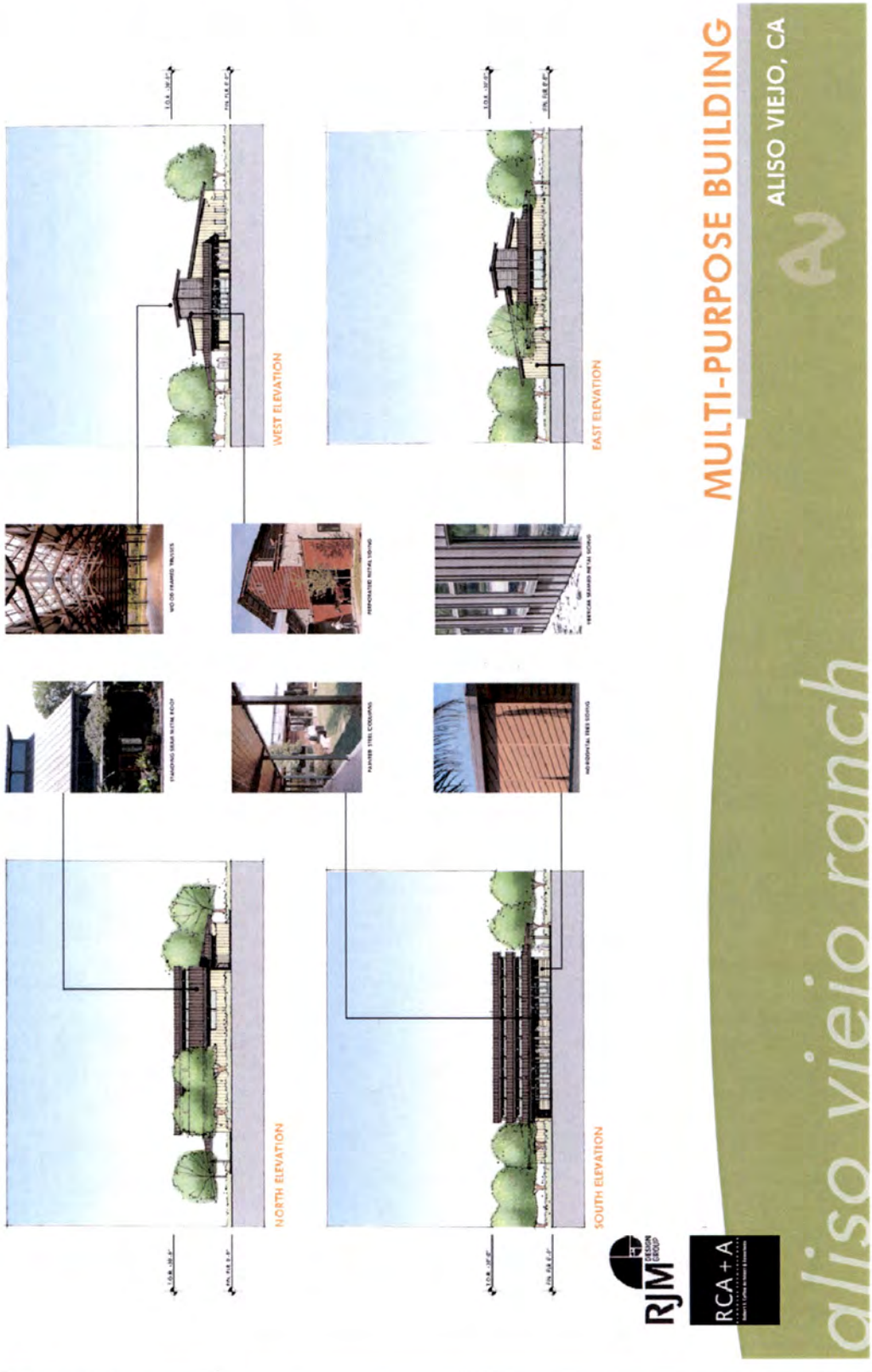


Figure 18 - Architectural Elevations - Basketball Pavilion

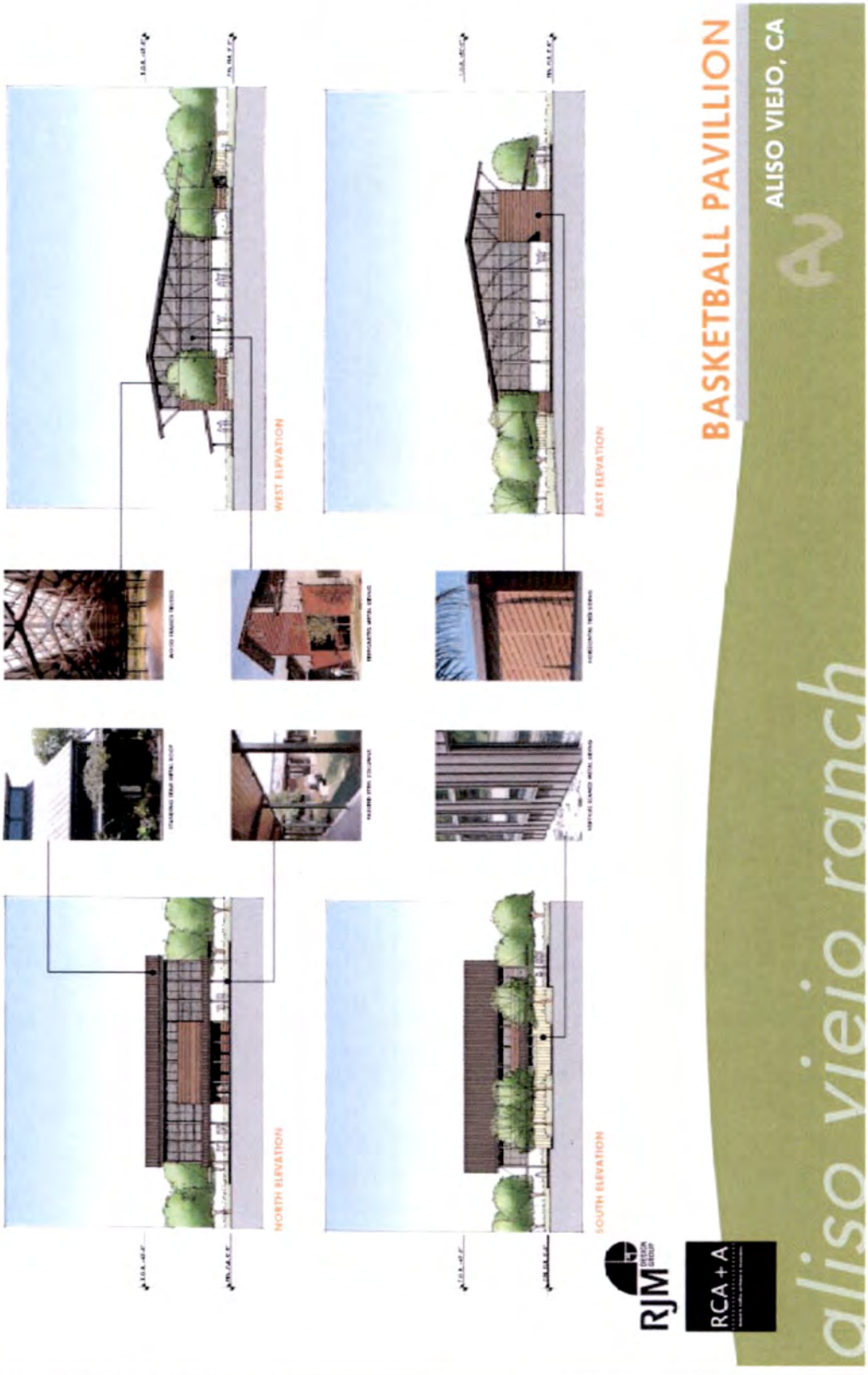


Figure 19 - Architectural Elevations - Youth & Teen Wing

Figure 20 - View Simulation Location Map

Figure 21 - View Simulation #1

Figure 22 - View Simulation #2

Figure 23 - View Simulation #3

Figure 24 - Lighting Plan

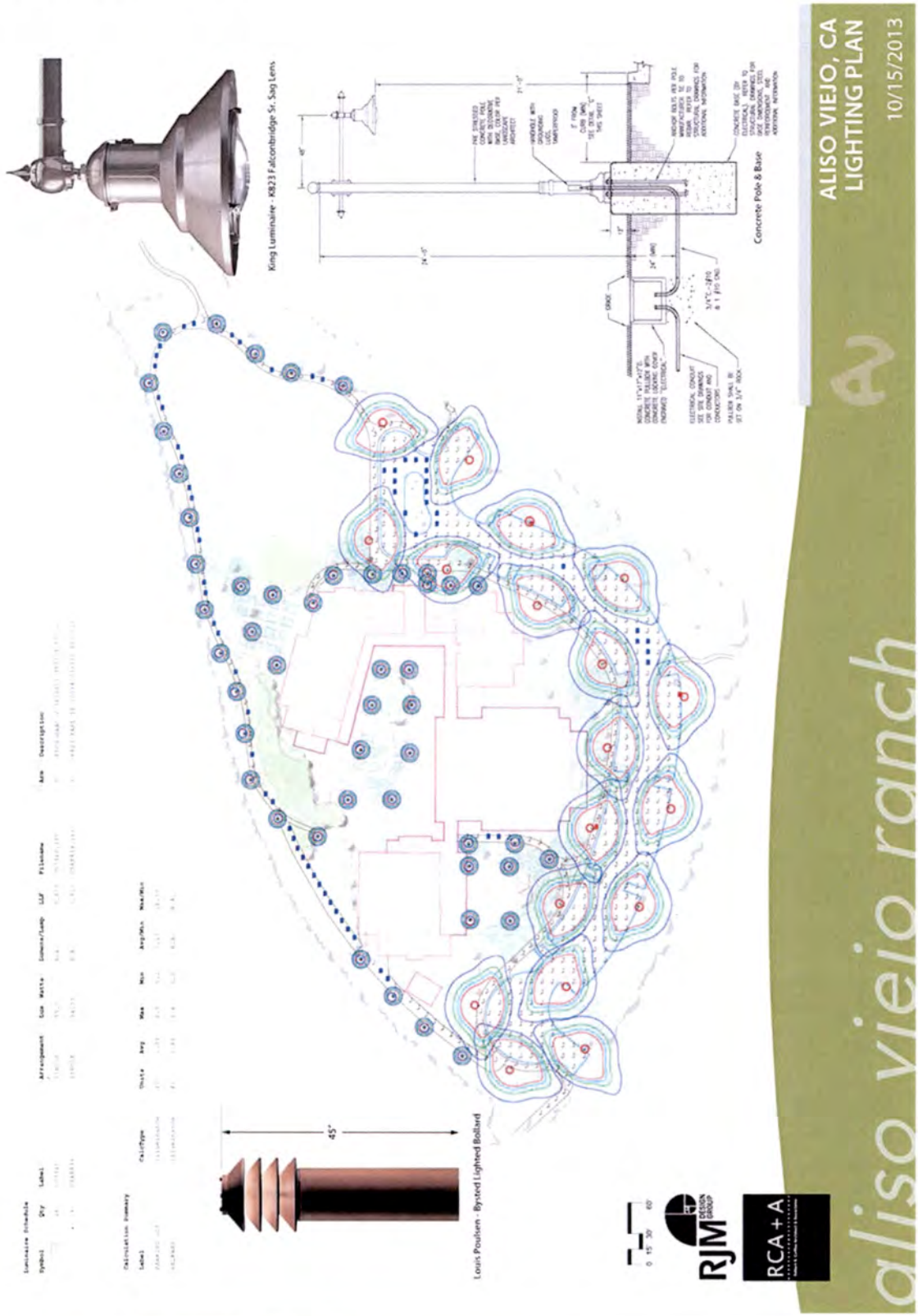


Figure 25 - Light Measurement Locations

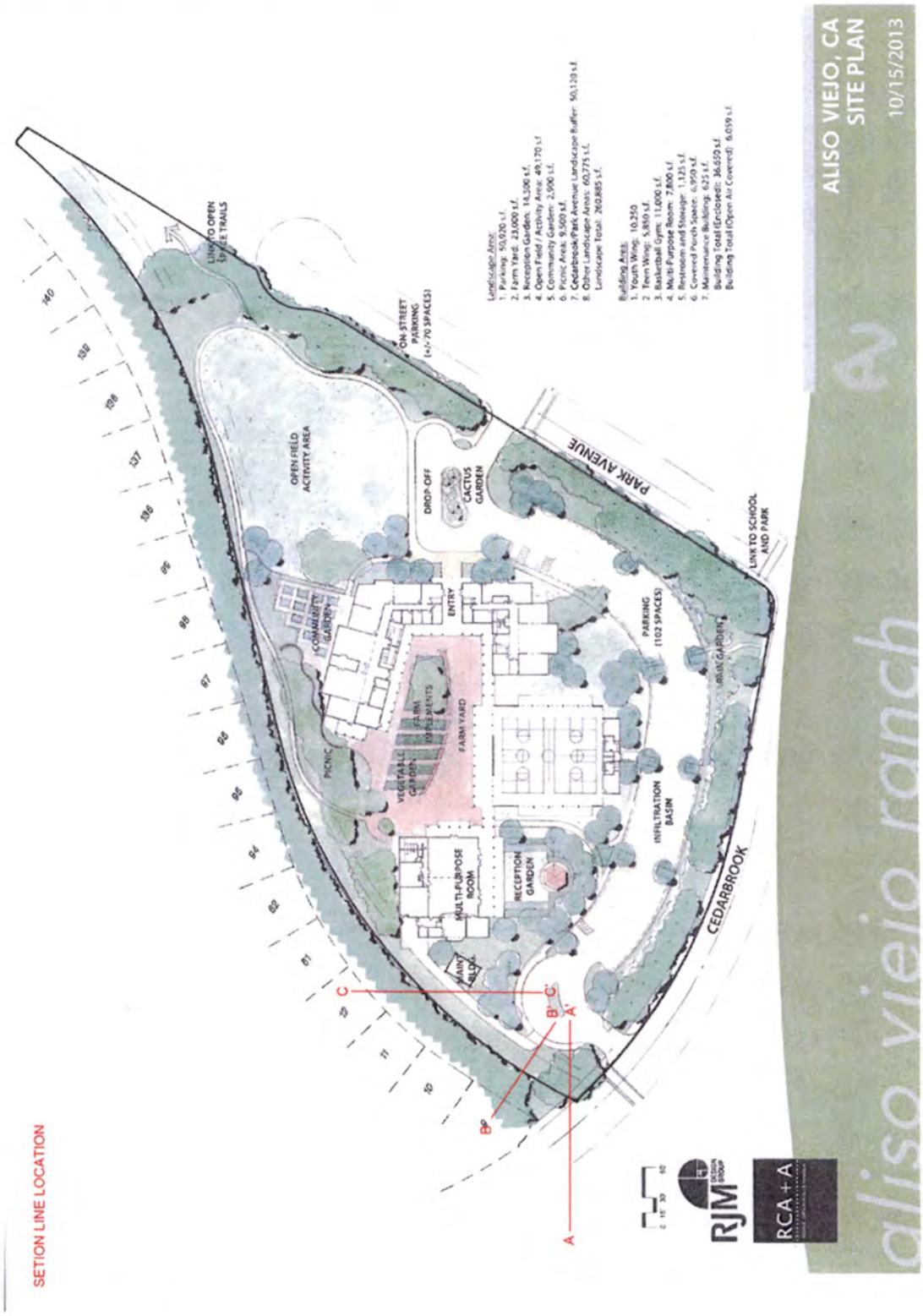


Figure 26 - Night Time Lighting Cross Sections

Figure 27 - Existing Night Time Lighting Levels

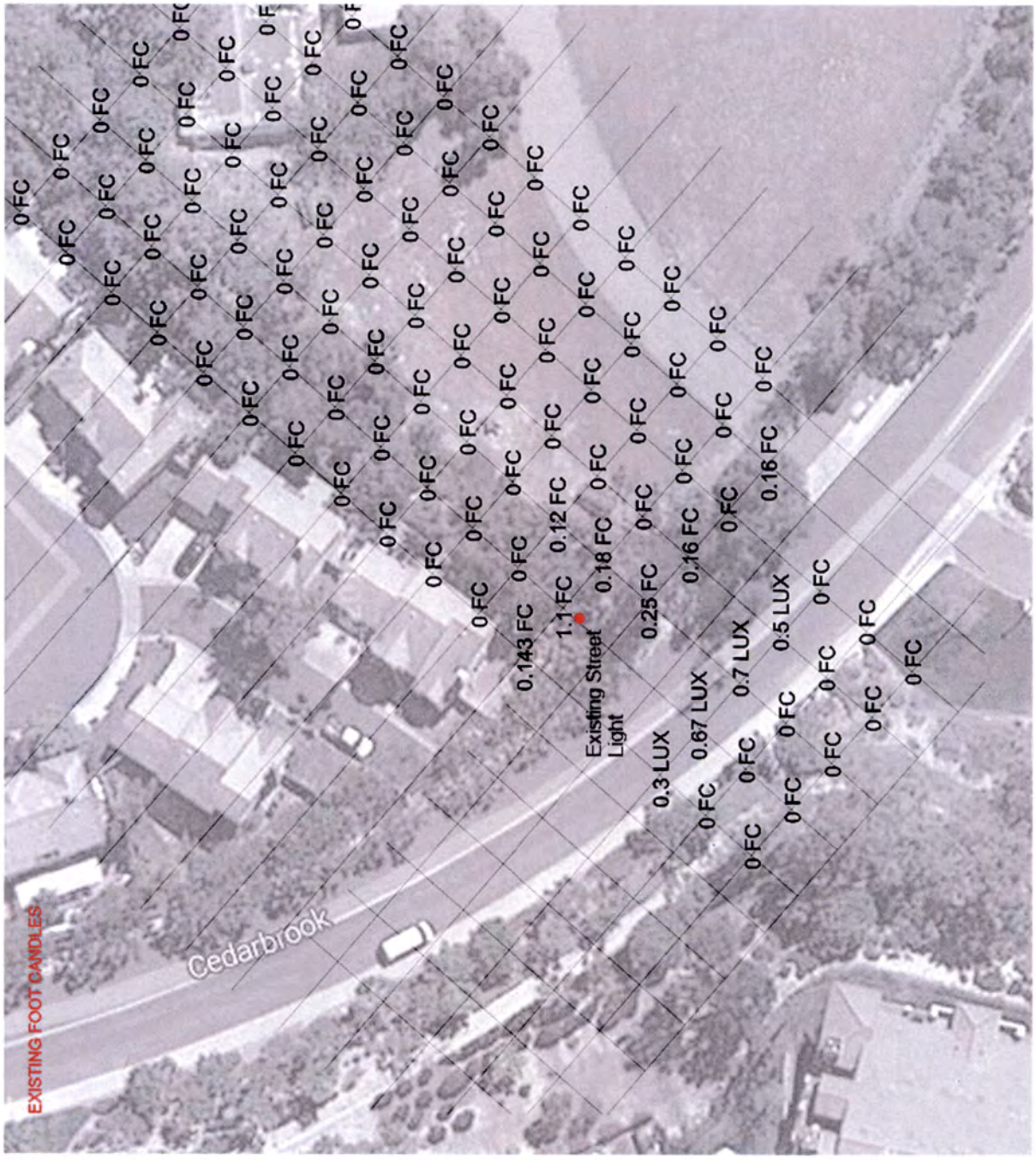


Figure 28 - Projected Night Time Light Levels

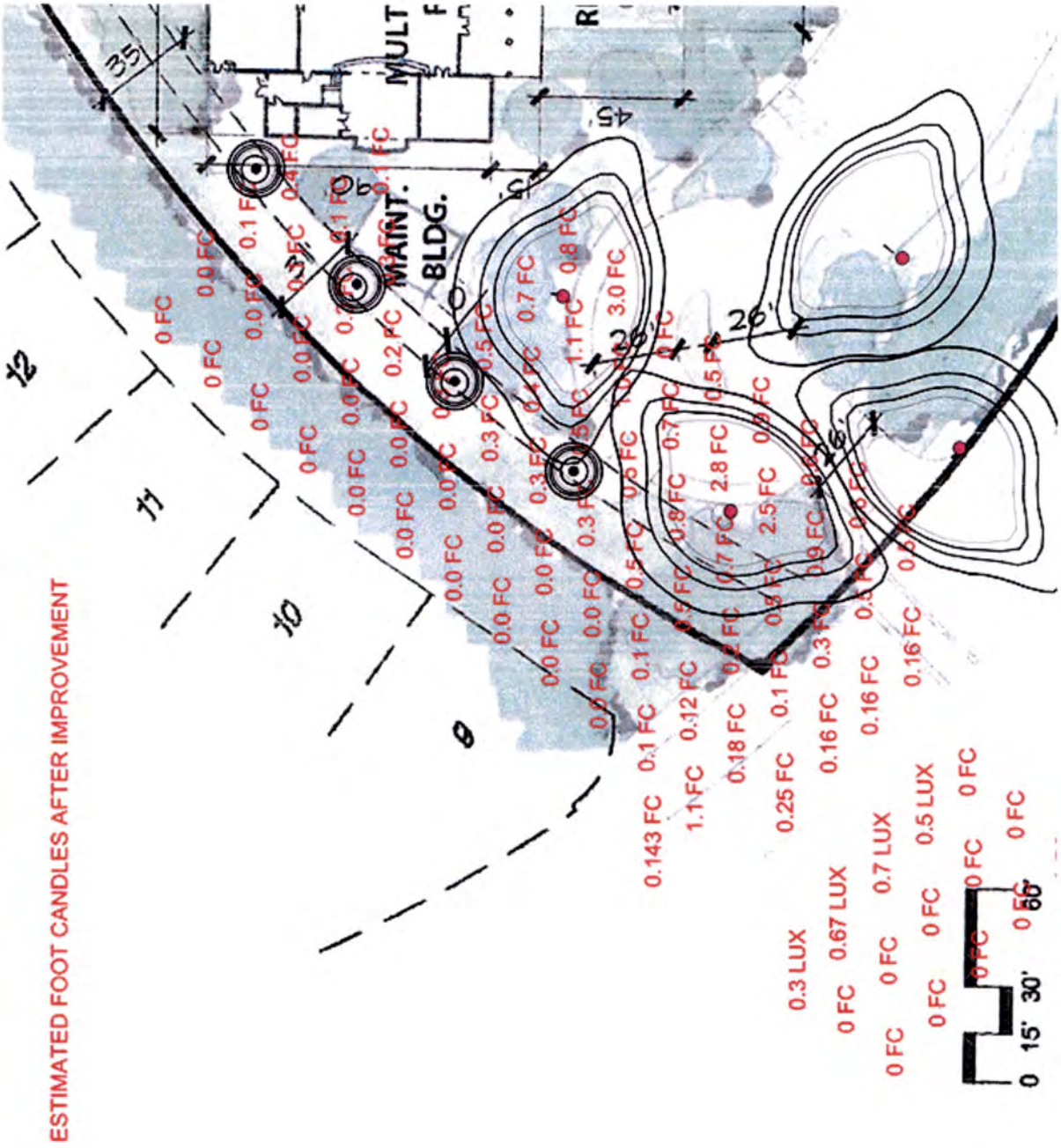


Figure 29 - Noise Monitoring Locations

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED

The environmental factors checked below would potentially be affected by this project.

☒ Aesthetics	☐ Agriculture and Forestry Resources	☒ Air Quality
☒ Biological Resources	☒ Cultural Resources	☒ Geology/Soils
☒ Greenhouse Gas Emissions	☐ Hazards & Hazardous Materials	☐ Hydrology/Water Quality
☐ Land Use/Planning	☐ Mineral Resources	☒ Noise
☐ Population/Housing	☒ Public Services	☐ Recreation
☒ Transportation/Traffic	☐ Utilities/Service Systems	☐ Mandatory Findings of Significance

DETERMINATION

On the basis of this initial evaluation (detail in the remainder of this document):

1 ☐ I find that the project could not have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

2 ☒ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

3 ☐ I find the proposed project may have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

4 ☐ I find that the proposed project may have a "potentially significant impact" or "potentially significant unless mitigated impact" on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

5 ☐ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or Negative Declaration pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or Negative Declaration, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

David J. Tanner

David J. Tanner

June 17, 2014
Date

INITIAL STUDY - CHECKLIST OF ENVIRONMENTAL IMPACTS

1 - Aesthetics

1	Would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
(a)	Have a substantial adverse effect on a scenic vista?				X
(b)	Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?				X
(c)	Substantially degrade the existing visual character or quality of the site and its surroundings?			X	
(d)	Create a new source of substantial light or glare, which would adversely affect day or nighttime views in the area?			X	

Environmental Setting

The City of Aliso Viejo occupies approximately seven square miles, much of which is hillsides. Roughly 95 percent of land within City limits scheduled for development has been developed. Aliso Viejo is a Planned Community containing a mixture of residential housing types, retail centers, business uses, community facilities and open space areas. Most residential uses are three stories or less. Most commercial, retail and office uses are two stories or less. The tallest (office) building in the City is ten stories. The City generates light and glare, including streetlights along roadways, parking lots and walkways, lighted recreation facilities and light emitted from residential and non-residential buildings. Buildings and structures made with glass, metal and polished exterior or roofing materials can reflect daytime glare.

Existing Land Use

The 7.7± acre Aliso Viejo Ranch property is the site of the original Mission Viejo Ranch House. A total of seven structures, four of which are single story ranch structures exist onsite along with scattered ranch equipment. Access into the Site is restricted. The Site is used occasionally for special events, the largest of which is the annual Founders Day Fair, a one-day event held each October from 2 to 8 p.m.

Aesthetic Characteristics

Onsite: Site Photos are shown on Figures 4 through 11. The Site is rural in nature reflecting its prior land use, contains many mature trees and is surrounded by perimeter landscaping. The Site interior has limited ground cover and no paved surfaces. The entire Site has been disturbed.

Offsite: Views onto the Site from adjacent properties are limited due to existing vegetation including an offsite windrow of eucalyptus trees along the north and northeastern Site boundary and a vegetated earthen berm along the west, south and southeast boundary.

Existing Light and Glare

Information in this section was derived from the Aliso Viejo Ranch Photometric Study. This study is reproduced as Appendix A to this document.

The Site is bordered by the California Reflections single-family residential development on the northwest. Views onto the Site from these homes are limited due to existing vegetation including a windrow of eucalyptus trees offsite along the northwest Site boundary. The Barcelona Apartments development is located to the southwest of the Site north of Cedarbrook. Views from these residential units are restricted by the Site's existing perimeter landscaped berms.

Existing onsite generation of light and glare is restricted to the seven structures located onsite. The only occupied structure is the caretaker residence. On occasion, the Site is used for special events, the largest of which is the annual (one day) Founders Day Fair. This event occurs annually in October from 2 to 8 p.m. with nighttime lighting beginning at sunset (approximately 6 p.m.). Cleanup is usually completed by 10 p.m. Lighting for the Fair includes pole lighting and lighting associated with rides and exhibits.

Existing light emanating from the Site was measured to determine its effect on adjacent land uses. Measurements were taken as shown on Figure 25. Night time lighting from special events was not measured. On-site special events occur several times a year, during daytime hours with the exception of the annual one day Founders Day Fair. The Founders Day Fair goes until 8 pm which is approximately 2 hours after sunset. Lighting for the fair is temporary and is not consistent from year to year.

The City determined the worst-case light receptors to be the residential homes in the California Reflections development adjacent to the northwest edge of the Site and to a lesser extent the Barcelona Apartments west of the Site. Measurements were recorded at 20-foot intervals moving southeast from the Site's existing northwest fence. All of the readings were below the minimum foot-candles the measuring equipment could detect as shown on the Lighting Cross Sections (Figure 26) and Existing Night Time Light Levels (Figure 27). Additional measurements were taken at the existing ingress/egress locations on Cedarbrook and Park Avenue. These measurements were also below the minimum the equipment could detect. Existing berms, mature vegetation and elevations differences ranging from 10 to 40 plus feet effectively block existing light and glare from impacting offsite properties. Therefore, existing light and glare emanating from the Site is considered low except during the annual one day Founders Day Fair when nighttime light emanating from the Site can reach a higher level from sunset to 8: pm.

Impact Assessment

a) Have a substantial adverse effect on a scenic vista?

> **No Impact**. There are no designated Scenic Vista's within the City of Aliso Viejo. Therefore, the Project will not have a substantial adverse impact on a Scenic Vistas.

b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?

No Impact. There are no State scenic highways within Aliso Viejo. Therefore, the Project will not substantially damage scenic resources including, but not limited to, trees, rock outcroppings or historic buildings within a state scenic highway.

c) Substantially degrade the existing visual character or quality of the site and its surroundings?

Less Than Significant Impact. The Project will remove all existing structures onsite. Many of these are in poor condition. Part of the Site will be graded requiring removal of several interior trees (see Figures 12 through 15). Site improvements will result in construction of new buildings designed to maintain a ranch theme (see Figures 17 through 23), landscaping designed to maintain the existing ranch theme (see Figure 16), parking areas (see Figures 12 & 13) and nighttime lighting (see Figures 24). Existing Ranch equipment will be maintained and displayed throughout the Site.

The removal of existing buildings, grading, construction of new building, lighted parking areas and landscaping will change the visual character of the Site.

The Project will impact views onto the Site from surrounding land uses including adjacent residential homes within the California Reflections development to the northwest of the Site, the non-adjacent Barcelona Apartments to the west, Aliso Viejo Community Park to the south and the Aliso Viejo Middle School to the east.

Existing views onto the Site from public vantage points are limited to the Site's access drives on Cedarbrook and Park Avenue due to the presence of perimeter berms and trees. The proposed Project will utilize these same ingress/egress locations. The existing perimeter berms and trees will not be impacted by the Project. Therefore, the impact of the Project on views from existing public streets, the Aliso Viejo Middle School and Aliso Viejo Community Park are considered less than significant.

Views onto the Site from residential homes located along the northwest and west Site boundary are limited due to existing vegetation including a windrow of eucalyptus trees offsite along the northwest Site boundary. Visual simulations of the proposed Project from locations along the northern and northeastern boundary are shown on Figures 21 through 23.

Because the Project proposes to maintain the Ranch theme and existing landscape berms, which limit views from offsite onto the Site, the City determined the Project would not substantially degrade the existing visual character or quality of the Site and its surroundings.

d) Create a new source of substantial light or glare, which would adversely affect day or nighttime views in the area?

Less Than Significant Impact. Construction of new structures and installation and use of proposed lighting while enhancing the functionality of the Site will affect the visual character/quality of the Site and its surroundings through introduction of nighttime lighting.

The City of Aliso Viejo Municipal Code contains outdoor lighting requirements. Section 15.62.070(C) Outdoor Lighting states: "The intensity of outdoor lighting shall conform to the provisions of Appendix A of this code. Lighting shall be designed and shielded to minimize spillover onto neighboring properties. In order to assess compliance of proposed projects with lighting intensity and spillover limitations, the city may require a photometric site plan analysis to show lighting intensities within the site and light spillover beyond the site boundaries."

Appendix A to the Municipal Code states, "All lighting on the Property shall be designed to prevent spillover onto neighboring properties." (F)(9). It continues "In order to maintain sufficient illumination for security purposes, landscaping plans shall be designed so that trees and other landscaping do not obstruct light sources from outdoor fixtures, including parking lot lighting." (I)(1).

Project Design Feature PDF-2 has been incorporated into the Project as follows:

> Lighting plans shall ensure that 1) direct lighting is shielded from residential areas and other light sensitive receptors, 2) lighting is directed to the specific location intended for illumination (e.g., roads, walkways, or recreation fields), 3) non-essential lighting and stray light spillover is minimized, 4) low intensity lamps are used except when high intensity illumination is required, such as for a recreational field, and 5) night lighting shall not be used during the course of construction unless determined to be absolutely necessary. If night lighting is necessary, the lights shall be shielded to minimize lighting of neighboring properties."

The Project has been designed to reduce light and glare affecting surrounding land uses through incorporation of architectural features, shielded lighting and limitation on the hours of operation. Lighting will be provided around interior parking areas and walkways as shown on the Lighting Plan, Figure 24. Given normal hours of operation (8 a.m. to 8 p.m. Monday thru Friday, 8 a.m. to 5 p.m. Saturday, closed Sundays and holidays) use of lighting will be minimized, occurring primarily during fall and winter months. The City reviewed the Project Description, which includes proposed Architectural Renderings, a Lighting Plan, a Landscape Plan and hours of operation for conformance with Municipal Code Section 15.62.070(C). The City determined the Project is in conformance with Municipal Code section 15.62.070(C). In accordance with Municipal Code Section 15.62.070(C), the City required a photometric site plan analysis to be prepared to determine worst-case lighting intensities within the Site and light spillover beyond its boundaries. The City determined the worst-case receptors to be residential homes within the California Reflections development located adjacent to the northwest edge of the Site and to a lesser extent the Barcelona Apartments located west of the Site.

Based on the worst-case condition, the Project is projected to increase existing nighttime light levels by less than 0.1 foot candle along the Project's perimeter fence and less than detectable foot candles along existing residential developments to the northwest, north and northeast (see Figure 28). Existing berms and mature vegetation that will remain following Project development combined with proposed vegetation and existing elevations differences ranging from 10 to 40 plus feet are anticipated to block Project light and glare from

impacting offsite properties. Staff determined the proposed outdoor lighting conforms to the provisions of Municipal Code Section 15.62.070(C), Appendix A. Therefore, the Project will not create a new source of substantial light or glare that would adversely affect day or nighttime views in the area.

Mitigation Measures: No mitigation measures required.

2 - Agricultural and Forest Resources

2	In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Department of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. Would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
(a)	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?				X
(b)	Conflict with existing zoning for agricultural use, or a Williamson Act contract?				X
(c)	Conflict with existing zoning for, or cause rezoning of, forestland (as defined in Public Resources Code 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))?				X
(d)	Result in the loss of forestland or conversion of forestland to non-forest use?				X
(e)	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 forestland to non-forest use?				X

Environmental Setting

There is no agricultural land within Aliso Viejo.

Impact Assessment

a) 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?

No Impact. No Prime Farmland, Unique Farmland or Farmland of Statewide Importance exists in Aliso Viejo. Therefore, the Project will 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.

b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?

No Impact. No Williamson Act contract land exists in Aliso Viejo. Therefore, the Project will not conflict with existing zoning for agricultural use or a Williamson Act contract.

c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code 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))?

No Impact. No land in Aliso Viejo is zoned forestland. Therefore, the Project will not conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code 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)).

d) Result in the loss of forestland or conversion of forestland to non-forest use?

No Impact. No forestlands exist within the City of Aliso Viejo. Therefore, the Project will not result in the loss of forestlands or conversion of forestland to non-forest use.

e) 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 forestland to non-forest use?

No Impact. No farmland exists in Aliso Viejo. Therefore, the Project will 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 forestland to non-forest use.

Mitigation Measures: No mitigation measures required

3 - Air Quality

3	Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
(a)	Conflict with or obstruct implementation of the applicable air quality plan?			X	
(b)	Violate any air quality standard or contribute substantially to an existing or projected air quality violation?			X	
(c)	Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?			X	
(d)	Expose sensitive receptors to substantial pollutant concentrations?			X	
(e)	Create objectionable odors affecting a substantial number of people?				X

The following information was summarized from an Air Quality/Greenhouse Gas Impact Study prepared for the proposed Project. This report is reproduced as Appendix B to this document.

Environmental Setting

Aliso Viejo is located within the South Coast Air Basin. Pursuant to the Federal Clean Air Act, the South Coast Air Quality Management District (SCAQMD) is required to reduce emissions of criteria pollutants for which the Basin is in nonattainment (i.e. ozone and particulate matter less than 10 and 2.5 microns in diameter, PM-10 and PM-2.5 respectively). The Project is subject to the SCAQMD Air Quality Management Plan, which lists strategies to reduce emissions and achieve ambient air quality standards. SCAQMD identifies "sensitive receptors" as populations more susceptible to air pollution effects than the general public. Sensitive receptors include health care facilities, rehabilitation centers, convalescent centers, residences, schools, playgrounds, childcare centers and athletic facilities. Sensitive receptors located near known air emissions sources including freeways and intersections are of particular concern.

Impact Assessment

a) Would the project conflict with or obstruct implementation of the applicable air quality plan?

Less than Significant Impact. An Air Quality Management Plan (AQMP) describes air pollution control strategies to be taken by a City, County or Region classified as a non-attainment area. The purpose of an AQMP is to bring the area into compliance with air quality standards. CEQA requires certain proposed projects be analyzed for consistency with the AQMP. For a project to be consistent with SCAQMD's AQMP, the pollutants

emitted from the project should not exceed the SCAQMD daily threshold or cause a significant impact on air quality. If feasible, mitigation measures are implemented and if these reduce the impact level from significant to less than significant, a project may be deemed consistent with the AQMP. The AQMP uses the assumptions and projections of local planning agencies to determine control strategies for regional compliance status. Since the AQMP is based on the local General Plan, projects that are deemed consistent with the General Plan are found to be consistent with the AQMP.

Emissions projections used to establish SCAQMD attainment objectives reflect adopted regional and local land use plans. The Project is consistent with the City General Plan which designates the site for Community Facilities land uses. The emissions associated with the proposed Project are within the amounts already accounted for in the AQMP. Accordingly, the Project would not be inconsistent with the AQMP. Therefore, the project would not conflict with or obstruct implementation of the applicable air quality plan.

b) Would the project violate any air quality standard or contribute substantially to an existing or projected air quality violation?

Less than Significant Impact. Project compliance with air quality standards and its effect on existing or projected air quality violation(s) is analyzed below.

<u>Regional Construction Activity Emission Impacts</u>

CalEEMod was used to estimate onsite and offsite construction emissions as shown in Table 3-1. The emissions incorporate Rule 403[1] during construction. The CalEEMod emissions do not exceed the SCAQMD daily emissions thresholds. Therefore, the Project will not result in significant regional construction emissions.

Aliso Viejo Community Center Air Quality & Greenhouse Gas Impact Study

[1] Refer to Appendix B, Aliso Viejo Community Center Air Quality & Greenhouse Gas Impact Study, Appendix "A" for Rule 403 measures incorporated into the Project

TABLE 3-1 - Regional Significance - Construction Emissions (Lbs/day) (1)

Activity	VOC	NOx	CO	SO2	PM10	PM2.5
Demolition	4.58	48.45	37.15	0.04	2.58	2.33
Site Preparation	5.34	56.99	43.92	0.04	4.55	3.60
Grading	3.90	40.50	27.75	0.03	2.93	2.42
Building Construction	4.35	33.50	31.71	0.06	2.80	2.39
Architectural Coating (2)	24.51	2.51	3.75	0.00	0.49	0.28
Paving	8.24	30.39	15.80	0.02	1.43	1.21
Maximum (3)	32.75	56.99	43.92	0.06	4.55	3.60
SCAQMD Threshold	75.00	100.00	550.00	150.00	150.00	55.00
Exceeds Threshold (?)	**No**	**No**	**No**	**No**	**No**	**No**

1) Indicates air quality emissions levels with Rule 402 and 403 and project design features.
2) ROG emissions associated with architectural coatings could be reduced by using water based or low-VOC coatings and using coating transfer or spray equipment with high transfer efficiency. For example, a high-volume, low-pressure (HVLP) spray method is coating application system operated at air pressure between 0.1 and 10 pounds per square inch gauge (psig) with 65 percent transfer efficiency. Manual transfer with brush or roller has 100 % transfer efficiency. The mitigated scenario assumes a transfer efficiency of 65%.
3) Construction activities are not expected to overlap except during paving and painting. Therefore, the maximum emissions represent the largest of each activity alone except for painting and paving which are combined.

Localized Construction Emissions

Table 3-2 illustrates the construction related Localized Significant Thresholds (LSTs) for the project area. The emissions will be below SCAQMD thresholds of significance for localized construction emissions. Therefore, the Project will not result in significant localized construction emissions.

TABLE 3-2 - Construction Localized Significance

LST Pollutants (1)	CO (lbs/day)	NOx (lbs/day)	PM10 (lbs/day)	PM2.5 (lbs/day)
Onsite Emissions	43.92	56.99	4.6	3.60
SCAQMD Construction Threshold (2)	962	57	7	5
Exceeds Threshold (?)	**No**	**No**	**No**	**No**

1) Reference LST thresholds are from 2006-2008 SCAQMD Mass rate Localized Significant Thresholds for construction and operation Table C-1 for a disturbance area of two acres and at a receptor distance of 25 meters.
2) Reference: Source Receptor Area 20 Thresholds.

Fugitive Dust

Fugitive dust emissions are generally associated with land clearing, exposure of soils to the air and wind and cut-and-fill grading operations. Construction emissions can vary greatly depending on the level of activity, the specific operations taking place, the equipment being operated, local soils, weather conditions and other factors. The proposed Project will be required to comply with SCAQMD Rules 402 and 403 to control fugitive dust. Table 3-1

lists total construction emissions including fugitive-dust emissions and construction equipment exhausts that have incorporated a number of feasible control measures that can be reasonably implemented to reduce PM10 emissions from construction. Table 3-1 illustrates that in all construction phases, the daily total construction emissions with standard control measures would be below the daily thresholds established by SCAQMD. Therefore, the Project will not result in significant Fugitive Dust emissions.

Odors

Heavy-duty equipment in the Project area during construction will emit odors. However, construction activity would cease after individual construction steps are completed. No other sources of objectionable odors have been identified for the Project. Therefore, the Project will not result in significant Odors.

Naturally Occurring Asbestos

The Project is located in Orange County, which is not among the counties found to have serpentine and ultramafic rock in their soils. Therefore, the potential risk for naturally occurring asbestos during project construction is small and less than significant.

Operational Air Quality Emissions Impact - Regional Operational Emissions

Long-term air pollutant emission impacts are those associated with stationary and mobile sources involving any project-related changes. The stationary source emissions would come from additional natural gas consumption for onsite buildings and electricity for lighting in the buildings and parking area. Using trip generation factors from the traffic study and from the Institute of Transportation Engineers' Trip Generation Manual Ninth Edition, long-term operational emissions associated with the Project calculated with the CalEEMod model are shown in Table 3-3. Area sources include architectural coatings, consumer products and landscaping. Energy sources include natural gas consumption for heating.

AS shown in Table 3-3, the Project's increase of all criteria pollutants is below the SCAQMD daily emission thresholds. Therefore, the Project will not result in significant Regional Operational emissions.

TABLE 3-3 - Regional Significance - Operational Emissions (lbs/day) (1)

Activity	VOC	NOx	CO	SO2	PM10	PM2.5
Area Sources	7.65	0.00	0.01	0.00	0.00	0.00
Energy Sources	0.02	0.21	1.80	0.00	0.02	0.02
Mobile Sources	4.04	9.16	39.01	0.08	5.65	1.59
Total: Area Sources + Energy + Mobile	11.17	9.37	40.82	0.08	5.67	1.61
SCAQMD Threshold	55	55	550	150	150	55
Exceeds Threshold (?)	**No**	**No**	**No**	**No**	**No**	**No**
1) Emissions levels do not exceed the significance thresholds. Therefore any additional air quality reduction measures will further reduce emissions.						

Localized Operational Emissions

Table 3-4 shows calculated emissions for the proposed operational activities compared with appropriate Localized Significant Thresholds (LSTs). LST analysis only includes onsite sources. However, the CalEEMod software outputs do not separate onsite and offsite emissions for mobile sources. For a worst-case assessment, emissions shown in Table 3-4 include all onsite project-related stationary sources and five percent of project-related new mobile sources. This percentage is an estimate of the amount of project-related new vehicle traffic that will occur onsite.

TABLE 3-4 - Localized Significance - Operational Emissions (1)

LST Pollutants1	CO (lbs/day)	NOx (lbs/day)	PM10 (lbs/day)	PM2.5 (lbs/day)
Onsite Emissions (2)	3.76	0.67	0.30	0.10
SCAQMD Operation Threshold (3)	962	131	2	2
Exceeds Threshold (?)	**No**	**No**	**No**	**No**

1) Reference LST thresholds are from 2006-2008 SCAQMD Mass rate Localized Significant Thresholds for construction and operation Table C-1 for a disturbance area of 2 acre and at a receptor distance of 25 meters.
2) Per LST methodology, mobile source emissions do not need to be included except for land use emissions and onsite vehicle emissions. It is estimated that approximately 5% of mobile emissions will occur on the Site.
3) Reference: Source Receptor Area 20 Thresholds

Table 3-4 indicates the operational emission rates would not exceed the LST thresholds for the nearest sensitive receptors at 25 meters. Therefore, the Project will not result in significant Localized Operational emissions.

c) Would the project result in a cumulatively considerable net increase of any criteria pollutant for which the project region is nonattainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?

Less than Significant Impact. See response to (b) above. The Project will not result in a cumulatively considerable net increase of a criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions, which exceed quantitative thresholds for ozone precursors).

d) Would the project expose sensitive receptors to substantial pollutant concentrations?

Less than Significant Impact. See response to (b) above. Sensitive receptors include residences, schools, hospitals and similar uses sensitive to adverse air quality. Sensitive receptors in the Project vicinity include residential land uses to the west, north and northeast of the Site, Aliso Viejo Community Park south of the Site across Cedarbrook and Aliso Viejo Middle School east of the Site across Park Avenue. Project construction and operational emissions were compared to the SCAQMD's threshold of significance. Projected Project emissions will be below SCAQMD thresholds of significance for local or regional construction and operational emissions. Therefore, the Project would not expose sensitive receptors to substantial pollutant concentrations.

e) Would the project create objectionable odors affecting a substantial number of people?

No New Impact. See response to (b) above. Heavy-duty equipment in the project area during construction will emit odors. However, construction activity would cease after individual construction steps are completed. No other sources of objectionable odors have been identified for the Project. Therefore, the Project will not create objectionable odors affecting a substantial number of people.

Mitigation Measures: No mitigation measures required.

4 - Biological Resources

4	Would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
(a)	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 Wildlife or U.S. Fish and Wildlife Service?		X		
(b)	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 Wildlife or U.S. Fish and Wildlife Service?				X
(c)	Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?				X
(d)	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?		X		
(e)	Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?				X
(f)	Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?				X

Information in this section was summarized from the Biological Resources Technical Report prepared for the Project. This report is reproduced as Appendix C to this document.

Environmental Setting

The City of Aliso Viejo is located within the Coastal sub-region of the Orange County Natural Community Conservation Plan and Habitat Conservation Plan (Conservation Plan). The County approved the Conservation Plan and an associated Implementation Agreement in 1996 prior to the City's incorporation in 2001. The Conservation Plan designated three species as "target species" to be used as umbrella species to guide design of a permanent habitat system within the Central and Coastal sub-regions. This Plan provides for long-term protection for habitat required by the coastal California Gnatcatcher, Coastal Cactus Wren and Orange-Throated Whiptail

Lizard, all of which are on the federal list of threatened or endangered species. Aliso and Wood Canyons Wilderness Park borders the City to the east, south and west and holds the majority of the nearly 25 percent of City land area set aside as open space. This Park is a significant source of ecological and biological resources. Important vegetative communities in Aliso Viejo include scrub, grassland, chaparral, woodland, riparian and vernal pool. Sensitive wildlife species are typically associated with scrub, grassland or chaparral habitat. Several areas within Aliso and Wood Canyons Wilderness Park are designated as "Non-Reserve Open Space" within the Conservation Plan. In addition, substantial area west of Aliso Viejo is designated as Conservation Habitat Reserve. The Conservation Plan restricts types of permitted uses within the Habitat Reserve area to protect long-term habitat values.

Although approximately 95 percent of developable land in Aliso Viejo has been developed, nearly 25 percent of the City land area is set-aside as open space, the majority of which is within Aliso and Wood Canyons Wilderness Park. This Park is a significant source of ecological and biological resources. Extensive research and planning studies conducted by the County of Orange and other jurisdictions identified locations of sensitive habitats and species.

The entire Project Site is disturbed with scattered patches of ruderal vegetation and ornamental landscaping. Although several western sycamore (*Platanus racemosa*) trees have been planted onsite. No native vegetation communities occur within or immediately adjacent to the Site.

General Plant and Wildlife Species

The onsite western sycamore trees and non-native ornamental vegetation community discussed above provides limited habitat for wildlife. While a few species of birds may utilize these areas for roosting or nesting, the majority of the Site does not provide suitable foraging, nesting/breeding, movement or refugia for common or sensitive wildlife species.

Jurisdictional Features

There are no wetlands onsite. Developed areas, ruderal species and ornamental landscaping occupy the entire Site. No jurisdictional features regulated by the USACE, CDFW or RWQCB occur within or immediately adjacent to the Site.

Sensitive Habitats

No sensitive habitats are located within or immediately adjacent to the Project Site. The Project Site is characterized as disturbed with associated ruderal species and ornamental landscaping.

Sensitive Plants

No sensitive plant species were detected or expected to occur on or adjacent to the Site as the Site is characterized as disturbed with associated ruderal vegetation and ornamental landscaping.

Sensitive Wildlife

No sensitive animal species were detected or expected to occur on or adjacent to the Site as the Site is characterized as disturbed with associated ruderal vegetation and ornamental landscaping.

Although no raptor or passerine nests were documented within or immediately adjacent to the Site, the large western sycamore trees, ornamental trees and shrubs located within and adjacent to the Site may occasionally represent roosting/nesting and foraging habitat for species tolerant of extensive indirect impacts (e.g. light and noise). Also, the onsite trees and buildings may represent suitable roosting habitat for sensitive bat species know to occur within the region. Sensitive Animal Species with the potential to occur onsite are listed in Table 4-1

Table 4-1 - Sensitive Animal Species with Potential to Occur Onsite

Species Name *Scientific Name* **Status**	**Habitat Description**	**Comments**
Cooper's hawk *Accipiter cooperii* State Watch List	Cooper's hawk is most commonly found within or adjacent to riparian/oak forest and woodland habitats. This uncommon resident of California increases in numbers during winter migration.	Not expected to breed onsite based on a lack of suitable habitat. May occasionally forage.
Long-eared owl *Asio otus* California Species of Special Concern	The long-eared owl prefers deciduous and evergreen forests, orchards, wooded parks, farm woodlots, river woods, and desert oases. Wooded areas with dense vegetation are needed for roosting and nesting, open areas for hunting.	Not expected to breed onsite based on a lack of suitable habitat. May occasionally forage.
Burrowing owl *Athene cunicularia* California Species of Special Concern	The burrowing owl uses predominantly open land, including grassland, agriculture (e.g., dry-land farming and grazing areas), playa, and sparse coastal sage scrub and desert scrub habitats (Garrett and Dunn 1981).	Burrowing owl habitat is present onsite. A search of the Site found no owls or owl signs. This species is not expected onsite.
Ferruginous hawk *Buteo regalis* State Watch List	An uncommon winter resident and migrant at lower elevations and open grasslands in the Modoc Plateau, Central Valley, and Coast Ranges. Fairly common winter resident of grasslands and agricultural areas in southwestern California (Garrett and Dunn 1981). Frequents open grasslands, sagebrush flats, desert scrub, low foothills surrounding valleys, and fringes of pinyon-juniper habitats (Zeiner et al. 1988-1990).	Not expected to breed onsite based on a lack of suitable habitat. May occasionally forage.
Northern harrier *Circus cyaneus* California Species of Special Concern	The northern harrier frequents open wetlands, wet and lightly grazed pastures, old fields, dry uplands, upland prairies, mesic grasslands, drained marshlands, croplands, shrub-steppe, meadows, grasslands, open rangelands, desert sinks, fresh and saltwater emergent wetlands and is seldom found in wooded areas (Bent 1937; MacWhirter and Bildstein 1996). It uses tall grasses and forbs in wetlands, or at wetland/field borders for cover; it roosts on the ground (Bent 1937)	Not expected to breed onsite based on a lack of suitable habitat. May occasionally forage.
White-tailed kite *Elanus leucurus* State Fully Protected	The white-tailed kite is found in riparian, oak woodlands adjacent to large open spaces including grasslands, wetlands, savannahs and agricultural fields. This non-migratory bird species occurs throughout the lower elevations of California and commonly nests in coast live oaks (Unitt 2004).	Not expected to breed onsite based on a lack of suitable habitat. May occasionally forage.
California horned	This generally non-migratory bird occurs within open	Not expected to breed

lark *Eremophila alpestris actia* State Watch List	habitats including coastal strand, arid grassland, desert and disturbed habitats (Unitt 2004). This widespread California resident breeds on the ground within sparsely vegetated regions of grasslands and forbs.	onsite based on a lack of suitable habitat. May occasionally forage.
Pallid bat *Antrozous pallidus* California Species of Special Concern	Pallid bats are found in arid deserts and grasslands, often near rocky outcrops and water. Less abundant in evergreen and mixed conifer woodland. Usually roosts in rock crevices or buildings, less often in caves, tree hollows, mines, etc.	Not expected to breed onsite based on a lack of suitable habitat. May occasionally roost.
Mexican long-tongued bat *Choeronycteris mexicana* California Species of Special Concern	This migratory species is a nectar feeder (agave and cacti) extending throughout the southwestern United States. Although this species primarily roosts in caves and mines it will occasionally utilize abandoned, manmade structures and are not known to utilize tree foliage (H.T. Harvey & Associates 2004). This species generally occurs at an elevation range of 1,000 - 6,000 ft (300 - 1,825 m).	Not expected to breed onsite based on a lack of suitable habitat. May occasionally roost.
Western mastiff bat *Eumops perotis californicus* California Species of Special Concern	Roosts in crevices and shallow caves on the sides of cliffs and rock walls, and occasionally in buildings.	Not expected to breed onsite based on a lack of suitable habitat. May occasionally roost.
Western red bat *Lasiurus blossevillii* California Species of Special Concern	The red bat is locally common in some areas of California, occurring from Shasta Co. to the Mexican border, west of the Sierra Nevada/Cascade crest and deserts. Roosts primarily in trees, less often in shrubs. Roost sites often are in edge habitats adjacent to streams, fields, or urban areas. Preferred roost sites are protected from above, open below, and located above dark groundcover. Such sites minimize water loss. Roosts may be from 2-40 ft (0.6-13 m) above ground level (Zeiner et al. 1988-1990).	Not expected to breed onsite based on a lack of suitable habitat. May occasionally roost.
Pocketed free-tailed bat *Nyctinomops femorosaccus* California Species of Special Concern	Usually associated with rugged canyons, high cliffs, and rock outcroppings. Roosts in rock crevices and caves during the day; may also roost in buildings or under roof tiles (Zeiner et al. 1988-1990).	Not expected to breed onsite based on a lack of suitable habitat. May occasionally roost.
Big free-tailed bat *Nyctinomops macrotis* California Species of Special Concern	The big free-tailed bat is rare in California. Records of the species are from urban areas of San Diego Co., and vagrants found in fall and winter. A probable vagrant was collected in Alameda Co., but this record is suspect. Big free-tailed bats in other areas prefer rugged, rocky terrain. Found at 8000 ft (2500 m) in New Mexico, southern Arizona, and Texas. Roosts in buildings, caves, and occasionally in holes in trees. Also roosts in crevices in high cliffs or rock outcrops (Parish and Jones 1999, NatureServ 2013).	Not expected to breed onsite based on a lack of suitable habitat. May occasionally roost.

Regional Connectivity/Wildlife Movement Corridors

The Site does not represent a wildlife movement corridor. The Site is completely disturbed, surrounded by a chain link fence, possesses non-native habitats with the exception of a few western sycamore trees and is bordered by residential, educational and recreational land uses that would significantly restrict movement though the Site. Although onsite trees and buildings may occasionally be utilized by resident and migratory bird or bat species for roosting and potentially nesting, this does not constitute characterizing the Site as a movement corridor.

Impact Assessment

a) 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 Wildlife (CDFW) or U.S. Fish and Wildlife Service?

Less than Significant with Mitigation Incorporated. The Project would impact all interior portions of the Project Site (5.68 acres) including developed areas, disturbed communities, sycamore trees and ornamental landscaping. These non-native habitats are not characterized as sensitive communities and have low biological value. The nearest sensitive habitats include water bodies and associated riparian habitats located in Aliso Creek approximately 350 feet (100 meters) east of the Project Site.

No sensitive wildlife species were documented within or immediately adjacent to the Site. However, onsite trees and buildings are proximal to the Aliso Creek riparian corridor and represent suitable roosting habitat for sensitive bat species documented in the area. Removal of trees and structures during the breeding season could result in direct mortality of sensitive bats. In addition, construction noise and human disturbance could cause maternity roost abandonment and subsequent death of young. The loss of a sensitive bat species is considered a potentially significant impact.

No active bird/raptor nests were documented on or adjacent to the Site. However, the ornamental landscaping represents suitable nesting habitat for common and sensitive resident and migratory species documented or expected to occur within the Site. Loss of an active nest of common or sensitive migratory bird species would be considered a violation of the CDFW Code, Section 3503, 3503.5, 3513, and federal Migratory Bird Treaty Act (MBTA). Therefore, loss of any migratory bird species nest is considered a potentially significant impact.

Noise levels on the Site would temporarily increase over present levels during Project construction and have the potential to disrupt foraging, nesting and roosting of passerines, raptors and bats known or expected to occur on or adjacent to the Site. These impacts are considered adverse, but not significant for most bird and bat species because the work would be temporary and localized and the construction activities would not impact a substantial population of bird or bat species. Initial clearing of ornamental landscaping will be conditioned to occur outside of the nesting/breeding season to avoid impacts to nesting birds and roosting bats. However, passerines, raptors and bats would potentially incur temporary

short-term impacts from construction noise if nesting/roosting occurs in the vicinity of the proposed Project. This impact would be considered potentially significant.

The Project will not generate significant nighttime lighting. Therefore, the Project will not have a substantial adverse effect 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 Wildlife (CDFW) or U.S. Fish and Wildlife Service as a result of Project lighting.

b) 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 Wildlife or U.S. Fish and Wildlife Service?

No Impact. The Project would impact the interior portions of the Site (5.68 acres). The impacted area consists of non-native habitats. They are not characterized as riparian or other sensitive natural communities and have a low biological value. Therefore, the Project will not have an adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service.

The Project will not generate significant nighttime lighting. Therefore, the Project will 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 Wildlife or U.S. Fish and Wildlife Service as a result of Project lighting.

b) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

No Impact. There are no wetlands onsite. Disturbed and relatively xeric areas occupy the entire Site. The Project will not have an adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption or other means.

The Project will not generate significant nighttime lighting. Therefore, the Project will not have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means as a result of Project lighting.

c) 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?

Less than Significant with Mitigation Incorporated. The Project will not generate significant nighttime lighting. Therefore, the Project will 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 a result of Project lighting.

The Site is not a regional or local wildlife movement corridor. Therefore, there would be no impact on regional movement corridors. No impact would occur to regional connectivity/wildlife movement corridors as a result of project implementation. However, as stated in (a) above the ornamental landscaping represents suitable nesting habitat for common as well as sensitive resident and migratory bird/raptor species documented or expected to occur within the Site. Loss of an active nest of common or sensitive migratory bird species would be considered a violation of the CDFW Code, Section 3503, 3503.5, 3513 and federal Migratory Bird Treaty Act (MBTA). Therefore, loss of any migratory bird species nest is considered a potentially significant impact.

d) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?

No Impact. The City of Aliso Viejo does not adhere to any local policies (e.g. oak tree preservation policy) or ordinances that would impact development of the Project Site. Therefore, the Project will not conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.

e) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?

No Impact. The Project Site is in the plan area of the Orange County Central-Coastal Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP). However, the Site is designated as Non-Reserve Open Space under the NCCP/HCP. Non-Reserve Open Spaces are those areas not with the NCCP/HCP's nature reserve system, not within a special linkage area and not in a sensitive resource area. The closest designated NCCP/HCP preserve is approximately 1.8 miles west of the Site (NROC 2005).

The Site is not in the plan areas of any habitat conservation plans other than the NCCP/HCP (USFWS 2011). Therefore, the Project will not conflict with provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan or other approved local, regional or state habitat conservation plan.

Mitigation Measures

Impacts to roosting bat species would be reduced to less than significant with implementation of Biological Mitigation Measure 4-1 (MM-4-1). Impacts on active resident and migratory bird nests would be reduced to less than significant with the implementation of Biological Mitigation Measure 4-2 (MM-4-2). Passerines, raptors and bats could potentially incur temporary short-term significant impacts from construction noise if nesting/roosting occurs in the vicinity of the proposed Project. Impacts to passerines, raptors and bats due to temporary short-term impacts from construction noise if nesting/roosting occurs in the vicinity of the proposed Project will be reduced to less than significant with the implementation of Biological Mitigation Measure 4-3 (MM-4-3).

MM 4-1: Sensitive Bats

Project implementation shall avoid disturbance to the maternity roosts of sensitive bats during the breeding season. No more than two weeks prior to construction-related activities that would commence during the breeding season (March 1st to August 31st), a qualified biologist acceptable to CDFW will conduct pre-construction surveys of all potential sensitive bat breeding habitat in the vicinity of the Site. Pre-construction surveys are not required for construction-related activities scheduled to occur during the non-breeding season (September 1st through February 28th).

If active roosts are identified during pre-construction surveys, a no-disturbance buffer will be created by the qualified bat biologist in consultation with CDFW around active roosts during the breeding season. The size of the buffer will be determined by factors including noise and disturbance levels at the roost site, distance and amount of vegetation or other screening between the construction activity and the roost and sensitivity/behavior of the individual nesting species.

If pre-construction surveys indicate no roosts of sensitive bat species are present, roosts are inactive or potential habitat is unoccupied, no further mitigation is required.

MM 4-2: Federal Migratory Bird Treaty Act

Impacts to nesting passerine and raptor bird species are prohibited under the MBTA. The MBTA makes it unlawful to take, possess, buy, sell, purchase or barter any migratory bird listed in 50 C.F.R. Part 10, including feathers or other parts, nests, eggs or products, except as allowed by implementing regulations (50 C.F.R. 21). Suitable nesting bird habitat has been documented within and immediately adjacent to the proposed action area within the ornamental landscaping. Therefore, to remain in compliance with CDFW Code, Section 3503, 3503.5, 3513 and the MBTA, nesting bird surveys will be conducted within and adjacent to the action area prior to and during all proposed actions conducted between January 31st and September 15th.

Prior to conducting any proposed actions during the breeding season (January 31st and September 15th), the monitoring biologist will conduct a pre-construction survey/surveys to identify any active nesting locations in and near the project area no more than three days prior to project initiation. If the biologist does not find any active nests that would be potentially impacted, the proposed action may proceed. If the biologist finds an active nest within or adjacent to the action area and determines that the nest may be impacted, the biologist will delineate an appropriate buffer zone around the nest. Any active nests observed during the survey will be mapped on a recent aerial photograph including documentation of GPS coordinates. Only specified activities, if any, as approved by the qualified biologist, will take place within the buffer zone until the nest is vacated.

The proposed action area is located adjacent to an open space area favored by several resident and migratory raptor species. Surveys for active raptor nests will be performed in all ornamental landscaping including trees and shrubs no more than three days prior to commencement of any activities during the raptor nesting season generally extending from January 31st and June 30th. Active raptor nests observed during the survey will be mapped

on a recent aerial photograph including documentation of GPS coordinates. Restrictions on activities will be required in the vicinity of the nest until the nest is no longer active as determined by the qualified biologist.

Typically, a 300 to 500 foot buffer zone will be designated around a nest to allow activities to proceed while minimizing disturbance to the active nest. Once the nest is no longer active, the proposed action may proceed within the buffer zone. Impacts on active raptor nests will be avoided.

MM 4-3: Nesting Bird/Bats - Noise

If A) nesting birds/bats are found onsite during pre-construction surveys and B) construction-related impacts occur between January 31st and September 15th, an acoustical consultant shall evaluate the construction equipment/phases and estimate noise levels anticipated during clearing, grubbing and grading activities. The acoustical consultant shall identify appropriate measures for reducing construction noise levels to below 60 dB(A) hourly Equivalent Continuous Noise Level (Leq) or prevent any increases in the ambient noise levels at nesting location if existing noise levels are 60 dB(A) hourly Leq or greater. Noise reduction measures may include operational adjustments, including:

1. Construction cannot take place between the hours of 8:00 PM and 7:00 AM on weekdays, and between 8:00 PM and 8:00 AM on Saturday, or at any time on Sunday or a federal holiday.

2. Stationary construction noise sources such as generators or pumps should be located at least 100 feet from sensitive land uses, as feasible.

3. Construction staging areas should be located as far from noise sensitive land uses as feasible.

4. During construction, the contractor shall ensure all construction equipment is equipped with appropriate noise attenuating devices.

5. Idling equipment shall be turned off when not in use.

6.) Equipment shall be maintained so that vehicles and their loads are secured from rattling and banging.

If noise reduction measures are required, bi-weekly monitoring of the nesting species shall be conducted by the qualified biologist to observe if the birds/bats are being affected by construction activities. The acoustical consultant shall confirm through noise measurements that the noise reduction measures are effective at preventing noise levels in excess of 60 dB(A) hourly Leq or an increase in ambient noise levels.

Noise reduction measures are not required from September 16th through January 31st.

Level of Significance after Incorporation of Mitigation Measures

With the implementation of these mitigation measures, impacts associated with biological resources will be less than significant.

5 - Cultural Resources

5	Would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
(a)	Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?			X	
(b)	Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?		X		
(c)	Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?				X
(d)	Disturb any human remains, including those interred outside of formal cemeteries?				X

The following is summarized from the Archaeological Phase I Cultural Resource Reconnaissance for this Project. This report is reproduced as appendix D to this document.

Environmental Setting

Aliso Viejo was surveyed for significant archaeological and paleontological resources prior to any development. Most of Aliso Viejo is within an area of prehistoric archaeological resource sensitivity. 33 of the many sites identified were in areas designated open space. Aliso and Wood Canyons Wilderness Park have assorted pictographs and carvings of historical significance. The Aliso Creek and other areas within the City are highly fossiliferous.

The National Register of Historic Places is the nation's official list of cultural resources designated for preservation. The National Register is part of a program to coordinate and support public and private efforts to identify, evaluate and protect historic and archaeological resources. Properties listed in the National Register include districts, sites, buildings, structures and objects significant in American history, architecture, archaeology, engineering and culture. Aliso Viejo has no sites listed in the National Register. The California Register of Historical Resources includes historic resources of importance at the State level. All properties listed in the National Register are automatically included in the California Register. The State of California also maintains an historical resources inventory administered by twelve regional offices. Aliso Viejo has no sites listed in the California Register.

The 7.7± acre Aliso Viejo Ranch property is the site of the original Mission Viejo Ranch House.

Paleontological Resources

The Site is mostly a surface deposit of younger Quaternary Alluvium derived primarily as fluvial deposits from the nearby Aliso Creek drainage. The records search also indicated on the western part of the Site there are exposures of an underlying marine late Miocene Monterey Formation,

an extensive geological sedimentary formation in California with strata that vary from fossil assemblages to calcareous-siliceous rocks.

The preliminary cultural resource study identified a large block of stone with a shell embedded in it along the northwestern fence line of the Site. The stone appears to be a sedimentary conglomerate containing a fossil Cardium shell. In addition, the Site is surrounded by a berm that slopes into the project area at a 20 to 30 degree angle. A white chalky diatomaceous chert was observed throughout the slopes most notably in the eastern portion of the Project area. This is also associated with the Monterey Formation.

The Monterey Formation is identified as a stratigraphic unit with high potential for scientifically significant fossils as identified by the County of Orange. However, the Project area is not intended to extend outside of the alluvium deposit, which is listed as having low to no potential.

Prehistoric Resources

Five previous archaeological surveys were conducted on the subject property. No prehistoric surface or subsurface materials were reported by these surveys. The previous reports noted grading on the parcel and removal of historic buildings associated with the Ranch (Demcak 1991). Current ground visibility is excellent at 80 to 90%. No subsurface cultural deposits were located during the current Cultural Resource Reconnaissance Survey. Six fractured or damaged prehistoric groundstone artifacts were found distributed over the surface of the parcel.

Based on the above, it is assumed the groundstone artifacts were imported through prior grading or other offsite efforts.

Historic Resources

Seven historic structures are present on the Site. Only four original Moulton Ranch buildings exist. The 2 storage sheds lack integrity. The barn is one of two original barns. The other was destroyed in recent decades. The remaining barn has been enlarged and therefore has parts that are not original. The fourth structure, a bunkhouse, is relatively unmodified.

These were previously studied in detail by an architectural firm in 2008 (DKP 2008). The historic structures and ranch equipment highlight a cultural landscape of past ranching activities in the area. Many of the historic buildings are in disrepair or have little to no individual significance. The barn, although modified, retains some architectural integrity. The bunkhouse is relatively intact and maintains the most architectural integrity. Farming equipment associated with the Moulton Ranch still exists throughout the Site.

Impact Assessment

a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?

Less than Significant Impact.[2] The Site's, structures, and other properties may be considered an historical resource if they are significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military or cultural annals of California (PRC 5020.1[j]), or if they meet the criteria for listing in the National Register or the California Register of Historical Resources (CR) (14 CFR 4850). If enacted by local legislation, CEQA allows for local historic resource guidelines to serve as CR criteria equivalent to State criteria. If the historical resource has integrity and one or more of the following criteria are met, the resource would be considered a significant resource and any direct effect would be considered a significant impact on the environment:

1. Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;

2. Is associated with the lives of persons important in our past;

3. Embodies the distinctive characteristics of a type, period, region, or method of construction, or represent the work of an important creative individual, or possesses high artistic values; and

4. Has yielded, or may be likely to yield, information important in prehistory or history.

Here, the remnants of a cattle ranch do not possess integrity of location, design, setting, materials, workmanship, feeling, and association. Several original buildings in the ranch complex have been removed. Modern buildings have also been added which do not contribute to the original uses of the land. The integrity of the original Moulton Ranch has been compromised. The remaining buildings are not exemplary examples of ranching structures nor were they designed by a master architect. Only four original Moulton Ranch buildings exist. The 2 storage sheds lack integrity. The barn is one of two original barns, the other was destroyed in recent decades. The remaining barn has also been enlarged and therefore has parts which are not original. The fourth structure, a bunkhouse, is relatively unmodified. Accordingly, none of the structures would qualify individually for listing on the National Register of Historic Places or the California Register of Historic Resources since they are not individually associated with a significant event or person or are not a rare architectural type.

While the original Moulton Ranch complex of structures could be considered a significant resource based on its association with the history of ranching in the Aliso Viejo area and Orange County generally, only four buildings from this complex remain and they do not collectively represent all aspects of a functioning historic ranch. Accordingly, the complex

[2] See Letter of Clarification: Significance of Buildings on the Aliso Ranch Project Area - prepared by Scientific Resource Surveys, Inc. – June 9, 2014, Appendix D

would not qualify for listing on the National Register of Historic Places or the California Register of Historic Resources and the City does not consider these buildings historic resources.

As there are no historic resources on the Site, the Project will not cause a substantial adverse change in the significance of a historical resource as defined in §15064.5.

b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?

Less than Significant Impact with Mitigation. There are no known archaeological resources on the Site. However, if previously undocumented cultural resources are identified during earthmoving activities, a qualified archaeologist shall be contacted to assess the nature and significance of the find, as addressed in Mitigation Measures 5-1 through 5-7. With the implementation of these mitigation measures, impacts associated with archeological resources will be less than significant.

c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?

No Impact. This Site has previously been graded. Geologically, the parcel includes Quaternary Alluvium and the Miocene Monterey Formation. The Monterey Formation is identified as a stratigraphic unit with high potential for scientifically significant fossils as identified by the County of Orange. However, the Project plan does not propose to develop outside of the alluvium deposit area on the Site. This alluvium material is listed as having low to no potential for fossils. Therefore, the Project will not directly or indirectly destroy a unique paleontological resource or site or unique geologic feature.

d) Disturb any human remains, including those interred outside of formal cemeteries?

No Impact. The Site has been previously graded. There are no known human remains on the Site. The Project is not anticipated to disturb human remains. Notwithstanding, in the event that any human remains or related resources are discovered, such resources would be treated in accordance with all applicable federal, State, and local regulations and guidelines for disclosure, recovery, relocation, and preservation, including State Health and Safety Code Section 7050.57.98, which states that no further disturbance shall occur until the County Coroner has made a determination of origin and disposition pursuant to Public Resources Code Section 5097.98. Under these provisions, the County Coroner must be notified of the find immediately. If the remains are determined to be prehistoric, the Coroner will notify the Native American Heritage Commission (NAHC), which will determine and notify a Most Likely Descendant (MLD). With the permission of the landowner or his/her authorized representative, the MLD may inspect the site of the discovery. The MLD shall complete the inspection within 48 hours of notification by the NAHC. Therefore, with compliance with State Health and Safety Code Section 7050.57.98, impacts associated with human remains will be less than significant.

Mitigation Measures: If previously undocumented cultural resources are identified during earthmoving activities, a qualified archaeologist shall be contacted to assess the nature and significance of the find, as addressed in Mitigation Measures 5-1 through 5-1 below.

MM 5-1: An archaeologist will monitor all earthmoving activities.

MM 5-2: Native American monitors will be present during earthmoving activities.

MM 5-3: Prior to construction of the proposed Project, archaeological sensitivity training shall be conducted by a qualified archaeologist approved by the City of Aliso Viejo. The purpose of this training is to provide the contractor with an understanding of what is required under State law and PRC Section 21083.2(i), which is related to with the possibility that archaeological deposits may be accidentally encountered during construction activities.

MM 5-4: If cultural resources are encountered during construction of the proposed project, the Contractor shall flag the find and create a defined 100-foot wide buffer zone around the find. Earthmoving equipment shall be redirected around the buffer zone, and a qualified archaeologist shall be retained to conduct an investigation of the find(s). Earthmoving activities shall be permitted to continue outside of the 100-foot buffer zone while the find is investigated.

MM 5-5: Any find determined by the qualified archaeologist to be of cultural significance shall be recovered and prepared to the point of identification and permanent preservation, including washing of sediments to recover small invertebrates and vertebrates. Preparation and stabilization of all recovered fossils shall occur.

MM 5-6: The identification and curation of specimens into an established, accredited museum repository with permanent retrievable paleontologic/archeologic storage shall occur. These procedures shall be deemed necessary steps in effective paleontologic/archeologic mitigation and CEQA compliance. Prior to the initiation of any mitigation activity, the qualified archaeologist shall have a written repository agreement in writing. Mitigation shall not be deemed complete until such curation into a museum repository has been fully completed and documented.

MM 5-7: The qualified archaeologist shall prepare a findings report with an appended inventory of recovered specimens. The report and inventory, when submitted to the City of Aliso Viejo, along with confirmation of the curation of specimens into an established, accredited museum repository, shall signify completion of the mitigation program to reduce impacts to significant paleontologic/archaeologic resources.

Level of Significance after Incorporation of Mitigation Measures

With the implementation of these mitigation measures, impacts associated with archaeological resources will be less than significant.

6 - Geology and Soils

6	Would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
(a)	Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
(i)	Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Amendment issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.			X	
(ii)	Strong seismic ground shaking?			X	
(iii)	Seismic-related ground failure, including liquefaction?			X	
(iv)	Landslides?				X
(b)	Result in substantial soil erosion or the loss of topsoil?			X	
(c)	Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or offsite landslide, lateral spreading, subsidence, liquefaction or collapse?			X	
(d)	Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?			X	
(e)	Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?				X

Citywide information was summarized from Final EIR prepared for the Aliso Viejo General Plan. This document is on file at the City of Aliso Viejo Planning Office.

Site Specific Geology and Soils information has been gathered from the Geotechnical Investigation for the proposed Project. This report is reproduced as Appendix E to this document.

Environmental Setting

Citywide Geological hazards

Aliso Viejo is located in a region that includes seismic activity, erosion and soil limitations.

Citywide Seismic Activity

Aliso Viejo is situated near several active fault lines. The San Andreas Fault is the dominant fault in California and impacts the City. However, the Newport-Inglewood and Whittier faults are more significant locally. Residents and property in Aliso Viejo are subject to risks from hazards associated with earthquakes. These include ground rupture, shaking, displacement, subsidence, uplift, landslides and liquefaction.

Site Specific Geologic Data

The Site is underlain by artificial fill and alluvial soils over bedrock of the Monterey Formation. The fill is typically comprised of silty sand with some clay. The alluvium generally consists of silty sands to clayey silts. Based on the results of laboratory testing, these surficial soils are considered to be moderately to highly expansive. The bedrock of the Monterey Formation generally consists of clayey siltstone. No active or inactive faults are known to cross the Site. No landslides have been mapped within the Site. According to the State of California Seismic Hazard Zone map for the San Juan Capistrano 7.5-minute quadrangle, the Site is susceptible to earthquake-induced liquefaction.

Site Specific Subsurface Soil Data

Soils consist of undocumented fill and alluvium ranging from about 7.5 feet to greater than 25 feet sitting on Monterey Formation bedrock. The maximum thickness of the fill (about five feet) is located within and adjacent to the graded pad area in the center of the Site (the future location of the basketball pavilion and southern part of the community center) and the northeastern area (the future open field activity area). Fill materials encountered within the remaining portions of the Site were less than two feet thick. The deepest alluvial soils encountered (>25 feet) were present in the central and southern parts of the Site. The fill consisted of damp to moist, medium dense, silty sands with some clay. The alluvial deposits generally consisted of dry to wet, medium dense to dense, silty sands and moist to wet, firm to stiff clayey silts. The Monterey Formation bedrock where encountered consisted of moist to wet, firm to very stiff, clayey silts.

Groundwater Table

Groundwater was encountered at 15 to 25 feet below ground surface across the Site.

Impact Assessment

The Final EIR for the 2004 General Plan (Section 5.5 Geology/Soils) identified that: 1) Aliso Viejo is in a region with active faults, 2) The most significant faults potentially affecting the City are the Newport-Inglewood and Whittier, 3) Regional faults create the potential for ground shaking impacts within the City, 4) Potential seismic hazards include ground shaking, failure and liquefaction and 5) The City is subject to high ground shaking from seismic events. The General Plan Final EIR contains mitigation measures (GS-1, GS2 and GS-3) that were found to reduce potential impacts to a level of less than significant. General Plan Final EIR Mitigation Measures G-1 through G-3 are listed below.

General Plan Final EIR Mitigation Measure GS-1: The City shall prepare, adopt and implement a grading ordinance or Specific Plan to ensure that grading associated with new development projects is conducted in accordance with appropriate geotechnical engineering standards.

General Plan Mitigation Measure GS-2: Pursuant to State law, geologic and/or geotechnical studies shall be required for proposed new development projects located in areas identified as susceptible to landslides and liquefaction and binding mitigation strategies must be adopted....

General Plan Mitigation Measure GS-3: The City shall continually monitor and encourage remediation of unstable slope areas, particularly in areas characterized by the presence of crib wall or where historical anecdotal evidence of instability exists.

The Project will comply with the City Grading Ordinance. The Site is not located in an area identified as susceptible to landslides and liquefaction. The Project shall conform to all recommendations set forth in site specific geologic and/or geotechnical studies.

a) Would the project expose people or structures to potential substantial adverse effects, including the risk of loss, injury or death involving: (i) 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? Refer to Division of Mines and Geology Special Publication 42.

Less Than Significant Impact. No new or different impacts will result from the proposed Project. Application of previously adopted mitigation measures GS-1 through GS-3 from the Final EIR for the General Plan ensures Project-related impacts are less than significant. The Project will comply with the City Grading Ordinance. The Site is not located in an area identified as susceptible to landslides and liquefaction. The Project shall conform to all recommendations set forth in site specific geologic and/or geotechnical studies. Therefore, the Project will not expose people or structures to 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.

ii) Strong seismic ground shaking?

Less Than Significant Impact. No new or different impacts will result from the proposed Project. Application of previously adopted mitigation measures GS-1 through GS-3 from the Final EIR for the General Plan ensures Project-related impacts are less than significant. The Project will comply with the City Grading Ordinance. The Site is not located in an area identified as susceptible to landslides and liquefaction. The Project shall conform to all recommendations set forth in site specific geologic and/or geotechnical studies. Therefore, the Project will not expose people or structures to potential substantial adverse effects, including the risk of loss, injury or death involving strong seismic ground shaking.

iii) Seismic-related ground failure, including liquefaction?

Less Than Significant Impact. No new or different impacts will result from the proposed Project. Application of previously adopted mitigation measures GS-1 through GS-3 from the Final EIR for the General Plan ensures Project-related impacts are less than significant. The Project will comply with the City Grading Ordinance. The Site is not located in an area identified as susceptible to landslides and liquefaction. The Project shall conform to all recommendations set forth in site specific geologic and/or geotechnical studies. Therefore, the Project will not expose people or structures to potential substantial adverse effects, including the risk of loss, injury or death involving seismic-related ground failure, including liquefaction.

iv) Landslides?

No Impact. According to the onsite geotechnical investigation, there are no known landslides on the Site or adjacent to the Site. The Final EIR for the General Plan identified that development within the City may occur in areas prone to landslides or where soil limitations present a hazard to residents. This was considered a potentially significant impact. The Final EIR contained mitigation measures GS-1 through GS-3 that were found to reduce potential impacts to a level of less than significant. The Project will comply with the City Grading Ordinance. The Site is not located in an area identified as susceptible to landslides and liquefaction. The Project shall conform to all recommendations set forth in site specific geologic and/or geotechnical studies. Application of the previously adopted mitigation measures will ensure Project-related impacts are less than significant. Therefore, the Project will not expose people or structures to potential substantial adverse effects, including the risk of loss, injury or death involving landslides.

b) Would the project result in substantial soil erosion or the loss of topsoil?

Less Than Significant Impact. The Final EIR for the General Plan identified that during the construction phase of projects grading could subject temporary exposed soil surfaces to erosion through storm water runoff and wind. Long-term soil loss could also occur from the increased peak flows and total runoff produced by paved or landscaped surfaces in the planning area. Uncontrolled flows could result in scouring or downcutting of stream channels in sections where runoff velocities and volumes are high. This was considered a potentially significant impact. The Final EIR contained mitigation measure GS-1 that was found to reduce potential impacts to a level of less than significant. The Project will comply with the City Grading Ordinance. The Site is not located in an area identified as susceptible to landslides and liquefaction. The Project shall conform to all recommendations set forth in site specific geologic and/or geotechnical studies. Application of the previously adopted mitigation measures will ensure Project-related impacts are less than significant. Therefore, the Project will not result in substantial soil erosion or the loss of topsoil.

c) Would the project be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or offsite landslide, lateral spreading, subsidence, liquefaction or collapse?

