

RESOLUTION NO. 2024-9268

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS CERTIFYING A FINAL ENVIRONMENTAL IMPACT REPORT FOR A MIXED-USE PROJECT CONSISTING OF 119 APARTMENTS AND 4,000 SQUARE FEET OF COMMERCIAL SPACE IN THE MIXED USE 2 (MU-2) ZONE

EIR23-003
Capalina SMA, LLC

WHEREAS, on October 19, 2022, the City of San Marcos (City) received an application from Capalina SMA, LLC requesting a General Plan Amendment (GPA22-0003) to allow for a change of land use designation from Mixed Use 3 (MU3) to Mixed Use 2 (MU2); a Rezone (R22-0003) to change the zone from Mixed Use 3 (MU-3) to Mixed Use 2 (MU-2); and a Site Development Plan (SDP22-0007) to allow the construction of 119 apartments and 4,000 square feet of commercial space on a 2.51-acre site located on the north side of Capalina Road between Rancho Santa Fe Road and Pacific Street in the Business/Industrial District (Project); and

WHEREAS, the Project requires approval of a discretionary action by the City, which is subject to compliance with the California Environmental Quality Act (Public Resources Code Sections 21000 et. seq) (CEQA), the California Guidelines for the Implementation of CEQA (14 Cal. Code of Regs. Sections 15000-15387) (State CEQA Guidelines), and the City's environmental review ordinance (San Marcos Municipal Code Chapter 18.04) (City CEQA Guidelines); and

WHEREAS, the City is the lead agency, as defined by CEQA and the State CEQA Guidelines, responsible for the preparation, consideration and approval of environmental documents for the Project; and

WHEREAS, on May 11, 2023, the City held an Environmental Impact Report (EIR) Scoping Meeting to provide an overview of the project Notice of Preparation, in accordance with CEQA Guideline Section 15083, and Public Workshop with the general public; and

WHEREAS, the City prepared, or caused to be prepared, an Environmental Impact Report (EIR) to assess the Project in conformance with CEQA; and

WHEREAS, the Draft EIR was available to the general public and other public agencies for a 45-day review and comment period from November 3, 2023 to December 18, 2023; and

WHEREAS, the City received two comment letters on the Draft EIR from private individuals, private entities, or public agencies; and

WHEREAS, the City issued a Final Environmental Impact Report (EIR23-003, State Clearinghouse No. 2023050006 (Final EIR)) on February 5, 2024, incorporating the November 2023 Draft EIR; comments and recommendations received by the City on the Draft EIR, either verbatim or in summary, and a list of private individuals or entities and public agencies that submitted comments; City responses to significant environmental points raised in the review and consultation process; modifications made to the text of the Draft EIR that are also included in the Final EIR; and appendices to the Draft and Final EIRs; and

WHEREAS, the Final EIR evaluates the possible environmental impacts of the proposed General Plan Amendment (GPA22-0003), Rezone (R22-0003), and Site Development Plan (SDP22-0007); and

WHEREAS, to the extent authorized by law, the City desires and intends to use the Final EIR and the documents incorporated by reference therein, to comply with the environmental documentation requirements pursuant to CEQA, the State CEQA Guidelines and the City CEQA Guidelines for each of the above-referenced discretionary actions for the Project; and

WHEREAS, the City prepared the Findings of Fact as specified in Exhibit A in accordance with CEQA and the State CEQA Guidelines and San Marcos Municipal Code Chapter 18.04 (City CEQA Guidelines); and

WHEREAS, the Planning Commission is responsible pursuant to San Marcos Municipal Code Chapter 18.04 for reviewing the Final EIR and making a recommendation to the City Council as to whether the Final EIR should be certified if prepared in compliance with all applicable requirements; and

WHEREAS, the Planning Commission recommended certification of the Final EIR to the City Council on February 5, 2024 by a 7-0 vote, in favor; and

WHEREAS, the required public hearing held on February 5, 2024 was duly noticed and held in the manner prescribed by law.

NOW, THEREFORE, the City Council resolves as follows:

- A. The foregoing recitals are true and correct, and are hereby incorporated by reference into this Resolution.
- B. The Final EIR concludes that the Project would have direct and/or cumulative impacts in the following areas which can be reduced to less than significant levels with implementation of the mitigation measures in the Final EIR:
 - 1. Biological Resources (impacts to nesting birds)
 - 2. Cultural Resources (unknown cultural resources during project grading)
 - 3. Tribal Cultural Resources (unknown cultural resources during project grading)
 - 4. Geology and Soils (unknown impacts to paleontological resources during grading)
- C. The Final EIR indicates the Project will not have significant, direct and/or unavoidable and adverse impacts on the environment after all feasible mitigation measures recommended in the Final EIR are implemented.
- D. The Final EIR reflects the independent judgment of the City, as required by Section 21082.1(c)(3) of CEQA; and

- E. The Final EIR was prepared and completed in compliance with CEQA and all applicable requirements, as required by Section 15090 of the State CEQA Guidelines, including the Findings of Facts to be considered.
- F. Upon consideration of the Finding of Facts, together with the staff report (copies of which are on file with the City), public testimony presented at the hearing, and all other oral and written evidence received by the City on this Project, the City Council hereby certifies the Final EIR, and adopts the Findings of Fact attached hereto as Exhibit A and incorporated herein by reference.

