City of Huntington Beach Planning and Building Department

STAFF REPORT

TO: Planning Commission
FROM: Scott Hess, AICP, Director of Planning
BY: Jennifer Villasenor, Senior Planner
DATE: January 24, 2012

SUBJECT: **SUBSEQUENT ENVIRONMENTAL IMPACT REPORT NO. 07-002 (HUNTINGTON BEACH SENIOR CENTER)**

APPLICANT/ PROPERTY OWNER: City of Huntington Beach, 2000 Main Street, Huntington Beach, CA 92648

LOCATION: 18041 Goldenwest Street, Huntington Beach, CA 92648 (5-acre site southwest of the intersection of Goldenwest Street and Talbert Avenue)

STATEMENT OF ISSUE:

- Subsequent Environmental Impact Report No. 07-002 (SEIR No. 07-002):
  - Analyzes the proposed construction and operation of an up to 45,000 square foot one-story senior recreation facility on a 5-acre undeveloped site in Central Park.
  - Documents potential impacts to aesthetics, air quality, biological resources, cultural resources, geology and soils, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, land use and planning, noise, public services, recreation, transportation/traffic and utilities and service systems.
  - Evaluates seven alternatives to the proposed project.
  - Concludes that the Alternative Central Park Site is the environmentally superior alternative.
  - Concludes that all potential project impacts can be mitigated to less than significant levels.
  - Concludes that there will be cumulative significant and unavoidable impacts to aesthetics.
  - Responds to the California Court of Appeals ruling regarding the adequacy of the previously certified EIR No. 07-002 and addresses specific issues raised in the court's decision.

- Staff's Recommendation:
  - Certify Subsequent EIR No. 07-002 (Attachment No. 2) because it adequately analyzes the potential environmental impacts associated with the project, identifies project alternatives and mitigation measures to lessen the project's impacts consistent with General Plan policies and has been prepared in accordance with the California Environmental Quality Act (CEQA) and California Court of Appeals ruling.

RECOMMENDATION:

Motion to:

"Certify Subsequent Environmental Impact Report No. 07-002 as adequate and complete in accordance with CEQA requirements by approving Resolution No. 1659 (Attachment No. 1)."

ALTERNATIVE ACTION(S):

The Planning Commission may take alternative actions such as:

A. "Continue certification of SEIR No. 07-002 and direct staff accordingly."

B. "Deny certification of SEIR No. 07-002 with findings for denial."

PROJECT PROPOSAL:

Subsequent Environmental Impact Report (SEIR) No. 07-002 represents an analysis of potential environmental impacts associated with the construction and operation of an up to 45,000 square foot senior recreation facility on a 5-acre site within Huntington Central Park. The 5-acre project site will comprise the senior center building, parking lot and open space area. The approximately 45,000 square foot building consists of a community hall/dining room, group exercise, fitness and dance rooms, multi-use classrooms, a kitchen, a social lounge and administrative offices. The outdoor open area includes a patio with a decorative trellis, an expansive lawn, a garden, a fountain, benches and a natural meadow. Ingress and egress to and from the site is proposed via a planned access driveway with entry gate at the existing Goldenwest Street/ Talbert Avenue intersection. An existing traffic signal at this location will be modified for traffic to enter and exit the project site.

The SEIR also analyzes a proposed General Plan Amendment, which involves incorporating the Central Park Master Plan into the Recreation and Community Services Element of the General Plan and updating the Central Park Master Plan of Uses to change the 5-acre senior center site from a low intensity to high intensity recreation area.

The SEIR provides a discussion of impacts by issue area and provides mitigation measures, where necessary to reduce environmental impacts. Specific issue areas discussed in the SEIR include: aesthetics, air quality, biological resources, cultural resources, geology and soils, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, land use, noise, public services, recreation, transportation/traffic and utilities and service systems. An analysis of alternatives to the proposed project and long-term implications resulting from project implementation are also provided.

The SEIR consists of two volumes. Volume 1 is the Draft Subsequent EIR and Technical Appendices that were circulated for a minimum 45-day public review period. Volume 2 is titled the Final Subsequent EIR and includes comments received during the public review period, responses to those comments and text changes to the Draft SEIR (Volume 1) to clarify or correct information in response to comments or identified as necessary by staff. These volumes are referenced as Attachment No. 2 to this staff report.

An analysis of the proposed project, including General Plan Amendment No. 11-004 and Conditional Use Permit No. 07-039(R), is presented in a companion report that may be considered by the Planning Commission after action on the SEIR.

Background:

The senior center project (EIR No. 07-002 and CUP No. 07-039) was initially approved by the City Council in 2008, but subsequent legal challenges invalidated the approvals necessitating a new approval process. Specifically, the Court ruled that the City violated its General Plan by failing to modify the General Plan to accommodate the senior center project in the Central Park Master Plan. The Court also determined that the City violated CEQA by failing to consider a reasonable range of alternatives, including closed school sites that became available after the Draft EIR was prepared but before the Final EIR was certified. The Court required the City to set aside the project approvals (EIR and CUP) and process a General Plan Amendment and conduct further environmental analysis. The Subsequent EIR includes analysis of the proposed General Plan Amendment and four additional alternative sites as well as additional analysis of potential impacts due to loss of open space Citywide as a result of utilizing all Quimby fees from the Pacific City project for the proposed senior center project. The 2007 EIR has also been updated where appropriate to reflect current existing conditions.

Study Session:

The Planning Commission held a study session on the SEIR and project on January 10, 2012. Staff presented an overview of the project's background and entitlements. After the staff presentation, Vice Chair Bixby asked several questions related to the project and SEIR. Some questions were responded to by staff at the Study Session while others are addressed in the following paragraph. Other non-CEQA related questions are addressed in the companion report for the CUP and GPA entitlements for the project.

Vice Chair Bixby requested that the cumulative projects list in the SEIR be updated. However, the status of the cumulative projects in the SEIR is a snapshot of the status of each project at the time the analysis in the SEIR was prepared. Therefore, no changes to the cumulative projects list have been made. It should be noted that a log of pending projects can be obtained from the City website at the following link: http://www.huntingtonbeachca.gov/files/users/planning/AppLog_Jan12.pdf. This list is updated monthly and provides the most current information available for projects currently in process. Vice Chair Bixby also inquired as to why two additional project objectives were added to the SEIR. The two additional project objectives, related to emphasizing the safety and security of seniors and employees of the new facility and incorporating sustainable/ green building practices into the project design, were added because they became important components of the project during the design phase of the previously approved facility. In addition, emphasis on incorporation of green building practices in projects, particularly City initiated projects, is becoming an increasingly important priority Citywide and is encouraged through various City efforts, such as HB Goes Green program and the City's 10-Point Plan for Local Businesses. Vice Chair Bixby asked why there was no analysis of impacts to schools or libraries as a result of the senior center project. As discussed in the Initial Study/NOP for the project, the senior center does not include residential units and therefore, would not cause an increase in population creating substantial additional demand on schools and libraries. As such, no impact is anticipated and no further analysis was

included in the SEIR. Finally, Vice Chair Bixby inquired as to whether the Sports Complex was required to mitigate for loss of raptor foraging acreage at a one to one ratio and requested a copy of the map where the mitigation occurred to ensure that it is not the same location proposed for the senior center raptor foraging mitigation. The Sports Complex did not require mitigation for loss of raptor foraging area. The mitigation area for the senior center project is specified in Mitigation Measure 4.3-2, which identifies several options for location of the mitigation area.

ISSUES:

Subject Property And Surrounding Land Use, Zoning And General Plan Designations:

LOCATION	GENERAL PLAN	ZONING	LAND USE
Subject Site:	OS-P (Open Space – Parks)	OS-PR (Open Space – Parks & Recreation)	Undeveloped, vacant
North of Subject Site (across earthen berm)	OS-P	OS-PR	Undeveloped area; Shipley Nature center
East of Subject Site: (across Goldenwest St.)	OS-P	OS-PR	Sports Complex; Central Library
South of Subject Site:	OS-P	OS-PR	Disc golf course; equestrian center
West of Subject Site:	OS-P	OS-PR	Passive parkland

The project site was developed with a farm house as early as the 1930s. Sometime in the 1960s, the house was demolished and the land was excavated so that dirt from the site could be used for construction of the 405 freeway. In 1974, the City acquired the land for Central Park and it has remained in its current undeveloped state. Although there are no developed structures or programmed uses of the site, the site is used informally for recreation and for traversing to get to other areas of the park.