Less Than Significant Impact. No new or different impacts will result from the proposed Project. Application of previously adopted mitigation measures GS-1 through GS-3 from the Final EIR for the General Plan ensures Project-related impacts are less than significant. The Project will comply with the City Grading Ordinance. The Site is not located in an area identified as susceptible to landslides and liquefaction. The Project shall conform to all recommendations set forth in site specific geologic and/or geotechnical studies. Therefore, the Project will not be located on a geologic unit or soil that is unstable or that would become unstable as a result of the project, and potentially result in on- or offsite landslide, lateral spreading, subsidence, liquefaction or collapse.

d) Would the project be located on expansive soil, as defined in Table 18 1 B of the Uniform Building Code (1994), creating substantial risks to life or property?

Less Than Significant Impact. No new or different impacts will result from the proposed Project. Application of previously adopted mitigation measures GS-1 through GS-3 from the Final EIR for the General Plan ensures Project-related impacts are less than significant. The Project will comply with the City Grading Ordinance. The Site is not located in an area identified as susceptible to landslides and liquefaction. The Project shall conform to all recommendations set forth in site specific geologic and/or geotechnical studies. Therefore, the proposed Project will not be located on expansive soil, as defined in Table 18 1 B of the Uniform Building Code (1994), creating substantial risks to life or property.

e) Would the project have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of waste water?

No Impact. The Final EIR for the General Plan identified that development may occur in areas prone to landslides or where soil limitations present a hazard to residents. This was considered a potentially significant impact. The Final EIR contained mitigation measures GS-1 through GS-3 that were found to reduce potential impacts to a level of less than significant. The Project will comply with the City Grading Ordinance. The Site is not located in an area identified as susceptible to landslides and liquefaction. The Project shall conform to all recommendations set forth in site specific geologic and/or geotechnical studies. Future Site development would not be served by septic tanks or alternative wastewater disposal systems because sewer service is available. Therefore, the proposed Project will not have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water.

Mitigation Measures: No mitigation measures required.

7 - Greenhouse Gas Emissions

7	Would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
(a)	Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?			X	
(b)	Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?				X

The following information was summarized from an Air Quality/Greenhouse Gas Impact Study prepared for the Project. This report is reproduced as Appendix B to this document.

Environmental Setting

South Coast Air Quality Management District

The Project is within the South Coast Air Basin, which is under the jurisdiction of the South Coast Air Quality Management District (SCAQMD). SCAQMD Regulation XXVII currently includes three rules:

1) Rule 2700 defines terms and post-global warming potentials.
2) Rule 2701, the SoCal Climate Solutions Exchange, establishes a voluntary program to encourage, quantify and certify voluntary, high quality certified GHG emission reductions in the SCAQMD.
3) Rule 2702, the Greenhouse Gas Reduction Program, was adopted on February 6, 2009. This rule creates a Greenhouse Gas Reduction Program in the SCAQMD. The SCAQMD will fund projects through contracts in response to requests for proposals or purchase reductions from other parties.

SCAQMD Threshold Development: The SCAQMD has established recommended significance thresholds for GHGs for local lead agency consideration. It has published a five-tiered draft GHG threshold that includes a 10,000 metric ton of CO2e per year for stationary/industrial sources and 3,000 metric tons of CO2e per year significance threshold for residential/commercial projects. Tier 3 is anticipated to be the primary tier by which the SCAQMD will determine significance for projects. The Tier 3 screening level for stationary sources is based on an emission capture rate of 90 percent for all new or modified projects, meaning that 90 percent of total emissions from new or modified stationary source projects would be subject to CEQA analysis. The current draft thresholds are as follows:

Tier 1 consists of evaluating whether a project qualifies for an exemption under CEQA
Tier 2 consists of determining whether a project is consistent with a GHG reduction plan. If a project is consistent with a qualifying local GHG reduction plan, its GHG emissions are less than significant.

Tier 3 consists of screening values, which the lead agency can choose. But these but must be consistent. Project construction emissions are averaged over 30 years and are added to a project's operational emissions. If a project's emissions are under one of the following screening thresholds, the emissions are less than significant.

- All land use types: 3,000 MTCO2e per year
- Based on land use types:
  - residential is 3,500 MTCO2e per year,
  - commercial is 1,400 MTCO2e per year
  - mixed use is 3,000 MTCO2e per year

Tier 4 has the following options:

Option 1: Reduce emissions from business as usual by a certain percentage. This percentage is currently undefined.

Option 2: Early implementation of applicable AB 32 Scoping Plan measures.

Option 3: Year 2020 target for service populations (SP), which includes residents and employees: 4.8 MTCO2e/SP/year for projects, 6.6 MTCO2e/SP/year for plans. Year2035 target: 3.0 MTCO2e/SP/year for projects, 4.1 MTCO2e/SP/year for plans.

Tier 5 involves mitigation offsets to achieve target significance threshold.

Impact Assessment

Thresholds of Significance

CEQA Guidelines for Greenhouse Gas: CEQA Guidelines define significant as "a substantial, or potentially substantial, adverse change in the environment." To determine if a project has a significant impact, the type and amount of GHG emissions must be evaluated. The following GHG significance thresholds are contained in Appendix G of the CEQA Guidelines as amended March 18, 2010 pursuant to SB 97. A significant impact would occur if the project would:

a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment or
b) Conflict with any applicable plan, policy or regulation of an agency adopted for the purpose of reducing the emissions of greenhouse gases

SCAQMD Interim Significance Thresholds: In addition to CEQA guidelines, the SCAQMD established an interim significance threshold for GHG emissions under CEQA as discussed above. This compares a Project's GHG emissions to the SCAQMD's Tier 3 numbers.

a) Would the project generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?

Less Than Significant Impact. The Project would generate direct and indirect greenhouse gas emissions from the following sources.

Construction Greenhouse Gas Emissions: CalEEMod was used to estimate onsite and offsite emissions. For procedures and data used to estimate these emissions, refer to Appendix B. GHGs emissions from Project construction equipment and worker vehicle emissions are shown in Table 7-1. Total construction emissions amortized over 30 years are estimated at 24 metric tons of CO2e per year.

TABLE 7-1 - Construction Greenhouse Gas Emissions

Activity	Emissions (MTC02e) (1)		
	Onsite	Offsite	Total
Demolition	38	2	39
Site Preparation	19	1	39
Grading	29	2	30
Building Construction	282	271	553
Paving	21	2	23
Coating	11	11	22
Total	**399**	**288**	**706**
Averaged over 30 years (2)	**13**	**10**	**24**

1 MTCO2e=metric tons of carbon dioxide equivalents (includes carbon dioxide, methane, nitrous oxide, and/or hydroflurocarbons).
2 The emissions are averaged over 30 years because the average is added to the operational emissions, pursuant to SCAQMD recommendations.
* CalEEMod output (Appendix A of the Aliso Viejo Community Center Air Quality and Greenhouse Gas Impact Study, City of Aliso Viejo, California (Appendix B)

Operational Greenhouse Gas Emissions: Operational emissions recur over the life of the project. These are estimated at 1,382 metric tons of CO2e per year as shown in Table 7-2 with transportation to and from the Site producing 78 percent of operational emissions. Table 7-3 compares Project emissions to the SCAQMD's significance thresholds. The Project's operational GHG emissions are below the SCAQMD's recommended significance threshold for this type of project. Therefore, the Project will not result in significant construction emissions.

TABLE 7-2 - Project Greenhouse Gas Emissions During Operation

Emission Source	Emissions (MTCO2e) with Regulation (1)
Area Source	0
Energy Source	153
Mobile Source	1,076
Waste	95
Water	34
Subtotal (Operation)	1,358
Subtotal Construction (averaged over 30 years)	24
Total Annual Emissions	**1,382**

1 MTCO2e = metric tons of carbon dioxide equivalent

TABLE 7-3 - Significance of Greenhouse Gases

Item	Emissions With Regulation	Units
Total Annual Emissions (1)	1,382	MTCO2e/year
SCAQMD Draft Tier 3 threshold	3,000	MTCO2e/year
Exceed Tier 3 Threshold?	**No**	- -
Significant impact?	**No**	- -
1 Refer to Table VII-2 for emissions		

b) Would the project conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emission of greenhouse gases?

No Impact. The Project is in the City's planned urban growth footprint and incorporates features that reduce GHG emissions. Although the Project does generate GHG, mostly from transportation, these emissions are comparatively small and will not have a significant impact on area plans and policies for GHG emission reductions.

AB 32's core mandate is a statewide GHG emission reduction to 1990 levels by 2020. These reductions will come through a variety of mechanisms. CARB has begun to adopt strategies to reduce GHG emissions under AB 32, such as the improved vehicle energy efficiency and switching to lower carbon fuels discussed above. While applicable to stationary land use projects, these strategies are generally not under the control of local agencies. Nonetheless, emission reductions from these strategies have begun to occur and are anticipated to expand.

Other measures contained in the Climate Change Scoping Plan are under development and regulations have not yet been adopted at this time. Therefore, it is difficult to compare the Project's consistency with the implementing programs and regulations to achieve the statewide GHG emission reduction goals established under AB 32 because many are still under development.

With the implementation of energy efficient programs and state and federal vehicle emission reduction programs, the Project would be consistent with the goals of AB 32 and the City of Aliso Viejo. Each project has an allotment of GHG emissions as allocated by the SCAQMD Tier 3 Plan. This Project consumes well below its share.

Therefore, the Project will not conflict with any applicable plan, policy, or regulation of an agency adopted for the purpose of reducing the emissions of greenhouse gases.

Mitigation Measures: No mitigation measures required.

8 - Hazards and Hazardous Materials

8	Would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
(a)	Create a significant hazard to the public or the environment through the routine transport, use or disposal of hazardous materials?				X
(b)	Create a significant hazard to the public or the environment through reasonable foreseeable upset and accident conditions involving the release of hazardous materials into the environment?				X
(c)	Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?				X
(d)	Be located on a site which is included on a list of hazardous materials sites complied pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?				X
(e)	For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?				X
(f)	For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?				X
(g)	Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?				X
(h)	Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?				X

A Phase I Environmental Site Assessment for the Site is reproduced as Appendix F to this document.

Environmental Setting

The flat, 7-acre, roughly triangular Project Site is located north of and adjacent to Cedarbrook and Park Avenue in the City of Aliso Viejo, Orange County, California. Lots 1 and 2 of Tract Map 13687 comprise the Site. There are several older structures and a caretaker mobile home on the site.

Aerial photos from 1938, 1946, 1953, 1963, 1972, 1977, 1989, 1994, 2005, 2009, 2010 and 2012 were examined. The Site remains largely unchanged from 1938 to present. A house and barns were observed in these aerial photos for an isolated agricultural and livestock operation. As such, one would expect tanks holding gasoline or diesel fuel for tractor and other uses along with use of agricultural chemicals. In particular, the 1972 photo is somewhat higher resolution and was shot late in the afternoon, causing shadows. A pump shadow could not be found.

Prior to the 1989 aerial photo, the surrounding area was used for farming and ranching purposes. 1989 shows the surrounding area rapidly developing into its present configuration. The 2005 aerial photo shows the vicinity fully developed into residential, school, road, park and open space uses. Later photos show little change in the surrounding area.

The Project site is not listed in any environmental database searched by Environmental Data Resources. No reports indicating an environmental concern were found for nearby properties. Based on the site reconnaissance and review of historic aerial photos, there is no evidence that hazardous substances or petroleum products (in quantity) existed on the Project site. However, because of the agricultural uses, the likelihood of a gasoline storage tank and pump is high. However, the pump and tank appear to have been removed some years ago leaving no trace to be found during a standard Phase I assessment.

Aliso Viejo residents are exposed to hazards associated with potential wildfires. Portions of the City abut Aliso and Woods Canyon Wilderness Park, which is located within the Orange County Fire Authority (OCFA) Very High Fire Hazard Severity Zone. OCFA has established a Wildland Task Force to educate the public living near wildlands about ways they can protect themselves from wildfire threats. OCFA provides fire protection and emergency services to Aliso Viejo on a contract basis. One fire station is located within Aliso Viejo at 57 Journey. Other stations serving the City are located at 24241 Avila Road in the City of Laguna Niguel and at 24001 Paseo de Valencia in the City of Laguna Woods. Emergency medical transportation is provided through City contracts with private sector providers.

Impact Assessment

a) Would the project create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?

No Impact. Project construction is not anticipated to involve transport, use, creation or disposal of hazardous materials. Should facility operation involve these materials, compliance with federal, State and local hazardous materials regulations, as well as Project compliance with the 2004 General Plan Safety Element includes goals and policies to reduce the risk of hazardous material incidents (Goal S-4, Policy S-4.2, S-4.3 and S-4.3) to a less than significant impact.

General Plan Goal S-4: Protect the community from hazards associated with air pollution, hazardous materials and nuclear power production.

General Plan Policy S-4.2: Minimize risks associated with ground transportation of hazardous materials through Aliso Viejo.

General Plan Policy S-4.3: Provide education and information to City residents regarding proper use, storage and disposal of household hazardous materials.

Therefore, the Project will not create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials.

b) Would the project create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?

No Impact. Use of hazardous materials in quantity at a community facility is not anticipated. Construction and operation of the Project will comply with existing laws, ordinances and regulations that govern the use, transport or disposal of hazardous materials., as well as Project compliance with the 2004 General Plan Safety Element goals and policies to reduce the risk of hazardous material incidents (Goal S-4, Policy S-4.1, S-4.2 and S-4.3) to a less than significant impact. Therefore, the Project will not create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment.

c) Would the project emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school

No Impact. The Project is located adjacent to the Aliso Viejo Middle School. The Project is in compliance with the SCAQMD AQMP. The proposed community facilities are not anticipated to handle hazardous materials or waste. Further, construction and operation of the Project will comply with existing laws, ordinances and regulations that govern use, transport or disposal of hazardous materials as well as Project compliance with the 2004 General Plan Safety Element goals and policies to reduce the risk of hazardous material incidents (Goal S-4, Policy S-4.1, S-4.2 and S-4.3) to a less than significant impact.

Therefore, the Project will not emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school.

d) Would the project be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?

No Impact. The Site is not included on a list of hazardous materials sites compiled pursuant to Government Code section 65962.5. Therefore, the Project will not create a significant hazard to the public or the environment related hazardous material sites.

e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?

No Impact. The Site is not located within an airport land use plan or within two miles of a public airport or public use airport. Therefore, the Project will not result in a safety hazard

for people residing or working in the project area related to the operations of a public or public use airport.

f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?

No Impact. The Site is not located within the vicinity of a private airstrip. Therefore, the Project will not result in a safety hazard for people residing or working in the project area related to the operations of a private airstrip.

g) Would the project impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?

No Impact. Aliso Viejo has an Emergency Operations Plan that is consistent with State Emergency Management System Requirements. The General Plan identifies evacuation routes to be used in the event of a major emergency. The Site is not located on a busy thoroughfare or exit route and would not impede evacuation. Compliance with the City's adopted Emergency Operations Plans will ensure Project-related impacts are less than significant. Therefore, the Project will not impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan.

h) Would the project expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?

No New Impact. As identified in the 2004 General Plan Final EIR, future development in the City will expose persons and structures to hazards associated with wildfires. The City has adopted mitigation measures (H-1 through H-9) pursuant to the 2004 General Plan EIR that were found to reduce potential impacts related to wildfires to a level of less than significant. The 2004 General Plan Final EIR Mitigation Measures H-1 through H-9 are listed below.

General Plan Final EIR Mitigation Measure H-1: The City shall prepare, adopt and implement a Zoning Ordinance or Specific Plan and Map consistent with State Law, which codifies and expands development restriction and landscape maintenance requirements in areas within and near Very High Fire Hazard Severity Zones.

When the City renews contracts with the Orange County Fire Authority (OCFA) the City shall consider the following issues

- Staffing levels identified in service contracts should reflect the established service standards, community population, increased emergency activity, geography of service areas and funds availability.
- Contracts should include service to new development that will be constructed during terms of the contract.

- Size of facilities and type of resources within the City should accommodate sufficient staff and equipment, and distribution of the facilities should minimize emergency response times.

General Plan Final EIR Mitigation Measure H-3: The City shall: 1) evaluate the need for additional fire facilities or resources to serve new development projects that vary from established agreements; 2) coordinate with the Aliso Viejo Community Association (AVCA) and service providers to evaluate the level of fire service provided to the community; and 3) require adequate street widths and clearance for emergency access.

General Plan Final EIR Mitigation Measure H-4: The City shall use public education activities to raise public awareness of the fire safety issues including wildland fire prevention, where to take pets during fire-related evacuations, and the benefits of fire resistant slope cover. The City shall coordinate education activities and make materials available to residents and utilize forums, flyers, brochures and the City website to accomplish this objective.

General Plan Final EIR Mitigation Measure H-5: The City shall implement a Geographic Information System (GIS) to provide accurate mapping and detailed information pertaining to public safety within the planning area. The City shall expand the GIS system to include information pertaining to fire hydrants, parcels subject to fuel modification plans, and emergency management information. These data shall be shared with OCFA.

General Plan Final EIR Mitigation Measure H-6: The City shall support research and development of new technologies to prevent and suppress fires (e.g. foam treatments for new construction and other means). And, if appropriate, the City shall encourage OCFA to utilize such technologies to improve fire safety in Aliso Viejo.

General Plan Final EIR Mitigation Measure H-7: The City shall: 1) work collaboratively with AVCA and OCFA, carefully investigate the status of fuel modification plans, applicable to properties within the City and issue an educational notice to residents and property owners of lots with established fuel modification zones; 2) encode parcels subject to fuel modification plans within the City's Geographic Information System (GIS) and prepare a map and notices to property owners describing the types of vegetation permitted and restricted within the applicable modification zone; and 3) amend the Safety Policy Map (Figure S-1 in the Safety Element) in the future to incorporate this information.

General Plan Final EIR Mitigation Measure H-8: Continue to work with AVCA to identify alternative emergency water sources, such as private swimming pools, to assist in fire suppression activities.

General Plan Final EIR Mitigation Measure H-9: The City shall work closely with the OCFA to implement fire hazard education and fire prevention programs, including fuel modification programs and controlled burns. In addition, the City shall coordinate with OCFA to ensure that water pressure for urban areas and sites to be developed is adequate for fire fighting purposes.

Pursuant to the General Plan, the Project will be required to comply with mitigation measures (H-1 through H-9). This will ensure that the Project will not expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands.

Mitigation Measures: No mitigation measures required.

9 - Hydrology and Water Quality

9	Would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
(a)	Violate any water quality standards or waste discharge requirements?				X
(b)	Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?				X
(c)	Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in a substantial erosion or siltation on- or offsite.				X
(d)	Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or offsite?				X
(e)	Create or contribute runoff water which would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff?				X
(f)	Otherwise substantially degrade water quality?				X
(g)	Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?				X
(h)	Place within a 100-year flood hazard area structures which would impede or redirect flood flows?				X
(i)	Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?				X
(j)	Inundation by seiche, tsunami, or mudflow?				X

Environmental Setting

Site Specific information was obtained from the Project Memorandum regarding Hydrology and Water Quality reproduced as Appendix G to this document. Information was also summarized from the Final EIR prepared for the Aliso Viejo General Plan.

Aliso Viejo is located within the San Diego Region (Region 9) of the California Regional Water Quality Control Board and within the Water Quality Control Board San Juan Creek Watershed Management Area and on the San Juan Hydrologic Unit. The Orange County Flood Control District is responsible for regional flood control and drainage facilities. The City maintains local facilities that tie into the Flood Control District regional system. Local drainage facilities consist mostly of underground closed conduits and storm drains located mainly in developed areas of the City. Local drainage facilities collect and convey storm water to regional facilities such as Laguna Canyon, Wood Canyon and Aliso Creek Channels. The Water Quality Control Board has designated creeks within these Channels as impaired because the creeks have been found to have toxic levels of coliform bacteria, a pollutant of concern per Clean Water Act Section 303(d). Federal Emergency Management Agency (FEMA) Flood Insurance Rater Maps depict portions of Aliso Viejo (but not the project Site) as within a 100-year flood zone. Elevations on the Site range from approximately 220 to 240 feet above mean sea level.

Impact Assessment

a) Would the project violate any water quality standards or waste discharge requirements?

No Impact. The Project must comply with existing water quality standards and waste discharge regulations set forth by the San Diego Regional Water Quality Control Board. Further, the Project will be designed to conform to City of Aliso Viejo water quality design standards and wastewater facilities and disposal will comply with current standards of Aliso Wastewater Management Agency. All building wastewater and sewerage disposal systems on the Site will be connected to a public sewer system and be conveyed to the regional treatment plant. As required, storm water quality standards during construction will conform to the requirements of the San Diego Regional Water Quality Control Board. Therefore, the Project will not violate any water quality standards or waste discharge requirements.

b) Would the project substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?

No Impact. While consistent with the General Plan, the Project will intensify land use onsite. The Site has been previously graded and disturbed. Underground utilities including storm drains have been installed to these pads. Project development will grade roughly 5.68 acres of the Site. The Project will increase the amount of impervious surface onsite. However, the Project will be designed to maintain the existing rate of groundwater recharge. Therefore, the Project will not lead to substantial depletion of groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g. the production rate of existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted).

As identified in the 2004 General Plan Final EIR identified that 1) future development, especially on undeveloped land, will increase the area of impervious surfaces, 2) storm water containing pollutants conveyed to the Aliso Creek Channel has the potential to impact groundwater resources in the Aliso Creek groundwater basin and 3) increased demand for domestic water supply that will result from implementation of the General Plan (i.e. development of the City) may impact groundwater resources. As part of the City's adoption of the General Plan it approved mitigation measures HWQ-2, HWQ-4, HWQ-6, HWQ-7, HWQ-9 and HWQ-11 which were found to reduce these impacts to a level of less than significant. The 2004 General Plan Final EIR Mitigation Measures HWQ-2, HWQ-4, HWQ-6, HWQ-7, HWQ-9 and HWQ-11 are listed below.

General Plan Final EIR Mitigation Measure HWQ-2: The City shall meet all requirements of the San Diego Regional Water Quality Control Board (SDRWQCB) Order # R9-2002-0001, pursuant to the National Pollutant Discharge and Elimination System (NPDES). Requirements of the Order include implementation of a Jurisdictional Urban Runoff Management Plan (JURMP), addressing a variety of topics related to urban runoff, including Best Management Practices in the planning and construction of new and existing development, education of City staff and the community as a whole regarding polluted urban runoff, and revising the environmental review process to analyze water quality impacts from development.

General Plan Final EIR Mitigation Measure HWQ-4: Prior to making land use decisions, the City shall utilize available methods to estimate increases in pollutant loads and flows resulting from projected development. In addition, applicants for new development and redevelopment projects shall demonstrate accomplishment of the following NPDES objectives:

- Use of structural and nonstructural Best Management Practices (BMPs) to mitigate projected increases in pollutant loads and flows.
- Minimized pollutant loading flow velocity during and after construction.
- Minimized amounts of impervious surfaces and directly connected impervious surfaces.
- Maximize on-site infiltration and runoff and temporary on-site retention areas.
- Limited disturbance of natural water bodies and natural drainage systems.
- Pollution prevention methods, source controls and treatment using small collection strategies located at, or as close as possible to, the source.

General Plan Final EIR Mitigation Measure HWQ-6: The City shall continue to work with AVCA to ensure that landscaping, park maintenance and other services provided by AVCA: 1) prevent groundwater pollution from fertilizer application and other potential pollutants; and 2) employ water conservation measures and use recycled water if available from water suppliers.

General Plan Final EIR Mitigation Measure HWQ-7: The City shall work with all provision of the National Pollution Discharge and Elimination System (NPDES) permit, and support regional efforts by SDRWQCB to improve and protect water quality.

General Plan Final EIR Mitigation Measure HWQ-9: The City shall develop a diverse plant palette consisting of native and xeriscape plants that may be used near trails, greenways and landscaped roadways in Aliso Viejo. The City shall also require that 50 percent of all new public and private landscaping within the City consist of low water, native/xeriscape plants drawn from the palette. This objective shall be periodically evaluated and the required percentage increased over time.

General Plan Final EIR Mitigation Measure HWQ-11: The City shall continue to work with the Moulton Niguel and El Toro Water Districts to implement the Urban Water Master Plan and ensure that adequate water supplies are available to meet the needs of current and future growth,

The Project will be required to comply with mitigation measures HWQ-2, HWQ-4, HWQ-6, HWQ-7, HWQ-9 and HWQ-11.

Further, the City has determined that the existing off-site storm drain facilities have sufficient capacity to accommodate runoff generated by build out of the Project.

As designed, and with the implementation of General Plan EIR mitigation measures HWQ-2, HWQ-4, HWQ-6, HWQ-7, HWQ-9 and HWQ-11, Project-related impacts are less than significant.

c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in a substantial erosion or siltation on- or offsite.

No Impact. The Site currently drains by gravity flow to the southwest. Project development will grade roughly 5.68 acres of the Site. The Site will continue to drain by gravity to the southwest. Proposed parking areas will be constructed of permeable material (non-asphalt) and will capture and treat low-flow runoff. There are no streams or drainages onsite. Project development will include landscaping of areas currently devoid of vegetation reducing the amount of onsite siltation and erosion. Site development will not increase the rate or volume of runoff. Therefore, the Project will not substantially alter the existing drainage pattern of the Site or area, including through the alteration of the course of a stream or river, in a manner, which would result in a substantial erosion or siltation on- or offsite.

d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or offsite?

No Impact. The Site currently drains by gravity flow to the southwest. Project development will grade roughly 5.68 acres of the Site. The Project will continue to drain by gravity to the southwest. Proposed parking areas will be constructed of permeable material (non-asphalt) and will capture and treat low-flow runoff. There are no streams or drainages

onsite. Project development will include landscaping of areas currently devoid of vegetation reducing the amount of onsite siltation and erosion. Site development will not increase the rate or volume of runoff. Therefore, the Project will not Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or offsite.

e) Create or contribute runoff water which would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff?

No Impact. The Site currently drains by gravity flow to the southwest. Project development will grade roughly 5.68 acres of the Site. The Project will continue to drain by gravity to the southwest. Project development will not increase the rate or volume of runoff. The Project proposes an infiltration basin below a permeable (non-asphalt) parking area in the southwestern portion of the Site. The infiltration basin will capture runoff and reduce the amount of low-flow pollutants leaving the Site. Based on a preliminary review of the hydrology and hydraulics information of the existing storm drain system, the project engineer (APA Engineering) concluded there is sufficient capacity to handle the proposed flows for the proposed development (Storm Drain Facility JO1P26). Potential runoff pollutants will be treated with Best Management Practices in accordance with current requirements of the San Diego Regional Water Quality Control Board, Region 9. Therefore, the Project will not create or contribute runoff water, which would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff and no impact will result.

f) Otherwise substantially degrade water quality?

No Impact. The Site currently drains by gravity flow to the southwest. Project development will require grading over approximately 5.68 acres of the Site. The Project will continue to drain by gravity flow to the southwest. Project development will not increase the rate or volume of runoff. The Project proposes an infiltration basin below a permeable (non-asphalt) parking area in the west/southwestern portion of the Site. The infiltration basin will capture runoff and reduce the amount of low-flow pollutants leaving the Site. Potential runoff pollutants will be treated with Best Management Practices in accordance with current requirements of the San Diego Regional Water Quality Control Board, Region 9. Therefore, the Project will not otherwise substantially degrade water quality.

g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?

No Impact. The Site is not within a 100-year flood hazard area. Therefore, the Project will not place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map.

h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?

No Impact. The Site is not within a 100-year flood hazard area. Therefore, the Project will not place within a 100-year flood hazard area structures which would impede or redirect flood flows.

i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?

No Impact. The Site is not located within a dam or levee inundation area. Therefore, the Project will not expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam.

j) Inundation by seiche, tsunami, or mudflow?

No Impact. The Site is not located within an area subject to seiche, tsunami or mudflow. Therefore, the Project will not expose people or structures to significant risk of loss, injury or death involving inundation by seiche, tsunami or mudflow.

Mitigation Measures: No mitigation measures required.

10 - Land Use and Planning

10	Would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
(a)	Physically divide an established community?				X
(b)	Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the General Plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?				X
(c)	Conflict with any applicable habitat conservation plan or natural community conservation plan?				X

Environmental Setting

The City of Aliso Viejo encompasses approximately seven square miles and is bordered by Laguna Beach to the west, Laguna Woods to the north, Laguna Hills to the east and Laguna Niguel to the east and south. Prior to cityhood, Aliso Viejo was an unincorporated area within the County of Orange, which had been completely master-planned by the Mission Viejo Company. The City has a mixture of single and multi-family residential, commercial, business park, professional office, community facilities, open space and recreation uses. According to the 2010 Census, City population was 47,823 residents.

Regulatory Context

City of Aliso Viejo General Plan and Development Code

California State law (Government Code Section 65300) requires each city and county to adopt a comprehensive, long-term General Plan for its own physical development and for any land outside its boundaries related to its planning activities. Land uses within the City of Aliso Viejo are controlled by the Aliso Viejo General Plan and Development Code. The General Plan addresses issues related to growth and development and is a blueprint describing what the residents want the City to become with options to guide development through 2004. The City is roughly 95% built-out. More than 90 percent of developable land in Aliso Viejo is built upon.

Existing Site Conditions

The Site is currently designated Community Facilities by the General Plan Land Element Land Use Policy Map and on the City of Aliso Viejo Official Zoning Map. On May 1, 2013, the City reviewed the 2013 concept Site Plan for the Property (See Figure 12) and instructed City staff to prepare a Planning Application for a Site Development Permit for the Project.

Impact Assessment

a) Physically divide an established community?

No Impact. The Project proposes to develop the site consistent with the land use designated City General Plan, Site Zoning for the Site. This land use is consistent with the existing use of the Site. Therefore, the Project will not physically divide an established community.

b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the General Plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?

No Impact. The Project is consistent with the City General Plan and Site Zoning. This Site is not located within the Coastal Zone and is not subject to a local coastal program. Therefore, the Project will not conflicting with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the General Plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect.

c) Conflict with any applicable habitat conservation plan or natural community conservation plan?

No Impact. The Site is not within the boundary of an adopted habitat conservation plan or natural community conservation plan. Therefore, the Project will not conflict with any applicable habitat conservation plan or natural community conservation plan.

Mitigation Measures: No mitigation measures required.

11 - Mineral Resources

11	Would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
(a)	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?				X
(b)	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?				X

Environmental Setting

According to the General Plan Final EIR, Aliso Viejo has no known mineral resources.

Impact Assessment

a) 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?

No Impact. Aliso Viejo has no known mineral resources that would be of value to the region and the residents of the state. Therefore, the Project will 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 and no impact will result

b) 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?

No Impact. The Site is not delineated in the City General Plan or Municipal Code as a locally important resource recovery site. The Site is not within the boundary of a specific plan or other land use plan. Therefore, the Project will 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 and no impact will result.

Mitigation Measures: No mitigation measures required.

12 - Noise

12	Would the project result in:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
(a)	Exposure of persons to or generation of noise levels in excess of standards established in the local General Plan or noise ordinance, or applicable standards of other agencies?			X	
(b)	Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?			X	
(c)	A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?			X	
(d)	A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?			X	
(e)	For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?				X
(f)	For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?				X

The following information was summarized from the Noise Impact Study prepared for the proposed Project. This report is reproduced as Appendix H to this document.

Environmental Setting

Operations are not anticipated to occur during nighttime hours[3] (10:00 p.m. to 7:00 a.m.). Therefore, this assessment evaluates noise impacts during daytime hours (7:00 a.m. to 10:00 p.m.).

Short-Term Noise Measurement Results

To evaluate existing noise conditions, short-term ambient noise measurements were taken on September 25, 2013 at five locations on or near the Site. Figure 29 maps these measurement points. Traffic from nearby roadways is the main noise source at the Site and surrounding area. Measurements results are shown in Table 12-1 and indicate the Site experiences noise ranging from 48.0 to 56.5 dBA Leq during daytime hours. Noise levels vary depending on distance from the centerline of a roadway, time of day, traffic speeds and activity. The City's daytime stationary noise level limit is exceeded at points S3, S4 and S5 by existing ambient conditions.

[3] The Aliso Viejo Municipal Code (Section 8.12.050) Exterior Noise Standards apply from 10:00 p.m. to 7:00 a.m.)

Therefore, the Project must not further exceed existing ambient noise conditions. Table 12-2 shows the noise measurements as an estimated Community Equivalent Noise Level (CNEL) based on off-peak traffic hour volumes for a distribution of typical Orange County roads.

TABLE 12-1 - Short-term Noise Monitoring Levels (decibels A-weighted - dBA)

Site No.	Time Started	Leq	Lmin	Lmax	L2	L8	L25	L50	Comments
S1	9:30 am	48.0	42.4	70.6	51.9	49.5	48.4	47.3	Ambient Noise = City traffic and Aliso Viejo Community Park
S2	9:50 am	49.4	44.8	59.6	54.1	51.5	50.0	48.7	Ambient Noise = City traffic and Aliso Viejo Middle School
S3	10:05 am	51.8	46.2	66.2	58.0	54.6	52.0	50.5	Ambient Noise = City traffic and adjacent residential homes
S4	10:20 am	51.6	46.3	66.3	55.1	53.6	52.3	51.1	Ambient Noise = City traffic and adjacent residential homes
S5	10:35 am	56.5	51.0	68.6	60.8	59.3	57.1	55.4	Ambient Noise = City traffic and adjacent residential homes

TABLE 12-2 - Noise Measurements CNEL Summary

Noise Monitoring Location	Description of Monitoring Location	CNEL or Estimated CNEL
S1	Meter placed 55' north of the Park Avenue centerline along the southern property line. Ambient noise includes noise along Park Avenue and the AV Community Park.	52.4
S2	Meter placed 100' west of the Park Avenue centerline along the eastern property line. Ambient noise includes noise along Park Avenue and the Aliso Viejo Middle School.	56.5
S3	Meter placed 175' west of the Park Avenue centerline along the eastern property line. Ambient noise includes noise along Park Avenue and the residential homes.	56.2
S4	Meter placed 20' west of the western property line. Ambient noise includes noise along Park Avenue and the residential homes.	57.0
S5	Meter placed 20' west of the western property line. Ambient noise includes noise along Park Avenue and the residential homes.	53.6

Modeled Existing Traffic Noise Levels

The noise contours for nearby roadways were computed using the FHWA Traffic Noise Prediction Model to provide a baseline of the existing traffic noise levels. In all cases, exterior noise levels were calculated at five feet above ground level and from the centerline of the subject roadway. See Appendix H to this document (the Noise Study) for details of the noise level calculations. Distances in feet to the 55, 60, 65 and 70 dBA Community Equivalent Noise Level (CNEL) noise contours were determined. In addition, the noise level 100 feet from the centerline was calculated and is representative of noise at the nearest homes to the roadways. Existing traffic (without Project) noise levels along the roadways are presented in Table 12-3.

Impact Assessment

a) Exposure of persons to or generation of noise levels in excess of standards established in the local General Plan or noise ordinance, or applicable standards of other agencies?

Table 12-3 - Existing 2013 (Without Project) Exterior Noise Levels Along Roadways

Roadway	Segment	CNEL at 100 ft (dBA)	Distance to Contour (ft)			
			70 dBA CNEL	65 dBA CNEL	60 dBA CNEL	55 dBA CNEL
Aliso Viejo Parkway	Enterprise to Aliso Creek Road	66.4	58	125	269	580
Aliso Viejo Parkway	Aliso Creek Road to Cedarbrook	67.9	73	157	337	727
Aliso Viejo Parkway	Cedarbrook to Moulton Parkway	67.7	71	153	329	708
Aliso Creek Road	Golf Drive to Aliso Viejo Parkway	66.0	54	117	251	541
Aliso Creek Road	Aliso Viejo Parkway to Windsong	67.2	65	139	300	647
Aliso Creek Road	Windsong to NB SR-73 Ramp	67.6	70	150	323	697
Windsong	Aliso Creek Road to Cedarbrook	55.1	10	22	47	102
Cedarbrook	Aliso Viejo Parkway to Windsong	55.5	11	23	50	108
Cedarbrook	Windsong to Park Avenue	52.9	7	16	34	73

Less Than Significant Impact. Existing plus project noise contours were computed for nearby roadways and are shown in Table 12-4. Projected noise 100 feet from the centerline of the analyzed roadways ranges from 54.0 to 68.0 dBA CNEL.

Table 12-4 - Existing 2013 (With Project) Exterior Noise Levels Along Roadways

Roadway	Segment	CNEL at 100 ft (dBA)	Distance to Contour (ft)			
			70 dBA CNEL	65 dBA CNEL	60 dBA CNEL	55dBA CNEL
Aliso Viejo Parkway	Enterprise to Aliso Creek Road	66.5	58	126	271	584
Aliso Viejo Parkway	Aliso Creek Road to Cedarbrook	68.0	73	157	339	730
Aliso Viejo Parkway	Cedarbrook to Moulton Parkway	67.8	71	154	331	714
Aliso Creek Road	Golf Drive to Aliso Viejo Parkway	66.0	55	117	253	545
Aliso Creek Road	Aliso Viejo Parkway to Windsong	67.2	65	140	302	651
Aliso Creek Road	Windsong to NB SR-73 Ramp	67.7	71	153	329	708
Windsong	Aliso Creek Road to Cedarbrook	55.7	11	24	52	112
Cedarbrook	Aliso Viejo Parkway to Windsong	56.0	12	25	54	117
Cedarbrook	Windsong to Park Avenue	54.0	9	18	40	85

Table 12-5 compares existing noise without and with the Project. Building the Project adds 0.0 to 1.1 dBA CNEL on nearby roadways. The 100-foot CNEL numbers are to compare noise without and with the Project only and do not include the effect of topography, noise barriers, structures or other factors that reduce actual noise by 5 to 10(+) dBA for outdoor living areas. A noise impact is considered significant if there is a substantial increase above the baseline case. The human ear can detect 3 dBA changes. Less than 3 dBA is not readily discernible in an outdoor environment. Thus, 3 dBA is the threshold. The with-Project 1.1 dBA maximum CNEL increase does not exceed the General Plan Noise Element criteria. Therefore, the impact is less than significant.

Table 12-5 - Change in 2013 Noise Levels as a Result of Project (dBA CNEL)

Roadway	Segment	Distance to Contour (ft)			
		Year 2013 without Project	Year 2013 with Project	Change in Noise Level	Potential Significant Impact
Aliso Viejo Parkway	Enterprise to Aliso Creek Road	66.4	66.5	0.1	**No**
Aliso Viejo Parkway	Aliso Creek Road to Cedarbrook	67.9	68.0	0.1	**No**
Aliso Viejo Parkway	Cedarbrook to Moulton Parkway	67.7	67.8	0.1	**No**
Aliso Creek Road	Golf Drive to Aliso Viejo Parkway	66.0	66.0	0.0	**No**
Aliso Creek Road	Aliso Viejo Parkway to Windsong	67.2	67.2	0.0	**No**
Aliso Creek Road	Windsong to NB SR-73 Ramp	67.6	67.7	0.1	**No**
Windsong	Aliso Creek Road to Cedarbrook	55.1	55.7	0.6	**No**
Cedarbrook	Aliso Viejo Parkway to Windsong	55.5	56.0	0.5	**No**
Cedarbrook	Windsong to Park Avenue	52.9	54.0	1.1	**No**

Year 2035 without Project Traffic Condition: Table 12-6 shows the 2035 without Project condition noise contours for nearby roadways. This ranges from 53.4 to 68.8 dBA CNEL.

Year 2035 with Project Traffic Condition: Table 12-7 shows the 2035 with Project condition noise contours for nearby roadways. This ranges from 54.3 to 68.9 dBA CNEL.

Table 12-8 compares 2035 without Project Condition to 2035 with Project Condition. Adding the Project gives a 0.9 dBA CNEL maximum increase. This is a less than an audible change and thus is considered less than significant.

Onsite Traffic Noise Impacts to Project: Based on 2035 with Project noise, the Site will experience worst-case exterior traffic noise of roughly 56.1 dBA CNEL. This is below the City's 65 dBA CNEL exterior standard. This impact is less than significant.

2035 Noise Level - Flat World vs. with Topography: Table 12-9 compares 2035 noise levels in a flat world condition to that with topography that absorbs or reflects sound. Roadway segments where noise exceeds the City's 65-dBA CNEL standard for the flat-world scenario are all below the 65-dBA standard, 49.1 to 62.5 dBA with existing topography. The projected noise is below the City's 65 dBA standard and therefore is less than significant.

Table 12-6 - Future 2035 (Without Project) Exterior Noise Levels Along Roadways

Roadway	Segment	CNEL at 100 ft (dBA)	Distance to Contour (ft)			
			70 dBA CNEL	65 dBA CNEL	60 dBA CNEL	55 dBA CNEL
Aliso Viejo Parkway	Enterprise to Aliso Creek Road	67.7	70	151	325	700
Aliso Viejo Parkway	Aliso Creek Road to Cedarbrook	68.8	84	180	388	836
Aliso Viejo Parkway	Cedarbrook to Moulton Parkway	68.6	81	175	377	811
Aliso Creek Road	Golf Drive to Aliso Viejo Parkway	66.7	60	130	280	604
Aliso Creek Road	Aliso Viejo Parkway to Windsong	67.7	70	151	326	701
Aliso Creek Road	Windsong to NB SR-73 Ramp	68.2	76	163	351	756
Windsong	Aliso Creek Road to Cedarbrook	55.5	11	23	50	108
Cedarbrook	Aliso Viejo Parkway to Windsong	55.9	12	25	53	115
Cedarbrook	Windsong to Park Avenue	53.4	8	17	36	78

Table 12-7 - Future 2035 (With Project) Exterior Noise Levels Along Roadways

Roadway	Segment	CNEL at 100 ft (dBA)	Distance to Contour (ft)			
			70 dBA CNEL	65 dBA CNEL	60 dBA CNEL	55 dBA CNEL
Aliso Viejo Parkway	Enterprise to Aliso Creek Road	67.7	70	152	327	704
Aliso Viejo Parkway	Aliso Creek Road to Cedarbrook	68.9	84	181	390	839
Aliso Viejo Parkway	Cedarbrook to Moulton Parkway	68.7	82	176	379	817
Aliso Creek Road	Golf Drive to Aliso Viejo Parkway	66.8	61	131	282	608
Aliso Creek Road	Aliso Viejo Parkway to Windsong	67.7	70	152	327	705
Aliso Creek Road	Windsong to NB SR-73 Ramp	68.3	77	165	356	767
Windsong	Aliso Creek Road to Cedarbrook	56.1	12	25	55	118
Cedarbrook	Aliso Viejo Parkway to Windsong	56.1	12	26	55	118
Cedarbrook	Windsong to Park Avenue	54.3	9	19	42	90

Stationary Noise: Table 12-10 shows exterior noise levels with Project HVAC equipment operating along the northwest property line, the nearest sensitive receptor area. The Project incorporates **Project Design Feature (PDF-4)** "The Project will include parapet walls and equipment enclosures to shield any potential HVAC equipment noise." Noise from the (shielded) condenser unit adds roughly 0.0 to 0.2 dBA. This operating noise increase does not exceed the City's exterior noise standards. Therefore, the impact is less than significant.

Table 12-8 - Change in 2035 Noise Levels as a Result of Project

Roadway	Segment	Distance to Contour (ft)			
		Year 2013 without Project	Year 2013 with Project	Change in Noise Level	Potential Significant Impact
Aliso Viejo Parkway	Enterprise to Aliso Creek Road	67.7	67.7	0.0	No
Aliso Viejo Parkway	Aliso Creek Road to Cedarbrook	68.8	68.9	0.1	No
Aliso Viejo Parkway	Cedarbrook to Moulton Parkway	68.6	68.7	0.1	No
Aliso Creek Road	Golf Drive to Aliso Viejo Parkway	66.7	66.8	0.1	No
Aliso Creek Road	Aliso Viejo Parkway to Windsong	67.7	67.7	0.0	No
Aliso Creek Road	Windsong to NB SR-73 Ramp	68.2	68.3	0.1	No
Windsong	Aliso Creek Road to Cedarbrook	55.5	56.1	0.6	No
Cedarbrook	Aliso Viejo Parkway to Windsong	55.9	56.1	0.2	No
Cedarbrook	Windsong to Park Avenue	53.4	54.3	0.9	No

Table 12-9 - Change in 2035 Noise Levels - Flat World vs. with Topography Scenarios

Roadway	Segment	CNEL at Nearest Sensitive Receptor		
		Flat World Scenario	Topography Scenario	Change in Noise Level
Aliso Viejo Parkway	Enterprise to Aliso Creek Road	67.7	60.9	-6.8
Aliso Viejo Parkway	Aliso Creek Road to Cedarbrook	68.8	62.5	-6.3
Aliso Viejo Parkway	Cedarbrook to Moulton Parkway	65.3	55.3	-10.0
Aliso Creek Road	Golf Drive to Aliso Viejo Parkway	66.6	49.1	-16.5
Aliso Creek Road	Aliso Viejo Parkway to Windsong	69.4	62.3	-7.1
Aliso Creek Road	Windsong to NB SR-73 Ramp	66.6	58.1	-8.5

Table 12-10 - Projected Exterior Noise Levels at Northern Property Line (dBA)

	Source	1st Floor Adjusted Noise Levels (dBA)						
		Distance from Reference Source (feet)	Leq	Lmax	L2	L8	L25	L50
Daytime (7 a.m. - 10 p.m.)	Condenser Unit2	75	37.9	37.9	37.9	37.9	37.9	37.9
	Existing Ambient Measurement3	--	51.6	66.3	55.1	53.6	52.3	51.1
	Total Combined Noise Impact4		51.8	66.3	55.2	53.7	52.5	51.3
	City of Aliso Viejo not to exceed Noise Standards	--	--	75.0	70.0	65.0	60.0	55.0
	Change in Noise Levels as a result of Project	--	--	0.0	0.1	0.1	0.2	0.2

Interior Noise: Typical building construction provides a conservative 12 dBA noise reduction from exterior levels with "windows open" and a very conservative 20 dBA noise reduction with "windows closed." A "windows closed" (minus 20 dBA) condition was used for this interior noise analysis. Future interior noise levels are shown in Table 12-11. Noise from Project operation inside nearby homes is less by 13.7 to 19.8 dBA than required by the City's noise standard. This impact is considered less than significant.

Table 12-11 - Projected Interior Noise Levels at Northern Property Line (dBA)

	Source	1st Floor Adjusted Noise Levels (dBA)						
		Distance from Reference Source (ft)	Leq	Lmax	L2	L8	L25	L50
Daytime (7 a.m. - 10 p.m.)	Condenser Unit	75	37.9	37.9	37.9	37.9	37.9	37.9
	Existing Ambient Measurement	--	51.6	66.3	55.1	53.6	52.3	51.1
	Total Combined Noise Impact		51.8	66.3	55.2	53.7	52.5	51.3
	Projected Interior Noise Levels		31.8	46.3	35.2	33.7	N/A	N/A
	City of Aliso Viejo not to exceed Noise Standards	--	--	60.0	55.0	50.0	--	--
	Project margin of safety	--	--	-13.7	-19.8	-16.3	--	--

In summary, the Project will not result in exposure of persons to or generation of noise levels in excess of standards established in the local General Plan or noise ordinance, or applicable standards of other agencies.

b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?

Less Than Significant Impact. Construction will cause groundborne vibration and noise. City Municipal Code prohibits construction between 8 p.m. and 7 a.m. on weekdays, 8 p.m. and 8 a.m. on Saturday, on Sunday or on federal holidays. Project construction will comply with these restrictions. The effect of vibration on structures has been studied extensively. According to the Konan Vibration Criteria for Historic and Sensitive Buildings, vibration should not exceed 0.300 inches per second peak particle velocity (PPV). 0.030 inches per second is barely perceptible. Project construction will not require equipment such as pile drivers that generate substantial vibration. The largest construction vibration source is likely to be a bulldozer. A small bulldozer causes roughly 0.003 inches per second PPV at 25 feet. Neighboring homes are farther than 25 feet away. No noticeable vibration will occur at nearby homes. Therefore, the Project will not result in exposure of persons to or generation of, excessive ground borne vibration or ground borne noise levels.

c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?

Less Than Significant Impact. Refer to the analysis for question (a) above. Table 12-5 compares existing conditions without and with the Project. Adding the Project increases noise by 1.1 dBA CNEL along nearby roadways. Table 12-8 projects a 2035 with Project noise increase of 0.9 dBA giving 49 to 63 dBA CNEL on nearby roadways. This is below

the City's 65 dBA CNEL standard and thus is less than significant. Table 12-10 shows Project operation will increase exterior noise levels along the northwest property line by 0.0 to 0.2 dBA. Projected noise levels are below the City's exterior noise standards. Therefore, the impact is considered less than significant. Interior noise levels are shown in Table 12-11. Interior noise levels due to the Project in nearby homes are well below the City's noise standard. This impact is considered less than significant. Therefore, the Project will not result in a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project.

d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?

Less Than Significant Impact. The Project will generate short-term construction noise, long-term operational noise and traffic noise above ambient levels without the Project.

Construction noise is a short-term impact and would be considered significant if work activities occurred outside allowable times given by the City's Municipal Code (Section 8.12.070). The City has an exemption for noise created during normal construction hours. Because Project construction will comply with Municipal Code, short-term construction impacts are considered less than significant.

Regarding Project operating noise, refer to the analysis for question (a) above. Table 12-8 projects a 2035 with Project noise increase of 0.9 dBA giving 49 to 63 dBA CNEL on nearby roadways. This is below the City's 65 dBA CNEL standard and thus is less than significant. Table 12-10 shows Project operation will increase exterior noise levels along the northwest property line rise by 0.0 to 0.2 dBA, well below the City's exterior noise standard. This impact is considered less than significant. Interior noise levels are shown in Table 12-11. Interior noise increases due to the Project in nearby homes are also well below the City's noise standard. This impact is considered less than significant.

Therefore, the Project will not create a substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project

e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?

No Impact. Aliso Viejo is not located within an airport land use plan area. Therefore, the Project will not expose people residing or working in an airport land use plan area to excessive noise levels.

f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?

No Impact. Aliso Viejo is not located within the vicinity of a private airstrip. Therefore, the Project will not expose people residing or working in the area of a private airstrip to excessive noise levels.

Mitigation Measures: No mitigation measures required.

13 - Population and Housing

13	Would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
(a)	Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?				X
(b)	Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?				X
(c)	Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?				X

Environmental Setting

The Site is vacant with the exception of a caretaker who resides on-site.

Impact Assessment

a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?

No Impact. In conformance with the General Plan and Municipal Code, the Project will provide community facilities anticipated to increase the quality of life within the City. Increased quality of life is anticipated to increase the desirability to live or visit the City of Aliso Viejo. However, this assumption is speculative. The Project will be served by existing infrastructure. Therefore, the Project will not induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure).

b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?

No Impact. The Project will remove one caretaker residence on Site. Therefore, the Project will not displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere.

c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?

No Impact. The Project will displace one caretaker who resides on the Site. Therefore, the Project will not displace substantial numbers of people, necessitating the construction of replacement housing elsewhere.

Mitigation Measures: No mitigation measures required.

14 - Public Services

14 (a)	Would the project result in substantial adverse physical impacts associated with the provision of or need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
(i)	Fire Protection?			X	
(ii)	Police Protection?			X	
(iii)	Schools?				X
(iv)	Parks?				X
(v)	Other public facilities?				X

Environmental Setting

Fire Protection: The Orange County Fire Authority (OCFA) provides fire protection and emergency services to Aliso Viejo on a contract basis. One fire station is located within the City at 57 Journey. Two other stations (Laguna Niguel and Laguna Woods) near the City's boundaries also provide service to Aliso Viejo residents and businesses. Emergency medical transportation is provided through City contracts with private sector providers.

Police Protection: The City of Aliso Viejo contracts with the Orange County Sheriff's Department to provide law enforcement services. Sherriff facilities are at the Aliso Viejo sub-station located at 11 Journey. Aliso Viejo and the Sheriff's Department have implemented a Crime Prevention through Environmental Design Program based on the premise that proper design and effective use of the physical environment reduce the incidence and fear of crime and thereby improve quality of life. The Police Services Department reviews site and design plans to ensure risks associated with criminal activity are minimized. Aliso Viejo also has active Neighborhood Watch and Community Oriented Policing programs organized by Police Services.

Schools: Three school districts serve Aliso Viejo residents: Capistrano, Saddleback Valley and Laguna Beach Unified School Districts.

Parks: The Aliso Viejo Community Association (AVCA) is a master association established to enhance maintenance and aesthetics of the community. AVCA owns and maintains 21 parks within the community (257.5 ± acres) and maintains most of the slopes adjacent to the major thoroughfares within Aliso Viejo. The City owns and maintains Iglesia and View Parks and operates the Family Resource Center in Iglesia Park.

Library: The Orange County Public Library system provides library service to Aliso Viejo.

Drainage: The Orange County Flood Control District is responsible for regional flood control facilities for which it has fee title or flood control easement. Maintenance of privately owned

portions of channels and watercourses is the responsibility of individual property owners. The City maintains publicly owned local facilities within its jurisdiction.

Impact Assessment

Would the project result in substantial adverse physical impacts associated with the provision of or need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:

Fire Protection, Police Protection, Schools, Parks, Other Public Facilities?

Less than Significant Impact: The Project will intensify development onsite. The number of persons accessing the Site will increase.

Orange County Fire Authority reviewed the Project (December 16, 2013 email from Lynne Pivaroff). Orange County Sheriff's Department reviewed the Project (April 1, 2014 email from John Macpherson). Both groups approved the Project subject to Standard Conditions of Approval the Project will be required to complete prior to issuance of building permits. These standard conditions will insure Project impacts to police and fire services are less than significant. Both emails are on file with the Aliso Viejo Planning Department. Neither the Fire nor Police Services determined that the Project would result in the need for the construction of new or expanded facilities. Thus, the Project would not result in a potentially significant impact related to polices or fire protection services.

The Project will not increase the number of school-aged children in the City and thus would not result in a potentially significant impact to schools.

The Project will not increase the demand for the use of public parks and thus will have no impact on public parks.

The Project will not increase the demand for libraries or other public facilities and thus will have no impact on other public facilities.

Therefore, the Project will not result in substantial adverse physical impacts associated with the provision of or need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:

Mitigation Measures: No mitigation measures required.

15 - Recreation

15		Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
(a)	Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?				X
(b)	Does the project include recreational facilities or require the construction or expansion of recreational facilities, which might have an adverse physical effect on the environment?				X

Environmental Setting

The Aliso Viejo Community Association (AVCA) is a master association established to enhance maintenance and aesthetics of the community. AVCA owns and maintains 21 parks within the community (257.5 ± acres). AVCA also maintains most of the slopes adjacent to major thoroughfares within Aliso Viejo. The City owns and maintains Iglesia and View Parks and operates the Family Resource Center at Iglesia Park. The Family Resources Center offers a wide range of services and programs to empower families living in Aliso Viejo to obtain resources needed to help children mature into well-educated, healthy and self-sufficient adults.

The City also owns the 7.7-acre Aliso Viejo Ranch property, which is used for community events including the annual Founders Day Fair. Access to the Site is restricted. This is the property being considered for improvements in this document.

Impact Assessment

a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?

No Impact. The Project proposes construction of community recreational facilities that will add to the City's inventory of such facilities. Therefore, the Project will not increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated.

b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?

No Impact. The Project proposes construction of community recreational facilities that will add to the City's inventory of such facilities. Based on the information contained in this Initial Study, the Project will not have an adverse physical effect on the environment. While

the Project constructs new recreational facilities, the Project will not include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment.

Mitigation Measures: No mitigation measures required.

16 - Transportation and Traffic

16	Would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
(a)	Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?			X	
(b)	Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?			X	
(c)	Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?				X
(d)	Substantially increase hazards due to a design feature (e. g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?			X	
(e)	Result in inadequate emergency access?			X	
(f)	Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities			X	

Information in this section was summarized from a Traffic Impact Study prepared for the Project. This report is reproduced as Appendix I to this document. Parts of the Aliso Viejo General Plan Circulation Element are also discussed.

Environmental Setting

Vehicular roadways are the primary existing transportation facilities within Aliso Viejo. The roadway network consists of primary arterial roads, secondary arterial roads and collector streets. Intersection Level of Service "C" (LOS "C") is acceptable and is met throughout Aliso Viejo. No airports are located in Aliso Viejo or within ten miles of Aliso Viejo.

Aliso Viejo General Plan - Circulation Element: Aliso Viejo's circulation system consists of arterials and local streets. The San Joaquin Hills Transportation Corridor (SR-73), which roughly bisects the City northwest to southeast, provides regional access. Orange County Transit

Authority (OCTA) provides bus service allowing an alternative to vehicular transportation and enabling inter-jurisdictional connections. Aliso Viejo also has an extensive network of hiking and biking trails taking advantage of community sidewalks, natural hiking trails in Aliso and Woods Canyons Wilderness Park and bicycle routes. Creating strategies to ensure continued adequacy of these resources is the objective of the General Plan Circulation Element.

City of Aliso Viejo Streets and Trails Amenities Master Plan: The Streets and Trails Plan depicts concepts for streets and trails to increase pedestrian opportunities and enhance aesthetics of the existing street network. This Plan encompasses policies and guidelines in the City Council-adopted Street Median Program, Bikeway Master Plan and Multi-Use Trail and Greenways Master Plan and thereby provides an overall community-wide master plan. The Plan identifies streets and trails amenity needs, alternative solutions to facility requirements and recommended actions that will support the City's vision of an enhanced walk-able and bike-able community.

County of Orange Master Plan of Arterial Highways (MPAH): The MPAH designates the arterial system in the Circulation Element of the Orange County General Plan and identifies intended future roadways for the County. With the exception of Wood Canyon Drive south of Aliso Creek Road, all roads in Aliso Viejo are built and striped to MPAH specifications. Wood Canyon Drive south of Aliso Creek Road is currently striped as a two-lane undivided roadway and will be re-striped to the County classification as a four-lane secondary road when needed.

County of Orange Congestion Management Program CMP: The State of California requires urbanized areas such as Orange County to adopt a CMP with the goal of reducing traffic congestion and facilitating coordination of local land use planning and regional transportation improvement decisions. The OC CMP is a composite of data collected by local jurisdictions according to guidelines established by the Orange County Transportation Authority (OCTA). The data is compiled by the OCTA and submitted to the Southern California Association of Governments (SCAG), the agency that determines regional consistency.

County of Orange Growth Management Plan (Measure M): In 1990, Orange County voters approved Measure M authorizing a half-cent retail sales tax increase for a period of 20 years effective April 1, 1991. Revenue generated by Measure M is returned to local jurisdictions for use on local and regional transportation improvements and maintenance projects. To qualify for this revenue, each jurisdiction must comply with the Countywide Traffic Improvement and Growth Management Program. To receive an allocation of Measure M funds, Aliso Viejo must submit a statement of compliance with the growth management components of this Program. Requirements include adoption of a traffic circulation plan consistent with the MPAH, adoption of a Growth Management Element within the General Plan, adoption and adequate funding for a local transportation fee program and adoption of a seven-year capital improvement program that includes all transportation projects funded either partially or fully by Measure M funds.

OCTA 2001 Commuter Bikeways Strategic Plan: The Bikeways Plan is a regional planning document that identifies existing and proposed bikeways in Orange County. The comprehensive inventory of County bikeways was achieved through the cooperation of cities and the County and priority corridors for new bikeways were identified. OCTA's bikeway classification system is employed by Aliso Viejo and the City's bikeways are linked to regional County bikeways.

Regional Transportation Plan (RTP): SCAG prepared a Regional Comprehensive Plan and Guide (RCP&G) in 1995 to address regional issues, goals, objectives and policies for the Southern California region into the early part of the 21st Century. Part of the RCP&G is the RTP. Updated periodically, the RTP has been developed with active participation from local agencies throughout the region, elected officials, the business community, community groups, private institutions and citizens. The RTP sets broad goals for the region and provides strategies to reduce problems associated with congestion and mobility. In recognition of the close relationship between traffic and air quality issues, the assumptions, goals and programs contained in the RTP parallel those used to prepare the Air Quality Management Plan.

Air Quality Management Plan: Aliso Viejo is located in the South Coast Air Basin, a non-attainment area. The federal Clean Air Act requires preparation of plans to improve air quality in non-attainment areas. Implementing the Clean Air Act, the South Coast Air Quality Management Plan mandates a variety of measures to reduce traffic congestion and improve air quality. The Circulation Element includes SCAQMD circulation programs to be implemented in Aliso Viejo (e.g. Circulation Element Goal C-3 regarding public transportation and Goal C-4 - regarding pedestrians and bicyclists).

Impact Assessment

a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?

Less than Significant Impact. The City General Plan and Municipal Code have been developed in conformance with applicable circulation systems plans and policies. Planning Department Staff determined the Project is consistent with the General Plan and Municipal Code. The traffic analysis prepared for the Project determined the intersection of Cedarbrook (N-S) at Windsong (E-W) would operate at an unacceptable level of service (LOS D) without the Project upon build-out of the General Plan in 2035. To remedy this projected problem, the Project incorporates Project Design Feature -3.

PDF-3: The Project will provide an all-way stop (stop sign and striping) at the intersection of Cedarbrook and Windsong as described below:

- Install all-way stop control (a stop sign)
- Restripe northbound approach on Cedarbrook to include left turn lane
- Restripe Cedarbrook, north of Windsong, to include a painted median
- Restripe eastbound approach to Windsong to include left turn lane
- Parking will be restricted along Cedarbrook and Windsong for roughly 200 feet in each direction to accommodate the improvements

Therefore, the Project will not conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit.

b) Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?

Less than Significant Impact. The City General Plan and Municipal Code have been developed in conformance with applicable circulation system plans and policies. Planning Department Staff determined the Project is consistent with the General Plan and Municipal Code. The traffic analysis prepared for the Project determined the intersection of Cedarbrook (N-S) at Windsong (E-W) would operate at an unacceptable level of service (LOS D) without the Project upon build-out of the General Plan in 2035. To remedy this projected problem, the Project incorporates Project Design Feature PDF-3. By incorporating PDF-3 into the Project, the City is remedying this problem by constructing an all-way stop (stop sign and striping) at this intersection. Therefore, the Project is consistent with regional and local transportation plans. The Project will not conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways.

c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?

No Impact. No airports are located in or within ten miles of Aliso Viejo. Therefore, the Project will not result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that would result in substantial safety risks.

d) Substantially increase hazards due to a design feature (e.g. sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?

Less Than Significant Impact. The City General Plan and Municipal Code have been developed in conformance with applicable circulation system plans and policies taking into consideration hazards due to design features. Planning Department Staff determined the Project is consistent with the General Plan and Municipal Code. The traffic analysis prepared for the Project determined the intersection of Cedarbrook (N-S) at Windsong (E-W) would operate at an unacceptable level of service (LOS D) without the Project upon build-out of the General Plan in 2035. To remedy this projected problem, the Project incorporates Project Design Feature PDF-3. By incorporating PDF-3 into the Project, the City is remedying this projected problem by constructing an all-way stop (stop sign and striping) at this intersection.

The Project includes Special Considerations for Pedestrian and Traffic Safety and Parking Management designed to allow the Project to operate without adverse impacts to surrounding land uses related to traffic hazards (see below).

The peak period of operations for the Project is expected to be from 1:00 p.m. to 8:00 p.m. Monday through Friday and 9:00 a.m. to 4:00 a.m. on Saturdays. Additional community related programs would occur daily on both weekday and weekends. Staff would be employed onsite at all times during operation.

The City of Aliso Viejo Zoning Code Section 15.38.040, Non-Residential Parking Requirements, states community centers should provide one space per each four persons based on the maximum capacity of all facilities capable of simultaneous use as determined by the Planning Director. The Project is expected to have approximately 275 attendants and 25 staff onsite during a typical weekday, for a total of 300 persons onsite during simultaneous use. This would necessitate a minimum of 75 parking spaces per the City's zoning code. Based on the proposed design, the Site will provide 102 un-striped parking spaces, 27 more than needed to meet the City's requirement. The parking areas will use a permeable pavement (non-asphalt) and will be located adjacent to Cedarbrook and Park Avenue. In addition, on-street non-metered public parking is available adjacent to the Site on Cedarbrook and Park Avenue. Vehicles visiting the Aliso Viejo Middle School and Cedarbrook Park periodically utilize this on-street parking.

Special Considerations for Pedestrian and Traffic Safety and Parking Management

The following special considerations have been incorporated into the Project to alleviate potential vehicular congestion and ensure public safety:

1) Provide approximately 102 parking spaces.
2) Create a drop-off area near the Park Avenue entrance. The turn around area shall be designed to accommodate the turning radius of a standard 40-foot school bus.
3) Provide sufficient space in the loading zone for two buses to queue onsite.
4) At no time permit a bus unload children on Park Avenue or Cedarbrook.
5) Restrict the drop-off area to the immediate loading and unloading of passengers.
6) Erect signage to prohibit long-term parking in the drop-off area.
7) Provide a short-term (10-minute) parking area with signage next to the front entrance of the Site to encourage visitors to use the short-term parking spaces instead of parking in the drop-off area.
8) Instruct staff to park in the furthest available parking spaces from the front entrance.
9) Direct students to use the existing crosswalk on Park Avenue to walk to the Ranch from Aliso Viejo Middle School and provide a crossing guard at this crosswalk during peak times.
10) Enhance the Park Avenue crosswalk to improve pedestrian safety. The following options may be employed: active warning of pedestrian presence, in roadway lighting, textured/painted crosswalk and raised crosswalk and roadway chokers.
11) Install an internal pedestrian pathway to direct pedestrians from Park Avenue to the front entrance. Install signage at all pedestrian crossings within the internal drive aisle to alert drivers.
12) Install secure bicycle racks to accommodate at least 30 bicycles. The racks will be located in a much traveled, convenient and secure area, such as the front entrance to alert visitors and staff to the racks availability.
13) Inform visitors and staff of local bicycling resources, including bicycle routes, organizations and events.
14) Offer cycling safety courses to the community.

The Project design incorporates a parking lot circulation plan allowing both driveways to be full access (ingress and egress) and to allow the internal drive aisle to serve 2-way traffic

flow. The circulation plan allows easy access for vehicles and minimizes driver confusion. Additionally, it reduces traffic to Park Avenue near the Aliso Viejo Middle School. School buses shall be encouraged to enter at the Park Avenue driveway and exit at the Cedarbrook driveway during non-peak times. Site distance standards conform to the Orange County Highway Design and the Caltrans Highway Design Manual.

Therefore, the Project will not substantially increase hazards due to a design feature (e. g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment).

e) Result in inadequate emergency access?

Less Than Significant Impact. The City General Plan and Municipal Code have been developed in conformance with applicable circulation system plans and policies. Aliso Viejo Planning Department and Public Works staff and the Orange County Fire and Sherriff's Departments have reviewed the proposed Site Development Permit and determined the Project to be consistent with the City General Plan and Municipal Code and will not result in inadequate emergency access. Therefore, the Project will not result in inadequate emergency access.

f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?

Less Than Significant Impact. The City General Plan and Municipal Code have been developed in conformance with applicable circulation system plans and policies. Planning Department and Public Works Staff determined the Project is consistent with the City General Plan, Municipal Code for the Site. The traffic analysis prepared for the Project determined the intersection of Cedarbrook (N-S) at Windsong (E-W) would operate at an unacceptable level of service (LOS D) without the Project upon build-out of the General Plan in 2035. To remedy this projected problem, the Project incorporates Project Design Feature PDF-3. By incorporating PDF-3 into the Project, the City is remedying this problem by constructing an all-way stop (stop sign and striping) at this intersection.

The Project includes Special Considerations for Pedestrian and Traffic Safety and Parking Management designed to allow the Project to operate without adverse impacts to surrounding land uses related to traffic hazards.

Therefore, the Project will not conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities or otherwise decrease the performance or safety of such facilities.

Mitigation Measures: No mitigation measures required.

17 - Utilities and Service Systems

17	Would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
(a)	Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?				X
(b)	Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?				X
(c)	Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?				X
(d)	Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?				X
(e)	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?				X
(f)	Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?				X
(g)	Comply with federal, state, and local statutes and regulations related to solid wastes.				X

This section references information in Appendix J of this document (Moulton Niguel Water District letter, November 21, 2013) and Appendix G of this document (Project Memorandum - Aliso Viejo Ranch Project, APA's Response to Hydrology and Water Quality Impact Assessment, February 25, 2014).

Environmental Setting

Flood Control: The Orange County Flood Control District is responsible for regional flood control facilities for which it has fee title or flood control easements. Maintenance of privately owned portions of channels and watercourses is the responsibility of individual property owners. Aliso Viejo maintains publicly owned local facilities within its jurisdiction that tie into the Flood Control District regional system. Local drainage facilities consist primarily of underground closed conduits and storm drains located primarily in developed areas of Aliso Viejo, collect storm water and convey it to regional facilities including the Laguna Canyon, Wood Canyon and Aliso Creek Channels.

Water: Two water providers serve Aliso Viejo: Moulton Niguel and El Toro Water Districts. Both districts have potable water emergency inter-district connections with neighboring water districts to ensure water delivery continuity to Aliso Viejo in case of service failure in any district. The Moulton Niguel Water District provides water service to most of Aliso Viejo. Its 2000 Urban Water Management Plan was developed based on a build out scenario of 20,000 residential units in additional to non-residential uses in the Aliso Viejo General Plan. The El Toro Water District serves a small portion of northern Aliso Viejo, which is built-out with little opportunity for new development or redevelopment. Use of recycled or reclaimed water for irrigation rather than imported potable water helps ensure long-term availability of drinking water to Aliso Viejo residents. Due to uncertainty of future statewide water supplies and projected cost increases of imported potable water, the Moulton Niguel and El Toro Water Districts plan to expand their reclaimed water distribution system. The recycled water system is independent of the drinking water system and requires separate dedicated pipelines, pump stations and reservoirs.

Wastewater: Wastewater generated within Aliso Viejo is carried by the Moulton Niguel Water District and El Toro Water Districts' wastewater collection system to the Regional Treatment Plant operated by the South Orange County Wastewater Authority.

Electricity: Southern California Edison Company provides Aliso Viejo electricity service.

Natural Gas: Southern California Gas Company provides natural gas service to Aliso Viejo.

Solid Waste: Solid waste generated in Aliso Viejo is collected by a private sector contractor and transported to various Class III landfills operated by the Orange County Integrated Waste Management Department. Class III landfills accept non-hazardous municipal waste.

Impact Assessment

a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?

No Impact. The Project lies within The Moulton Niguel Water District boundary. MNWD will service the Project for water, recycled water and wastewater service. Their preliminary review indicates available water supply and sewer capacity to support the Project. In a letter to the City, MNWD states, "a Will Serve Letter will be sent to the City of Aliso Viejo, once Development Plans have been reviewed and approved, and all required permitting steps are complete with MNWD Engineering." Therefore, the Project will not exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?

b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?

No Impact. The Project lies within The Moulton Niguel Water District boundary. MNWD will service the Project for water, recycled water and wastewater service. Their preliminary review indicated available water supply and sewer capacity to support the Project. In a letter to the City, MNWD states, "a Will Serve Letter will be sent to the City of Aliso Viejo, once Development Plans have been reviewed and approved, and all required permitting steps are

complete with MNWD Engineering." MNWD states that water and sewer main upsizing is not anticipated for this location. A final decision cannot be made until Project Improvement Plans have been prepared and submitted to the Orange County Fiore authority for review and processing. Project improvement plans will be prepared following Project approval and prior to site development. Therefore, the Project will not require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects.

c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?

No Impact. The Project has been designed in accordance with all local, state and federal storm water/drainage requirements. Service providers indicate existing storm drain facilities are adequate to accommodate projected flows (See Appendix G). Therefore, the Project will not require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects.

d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?

No Impact. The Project lies within The Moulton Niguel Water District boundary. MNWD will service the Project for water, recycled water and wastewater service. Their preliminary review indicates available water supply and sewer capacity to support the Project. In a letter to the City, MNWD states, "a Will Serve Letter will be sent to the City of Aliso Viejo, once Development Plans have been reviewed and approved, and all required permitting steps are complete with MNWD Engineering." Therefore, the Project will not impact water supplies available to serve the project from existing entitlements and resources and no new or expanded entitlements are needed.

e) 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?

No Impact. The Project lies within The Moulton Niguel Water District boundary. MNWD will service the Project for water, recycled water and wastewater service. Their preliminary review indicates available water supply and sewer capacity to support the Project. In a letter to the City, MNWD states, "a Will Serve Letter will be sent to the City of Aliso Viejo, once Development Plans have been reviewed and approved, and all required permitting steps are complete with MNWD Engineering." Therefore, the Project will not change the current 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.

f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?

No Impact. Aliso Viejo is served by OC Waste and Recycling. Used by 34 cities and over three million residents, OC Waste & Recycling operates a network of three active landfills and four household hazardous waste collection centers. OC Waste & Recycling is required to obtain permits to operate its Orange County landfills. These include: a Solid Waste Facilities Permit, Waste Discharge Requirements, Stormwater Discharge Permit and permits to construct and operate gas management systems. These permits are issued and enforced by Regulatory Agencies. The main regulatory body for landfills is the California Department of Resources Recycling Recovery (CalRecycle). The County of Orange Health Care Agency's Environmental Health Division is the local enforcement agency (LEA) for the CalRecycle. In addition to the CalRecycle and the LEA, the South Coast Air Quality Management District enforces air quality regulations and the California Regional Water Quality Control Boards enforces water quality regulations. The Project is in conformance with the City General Plan. The General Plan Final EIR states "Solid waste generated within Aliso Viejo will be disposed of at regional landfills, which have the existing capacity to accommodate the region's solid waste disposal needs for the foreseeable future." The General Plan includes programs to reduce potential impacts to regional landfill further. The Project will comply with all City programs to reduce potential impacts to regional landfills. Therefore, the Project will continue to be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs.

g) Comply with federal, state, and local statutes and regulations related to solid wastes.

No Impact. Aliso Viejo is served by OC Waste and Recycling. Used by 34 cities and over three million residents, OC Waste & Recycling operates three active landfills and four hazardous waste collection centers. OC Waste and Recycling, the City and Project are required to and will continue to comply with all federal, state and local statutes and regulations related to solid wastes. Therefore, the Project is in compliance with federal, state, and local statutes and regulations related to solid wastes.

Mitigation Measures: No mitigation measures required.

18 - Mandatory Findings of Significance

18		Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
(a)	Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?		X		
(b)	Does the project have the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals?				X
(c)	Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects?)			X	
(d)	Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?			X	

Impact Assessment

a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?

Less than Significant with Mitigation Incorporated.

Biological Resources

The Project will impact onsite trees and buildings proximal to the Aliso Creek riparian corridor that represent suitable roosting habitat for sensitive bat species documented in the area. Removal of trees and structures during breeding season could result in mortality of sensitive bats. Construction noise and human disturbance could cause maternity roost abandonment and subsequent death of young. Loss of a sensitive bat species is considered a potentially significant impact.

Ornamental landscaping onsite represents suitable nesting habitat for common and sensitive resident and migratory bird/raptor species documented or expected to occur in or near the Project Site. Loss of an active nest of common or sensitive bird species would be considered a violation of the CDFW Code, Section 3503, 3503.5, 3513, and federal Migratory Bird Treaty Act (MBTA). Therefore, loss of any bird species nest is considered a potentially significant impact.

During construction, temporary noise impacts have the potential to disrupt foraging, nesting or roosting of passerines, raptors or bats known or expected to occur on or near the Site. These impacts are considered adverse, but not significant for most bird and bat species because the work would be temporary and localized and construction activities would not impact a substantial population of these bird and bat species. Initial clearing of ornamental landscaping will be conditioned to occur outside of the nesting/breeding season to avoid impacts to nesting birds and roosting bats. However, passerines, raptors and bats would potentially incur temporary short-term impacts from construction noise if nesting or roosting occurs near the Site. This impact would be considered potentially significant.

Impacts to roosting bat species would be reduced to less than significant with the implementation of Biological Mitigation Measure 4-1 (MM-4-1). Impacts on active resident and migratory bird nests would be reduced to less than significant with the implementation of Biological Mitigation Measure 4-2 (MM-4-2). Impacts to passerines, raptors and bats due to temporary short-term impacts from construction noise if nesting/roosting occurs in the vicinity of the proposed Project will be reduced to less than significant with the implementation of Biological Mitigation Measure 4-3 (MM-4-3).

MM 4-1: Sensitive Bats

Project implementation shall avoid disturbance to the maternity roosts of sensitive bats during the breeding season. No more than two weeks prior to construction-related activities that would commence during the breeding season (March 1st to August 31st), a qualified biologist acceptable to CDFW will conduct pre-construction surveys of all potential sensitive bat breeding habitat in the vicinity of the Site. Pre-construction surveys are not required for construction-related activities scheduled to occur during the non-breeding season (September 1st through February 28th).

If active roosts are identified during pre-construction surveys, a no-disturbance buffer will be created by the qualified bat biologist in consultation with CDFW around active roosts during the breeding season. The size of the buffer will be determined by factors including noise and disturbance levels at the roost site, distance and amount of vegetation or other screening between the construction activity and the roost and sensitivity/behavior of the individual nesting species.

If pre-construction surveys indicate that no roosts of sensitive bat species are present, or that roosts are inactive or potential habitat is unoccupied, no further mitigation is required.

MM 4-2: Federal Migratory Bird Treaty Act

Impacts to nesting passerine and raptor bird species are prohibited under the MBTA. The MBTA makes it unlawful to take, possess, buy, sell, purchase, or barter any migratory bird listed in 50 C.F.R. Part 10, including feathers or other parts, nests, eggs, or products, except as allowed by implementing regulations (50 C.F.R. 21). Suitable nesting bird habitat has been documented within and immediately adjacent to the proposed action area within the ornamental landscaping. Therefore, to remain in compliance with CDFW Code, Section 3503, 3503.5, 3513 and the MBTA, nesting bird surveys will be conducted within and adjacent to the action area prior to and during all proposed actions conducted between January 31st and September 15th.

Prior to conducting any proposed actions during the breeding season (January 31st and September 15th), the monitoring biologist will conduct a pre-construction survey/surveys to identify any active nesting locations in and near the project area no more than three (3) days prior to project initiation. If the biologist does not find any active nests that would be potentially impacted, the proposed action may proceed. If the biologist finds an active nest within or adjacent to the action area and determines that the nest may be impacted, the biologist will delineate an appropriate buffer zone around the nest. Any active nests observed during the survey will be mapped on a recent aerial photograph including documentation of GPS coordinates. Only specified activities (if any), as approved by the qualified biologist, will take place within the buffer zone until the nest is vacated.

The proposed action area is located adjacent to an open space area favored by several resident and migratory raptor species. Surveys for active raptor nests will be performed in all ornamental landscaping including trees and shrubs no more than three (3) days prior to commencement of any activities during the raptor nesting season generally extending from January 31st and June 30th. Active raptor nests observed during the survey will be mapped on a recent aerial photograph including documentation of GPS coordinates. Restrictions on activities will be required in the vicinity of the nest until the nest is no longer active as determined by the qualified biologist.

Typically, a 300 to 500 foot buffer zone will be designated around a nest to allow activities to proceed while minimizing disturbance to the active nest. Once the nest is no longer active, the proposed action may proceed within the buffer zone. Impacts on active raptor nests will be avoided.

MM 4-3: Nesting Bird/Bats - Noise

If A) nesting birds/bats are found onsite during pre-construction surveys and B) construction-related impacts occur between January 31st and September 15th, an acoustical consultant shall evaluate the construction equipment/phases and estimate noise levels anticipated during clearing, grubbing and grading activities. The acoustical consultant shall identify appropriate measures for reducing construction noise levels to below 60 dB(A) hourly Equivalent Continuous Noise Level (Leq) or prevent any increases in the ambient noise levels at nesting location if existing noise levels are 60 dB(A) hourly Leq or greater. Noise reduction measures may include operational adjustments, including:

1. Construction cannot take place between the hours of 8:00 PM and 7:00 AM on weekdays, and between 8:00 PM and 8:00 AM on Saturday, or at any time on Sunday or a federal holiday.

2. Stationary construction noise sources such as generators or pumps should be located at least 100 feet from sensitive land uses, as feasible.

3. Construction staging areas should be located as far from noise sensitive land uses as feasible.

4. During construction, the contractor shall ensure all construction equipment is equipped with appropriate noise attenuating devices.

5. Idling equipment shall be turned off when not in use.

6.) Equipment shall be maintained so that vehicles and their loads are secured from rattling and banging.

If noise reduction measures are required, bi-weekly monitoring of the nesting species shall be conducted by the qualified biologist to observe if the birds/bats are being affected by construction activities. The acoustical consultant shall confirm through noise measurements that the noise reduction measures are effective at preventing noise levels in excess of 60 dB(A) hourly Leq or an increase in ambient noise levels.

Noise reduction measures are not required from September 16th through January 31st.