PASSED, APPROVED AND ADOPTED by the City Council of the City of San Marcos, California, at a regular meeting thereof, held on this 26th day of March, 2024, by the following roll call vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED:

Rebecca D. Jones, Mayor

ATTEST:

Phillip Scollick, City Clerk

Attachment(s):

Exhibit A –Findings of Fact

EXHIBIT A
RESOLUTION NO. 2024-9268
EIR 23-003

**California Environmental Quality Act (CEQA) Findings Regarding
Significant Effects for the Capalina Apartments Project**

GPA22-0003, R22-0003, SDP22-0007
SCH No. 2023050006

The City of San Marcos has prepared an Environmental Impact Report (EIR) for the proposed Capalina Apartments (Project) in compliance with the California Environmental Quality Act (CEQA; Public Resources Code Section 21000 *et seq.*) and the State CEQA Guidelines (14 California Code of Regulations Section 15000 *et seq.* as amended).

FINAL EIR EVALUATION

The Final EIR evaluated potentially significant effects for the following environmental areas of potential concern: 1) Aesthetics; 2) Air Quality; 3) Biological Resources; 4) Cultural Resources; 5) Energy; 6) Geology and Soils; 7) Greenhouse Gas; 8) Hazards and Hazardous Materials; 9) Hydrology and Water Quality; 10) Land Use and Planning; 11) Noise; 12) Population and Housing; 13) Public Services; 14) Recreation; 15) Transportation; 16) Tribal Cultural Resources; and 17) Utilities and Service Systems. The issue areas of Agriculture/Forestry Resources, Mineral Resources, and Wildfire were analyzed during the Initial Study process for the EIR and were determined to have no impact or less than significant impacts.

The Final EIR identified potentially significant environmental effects related to Biological Resources (nesting birds); Cultural Resources and Tribal Cultural Resources (unknown cultural resources during project grading); and Geology and Soils (paleontological resources).

Public Resources Code Section 21081 and CEQA Guidelines Section 15091 require that the City of San Marcos, as lead agency for this Project, prepare written findings for any identified significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings under CEQA and the CEQA Guidelines are:

- (1) Changes or alterations have been required in, or incorporated into, the project which mitigate, avoid or substantially lessen the significant effects on the environment.
- (2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
- (3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the Final EIR.

After consideration of an EIR, the lead agency may decide whether or how to approve or carry out the project. Pursuant to Public Resources Code Section 21081(a)(1) and CEQA Guidelines Section 15091(a)(1) of the Guidelines, the City finds that for each of the significant effects identified in the Final EIR, changes or alterations (mitigation measures) have been required in, or incorporated into, the Project which will avoid or substantially lessen each of the significant environmental effects identified in the Final EIR. The significant effects (impacts) and mitigation measures are stated fully in the Final EIR. The rationale for this finding for each impact is discussed below.

The official custodian of the documents and other materials that constitute the record of proceedings is:

City of San Marcos Planning Division
1 Civic Center Drive
San Marcos, CA 92069

Copies of all these documents, which constitute the record of proceedings upon which the City's decision is based, are, and at all relevant times have been, available upon request at the offices of the City, the custodian for such documents.

PROJECT DESCRIPTION

The Capalina Apartments (Proposed Project) would consist of 119 residential apartments on 2.51 gross acres for a proposed density of 47 dwelling units/acre. Six of the units would be affordable at the very low-income level (30-50% of the Area Median Income or AMI)¹. The project also includes 4,000, square feet (s.f.) of commercial space. The project site is located on the north side of Capalina Road, between N. Rancho Santa Fe Road and N. Pacific Street in the Business/Industrial District (project site).

The residential units would be spread across two buildings, identified as Building A and Building B. Building A is an L-shaped building fronting Capalina Road, would be four stories tall, and have a maximum height of approximately 56 feet. Building B, which is a rectangular shape and fronts on W. Mission Road, would also be four stories and have a maximum height of approximately 51 feet. Overall, the project proposes 11 studio/one bath units (600 s.f.), 53 one bedroom/one bath units (ranging from 680 s.f. to 710 s.f.), 6 two bedroom/one bath units (925 s.f.), 41 two bedroom/two bath units (1,080 s.f.), and 8 three bedroom/2 bath units (1,130 s.f.). Proposed materials include stucco walls, composite shingle roof material, resawn wood fascia, trim detailing, and metal railing.