General Plan Conformance:

The current General Plan Land Use Map designation on the subject site is OS-P (Open Space – Parks). The SEIR is consistent with the Open Space – Parks designation and the goals and objectives of the City's General Plan as follows:

A. *Air Quality Element*

Policy AQ 1.8.1: Continue to enforce construction site guidelines that require truck operators to minimize particulate emission.

Policy AQ 1.8.2: Require installation of temporary construction facilities (such as wheel washers) and implementation of construction practices that minimize dirt and soil transfer onto public roadways.

Standard Code Requirements (CR) and Mitigation Measures MM-4.2-2 (a) through (e) are identified in the SEIR to minimize air pollutant emission impacts, primarily by complying with South Coast Air Quality Management District (SCAQMD) Rule 403 regarding fugitive dust, during construction of the project.

B. *Circulation Element*

Policy CE 2.3.1: Require development projects to mitigate off-site traffic impacts and pedestrian, bicycle, and vehicular conflicts to the maximum extent feasible.

Policy CE 2.3.2: Limit driveway access points and require adequate driveway widths onto arterial roadways and require driveways be located to ensure the smooth and efficient flow of vehicles, bicycles, and pedestrians.

Policy CE 2.3.4: Require that new development mitigate its impact on City streets, including but not limited to, pedestrian, bicycle, and vehicular conflicts, to maintain adequate levels of service.

The SEIR includes a detailed traffic analysis to document potential impacts associated with the project. The SEIR concludes that the project would not result in deficiencies at any of the study intersections. In addition, the SEIR identifies code requirements to ensure on-site traffic signing and striping as well as adequate site distance at access points are implemented with development of the project to minimize pedestrian and vehicular conflicts.

Policy CE 6.1.7: Require new development to provide accessible facilities to the elderly and disabled.

MM 4.12-4 requires that design features be incorporated into the project that take into account the special needs of seniors such as slower pedestrian walk speeds and larger roadway signs.

C. *Environmental Hazards Element*

Policy EH 1.2.1: Require appropriate engineering and building practices for all new structures to withstand groundshaking and liquefaction such as stated in the Uniform Building Code (UBC).

Mitigation Measure 4.5-1 requires that detailed design measures identified in the Geotechnical Evaluation for the project be implemented, including those related to: earthwork, seismic design consideration, foundations, etc.

Objective EH 3.2: Minimize methane hazards in the identified Methane Overlay District, and other areas outside the Methane Overlay Districts as may later be defined, through the regulation of construction and adherence to the City's Methane Hazard Mitigation Plan.

MM 4.6-1(d) is required to address the potential hazards of the accumulation of methane and hydrogen sulfide gas at the project site by ensuring appropriate testing and methods of gas reduction, as required by the Huntington Beach Fire Department.

D. *Environmental Resources/Conservation Element*

Policy ERC 2.1.10: Conduct construction activities to minimize adverse impacts on existing wildlife resources.

MM 4.3-1(a) and (b) will mitigate for the potential loss of wildlife habitat as a result of construction of the proposed project. In addition, MM 4.3-2 requires that five acres of parkland be conserved and/or enhanced for raptor foraging to mitigate the loss of five acres due to the proposed project.

E. *Historic and Cultural Resources Element*

Objective HCR 1.1: Ensure that all the City's historically and archaeologically significant resources are identified and protected.

The SEIR documents all known archaeological sites in the vicinity of the project and recommends Mitigation Measures 4.4-1 (a) through (c) to reduce impacts to a less than significant level. These mitigation measures will ensure that, in the unlikely event that intact cultural materials are encountered during construction, these materials will be identified and scientifically removed and preserved, as appropriate.

F. *Noise Element*

Policy N 1.6.1: Ensure that construction activities be regulated to establish hours of operation, to prevent and/or mitigate the generation of excessive or adverse noise impacts through the implementation of the existing Noise Ordinance and/or any future revisions to the Noise Ordinance.

The SEIR provides acoustical analysis to define noise levels on site. The analysis includes City code requirements and mitigation measures to ensure that noise levels in the exterior activity environments meet City standards, including limiting hours of construction that exceed the allowable hours specified in the Huntington Beach Municipal Code.

G. *Public Facilities and Services Element*

Objective PF 1.3: Ensure that new developments in Huntington Beach are designed to encourage safety.

Policy PF 2.3.3: Ensure that new construction is designed with fire and emergency access and safety in mind.

The SEIR documents that the proposed project does not impact safety or fire and emergency access.

Zoning Compliance: Not applicable.

Urban Design Guidelines Conformance: Not applicable.

Environmental Status:

CEQA Guidelines Section 15162 requires a Subsequent EIR when changes to a project or its circumstances occur or if new information becomes available that would necessitate substantial revisions to the previously approved EIR. As detailed in the timeline below, a lawsuit challenged the City's approval of the project and adequacy of the EIR. The court ruling required the City to prepare a Subsequent EIR.

DATE	EVENT
October, 2006	City entered into an agreement with the developer of Pacific City (a 30-acre mixed use development approved in the Downtown Specific Plan area) to construct a new senior center with fees assessed for parks/recreation pursuant to the Quimby Act and Chapter 254 of the HBZSO.
November 7, 2006	Measure T was passed by Huntington Beach voters approving construction of a senior center on five acres in Huntington Central Park, following approval of all entitlements and environmental review.
March – April, 2007	Staff conducted an initial study and determined that an EIR would be required. A Public Scoping Meeting was held to solicit comments and issue areas to be studied in the EIR.
September – October, 2007	Draft EIR made available for public review and comment for forty-five days. A Public Comment Meeting was held to solicit comments on the adequacy of the Draft EIR.
November 28, 2007	Final EIR (including Responses to Comments on Draft EIR, Text Changes to Draft EIR, Technical Appendix and Comments) made available for public information and sent to Responsible Agencies.
December 11, 2007	Planning Commission held a public hearing and certified EIR No. 07-002 and approved CUP No. 07-039.
February 4, 2008	City Council held a public hearing to consider appeal of the Planning Commission approvals and certified EIR No. 07-002 and approved CUP No. 07-039.
March 4, 2008	*Parks Legal Defense Fund* filed a lawsuit against the City challenging the validity of the use of Quimby funds for the senior center, the approval of the CUP, the adequacy of the EIR and the Measure T vote.

December 15, 2009	Superior Court ruled in favor of the *Parks Legal Defense Fund* on three causes of action ruling that the Petitioner's challenge of the Measure T vote was time-barred. The City subsequently filed an appeal of the ruling.
December 13, 2010	Court of Appeals ruled in favor of the City with respect to use of the Quimby fees and agreed with the trial court that the Measure T challenge was time-barred. However, the trial court ruling on the adequacy of the EIR and validity of the CUP approval were upheld.
July 5, 2011	Pursuant to the court ruling, the City Council voted to set-aside the CUP and EIR approvals so that a Subsequent EIR could be prepared and a GPA and new CUP approved in accordance with the court's decision (Attachment No. 4).
September 15 – October 31, 2011	Draft SEIR made available for public review and comment for forty-five days.
October 12, 2011	A public comment meeting was conducted to take comments from the public relative to the adequacy of the environmental analysis in the SEIR.

The Subsequent EIR includes analysis of the project's impacts as required by the court ruling and in accordance with CEQA. The new analysis includes the proposed General Plan Amendment and four additional alternative sites as well as additional analysis with respect to potential impacts due to loss of open space as a result of utilizing Quimby fees for the proposed senior center project. The Subsequent EIR also updates baseline conditions and includes a new greenhouse gas emissions section since it was not required in the 2007 EIR.
During the Subsequent EIR process, a public comment meeting was held on October 12, 2011 during the 45-day public review period to collect comments on the adequacy of the draft Subsequent EIR. The meeting was advertised in the Huntington Beach Independent, and notices were sent to responsible agencies, interested parties and property owners and tenants within a 2000-foot radius of the project site. Approximately 25 people attended the comment meeting and raised issues and asked questions related to project funding and timing, the alternatives analysis, noise impacts, facility operations, and alternative sites selection. Comments from the meeting were recorded and responded to in the Final Subsequent EIR, which was made available on December 19, 2011.

Through the use of appropriate mitigation measures identified in the SEIR, all of the potentially adverse impacts associated with the project can be mitigated to a level of insignificance. There is, however, one significant cumulative environmental impact anticipated that cannot be completely eliminated through mitigation measures. The SEIR concludes that due to the increase in development intensity of the project site, when compared with current uses, the project contributes incrementally to the visual degradation of the area in terms of reducing the amount of undeveloped open space in Central Park. This results in significant cumulative impacts to aesthetics.