Cultural Resources

The Site's, structures, and other properties may be considered an historical resource if they are significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military or cultural annals of California (PRC 5020.1[j]), or if they meet the criteria for listing in the National Register or the California Register of Historical Resources (CR) (14 CFR 4850). If enacted by local legislation, CEQA allows for local historic resource guidelines to serve as CR criteria equivalent to State criteria. If the historical resource has integrity and one or more of the following criteria are met, the resource would be considered a significant resource and any direct effect would be considered a significant impact on the environment:

1. Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;

2. Is associated with the lives of persons important in our past;

3. Embodies the distinctive characteristics of a type, period, region, or method of construction, or represent the work of an important creative individual, or possesses high artistic values; and

4. Has yielded, or may be likely to yield, information important in prehistory or history.

Here, the remnants of a cattle ranch do not possess integrity of location, design, setting, materials, workmanship, feeling, and association. Several original buildings in the ranch complex have been removed. Modern buildings have also been added which do not contribute to the original uses of the land. The integrity of the original Moulton Ranch has been compromised. The remaining buildings are not exemplary examples of ranching structures nor were they designed by a master architect. Only four original Moulton Ranch buildings exist. The two storage sheds lack integrity. The barn is one of two original barns, the other was destroyed in recent decades. The remaining barn has also been enlarged and therefore has parts which are not original. The fourth structure, a bunkhouse, is relatively unmodified. Accordingly, none of the structures would qualify individually for listing on the National Register of Historic Places or the California Register of Historic Resources since they are not individually associated with a significant event or person or are not a rare architectural type.

While the original Moulton Ranch complex of structures could be considered a significant resource based on its association with the history of ranching in the Aliso Viejo area and Orange County generally, only four buildings from this complex remain and they do not collectively represent all aspects of a functioning historic ranch. Accordingly, the complex would not qualify for listing on the National Register of Historic Places or the California Register of Historic Resources and the City does not consider these buildings historic resources.

As there are no historic resources on the Site, the Project will not cause a substantial adverse change in the significance of a historical resource as defined in §15064.5. However, if previously undocumented cultural resources are identified during earthmoving activities, the Project

There are no known archaeological resources on the Site. However, if previously undocumented cultural resources are identified during earthmoving activities, a qualified archaeologist shall be contacted to assess the nature and significance of the find, as addressed in Mitigation Measures 5-1 through 5-7. With the implementation of these mitigation measures, impacts associated with archeological resources will be less than significant.

MM 5-1: An archaeologist will monitor all earthmoving activities.

MM 5-2: Native American monitors will be present during earthmoving activities.

MM 5-3: Prior to construction of the proposed Project, archaeological sensitivity training shall be conducted by a qualified archaeologist approved by the City of Aliso Viejo. The purpose of this training is to provide the contractor with an understanding of what is required under State law and PRC Section 21083.2(i), which is related to with the possibility that archaeological deposits may be accidentally encountered during construction activities.

MM 5-4: If cultural resources are encountered during construction of the proposed project, the Contractor shall flag the find and create a defined 100-foot wide buffer zone around the find. Earthmoving equipment shall be redirected around the buffer zone, and

a qualified archaeologist shall be retained to conduct an investigation of the find(s). Earthmoving activities shall be permitted to continue outside of the 100-foot buffer zone while the find is investigated.

MM 5-5: Any find determined by the qualified archaeologist to be of cultural significance shall be recovered and prepared to the point of identification and permanent preservation, including washing of sediments to recover small invertebrates and vertebrates. Preparation and stabilization of all recovered fossils shall occur.

MM 5-6: The identification and curation of specimens into an established, accredited museum repository with permanent retrievable paleontologic/archeologic storage shall occur. These procedures shall be deemed necessary steps in effective paleontologic/archeologic mitigation and CEQA compliance. Prior to the initiation of any mitigation activity, the qualified archaeologist shall have a written repository agreement in writing. Mitigation shall not be deemed complete until such curation into a museum repository has been fully completed and documented.

MM 5-7: The qualified archaeologist shall prepare a findings report with an appended inventory of recovered specimens. The report and inventory, when submitted to the City of Aliso Viejo, along with confirmation of the curation of specimens into an established, accredited museum repository, shall signify completion of the mitigation program to reduce impacts to significant paleontologic/archaeologic resources.

Level of Significance after Incorporation of Mitigation Measures

With the implementation of these mitigation measures, impacts associated with biological and archaeological resources will be less than significant.

Therefore, the Project will not have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?

(b) Does the project have the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals?

The Initial Study determined the Project is consistent with the City General Plan and Municipal Code and will comply will all federal, State and local regulations. The final EIR for the 2004 General Plan contains a number of mitigation measures designed to reduce potential environmental impacts from build-out of the General Plan to less than significant levels. The Project will comply with all mitigation measures contained in final EIR for the 2004 General Plan. Therefore, the Project does not have the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals.

c) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects?)

Less Than Significant Impact. The Initial Study determined the Project would have less than significant impacts on the environment in the areas of Aesthetics, Air Quality, Geology and Soils, Greenhouse Gas Emissions, Noise, and Public Services (Police and Fire) and Transportation/Traffic. The Initial Study concluded the Project has the potential to cause a potentially significant impact to Biological Resources and Cultural Resources that could be reduced to less than significance with implementation of mitigation measures. Further, the initial Study considered cumulative effects of the Project's effects on the environment and concluded the Project does not have impacts that are individually limited, but cumulatively considerable.

d) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?

Less Than Significant Impact. The Project does not have environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly.

The Initial Study determined the Project would have less than significant impacts on the environment in the areas of Aesthetics, Air Quality, Cultural Resources, Geology and Soils, Greenhouse Gas Emissions, Noise, Public Services (Police and Fire), and Transportation and Traffic. The Initial Study concluded the Project does not have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly.

REFERENCES

The following documents are on file with the City of Aliso Viejo Planning Department.

1 **Aliso Viejo General Plan**, April 21, 2004

2 **Final Environmental Impact Report, Aliso Viejo General Plan**; April 21, 2004 (SCH 2003101060)

3 **Aliso Viejo Ranch Site Master Plan**

APPENDICES

The documents listed below are incorporated into this CEQA document.

A **Aliso Viejo Ranch Photometric Study** - prepared by Hongjoo Kim Landscape Architects, Inc.

B **Aliso Viejo Community Center Air Quality & Greenhouse Gas Impact Study** - prepared by RK Engineering Group Inc. - March 6, 2014

C **Biological Resources Technical Report, the Ranch Project** - prepared by Cadre Environmental - January 2014

D **Archaeological Phase I: Cultural Resource Reconnaissance of the Aliso Viejo Ranch** - prepared by Scientific Resource Surveys, Inc. - February 2014

Letter of Clarification: Significance of Buildings on the Aliso Ranch Project Area - prepared by Scientific Resource Surveys, Inc. – June 9, 2014

E **Geotechnical Investigation, Proposed Aliso Viejo Ranch, Lots 1 and 2 of Tract 13687** - prepared by GMU Geotechnical, Inc. - October 24, 2013

F **Phase I Environmental Site Assessment, The Ranch (Tract 31687)** - prepared by Environmental & Regulatory Specialists Inc. - October 2013

G **Project Memorandum - Aliso Viejo Ranch Project, APA's Response to Hydrology and Water Quality Impact Assessment** - prepared by APA Engineering - February 25, 2014

H **Aliso Viejo Community Center Noise Impact Study** - prepared by RK Engineering Group Inc. - March 6, 2014

I **Aliso Viejo Community Center Traffic Impact Analysis and Parking Management Plan** - prepared by RK Engineering Group, Inc. - March 14, 2014

J **Moulton Niguel Water District letter to the City of Aliso Viejo** - November 21, 2013

Response to Comments
Aliso Viejo Ranch Project
Mitigated Negative Declaration
February 2, 2015

The following are responses to comments received following the public circulation of the Draft Mitigated Negative Declaration prepared for the Aliso Viejo Ranch Project.

The City received written comments from:

1. California Department of Transportation, July 24, 2014
2. California Department of Fish and Wildlife, July 24, 2014
3. Community Legal Advisors Inc., July 28, 2014
4. City of Aliso Viejo City, Council Meeting, August 6, 2014
5. The Gas Company, August 18, 2014
6. Mrs. June B. Peterson, August 20, 2014
7. Heidi Stoops, August 20, 2014
8. Mr. Mike Ramirez, September 10, 2014
9. Mr. Ray De Leon, September 11, 2014
10. Community Legal Advisors Inc., September 15, 2014
11. California Preservation Foundation, September 15,2014
12. Angela Faiyez, October 13, 2014
13. Saddleback Area Historical Society, November 24, 2014

Comments received are attached in Appendix I.

The City also received comments at a City Council hearing held on August 6, 2014. Transcript of hearing is attached in Appendix I.

Each comment received was first reviewed to determine if it addresses the adequacy of the draft mitigated negative declaration under the California Environmental Quality Act (CEQA). Responses to comments on adequacy of the draft mitigated negative declaration are provided individually following the order they were raised in each comment email, letter or City Council meeting. If the comment does not address adequacy of the draft mitigated negative declaration, the comment is noted and will be made available to the City Council for its review. Responses to comments are provided below.

Letter from California Department of Transportation
July 24, 2014

Comment: This letter stated "**The Department of Transportation (Department) is a commenting agency** on this project and has no comment at this time. However, in the event of any activity in the Department's right of way, an encroachment permit will be required." This comment does not address adequacy of the Draft Mitigated Negative Declaration.

Response: No response is required.

Letter from California Department of Fish and Wildlife
July 24, 2014

Comment: To reduce the potential for the spread of non-native seeds, the Department recommends that all heavy equipment proposed for use on the project site be verified as cleaned (including wheels, tracks, undercarriages, and bumpers, as applicable) before delivery to the project site. The City should ensure that all equipment delivered to the initial staging area(s) is documented as being weed free, including: (1) vegetation clearing equipment; (2) earth moving equipment; and (3) all project-associated vehicles (including personal vehicles) that, upon inspection by the monitoring biologist, are deemed to present a risk for spreading weeds. Equipment should be cleaned at existing construction yards or at a wash station. The biological monitor shall document that all construction equipment (as described above) has been cleaned prior to working within the project site.

Response: As documented in the IS/MND, "the entire Project Site is disturbed with scattered patches of ruderal vegetation and ornamental landscaping. . . No native vegetation communities exist within or immediately adjacent to the Site."[1] Given this, the possible addition of non-native seeds to the Project Site via construction equipment would not pose a potentially significant impact to the environment because there are no native plant communities on the Project Site. However, please note that the City Standard Conditions require construction equipment to be cleaned upon leaving a project site. If the City Council so desires, staff can add a Condition of Approval to the Project that would require additional specified cleaning of construction equipment prior to the equipment entering the site.

Comment: In addition, the use of native plants in landscaping avoids spread of invasive species. It also provides additional benefits such as the attraction of native pollinators and reduced water consumption. Therefore, it is recommended that appropriate native plants should be used to the greatest extent feasible in landscaped areas. The applicant should not plant, seed, or otherwise introduce invasive exotic plant species to landscaped areas. Exotic plant species not to be used include those species listed on the California Invasive Plant Council's (Cal-IPC) Invasive Plant Inventory, which is available online at http://www.cal-ipc.org. This list includes (but is not limited to) the following: pepper trees, pampas grass, fountain grass, ice plant, myoporum, black locust, capeweed, tree of heaven, periwinkle, sweet alyssum, English ivy, French broom, Scotch broom, and Spanish broom. In addition, landscaping should not contain plants that require extensive irrigation, fertilizers, or pesticides. Therefore, the final MND should include a plant palette which does not contain non-native invasive species.

Response: The comment does not pertain to adequacy of the IS/MND under CEQA and is noted. Appropriate native plants will be used to the greatest extent feasible (i.e. to the extent such planting can be accomplished in manner that complies with City ordinances) in landscaped areas. City of Aliso Viejo Ordinance No. 2009-119 requirements pertaining to water efficient landscaping will be maintained. City requirements are that at least 50% of plantings must be drought tolerant.

[1] IS/MND at p. 55

Comment: Because the proposed project would create ground disturbance, concern exists over the impacts the project will have on storm water quality and general hydrology in the surrounding area. Given Governor Brown's Drought State of Emergency Declaration, issued January 17, 2014, the final MND should analyze the efficacy of low impact development options to minimize storm water impacts, including: the use of pervious surfaces (crushed aggregate, turf block, unit pavers, pervious concrete and asphalt) as alternatives to impervious surfaces; the use of pervious surfaces (crushed aggregate, turf block, unit pavers, pervious concrete and asphalt) as alternatives to impervious surface; and structure roof spouts emptying over pervious surfaces.

Response: The comment does not pertain to adequacy of the IS/MND pursuant to CEQA and is noted. In compliance with the City's NPDES-MS-4 Permit and Stormwater Management Ordinance No. 2010-128, water quality conditions of approval will include preparation of a Water Quality Management Plan (WQMP). The WQMP will include site specific structural best management practices addressing low impact development and hydro-modification requirements.

Comment: Further avoidance of direct impacts to birds, particularly migratory species, can be achieved through incorporation of 'bird safe' elements in architectural design. Elements such as glazed windows, well-articulated building facades, and minimal nighttime lighting are encourage to reduce collisions of migratory birds with buildings. Large flat windows, reflective glass, and transparent corners are strongly discouraged. The Department recommends that the City follow as many of these guidelines as appropriate when considering structure design, as described in San Francisco's Standards for Bird Safe Buildings (the document can be found online at http://sfplanning.org/index.aspx?page=2506).

Response: The comment does not pertain to adequacy of the IS/MND pursuant to CEQA and is noted. The City Public Works Department will review final building plans for any future development on the property to determine how "bird safe" elements can be incorporated into building plans/architecture.

Letter from Community Legal Advisors Inc
July 28, 2014

Comment: Community Legal Advisors represents the California Reflections Community Association ("Association") on behalf of its 174 members in voicing their concern regarding the City's proposed adoption of the IS/MND for the Project because implementation of the recommended mitigation measures in the IS/MND will not adequately address its ongoing concerns regarding traffic, noise pollution, light pollution, massing and irreplaceable historic open lands and structures. The Association seeks to access and utilize all of its administrative remedies by seeking a full environmental impact report ("EIR") which fully addresses the probable impact of the Project on Association, its owners and those living in the immediate area. The Association is borders the Project on its northern side.

Response: The general comment is noted. The specific concerns in the commenter's letter are addressed below.

Comment Continued: **Traffic**: The Project is located within a school zone. Two times a day, for approximately forty-five minutes at a time, (from 7:30-8:15 and 2:40-3:15) the California Reflections community is largely inaccessible (without substantial delay) because of the cars picking up students from the Aliso Viejo Middle School. Many of those students already walk to the California Reflections neighborhood and nearby Creekside Park in order to be picked up by parents or caregivers attempting to avoid the existing traffic congestion near the school. Expanding the use of the existing park with the Project, including adding a proposed Boys and Girls Club which is designed to serve hundreds will increase traffic in an area that is already difficult to navigate and unsafe to the Aliso Viejo Middle School children. Adding a stop sign at Windsong will not resolve the traffic problem.

Nor will adding 300 more cars on these streets improve the situation. The IS/MND anticipates adding 275 attendants and 27 staff, for a total of 300 additional automobiles in "simultaneous use." The IS/MND includes little analysis as to how this additional traffic up and down Cedarbrook and in front of the AVMS will be addressed. The IS/MND states that the access to the Project will be divided amongst two streets – Park and Cedarbrook, without clearly identifying that Park is merely a continuation of Cedarbrook, a dogleg at the end of a long and busy street. THERE IS NO INGRESS NOR EGRESS FROM PARK EXCEPT CEDARBROOK! The City is approving adding 300 cars to an already busy and traffic laden pick up and drop off situation at the AVMS, and their resolution to the traffic problem is to add a stop sign.

Response: The Traffic Impact Study, prepared by RK Engineering Group, Inc., reviewed the Project's potential on-Site and off-Site traffic impacts pursuant to the City of Aliso Viejo and CEQA requirements. Special consideration was given to the impact of school traffic to this Site. As such, observed traffic counts and field reviews were conducted during AM (7:30 to 9:00 AM), mid-day (2:45 to 4:00 PM) and PM (4:00 to 6:00 PM) to ensure worst case traffic conditions and all drop-off and pick-up times were analyzed.[2] As a result, the Traffic Impact Study indicated a special mid-day analysis.

Additionally, the Traffic Impact Study assessed the sole access route to the site via Cedarbrook and compared it to applicable standards. There are two driveways to the site (one on Cedarbrook and one on Park Avenue) and an additional emergency access to the site is provided via the Creekside Park Access Road. Based on the Traffic Impact Study's analysis, Cedarbrook has the capacity to accommodate the anticipated additional traffic without the result of a significant impact.[3]

RK Engineering Group, Inc., performed Level of Service analyses of all intersections near the site, including Cedarbrook at Windsong and Cedarbrook at Napa and determined the intersections are all currently operating at acceptable levels of service during peak times, including with school traffic. The Traffic Impact Study found existing safety issues, and future LOS impacts, at the intersection of Cedarbrook at Windsong.[4] It determined that a stop sign would address these impacts because it improves pedestrian safety, increases sight distance, and helps reduce intersection delay for the critical movements. (Id.)

---

[2] IS/MND, Appendix I, Traffic Impact Study at p. 2-1

[3] IS/MND, Appendix I, Traffic Impact Study, Tables 4 and 5.

[4] IS/MND, Appendix I, p. 71 – through 7-2

The maximum number of trips the Project is expected to generate is 66 inbound trips and 42 outbound trips during the AM peak hour and 60 inbound and 62 outbound trips during the PM peak hour.[5] Accordingly, contrary to the comment, the maximum potential Project during neither peak hour would generate close to 300 trips (275 attendants and 27 staff for a total of 300± persons on site, not vehicles).

The peak hour inbound trip totals represents the (worst case) number of vehicles coming to the Site over a one hour period. It is likely that schedules will overlap in such a way that not all attendants on-site will arrive at the same time. Fore example, staff may arrive before students, and different activities may have different start/end times. It is also likely that many of the users of the Ranch will be school aged children who will walk from the school to the Ranch, will carpool to the site by parents, and/or use buses which will increase the occupancy of each vehicle reducing the number of trips.

The intersections impacted by the Project, currently operate at an acceptable level of service during peak hour conditions. However, for a portion of the AM and PM peak hour, significant delays occur adjacent to the Site caused by the backup queuing from student drop-off and pick-up from the adjacent school. Due to the hours of operation, the Project will not impact or be impacted by the AM queuing delay and for the reasons stated above the project's impact on the PM queuing delay will be less than significant.

Overall findings of the Traffic Impact Study reflect that with mitigation the maximum potential Project will not result in significant impacts on the environment related to the adjacent roadway system.

Comment Continued: **Lighting**: The lighting plan described on pages 8, 42, and 44, and depicted on page 35 are cryptic at best. They contain few foot-candle measurements and provide the neighbors who view down over Project little to no indication as to what the impact of the lighting will be. How much light will be coming from "18 pole light fixtures and 48 bollard fixtures," and what will be the environmental impact on the neighborhood. Right now, the existing light is "below the minimum equipment could detect' and yet the addition of 18 pole light fixtures and 48 bollard lighting fixtures will apparently "have no impact on Scenic Vista." Nighttime light levels of .1 foot-candles at the Project's perimeter fence tells us little about what the neighboring community will be staring out their back windows into. There needs to be a more detailed study as to the lighting at the project, both during and after hours, including its light fall, total lumens, and impact on the neighboring owners residences.

Response: Existing light levels were measured using industry standard methodology, including foot-candle measurements and equipment. One foot-candle is the amount of light that falls on an object one foot from a point source of light of one candle power. Based on existing nighttime light measurements, review of the Project Description and proposed hours of operation, the experts who prepared the Photometric Report for the IS/MND projected the maximum potential Project's lighting design will result in an increase of less than 0.1 foot candles along the Project's perimeter fence and less than detectable foot candles along existing residential development to the north/northwest.[6] As

[5] IS/MND, Appendix I, Traffic Impact Study, Table 3
[6] IS/MND Appendix A, Photometric Report, p. 3

a result the City concluded the maximum potential Project will result in a minor change in nighttime lumens/light intensity and thus, pursuant to CEQA, the maximum potential Project will result in a less than significant impact.

If, as policy matter, the City wishes to take measure to further decrease maximum potential Project nighttime lighting levels, it could consider the following: planting large trees between lighting fixtures and residential development; use of soft, warm color light bulbs instead of current specification; and, use of pendent style fixture and glare control photometry shield. Should the City wish to consider these measures, staff recommends it first consult with the Fire Authority and Sheriff's Department to ensure health and/or safety concerns are not compromised.

Comment Continued: **Noise Pollution**: The study places 300 people at the Project at any given time. The study explores the noise impact of the automobile traffic on the Project itself, (not as to the neighboring Association as discussed above.) There is zero discussion in the IS/MND as to how the noise generated by the club activities and Project use is going to be mitigated, or even measured. There is no discussion regarding the honking of horns, the endless bouncing of basketballs, the cheering of parents or teammates in the new gym, the pounding of exercise machines or other entertainment, in whatever manner it will take place. Apparently, under the IS/MND, 300 people will simply appear and disappear, making no perceptible noise while they are present next door at the Project.

Response: As documented in the IS/MND, the Project's operational noises levels (including those related to automobile traffic) fall within the City's established exterior and interior noise standards.[7] The City developed these standards to limit the amount of noise from the Project Site to neighboring residential areas. Further, fixed stationary noise, such as HVAC unit, are the primary source of noise impacts from the Site.

The Project includes design features to shield noise impacts (design features include parapet walls and enclosures) resulting in noise levels that will be below the City standards and will result in a less than significant impact.

Noise levels generated from outdoor use of the proposed Project would be approximately 38.5 dBA along the northern property line. Existing noise levels measured along the northern property line are 51.6 dBA. The difference between existing noise level and the proposed Projects projected noise level is 13.1 dBA. When adding the two sound levels together (logarithmically), the level would not increase the existing condition. Due to the logarithmic nature of sound, noise levels need to be within 10 dBA of each other to increase the noise level. Therefore, the proposed Project will comply with the City's noise ordinance and the impact from outdoor use of the proposed Project will be less than significant.

Comment Continued: **Massing**. The IS/MND states at Page 43 that "the Project will impact views onto the Site from surrounding land uses including residential homes with the California Reflections development..." However, it is not possible, based upon the depictions of the basketball and multi-purpose pavilion, what their massing will be in relation or proportion to the existing structures, or to the view of the adjacent community.

[7] See City Ordinance 8.12.050(a) and IS/MND Appendix H, Noise Impact Study, at pp. 3-2 through 3-3 and Tables 7 through 14

This view is not blocked by "a windrow of eucalyptus" nor is it, in any manner, adequately simulated by view simulation Nos. 1-3.

Response: View simulations depict views from the immediate adjacent residential neighborhood (California Reflections) to the west. Photos were taken along the top of the existing slope bank from the edge of three backyards. These three viewpoints were considered the "worst case" view impact locations. The existing slope bank is covered with existing mature trees. Views from the top of slope toward Aliso Viejo Ranch range from completely obstructed to filtered. Three viewpoints were selected: one at each end of the project that was filtered by trees; views not completely obstructed; and, a middle filtered view only partially obstructed by trees. View simulations were prepared for each of these three locations and included in the draft MND. The view simulations are based on Project plans, including proposed finish grade elevations, proposed landscaping and location and size of proposed buildings, including the basketball and multi-purpose pavilion, as depicted in the Project Description and accurately reflect the build-out condition of the Project.

As requested by the commenter, the following provided information about massing of proposed buildings in relation or proportion to the existing structures, or to the view from the adjacent community.

The maximum potential proposed community center facility has a greater massing than existing buildings. The potential maximum Community Center's total footprint area of the existing structures is approximately 11,250 square feet and proposed total footprint area of proposed buildings is approximately 36,500 square feet. Heights of existing structures are approximately 12 to 15 feet. Heights of the maximum potential Project's proposed buildings vary as follows:

- A single story maintenance building that is 14 feet in height, and approximately 70' away from the closest residential property line;
- A multi-purpose building is 30' in height, and approximately 75' away from the closest residential property line;
- The main classroom building is 24' in height, and approximately 81' away from the closest residential property line; and,
- The basketball pavilion is 43' in height, and more than 240' away from the closest residential property line.

There is another residential neighborhood (Barcelona Apartments) southwest of the park site that will have a clearer, but more distant view of the project than would the California Reflections residential community. The closest building to homes in this neighborhood is over 200 feet away. This neighborhood is at a much higher elevation than the immediate adjacent California Reflections neighborhood.

Comment Continued: **Loss of Open Space and Historic Lands and Structures**. The site for the Project reflects one of a very few historic open space lands in Orange County. Specifically, the site includes seven structures totaling 11,244 feet including barns, a kitchen building, bunkhouses and the City's only symbol of its oldest home- the original el Rancho Aliso Viejo - irreplaceable relics of historic Orange County. According to Bob Bunyan, who worked for the Mission Viejo Co. for 26 years, "this master –planned community doesn't have a long, long, history....Our history, where people lived, has evolved, and how people live has evolved." "It's kind of like bulldozing over and making

everything new, but, here's this little oasis in the middle of 6600 acres, it's like a glimpse back 100 years ago." Bunyan, who helped lay out the original plans for the community, worked with others beginning in 1991, and painstakingly catalogued about 170 Ranch artifacts, dating back to the early 1900's. Once this site is gone, it is gone forever. Page 43 inconsistently describes the impact as follows: "The removal of existing buildings, grading, construction of a new building, lighted parking areas will change the visual character of the site...the City determined the Project would not substantially degrade the existing visual character or quality of the Site and its surroundings."

Response: The City conducted extensive studies to determine if the Project Site contained a cultural resource as defined by CEQA. These studies considered whether the Site contained any resources eligible for the National Register of Historic Places (NRHP) or the California Register of Historic (CRHR) resources, as well as whether the Site contained any resources that had been designated locally significant by the City or could be considered locally significant.

The CRHR criteria, which in part restate those for NRHP eligibility, are as follows:

The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association and;

A. that are associated with events that have made a significant contribution to the broad patterns of our history; or
B. that are associated with the lives of persons significant in our past; or
C. that embody distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
D. that have yielded, or may be likely to yield, information important in prehistory or history.

The Cultural Resource Studies conducted by Scientific Resource Surveys Inc. at the Aliso Viejo Ranch property concluded the seven buildings found on Site do not satisfy any of these criteria and thus are not eligible for the CRHR. (IS/MND, Appendix D) The Site has lost its integrity as buildings have been demolished, original buildings have been altered, corrals and other associated ranching features have been removed, and modern buildings have been added to the site. As remnants of a cattle ranch, the buildings do not possess integrity of location, design, setting, materials, workmanship, feeling, and association. Several original buildings in the Ranch complex have been removed. Modern buildings have also been added which do not contribute to the original uses of the land. Remaining buildings are not exemplary examples of ranching structures nor were they designed by a master architect. Only four original Moulton Ranch buildings exist. The 2 storage sheds lack integrity. The barn is one of two original barns; the other was destroyed in recent decades. The remaining barn also has been enlarged and therefore has parts which are not original. The fourth structure, a bunkhouse, is relatively unmodified.

Accordingly, none of the structures would qualify individually for listing on the National Register of Historic Places or the California Register of Historic Resources.

Nonetheless, as noted in the Initial Study/Mitigated Negative Declaration, the location is a remnant of an important era in Southern California, Orange County, and Aliso Viejo generally in that it

relates to the onset of ranching and the Moulton family whose ranching efforts helped shape the history of the area.

Thus, even though the site does not contain cultural resources s defined by CEQA, Project Design Feature 1 states, "The Project will emphasize the rich ranching history of the City of Aliso Viejo area as exemplified by the Ranch. Displays in the Project building will be used to engage the public in this setting." PDF 1 also includes documentation of the site through the following:

- Historic American Buildings Survey (HABS)/Historic American Engineering (HAER) drawings of the structures;
- Detailed compilation of the historic background of the Ranch including;
- Review of oral interviews on file at Cal State Fullerton and the University of California Irvine for the area, as well as conduct new interviews with farmers and cowboys who once were associated with the areas ranching operations;
- Collection of historic photographs of the Ranch; and,
- Compilation of historic maps and documentation of changing land use through time.

Once documented, the information can be used to provide a detailed architectural and social description of the Ranch that could be part of displays in a new Aliso Viejo Ranch Community Center.

While sites that do not qualify as cultural resources are discarded without such documentation efforts as those outlined above. But Project Design Feature 1 will serve as a way to engage all within the Aliso Viejo community in the past. .

Comment Continued: The California Reflections Community Association, on behalf of its 174 members voices these objections to the proposed adoption of the IS/MND for the Project because implementation of the recommended mitigation measures in the IS/MND will not adequately address its ongoing concerns regarding traffic, noise pollution, light pollution, massing and irreplaceable historic open lands and structures. The Association seeks to access and utilize all of its administrative remedies by seeking a full environmental impact report ("EIR") which fully addresses the probable impact of the Project on Association, its owners and those living in the immediate area.

Response: Based on the Initial Study, its references and its Appendices, the City has determined there is no substantial evidence that the maximum potential Project, as proposed to be mitigated, may significantly affect the environment and thus has prepared and proposed for adoption a Mitigated Negative Declaration.[8] Comments submitted by the Association do not present "substantial evidence" of a "fair argument" that the Project "may" have a significant effect on the environment. For the purposes of CEQA, "substantial evidence" is defined as facts, reasonable assumptions predicated on facts; and expert opinions supported by facts.[9] Further, please note argument, speculation, unsubstantiated opinion or narrative, clearly inaccurate or erroneous evidence does not constitute "substantial evidence." (Id.)

[8] See Public Resource Code §21080(c)(1); State CEQA Guidelines §§15063(b)(2), 15064(f)(3)
[9] (Pub. Res. Code §§21080(e), 21082.2(c), and State CEQA Guidelines §§15064(f)(5),15384)

Comments from the City of Aliso Viejo City, Council Meeting
August 6, 2014

Commenter: MICHAEL ALTI

Comment: Thank you. Good evening members of the Council and Staff. I'm an attorney for California Reflections Community Association and I'd like to talk about some procedural and substantive issues about the MND. Several members from the Association are also going to be here to provide their own comments. The first issue really is there is a lot of frustration in the Association. They don't feel that they've been a part of the public process. The Association consists of 174 homes immediately adjacent to the project site. The draft Resolution that has been provided and circulated which the Council is considering states at the bottom of the first page that the City provided copies of the draft MND and Initial Study to the public and the State Clearinghouse for a 30 day review period. All the members of the Association live immediately contiguous to this project site and they did not receive any notice of the public comment period. The first they learned about this project was when they received a notice of City Council public hearing in the mail. This notice was sent on July 21st so they learned about it about July 23, July 24 and by the time they received this notice and the public comment period ended on July 28th. Very quickly they had to retain our firm to respond. We had to meet with the Board and come up with our letter which we submitted on July 28th. But we had to rush because Mr. Armijo showed the huge pile of documents that the MND, all the appendices and it was impossible for us to have basically one day to go through all these documents to provide our comments about all the different impacts that our Association perceives.

I do want to mention that under CEQA Guidelines section 15201 it states that public participation is an essential part of the CEQA process. There was a case in 1994 called Dixon v. Superior Court where the court found that before adopting a negative declaration the lead agency, the City, is required to give notice to the public and allow ample time for comments. The Association doesn't feel that happened. There is a 1980 CEQA case called Plagmeyer v City of San Jose where the court found that non-compliance with public notice procedures will have the effect of invalidating government actions. We are not stating here that we want to invalidate any government action we are stating that we would like ample time to review the actual MND and all the appendices.

Response: Based on the comment, the City reviewed it notice list, discovered a minor error and re-noticed the Project. In addition, the City Council approved a motion to extend the public review period for an additional 30 days and increase the radius of the public notice to provide members of the public additional time to review the proposed Mitigated Negative Declaration and its technical appendices.

Comment Continued: In terms of some of the substantive issues, I, Mr. Armijo mentioned that he changed the Mitigation Monitoring Program. I looked at, I was on the City's website about four hours ago and I did see comments, mitigation measures dealing with the City of Yorba Linda water hydrology. That's not important but it just kinda raised a flag to us that there is some, we are not fully aware of all the potential impacts that are being presented. There is also an Appendix D which is very important because it has to do with cultural

resources and the historic resource of the four buildings that have been discussed. I clicked the link on Friday, I also clicked today, I could not access that appendix. I was able to get the traffic, noise, other appendices; the historic cultural Appendix D is not available. You click on it, it says 404 error and it doesn't work.

Response: During the initial public review period some project information was not available for public review due to a temporary problem with the City's website. Based on this comment the City Council approved a motion to extend the public review period for an additional 30 days and increase the radius of the public notice to provide members of the public additional time to review the proposed Mitigated Negative Declaration and its technical appendices.

Comment Continued: On some of the substantive issues in terms of traffic there is mention about the unacceptable LOS of D at the, the name of the street is Cedarbrook and Windsong, the LOS of D. It states that the project design feature of adding a stop sign is supposed to remedy that but there is no analysis of how that would be remedied. That is kind of one of our frustrations with the MND. We see a lot of conclusory statements without sufficient analysis. It seems more like it is someone's opinion without providing substantial evidence to support that opinion. For example, there is a statement in the MND that states that the proposed project will reduce traffic to Park Avenue near the Aliso Viejo Middle School but there is no analysis of how traffic will be reduced. In response to our comments, the, one of the responses stated that future development will need to coordinate special events between this proposed project and the middle school but that's nowhere to be seen in the actual mitigated negative declaration.

Response: See response to letters from Community Legal Advisors Inc, dated July 28, 2014 and September 15, 2014 regarding the proposed Project's impact on traffic.

Comment Continued: Another point is that the MND states that there will be 275 attendants plus 25 staff for a total of 300 persons on site at the same time which could be potentially 300 cars. We raised that in our letter and the response was that there would only be 66 inbound trips at the peak am hour and we are not sure how 300 persons on site equates to 66 inbound trips.

Response: See response to letters from Community Legal Advisors Inc, dated July 28, 2014 and September 15, 2014 regarding the proposed Project's impact on traffic.

Comment Continued: In terms of noise, again we feel there is a conclusory statement without analysis. The MND states that long-term operational and traffic noise increases would be below the threshold of significance. We raised the issue of noise and we are concerned because right behind the property will be the community garden, the picnic area and the field activity area with noise generated from all the people, from kids playing sports and what have you. But the MND and the response only address traffic related noise as well as noise from HVAC units. We are also concerned about these noises from people, all the participants at the field, at the picnic area, at the gardens and that's not mentioned anywhere.

Response: See response to letters from Community Legal Advisors Inc, dated July 28, 2014 and September 15, 2014 regarding the proposed Project's impact on noise and traffic.

Comment Continued: The photometric report is listed as Appendix A and it consists of about 16 pages most of which is figures and diagrams and right at the beginning near the middle of page two it has another conclusory statement. It states that the project's lighting design will result in an increase of less than .1 foot candles along the project's perimeter fence and less than detectible foot candles along existing residential development to the north which is our project. But there is no analysis. It is just one conclusion and they don't discuss their 16 pages of figures and diagrams. It's just a conclusion. So we don't understand how they have reached that conclusion.

Response: See response to letters from Community Legal Advisors Inc, dated July 28, 2014 and September 15, 2014 regarding the proposed Project's impact on light and glare.

Comment Continued: In terms of historic resources, Mr. Armijo was stating earlier that this project is not, that the four buildings are not eligible for the National Register or the California Register. I do want to point out in the CEQA Guidelines section 15064.5, and we don't know whether it would be eligible or not. But even if, it states that if a resource is not listed or determined to be eligible for listing in the California Register of Historical Resources that does not preclude a lead agency, such as the City from determining that the resource may still be a historical resource as defined in the Public Resources Code. A lot of people here do believe that the four buildings from the Aliso Viejo Ranch, from the original Molton Ranch are historic in nature and the MND even states that the original Molton Ranch complex of structures could be considered a significant resource. But then it concludes that because only four buildings remain they do not collectively represent all aspects of a functioning historic ranch. But whether it is a functioning historical ranch is not necessarily the issue. We can look at each building individually or the four buildings together, and whether some buildings may have been destroyed in the past does not undermine the fact that these four existing buildings could be considered historic. Because once they are demolished they are gone and that little piece of history for Aliso Viejo which has, as recognized in the MND, zero buildings or any sites on the National Register of Historic Places. Once we demolish them they are gone and we lose that piece of history that is very important to your residents. So I think that's very important to look at CEQA Guideline 15064.5 which still gives you the discretion even if it is not under the National Register or the California Register to determine that a building is historic.

And that's about it. We essentially do need more time to fully analyze and address and raise our comments. Thank you very much.

Response: See response to letters from Community Legal Advisors Inc, dated July 28, 2014 and September 15, 2014 regarding the proposed Project's impact on historic resources.

Commenter: JASON RUDIN

Comment: Good evening Mr. Mayor, Councilmember's. I was actually going to come up here and actually just say I agree with the Attorney but I feel compelled to actually say something. I bought my house in California Reflections about two and a half years ago. Had I known this was going on or there was a potential for the development down there I never would have bought. Okay. It is ridiculous that the Council, the City wants to develop

in this area. It is not fair to homeowners or anybody in the community in that surrounding area. I kept (cough, excuse me) hearing the word insignificant when it comes to the historic sight. It is not insignificant. Why do we have our Founder's Day celebration there? That's not insignificant. It's just, I think I speak for everybody in here, nobody wants this. I'm just going to keep it very short.

Response See response to letters from Community Legal Advisors Inc, dated July 28, 2014 and September 15, 2014 regarding the proposed Project's impact on historic resources. The City does hold Founders Day Festival within the limits of the property; however, the Founders Day festival was established to celebrate the founding of Aliso Viejo in the 1990s. The Ranch complex does not represent the time period associated with the founding of the City. It is a location for the festival, nothing more.

Commenter: ALYCE LAMB

Comment: Hi, my name is Alyce Lamb and I've lived in California Reflections for 23 1/2 years and I'm a member of the board for eight. In regard to the traffic, I orchestrate my daily life to accommodate the school's schedule. I drive in and out of my community so as to avoid the school's traffic cues. And I take my walks so as to avoid inhaling the carbon monoxide emitted from the school traffic lines. To add insult to injury, 80% of the school traffic originates in Laguna Niguel. Now the City deems it prudent to import more traffic onto a dead end street without doing an environmental impact report. I believe if anyone on the City Council lived in our community they would expect no less.

Response: This comment does not address the adequacy of the Draft Mitigated Negative Declaration. It states "Now the City deems it prudent to import more traffic onto a dead end street without doing an environmental impact report" without saying why an environmental impact report is warranted. No response is required.

Commenter: IAN SMITH

Comment: I'd be willing to wait the 30 days if it means I can respond in writing to some of what is in that statement.

Response: This comment does not address the adequacy of the Draft Mitigated Negative Declaration. It states "I'd be willing to wait the 30 days if it means I can respond in writing to some of what is in that statement." No response is required.

Commenter: KIM SMITH

Comment: "Good evening. I second that, Ian is my husband.

We've lived in that community for almost 24 years. We watched our house being built. We are on the street that overlooks the ranch now. When we moved in, we really thought it was going to be open space. We are really quite disheartened but I will be able to address the issues better in 30 days."

Response: This comment does not address the adequacy of the Draft Mitigated Negative Declaration. It addresses the ability of the commenter to make comments if given an additional 30 days to respond. No response is required.

Commenter: RENEE McGINNIS

Comment: Good evening. I also would like to put it in writing and have the 30 days. But, in case I am not heard then I would like to say the traffic is a nightmare. If I come home during that time I have a 20 minute wait in the line to get into my tract. And you, everybody has to turn their cars off and just sit there and wait. So the traffic is a nightmare without this coming in. Thank you.

Response: This comment does not address the adequacy of the Draft Mitigated Negative Declaration. It states "the traffic is a nightmare. If I come home during that time I have a 20 minute wait in the line to get into my tract. And you, everybody has to turn their cars off and just sit there and wait. So the traffic is a nightmare without this coming in." See response to letters from Community Legal Advisors Inc, dated July 28, 2014 and September 15, 2014 regarding the proposed Project's impact on traffic.

Commenter: PRASHANT WADHWA

Comment: Yes, so I bought my house two and a half years back and I never knew that such a project is going to go forward. So right now I feel like I am being excluded and not being heard as a resident. And the traffic is really, really bad. It is just going to add to the troubles and I have, I don't feel good about this.

Response: This comment does not address the adequacy of the Draft Mitigated Negative Declaration. It states "the traffic is really, really bad." See response to letters from Community Legal Advisors Inc, dated July 28, 2014 and September 15, 2014 regarding the proposed Project's impact on traffic.

Commenter: SONIA KANWAL

Comment: Good evening. I say yes to 30 days. That's it. Thank you.

Response: This comment does not address the adequacy of the Draft Mitigated Negative Declaration. It addresses the ability of the commenter to make comments if given an additional 30 days to respond. No response is required.

Commenter: RUDY RIVERA

Comment: I say yes to the 30 days but I also agree with the attorney. And just really quick, you know the traffic. I think if, like somebody said, if any of you lived there you guys would really feel the impact of it during those times. And 20 minutes, it's, it's pretty bad. I think it might sound good on paper, I think it is for a good cause, but it's just a bad location for it. Bottom line. So anyways, that's my peace. Thanks.

Response: This comment does not address the adequacy of the Draft Mitigated Negative Declaration. It states "And just really quick, you know the traffic. I think if, like somebody said, if any of you lived there you guys would really feel the impact of it during those times. And 20 minutes, it's, it's pretty bad. I think it might sound good on paper, I think it is for a good cause, but it's just a bad location for it. Bottom line." See response to letters from Community Legal Advisors Inc, dated July 28, 2014 and September 15, 2014 regarding the proposed Project's impact on traffic.

Commenter: CLAUDIA MOURAD

Comment: Good evening. I too would also like to wait the 30 days. I want to review everything and then I can speak with our lawyer. Lawyer to lawyer and then I can respond then. Thank you.

Response: This comment does not address the adequacy of the Draft Mitigated Negative Declaration. It addresses the ability of the commenter to make comments if given an additional 30 days to respond. No response is required.

Commenter: MOHAMMED FAIYEZ

Comment: I'm okay with the 30 days but I do have a question. I'm kind of blown away by this comment if nobody in the City of Aliso Viejo wants this community center that's written on paper, why are we here today. I just don't get it. I don't, honestly. And the Via Iglesias, Via Iglesias is 50% capacity and Laguna Beach is 50% also and we have buses going back and forth. Why do we need another one. I don't understand. And my house, we bought this house 10 years ago, Ang? (addressing someone in the audience). 10 years ago and my backyard is adjacent to the ranch, it is not fair. Not at all.

Response: This comment addresses the ability of the commenter to make comments if given an additional 30 days to respond, the need for the facility and the fairness of locating this facility at this location. The comment does not address the adequacy of the Draft Mitigated Negative Declaration. No response is required.

Commenter: ANGELA FAIYEZ

Comment: I agree with what my husband just said, obviously.

Yes, and I agree with my neighbors. The traffic is horrific. If you are trying to get in and out it is really, really difficult. I will wait the 30 days and again I feel like it shouldn't be there. It's just not the right place for it.

Response: This comment addresses the ability of the commenter to make comments if given an additional 30 days to respond, the need for the facility and the fairness of locating this facility at this location. It states "The traffic is horrific. If you are trying to get in and out it is really, really difficult. I will wait the 30 days and again I feel like it shouldn't be there. It's just not the right place for it." See response to letters from Community Legal Advisors Inc, dated July 28, 2014 and September 15, 2014 regarding the proposed Project's impact on traffic.

Commenter: JACK LEE

Comment: Good evening. Mayor and Councilmember's. I know you are all hard working people and you are always thoughtful about the residents and I want to first say thank you for taking your time and trying to do this for the community. However, like everybody else said, this is really a bad spot. And I think something that hasn't been mentioned is about the funding. 19 million dollars. We are going to deplete our coffers and go into debt. If somebody can explain that to me and find a better way to use that piece of land for all of the residents. Thank you very much.

Response: This comment states "this is really a bad spot." (for this project) "And I think something that hasn't been mentioned is about the funding. 19 million dollars. We are going to deplete our coffers and go into debt." Because the comment does not address the adequacy of the Draft Mitigated Negative Declaration, no response is required.

Commenter: SUSAN RICHESON

Comment: Hi Councilmember's. I believe that I have studied the traffic situation for over 20 years. Your consultants have it wrong. I'm an expert. I have lived there for over 20 years. I'm here to tell you they've got it wrong. The traffic. It is a dead end street. There is no other way in and out except to go past Cedarbrook and past Napa. It's not a good place for the Boys and Girls club. This is, it is too huge of a project, too many more cars coming up and down our street. I would just wish that you guys could understand the legacy that you have an opportunity to leave. And it should not be this plan. You could make something truly of value for your community. Make something that we all want. I have been for the past 20 years to all the meetings where in the Democratic process we all said no we don't want it, we want something you know like park-like. This has not been anything that anyone has agreed on in what I have seen in all the meetings. So I would just hope that you guys could see your opportunity to do something much better than this. Thank you.

Response: This comment States "I believe that I have studied the traffic situation for over 20 years. Your consultants have it wrong. I'm an expert. I have lived there for over 20 years. I'm here to tell you they've got it wrong. The traffic. It is a dead end street. There is no other way in and out except to go past Cedarbrook and past Napa. It's not a good place for the Boys and Girls club. This is, it is too huge of a project, too many more cars coming up and down our street." The Project does not involve the Boys and Girls Club. See response to letters from Community Legal Advisors Inc, dated July 28, 2014 and September 15, 2014 regarding the proposed Project's impact on traffic.

Commenter: JOSEPH BUONOMO

Comment: Anyway, so yes I appreciate the Honorable Council the extension for 30 days to be able to submit in writing my comments and I'll just defer from that. Thank you.

Response: This comment addresses the ability of the commenter to make comments if given an additional 30 days to respond. The comment does not address the adequacy of the Draft Mitigated Negative Declaration. No response is required.

Commenter: WILLIAM BROWN

Comment: Ok sorry about that. Hey I don't have no weapons. I wouldn't use it anyway. Anyway, the last time I was here I said I'm Aliso Viejo proud. I want to give that back to you, I'm not proud. I am proud that I have a daughter and three grandchildren in the City. But you guys, what are you smoking in the back room. I'm not kidding. You try to give this property to a church group because he said he had 19 million dollars. Turns out he didn't have it. You were going to give him the property for 50 years on a minimum. I can't understand it. The best person you had working in the Council was Cynthia Adams. She came up with a plan, had all of Aliso Viejo down at the school and she did such a great job coming up with sherrets. If you don't know what sherrets are, look it up. It's, I will tell you briefly, it was explained to me. A bunch of architects could not figure out what to do so you put them in a closed building and say come up with this by tomorrow. They came up with a plan. She did the same thing, came up with a plan. Leave the property as it is. 19 million dollars is a lot of money, a heck of a lot of money. I have a bitter taste about the plans that's going on. I don't know what's going on. I want to know what you guys are smoking in the back room.

I'm the one that took all the pictures that everybody is raving about. The traffic problem. And I can't believe that I got home the other day and I had this letter from the City. You want to skate the environmental clause. I can't believe that. Just don't do a study when school is out, this was done once before and it doesn't work. It doesn't tell the true story. That's all. I've got other things to say but last time I ran over, I don't want to do that this time.

Response: This comment does not address the adequacy of the Draft Mitigated Negative Declaration. It states "Leave the property as it is. 19 million dollars is a lot of money" and "The traffic problem". See response to letters from Community Legal Advisors Inc, dated July 28, 2014 and September 15, 2014 regarding the proposed Project's impact on traffic.

Commenter: RAVI SINGH

Comment: Good evening. Thank you Mr. Mayor, Council members. Lovely evening except what we have on the Agenda. I do on record approve of the 30 days extension. However, I think it is important that I touch on a couple of the sour notes that I had prepared because they are important. My name is Ravi Singh. I have been an Aliso Viejo resident since 1991. I bought my house in 1991. Love the City. Love what the City Council has done with it. Immensely in love with it. Compared to any city in Southern California, nothing better. Okay. A few month back, maybe a little bit more than a few months, we sat right here in this room. We had tables set up and we were asked here to come and give our feedback on what to do with the ranch. We had tables set up and unbeknownst to the participants who came down there was a member of the Boys and Girls club that was strategically placed at each table. This information was not shared with the participants that were here to give their feedback. Yet, every single table, despite a member of the Boys and Girls club being present at each table, every single table objected. The number one objection was the community center. Every single table. Yet here we are six, eight months down later. You are intent on doing what you want to do. I thought you were supposed to represent your constituents. What happened. I don't understand this. This monstrosity here is

unnecessary, unneeded, unwanted. To echo the gentlemen earlier nobody wants it, except the people over here.

The current facilities that we have at Via Iglesia and Laguna Canyon they are not even near capacity now or in the foreseeable future. So why are you doing this. Why? You want to spend tens of millions of dollars, go into debt, and then spend hundreds of thousands of dollars to fund that community center each year. Here we are with fancy names of ISMND and an EIR and ABC. These are just letters. They are human beings here that live in the complex. 400 hundred or 500 hundred of them. Your constitutes. 174 homes and yet how many of you have come down and driven that route in the morning or in the afternoon when traffic is horrible. How many of you. Show of hands anyone. Show of hands back here. How many of you have taken the time to go down to California Reflections and speak to the homeowners and have them point out to you.

Okay, I will just finish up by saying, very quickly, stop this madness for heaven's sake. That's all.

Response: This comment does not address the adequacy of the Draft Mitigated Negative Declaration. It states the commenter opinion about the Project and "how many of you have come down and driven that route in the morning or in the afternoon when traffic is horrible". See response to letters from Community Legal Advisors Inc, dated July 28, 2014 and September 15, 2014 regarding the proposed Project's impact on traffic.

Commenter: KARSHA BJERKE

Comment: Hi, hello Mayor and Council members. I was just going to say I agree to the 30 days and many other comments made until it may just be a manner that he uses in his speech but the use of the word insignificant. I saw a couple of you raise your hand that you have done the traffic in and out. It is not insignificant to us. And the historical site is also significant. And it brought to mind the Titanic and you know when they hit that ice berg and the significance of that was a tragedy. But what became a travesty is when all those life boats went in there half full. It was a travesty that they so much loss of life. And we have those Boys and Girls clubs that are half full. And the waste of 19 million dollars with the half full, just kind of the correlation there calls to mind of that. So we have the traffic issues that he finds insignificant, we find very significant. The loss of the circle value and the loss of the money I correlate all that together. But thank you very much.

Response: This comment addresses the desire of the commenter to make comments if given an additional 30 days to respond, "And the waste of 19 million dollars" and "traffic issues that he finds insignificant, we find very significant". See response to letters from Community Legal Advisors Inc, dated July 28, 2014 and September 15, 2014 regarding the proposed Project's impact on traffic. This comment does not address the adequacy of the Draft Mitigated Negative Declaration.

Commenter: DON DOOLEY

Comment: Good evening Mayor and members of the Council. I will save my comments for the 30 day continuance of the Mitigated Negative Dec notice. I would ask though as part of

the Council's motion to continue that item for 30 days to re-notice that if it hasn't already been done that staff notice not only the property owner of the Barcelona Apartments and the St. Maritz Apartments but the tenants as well. In the interest of public involvement there may be people that are not aware of the environmental report that may be interested in attending the meeting.

Response: This comment addresses the desire of the commenter to have the city re-notice the Draft Mitigated Negative Declaration. This comment does not address the adequacy of the Draft Mitigated Negative Declaration. No response is required.

Commenter: PHILIP FLEMING

Comment: Good evening Mayor and Council, staff, guests. I want to start out by saying I too am Aliso proud. This is a great City, it really is. For the most part you folks do a great job. You've just simply dropped the ball on this one. And I am a resident in California Reflections, 21 St. Maritz. I'm also President of the Homeowners' Association representing all 174 homeowners tonight. I stood in front of you several months ago and implored you to stop this insanity as it relates to the development of this site. You didn't listen then and it's obvious that you are not going to listen now. I certainly hope you change your course there. Since that time a number of things have happened. I'd like to start by the L.A. Times is a Pulitzer Prize winning journalist organization world renowned. They also print a daily newspaper, you may have seen it. I saw an article the other day that was extremely alarming to me. And because you have announced your targeted tenant of the Boys and Girls Club, and I personally have nothing against the Boys and Girls Club, the LA Times wrote an article a week ago today Federal authorities on Wednesday arrested 18 El Monte Flores gang members and associates that used the offices of the Boys and Girls Club as their hangout. 18 of the 41 indicted by the Federal Grand Jury last week on charges including conspiracy, murder, drug trafficking, money laundering and weapons violations. Right out of the LA Times article, folks, I'm quoting the article. Federal officials said the gang conducted illegal activities out of the Boys and Girls Club in the San Gabriel Valley club facility on Mountain View road. They used the club as a place where they would openly sell drugs, collect taxes said the spokesman for the DA, V.J. Rodney. The gang also used the club for recently held meetings and even hosted a car wash for their fundraisers. I quote the Mayor of the City of El Monte, it is very disturbing that the facility is supposed to give Boys and Girls Club protection and safe place could be used for this purpose. Assistant United States Attorney Jeff Mitchell of the violent crimes organize section said 41 suspects of the fugitive that 15 were already in the state and federal prison on unrelated charges. The Captain of the El Monte Police force, we took some really bad people off the streets today. Councilwoman Norma Macias said that she's received numerous complaints about the types of activity of the people loitering in and around the Boys and Girls Club. Folks that's 50 miles from here. That's not very far. This is the LA Times.

I stand in front of you today again demanding that you abandon this project entirely and any further consideration. This is not needed in our community. You hear the folks here behind me. This is fiscally irresponsible

This will negatively and indelibly change a very sensitive historic preservation site forever. And I again urge you implore you to drop consideration of the development of this site. Thank you.

Response: This comment states the commenter opinion about the Project and states "I stand in front of you today again demanding that you abandon this project entirely and any further consideration. This is not needed in our community. You hear the folks here behind me. This is fiscally irresponsible".

The commenter stated "This will negatively and indelibly change a very sensitive historic preservation site forever". See response to letters from Community Legal Advisors Inc, dated July 28, 2014 and September 15, 2014 regarding the proposed Project's impact on historic resources.

Commenter: STEVEN ELDER

Comment: I'm going to wait for 30 days.

Response: This comment addresses the ability of the commenter to make comments if given an additional 30 days to respond. The comment does not address the adequacy of the Draft Mitigated Negative Declaration. No response is required.

Commenter: SHARON DAUGHORTY

Comment: Good evening Mr. Mayor and Council. First of all I'd like to share with you that I am a very proud member of the Aliso Viejo community and I actually do not live in California Reflections. However, I live in this neighborhood. And I'm very concerned about this proposal for the ranch. First of all to be demolished because of historical values but more specifically I have concerns for the evaluation of this site. I clearly feel that an environmental impact report should be deemed. I think evidence of the lack of insignificant reporting is and reflective of, which I think was noted earlier in the comments, about that there is an acceptance of Level C for traffic and that this proposed increase in traffic because of the community center might take it down to a Level D. I live in this community and I have to accommodate the school for the traffic and for the noise and I'm very concerned that with the revised project that it will further impact not only California Reflections but the Villas, I live up the street, and the community as a whole. We live in a residential community that we like to walk, we like to be a part of the community. I think the increased traffic will in fact negatively really impact our ability to really enjoy our residence.

In addition to that, the parking situation. We have a two residential or apartment complexes. One of which is the Barcelona. And every single evening on Windsong the entire parking is taken up in that area. In the Villas, where I live, I cannot have really any guests come and if they do they have to park on the street. So I'm thinking okay we take away the parking because of the community center then the Barcelona and the other neighboring apartment complex doesn't have any place to park, where do my guests park. Which further impacts it. Then I'm thinking about the construction. I was up very early this morning for a 7:00 a.m. meeting and I had a construction go by. And I thought what would happen with any revisions or any construction. I would advocate that it doesn't go down

Cedarbrook where there is a lot of homes or my bedroom faces Cedarbrook and I think that would be problematic as well.

I'm concerned also quite frankly about the overall value for California Reflections because as a good neighbor I went down to that community and there is a lot of empty, already empty homes facing where the community center would go. I'm thinking well what would happen with those homes. Would they be difficult to be rented or re-sold as I already see. There seems to be a lack of residents in that particular area. And if that community finds itself hard to sell the properties or to rent the properties out and if that community is all of a sudden impacted in terms of their value, what happens to the Villas. I have additional comments which I'll reserve ...

Okay, ... which I will reserve for future, you know for future comments. But I think in general my last, my very last comment is the pool community that we have down the street from Cedarbrook is already underutilized. And I think that we really haven't thought out a proper use for the ranch. I personally would like to see it retained because I do believe it has historic value.

Response: See response to letters from Community Legal Advisors Inc, dated July 28, 2014 and September 15, 2014 regarding the proposed Project's impact on historic resources, noise and traffic.

Commenter: MIKE CHAMBERS

Comment: Good evening. I also want to say I think our Council is amazing. I think our City is amazing. I'm so blessed to live in a city where it has been so fiscally responsibly run that we have 20 million dollars in reserve, not including 4 million dollars-ish of community enhancement funds. So thank you to all of you collectively for putting us in this position. There is a traffic problem in California Reflections. It already exists. It is going to happen every day this week whether you build down there or not. I think we keep coming up here as a crutch. I don't want to disrespect my neighbors in California Reflections but I'd prefer you just come up and say you don't want it in your back yard. I can respect that. You don't want to deal with construction noise. But that's really it. There is no historical significance to those buildings. We had a third party person come in and tell us that. We had somebody come in and say it is not going to, it passes the environmental now, it passes traffic. Common sense tells me that when you open a Boys and Girls Club the two biggest pain points before and after school of your traffic situation should be eased because most of those kids are going to stay and their parents are going to come and get them after the point of impact.

All I ask California Reflections is please don't respect our City Council people. They put us in a great position. I'm not asking you like the project. I'm not asking you to like it in the backyard. But don't come up here and say have you been to one of our meetings. That's unfair. How many of you have actually been to the Boys and Girls Club. I keep hearing misquoting facts about that we are underutilized. We are not. We are at capacity at that club. You can put about 50 to 60 kids in there safely. 70 to 75 if you want to squeeze them in. But most of our kids in Via Iglesia, which is one subset are playing outside. Let's set that aside for a moment. The Boys and Girls Club is not part of this. This is a City decision. A couple facts I keep hearing out here, California Reflections, it is a poor

California reflection on your community when you come up and don't realize that it is no longer a 19 million dollar project. It isn't. Get that correct. Don't come up and wrongfully accuse our Council and people of doing wrong things. Our city is growing. Were you guys here when we decided to develop all up and down Aliso Creek. We have residential density everywhere. We have a population boom. The biggest growing segment in our population is 0 through 10. We need to find an outlet for these kids. I'm not asking you to endorse this project, I'm not. But don't say it is not responsible of us to look for a solution. I'm sure some club 50 miles away from here had a problem. Any time you have a boom of youth population and you don't give them a positive outlet crime typically happens. We can wait for crime to happen or we can address it now. So at a minimum, I applaud the courage and the leadership. These are tough issues, I get it. I thank you guys for putting us in the position to this point. And I thank you guys for your leadership going forward, whatever you decide. Thank you.

Response: This comment states the commenter opinion about the Project. The comment does not address the adequacy of the Draft Mitigated Negative Declaration. No response is required.

Commenter: SCOT SPEYLNG

Comment: Alright, I'll take the podium and try to avoid any of the rift-raft back here. Thank you everybody for letting me speak here. Ms. Cave, Mr. Chun I appreciate you coming down and recognizing firsthand the traffic impacts that we've got in California Reflections. Just to travel a tenth of a mile can take 20 minutes. A stop sign is not going to correct that. But I came here just to gather information and I'm really glad that I spoke deferred behind the gentleman that just spoke. Just to get some of the fact because we don't have any of the facts. I think 30 days, I'd like to go on record, is a great idea. I work with, in contracting, we build big projects. I'm a project manager. I've been through a lot of these permitting discussions before. I'm been involved with the Boys and Girls Club at another location. We ran fundraisers for them. And things went really well. They are a great organization. As far as the impacts that it is going to have in this location though, with an elementary, is it, middle school down there. I don't know if it is elementary, I don't have kids, middle school. Heavy construction traffic moving down that street is not only going to affect the residents but it is also going to affect the kids. Construction throughout the course of the day. Construction workers going to and from that site. I don't know how big this scale is but I'd be really interested in seeing the plan and development as well as some of the finances behind the project and understanding why this would be good for Aliso Viejo. And understand how it would be good for the kids that participate. It's a cumbersome task to go through 1,000 pages even in 30 days. And I've written a lot of development plans, I've read a lot of development plans and just because it is 1,000 pages doesn't mean that it is comprehensive. The more succinct you can get and further down into not really details of 4 or 5 pages on what a stop sign is going to do but really look at it from the 5,000 foot level of what this project is going to do for this community and for the kids that are going to attend.

The noise. Not just with the kids running around in the middle school there, the parks, but now the additional kids at play. Kids at play is a great thing just pick the right location for it. I'm not saying that this isn't the right location for it. I just don't know enough and I don't think that the residents here that are showing their passion because this is right in their

back yard know enough about it. Going back, you've recognized Sidney Novak and what she said she loved about Aliso Viejo is that there is a ton of places for activities. I mean she'd be one of the people that may or may not be attending this Boys and Girls Club, who knows. But there is a lot of opportunities for kids at play here in Aliso Viejo. I'd like to see what the justification is for adding another community center. Especially in a location that's at the dead end of the street. That's all I have.

Response: This comment states the commenter opinion about the Project, supports the opportunity for an additional 30 days to review and comment on the Draft Mitigated Negative Declaration. The comment raises the Project's impact on traffic and noise. See response to letters from Community Legal Advisors Inc, dated July 28, 2014 and September 15, 2014 regarding the proposed Project's impact on noise and traffic.

Commenter: MARILYN FURSE

Comment: I'm Marilyn Furse and I live in California Reflections and I just have one question for you. We are spending, or you are projected to spend 19 million dollars. How are you going to recoup this money? Is the Boys and Girls Club going to pay you? Or how are you going to get the money for it?

Response: This comment raises the question of project financing. The comment does not address the adequacy of the Draft Mitigated Negative Declaration. No response is required.

Commenter: JUDI SAMPSKY

Comment: Thank you. My name is Judi Sampsky and I live in California Reflections. I would like the 30 days to be able to see all this number one and that's very very kind. I do have some concerns as for what project whatever. My concerns are I run this area every morning. I run down there. And there is bathrooms already in that park there. Those bathrooms are now locked. When I ran two years ago if I had to go to the restroom I could go in those bathrooms. They are now locked. There is a sign up that they are locked after school too. And the graffiti that is on the trail back there is terrible already. I have four kids of my own. They are all grown now. One of them's gone through the middle school and all that. So I know the kids need something to do but that area down there is already kinda secluded and to make a place for more to kind of stay down there I don't think is really the right place for it to be. Thank you.

Response: This comment states the commenter opinion about the Project, supports the opportunity for an additional 30 days to review and comment on the Draft Mitigated Negative Declaration. The comment does not address the adequacy of the Draft Mitigated Negative Declaration. No response is required.

Commenter: SEAN LeCAVE

Comment: Sean LeCave, California Reflections resident for 8 years. Agree with the 30 day extension. I just want to say the impact is in regards to traffic I fail see how it would be insignificant. I can't tell you how many times I have almost gotten him coming out of California Reflections and going up the street. The only times it seems safe to come out of

our area is when there is an Orange County Sheriff monitoring the situation. Any other times it's, it's not good. I am extremely concerned about my kids if they have to go around. The only entrance in and out of California Reflections, although there is a gate that is open now. I'm very concerned about them coming out of that area as well so we watch that. Again, nobody follows the speed limit. A stop sign is not going to help the situation. I don't see anything as far as adding this proposed plan would have an impact in reducing the traffic situation. If you are there when there is a softball tournament and soccer games going and something going on on the weekends and if there are any weekend activities associated with the center there would be no place to park. And if anything significant were to happen in that area it would be impossible for people to evacuate. It is a huge concern for us residents as we have been sharing. And I have been to at least one, to one of these and at least two of these in the past. I was here when we had the tables arranged. Honestly, it seemed a bit contrived and obvious with the presence of non-Aliso Viejo residents supporting the Boys and Girls Club. That was very disconcerting. We represent Aliso Viejo. We pay your salaries. So to have a concerted effort to bring people in and bus them in from other cities to speak in favor of this was really disconcerting. Thank you.

Response: This comment states the commenter opinion about the Project, supports the opportunity for an additional 30 days to review and comment on the Draft Mitigated Negative Declaration. The comment mentions the Project's impact on traffic and noise. See response to letters from Community Legal Advisors Inc, dated July 28, 2014 and September 15, 2014 regarding the proposed Project's impact on noise and traffic.

Commenter: GARRETT DWYR

Comment: Hi, thanks for listening to me. My name is Garrett Dwyr. I am also an Aliso Viejo resident. I live in the La Paz condos across the street from the Town Center. I volunteer at the Boys and Girls Club. And my daughter is three years old and she is hopefully going to be attending the Boys and Girls Club, where ever it may be, whether it is Via Iglesia or the new facility. And I have wonderful thoughts about being able to walk down that path from the junior high school there to our home and spend some quality time with my daughter picking her up and dropping her off at that facility. I can sympathize and empathize with folks that live in the California Reflections. And I certainly don't want to sound callous but that's a very small portion of the population of Aliso Viejo. And I think that's, I don't know that that's necessarily the majority opinion of the City, I certainly don't have any expertise to speak on the matter. But I have really wonderful thoughts about the facility. I appreciate the value that it brings to the community. And I think that it can really add a lot of value, to me personally and my family. So, in speaking of and listening to the environmental impact of it I will be a pedestrian to that facility a lot so I think it can really, really be a productive part of our community. So, thanks.

Response: This comment states the commenter opinion about the Project. The comment does not address the adequacy of the Draft Mitigated Negative Declaration. No response is required.

Commenter: JULIA ROMANENKO

Comment: My name is Julia Romanenko, I live in California Reflections and I've been there for seven years raising two boys. And this is one place I am not comfortable. I don't feel

safe getting in and out of our complex. I have one son who is starting to drive and I am concerned. Because the vehicles are speeding up going up the street. Nobody is slowing down. We cannot see around the turn and increasing the traffic is only going to put us in more danger. Thank you.

Response: This comment states the commenter opinion about the Project and states "We cannot see around the turn and increasing the traffic is only going to put us in more danger". See response to letters from Community Legal Advisors Inc, dated July 28, 2014 and September 15, 2014 regarding the proposed Project's impact on traffic.

Letter from the Gas Company
August 18, 2104

Comment: This letter's intent is to notify you that the Southern California Gas Company has facilities in the area where the above named project is proposed. Gas facilities within the service area of the project could be altered or abandoned as necessary without any significant impact on the environment.

Response: This comment does not address the adequacy of the Draft Mitigated Negative Declaration. No response is required.

Letter from Mrs. June B. Peterson
August 20, 2014

Comment: This comment expressed the commenter's opinion on the Project and does not address adequacy of the Draft Mitigated Negative Declaration.

Response: No response is required.

Email from Heidi Stoops
August 20, 2014

Comment: This comment expressed the commenter's opinion on the Project and does not address adequacy of the Draft Mitigated Negative Declaration.

Response: No response is required.

Email from Mr. Mike Ramirez
September 10, 2014

Comment: This comment expressed the commenter's opinion on the Project and does not address adequacy of the Draft Mitigated Negative Declaration.

Response: No response is required.

Email from Mr. Ray De Leon
September 11, 2014

Comment: This comment expressed the commenter's opinion on the Project which do not address adequacy of the Draft Mitigated Negative Declaration. The comment references concerns by the residents of California Reflections Regarding traffic and parking concerns.

Response: Refer to the responses to the comments submitted by Community Legal Advisors Inc., dated July 28, 2014 and September 15, 2014.

Letter from Community Legal Advisors Inc.
September 15, 2014

Comment: Legal Standard

Requirement to Prepare an EIR. As established by the California Supreme Court in *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 74-75, "since the preparation of an EIR is the key to environmental protection under CEQA, accomplishment of the high objectives of that act [CEQA] *requires the preparation of an EIR whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact'* (emphasis added). The Supreme Court's holding was memorialized in Section 15064(f)(1) of the CEQA Guidelines. The holding in *No Oil* is particularly important in light of the significant environmental impact that will result from the proposed destruction of historic resources, which the MND fails to adequately address.

Intent of CEQA and Purpose of EIR. Indeed, "CEQA embodies the fundamental legislative intent that the act be interpreted in a manner that affords the *fullest possible protection to our environment... "California for Alternatives to Toxics v. Dept. of Food and Agriculture* (2005) 136 Cai.App.4'h 1, 12 (emphasis added). The Supreme Court best expressed the legislative intent behind CEQA in the case of *Laurel Heights Improvement Assn. v. Regents of University of California(1988)* 47 Cal.3d 376, 392 as follows:

> "The EIR is the primary means of achieving the Legislature's considered declaration that it is the policy of this state to 'take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state.' The EIR is therefore 'the heart of CEQA.' An EIR is an 'environmental alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.' The EIR is also intended 'to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.'" (citations omitted)

Here, the Association, and many residents of Aliso Viejo and beyond are certainly apprehensive whether the City has in fact fully analyzed and considered the implications of the Project, particularly because destroying the historic ranch buildings is obviously a "point of no return."

Basis for Conclusions and Adequacy of Evidence and Analysis. An environmental review document that does not explain the basis for its conclusions may be deemed to not comply with CEQA's requirements. *See Californians for Alternatives to Taxies,* supra, 136 Cai.App.41 at 13. Thus, an environmental review document "should set forth specific data, as needed to *meaningfully assess* whether the proposed activities would result in significant impacts." *Id.*

The Court in *Chris/ward Ministry v. Superior Court* (1986) 184 Cai.App.3d 180, 197 considered a situation where the local agency failed to undertake an adequate initial study, concluding that the agency should not be allowed to hide behind its own failure to gather relevant data. There, the City adopted an initial study and negative declaration and concluded in brief, conclusory language that the project would not have a significant environmental impact. The Court ordered the preparation of an EIR and commented that "the City's assertion it could find 'no fair argument' there would be any potential significant environment impacts rests, in part, in its failure to undertake an adequate environmental analysis." *Id.*

The case of *Sundstrom v. County of Mendocino* (1988) 202 Cai.App.3d 296 is especially illustrative of the detail and analysis required in an environmental review document. Significantly, *"CEQA places the burden of environmental investigation on government rather than the public. If the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record.* Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." *Id.* at 311 (emphasis added). The *Sundstrom* court also expressed that the "existence of serious public controversy concerning the environmental effect of a project in itself indicates that the preparation of an EIR is desirable." *Id.* at 310

We cite the above cases in order to set forth the well-established legal requirements with which the City must comply. As explained below, the City has thus far failed to meet its burden of environmental investigation and failed to adequately study the environmental impacts posed by the proposed demolition of the historic ranch buildings on the former Moulton Ranch compound.

Response: The commenter quotes from CEQA, State CEQA Guidelines, and various court decisions regarding legal standards which govern when a project's potential impacts require an environmental impact report (EIR) should be prepared, and contends an EIR should be prepared here because of the Project's "proposed destruction of historic resources" and the fact that "the Association and many residents of Aliso Viejo and beyond are certainly apprehensive whether the City has in fact fully analyzed and considered the implications of the Project." The MND's analysis of the Project's potential to significantly impact a historic resource will be discussed further below. Further, as a matter of law, the City has concluded that it properly prepared a mitigated negative declaration for the maximum potential Project.

Where, as here, a mitigated negative declaration has been prepared for a project, the commenter bears the burden of showing that substantial evidence in the record supports a fair argument that the

project may have a significant effect on the environment.[10] This showing of substantial evidence must be made "in light of the whole record before the lead agency" and not a selective reading that ignores pertinent evidence.[11] Further, pursuant to Public Resources Code section 21082.2 and State CEQA Guideline section 15064(f)(4) (and contrary to the quotation in the commenter's letter) the existence of public controversy is not enough by itself to show that an EIR is required. "Substantial evidence" is "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached."[12] Substantial evidence includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts, but does not include mere "[a]rgument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible."[13]

Here, as will be detailed below, none of the comments submitted on the MND present "substantial evidence," as that term is defined in CEQA, of a fair argument that the Project may result in a significant impact. Further, as a matter of law, the Association's "apprehension" regarding the Project does not require preparation of an EIR.

Comment Continued: ***Cultural Resources***. The MND concludes "as there are no historic resources on the Site, the Project will not cause a substantial adverse change in the significance of a historical resource as defined in §15064.5" (MND, p. 66). Unfortunately, this conclusion is unsupported by the facts, and the MND itself often refers to the ranch buildings at issue as "historic." Further, the MND fails to meet the standards set forth in Section 15064.5. The following are just some of the reasons why the analysis in the MND is inadequate:

1. ***Improper Historic Resource Determination***. Under Section 15064.5 of the CEQA Guidelines, a historic resource includes (1) resources listed in, or eligible for listing, in the California Register of Historic Resources; (2) a resource included in a local register of historical resources; (3) a resource that the lead agency determines to be historically significant if it meets the criteria for listing on the California Register of Historical Resources, and (4) a resource that a lead agency may otherwise determine is a historical resource even if it does not meet the other three categories. Here, the MND recognizes that "CEQA allows for local historic resource guidelines to serve as CR criteria equivalent to State criteria" (MND, p. 65), but the MND fails to discuss any such guidelines or process in the City. Indeed, the City lacks any such guidelines, and it should not make any historic resource determination until it adopts enabling legislation or guidelines. This is particularly important because the City's own General Plan calls for the City to identify, designate, and protect sites of historic importance; yet the City does not have a process for doing so. In short, CEQA gives the City the power and ability to make its own independent determination of whether the ranch buildings at issue constitute a local historic resource.

---

[10] *See Citizens for Responsible Development v. City of West Hollywood* (1995) 39 Cal.App.4th 490, 498-99 [citing *Leonoff v. Monterey Cnty. Bd. of Supers.* (1990) 222 Cal.App.3d 1337, 1348].

[11] Pub. Res. Code, § 21080(c); *see also Leonoff, supra,* 222 Cal.App.3d at 1348-49

[12] State CEQA Guidelines § 15384.

[13] State CEQA Guidelines § 15064(f)(5); *Leonoff, supra*, 222 Cal.App.3d at 1352.

Response: Improper Historic Resource Determination

As pointed out in the Community Legal Advisors, Inc. (CLA) letter, the determination of a resource's significance is not arbitrary. Cultural resources are evaluated in terms of criteria for California Register of Historical Resources (CRHR) listing and CEQA criteria.[14] The CRHR criteria in part recapitulate those for National Register of Historic Places (NRHP) eligibility, which have been promulgated by the Advisory Council on Historic Preservation. The CLA letter acknowledges the criteria in which the site was evaluated and agrees that the City can, within its own discretion, determine whether a site is of historic significance. The letter also acknowledges that the City of Aliso Viejo uses the CEQA criteria[15] as its overall regulatory standard to establish significance of a site. Therefore, CLA affirms that, as the Lead Agency, the City must make the final decision on a site's local significance based on substantial evidence including information from technical experts. This was the case here, where the City has determined that the project site is not a historic resource.

Comment Continued:

2. ***Disregard for General Plan Policies.*** The Conservation Element of the City's General Plan clearly states under "Cultural and Paleontologic Resources" that "Aliso Viejo contains important historic, archaeological and tribal sites. In a region characterized by growth and urbanization, these resources are threatened by the encroachment of urban development" (p. COS-9). To that end, the General Plan includes Goal No. COS-8 to "preserve and protect historical archeological and tribal resources." To achieve this goal, the Conservation Element contains the following three policies:

   a. **"Balance the benefits of development with a project's potential impacts to cultural resources"** (Policy COS-8.1)

   b. **"Identify, designate, and protect sites of historic importance"** (Policy COS-8.2)

   c. **"Encourage procurement of cultural resources and artifacts for public education and enjoyment."** (Policy COS-8.3)

   Significantly, the Conservation Element recognizes that "Aliso Viejo contains cultural and historic resources within its boundaries" (p. COS-22). The MND contains a conflicting statement that Aliso Viejo has no sites listed on the National Register or the California Register (MND, p. 63). There must be a reason why the Conservation Element states that the City contains historic resources. It appears highly plausible that the City did consider the Moulton Ranch compound site to be a discretionary "historic resource" when it adopted the General Plan.

   Next, the Conservation Element concludes that the "City will review future development proposals to ensure that cultural and historic resources are conserved in compliance with this Element and the requirements of the California

[14] California Code of Regulations, Title 14, §15000 et seq.
[15] California Code of Regulations, Title 14, §15000 et seq.

Environmental Quality Act (CEQA)" (p. COS-23). However, the City's General Plan and its Zoning Code do not define the terms "cultural resource" or "historic resource." Likewise, there is no enabling ordinance within the City's Zoning Code (based on General Plan Goal COS-8) that addresses or implements this General Plan goal. Hence, the Aliso Viejo Zoning Code is out of compliance with its General Plan as there is no defined process to evaluate and determine what constitutes a "cultural resource" and a "historic resource" within the City. This impacts all projects and developments in the City regardless of whether they are determined categorically exempt or not from CEQA. As a result, the MND is inadequate and an EIR should be prepared since the MND fails to adequately address the project implementation impacts in light of General Plan Goal COS-8 and its associated policies. Consequently, the proposed project results in a potentially significant adverse impact on the environment, particularly at a local level.

As stated above, simply because a potential resource may or may not qualify for listing on the National Register or California Register, it does not preclude the lead agency from considering it as a discretionary historic resource under Section 15064.5(a)4 of the California CEQA Guidelines and Section 10.26 of the Aliso Viejo Local CEQA Guidelines.

Given that the extant Moulton Ranch buildings have been traditionally perceived by the community as being of local historic significance, the project site should be identified, for CEQA purposes, as a discretionary local historic resource and properly evaluated with an intensive level historic resource evaluation pursuant to an EIR.

Response: Disregard for General Plan Policies

When adopting the 2004 General Plan and attendant General Plan EIR, the City recognized the importance of archaeological, paleontological and Native American resources within the City. This is reflected in Goal COS-8 and Policies COS-8.1, COS-8.2 and COS-8.3 in the Conservation/Open Space Element. General Plan policies serve as guides to the City Council and City staff when reviewing development proposals and making other decisions that affect future development in Aliso Viejo. The policies provide balanced guidance in that every policy may not be seen outright as consistent with every other policy. The project is consistent with the overall goals of the City pertaining to preservation and protection of historical, archeological and tribal resources as an . assessment of potential significant cultural or historical resources on the project site was undertaken as part of the approval process.

The 2004 General Plan EIR indicates CEQA requires a lead agency determine whether a "project" would have a significant effect on one or more historical resources. A "historical resource" is defined as a resource listed in or determined to be eligible for listing in the California Register of Historical Resources (California Public Resources Code [PRC] Section 21084.1); a resource included in a local register of historical resources,[16] or any object, building, structure, site, area, place, record or manuscript that a lead agency determines to be historically significant.[17] The Public Resources Code and CEQA Guidelines require evaluation of historical resources to determine their

[16] 14 California Code of Regulations [CCR] Section 15064.5[a][2]
[17] 14 CCR Section 15064.5[a][3]

eligibility for listing in the California Register of Historical Resources (CRHR). Criteria for listing resources in the CRHR were developed to be in accordance with previously established criteria developed for listing in the National Register of Historic Places (NRHP).

Scientific Resource Surveys Inc. conducted cultural resource assessments of the Aliso Viejo Ranch property and structures as part of the Initial Study process for a maximum scale potential Aliso Viejo Community Center on the property. The assessments found neither the buildings nor the site were eligible for listing in the NRHP or CRHR, according to California Public Resources Code or California Code of Regulations criteria. This is the criteria the City and consultants used to determine whether the Ranch buildings or site were historical resources.

Recommendations of the Cultural Resources Report are based on the Site evaluation in conjunction with the Project Design Features (PDF) found on page 9 of the MND. Often sites that do not qualify as significant are discarded without such efforts to create an educational exhibit space to honor the local history. The PDF creates a usable space that presents the legacy of the area through documentation, research, public displays, and programs, the community will be granted greater access to local and regional history.

Comment Continued:

3. ***Integrity of the Ranch Buildings.*** The MND states that the integrity of the original Moulton Ranch has been compromised (p. 65). The MND also states that "only four buildings from this complex remain and they do not collectively represent all aspects of a functioning historic ranch. Accordingly, the complex would not qualify for listing on the National Register of Historic Places or the California Register of Historic Resources and the City does not consider these buildings historic resources." It is unclear from the MND why and how the City does not consider the ranch buildings to be historic resources. The significance of the issue of "integrity" is also unclear as there is no historic context within the MND or its appendices (including the February 2014 and June 2014 SRS reports) to provide the basis for evaluating the significance and integrity of the ranch buildings. Consequently, the MND relies on inadequate evaluations of the historic significance of the Moulton Ranch compound site by evaluators that do not meet the U.S. Secretary of the Interior's Professional Qualifications in History or Architectural History (this issue is further discussed below).

   Likewise, without a defined historic context statement that clearly articulates what character defining features and thresholds of significance each building type must possess to convey significance, the conclusions for the potential historic significance of each building on the property are inadequate, unreliable and inconsistent with the professional historic resource evaluation process outlined by the U.S. Department of the Interior in National Register Bulletin 15. Bulletin 15 is a nationally recognized evaluation standard used through the United States and by the California State Office of Historic Preservation. It is used by professional historians and architectural historians that meet the U.S. Secretary of the Interior's Standards in History and Architectural History.

It should also be pointed out that there is no state law that requires a building, structure or object to retain "integrity" in order to be identified or listed as a local historic resource. All that is required is for the lead agency to believe a building is historically significant. Ironically, the Archaeological Phase I Report attached as Appendix D to the MND states: *"the barn although modified, possibly retains a great deal of architectural integrity. Perhaps the most important building is the bunk house as it looks to maintain the most architectural integrity* (p. 46). Thus, the City's own report acknowledges the integrity of some of the ranch buildings!

Response: Integrity of the Ranch Buildings

As described in detail within the Cultural Resources Report, the buildings individually do not meet criteria for California Register of Historical Resources (CRHR) listing and CEQA criteria[18] for significance. Further, as a collective unit the buildings and landscape has been altered which diminished the integrity and cultural fabric of the site as a whole. As the CLA letter explains, the City as lead agency utilizes CEQA for determination of historic resources. Contrary to the statements in the CLA letter, both cultural resource studies performed on the Site have been completed by qualified personnel (see response to the letter from California Preservation Foundation, dated September 15, 2014 for qualifications of personnel) and evaluated according to appropriate regulations.