A total of 34,582 s.f. of open space is proposed. This represents approximately 32 percent of the project site. There are two main categories of open space proposed for the project – common open space and private open space. Common open space includes both indoor and outdoor common space. The outdoor common space would be 25,700 s.f. and includes 24,415 s.f. at grade (pool, spa, outdoor “living room”, open turf area with play equipment and passive open

¹ Area Median Income (AMI) is the midpoint of a region's income distribution - half of the families in a region earn more than the median and half earn less than the median. This can also be looked at as the Median household income.

space areas) and a 1,285 s.f. rooftop deck. The proposed common indoor space would be 1,250 s.f. and includes a fitness area and meeting room. All common open space would be for the use of future residents and would be maintained by the property management company. Private open space is associated with private patio and balcony areas on the residential units and totals 7,632 s.f. Private open space ranges from 396 s.f. to 2,706 s.f. per unit, depending on the unit layout and location.

The project applicant is requesting the following discretionary approvals from the City to allow for development of the proposed project:

General Plan Amendment (GPA22-0003) – A General Plan Amendment would be required to change the existing Mixed Use 3 (MU3) designation to Mixed Use 2 (MU2)

Rezone (R22-0003) - A rezone would be required to change the existing Mixed Use 3 (SP) (MU-3-SP)) zoning to Mixed Use 2 (MU-2).

Site Development Plan (SDP22-0007) - The Site Development Plan approval would be required to construct 119 multi-family residential units and 4,000 s.f. of commercial and address the details of the architectural style, building elevation, fencing, landscaping, among other criteria, within the development.

PROJECT OBJECTIVES

The City identified project objectives to develop a reasonable range of alternatives to analyze within the Final EIR. The objectives for the Proposed Project are:

- 1) Provide a multi-family housing opportunity through a range of unit types, sizes, and number of different bedroom counts, including studios, one, two, and, three-bedroom units, as well as a range of affordability to accommodate a full spectrum of family demographics to contribute to the growing housing needs of the region.
- 2) Integrate high-density housing opportunities and commercial uses close to major transit corridors, education facilities, and job centers to optimize land use with transit use and active modes of transportation, reduce reliance on automobiles, and potentially reduce energy usage and air pollutant and greenhouse gas (GHG) emissions.
- 3) To the extent possible given the site constraints, maximize the opportunity to provide high-density housing for the city of San Marcos in the 45-50 dwelling unit/acre density range.
- 4) Support the housing needs of the City of San Marcos and the region by developing high-quality, workforce housing that balances density with price-points and long-term maintenance costs, such that new apartments remain financially attainable.
- 5) Incorporate deed restricted affordable housing into a portion of the proposed project.

These objectives have been considered in preparing the findings discussed below.

Section I Findings Regarding Certification of Final EIR

Pursuant to CEQA and the Guidelines, the City Council of the City of San Marcos as the lead agency under CEQA is responsible for certification of the EIR and therefore makes the following findings:

1. The City Council has reviewed and considered the information in the Final EIR, which has been completed in compliance with CEQA;
2. The Final EIR reflects the City's, as lead agency, independent judgment and analysis; and,
3. The City Council adopts the Mitigation Monitoring and Reporting Program (Attachment A) to reduce or avoid the significant and mitigable impacts of the Project.

Section II Environmental Effects Found Not to be Significant

Through project scoping and the environmental analysis conducted for and included within the Final EIR, it was determined that the Project would not result in a potential significant effect on the environment with respect to Aesthetics, Agriculture and Forestry Resources, Air Quality, Energy, Greenhouse Gas Emissions, Hazards and Hazardous Materials, Hydrology and Water Quality, Mineral Resources, Land Use and Planning, Noise, Population and Housing, Public Services, Recreation, Transportation, Utilities and Service Systems, and Wildfire. A summary of the reasons for this determination can be found in Chapters 3.0 and 5.0 of the Final EIR. No further findings are required for these subject areas.

Section III Environmental Effects Mitigated to Below a Level of Significance

The following findings supported by substantial evidence in the record, including the Final EIR, and technical appendices, have been made for the significant environmental effects identified in the Final EIR related to Biological Resources, Cultural Resources and Tribal Cultural Resources, and Geology and Soils.

BIOLOGICAL RESOURCES

The Project has the potential to impact avian species protected under the Migratory Bird Treaty Act (MBTA) if tree removal, vegetation removal, or other construction activities occur during the nesting season (Impact BIO-1).

Mitigation Measures: The Project includes mitigation measures in the MMRP that is to be adopted concurrently with these findings.

All biological resource impacts and mitigation measures are detailed in Attachment A at the end of this document. Mitigation measure MM-BIO-1 will mitigate Impact BIO-1 to below a level of significance.

In order to mitigate potential impacts to nesting birds, implementation of the following mitigation measures will be required:

MM-BIO-1 Construction-related ground-disturbing activities (e.g., clearing/grubbing, vegetation removal, grading, and other intensive activities) that occur during the breeding season (typically February 1 through September 15) shall require biological survey for nesting bird species to be conducted within the limits of grading within 72 hours prior to construction. This survey is necessary to ensure avoidance of impacts to nesting raptors and/or birds protected by the federal Migratory Bird Treaty Act and California Fish and Game Code, Sections 3503 and 3513. If any active nests are detected, the area shall be flagged and mapped on the construction plans or a biological resources figure, and the information provided to the construction supervisor and any personnel working near the nest buffer. Active nests will have buffers established around them (e.g., 250 feet for passerines to 500 feet for raptors) by the project biologist in the field with brightly colored flagging tape, conspicuous fencing, or other appropriate barriers or signage. The project biologist shall serve as a construction monitor during those periods when construction activities occur near active nest areas to avoid inadvertent impacts to these nests. The project biologist may adjust the 250-foot or 500-foot setback at his or her discretion depending on the species and the location of the nest (e.g., if the nest is well protected in an area buffered by dense vegetation). However, if needed, additional qualified monitor(s) shall be provided in order to monitor active nest(s) or other project activities in order to ensure all of the project biologist's duties are completed. Once the nest is no longer occupied for the season, construction may proceed in the setback areas.