Prior to certification and adoption of the SEIR by resolution, the Planning Commission may amend the document. However, removal of any of the recommended mitigation measures requires findings and justification. The analysis section of this report contains further discussion regarding the conclusions of the SEIR.

***Environmental Board*:**

The City's Environmental Board was provided an opportunity to comment on the SEIR during the 45-day public review period, but did not submit a comment letter. It should be noted that the Environmental Board submitted a comment letter on the previous EIR, which was responded to in the Response to Comments in accordance with CEQA Guidelines.

Coastal Status: Not applicable

***Redevelopment Status*:** Not applicable.

***Design Review Board*:** Not applicable.

***Subdivision Committee*:** Not applicable.

Other Departments Concerns and Requirements:

The SEIR was circulated to other Departments for review and comment. The analysis and conclusions included in Subsequent EIR No. 07-002 reflect and are based in part on consultation with the Building Division in addition to the Departments of Community Services, Economic Development, Fire, Police, Public Works and the City Attorney's Office. If approved, as development of the proposed project occurs, compliance with mitigation measures will be enforced through the Mitigation Monitoring and Reporting Program by the responsible monitoring department.

Public Notification:

Legal notice was published in the Huntington Beach/Fountain Valley Independent on January 12, 2012, and notices were sent to property owners of record and occupants within a 2,000 ft. radius of the subject property, individuals/organizations requesting notification (Planning Department's Notification Matrix), and other interested parties. As of January 17, 2012, no comments on the SEIR have been received.

Application Processing Dates:

DATE OF COMPLETE APPLICATION:

- September 15, 2011

MANDATORY PROCESSING DATE(S):

- Within 1 year of complete application: September 15, 2012

ANALYSIS:

The analysis section provides an overview of the SEIR and its conclusions, a review of the project alternatives and a summary of the response to comments.

EIR Overview

The SEIR provides a detailed analysis of potential impacts associated with the proposed project. It is intended to serve as an informational document for decisions to be made by the City and responsible agencies regarding the project. The issues discussed in the SEIR are those that have been identified in the course of extensive review of all potentially significant environmental impacts associated with the project. The direct, indirect and cumulative impacts of the project are addressed, as are the impacts of project alternatives. A summary of key issues and mitigation measures as a result of the subsequent environmental impact report process is provided below. A complete listing of the recommended mitigation measures is provided in the Mitigation Monitoring and Reporting Program provided as Attachment No. 3.

Scope of Subsequent EIR Analysis

The Subsequent EIR includes analysis of the proposed General Plan Amendment and four additional alternative sites as well as additional analysis with respect to potential impacts due to loss of open space as a result of utilizing Quimby fees for the proposed senior center project. The SEIR also updates baseline conditions and includes a new greenhouse gas emissions section since it was not required in the 2007 EIR.

Subsequent EIR No. 07-002 analyzed 14 impact areas listed below.

- **Air Quality**
- **Biological Resources**
- **Geology and Soils**
- **Greenhouse Gas Emissions**
- **Hydrology and Water Quality**
- **Recreation**
- **Traffic**
- **Aesthetics**
- **Cultural Resources**
- **Hazards and Hazardous Materials**
- **Land Use and Planning**
- **Noise**
- **Public Services**
- **Utilities & Service Systems**

Although each impact area was updated from the 2007 EIR as necessary, several impact areas and sections required more extensive revisions to address the issues raised in the court ruling. The most substantial changes from the previous (2007) EIR to the Subsequent EIR were in the following areas:

- **Project Description**: added General Plan Amendment description, update of project objectives, discussion on court ruling, description of four new alternative sites (described in more detail below)
- **Land Use and Planning**: General Plan Amendment analysis
- **Recreation**: analysis of Citywide impacts to parkland due to use of Quimby fees from the Pacific City project for the senior center project and not acquisition of parkland
- **Alternatives**: analysis of four new alternative sites
- **Greenhouse Gas Emissions**: new analysis not included in 2007 EIR

No impacts in the areas of Agricultural Resources, Mineral Resources and Population and Housing were determined during the scoping process for the 2007 EIR. None of the changes in the project description, alternative sites, or baseline conditions would result in a change to this determination; as such, no analysis is provided in the Subsequent EIR in these impact areas.

Similar to the 2007 EIR, all project impacts would result in less than significant impacts or less than significant impacts with implementation of code requirements and mitigation measures. The Subsequent EIR determined one significant and unavoidable cumulative impact would occur in the area of aesthetics as a result of the project. This significant and unavoidable cumulative aesthetic impact was also identified in the 2007 EIR.

- Aesthetics

Implementation of the project will alter views of the area and introduce new sources of light and glare. The SEIR analyzes the potential impacts associated with these changes, including an analysis of impacts to and from the existing parkland west of the project site.

The SEIR concludes that impacts associated with light and glare could be potentially significant and recommends Mitigation Measure (MM) 4.1-3 (a – e), which reduces impacts associated with onsite lighting and restricts the use of reflective materials on façade treatments. The SEIR documents that potential impacts related to scenic resources and views will be less than significant and do not warrant mitigation. However, the project contributes to the overall loss of undeveloped open space and the cumulative impact is considered significant from an aesthetic viewpoint.

- Air Quality

Air quality modeling was completed to assess potential impacts related to construction and operation of the project. Consistent with the South Coast Air Quality Management District's (SCAQMD) recommendations, the SEIR analyzed the following emissions: Carbon Monoxide (CO), Volatile Organic Compounds (VOC), Nitrogen Oxides (NO_x), Sulfur Oxides (SO_x) and Fine Suspended Particulate Matter (PM_{10}) and ($PM_{2.5}$). In addition, the SEIR examined if localized CO concentrations at nearby intersections would be increased beyond state and national standards as a result of increased vehicle traffic.

The SEIR concludes that the project results in less than significant impacts for all emissions and would not expose sensitive receptors (surrounding residents and park users) to substantial pollutant concentrations. The project must comply with standard requirements such as SCAQMD's Rule 403 related to fugitive dust during construction. The SEIR discusses six standard City code requirements to improve air quality emissions and recommends five mitigation measures to further reduce air quality impacts during construction.

- Biological Resources

In 2007, Atkins (then PBS&J) conducted a general botanical survey and a focused blooming season survey in addition to a general wildlife survey at the project site for the EIR. A nesting habitat survey was

conducted in 2008 and a burrowing owl survey was conducted in 2009 in accordance with the mitigation measures of the 2007 EIR. In preparation of the SEIR, a site visit was conducted by Atkins in 2011 to assess existing site conditions and record any substantial changes to the site. Atkins staff determined that substantial changes to the site have not occurred since preparation of the 2007 EIR.

A total of 12 plant species and 14 wildlife species were recorded within the project site during the surveys. Other sensitive plant and wildlife species have the potential to occur on the project site. Through incorporation of MM 4.3-1 (a) and (b) impacts to the burrowing owl, a sensitive wildlife species with moderate potential to occur on the site, and protected or sensitive avian species can be mitigated to less than significant levels. These mitigation measures require focused surveys and avoidance measures prior to any ground disturbance activities. To mitigate the loss of five acres of raptor foraging habitat as a result of project implementation, MM 4.3-2 requires that five acres of suitable area be conserved and/or enhanced for raptor foraging.

- Cultural Resources

The northern half of the project site lies within the recorded southern portion of prehistoric site CA-ORA-142. As such, a records search, Native American consultation, pedestrian survey of the site and subsequent test trenching was performed to assess the presence of cultural resources within the project site. The records search confirmed destruction of the site and test trench excavations were negative for evidence of CA-ORA-142. Nonetheless, it is possible that intact portions of CA-ORA-142 remain outside the project site but in the vicinity. The SEIR recommends MM 4.4-1 (a – c) which would reduce impacts to archaeological resources to less than significant levels by requiring monitoring of construction activities by a qualified professional archaeologist and requiring the scientific recovery and evaluation of any resources that are encountered during construction.