The CLA acknowledges use of context statements to aid in describing a site/buildings place within history. As pointed out within "Section V: Understanding Historic Context, found within the U.S. Department of Interior National Register Bulletin entitled, "How to Apply the National Register Criteria for Evaluation," an historic context is described as, "those patterns or trends in history by which a specific occurrence, property, or site is understood and its meaning (and ultimately its significance) within history or prehistory is made clear."

Further the bulletin goes on to point out that, "Historian, architectural historians, folklorists, archaeologist and anthropologists use different words to describe the phenomena such as trend, pattern, theme or cultural affiliation, but ultimately the concept is the same."

The SRS Inc. report puts the site within its context in the section labeled Cultural Setting (page 14) in which prehistoric and historic trends, patterns and specific occurrences are discussed. Finally, there are five bullet points listed within the National Register Bulletin that aid in deciding whether a property is significant within its historic context:

- The facet of prehistory or history of a the local area, State, or the Nation that the property represents;
- Whether the facet of prehistory or history is significant;
- Whether it is a type of property that has relevance and importance in illustrating the historic context;
- How the property illustrates that history; and
- Whether the property possesses the physical features necessary to convey the aspect of prehistory or history with which it is associated.

[18] California Code of Regulations, Title 14, §15000 et seq.

All the above mentioned points are addressed within the Report, establishing that, although the existing buildings are associated with a time of importance within the development of the general area, the buildings and site themselves do not collectively illustrate or possesses necessary features essential in conveying that aspect of history. This is established as the buildings were individually and as a group evaluated in accordance with criteria for California Register of Historical Resources (CRHR) listing and the CEQA criteria.[19]

As pointed out by the CLA, "there is no state law that requires a building, structure or object to retain "integrity" in order to be identified or listed as a local historic resource." Within that same sense, a building may possess architectural integrity and still not meet criteria to be identified as significant under the criteria for California Register of Historical Resources (CRHR) listing and the CEQA criteria.[20] Therefore, the Report's comments towards an individual building's architectural integrity do not inherently warrant a finding of significance within the criteria in which the resource has to be evaluated. That is why an in depth discussion of the buildings' and sites' lack of significance was provided within the Report.

Comment Continued:

4. ***Inadequate and Insufficient Analysis.*** Next, the MND concludes, "While the original Moulton Ranch complex of structures could be considered a significant resource based on its association with the history of ranching in the Aliso Viejo area and Orange County generally, only four buildings from this complex remain and they do not collectively represent all aspects of a functioning historic ranch" (p. 65). However, the MND does not consider that some of the buildings may be historically significant *individually* rather than collectively. For example, the bunkhouse could be potentially significant as a rare building type associated with worker ranch housing in Orange County during the late 19th and early 20th centuries. Likewise, the on-site barn may be significant because of its association with Lewis Moulton and/or Jean Pierre Daguerre as there are no other existing buildings associated with these important regional personalities during the late 19th and early 20th centuries.

   Obviously, the remaining Moulton Ranch compound buildings represent *some* aspects of a functioning historic ranch in addition to their association with those people who were associated with the ranch. The historic interest of these buildings by the community is precisely why the City holds its annual Founder's Day event at the site. Therefore, the *conclusions* provided in the MND are largely *conclusory* in nature and without factual support or adequate analysis.

   For example, the Archeological Phase I Report states at page 50 "They (the buildings) are remnants of an important era in Southern California, Orange County and the Aliso Viejo area generally in that they are related to the onset of ranching. They are associated with the Moulton family whose ranching efforts helped shape the history of the area. The existing buildings however only reflect the final era of use of the Moulton Ranch and are associated with cattle ranching. Evidence of earlier sheep ranching is not present." However, there is no analysis anywhere in

[19] California Code of Regulations, Title 14, §15000 et seq.
[20] California Code of Regulations, Title 14, §15000 et seq.

the Phase I Report or the MND why evidence of sheep ranching is important or required, even though this statement is made several times. This reflects the lack of an appropriately developed historic context statement for the site in order to understand and properly evaluate the potential significance of the site. If the buildings themselves are associated with cattle ranching and the Moulton family history, these are sufficient reasons for them to qualify as historic resources.

We would also point out that other portions of the MND outside the Cultural Resources section refer to the buildings as "historic. The Phase I Environmental Site Assessment states that the current use of the property is a "historic site" (p. 4). The Hydrology Report (Appendix G) states that the site "has several *vintage* farm houses and barns within the project site limits." Page 78 of the MND notes that, based on historic aerial photographs, the site has remained largely unchanged since at least 1938 -at least 75 years!

The MND and its Appendices themselves contain evidence that the ranch buildings are in fact historic resources. The Archeological Phase I Report recognizes that "their real significance lies in their association with the original Moulton Ranch as a basis for development of the modern community of Aliso Viejo" (p. 51). It even calls them *"historic* structures and ranch equipment" and explains that they "highlight a cultural landscape of past ranching activities in the area" (p. 46).

In short, proceeding to demolish the extant Moulton Ranch buildings under the proposed under the proposed MND is environmentally inadequate based on the information the City has relied on to determine that there is a less than significant impact on historic resources. Therefore, an EIR must be prepared for the project.

Response: Inadequate and Insufficient Analysis

The existing Moulton Ranch complex has been evaluated twice. Both times buildings were looked at individually and as a complex by qualified individuals and firms.

CLA states the Site represents "*some* aspects of a functioning historic ranch." Although whether the Ranch was functioning or not would not contribute to the site's significance, it is also notable that the Ranch does not represent aspects of a functioning ranch, as it has not served as one for decades. Further, as outlined in the Report, all important representative ranch buildings and features in the complex have either been removed or modified, leaving behind buildings that do not uniquely represent the original use of the area. The City does hold Founders Day Festival within the limits of the property; however, the Founders Day festival was established to celebrate the founding of Aliso Viejo in the 1990s. The Ranch complex does not represent the time period associated with the founding of the City. It is a location for the festival, nothing more.

The CLA letter again addresses evaluation of the complex as a whole, questioning the importance of sheep ranching within the evaluation. As pointed out on page 17 of the Cultural Resources Report, were there to be evidence of sheep operations on the Ranch property this would directly associate the landscape with Daguerre and the creation of the Moulton Ranch Complex. There is not. As a result, the remaining complex only provides a glimpse of cattle operations associating the area with the latter stages of the land's development and less with significant time periods identified with the

Report. As stated previously, evaluation of the buildings indicated they were not significant under current regulations.

As the CLA letter stated the SRS Inc. report did call for more documentation. This additional documentation is outlined within the PDF and mitigation measures. Specifically, the mitigation measures detailed on page 67 of the Aliso Ranch Site Development Permit Initial Study/Mitigated Negative Declaration ensure that in the event undocumented cultural resources are identified during earthmoving activities, there will be a qualified archaeologist on site.

Further, as PDF 1 (page 9 of the Aliso Ranch Site Development Permit Initial Study/Mitigated Negative Declaration) states, "The Project will emphasize the rich ranching history of the City of Aliso Viejo area as exemplified by the Ranch. Displays in the Project building will be used to engage the public in this setting." PDF 1 also includes documentation of the Site through the following: Historic American Buildings Survey (HABS)/Historic American Engineering (HAER) drawings of the structures; detailed compilation of the historic background of the Moulton family and the entire Ranch; and, presentation of oral histories in conjunction with historic photographs and artifacts. Often sites that do not qualify as significant are discarded without such efforts to create an educational exhibit space to honor the local history. By creating a usable space that presents the legacy of the area through documentation, research, public displays, and programs, the community will be granted greater access to local and regional history.

The Phase I Environmental Site Assessment quoted by the CLA letter is an assessment to determine if there are "recognized environmental conditions" on the Site or if the Site could be affected by a recognized environmental condition. Preparers of the Phase I Environmental Site Assessment are not qualified to determine historical significance of the resources on Site or if there have been significant changes to historical resources over time. The statement on page 78 of the Initial Study/Mitigated Negative Declaration regarding the extent of changes observed on aerial photos is taken from the Phase I Environmental Site Assessment and is a general statement intended to address the possibility or likelihood of recognized environmental conditions occurring on the site.

Similarly the Hydrology Report evaluates the hydrologic conditions affecting the site. Preparers of the Hydrologic Report are not qualified to determine the historical significance of the resources on site.

Comment Continued:

5. ***Additional Investigation is Needed.*** Significantly, the Archeological Phase I Report concludes as follows: Further investigations on this building (bunk house) may aid in providing a glimpse of Orange County's ranching history from the perspective of the tenant farmer or ranch hand providing a look at life on these ranches from an often overlooked point of view. Based on this survey it is believed more documentation of the buildings and further archeological inquiry may be necessary" (p. 46). Scientific Resource Surveys, Inc. ("SRS") have themselves concluded that more documentation and archeological inquiry is necessary. Yet, SRS's letter dated June 9, 2014, suddenly and arbitrarily dismisses the potential significance of the buildings without any additional evidence or documentation to support their conclusions. This is another point calling for additional study and an

EIR to be prepared before the City decides to destroy these potentially historic buildings.

Response: Additional Investigation is Needed

As the CLA letter stated, the SRS Inc. report did call for more documentation. The documentation called for is outlined within the PDF and mitigation measures. Mitigation measures detailed on page 67 of the Aliso Viejo Ranch Site Development Permit Initial Study/Mitigated Negative Declaration ensure there will be a qualified archaeologist on site in the event undocumented cultural resources are identified during earthmoving activities.

Further, as PDF 1 (page 9 of the Aliso Ranch Site Development Permit Initial Study/Mitigated Negative Declaration) states "The Project will emphasize the rich ranching history of the City of Aliso Viejo area as exemplified by the Ranch. Displays in the Project building will be used to engage the public in this setting." As indicated within the Cultural Resources Report, PDF 1 also includes documentation of the Site through the following: Historic American Buildings Survey (HABS)/Historic American Engineering (HAER) drawings of the structures; detailed compilation of the historic background of the Moulton family and the entire Ranch; and, presentation of oral histories in conjunction with historic photographs and artifacts. Often sites that do not qualify as significant are discarded without such efforts to create an educational exhibit space to honor local history. By creating a usable space that presents the legacy of the area through documentation, research, public displays and programs, the community will be granted greater access to local and regional history.

Comment Continued:

6. ***Unqualified Experts.*** The Archeological Phase I Report as well as the June 9, 2014 letter from SRS (Appendix F) were prepared by Nancy Wiley, Research Director and Principal Investigator. Ms. Wiley's qualifications attached to the Archeological Phase I Report indicate that she has an M.A. and Ph.D in Classical Archaeology, and an M.A. in Native American Spirituality. Ms. Wiley does not appear qualified to determine the historic resource eligibility of the Moulton Ranch buildings as she is not a historian or architectural historian - she appears educated and trained in other fields. Therefore, the ranch site has never been professionally evaluated by a qualified historian who meets the U.S. Secretary of Interior's Standards in History or Architectural History to adequately consider the historic significance of the buildings. A proper historic resource evaluation (with appropriate historic contexts) must be developed to determine the potential historical significance of the Moulton Ranch site and buildings. The City has not established that Ms. Wiley or Donald Krotee meet the Professional Qualifications Standards of the Secretary of Interior in "History" or "Architectural History" in order to make a credible historic resource determination or recommendation.

Response: Unqualified Experts

As specified in the Secretary of Interior Standards for history and architectural history, Dr. Wiley and SRS Inc staff meets and exceeds the standards for conducting historic resource assessments. Dr. Wiley and SRS Inc. have been conducting Cultural Resource studies within Orange County for

nearly forty years. Her work over this time has included but is not limited to the following: documentation of historic sites, landmarks and buildings; archaeological investigations on both historic and prehistoric sites including many different ranch properties within the general area; oral history interviews; and site and building evaluations. Scientific Resources Surveys Inc. has documented and preserved a number of significant buildings and sites within Orange County, throughout California, and in other parts of the Country. Dr. Wiley was one of the first archaeologists in the nation to be recognized by the Society of Professional Archaeologists for the study of both prehistoric and historic resources. Her Ph.D. in Classical Archaeology highlights her ability to assess historic resources, as classical archaeology focuses on architecture of the historic past. She worked with landowners and the Saddleback Historical Society in the late 1970s on preservation and moving the Bennett Ranch House to what is now Heritage Hill, an Orange County Historic Park. Further she worked tirelessly again with the Saddleback Historical Society to get the landowner to preserve and move character defining features of the Presley Ranch House after much of the building had been destroyed. Dr. Wiley served on the State of California Historic Resources Commission from 1986-1992. She has worked on history projects ranging from local to international sites, adding to the public and scholarly community through published articles, talks, and outreach based on her studies. A few examples of the breadth of her contributions include lectures on Orange County history going back as far as June, 1980 when she delivered a talk to the Orange County Historical Society about SRS Inc.'s historic investigations, published articles on the material culture recovered at the Encino Road House in Los Angeles County, reports on SRS Inc.'s work at the Pio Pico House, a California State Park located in Los Angeles County, and her work abroad on historic shipwrecks sites found in Turks and Cacaos. Dr. Wiley has proven through her decades-long involvement with historic preservation and research to have a firm grasp on how to conduct such studies and is fully qualified to do so. Finally, no mention is made in the CLA Letter of the other SRS Inc. staff qualifications also found in the back of the Report. As their resumes reflect there are other individuals on staff who also meet and exceed Secretary of Interior standards. Dr. Wiley serves as Principle Investigator, as her qualification and experience outlined above make her well suited to conduct such evaluations.

It should also be noted the Aliso Viejo Ranch property had been evaluated once previously. Results of the first evaluation are contained in a study of the Ranch complex entitled "Preservation Assessment," conducted by Donald Krotee Partnership (DKP). This Assessment also was conducted by qualified individuals whose background in historic architecture has seen them either design or consult in over 50 projects placed on the NRHP helping to preserve historical building throughout Orange County, including the Old Orange County Court House and the Key Ranch. Results from the previous study are consistent with SRS Inc. findings.

Comment Continued:

7. ***Inadequate Mitigation Measures.*** In light of the above, the mitigation measures contained in the Cultural Resources section of the MND are insufficient as they do not address the destruction of the original Moulton Ranch buildings.

Response: Inadequate Mitigation Measures

Project Design Features turn the removal of a resource that does not meet the thresholds of significance into an opportunity to give back to the community through educational exhibits. PDF 1 (page 9 of the Aliso Ranch Site Development Permit Initial Study/Mitigated Negative Declaration)

states, "The Project will emphasize the rich ranching history of the City of Aliso Viejo area as exemplified by the Ranch. Displays in the Project building will be used to engage the public in this setting." As detailed in the Cultural Resources Report, PDF 1 also includes documentation of the site through the following: Historic American Buildings Survey (HABS)/Historic American Engineering (HAER) drawings of the structures; detailed compilation of the historic background of the Moulton family and the entire Ranch; and, presentation of oral histories in conjunction with historic photographs and artifacts. Often sites that do not qualify as significant are discarded without such efforts to create an educational exhibit space to honor the local history. By creating a usable space that honors the legacy of the area through documentation, research, public displays, and programs, the public will be granted greater access to local and regional history.

Comment Continued:

Aesthetics: The impacts on the aesthetics of the Project site will be significant and cannot be mitigated because the potential scale, mass and footprint of the large proposed facility will be significantly different than the seven small, detached buildings on the site. The MND recognizes that the "removal of existing buildings, grading, construction of new building, lighted parking areas and landscaping will change the visual character of the Site" (p. 43). However, the conclusion that "the City determined that the project would not substantially degrade the existing visual character or quality of the Site and its surroundings" appears highly subjective and unsupported.

With respect to lighting, the MND concludes that "the Project is projected to increase existing nighttime light levels by less than 0.1 foot candle along the Project's perimeter fence and less than detectable foot candles along existing residential developments to the northwest, north and northeast" (p. 44). This conclusion appears to be based on the Photometric Study (Appendix A). However, we would point out that the 16 page Photometric Study does not contain any analysis of how it reaches this conclusion. The Photometric Study contains pictures and diagrams and a short conclusion "based on our analysis, the proposed Project's lighting design will result in an increase of less than 0.1 foot candles along the Project's perimeter fence and less than detectable foot candles along existing residential development to the north/northwest" (p. 3). Notably lacking is any sort of analysis on how this conclusion was reached. The MND needs to contain at least some analysis, especially because 48 bollards and 18 light poles are proposed for the Project. In addition, there needs to be a more detailed and thorough study as to the lighting at the Project Site, both during and after hours, including the impacts on surrounding residences. Conclusory statements- whether in the MND or the Photometric Study - are insufficient under CEQA.

We would also point out that given the large scale of the Project, the Photometric Study is insufficient. The Photometric Study was prepared by a landscape architect. However, because the Project is large and encompasses seven acres, a new study should be conducted, and it should be prepared by a licensed electrical engineer.

Response:

"the City determined that the project would not substantially degrade the existing visual character or quality of the Site and its surroundings" appears highly subjective and unsupported".

CEQA does not evaluate view impacts to private property, only to public property. The existing vegetated slopes with mature trees will effectively limit views from public vantage points with the exception of proposed access drives. The potential maximum Project's impact to a public viewshed was determined to be less than significant.

The City also investigated the worst case view impacts from adjacent residential land as a result of the Project. Aliso Viejo Ranch Photo Simulations depict viewpoints of the Project Site from the adjacent rear yard fence line of the single family residential neighborhood to the northwest (California Reflections). The vantage points chosen to represent views of the project site in the photo simulation are from the California Reflections neighborhood and are considered "worst case," meaning portions of the Site that could be seen through less dense areas of vegetation. Photos were taken from the top of the existing slope bank at the rear of the residential yards. The slope bank separating the residential pads from the Project Site is covered with existing mature trees. Views from the top of slope toward the Project Site range from completely obstructed to filtered.

A multi-family residential neighborhood (Barcelona Apartments) exists west of the Project Site. Residential units located in buildings in the south end of the apartment complex have obstructed views of the site from their parking lot. Homes in this neighborhood are located at a higher elevation than the Project Site at the top of an approximate 80-foot wide landscaped slope, with a standard 2:1 graded slope, the slope elevation would be more than 40 feet high. The apartment complex is also located across Cedarbrook which has an 80' right-of-way. Scenic views to the east from the apartment homes would not be affected due to the elevation difference.

Aliso Viejo Ranch Photo Simulations represent the maximum potential Project as viewed from the rear yards of existing single family residential development (California Reflections) located to the northwest. Rear yards of approximately twenty residential lots are separated by a slope bank that is vegetated and contains mature varieties of tree growth such as evergreen pine, California pepper, sycamore, and eucalyptus.

The Photo Simulation Process involved multiple steps in creation of a 3rd Dimensional digital model of the proposed project. Base data was collected that includes CAD drawings of the proposed maximum potential Project from the architect as well as existing topographical elevation measurements. Digital photographs were taken from various vantage points around the Project Site. Then a composite of the model and photos were created based on the CAD data, GPS coordinates and topographic elevations, and building positions in 3D Studio Max, a computer animation and modeling program. The modeling resulted in the following conclusions:

Conclusion – Percent of Visibility of Project site (percentage of obstruction of the view by existing trees):

- From the California Reflections neighborhood, rear yard of homes, top of slope (slope view) to the site:

- "Framed" – 66% obstruction of view
- "Filtered" – 81% obstruction of view
- "Screened" – 93% obstruction of view

o From the street (public street view):
  - "Framed" – 82% obstruction of view
  - "Filtered" – 94% obstruction of view
  - "Screened" – 96% obstruction of view

o Based on this analysis, the average obstruction of the view by existing trees is:
  - Slope view – 87% has an obstructed view
  - Street view – 93% has an obstructed view

Based on this data, the Initial Study concluded the maximum potential Project would result in a less than significant impact to aesthetic resources.

Photometric Study

At the request of Hongjoo Kim Landscape Architects, a photometric study was prepared by the manufacturer of the light fixtures proposed to be used, King Luminaire. King Luminaire's Stress Crete Group prepared the photometric study using the industry standard AGI32 software. AGI32 uses an IES file to represent a fixture. IES files are created in lab where the fixture is tested to determine its accuracy and performance.

The AGI32 study, <u>does not</u> take into consideration shielding effects of slope or vegetation. The study concluded the light intensity (in foot candle) decreased outward from proposed light. At 55 feet from light fixture the light intensity is reduced to 0 foot candles. Therefore, based on the proposed lighting plan, light intensity impacting adjacent residential development is less than detectable foot candles without including screening effects of proposed landscaping, adjacent slope or existing off-site vegetation (trees).

In addition, a photometric study satisfies LEED (Leadership in Energy and Environmental Design) requirements of U.S. Green Building Council. Proposed nighttime lighting is consistent with LEED standard LZ2, provided below.

> ***LZ2: Low (primarily residential zones, neighborhood business districts, light industrial areas with limited nighttime use and residential mixed-use areas)***
>
> *Design exterior lighting so that all site and building-mounted luminaires produce a maximum initial illuminance value no greater than 0.10 horizontal and vertical footcandles at the site boundary and no greater than 0.01 horizontal footcandles 10 feet beyond the site boundary. Document that no more than 2% of the total initial designed fixture lumens (sum total of all fixtures on site) are emitted at an angle of 90 degrees or higher from nadir (straight down).*

Qualifications

A landscape architect and lighting manufacturer are qualified professionals to perform a photometric study of this kind for following reasons:

1. Existing and proposed plantings have to be considered to analyze impact in addition to a photometric study.

2. Existing conditions of the three dimensional sloped contours have to be considered to analyze impact in addition to a photometric study.

Hongjoo Kim's qualifications: Hongjoo Kim, ASLA, has more than 18 years of experience and is licensed landscape architect of the State of California (CA 5087) who has been involved a number of similar projects and lighting design. Mr. Kim holds a Bachelor of Engineering in Landscape Architecture from Kyungwon University, South Korea, Masters of Landscape Architecture both from University of Colorado at Denver and Harvard University Graduate School of Design. He is a recipient of the American Society of Landscape Architects' Honor Award for Excellence in the Study of Landscape Architecture in 1997 and many professional awards through his career. He has been a member of the American Society of Landscape Architects since 2002.

Mr. Kim has lectured internationally and has served as a design instructor, lecturer, and critic at USC, UCLA, California State University at Pomona, University of California at Irvine, University of Colorado at Denver, University of Oklahoma, ASLA conferences, and International Federation of Landscape Architects conferences.

Comment Continued:

Air Quality: In response to the issue of whether the Project would conflict with or obstruct implementation of the applicable air quality plan, the MND includes the conclusion "The Project is consistent with the City General Plan which designates the site for Community Facilities land uses. The emissions associated with the proposed Project are within the amounts already accounted for in the AQMP. Accordingly, the Project would not be inconsistent with the AQMP" (p. 49). Again, the MND contains no analysis of how it reaches these conclusions.

Similarly, the MND states: "Heavy-duty equipment in the Project area during construction will emit odors. However, construction activity would cease after individual construction steps are completed. No other sources of objectionable odors have been identified for the Project. Therefore, the Project will not result in significant odors" (p. 51). Regrettably, there is no analysis in the MND or Appendix B as to why the odors emitted during construction are not significant.

Likewise, the statement that "the Project will not result in a cumulatively considerable net increase of a criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard" is conclusory without any analysis (p. 52).

Response: Maximum potential Project emission levels for both construction and operation have been projected for the Project and will comply with the applicable SCAQMD thresholds of significance. All Project emission levels are below applicable thresholds, therefore, the proposed Projects impact on air quality will be less than significant.

The proposed Project is required to comply with SCAQMD Rule 402 and 403.

> Rule 402 prohibits a person from discharging from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or which endanger the comfort, repose, health or safety of any such persons or the public, or which cause, or have a natural tendency to cause, injury or damage to business or property.
>
> The purpose of Rule 403 is to reduce the amount of particulate matter entrained in the ambient air as a result of anthropogenic (man-made) fugitive dust sources by requiring actions to prevent, reduce or mitigate fugitive dust emissions. The Project is required to implement best control measures.

Detailed requirements of SCAQMD Rules 402 and 403 are contained on the SCAQMD website: http://www.aqmd.gov/home/regulations/compliance/inspection-process/visible-emissions-public-nuisance-fugitive-dust

Compliance with SCAQMD Rules 402 and 403, combined with the distance to the nearest sensitive receptors from the Project Site, will insure that Project related impacts to air quality including odors and operations are less than significant.

Comment Continued:

Land Use and Planning: As discussed above, the MND conflicts with the City's General Plan policies relating to conserving historic resources as there is no ordinance within the Aliso Viejo Zoning Code to implement General Plan Goal COS-8 and its related policies for historic preservation. As a general law city, Aliso Viejo's General Plan and Zoning Code must be 100% consistent with each other by state law. Therefore, the conclusion that "the Project is consistent with the City General Plan and Site Zoning" (p. 90) is unsupported and conclusory, and completely ignores the General Plan's Conservation Element.

Second, we note that the MND discussion of "Land Use and Planning" states that "the Site is not within the boundary of an adopted habitat conservation plan or natural community conservation plan. Therefore the Project will not conflict with any applicable habitat conservation plan or natural community conservation plan" (p. 90). This statement is simply false - at page 60, the MND states that "the Project Site is in the plan area of the Orange County Central-Coastal Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP)."

In addition to this internal inconsistency in the MND, we would also point out that the MND contains no discussion of whether the Site could qualify within the nature reserve system of the NCCP/HCP in the future. In short, the MND has failed to adequately consider and evaluate the issue of whether the Project conflicts with any applicable habitat conservation

plan or natural community conservation plan. An EIR should be prepared to fully address this issue.

Response: The Aliso Viejo General Plan and Zoning Code both designate the Aliso Viejo Ranch property as "Community Facility." The dominant element of every General Plan is the Land Use Element. The Aliso Viejo General Plan Land Use Element land use designation (page LU-22) indicates a Community Facility land use designation allows for "... development and operation of community facilities, including fire stations, police stations, public and private schools (including Soka University of America), churches, recreation centers, water tanks, utilities, or other non-commercial, non-residential, or non-industrial purposes. Administrative offices associated with public facilities are also permitted."

The City of Aliso Viejo Zoning Code/Official Zoning Map also designates the Aliso Viejo Ranch property as "Community Facility," which provides for "public, quasi-public, and private community uses to serve the needs of residents, visitors, property owners, and workers in the city. Examples of permitted land uses include civic buildings, schools, hospitals, cultural venues, and similar uses." (Section 15.26.010) Community Centers and Senior Citizen Centers are uses permitted within a Community Facility Zoning District, subject to an approved Conditional Use Permit. (Table 15.26.020)

Furthermore, the City Municipal Code and adopted CEQA thresholds are in concert with the goals and policies of the General Plan Conservation/Open Space Element.

The MND and Biological Technical report (pg. 39) state the Project Site is in the plan area of the Orange County Central-Coastal NCCP/HCP. The discussion of Land Use and Planning in the MND is hereby corrected to also state that the project site is in the plan area of the Orange County Central-Coastal NCCP/HCP.

The Project Site is designated as Non-Reserve Open Space under the NCCP/HCP. Non-Reserve Open Spaces are those areas that are not with the NCCP/HCP nature reserve system, are not within a special linkage area, and are not in a sensitive resource area. The closest designated NCCP/HCP preserve is located approximately 1.8 miles west of the Project Site (NROC 2005). The maximum potential Project will have no impact on the Orange County Central-Coastal NCCP/HCP.

The Project Site is not in the plan areas of any habitat conservation plans other than the NCCP/HCP (USFWS 2011). Therefore, the maximum potential Project will not conflict with provisions of an adopted HCP, NCCP, or other approved local, regional, or state habitat conservation plan.

Comment Continued:

Greenhouse Gas Emissions: The MND concludes "with the implementation of energy efficient programs and state and federal vehicle emission reduction programs, the Project would be consistent with the goals of AB 32 and the City of Aliso Viejo" (p. 76). However, the MND does not clearly identify any specific energy efficient or emission reduction programs - therefore, it is difficult to see how the City made this consistency determination.

Response: As mandated by the State of California, all new projects are required to comply with Title 24 building requirements. Current Title 24 building requirements are approximately 25 percent

to 30 percent more efficient than 2008 Title 24 requirements. This is as a direct result of the goals and policies of AB 32. The Project would be required to comply with Title 24 building requirements and therefore would be consistent with the both AB 32 and the City's emission reduction goals.

In addition, the Project's operational emissions would be below South Coast Air Quality District's greenhouse gas significance threshold of 3,000 MTCO2e/yr. Thus the project would have a less than significant impact with regard to Greenhouse Gas Emissions.

Comment Continued:

Hydrology and Water Quality:

The MND states that "the Project will be designed to maintain the existing rate of groundwater recharge" (p. 84). Again, the MND does not clearly explain how the Project would be designed to maintain that rate, especially because "the Project will increase the amount of impervious surface onsite."

Response: The Project will be designed to maintain the existing rate of groundwater recharge through construction of drains impervious surfaces leading to or above underground storage/recharge areas. In compliance with the City's NPDES-MS-4 Permit and Stormwater Management Ordinance No. 2010-128, water quality conditions of approval will include preparation of a Water Quality Management Plan (WQMP). The WQMP will include site specific structural best management practices addressing the low impact development and hydro-modification requirements. One example would be the use of impervious parking surfaces with and underlying aggregate storage basin.

Comment Continued:

Noise: The Noise Report (Appendix H) and the Noise section of the MND discuss possible noise generated from traffic (main source) as well as HVAC equipment noise. The Noise Report and MND completely ignore noise that will be generated from adults and children frequenting the adjacent community gardens, picnic area, field activity area, and the remainder of the Site. Ignoring these noise sources is especially questionable as the MND recognizes that "the Project will *intensify* development onsite. The number of persons accessing the Site will increase" (p. 103). Therefore, noise generated from these noise sources must be considered, especially because the "City's daytime stationary noise limit is [already] exceeded at points S3, S4 and S5 by existing ambient conditions" (p. 92).

Further, the Noise Element in the City's General Plan contains a goal to "minimize the impact of point source noise and ambient noise levels throughout the community" (Goal N-1). The Noise Element also contains a goal to "minimize noise impacts from sources other than transportation" (Goal N-3) with a Policy N-3.1 to "ensure stationary noise impacts on sensitive receptors and noise emanating from construction activities, private developments/residences, landscaping activities and special events are minimized." The Noise Element clearly recognizes that "in addition to transportation related noise, excessive noise generated by *non-transportation sources* ... have the potential to impact sensitive receptors" (p. N-12). The MND has effectively ignored the General Plan goals and policies to consider non-transportation noise sources.

In short, the analysis contained in the MND is essentially meaningless for failing to even address the intensification of the Site, the increase in people accessing the Site, and noise from non-transportation sources (in addition to HVAC equipment).

Response: As documented in the Aliso Viejo Ranch Site Development Permit Initial Study/Mitigated Negative Declaration, maximum potential Project operational noises levels (including those related to automobile traffic) fall within the City's established exterior and interior noise standards and thus is consistent with City Code and the City's General Plan[21]. The City developed these standards to limit the amount of noise from a project site to neighboring residential areas. Further, fixed stationary noise from HVAC units will be the primary source of noise from the Site and therefore was analyzed because it would be potentially the loudest stationary source on-Site. The Project will include design features to shield these impacts such as parapet walls and enclosures, which will result in noise levels that will be below City standards and have a less than significant impact.

When comparing typical HVAC unit noise levels to typical speech noise levels, HVAC is significantly louder. HVAC has an estimated 82.5 dBA sound level at 3 feet from the source. Typical speech levels at 3 feet away are approximately 60 to 65 decibels A-weighted (dBA) and drops off at a rate of 6 dBA every doubling of distance (e.g., 65 dBA at 3ft, 59 dBA at 6ft, 53 dBA at 12ft and so on). When extrapolating noise levels to 75 feet from the source (nearest residential units, the resulting level would be 38 dBA which is below the existing ambient level of 51.8 dBA. The noise levels associated with people and speech to the adjacent residences would be 13.8 dBA below the ambient. The impact from people/speech would be less than significant. Findings in the noise report would be considered complete and fully evaluate the loudest sources of potential noise on Site.

Comment Continued:

Traffic: The Traffic section of the MND (p. 108) and the Traffic Report (Appendix I) state that the intersection of Cedarbrook at Windsong will operate at an unacceptable level of service (LOS D) even without the Project upon buildout. A Project Design Feature is included to provide a stop sign at the intersection. However, neither the MND nor the Traffic Report explain *how* the stop sign would remedy the problem. This is an important point because the MND relies on this fundamental assumption in several conclusions that there will be no significant impacts. The MND or Traffic Report must contain at least some analysis explaining why the stop sign would remedy the project LOS D at the intersection; otherwise, the conclusion about no significant impacts (and no cumulative impacts) must be called into question.

A final point worth mentioning relates to the statement in the Traffic Report that "for existing traffic conditions, all study area intersections are currently operating at acceptable levels of service during peak hours" (p. 2-2). At the August 6, 2014 City Council Hearing on the MND, more than a dozen local residents expressed their concerns about the *existing* traffic conditions. Residents described the current traffic situation as a "nightmare" explaining

[21] See City Ordinance 8.12.050(a) and IS/MND Appendix H, Noise Impact Study, at pp. 3-2 through 3-3 and Tables 7 through 14.

that it would take a 20 minute delay just to enter their subdivision. Some members of the City Council appeared to acknowledge the inadequate current traffic situation. In short, the evidence presented by numerous residents at the City Council hearing calls into question the Traffic Report's statement about acceptable levels of service presently.

Response:

"The traffic section of the MND (p. 108) and the Traffic Report (Appendix I) state that the intersection of Cedarbrook at Windsong will operate at an unacceptable level of service (LOS D) even without the Project upon Buildout..."

As documented in the Traffic Impact Study (TIS) dated March 14, 2014, "The following intersection [Cedarbrook at Windsong] is projected to operate below the acceptable levels of service during General Plan Buildout (Year 2035) Without Project Conditions." (p.5-1). It should be noted that the intersection of Cedarbrook at Windsong is projected to operate at an unacceptable level of service during General Plan Buildout Year 2035 conditions, not for Project Buildout conditions, as stated in the comments.

"The MND or Traffic Report must contain at least some analysis explaining why the stop sign would remedy the project LOS D at the intersection; otherwise, the conclusion about no significant impacts (and no cumulative impacts) must be called into question."

As documented in the Traffic Impact Study (TIS) dated March 14, 2014, "As a result of these factors, an all-way stop is warranted at the intersection of Cedarbrook at Windsong and it will improve the level of service for Year 2035 conditions, both with and without project." (p. 7-3) Level of Service Analysis Worksheets for General Plan Buildout (Year 2035) conditions are included as an attachment to these comments. Level of Service Analysis Worksheets for General Plan Buildout (Year 2035) Plus Project conditions are shown in Appendix G of the TIS. As shown by the traffic analysis summarized in the LOS Worksheets, the intersection of Cedarbrook at Windsong is projected to operate at LOS C or better during peak hours with the addition of a stop sign (all-way stop control) at the intersection for General Plan Buildout (Year 2035) With and Without Project (One-Hour Average) conditions.

Even when considering the peak 15-minute time period, The Year 2035 Plus Project with Improvements analysis shows intersection delay will be reduced from the delay currently being experienced during Existing conditions at the intersection of Cedarbrook at Windsong even with the addition of the Project and growth. The AM delay decreases from 91.6 seconds of to 36.0 seconds. The Mid-Day delay decreases from 67.8 seconds to 50.5 seconds. The PM delay decreases from 12.7 seconds to 11.1 seconds. (Note: These delays are for Existing and Year 2035 Plus Conditions with Mitigation with a factor used to account for the peak 15-minute period experienced due to the school back-up traffic.) This is also true when "Year 2035 with Project" is compared to "Year 2035 without the Project Design Feature".

"In short, the evidence presented by numerous residents at the City Council hearing calls into question the Traffic Report's statement about acceptable levels of service."

The City's CEQA level of significance threshold for traffic is based on peak hour analysis. This level of significance threshold applies City-wide for all projects.

The level of service shown on Table 1 (Intersection Analysis for Existing Conditions) in the TIS dated March 14, 2014 takes into account traffic volumes during a peak hour when calculating level of service. As a whole peak hour, the intersection operates at an acceptable level of service based upon traffic volumes collected and analyzed.

Due to the back-up queuing experienced from the school site, the intersection experiences significant delays which affect operation of the intersection only during a peak 15-minute period of time. If this peak 15-minute period is taken into account with a peak hour factor adjustment rather than the average during the entire peak hour, the level of service will be lower. This condition does not effect the other 23.5 hours of the day. This situation is similar to other roadways in school zones.

It should be noted includes steps to be taken to ensure the Project will operate at off-peak hours from the existing school and athletic field uses to ensure there is no overlap of peak traffic volumes with the existing uses. Specifically, the Community Center will not have programs requiring pick-up or drop-off on school days at the same time as the start and end times as the Middle School or during special events planned at the nearby athletic fields. It is anticipated some students will arrive approximately 30-minutes after the area Elementary Schools are released (2:05 pm) and 30-minutes after area Middle Schools are released (3:25 pm). In addition, many students from the nearby Aliso Viejo Middle School will be walking to the Community Center, which will reduce some traffic of vehicles that are currently picking up children after school. The remaining programs at the proposed Community Center will plan to operate in the later afternoon/evening hours and on weekends so not to conflict with school and athletic field related traffic.

Comment Continued:

Cumulative Impacts: We would also point out that the statement at Page 122 of the MND that "the initial Study considered cumulative effects of the Project's effects on the environment and concluded the Project does not have impacts that are individually limited, but cumulatively considerable" does not contain any analysis or supporting evidence. This conclusion must also therefore be called into question.

Response: The City identified cumulative projects during the scoping process for the maximum potential Project. These cumulative projects were considered throughout the Initial Study for the Project. A list of cumulative projects considered is included in the Traffic Impact Study (TIS) dated March 14, 2014. This cumulative projects list was used in the Noise, Air Quality and Greenhouse Gas studies. The potential for cumulative impacts was considered in each CEQA topic.

Comment Continued:

Conclusion: For the reasons stated above, we respectfully request that the City Council refrain from adopting the MND and either prepare an EIR or reconsider the merits and purpose of this Project altogether, especially because of the numerous inconsistencies and deficiencies in the attempted analysis of the historic nature of the ranch buildings

Consistent with the Supreme Court's summary of CEQA provided in *Laurel Heights,* only with an EIR can the City "demonstrate to an apprehensive citizenry that the agency has, in

fact, analyzed and considered the ecological implications of its action." Otherwise, the City will reach the "ecological point of no return" and violate CEQA.

Similar to the *Sundstrom* case, there remains significant public controversy regarding the environmental effects of demolishing the historic Moulton Ranch buildings which are of substantial community interest and have been perceived by the community as a local historic resource since the City's incorporation and before. The City bears the burden of environmental investigation, and the numerous deficiencies in its analysis of the environmental impacts of destroying the extant ranch buildings outlined above lend to the logical argument that the buildings could still constitute potential "historic resources" if properly evaluated.

As noted above, the Archeological Phase I Report itself calls for more documentation and archeological inquiry about the ranch buildings. Finally, we ask that any future report or determination about the historic nature of the buildings be conducted by a qualified expert who meets the U.S. Secretary of the Interior's Professional Qualifications. Likewise, the City needs to develop specific local criteria for adequately identifying, evaluating and protecting local historic resources as indicated in the City's General Plan Conservation Element. This is imperative as the extant Moulton Ranch buildings may qualify for protection and preservation under the Aliso Viejo General Plan.

Response: Where a mitigated negative declaration has been prepared for a project, the commenter bears the burden of showing that substantial evidence in the record supports a fair argument that the project may have a significant effect on the environment. This showing of substantial evidence must be made "in light of the whole record before the lead agency" and not a selective reading that ignores pertinent evidence. Further, the existence of public controversy is <u>not</u> enough by itself to show that an EIR is required. "Substantial evidence" is "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." Substantial evidence includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts, but does not include mere "argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible." As demonstrated in each response to each comment on the MND, none of the comments submitted present "substantial evidence," as that term is defined in CEQA, of a fair argument that the Project may result in a significant impact.

<u>Letter from California Preservation Foundation</u>
<u>September 15, 2014</u>

Comment: We are concerned that the evaluation of these buildings was not done by a qualified, professional historian or architectural historian that meets the Secretary of the Interior's Professional Qualifications in history or architectural history. The determination that the **<u>demolition of these structures</u>** will be a "Less than Significant Impact" on the environment, as it pertains cultural resources, was made in a report by Dr. Nancy Wiley of Scientific Resources Surveys, Inc. Dr. Nancy Wiley is not a qualified historian or architectural historian that meets the U.S. Secretary of the Interior's Professional Qualifications. Instead, she is an educated and trained archeologist and anthropologist. Therefore, she is not qualified to be conducting an <u>historic resource evaluation</u> and making

recommendations on the integrity and historic significance of the Moulton Ranch property/buildings.

The City of Aliso Viejo should commission an intensive level historic resource evaluation by a qualified historian or architectural historian that meets the Secretary of the Interior's Professional Qualifications in History and/or Architectural History as part of an Environmental Impact Report for the former Moulton Ranch compound property. The absence of listing on a national, state or local register of historic resources does not relieve the City of Aliso Viejo, as the lead agency, from considering this complex of structures as historic resource under CEQA Guidelines, Section 15064.5(a)(4) (Determining the Significance of Impacts on Historical and Unique Archeological Resources).

Response: Dr. Wiley (and SRS Inc.) are a qualified, professional historian or architectural historian that meets Secretary of the Interior Professional Qualifications in history or architectural history.

By looking at the Secretary of Interior for history and architectural history, it is clear that Dr. Wiley and SRS Inc. staff exceed the standards. Dr. Wiley and SRS Inc have been conducting Cultural Resource studies within Orange County for nearly forty years. Her work over this time has included but is not limited to the following: documentation of historic sites, landmarks and buildings; archaeological investigations on both historic and prehistoric sites including many different ranch properties within the general area; oral history interviews; and, site and building evaluations. Scientific Resources Surveys Inc has documented and preserved a number of significant buildings and sites within Orange County, throughout California and in other parts of the Country. Dr. Wiley was one of the first archaeologists in the nation to be recognized by the Society of Professional Archaeologist for study of both prehistoric and historic resources. Her Ph.D. in Classical Archaeology highlights her ability to assess historic resources, as classical archaeology focuses on the architecture of the historic past. She worked with landowners and the Saddleback Historical Society in the late 1970s on preservation and moving the Bennett Ranch House to what is now Heritage Hill, an Orange County Historic Park. Further she worked tirelessly again with the Saddleback Historical Society to get the landowner to preserve and move character defining features of the Presley Ranch House after much of the building had been destroyed. Dr. Wiley served on the State of California Historic Resources Commission from 1986-1992. She has worked on history projects ranging from local to international sites, adding to the public and scholarly community through published articles, talks, and outreach based on her studies. A few examples of the breadth of her contributions include lectures on Orange County history going back as far as June, 1980 when she delivered a talk to the Orange County Historical Society about SRS Inc. historic investigations, published articles on the material culture recovered at the Encino Road House in Los Angeles County, reports on SRS Inc. work at the Pio Pico House, a California State Park, also located in Los Angeles County, and her work abroad on historic shipwrecks sites found in Turks and Cacaos. Dr. Wiley has proven through her decades-long involvement with historic preservation and research to have a firm grasp on how to conduct such studies and is fully qualified to do so. Finally, no mention is made of other SRS Inc. staff qualifications also found in the back of the Report. As the resumes clearly show there are other individuals on staff who also meet and exceed the Secretary of Interior standards. Dr. Wiley serves as Principle Investigator as her qualification and experience outlined above make her well suited to conduct such evaluations.

It should be noted the Aliso Viejo Ranch property had been evaluated once before. The previous study of the Ranch complex entitled "Preservation Assessment," conducted by Donald Krotee

Partnership (DKP) also was conducted by qualified individuals whose background in historic architecture has seen them either design or consult in over 50 projects placed on the NRHP helping to preserve historical building throughout Orange County, including the Old Orange County Court House and the Key Ranch. Results from the previous study are consistent with SRS Inc. findings.

Email from Mrs. Angela Faiyez
October 13, 2014

Comment: This comment expressed the commenter's opinion on the Project and does not address adequacy of the Draft Mitigated Negative Declaration.

Response: No response is required.

Saddleback Area Historical Society
November 24, 2014

Comment: This comment expressed the commenter's opinion on the Project and does not address adequacy of the Draft Mitigated Negative Declaration.

Response: No response is required.

APPENDIX I

Written Comments Received

1. California Department of Transportation, July 24, 2014
2. California Department of Fish and Wildlife, July 24, 2014
3. Community Legal Advisors Inc., July 28, 2014
4. City of Aliso Viejo City, Council Meeting, August 6, 2014
5. The Gas Company, August 18, 2014
6. Mrs. June B. Peterson, August 20, 2014
7. Heidi Stoops, August 20, 2014
8. Mr. Mike Ramirez, September 10, 2014
9. Mr. Ray De Leon, September 11, 2014
10. Community Legal Advisors Inc., September 15, 2014
11. California Preservation Foundation, September 15,2014
12. Angela Faiyez, October 13, 2014
13. Saddleback Area Historical Society, November 24, 2014

Oral Comments Received

1. Transcript from the City of Aliso Viejo City, Council Meeting, August 6, 2014

Letters in Response Comments Raised

1. RK Engineering Group Inc. - ALISO VIEJO RANCH COMMUNITY CENTER, Initial Study/Mitigated Negative Declaration Responses to Comments
   Dated October 30, 2014

2. RK Engineering Group Inc. - Responses to Comments from the Aliso Viejo City Council Meeting (August 6' 2014) pertaining to Traffic Concerns for the Aliso Viejo Ranch Project
   Dated October 31, 2014

3. FORMA - ALISO VIEJO RANCH Site Development Permit Mitigated Negative Declaration Response to Comments – Aesthetic Characteristics
   Dated October 30, 2014

4. FORMA - ALISO VIEJO RANCH Site Development Permit Mitigated Negative Declaration Response to Comments – Private and Public View Exhibit
   Dated October 30, 2014

5. Scientific Resource Surveys Inc. - Response to concerns over SRS Inc's study of the Aliso Viejo Ranch Site Development Permit Project
   Dated October 30, 2014

6. Hongjoo Kim Landscape Architects - ALISO VIEJO RANCH COMMUNITY CENTER, Initial Study/Mitigated Negative Declaration Responses to Comments
   Dated October 29, 2014

7. CADRE Environmental - ALISO VIEJO RANCH COMMUNITY CENTER
   Initial Study/Mitigated Negative Declaration Responses to Comments
   Dated: July 30, 2014

CITY OF ALISO VIEJO

CITY COUNCIL MEETING

AUGUST 6, 2014 – ITEM #11

SPEAKER	COMMENT
MAYOR TSUNODA	Just by a show of hands how many people here are here for Item #11. Okay. How many are here for anything else besides Item 11. Okay, Thank you.
MAYOR TSUNODA	We are now at Item #11, a public hearing with regards to the Aliso Viejo Ranch Site Environmental Analysis. And I will have our City Manager, Mr. David Doyle kick it off.
CITY MANAGER	Yeah, thank you Mr. Mayor, members of the City Council. This is a public hearing item, It's been noticed. It's for the Aliso Viejo Ranch Site Environmental Analysis. Before I turn it over to Mr. Armijo who is going to give a presentation, I want to let the council, remind the council and let the community know that we did have a study session on this earlier tonight. And my comments at the beginning of that study session will be the same as my comments at the beginning of this item which is there is currently no approved project. Council has not given direct to move forward with any project. This is merely the study of an environmental analysis and the report coming back to identifying the mitigation measures of a project, of a given sized project that we have been studying for several months. And this item is coming forward to you for consideration of the environmental aspects only and that there has been no direction given to move forward with any project at this time. So with that I will turn it over to Mr. Armijo who will probably reiterate those comments as part of his presentation.
MR. ARMIJO	Good evening again Mayor and Council, that's better.
MAYOR	Good evening again Mr. Armijo.
MR. ARMIJO	The agenda item for this is regarding introduction and requests certification of the initial study, mitigated negative declaration for a contemplated community center on the 7.7 acre Aliso Viejo Ranch. That initial study and mitigated negative declaration together with its technical studies is this. As you can see there is quite a bit of information here in the whole package. The certification of this mitigated negative declaration that is the subject of this agenda item again, to reiterate, does not approve or imply approval of any development, particular development of the Aliso Viejo Ranch property. Rather, it analyzes, the environmental document analyzes potential environmental impacts of the most extensive community

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

SPEAKER	COMMENT
	center contemplated which is approximately 36,500 sq feet in total size closed building. Thereby, once the City Council certifies the environmental document, that document also is intimated to be appropriate for any project of lesser scope the Council may wish to consider at some point in time in the future, so long as the environmental impacts with the future project, considered project are not new or more intense than those identified in the initial study and mitigated negative declaration. To reiterate for the audience, the original master plan for this site was approved by the Council in 2009 after an extensive public outreach program. Subsequently, staff did prepare a draft site plan on the property that involved a potential community center that reflected in its design and further defined the originally approved concept master plan. The draft site plan did incorporate the master plan elements of the property. It contemplated construction of a multi-purpose structure, multi-purpose structures and construction of that would serve as an educational, rather, an activity center that provides classes, workshops and would be a community facility serving the community members of all ages. The contemplated project -- 36,500 sq feet -- analyzed also includes uses that were contemplated in the concept master plan, interior and exterior uses. Design elements that would reflect the historic character and rustic nature of the site itself, community gardens and areas that would host, were able to host community and youth sporting events. As I mentioned before at the first session, the project analyzed does include project design features that pertain to lighting and glare, noise, traffic safety and cultural resources. Those are elements of the project that would necessarily be included as part of the project and are not mitigation measures. The consulting staff conducted technical studies, which I held up before, related to the following during the initial study process: biological resources, aesthetics, in view shed, cultural and historic resources, traffic, noise, air quality, lighting, greenhouse gas emissions, geology and soils and hydrology. As a result of the technical studies and additional analysis associated with CEQA required topics, staff identified the following CEQA topical areas as being ones in which there potentially could be some level of impact from development of a maximum contemplated community center: aesthetics, air quality, biological resources, cultural resources, geology and soils, greenhouse gas emissions, public services, noise and traffic. So I went through some of the, how I call it, lesser impacted areas. Previously, those were air quality and greenhouse gas emissions, biological resources. And I did mention

SPEAKER	COMMENT
	the comments and respond to those at that time that we received from the public, and that being the California State Department of Fish and Wildlife in a letter regarding biological resources. I did also mention geology and soils, public services and noise and I did respond at that time to comments initiated by the community legal advisors regarding noise and potential noise impacts. And I spoke at length, I will call it, about aesthetics, cultural resources and traffic safety and parking. And I did respond at that time to comments made by community legal advisors regarding those topics. The short, the very short of it is is that staff found that the impacts associated with the future contemplated community center of that size pertaining to aesthetics were less than significant for various reasons. Light and glare would be confined to the site by placement of the light standards and bollard lights. Also by the difference in elevations between the site and adjacent residential areas, by City standard conditions. And also regarding cultural resources, the structures that are on the site now, the seven structures that are on the site now [coughing – excuse me, again I'm sorry] do not qualify for listing in the California National Register because they are not, they can't satisfy the criteria. Including they weren't done by a master architect, etc., but there are several criteria that would have to satisfy to be listed. They are not eligible for listing for the buildings that remain from the original development, Molton Ranch, or Ranch House development. They are in one form or another generally de-tritons, all but one I think. And so three of the buildings are just new. Other original buildings have been destroyed. So the fact that they are, excuse me the fact that they are not eligible for listing even with, if rehabilitation would be rehabilitating a building that is not registered, not eligible for listing. So the impact to historic and cultural resources was found to be insignificant also. For those reasons in terms of the CEQA thresholds for analysis. Regarding traffic, the traffic report is very extensive, well over 100 pages in length. The, what we found is that with project design features, and 14 of which are, 14 project design features incorporated in the project development would insure that the traffic anticipated to be generated by the contemplated maximum scale community center would remain less than significant in impact analysis. There was one intersection analyzed, Windsong and Cedarbrook, that would function with or without a project. And at the General Plan build out, the 2035 General Plan that is in process it would function with our without the project at a level service D. Which is less, _____, compared to the City policy right now is below service level C. However, we are also recommending

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

SPEAKER	COMMENT
	as a project design feature that there be stop sign. A four-way stop up there, various lane re-stripping and parking prohibited along 200 feet of Windsong and Cedarbrook. That would enable the intersection to function, to continue to function at an acceptable level of service. That's, oh parking provided on site. Parking is provided and would be provided according to Code, 102 spaces on site which is adequate for the site. We did also respond to a letter from, excuse me, another comment from the Community of Legal Advisors regarding the propriety of the mitigation negative declaration vis-a-ve an environmental impact report for any proposed project. The mitigation measures that are identified in the initial study and the mitigation monitoring and reporting program would reduce any potentially significant environmental impacts to a less than significant level for biological resources. And that pertains to any sensitive bat species or Federal Migratory Treaty Act violations or nesting or impacts to nesting birds adjacent to the site or on the site. None were found. There is no wildlife corridor, there are no sensitive species on the site either floral or faunal on the site. And also these, there are mitigation measures, I believe seven without looking at it right now, that pertain to cultural resources, archaeological resources providing for monitoring of the site during pre-construction, during grading and construction phases. I mentioned that the Mitigation Monitoring and Reporting Program that was initially posted on the City's webpage inadvertently contained three extra pages. That is my fault, staff posted a corrected Mitigation Monitoring and Reporting Program on the City's webpage. The one in your staff report is accurate. So in short we recommend the Council adopt the resolution that is attached to your staff report certifying the Aliso Viejo Ranch Mitigated Negative Declaration as adequate environmental documentation for the identified maximum contemplated scale of community project. Certification of the Mitigated Negative Declaration as adequate environmental documentation for that maximum contemplated scale of community center project would ensure adequate environmental documentation for a lesser scale project so long as new impacts were not identified or more intense impacts occurred for that project. Again, this does not imply any particular project or specific project approval. The environmental documentation for a contemplation maximum scale of project. So David Tanner from Environmental and Regulatory Specialists is

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

SPEAKER	COMMENT
	here, Roger Gadeki from _____ Engineering is here and the City Attorney and I are here to answer questions.
MAYOR TSUNODA	Thank you very much Mr. Armijo. At this point I am going to open up the public hearing. Ladies and gentlemen, I have 25 total speaker slips in front of me. Speakers are respectfully reminded that they are limited to three minutes as they approach the podium after I call your name. By the way, you are under no obligation to use the full three minutes. What I am going to do is this. The attorney representing, I believe, California Reflections is here. His name is Mr. Michael Alti. I'm going to have him come up and speak first. If you are in agreement with most of what Mr. Alti is going to say it would be great for you to go on record. We have your name, if you agree with his comments fantastic. That will speed up the process for all 25 folks who wish to speak or wish to go on record here. That will be I think a fair and equitable process for everybody. I will now begin the public hearing process by asking Mr. Michael Alti to come on up. Welcome.
MICHAEL ALTI	Thank you. Good evening members of the Council and Staff. I'm an attorney for California Reflections Community Association and I'd like to talk about some procedural and substantive issues about the MND. Several members from the Association are also going to be here to provide their own comments. The first issue really is there is a lot of frustration in the Association. They don't feel that they've been a part of the public process. The Association consists of 174 homes immediately adjacent to the project site. The draft Resolution that has been provided and circulated which the Council is considering states at the bottom of the first page that the City provided copies of the draft MND and Initial Study to the public and the State Clearinghouse for a 30 day review period. All the members of the Association live immediately contiguous to this project site and they did not receive any notice of the public comment period. The first they learned about this project was when they received a notice of City Council public hearing in the mail. This notice was sent on July 21st so they learned about it about July 23, July 24 and by the time they received this notice and the public comment period ended on July 28th. Very quickly they had to retain our firm to respond. We had to meet with the Board and come up with our letter which we did submitted on July 28th. But we had to rush because Mr. Armijo showed the huge pile of documents that the MND, all the appendices and it was impossible for us to have basically one day to go through all these documents to provide our comments about all the different impacts that our Association perceives.

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

SPEAKER	COMMENT
	I do want to mention that under CEQA Guidelines section 15201 it states that public participation is an essential part of the CEQA process. There was a case in 1994 called Dixon v. Superior Court where the court found that before adopting a negative declaration the lead agency, the City, is required to give notice to the public and allow ample time for comments. The Association doesn't feel that happened. There is a 1980 CEQA case called Plagmeyer v City of San Jose where the court found that non-compliance with public notice procedures will have the effect of invalidating government actions. We are not stating here that we want to invalidate any government action, we are stating that we would like ample time to review the actual MND and all the appendices. In terms of some of the substantive issues, I, Mr. Armijo mentioned that he changed the Mitigation Monitoring Program. I looked at, I was on the City's website about four hours ago and I did see comments, mitigation measures dealing with the City of Yorba Linda water hydrology. That's not important but it just kinda raised a flag to us that there is some, we are not fully aware of all the potential impacts that are being presented. There is also an Appendix D which is very important because it has to do with cultural resources and the historic resource of the four buildings that have been discussed. I clicked the link on Friday, I also clicked today, I could not access that appendix. I was able to get the traffic, noise, other appendices, the historic cultural Appendix D is not available. You click on it, it says 404 error and it doesn't work. On some of the substantive issues in terms of traffic there is mention about the unacceptable LOS of D at the, the name of the street is Cedarbrook and Windsong, the LOS of D. It states that the project design feature of adding a stop sign is supposed to remedy that but there is no analysis of how that would be remedied. That is kind of one of our frustrations with the MND. We see a lot of conclusory statements without sufficient analysis. It seems more like it is someone's opinion without providing substantial evidence to support that opinion. For example, there is a statement in the MND that states that the proposed project will reduce traffic to Park Avenue near the Aliso Viejo Middle School but there is no analysis of how traffic will be reduced. In response to our comments, the, one of the responses stated that future development will need to coordinate special events between this proposed project and the middle school but that's nowhere to be seen in the actual mitigated negative declaration. Another point is that the MND states that there will be 275

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

SPEAKER	COMMENT
	attendants plus 25 staff for a total of 300 persons on site at the same time which could be potentially 300 cars. We raised that in our letter and the response was that there would only be 66 inbound trips at the peak am hour and we are not sure how 300 persons on site equates to 66 inbound trips. In terms of noise, again we feel there is a conclusory statement without analysis. The MND states that long-term operational and traffic noise increases would be below the threshold of significance. We raised the issue of noise and we are concerned because right behind the property will be the community garden, the picnic area and the field activity area with noise generated from all the people, from kids playing sports and what have you. But the MND and the response only address traffic related noise as well as noise from HVAC units. We are also concerned about these noises from people, all the participants at the field, at the picnic area, at the gardens and that's not mentioned anywhere. The photometric report is listed as Appendix A and it consists of about 16 pages most of which is figures and diagrams and right at the beginning near the middle of page two it has another conclusory statement. It states that the project's lighting design will result in an increase of less than .1 foot candles along the project's perimeter fence and less than detectible foot candles along existing residential development to the north which is our project. But there is no analysis. It is just one conclusion and they don't discuss their 16 pages of figures and diagrams. It's just a conclusion. So we don't understand how they have reached that conclusion. In terms of historic resources, Mr. Armijo was stating earlier that this project is not, that the four buildings are not eligible for the National Register or the California Register. I do want to point out in the CEQA Guidelines section 15064.5, and we don't know whether it would be eligible or not. But even if, it states that if a resource is not listed or determined to be eligible for listing in the California Register of Historical Resources, that does not preclude a lead agency, such as the City from determining that the resource may still be a historical resource as defined in the Public Resources Code. A lot of people here do believe that the four buildings from the Aliso Viejo Ranch, from the original Molton Ranch are historic in nature and the MND even states that the original Molton Ranch complex of structures could be considered a significant resource. But then it concludes that because only four buildings remain they do not collectively represent all aspects of a functioning historic ranch. But whether it is a functioning historical ranch is not necessarily the issue. We can look at each building individually or

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

SPEAKER	COMMENT
	the four buildings together, and whether some buildings may have been destroyed in the past does not undermine the fact that these four existing buildings could be considered historic. Because once they are demolished they are gone and that little piece of history for Aliso Viejo which has, as recognized in the MND, zero buildings or any sites on the National Register of Historic Places. Once we demolish them they are gone and we lose that piece of history that is very important to your residents. So I think that's very important to look at CEQA Guideline 15064.5 which still gives you the discretion even if it is not under the National Register or the California Register to determine that a building is historic. And that's about it. We essentially do need more time to fully analyze and address and raise our comments. Thank you very much.
MAYOR TSUNODA	Councilmember Cave.
COUNCILMEMBER CAVE	Not wanting to take anybody's opportunity to speak away from them. But would it be reasonable that since they feel that they didn't have adequate notice. Whether they did or not, we will leave that. Whether they don't feel prepared to be able to respond adequately. Would it be reasonable to recirculate or reopen it for circulation for an additional 30 days, which was the original period, to allow the community to review thoroughly and come back with substantive questions or challenges or other things. Because if they make a comment that does inform us that we didn't have the information today regarding this, say the historic aspect. That could inform future design of the site, that doesn't mean that that kills development on the site. It means that it informs development on the site. So would it be reasonable and acceptable to the Council to send it back out for a 30 day recirculation. Say using the date, Friday, since isn't that the date we usually circulate. 30 days from then. Get their comments back, respond to the comments and then readdress those comments. That way it would give everybody, well, it would give an opportunity to feel more informed. Whether it actually does that I can't guarantee that either. But at least is would re-set the clock and give them an opportunity that they feel they missed. Is that possible? I suppose then, rather than a statement, is that possible?
CITY ATTORNEY	Yes, it's possible.

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

SPEAKER	COMMENT
MAYOR TSUNODA	Just for point of clarification, Mr. City Attorney. What would be the process for the Council to direct staff to re-notice for 30 days the opportunity to review the Mitigated Negative Declaration document?
CITY ATTORNEY	Mayor and Council. The Council would continue this meeting. I think the additional note that you mentioned, Mayor, of asking for re-notice would let us be able to check all the ticks in the URL links, etc. to make sure. But my preference would be that you would do it just exactly as you said. Trigger the notice and the process from the start so all those ticks can be checked.
MAYOR TSUNODA	Councilmember Munzing.
COUNCILMEMBER MUNZING	Yeah, because what Mr. Attorney was saying, that I do want to make sure all the links and all the appendices and everything are working and that they can get the historical cultural. So I want to be sure they are all available for full review.
MAYOR TSUNODA	Any other questions or comments by the Council before I begin reading the speaker slips. Councilmember Cave.
COUNCILMEMBER CAVE	Well a question, if we took that action today are there people who have submitted a speaker slip that would be willing to withhold their comments until then or do they still want to speak today. Because I'm willing to make a motion but it's not fair to cut off public comment.
MAYOR TSUNODA	Let's do this, let's hold on to that potential motion for an extension for 30 days. Let me ask each resident who has come here to speak to, if they would like, say their peace and ask the question if they would also be in favor of extending it for an extra 30 days for a full review of the document. And given that the first person I have on my list, and by the way ladies and gentlemen, if you want to come up here and say yes that would be fantastic that you are in favor of an additional 30 days for review, Mr. Scott Spelyng.
SCOTT SPELYLNG	If I may, can I defer to the end as an information gathering session.
MAYOR TSUNODA	I'm sorry I didn't understand the questions, why don't you come up.
SCOTT SPELYNG	If I may can I defer to the end, I'd like to hear what other people have to say first.
MAYOR TSUNODA	Sure, okay. How about Mr. Jason Rudin. Good evening.

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

SPEAKER	COMMENT
JASON RUDIN	Good evening Mr. Mayor, Councilmembers. I was actually going to come up here and actually just say I agree with the Attorney but I feel compelled to actually say something. I bought my house in California Reflections about two and a half years ago. Had I known this was going on or there was a potential for the development down there I never would have bought. Okay. It is ridiculous that the Council, the City wants to develop in this area. It is not fair to homeowners or anybody in the community in that surrounding area. I kept (cough, excuse me) hearing the word insignificant when it comes to the historic sight. It is not insignificant. Why do we have our Founder's Day celebration there? That's not insignificant. It's just, I think I speak for everybody in here, nobody wants this. I'm just going to keep it very short.
MAYOR TSUNODA	Thank you. Alyce Lamb. Hi.
ALYCE LAMB	Hi, my name is Alyce Lamb and I've lived in California Reflections for 23 1/2 years and I'm a member of the board for eight. In regard to the traffic, I orchestrate my daily life to accommodate the school's schedule. I drive in and out of my community so as to avoid the school's traffic cues. And I take my walks so as to avoid inhaling the carbon monoxide emitted from the school traffic lines. To add insult to injury, 80% of the school traffic originates in Laguna Niguel. Now the City deems it prudent to import more traffic onto a dead end street without doing an environmental impact report. I believe if anyone on the City Council lived in our community they would expect no less.
MAYOR TSUNODA	Okay, thank you. Ian Smith.
IAN SMITH	I'd be willing to wait the 30 days if it means I can respond in writing to some of what is in that statement.
MAYOR TSUNODA	Okay, great, thank you very much. Kim Smith. Good evening.
KIM SMITH	Good evening. I second that, Ian is my husband.
MAYOR TSUNODA	Uh, Mr. and Mrs. Smith, got it, okay.
KIM SMITH	We've lived in that community for almost 24 years. We watched our house being built. We are on the street that overlooks the ranch now. When we moved in, we really thought it was going to be open space. We are really quite disheartened but I will be able to address the issues better in 30 days.

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

SPEAKER	COMMENT
MAYOR TSUNODA	Great, thank you. Renee McGinnis. Good evening
RENEE McGINNIS	Good evening. I also would like to put it in writing and have the 30 days. But, in case I am not heard then I would like to say the traffic is a nightmare. If I come home during that time I have a 20 minute wait in the line to get into my tract. And you, everybody has to turn their cars off and just sit there and wait. So the traffic is a nightmare without this coming in. Thank you.
MAYOR TSUNODA	Thank you. Prashant Wadhwa, I'm sorry if I butchered that. I apologize. P-r-a-s-h-a-n-t? W-a-d-h-w-a? Oh, welcome.
PRASHANT WADHWA	Yes, so I bought my house two and a half years back and I never knew that such a project is going to go forward. So right now I feel like I am being excluded and not being heard as a resident. And the traffic is really, really bad. It is just going to add to the troubles and I have, I don't feel good about this.
MAYOR TSUNODA	Great, thank you. Sonia Kanwol. Sonia Kanwol. K-a-n-w-a-l. Good evening.
SONIA KANWAL	Good evening. I say yes to 30 days. That's it. Thank you.
MAYOR TSUNODA	Okay, thank you. Rudy Rivera.
RUDY RIVERA	I say yes to the 30 days but I also agree with the attorney. And just really quick, you know the traffic. I think if, like somebody said, if any of you lived there you guys would really feel the impact of it during those times. And 20 minutes, it's, it's pretty bad. I think it might sound good on paper, I think it is for a good cause, but it's just a bad location for it. Bottom line. So anyways, that's my peace. Thanks.
MAYOR TSUNODA	Great, thank you. Claudia Mourad. Good evening.
CLAUDIA MOURAD	Good evening. I too would also like to wait the 30 days. I want to review everything and then I can speak with our lawyer. Lawyer to lawyer and then I can respond then. Thank you.
MAYOR TSUNODA	Thank you. Mohammed Faiyez.
MOHAMMED FAIYEZ	Good evening.
MAYOR TSUNODA	Howdy.
MOHAMMED FAIYEZ	I'm okay with the 30 days but I do have a question. I'm kind of blown away by this comment if nobody in the City of Aliso Viejo wants this community center that's written on paper, why are we here today. I just don't get it. I don't, honestly. And the Via

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

SPEAKER	COMMENT
	Iglesias, Via Iglesias is 50% capacity and Laguna Beach is 50% also and we have buses going back and forth. Why do we need another one. I don't understand. And my house, we bought this house 10 years ago, Ang? (addressing someone in the audience). 10 years ago and my backyard is adjacent to the ranch, it is not fair. Not at all.
MAYOR TSUNODA	Thank you. Angela Faiyez.
ANGELA FAIYEZ	I agree with what my husband just said, obviously.
MAYOR TSUNODA	Mr. and Mrs. Faiyez, okay good.
ANGELA FAIYEZ	Yes, and I agree with my neighbors. The traffic is horrific. If you are trying to get in and out it is really, really difficult. I will wait the 30 days and again I feel like it shouldn't be there. It's just not the right place for it.
MAYOR TSUNODA	Great, thank you. Jack Lee. Good evening.
JACK LEE	Good evening. Mayor and Councilmembers. I know you are all hard working people and you are always thoughtful about the residents and I want to first say thank you for taking your time and trying to do this for the community. However, like everybody else said, this is really a bad spot. And I think something that hasn't been mentioned is about the funding. 19 million dollars. We are going to deplete our coffers and go into debt. If somebody can explain that to me and find a better way to use that piece of land for all of the residents. Thank you very much.
MAYOR TSUNODA	Great, thank you. Susan Richeson. Hello.
SUSAN RICHESON	Hi Councilmembers. I believe that I have studied the traffic situation for over 20 years. Your consultants have it wrong. I'm an expert. I have lived there for over 20 years. I'm here to tell you they've got it wrong. The traffic. It is a dead end street. There is no other way in and out except to go past Cedarbrook and past Napa. It's not a good place for the Boys and Girls club. This is, it is too huge of a project, too many more cars coming up and down our street. I would just wish that you guys could understand the legacy that you have an opportunity to leave. And it should not be this plan. You could make something truly of value for your community. Make something that we all want. I have been for the past 20 years to all the meetings where in the Democratic process we all said no we don't want it, we want something you know like park-like. This has not been anything that anyone has agreed on in what I have seen in all the meetings. So I would just hope that you

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

SPEAKER	COMMENT
	guys could see your opportunity to do something much better than this. Thank you.
MAYOR TSUNODA	Thank you. I really apologize for this one, Joseph Buomomo. I'm sorry.
JOSEPH BUONOMO	Anyway, so yes I appreciate the Honorable Council the extension for 30 days to be able to submit in writing my comments and I'll just defer from that. Thank you.
MAYOR TSUNODA	Thank you. Nicole Heights. Nicole Heights, H-e-i-t-z. No, okay. Edwardo Zaragoza. No. Edwardo Zaragoza, Z-a-r-a-g-o-z-a. No. William Brown.
WILLIAM BROWN	I'm trying to get down here with my cane and my hearing aids.
MAYOR TSUNODA	Good evening Mr. Brown, how are ya?
WILLIAM BROWN	Fine sir, good afternoon. Mayor and City Council. I'm not used to a microphone. But you might remember me.
MAYOR TSUNODA	Oh yeah, absolutely.
WILLIAM BROWN	I sent you a letter.
MAYOR TSUNODA	Thank you.
WILLIAM BROWN	Ok sorry about that. Hey I don't have no weapons. I wouldn't use it anyway. Anyway, the last time I was here I said I'm Aliso Viejo proud. I want to give that back to you, I'm not proud. I am proud that I have a daughter and three grandchildren in the City. But you guys, what are you smoking in the back room. I'm not kidding. You try to give this property to a church group because he said he had 19 million dollars. Turns out he didn't have it. You were going to give him the property for 50 years on a minimum. I can't understand it. The best person you had working in the Council was Cynthia Adams. She came up with a plan, had all of Aliso Viejo down at the school and she did such a great job coming up with sherrets. If you don't know what sherrets are, look it up. It's, I will tell you briefly, it was explained to me. A bunch of architects could not figure out what to do so you put them in a closed building and say come up with this by tomorrow. They came up with a plan. She did the same thing, came up with a plan. Leave the property as it is. 19 million dollars is a lot of money, a heck of a lot of money. I have a bitter taste about the plans that's going on. I don't know what's going on. I want to know what you guys are smoking in the back room. [Laughing and clapping in the audience.]
MAYOR TSUNODA	Okay.
WILLIAM BROWN	I really do. I have copy of the letter Phillip, Mr. Mayor, if you need

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

SPEAKER	COMMENT
	another copy.
MAYOR TSUNODA	We have it up here thank you.
WILLIAM BROWN	Did you read the letter?
MAYOR TSUNODA	I have it right here. It is being passed around with my colleagues.
WILLIAM BROWN	I'm the one that took all the pictures that everybody is raving about. The traffic problem. And I can't believe that I got home the other day and I had this letter from the City. You want to skate the environmental clause. I can't believe that. Just don't do a study when school is out, this was done once before and it doesn't work. It doesn't tell the true story. That's all. I've got other things to say but last time I ran over, I don't want to do that this time.
MAYOR TSUNODA	Thank you Mr. Brown.
WILLIAM BROWN	Thank you.
MAYOR TSUNODA	Ravi Singh. Good evening.
RAVI SINGH	Good evening. Thank you Mr. Mayor, Councilmembers. Lovely evening except what we have on the Agenda. I do on record approve of the 30 days extension. However, I think it is important that I touch on a couple of the sour notes that I had prepared because they are important. My name is Ravi Singh. I have been an Aliso Viejo resident since 1991. I bought my house in 1991. Love the City. Love what the City Council has done with it. Immensely in love with it. Compared to any city in Southern California, nothing better. Okay. A few month back, maybe a little bit more than a few months, we sat right here in this room. We had tables set up and we were asked here to come and give our feedback on what to do with the ranch. We had tables set up and unbeknownst to the participants who came down there was a member of the Boys and Girls club that was strategically placed at each table. This information was not shared with the participants that were here to give their feedback. Yet, every single table, despite a member of the Boys and Girls club being present at each table, every single table objected. The number one objection was the community center. Every single table. Yet here we are six, eight months down later. You are intent on doing what you want to do. I thought you were supposed to represent your constituents. What happened. I don't understand this. This monstrosity here is unnecessary, unneeded, unwanted. To echo the gentlemen earlier nobody wants it, except the people over here.

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

SPEAKER	COMMENT
	The current facilities that we have at Via Iglesia and Laguna Canyon they are not even near capacity now or in the foreseeable future. So why are you doing this. Why? You want to spend tens of millions of dollars, go into debt, and then spend hundreds of thousands of dollars to fund that community center each year. Here we are with fancy names of ISMND and an EIR and ABC. These are just letters. They are human beings here that live in the complex. 400 hundred or 500 hundred of them. Your constitutes. 174 homes and yet how many of you have come down and driven that route in the morning or in the afternoon when traffic is horrible. How many of you. Show of hands anyone. Show of hands back here. How many of you have taken the time to go down to California Reflections and speak to the homeowners and have them point out to you.
COUNCILMEMBER [UNKNOWN]	I have.
RAVI SINGH	You have spoken. I have never seen you in my complex. Never. Has anybody seen her in our complex?
AUDIENCE	No, never, never.
MAYOR TSUNODA	Alright Mr. Singh.
CITY CLERK	Excuse me, Mayor, the three minutes is up.
MAYOR TSUNODA	Thank you very much.
RAVI SINGH	Okay, I will just finish up by saying, very quickly, stop this madness for heaven's sake. That's all.
MAYOR TSUNODA	Thank you. Karsha Berke.
KARSHA BJERKE	Beyerkay.
MAYOR TSUNODA	Darn, how do you pronounce it?
KARSHA BJERKE	B-e-e-r-k-a-y
MAYOR TSUNODA	Ew. Hi Karsha.
KARSHA BJERKE	Hi, hello Mayor and Councilmembers. I was just going to say I agree to the 30 days and many other comments made until it may just be a manner that he uses in his speech but the use of the word insignificant. I saw a couple of you raise your hand that you have done the traffic in and out. It is not insignificant to us. And the historical site is also significant. And it brought to mind the Titanic and you know when they hit that ice berg and the significance of that was a tragedy. But what became a travesty is when all those

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

SPEAKER	COMMENT
	life boats went in there half full. It was a travesty that they so much loss of life. And we have those Boys and Girls clubs that are half full. And the waste of 19 million dollars with the half full, just kind of the correlation there calls to mind of that. So we have the traffic issues that he finds insignificant, we find very significant. The loss of the circle value and the loss of the money I correlate all that together. But thank you very much.
MAYOR TSUNODA	Great, thank you. Don Dooley. Good evening.
DON DOOLEY	Good evening Mayor and members of the Council. I will save my comments for the 30 day continuance of the Mitigated Negative Dec notice. I would ask though as part of the Council's motion to continue that item for 30 days to re-notice that if it hasn't already been done that staff notice not only the property owner of the Barcelona Apartments and the St. Maritz Apartments but the tenants as well. In the interest of public involvement there may be people that are not aware of the environmental report that may be interested in attending the meeting.
MAYOR TSUNODA	Okay. Great. Thank you very much. Sorry.
DON DOOLEY	And oh one other, is again, if it hasn't already been done, is to put a display ad in the newspaper. A 1/8th page display ad. Make a little bit bigger notice than the small public notice ads that you normally see in the paper. That would be my request. Thank you very much.
MAYOR TSUNODA	Thank you. Philip Fleming. Good evening.
PHILIP FLEMING	Good evening Mayor and Council, staff, guests. I want to start out by saying I too am Aliso proud. This is a great City, it really is. For the most part you folks do a great job. You've just simply dropped the ball on this one. And I am a resident in California Reflections, 21 St. Maritz. I'm also President of the Homeowners' Association representing all 174 homeowners tonight. I stood in front of you several months ago and implored you to stop this insanity as it relates to the development of this site. You didn't listen then and it's obvious that you are not going to listen now. I certainly hope you change your course there. Since that time a number of things have happened. I'd like to start by the L.A. Times is a Pulitzer Prize winning journalist organization world renowned. They also print a daily newspaper, you may have seen it. I saw an article the other day that was extremely alarming to me. And because you have announced your targeted tenant of the Boys and Girls Club, and I personally have nothing against the Boys and Girls Club, the LA Times wrote an article a week ago today Federal authorities on

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

SPEAKER	COMMENT
	Wednesday arrested 18 El Monte Flores gang members and associates that used the offices of the Boys and Girls Club as their hangout. 18 of the 41 indicted by the Federal Grand Jury last week on charges including conspiracy, murder, drug trafficking, money laundering and weapons violations. Right out of the LA Times article, folks, I'm quoting the article. Federal officials said the gang conducted illegal activities out of the Boys and Girls Club in the San Gabriel Valley club facility on Mountain View road. They used the club as a place where they would openly sell drugs, collect taxes said the spokesman for the DA, V.J. Rodney. The gang also used the club for recently held meetings and even hosted a car wash for their fundraisers. I quote the Mayor of the City of El Monte, it is very disturbing that the facility is supposed to give Boys and Girls Club protection and safe place could be used for this purpose. Assistant United States Attorney Jeff Mitchell of the violent crimes organize section said 41 suspects of the fugitive that 15 were already in the state and federal prison on unrelated charges. The Captain of the El Monte Police force, we took some really bad people off the streets today. Councilwoman Norma Macias said that she's received numerous complaints about the types of activity of the people loitering in and around the Boys and Girls Club. Folks that's 50 miles from here. That's not very far. This is the LA Times. I stand in front of you today again demanding that you abandon this project entirely and any further consideration. This is not needed in our community. You hear the folks here behind me. This is fiscally irresponsible.
CITY CLERK	Excuse me Mayor, three minutes is up.
MAYOR TSUNODA	Thank you very much. Go ahead Mr. Fleming.
PHILIP FLEMING	Thank you, just a few more comments.
MAYOR TSUNODA	Sure.
PHILIP FLEMING	This will negatively and indelibly change a very sensitive historic preservation site forever. And I again urge you implore you to drop consideration of the development of this site. Thank you.
MAYOR TSUNODA	Thank you. Steven and Valerie Elder. Steven and Valerie Elder.
CITY ATTORNEY	If we could just interject at this point, the item before the Council is the environmental impacts ...