If construction activities, particularly clearing/grubbing, grading, and other intensive activities, stop for more than 3 days during the nesting season, an additional nesting bird survey shall be conducted within the proposed impact area.

Finding

Changes or alterations have been required in, or incorporated into, the Project as mitigation measure MM-BIO-1, which is feasible, and would mitigate, avoid or substantially lessen the significant environmental effects as identified in the Final EIR to nesting birds protected under the MBTA.

Facts in Support of Finding:

Based on the presence of suitable avian nesting habitat, implementation of the Project could result in potentially significant impacts to nesting birds that are afforded protection under the MBTA would occur (see MM-BIO-1). Mitigation Measure MM-BIO-1 requires a preconstruction survey if construction is proposed during the nesting season. If nesting birds are found, avoidance measures would be implemented to minimize impacts. With the implementation of MM-BIO-1, direct impacts on nesting birds would be less than significant.

With the incorporation of the above mitigation measure, significant environmental effects to biological resources would be less than significant.

CULTURAL RESOURCES AND TRIBAL CULTURAL RESOURCES

The Project would result in potentially significant impacts related to unidentified archaeological resources and human remains (Impacts CR-1 and CR-2).

Mitigation Measures: The Project includes mitigation measures in the MMRP that are to be adopted concurrently with these findings.

All cultural resources impacts and mitigation measures are detailed in Attachment A at the end of this document. Mitigation measures MM-CR-1 through MM-CR-3 will mitigate Impact CR-1 (potential to impact unidentified archaeological resources during grading to below a level of significance. MM-CR-4 will mitigate Impact CR-2 (potential impact to human remains) to below a level of significance.

In order to mitigate potential impacts to unidentified subsurface archaeological resources, implementation of the following mitigation measures will be required:

MM-CR-1 Pre-Excavation Agreement: Prior to the issuance of a Grading Permit, or ground disturbing activities, the Applicant/Owner shall enter into a Tribal Cultural Resources Treatment and Repatriation Agreement (Pre-Excavation Agreement) with a Traditionally and Culturally Affiliated Native American Tribe (TCA Tribe), identified in consultation with the City. The purpose of the Pre-Excavation Agreement shall be to formalize protocols and procedures between the Applicant/Owner and the TCA Tribe for the protection, treatment, and repatriation of Native American human remains, funerary objects, cultural and/or religious landscapes, ceremonial items, traditional gathering areas, and other tribal cultural resources. Such resources may be located within and/or discovered during ground disturbing and/or construction activities for the proposed project, including any additional culturally appropriate archaeological studies, excavations, geotechnical investigations, grading, preparation for wet and dry infrastructure, and other ground disturbing activities. Any project-specific Monitoring Plans and/or excavation plans prepared by the project archaeologist shall include the TCA Tribe requirements for protocols and protection of tribal cultural resources that were agreed to during the tribal consultation.

The landowner shall relinquish ownership of all non-burial related tribal cultural resources collected during construction monitoring and from any previous archaeological studies or excavations on the project site to the TCA Tribe for proper treatment and disposition per the Pre-Excavation Agreement, unless ordered to do otherwise by responsible agency or court of competent jurisdiction. The requirement and timing of such release of ownership, and the recipient thereof, shall be reflected in the Pre-Excavation Agreement. If the

TCA Tribe does not accept the return of the cultural resources, then the cultural resources will be subject to curation.

MM-CR-2

Construction Monitoring: Prior to the issuance of a Grading Permit or ground disturbing activities, the Applicant/Owner or Grading Contractor shall provide written documentation (either as signed letters, contracts, or emails) to the City's Planning Division stating that a Qualified Archaeologist and Traditionally and Culturally Affiliated Native American monitor (TCA Native American monitor) have been retained at the Applicant/Owner or Grading Contractor's expense to implement the construction monitoring program, as described in the Pre-Excavation Agreement.