- Geology and Soils

The SEIR includes an analysis of existing geology, seismicity and soil conditions that would be conducive to geological constraints such as liquefaction or expansive soils. The analysis is based on the preliminary geotechnical study completed for the project, which determined that the project is feasible from a geotechnical perspective. The SEIR concludes that implementation of the project will require MM 4.5-1 to minimize potential impacts to less than significant levels. MM 4.5-1 requires that detailed design measures contained within the Geotechnical Evaluation prepared for the project be implemented, including those related to: earthwork, seismic design consideration, foundations, etc. MM 4.5-2 requires that the near surface soils of the northern slope, or earthen berm, adjacent to the project site, be compacted and covered with an appropriate erosion protection device to reduce the likelihood of impacts from landslides. The SEIR also identifies requirements for compliance with the National Pollutant Elimination Discharge System (NPDES) permit process, California Building Code (CBC) and the City's Grading and Excavation Code that would ensure erosion and other soil instability impacts resulting from project construction would be less than significant.

- Greenhouse Gas (GHG) Emissions

The SEIR includes a new section that analyzes impacts from GHG emissions. Construction activities and equipment as well as operation of the facility all contribute to the generation of GHG emissions. GHG emissions were calculated using CalEEMod software, which concluded that estimated annual GHG emissions would be below the draft emissions threshold established by the South Coast Air Quality Management District (SCAQMD), and thus, less than significant. The SEIR also concluded that the project would not conflict with applicable plans and policies for reducing GHG emissions such as The Global Warming Solutions Act of 2006 (AB32).

- Hazards and Hazardous Materials

The SEIR analyzes the potential for impacts associated with hazardous materials on existing uses, construction workers and proposed uses. The proposed project, as a senior recreation facility, will not result in the increased likelihood of hazardous materials incidents. Implementation of the proposed project does not pose any constraints to the city's existing Emergency Management Plan. Mitigation measures are proposed to reduce all potentially significant effects associated with the potential exposure of unknown hazardous materials through construction activities to less than significant levels by ensuring remediation of contaminated soils containing hazardous materials prior to development and by providing supplemental procedures in the event of unanticipated discoveries of contaminants.

- Hydrology and Water Quality

The SEIR concludes that impacts to hydrology and water quality are potentially significant but can be mitigated to less than significant levels through MM 4.7-1, which requires a Water Quality Management Plan (WQMP) for the project and shall include specific stormwater Best Management Practices (BMPs) for reducing potential pollutants in stormwater runoff. In addition, MM 4.7-2 reduces impacts to erosion and flooding by requiring a Hydrology and Hydraulic Report and Drainage Plan that incorporates stormwater conveyance facilities to provide adequate site drainage and minimize erosive forces.

- Land Use and Planning

The project site has a General Plan Land Use designation of Open Space – Park (OS-P) and a zoning designation of Open Space – Park and Recreation (OS-PR). The Central Park Master Plan of Uses currently designates the 5-acre senior center site as a low intensity recreation area. Implementation of the proposed project requires a General Plan Amendment to update the Central Park Master Plan to accommodate the higher intensity senior center development and incorporate the Central Park Master Plan into the Recreation and Community Services Element of the General Plan. A Conditional Use Permit is required to allow development of a senior recreation facility on the site. The development and its conformance to the Huntington Beach Zoning and Subdivision Ordinance are analyzed in the companion report for this project. Although the project requires a General Plan Amendment to accommodate a higher intensity recreational use and identify the senior center site on the Central Park Master Plan, the project is consistent with the General Planning land use designation of OS – P and zoning designation of OS – PR. Both designations allow for public recreation facilities. Additionally, the change from a low intensity recreation area to a high intensity recreation area to accommodate the proposed development would not

substantially reduce the overall amount of remaining passive recreational space in Central Park such that the project would conflict with applicable policies of the General Plan. The SEIR concludes that the proposed project is compatible with existing adjacent developments directly across Goldenwest Street, specifically the Sports Complex and Central Library. Overall, impacts to land use are considered less than significant and no mitigation is required.

- Noise

Potential noise impacts relate to short-term construction activities and long-term changes in ambient conditions related to an increase in traffic. Ambient noise levels were measured in 2007 and again in 2011 to confirm that substantial changes in existing noise levels had not occurred. Noise levels were measured at five locations around the project site and roadway noise levels were calculated using data from the traffic study. In terms of the short-term noise impacts from construction, the City's noise ordinance exempts noise associated with construction provided the construction takes place between the hours of 7:00 A.M. and 8:00 P.M. Monday through Saturday. Despite this exemption, to further reduce less-than-significant impacts the SEIR recommends MM 4.9-1(a) to limit the hours and days during which grading and construction can occur to between the hours of 7:00 A.M. and 7:00 P.M. Monday through Friday and 8:00 A.M. and 5:00 P.M. Saturdays. The SEIR also indicates that noise associated with operation of the senior center, including amplified noise from special events, will be required to comply with the City of Huntington Beach Noise Ordinance and impacts are considered less than significant.

- Public Services

Potential impacts to fire, police, schools and libraries are analyzed in the SEIR. The proposed project will not result in a substantial demand for services such that new public services or facilities are needed and therefore, all impacts to public services are considered less than significant.

- Recreation

The SEIR indicates that construction and operation of the proposed senior center would increase the overall level of recreational opportunities in the City. Because development of the project site represents the loss of only 1.5 percent of all passive parkland in Central Park, impacts to existing passive recreational opportunities are less than significant. The SEIR discloses that the City currently meets the "parkland to population" ratio of 5 acres per 1,000 persons established by the General Plan and is not deficient in parkland. The proposed project does not contribute to an additional residential population such that a reduction in the City's current parkland ratio of 5.25 acres per 1,000 residents would occur. To this end, the proposed senior center project does not result in a significant impact to park opportunities Citywide, and no mitigation resulting from a deficiency in parkland would be required. Consequently, use of Quimby funds from a downtown project (the 30-acre Pacific City project) for development of the senior center project rather than land acquisition or other park improvement projects becomes a policy decision and not an environmental matter.

One mitigation measure has been incorporated to require that construction signs be posted in Central Park near the project site at least thirty days prior to construction commencement to give notice to informal

users of the site. The mitigation measure also requires that the temporary disc golf hole that is currently on the site be permanently relocated prior to any construction activities.

- Transportation/Traffic

The SEIR examines the potential impacts related to traffic generation, parking demand and access. The analysis takes into consideration the access improvements that will be constructed with the project and the special issues that arise with senior drivers. A project specific traffic study was completed in 2007 during preparation of the previously certified EIR. Since that time, the City's Transportation Division has confirmed that traffic conditions in the vicinity of the project site have not substantially changed such that new traffic counts were warranted for the SEIR. However, the SEIR does include an analysis of *Existing Plus Project* conditions to ensure that the proper baseline was utilized for assessing traffic impacts as well as an analysis of traffic conditions in Year 2012 (near-term conditions) and Year 2030 to assess potential impacts at project buildout and the long-term effect of the project in conjunction with other growth within the City.

The SEIR indicates that the proposed project would not cause a change in the level of service resulting in deficient operation of any of the study intersections nor contribute to deficient traffic operations for those intersections projected to be deficient under *Without Project* conditions.

Roadway hazards can be reduced through mitigation measures and code requirements that also consider the specific attributes of seniors using the facility.

- Utilities and Service Systems

This section of the SEIR analyzes potential impacts to water, wastewater, solid waste services and electricity and natural gas utilities. The SEIR concludes that implementation of the project could increase the demand for electricity resulting in potentially significant impacts. MM 4.13-3 requires that additional electrical load analyses be undertaken to determine the need for additional electrical transformers. The EIR also concludes that implementation of new stormwater treatment control BMPs could result in potentially significant impacts. CR 4.13-1(a) and CR 4.13-2(b) require that the project prepare and implement a Stormwater Pollution Prevention Plan (SWPPP) and that all BMPs described in the Water Quality Management Plan (WQMP) are properly installed and implemented. With implementation of the proposed mitigation measures and City code requirements, impacts would be reduced to less than significant levels.

Alternatives to the Proposed Project

CEQA Guidelines Section 15126.6 requires a reasonable range of alternatives to be evaluated that would attain most of the project objectives while avoiding or substantially reducing any of the significant environmental impacts caused by the project. The City selected potential project alternatives based on the CEQA Guidelines and the language of the court ruling. Seven alternatives were evaluated in the Subsequent EIR. The seven alternatives included the three alternatives analyzed in the 2007 EIR as described below:

- **No Project/Continuation of Uses Allowed By Existing General Plan and Master Plan** – Analyzes development on the site as a "low intensity recreation area" with the access driveway, parking lot, restrooms, tot lot and open space.
- **Reduced Project/Alternative Configuration** – Analyzes a reduction in the size of the development with a 30,000 square foot building re-oriented to the southeast corner of the site.
- **Alternative Central Park Site** – Analyzes the alternative site location of the northwest corner of Ellis Avenue and Goldenwest Street.