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

SPEAKER	COMMENT
MAYOR TSUNODA	Right.
CITY ATTORNEY	.. of a project at that site. So if we could focus testimony on that it would be more appropriate.
MAYOR TSUNODA	Thank you Mr. City Attorney. Steven and Valerie Elder. No.
STEVEN ELDER	I'm going to wait for 30 days.
MAYOR TSUNODA	Okay, thank you. Sharon Daughorty. Good evening.
SHARON DAUGHORTY	Good evening Mr. Mayor and Council. First of all I'd like to share with you that I am a very proud member of the Aliso Viejo community and I actually do not live in California Reflections. However, I live in this neighborhood. And I'm very concerned about this proposal for the ranch. First of all to be demolished because of historical values but more specifically I have concerns for the evaluation of this site. I clearly feel that an environmental impact report should be deemed. I think evidence of the lack of insignificant reporting is and reflective of, which I think was noted earlier in the comments, about that there is an acceptance of Level C for traffic and that this proposed increase in traffic because of the community center might take it down to a Level D. I live in this community and I have to accommodate the school for the traffic and for the noise and I'm very concerned that with the revised project that it will further impact not only California Reflections but the Villas, I live up the street, and the community as a whole. We live in a residential community that we like to walk, we like to be a part of the community. I think the increased traffic will in fact negatively really impact our ability to really enjoy our residence. In addition to that, the parking situation. We have a two residential or apartment complexes. One of which is the Barcelona. And every single evening on Windsong the entire parking is taken up in that area. In the Villas, where I live, I cannot have really any guests come and if they do they have to park on the street. So I'm thinking okay we take away the parking because of the community center then the Barcelona and the other neighboring apartment complex doesn't have any place to park, where do my guests park. Which further impacts it. Then I'm thinking about the construction. I was up very early this morning for a 7:00 a.m. meeting and I had a construction go by. And I thought what would happen with any revisions or any construction. I would advocate that it doesn't go down Cedarbrook where there is a lot of homes or my bedroom faces Cedarbrook and I think that would be problematic as well. I'm concerned also quite frankly about the overall value for

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

SPEAKER	COMMENT
	California Reflections because as a good neighbor I went down to that community and there is a lot of empty, already empty homes facing where the community center would go. I'm thinking well what would happen with those homes. Would they be difficult to be rented or re-sold as I already see. There seems to be a lack of residents in that particular area. And if that community finds itself hard to sell the properties or to rent the properties out and if that community is all of a sudden impacted in terms of their value, what happens to the Villas. I have additional comments which I'll reserve …
CITY CLERK	Excuse me, Mr. Mayor, three minutes is up.
MAYOR TSUNODA	Okay, thank you.
SHARON DAUGHORTY	Okay, … which I will reserve for future, you know for future comments. But I think in general my last, my very last comment is the pool community that we have down the street from Cedarbrook is already underutilized. And I think that we really haven't thought out a proper use for the ranch. I personally would like to see it retained because I do believe it has historic value.
MAYOR TSUNODA	Thank you. Mr. Mike Chambers. Good evening.
MIKE CHAMBERS	Good evening. I also want to say I think our Council is amazing. I think our City is amazing. I'm so blessed to live in a city where it has been so fiscally responsibly run that we have 20 million dollars in reserve, not including 4 million dollars-ish of community enhancement funds. So thank you to all of you collectively for putting us in this position. There is a traffic problem in California Reflections. It already exists. It is going to happen every day this week whether you build down there or not. I think we keep coming up here as a crutch. I don't want to disrespect my neighbors in California Reflections but I'd prefer you just come up and say you don't want it in your back yard. I can respect that. You don't want to deal with construction noise. But that's really it. There is no historical significance to those buildings. We had a third party person come in and tell us that. We had somebody come in and say it is not going to, it passes the environmental now, it passes traffic. Common sense tells me that when you open a Boys and Girls Club the two biggest pain points before and after school of your traffic situation should be eased because most of those kids are going to stay and their parents are going to come and get them after the point of impact. All I ask California Reflections is please don't respect our City

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

SPEAKER	COMMENT
	Council people. They put us in a great position. I'm not asking you like the project. I'm not asking you to like it in the backyard. But don't come up here and say have you been to one of our meetings. That's unfair. How many of you have actually been to the Boys and Girls Club. I keep hearing misquoting facts about that we are underutilized. We are not. We are at capacity at that club. You can put about 50 to 60 kids in there safely. 70 to 75 if you want to squeeze them in. But most of our kids in Via Iglesia, which is one subset are playing outside. Let's set that aside for a moment. The Boys and Girls Club is not part of this. This is a City decision. A couple facts I keep hearing out here, California Reflections, it is a poor California reflection on your community when you come up and don't realize that it is no longer a 19 million dollar project. It isn't. Get that correct. Don't come up and wrongfully accuse our Council and people of doing wrong things. Our city is growing. Were you guys here when we decided to develop all up and down Aliso Creek. We have residential density everywhere. We have a population boom. The biggest growing segment in our population is 0 through 10. We need to find an outlet for these kids. I'm not asking you to endorse this project, I'm not. But don't say it is not responsible of us to look for a solution. I'm sure some club 50 miles away from here had a problem. Any time you have a boom of youth population and you don't give them a positive outlet crime typically happens. We can wait for crime to happen or we can address it now. So at a minimum, I applaud the courage and the leadership. These are tough issues, I get it. I thank you guys for putting us in the position to this point. And I thank you guys for your leadership going forward, whatever you decide. Thank you.
MAYOR TSUNODA	Thank you. Mr. Scot Spelyng. That alright, ladies and gentlemen. Ladies and gentlemen.
SCOT SPEYLNG	Alright, I'll take the podium and try to avoid any of the rift-raft back here. Thank you everybody for letting me speak here. Ms. Cave, Mr. Chun I appreciate you coming down and recognizing firsthand the traffic impacts that we've got in California Reflections. Just to travel a tenth of a mile can take 20 minutes. A stop sign is not going to correct that. But I came here just to gather information and I'm really glad that I spoke deferred behind the gentleman that just spoke. Just to get some of the fact because we don't have any of the facts. I think 30 days, I'd like to go on record, is a great idea. I work with, in contracting, we build big projects. I'm a project manager. I've been through a lot of these permitting discussions before. I'm been involved with the Boys and Girls Club at another location. We ran fundraisers for them. And things went really well. They are a great organization. As far as

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

SPEAKER	COMMENT
	the impacts that it is going to have in this location though, with an elementary, is it, middle school down there. I don't know if it is elementary, I don't have kids, middle school. Heavy construction traffic moving down that street is not only going to affect the residents but it is also going to affect the kids. Construction throughout the course of the day. Construction workers going to and from that site. I don't know how big this scale is but I'd be really interested in seeing the plan and development as well as some of the finances behind the project and understanding why this would be good for Aliso Viejo. And understand how it would be good for the kids that participate. It's a cumbersome task to go through 1,000 pages even in 30 days. And I've written a lot of development plans, I've read a lot of development plans and just because it is 1,000 pages doesn't mean that it is comprehensive. The more succinct you can get and further down into not really details of 4 or 5 pages on what a stop sign is going to do but really look at it from the 5,000 foot level of what this project is going to do for this community and for the kids that are going to attend. The noise. Not just with the kids running around in the middle school there, the parks, but now the additional kids at play. Kids at play is a great thing just pick the right location for it. I'm not saying that this isn't the right location for it. I just don't know enough and I don't think that the residents here that are showing their passion because this is right in their back yard know enough about it. Going back, you've recognized Sidney Novak and what she said she loved about Aliso Viejo is that there is a ton of places for activities. I mean she'd be one of the people that may or may not be attending this Boys and Girls Club, who knows. But there is a lot of opportunities for kids at play here in Aliso Viejo. I'd like to see what the justification is for adding another community center. Especially in a location that's at the dead end of the street. That's all I have.
MAYOR TSUNODA	Great, thank you very much. That is all of the speaker slips that I have but I want to open it up to anyone else that would like to address the City Council on item 11. Yes, please. All I ask is after you speak if you could fill out a slip for us.
MARILYN FURSE	Oh yeah, sure I will.
MAYOR TSUNODA	Great, thank you.
MARILYN FURSE	I'm Marilyn Furse and I live in California Reflections.

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

SPEAKER	COMMENT
MAYOR TSUNODA	I'm sorry, your last name is?
MARILYN FURSE	Marilyn Furse. F-u-r-s-e. and I live in California Reflections and I just have one question for you. We are spending, or you are projected to spend 19 million dollars. How are you going to recoup this money? Is the Boys and Girls Club going to pay you? Or how are you going to get the money for it?
MAYOR TSUNODA	Uh, Mr. City Attorney.
CITY ATTORNEY	That's not, not up for consideration.
MAYOR TSUNODA	If you were here earlier, one thing is that this item right now is for a Mitigated Negative Declaration, it has nothing to do with an actual project or financing or anything.
MARILYN FURSE	Okay well environmental is like. Doesn't that include the money we have to spend for it. We, you know, belong to the City. It doesn't include that right?
MAYOR TSUNODA	No.
MARILYN FURSE	Okay.
MAYOR TSUNODA	Thank you. Any other individuals that would like to speak. Yes, come on down. Great. Welcome.
JUDI SAMPSKY	Thank you. My name is Judi Sampsky and I live in California Reflections. I would like the 30 days to be able to see all this number one and that's very very kind. I do have some concerns as for what project whatever. My concerns are I run this area every morning. I run down there. And there is bathrooms already in that park there. Those bathrooms are now locked. When I ran two years ago if I had to go to the restroom I could go in those bathrooms. They are now locked. There is a sign up that they are locked after school too. And the graffiti that is on the trail back there is terrible already. I have four kids of my own. They are all grown now. One of them's gone through the middle school and all that. So I know the kids need something to do but that area down there is already kinda secluded and to make a place for more to kind of stay down there I don't think is really the right place for it to be. Thank you.
MAYOR TSUNODA	Thank you. Is there anyone else. Yes, please. As long as you promise to fill out a slip.
SEAN LeCAVE	I will fill out a slip. Thank you. Sean LeCave.

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

SPEAKER	COMMENT
MAYOR TSUNODA	I'm sorry, your name again is?
SEAN LeCAVE	Sean LeCave, California Reflections resident for 8 years. Agree with the 30 day extension. I just want to say the impact is in regards to traffic I fail see how it would be insignificant. I can't tell you how many times I have almost gotten him coming out of California Reflections and going up the street. The only times it seems safe to come out of our area is when there is an Orange County Sheriff monitoring the situation. Any other times it's, it's not good. I am extremely concerned about my kids if they have to go around. The only entrance in and out of California Reflections, although there is a gate that is open now. I'm very concerned about them coming out of that area as well so we watch that. Again, nobody follows the speed limit. A stop sign is not going to help the situation. I don't see anything as far as adding this proposed plan would have an impact in reducing the traffic situation. If you are there when there is a softball tournament and soccer games going and something going on on the weekends and if there are any weekend activities associated with the center there would be no place to park. And if anything significant were to happen in that area it would be impossible for people to evacuate. It is a huge concern for us residents as we have been sharing. And I have been to at least one, to one of these and at least two of these in the past. I was here when we had the tables arranged. Honestly, it seemed a bit contrived and obvious with the presence of non-Aliso Viejo residents supporting the Boys and Girls Club. That was very disconcerting. We represent Aliso Viejo. We pay your salaries. So to have a concerted effort to bring people in and bus them in from other cities to speak in favor of this was really disconcerting. Thank you.
MAYOR TSUNODA	Thank you. Are there any other members of the audience that would like to speak. Come on down. You know the price. Fill out a speaker slip.
GARRETT DWYR	Hi, thanks for listening to me. My name is Garrett Dwyr. I am also an Aliso Viejo resident. I live in the La Paz condos across the street from the Town Center. I volunteer at the Boys and Girls Club. And my daughter is three years old and she is hopefully going to be attending the Boys and Girls Club, where ever it may be, whether it is Via Iglesia or the new facility. And I have wonderful thoughts about being able to walk down that path from the junior high school there to our home and spend some quality time with my daughter picking her up and dropping her off at that facility. I can sympathize and empathize with folks that live in the California Reflections. And I certainly don't want to sound callous

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

SPEAKER	COMMENT
	but that's a very small portion of the population of Aliso Viejo. And I think that's, I don't know that that's necessarily the majority opinion of the City, I certainly don't have any expertise to speak on the matter. But I have really wonderful thoughts about the facility. I appreciate the value that it brings to the community. And I think that it can really add a lot of value, to me personally and my family. So, in speaking of and listening to the environmental impact of it I will be a pedestrian to that facility a lot so I think it can really, really be a productive part of our community. So, thanks.
MAYOR TSUNODA	Great, thank you very much. Is there anyone else that would like to speak on item 11. Come on down. Oh, you already have it. That's great. Good evening.
JULIA ROMANENKO	Hi. Good evening. Uhm.
MAYOR TSUNODA	Your name again.
JULIA ROMANENKO	My name is Julia Romanenko, I live in California Reflections and I've been there for seven years raising two boys. And this is one place I am not comfortable. I don't feel safe getting in and out of our complex. I have one son who is starting to drive and I am concerned. Because the vehicles are speeding up going up the street. Nobody is slowing down. We cannot see around the turn and increasing the traffic is only going to put us in more danger. Thank you.
MAYOR TSUNODA	Great, thank you. Anybody else that would like to speak on Item No. 11 before I close the public hearing. Going once, going twice. Okay we will close the public hearing. Thank you very much.
CITY ATTORNEY	Mayor did you intend to continue it or just start all over with re-noticing?
MAYOR TSUNODA	Can I continue the entire item? Does that mean that we also have to continue the public hearing portion of it?
CITY ATTORNEY	Ideally, yeah, that is what we do.
MAYOR TSUNODA	Okay, So I tell you what, I will resend the closing of the public hearing, Madam City Clerk, but I will go around the horn here and see if there are any comments or questions by the Council starting with Councilmember Munzing.
COUNCILMEMBER MUNZING	Yeah, I would like to hold most of my comments for the 30 days. There was a comment I would like to address with anybody, the

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

SPEAKER	COMMENT
	City Manager, regarding graffiti down in that area. Is that ah, if that is an ongoing problem, if that exists then that definitely needs to be acknowledged and addressed.
CITY MANAGER	Sure. Two comments. I think that graffiti comment came with restroom locking at the parks. As the Council is well aware, the parks are owned, operated and controlled by AFCA, not the City. So that person should certainly talk to AFCA about the locking of the bathrooms. If there is concerns there. Relative to the graffiti, absolutely graffiti is a big concern in the City. We'll have the Sheriff's Department down there looking at that. We photograph and catalog all of the graffiti that we have for prosecution should, if and when we find that person who has been doing it. So we will be down there to take a look at it right away. And if anybody sees graffiti please report it to us so that we can take it, at any other location in the City as well.
MAYOR TSUNODA	Anything else.
COUNCILMEMBER MUNZING	I'm good.
MAYOR TSUNODA	Councilmember Chun.
COUNCILMEMBER CHUN	No I'll hold comment until after the 30 day period.
MAYOR TSUNODA	I'm going to do you last here. Mayor Pro Tem Phillips.
MAYOR PRO TEM PHILLIPS	Nothing at this point.
MAYOR TSUNODA	I will now turn to Councilmember Cave.
COUNCILMEMBER CAVE	I have a clarification on that graffiti is a big concern in the City. Because it is not to my awareness that we have an exorbitant amount of graffiti and that statement made me believe that I think the problem is bigger than it is. So could you please clarify.
CITY MANAGER	Yes, I will clarify. It is a concern when we have graffiti, we do not have a graffiti problem. But as soon as we see graffiti we like to have it removed immediately. But we don't have a plethora of graffiti. Thank you.
COUNCILMEMBER CAVE	And it is important if you see graffiti, report graffiti.
CITY MANAGER	Correct.

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

SPEAKER	COMMENT
COUNCILMEMBER CAVE	Do we have a graffiti hotline or does the County have one?
CITY MANAGER	Certainly they can call the City. I do believe the County has one as well, but if they contact the City we will make sure that the graffiti is removed either by us or own crews or the appropriate crew.
COUNCILMEMBER CAVE	Off handed comments make me nervous. Okay. And to clarify, I have been down to California Reflections on numerous occasions since 1993. If you choose not to hear me when I'm there, I can't do anything about it.
AUDIENCE MEMBER	Inaudible.
COUNCILMEMBER CAVE	I believe I have the floor. So, there are some people who have seen me, others certainly have not. If you would like to see me please contact City Hall and we can arrange a meeting. That's not a problem. I wanted to make sure in my motion that the people who felt that they had been excluded on did not have an opportunity to respond to this document had an opportunity to do so. So I hope the person who is laughing at me and implying that I don't care will take that into consideration. Because I certainly don't have to make this, I don't have to make this motion. This idea came while we were in the middle of the original discussion seeing all of the requests to speak, hearing the attorney speak about how people did not feel that they had been adequately noticed. If the City did follow the proper procedures that is something that could be dealt with in litigation. But I think it is important to give people an opportunity to be heard. So you can laugh at me, that's your First Amendment right, but I'm going to stick to my guns and make a motion to allow us to re-circulate the Mitigated Negative Declaration for an additional 30 days commencing this Friday or on a date in which you can adequately get those notices out. In addition, I would like to ask the City to consider a policy of sending a notice to homeowners' associations in addition to homeowners. The law requires us to notice property owners contiguous to the site in the certain distance. If a homeowners' association does not own property the association itself will not be notified. In some instances it helps to notify the association because they can reach a broader audience than the distance requirements than the contiguous reporting requires. So if I didn't care I wouldn't have to bring this up. So continue to laugh, that's your First Amendment right, but I would also ask staff that if we could extend that radios to include the homeowners' association. In addition, anybody who wishes to be permanently on the list of notifications for any project in the City, you have a right to make

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

SPEAKER	COMMENT
	that request and we will send you all the notices that you want. So you don't have to worry about not hearing about it. We will automatically put you on that noticing list and you will receive them. I'll bet we could probably do that by email but I think we can also do that by regular mail. I'm not a fan of the U.S. mail, we've had our issues over the years. But we can do that. So, what would be the Council's preference. Do we want to extend the radius. Do we want to address the questions and the concerns that these speakers brought up tonight. I was listening to extend it to Barcelona and potentially some of the other neighborhoods up the street. That doesn't mean that we're inviting people to come and vilify us, and tar and feather and bring pitch forks and torches at the next meeting. What we are hoping to find are specific examples. You had a lot of antidotes tonight talking about how you've experienced it. What we need is specific evidence that was not covered in this document that would give us a way to respond to it. If we didn't cover it all, okay. Give us the correct information. Give us the facts that we can continue to study. Because if the environmental document doesn't point to the ability to do a project of this scope, we can't do it. We could override it. I don't think this Council would do that. But we could. I don't think it is the appropriate thing to do. But if we have all the information then we can make an informed decision. So would the Council be willing to extend the noticing to include the neighborhoods along Cedarbrook from Aliso Viejo Parkway bordering Cedarbrook, which would include the Villas, would include Barcelona Apartments and it they used to be, it used to be an Archstone project it is accessed off of Windsong and Aliso Creek Road.
MAYOR TSUNODA	And you were also going to include the tenants within those.
COUNCILMEMBER CAVE	Uhm, yeah typically the units get mail, not just the property owners. So if we are looking at the buildings that are adjacent I don't know that we are looking at sending it to all the apartment owners.
CITY ATTORNEY	Council we wouldn't have that information. It could be sent to the unit numbers maybe, but certainly to the owners and the landlords to ask them to pass it on to tenants in the associations.
COUNCILMEMBER CAVE	Typically in an apartment situation you would send it to occupant anyway.

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

SPEAKER	COMMENT
CITY ATTORNEY	You can do that.
CITY MANAGER	So we can, point of clarification, so we can work with the managers of the projects and make sure we get the appropriate unit count or how they address them and that would be great. Thank you.
COUNCILMEMBER CAVE	A radius map will give you the units wouldn't it. What else could be done. So that will be a motion to extend the 30 days and due the additional noticing. I'll leave that and I have a second topic to discuss after that motion.
COUNCILMEMBER CHUN	I'll second that motion.
MAYOR TSUNODA	I have a motion and second. All those in favor please state by saying aye.
COUNCILMEMBERS	Aye.
MAYOR TSUNODA	Any opposed. Hearing none, that motion carries unanimously. You had a second thought.
COUNCILMEMBER CAVE	Second thought.
MAYOR TSUNODA	Councilmember Cave.
COUNCILMEMBER CAVE	Last time we had this discussion we talked about the traffic and the problems that are emanating from the school. Now we can't eminent domain the school and close it can we? No, okay.
UNKNOWN	No.
COUNCILMEMBER CAVE	So we can't fix that problem …
MAYOR TSUNODA	Oh, rhetorical question
UNKNOWN	No.
COUNCILMEMBER CAVE	… unless we dedicate more deputy time down there to take care of it. It's August, school will be back in. We have typically what, the two week to three week ramp up period during the start of school because it is always a nightmare. The beginning of school for every school. We talked about, can, we talked about approaching the apartment managers to maximum the way that their people are utilizing their parking spaces onsite. Some people don't like to park in the structure or inside their own gates because for whatever reason they don't want to. Can we talk to those owners again and try to get those cars off the street and onto the projects. There is no

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

SPEAKER	COMMENT
	way those projects could be approved today and allow that overflow parking. The rules have changed since they were built back in the 1990s. But is there a way that we can try to work with the. The same thing with the other, what is that one, Villa Merced, it was at one point. Because that's another overflow parking situation. All of these multi-family projects have parking problems. And we didn't cause it, we get stuck with it. So can we continue to make inroads to get those cars off the street and onto those properties. Whether it is not renting to people with five cars, or whatever rules that they have. I don't know that you can do that, that's beginning to invade people's privacy. But whatever. Can we continue to work with those folks to try to do that. And then I would like to ask the attorney for California Reflections to see me if he does not have a copy of the Contiguous Air Report that was initially released with California Reflections that describes the use of that ranch site. Because I think it would be informative for the residents to see what was originally envisioned when that tract was built and what was disclosed to the original owners. I would also suggest to that attorney that he talk to individual owners if that disclosure wasn't there for people who have bought their houses since the original builders to go after the title and see if they have some remedies against the person who sold them their house non-disclosure. Because I heard that if I had known about it I wouldn't have bought. That's there, that should have been with the title report and it should have been disclosed. So I have a copy of it. I've had one for a number of years because we've been through this before. I think that's it.
MAYOR TSUNODA	Great, staff, comfortable understanding direction, etc. Great, thank you very much. Moving on to community input.

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3390 UNIVERSITY AVENUE, 5TH FLOOR
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

Landscape Area:
1. Parking: 50,920 s.f.
2. Farm Yard: 23,000 s.f.
3. Reception Garden: 14,500 s.f.
4. Open Field / Activity Area: 49,170 s.f.
5. Community Garden: 2,900 s.f.
6. Picnic Area: 9,500 s.f.
7. Cedarbrook/Park Avenue Landscape Buffer: 50,120 s.f.
8. Other Landscape Areas: 60,775 s.f.
Landscape Total: 260,885 s.f.

Building Area:
1. Youth Wing: 10,250
2. Teen Wing: 5,850 s.f.
3. Basketball Gym: 11,000 s.f.
4. Multi-Purpose Room: 7,800 s.f.
5. Restroom and Storage: 1,125 s.f.
6. Covered Porch Space: 6,950 s.f.
7. Maintenance Building: 625 s.f.
Building Total (Enclosed): 36,650 s.f.
Building Total (Open Air Covered): 6,059 s.f.

RJM DESIGN GROUP

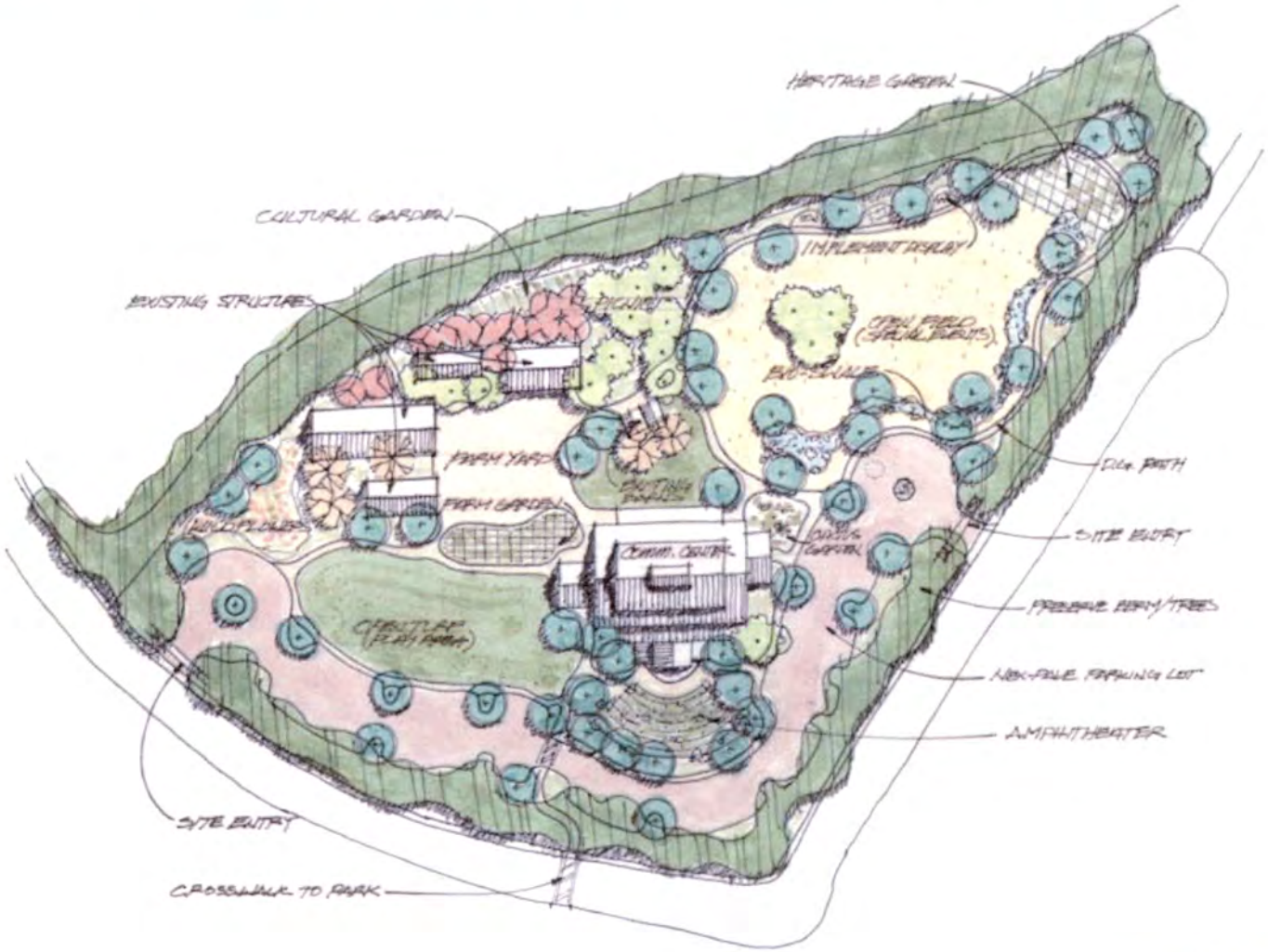
RCA + A

aliso viejo ranch

ALISO VIEJO, CA
SITE PLAN

10/15/2013

Exhibit D - Preliminary Master Plan



City of Aliso Viejo
CITY COUNCIL
AGENDA ITEM

DATE: February 18, 2015

TO: Mayor and City Council

FROM: City Attorney

SUBJECTS: RESOLUTION APPROVING AFFORDABLE HOUSING AGREEMENT, REGULATORY AGREEMENT AND HOUSING INCENTIVES AGREEMENT TO ALLOW DEVELOPMENT AND OPERATION OF 200 SENIOR AFFORDABLE MULTI-FAMILY UNITS AND 2 MANAGER UNITS AT 2C LIBERTY FOR A PERIOD OF 55 YEARS

RECOMMENDED ACTIONS

Staff recommends the City Council approve the following Resolution:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, APPROVING AN AFFORDABLE HOUSING AGREEMENT, REGULATORY AGREEMENT AND HOUSING INCENTIVES AGREEMENT FOR THE DEVELOPMENT AND OPERATION OF 200 SENIOR AFFORDABLE MULTI-FAMILY UNITS AND 2 MANAGER UNITS AT 2C LIBERTY FOR A PERIOD OF 55 YEARS

SUMMARY

On November 5, 2014, the City Council approved a site development permit application submitted by ALISO VIEJO 621, L.P., a subsidiary or affiliate of USA Properties Fund ("Developer") to allow development of 200 senior affordable multi-family units and two (2) manager units within a four-story, 52 foot high, 218,523 square foot building located at 2C Liberty. The name of the proposed development is "Vintage Aliso."

City staff and Developer have negotiated an Affordable Housing Agreement, a copy of which is attached as Attachment 2, which requires Developer to develop Vintage Aliso. City staff and Developer have negotiated a Regulatory Agreement, a copy of which is attached to the Affordable Housing Agreement as Exhibit H, to require Vintage Aliso to provide 167 units to low income senior households and 33 units to very low income senior households for a period of 55 years. City staff and Developer have also negotiated a Housing Incentives Agreement, a copy of which is attached as Attachment 3, in accordance with Aliso Viejo City Code ("AVCC") Chapter 15.58 to provide housing incentives and economic feasibility waivers in consideration for developing and

operating Vintage Aliso as an affordable housing project, as required by the City's Housing Element.

In order to assist Developer in developing Vintage Aliso in accordance with the Affordable Housing Agreement, and to insure that the restrictive covenants set forth in the Regulatory Agreement run with Vintage Aliso for 55 years, City agrees to pay to Developer a residual receipts loan from the City's Affordable Housing Account in the amount of One Million Four Hundred Eighty Five Thousand Dollars ($1,485,000).

FISCAL IMPACT

Developer has requested a residual receipts loan from the City's Affordable Housing Account in the amount of $1,485,000. The primary source of the City's Affordable Housing Account was from a condominium conversion in-lieu payment to offset converting apartments to condominiums. Therefore, these funds will be utilized for the specific reason they were committed to; providing assistance for affordable rental apartments. The loan amount is based on the Housing Strategy prepared by RSG and approved by the City Council on February 3, 2015, which provides that the per-unit incentive for very-low income housing units is $45,000. The City loan is based on Vintage Aliso providing 33 very-low income housing units (33 very-low units x $45,000 = $1,485,000).

ENVIRONMENTAL:

The Resolution is statutorily exempt from CEQA pursuant to Government Code section 65583.2(i). Government Code section 65583.2(i) exempts from CEQA review housing projects on parcels that were rezoned by the Housing Element to accommodate the City's need for low and very low income housing. (See Govt. Code, § 65583(c)(1)(A).) The Government Code requires that parcels rezoned to accommodate the low and very low housing need meet the following requirements: (1) the parcels must be rezoned with a minimum development density of at least 20 dwelling units per acre; and (2) the rezoning must allow development of owner-occupied and rental multifamily residential use "by right." (Govt. Code, § 65583.2(h).) The Resolution and associated agreements are consistent with the recent general plan amendment and rezoning to accommodate the City's affordable housing need, and therefore is exempt from CEQA review under Government Code section 65583.2(i).

BACKGROUND

Regional Housing Needs Assessment (RHNA)

State law requires cities to identify adequate sites with appropriate zoning to accommodate assigned growth need for the planning period. Government Code section 65583(c)(1)(A) requires the City to adopt a program that will identify additional sites that can be developed for housing within the planning period to accommodate the portion of its Regional Housing Needs Assessment (RHNA) not accommodated by the land inventory. The City was assigned a RHNA which specified the City needed to accommodate provision of housing units for 210 very-low income households (31% to

50% Average Median Income) and 80 low-income households (51% to 80% Average Median Income), for a total of 290 units. However, since Development Agreements for the Vantis and Commons developments still allow for construction of units for seven (7) very-low income households and 34 low-income households within this planning period, the remaining need is for 203 very-low income households and 46 low-income households.

In compliance with requirements of state law, the City carried out general plan and zoning amendments to identify adequate sites commensurate with its unmet housing need of 249 units by amending the General Plan designation and zoning district for two (2) vacant properties, 2C Liberty and 4 Liberty, on January 22, 2014 and February 8, 2014. In the Community Profile portion of the adopted Housing Element, the property located at 2C Liberty was identified with potential construction of 144 units based on the General Plan Very High Density Residential land use average of 36 dwelling units per acre. This was a conservative estimate that is near the low end of the allowable density range of 30-50 units/acre.

Housing Incentives and Economic Feasibility Waiver

On November 5, 2014, the City Council also approved several housing incentives and economic feasibility waivers requested by the Developer.

AVCC Section 15.58.010C states residential projects can be eligible for a density bonus or incentives (“incentives” are reductions in applicable development standards). Vintage Aliso meets the criteria because it consists of 202 dwelling units; providing 83 percent (or 167) of total dwelling units for lower income households; sixteen (16) percent (or 33) of total dwelling units for very low income households, and by providing a senior citizen housing development as defined in California Civil Code sections 51.3 and 51.12. (A "senior citizen housing development" is a residential development developed, substantially rehabilitated, or substantially renovated for, senior citizens that has at least 35 dwelling units. A “senior citizen” is a person who is 62 years or older; however, the minimum age to live in a “senior citizen housing development” is 55 years old.)

AVMC Chapter 15.58 allows for up to three (3) incentives when projects include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a condominium or planned development. Vintage Aliso meets the first criteria by providing more than 30 percent (it provides 83 percent) of the total units for lower income households. Additionally, according to Government Code 65915(e)(f), if Vintage Aliso shows that a waiver or modification is necessary to make the housing units economically feasible, in no case may a city apply any development standard that will have the effect of precluding construction of a development meeting criteria specified in the statute. To this purpose, Developer has requested 3 economic feasibility waivers.

Lastly, AVMC Chapter 15.62 sets out standards for physical design in Aliso Viejo. It provides architectural, landscape and site planning criteria for design and review of proposed commercial, office, industrial, residential, and other development within the City.

On November 5, 2014, the City Council approved the following Housing Incentives and Economic Feasibility Waivers:

Housing Incentives: Pursuant to AVCC Section 15.58, Developer is entitled to three (3) incentives or concessions from the City Residential Development Standards set forth in AVCC Chapter 15.10:

(1) Height and Area Standards: Minimum common open area for the Project shall be seventeen percent (17%).

(2) Minimum Building Setbacks: All minimum perimeter setbacks for the Project shall be increased 1 foot for every foot in height above 35 feet. Western perimeter shall have a minimum 28 foot setback, southern perimeter shall have a minimum 20 foot setback, and all other areas shall have a minimum 36 foot perimeter setback.

(3) Landscaping: Landscaping boundary shall be a minimum of 10 feet along the western property line, 13 feet along the southern property line, 3 feet along the eastern property line, and 0 feet along the northern property line.

Economic Feasibility Waivers: Developer has shown that waivers or modifications of certain provisions of the City's Municipal Code are necessary to make the housing units economically feasible:

(1) Parking: 1 parking space for each 2 bedroom unit.

(2) Outdoor Lighting: The light source for pole or fence-mounted lights for the Project shall be located no higher than 14 feet above finish grade.

(3) High Density Residential Projects: Multi-family units may be constructed as mega-structures rather than clustered groupings of structures.

Housing Strategy

On January 22, 2014 the City Council adopted a Housing Element for the 2014-2021 planning period. On October 1, 2014, the California Department of Housing and Community Development (HCD) stated that the adopted housing element meets the statutory requirements of State law. Housing Program 2, "Affordable Housing In-Lieu Funds", of the Housing Element committed the City to bring forward a qualified housing consultant to work with staff in devising a plan to distribute the funds. On October 1, 2014, Rosenow Spevacek Group (RSG) was chosen to assist staff because of its longstanding work with the current Affordable Housing Program.

The Housing Strategy outlines a strategy for the distribution of the City Affordable Housing Account. The current Account totals approximately $2,000,000, and with the anticipated final pay-outs of the Vantis Development Agreement, the Fund should be approximately $2,500,000 by 2016 (coinciding with the 400th Certificate of Occupancy for the Vantis apartments). The Housing Strategy also anticipates the development of 2C Liberty and the City residual receipts loan of $1,485,000 to Developer from the City Affordable Housing Account.

On February 4, 2015, the City Council approved the Housing Strategy.

DISCUSSION

Affordable Housing Agreement

The Affordable Housing Agreement requires Developer to construct two hundred (200) rental units, plus two (2) unit reserved for a professional on-site property manager. Thirty three (33) units shall be reserved for very low income households. One hundred sixty seven (167) units shall be reserved for lower income households. Vintage Aliso will be constructed on 2C Liberty, which consists of approximately four (4) acre site owned by Developer. Vintage Aliso will consist of one four-story, approximately 218,523 square foot building; 51 feet, 10 inch maximum height; 17% common area; 202 parking stalls for 202 residential units.

The Affordable Housing Agreement provides for a City residual receipts loan in the amount of $1,485,000, which will be paid after Developer has met specific conditions, including providing City with evidence of the following: (1) financing sufficient to complete the construction of Vintage Aliso; (2) satisfactory evidence of insurance policies required by the Affordable Housing Agreement; (3) obtained all project entitlements and permits required for construction of Vintage Aliso; (4) City has approved final working drawings for Vintage Aliso; (5) a general construction contract between Developer and a licensed general contractor; and (6) Developer has obtained tax credits from the California Tax Credit Allocation Committee.

The City residual receipts loan will accrue interest at an annual simple rate of three percent (3%). Repayment of the loan will commence on April 15, 2017 and annually on that date thereafter for the term of the loan, which is 40 years from the recordation of the Certificate of Completion for Vintage Aliso. Developer is required to make payments on the City loan equal to fifty percent (50%) of the residual receipts of Vintage Aliso for the prior calendar year, to the extent residual receipts exist. “Residual receipts” means the remainder of the Gross Revenue of Vintage Aliso after payment of project operating expenses, deferred developer fee payments, repayments of any advances previously made by Developer to partners or third parties for the rehabilitation or operation of Vintage Aliso, as further provided in the Promissory Note attached to the Affordable Housing Agreement as Exhibit B.

Regulatory Agreement

The Regulatory Agreement requires Vintage Aliso to be operated for a period of 55 years following the recordation of the Certificate of Completion at the following affordable rents: (1) 167 units with an affordable rent for lower income households; and (2) 33 units with an affordable rent for very low income households. All affordable units will be reserved for senior citizens. In addition to the 200 restricted units, Vintage Aliso will include 2 units for on-site project managers.

Housing Incentives Agreement

will be reserved for senior citizens. In addition to the 200 restricted units, Vintage Aliso will include 2 units for on-site project managers.

Housing Incentives Agreement

The Housing Incentives Agreement provides the housing incentives and economic feasibility waivers set forth above.

The attached Resolution would approve the Affordable Housing Agreement, Regulatory Agreement (as an attachment to the Affordable Housing Agreement) and Housing Incentives Agreement.

CONCLUSIONS

Staff recommends the City Council adopt the proposed Resolution.

Prepared by:

City Attorney

APPROVED FOR SUBMITTAL TO THE CITY COUNCIL

David A. Doyle
City Manager

Attachments:
1. Resolution
2. Affordable Housing Agreement
3. Housing Incentives Agreement

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, APPROVING AN AFFORDABLE HOUSING AGREEMENT, REGULATORY AGREEMENT AND HOUSING INCENTIVES AGREEMENT WITH ALISO VIEJO 621, L.P., A CALIFORNIA LIMITED PARTNERSHIP

WHEREAS, on January 22, 2014, the City Council adopted the 2013 Housing Element update as part of its comprehensive General Plan, which was certified by the Department of Housing and Community Development ("HCD") on October 1, 2014 for the 2013-2021 planning period; and

WHEREAS, pursuant to Housing Element Program #2, the City hired Rosenow Spevacek Group (RSG) to develop an Affordable Housing In-Lieu Monies Strategy ("Strategy") that provides a working document on recommended implementation policies, procedures and guidelines for the use of In-Lieu Funds on potential housing programs and projects in the City, which was approved by the City on February 4, 2015; and

WHEREAS, as set forth in the Strategy, the City currently has an unmet Regional Housing Needs Assessment ("RHNA") requirement to provide two hundred three (203) "very low income" and forty-six (46) "low income" units; and

WHEREAS, Aliso Viejo 621, L.P., a California limited partnership ("Developer") has requested financial assistance from City to aid in the construction of a senior affordable housing project commonly known as the Vintage Aliso Senior Apartments, to be located at 2C Liberty in the City of Aliso Viejo ("Property"), and consisting of two hundred two (202) unit affordable rental housing project with thirty three (33) of the units for very low income occupants, one hundred sixty seven (167) of the units for low income occupants, and two (2) units reserved, at market rate, for the property staff ("Project"); and

WHEREAS, in order to assist in the construction on the Project, which will satisfy a portion of the City's RHNA requirements, City has agreed to make funds available to the Developer from the City's Affordable Housing Account in the form of a residual receipts loan in the amount of One Million Four Hundred Eighty Five Thousand Dollars ($1,485,000); and

WHEREAS, Developer and City have negotiated an Affordable Housing Agreement (Vintage Aliso) setting forth certain covenants, conditions, and restrictions regarding City's residual receipts loan from the City Affordable Housing Account to Developer and requiring the Developer to develop the Project on the Property ("Affordable Housing Agreement"), a copy of which is attached hereto by reference; and

WHEREAS, Developer and City have also negotiated a Regulatory Agreement and Declaration of Restrictive Covenants, Conditions and Restrictions Restricting Use of Property for Affordable Housing (Vintage Aliso) ("Regulatory Agreement") which requires the Project to be operated as an affordable housing rental project for a period of 55 years, a copy of which is attached to the Affordable Housing Agreement as Exhibit H; and

WHEREAS, Section 15.58 of the Aliso Viejo Municipal Code allows for up to three (3) incentives when projects include at least thirty percent (30%) of the total units for lower income households, at least fifteen percent (15%) for very low income households, or at least thirty percent (30%) for persons and families of moderate income in a condominium or planned development, and the Project meets the first criteria by providing eighty-three percent (83%) of the total units for lower income households and, therefore, is entitled to request three (3) incentives or concessions; and

WHEREAS, Developer and City have negotiated a Housing Incentives Agreement (Vintage Aliso), a copy of which is attached hereto by reference, to provide certain housing incentives and economic feasibility waivers, as authorized by Aliso Viejo City Code Chapter 15.58; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. Recitals. The above recitals are incorporated herein by reference.

SECTION 2. CEQA Compliance. The City hereby finds and determines that the Project is statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to Government Code section 65583.2(i). Government Code section 65583.2(i) exempts from CEQA review housing projects on parcels that were rezoned by the City's Housing Element for the purpose of accommodating the City's need for low and very low income housing. (See Gov't. Code, § 65583(c)(1)(A).) The Government Code requires that parcels rezoned to accommodate the low and very low housing need meet the following requirements: (1) the parcels must be rezoned with a minimum development density of at least 20 dwelling units per acre; and (2) the rezoning must allow development of owner-occupied and rental multifamily residential use "by right". (Govt. Code, § 65583.2(h).)

The City Council hereby finds and determines that the Project meets the above criteria. First, the property's General Plan land use designation was redesignated from Business Park (BP) to Very High Density Residential (VHDR) and the site was rezoned from Business Park-1 (BP-1) to Residential Very High Density (RVH) as part of the 2014 Housing Element Update. The Very High Density Residential land use allows a residential density between 30 and 50 dwelling units per acre, which density can

accommodate affordable housing on-site. Consistent with Government Code sections 65583 and 65583.2, no additional discretionary permits are required for the project so long as it meets the City's objective design criteria and development standards identified in the site development permit process. At the time of the adoption of the 2014 Housing Element Update there was an unmet need of 249 lower-income units, as determined by the Southern California Association of Governments ("SCAG"), consistent with State law. The general plan amendment and rezoning of the 2C Liberty parcel was necessary to accommodate this unmet affordable housing need. The Project is consistent with the recent general plan amendment and rezoning to accommodate the City's affordable housing need. Therefore, pursuant to Government Code section 65583.2(i), the Project does not constitute a "project" for purposes of CEQA and the action is exempt from CEQA review.

SECTION 3. Approval of Agreements. The City Council hereby approves the Affordable Housing Agreement, Regulatory Agreement and Housing Incentives Agreement in substantially the forms attached to this Resolution.

SECTION 4. Implementation. The City Manager or his or her designee is hereby authorized and directed to take any actions and execute any and all necessary documents to execute the Affordable Housing Agreement, Regulatory Agreement and Housing Incentives Agreement, and as may be necessary or convenient in furtherance of the actions authorized in this Resolution.

SECTION 5. Notice of Exemption. Within five (5) working days after the passage and adoption of this Resolution, the City Council hereby authorizes and directs staff to prepare, execute and file with the Orange County Clerk a Notice of Exemption for the proposed Strategy.

SECTION 6. Severability. If any provision of this Resolution is held invalid, the remainder of this Resolution shall not be affected by such invalidity, and the provisions of this Resolution are severable.

SECTION 7. Effective Date. This Resolution shall become effective upon its adoption.

PASSED, APPROVED AND ADOPTED this 18th day of February 2015.

_____

William A. Phillips
Mayor

ATTEST:

_____
Mitzi Ortiz, MMC
City Clerk

APPROVED AS TO FORM:

_____
Scott C. Smith
City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF ALISO VIEJO)

I, MITZI ORTIZ, City Clerk of the City of Aliso Viejo, California, DO HEREBY CERTIFY that foregoing Resolution No. 2015-_____ was duly passed and adopted by the City Council of the City of Aliso Viejo at their regular meeting held on the 18th day of February 2015, by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
MITZI ORTIZ, MMC
CITY CLERK

(SEAL)

ATTACHMENT 2

AFFORDABLE HOUSING AGREEMENT

[Attached behind this cover page]

AFFORDABLE HOUSING AGREEMENT
(Vintage Aliso)

between

THE CITY OF ALISO VIEJO,
a California municipal corporation

and

ALISO VIEJO 621, L.P.,
a California limited partnership

[Dated February 18, 2015 for reference purposes only]

This AFFORDABLE HOUSING AGREEMENT (Vintage Aliso) ("Agreement") is dated, for reference purposes only, as of February 18, 2015, and is made by and between THE CITY OF ALISO VIEJO, a California municipal corporation ("City"), and ALISO VIEJO 621, L.P., a California limited partnership ("Developer"). The City and the Developer are sometimes referred to in this Agreement, individually, as a "Party" and, collectively, as "Parties." This Agreement is entered into with reference to the following recitals of fact ("Recitals") that the City and the Developer believe to be true as of the Effective Date of this Agreement:

RECITALS

A. Developer has requested financial assistance from City to aid in the construction of a senior affordable housing project commonly known as the Vintage Aliso Senior Apartments, to be located at 2C Liberty, Aliso Viejo, California, 92656, and consisting of two hundred two (202) affordable rental housing ("Project"). Of these, Developer shall restrict thirty three (33) of the units at rents affordable to and to be occupied by very low income occupants, one hundred sixty seven (167) of the units at rents affordable to and to be occupied by low income occupants, and two (2) units shall be reserved, at market rate, for the property staff.

B. City currently has an unmet Regional Housing Needs Assessment ("RHNA") requirement to provide two hundred three (203) "very low income" and forty-six (46) "low income" units.

C. In order to assist in the construction on the Project, which will satisfy a portion of the City's RHNA requirements, City has agreed to make funds available to the Developer from the City's Affordable Housing Account in the form of a residual receipts loan in the amount of One Million Four Hundred Eighty Five Thousand Dollars ($1,485,000), subject to the terms and conditions set forth in this Agreement.

D. Developer and City now desire to enter into this Agreement setting forth certain covenants, conditions, and restrictions regarding City's residual receipts loan from the City Affordable Housing Account to Developer and describing the manner in which Developer will use the residual receipts loan fund proceeds.

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the City and the Developer, the Parties agree as follows:

TERMS AND CONDITIONS

ARTICLE I

DEFINITIONS, PARTIES, CHANGE IN OWNERSHIP, REPRESENTATIONS AND WARRANTIES AND EFFECTIVE DATE

1.1 Definitions. All initially capitalized terms not otherwise defined in this Agreement shall have the following meanings:

1.1.1 Affordable Housing Cost. As defined in California Health and Safety Code Section 50053, as it may be amended from time to time through the term of the Regulatory Agreement.

1.1.2 Agreement. This Affordable Housing Agreement (Vintage Aliso) between the City and the Developer, including all Exhibits attached to this Agreement.

1.1.3 Certificate of Completion. The written certificate of the City that the Project is complete and in compliance with all the terms and conditions of this Agreement, substantially in the form of Exhibit F attached to this Agreement.

1.1.4 City. The City of Aliso Viejo, California, a California municipal corporation, and any assignee of or successor to its rights, powers and responsibilities.

1.1.5 City Affordable Housing Account. An account set up by the City for monies received to fund affordable housing initiatives.

1.1.6 City Deed of Trust. The trust deed executed by the City Manager in favor of the City, substantially in the form attached as Exhibit C, securing the City Promissory Note.

1.1.7 City Loan. A residual receipts Loan in an amount of One Million Four Hundred Eighty Five Thousand Dollars ($1,485,000) from the City to the Developer.

1.1.8 City Manager. The City Manager of the City or his or her designee or successor in function.

1.1.9 City Promissory Note. That certain promissory note attached hereto as Exhibit B evidencing Developer's obligation to repay the City Loan.

1.1.10 Completion of Construction. The issuance by the City of all final or temporary certificates of occupancy required for the occupancy of the Project, provided, however if a temporary certificate of occupancy is issued, such temporary certificate of occupancy shall not contain any condition which would materially and adversely impact the use and operation of the Project, as determined by the City in its reasonable discretion.

1.1.11 Construction. The work of improvement to be performed on the Property in accordance with the Project Entitlements.

1.1.12 Construction Costs. The total cost incurred by the Developer in acquiring the Property and developing the Project.

1.1.13 Default. The failure of a Party to perform any action or covenant required by this Agreement within the time period provided for such performance in this Agreement following any provided notice and opportunity to cure.

1.1.14 Developer. ALISO VIEJO 621, L.P., a California limited partnership, and any voluntary successors and assigns to which a Permitted Transfer of the Project may be made, as authorized by the provisions of this Agreement.

1.1.15 Governmental Entity. Any and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city, or otherwise) whether now or later in existence.

1.1.16 Lender. The holder of any security instrument and its successors and assigns that make loans in the normal course of its business.

1.1.17 Lien. Any mortgage, deed of trust or other security instrument encumbering the Developer's fee interest in the Property and/or Project, or any part thereof.

1.1.18 Normal Business Hours. Any weekday, Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m. Pacific Standard Time.

1.1.19 Permitted Transfer. Any sale, transfer, assignment or conveyance of the Property or the Project that is approved by the City or is expressly permitted by the terms of this Agreement.

1.1.20 Project. The Construction of two hundred two (202) rental units which shall consist of two (2) units reserved for on-site property staff members, thirty three (33) units to be rented to very low income Qualified Households, and one hundred sixty seven (167) units to be rented to lower income Qualified Households.

1.1.21 Project Entitlements. The precise plan, parcel map, variances, zone changes, grading permits, building permit or other approvals necessary for development of the Project on the Property to be approved by the City. Project Entitlements shall not include the formation or approval of districts, bonds or exactions (including, but not limited to, special assessments and special taxes) necessary to finance, directly or indirectly, the construction of public improvements or the provision of public services necessary for the Project. Project Entitlements also shall not include permits to occupy or operate after Completion of Construction has occurred.

1.1.22 Project Budget. The Project cost and the anticipated sources of funds to pay for the Construction of the Project as set forth on Exhibit G attached to this Agreement.

1.1.23 Property. The real property, and all current and future improvements thereon (including, without implied limitation, the Project), legally described in Exhibit A.

1.1.24 Qualified Households. Persons or families whose incomes do not exceed fifty percent (50%) or sixty percent (60%), as applicable, of the Area Median Income for Orange County, California as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937, California Health and Safety Code Section 50093, and published by the California Department of Housing and Community Development in the California Code of Regulation.

1.1.25 Restriction Period. The period of time beginning on the date the Certificate of Completion for the Project is recorded and ending on the date which is fifty-five (55) years after the date the Certificate of Completion for the Project is recorded.

1.1.26 Regulatory Agreement. The regulatory agreement executed by and between City and Developer in substantially the form attached to this Agreement as Exhibit H.

1.1.27 Schedule of Performance. The schedule for the performance of certain actions by the City and the Developer pursuant to this Agreement, attached to this Agreement as Exhibit E.

1.1.28 Scope of Development. The detailed description of the primary elements of the Project attached to this Agreement as Exhibit D.

1.1.29 Transfer. Any voluntary or involuntary sale, transfer, assignment or conveyance of the Property, any portion thereof or interest therein, or any agreement to do so, except for a Permitted Transfer.

1.1.30 Units. The two hundred (200) residential units constituting the Project (excluding the 2 units to be used by the property staff members), which shall be restricted by the Developer for rental to and occupancy by Qualified Households in accordance with the terms and conditions of this Agreement and the Regulatory Agreement.

1.2 Prohibition Against Transfer.

1.2.1 The qualifications and identity of the Developer is of particular concern to the City. It is because of those qualifications and identity that the City has entered into this Agreement with the Developer. No voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein.

1.2.2 Developer shall not, without prior written approval of the City, which may not be unreasonably withheld, except as otherwise permitted by this Agreement, (i) assign or attempt to assign all or any part of this Agreement or any right herein or (ii) make any total or partial sale, transfer, conveyance, lease, leaseback, or assignment of the whole or any part of the Property or the improvements thereon or permit to be placed on any of the Property any unauthorized mortgage, trust deed, deed of trust, encumbrance or lien. This prohibition shall not apply to the reasonable grant by the Developer of utility or telecommunication easements or permits to facilitate the development of the Property.

1.2.3 In the absence of specific written agreement or approval by the City, no unauthorized sale, transfer, conveyance, lease, leaseback or assignment of the Property shall be deemed to relieve the Developer or any other party from any obligations under this Agreement.

1.2.4 This Agreement may be terminated by the City if there is any material change, whether voluntary or involuntary, in membership, ownership or control of the Developer (other than such changes occasioned by the death or incapacity of any individual) that has not been approved by the City prior to the time of such change (a "**Developer Control Change**") or the City may seek other appropriate relief in the event that at any time following the execution and prior to issuance of the Certificate of Completion for the Project, such a Developer Control Change occurs with respect to the Project; provided, however, that (i) the City shall first notify the Developer in writing of its intention to terminate this Agreement or assert any other such remedy, and (ii) the Developer shall have thirty (30) calendar days following its receipt of such written notice to commence and thereafter diligently and continuously proceed with the cure of the default of the Developer hereunder and submit evidence of the initiation of satisfactory completion of such cure to the City in a form and substance deemed satisfactory to the City, in its reasonable discretion. For purposes of this Section, a "Developer Control Change" shall not include any of the following events (i) the transfer of any limited partner interest in the Developer, (ii) the transfer of any general partner interest in the Developer to a single asset limited liability company wholly owned by the transferring general partner, or (iii) the removal of a general partner of Developer by the limited partner of Developer in accordance with the terms and conditions of the Developer agreement of limited partnership; provided, however, that a copy of the Developer agreement of limited partnership has been provided to City and the terms of the removal of a general partner under the Developer agreement are acceptable to City, in City's reasonable discretion.

1.3 Representations and Warranties.

1.3.1 City Representations and Warranties. The representations and warranties of the City contained in this Section 1.3.1 shall be based upon the actual knowledge of David A. Doyle, City Manager, as of the Effective Date. All representations and warranties contained in this Section 1.3.1 are true and correct as of the Effective Date. The City's liability for misrepresentation or breach of warranty, representation or covenant, wherever contained in this Agreement, shall survive the execution and delivery of this Agreement. The City hereby makes the following representations, covenants and warranties and acknowledges that the execution of this Agreement by the Developer has been made in material reliance by the Developer on such covenants, representations and warranties:

1.3.1.1 The City is a California municipal corporation. The City has the legal power, right and authority to enter into this Agreement and to execute the instruments and documents referenced herein, and to consummate the transactions contemplated hereby.

1.3.1.2 The persons executing any instruments for or on behalf of the City have been authorized to act on behalf of the City and this Agreement is valid and enforceable against the City in accordance with its terms and each instrument to be executed by the City pursuant hereto or in connection therewith will, when executed, be valid and enforceable against the City in accordance with its terms. No separate approval, consent, order or

authorization of, or designation or declaration of any other person, is required in connection with the valid execution and delivery of and compliance with this Agreement by the City.

1.3.1.3 Except for otherwise provided in this Agreement, the City has taken all requisite action and obtained all requisite consents for agreements or matters to which the City is a party in connection with entering into this Agreement and the instruments and documents referenced herein and in connection with the consummation of the transactions contemplated hereby.

1.3.1.4 The funds used by the City to provide the City Loan are originated solely from the City Affordable Housing Account. There are no sources of funds other than the City Affordable Housing Account used or to be used by the City with respect to the funding of the City Loan.

1.3.2 Developer Representations and Warranties. The representations and warranties of the Developer contained in this Section 1.3.2 shall be based upon the actual knowledge of Geoffrey Brown, President of USA Properties Fund, Inc., a California corporation, as of the Effective Date. All representations and warranties contained in this Section 1.3.2 are true and correct as of the Effective Date. The Developer's liability for misrepresentation or breach of warranty, representation or covenant, wherever contained in this Agreement, shall survive the execution and delivery of this Agreement. The Developer hereby makes the following representations, covenants and warranties and acknowledges that the execution of this Agreement by the City has been made in material reliance by the City on such covenants, representations and warranties:

1.3.2.1 The Developer is a California limited partnership lawfully entitled to do business in the State of California and the City. The Developer has the legal right, power and authority to enter into this Agreement and the instruments and documents referenced herein and to consummate the transactions contemplated hereby. The persons executing this Agreement and the instruments referenced herein on behalf of the Developer hereby represent and warrant that such persons have the power, right and authority to bind the Developer.

1.3.2.2 The Developer has taken all requisite action and obtained all requisite consents in connection with entering into this Agreement and the instruments and documents referenced herein and the consummation of the transactions contemplated hereby, and no consent of any other party is required for the Developer's authorization to enter into Agreement.

1.3.2.3 Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby shall result in a breach of or constitute a default under any other agreement, document, instrument or other obligation to which the Developer is a party or by which the Developer may be bound, or under law, statute, ordinance, rule, governmental regulation or any writ, injunction, order or decree of any court or Governmental Entity applicable to the Developer.

1.3.2.4 This Agreement is, and all agreements, instruments and documents to be executed by the Developer pursuant to this Agreement shall be, duly executed

by and shall be valid and legally binding upon the Developer and enforceable in accordance with their respective terms. No separate approval, consent, order or authorization of, or designation or declaration of any other person, is required in connection with the valid execution and delivery of in compliance with this Agreement by the Developer.

1.4 Effective Date. This Agreement is dated February 18, 2015 for reference purposes only. This Agreement shall not become effective until the date on which all of the following are true ("Effective Date"): (i) this Agreement is approved and executed by the appropriate authorities of the Developer and delivered to the City; (ii) following all legally required notices and hearings, this Agreement is approved by the City Council; and (iii) this Agreement is executed by the authorized representatives of the City and delivered to the Developer.

ARTICLE II

FINANCING OF PROJECT

2.1 Project Financing. The City and the Developer agree that the financing of the Project shall occur as follows:

2.1.1 City Loan. Subject to the terms and conditions of this Agreement, the City Promissory Note and the City Deed of Trust, the City shall pay to or for the benefit of the Developer the City Loan in order to assist the Developer in developing the Project, and to insure that the restrictive covenants set forth in the Regulatory Agreement run with the Project for the Restriction Period. The Developer shall use the City Loan as set forth in this Agreement solely for the Construction Costs associated with completing the Project, to repay a loan obtained by Developer for the acquisition of the Property, or to pay down the City Loan. The Developer shall not be entitled to use any portion of the City Loan to reimburse the Developer for any internal management, administrative or overhead expenses or for any purpose other than paying for expenses directly attributable to the development of the Project, paying down a loan obtained by Developer for the acquisition of the Property, or paying down the City Loan.

2.1.1.1 Conditions Precedent to Disbursement of the City Loan. The disbursement of the City Loan shall be subject to the satisfaction (or waiver by the City) of all of the conditions precedent set forth in this Section, as determined in the reasonable discretion of the City Manager:

2.1.1.1.1 The Developer has provided the City with evidence of Lenders' commitments to provide financing sufficient to complete the Construction of the Project pursuant to the Project Budget, and all documents required to be executed in connection with such financing shall have been duly executed, acknowledged and delivered;

2.1.1.1.2 The Developer has provided the City with satisfactory evidence of the insurance required by this Agreement;

2.1.1.1.3 The Developer has obtained all Project Entitlements required for the Construction of the Project, including, but not limited to, the construction approval. Developer shall deliver a list of all permits required for the Construction of the

Project, demonstrating that all approvals have been obtained, and that all conditions for the issuance of all necessary permits have been satisfied;

2.1.1.1.4 The Developer has submitted and the City has approved final working drawings for the Project as evidenced by the issuance of building permits for the Project;

2.1.1.1.5 The Developer has obtained tax credits from the California Tax Credit Allocation Committee and other financing commitments and the lender(s) thereunder is/are irrevocably committed to close such financing and, to the extent the financing commitments include tax credits, an institutional investor shall be admitted to Developer (the "**Financing Commitments**");

2.1.1.1.6 The Developer is in compliance with all of the terms, covenants, and conditions set forth in this Agreement;

2.1.1.1.7 The Developer has submitted a fully executed original of the City Promissory Note and City Deed of Trust; and

2.1.1.1.8 The Developer has submitted a general construction contract between the Developer and a licensed general contractor, covering all construction required by this Agreement and the approved final working drawings, in an amount that is consistent with the final Project Budget.

2.1.1.2 Procedure for Disbursement of the City Loan. Provided that Developer has satisfied the Conditions Precedent, City shall disburse the City Loan to Developer concurrently with the closing date of the construction loan for the Project.

2.1.1.3 Repayment of the City Loan. The Developer shall repay the City Loan pursuant to the terms and conditions of the City Promissory Note.

2.2 No Other City Financial Assistance. The sole source of funds for the payment of the proceeds of the City Loan pursuant to this Agreement shall be City Affordable Housing Account. No funds of the City other than from the City Affordable Housing Account shall be committed, pledged, obligated or encumbered by the terms of this Agreement. The City shall be under no obligation to contribute any other financial assistance to the Construction or operation of the Project other than the City Loan.

2.3 Additional Financing; Subordination. All Construction Costs for the Project and all other improvements on the Property shall be paid for by the Developer. City understands that Developer will be seeking construction and permanent financing for the Project and the City shall subordinate to said financing as set forth in Paragraph 11 of the Note.

2.4 Refinancing of Loans. The Developer may not refinance any Loan with a new Loan without the City's prior written approval, which may be given, conditioned, or withheld in the City's sole and absolute discretion; provided, however, the foregoing notwithstanding, (i) the City will not unreasonably withhold or condition its consent if the refinancing of a Loan is given on substantially similar, and no less favorable, terms as the existing Loan, and (ii) the consent of

the City shall only be required to refinance any Loan upon maturity of said Loan if Developer desires for City to subordinate to that Loan.

2.5 Project Budget. The Developer has submitted to the City a Project Budget for the acquisition and development costs of the Project. By its execution of this Agreement, the City has given its approval of the Project Budget. While the Project Budget has been prepared based on the best, good faith estimate of the Developer of the costs which are likely to be incurred for the Project, the Parties recognize that events and circumstances not currently contemplated, some of which are outside the control of the Parties, could result in changes in the Constructions Costs, necessitating changes in the Project Budget. To the extent that there are changes to the Project Budget between the date of this Agreement and the closing of the City Loan, the Developer shall submit a revised Project Budget to the City for the City's review and approval as to the sufficiency of the Financing Commitments to meet the Project Budget prior to the closing of the City Loan.

2.5.1 Construction Costs of Project. The Developer has provided a detailed scope of work for the Construction of the Project in the Scope of Development. The Construction Costs shall be subject to change from time to time in accordance with this Agreement, subject to prior written approval by the City, which approval shall not be unreasonably withheld, for any increase in the overall amount of the Construction Costs which are not covered by the Financing Commitments. The City Manager is hereby authorized to act on behalf of the City to approve any revisions to the Construction Costs which do not in any way increase the City's financial obligations hereunder.

2.6 Security Financing; Right of Holders.

2.6.1 Any Lien required for any reasonable method of financing the Construction of the Property is permitted before the recordation of any Certificate of Completion. The Developer shall notify the City in writing in advance of any Lien if the Developer proposes to enter into the same before the recordation of the Certificate of Completion. The following restrictions apply to any Lien: (i) it must be given to a responsible financial or Lender including, without limitation, banks, savings and loan institutions, insurance companies, real estate investment trusts, pension programs and the like, or other acceptable persons or entities for the purpose of financing the Construction of the Project on the Property, and (ii) any Loan made in connection with the Lien must contain customary construction Lender disbursement controls to the extent applicable.

2.6.2 The Developer shall promptly notify the City of any Lien that has been created or attached thereto prior to completion of the Construction of the Project on the Property whether by voluntary act of the Developer or otherwise.

2.6.3 The holder of any mortgage, deed of trust or other security interest authorized by this Agreement shall in no manner be obligated by the provisions of this Agreement to construct the Project on the Property or to guarantee such Construction or completion. Nothing in this Agreement shall be deemed to permit or authorize any such holder to devote the Property to any other use, or to construct any other improvement thereon, except those uses or improvements provided for or authorized by this Agreement.

2.6.4 Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in the Completion of Construction of the Project on the Property, or any breach or default of any other obligations which, if not cured by the Developer, entitle the City to terminate this Agreement, or a portion thereof, the City shall at the same time deliver to each holder of record of any Lien authorized by this Agreement ("Holder") a copy of such notice or demand. Each such Holder shall (insofar as the rights of the City are concerned) have the right, at its option, to commence the cure or remedy of any such default and to diligently and continuously proceed with such cure or remedy, within sixty (60) calendar days after the receipt of the notice; and to add the cost thereof to the security interest debt and the lien of its security interest. If such default shall be a default which can only be remedied or cured by such Holder upon obtaining possession, such Holder shall seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall remedy or cure such default within sixty (60) calendar days after obtaining possession; provided that in the case of a default which cannot with diligence be remedied or cured, or the remedy or cure of which cannot be commenced, within such sixty (60) calendar day period, such Holder shall have such additional time as is reasonably necessary to remedy or cure such default of the Developer, not to exceed one hundred eighty (180) calendar days. Nothing contained in this Agreement shall be deemed to permit or authorize such Holder to undertake or continue the Construction or completion of the Project (beyond the extent necessary to conserve or protect the improvements or Construction already made) without first having expressly assumed the Developer's obligations by written agreement satisfactory to the City. The Holder in that event must agree to complete, in the manner provided in this Agreement, the improvements to which the Lien relates and must submit evidence satisfactory to the City that it has the qualifications and financial responsibility necessary to perform such obligations. Any such Holder completing such improvements in accordance herewith shall be entitled, upon written request made to the City, to be issued the Certificate of Completion by the City.

2.6.5 In any case where, one hundred eighty (180) calendar days after default by the Developer under this Agreement, the Holder of any such Lien has not exercised the option to construct the applicable portions of the Project on the Property, or has exercised the option but has not proceeded diligently and continuously with the Completion of Construction of the Project on the Property, then in such event, the City may purchase the Lien by payment to the Holder of the amount of the unpaid debt, including principal, accrued and unpaid interest, late charges, costs, expenses and other amounts payable to the Holder by the Developer under the Loan documents between holder and the Developer. If the ownership of the Property has vested in the Holder, the City, if it so desires, shall be entitled to a conveyance from the Holder to the City upon payment to the holder of an amount equal to the sum of the following:

2.6.5.1 The unpaid Lien debt, including principal, accrued and unpaid interest, late charges, costs, expenses and other amounts payable to the holder by the Developer under the Loan documents between the Holder and the Developer, at the time title became vested in the Holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings.)

2.6.5.2 All expenses, if any, incurred by the Holder with respect to foreclosure.

2.6.5.3 The net expenses, if any (exclusive of general overhead), incurred by the Holder as a direct result of the subsequent ownership or management of the Property, such as insurance premiums and real estate taxes.

2.6.5.4 The cost of any improvements made by such Holder.

2.6.5.5 An amount equivalent to the interest that would have accrued on the aggregate on such amounts had all such amounts become part of the Lien had the Lien continued in existence to the date of payment by the City.

2.6.6 In the event of a default or breach by the Developer of a Lien with respect to the Property (or any portion thereof) prior to the issuance of a Certificate of Completion for the Project, and the Holder has not exercised its option to complete the development, the City may cure the default but is under no obligation to do so prior to completion of any foreclosure. In such event, the City shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the City in curing the default. The City shall also be deemed to have a Lien as may arise under this Section 2.6 upon the Property (or any portion thereof) to the extent of such costs and disbursements.

ARTICLE III

DEVELOPMENT OF THE PROJECT

3.1 Development of Project and Property. It is the intent of the Parties that the Project be constructed on the Property in accordance with the Scope of Development.

3.2 Project Entitlements.

3.2.1 The Developer acknowledges and agrees that the Construction and use of the Project shall be subject to the City's zoning, building and land use regulations (whether contained in ordinances, the municipal code of the City, conditions of approval or elsewhere) (collectively, "Land Use Laws"). No action by the City with reference to this Agreement or any related documents shall be deemed to constitute a waiver of any Land Use Laws required for the Construction of the Project as applicable to the Developer, any successor in interest of the Developer or any successor in interest pertaining to the Property. Land Use Laws may only be changed or waived by modification or variance approved by the City. Under no circumstances shall the Developer commence Construction of the Project on any portion of the Property prior to receiving Project Entitlements.

3.2.2 The Developer shall be responsible for obtaining all Project Entitlements and the Developer shall submit all applications therefore within the time period set forth in the Project Schedule of Performance. The Developer shall be responsible for all of the costs incurred in connection with obtaining any such Project Entitlements. The Developer shall also be responsible for satisfying all conditions of approval and mitigation measures at its sole cost and expense. The City shall reasonably cooperate with the Developer's efforts in obtaining any Project Entitlements, so long as the City incurs no expense thereby other than insignificant amounts of the time of the City's officers and employees. However, the City makes no representations or warranties regarding the City’s action on the Project Entitlements.

3.2.3 The Developer shall, at its own expense, secure or shall cause to be secured, any and all permits which may be required for such Construction, development or work by the City or any other Governmental Entity having jurisdiction thereof. The City shall cooperate in good faith with the Developer in the Developer's efforts to obtain from the City or any other appropriate Governmental Entity any and all such permits including, but not limited to, permits for flags and signs on the Property and, upon completion of applicable portions of the development of the Project on the Property, certificates of occupancy.

3.2.4 The Developer shall, at its expense, cause to be prepared and shall pay any and all fees pertaining to the review and approval thereof by the City, all required construction, planning and other documents reasonably required by Governmental Entities required for Construction of the Project hereunder including, but not limited to the public improvements necessary for the Construction of the Project on the Property and to the specifications, drawings, plans, maps, permit applications, land use applications, zoning applications and design review documents for the units.

3.2.5 Notwithstanding any provision to the contrary in this Agreement, the Developer agrees to obtain all necessary permits, follow all necessary processes and pay all necessary fees relating to the completion of the Project on the Property. The Developer further agrees to accept and comply fully with any and all lawful conditions of approval applicable to all permits and other governmental actions affecting the development of the Property and consistent with this Agreement.

3.3 Scope of Development.

3.3.1 The Property shall be developed and completed in conformance with the approved Scope of Development and any and all other plans, specifications and similar development documents required by this Agreement, except for such changes as may be mutually agreed upon in writing by and between the Developer and the City and the mutual approval of any such change shall not be unreasonably withheld; provided, however, to the extent that the changes (i) do not require the consent of the City's Department of Building and Safety or (ii) do not alter the exterior elevations of the Project, the consent of the City shall not be needed in connection with any such change.

3.3.2 The Developer shall prepare and timely submit to the City for its review and approval all development plans, construction drawings, specifications and related documents for the development of the Project, including the public improvements necessary for the development of the Property. All development plans, construction drawings, specifications and related documents submitted by the Developer to the City shall be in the form of final drawings, plans and specifications as required by the City. Such final drawings, plans and specifications are hereby defined as those which contain sufficient detail necessary to obtain a building permit from the City.

3.3.3 The City shall cooperate with and shall assist the Developer in order for the Developer to obtain the approval of any and all drawings, plans, specifications and related documents submitted by the Developer to the City consistent with the Schedule of Performance. Any failure by the City to approve any such plans or to issue necessary permits for the

development of the Project on the Property within the period provided in the Schedule of Performance shall constitute an enforced delay hereunder, and the Schedule of Performance shall be extended by that period of time beyond the period described in the Schedule of Performance in which the City approves said documents; provided, however, that in the event that the City disapproves of any of such documents, the Developer shall within thirty (30) calendar days after receipt of such disapproval revise and resubmit such documents in accordance with the City's requirements and in such form and substance so as to obtain the City's approval thereof.

3.3.4 The approval of the Scope of Development by the City shall not be binding upon the City Council of the City with respect to any regulatory approvals or Project Entitlements relating to the development of the Project and/or the public improvements necessary for the development of the Property as may be required by such other Governmental Entities. If any material change of the Scope of Development as previously approved by the City shall be required by another Governmental Entity having jurisdiction over the development of the Property, the Developer and the City shall cooperate in efforts to obtain waivers of such revisions, or to obtain approvals of any such revisions which have been made by the Developer and have thereafter been approved by the City. The City shall not unreasonably withhold or delay approval of such revisions to the Scope of Development; provided however that no such change may result in the reduction of the number of units that shall be constructed by the Developer and reserved for lease at an Affordable Housing Cost and occupancy by Qualified Households.

3.3.5 During the preparation of all drawings, plans, specifications and related documents in connection with the development of the Project on the Property, including the public improvements necessary for the development of the Property, the Developer shall provide to the City regular progress reports to advise the City of the status of the preparation by the Developer, and the submission to and review by the City of the drawings, plans, specifications and related documents. The Developer shall communicate and consult with the City as frequently as is necessary to ensure that any such drawings, plans, specifications and related documents submitted by the Developer to the City are being processed in a timely fashion.

3.3.6 The City shall have the right to review all changes to drawings, plans, specifications and related documents pertinent to the development of the Project on the Property which materially deviate from previously approved drawings, plans, specifications and related documents in order to ensure that they are consistent with this Agreement and with the Scope of Development. The City shall grant its approval provided that the changes to such drawings, plans, specifications and related documents are materially consistent with the Scope of Development and any other documents related to the development of the Project on the Property which have been approved by the City. City shall not unreasonably withhold or delay approval of such revisions to the Scope of Development; provided, however that no such change may result in the reduction of the number of Units provided to Qualified Households pursuant to the Regulatory Agreement. For purposes of this Article, “materially deviates” or “material changes” means a change which necessitates a revision to the Project Entitlements.

3.3.6.1 Upon any disapproval of modified or revised drawings, plans, specifications or related documents, the City shall state in writing the reasons for such disapproval. The Developer, upon receipt of notice of any disapproval, shall promptly revise such disapproved portions of the drawings, plans, specifications or related documents in a

manner that addresses the reasons for disapproval and reasonably meets the requirements of the City in order to obtain the City's approval thereof. The Developer shall resubmit such revised drawings, plans, specifications and related documents to the City as soon as possible after its receipt of the notice of disapproval and, in any event, no later than thirty (30) calendar days thereafter. The City shall approve or disapprove such revised drawings, plans, specifications and related documents in the same manner and within the same time as provided for approval or disapproval of drawings, plans, specifications and related documents initially submitted to the City, and if no specific time for approval is specified then the City shall so approve or disapprove the proposed modifications or revisions promptly upon the written request of the Developer.

3.3.6.2 If the Developer desires to make any material change in the final construction drawings, plans, specifications and related documents after their approval by the City, the Developer shall submit the proposed change in writing to the City for approval. The City shall notify the Developer of approval or disapproval thereof in writing within fifteen (15) calendar days after submission to the City. This fifteen (15) calendar day period may be extended by mutual consent of the Developer and the City. Any such change shall, in any event, be deemed to be approved by the City unless rejected, in whole or in part, by written notice thereof submitted by the City to the Developer, setting forth in detail the reasons therefore, and such rejection shall be made within said fifteen (15) calendar day period unless extended as permitted herein.

3.3.6.3 The Developer shall have the right during the course of Construction to make changes in Construction concerning the interior design of the units and minor field changes with respect to the units, and to make minor field changes to the public improvements necessary for the development of the Project on the Property without seeking the approval of the City; provided, however, that such changes do not affect the type of use to be conducted within all or any portion of a unit or the ability of the City to accept the completion of the public improvements necessary for the development of the Project on the Property; and further provided that the City has approved any such minor field change to either a unit or the public improvements necessary for the development of the Project on the Property in accordance with the standards and practices of the City's Development Services Department. The term "minor field changes" shall be defined as those changes from the approved final construction drawings, plans and specifications which have no substantial effect on the improvements and are made in order to expedite the work of construction in response to field conditions. Nothing contained in this Section 3.5 shall be deemed to constitute a waiver of or change in the City's Development Services Department requirements governing such minor field changes or in any and all approvals by the City otherwise required for such minor field changes.

3.4 Schedule of Performance. The Developer shall begin and complete all Construction and development and undertake all obligations and responsibilities of the Developer within the times specified in the Schedule of Performance, or within such reasonable extensions of such times as may be granted by the City or as otherwise provided for in this Agreement. The Schedule of Performance shall be subject to revision from time to time as mutually agreed upon in writing by and between the Developer and the City. Any and all deadlines for performance by the Parties shall be extended for any time attributable to delays which are not the fault of the performing Party and are caused by the other Party, other than

periods for review and approval or reasonable disapprovals of plans, drawings and related documents, specifications or applications for permits as provided in this Agreement.

3.4.1 Diligent Progress. After the disbursement of the City Loan, the Developer shall promptly begin and thereafter diligently prosecute to completion of the construction as provided in the Scope of Development. The Developer shall begin and complete all construction and development within the times specified in the Schedule of Performance with such reasonable extensions of said dates as may be granted by the City.

3.4.2 Regular Progress Reports. Prior to and during the period of Construction of the Project on the Property and the public improvements necessary for the development of the Property, the Developer shall submit to the City written progress reports and/or hold progress meetings when and as reasonably requested by the City. The reports shall be in such form and detail as may reasonably be required by the City.

3.4.3 Progress Meetings. At the reasonable request of City, Developer shall schedule, coordinate and attend construction progress meetings. The purposes of such meetings shall include but not be limited to discussing and furthering the construction of the Project, discussing, reviewing and deciding upon budgetary matters, value engineering matters, changes, delays, and extensions, reviewing work progress in relation to the Schedule of Performance, sharing new information, reporting on progress and on any significant events or developments, and otherwise carrying out the purposes of this Agreement. Developer shall provide all parties at least 24 hours' prior notice (written or telephonic) of each such meeting.

3.5 Access to Property. Officers, employees, agents or representatives of the City shall have the right of reasonable access to the Project and the Property, upon reasonable prior notice, without the payment of charges or fees, during Normal Business Hours during the period of Construction in order to inspect the work being performed in constructing the Project on the Property and to ensure that the Developer is complying with this Agreement. Such officers, employees, agents or representatives of the City shall be those persons who are so identified by the City Manager. Any and all officers, employees, agents or representatives of the City who enter the Property pursuant hereto shall identify themselves at the Project office upon their entrance on to the Property and shall at all times be accompanied by a representative of the Developer while on the Property and shall comply with all reasonable job safety rules established by the Developer and/or the Project contractor; provided, however, that the Developer shall make a representative of the Developer available for this purpose at all times during Normal Business Hours upon reasonable notice from the City. The City shall indemnify, defend and hold the Developer harmless from injury, property damage or liability arising out of the exercise by the City of this right of access, other than injury, property damage or liability relating to the negligence of the Developer or its officers, agents or employees.

3.6 Labor Laws. The Developer shall carry out its Construction of the Project and the public improvements necessary for the development of the Project in conformity with all applicable laws, including but not limited to, all applicable State of California labor standards.

3.7 Prevailing Wage.

3.7.1 THE DEVELOPER AGREES WITH THE CITY THAT THE DEVELOPER SHALL ASSUME ANY AND ALL RESPONSIBILITY AND BE SOLELY RESPONSIBLE FOR DETERMINING WHETHER OR NOT LABORERS EMPLOYED RELATIVE TO THE CONSTRUCTION OF THE PROJECT MUST BE PAID THE PREVAILING PER DIEM WAGE RATE FOR THEIR LABOR CLASSIFICATION, AS DETERMINED BY THE STATE, PURSUANT TO LABOR CODE SECTIONS 1720, ET SEQ.

3.7.2 WAIVERS AND RELEASES. DEVELOPER, ON BEHALF OF ITSELF, ITS SUCCESSORS, AND ASSIGNS, WAIVES AND RELEASES CITY FROM ANY RIGHT OF ACTION THAT MAY BE AVAILABLE TO ANY OF THEM PURSUANT TO LABOR CODE SECTION 1781. RELATIVE TO THE WAIVER AND RELEASE CONTAINED IN THIS SECTION 3.7.2, DEVELOPER ACKNOWLEDGES THE PROTECTIONS OF CIVIL CODE SECTION 1542, WHICH READS AS FOLLOWS:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

3.7.3 INITIALS. BY INITIALING BELOW, DEVELOPER KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE WAIVERS AND RELEASES OF SECTION 3.7.2:

_____
Initials of Authorized
Developer Representative

3.7.4 INDEMNITY. ADDITIONALLY, DEVELOPER SHALL INDEMNIFY CITY, PURSUANT TO SECTION 5.5, AGAINST ANY CLAIMS PURSUANT TO LABOR CODE SECTION 1781 ARISING FROM THIS AGREEMENT OR THE CONSTRUCTION OF ALL OR ANY PORTION OF THE PROJECT.

3.8 Property Taxes and Assessments. The Developer shall pay, prior to delinquency, all real property taxes and assessments assessed and levied on or against the Property. Nothing herein contained shall be deemed to prohibit the Developer from contesting the validity or amounts of any tax assessment, encumbrance or lien, nor to limit the remedies available to the Developer in respect thereto, or for claiming exemptions available under California Revenue & Taxation Code Section 214 (g).

3.9 Certificate of Completion.

3.9.1 The Developer may provide a written request to the City for a Certificate of Completion. Said Certificate of Completion shall only be issued after the Completion of Construction of the Project, excluding minor building punch-list items to be completed by the

Developer upon any unit in the Project. Notwithstanding any provision set forth herein to the contrary, the Completion of Construction of the Project shall include the Completion of Construction of all of the units and any and all on-site parking, common area landscaping and related improvements necessary to support or which meet the requirements applicable to occupancy of each unit comprising the Project.

3.9.2 The City shall not unreasonably withhold the issuance of a Certificate of Completion. A Certificate of Completion shall be, and shall so state, that it is a conclusive determination of satisfactory completion of all of the obligations of this Agreement with respect to Construction of the Project.

3.9.3 The City shall furnish the Developer with a Certificate of Completion for the Project. Such Certificate of Completion shall be recorded after the Developer's Completion of Construction of the Project if requested by the Developer.

3.9.4 After the recordation of the Certificate of Completion, any party thereafter leasing or otherwise acquiring any interest in a unit shall not (because of such lease or acquisition) incur any obligation or liability under this Agreement.