The Qualified Archaeologist and TCA Native American monitor shall be invited to attend all applicable pre-construction meetings with the General Contractor and/or associated subcontractors to present the construction monitoring program. The Qualified Archaeologist and TCA Native American monitor shall be present on site during grubbing, grading, trenching, and/or other ground disturbing activities that occur in areas of native soil or other permeable natural surfaces that have the potential to unearth any evidence of potential archaeological resources or tribal cultural resources. In areas of artificial paving, the Qualified Archaeologist and TCA Native American monitor shall be present on site during grubbing, grading, trenching, and/or other ground disturbing activities that have the potential to disturb more than six inches below the original pre-project ground surface to identify any evidence of potential archaeological or tribal cultural resources. No monitoring of fill material, existing or imported, will be required if the General Contractor or developer can provide documentation to the satisfaction of the City that all fill materials being utilized at the site are either: 1) from existing commercial (previously permitted) sources of materials; or 2) are from private or other non-commercial sources that have been determined to be absent of tribal cultural resources by the Qualified Archaeologist and TCA Native American monitor.

The Qualified Archaeologist and TCA Native American monitor shall maintain ongoing collaborative coordination with one another during all ground disturbing activities. The requirement for the construction monitoring program shall be noted on all applicable construction documents, including demolition plans, grading plans, etc. The Applicant/Owner or Grading Contractor shall provide written notice to the Planning Division and the TCA Tribe, preferably through e-mail, of the start and end of all ground disturbing activities.

Prior to the release of any grading bonds, or prior to the issuance of any project Certificate of Occupancy, an archaeological monitoring report, which describes the results, analysis, and conclusions of the construction monitoring shall be submitted by the Qualified Archaeologist, along with any TCA Native American monitor's notes and comments received by the Qualified Archaeologist, to the Planning Division Manager for approval. Once approved, a final copy of the archaeological monitoring report shall be retained in a confidential City project

file and may be released, as a formal condition of Assembly Bill (AB) 52 consultation, to San Luis Rey Band of Mission Indians, Rincon Band of Luiseño Indians, Pechanga Band of Indians, or any parties involved in the project specific monitoring or consultation process. A final copy of the report, with all confidential site records and appendices, will also be submitted to the South Coastal Information Center after approval by the City.

MM-CR-3

Unanticipated Discovery Procedures: Both the Qualified Archaeologist and the TCA Native American monitor may temporarily halt or divert ground disturbing activities if potential archaeological resources or tribal cultural resources are discovered during construction activities. Ground disturbing activities shall be temporarily directed away from the area of discovery for a reasonable amount of time to allow a determination of the resource's potential significance. Isolates and clearly non-significant archaeological resources (as determined by the Qualified Archaeologist, in consultation with the TCA Native American monitor) will be minimally documented in the field. All unearthed archaeological resources or tribal cultural resources will be collected, temporarily stored in a secure location (or as otherwise agreed upon by the Qualified Archaeologist and the TCA Tribe), and repatriated according to the terms of the Pre-Excavation Agreement, unless ordered to do otherwise by responsible agency or court of competent jurisdiction.

If a determination is made that the archaeological resources or tribal cultural resources are considered potentially significant by the Qualified Archaeologist, the TCA Tribe, and the TCA Native American monitor, then the City and the TCA Tribe shall determine, in consultation with the Applicant/Owner and the Qualified Archaeologist, the culturally appropriate treatment of those resources.

If the Qualified Archaeologist, the TCA Tribe, and the TCA Native American monitor cannot agree on the significance or mitigation for such resources, these issues will be presented to the Planning Division Manager for decision. The Planning Division Manager shall make a determination based upon the provisions of CEQA and California Public Resources Code Section 21083.2(b) with respect to archaeological resources and California Public Resources Section 21704 and 21084.3 with respect to tribal cultural resources, and shall take into account the religious beliefs, cultural beliefs, customs, and practices of the TCA Tribe.

All sacred sites, significant tribal cultural resources, and/or unique archaeological resources encountered within the project area shall be avoided and preserved as the preferred mitigation. If avoidance of the resource is determined to be infeasible by the City as the Lead Agency, then the City shall require additional culturally appropriate mitigation to address the negative impact to the resource, such as, but not limited to, the funding of an ethnographic study and/or a data recovery plan, as determined by the City in consultation with the Qualified Archaeologist and the TCA Tribe. The TCA

Tribe shall be notified and consulted regarding the determination and implementation of culturally appropriate mitigation and the drafting and finalization of any ethnographic study and/or data recovery plan, and/or other culturally appropriate mitigation. Any archaeological isolates or other cultural materials that cannot be avoided or preserved in place as the preferred mitigation shall be temporarily stored in a secure location on site (or as otherwise agreed upon by the Qualified Archaeologist and TCA Tribe), and repatriated according to the terms of the Pre-Excavation Agreement, unless ordered to do otherwise by responsible agency or court of competent jurisdiction. The removal of any artifacts from the project site will be inventoried with oversight by the TCA Native American monitor.

If a data recovery plan is authorized as indicated above and the TCA Tribe does not object, then an adequate artifact sample to address research avenues previously identified for sites in the area will be collected using professional archaeological collection methods. If the Qualified Archaeologist collects such resources, the TCA Native American monitor must be present during any testing or cataloging of those resources. Moreover, if the Qualified Archaeologist does not collect the cultural resources that are unearthed during the ground disturbing activities, the TCA Native American monitor may, at their discretion, collect said resources for later reburial or storage at a local curation facility, as described in the Pre-Excavation Agreement.