Additionally, in response to the court ruling, four additional alternatives were selected for evaluation in the Subsequent EIR including:

- **Kettler School Site** – Analyzes use of an existing 38,418 square foot school building at the closed Kettler School site located at 8750 Dorsett Drive, west of Magnolia Street between Atlanta and Hamilton Avenues. This site is specifically referenced in the court ruling.
- **Park View School Site** – Analyzes use of 45,000 square feet of an existing 56,837 square foot school building at the closed Park View School site located at 16666 Tunstall Lane, east of Goldenwest Street between Heil Avenue and the East Garden Grove Wintersburg Flood Control Channel. This site was included because it is a closed school site that is currently available for use with a centrally located building large enough to accommodate the proposed senior center.
- **Magnolia Tank Farm Site** – Analyzes demolition of the existing empty oil storage tanks and ancillary site improvements and construction of a 45,000 square foot senior center on a portion of the existing 27-acre former Magnolia Oil Tank Farm located on the west side of Magnolia Street at Banning Avenue. At the time the City was evaluating other sites, this site's property owner was pursuing a Coastal Development Permit to remove the tanks. In addition, the site already has proper General Plan and zoning land use designations for the proposed senior center.
- **The Cove Site** – Analyzes construction of a 45,000 square foot senior center on a portion of the 9.9-acre undeveloped site located at the northeast corner of Gothard Street and Garfield Avenue. This site was included because the property owner, Chevron Land and Development Co., contacted the City to discuss a potential land swap for the current senior center site, which was deeded to the City by Chevron (then Standard Oil Corp.). The site was also chosen due to its central location in the City and undeveloped status.

Other alternatives such as upgrading the existing Rodgers Senior Center, using vacant commercial buildings, other closed school sites, and multiple small satellite senior centers were considered but rejected as infeasible. The Alternatives analysis concluded that Alternative 3: Alternative Central Park site would be considered the environmentally superior alternative.

Statement of Overriding Considerations

Environmental impacts associated with implementation of a project may not always be mitigated to a level considered less than significant. In such cases, a Statement of Overriding Considerations must be prepared prior to approval of the project, and in accordance with CEQA Guidelines Sections 15091 and 15093. Although the project would not result in significant project-specific impacts, implementation of the proposed project could result in significant cumulative impacts to aesthetics. Therefore, a Statement of Overriding Considerations (SOC) is required to describe the specific reasons for approving the project,

based on information contained within the Final SEIR, as well as any other information in the public record. The SOC is part of the companion report for this project, which analyzes General Plan Amendment No. 11-004 and Conditional Use Permit No. 07-039(R).

Public Comments on the Draft SEIR

During the public review period, the City of Huntington Beach received a total of 12 comment letters from one state agency, one organization and nine individuals (one individual submitted two comment letters), as well as 13 verbal comments at the public meeting held during the 45-day comment period. Staff has responded to all comments received in the Response to Comments of the Final SEIR. The Final SEIR includes revised text sections as a result of the comments or as a result of staff requests to clarify information. Any written communication received subsequent to the preparation of this staff report will be forwarded to the Planning Commission under separate cover.

SUMMARY:

Subsequent Environmental Impact Report No. 07-002 serves as an informational document with the sole purpose of identifying potential environmental impacts associated with the Huntington Beach Senior Center project, alternatives that minimize those impacts, and appropriate mitigation measures.

Staff recommends that the Planning Commission certify SEIR No. 07-002 because:

- The SEIR has been prepared in accordance with the California Environmental Quality Act;
- The SEIR responds to the court ruling and addresses all specific environmental issues raised by the court with respect to loss of parkland Citywide, project alternatives and the proposed General Plan Amendment;
- The SEIR adequately addresses the environmental impacts associated with the proposed project; and
- The EIR identifies project alternatives and mitigation measures to lessen the project's impacts consistent with General Plan policies.

ATTACHMENTS:

1. Planning Commission Resolution No. 1659
2. Final Subsequent EIR No. 07-002, includes EIR, EIR Appendices, Response To Comments and Text Changes *(not attached – previously provided under separate cover; available for review at City Hall, the Central Library and on the City's website)*
3. Mitigation Monitoring and Reporting Program
4. City Council RCA, dated July 5, 2011, Setting aside previous approvals for the Senior Center Project (CUP 07-039 and EIR 07-002)

DRAFT RESOLUTION NO. 1659

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HUNTINGTON BEACH, CALIFORNIA, CERTIFYING THE FINAL SUBSEQUENT ENVIRONMENTAL IMPACT REPORT (SCH#2007041027) FOR THE HUNTINGTON BEACH SENIOR CENTER PROJECT

WHEREAS, Subsequent Environmental Impact Report No. 07-002, State Clearinghouse #2007041027, ("SEIR") was prepared by the City of Huntington Beach ("City") to address the environmental implications of the proposed Huntington Beach Senior Center Project (the "Project").

- On April 2, 2007, a Notice of Preparation/Initial Study for the Project was prepared and distributed to the State Clearinghouse, other responsible agencies, trustee agencies and interested parties.

- After obtaining comments received in response to the Notice of Preparation, and comments received at the public scoping meeting held on April 19, 2007, the City completed preparation of the Draft EIR and filed a Notice of Completion with the State Clearinghouse on September 13, 2007.

- The Draft EIR was certified by the City Council on February 4, 2008.

- The Draft Subsequent EIR was circulated for public review and comment from September 15, 2011 to October 31, 2011 and was available for review at several locations including City Hall, the Huntington Beach Central Library, and the City's website; and

WHEREAS, public comments have been received on the Draft Subsequent EIR, and responses to those comments have been prepared and provided to the Planning Commission as a section within a separately bound document entitled "Final Subsequent Environmental Impact Report Huntington Beach Senior Center" (the "Responses to Comments"), dated December 2011; and

WHEREAS, Public Resources Code 21092.5(a) requires that the City of Huntington Beach provide a written proposed response to any public agency that commented on the Subsequent Environmental Impact Report, and the Response to Comments included in the Final Subsequent Environmental Impact Report satisfies this provision; and

WHEREAS, the Planning Commission held a public meeting on the Subsequent EIR on January 24, 2012, and received and considered public testimony.

NOW, THEREFORE, the Planning Commission of the City of Huntington Beach, California, **DOES HEREBY RESOLVE,** as follows:

ATTACHMENT NO. 1.1

SECTION 1. Consistent with CEQA Guidelines Section 15132 and Section 15162, the Final Subsequent EIR for the Project is comprised of the Draft Subsequent EIR and Appendices, the comments received on the Draft Subsequent EIR, the Responses to Comments (including a list of persons, organizations, and public agencies commenting on the Draft Subsequent EIR), the Text Changes to the Draft subsequent EIR (bound together with the Responses to Comments) and all Planning and Building Department Staff Reports to the Planning Commission and City Council, including all minutes, transcripts, attachments and references. All of the above information has been and will be on file with the City of Huntington Beach Department of Planning and Building, 2000 Main Street, Huntington Beach, California 92648.

SECTION 2. The Planning Commission finds and certifies that the Final Subsequent EIR is complete and adequate in that it has identified all significant environmental effects of the Project and that there are no known potential environmental impacts not addressed in the Final Subsequent EIR.

SECTION 3. The Planning Commission finds that although the Final Subsequent EIR identifies certain significant environmental effects that will result if the Project is approved, all significant effects which can feasibly be mitigated or avoided have been mitigated or avoided by the incorporation of Project design features, standard conditions and requirements, and by the imposition of mitigation measures on the approved Project.

SECTION 4. The Planning Commission finds that the Final Subsequent EIR has described reasonable alternatives to the Project that could feasibly obtain the basic objectives of the Project (including the "No Project" Alternative), even when these alternatives might impede the attainment of Project objectives and might be more costly. Further, the Planning Commission finds that a good faith effort was made to incorporate alternatives in the preparation of the Draft Subsequent EIR and that a reasonable range of alternatives was considered in the review process of the Final Subsequent EIR and ultimate decisions on the Project.

SECTION 5. The Planning Commission finds that no "substantial evidence" (as that term is defined pursuant to CEQA Guidelines Section 15384) has been presented which would call into question the facts and conclusions in the Subsequent EIR.

SECTION 6. The Planning Commission finds that no "significant new information" (as that term is defined pursuant to CEQA Guidelines Section 15088.5) has been added to the Subsequent EIR after circulation of the Draft Subsequent EIR. The Planning Commission finds that the minor refinements that have been made in the Project as a result of clarifications in the text of the Draft Subsequent EIR do not amount to significant new information concerning the Project, nor has any significant new information concerning the Project become known to the Planning Commission through the public hearings held on the Project, or through the comments on the Draft Subsequent EIR and Responses to Comments.