3.9.5 If the City refuses or fails to furnish a Certificate of Completion after written request from the Developer, the City shall, within fifteen (15) calendar days of the written request or within three (3) calendar days after the next regular meeting of the City, whichever date occurs later, provide to the Developer a written statement setting forth the reasons with respect to the City's refusal or failure to furnish a Certificate of Completion. The statement shall also contain the City's opinion of the action the Developer must take to obtain a Certificate of Completion. If the reason for such refusal is confined to the immediate unavailability of specific items or materials for Construction or landscaping at a price reasonably acceptable to the Developer or other minor building "punch-list" items, the City may issue its Certificate of Completion upon the posting of a bond or irrevocable letter of credit, reasonably approved as to form and substance by the City Attorney and obtained by the Developer in an amount representing a fair value of the work not yet completed as reasonably determined by the City. If the City shall have failed to provide such written statement within the foregoing period, the Developer shall be deemed conclusively and without further action of the City to have satisfied the requirements of this Agreement with respect to the Construction of the Project on the Property as if a Certificate of Completion had been issued therefore.

3.9.6 A Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a Lien securing money loaned to finance the Construction of the Project or any part of the Project. A Certificate of Completion shall not be deemed to constitute a notice of completion as referred to in California Civil Code Section 3093, nor shall it act to terminate the continuing covenants or conditions required by this Agreement or the Regulatory Agreement.

ARTICLE IV

USE OF THE PROPERTY

4.1 Project Restricted to Qualified Households. Concurrently with the execution of this Agreement, Developer shall enter into the Regulatory Agreement pursuant to which Developer covenants and agrees for itself, its successors, and assigns that two hundred (200) units in the Project shall remain affordable to Qualified Households for a period of fifty-five (55) years following Completion of Completion for the Project subject to the following unit occupancy restrictions:

4.1.1 At least thirty three (33) units shall be occupied or available for occupancy by very low income Qualified Households;

4.1.2 At least one hundred sixty seven (167) units shall be occupied or available for occupancy by low income Qualified Households.

The covenants of this Section 4.1 shall run with the land and shall be superior to all other liens and encumbrances on the Property.

4.2 Obligation to Refrain from Discrimination. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, that there shall be no discrimination against or segregation of any person, or group of persons, on account of sex, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property; nor shall the Developer, itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessee or vendees of the Property.

4.3 Form of Nondiscrimination and Nonsegregation Clauses. The Developer covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Property, or any part thereof, that the Developer, such successors and such assigns shall refrain from restricting the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of the Property (or any part thereof) on the basis of sex, marital status, race, color, religion, creed, ancestry or national origin of any person. All deeds, leases or contracts pertaining thereto shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

4.3.1 In Deeds. "The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessee, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

4.3.2 In Leases. "The Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or

segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants lessees, sublessee, subtenants, or vendees in the premises herein leased."

4.3.3 In Contracts. "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed or leased, nor shall the transferee or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the premises herein transferred." The foregoing provision shall be binding upon and shall obligate the contracting party or parties and any subcontracting party or parties, or other transferees under the instrument.

4.4 Effect and Duration of Covenants. The covenants established against discrimination shall remain in effect in perpetuity. The covenants respecting use, occupancy and maintenance of the Project shall remain in effect for a period of fifty-five (55) years following the recordation of the Certificate of Completion. All of the covenants set forth in this ARTICLE IV shall run with the land and shall constitute equitable servitudes thereon, and shall, without regard to technical classifications and designation, be binding for the benefit and in favor of the City, its successors and assigns.

4.5 Enforcement of Covenants. The City may enforce the terms and provisions of this Agreement and the covenants running with the land for and in its own rights and for the purposes of protecting the interests of the community. The City shall have the right, if such covenants are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or such other proper proceedings to enforce the curing of such breaches to which it or any other beneficiary of such covenants may be entitled, including, without limitation, to specific performance, damages and injunctive relief. The City shall have the right to assign all of its rights and benefits hereunder to the City.

ARTICLE V

INSURANCE, DEFAULTS, REMEDIES AND INDEMNITY

5.1 Insurance.

5.1.1 The Developer shall furnish, or shall cause to be furnished, to the City duplicate originals or appropriate certificates of public indemnity and liability insurance in the amount of Ten Million Dollars ($10,000,000) combined single limit, naming the City as additional insured. Said insurance shall cover comprehensive general liability including, but not limited to, contractual liability; acts of subcontractors; premises-operations; explosion, collapse and underground hazards, if applicable; broad form property damage, and personal injury including libel, slander and false arrest. The Developer agrees to have its general liability coverage endorsed

so that all coverage limits required by this Agreement are available separately for each and every location at which the Developer conducts operations of any type on behalf of the City. The Developer warrants that these limits will not be reduced except by losses attributable to those specific locations and not by losses from any other operations of the City. In addition, to the extent applicable, the Developer shall provide to the City adequate proof of comprehensive automobile liability insurance covering owned, non-owned and hired vehicles, combined single limit in the amount of Five Million Dollars ($5,000,000) each occurrence; and proof of workers' compensation insurance. Any and all insurance policies required hereunder shall be obtained from insurance companies admitted in the State of California with a minimum financial strength rating of "A-" and a minimum financial size category of "VII." All said insurance policies shall provide that they may not be canceled unless the City receive written notice of cancellation at least thirty (30) calendar days prior to the effective date of cancellation. Any and all insurance obtained by the Developer hereunder shall be primary to any and all insurance which the City may otherwise carry, including self insurance, which for all purposes of this Agreement shall be separate and apart from the requirements of this Agreement. Any and all insurance required hereunder shall be maintained and kept in force until the Completion of Construction.

5.2 Defaults.

5.2.1 Subject to the extensions of time set forth in Section 6.4, failure or delay by either Party to perform any term or provision of this Agreement shall constitute a default under this Agreement; provided, however, that if a Party otherwise in default commences to cure, correct or remedy such default within thirty (30) calendar days after receipt of written notice specifying such default and shall diligently and continuously prosecute such cure, correction or remedy to completion (and where any time limits for the completion of such cure, correction or remedy are specifically set forth in this Agreement, then within said time limits), such Party shall not be deemed to be in default hereunder.

5.2.2 The injured Party shall give written notice of default to the Party in default, specifying the default complained of by the non-defaulting Party. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

5.2.3 Any failure or delays by either Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by either Party in asserting any of its rights and remedies shall not deprive either Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

5.3 Remedies.

5.3.1 The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

5.3.2 ELECTION OF REMEDIES. DURING THE CONTINUANCE OF AN EVENT OF DEFAULT BY CITY UNDER THIS AGREEMENT, DEVELOPER SHALL BE LIMITED TO EITHER OF THE FOLLOWING REMEDIES: (1) AN ACTION AGAINST CITY FOR SPECIFIC PERFORMANCE OF THIS AGREEMENT; OR (2) TERMINATION OF THIS

AGREEMENT. UNDER NO CIRCUMSTANCES SHALL CITY BE LIABLE TO DEVELOPER UNDER THIS AGREEMENT FOR ANY SPECULATIVE, CONSEQUENTIAL, COLLATERAL, SPECIAL, PUNITIVE OR INDIRECT DAMAGES OR FOR ANY LOSS OF PROFITS SUFFERED OR CLAIMED TO HAVE BE SUFFERED BY DEVELOPER.

5.3.3 WAIVER OF RIGHTS. CITY AND DEVELOPER EACH ACKNOWLEDGE AND AGREE THAT CITY WOULD NOT HAVE ENTERED INTO THIS AGREEMENT, IF IT WERE TO BE LIABLE TO DEVELOPER FOR ANY MONETARY DAMAGES, MONETARY RECOVERY OR ANY REMEDY DURING THE CONTINUANCE OF AN EVENT OF DEFAULT UNDER THIS AGREEMENT BY CITY, OTHER THAN AS SPECIFIED IN SECTION 5.3.2. ACCORDINGLY, CITY AND DEVELOPER AGREE THAT THE REMEDIES SPECIFICALLY PROVIDED FOR IN SECTION 5.3.2 ARE REASONABLE UNDER THE CIRCUMSTANCES AND SHALL BE DEVELOPER'S SOLE AND EXCLUSIVE RIGHTS AND REMEDIES DURING THE CONTINUANCE OF AN EVENT OF DEFAULT UNDER THIS AGREEMENT BY CITY. DEVELOPER WAIVES ANY RIGHT TO PURSUE ANY REMEDY OR DAMAGES OTHER THAN THOSE SPECIFICALLY PROVIDED IN SECTION 5.3.2.

5.3.4 CIVIL CODE SECTION 1542 WAIVER. DEVELOPER ACKNOWLEDGES THE PROTECTIONS OF CIVIL CODE SECTION 1542 RELATIVE TO THE WAIVERS AND RELEASES CONTAINED IN THIS SECTION 5.3, WHICH CIVIL CODE SECTION READS AS FOLLOWS:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

5.3.5 ACKNOWLEDGMENT. BY INITIALING BELOW, DEVELOPER KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF SECTION 1542 AND ALL OTHER STATUTES AND JUDICIAL DECISIONS (WHETHER STATE OR FEDERAL) OF SIMILAR EFFECT SOLELY IN CONNECTION WITH THE WAIVERS AND RELEASES CONTAINED IN THIS SECTION 5.3.

_____
Initials of Authorized
Developer Representative

5.3.6 STATEMENT OF INTENT. CALIFORNIA CIVIL CODE SECTION 1542 NOTWITHSTANDING, IT IS THE INTENTION OF DEVELOPER TO BE BOUND BY THE LIMITATION ON DAMAGES AND REMEDIES SET FORTH IN THIS SECTION 5.3, AND DEVELOPER HEREBY RELEASES ANY AND ALL CLAIMS AGAINST CITY FOR MONETARY DAMAGES, MONETARY RECOVERY OR OTHER LEGAL OR EQUITABLE RELIEF RELATED OT ANY EVENT OF DEFAULT UNDER THIS AGREEMENT, EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION 5.3, WHETHER OR NOT ANY SUCH

RELEASED CLAIMS WERE KNOWN OR UNKNOWN TO DEVELOPER AS OF THE EFFECTIVE DATE OF THIS AGREEMENT.

5.3.7 Legal Actions. Either Party may institute legal action, at law or in equity, to enforce or interpret the rights or obligations of the Parties under this Agreement or recover damages, subject to the provisions of Section 5.3.

5.3.8 Attorneys' Fees. If either Party hereto files any action or brings any action or proceeding against the other arising out of this Agreement, then as between the Developer and the City, the prevailing Party shall be entitled to recover as an element of its costs of suit, and not as damages, its reasonable attorneys' fees and costs of experts as fixed by the Court, in such action or proceeding or in a separate action or proceeding brought to recover such attorneys' fees. For the purposes hereof the words "reasonable attorneys' fees" mean and include, in the case of the City, salaries and expenses of the lawyers employed by the City (allocated on an hourly basis) who may provide legal services to the City in connection with the representation of the City in any such matter.

5.3.9 Rights and Remedies are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties set forth in this Agreement 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 the same rights or remedies for any other Default by the other Party.

5.3.10 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 on the City Manager or City Mayor (or such other agent for service of process and at such address as may be specified in written notice to the City), or in such other manner as may be provided by law, and shall be valid whether made within or without the State of California.

5.3.11 Nonliability of City Officials and Employees. No member, official or employee of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or to its successor, or on any obligations under the terms of this Agreement, except for gross negligence or willful acts of such member, officer or employee.

5.4 City Rights of Termination.

5.4.1 Subject to written notice of default which shall specify the Developer's default and the action required to commence cure of same and upon thirty (30) calendar days notice to the Developer of the City's intent to terminate this Agreement pursuant to this Section 5.4, the City at its option may terminate this Agreement, if the Developer is in breach of this Agreement, assigns or attempts to assign this Agreement or any right therein without prior approval by the City, or attempts to make any total or partial sale, lease or leaseback, transfer or conveyance of the whole or any part of the Property or the improvements to be developed thereon in violation of the terms of this Agreement, and the Developer does not correct such violation within thirty (30) calendar days from the date of receipt of such notice.

5.4.2 Subject to written notice of default, which shall specify the Developer's default and the action required to commence cure of same and upon thirty (30) calendar days notice to the Developer of the City's intent to terminate this Agreement pursuant to this Section 5.4, the City at its option may terminate this Agreement if the Developer: (i) does not within the time limits set forth in this Agreement or as specifically provided in the Project Entitlements, subject to extensions authorized by this Agreement due to force majeure or otherwise, submit development plans, construction drawings and related documents acceptable to the City for plan check purposes and in order to obtain building permits for the improvement of the Property, together with applicable fees therefore prepared to the minimum acceptable standards as required by the City for commencement of formal review of such documents and as required by this Agreement, or (ii) does not carry out its other responsibilities under this Agreement or in accordance with any modification or variance, precise plan, design review and other environmental or governmental approvals and such default is not cured or the Developer does not commence and diligently and continuously proceed with such cure within thirty (30) calendar days after the date of receipt of written demand therefore from the City.

5.4.3 The thirty (30) calendar day written notice specified in Section 5.4.2 shall specify that the City proposes to take action pursuant to this Section and shall specify which of the Developer's obligations set forth in this Agreement have been breached. The City shall proceed with its remedy set forth herein only in the event that the Developer continues in default of said obligation(s) for a period of thirty (30) calendar days following such notice or, upon commencing to cure such default, fails to diligently and continuously prosecute said cure to satisfactory conclusion.

5.5 Indemnification.

5.5.1 City Indemnity Obligations. City shall indemnify the Developer against any claim to the extent such claim arises from any wrongful intentional act or negligence of the City, but only to the extent that City may be held liable under applicable law for such wrongful intentional act or negligence and exclusive of any violation of law (including the State Constitution) relating to City's approval, entry into or performance of this Agreement. Nothing in this Agreement is intended nor shall be interpreted to waive any limitation on City's liability, any exemption from liability in favor of City, any claim presentment requirement for bringing an action regarding any liability of City or any limitations period applicable to liability of City, as set forth in Government Code Sections 800, et seq., Sections 900, et seq., or in any other law or require City to indemnify any party beyond such limitations on City's liability.

5.5.2 Developer Indemnity Obligations. Developer shall indemnify the City against any claim to the extent such claim arises from any wrongful intentional act or negligence of the Developer. Developer shall also indemnify the City against any and all of the following: (a) any application made by or at Developer's request; (b) any agreements that Developer (or anyone claiming by or through Developer) makes with a third party regarding the Property or the Project; (c) any workers compensation claim or determination relating to any employee of the Developer or their contractors; (d) any Prevailing Wage action relating to this Agreement or the Project; and (e) any environmental claim attributable to any action or failure to act by the Developer.

5.5.3 Developer Assumption of Risks of Legal Challenges. Developer assumes the risk of delays and damages that may result to Developer from any third party legal actions related to City's approval of this Agreement or any associated approvals, even in the event that an error, omission or abuse of discretion by City is determined to have occurred. If a third party files a legal action regarding City's approval of this Agreement or any associated approval (exclusive of legal actions alleging violation of Government Code Section 1090 by elected officials of City), Developer shall have the option to either: (1) terminate this Agreement; or (2) indemnify City against such third party legal action, including all legal costs, monetary awards, sanctions, attorney fee awards, expert witness and consulting fees, and the expenses of any and all financial or performance obligations resulting from the disposition of the legal action. Should Developer fail to notify City of Developer's election pursuant to this Section 5.5.3 at least fifteen (15) days before response to the legal action is required by City, Developer shall be deemed to have elected to terminate this Agreement pursuant to this Section 5.5.3. City shall reasonably cooperate in its defense in any legal action subject to this Section 5.5.3, subject to Developer's indemnity obligations for such legal action. Nothing contained in this Section 5.5.3 is intended to be nor shall be deemed or construed to be an express or implied admission that City may be liable to Developer or any other party for damages or other relief regarding any alleged or established failure of City to comply with any law. Any legal action that is subject to this Section 5.5.3 (including any appeal periods and the pendency of any appeals) shall constitute an unavoidable delay and the time periods for performance by either Party under this Agreement may be extended pursuant to the provisions of this Agreement in Section 6.4.

5.5.4 Independence of Insurance Obligations. Developer's indemnification obligations under this Agreement shall not be construed or interpreted as in any way restricting, limiting, or modifying Developer's insurance or other obligations under this Agreement. Developer's obligation to indemnify City under this Agreement is independent of Developer's insurance and other obligations under this Agreement. Developer's compliance with its insurance obligations and other obligations under this Agreement shall not in any way restrict, limit, or modify Developer's indemnification obligations under this Agreement and are independent of Developer's indemnification and other obligations under this Agreement.

5.5.5 Survival of Indemnification and Defense Obligations. The indemnity and defense obligations of the Parties under this Agreement shall survive the expiration or earlier termination of this Agreement, until any and all actual or prospective claims regarding any matter subject to an indemnity obligation under this Agreement are fully, finally, absolutely and completely barred by applicable statutes of limitations.

5.5.6 Indemnification Procedures. Wherever this Agreement requires any Party to indemnify the other Party:

5.5.7 Prompt Notice. The indemnifying Party shall promptly notify the other Party of any claim.

5.5.8 Selection of Counsel. The indemnifying Party shall select counsel reasonably acceptable to the other Party. Counsel to indemnifying party's insurance carrier that is providing coverage for a claim shall be deemed reasonably satisfactory, except in the event of a potential or actual conflict of interest for such counsel regarding such representation or such

counsel proves to be incompetent regarding such representation. Even though the indemnifying Party shall defend the claim, the other Party may, at its option and its own expense, engage separate counsel to advise it regarding the claim and its defense. The other Party's separate counsel may attend all proceedings and meetings. The indemnifying Party's counsel shall actively consult with the other Party's separate counsel. The indemnifying Party and its counsel shall, however, control the defense, except to the extent that the other Party waives its rights to indemnity and defense for such claim.

5.5.9 Cooperation. The other Party shall reasonably cooperate with the indemnifying Party's defense of the other Party.

5.5.10 Settlement. The indemnifying Party may only settle a claim without the consent of other Party, if the Claim is within the policy limits of applicable insurance policies provided in satisfaction of the requirements of this Agreement and such settlement procures a release of other Party from the subject claims, does not require other Party to make any payment to the claimant and neither other Party nor indemnifying Party on behalf of other Party admits any liability. Notwithstanding the immediately preceding sentence or any other provision of this Agreement, the other Party 's consent shall be required to settle any and all claims under builder's risk insurance.

ARTICLE VI

GENERAL PROVISIONS

6.1 Notices, Demands and Communications Between the Parties.

6.1.1 Any and all notices, demands or communications submitted by any Party to another Party pursuant to or as required by this Agreement shall be proper if in writing and dispatched by messenger for immediate personal delivery, or by registered or certified United States mail, postage prepaid, return receipt requested, to the principal office of the City or the Developer, as applicable, as designated in Section 6.1.2. Such written notices, demands and communications may be sent in the same manner to such other addresses as either Party may from time to time designate as provided in this Section 6.1. Any such notice, demand or communication shall be deemed to be received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day that it is dispatched by messenger for immediate personal delivery, or two (2) calendar days after it is placed in the United States mail as heretofore provided.

6.1.2 In addition to the submission of notices, demands or communications to the Parties as set forth above, copies of all notices shall also be delivered by facsimile as follows:

to Developer:	**with copy to:**
Aliso Viejo 621, L.P. c/o USA Aliso Viejo 621, Inc. 3200 Douglas Blvd., Suite 200 Roseville, CA 95661 Attn: President	Bocarsly Emden Cowan Esmail & Arndt LLP 633 West Fifth Street, 64th Floor Los Angeles, CA 90071 Attn: Kyle Arndt

And

Foundation for Affordable
Housing II Inc.
384 Forest Ave, Suite 14
Laguna Beach, California 92651
Attn: President

to City:	**with copy to:**
City of Aliso Viejo 12 Journey, Suite 100 Aliso Viejo, CA. 92656-5335 Attn: City Manager	Best Best & Krieger LLP 18101 Von Karman Avenue Suite 1000 Irvine, CA 92612 Attn: Elizabeth Hull, Esq.

6.2 Conflict of Interest. No member, official, employee or agent of the City shall have any personal interest, direct or indirect, in this Agreement, or in the development of the Project, nor shall any such member, official, employee or agent of the City participate in any decision relating to the Agreement. The Parties represent and warrant that they do not have knowledge of any such conflict of interest.

6.3 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Person other than the Parties and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation of any Third Person to any Party or give any Third Person any right of subrogation or action over or against any Party. Notwithstanding the immediately preceding sentence, the City is an express intended third party beneficiary of all of the covenants required by this Agreement.

6.3.1 Warranty Against Payment of Consideration for Agreement. The Developer warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement. Third parties, for the purposes of this Section 6.3.1, shall not include persons to whom fees are paid for professional services if rendered by attorneys, financial consultants, accountants, engineers, architects and the like when such fees are considered necessary by the Developer.

6.4 Enforced Delay: Extension of Time of Performance. In addition to specific provisions of this Agreement, performance by either Party hereunder shall not be deemed to be in Default, or considered to be a Default, where delays or Defaults are due to the force majeure events of war, acts of terrorism, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes or lack of transportation, weather-caused delays, inability to secure necessary labor, materials or tools, delays of any contractors, subcontractor or supplier, which are not attributable to the fault of the Party claiming an extension of time to prepare or acts or failure to act of any Governmental Entity (provided that acts or failure to act of the City shall not extend the time for the City to act hereunder except for delays associated with a lawsuit or injunction including but

without limitation to lawsuits pertaining to the approval of the Agreement, and the like). An extension of time for any such force majeure cause shall be for the period of the enforced delay and shall commence to run from the date of occurrence of the delay; provided however, that the Party which claims the existence of the delay has first provided the other Party with written notice of the occurrence of the delay within ten (10) calendar days of the commencement of such occurrence of delay. The inability of the Developer to obtain a satisfactory commitment from a construction lender for the improvement of the Property or to satisfy any other condition of this Agreement relating to the Construction of the Property shall not be deemed to be a force majeure event or otherwise provide grounds for the assertion of the existence of a delay under this Section 6.4. The Parties hereto expressly acknowledge and agree that changes in either general economic conditions or changes in the economic assumptions of any of them which may have provided a basis for entering into this Agreement and which occur at any time after the execution of this Agreement, are not force majeure events and do not provide any Party with grounds for asserting the existence of a delay in the performance of any covenant or undertaking which may arise under this Agreement. Each Party expressly assumes the risk that changes in general economic conditions or changes in such economic assumptions relating to the terms and covenants of this Agreement could impose an inconvenience or hardship on the continued performance of such Party under this Agreement, but that such inconvenience or hardship is not a force majeure event and does not excuse the performance by such Party of its obligations under this Agreement.

6.5 Inspection of Books and Records. The City shall have the right at all reasonable times at the City's cost and expense to inspect the books and records of the Developer pertaining to the Property, and/or the development of the Project on the Property, as necessary for the City, in its reasonable discretion, to enforce its rights under this Agreement. Matters discovered by the City shall not be disclosed to third parties unless required by law or unless otherwise resulting from or related to the pursuit of any remedies or the assertion of any rights of the City hereunder.

6.6 Approvals. Except as otherwise provided in this Agreement, approvals required of the City or the Developer, or any officers, agents or employees of either the City or the Developer, shall not be unreasonably withheld and approval or disapproval shall be given within the time set forth in the Project Entitlements or, if no time is given, within a reasonable time.

6.7 Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

6.8 Further Assurances. The Parties agree to reasonably consider such additional actions or the execution of such other documents as may be reasonably necessary or convenient to the financing, development, and operation of the Project, although nothing in this Section 6.8 shall be deemed a representation, guarantee or commitment by either Party to take any action or execute any document.

6.9 Entire Agreement. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to all or any portion of the Property and the development thereof.

6.10 Waivers and Amendments. All waivers of the provisions of this Agreement and all amendments hereto must be in writing and signed by the appropriate authorities of the City and the Developer.

6.11 Counterparts. This Agreement may be executed in counterpart originals each of which is deemed to be an original. This Agreement includes thirty-one (31) pages (including signature pages) and eight (8) exhibits, which constitute the entire understanding and Agreement of the Parties.

6.12 Termination of Agreement. Unless terminated earlier in accordance with the terms hereof, this Agreement shall terminate upon the repayment in full of the City Loan, provided, however, that termination of this Agreement shall not act to terminate the Regulatory Agreement.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the dates set forth below.

[Signatures on following pages]

SIGNATURE PAGE
TO
AFFORDABLE HOUSING AGREEMENT
(Vintage Aliso)

CITY:

THE CITY OF ALISO VIEJO, a California municipal corporation

Dated:_____

By: _____
David A. Doyle
City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP

_____
City Attorney

SIGNATURE PAGE
TO
AFFORDABLE HOUSING AGREEMENT
(Vintage Aliso)

DEVELOPER:

ALISO VIEJO 621, L.P.,
a California limited partnership

By: USA Aliso Viejo 621, Inc., a California corporation, its administrative general partner

Dated:_____ By: _____
Geoffrey C. Brown, President

By: Foundation for Affordable Housing II Inc., a California nonprofit public benefit corporation, its managing general partner

Dated:_____ By: _____
Thomas E. Willard, President

EXHIBIT A
TO
AFFORDABLE HOUSING AGREEMENT
(Vintage Aliso)

Legal Description of Property

[to be attached]

EXHIBIT B
TO
AFFORDABLE HOUSING AGREEMENT
(Vintage Aliso)

City Loan Promissory Note

[Attached behind this cover page]

PROMISSORY NOTE SECURED BY DEED OF TRUST

Principal Amount: $1,485,000

Date of Note: _____, 2015

Borrower: ALISO VIEJO 621, L.P., a California limited partnership

Lender: CITY OF ALISO VIEJO, a California municipal corporation

Maturity Date: _____

Interest Rate: Three Percent (3%) (simple)

FOR VALUE RECEIVED, the undersigned ALISO VIEJO 621, L.P., a California limited partnership ("**Borrower**"), whose address is 3200 Douglas Blvd, Suite 200, Roseville, California 95661, promise to pay, at the times stated in this Note, to the order of the CITY OF ALISO VIEJO ("**Lender**"), the principal sum of One Million Five Hundred Thousand Dollars ($1,485,000) ("**Loan**"), together with simple interest on the unpaid principal balance of this Note from time to time outstanding at an annual simple rate of three percent (3%) from the date of advance until fully paid at 12 Journey, Suite 100, Aliso Viejo, California 92656-5335, or at such other place as Lender may designate to Borrower in writing.

1. **Reference to Agreement.** This Note is made by Borrower to the order of Lender pursuant to that certain Affordable Housing Agreement (Vintage Aliso), dated February 18, 2015, by and between Borrower and Lender (the "**Agreement**"). In the event of any conflict between the terms of this Note and the terms of the Agreement, the terms of the Agreement shall control.

2. **Definitions**. All words, terms or phrases indicated to be defined words, terms or phrases by initial capitalization in this Note that are not specifically defined in this Note shall have the meaning given to the word, term or phrases in the Agreement. As used in this Note, the following words, phrases and terms shall have the following meaning:

2.1 "Gross Revenue" means and refers to all revenue, income, receipts, and other consideration actually received from the use, operation or occupancy of the Project. "Gross Revenue" shall include, but not be limited to: all rents, fees and charges paid by tenants, as well as other rental subsidy payments received for the Units, deposits forfeited by tenants, all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements resulting in actual income; proceeds from vending and laundry room machines; the proceeds of business interruption or similar insurance; the proceeds of casualty insurance to the extent not utilized to repair or rebuild the Project (or applied toward the cost of recovering such proceeds). "Gross Revenue" shall also include the fair market value of any goods or services provided in consideration for the leasing or other use of any portion of the Project as well as all other revenue, income and receipts of every kind that accrue or are accounted for on an accrual basis in conformity with generally accepted accounting principles. "Gross Revenue" shall not include tenants' security deposits, loan proceeds, capital contributions or similar advances interest on security deposits and required reserves, sales proceeds, and the proceeds of loans, refinancings, condemnation, insurance claims and partner capital contributions.

2.2 "Project Operating Expenses" means and refers to the following costs actually incurred for operation and maintenance of the Project: (i) the cost of utilities supplied to and used for the Project and payable by Developer; (ii) the cost of all insurance required for the Project; (iii) real property taxes, if any, and assessment payments; (iv) funds paid toward property management fees in an amount not to exceed six percent (6%) of the annual Gross Revenue; (v) expenses and costs of social programs, if any, paid to third party service providers or any general partner of Developer providing such service, and compliance/monitoring reporting or related or required by or paid to an investor of the Project; (vi) all other reserves and other amounts required to be paid, in the amount required by the Senior Lender and/or City; (vii) on-site administrative costs (including payroll and payroll taxes and expenses, employee benefits); (viii) maintenance and repair expenses and services (including materials and labor) including charges for public services such as sewer charges, license and permit fees, goods, commodities, materials, equipment, furniture, furnishings, fixtures, painting, cleaning, pest control, gardening, rubbish removal, security services, advertising and promotion, leasing commissions, accounting, audit, tax preparation and legal expenses attributable to the Project which are directly attributable and customarily incurred in the operation of real estate projects similar to the Project; (ix) all scheduled payments of principal and/or interest, late charges and all other payments due the Senior Lender, together with all fees, costs, expenses and related charges payable by Developer under the terms of the loan documents of the Senior Lender including, without limitation, issuer fees, trustee fees, remarketing fees, and rebate analyst fees, interest rate cap deposits and credit enhancer charges; (xi) any tax credit adjuster payments to the limited partner(s); and (x) partnership management fees and asset management fees payable to the partners of Borrower no to exceed $25,000 per annum (increasing by 3% per annum). "Project Operating Expenses" shall not include the following: advances to the Borrower from its limited partner(s), general partner(s), their affiliate(s) and/or third parties, depreciation, amortization, depletion or other non-cash expenses or any amount expended from a reserve account. The calculation of Project Operating Expenses shall be subject to the reasonable approval of the Lender.

2.3 "Residual Receipts" means and refers to the remainder resulting from Gross Revenue after payment of: (i) Project Operating Expenses; (ii) deferred developer fee payments; and (iii) repayments of any advances previously made to Borrower from its limited partner(s), general partner(s), their affiliate(s) and/or third parties necessary for the rehabilitation or operation of the Project; provided, however, that the interest rate changed on said advances shall not exceed the interest rate for the Loan.

2.4 "Senior Lender" means the holder of any note secured by a deed of trust recorded against the Property which is senior in priority to the deed of trust securing the Loan and any other third party lender to the Borrower as may be permitted pursuant to the Agreement.

3. **Loan Disbursement**. Lender shall disburse the Loan to Borrower in accordance with Section 2.1.1.2 of the Agreement.

4. **Interest**. Interest on the unpaid balance of this Note will accrue from the date of disbursement of the Loan at the rate set forth above.

5. **Form of Payment**. All sums due under this Note are payable in lawful money of the United States and the other terms and conditions of this Note and the Deed of Trust.

6. **Method of Calculating Interest**. Interest shall be computed based on a 365-day year and the actual number of days elapsed.

7. **Payment of Principal and Interest**. Commencing on April 15, 2017, and on said date of each year thereafter for the term of the Loan, Developer shall make payments to City equal to fifty percent (50%) of the Residual Receipts for the prior calendar year (or, for the first calendar year, the pro rata share of Residual Receipts, prorated from the date of the conversion of the Construction Loan to the Permanent Loan to December 31), to the extent Residual Receipts exist. Payment(s) shall be credited first against accrued interest and then against outstanding principal and shall be accompanied by a written report by Developer documenting the calculation of Residual Receipts for the previous calendar year ending December 31. Developer shall provide City with any documentation reasonably requested by City to substantiate Developer's determination of the Residual Receipts. Any outstanding principal amount and all accrued and unpaid interest under this Note shall be due and payable from Borrower to Lender on the fortieth (40th) anniversary of the recordation of the Certificate of Completion ("**Maturity Date**").

8. **Application of Payments**. Each payment under this Note shall be credited in the following order: (a) costs, fees, charges and advances paid or incurred by Lender under this Note or the Deed of Trust or otherwise payable to Lender by Borrower under this Note or the Deed of Trust, in such order as Lender elects, in Lender's sole and absolute discretion; (b) accrued interest; and (c) principal due under this Note.

9. **Prepayment**. The principal and interest under this Note may be prepaid at any time, without penalty; provided, however, that any such prepayment shall have no effect on the application of the Agreement or the Regulatory Agreement to the Property.

10. **Secured by Deed of Trust**. This Note is secured by, among other things, that certain Deed of Trust, Assignment of Leases and Rents, Fixture Filing, and Security Agreement; Request for Notice ("**Deed of Trust**") of even date herewith made by Borrower, as trustor, to ___ _____ as trustee, for the benefit of Lender, as beneficiary.

11. **Subordination**. This Note and the Deed of Trust securing this Note shall be subject and subordinate to the Senior Lender(s), as previously disclosed to Lender by Borrower, Lender's shall execute a subordination agreement in favor of the Senior Lender(s) in forms reasonably requested by such lenders; provided, however, that Lender reserves the right to review, modify and negotiate, in good faith, the terms and conditions of such subordination agreements.

12. **Interest on Default.** From and after a Default or the Maturity Date (either according to the terms of this Note or as the result of an acceleration of the then unpaid principal balance under the terms of this Note), the entire unpaid principal balance of this Note shall automatically bear an annual interest rate (instead of the rate set forth above) equal to the lesser of: (a) eight percent (8%); or (b) the maximum interest rate allowed by law ("**Default Rate**").

13. **Default.** Any of the following shall constitute a "**Default**" under this Note: (a) Borrower's failure to pay any installment or other sum due under this Note within ten (10) days after Lender delivers written notice to Borrower of such failure (provided that a Default shall not exist if there are no Residual Receipts); or (b) any breach of any other promise or obligation in this Note, the Deed of Trust, the Regulatory Agreement or the Agreement or in any other instrument now or hereafter securing the indebtedness evidenced by this Note; provided, however, that Lender has given Borrower thirty (30) days notice to Borrower describing the default in reasonable detail in which to cure the Default, and such Default not having been cured within 30 days (or, if a greater amount of time is reasonably necessary to effect a cure, if actions to cure such Default are not undertaken within said 30 day period and pursued with reasonable diligence thereafter). On and following any Default, Lender may, in Lender's sole and absolute discretion, declare this Note (including, without limitation, all accrued interest) immediately due and payable regardless of the Maturity Date.

14. **Collection Costs.** Borrower agrees to pay the following costs, expenses, and attorney fees paid or incurred by Lender, or adjudged by a court: (a) reasonable costs of collection and costs, expenses, and attorney fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed; (b) reasonable costs, expenses, and attorney fees paid or incurred in connection with representing Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving this Note; and (c) costs of suit and such sum as the court may adjudge as reasonable attorney fees in any action to enforce or collect payment of this Note or any portion thereof.

15. **Waiver.** Borrower, endorsers, and all other Persons liable or to become liable on this Note waive presentment, protest, and demand; notice of protest, demand, and dishonor; and all other notices or matters of a like nature. No extension of time for payment of this Note made by agreement by Lender with any Person now or hereafter liable for the payment of this Note shall operate to release, discharge, modify, change or affect the original liability of Borrower under this Note, either in whole or in part. The provisions of this Note and the obligations of Borrower under this Note shall be absolute and Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reasons whatsoever.

16. **Notice.** Any notice required to be provided under this Note shall be given in writing and shall be sent: (a) for personal delivery by a delivery service that provides a record of the date of delivery, the individual to whom delivery was made, and the address where delivery was made; (b) by first-class certified United States mail, postage prepaid, return receipt requested; or (c) by a nationally recognized overnight (one business day) courier service, marked for next business day delivery. All notices shall be addressed to the Person to whom such notice is to be given at the property address stated in the Deed of Trust or to such other address as a Person may designate by written notice. All notices shall be deemed effective on the earliest of: (i) actual receipt; (ii) rejection of delivery; (iii) if sent by certified mail, the second (2nd) day on

which regular United States mail delivery service is provided after the date of mailing; or (iv) if sent by overnight delivery service, on the next day on which such service makes next-business-day deliveries after the date of sending.

17. **Forbearance Not a Waiver.** If Lender delays in exercising or fails to exercise any of its rights under this Note, that delay or failure shall not constitute a waiver of any Lender rights or of any breach, Default, or failure of condition under this Note. No waiver by Lender of any of its rights or of any such breach, Default, or failure of condition shall be effective, unless the waiver is expressly stated in a writing signed by Lender.

18. **Assignment.** This Note inures to and binds the heirs, legal representatives, successors, and assigns of Borrower and Lender; provided, however, that Borrower may not assign this Note nor any proceeds of it, nor assign or delegate any of its rights or obligations under this Note, except as otherwise permitted in the Agreement, without Lender's prior written consent in each instance, which consent may be given, withheld, delayed or conditioned in Lender's sole and absolute discretion. Lender, in its sole and absolute discretion, may transfer this Note and may sell or assign participations or other interests in all or any part of this Note, all without notice to or the consent of Borrower.

19. **Governing Law.** This Note shall be construed and enforceable according to the laws of the State of California for all purposes, without application of conflicts or choice of laws principles or statutes.

20. **Usury.** To the extent that the indebtedness evidenced by this Note is determined not to be exempt from the usury laws of the State of California, all agreements between Borrower and Lender are expressly limited, so that in no event or contingency, whether because of the advancement of the proceeds of this Note, acceleration of maturity of the unpaid principal balance, or otherwise, shall the amount paid or agreed to be paid to Lender for the use, forbearance, or retention of the money to be advanced under this Note exceed the highest lawful rate permissible under applicable usury laws. If, under any circumstances, fulfillment of any provision of this Note or any other agreement pertaining to this Note, after timely performance of such provision is due, shall involve exceeding the limit of validity prescribed by law that a court of competent jurisdiction deems applicable, then, ipso facto, the obligations to be fulfilled shall be reduced to the limit of such validity. If, under any circumstances, Lender shall ever receive as interest an amount that exceeds the highest lawful rate, the amount that would be excessive interest shall be applied to reduce the unpaid principal balance under this Note and not to pay interest, or, if such excessive interest exceeds the unpaid principal balance under this Note, such excess shall be refunded to Borrower. This provision shall control every other provision of all agreements between Borrower and Lender.

21. **Non-Revolving Credit**. This Note evidences a non-revolving loan from Lender to Borrower. The accrued and unpaid interest and principal balance owing on this Note at any time may be evidenced by an unpaid balance acknowledgment of Lender on this Note or by the internal accounting records of Lender regarding this Note.

22. **Waiver of Statute of Limitations.** The pleading of any statute of limitations as a defense to the obligations or enforcement of the obligations evidenced by this Note is waived to the fullest extent permissible by law.

23. **Time Is of the Essence.** Time is of the essence with respect to all obligations of Borrower under this Note.

24. **Cross-Default.** Any Default by Borrower as to the AHA, the Regulatory Agreement and the Deed of Trust, in Lender's sole and absolute discretion, constitute a Default under this Note.

25. **Severability.** If any provision of this Note, or the application of it to any Person or circumstance, is held void, invalid, or unenforceable by a court of competent jurisdiction, the remainder of this Note, and the application of such provision to other Persons or circumstances, shall not be affected thereby, the provisions of this Note being severable in any such instance.

26. **Recourse**. Notwithstanding anything to the contrary set forth herein, in the Regulatory Agreement, the AHA or the Deed of Trust, the Loan, City's sole recourse against Borrower shall be to exercise any remedies under the Deed of Trust or any other document given for security hereunder. No deficiency judgment may be obtained against the Borrower.

27. **Acknowledgment**. PRIOR TO SIGNING THIS NOTE, BORROWER HAS READ AND UNDERSTANDS ALL OF ITS PROVISIONS AND HAS CONSULTED WITH LEGAL COUNSEL OF BORROWER'S INDEPENDENT SELECTION REGARDING BORROWER'S OBLIGATIONS UNDER THIS NOTE. BORROWER AGREES TO THE TERMS AND CONDITIONS OF THIS NOTE AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS NOTE.

BORROWER:

ALISO VIEJO 621, L.P., a California limited partnership

By: USA Aliso Viejo 621, Inc., a California corporation, its administrative general partner

By: _____
Geoffrey C. Brown, President

By: Foundation for Affordable Housing II Inc., a California nonprofit public benefit corporation, its managing general partner

By: _____
Thomas E. Willard, President

EXHIBIT C
TO
AFFORDABLE HOUSING AGREEMENT
(Vintage Aliso)

City Deed of Trust

[**Attached behind this cover page]**

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Aliso Viejo
12 Journey, Suite 100
Aliso Viejo, CA. 92656-5335
Attn: City Manager

Space above line for Recorder's use only
Exempt from Recording Fees pursuant to Govt. Code § 27383

DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, FIXTURE FILING, AND SECURITY AGREEMENT; REQUEST FOR NOTICE

This DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, FIXTURE FILING, AND SECURITY AGREEMENT; REQUEST FOR NOTICE ("**Deed of Trust**") is made as of _____, 2015, by and among ALISO VIEJO 621, L.P., a California limited partnership, whose address is 3200 Douglass Blvd, Suite 200, Roseville, California, 95661 ("**Trustor**"), _____, as trustee ("**Trustee**"), and the CITY OF ALISO VIEJO, a California municipal corporation, as beneficiary ("**Beneficiary**"), and is executed to secure that certain Residual Receipts Promissory Note of even date herewith, in the principal amount of One Million Four Hundred Eighty Five Thousand Dollars ($1,485,000) ("**Note**"), executed by Trustor in favor of Beneficiary, the provisions of which are incorporated into this Deed of Trust by this reference.

To secure the full and timely payment of the Note and the full and timely performance and discharge of all obligations of Trustor under the Note, Trustor hereby IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to Trustee, its successors and assigns, in Trust, with POWER OF SALE TOGETHER WITH RIGHT OF ENTRY AND POSSESSION, the following property ("**Trust Estate**"):

(a) All of that certain real property in the City of Aliso Viejo, County of Orange, State of California, more particularly described in Exhibit "1" attached hereto and by this reference made a part hereof ("**Subject Property**");

(b) All buildings, structures and other improvements now or in the future located or to be constructed on the Subject Property ("**Improvements**");

(c) All tenements, hereditament, appurtenances, privileges, franchises and other rights and interests now or in the future benefiting or otherwise relating to the Subject Property or the Improvements, including easements, rights-of-way and development rights ("**Appurtenances**"). (Appurtenances, together with the Subject Property and the Improvements, are hereafter collectively referred to as the "**Real Property**");

(d) Subject to the assignment to Beneficiary set forth in Section 4 below, all rents, issues, income, revenues, royalties and profits now or in the future payable with respect to or otherwise derived from the Trust Estate or the ownership, use, management operation, leasing or occupancy of the Trust Estate, including those past due and unpaid ("**Rents**");

(e) All present and future right, title and interest of Trustor in and to all inventory, equipment, fixtures and other goods (as those terms are defined in Division 9 of the California Uniform Commercial Code ("**UCC**"), whether existing now or in the future) located at, upon or about, or affixed or attached to or installed in, the Real Property, or used or to be used in connection with or otherwise relating to the Real Property or the ownership, use, development, rehabilitation, maintenance, management, operation, marketing, leasing or occupancy of the Real Property, including furniture, furnishings, machinery, appliances, building materials and supplies, generators, boilers, furnaces, water tanks, heating, ventilating and air conditioning equipment and all other types of tangible personal property of any kind or nature, and all accessories, additions, attachments, parts, proceeds, products, repairs, replacements and substitutions of or to any of such property ("**Goods**," and together with the Real Property, collectively the "**Property**"); and

(f) All present and future right, title and interest of Trustor in and to all accounts, general intangibles, chattel paper, deposit accounts, money, instruments and documents (as those terms are defined in the UCC) and all other agreements, obligations, rights and written material (in each case whether existing now or in the future) now or in the future relating to or otherwise arising in connection with or derived from the Property or any other part of the Trust Estate or the ownership, use, development, rehabilitation, maintenance, management operation, marketing, leasing, occupancy, sale or financing of the Property or any other part of the Trust Estate, including (to the extent applicable to the Property or any other portion of the Trust Estate): (i) permits, approvals and other governmental authorizations; (ii) the Scope of Development and architectural drawings, (iii) agreements with contractors, subcontractors, suppliers, project managers, supervisors, designers, architects, engineers, sales agents, leasing agents, consultants and property managers, (iv) warranties, guaranties, indemnities and insurance policies, together with insurance payments and unearned insurance premiums, (vi) claims, demands, awards, settlements, and other payments arising or resulting from or otherwise relating to any insurance or any loss or destruction of, injury or damage to, trespass on or taking, condemnation (or conveyance in lieu of condemnation) or public use of any of the Property, (vii) license agreements, service and maintenance agreements, purchase and sale agreements and purchase options, together with advance payments, security deposits and other amounts paid to or deposited with Trustor under any such agreements, (viii) reserves, deposits, bonds, deferred payments, refunds, rebates, discounts, cost savings, escrow proceeds, sale proceeds and other rights to the payment of money, trade names, trademarks, goodwill and all other types on intangible personal property of any kind or nature, and (ix) all supplements, modifications, amendments, renewals, extensions, proceeds, replacements and substitutions of or to any of such property (collectively, "**Intangibles**").

Trustor further grants to Trustee and Beneficiary, pursuant to the UCC, a security interest in all present and future right, title and interest of Trustor in and to all Goods and Intangibles and all of the Trust Estates described above in which a security interest may be created under the UCC (collectively, the "**Personal Property**"). This Deed of Trust constitutes a security

agreement under the UCC, conveying a security interest in the Personal Property to Trustee and Beneficiary. Trustee and Beneficiary shall have, in addition to all rights and remedies provided herein, all the rights and remedies of a "secured party" under the UCC and other applicable California law. Trustor covenants and agrees that this Deed of Trust constitutes a fixture filing under Section 9502 of the UCC.

FOR THE PURPOSE OF SECURING, in such order of priority as Beneficiary may elect, the following: (a) payment of the Note, plus any accrued interest; and (b) due, prompt and complete observance, performance and discharge of each and every monetary and non-monetary condition, obligation, covenant and agreement contained herein or contained in the following agreements between Trustor ("Developer" therein) and Beneficiary ("City" therein) related to the Trust Estate: (i) Affordable Housing Agreement (Vintage Aliso) dated February 18, 2015 (the "**AHA**") The AHA, Note and Regulatory Agreement (collectively, "**Secured Obligations**") and this conveyance shall secure any and all extensions, amendments, modifications or renewals thereof, however evidenced.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS AND AGREES:

1. That Trustor shall perform the obligations of the Developer as set forth in the Secured Obligations at the time and in the manner respectively provided therein.

2. That Trustor shall not permit or suffer the use of any of the Trust Estate for any purpose other than the use for which the same was intended at the time this Deed of Trust was executed.

3. Upon default of a Secured Obligation, and after the giving of notice and the expiration of any applicable cure period, the Beneficiary, at its option, may declare the whole of the indebtedness secured hereby to be due and payable. This Deed of Trust shall cover, and the Trust Estate subject hereto shall include, all real and personal property now or hereafter affixed or attached to or incorporated upon the Subject Property in, to or under which Trustor now has or hereafter acquires any right, title or interest, which, to the fullest extent permitted by law, shall be deemed fixtures and a part of the Subject Property.

To the extent any of the property subject to this Deed of Trust consists of rights in action or personal property covered by the UCC, this Deed of Trust shall also constitute a security agreement, and Trustor hereby grants to Beneficiary, as secured party, a security interest in such property, including all proceeds thereof, for the purpose of securing the Secured Obligations. In addition, for the purpose of securing the Secured Obligations, Trustor hereby grants to Beneficiary, as secured party, a security interest in all of the property described herein in, to, or under which Trustor now has or hereafter acquires any right, title or interest, whether present, future or contingent, including, but not limited to, all equipment, inventory, accounts, general intangibles, instruments, documents and chattel paper, as those terms are defined in the UCC, and all other personal property of any kind (including, without limitation, money and rights to the payment of money), whether now existing or hereafter created, that are now or at any time hereafter: (i) in the possession or control of Beneficiary in any capacity; (ii) erected upon, attached to or appurtenant to the Subject Property; (iii) located or used on the Subject

Property or identified for use on the Subject Property (whether stored on the Subject Property or elsewhere); or (iv) used in connection with, arising from, related to, or associated with the Subject Property or any of the personal property described herein, the rehabilitation of any improvements on the Subject Property, the ownership, development, maintenance, management or operation of the Subject Property, the use or enjoyment of the Subject Property or the operation of any business conducted thereon, including, without limitation, all such property described as the Trust Estate hereinabove.

The security interests granted in this Section 3 are hereinafter severally and collectively called the "**Security Interest**". The Security Interest shall be self-operative with respect to the real property described herein but Trustor shall execute and deliver on demand such additional security agreements, financing statements and other instruments as may be requested in order to impose the Security Interest more specifically upon the real and personal property encumbered hereby. The Security Interest, at all times, shall be prior to any other interest in the personal property encumbered hereby. Trustor shall act and perform as necessary and shall execute and file all security agreements, financing statements, continuation statements and other documents requested by Beneficiary to establish, maintain and continue the perfected Security Interest. Trustor, on demand, shall promptly pay all costs and expenses of filing and recordation, to ensure the continued priority of the Security Interest.

Trustor shall not sell, transfer, assign or otherwise dispose of any personal property encumbered hereby without obtaining the prior written consent of Beneficiary, except that the Trustor may, in the ordinary course of business, replace personal property or dispose of personal property that will not be replaced because of its obsolescence. Unless Beneficiary then agrees otherwise in writing, all proceeds from any permitted sale or disposition in excess of that required for full replacement shall be paid to Beneficiary to be applied on the Note. Although proceeds of personal property are covered hereby, this shall not be construed to mean that Beneficiary consents to any sale of such personal property. Upon its recordation in the real property records of Orange County, this Deed of Trust shall be effective as a financing statement filed as a fixture filing. In addition, a carbon, photostatic or other reproduced copy of this Deed of Trust and/or any financing statement relating hereto shall be sufficient for filing and/or recording as a financing statement.

4. That all rents, profits and income from the property covered by this Deed of Trust are hereby assigned to the Beneficiary for the purpose of discharging the debt hereby secured. Permission is hereby given to Trustor, so long as no default exists hereunder after the giving of notice and the expiration of any applicable cure period, to collect such rents, profits and income for use in accordance with the provisions of the Secured Obligations.

5. That upon default hereunder or under the Secured Obligations, and after the giving of notice and the expiration of any applicable cure period, Beneficiary shall be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession and protect the property described herein and operate same and collect the rents, profits and income therefrom.

6. That Trustor will keep the improvements now existing or hereafter erected on the Subject Property insured against loss by fire and such other hazards, casualties, and

contingencies as may be required by applicable provisions of the Secured Obligations, and all such insurance shall be evidenced by standard fire and extended coverage insurance policy or policies. Such policies shall be endorsed with standard mortgage clause with loss payable to the Beneficiary and certificates thereof together with copies of original policies, if requested, shall be deposited with the Beneficiary.

7. To pay before delinquency any taxes and assessments affecting the Trust Estate; to pay, when due, all encumbrances, charges and liens, with interest, on the Trust Estate or any part thereof which appear to be prior or superior hereto; and to pay all costs, fees, and expenses of this Deed of Trust. Notwithstanding anything to the contrary contained in this Deed of Trust, Trustor shall not be required to pay and discharge any such tax, assessment charge or levy so long as Trustor is contesting the legality thereof in good faith and by appropriate proceedings, and Trustor has adequate funds to pay any liabilities contested pursuant to this Section 7.

8. As it is provided more specifically in the Secured Obligations, to keep said property in good condition and repair, subject to ordinary wear and tear, casualty and condemnation, not to remove or demolish any buildings thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged, or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon (subject to Trustor's right to contest the validity or applicability of laws or regulations); not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law and/or covenants, conditions and/or restrictions affecting said property; not to permit or suffer any material alteration of or addition to the buildings or improvements hereafter constructed in or upon said property without the consent of the Beneficiary.

9. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses, including cost of evidence of title and reasonable attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear.

10. Should Trustor fail, after the giving of notice and the expiration of any applicable cure period, to make any payment or do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, at Trustor's sole cost and expense. Following default, after the giving of notice and the expiration of any applicable cure period, Beneficiary or Trustee being authorized to enter upon said property for such purposes, may commence, appear in and/or defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; may pay, purchase, contest or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, may pay necessary expenses, employ counsel, and pay his reasonable fees.

11. Beneficiary shall have the right to pay fire and other property insurance premiums when due should Trustor fail to make any required premium payments. All such payments made by the Beneficiary shall be added to the sums secured hereby.

12. To pay immediately and without demand all sums so expended by Beneficiary or Trustee, under permission given under this Deed of Trust, with interest from date of expenditure, at the highest rate of interest permitted by law.

13. That the funds to be advanced hereunder are to be used in accordance with applicable provisions of the Secured Obligations; upon the failure of Trustor to do so, after the giving of notice and the expiration of any applicable cure period, Trustor shall be in default hereunder.

14. Trustor further covenants that it will not voluntarily create, suffer, or permit to be created against the property subject to this Deed of Trust any lien or liens except as authorized by Beneficiary and/or as provided in the Secured Obligations and further that it will keep and maintain the property free from the claims of all persons supplying labor or materials which will enter into the rehabilitation of any and all buildings now being erected or to be erected on said premises. Notwithstanding anything to the contrary contained in this Deed of Trust Trustor shall not be obligated to pay any claims for labor, materials or services which Trustor in good faith disputes and is diligently contesting, provided that Trustor shall, at Beneficiary's written request, within thirty (30) days after the filing of any claim or lien (but in any event, and without any requirement that Beneficiary must first provide a written request prior to foreclosure) record in the Office of the Recorder of Orange County, a surety bond in the amount required by law to protect against a claim of lien, or provide such other security reasonably satisfactory to Beneficiary.

15. That any and all improvements made or about to be made upon the premises covered by this Deed of Trust and all plans and specifications and the Scope of Development, comply with all applicable municipal ordinances and regulations and all other applicable regulations made or promulgated, now or hereafter, by lawful authority, and that the same will upon completion comply with all such municipal ordinances and regulations and with the rules of the applicable fire rating or inspection organization, bureau, association or office.

IT IS MUTUALLY AGREED THAT:

16. Trustor confirms that if Trustor should sell, enter into a contract of sale, convey, or in any way transfer all or any interest of Trustor in the Real Property encumbered by this Deed of Trust or suffer Trustor's title or any interest therein to be divested, whether voluntarily or involuntarily, unless the same is a Permitted Transfer as defined in the Agreement, without the prior written consent of the Beneficiary being first obtained, then Beneficiary shall have the right, at Beneficiary's sole option, to declare all sums payable under the Note secured hereby immediately due and payable in full, irrespective of the maturity date otherwise specified in said Note. No waiver of this right shall be effective unless in writing and signed by the Beneficiary. Consent by the Beneficiary to any one such transaction shall not be deemed a waiver of the right to require such consent to future or successive transactions. Further, upon default under one of the Secured Obligations, and after the giving of notice and the expiration of

any applicable cure period provided therein, the Beneficiary, at its option, may declare the whole of the indebtedness secured hereby to be immediately due and payable in full, irrespective of the maturity date otherwise specified in said Note.

17. As provided more specifically in the Secured Obligations, should the Trust Estate or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner, Beneficiary shall be entitled to all compensation, awards, and other payments or relief therefor which are not used to reconstruct, restore or otherwise improve the property or part thereof that was taken or damaged, and shall be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds which are not used to reconstruct, restore or otherwise improve the property or part thereof that was taken or damaged, including the proceeds of any policies of fire and other insurance affecting said property, are hereby assigned to Beneficiary.

18. Upon default by Trustor in taking any action or in making any payments provided for herein, or in the Secured Obligations, if Trustor shall fail to perform any covenant or agreement in this Deed of Trust within 30 days after written demand therefor by Beneficiary (or, in the event that more than 30 days is reasonably required to cure such default, should Trustor fail to promptly commence such cure, and diligently prosecute same to completion, which shall be determined by Beneficiary in Beneficiary's sole and absolute discretion), after the giving of notice and the expiration of any applicable cure period, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale, and of written notice of default and of election to cause the property to be sold, which notice Trustee shall cause to be duly filed for record and Beneficiary may foreclose this Deed of Trust. Beneficiary shall also deposit with Trustee this Deed of Trust and all documents evidencing expenditures secured hereby.

19. After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to the purchaser its Deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at the sale. The Trustee shall apply the proceeds of sale to payment of: (1) the expenses of such sale, together with the reasonable expenses of this trust including therein reasonable Trustee's fees or attorney's fees for conducting the sale, and the actual cost of publishing, recording, mailing and posting notice of the sale; (2) the cost of any search and/or other evidence of title procured in connection with such sale and revenue stamps on Trustee's Deed; (3) all sums expended under the terms hereof, not then repaid, with accrued

interest at the maximum rate allowed by law; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto.

20. Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the property is situated, shall be conclusive proof of proper appointment of the successor trustee.

21. The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law.

22. Upon written request of Beneficiary stating that all sums secured hereby have been paid and all obligations secured hereby have been satisfied, and upon surrender of this Deed of Trust to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters of fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

23. The trust created hereby is irrevocable by Trustor.

24. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term "Beneficiary" shall include not only the original Beneficiary hereunder but also any future successor in interest to Beneficiary. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. All obligations of Trustor hereunder are joint and several.

25. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law, the Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

26. The undersigned Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to it at the address set forth in the Deed of Trust.

27. Trustor agrees at any time and from time to time, upon receipt of a written request from Beneficiary, to furnish to Beneficiary detailed statements in writing of income, rents, profits, and operating expenses of the premises, and the names of the occupants and tenants in possession, together with the expiration dates of their leases and full information regarding all rental and occupancy agreements, and the rents provided for by such leases and rental and occupancy agreements, and such other information regarding the premises and their use as may be requested by Beneficiary.

28. Trustor agrees that the obligations secured by this Deed of Trust are made expressly for the purpose of financing the acquisition of the Property and the rehabilitation and operation of the improvements on the Property, including the 64 dwelling units, which will be maintained as affordable housing, and the property manager's unit, as more specifically provided in the Secured Obligations.

29. As is provided more specifically in the Secured Obligations, the obligations of Trustor thereunder are nonrecourse obligations of the Trustor. Neither Trustor nor any of its principals, nor any other party, shall have any personal liability for payment of obligations arising from the Secured Obligations, except as specifically provided therein. The sole recourse of Beneficiary shall be the exercise of its rights against the Property except as otherwise provided in the Secured Obligations and any related security.

30. Notwithstanding the provisions of this Deed of Trust, non-monetary performance hereunder shall not be deemed to be in default where delays or defaults are due to: war; insurrection; floods; earthquakes; fires; casualties; acts of God; epidemics; quarantine restrictions; governmental restrictions or priority; acts of the other party; acts or failure to act of the City or any other public or governmental agency or entity (except that any act or failure to act of Beneficiary shall not excuse performance by Beneficiary unless such act or failure to act is allowed or required by law); or any other causes beyond the control or without any fault of the party claiming an extension of time to perform. An extension of time for any such cause (a "**Force Majeure Delay**") shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause. If, however, notice by the party claiming such extension is sent to the other party more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice. Times of performance under this Deed of Trust may also be extended in writing by the Beneficiary and Trustor.

31. If the rights and liens created by this Deed of Trust shall be held by a court of competent jurisdiction to be invalid or unenforceable as to any part of the obligations described herein, the unsecured portion of such obligations shall be completely performed and paid prior to the performance and payment of the remaining and secured portion of the obligations, and all performance and payments made by Trustor shall be considered to have been performed and paid on and applied first to the complete payment of the unsecured portion of the obligations.

32. Default.

(a) Subject to the extensions of time set forth in Section 30, and subject to the further provisions of this Section 32, failure or delay by Trustor to perform any term or provision respectively required to be performed under the Secured Obligations or this Deed of Trust constitutes a default under this Deed of Trust.

(b) Beneficiary shall give written notice of default to Trustor, specifying the default complained of by the Beneficiary. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

(c) Any failures or delays by Beneficiary in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by Beneficiary in asserting any of its rights and remedies shall not deprive Beneficiary of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

(d) If an event of default occurs under the terms of this Deed of Trust, prior to exercising any remedies hereunder or thereunder, Beneficiary shall give Trustor written notice of such default. Trustor shall have a reasonable period of time after such notice is given within which to cure the default prior to exercise of remedies by Beneficiary under this Deed of Trust. In no event shall Beneficiary be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within thirty (30) days after the notice of default is first given.

(e) If an event of default occurs under the terms of the Secured Obligations, prior to exercising any remedies hereunder or thereunder, Beneficiary shall give Trustor notice of such default. As is provided more specifically in the Secured Obligations, if the default is reasonably capable of being cured within thirty (30) days, Trustor shall have such period to effect a cure prior to exercise of remedies by the Beneficiary under the Secured Obligations, or this Deed of Trust. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and Trustor (i) initiates corrective action within said period, and (ii) diligently and in good faith works to effect a cure as soon as possible, then Trustor shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by Beneficiary. In no event shall Beneficiary be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default.

(f) Trustor's limited partners shall have the right to cure any default of Trustor hereunder or under Note or AHA upon the same terms and conditions afforded to Trustor. Beneficiary shall provide any notice hereunder to the limited partners concurrently with the provision of such notice to Trustor to the following address: _____.

33. Notwithstanding anything contained herein, in the event of a foreclosure or deed-in-lieu of foreclosure with respect to the Property, the following rule contained in Section 42(h)(6)(E)(ii) of the Internal Revenue Code of 1986, as amended, shall apply:

> For a period of three (3) years from the date of foreclosure, with respect to any unit that had been regulated by the regulatory agreement with the California Tax Credit Allocation Committee, (i) none of the tenants occupying those units at the time of Foreclosure may be evicted or their tenancy terminated (other than for good cause), (ii) nor may any rent be increased except as otherwise permitted under Section 42 of the Code.

[Signatures on following page]

IN WITNESS WHEREOF, Trustor has executed and delivered this Deed of Trust as of the date first written above.

ALISO VIEJO 621, L.P., a California limited partnership

By: USA Aliso Viejo 621, Inc., a California corporation, its administrative general partner

By: _____
Geoffrey C. Brown, President

By: Foundation for Affordable Housing II Inc., a California nonprofit public benefit corporation, its managing general partner

By: _____
Thomas E. Willard, President

[SIGNATURES MUST BE NOTARY ACKNOWLEDGED]

EXHIBIT "1"

<u>Subject Property Legal Description</u>

EXHIBIT D
TO
AFFORDABLE HOUSING AGREEMENT
(Vintage Aliso)

Scope of Development

The Project shall consist of two hundred (200) rental units, plus two (2) unit reserved for a professional on-site property manager. Thirty three (33) units shall be reserved for very low income households. One hundred sixty seven (167) units shall be reserved for lower income households.

The Project will be developed on approximately four (4) acre site owned by Developer. The Project will consist of one four-story, approximately 218,523 square foot building; 51 feet, 10 inch maximum height; 17% common area; 202 parking stalls for 202 residential units.

EXHIBIT E
TO
AFFORDABLE HOUSING AGREEMENT
(Vintage Aliso)

Schedule of Performance

A. Days shall be calendar days, unless otherwise specified.

B. The City Manager is authorized by City to make changes to the schedule of ninety (90) calendar days or less.

C. In the event of any conflict between this schedule and the Agreement, the terms and provisions of this schedule shall control.

D. All defined terms indicated by initial capitalization used in this schedule shall have the meanings ascribed to the same terms in the Agreement.

Action	**Date Action to be Completed By**
Developer to obtain all Project Entitlements	
Disbursement of City Loan	Subject to Section 2.1.1.1, concurrently with the closing date of the construction loan for the Project
Commencement of Construction of the Project	Within 60 days of disbursement of City Loan
Completion of Construction of the Project	Within 24 months of commencement of construction of the Project

EXHIBIT F
TO
AFFORDABLE HOUSING AGREEMENT
(Vintage Aliso)

Certificate of Completion

[Attached behind this cover page]

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Aliso Viejo
12 Journey, Suite 100
Aliso Viejo, CA. 92656-5335
Attn: City Manager

Space above line for Recorder's use only
Exempt from Recording Fees pursuant to Govt. Code § 27383

CERTIFICATE OF COMPLETION

I, David A. Doyle, City Manager of the City of Aliso Viejo ("City"), certify as follows:

By its Resolution No. ____, adopted and approved _____, City resolved as follows:

Section 1. This Certificate of Completion is made with respect to that certain Affordable Housing Agreement entered into by and between City and ALISO VIEJO 621, L.P., a California limited partnership ("Developer") dated February 18, 2015 ("Agreement"). The Agreement is an official record of City and a copy of the Agreement may be inspected in the City Clerk's office, located at 12 Journey, Suite 100, Aliso Viejo, California, during regular business hours. All capitalized terms not otherwise defined in this certificate shall have the same meaning as ascribed to those terms in the Agreement.

Section 2. The two hundred (200) unit senior citizen rental housing project ("Project") required to be constructed in accordance with the Agreement on that certain real property ("Property") described on Attachment No. 1 to this Certificate of Completion has been completed in accordance with the provisions of the Agreement.

Section 3. Pursuant to Section 3.9 of the Agreement, this Certificate of Completion is a conclusive determination of the satisfactory completion of Developer's obligation to complete Construction of the Project on the Property, including all buildings and all parking, landscaping and related improvements necessary to support the Project and its operation upon the Property; provided, however, that City may enforce any covenants and obligations surviving this Certificate of Completion in accordance with the terms and conditions of the Agreement and Regulatory Agreement.

DATED AND ISSUED this ____ day of _____.

Dated: _____ By: _____

David A. Doyle
City Manager

ATTEST:

_____
City Clerk

EXHIBIT F

60367.00500\9369357.4

ATTACHMENT NO. 1
TO
CERTIFICATE OF COMPLETION

Legal Description of the Property

EXHIBIT F

EXHIBIT G
TO
AFFORDABLE HOUSING AGREEMENT
(Vintage Aliso)

Project Budget

FUNDING SOURCES		FUNDING USES	
		Land Acquisition	
Construction Loan		New Construction	
Permanent Loan		Fees & Permits	
City Loan	1,485,000	Professional Services	
		Financing Costs	
		Relocation	
		Other (marketing/off sites)	
		Reserves & Contingency	
		Developer Profit	
Total		**Total**	

EXHIBIT H
TO
AFFORDABLE HOUSING AGREEMENT
(Vintage Aliso)

Regulatory Agreement

[Attached behind this cover page]

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Aliso Viejo
12 Journey, Suite 100
Aliso Viejo, CA. 92656-5335
Attn: City Manager

Space above line for Recorder's use only
Exempt from Recording Fees pursuant to Govt. Code § 27383

REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, CONDITIONS AND RESTRICTIONS RESTRICTING USE OF PROPERTY FOR AFFORDABLE HOUSING (Vintage Aliso)

THIS REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, CONDITIONS AND RESTRICTIONS RESTRICTING USE OF PROPERTY FOR AFFORDABLE HOUSING (Vintage Aliso) ("**Regulatory Agreement**") is dated as of February 18, 2015 for reference purposes only, and is entered into by and between the CITY OF ALISO VIEJO, a California municipal corporation ("**City**"), and ALISO VIEJO 621, L.P., a California limited partnership ("**Developer**"). City and Developer are sometimes referred to in this Regulatory Agreement individually as a "**Party**" or collectively as the "**Parties**." City and Developer enter into this Regulatory Agreement with reference to the following recited facts (each a "**Recital**"):

RECITALS

A. Developer is the owner of that certain real property located 2C Liberty, Aliso Viejo, California, 92656 ("**Property**"), as more fully described in Exhibit "A" attached hereto and incorporated herein by this reference, on which Developer proposes to construct a senior citizen affordable rental housing project consisting of two hundred (200) rental units, to be made affordable to and occupied by very low and low income occupants, and two (2) units reserved for the property staff members ("**Project**").

B. City currently has an unmet Regional Housing Needs Assessment ("RHNA") requirement to provide two hundred three (203) "very low income" and forty-six (46) "low income" units.

C. In order to assist in the construction on the Project, which will satisfy a portion of the City's RHNA requirements, City and Developer have entered into that certain Affordable Housing Agreement (Vintage Aliso), dated February 18, 2015 ("**AHA**"), pursuant to which City has agreed to make funds available to the Developer from the City's Affordable Housing Trust Fund in the form of a residual receipts loan in the amount of One Million Four Hundred Eighty

Five Thousand Dollars ($1,485,000), in consideration for Developer's construction and maintenance of the Project on the Property.

D. This Regulatory Agreement shall, subject to the terms and conditions set forth herein, restrict the use of the Property until the passage of fifty-five (55) years following the recordation of the Certificate of Completion to ensure that each Unit to be constructed within the Project shall, at all times until expiration of such fifty-five (55) year period, be occupied or reserved for occupancy by a Qualified Household at an Affordable Rent, exclusive of the Manager Units.

E. Developer is willing to enter into this Regulatory Agreement, and to impose the conditions, covenants, restrictions and agreements set forth in this Regulatory Agreement upon the ownership and operation of the Property and the Project that will bind the Property, the Project, Developer, and Developer's successors and assigns, to assure City of the operation of the Project for the purpose of increasing and improving the supply of senior citizen affordable rental housing in the City and the surrounding communities.

F. The purpose of this Regulatory Agreement is to create such conditions, covenants, restrictions, reservations, agreements, liens, servitudes and charges upon the Property and the Project and subject to which each and every part of the Property and the Project shall be developed, occupied, owned, maintained, held, leased, rented, sold and conveyed.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION AND THE MUTUAL PROMISES AND COVENANTS OF THE PARTIES SET FORTH IN THIS REGULATORY AGREEMENT, CITY AND DEVELOPER AGREE AS FOLLOWS:

TERMS

1. **DEFINED TERMS.** As used in this Regulatory Agreement, the following words, phrases and terms shall have the meaning as provided in the initial paragraph of this Regulatory Agreement, the Recitals or as follows, unless the specific context of usage of a particular word, phrase or term may otherwise require:

1.1 **Affordable Rent**. Affordable Rent means:

1.1.1 With respect to thirty three (33) units, Affordable Rent shall mean the maximum rent for "very low income households" as defined in California Health and Safety Code Section 50053(b)(2) and accompanying regulations of the California Department of Housing and Community Development, as such law or regulations may hereafter be amended, replaced or renumbered from time-to-time, with allowance for utilities, as such allowance may be established by the County.

1.1.2 With respect to one hundred sixty seven (167) units, Affordable Rent shall mean the maximum rent for "lower income households" as defined in California Health and Safety Code Section 50053(b)(3) and accompanying regulations of the California Department of Housing and Community Development, as such law or regulations may hereafter be amended, replaced or renumbered from time-to-time, with allowance for utilities, as such allowance may be established by the County.

1.2 **AMI**. The area median income for Orange County, as determined by and published by the California Department of Housing and Community Development (HCD) published in Title 25, Section 6932 of the California Code of Regulations, as amended from time to time or if no longer determined by HCD, then as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937.

1.3 **Annual Report**. A report in substantially the form of Exhibit C attached to this Regulatory Agreement or in such other form as subsequently reasonably required by City.

1.4 **Applicant**. A Senior Citizen that completes and submits an application for occupancy of a Unit as a Qualified Household.

1.5 **Application**. Any agreement, application, certificate, document, or submission (or amendment of any of the foregoing): (a) necessary or appropriate for the Project, including any application for any building permit, certificate of occupancy, utility service or hookup, easement, covenant, condition, restriction, subdivision, or such other instrument as Developer may reasonably request for the Project; or (b) to enable Developer to seek any Approval or to use and operate the Project in accordance with the AHA and this Regulatory Agreement.

1.6 **Approval**. Any license, permit, approval, consent, certificate, ruling, variance, authorization, conditional use permit, or amendment to any of the foregoing, as shall be necessary or appropriate under any Law to commence, perform, or complete the Construction of the Project.

1.7 **Automobile Liability Insurance**. Insurance coverage against claims of personal injury (including bodily injury and death) and property damage covering all owned, leased, hired and non-owned vehicles used by Developer regarding the Project, with minimum limits for bodily injury and property damage of Two Million Dollars ($2,000,000). Such insurance shall be provided by a business or commercial vehicle policy and may be provided through a combination of primary and excess or umbrella policies, all of which shall be subject to pre-approval by City, which approval shall not be unreasonably withheld.

1.8 **Available**. When a Unit is held available for occupancy by a Qualified Household. A Unit shall be considered to be held available for occupancy by a Qualified Household, until occupied or reoccupied by a Qualified Household appropriate to the income category of the Unit, provided that Developer is exercising bona fide good faith efforts to let or relet the Unit to a Qualified Household.

1.9 **Bankruptcy Law**, Title 11, United States Code, and any other or successor California or Federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

1.10 **Bankruptcy Proceeding**. Any proceeding, whether voluntary or involuntary, under any Bankruptcy Law.

1.11 **Builder's Risk Insurance.** Builder's risk or course of construction insurance covering all risks of loss, less policy exclusions, on a completed value (non-reporting) basis, in an amount sufficient to prevent coinsurance, but in any event not less than one hundred percent

(100%) of the completed value of the subject Construction, including cost of debris removal (subject to a policy sublimit), but excluding foundation and excavations. Such insurance shall also: (a) grant permission to occupy; and (b) cover, for replacement cost, all materials on or about any offsite storage location intended for use in, or in connection with, the Property (subject to a policy sublimit).

1.12 **City**. The City of Aliso Viejo, a California municipal corporation.

1.13 **City Manager**. The Aliso Viejo City Manager or his/her designee.

1.14 **Claim**. 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.

1.15 **Control**. Possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether by ownership of equity interests, by contract or otherwise.

1.16 **CPI**. The United States Department of Labor, Bureau of Labor Statistics "Consumer Price Index" for all Urban Consumers (CPI-U) published for the Los Angeles-Riverside-Orange County, California, Metropolitan Statistical Area, with a base of 1982-1984 = 100, or a successor index. If the CPI ceases to be published, with no successor index, then the Parties shall reasonably agree upon a reasonable substitute index. The CPI for any date means the CPI last published before the calendar month that includes such date.

1.17 **Default**. The occurrence of any one or more of the following:

1.17.1 *Monetary Default*. A Monetary Default that continues for ten (10) calendar days after Notice from the non-defaulting Party, specifying in reasonable detail the amount of money not paid and the nature and calculation of each such payment;

1.17.2 *Reporting Default*. If Developer fails to deliver any Annual Report as and when required in Section 2.7.6 or fails or refuses to allow and cooperate with any City audit of Project Records in accordance with Section 2.10, each after ten (10) calendar days Notice of such failure;

1.17.3 *Bankruptcy or Insolvency*. Developer admits in writing that it is unable to pay its debts as they become due or becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within sixty (60) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Developer's assets or Developer's interest in this Regulatory Agreement (unless such appointment, attachment, execution, or other seizure was involuntary, and is contested with diligence and continuity and vacated and discharged within sixty (60) days);

1.17.4 *Transfer*. The occurrence of a Transfer, whether voluntarily or involuntarily or by operation of Law, in violation of the terms and conditions of this Regulatory Agreement or the AHA;

1.17.5 *Non-Monetary Default*. Any Non-Monetary Default, other than those specifically addressed in Sections 1.27.2, 1.27.3, 1.27.4 or 1.27.6, that is not cured within thirty (30) days after Notice to the Party alleged to be in Default describing the Non-Monetary Default in reasonable detail, or, in the case of a Non-Monetary Default that cannot with reasonable diligence be cured within thirty (30) days after the effective date of such Notice, if the Party alleged to be in Default does not do all of the following: (a) within thirty (30) days after Notice of such Non-Monetary Default, advise the other Party of the intention of the Party alleged to be in Default to take all reasonable steps to cure such Non-Monetary Default; (b) duly commence such cure within such period, and then diligently prosecute such cure to completion; and (c) complete such cure within a reasonable time under the circumstances; or

1.17.6 *AHA Default*. Any "Default" pursuant to the terms and conditions of the AHA, after the expiration of all applicable cure periods.

1.18 **Default Interest**. Interest at an annual rate equal to the lesser of: (a) eight percent (8%) per annum; or (b) the Usury Limit.

1.19 **Developer**. Aliso Viejo 621, L.P., a California limited partnership, and any Person to whom Developer Transfers its interest in this Regulatory Agreement in compliance with the terms and conditions of this Regulatory Agreement.

1.20 **Environmental Law**. Any Law regarding any of the following at, in, under, above, or upon the Property: (a) air, environmental, ground water, or soil conditions; or (b) clean-up, remediation, control, disposal, generation, storage, release, discharge, transportation, use of, or liability or standards of conduct concerning, Hazardous Substances, as now or may, at any later time, be in effect.

1.21 **Foreclosure Event**. Defined in Section 3.14.7.

1.22 **Government**. Each and every governmental agency, authority, bureau, department, quasi-governmental body, or other entity or instrumentality having or claiming jurisdiction over the Property or the Project (or any activity this Regulatory Agreement requires or allows), including the government of the United States of America, the California and the County governments and their subdivisions and municipalities, including the City and all other applicable governmental agencies, authorities, and subdivisions thereof, any planning agency, board of standards and appeals, department of buildings, city council, zoning board of appeals, design review board or committee or similar body having or claiming jurisdiction over the Property or any activities on or at the Property.

1.23 **Hazardous Substance**. Any flammable substances, explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, explosives, petroleum, petroleum products and any "hazardous" or "toxic" material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, including any material, substance or waste that is: (a) defined as a "hazardous substance" under Section 311 of the Water Pollution Control Act (33 U.S.C. § 1317), as amended; (b) substances designated as "hazardous substances" pursuant to 33 U.S.C. §

1321; (c) defined as a "hazardous waste" under Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, *et seq.*, as amended; (d) defined as a "hazardous substance" or "hazardous waste" under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. § 9601, *et seq.*, or any so-called "superfund" or "superlien" law; (e) defined as a "pollutant" or "contaminant" under 42 U.S.C. § 9601(33); (f) defined as "hazardous waste" under 40 C.F.R. Part 260; (g) defined as a "hazardous chemical" under 29 C.F.R. Part 1910; (h) any matter within the definition of "hazardous substance" set forth in 15 U.S.C. § 1262; (i) any matter, waste or substance regulated under the Toxic Substances Control Act ("TSCA") [15 U.S.C. Sections 2601, et seq.]; (j) any matter, waste or substance regulated under the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, et seq.; (k) those substances listed in the United States Department of Transportation (DOT)Table [49 C.F.R. 172.101]; (l) any matter, waste or substances designated by the EPA, or any successor authority, as a hazardous substance [40 C.F.R. Part 302]; (m) any matter, waste or substances defined as "hazardous waste" in Section 25117 of the California Health and Safety Code; (n) any substance defined as a "hazardous substance" in Section 25316 of the California Health and Safety Code; (o) any matter, waste, or substance that is subject to any other Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source; or (p) other substances, materials, and wastes that are, or become, regulated or classified as hazardous or toxic under Law or in the regulations adopted pursuant to said Law, including manure, asbestos, polychlorinated biphenyl, flammable explosives and radioactive material. Notwithstanding the foregoing, "Hazardous Substances" shall not include such products in quantities as are customarily used in the construction, maintenance, development or management of residential developments or associated buildings and grounds, or typically used in residential activities in a manner generally used in other comparable residential developments, or substances commonly ingested by a significant population living within the Project including, without limitation, alcohol, aspirin, tobacco and saccharine.

1.24 **Income Certification Form**. A certification in substantially the form of Exhibit B attached to this Regulatory Agreement or in such other form as may be reasonably required by City.

1.25 **Indemnify**. Where this Regulatory Agreement states that any Indemnitor shall "indemnify" any Indemnitee from, against, or for a particular Claim, that the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against such Claim (alleged or otherwise). "**Indemnified**" shall have the correlative meaning.

1.26 **Indemnitee**. Any Person entitled to be Indemnified under the terms of this Regulatory Agreement.

1.27 **Indemnitor**. A Party that agrees to Indemnify any other Person under the terms of this Regulatory Agreement.

1.28 **Law**. Every law, ordinance, requirement, order, proclamation, directive, rule, and regulation of any Government applicable to the Property or the Project, in any way, including any

development, use, maintenance, taxation, operation, or occupancy of, or environmental conditions affecting the Property or the Project, or relating to any taxes, or otherwise relating to this Regulatory Agreement or any Party's rights, obligations or remedies under this Regulatory Agreement, or any Transfer of any of the foregoing, whether in force on the date of this Regulatory Agreement or passed, enacted, modified, amended or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, or exemption.

1.29 **Legal Costs**. In reference to any Person, all 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, and consultant and expert witness fees and expenses.

1.30 **Lender**. Any of the following: (a) a bank (California, Federal or foreign), trust company (in its individual or trust capacity), insurance company, credit union, savings bank (California or Federal), pension, welfare or retirement fund or system, real estate investment trust (or an umbrella partnership or other entity of which a real estate investment trust is the majority owner), Federal or California agency regularly making or guaranteeing mortgage loans, investment bank, a Fortune 500 company or a subsidiary of a Fortune 500 company; or (b) any Person that is an Affiliate of or is a combination of any one or more of the Persons described in "(a)" of this Section 1.41.

1.31 **Liability Insurance**. Commercial general liability insurance against claims for bodily injury, personal injury, death or property damage occurring upon, in, or about the Property, the Project or adjoining streets or passageways, at least as broad a Insurance Services Office Occurrence Form CG0001, with a minimum liability limit of Four Million Dollars ($4,000,000) combined single limit and Two Million Dollars ($2,000,000) for any one occurrence and which may be provided through a combination of primary and excess or umbrella insurance policies. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Project or the general aggregate limit shall be twice the required minimum liability limit for any one occurrence.

1.32 **Maintenance Deficiency**. Defined in Section 3.10.2.

1.33 **Maintenance Standard**. Defined in Section 3.10.1

1.34 **Management Agent**. A Person with significant experience managing affordable rental housing projects substantially similar to the Project and that is, at the time, managing other financially self-supporting, successful affordable rental housing projects substantially similar to the Project.

1.35 **Manager Units**. Two (2) Units within the Project reserved exclusively for use by the on-site employees employed by Developer or the Management Agent, as applicable.

1.36 **Monetary Default**. Any failure by a Party to pay or deposit, when and as this Regulatory Agreement requires, any amount of money, any bond or surety or evidence of any insurance coverage required to be provided under this Regulatory Agreement, whether to or with the non-defaulting Party or a Third Person.