In the event that curation of archaeological resources or tribal cultural resources is required by a superseding regulatory agency, curation shall be conducted by an approved local facility within San Diego County and the curation shall be guided by California State Historical Resources Commission's Guidelines for the Curation of Archaeological Collections. The City shall provide the Applicant/Owner final curation language and guidance on the project grading plans prior to issuance of the grading permit, if applicable, during project construction. The Applicant/Owner shall be responsible for all repatriation and curation costs and provide to the City written documentation from the TCA Tribe or the curation facility, whichever is most applicable, that the repatriation and/or curation have been completed.

MM-CR-4

Human Remains: As specified by California Health and Safety Code Section 7050.5, if human remains, or remains that are potentially human, are found on the project site during ground disturbing activities or during archaeological work, the person responsible for the excavation, or his or her authorized representative, shall immediately notify the San Diego County Medical Examiner's Office by telephone. No further excavation or disturbance of the discovery or any nearby area reasonably suspected to overlie adjacent remains (as determined by the Qualified Archaeologist and/or the TCA Native American monitor) shall occur until the Medical Examiner has made the necessary findings as to origin and disposition pursuant to Public Resources Code 5097.98.

If such a discovery occurs, a temporary construction exclusion zone shall be established surrounding the area of the discovery so that the area would be protected (as determined by the Qualified Archaeologist and/or the TCA Native American monitor), and consultation and treatment could occur as prescribed by law. As further defined by State law, the Medical Examiner will determine within two working days of being notified if the remains are subject to his or her authority. If the Medical Examiner recognizes the remains to be Native American, and not under his or her jurisdiction, then he or she shall contact the Native American Heritage Commission by telephone within 24 hours. The Native American Heritage Commission will make a determination as to the Most Likely Descendent, who shall be afforded 48 hours from the time access is granted to the discovery site to make recommendations regarding culturally appropriate treatment.

If suspected Native American remains are discovered, the remains shall be kept in situ (in place) until after the Medical Examiner makes its determination and notifications, and until after the Most Likely Descendent is identified, at which time the archaeological examination of the remains shall only occur on site in the presence of the Most Likely Descendent. The specific locations of Native American burials and reburials will be proprietary and not disclosed to the general public. According to California Health and Safety Code, six or more human burials at one location constitute a cemetery (Section 8100), and disturbance of Native American cemeteries is a felony (Section 7052). In the event that the Applicant/Owner and the Most Likely Descendant are in disagreement regarding the disposition of the remains, State law will apply, and the mediation process will occur with the NAHC. In the event that mediation is not successful, the landowner shall rebury the remains at a location free from future disturbance (see Public Resources Code Section 5097.98(e) and 5097.94(k)).

Finding

Changes or alterations have been required in, or incorporated into, the Project as mitigation measures MM CR-1 through MM CR-4, which are feasible, and will mitigate, avoid or substantially lessen the significant environmental effects as identified in the Final EIR to archaeological resources and human remains.

Facts in Support of Finding:

Specifically, implementation of these mitigation measures provides for the presence of archaeological and Native American monitors during ground disturbing activities that would be able to identify any previously unidentified archaeological resources to prevent inadvertent disturbance of any intact cultural deposits that may be present. Should any resources be identified, implementation of MM-CR-1 through MM-CR-3 would ensure proper handling and treatment of such resources by providing for a proper evaluation to determine whether additional archaeological work is necessary. To further ensure impacts to Native American archaeological resources are protected, implementation of MM-CR-1 through MM-CR-3 provides additional

protections for significant resources and describes the process for proper treatment and handling to ensure impacts are minimized.

Potential impacts to human remains would be mitigated through implementation of MM-CR-4, which specifies that remains shall not be further disturbed until the San Diego County Coroner has determined origins of the remains and final treatment has been agreed to with input of Native American Tribes as necessary.

GEOLOGY AND SOILS

The Project would result in potentially significant impacts related to unidentified paleontological resources (Impact GEO-1).

Mitigation Measures: The Project includes a mitigation measure in the MMRP that is to be adopted concurrently with these findings.

The geology and soils impact (paleontological resources) and mitigation measure is detailed in Attachment A at the end of this document. Mitigation measure MM-GEO-1 will mitigate Impact GEO-1 (potential impact to previously unknown paleontological resources) to below a level of significance.

In order to mitigate potential impacts to paleontological resources, implementation of the following mitigation measure will be required:

- MM-GEO-1** Prior to project grading the project applicant shall retain a qualified paleontologist to review the proposed project area to determine the potential for paleontological resources to be encountered. If there is a potential for paleontological resources to occur, the paleontologist shall identify the area(s) where these resources are expected to be present, and a qualified paleontological monitor shall be retained to monitor the initial cut in any areas that have the potential to contain paleontological resources.

Finding

Changes or alterations have been required in, or incorporated into, the Project as mitigation measure MM-GEO-1, which is feasible, and will mitigate, avoid or substantially lessen the significant environmental effects as identified in the Final EIR to paleontological resources.