ATTACHMENT NO. 1.2

SECTION 7. The Planning Commission finds that the Mitigation Monitoring and Reporting Program establishes a mechanism and procedures for implementing and verifying the mitigation measures pursuant to Public Resources Code 21081.6 and hereby adopts the Mitigation Monitoring and Reporting Program. The mitigation measures shall be incorporated into the Project prior to or concurrent with Project implementation as defined in each mitigation measure.

SECTION 8. The Planning Commission finds that the Final Subsequent EIR reflects the independent review and judgment of the City of Huntington Beach City Council, that the Final Subsequent EIR was presented to the Planning Commission, and that the Planning Commission reviewed and considered the information contained in the Final Subsequent EIR prior to approving General Plan Amendment No. 11-004 and Conditional Use Permit No. 07-039(R).

SECTION 9. The Planning Commission finds that the Final Subsequent EIR serves as adequate and appropriate environmental documentation for the Project. The Planning Commission certifies that the Final Subsequent EIR prepared for the Project is complete, and that it has been prepared to respond to the California Court of Appeals ruling, dated December 13, 2010 and in compliance with the requirements of the California Environmental Quality Act and CEQA Guidelines.

PASSED, APPROVED, and **ADOPTED,** this 24th day of January 2012 by the following roll call vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Scott Hess, Secretary

Chairperson, Planning Commission

ATTACHMENT NO. 1.3

ATTACHMENT NO. 2

FINAL SUBSEQUENT EIR NO. 07-002

NOT ATTACHED

AVAILABLE FOR REVIEW AT:

THE PLANNING AND ZONING COUNTER – CITY HALL, 3RD FLOOR

THE CITY CLERK'S OFFICE – CITY HALL, 2ND FLOOR

THE CENTRAL LIBRARY

CITY WEBSITE
WWW.HUNTINGTONBEACHCA.GOV/GOVERNMENT/
DEPARTMENTS/PLANNING/MAJOR/SENIOR_CENTER.CFM

ATTACHMENT NO. 2

HUNTINGTON BEACH
SENIOR CENTER

Final Subsequent Environmental Impact Report
SCH No. 2007041027

Mitigation Monitoring and Reporting Program

Prepared for
City of Huntington Beach
Planning Department
2000 Main Street, Third Floor
Huntington Beach, California 92648

Prepared by
Atkins
12301 Wilshire Boulevard, Suite 430
Los Angeles, California 90025

January 2012

ATTACHMENT NO. 3.1

Mitigation Monitoring Program

A. INTRODUCTION

The Final Subsequent Environmental Impact Report for the Huntington Beach Senior Center project (State Clearinghouse #2007041027) identifies mitigation measures to reduce the adverse effects of the project in the areas of: aesthetics, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, noise, recreation, transportation/traffic, and utilities & service systems.

The California Environmental Quality Act (CEQA) requires that agencies adopting environmental impact reports ascertain that feasible mitigation measures are implemented, subsequent to project approval. Specifically, the lead or responsible agency must adopt a reporting or monitoring program for mitigation measures incorporated into a project or imposed as conditions of approval. The program must be designed to ensure compliance during applicable project timing, e.g. design, construction, or operation (Public Resource Code §21081.6).

The Mitigation Monitoring and Reporting Program (MMRP) shall be used by the City of Huntington Beach staff responsible for ensuring compliance with mitigation measures associated with the Huntington Beach Senior Center project. Monitoring shall consist of review of appropriate documentation, such as plans or reports prepared by the party responsible for implementation or by field observation of the mitigation measure during implementation.

The following table identifies the mitigation measures by resource area. The table also provides the specific mitigation monitoring requirements, including implementation documentation, monitoring activity, timing and responsible monitoring party. Verification of compliance with each measure is to be indicated by signature of the mitigation monitor, together with date of verification.

The Project Applicant and the Applicant's Contractor shall be responsible for implementation of all mitigation measures, unless otherwise noted in the table.

ATTACHMENT NO. 3.2

Mitigation Monitoring Program

Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
Aesthetics						
MM 4.1-3(a) All exterior nighttime lighting shall be angled down and away from the adjacent open space areas. Prismatic glass coverings and cutoff shields shall be used to further prevent spillover off site.	Project building plans	Review and approve building plans for inclusion of features	Plan check prior to issuance of building permit	Planning		
MM 4.1-3(b) The minimum number of foot-candles deemed necessary by the City to promote effective security while controlling glare and minimizing light spillover onto adjacent areas shall be utilized in all lighting fixtures.	Project building plans	Review and approve building plans for inclusion of features	Plan check prior to issuance of building permit	Planning		
MM 4.1-3(c) Motion-sensitive security lighting shall be used on site.	Project building plans	Review and approve building plans for inclusion of features	Plan check prior to issuance of building permit	Planning		
MM 4.1-3(d) To the extent feasible, the Developer shall use non-reflective façade treatments, such as matte paint or glass coatings.	Project building plans	Review and approve building plans for inclusion of features	Plan check prior to issuance of building permit	Planning		
MM 4.1-3(e) Trees and barrier-type vegetation should be placed throughout the site, including along the entire perimeter, to help shield vehicle headlights from adjacent uses.	Project landscaping and building plans	Review and approve landscaping and building plans for inclusion of features	Plan check prior to issuance of building permit	Planning		
Air Quality						
MM-4.2-2(a) (This MM incorporates Measure Air-9 from the Central Park Master Plan EIR) The project developer(s) shall require by contract specifications that construction equipment engines will be maintained in good condition and in proper tune per manufacturer's specification for the duration of construction.	Contract language and notes on grading and building plans	Review and approve contract specifications, grading and building plans for inclusion	Plan check prior to issuance of a grading permit	Planning		

ATTACHMENT NO. 3.3

Mitigation Monitoring Program

Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
MM-4.2-2(b) (This MM incorporates Measure Air-12 from the Central Park Master Plan EIR) The project developer(s) shall require by contract specifications that construction-related equipment, including heavy-duty equipment, motor vehicles, and portable equipment, shall be turned off when not in use for more than five minutes. Contract specification language shall be reviewed by the City prior to issuance of a grading permit.	Contract language and notes on grading and building plans	Review and approve contract specifications, grading and building plans for inclusion	Plan check prior to issuance of a grading permit	Planning	_____	_____
MM-4.2-2(c) (This MM incorporates Measures Air-10 and Air-11 from the Central Park Master Plan EIR) The project developer(s) shall encourage contractors to utilize alternative fuel construction equipment (i.e., compressed natural gas, liquid petroleum gas, electric, and unleaded gasoline) and low-emission diesel construction equipment to the extent that the equipment is readily available and cost effective. Contract specification language shall be reviewed by the City prior to issuance of a grading permit.	Contract language and notes on grading and building plans	Review and approve contract specifications, grading and building plans for inclusion	Plan check prior to issuance of a grading permit	Planning	_____	_____
MM-4.2-2(d) The project developer(s) shall require by contract specifications that construction operations rely on the electricity infrastructure surrounding the construction sites rather than electrical generators powered by internal combustion engines to the extent feasible. Contract specification language shall be reviewed by the City prior to issuance of a grading permit.	Contract language and notes on grading and building plans	Review and approve contract specifications, grading and building plans for inclusion	Plan check prior to issuance of a grading permit	Planning	_____	_____
MM4.2-2(e) The project developer(s) shall require by contract specifications that the architectural coating (paint and primer) products used would have a VOC rating of 125 grams per liter or less. Contract specifications shall be included in the proposed project construction documents, which shall be reviewed by the City prior to issuance of a building permit.	Project building plans	Review and building plans for inclusion	Plan check prior to issuance of a building permit	Planning	_____	_____