1.37 **Non-Monetary Default**. A Party's: (a) failure to perform any of its obligations under this Regulatory Agreement; (b) failure to comply with any affirmative or negative covenant or material restriction or prohibition in this Regulatory Agreement or the AHA, excepting any such failure constituting a Monetary Default; or (c) any other event or circumstance that, with the passage of time or giving of Notice, or both, or neither, would constitute a breach of this Regulatory Agreement.

1.38 **Notice**. Any consent, demand, designation, election, notice, or request relating to this Regulatory Agreement. All Notices must be in writing.

1.39 **Permitted Encumbrance**. Any Permitted Security Instrument, the AHA, any utility easements, temporary easements and other temporary encumbrances now or hereafter recorded against the Property, a bona fide Senior Loan, a bona fide Refinancing and any other document required or expressly allowed to be recorded against the Property by the express terms of this Regulatory Agreement or the AHA.

1.40 **Permitted Lender**. The holder of any Permitted Security Instrument.

1.41 **Permitted Security Instrument**. Any Security Instrument that secures a Senior Loan or any refinancing thereof.

1.42 **Permitted Transfer**. Any sale, transfer, assignment or conveyance of the Property or the Project that is approved by the City or is expressly permitted by the terms of this Regulatory Agreement or the AHA.

1.43 **Person**. Any association, corporation, governmental entity or agency, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization or other entity of any kind.

1.44 **Prevailing Wage Action**. Any of the following: (a) any determination by the California Department of Industrial Relations that prevailing wage rates should have been paid, but were not; (b) any determination by the California Department of Industrial Relations that higher prevailing wage rates than those paid should have been paid; (c) any administrative or legal action or proceeding arising from any failure to comply with any of California Labor Code Sections 1720 through 1781, as amended from time to time, regarding prevailing wages, including maintaining certified payroll records pursuant to California Labor Code Section 1776; or (d) any administrative or legal action or proceeding to recover wage amounts at law or in equity, including pursuant to California Labor Code Section 1781.

1.45 **Prohibited Encumbrance**. Any mortgage, lien, deed of trust, security instrument, mechanic's lien, easement or other encumbrance recorded or asserted against the Property or the Project that is not a Permitted Encumbrance.

1.46 **Prohibited Transferee**. Any Person with whom City is in litigation, any Person that City reasonably determines has any connection with any terrorist organization, any Person entitled to claim diplomatic immunity, any domestic or foreign governmental entity, except as reasonably approved by City, any Person that is immune or may elect to be immune from suit under California or Federal law, or any other Person that City reasonably disapproves.

1.47 **Project Records**. All books, statements, contracts and other records of Developer, any Affiliate and any Management Agent relating in any way to the acquisition, Construction, use, occupancy or operation of the Property or the Project, including Income Certification Forms completed by applicants or tenants of the Project, Annual Reports, accounting of Project revenues, and accounting of Project expenses. All Project Records shall be prepared in accordance with industry standards and generally accepted accounting principles.

1.48 **Property**. That certain real property located within the City of Aliso Viejo, County of Orange, State of California, specifically described in the legal description attached as Exhibit A to this Regulatory Agreement, which is incorporated into this Regulatory Agreement by this reference.

1.49 **Property Insurance**. Insurance providing coverage for the Property and all improvements on or to the Property against loss, damage, or destruction by fire and other hazards (but specifically excluding earthquake and terrorism) encompassed under the broadest form of property insurance coverage then customarily used for like properties in the County, in an amount equal to one hundred percent (100%) of the replacement value (without deduction for depreciation) of all improvements comprising the Project (excluding excavations and foundations), and in any event sufficient to avoid co-insurance and with no co-insurance penalty provision, with "ordinance or law" coverage. To the extent customary for like properties in the County at the time, such insurance shall include coverage for explosion of steam and pressure boilers and similar apparatus located on the Property; an "increased cost of construction" endorsement; and an endorsement covering demolition and cost of debris removal, all subject to policy sublimits. Property Insurance shall also include rental or business interruption insurance in an amount, at least, equal to the average annual gross revenue of the Project for the preceding three (3) calendar years and providing for a 12-month extended period of indemnity.

1.50 **Qualified Household**. A Senior Citizen that qualifies as a low or very low income household, as defined in California Health and Safety Code Section 50053 and accompanying regulations of the California Department of Housing and Community Development, as such law or regulations may hereafter be amended, replaced or renumbered from time-to-time.

1.51 **Refinancing**. Any loan secured by a Permitted Security Instrument that Developer obtains from a Lender subsequent to recordation of the Senior Loan for any of the following purposes: (1) to pay off all or a portion of an existing loan secured by a Permitted Security Instrument where the Lender providing the new loan will disburse loan proceeds to or on behalf of Developer exceeding the amount of principal and interest under the existing loan being paid plus the amount of any reasonable and customary fees and costs associated with obtaining such new loan that are actually paid by Developer and not rebated or refunded to Developer, the aggregate amount of such fees and costs not to exceed three percent (3%) of the original principal amount of the new loan; (2) disbursing funds to or on behalf of Developer without paying off any existing loan secured by a Permitted Security Instrument; or (3) any loan extension, modification or equivalent regarding an existing loan to Developer secured by a Permitted Security Instrument that results in the Lender of the existing loan disbursing additional loan proceeds to or on behalf of Developer in excess of the original principal amount of the loan.

1.52 **Security Instrument**. Any security instrument, deed of trust, security deed, contract for deed, deed to secure debt, or other voluntary real property (including leasehold) security instrument(s) or agreement(s) intended to grant real property (including leasehold) security for any obligation (including a purchase-money or other promissory note) encumbering the Property, as entered into, renewed, modified, consolidated, increased, decreased, amended, extended, restated, assigned (wholly or partially), collaterally assigned, or supplemented from time to time, unless and until paid, satisfied, and discharged of record. If two or more such security instruments are consolidated or restated as a single lien or held by the same Lender (as applicable), then all such security instruments so consolidated or restated shall constitute a single Security Instrument. A participation interest in a security instrument (or partial assignment of the secured loan) does not itself constitute a Security Instrument.

1.53 **Senior Citizen**. Defined in Civil Code Section 51.3.

1.54 **Senior Loan**. Any loan that Developer shall obtain from a Lender, the proceeds of which are to be used and applied solely to pay the reasonable costs of obtaining such loan for acquisition of the Property or for construction, installation and/or operation of the Project, or for the refinancing of any prior Senior Loan in accordance with the terms of this Agreement.

1.55 **Term**. The period of time beginning on the date of recordation of this Regulatory Agreement and ending on the fifty-fifth (55th) anniversary of the Certificate of Completion.

1.56 **Third Person**. Any Person that is not a Party, an Affiliate of a Party, or an elected official, officer, director, manager, shareholder, member, principal, partner, employee or agent of a Party.

1.57 **Transfer**. With respect to any property, right or obligation, any of the following, whether by operation of law or otherwise, whether voluntary or involuntary, and whether direct or indirect:

1.57.1 Any total or partial sale, assignment, conveyance, trust, power, or transfer in any other mode or form, by Developer of more than a 49% interest in Developer's interest in this Regulatory Agreement, the Property, or the Project or a series of such sales, assignments and the like that, in the aggregate, result in a disposition of more than a 49% interest in Developer's interest in this Regulatory Agreement, the Property or the Project, even if Developer is not technically the transferor; or

1.57.2 Any merger, consolidation, sale or lease of all or substantially all of the assets of Developer or a series of such sales, assignments and the like that, in the aggregate, result in a disposition of more than a 49% interest of all or substantially all of the assets of Developer; or

1.57.3 Any Property Transfer; or

1.57.4 The recordation of any deed of trust, mortgage, lien or similar encumbrance against all or any portion of the Property, other than a Permitted Security Instrument.

A "Transfer" shall not include a Permitted Transfer.

1.58 **Unavoidable Delay**. A delay in either Party performing any obligation under this Regulatory Agreement, except payment or deposit of money, arising from or on account of any cause whatsoever beyond the Party's reasonable control, including strikes, labor troubles or other union activities, casualty, war, acts of terrorism, riots, litigation, governmental action or inaction, regional natural disasters or inability to obtain required materials. Unavoidable Delay shall not include delay caused by a Party's financial condition, illiquidity, or insolvency.

1.59 **Unit**. Any residential accommodation within the Project, which shall be restricted by Developer for rental to and occupancy by a Qualified Household at an Affordable Rent, in accordance with the terms and conditions of the Regulatory Agreement, exclusive of the Manager Units.

1.60 **Usury Limit**. The highest rate of interest, if any, that Law allows under the circumstances.

1.61 **Waiver of Subrogation**. A provision in, or endorsement to, any insurance policy, by which the carrier agrees to waive rights of recovery by way of subrogation against either Party to this Regulatory Agreement for any loss such policy covers.

1.62 **Workers Compensation Insurance**. Workers compensation insurance complying with the provisions of California law and an employer's liability insurance policy or endorsement to a liability insurance policy, with a minimum liability limit of One Million Dollars ($1,000,000) per accident for bodily injury or disease, covering all employees of Developer and the Management Agent.

2. AFFORDABLE RENTAL HOUSING COVENANTS AND RESTRICTIONS

2.1 Developer Acknowledgment of Potential Impact of Regulatory Agreement. Developer acknowledges and agrees that this Regulatory Agreement imposes certain covenants, conditions and restrictions on the use and occupancy of the Property and the Project during the Term that may result in less than all of the Units being leased or rented and that may not constitute the highest and best use of the Property.

_____
Initials of Authorized
Developer Representative(s)

2.2 Agreement to Record. Developer agrees that City may record this Regulatory Agreement against the Property in the official records of the Recorder of the County of Orange, California.

2.3 Reservation of Property for Affordable Housing. Developer covenants and agrees to reserve and restrict the Property for residential occupancy by Senior Citizens who, at the time of initial occupancy of a Unit and continuously thereafter (subject to the other provisions of this Regulatory Agreement), until the end of the Term, are a Qualified Household. Developer covenants that each Unit shall be occupied or Available for occupancy by a Qualified Household

at an Affordable Rent on a continuous basis throughout the Term. Only two (2) residential units within the Project may be used as Manager Units at any given time. The Units shall be allocated as follows:

2.3.1 Thirty three (33) Units for very low income households.

2.3.2 One hundred sixty seven (167) Units for lower income households.

2.4 Affordable Senior Citizen Residential Rental Property Restrictive Covenant. Developer covenants to and for the benefit of City that Developer shall develop, own, manage and operate, or cause the management and operation of, the Project to provide Senior Citizen residential rental housing available only to Qualified Households at an Affordable Rent and for no other purposes, in accordance with this Regulatory Agreement. Developer hereby covenants to develop the Property with the Project. Developer will not knowingly permit any Unit to be used on a transient basis and will not lease or rent any Unit for an initial period of less than six (6) months. No Unit will, at any time, be leased or rented for use as a hotel, motel, time share, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitary or rest home, or for occupancy as a private home rental.

2.5 Continuous Operation Covenant. Developer covenants to and for the benefit of City to cause the Project to be continuously operated, in accordance with the other provisions of this Section 2, throughout the Term.

2.6 Abandonment. Developer shall not abandon or surrender the operation of all or any part of the Project during the Term, except due to material casualty or condemnation.

2.7 Affordable Rent. The monthly rent charged to and paid by a Qualified Household for the occupancy of a Unit may never exceed an Affordable Rent applicable to such Qualified Household.

2.7.1 **Rent Increases**. Rent for Units may be increased only once per calendar year, based on changes in AMI; provided that the rent for each Unit must never exceed an Affordable Rent for the Unit.

2.7.2 **Determination of Household Income**. Determination of Qualified Household income shall be made by Developer at the time of initial application of an Applicant. At the time of initial application, Developer shall require an Applicant to complete the Income Certification Form and certify the accuracy of the information provided on such form. On or before January 1st of each calendar year during the Term and within sixty (60) days following the expiration of the Term, Developer shall require each Qualified Household occupying a Unit to recertify the Qualified Household's income on the Income Certification Form. Developer shall make a good faith effort to verify the accuracy of income information provided in any Income Certification Form by an Applicant for occupancy of a Unit or by a Qualified Household occupying a Unit, by taking one or more of the following steps, as reasonably required or indicated: (1) obtain an income tax return and copy of each W2 Wage and Earnings Statement for the most recently concluded income tax year; (2) conduct a credit reporting agency or similar search; (3) obtain an income verification form from the Applicant's or the Qualified Household's current employer(s); (4) obtain an income verification form from the United States Social

Security Administration and/or the California Department of Social Services, if the Applicant or the Qualified Household receives assistance from either of such agencies; or (5) if the Applicant or a Qualified Household is unemployed and has no such income tax return, obtain another form of independent verification. For purposes of this Section 2.7.2, Developer may conclusively rely upon the evidence of the age of the occupant(s) of a Unit as presented in a valid California Driver's License, other form of identification issued by the State of California or the United States Government, which includes a date of birth. All such verification information shall only be obtained by Developer after obtaining the Applicant's or the Qualified Household's written consent for the release of such information to Developer. Failure to consent in writing to the release of such income verification information to Developer may disqualify an Applicant for occupancy of a Unit or be grounds for termination of Qualified Household's occupancy of a Unit.

2.7.3 The Units are not specifically assigned to any particular Qualified Household income category. The restricted income level of each Unit may change as Units become vacant, a Qualified Household tenant's income changes or other Units are occupied by Qualified Households. In all circumstances, though, the rent for each Unit shall be an Affordable Rent for the Unit as necessary to maintain the restricted income tenant mix required under Section 2.3. If the income category of a Qualified Household upon recertification is different from the previous income category of the Qualified Household, Developer or Management Agent shall rent the next available Unit to a Qualified Household with an income level that will maintain the tenant income level mix set forth in Section 2.3.

2.7.4 Developer shall maintain on file all Income Certification Forms completed by Applicants and Qualified Households that occupied or are occupying Units in accordance with Section 2.10.1 and shall provide copies of the rent roll and Income Certification Forms to City for its review and approval within fifteen (15) days following Notice by City to Developer.

2.7.5 Developer and each Qualified Household occupying a Unit shall permit City to conduct inspections of the Property, the Project and each Unit, from time-to-time, for purposes of verifying compliance with this Regulatory Agreement, upon five (5) days prior written notice to Developer.

2.7.6 Developer shall submit its first Annual Report to City on the first year anniversary of the recordation of the Certificate of Completion. Thereafter, on the same date each year during the Term, Developer shall submit an Annual Report to City. City shall maintain the confidentiality of the information contained in any Annual Report specifically relating to any particular Qualified Household occupying a Unit, to the extent reasonably allowed by Law, as determined by the City Attorney.

2.8 Developer Covenant Regarding Lease of Units. Developer, for itself, its successors and assigns, covenants and agrees that, if any Unit is rented or leased during the Term, the rental or lease of the Unit shall be accomplished through a written lease agreement and all of the following restrictions shall apply:

2.8.1 A Qualified Household shall be the record tenant and only occupants of the Unit.

2.8.2 Developer shall, upon request of such prospective tenant, provide a legible copy of this Regulatory Agreement to each prospective tenant of any Unit, prior to entering into a lease with such tenant for any Unit.

2.8.3 The lease for each Unit shall expressly state that it is subject and subordinate to this Regulatory Agreement.

2.8.4 The lease for each Unit shall be for an initial period of not less than six (6) months.

2.8.5 The lease for each Unit shall not contain any of the following provisions:

(a) An agreement by the Qualified Household to be sued, to admit guilt or to the entry of a judgment in favor of Developer in a lawsuit brought in connection with the lease;

(b) An agreement by the Qualified Household that Developer may take, hold or sell personal property of any member(s) of the Qualified Household, without notice to the Qualified Household and a court decision on the respective rights of Developer and the member(s) of the Qualified Household, other than an agreement by the Qualified Household concerning disposition of personal property remaining in the Unit after the Qualified Household has moved out of the Unit;

(c) An agreement by the Qualified Household not to hold Developer or its agents legally responsible for any willful misconduct or negligence attributable to Developer or its agents;

(d) An agreement by the Qualified Household that Developer may institute a lawsuit, involving or affecting the Qualified Household or any of its members, without notice to the Qualified Household;

(e) An agreement by the Qualified Household that Developer may evict the Qualified Household without instituting a civil court proceeding in which the Qualified Household has an opportunity to present a defense before a court decision on the respective rights of Developer and the Qualified Household;

(f) An agreement by the Qualified Household to waive any right to a trial by jury;

(g) An agreement by the Qualified Household to waive the Qualified Household's right to appeal or to otherwise challenge a court decision in connection with the lease;

(h) An agreement by the Qualified Household to pay attorney's fees or other legal costs, even if the Qualified Household wins in a court proceeding by Developer against the Qualified Household; provided, however, the Qualified Household may be obligated to pay costs if the Qualified Household loses such a legal action;

(i) An agreement by the Qualified Household to pay one (1) or more security deposits (or the equivalent) totaling in excess of the amount of one month's rent for such Unit. Failure to pay any security deposit installment may constitute a breach of the lease.

2.8.6 Each lease for a Unit shall contain all of the following provisions:

(a) An agreement authorizing Developer to immediately terminate the tenancy of a Qualified Household occupying a Unit, where one or more members of that Qualified Household misrepresented any fact material to the qualification of such household as a Qualified Household;

(b) An agreement providing that each Qualified Household occupying a Unit shall be subject to annual certification or recertification of income as a condition to continued occupancy of the Unit;

(c) An agreement providing that each Qualified Household occupying a Unit may be subject to rental increases in accordance with this Regulatory Agreement; and

(d) Providing that Developer will not discriminate on the basis of race, creed, color, gender, sexual orientation, national origin, ancestry, religion, marital status, age, disability or receipt of public assistance or housing assistance in connection with rental of a Unit, or in connection with the employment or application for employment of persons for operation and management of the Project, and all contracts, applications and leases entered into for such purposes shall contain similar non-discrimination clauses to such effect.

2.8.7 Developer shall not terminate the tenancy or refuse to renew the lease or rental agreement of a Qualified Household except for: (i) violations of the terms and conditions of the lease; (ii) for violation of applicable Federal, California, or local law; or (iii) for other good cause. Developer shall, in connection with termination of the tenancy of a Qualified Household or a refusal to renew the lease or rental agreement of a Qualified Household, serve written notice upon the Qualified Household specifying the grounds for the action in accordance with all applicable Laws and at least thirty (30) days before the effective date of the termination of the tenancy, unless the termination is pursuant to a legal action in unlawful detainer.

2.9 Tenant Selection Policies and Criteria. Developer shall adopt written tenant selection policies and criteria that:

2.9.1 are consistent with the purpose of providing affordable rental housing for Qualified Households at an Affordable Rent;

2.9.2 are reasonably related to tenant eligibility and ability to perform the obligations of the lease for a Unit;

2.9.3 subject to applicable fair housing laws, give reasonable preference and consideration to the housing needs of individuals that are involuntarily displaced by activities of the City;

2.9.4 provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable;

2.9.5 give prompt written notice to any rejected Applicant of the grounds for rejection;

2.9.6 provide for all of the Units to be Available for occupancy on a continuous basis to Qualified Households at an Affordable Rent;

2.9.7 do not give preference to any particular class or group of Persons in leasing or renting the Units, except as provided in 2.9.3 and to the extent that a tenant must be a Qualified Household;

2.9.8 provide that there shall be no discrimination against or segregation of any Person or group of Persons, on account of any basis listed in subdivision (a) or (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 leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Property, nor shall Developer or any Person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the Property. Notwithstanding the immediately preceding sentence, with respect to familial status, this Section 2.9.8 shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in this Section 2.9.8 shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. All deeds, leases or contracts made or entered into by Developer as to the Units, the Project or the Property shall contain covenants prohibiting discrimination, as set forth in Health and Safety Code Section 33436(b).

2.9.9 provide for a statement in all advertisements, notices and signs for the availability of Units for lease or rent to the effect that Developer is an equal housing opportunity provider.

2.10 Project Records Retention; Audit and Examination Rights.

2.10.1 **Retention of Project Records**. Developer shall prepare and maintain and/or cause its Management Agent to prepare and maintain complete and accurate Project Records during the Term. Developer shall, at all times during the Term and for a period of six (6) years following the end of the Term, maintain and cause to be maintained by the Management Agent, safe and intact, all of the Project Records. From time to time, upon request from City, Developer shall make all Project Records, whether in the custody or control of

Developer or Management Agent, available to City, the City's auditor, representative or agent for examination and copying at any reasonable time, on five (5) calendar days advance Notice. Developer shall also provide City any additional information concerning the Units, the Project or the Property reasonably requested by City.

2.10.2 **Audit Procedures**.

(a) City may cause an audit of any and all Project Records by an independent auditor of City's selection at City's sole cost and expense. City shall preserve the confidentiality of information contained in the Project Records, to the extent permitted by Law, as determined by the City Attorney.

(b) If Developer fails to provide any Annual Report to City, as and when required under Section 2.7.6, Developer shall be in Default under this Regulatory Agreement. Notwithstanding any other provision of this Regulatory Agreement, if Developer fails to deliver any Annual Report to City, within ten (10) calendar days after Notice specifying such Default, City shall have the right, in addition to any other rights or remedies City may have under this Regulatory Agreement regarding such Default, to conduct an audit of any and all Project Records to attempt to identify the information that should have been provided by Developer in such Annual Report. Developer shall reimburse City for the cost of any audit conducted pursuant to this Section 2.10.2(b), on Notice of such cost from City. Developer shall pay Default Interest to City on the amount of any audit cost becoming due to City from Developer pursuant to this Section 2.10.2(b), that is not paid within fifteen (15) calendar days following Notice requesting such payment, from the date of such Notice until paid in full.

2.11 Compliance. Developer shall, during the Term and at Developer's sole cost and expense, in all material respects: (a) comply with all Laws; and (b) procure and comply with all Approvals required by Law.

3. PROJECT MANAGEMENT

3.1 Management. Developer and Management Agent shall operate the Project in a manner that will provide decent, safe and sanitary residential facilities to the occupants of the Project, will comply with all the provisions of this Regulatory Agreement, the AHA, Density Bonus Agreement, any other applicable contract or agreement between the City and Developer, and all applicable Law. Developer shall be responsible for management of the Project, including, without limitation, the selection of Qualified Households, certification and recertification of household size and income for Qualified Households occupying all Units, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. City shall have no responsibility for the management or operation of the Project or the Property. The Project shall at all times be managed by an experienced Management Agent reasonably acceptable to City, with demonstrated ability to operate residential rental facilities similar to the Project in a manner that will provide decent, safe, and sanitary housing in a self-sufficient manner. The City hereby approves USA Multifamily Management, Inc. as the Management Agent. For the purposes of this Regulatory Agreement, if Developer directly performs the functions of the Management Agent by its employees or by means of a service contract with an Affiliate, Developer's role as the Management Agent shall be deemed

approved by City. If the Management Agent is a Person other than Developer or an Affiliate, Developer shall submit for City's approval the identity of any proposed Management Agent, together with additional information relevant to the background, experience and financial condition of any proposed Management Agent, as reasonably requested by City. If the proposed Management Agent meets the standard for a qualified Management Agent under this Regulatory Agreement, City shall approve the proposed Management Agent by Notice to Developer within thirty (30) days following the City's receipt of all requested information regarding such Management Agent, as provided for in the immediately preceding sentence. Unless the proposed Management Agent is disapproved by City within such thirty (30) day period, the Management Agent shall be deemed approved by City.

3.1.1 **Performance Review**. Upon Notice from City, Developer shall, with the participation of City, periodically review the management practices and financial status of the Project and the Management Agent. City shall not request such periodic review more frequently than once each calendar year. The purpose of each periodic review will be to enable City to determine whether or not the Project is being operated, maintained, and managed in accordance with the requirements and standards of this Regulatory Agreement, the AHA and all applicable Law.

3.1.2 **Replacement of Management Agent**. Any contract for the operation or management of the Project entered into by Developer with a Management Agent shall provide that the contract shall have a term of no more than one (1) calendar year and that the contract is subject to the provisions of this Regulatory Agreement. If the Project is not being operated and managed in accordance with the requirements and standards of this Regulatory Agreement, the AHA, and all applicable Law, Developer shall remove the Management Agent and replace the Management Agent with a different Management Agent approved by City, pursuant to Section 3.1. Developer's failure to remove and replace the Management Agent in any such circumstance shall constitute a Default by Developer under this Regulatory Agreement.

3.2 Insurance.

3.2.1 **Developer to Insure**. To protect City against all insurable Claims resulting from the actions of Developer or the Management Agent in connection with this Regulatory Agreement, the Property or the Project, Developer shall maintain, at the sole cost and expense of Developer, the following insurance (or its then reasonably available equivalent): (a) Liability Insurance; (b) Property Insurance; (c) Automobile Liability Insurance if the Developer owns or leases any vehicles; (d) Builder's Risk Insurance (regarding any Construction); and (e) Workers Compensation Insurance.

3.2.2 **Nature of Insurance Program**. All Liability Insurance, Property Insurance, Builder's Risk Insurance and Automobile Liability Insurance policies this Regulatory Agreement requires shall be issued by carriers that: (a) are listed in the then current "Best's Key Rating Guide—Property/Casualty—United States & Canada" publication (or its equivalent, if such publication ceases to be published) with a minimum financial strength rating of "A-" and a minimum financial size category of "VII" (exception may be made for the California Compensation Insurance Fund when not specifically rated); and (b) are authorized to do business in California. Developer may provide any insurance under a "blanket" or "umbrella" insurance

policy, provided that: (1) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to Property and the Project, which amount(s) shall equal or exceed the amount(s) required by this Regulatory Agreement; and (2) such policy otherwise complies with the requirements of this Regulatory Agreement.

3.2.3 **Policy Requirements and Endorsements**. All insurance policies required by this Regulatory Agreement shall contain (by endorsement or otherwise) the following provisions:

(a) *Insured*. Liability Insurance and Automobile Liability Insurance policies shall name City as "additional insured." Property Insurance and Builders Risk Insurance policies shall name City as a "loss payee." The coverage afforded to City shall be at least as broad as that afforded to Developer regarding the Property and the Project and may not contain any terms, conditions, exclusions or limitations applicable to City that do not apply to Developer.

(b) *Primary Coverage*. Any insurance or self-insurance maintained by City shall be excess of all insurance required under this Regulatory Agreement and shall not contribute with any insurance required by this Regulatory Agreement.

(c) *Contractual Liability*. Liability Insurance policies shall contain contractual liability coverage for Developer's indemnity obligations under this Regulatory Agreement. Developer's obtaining or failure to obtain such contractual liability coverage shall not relieve Developer from nor satisfy any indemnity obligation of Developer under this Regulatory Agreement.

(d) *Notice to City*. Each insurance carrier shall give City no less than thirty (30) calendar days' advance written notice of any cancellation or non-renewal of any insurance policy required by this Regulatory Agreement. Also, phrases such as "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" shall not be included in the cancellation wording of any certificates of insurance or any coverage for City. Developer shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits are exhausted or upon insolvency of the insurer that issued the policy.

(e) *Deliveries to City*. Evidence of Developer's maintenance of all insurance policies required by this Regulatory Agreement shall be delivered to City on the date of this Regulatory Agreement. No later than three (3) days before any insurance required by this Regulatory Agreement expires, is cancelled or its liability limits are reduced or exhausted, Developer shall deliver to City evidence of Developer's maintenance of all insurance this Regulatory Agreement requires. Each insurance policy required by this Regulatory Agreement shall be endorsed to state that coverage shall not be cancelled, suspended, voided, reduced in coverage or in limits, except after thirty (30) calendar days' advance written notice of such action has been given to City by certified mail, return receipt requested; provided; however, that only ten (10) days' advance written notice shall be required for any such action arising from non-payment of the premium for the insurance. Phrases such as "endeavor to" and "but failure to mail such Notice shall impose no obligation or liability of any kind upon the company" shall not

be included in the cancellation wording of any certificates or policies of insurance applicable to City pursuant to this Regulatory Agreement.

(f) *Waiver of Certain Claims*. Developer shall cause each insurance carrier providing any Liability Insurance, Builder's Risk Insurance, Worker's Compensation Insurance, Automobile Liability Insurance or Property Insurance coverage under this Regulatory Agreement to endorse their applicable policy(ies) with a Waiver of Subrogation with respect to City, if not already in the policy. To the extent that Developer obtains insurance with a Waiver of Subrogation, Developer and City release each other, and their respective authorized representatives, from any Claims for damage to any Person or property to the extent such Claims are paid by such insurance policies obtained pursuant to or in satisfaction of the provisions of this Regulatory Agreement.

(g) *No Representation*. No Party makes any representation that the limits, scope, or forms of insurance coverage this Regulatory Agreement requires are adequate or sufficient.

(h) *No Claims Made Coverage*. None of the insurance coverage required under this Regulatory Agreement may be written on a claims-made basis.

(i) *Fully Paid and Non-Assessable*. All insurance obtained and maintained by Developer in satisfaction of the requirements of this Regulatory Agreement shall be fully paid for and non-assessable. However, Developer's policies may be subject to insurer audits.

(j) *City Option to Obtain Coverage*. During the continuance of a Default arising from the failure of Developer to carry any insurance required by this Regulatory Agreement, City may, at its sole option, purchase any such required insurance coverage and City shall be entitled to immediate payment from Developer of any premiums and associated reasonable costs paid by City for such insurance coverage. Any amount becoming due and payable to City under this Section 3.2.3(j) that is not paid within fifteen (15) calendar days after written demand from City for payment of such amount, with an explanation of the amounts demanded, will bear interest from the date of the demand at the rate of eight percent (8%) per annum or the Usury Limit, whichever is less. Any election by City to purchase or not to purchase insurance otherwise required by the terms of this Regulatory Agreement to be carried by Developer shall not relieve Developer of its obligation to obtain and maintain any insurance coverage required by this Regulatory Agreement.

(k) *Separation of Insured*. All Liability Insurance and Automobile Liability Insurance shall provide for separation of insured for Developer and City. Insurance policies obtained in satisfaction of or in accordance with the requirements of this Regulatory Agreement may provide a cross-suits exclusion for suits between named insured Persons, but shall not exclude suits between named insured Persons and additional insured Persons.

(l) *Deductibles and Self-Insured Retentions*. Any deductibles or self-insured retentions under insurance policies required by this Regulatory Agreement shall be declared to and approved by City. Developer shall pay all such deductibles or self-insured

retentions regarding City or, alternatively, the insurer under each such insurance policy shall eliminate such deductibles or self-insured retentions with respect to City.

(m) *No Separate Insurance*. Developer shall not carry separate or additional insurance concurrent in form or contributing in the event of loss with that required under this Regulatory Agreement, unless City is made an additional insured thereon, as required by this Regulatory Agreement.

(n) *Insurance Independent of Indemnification*. The insurance requirements of this Regulatory Agreement are independent of Developer's indemnification and other obligations under this Regulatory Agreement and shall not be construed or interpreted in any way to satisfy, restrict, limit, or modify Developer's indemnification or other obligations or to limit Developer's liability under this Regulatory Agreement, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall the provision of such insurance preclude City from taking such other actions as are available to it under any other provision of this Regulatory Agreement or otherwise at law or in equity.

3.2.4 **Insurance Independent of Indemnification**. The insurance requirements of this Regulatory Agreement are independent of Developer's indemnification and other obligations under this Regulatory Agreement and shall not be construed or interpreted in any way to satisfy, restrict, limit, or modify Developer's indemnification or other obligations under this Regulatory Agreement or to limit Developer's liability under this Regulatory Agreement, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage. Further, Developer's provision of the insurance required by this Regulatory Agreement shall not preclude City from taking such other actions as are available to City under any other provision of this Regulatory Agreement or otherwise at law or in equity.

3.2.5 **Deductibles and Self-Insured Retentions**. All deductibles and self-insured retentions under Developer's insurance policies are subject to the City's prior written approval, which shall not be unreasonably withheld. Developer shall pay or get the insurance company to waive any and all deductibles and self-insured retentions under all insurance policies issued in satisfaction of the terms of this Regulatory Agreement regarding any Claims relating to City, except to the extent that any such Claims arise from the negligence or willful misconduct of City.

3.2.6 **No Separate Insurance**. Developer shall not carry separate or additional insurance relating to the Project that is concurrent in form or contributing in the event of loss with the insurance required under this Regulatory Agreement, unless such insurance is endorsed in favor of City as required by this Regulatory Agreement.

3.2.7 **No Representation**. Neither Party makes any representation that the limits, scope, or forms of insurance coverage this Regulatory Agreement requires are adequate or sufficient.

3.2.8 **Increases in Coverage**. All insurance liability limit amounts stated in this Regulatory Agreement shall be increased upon Developer's receipt of a written request by City to increase said insurance liability limit amounts. City shall only request an increase in insurance liability limit amounts pursuant to this Section 3.2.8 when the CPI has increased 15 points or more since the since the last increase in insurance liability limit amounts by Developer. The aggregated insurance liability limit amounts shall be increased by no less than $1,000,000 for each 15 point increase in the CPI.

3.3 Hazardous Substances.

3.3.1 **Restrictions**. Developer shall not cause or permit to occur on, under or at the Project or the Property during the Term: (a) any violation of any Environmental Law; or (b) the use, generation, release, manufacture, refining, production, processing, storage, or disposal of any Hazardous Substance, or transportation to or from the Project or the Property of any Hazardous Substance, unless both: (i) reasonably necessary and customary to construct, operate or maintain the Project for uses this Regulatory Agreement permits; and (ii) in compliance with all Environmental Laws.

3.3.2 **Compliance; Clean-Up**. Developer shall, at Developer's sole cost and expense: (a) comply with all Environmental Laws applicable to the Project and the Property and, to the extent Environmental Law requires, clean up any Hazardous Substance; (b) make all submissions to, deliver all information required by, and otherwise fully comply with all requirements of any Government under any Environmental Law; (c) if any Government requires any clean-up plan or clean-up because of a discharge of Hazardous Substances, prepare and submit the required plans and all related bonds and other financial assurances; (d) promptly and diligently carry out all such clean-up plans; and (e) Indemnify City against any discharge of Hazardous Substances or violation of Environmental Law, in accordance with Section 3.7. Developer's obligations under this Section 3.3 shall not limit Developer's rights against Third Persons (exclusive of City).

3.4 Restrictions on Change in Management or Control of Developer, Assignment and Transfer.

3.4.1 **Restrictions**. Developer acknowledges and agrees that the qualifications and identity of Developer are of particular importance and concern to City. Developer further acknowledges and agrees that City has relied and is relying on the specific qualifications and identity of Developer in entering into this Regulatory Agreement with Developer and that City would not have entered into this Regulatory Agreement but for the specific qualifications and identity of Developer. As a consequence, Transfers are permitted only as expressly provided in this Regulatory Agreement. Developer represents to City that it has not made and agrees that it will not create or permit to be made or created, any Transfer, other than a Permitted Transfer, either voluntarily, involuntarily or by operation of Law, without the prior written approval of City, which may be given, withheld or conditioned in the sole and absolute discretion of City. Any Transfer made in contravention of this Section 3.4 shall be voidable at the election of City. Developer hereby acknowledges and agrees that the restrictions on Transfers set forth in this Section 3.4 are reasonable.

3.4.2 **Delivery of Transfer Documents**. All instruments and other legal documents proposed to effect any proposed Transfer shall be submitted to City for review, at least thirty (30) calendar days prior to the proposed date of the Transfer, and the written approval, disapproval or conditions of City regarding the proposed Transfer shall be provided to Developer, within thirty (30) calendar days following City's receipt of all proposed Transfer documents. Developer agrees to reimburse City for all reasonable costs and expenses incurred by City in connection with its review of each proposed Transfer, including all Legal Costs and other Third Person consultant fees and expenses.

3.5 Casualty. If any casualty occurs to the Project during the Term, Developer shall, except as otherwise provided in the Senior Loan Documents, restore the Project with reasonable promptness.

3.6 Condemnation. If any portion of the Project is taken by exercise of the power of eminent domain by a Government during the Term, then Developer shall, subject to the provisions of the Senior Loan Documents, restore the remaining portions of the Project with reasonable promptness, to the extent practicable.

3.7 Indemnity.

3.7.1 **Developer Indemnity Obligations**. Developer shall Indemnify City against any Claim to the extent such Claim arises from any wrongful intentional act or negligence of Developer. Developer shall also Indemnify City against any and all of the following: (a) any Application made by or at Developer's request; (b) any agreements that Developer (or anyone claiming by or through Developer) makes with a Third Person regarding the Property or the Project; (c) any workers' compensation claim or determination relating to any employee of Developer or their contractors; (d) any Prevailing Wage Action relating to this Regulatory Agreement or the Project; and (e) any Claim attributable to any action or failure to act by Developer.

3.7.2 **No City Liability**. During the Term: (a) Developer is and shall be responsible for operation of the Property and the Project; and (b) City shall not be liable for any injury or damage to any property (of Developer or any other Person) or to any Person occurring on or about the Property or the Project, except to the extent caused by the City's wrongful intentional act or negligence.

3.7.3 **Independent of Insurance Obligations**. Developer's indemnification obligations under this Regulatory Agreement shall not be construed or interpreted as in any way restricting, limiting, or modifying Developer's insurance or other obligations under this Regulatory Agreement. Developer's obligation to Indemnify City under this Regulatory Agreement is independent of Developer's insurance and other obligations under this Regulatory Agreement. Developer's compliance with its insurance obligations and other obligations under this Regulatory Agreement shall not in any way restrict, limit or modify Developer's indemnification obligations under this Regulatory Agreement and are independent of Developer's other obligations under this Regulatory Agreement.

3.7.4 **Survival of Indemnification and Defense Obligations**. The indemnity and defense obligations of Developer under this Regulatory Agreement shall survive the expiration or earlier termination of this Regulatory Agreement, until any and all actual or prospective Claims regarding any matter subject to an indemnity obligation under this Regulatory Agreement are fully, finally, absolutely and completely barred by the applicable statutes of limitations.

3.7.5 **Immediate Duty to Defend**. The duty to defend under this Regulatory Agreement includes Claims for which an Indemnitee may be liable without fault or strictly liable and applies regardless of whether the issues of negligence, liability, fault, default, or other obligation on the part of the Indemnitor or the Indemnitee have been determined. The duty to defend applies immediately, regardless of whether the Indemnitee has paid any sums or incurred any detriment arising out of or relating (directly or indirectly) to any Claims. It is the express intention of the Parties that an Indemnitee be entitled to obtain summary adjudication or summary judgment regarding an Indemnitor's duty to defend the Indemnitee at any stage of any claim or suit within the scope of the Indemnitor's indemnity obligations under this Regulatory Agreement.

3.8 Indemnification Procedures. Wherever this Regulatory Agreement requires any Indemnitor to Indemnify any Indemnitee:

3.8.1 **Prompt Notice**. The Indemnitee shall promptly Notify the Indemnitor of any Claim.

3.8.2 **Selection of Counsel**. The Indemnitor shall select counsel reasonably acceptable to the Indemnitee. Counsel to Indemnitor's insurance carrier that is providing coverage for a Claim shall be deemed reasonably satisfactory, except in the event of a potential or actual conflict of interest for such counsel regarding such representation or such counsel proves to be incompetent regarding such representation. Even though the Indemnitor shall defend the Claim, Indemnitee may, at its option and its own expense, engage separate counsel to advise it regarding the Claim and its defense. The Indemnitee's separate counsel may attend all proceedings and meetings. The Indemnitor's counsel shall actively consult with the Indemnitee's separate counsel. The Indemnitor and its counsel shall, however, control the defense, except to the extent that the Indemnitee waives its rights to indemnity and defense for such Claim.

3.8.3 **Cooperation**. The Indemnitee shall reasonably cooperate with the Indemnitor's defense of the Indemnitee.

3.8.4 **Settlement**. The Indemnitor may only settle a Claim without the consent of the Indemnitee, if the Claim is within the policy limits of applicable insurance policies provided in satisfaction of the requirements of this Regulatory Agreement and such settlement procures a release of Indemnitee from the subject Claims, does not require Indemnitee to make any payment to the claimant and neither Indemnitee nor Indemnitor on behalf of Indemnitee admits any liability. Notwithstanding the immediately preceding sentence or any other provision of this Regulatory Agreement, the Indemnitee's consent shall be required to settle any and all Claims under Builder's Risk Insurance.

3.8.5 **Insurance Proceeds**. The Indemnitor's obligations shall be reduced by net insurance proceeds the Indemnitee actually receives for the matter giving rise to indemnification obligation.

3.9 No Limitation. Developer hereby acknowledges and agrees that Developer's duties, obligations and liabilities under this Regulatory Agreement, including without limitation, under Sections 3.3 and Section 3.7, are in no way limited or otherwise affected by any information City may have concerning the Project or the Property and/or the presence within the Project or the Property of any Hazardous Substance, whether City obtained such information from Developer, or from its own investigations or from a Third Person.

3.10 Maintenance. Developer, for itself, its successors and assigns, covenants and agrees that:

3.10.1 **Maintenance Standard**. The entirety of the Property and the Project shall be maintained by Developer in good condition and repair and a neat, clean and orderly condition, normal wear and tear excepted, including, without limitation, maintenance, repair, reconstruction and replacement of any and all asphalt, concrete, landscaping, utility systems, irrigation systems, drainage facilities or systems, grading, subsidence, retaining walls or similar support structures, foundations, signage, ornamentation, and all other improvements on or to the Property, now existing or made in the future by or with the consent of Developer, as necessary to maintain the appearance and character of the Property, as improved with the Project. Developer's obligation to maintain the Property and the Project described in the immediately preceding sentence shall include, without limitation, all of the following, at Developer's sole cost and expense: (i) maintaining the surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability; (ii) removing all papers, mud, sand, debris, filth and refuse and thoroughly sweeping areas to the extent reasonably necessary to keep areas in a clean and orderly condition; (iii) removing or covering graffiti with the type of surface covering originally used on the affected area, (iv) placing, keeping in repair and replacing any necessary and appropriate directional signs, markers and lines; (v) installing, operating, keeping in repair and replacing where necessary, such artificial lighting facilities as shall be reasonably required; (vi) maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of plants and other landscaping material as necessary to maintain the appearance and character of the landscaping; (vii) properly maintaining the windows, structural elements, and painted exterior surface areas of the Project in a clean and presentable manner; (viii) keeping the common areas of the Project and the Property free of accumulated debris, appliances, inoperable motor vehicles or motor vehicle parts, or free of storage of lumber, building materials or equipment not regularly in use on the Property; (ix) parking of any commercial motor vehicle in excess of 7,000 pounds gross weight anywhere on the Property on other than on a temporary basis; and (x) the use of garage areas on the Property for purposes other than the parking of motor vehicles and the storage of personal possessions and mechanical equipment of Developer or persons residing in Units on the Property. Developer's obligation to maintain the Project and the Property described in this Section 3.10.1 is, collectively, referred to in this Regulatory Agreement as the "**Maintenance Standard**." Developer may contract with a maintenance contractor to provide for performance of all or part of the duties and obligations of Developer with respect to the maintenance of the Property or the Project; provided, however, that Developer

shall remain responsible and liable for the maintenance of the Property and the Project, at all times.

3.10.2 **Maintenance Deficiency**. If, at any time during the Term, there is an occurrence of an adverse condition on any area of the Property or the Project in contravention of the Maintenance Standard (each such occurrence being a "**Maintenance Deficiency**"), then City may Notify Developer of the Maintenance Deficiency. If Developer fails to cure or commence and diligently pursue to cure the Maintenance Deficiency within thirty (30) calendar days following its receipt of Notice of the Maintenance Deficiency, City may conduct a public hearing, following transmittal of Notice of the hearing to Developer, at least, ten (10) days prior to the scheduled date of such public hearing, to verify whether a Maintenance Deficiency exists and whether Developer has failed to comply with the provisions of Section 3.10.1. If, upon the conclusion of the public hearing, City finds that a Maintenance Deficiency exists and remains uncured, City shall have the right to enter the Property and/or the Project and perform all acts necessary to cure the Maintenance Deficiency, or to take any other action at law or in equity that may then be available to City to accomplish the abatement of the Maintenance Deficiency. Any sum expended by City for the abatement of a Maintenance Deficiency pursuant to this Section 3.10.2 shall be reimbursed to City by Developer within thirty (30) calendar days after written demand to Developer for payment. If any amount becoming due to City under this Section 3.10.2 is not paid within thirty (30) calendar days after written demand to Developer for payment, Developer shall also pay Default Interest on such amount until paid in full.

3.10.3 **Graffiti**. Graffiti, as defined in Government Code Section 38772, that has been applied to any exterior surface of a structure or improvement on the Property that is visible from any public right-of-way adjacent or contiguous to the Property, shall be removed by Developer by either painting over the evidence of such vandalism with a paint that has been color-matched to the surface on which the paint is applied, or graffiti may be removed with solvents, detergents or water, as appropriate. If any such graffiti is not removed within seventy-two (72) hours following the time of the discovery of the graffiti, City shall have the right to enter the Property and/or the Project and remove the graffiti, without notice to Developer. Any sum expended by City for the removal of graffiti pursuant to this Section 3.10.3, shall be limited to an amount not to exceed Five Hundred Dollars ($500) per entry by City and shall be reimbursed to City by Developer within thirty (30) calendar days after written demand to Developer for payment. If any amount becoming due to City for graffiti removal under this Section 3.10.3 is not paid within thirty (30) calendar days after written demand to Developer for payment, Developer shall also pay Default Interest in such amount, until paid in full.

3.11 <u>No City Responsibility for Project</u>. City shall have no responsibility for the Construction, installation, rehabilitation, management, operation or maintenance of the Project or the Property.

3.12 <u>Only Permitted Encumbrances</u>. Developer shall not record and shall not allow to be recorded against the Property any Security Instrument, lien or other encumbrance that is not a Permitted Encumbrance or as otherwise authorized pursuant to the AHA. Developer shall immediately remove or cause to be removed (or providing title insurance in form and substance reasonably acceptable to City and issued by a title insurance company reasonably acceptable to City, insuring the priority of this Regulatory Agreement and the Deed of Trust securing City

Loan, as superior to such lien), at Developer's sole cost and expense, any Prohibited Encumbrance made or recorded against the Property or shall assure the complete satisfaction of any such Prohibited Encumbrance to the satisfaction of City, in the City's sole and absolute discretion. The covenants of Developer set forth in this Section 3.12 regarding the placement of encumbrances on the Property shall run with the land of the Property and bind successive Developers of the Property, until recordation (or deemed issuance) of the Certificate of Completion for the Project.

3.13 City Right to Discharge Prohibited Encumbrances. After sixty (60) calendar days Notice to Developer of a Prohibited Encumbrance and provided that Developer has not caused such Encumbrance to be removed during such period, City shall have the right, but not the obligation, to satisfy or remove any Prohibited Encumbrance against the Property or the Project and receive reimbursement from Developer for any amounts paid or incurred in satisfying or removing any such Prohibited Encumbrance, upon demand. Any amount expended by City to discharge a Prohibited Encumbrance that is not reimbursed to City by Developer within thirty (30) calendar days following written demand for payment from City shall accrue Default Interest, until paid in full. Nothing in this Section 3.13, shall require Developer to pay or make provisions for the payment of any tax, assessment, lien or charge that Developer is in the process of contesting the validity or amount thereof, in good faith, and so long as such contest shall not subject all or any portion of the Property to forfeiture or sale.

3.14 Rights of Permitted Lender and City Regarding Permitted Security Instruments.

3.14.1 **Notice of Liens**. Developer shall promptly Notify City of any Security Instrument or lien asserted against or attached to all or any portion of the Project or the Property, whether by voluntary act of Developer or otherwise; provided, however, that no Notice of filing of preliminary notices or mechanic's liens need be given by Developer to City, prior to suit being filed to foreclose any such mechanic's lien.

3.14.2 **Notice of Default**. Whenever a Permitted Lender delivers any Notice of Default to Developer, the Permitted Lender shall concurrently send a copy of such Notice of Default to the City. Upon delivery of such Notice of Default, City shall have the right, at its option, to commence the cure or remedy of any Default of Developer set forth in such Notice. If City fails or refuses to cure or remedy any Default of Developer, as set forth in such Notice, within a period of sixty (60) days from delivery of such Notice or, if Developer notifies the Permitted Lender and City that it intends to or is currently curing such Default, then sixty (60) days after Developer's right to cure the Default has expired or terminated, then the Permitted Lender shall thereafter have the right to commence the cure or remedy of the Default of Lender. Whenever City delivers any Notice of Default to Developer under this Regulatory Agreement, City shall send a copy of such Notice of Default to each Permitted Lender holding a Permitted Security Instrument of which City has received Notice and a contact address for transmittal of such Notices. Each Permitted Lender receiving a copy of any such Notice of Default shall have the right, at its option, to commence the cure or remedy of any Default of Developer set forth in such Notice and to diligently and continuously proceed with such cure or remedy of such Default, within the cure period allowed to Developer under this Regulatory Agreement. City shall accept such performance by a Permitted Lender with the same force and effect as if furnished by Developer.

3.14.3 **No Termination of Permitted Security Instruments by Default**. A Default by Developer under this Regulatory Agreement shall not defeat or render invalid the lien of any Permitted Security Instrument made in good faith and for value as to all or any part of the Property, whether or not the Permitted Lender is subordinated to this Regulatory Agreement; but unless this Regulatory Agreement has otherwise been subordinated, this Regulatory Agreement shall be binding and effective against any owner of the Property, whose title thereto is acquired pursuant to a Permitted Security Instrument or from a Person holding or benefiting from a Permitted Security Instrument.

3.14.4 **Permitted Lender Rights Regarding Termination or Modification**. No modification of this Regulatory Agreement shall be binding upon the Permitted Lender without its prior written consent.

3.14.5 **City Right to Purchase Obligation**. In any case where, after delivery of Notice of Default of Developer under a Permitted Security Instrument, City shall have the option, in the City's sole and absolute discretion, to purchase the rights of such Permitted Lender against or in the reference to Developer, the Property or Project secured by such Permitted Security Instrument held by such Permitted Lender by payment to the Permitted Lender of the amount of the unpaid obligations (including all principal, interest, fees, and any other amounts due and owing) secured by such Permitted Security Instrument. If City has not exercised its right to purchase the obligation secured by a Permitted Security Instrument pursuant to this Section 3.14.5 within forty-five (45) days following receipt of the notice of default under the Permitted Security Instrument, the affected Permitted Lender may demand by Notice that City act to exercise or forego the right granted in this Section 3.14.5 by Notice to the Permitted Lender. If City fails to exercise the right granted in this Section 3.14.5 by Notice to the Permitted Lender within forty-five (45) calendar days following the date of the City's receipt of such written demand from the Permitted Lender, City shall be conclusively deemed to have waived its rights under this Section 3.14.5. If City timely exercises its rights under this Section 3.14.5, the purchase transaction shall close on the earlier of (i) sixty (60) days after the date of such Permitted Lender's receipt of the City's Notice exercising such rights or (ii) the date that Lender or its designee acquires the Property.

3.14.6 **City Right to Cure Obligations**. In the event of a monetary default by Developer under any Permitted Security Instrument, City may cure the default of Developer under the applicable Permitted Security Instrument, but is under no obligation to do so, prior to completion of any sale or foreclosure of all or any portion of the Property under the applicable Permitted Security Instrument. City shall be entitled to reimbursement from Developer of all costs and expenses incurred by City in curing any default of Developer under any Permitted Security Instrument, under demand. Any amount expended by City to cure a default of Developer under any Permitted Security Instrument that is not reimbursed to City by Developer within thirty (30) calendar days after Notice of such amount to Developer, shall accrue Default Interest, until paid in full.

3.14.7 **Foreclosure of Permitted Security Instrument**. Foreclosure of any Permitted Security Instrument, whether by judicial proceedings or by power of sale, or any conveyance by deed in lieu of foreclosure ("**Foreclosure Event**"), shall not require the consent of City or constitute a Default under this Regulatory Agreement. Following any Foreclosure

Event, City shall recognize as "Developer" under this Regulatory Agreement any purchaser or other transferee of the entire Property that assumes each and all the obligations of Developer under this Regulatory Agreement pursuant to an assumption agreement reasonably satisfactory to City. If any Permitted Lender or its nominee or assignee acquires Developer's title to the entire Property as a result of a Foreclosure Event, such Permitted Lender shall thereafter have the right to assign or transfer Developer's interest under this Regulatory Agreement to an assignee upon obtaining the City's consent with respect to such assignee, which consent shall not be unreasonably withheld or delayed. Upon such acquisition of title by a Permitted Lender, or the assignee or nominee of a Permitted Lender, or the purchaser from a Permitted Lender or such assignee or nominee, the City Manager, on behalf of the City, shall execute and deliver an amendment to, or an assignment or assumption agreement for, this Regulatory Agreement with such Person, upon the written request of such Person given not later than one hundred twenty (120) days after such Person's acquisition of title to the entire Property. Such amended Regulatory Agreement shall be substantially the same in form and content as the provisions of this Regulatory Agreement, except as to the parties thereto, and the acknowledgment or elimination of any requirements that have been fulfilled prior to the date of such amendment and shall have priority equal to the priority of this Regulatory Agreement. Nothing in this Regulatory Agreement shall be deemed to permit or authorize any Permitted Lender to devote all or any portion of the Property to any uses, or to construct any improvements thereon, other than those uses of the Project provided for or authorized by this Regulatory Agreement. This Section 3.14.7 shall not apply to any Permitted Lender with whom City has executed a valid and binding subordination agreement subordinating this Regulatory Agreement.

4. COVENANTS RUN WITH THE LAND

4.1 Covenants to Run With the Land. Developer and City hereby declare their mutual specific intent that the covenants, conditions, restrictions, reservations and agreements set forth in this Regulatory Agreement are part of a plan for the promotion and preservation of affordable rental housing within the territorial jurisdiction of City and that each shall be deemed covenants running with the Property, binding upon each successor-in-interest of Developer in the Project or the Property for the duration of the Term. Regardless of classification or characterization, each of the covenants, conditions, restrictions and agreements contained in this Regulatory Agreement touch and concern the Property and each of them is expressly declared to be for the benefit and in favor of City for the duration of the Term, regardless of whether City is or remains an owner of any land or interest in land to which such covenants, conditions, restrictions or agreements relate. City, in the event of any breach of this Regulatory Agreement, has the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings, to enforce the curing of such breach, as provided in this Regulatory Agreement, at law or in equity. Developer hereby expressly assumes the duty and obligation to perform each of the agreements and covenants and to honor each of the reservations and restrictions set forth in this Regulatory Agreement. Each and every contract, deed or other instrument hereafter executed covering or conveying all or any portion of the Property or the Project or any interest in the Property or the Project or any Unit shall incorporate all of the provisions of this Regulatory Agreement, either expressly or by reference, and any contract, deed or other instrument transferring any estate or interest in the Property or the Project shall conclusively be deemed to have been executed, delivered and accepted subject to the agreements, covenants, conditions, reservations, and restrictions of this Regulatory Agreement, regardless of whether such

agreements, covenants, conditions, reservations and restrictions are set forth in or referenced such contract, deed or other instrument. After such transfer or assignment, all rights and obligations of the transferor Developer shall be assumed by the transferree Developer and the transferor Developer shall not incur any liability or have any obligation under this Agreement accruing after the date of such transfer or assignment.

5. REMEDIES

5.1 Remedies. If a Default occurs, then City shall, at the City's option, have any or all of the following described remedies, all cumulative (so exercise of one remedy shall not preclude exercise of another remedy), in addition to such other remedies as may be available at law or in equity or under any other terms of this Regulatory Agreement. The City's remedies shall include:

5.1.1 **Suits Before End of Term**. City may sue Developer for damages or other relief, from time to time, at the City's election, without terminating this Regulatory Agreement, including by mandamus or other suit, action or proceeding at law or in equity, to require Developer to perform the covenants or agreements or observe the conditions or restrictions of this Regulatory Agreement, or enjoin any acts or things that may be unlawful or in violation of the rights of City under this Regulatory Agreement; or by other action at law or in equity, as necessary or convenient to enforce the covenants, agreements, conditions or restrictions of this Regulatory Agreement.

5.1.2 **Receipt of Moneys**. No receipt of money by City from Developer after any Notice of Default shall affect any Notice previously given to Developer, or waive the City's right to enforce payment or deposit of any amount payable or later falling due, or the City's right to enter the Project, it being agreed that after service of Notice of Default or the commencement of suit or proceedings, or after final order or judgment, City may demand, receive, and collect any moneys due or thereafter falling due, without in any manner affecting such Notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of Developer's liability to City.

5.1.3 **No Waiver**. No failure by City to insist upon strict performance of any condition, covenant, agreement, restriction or reservation of this Regulatory Agreement or to exercise any right or remedy upon a Default, and no acceptance of full or partial payment of any amount due or becoming due to City during the continuance of any such Default, shall waive any such Default or such condition, covenant, agreement, restriction or reservation. No obligation of Developer under this Regulatory Agreement or the AHA, and no Default, shall be modified, except by a written instrument executed by City. No waiver of any Default shall modify this Regulatory Agreement or the AHA. Each and every covenant, agreement, condition, restriction and reservation of this Regulatory Agreement shall continue in full force and effect with respect to any other then-existing or subsequent Default of such condition, covenant, agreement, restriction or reservation of this Regulatory Agreement.

5.1.4 **Damages**. City may recover from Developer all damages City incurs by reason of Developer's Default and reimbursement of the City's reasonable out of pocket costs, including Legal Costs and bank fees for dishonored checks. City may recover such damages at any time after Developer's Default, including after the expiration of the Term.

Notwithstanding any Law to the contrary, City need not commence separate actions to enforce Developer's obligations for each amount or payment not paid, or each month's accrual of damages and costs for Developer's Default, but may bring and prosecute a single combined action for all such damages and costs.

5.1.5 **Injunction of Breaches**. Whether or not a Default has occurred, City may obtain a court order enjoining Developer from continuing any Default or from committing any threatened Default. Developer specifically and expressly acknowledges that damages would not constitute an adequate remedy to City for any Non-Monetary Default.

5.2 Specific Enforcement. Developer agrees that specific enforcement of Developer's non-monetary obligations under this Regulatory Agreement is one of the reasons that City entered into the AHA and that, if Developer breaches any such obligation, potential monetary damages to City, as well as to prospective Qualified Households, would be difficult, if not impossible, to evaluate and quantify. Therefore, in addition to any other relief to which City may be entitled as a consequence of Developer's default under this Regulatory Agreement, Developer agrees to the imposition of the remedy of specific performance against Developer under this Regulatory Agreement.

5.3 Enforcement. City shall have the power to enforce this Regulatory Agreement and no other Person shall have any right or power to enforce any provision of this Regulatory Agreement on behalf of City or to compel City to enforce any provision of this Regulatory Agreement against Developer, the Project, the Property or any Unit. Further, pursuant to Health and Safety Code Section 33334.3(f)(7), this Regulatory Agreement shall be enforceable by the City, any resident of a Unit, any resident association with members who reside in Units, former residents of Units who last resided in any such Unit, Applicants for occupancy of Units and persons on an affordable housing waiting list, subject to the specific requirements of such law.

5.4 Termination by Agreement. Any provision of this Regulatory Agreement may be terminated upon written agreement between City and Developer if City, in its sole and absolute discretion, determines that such a termination will not adversely affect the affordable rental housing goals or requirements of City.

6. GENERAL PROVISIONS

6.1 Relationship of Parties. Nothing contained in this Regulatory Agreement shall be interpreted or understood by any of the Parties, or by any Third Person, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between City and Developer or Developer's agents, employees or contractors. Developer shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, or both, perform any services required of them by the terms of this Regulatory Agreement regarding the Project or the Property. Except as otherwise expressly provided in this Regulatory Agreement, Developer has the right to exercise full control of employment, direction, compensation and discharge of all Persons assisting Developer in the development, operation or maintenance of the Project or the Property. Developer shall be solely responsible for all matters relating to payment of its employees, including compliance with tax

withholding and all other Laws governing such employees. Developer shall be solely responsible for its own acts and those of its agents and employees.

6.2 Subordination. The City agrees that this Regulatory Agreement be made junior and subordinate to liens given in connection with Loans required for the financing of the construction of the Project, including any refinancing thereof; as set forth in the AHA. The City Manager is hereby authorized and directed to execute such subordination agreements, modifications to this Agreement and/or other documents as may be requested by the Lender(s) to evidence subordination to the Loan(s), without further authorization from the City, provided that the City Manager reserves the right to review, modify and negotiate, in good faith, the terms and conditions of such agreements.

6.3 No Claims. Nothing contained in this Regulatory Agreement shall create or justify any claim against City by any Person that Developer may have employed or with whom Developer may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the operation or maintenance of the Project or the Property.

6.4 Approvals.

6.4.1 Any approvals required from City under this Regulatory Agreement shall not be unreasonably withheld, conditioned or delayed, except where otherwise specifically provided in this Regulatory Agreement. Wherever this Regulatory Agreement states that a Party's approval shall be "reasonable" or not unreasonably withheld: (a) such approval shall not be unreasonably withheld, delayed or conditioned; (b) no withholding of approval shall be deemed reasonable, unless withheld by Notice specifying reasonable grounds, in reasonable detail, for such withholding, and indicating specific reasonable changes in the proposal under consideration that would make it acceptable; and (c) if a Party grants its consent to any matter, this shall not waive its rights to require such consent for any further or similar matter.

6.4.2 Except as otherwise specifically provided in this Regulatory Agreement, whenever this Regulatory Agreement calls for approval by a Party of a proposed document to be submitted by the other Party, the receiving Party shall notify the other Party of its approval or disapproval of such document within thirty (30) calendar days after receipt of the proposed document. Unless otherwise provided in this Regulatory Agreement, a Party's failure to respond within such thirty (30) calendar day period shall be deemed the Party's approval. A Party shall provide specific reasons for any disapproval.

6.5 Warranty Against Payment of Consideration for Regulatory Agreement. Developer represents and warrants to City that: (a) it has not employed or retained any Person to solicit or secure this Regulatory Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees of Developer and Third Persons to whom fees are paid for professional services related to planning, design or Construction of the Project or documentation of this Regulatory Agreement; and (b) no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by Developer or any of its agents, employees or representatives to any elected or appointed official or employee of either the City or City in an attempt to secure this Regulatory Agreement or favorable terms or

conditions for this Regulatory Agreement. Breach of the representations or warranties of this Section 6.5 shall entitle City to terminate this Regulatory Agreement upon seven (7) days Notice to Developer. Upon any such termination of this Regulatory Agreement, Developer shall immediately refund any payments made to or on behalf of Developer by the City pursuant to this Regulatory Agreement or otherwise related to the Property, any Approval, or the Project, prior to the date of any such termination.

6.6 Non-liability of City Officials or Employees. No City official, employee or agent shall be personally liable to Developer, or any successor in interest to Developer, in the event of any Default by City under this Regulatory Agreement.

6.7 Non-liability of Developer Officers or Employees. No member, official, employee, attorney or consultant of Developer shall be personally liable to City, or any successor in interest, in the event of any default or breach by Developer or for any amount which may become due to City or to its successor, or on any obligations under the terms of this Regulatory Agreement.

6.8 Governing Law. This Regulatory Agreement shall be governed by the laws of the State of California, without application of conflicts of laws principles.

6.9 Amendment. This Regulatory Agreement may be amended only by a written instrument executed by both Developer and City.

6.10 Principles of Interpretation. No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Regulatory Agreement. The Parties have both participated substantially in the negotiation, drafting, and revision of this Regulatory Agreement, with advice from counsel and other advisers of their own selection. A term defined in the singular in this Regulatory Agreement may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which govern all language in this Regulatory Agreement. The words "include" and "including" in this Regulatory Agreement shall be construed to be followed by the words: "without limitation." Each collective noun in this Regulatory Agreement shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to any document, including this Regulatory Agreement, refers to such document as modified from time to time (except, at the City's option, any modification that violates this Regulatory Agreement), and includes all exhibits, schedules, and riders to such document. The word "or" in this Regulatory Agreement includes the word "and."

6.11 Attorney's Fees. In the event that a Party brings an action to enforce this Regulatory Agreement or that otherwise arises out of this Regulatory Agreement, the prevailing Party in such action shall be entitled to recover from the other Party Legal Costs to be fixed by the court in which a judgment is entered, as well as the costs of such suit. For the purposes of this Regulatory Agreement, the words "reasonable attorneys' fees," in the case of City, include the salaries, costs and overhead of the lawyers employed in the Office of the City Attorney, as allocated on an hourly basis.

6.12 Severability. If any term or provision of this Regulatory Agreement or its application to any Person or circumstance shall to any extent be invalid or unenforceable, then the

remainder of this Regulatory Agreement, or the application of such term or provision to Persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected by such invalidity. All remaining provisions of this Regulatory Agreement shall be valid and be enforced to the fullest extent allowed by Law.

6.13 Time is of the Essence. Time is of the essence with respect to the performance of each term, provision, covenant, condition, restriction, reservation or agreement contained in this Regulatory Agreement.

6.14 Unavoidable Delay; Extension of Time of Performance.

6.14.1 **Notice**. Subject to any specific provisions of this Regulatory Agreement stating that they are not subject to Unavoidable Delay or otherwise limiting or restricting the effects of an Unavoidable Delay, performance by either Party under this Regulatory Agreement shall not be deemed or considered to be in Default, where any such Default is due to the occurrence of an Unavoidable Delay. Any Party claiming an Unavoidable Delay shall Notify the other Party: (a) within ten (10) days after such Party knows of any such Unavoidable Delay; and (b) within five (5) days after such Unavoidable Delay ceases to exist. To be effective, any Notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The Party claiming an extension of time to perform due to an Unavoidable Delay shall exercise its commercially reasonable best efforts to cure the condition causing the Unavoidable Delay, within a reasonable time.

6.14.2 **Assumption of Economic Risks**. EACH PARTY EXPRESSLY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, OF EITHER PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMAND OR CHANGES IN THE ECONOMIC ASSUMPTIONS OF EITHER PARTY THAT MAY HAVE PROVIDED A BASIS FOR ENTERING INTO THIS REGULATORY AGREEMENT SHALL NOT OPERATE TO EXCUSE OR DELAY THE PERFORMANCE OF EACH AND EVERY ONE OF EACH PARTY'S OBLIGATIONS AND COVENANTS ARISING UNDER THIS REGULATORY AGREEMENT. ANYTHING IN THIS REGULATORY AGREEMENT TO THE CONTRARY NOTWITHSTANDING, THE PARTIES EXPRESSLY ASSUME THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES AND/OR MARKET DEMAND/CONDITIONS AND WAIVE, TO THE GREATEST EXTENT ALLOWED BY LAW, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, CHANGED ECONOMIC CIRCUMSTANCES, FRUSTRATION OF PURPOSE, OR SIMILAR THEORIES. THE PARTIES EXPRESSLY ASSUME THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF THE EFFECTIVE DATE.

_____	_____
Initials of Authorized Representative(s) of City	Initials of Authorized Representative(s) of Developer

6.15 Titles and Headings for Reference Only. The titles and headings of the articles, paragraphs and sections of this Regulatory Agreement are for convenience and reference only and

are not to be considered a part of this Regulatory Agreement and shall not in any way interpret, modify or restrict the meaning of any term, provision, covenant, condition, restriction, reservation or agreement contained in this Regulatory Agreement.

6.16 Notices.

6.16.1 Any and all Notices sent by either Party to the other Party pursuant to or as required by this Regulatory Agreement shall be proper, if in writing and transmitted to the principal office of City or Developer, as applicable, as designated in Section 6.16.2, by one or more of the following methods: (i) messenger for immediate personal delivery, (ii) a nationally recognized overnight delivery service (i.e., Federal Express, United Parcel Service, etc.) or (iii) registered or certified United States mail, postage prepaid, return receipt requested. Such Notices may be sent in the same manner to such other addresses as either Party may from time to time designate by Notice, in accordance with this Section 6.16. Any such Notice shall be deemed to be received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day that it is delivered by personal delivery, on the date of delivery by a nationally recognized overnight courier service or three (3) calendar days after it is placed in the United States mail, as provided in this Section 6.16. Rejection, other refusal to accept or the inability to deliver a Notice because of a changed address of which no notice was given, shall be deemed receipt of the Notice.

6.16.2 The following are the authorized addresses for the submission of Notices to the Parties:

to Developer:

Aliso Viejo 621, L.P.
c/o USA Aliso Viejo 621, Inc.
3200 Douglas Blvd., Suite 200
Roseville, CA 95661
Attn: President

And

Foundation for Affordable
Housing II Inc.
384 Forest Ave, Suite 14
Laguna Beach, California 92651
Attn: President

with copy to:

Bocarsly Emden Cowan Esmail &
Arndt LLP
633 West Fifth Street, 64th Floor
Los Angeles, CA 90071
Attn: Kyle Arndt

to City:	**with copy to:**
City of Aliso Viejo 12 Journey, Suite 100 Aliso Viejo, CA. 92656-5335 Attn: City Manager	Best Best & Krieger LLP 18101 Von Karman Avenue Suite 1000 Irvine, CA 92612 Attn: Elizabeth Hull, Esq.

6.17 Entire Agreement.

6.17.1 This Regulatory Agreement may be executed in counterpart originals, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument. This Regulatory Agreement includes forty (40) pages and three (3) exhibits.

6.17.2 This Regulatory Agreement, the Density Bonus Agreement and the AHA constitute the entire understanding and integrate all of the terms, conditions, covenants, restrictions, reservations, terms, provisions and agreements of City and Developer regarding the Property and the Project, and supersede all negotiations or previous agreements between City and Developer with respect to all or any part of the Property or the Project.

6.17.3 None of the terms, conditions, covenants, restrictions, reservations, terms, provisions or agreements set forth in this Regulatory Agreement shall be deemed to be merged with any deed conveying title to any estate or interest in the Property or the Project.

6.17.4 Signatures delivered by facsimile shall be binding as originals upon the Parties so signing and delivering; provided, however, that original signature(s) shall be required for documents to be recorded.

6.17.5 Real Property Tax Abatement. Developer shall have the right to apply for and obtain an abatement and/or exemption of the Project from real property taxes in accordance with all applicable rules and regulations, including Section 214(g) of the California Revenue and Taxation Code.

6.17.6 City Approvals and Actions. The City Manager shall have the authority to make approvals, issue interpretations, waive provisions, grant extensions of time, approve amendments to this Agreement and execute documents on behalf of the City so long as such actions do not materially or substantially change the number of the Units, the method for calculating the affordability of the Units or reduce the length of the affordability of the Project or add to the costs incurred or to be incurred by City as specified herein. The City Manager reserves the right, in its sole and absolute discretion, to submit any requested modification, interpretation, amendment or waiver to the City Council if the City Manager determines or believes that such action could increase the risk, liability or costs to City, or change the affordability covenants or reduce the length of affordability of the Project.

[**Signatures on following page]**

SIGNATURE PAGE
TO
REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, CONDITIONS AND RESTRICTIONS RESTRICTING USE OF PROPERTY FOR AFFORDABLE HOUSING
(Vintage Aliso)

IN WITNESS WHEREOF, City and Developer have executed this Regulatory Agreement by and through the signatures of their duly authorized representative(s) as of the date(s) set forth below:

CITY:

CITY OF ALISO VIEJO, a California municipal corporation

By:_____
David Doyle
City Manager

Date: _____

ATTEST:

By:_____
City Clerk

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP

By:_____
City Attorney

DEVELOPER:

ALISO VIEJO 621, L.P., a California limited partnership

By: USA Aliso Viejo 621, Inc., a California corporation, its administrative general partner

By: _____
Geoffrey C. Brown, President

By: Foundation for Affordable Housing II Inc., a California nonprofit public benefit corporation, its managing general partner

By: _____
Thomas E. Willard, President

Date: _____

[SIGNATURES MUST BE NOTARY ACKNOWLEDGED FOR RECORDING]

EXHIBIT "A"
TO
REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, CONDITIONS AND RESTRICTIONS RESTRICTING USE OF PROPERTY FOR AFFORDABLE HOUSING
(Vintage Aliso)

Property Legal Description

EXHIBIT "B"
TO
REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, CONDITIONS AND RESTRICTIONS RESTRICTING USE OF PROPERTY FOR AFFORDABLE HOUSING
(Vintage Aliso)

Income Certification Form

[Attached behind this cover page]

Income Certification Form

NOTE TO TENANT: This form is designed to assist you in computing "Adjusted Income" in accordance with the method set forth in the United States Department of Housing and Urban Development ("HUD") Regulations at United States Code of Federal Regulations, Title 24, Part 5, Section 5.611. You should make certain that this form is at all times up-to-date with the HUD Regulations.

Re: **[Address of Unit]**

1. Members of Household. I/We, the undersigned state that I/we have read and answered fully, frankly and personally each of the following questions for all persons who are to occupy the unit being applied for in the above apartment project. Listed below are the names of all persons who intend to reside in the unit:

Names of Members of Household	**Relationship to Head of Household**	**Age**	**Social Security Number**	**Place of Employment**
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

2. Adjusted Income Computation. The total anticipated annual income, calculated in accordance with the provisions of this Section 2, of all persons over the age of 18 years listed in Section 1 for the 12-month period beginning the date that: (i) I/we plan to move into a unit; or (ii) the date of this Certification, whichever is later, is $ _____.

(a) Annual income means all amounts, monetary or not, which:

(1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or

(2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and

(3) Which are not specifically excluded in paragraph (c) of this Section 2.

(4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

(b) Annual income includes, but is not limited to:

(1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

(2) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of $5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;

(4) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this Section 2);

(5) Payments in lieu of earnings, such as unemployment and disability compensation, workers compensation and severance pay (except as provided in paragraph (c)(3) of this Section 2);

(6) Welfare assistance payments.

(i) Welfare assistance payments made under the Temporary Assistance for Needy Families (TAN) program are included in annual income only to the extent such payments:

(A) Qualify as assistance under the TAN program definition at 45 C.F.R. 260.31; and

(B) Are not otherwise excluded under paragraph (c) of this Section 2.

(ii) If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

(A) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus

(B) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.

(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling;

(8) All regular pay, special pay and allowances of a member of the Armed Forces (except as provided in paragraph (c)(7) of this Section 2).

(c) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);

(3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and workers compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this Section 2);

(4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a live-in aide, as defined in 24 C.F.R. 5.403;

(6) The full amount of student financial assistance paid directly to the student or to the educational institution;

(7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

(8) (i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed $200 per month) received by a resident for performing a service for City or Developer, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the City Council. No resident may receive more than one such stipend during the same period of time;

(v) Incremental earnings and benefits resulting to any family member from participation in qualifying California or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

(11) Earnings in excess of $480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(12) Adoption assistance payments in excess of $480 per adopted child;

(13) [Reserved]

(14) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.

(15) Amounts received by the family in the form of refunds or rebates under California or local law for property taxes paid on the Unit;

(16) Amounts paid by a California agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 C.F.R. 5.609(c) apply.

3. Capital Asset and Savings Information. Do the persons whose income or contributions are included in Section 2 above:

(a) have savings, stocks, bonds, equity in real property or other form of capital investment (excluding the values of necessary items of personal property such as furniture and automobiles and interests in Indian trust land)? ___ Yes ____ No; or

(b) have they disposed of any assets (other than at a foreclosure or bankruptcy sale) during the last two years at less than fair market value? ___Yes ___No

(c) If the answer to (a) or (b) above is yes, does the combined total value of all such assets owned or disposed of by all such persons total more than $5,000? ___Yes ___No

(d) If the answer to (c) is yes, state:

(1) the amount of income expected to be derived from such assets in the 12-month period beginning on the date of initial occupancy in the unit that you propose to rent: $_____; and

(2) the amount of such income, if any, that was included in Section 2 above: $_____

4. Full-Time Student Information.

(a) Are all of the individuals who propose to reside in the unit full-time students*? ____Yes ____No

*A full-time student is an individual enrolled as a full-time student during each of five calendar months during the calendar year in which occupancy of the unit begins at an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance and is not an individual pursuing a full-time course of institutional or farm training under the supervision of an accredited agent of such an educational organization or of a state or political subdivision thereof.

(b) If the answer to 4(a) is yes, is at least one of the proposed occupants of the unit a husband and wife entitled to file a joint federal income tax return? ____Yes ____No

5. No Relationship With Developer. Neither myself nor any other occupant of the unit I/we propose to rent is an owner of the rental housing project in which the unit is located (hereinafter the "Owner"), has any family relationship to Owner or owns, directly or indirectly, any interest in the ownership. For purposes of this section, indirect ownership by an individual shall mean ownership by a family member, ownership by a corporation, partnership, estate or trust in proportion to the ownership or beneficial interest in such corporation, partnership, estate or trust held by the individual or a family member, and ownership, direct or indirect, by a partner of the individual.

6. Certification of Accuracy of Information. This certificate is made with the knowledge that it will be relied upon by Developer to determine maximum income for eligibility to occupy the unit; and I/we declare that all information set forth herein is true, correct and complete and, based upon information I/we deem reliable and that the statement of total anticipated income contained in this Section 2 is reasonable and based upon such investigation as the undersigned deemed necessary. I/we acknowledge that I/we have been advised that the making of any misrepresentation or misstatement in this declaration will constitute a material breach of my/our agreement with Developer to lease the unit and will entitle Developer to prevent or terminate

my/our occupancy of the unit by institution of an action for eviction or other appropriate action or proceedings. I/we will assist Developer in obtaining any information or documents required to verify the statements made herein, including either an income verification from my/our present employer(s) or copies of federal tax returns for the immediately preceding calendar year.

7. Housing Issuer Statistical Information (Optional--will be used for reporting purposes only):

Marital Status: _____

Race (Head of Household)

White _____ Asian _____ Hispanic _____
African-American _____ Native American _____ Other _____

Physical Disability: Yes _____ No _____

I/we declare under penalty of perjury under the laws of the United States of America and the laws of the State of California that the foregoing is true and correct.

Executed this _____ day of_____, ____ in the County of Orange, California.

_____
Applicant

_____
Applicant

[Signature of all persons over the age of 18 years listed in Section 2 above required]

FOR COMPLETION BY DEVELOPER ONLY:

8. Calculation of eligible income:

(a) Enter amount entered for entire household in Section 2: $_____

(b) (1) If answer to Section 3(c) is "yes," enter the total amount entered in paragraph 3(d)(1), subtract from that figure the amount entered in 3(d)(2) and enter the remaining balance ($_____);

(2) Multiply the amount entered in Section 8(b)(1) times the current passbook savings rate to determine what the total annual earnings on the amount in Section 8(b)(1) would be if invested in passbook savings ($_____), subtract from that figure the amount entered in Section 8(b)(1) and enter the remaining balance

(3) Enter at right the greater of the amount calculated under (1) or (2) above: $_____;

(c) TOTAL ELIGIBLE INCOME
(Line 8(a) plus line 8(b)(3)): $_____

9. The amount entered in Line 8(c):

_____ Qualifies the applicant(s) as a **[insert income category of Qualified Household.]**

_____ Does not qualify the applicant(s) as a Qualified Household.

10. Unit number assigned: _____

Rent: $_____ monthly/annually

11. The unit specified in Section 10 above [was/was not] last occupied for a period of, at least, 31 consecutive days by persons whose aggregate anticipated annual income, as certified in the above manner upon their initial occupancy of the unit, qualified them as a Qualified Household that was a _____ Household (very low or lower income household).

12. Method used to verify applicant(s) income:

_____ Employer income verification.

_____ Copies of tax returns.

_____ Other (_____)

_____
Management Agent

The undersigned employee has applied for a rental unit located in a project financed in part by the City of Aliso Viejo for persons of very low and lower income. Every income statement of a prospective tenant must be stringently verified. Please indicate below the employee's current annual income from wages, overtime, bonuses, commissions or any other form of compensation received on a regular basis.

Annual wages _____ Overtime _____ Bonuses _____
Commissions _____

Total current income _____

I hereby certify under penalty of perjury under the laws of the United States of America and the laws of the State of California that the statements above are true and complete to the best of my knowledge.

_____ _____ _____
Signature Date Title

I hereby grant you permission to disclose my income to _____ in order that they may determine my income eligibility for rental of an apartment at the Vintage Aliso Apartments.

_____ _____
Signature Date

Please send to: _____
_____
_____

I hereby attach copies of my individual federal and state income tax returns for the immediately preceding calendar year and certify under penalty of perjury under the laws of the United States of America and the laws of the State of California that the information shown in such income tax returns is true and complete to the best of my knowledge.

_____ _____
Signature Date

EXHIBIT "C"
TO
REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, CONDITIONS AND RESTRICTIONS RESTRICTING USE OF PROPERTY FOR AFFORDABLE HOUSING
(Vintage Aliso)

Annual Report

[Attached behind this cover page]

Annual Report

The undersigned, _____, as the authorized representative of ALISO VIEJO 621, L.P., a California limited partnership ("Developer"), has read and is thoroughly familiar with the provisions of the various documents associated with the financial assistance provided by the City of Aliso Viejo ("City"), as established in numerous documents including that certain Regulatory Agreement and Declaration of Restrictive Covenants, Conditions, and Restrictions Restricting Use of Property for Affordable Housing (Vintage Aliso), dated as of _____, 2015 (the "Regulatory Agreement"), between Developer and City.

As of the date of this Annual Report, the following percentage of completed residential units in the Project are: (i) occupied by Qualified Households (as such term is defined in the Regulatory Agreement); or (ii) are currently vacant and being held available for such occupancy and have been so held continuously since the later of: (y) the date of a Certificate of Occupancy was issued for the unit or (z) a Qualified Household vacated such unit, as indicated:

Number of Units occupied by very low income households: _____

Number of Units occupied by lower income households: _____

Number of Vacant Units: _____

Number of Qualified Households who commenced occupancy during the preceding reporting period: _____

Attached is a separate sheet ("Occupancy Summary") listing, among other items, the appropriate information for each apartment unit in the Project; the number of apartment units, the occupants of each unit and the rent paid for each unit. The information contained in the Occupancy Summary is true and accurate based on information submitted to Developer and is certified in writing as true and accurate under penalty of perjury under the laws of the United States and the laws of the State of California by each tenant.