Facts in Support of Finding:

Due to the fact that the sedimentary rock units of the Santiago Formation may contain paleontological resources, there is a potential that the site could contain paleontological resources that could be disturbed during grading activities for the project. Implementation of MM-GEO-1 would require a paleontologist to identify areas where paleontological resources may be present and to monitor the initial cut in any areas that may have the potential to contain paleontological resources. Therefore, impacts to potentially unknown paleontological resources would be reduced to below a level of significance.

Section IV Significant and Unavoidable Environmental Effects

Based upon the analysis in Section 3.1 through 3.17 of the EIR, the proposed project will not have any significant and unavoidable environmental effects. All impacts will be mitigated to below a level of significance through the incorporation of mitigation measures. These mitigation measures will be identified in a Mitigation Monitoring and Reporting program that will be adopted as part of the project and also be made a condition of approval of the project.

Section IV Findings Regarding Project Alternatives

The CEQA Guidelines states that the “range of potential alternatives to the Project shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects” (Section 15126[c]). The Final EIR evaluated a reasonable range of alternatives to the Project. These alternatives are:

- No Project/No Development Alternative
- No Project/ Existing Plan Alternative
- Reduced Intensity Alternative

When a lead agency has determined that, even after the adoption of all feasible mitigation measures, a project as proposed will still cause one or more significant environmental effects that cannot be substantially lessened or avoided, the agency, prior to approving the project as mitigated, must first determine whether, with respect to such impacts, there remain any project alternatives that are both environmentally superior and feasible within the meaning of CEQA. An alternative may be “infeasible” if it fails to achieve the most basic project objectives identified within the EIR.

Table 1 provides a qualitative comparison of each alternative’s conformance to the Project objectives.

Further, “feasibility” under CEQA encompasses the desirability of the project based on a reasonable balancing of relevant economic, environmental, social, or other considerations which make infeasible the Project alternatives identified in Section 4.0 of the Final EIR.

No Project/No Development Alternative

CEQA requires a No Project Alternative to be addressed in an EIR. Under the No Project/No Development Alternative, the Project would not be implemented, and the Project site would remain undeveloped and in its current condition. No grading or construction would occur on the Project site under this alternative. The project site is currently undeveloped and supports disturbed habitat.

Feasibility of Alternative

Since the No Project/No Development Alternative would not develop any residential or commercial uses on the project site, overall impacts would be less than those of the proposed project or eliminated entirely. There are some benefits of the project that would not be realized

under this alternative, including providing additional housing units, including affordable units which helps the City meet its Regional Housing Need Allocation numbers. Under this alternative, the frontage improvements, including a sidewalk along Capalina Road, and restriping and extension of the westbound left turn pocket on Capalina Road at N. Rancho Santa Fe Road would not be realized. Under this alternative there would not be any payment of the City's PFF, which goes toward supporting a variety of services and improvements in the City, including but not limited to Circulation Streets, SR-78 Interchanges, National Pollutant Discharge Elimination System, Tech Improvements, and Parks, and Habitat Conservation. Payment of these fees provide improvements that benefit all residents of the City. Similarly, this alternative would not contribute any school fees. Finally, this alternative would not meet any of the project objectives (See Table 1).

The No Project/No Development Alternative was rejected in favor of the Project, because it does not meet any of the Project objectives.

No Project/ Existing Plan Alternative

CEQA Guidelines Section 15126.6(e)(3), states that when the project is a revision of an existing land use plan, the no project alternative will be the continuation of the existing plan in the future. Under the No Project/Existing Plan Alternative, the project site would be developed consistent with the site's existing land use.

Per the City's General Plan, the project site would be developed consistent with the site's existing land use designation. Per the City's General Plan, the project site has an existing General Plan Land Use designation of Mixed Use 3 (MU3), which is a mixed-use non-residential designation with a maximum floor area ratio (FAR) of 1.50. According to Table 2-3 of the Land Use Element of the City's General Plan, this designation "Provides for a variety of commercial and office uses integrated as a cohesive development. These uses may be mixed 'vertically' (on separate floors of a building) or 'horizontally' (on a single site or adjacent parcels). Structured parking, while not required to achieve the maximum FAR, may be allowed. Shared parking arrangements may also be allowed consistent with the nature of mixed uses. Typical uses include retail, commercial services, administrative and office uses, institutional and government uses, business support and financial uses, restaurants, and health care facilities. To maintain a pedestrian scale and orientation, retail and other active services are encouraged at street level. This designation does not allow residential uses. A Specific Plan is required for development."

Figure 4-1 of the EIR presented a development concept that would meet the MU-3 (SP) zoning requirements. It would include a four-story mixed-use office building with 90,000 square feet (s.f.) of office use and 10,000 s.f. of retail uses along the Capalina Road frontage, with a FAR of 1.50. Up to 400 parking spaces would be required and would be a mix of structured parking and ground-level parking. For the structured parking, one level would be subterranean. Access would be from Capalina Road. Overall, the development footprint would be the same, however, more grading and excavation would be required to provide subterranean parking. Vehicular trips under the No Project/Existing Plan Alternative would be approximately four times higher than the proposed project. This alternative would generate approximately 2,200 ADT compared to the 874 ADT anticipated for the project.