ATTACHMENT NO. 3.4

Mitigation Monitoring Program

Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
Biological Resources						
MM 4.3-1(a) Nesting habitat for protected or sensitive avian species: 1) Vegetation removal and construction shall occur between September 1 and January 31 whenever feasible. 2) Prior to any construction or vegetation removal between February 15 and August 31, a nesting survey shall be conducted by a qualified biologist of all habitats within 500 feet of the construction area. Surveys shall be conducted no less than 14 days and no more than 30 days prior to commencement of construction activities and surveys will be conducted in accordance with CDFG protocol as applicable. If no active nests are identified on or within 500 feet of the construction site, no further mitigation is necessary. This survey can be carried out concurrently with surveys for other species provided it does not conflict with any established survey protocols. A copy of the pre-construction survey shall be submitted to the City of Huntington Beach. If an active nest of a sensitive species is identified onsite (per established thresholds) a 250-foot no-work buffer shall be maintained between the nest and construction activity until CDFG and/or USFWS approves of any other mitigation measures. 3) Completion of the nesting cycle shall be determined by qualified ornithologist or biologist.	Developer shall submit construction schedule (including grading activities) as evidence of construction overlap with breeding season. If construction occurs during relevant breeding, developer shall present a survey report (prepared by a qualified biologist approved by the City) to the City prior to issuance of a grading permit. If nests are found, developer shall submit plans identifying nest locations and limits of construction activities.	Review schedule and field survey report, and as necessary, review and approve plans indicating construction limits Perform periodic field check to ensure compliance	Plan check prior to issuance of a grading permit During construction	Planning Planning	_____ _____	_____ _____

ATTACHMENT NO. 3.3

Mitigation Monitoring Program

Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
MM 4.3-1(b) Burrowing Owl: 1) Prior to construction activity, focused pre-construction surveys shall be conducted for burrowing owls where suitable habitat is present within the construction areas. Surveys shall be conducted no less than 14 days and no more than 30 days prior to commencement of construction activities and surveys shall be conducted in accordance with CDFG burrowing owl survey protocol.	Developer shall submit construction schedule (including grading activities) as evidence of construction overlap with breeding season.	Review schedule and field survey report, and as necessary, review and approve plans indicating construction limits	Plan check prior to issuance of a grading permit	Planning	_____	_____
2) If unoccupied burrows are found during the non-breeding season, the City may collapse the unoccupied burrows, or otherwise obstruct their entrances to prevent owls from entering and nesting in the burrows. This measure would prevent inadvertent impacts during construction activities. 3) If no occupied burrows are found in the survey area, a letter report documenting survey methods and findings shall be submitted to the City and CDFG for review and approval, and no further mitigation is necessary. If occupied burrows are found, impacts on the burrows shall be avoided by providing a buffer of 165 feet during the non-breeding season (September 1 through January 31) or 250 feet during the breeding season (February 1 through August 31). The size of the buffer area may be adjusted if a qualified biologist and CDFG determine it would not be likely to have adverse effects on the owls. No project activity shall commence within the buffer area until a qualified biologist confirms that the burrow is no longer occupied. If the burrow is occupied by a nesting pair, a minimum of 7.5 acres of foraging habitat contiguous to the burrow shall be maintained until the breeding season is over. 4) If impacts on occupied burrows are unavoidable, onsite passive relocation techniques approved by CDFG shall be used to encourage owls to move to alternative burrows outside of the impact area. However, no occupied burrows shall be disturbed during the nesting season unless a qualified biologist verifies through non-invasive methods that	If construction occurs during relevant breeding, developer shall present a survey report (prepared by a qualified biologist approved by the City) to the City prior to issuance of a grading permit. If nests are found, developer shall submit plans identifying nest locations and limits of construction activities.	Perform periodic field check to ensure compliance	During construction	Planning	_____	_____

ATTACHMENT NO. 5-2

Mitigation Monitoring Program

Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
juveniles from the occupied burrows are foraging independently and are capable of independent survival. Mitigation for foraging habitat for relocated pairs shall follow guidelines provided in the California Burrowing Owl Consortium's April 1995 Burrowing Owl Survey Protocol and Mitigation Guidelines, which ranges from 7.5 to 19.5 acres per pair.						
MM 4.3-2 (This MM is Measure Biological Resources-4 from the Central Park Master Plan EIR) The City shall mitigate for impacts to raptor foraging habitat through dedication as open space, conservation and/or enhancing areas of raptor foraging habitat at a ratio of 1:1 for acres of impact on raptor foraging habitat to provide suitable habitat values and functions for raptors. Mitigation for impacts on raptor foraging habitat will be accomplished within suitable areas that are City-owned and preferably nearby, such as the areas in association with the Sully Miller Lake Group Facility, Low Intensity Recreation Area, Semi-Active Recreation Area, and/or Midden Area/Urban Forest/Trailhead. Enhancement would include, but not be limited to, the planting of native trees within and adjacent to conserved areas of raptor foraging habitat. Prior to ground disturbance, the City shall identify the particular site or area to be enhanced and shall formulate a plan to accomplish the raptor foraging habitat enhancement activities. This plan shall be reviewed for approval by a qualified biologist.	The City shall determine the location of 5 acres of suitable raptor foraging habitat to be conserved and/or enhanced. The City shall formulate a plan to accomplish the raptor foraging habitat enhancement activities, including the planting of native trees within and adjacent to the dedicated area. Proof of retention of biologist.	Prepare plans indicating enhancement area, and verify retention of a qualified biologist Review and approval of raptor foraging habitat enhancement plan by qualified biologist Implementation and completion of enhancement activities	Plan check prior to issuance of a grading permit Review plan throughout construction activities Prior to Certificate of Occupancy	Planning Planning Qualified Biologist	_____ _____ _____	____ ____ ____

ATTACHMENT NO. 3.7

Mitigation Monitoring Program

Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
Cultural Resources						
MM 4.4-1(a) (This MM incorporates Measures Archaeology-3, Archaeology-4, Historical-1, and Paleontology-1 from the Central Park Master Plan EIR) The City shall arrange for a qualified professional archaeological and paleontological monitor to be present during all project-related ground-disturbing activities, including the potential disturbance of soils on adjacent slopes. In addition, all construction personnel shall be informed of the need to stop work on the project site in the event of a potential find, until a qualified archaeologist or paleontologist has been provided the opportunity to assess the significance of the find and implement appropriate measures to protect or scientifically remove the find. Construction personnel will also be informed that unauthorized collection of cultural resources is prohibited.	Proof of retention of archaeological and paleontological monitor	Verify retention of qualified monitors	Plan check prior to issuance of a grading permit	Planning	_____	_____
		Periodic field check to ensure monitors are present	Throughout ground-disturbing activities	Planning	_____	_____

ATTACHMENT NO. 3.8

Mitigation Monitoring Program

Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
MM 4.4-1(b) (This MM incorporates Measures Archaeology-6,7 and 8, Historical-2 and 3, Paleontology-2,3 and 4, from the Central Park Master Plan EIR) If archaeological or paleontological resources are discovered during ground-disturbing activities, all construction activities within 50 feet of the find shall cease until the archaeologist/paleontologist evaluates the significance of the resource. In the absence of a determination, all archaeological and paleontological resources shall be considered significant. If the resource is determined to be significant, the archaeologist or paleontologist, as appropriate, shall prepare a research design for recovery of the resources in consultation with the State Office of Historic Preservation that satisfies the requirements of Section 21083.2 of CEQA. The archaeologist or paleontologist shall complete a report of the excavations and findings, and shall submit the report for peer review by three County-certified archaeologists or paleontologists, as appropriate. Upon approval of the report, the City shall submit the report to the South Central Coastal Information Center at California State University, Fullerton, and keep the report on file at the City of Huntington Beach.	Notes on grading plans Research design and recovery plan, if required	Review and approve grading plans for inclusion Review and approve research design and recovery plan	Plan check prior to issuance of a grading permit Throughout ground-disturbing activities	Planning Peer review by three County-certified professionals	_____ _____ _____ _____	____ ____ ____ ____
MM 4.4-1(c) (This MM incorporates Measure Archaeology-5 from the Central Park Master Plan EIR) The City shall arrange for a qualified Native American monitor or a rotation of monitors from the interested bands to be present during all project-related ground-disturbing construction activities, including the recompaction of soils on the adjacent hillside. Should project personnel discover any previously unknown cultural resources in the absence of an archaeological monitor, a qualified archaeologist should be notified immediately to evaluate the significance of the find and make recommendations for treatment.	Proof of retention of Native American monitor	Verify retention of qualified monitor Periodic field check to ensure monitor is present	Plan check prior to issuance of a grading permit Throughout ground-disturbing activities	Planning Planning	_____ _____	____ ____