The undersigned hereby certifies that: (1) a review of the activities of Developer during such reporting period and of Developer's performance under the Regulatory Agreement has been made under the supervision of the undersigned; and (2) to the best of the knowledge of the undersigned, based on the review described in clause 1, Developer is not in default under any of the terms and provisions of the Regulatory Agreement

Dated:_____

DEVELOPER

ALISO VIEJO 621, L.P., a California limited partnership

By: USA Aliso Viejo 621, Inc., a California corporation, its administrative general partner

By: _____
Geoffrey C. Brown, President

By: Foundation for Affordable Housing II Inc., a California nonprofit public benefit corporation, its managing general partner

By: _____
Thomas E. Willard, President

OCCUPANCY SUMMARY

Total Units occupied by Qualified Households: _____

Total Units available for rent to Qualified Households: _____

ATTACHED IS THE FOLLOWING INFORMATION:

A. Resident and rental information on each occupied apartment in the Project.

B. An Income Certification Form for all new Qualified Households who have moved into the Vintage Aliso Apartments since the filing of the last Occupancy Summary. The same are true and correct to the best of the undersigned's knowledge and belief.

Dated:_____

DEVELOPER

ALISO VIEJO 621, L.P., a California limited partnership

By: USA Aliso Viejo 621, Inc., a California corporation, its administrative general partner

By: _____
Geoffrey C. Brown, President

By: Foundation for Affordable Housing II Inc., a California nonprofit public benefit corporation, its managing general partner

By: _____
Thomas E. Willard, President

ATTACHMENT 3

HOUSING INCENTIVES AGREEMENT

[Attached behind this cover page]

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Aliso Viejo
12 Journey, Suite 100
Aliso Viejo, CA. 92656-5335
Attn: City Manager

Space above line for Recorder's use only
Exempt from Recording Fees pursuant to Govt. Code § 27383

HOUSING INCENTIVES AGREEMENT
(Vintage Aliso)

THIS HOUSING INCENTIVES AGREEMENT ("**Housing Incentives Agreement**"), dated as of February 18, 2015, for reference purposes only, is made and entered into by and between the CITY OF ALISO VIEJO, a California municipal corporation ("**City**") and ALISO VIEJO 621, L.P., a California limited partnership ("**Developer**"), with reference to the following recited facts (each a "**Recital**"):

RECITALS

A. Developer is the owner of that certain real property located 2C Liberty, Aliso Viejo, California, 92656 ("**Property**"), as more fully described in Exhibit "A" attached hereto and incorporated herein by this reference, on which Developer proposes to construct a senior citizen affordable rental housing project consisting of two hundred (200) rental units, to be made affordable to and occupied by very low and low income occupants, and two (2) units reserved for the property staff members ("**Project**").

B. City currently has an unmet Regional Housing Needs Assessment ("RHNA") requirement to provide two hundred three (203) "very low income" and forty-six (46) "low income" units.

C. In order to assist in the construction on the Project, which will satisfy a portion of the City's RHNA requirements, City and Developer have entered into that certain Affordable Housing Agreement (Vintage Aliso), dated February 18, 2015 ("**AHA**"), pursuant to which City has agreed to make funds available to the Developer from the City's Affordable Housing Trust Fund in the form of a residual receipts loan in the amount of One Million Five Hundred Thousand Dollars ($1,500,000), in consideration for Developer's construction and maintenance of the Project on the Property.

D. Developer and City additionally entered into a separate agreement entitled Regulatory Agreement and Declaration of Restrictive Covenants, Conditions and Restrictions Restricting Use of the Property for Affordable Households (Vintage Aliso), dated February 18, 2015 ("**Regulatory Agreement**"), which provides for, among other things, the development and operation of the Project as an affordable housing project for a period of no less than fifty-five

(55) years.

E. Pursuant to Section 15.58 of the City Municipal Code, Developer has submitted to City an application requesting certain affordable housing incentives for the development and operation of the Project as a senior citizen residential housing project for lower and very low income households, as defined in Section 15.58 of the City Municipal Code. Section 15.58 of the City Municipal Code allows for up to three (3) incentives when projects include at least thirty percent (30%) of the total units for lower income households, at least fifteen percent (15%) for very low income households, or at least thirty percent (30%) for persons and families of moderate income in a condominium or planned development. The Project meets the first criteria by providing eighty-three percent (83%) of the total units for lower income households and, therefore, is entitled to request three (3) incentives or concessions, as more particularly described in this Housing Incentives Agreement.

F. Based on the foregoing, Developer and City desire to enter into this Housing Incentives Agreement in order to provide for Developer's construction of the Project, pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION AND THE MUTUAL PROMISES AND COVENANTS OF THE PARTIES SET FORTH IN THIS HOUSING INCENTIVES AGREEMENT, CITY AND DEVELOPER AGREE AS FOLLOWS:

TERMS

1. DEFINITIONS AND INTERPRETATIONS.

1.1 Defined Terms. All initially capitalized terms not otherwise defined in the Recitals and this Housing Incentives Agreement shall have the following meanings:

1.1.1 **Affordable Rent**. Affordable Rent means:

(a) With respect to thirty three (33) units, Affordable Rent shall mean the maximum rent for "very low income households" as defined in California Health and Safety Code Section 50053(b)(2) and accompanying regulations of the California Department of Housing and Community Development, as such law or regulations may hereafter be amended, replaced or renumbered from time-to-time, with allowance for utilities, as such allowance may be established by the County.

(b) With respect to one hundred sixty seven (167) units, Affordable Rent shall mean the maximum rent for "lower income households" as defined in California Health and Safety Code Section 50053(b)(3) and accompanying regulations of the California Department of Housing and Community Development, as such law or regulations may hereafter be amended, replaced or renumbered from time-to-time, with allowance for utilities, as such allowance may be established by the County.

1.1.2 **Certificate of Completion**. A written certification of the City certifying that the construction of the Project has been completed in compliance with the terms and conditions of the AHA.

1.1.3 **City Manager**. The Aliso Viejo City Manager or his/her designee.

1.1.4 **County**. The County of Orange, California.

1.1.5 **Manager Units**. Two (2) units within the Project reserved exclusively for use by the on-site staff members employed by Developer or its designee.

1.1.6 **Qualified Household**. A Senior Citizen that qualifies as a low or very low income household, as defined in California Health and Safety Code Section 50053 and accompanying regulations of the California Department of Housing and Community Development, as such law or regulations may hereafter be amended, replaced or renumbered from time-to-time.

1.1.7 **Term**. The period of time beginning on the date of recordation of this Housing Incentives Agreement and ending on the fifty-fifth (55th) anniversary of the date the Certificate of Completion for the Project is recorded.

1.1.8 **Unit**. The residential accommodation within the Project, which shall be restricted by Developer for rental to and occupancy by a Qualified Household at an Affordable Rent, in accordance with the terms and conditions of this Housing Incentives Agreement.

1.2 Singular and Plural Terms. Any defined term used in the plural in this Housing Incentives Agreement shall refer to all members of the relevant class and any defined term used in the singular shall refer to any number of the members of the relevant class.

1.3 Accounting Principles. Any accounting term used and not specifically defined in this Housing Incentives Agreement shall be construed in conformity with, and all financial data required to be submitted under this Housing Incentives Agreement shall be prepared in conformity with, generally accepted accounting principles applied on a consistent basis or in accordance with such other principles or methods as are reasonably acceptable to the City Manager.

1.4 References and Other Terms. Any reference to any other document shall include such document both as originally executed and as it may from time to time be modified. References herein to Articles, Sections and Exhibits shall be construed as references to this Housing Incentives Agreement unless a different document is named. References to subparagraphs shall be construed as references to the same Section in which the reference appears. The term "document" is used in its broadest sense and encompasses agreements, certificates, opinions, consents, instruments and other written material of every kind. The terms "including" and "include" mean "including (include) without limitation". References herein to statutes, laws, codes, ordinances or regulations by specific number shall mean such statute, law, code, ordinance or regulation as it existed as of the date of this Housing Incentives Agreement and as it may be amended from time to time thereafter.

1.5 Controlling Agreement. In the event of any conflict between the AHA and this Housing Incentives Agreement, the provisions of the AHA shall control. In the event of any

conflict between the Regulatory Agreement and this Housing Incentives Agreement, the provisions of the Regulatory Agreement shall control.

1.6 Exhibits Incorporated. All attachments and exhibits to this Housing Incentives Agreement, as now existing and as the same may from time to time be modified, are incorporated herein by this reference.

2. AFFORDABLE HOUSING

2.1 Affordable Housing. As hereinafter more particularly provided, Developer shall use the Property for the construction and development of affordable rental housing and ancillary purposes as follows: (a) the Units shall be rented at an Affordable Rent to and shall be occupied by persons and/or families who are Qualified Households. Except for such reasonable periods during which a Unit is, or Units are, being maintained, repaired or rehabilitated, Developer shall actively market any vacant Unit or Units and rent it or them as soon as reasonably possible so as to satisfy the leasing requirements immediately above.

2.2 Developer Acknowledgment of Potential Impact of Agreement. Developer acknowledges and agrees that this Housing Incentives Agreement imposes certain covenants, conditions and restrictions on the use and occupancy of the Property and the Project that may result in less than all of the Units being leased or rented and that may not constitute the highest and best use of the Property.

_____
Initials of Authorized
Developer Representative(s)

2.3 Agreement to Record. Developer agrees that City shall record this Housing Incentives Agreement against the Property in the official records of the County within five (5) days of the Effective Date of the AHA.

2.4 Reservation of Property for Affordable Housing. Developer covenants and agrees to reserve and restrict the Property for residential occupancy by senior citizens who, at the time of initial occupancy of a Unit and continuously thereafter (subject to the other provisions of this Housing Incentives Agreement or the Regulatory Agreement), until the end of the Term, are a Qualified Household. Developer covenants that each Unit shall be occupied or available for occupancy by a Qualified Household at an Affordable Rent on a continuous basis throughout the Term. Only two (2) residential units within the Project may be used as a Manager Unit at any given time.

2.5 Affordable Senior Citizen Residential Rental Property Restrictive Covenant. Developer covenants to and for the benefit of City that Developer shall develop, own, manage and operate, or cause the management and operation of, the Project to provide senior citizen residential rental housing available with not less than 200 Units available only to Qualified Households at an Affordable Rent and for no other purposes. Developer covenants to develop the Property with the Project. Developer will not knowingly permit any Unit to be used on a transient basis and will not lease or rent any Unit for a period of less than six (6) months. No Unit will, at any time, be leased or rented for use as a hotel, motel, time share, dormitory, fraternity house,

sorority house, rooming house, hospital, nursing home, sanitary or rest home, or for occupancy as a private home rental.

2.6 Continuous Operation Covenant. Developer covenants to and for the benefit of City to cause the Project to be continuously operated, in accordance with the other provisions of this Housing Incentives Agreement, throughout the Term.

2.7 Abandonment. Developer shall not abandon or surrender the operation of all or any part of the Project during the Term, except due to material casualty or condemnation.

2.8 Affordable Rent. The monthly rent charged to and paid by a Qualified Household for the occupancy of a Unit may never exceed an Affordable Rent applicable to such Qualified Household.

2.8.1 **Rent Increases**. Rent for Units may be increased only pursuant to the terms and conditions of the Regulatory Agreement.

2.8.2 **Determination of Household Income**. Determination of Qualified Household income shall be made by Developer at the time of initial application of an applicant and pursuant to the terms and conditions of the Regulatory Agreement.

2.8.3 **Assignment of Units**. The Units are not specifically assigned to any particular Qualified Household income category. The restricted income level of each Unit may change as Units become vacant, a Qualified Household tenant's income changes or other Units are occupied by Qualified Households. In all circumstances, though, the rent for each Unit shall be an Affordable Rent for the Unit as necessary to maintain the restricted income tenant mix set forth in the Regulatory Agreement.

2.8.4 **Inspections**. Developer and each Qualified Household occupying a Unit shall permit City to conduct inspections of the Property, the Project and each Unit, from time-to-time, for purposes of verifying compliance with this Housing Incentives Agreement, upon five (5) days prior written notice to Developer.

2.8.5 **Annual Report**. Developer shall submit an annual report to City on the first year anniversary of the recordation of the Certificate of Completion. Thereafter, on the same date each year during the Term, or as otherwise provided in the Regulatory Agreement, Developer shall submit an annual report to City. City shall maintain the confidentiality of the information contained in any annual report specifically relating to any particular Qualified Household occupying a Unit, to the extent reasonably allowed by Law, as determined by the City Attorney.

2.9 Developer Covenant Regarding Lease of Units. Developer, for itself, its successors and assigns, covenants and agrees that, if any Unit is rented or leased during the Term, the rental or lease of the Unit shall be accomplished through a written lease agreement and all of the following restrictions shall apply:

2.9.1 A Qualified Household shall be the record tenant and the only occupants of the Unit.

2.9.2 Developer shall, upon request of the prospective tenant, provide a legible copy of this Housing Incentives Agreement to each prospective tenant of any Unit, prior to entering into a lease with such tenant for any Unit.

2.9.3 The lease for each Unit shall expressly state that it is subject and subordinate to this Housing Incentives Agreement.

2.9.4 The lease for each Unit shall be for an initial period of not less than six (6) months.

2.9.5 Developer shall not terminate the tenancy or refuse to renew the lease or rental agreement of a Qualified Household except for: (i) violations of the terms and conditions of the lease; (ii) for violation of applicable Federal, California, or local law; or (iii) for other good cause. Developer shall, in connection with termination of the tenancy of a Qualified Household or a refusal to renew the lease or rental agreement of a Qualified Household, serve written notice upon the Qualified Household specifying the grounds for the action in accordance with all applicable Laws and at least thirty (30) days before the effective date of the termination of the tenancy, unless the termination is pursuant to a legal action in unlawful detainer.

2.10 Tenant Selection Policies and Criteria. Developer shall adopt written tenant selection policies and criteria that:

2.10.1 are consistent with the purpose of providing senior citizen affordable rental housing for Qualified Households at an Affordable Rent;

2.10.2 are reasonably related to tenant eligibility and ability to perform the obligations of the lease for a Unit;

2.10.3 subject to applicable fair housing laws, give reasonable preference and consideration to the housing needs of individuals that are involuntarily displaced by activities of the City;

2.10.4 provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable;

2.10.5 give prompt written notice to any rejected applicant of the grounds for rejection;

2.10.6 provide for all of the Units to be available for occupancy on a continuous basis to Qualified Households at an Affordable Rent;

2.10.7 do not give preference to any particular class or group of persons in leasing or renting the Units, except as provided in 2.10.3 and to the extent that a tenant must be a Qualified Household;

2.10.8 provide that there shall be no discrimination against or segregation of any person, on account of any basis listed in subdivision (a) or (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 leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Property, nor shall Developer or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the Property. Notwithstanding the immediately preceding sentence, with respect to familial status, this Section 2.10.8 shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in this Section 2.10.8 shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. All deeds, leases or contracts made or entered into by Developer as to the Units, the Project or the Property shall contain covenants prohibiting discrimination, as set forth in Health and Safety Code Section 33436(b).

2.10.9 provide for a statement in all advertisements, notices and signs for the availability of Units for lease or rent to the effect that Developer is an equal housing opportunity provider.

3. HOUSING INCENTIVES

3.1 Housing Incentives. Pursuant to Section 15.58 of the City Municipal Code, Developer is entitled to three (3) incentives or concessions from the City Residential Development Standards set forth in Chapter 15.10 of the City Municipal Code, as follows:

3.1.1 **Residential Development Standards – Height and Area Standards**: Minimum common open area for the Project shall be seventeen percent (17%).

3.1.2 **Residential Development Standards – Minimum Building Setbacks**: All minimum perimeter setbacks for the Project shall be increased 1 foot for every foot in height above 35 feet. Western perimeter shall have a minimum 28 foot setback, southern perimeter shall have a minimum 20 foot setback, and all other areas shall have a minimum 36 foot perimeter setback.

3.1.3 **Residential Development Standards – Landscaping**: Landscaping boundary shall be a minimum of 10 feet along the western property line, 13 feet along the southern property line, 3 feet along the eastern property line, and 0 feet along the northern property line.

3.2 Economic Feasibility Waiver. Pursuant to Government Code section 65915(e) and (f), Developer has shown that waivers or modifications of certain provisions of the City's Municipal Code are necessary to make the housing units economically feasible. The following waivers or modifications of the development standards set forth in the City's Municipal Code are approved for the Project:

3.2.1 **Residential Parking Requirements**: The Project shall be required to construct 1 parking space for each 2 bedroom unit.

3.2.2 **Outdoor Lighting**: The light source for pole or fence-mounted lights for the Project shall be located no higher than 14 feet above finish grade.

3.2.3 **Higher Density Residential Projects**: Multi-family units may be constructed as mega-structures rather than clustered groupings of structures.

3.3 Developer represents and warrants that the granting of the incentives, waivers and modifications by City as set forth in Sections 3.1 and 3.2 results in identifiable, financially sufficient and actual economic benefits in the Project that make development of the Project financially feasible and viable.

4. MAINTENANCE AND OPERATION OF PROPERTY

4.1 Maintenance. Developer shall keep the Property well-maintained (including, without limitation, the buildings; signage; curbs, gutters and sidewalks; parking lots; lighting; landscaping; and fencing, if any); shall operate the Property in a businesslike manner; shall prudently preserve and protect both its own and City's interests in connection with the Property, shall not commit or permit any waste or deterioration of the Property; shall not abandon any portion of the Property; and shall not otherwise act in such a way as to unreasonably increase the risk of any damage to the Property. Such maintenance shall include, without limitation, the following:

4.1.1 keeping the exterior surfaces of buildings painted, plastered or otherwise appropriately treated;

4.1.2 replacing broken windows and other glass surfaces promptly;

4.1.3 keeping the Property free from any accumulation of debris, graffiti, and waste materials; and

4.1.4 keeping trees, lawns, shrubs and other plant materials trimmed and in healthy condition.

4.2 Restrictions on Alterations and Repairs. Developer shall not, without the prior consent of the City, which consent shall not be unreasonably withheld or delayed, remove, demolish or materially alter the Project except to make non-structural repairs which preserve or increase the Property's value, and shall promptly restore, in a good and workmanlike manner, any portion of the Project or the Property that is damaged or destroyed from any cause.

4.3 Compliance. Developer shall comply with all laws and requirements of governmental agencies (including, without limitation, all requirements relating to the obtaining of governmental agency approvals), all governmental agency approvals and all rights of third parties, relating to Developer, the Property or Developer's business thereon.

4.4 Records. Developer shall permit City, at any time or from time to time, upon three (3) business days' prior written notice, to inspect, audit and copy all of its books, records and accounts. Developer shall furnish or cause to be furnished to City any documents or information relating to the affairs of Developer and the Property and/or Project as City may reasonably request, which Developer can provide at a reasonable cost.

5. OTHER AFFIRMATIVE COVENANTS

5.1 Affirmative Covenants. Throughout the Term, Developer covenants and agrees:

5.1.1 **Pay Claims and Indebtedness**. Promptly to pay: (i) such amounts, chargeable against Developer or the Property, as City reasonably deems necessary to protect and preserve the Property and this Housing Incentives Agreement; and (ii) all encumbrances, charges, and liens on the Property, with any interest on them, which, in the judgment of the City Manager are, or appear to be, prior or superior to this Housing Incentives Agreement.

5.1.2 **Notice of Certain Matters**. To give notice to City, within ten (10) days of Developer's learning thereof, of each of the following:

(a) any litigation or claim affecting or relating to the Property and involving an amount in excess of Fifty Thousand Dollars ($50,000) (increasing annually by 3%); and any litigation or claim that might subject Developer to liability in excess of Fifty Thousand Dollars ($50,000) (increasing annually by 3%), whether covered by insurance or not;

(b) any dispute between Developer and any governmental agency (other than City) relating to the Property, the adverse determination of which might affect the Property; and

(c) any change in Developer's principal place of business.

6. SALE OR TRANSFER OF PROPERTY

6.1 Assumption Required. Developer covenants and agrees not to sell, transfer or otherwise dispose of the Property, or any portion of it (other than for individual tenant use as contemplated under this Housing Incentives Agreement), unless and until the City Manager has received reasonably satisfactory evidence that the proposed transferee has: (a) in the then recent past successfully maintained, managed and operated affordable housing of a type similar to the Property; (b) financial resources sufficient to perform Developer's obligations under this Housing Incentives Agreement; and (c) an assumption agreement, in form and substance satisfactory to the City Manager, pursuant to which the transferee assumes in full Developer's duties and obligations under this Housing Incentives Agreement; provided, however, that Developer shall not be required to notify City Manager or obtain the consent of the City for any Permitted Transfer, as defined in the AHA, of the Property or the Project.

6.2 Transfers in Violation. The Property and any interest in title to it shall not be transferred or conveyed to any person or entity except as provided in this Housing Incentives Agreement. Any such conveyance or other transfer in violation of the terms of this Housing Incentives Agreement shall be voidable at the election of City.

7. NONDISCRIMINATION

Developer covenants and agrees that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any part thereof, nor shall Developer itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination

or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendors of the Property.

8. PERIODIC REVIEW

8.1 Periodic Review. The City may review this Housing Incentives Agreement annually, on or before the anniversary of the Effective Date, in order to ascertain the good faith compliance by Developer with the terms of the Housing Incentives Agreement. Developer shall submit an annual report in accordance with Section 2.8.5. The report shall be accompanied by an administration fee sufficient to defray the estimated costs of review and administration of the Housing Incentives Agreement during the succeeding year. The amount of the administration fee, if any, shall be set annually by resolution of the City Council.

8.2 Special Review. The City Council may order a special review of compliance with this Housing Incentives Agreement at any time. The City Manager shall conduct such special reviews.

9. DEFAULTS. The occurrence of any of the following, whatever the reason therefor, shall constitute an "**Event of Default**" by Developer:

9.1 Developer fails to perform any obligation under this Housing Incentives Agreement, and such failure is not cured within thirty (30) days after Developer's receipt of written notice that such obligation was not performed; provided that, if cure cannot reasonably be effected within such thirty (30) day period, such failure shall not be an Event of Default so long as Developer (in any event, within such thirty (30) day time period) commences cure, and thereafter diligently and continuously prosecutes such cure to completion; or

9.2 Developer is enjoined or otherwise prohibited by any governmental agency (other than City) from occupying all or any of the Property and such injunction or prohibition continues for ninety (90) days or more for any reason; unless Developer is diligently and continuously attempting to have such injunction or prohibition stayed or lifted and Developer demonstrates, to the reasonable satisfaction of the City Manager, that such stay or lifting will occur within a reasonable time.

10. REMEDIES

10.1 Remedies Upon Default. Upon the occurrence of any Event of Default, City may, at its option and in its absolute discretion, do any or all of the following:

10.1.1 **Specific Performance**. By mandamus or other suit, action or proceeding at law or in equity, require Developer to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of the rights of City hereunder.

10.1.2 **Exercise Other Rights**. Exercise any other rights provided by law or in such order and manner as City elects in its sole and absolute discretion.

10.1.3 **Terminate Housing Incentives Agreement**. City may terminate this Housing Incentives Agreement. Termination in such event shall be effective immediately upon Developer's receipt of written termination notice from City. No act by City other than giving notice to Developer shall terminate this Housing Incentives Agreement. Any rights or remedies for breach of this Housing Incentives Agreement shall survive such a termination.

10.2 Cumulative Remedies; No Waiver. City's rights and remedies under this Housing Incentives Agreement are cumulative and in addition to all rights and remedies provided by law. The exercise by City of any right or remedy shall not constitute a cure or waiver of any default, nor invalidate any notice of default or any act done pursuant to any such notice, nor prejudice City in the exercise of any other right or remedy. No waiver of any default shall be implied from any omission by City to take action on account of such default if such default persists or is repeated. No waiver of any default shall affect any default other than the default expressly waived, and any such waiver shall be operative only for the time and to the extent stated. No waiver of any provision of this Housing Incentives Agreement shall be construed as a waiver of any subsequent breach of the same provision. City's consent to or approval of any act by Developer requiring further consent or approval shall not be deemed to waive or render unnecessary City's consent to or approval of any subsequent act. City's acceptance of the late performance of any obligation shall not constitute a waiver by City of the right to require prompt performance of all further obligations. City's acceptance of any performance following the sending or filing of any notice of default shall not constitute a waiver of City's right to proceed with the exercise of its remedies for any unfulfilled obligations; and City's acceptance of any partial performance shall not constitute a waiver by City of any rights relating to the unfulfilled portion of the applicable obligation.

11. COVENANTS TO RUN WITH THE LAND

11.1 Developer hereby subjects the Property to the covenants, reservations and restrictions set forth in this Housing Incentives Agreement. City hereby declares its express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon Developer's successors in interest to all or any part of the Property; provided, however, that on the termination of this Housing Incentives Agreement said covenants, reservations and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying all or any part of the Property, or any interest therein, shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments.

11.2 City and Developer hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the land in that the Developer's legal interest in the Property is rendered less valuable thereby. City and Developer hereby further declare their 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 Qualified Households, the intended beneficiaries of such covenants, reservations and restrictions, and by furthering the public purposes for which this Housing Incentives Agreement was made.

11.3 The covenants, reservations and restrictions hereof shall apply uniformly to the Property in order to establish and carry out a common plan for the use, development and improvement of the Property.

12. SUBORDINATION. The City agrees that this Housing Incentives Agreement be made junior and subordinate to liens given in connection with Loans required for the financing of the construction of the Project, including any refinancing thereof; as set forth in the AHA. In the event that the AHA and/or Regulatory Agreement are subordinated, the City Manager is hereby authorized and directed to execute such subordination agreements, modifications to this Agreement and/or other documents as may be requested by the Lender(s) to evidence subordination of this Housing Incentives Agreement, without further authorization from the City, provided that the City Manager reserves the right to review, modify and negotiate, in good faith, the terms and conditions of such agreements so that any subordination agreements are consistent with the City's subordination of the AHA and/or Regulatory Agreement.

13. MISCELLANEOUS

13.1 Governing Law. This Housing Incentives Agreement shall be governed by the laws of the State of California. Venue shall be in Orange County.

13.2 Amendments; Additional Agreements. This Housing Incentives Agreement shall be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the official records of the County. Nothing contained herein shall prohibit or restrict the City from entering into any other agreement with Developer or any occupant of the Property that City may deem necessary to assure that each Unit is continuously occupied by a Qualified Household.

13.3 Notice.

13.3.1 Any and all notices sent by either party to the other party pursuant to or as required by this Housing Incentives Agreement shall be proper, if in writing and transmitted to the principal office of City or Developer, as applicable, as designated in Section 12.3.2, by one or more of the following methods: (i) messenger for immediate personal delivery, (ii) a nationally recognized overnight delivery service (i.e., Federal Express, United Parcel Service, etc.) or (iii) registered or certified United States mail, postage prepaid, return receipt requested. Such notices may be sent in the same manner to such other addresses as either party may from time to time designate by notice, in accordance with this Section 12.3. Any such notice shall be deemed to be received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day that it is delivered by personal delivery, on the date of delivery by a nationally recognized overnight courier service or three (3) calendar days after it is placed in the United States mail, as provided in this Section 12.3. Rejection, other refusal to accept or the inability to deliver written notice because of a changed address of which no notice was given, shall be deemed receipt of the notice.

13.3.2 The following are the authorized addresses for the submission of notices to the Parties:

to Developer:	with copy to:
Aliso Viejo 621, L.P. c/o USA Aliso Viejo 621, Inc. 3200 Douglas Blvd., Suite 200 Roseville, CA 95661 Attn: President	Bocarsly Emden Cowan Esmail & Arndt LLP 633 West Fifth Street, 64th Floor Los Angeles, CA 90071 Attn: Kyle Arndt

And

Foundation for Affordable
Housing II Inc.
384 Forest Ave, Suite 14
Laguna Beach, California 92651
Attn: President

to City:	with copy to:
City of Aliso Viejo 12 Journey, Suite 100 Aliso Viejo, CA. 92656-5335 Attn: City Manager	Best Best & Krieger LLP 18101 Von Karman Avenue Suite 1000 Irvine, CA 92612 Attn: Elizabeth Hull, Esq.

13.4 Severability. If any provision of this Housing Incentives Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

13.5 Multiple Counterparts. This Housing Incentives Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument, and each of which shall be deemed to be an original.

13.6 Titles and Headings for Reference Only. The titles and headings of the articles, paragraphs and sections of this Housing Incentives Agreement are for convenience and reference only and are not to be considered a part of this Housing Incentives Agreement and shall not in any way interpret, modify or restrict the meaning of any term, provision, covenant, condition, restriction, reservation or agreement contained in this Housing Incentives Agreement.

13.7 No Partnership with City. Developer is, and shall be deemed to be, an independent contractor and is not an employee of City and shall not become an agent of City.

13.8 Attorney's Fees. In case any action at law or in equity, including an action for declaratory relief, is brought against Developer to enforce the provisions of this Housing Incentives Agreement, the losing party agrees to pay reasonable attorney's fees and other reasonable expenses incurred by the prevailing party.

13.9 Successors and Assigns. The terms and provisions of this Housing Incentives Agreement bind and benefit the heirs, legal representatives, successors and assigns of the parties.

13.10 Limited Partner Notice and Cure Rights. The following limited partners of Owner shall have the right to cure any default of Owner hereunder upon the same terms and conditions afforded to Owner: _____. The Parties may mutually agree to other limited partners in their respective reasonable discretion. City shall provide any notice hereunder to the limited partners concurrently with the provision of such notice to Owner to the following address: _____.

[**Signatures on following page]**

SIGNATURE PAGE
TO
HOUSING INCENTIVES AGREEMENT
(Vintage Aliso)

IN WITNESS WHEREOF, City and Developer have executed this Housing Incentives Agreement by and through the signatures of their duly authorized representative(s) set forth below:

CITY:

CITY OF ALISO VIEJO, a California municipal corporation

By:_____
David A. Doyle
City Manager

ATTEST:

By:_____
City Clerk

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP

By:_____
City Attorney

DEVELOPER:

Aliso Viejo 621, L.P., a California limited partnership

By: USA Aliso Viejo 621, Inc., a California corporation, its administrative general partner

By: _____
Geoffrey C. Brown, President

By: Foundation for Affordable Housing II Inc., a California nonprofit public benefit corporation, its managing general partner

By: _____
Thomas E. Willard, President

[SIGNATURES MUST BE NOTARY ACKNOWLEDGED FOR RECORDING]

EXHIBIT "A"
TO
HOUSING INCENTIVES AGREEMENT
(Vintage Aliso)

Property Legal Description

City of Aliso Viejo
Agenda Item

DATE: February 18, 2015

TO: Mayor and City Council

FROM: Karen Crocker, Community Services Director

SUBJECT: REQUEST FOR CITY FUNDING FOR THE 8TH ANNUAL TASTE OF ALISO NIGUEL

Recommendation:

1. Consideration of City Funding in the amount of $3,500 payable to the Parents for Aliso Niguel (PFAN), in support of the 8th Annual Taste of Aliso Niguel.
2. If approved, authorize the appropriation of $3,500 from the General Fund unreserved fund balance.

Fiscal Impact:

Through the Community Assistance Grant Program the City awarded PFAN $1,500 from the FY 2014-15 general fund budget. The request of the additional $3,500 would require authorization of the City Council for the appropriation of $3,500 from the unreserved general fund balance.

Background:

Last year, the PHAN had a new board of volunteer parents and they did not submit an application through the Community Assistance Grant Program. Therefore, the City received a funding request from PHAN in the amount of $5,000 for the 7th Annual Taste of Aliso Niguel. Once the request was received, staff presented to Council at the March 19, 2014 meeting. Subsequently, staff did suggest to PHAN that for this year's event they submit an application through the grant process.

PFAN did request $5,000 through the Community Assistance Grant Program for FY 2014-15; however, was only awarded $1,500. PFAN has submitted an additional request to the City to fund $3,500 for a total of $5,000.

The City received $96,235 of funding requests from various community groups as part of the 2014-15 Community Assistance Grant Program. There was

$25,000 budgeted for the Grant Program; therefore, $71,235 of requested funding was not granted to the 21 community groups who had requested funding from the City. There was no one group who received 100% of the funding that they had requested.

Discussion:

The "Taste of Aliso Niguel" program has been in existence for the past seven years. This event is coordinated and put on by volunteer parents of Aliso Niguel High School. The non-profit organization PFAN raises money for the benefit of student organizations and facilities at the high school. The "Taste of Aliso Niguel" is a fundraising event with the purpose of promoting the City's local restaurants and merchants. PHAN is requesting the additional $3,500 from the City to assist in defraying the costs of the expenses for equipment and supplies that are needed to put on the event. After expenses are covered, proceeds from the event will go to the high school for various educational and sports programs.

As of this date, the City has received one request from a 2014-15 grant recipient for additional funds. The grant was not for a specific amount. However, if the PHAN request is approved we can anticipate this request to be revised for a specific amount. Also, other entities that did not receive the funding they requested may approach the City for additional funds.

Karen Crocker

Karen Crocker
Community Services Director

APPROVED FOR SUBMITTAL TO THE CITY COUNCIL

David A. Doyle
City Manager

City of Aliso Viejo
Agenda Item

DATE: February 18, 2015

TO: Mayor and City Council

FROM: Shaun Pelletier, City Engineer

SUBJECT: AWARD CONTRACT TO ROY ALLAN SLURRY SEAL FOR THE FY 2014-15 SLURRY SEAL AND REHABILITATION

Recommended Action:

1. Award a contract in the amount of $451,092.85 to Roy Allan Slurry Seal as the lowest responsible bidder for the FY 2014-15 Slurry Seal and Rehabilitation Project; and
2. Authorize the City Manager to execute a contract with Roy Allan Slurry Seal; and
3. Authorize City staff to make total compensation to Roy Allan Slurry Seal up to $451,092.85 plus $45,109.29 (10% of the contract amount) to allow for contingencies, totaling $496,202.14.

Fiscal Impact:

Total fiscal impact will be approximately $575,000 including design ($5,900), construction management ($73,000), construction cost ($451,000), and contingency ($45,100). The project is included in FY 14-15 budget and the cost will be paid from Measure M and Gas Tax funds.

Background:

On December 3, 2014, the City Council approved contract documents, specifications, and plans for the project, and authorized staff to advertise for bids.

The City advertised for bids through January 29, 2015. The Aliso Viejo News advertised the notice inviting bids on December 11, 2014, and multiple online plan rooms were used. Six contractors requested and received construction documents for the work.

The City received and opened five bids at 2:00 P.M. on January 29, 2015. The total amounts for each of the bids received are as follows:

1.	Roy Allan Slurry Seal	$451,092.85
2.	American Asphalt South	$466,770.95
3.	Pavement Coatings Company	$494,135.05
4.	All American Asphalt	$499,539.15
5.	Wheeler Paving	$624,624.00

City staff has reviewed the bid from Roy Allan Slurry Seal and the bid appears to be responsive and complete.

Discussion:

The engineer's estimate for this work was $562,000. The average bid item costs were comparable to the engineer's estimate with the primary savings being found in crack filling and striping items.

Roy Allan Slurry Seal completed the City's FY 2006-07 slurry seal project satisfactorily. They have also completed similar projects in Mission Viejo, Lake Forest and other agencies with favorable references.

Staff requests authorization for payments to Roy Allan Slurry Seal up to $496,202.14 (10% above the contract amount) to cover for contingencies such as overages on quantities and additional work requested by the City.

The schedule for this project is as follows:

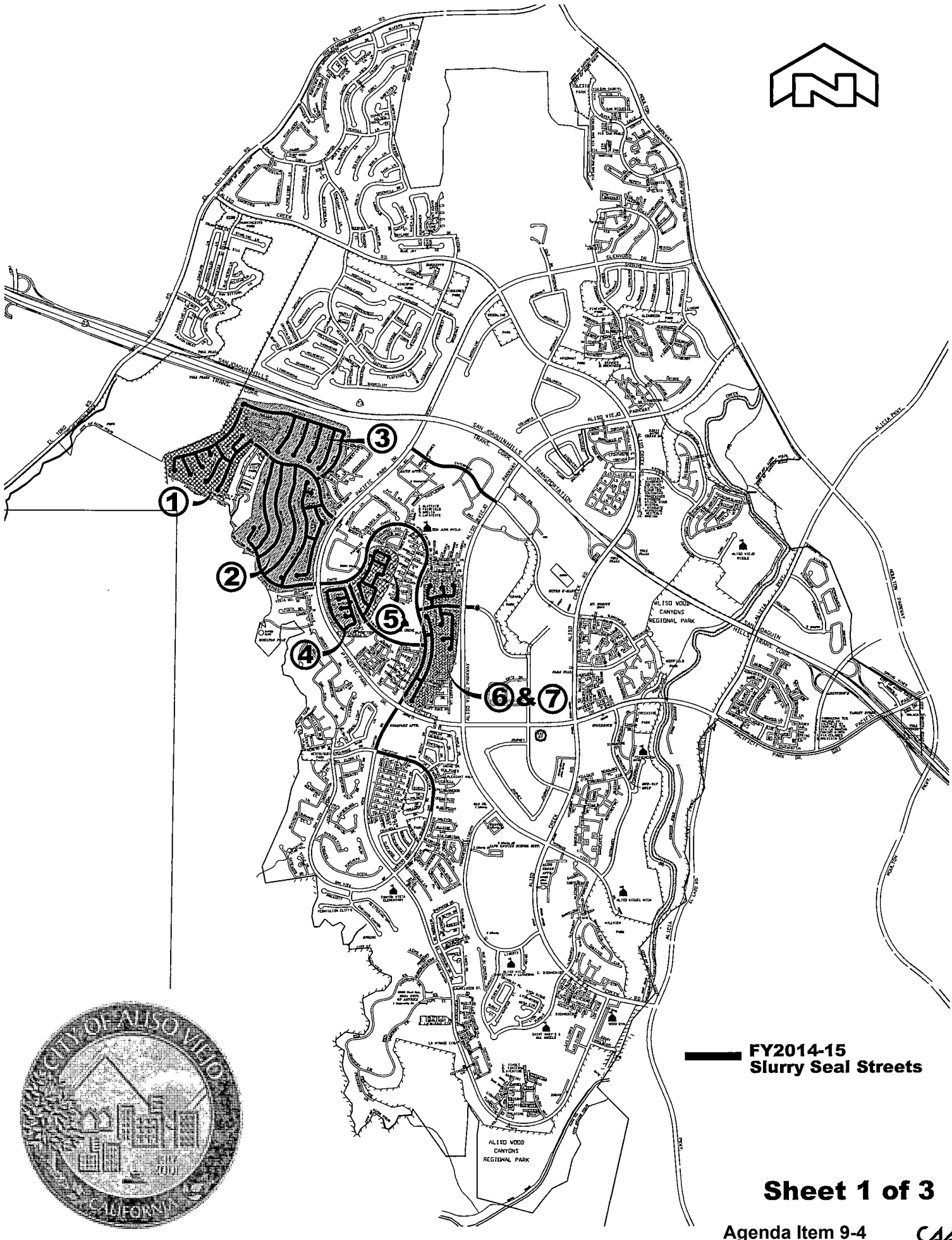
- Council approve advertising for bids	December 3, 2014
- Advertise for bids	December 11 - January 29, 2015
- Bids due	2:00 pm January 29, 2015
- Council approves award of contract	February 18, 2015
- Notice to Proceed	March 16, 2015
- Start construction	March 16, 2015
- Complete construction (40 working days)	May 8, 2015

Shaun S. Pelletier
City Engineer

APPROVED FOR SUBMITTAL TO THE CITY COUNCIL

David A. Doyle
City Manager

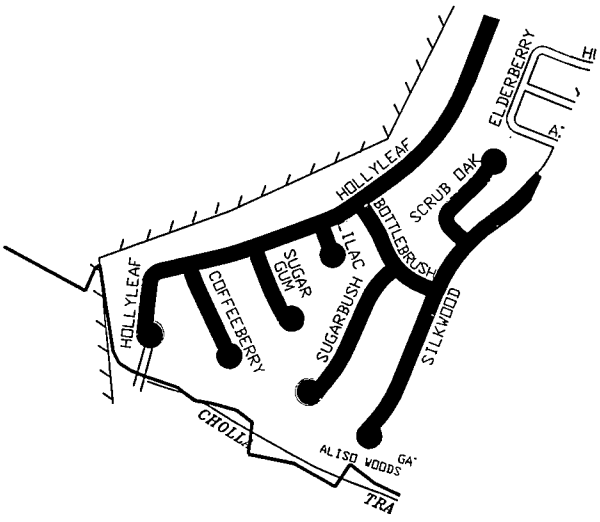
Attachment: Location Maps
Agreement with Roy Allan Slurry Seal
Roy Allan Slurry Seal Submitted Bid



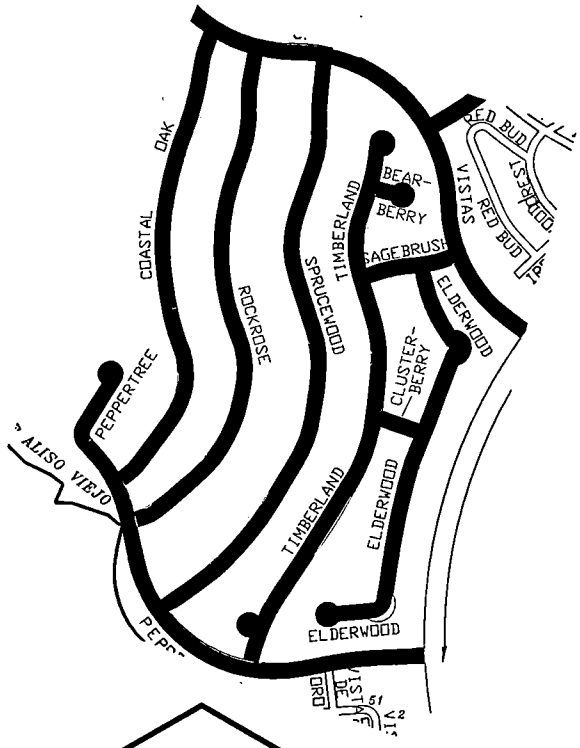
Sheet 1 of 3

Agenda Item 9-4

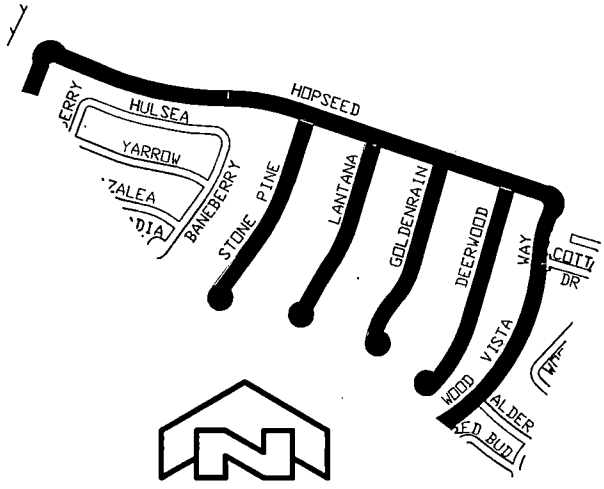
CAA



LOCATION MAP
AREA 1



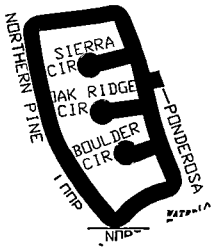
LOCATION MAP
AREA 2



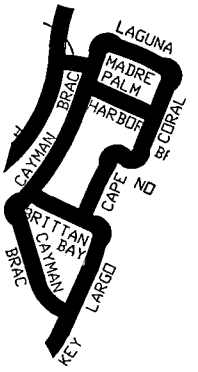
LOCATION MAP
AREA 3

FY2014-15
Slurry Seal Streets

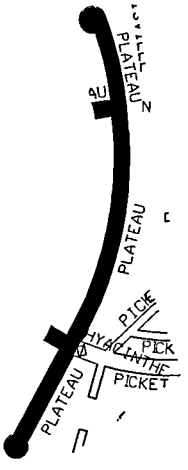
Sheet 2 of 3



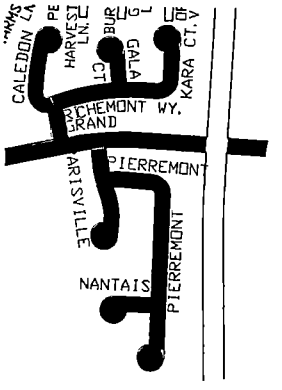
LOCATION MAP
AREA 4



LOCATION MAP
AREA 5



LOCATION MAP
AREA 6



LOCATION MAP
AREA 7

FY2014-15
Slurry Seal Streets

Sheet 3 of 3

CONTRACT

THIS CONTRACT is made this _____ day of _____, 2015, in the County of Orange, State of California, by and between the City of Aliso Viejo hereinafter called City, and Roy Allan Slurry Seal, hereinafter called Contractor. City and the Contractor for the considerations stated herein agree as follows:

ARTICLE 1. SCOPE OF WORK. The Contractor shall perform all Work within the time stipulated the Contract and shall provide all labor, materials, equipment, tools, utility services, and transportation to complete all of the Work required in strict compliance with the Contract Documents as specified in Article 5 below for the following Project:

FY 2014-15 Slurry Seal and Rehabilitation

The Contractor and its surety shall be liable to City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION. The Work shall be commenced on the date stated in City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents within forty (40) calendar days from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE. City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of Four Hundred Fifty One Thousand Ninety Two and 85/100 Dollars ($451,092.85). Payment shall be made as set forth in the General Conditions.

At any time during the term of the Contract, City may, pursuant to the terms and provisions of the Contract Documents, request that the Contractor perform additional work. Contractor shall not perform, nor be compensated for, additional work without written authorization from the City pursuant to the terms and provisions of the Contract Documents. Notwithstanding any other provisions of the Contract Documents, for contracts in excess of $25,000.00, the City Manager may approve additional work not to exceed 10% of the original Contract amount, ($496,202.14), as set forth in this Article 3. Any additional work in excess of this amount shall be approved by the City Council.

ARTICLE 4. LIQUIDATED DAMAGES. In accordance with Government Code section 53069.85, it is agreed that the Contractor will pay City the sum of **$500** for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees City may deduct that amount from any money due or that may become

due the Contractor under the Contract. This Article does not exclude recovery of other damages specified in the Contract Documents.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT. The "Contract Documents" include the following:

Notice Inviting Bids
Instructions to Bidders
Bid Form
Contractor's Certificate Regarding Workers' Compensation
Bid Bond
Designation of Subcontractors
Information Required of Bidders
Noncollusion Declaration form
Contract
Performance Bond
Payment Bond
General Conditions
Special Conditions
Technical Specifications
Addenda
Plans and Drawings
Approved and fully executed change orders
Any other documents contained in or incorporated into the Contract

The Contactor shall complete the Work in strict accordance with all of the Contract Documents.

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. This Contract shall supersede any prior agreement of the parties.

ARTICLE 6. PROVISIONS REQUIRED BY LAW. Each and every provision of law required to be included in these Contract Documents shall be deemed to be included in these Contract Documents. The Contractor shall comply with all requirements of the California Labor Code applicable to this Project.

ARTICLE 7. INDEMNIFICATION. Contractor shall provide indemnification as set forth in the General Conditions.

ARTICLE 8. PREVAILING WAGES. Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the office of the City Engineer or may be obtained online at http//www.dir.ca.gov/dlsr. and which must be posted at the job site.

ARTICLE 9. DECLARATION OF POLITICAL CONTRIBUTIONS. Prior to the City's approval of this Contract, Contractor shall submit to City a statement in writing declaring any political contributions of money, in-kind services, or loan made to any member of the City Council within the previous twelve-month period by the Contractor and all of Contractor 's employees, including any employee(s) that Contractor intends to assign to perform work on the Project.

IN WITNESS WHEREOF, this Contract has been duly executed by the above-named parties, on the day and year above written.

CITY OF ALISO VIEJO

By: _____
David Doyle
City Manager

Attest:

By: _____
Mitzi Ortiz
City Clerk

Approved as to Form:

By: _____
Best Best & Krieger LLP
City Attorney

Roy Allan Slurry Seal

By: _____
Name, Title

If Corporation, TWO SIGNATURES, President **OR** Vice President **AND** Secretary OR Treasurer REQUIRED]

By: _____
Name, Title

_____
Classification of Contractor's License

CITY OF ALISO VIEJO

DECLARATION OF POLITICAL CONTRIBUTIONS

Using the space provided below, please list any political contributions of money, in-kind services, or loans made to any member of the City Council within the last twelve (12) months by Contractor and all of Contractor's employees, including any employee(s) that applicant intends to assign to perform work on the Project:

_____

_____

_____

_____

_____

_____

_____

To the best of my knowledge, I declare under penalty of perjury that the foregoing is true and was executed at:

City/County/State	Date
Name of Business	Print Name
Signature	

NOTE: THIS DECLARATION IS INCLUDED AS PART OF THE CONTRACT AND MUST BE SIGNED AND ATTACHED HERETO.

END OF CONTRACT

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of Aliso Viejo (hereinafter referred to as "City") has awarded to _____, (hereinafter referred to as the "Contractor") _____ an agreement for _____ (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, _____, the undersigned Contractor and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto City in the sum of _____ DOLLARS, ($_____), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless City, its officers and agents, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by City in enforcing such obligation.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by City, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect City from loss or damage resulting from or caused by defective materials or faulty workmanship, the above obligation in penal sum thereof shall remain in full force and effect. The obligations of Surety hereunder shall continue so long as any obligation of Contractor

remains. Nothing herein shall limit City's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

Whenever Contractor shall be, and is declared by City to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at City's option:

(1) Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or

(2) Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and City, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by City under the Contract and any modification thereto, less any amount previously paid by City to the Contractor and any other set offs pursuant to the Contract Documents.

(3) Permit City to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by City under the Contract and any modification thereto, less any amount previously paid by City to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that City may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if City, when declaring the Contractor in default, notifies Surety of City's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

(Corporate Seal)

_____
Contractor/ Principal

By _____

Title _____

_____
Surety

(Corporate Seal)

By _____
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title _____

The rate of premium on this bond is _____ per thousand. The total amount of premium charges, $_____.
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety) _____
_____
_____

(Name and Address of Agent or Representative for service of process in California, if different from above) _____
_____
_____

(Telephone number of Surety and Agent or Representative for service of process in California _____
_____

STATE OF CALIFORNIA)
) ss.
CITY OF _____)

On this _____ day of _____, in the year 20__, before me, _____, a Notary Public in and for said state, 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 as the Attorney-In-Fact of the (Surety) acknowledged to me that he/she executed the same in his/her authorized capacity, and subscribed the name of the _____ (Surety) thereto and his/her own name as Attorney-In-Fact.

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.

_____
Notary Public in and for said State

(SEAL)

Commission expires: _____

NOTE: A copy of the Power-of-Attorney to local representatives of the bonding company must be attached hereto.

END OF PERFORMANCE BOND FORM

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS that:

WHEREAS, the City of Aliso Viejo (hereinafter designated as "City"), by action taken or a resolution passed _____, 20___ has awarded to _____ _____ hereinafter designated as the "Principal," a contract for the work described as _____ _____ follows:

_____

(the "Project"); and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and _____ as Surety, are held and firmly bound unto City in the penal sum of _____ Dollars ($_____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 3181 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by City in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Section 3181 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement

pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or City and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 3110 or 3112 of the Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

(Corporate Seal)

_____
Contractor/ Principal

By _____

Title _____

_____
Surety

(Corporate Seal)

By _____
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title _____

STATE OF CALIFORNIA)
) ss.
CITY OF _____)

On this _____ day of _____, in the year 20___, before me, _____, a Notary Public in and for said state, 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 as the Attorney-In-Fact of the (Surety) acknowledged to me that he/she executed the same in his/her authorized capacity, and subscribed the name of the _____ (Surety) thereto and his/her own name as Attorney-In-Fact.

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.

_____
Notary Public in and for said State

(SEAL)

Commission expires: _____

NOTE: A copy of the Power-of-Attorney to local representatives of the bonding company must be attached hereto.

END OF PAYMENT BOND FOR

City of Aliso Viejo

COUNCIL POLICY

SUBJECT	RES. NO.	POLICY NO.	EFF. DATE	PAGE
FRAUD PREVENTION POLICY	**2005-056**	**400-15**	**10/01/2008**	**1 of 8**

PURPOSE

To establish Policy and procedures for the prevention and detection of fraud and other related dishonest activities against the City and, when appropriate, to pursue legal remedies available under the law.

This Policy has been established to ensure that elected officials, officers, employees, and members of advisory boards, commissions and committees of the City of Aliso Viejo are aware of the following:

1. Acts that are considered to be fraudulent;
2. Procedures for reporting suspected fraudulent acts;
3. Steps to be taken when fraud or other related dishonest activities are suspected; and
4. Consequences to expect when a dishonest act is reported.

Further, this Policy delineates management's responsibility for instituting and maintaining a system of internal control to prevent and detect fraud, misappropriations and other irregularities, and to be alert for any indications of such misconduct.

POLICY

1. GENERAL

The City of Aliso Viejo is committed to protecting its assets against the risk of loss or misuse. Accordingly, it is the policy of the City to identify and promptly investigate any possibility of fraudulent or related dishonest activities against the City and, when appropriate, to pursue legal remedies available under law.

2. DEFINITIONS

a. Fraud – Fraud and other similar irregularities including, but not limited to:

i. claim for reimbursement of expenses that are not job-related or authorized by current policy;

ii. forgery or unauthorized alteration of documents (checks, time sheets, independent contractor agreements, purchase orders, budgets, etc.);

iii. misappropriation of City assets (funds, securities, supplies, furniture, equipment, etc.);

iv. improprieties in the handling or reporting of money or financial transactions;

v. authorizing or receiving payment for goods not received or services not performed;

vi. computer-related activity involving unauthorized alteration, destruction, forgery, or manipulation of data or misappropriation of City-owned software;

vii. misrepresentation of information on documents;

viii. any violation of Federal, State, or Local laws related to dishonest activities or fraud;

ix. seeking or accepting anything of material value from those doing business with the City, including vendors, consultants, contractors, lessees, applicants, and grantees. Materiality is determined by the City's Conflict of Interest Code, which incorporates the Fair Political Practices Commission's regulations;

x. obtaining profit or personal gain as a result of "insider" knowledge of City activities;

xi. disclosing confidential and proprietary information to outside parties; or

xii. Intentional, false representation or concealment of material fact for the purpose of personal gain.

b. Employee – Any individual or group of individuals who receive compensation, either full or part-time, from the City of Aliso Viejo for employment or providing services. The term also includes any volunteer who provides services to the City through an official arrangement with the City or a City organization, as well as consultants, vendors, contractors, outside agencies and/or any other parties with a business relationship with the City of Aliso Viejo.

c. Official - Elected officials, officers, and members of advisory or appointed boards, commissions and committees.

d. Management – Any administrator, manager, director, supervisor, or other individual who manages or supervises funds or other resources, including human resources.

e. Internal Auditor – Any person or persons assigned by the City Manager to investigate any fraud or similar activity.

f. External Auditor – Independent audit professionals who perform annual audits of the City's financial statements.

3. INVESTIGATION

a. It is the City's intent to fully investigate any suspected acts of fraud. An objective and impartial investigation will be conducted regardless of the position, title, length of service or relationship with the City of any party who might be or become involved in or becomes the subject of such investigation.

b. Each department of the City is responsible for instituting and maintaining a system of internal control to provide reasonable assurance for the prevention and detection of fraud. Management should be familiar with the types of improprieties that might occur within their area of responsibility and be alert for any indications of such conduct.

c. The Internal Auditor, in conjunction with the City Attorney, has the primary responsibility for the investigation of fraud.

d. Throughout the investigation, the Internal Auditor will inform the City Manager of pertinent investigative findings.

e. Employees will be granted "whistle-blower protection," as described below when acting in accordance with this Policy. When informed of suspected fraud, neither the City nor any person acting on behalf of the City shall:

   i. dismiss or threaten to dismiss the Employee reporting the suspected fraud;

   ii. discipline, suspend, or threaten to discipline or suspend the Employee reporting the suspected fraud;

   iii. impose any penalty upon the Employee reporting the suspected fraud, or;

   iv. intimidate or coerce the Employee reporting the suspected fraud.

Violations of these "whistle-blower protections" may result in discipline up to and including dismissal.

f. Upon conclusion of the investigation, the results will be reported to the City Manager.

g. The City Manager, following review of investigation results, will take appropriate disciplinary action regarding Employee misconduct. Disciplinary action can include termination of employment or a contract, and referral of the case to the District Attorney's Office for possible prosecution.

h. The City will pursue every reasonable effort, including court ordered restitution, to obtain recovery of City losses from the offender, or other appropriate sources.

PROCEDURE

1. RESPONSIBILITIES OF OFFICIALS

a. If an Official has reason to suspect that a fraud has occurred, he or she shall immediately contact the City Manager.

b. An Official shall not attempt to investigate the suspected fraud or discuss the matter with anyone other than the City Manager.

c. The alleged fraud or audit investigation shall not be discussed with the media by any person other than through the City Manager in consultation with the City Attorney and the Internal Auditor.

2. MANAGEMENT RESPONSIBILITIES

a. Management is responsible for detecting, preventing and reporting fraud in their areas of responsibility.

b. Each manager should be familiar with the types of fraud that might occur in his or her area and be alert for any indication that fraud is or was in existence in his or her area.

c. When fraud is detected or suspected, Management should determine whether an error or mistake has occurred or if there may be dishonest or fraudulent activity.

d. If Management determines a suspected activity may involve fraud, they should contact their immediate supervisor. In the event the activity involves the immediate supervisor, the activity should be reported to the Department Director.

e. Upon being notified of suspected fraud, Department Directors shall inform the City Manager.

f. Management should not attempt to conduct individual investigations, interviews, or interrogations. However, Management is responsible for taking appropriate corrective actions to ensure adequate controls exist to prevent reoccurrences of fraud.

g. Management shall cooperate fully with the Internal Auditor, other involved departments, and law enforcement agencies in the detection, reporting, and investigation of fraud, including the prosecution of offenders.

h. Management will have full and unrestricted access to all necessary records and personnel. All City furniture and contents, including desks and computers, are open to inspection at any time. There is no assumption of privacy.

i. In dealing with suspected fraud, great care must be taken. Management should not:

   i. make accusations;

   ii. alert individuals suspected of committing fraud that an investigation is underway;

   iii. treat individuals suspected of committing fraud unfairly, or;

   iv. make statements that could lead to claims of false accusations or other offenses.

j. In handling suspected fraud activities, Management has the responsibility to:

   i. make no contact (unless requested) with the individual suspected of committing fraud to determine facts or demand restitution. Under no circumstances should there be any reference to "what you did", "the crime", "the fraud", "the misappropriation", etc.;

   ii. avoid discussing the case, facts, suspicions, or allegations with anyone outside the City, unless specifically directed to do so by the City Attorney;

iii. avoid discussing the case with anyone inside the City other than the City Manager, Internal Auditor, or City Attorney or law enforcement personnel;

iv. direct all inquiries from the individual suspected of committing fraud, or his or her representative, to the City Manager or City Attorney. All inquiries by an attorney representing the individual suspected of committing fraud should be directed to the City Attorney. All inquiries from the media should be directed to the City Manager, and;

v. take appropriate corrective and disciplinary action, up to and including dismissal, if authorized by and in conformance with the City's personnel policies.

3. EMPLOYEE RESPONSIBILITIES

a. Employees should report detected or suspected fraud to the Employee's supervisor.

b. In the event the suspected fraud involves the Employee's immediate supervisor, the Employee shall make the report directly to the next higher level of Management and/or the City Manager.

c. The reporting Employee shall refrain from further investigation of the incident, confrontation with the alleged violator, or further discussion of the incident with anyone, unless requested by the City Manager, Internal Auditor, City Attorney, or law enforcement personnel.

4. INTERNAL AUDITOR RESPONSIBILITIES

a. Upon assignment by the City Manager, the Internal Auditor will promptly investigate the fraud.

b. In all circumstances where there appears to be reasonable grounds for suspecting that a fraud has taken place, the Internal Auditor, in consultation with the City Attorney, will contact appropriate law enforcement personnel.

c. The Internal Auditor shall be available and receptive to receiving relevant, confidential information to the extent allowed by law.

d. If evidence is uncovered showing possible fraud, the Internal Auditor will proceed as follows:

i. discuss the findings with Management and the City Manager to determine if disciplinary actions should be taken;

ii. report to the External Auditor such activities in order to assess the effect of the fraud activity on the City's financial statements;

iii. coordinate with Management regarding notification to insurers and filing of insurance claims;

iv. take immediate action, in consultation with the City Attorney, to prevent the theft, alteration, or destruction of evidentiary records. Such action shall include, but is not limited to:

(A) removing the records and placing them in a secure location, or limiting access to the location where the records currently exist, and;

(B) preventing the individual suspected of committing the fraud from having access to the records.

e. In consultation with the City Attorney and appropriate law enforcement personnel, the Internal Auditor may disclose particulars of the investigation with potential witnesses if such disclosure would further the investigation.

f. If the Internal Auditor is contacted by the media regarding an alleged fraud or investigation, the Internal Auditor will direct all inquiries to the City Manager.

g. At the conclusion of the investigation, the Internal Auditor will document the results in a confidential memorandum report to the City Manager and the City Attorney. If the report concludes that the allegations are supported by evidence, the report will be forwarded to appropriate law enforcement personnel.

h. Unless exceptional circumstances exist, a person under investigation for fraud is to be given notice in writing of essential particulars of the allegations following the conclusion of the investigation. Where notice is given, the person against whom allegations are being made may submit a written explanation to the Internal Auditor no later than seven (7) calendar days after notice is received.

i. The Internal Auditor shall make recommendations to the appropriate department for

assistance in the prevention of future similar occurrences.

j. Upon completion of the investigation, including all legal and personnel actions, all records, documents, and other evidentiary material, obtained from the department under investigation will be returned by the Internal Auditor to that department.

DISCIPLINARY ACTIONS

Any Employee found to be responsible for fraud or who knowingly makes false allegations in violation of this Policy shall be subject to appropriate disciplinary action, up to and including termination of employment and/or termination of the contract. The severity of the disciplinary action will be based upon the circumstances of the violation and in accordance with the City's personnel policies. The City will assess any remedial measures necessary to address and correct the circumstance and prevent reoccurrence in the future. Remedial measures may include, but are not limited to, disciplinary action, reorganization of personnel, training and education, counseling and/or other employee assistance.

EXCEPTIONS

There will be no exceptions to this Policy unless provided and approved by the City Manager and the City Attorney.

CITY OF ALISO VIEJO

ACKNOWLEDGMENT OF RECEIPT OF FRAUD POLICY

I hereby acknowledge that I have received a copy of the City's "Fraud Prevention Policy" dated October 1, 2008. I understand that I am to promptly read its contents and distribute copies to employees assigned to perform Services for the City of Aliso Viejo.

To the extent that provisions of this policy conflict with previously issued policies or practices, whether or not such policies and practices were contained in written policies, this policy shall prevail.

_____
Name of Business

_____
Print Name

_____
Signature

_____
Date

BID FORM

NAME OF BIDDER: Bay Allan Slurry Seal Inc

The undersigned, hereby declare that we have carefully examined the location of the proposed Work, and have read and examined the Contract Documents, including all plans, specifications, and all addenda, if any, for the following Project:

FY 2014-15 Slurry Seal and Rehabilitation

We hereby propose to furnish all labor, materials, equipment, tools, transportation, and services, and to discharge all duties and obligations necessary and required to perform and complete the Project for the following UNIT PRICES:

BID SCHEDULE

NO.	ITEM DESCRIPTION	UNIT OF MEASURE	EST. QTY.	UNIT PRICE	ITEM COST
1.	Mobilization	LS	1	$15,000.00	$15,000.00
2.	Traffic Control	LS	1	$19,750.00	$19,750.00
3.	Public Notification	LS	1	$2,600.00	$2,600.00
4.	Crack Sealing	LS	1	$16,200.00	$16,200.00
5.	Type II Emulsion Aggregate Slurry	ELT	1,620	$176.62	$286,124.40
6.	Pneumatic Roller	LS	1	$7,040.00	$7,040.00
7.	Street Sweeping	LS	1	$8,500.00	$8,500.00
8.	4" Double Yellow, thermoplastic	LF	19,625	$ .94	$18,447.50
9.	4" Skip and Solid Yellow, thermoplastic	LF	1,520	$ .84	$1,276.80
10.	4" Solid Yellow, thermoplastic	LF	155	$1.05	$162.75
11.	8" Skip Yellow, thermoplastic	LF	60	$1.05	$63.00
12.	12" Solid Yellow, thermoplastic	LF	725	$2.10	$1,522.50
13.	8" Solid White, thermoplastic	LF	6,900	$ .89	$6,141.00
14.	8" Skip White, thermoplastic	LF	95	$1.31	$124.45
15.	4" Skip White, thermoplastic	LF	4,885	$ .47	$2,295.95

16.	4" Solid White, thermoplastic	LF	1,130	$ .63	$ 711.90
17.	12" Solid White, thermoplastic	LF	3,370	$ 2.10	$7,077.00
18.	Arrows, Thermoplastic	EA	86	$78.75	$6,772.50
19.	Letters, Thermoplastic	EA	538	$ 19.95	$10,733.10
20.	Raised Pavement Markers	LS	1	$8,400.00	$8,400.00
21.	Remove Existing Striping, Markings, and RPM	LS	1	$28,700.00	$28,700.00
22.	WPCP	LS	1	$3,450.00	$3,450.00

In case of discrepancy between the unit price and the item cost set forth for a unit basis item, the unit price shall prevail and, shall be utilized as the basis for determining the lowest responsive, responsible bidder. However, if the amount set forth as a unit price is ambiguous, unintelligible or uncertain for any cause, or is omitted, or is the same amount as the entry in the "Item Cost" column, then the amount set forth in the "Item Cost" column for the item shall prevail and shall be divided by the estimated quantity for the item and the price thus obtained shall be the unit price. Final payment shall be determined by the Engineer from measured quantities of work performed based upon the unit price.

TOTAL BID PRICE (BASED ON BID SCHEDULE TOTAL OF UNIT PRICES):

$ 451,092.85
Total Bid Price in Numbers

Four hundred fifty One Thousand Ninety two Dollars and eighty five cents.
Total Bid Price in Written Form

In case of discrepancy between the written price and the numerical price, the written price shall prevail.

The undersigned agrees that this Bid Form constitutes a firm offer to City which cannot be withdrawn for the number of calendar days indicated in the Notice Inviting Bids from and after the bid opening, or until a Contract for the Work is fully executed by City and a third party, whichever is earlier.

If the Contract Documents specify alternate bid items, the following Alternate Bid amounts shall be added to or deducted from the Total Bid Price entered above (please check the appropriate box), at City's sole option. City can choose to include one or more of the Alternate Bids in the Project. If any of the Alternate Bids are selected by City, the resulting amount shall be added to or deducted from Total Bid Price for the Project. City may select one or more of the Alternate Bids at the below stated Bid Price up to sixty (60) days following award of the Contract. City can award/select Alternate Bid items at any time(s).

ALTERNATE BID SCHEDULE "A"

NO.	ITEM DESCRIPTION	UNIT OF MEASURE	EST. QTY.	UNIT PRICE	ITEM COST
ALTERNATE #1 ☐ Add ☐ Deduct					
ALTERNATE #2 ☐ Add ☐ Deduct					

ALTERNATE BID SCHEDULE "A" BID PRICE (BASED ON ALTERNATE BID SCHEDULE "A" TOTAL OF UNIT PRICES):

$ _____
Total Bid Price in Numbers

_____
Total Bid Price in Written Form

SECTION 00400
BID FORM
FY 2014-15 SLURRY SEAL AND REHABILITATION

The Contract duration shall commence on the date stated in City's Notice to Proceed, and shall be completed by the Contractor in the time specified in the Contract Documents. In no case shall the Contractor commence construction prior to the date stated in City's Notice to Proceed.

Bidder certifies that it is licensed in accordance with the law providing for the registration of Contractors, License No. 372798, Expiration Date 4-30-15, class of license C-12. If the bidder is a joint venture, each member of the joint venture must include the above information.

The undersigned acknowledges receipt, understanding and full consideration of the following addenda to the Contract Documents.

Addenda No. _____

Addenda No. _____

Addenda No. _____

1. Attached is the required bid security in the amount of not less than 10% of the Total Bid Price.

2. Attached is the fully executed Noncollusion Declaration form.

3. Attached is the completed Designation of Subcontractors form.

4. Attached is the completed Bidder Information Form.

5. Attached is the completed Contractor's Certificate Regarding Workers' Compensation form.

I hereby certify under penalty of perjury under the laws of the State of California, that all of the information submitted in connection with this Bid and all of the representations made herein are true and correct.

Name of Bidder Roy Allan Slurry Seal Inc.

Signature [signature]

Name and Title Lawrence Allan Vice President

Dated 1-27-15

END OF BID FORM

CONTRACTOR'S CERTIFICATE REGARDING WORKERS' COMPENSATION

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract.

Name of Bidder Bay Allan Slurry Seal, Inc.

Signature [illegible]

Name Lawrence Allan

Title Vice President

Dated 1-27-15

END OF CONTRACTOR'S CERTIFICATE REGARDING WORKERS' COMPENSATION

BID BOND

The makers of this bond are Roy Allan Slurry Seal, Inc. as Principal, and Contractors Bonding and Insurance Company, as Surety and are held and firmly bound unto the City of Aliso Viejo, hereinafter called City, in the penal sum of TEN PERCENT (10%) OF THE TOTAL BID PRICE of the Principal submitted to City for the work described below, for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted the accompanying bid dated January 29, 2015, for FY 2014-15 Slurry Seal and Rehabilitation.

If the Principal does not withdraw its bid within the time specified in the Contract Documents; and if the Principal is awarded the Contract and provides all documents to City as required by the Contract Documents; then this obligation shall be null and void. Otherwise, this bond will remain in full force and effect.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents shall in affect its obligation under this bond, and Surety does hereby waive notice of any such changes.

In the event a lawsuit is brought upon this bond by City and judgment is recovered, the Surety shall pay all litigation expenses incurred by City in such suit, including reasonable attorneys' fees, court costs, expert witness fees and expenses.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their several seals this 26th day of January, 2015, the name and corporate seal of each corporation.

(Corporate Seal)

Roy Allan Slurry Seal, Inc.
Contractor/ Principal

By
Title Vice President

Contractors Bonding and Insurance Company
Surety

(Corporate Seal)

By
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title Matthew J. Coats, Attorney-in-Fact

ACKNOWLEDGMENT

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 Orange)

On January 29, 2015 before me, Ann-Marie Allan, Notary Public
(insert name and title of the officer)

personally appeared Lawrence Allan,
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.

MGC1 ANN MARIE ALLAN
COMM. # 1939903
NOTARY PUBLIC - CALIFORNIA
ORANGE COUNTY
COMM. EXPIRES JULY 3, 2015 MGC1

Signature Ann Marie Allan (Seal)

STATE OF CALIFORNIA)
) ss.
CITY OF _____)

On this _____ day of _____, in the year 20__, before me, _____, a Notary Public in and for said state, 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 as the Attorney-In-Fact of the (Surety) acknowledged to me that he/she executed the same in his/her authorized capacity, and subscribed the name of the _____ (Surety) thereto and his/her own name as Attorney-In-Fact.

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.

_____
Notary Public in and for said State

(SEAL)

Commission expires: _____

NOTE: A copy of the Power-of-Attorney to local representatives of the bonding company must be attached hereto.

END OF BID BOND FORM

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT **CIVIL CODE § 1189**

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 Orange)

On January 26, 2015 before me, Summer L. Reyes, Notary Public,
Date *Here Insert Name and Title of the Officer*

personally appeared Matthew J. Coats
Name(s) of Signer(s)

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.

SUMMER L. REYES
Commission # 1986627
Notary Public - California
Orange County
My Comm. Expires Jul 29, 2016

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 _____
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document
Title or Type of Document: _____ Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

©2014 National Notary Association • www.NationalNotary.org • 1-800-US NOTARY (1-800-876-6827) Item #5907

RLI cbic an RLI Company
9025 N. Lindbergh Dr. | Peoria, IL 61615
Phone: (800)645-2402 | Fax: (309)689-2036

POWER OF ATTORNEY

RLI Insurance Company
Contractors Bonding and Insurance Company

Know All Men by These Presents:

That this Power of Attorney is not valid or in effect unless attached to the bond which it authorizes executed, but may be detached by the approving officer if desired.

That this Power of Attorney may be effective and given to either or both of **RLI Insurance Company** and **Contractors Bonding and Insurance Company**, required for the applicable bond.

That **RLI Insurance Company**, a Illinois corporation, and/or **Contractors Bonding and Insurance Company**, a Washington corporation (as applicable), each authorized and licensed to do business in all states and the District of Columbia do hereby make, constitute and appoint:

Linda D. Coats, Matthew J. Coats, Summer Reyes, jointly or severally

in the City of Laguna Hills, State of California, as Attorney in Fact, with full power and authority hereby conferred upon him/her to sign, execute, acknowledge and deliver for and on its behalf as Surety, in general, any and all bonds, undertakings, and recognizances in an amount not to exceed **Ten Million** Dollars (**$10,000,000.00**) for any single obligation.

The acknowledgment and execution of such bond by the said Attorney in Fact shall be as binding upon this Company as if such bond had been executed and acknowledged by the regularly elected officers of this Company.

RLI Insurance Company and **Contractors Bonding and Insurance Company**, as applicable, have each further certified that the following is a true and exact copy of the Resolution adopted by the Board of Directors of each such corporation, and now in force, to-wit:

> **"All bonds, policies, undertakings, Powers of Attorney or other obligations of the Corporation shall be executed in the corporate name of the Corporation by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or Agents who shall have authority to issue bonds, policies or undertakings in the name of the Corporation. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the Corporation. The signature of any such officer and the corporate seal may be printed by facsimile or other electronic image."**

IN WITNESS WHEREOF, **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company**, as applicable, have caused these presents to be executed by its respective Vice President with its corporate seal affixed this 4th day of August, 2014.

CONTRACTORS BONDING AND INSURANCE COMPANY — CORPORATE SEAL 1979 — WASHINGTON

RLI INSURANCE COMPANY — CORPORATE SEAL — ILLINOIS

RLI Insurance Company
Contractors Bonding and Insurance Company

Roy C. Die — Vice President

State of Illinois
County of Peoria } SS

On this 4th day of August, 2014, before me, a Notary Public, personally appeared Roy C. Die, who being by me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of the **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company**, and acknowledged said instrument to be the voluntary act and deed of said corporation.

Jacqueline M. Bockler — Notary Public

"OFFICIAL SEAL"
JACQUELINE M. BOCKLER
NOTARY PUBLIC STATE OF ILLINOIS
COMMISSION EXPIRES 01/14/18

CERTIFICATE

I, the undersigned officer of **RLI Insurance Company**, a stock corporation of the State of Illinois, and/or **Contractors Bonding and Insurance Company**, a Washington corporation, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable; and furthermore, that the Resolution of the Company as set forth in the Power of Attorney, is now in force. In testimony whereof, I have hereunto set my hand and the seal of the **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company** this 26th, day of January, 2015.

RLI Insurance Company
Contractors Bonding and Insurance Company

Roy C. Die — Vice President

0475404020212

NONCOLLUSION DECLARATION

The undersigned declares:

I am the Vice President of Ray Allan Slurry Seal Inc, the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on 1-27-15 [date], at Santa Fe Springs [city], Ca. [state].

Name of Bidder Ray Allan Slurry Seal, Inc

Signature [signature]

Name Lawrence Allan

Title Vice President

Dated 1-27-15

END OF NONCOLLUSION DECLARATION

CONTRACTOR INFORMATION AND EXPERIENCE FORM

A. INFORMATION ABOUT BIDDER

[**Indicate not applicable ("N/A") where appropriate.**]

NOTE: Where Bidder is a joint venture, pages shall be duplicated and information provided for all parties to the joint venture.

1.0 Name of Bidder: Roy Allan Slurry Seal Inc

2.0 Type, if Entity: Vice President

3.0 Bidder Address: 11922 Bloomfield Ave
Santa Fe Springs Ca. 90670

(562) 864-6612 — Facsimile Number
(562) 864-3363 — Telephone Number

4.0 How many years has Bidder's organization been in business as a Contractor? 40

5.0 How many years has Bidder's organization been in business under its present name? 40

5.1 Under what other or former names has Bidder's organization operated?: _____

6.0 If Bidder's organization is a corporation, answer the following:

6.1 Date of Incorporation: 1975

6.2 State of Incorporation: California

6.3 President's Name: W.R Allan

6.4 Vice-President's Name(s): Lawrence Allan

6.5 Secretary's Name: Lawrence Allan

6.6 Treasurer's Name: _____

14.0 List Trade References:

Vulcan Materials - ~~(951) 277-9110~~ (626) 633-4239
Chandler Aggregates - (951) 277-9110

15.0 List Bank References (Bank and Branch Address):

Camerica
13200 Crossroads Pkwy
City of Industry
CA 91746

16.0 Name of Bonding Company and Name and Address of Agent:

Coats Surety Services
23096 Avd De la Carlota Suite 600
Laguna Hills, Ca. 92653
(949) 457-1060

C.B.I.C.
111 Pacifica, Suite 350
Irvine, Ca. 92618
(949) 341-9115

B. LIST OF CURRENT PROJECTS (Backlog)

[**Duplicate Page if needed for listing additional current projects.**]

Project	Description of Bidder's Work	Completion Date	Cost of Bidder's Work
OZM012 Crack Seal & Slurry	Slurry Seal & Crack Seal	June 2015	$1,500,000.00
Annual Slurry Seal Imperial B.	Slurry Seal & Crack Seal	March 2015	$198,959.00

C. LIST OF COMPLETED PROJECTS - LAST THREE YEARS

[**Duplicate Page if needed for listing additional completed projects.**]

Please include only those projects which are similar enough to demonstrate Bidder's ability to perform the required Work.

Project Client	Description of Bidder's Work	Period of Performance	Cost of Bidder's Work
City of Mission Viejo	Slurry Seal	Nov. 2014	$284,000.00
City of Lake Forest	Crack Fill Slurry Seal	Oct. 2014	$1,058,388.00
City of San Marcos	Slurry Seal	Sept 2014	$742,309.00
City of Seal Beach	Slurry Seal	June 2014	$38,942.00
County of Orange	Slurry Seal	Sept 2014	$1,045,405.00
City of Manhattan	Slurry Seal	Jan. 2014	$229,613.00
City of Yorba Linda	Slurry Seal	Nov. 2013	$2,411,741.00

D. EXPERIENCE AND TECHNICAL QUALIFICATIONS QUESTIONNAIRE

Personnel:

The Bidder shall identify the key personnel to be assigned to this project in a management, construction supervision or engineering capacity.

1. List each person's job title, name and percent of time to be allocated to this project:
   Lawrence Allan - Project Manager - 20%
   Jerry Heredia - Superintendent - 50%
   Franco Donato - Foreman - 100%

2. Summarize each person's specialized education:
   Lawrence Allan - Bachelor of Science - Construction Management
   Jerry Heredia -
   Franco Donato -

3. List each person's years of construction experience relevant to the project:
   Lawrence Allan - 29 years
   Jerry Heredia - 9 years
   Franco Donato - 9 years

4. Summarize such experience:
   Lawrence Allan - Driver, Operator, Estimator -
   Jerry Heredia - Driver, Foreman, Superintendent
   Franco Donato - Driver, Foreman

Bidder agrees that personnel named in this Bid will remain on this Project until completion of all relevant Work, unless substituted by personnel of equivalent experience and qualifications approved in advance by City.

Additional Bidder's Statements:

If the Bidder feels that there is additional information which has not been included in the questionnaire above, and which would contribute to the qualification review, it may add that information in a statement here or on an attached sheet, appropriately marked:

_____
_____
_____
_____
_____

E. VERIFICATION AND EXECUTION

These Bid Forms shall be executed only by a duly authorized official of the Bidder:

I declare under penalty of perjury under the laws of the State of California that the foregoing information is true and correct:

Name of Bidder Ray Allen Slurry Seal Inc

Signature [illegible]

Name Lawrence Allen

Title Vice President

Dated 1-27-15

END OF CONTRACTOR INFORMATION AND EXPERIENCE FORM

LIST OF SUBCONTRACTORS FORM

In compliance with the Subletting and Subcontracting Fair Practices Act of the Public Contract Code of the State of California, each bidder shall set forth below: (a) the name and the location of the place of business and (b) the portion of the work which will be done by each subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the work in an amount in excess of one-half of one percent (1/2%) of the Contractor's Total Bid Price. Notwithstanding the foregoing, if the work involves streets and highways, then the Contractor shall list each subcontractor who will perform work or labor or render service to Contractor in or about the work in an amount in excess of one-half of one percent (1/2%) of the Contractor's Total Bid Price or $10,000, whichever is greater. No additional time shall be granted to provide the below requested information.

If no subcontractor is specified, for a portion of the work, or if more than one subcontractor is specified for the same portion of Work, to be performed under the Contract in excess of one-half of one percent (1/2%) of the Contractor's Total Bid Price or $10,000, whichever is greater if the work involves streets or highways, then the Contractor shall be deemed to have agreed that it is fully qualified to perform that Work, and that it shall perform that portion itself.

Portion of Work	Subcontractor & License Number	Location of Business
Striping & Marking	B.C. Traffic Specialist 877686	638 W. Southern Ave. Orange, Ca. 92865

SECTION 00440
LIST OF SUBCONTRACTORS FORM
FY 2014-15 SLURRY SEAL AND REHABILITATION

Portion of Work	Subcontractor & License Number	Location of Business

SECTION 00440
LIST OF SUBCONTRACTORS FORM
FY 2014-15 SLURRY SEAL AND REHABILITATION

Portion of Work	Subcontractor & License Number	Location of Business

Name of Bidder Ray Allen Slurry Seal Inc

Signature [illegible]

Name Lawrence Allen

Title Vice President

Dated 1-27-15

END OF LIST OF SUBCONTRACTORS FORM