Feasibility of Alternative

The No Project/Existing Plan Alternative would result in a more intensive use on the project site, including more than double the trip generation compared to the proposed project (2,200 ADT compared to 874 ADT). This results in a corresponding proportional increase in air pollutant and GHG emissions and noise from vehicles compared to the proposed project. Construction-related air pollutant and GHG emission are also expected to be greater since this alternative would require more grading and excavation to accommodate subterranean parking. An analysis of the feasibility and cost to create structured parking under this alternative scenario was included in a letter which addressed the project's proposed density bonus request (letter to Chris Garcia, City of San Marcos, from Timothy M. Hutter, Allen Matkins dated June 23, 2023). The analysis, prepared by Good & Roberts, a California engineering and general contracting company, concluded the cost to provide structured parking would be significant due to the site's size and configuration.

Footprint-specific impacts, such as those related to biological resources, cultural and tribal cultural resources, and geology and soils would be similar as the proposed project, as the same amount of site area would be disturbed.

This alternative would not generate any students for SMUSD and would reduce demand for parks, libraries, water, and sewer services compared to the proposed project. This alternative would result in a VMT impact and require mitigation to reduce VMT to 85% of the regional mean for employees. This alternative does not meet any of the project objectives, as shown in Table 1.

Reduced Intensity Alternative

Under the Reduced Intensity Alternative, the project site would be developed with 75 residential apartments and 4,000 s.f. of commercial use for a density of 30 du/acre. The project proposes a density of 47 du/acre. A General Plan Amendment and Rezone would be required for this alternative to change the site from MU-3 to MU-2. Overall, the development footprint and area of disturbance would be similar to that of the proposed project, but with less density of residential units. The building would still be four-stories high, which would allow for larger units. Private and common open space would be provided consistent with the City's Outdoor Space Standards (Section 20.255.120 of the San Marcos Municipal Code). Architectural treatments would be incorporated into the design of this alternative to provide for visual interest and to break up the bulk and scale of the development. Vehicular trips under this alternative would be reduced compared to the proposed project. This alternative would generate 520 ADT. Compared to the proposed project, which generates 874 ADT, this alternative would reduce ADT by 41%.

Feasibility of Alternative

The Reduced Intensity Alternative would reduce the number of residential units constructed on the project site. This results in a corresponding decrease in vehicular trips by approximately 41% and a corresponding decrease in air pollutant and GHG emissions and noise from offsite traffic compared to the proposed project. Public services, utilities and service systems, and energy demands would also be proportionally decreased. Footprint specific impacts, such as those related to biological resources, cultural and tribal cultural resources, and geology and soils would be similar as the proposed project since a similar area of disturbance would occur under this

alternative. This alternative would contribute lower PFF and school fees since fewer residential units would be constructed.

As shown in Table 1, this alternative would fully meet objective 1 and could be designed in a manner to meet objectives 4 and 5. This alternative would not meet objective 2 related to maximizing opportunities to provide high-density housing for the city and while it would meet objective 8 by contributing to community and citywide infrastructure, due to the reduced nature of the alternative, the contributions would be less than compared to the Project. Therefore, the Reduced Project Alternative was rejected in favor of the Proposed Project.

Table 1. Summary of Project Objectives and Alternatives

| Objective | Proposed Project | No Project/No Development | No Project/Existing Plan Alternative | Reduced Intensity Alternative |
|--|------------------|------------------------------|--------------------------------------|--------------------------------|
| Provide a multi-family housing opportunity through a range of unit types, sizes, and number of different bedroom counts, including studios, one, two, and, three-bedroom units, as well as a range of affordability to accommodate a full spectrum of family demographics to contribute to the growing housing needs of the region. | Meets objective | Does not meet this objective | Does not meet this objective | Meets objective |
| Integrate high-density housing opportunities and commercial uses close to major transit corridors, education facilities, and job centers to optimize land use with transit use and active modes of transportation, reduce reliance on automobiles, and potentially reduce energy usage, air pollutions and greenhouse gas emissions. | Meets objective | Does not meet this objective | Does not meet this objective | Partially meets this objective |
| To the extent possible given the site constraints, maximize the opportunity to provide high-density housing for the City of San Marcos in the 45-50 dwelling unit/acre density range. | Meets objective | Does not meet this objective | Does not meet this objective | Does not meet this objective |

| Objective | Proposed Project | No Project/No Development | No Project/Existing Plan Alternative | Reduced Intensity Alternative |
|---|------------------|------------------------------|--------------------------------------|---|
| Support the housing needs of the City of San Marcos and the region by developing high-quality, workforce housing that balances density with price-points and long-term maintenance costs, such that new apartments remain financially attainable. | Meets objective | Does not meet this objective | Does not meet this objective | Could be designed in a manner that meets this objective |
| Incorporate deed restricted affordable housing into a portion of the proposed project. | Meets objective | Does not meet this objective | Does not meet this objective | Could be designed in a manner that meets this objective |