ATTACHMENT NO. 3.9

Mitigation Monitoring Program

Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
MM 4.4-3 In the event of the discovery of a burial, human bone, or suspected human bone, all excavation or grading in the vicinity of the find shall halt immediately, the area of the find shall be protected, and the Developer shall immediately notify the City and the Orange County Coroner of the find and comply with the provisions of P.R.C. Section 5097. If the human remains are determined to be prehistoric, the Coroner will notify the NAHC, which will determine and notify a Most Likely Descendent (MLD). The MLD shall complete the inspection of the site within 24 hours of notification, and may recommend scientific removal and non-destructive analysis of human remains and items associated with Native American burials.	Notes on grading plans	Review and approve grading plans for inclusion	Plan check prior to issuance of a grading permit Throughout ground-disturbing activities	Orange County Coroner & Planning	_____ _____	_____ _____
Geology and Soils						
MM 4.5-1 Detailed design measures contained within the Geotechnical Evaluation prepared for the project shall be implemented, including those related to: earthwork, seismic design consideration, foundations, building floor slabs, retaining wall, exterior flatwork, shoring, corrosion; concrete, site drainage, storm drain infiltration system, and preliminary pavement design.	Notes on rough/mass grading plan and building plans	Review and approve grading and building plans for inclusion of soils and geotechnical recommendations	Plan check prior to issuance of a rough/mass grading permit	Public Works Building and Safety	_____ _____	_____ _____
MM 4.5-2 In order to mitigate the erosion potential of the slopes adjacent to the site, the near surface soils shall be compacted along the northern slope face (earthen berm) where the site improvements encroach upon the existing slopes. The slope shall then be covered with an appropriate erosion protection device and drought tolerant plants. Surface water runoff must be diverted away from the top of the slope to reduce the likelihood of surficial sliding and erosion.	Notes on rough/mass grading plan and building plans	Review and approve grading and landscaping plans for inclusion of soils and geotechnical recommendations and plant material	Plan check prior to issuance of a rough/mass grading permit and prior to approval of landscape plan	Public Works	_____	_____
MM 4.5-4(a) Oversize materials, more than approximately four inches in size, such as concrete rubble shall be disposed of off site. Trash and other debris shall be selectively removed and disposed off site.	Notes on grading and building plans	Review and approve notes on grading building plans	Prior to issuance of grading and building permit	Public Works Planning	_____ _____	_____ _____

ATTACHMENT NO. 3.10

Mitigation Monitoring Program

Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
MM 4.5-4(b) (This MM incorporates Measure Geology-2 from the Central Park Master Plan EIR) Remedial grading to remove compressible soils and replace them with appropriately compacted fill shall occur in order to address potential settlements. Fill soils to be used for backfill around utilities shall be compacted to 90 percent relative compaction.	Soils report documenting fill properties	Review and approve soil sampling report Notes on grading plans	Prior to fill import Prior to issuance of a grading permit	Fire Public Works	_____ _____	____ ____
MM 4.5-4(c) (This MM incorporates Measure Geology-6 from the Central Park Master Plan EIR) Corrosivity testing of the on-site soils should be performed during the design phase. Corrosivity testing may also need to be considered for soils that are imported for use as fill during construction.	Soils report with corrosion engineer recommendations	Review and approve notes on building plans	Prior to issuance of building permit	Building and Safety	_____	____
MM 4.5-5 (This MM incorporates Measure Geology-5 from the Central Park Master Plan EIR) The soil expansion potential shall be evaluated in detail prior to issuance of grading permits. If expansive soils are present near design grades, potential for heaving or cracking of rigid structures shall be addressed through soil removal, chemical treatment, or other equivalent measures.	Notes on rough/mass grading plan and building plans	Review and approve grading and building plans for inclusion of soils and geotechnical recommendations	Plan check prior to issuance of a rough/mass grading permit and building permit	Building and Safety	_____	____

ATTACHMENT NO. 3.11

Mitigation Monitoring Program

Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
Hazardous Materials						
MM 4.6-1(a) (This MM incorporates Measure Hazards-15 from the Central Park Master Plan EIR) In the event that previously unknown soil contamination that could present a threat to human health or the environment is encountered during construction, construction activities in the immediate vicinity of the contamination shall cease immediately. A risk management plan shall be prepared and implemented that (1) identifies the contaminants of concern and the potential risk each contaminant would pose to human health and the environment during construction and post-development and (2) describes measures to be taken to protect workers and the public from exposure to potential site hazards. Such measures could include a range of options, including, but not limited to, physical site controls during construction, remediation, long-term monitoring, post-development maintenance or access limitations, or some combination thereof. Depending on the nature of contamination, if any, appropriate agencies shall be notified (e.g., City of Huntington Beach Fire Department). A site health and safety plan that meets OSHA requirements shall be prepared and in place prior to the commencement of work in any contaminated area. The developer shall ensure proper implementation of the health and safety plan. If required, contamination shall be remediated in accordance with mitigation measure MM 4.6-1(b).	Risk Management Plan & Site Health and Safety Plan	Review and approve any grading plans for inclusion	Plan check prior to issuance of any grading permit	Fire	_____	_____

ATTACHMENT NO. 3.12

Mitigation Monitoring Program

Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
MM 4.6-1(b) Closure reports or other reports acceptable to the HBFD that document the successful completion of required remediation activities, if any, for contaminated soils, in accordance with City Specification 431-92, shall be submitted and approved by the HBFD prior to issuance of grading permits for site development. No construction shall occur in the affected area until reports have been accepted by the City.	Closure reports or other reports acceptable to the HBFD that document the successful completion of required remediation activities	Review and approve closure reports other reports acceptable to the HBFD that document the successful completion of required remediation activities	Plan check prior to issuance of any grading permit	Fire	_____	____
MM 4.6-1(c) (This MM is Measure Hazards-9 from the Central Park Master Plan EIR) Any unrecorded or unknown wells uncovered during the excavation or grading process shall be immediately reported to and coordinated with the City and Division of Oil, Gas and Geothermal Resources (DOGGR). In addition, should any known and unexpected landfills be excavated and discovered during the construction phase of the proposed project, construction work will be immediately halted and the Local Enforcement Agency (LEA) will be notified. Further construction operations will resume at the discretion of LEA and upon work approval by LEA.	Documentation of consultation with DOGGR	Review and approve documentation	Plan check prior to issuance of a rough grading permit	Fire	_____	____
MM 4.6-1(d) Prior to the issuance of grading permits and during construction, the project shall comply with all provisions of the HBMC Section 17.04.085 and HBFD City Specification 429, Methane District Building Permit Requirements. A plan for the testing of soils for the presence of methane gas shall be prepared. If necessary, measures to reduce levels of gases to within levels determined acceptable by the HBFD (such as vent systems) shall be implemented, if required by the HBFD.	Notes on grading and building plans Methane and Hydrogen Sulfide Testing Plan	Plan check prior to issuance of a rough grading permit Review and approval of testing plan	Prior to issuance of any grading permit and during construction	Fire	_____	____

ATTACHMENT NO. 3.13

Mitigation Monitoring Program

Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
Hydrology and Water Quality						
MM 4.7-1 (This MM incorporates Measures Water-2 and 3 from the Central Park Master Plan EIR) The project proponent shall prepare and implement a site-specific Water Quality Management Plan (WQMP). This (WQMP) shall identify specific stormwater BMPs for reducing potential pollutants in stormwater runoff. BMPs shall be designed in accordance with DAMP requirements and the recommendations of the Geotechnical Report prepared for the proposed project. The WQMP must be approved by the Public Works Department prior to the beginning of construction activities. The WQMP shall include the following BMPs along with selected BMPs to target pollutant removal rates: ■ Waste and materials storage and management BMPs (design and construction of outdoor materials storage areas and trash and waste storage areas, if any, to reduce pollutant introduction) ■ Spill prevention and control BMPs ■ Slope protection and stabilization BMPs ■ Water efficient irrigation practices (Municipal Code 14.52 Water Efficient Landscape; water efficient guidelines and Conceptual Landscape Plan). ■ Permanent erosion and sediment controls (e.g., hydroseeding, mulching, surface covers) The Project Proponent is encouraged to consider the following BMPs: ■ Minimize directly connected impervious area, including: pervious concrete (if applicable) or other pervious pavement for parking areas (e.g., turf block), pervious pavement for paths and sidewalks, and direction of rooftop runoff to pervious areas. ■ Incorporation of rain gardens or cisterns to reuse runoff for	Water Quality Management Plan	Review and approve WQMP and documentation	Plan check prior to issuance of precise grading permit	Public Works	_____	_____

ATTACHMENT NO. 3.17

Mitigation Monitoring Program

Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
landscape irrigation ■ Alternative building materials ■ Site design and landscape planning ■ Wet vaults for subsequent landscape irrigation ■ Sand filters for parking lots and rooftop runoff ■ Frequent street and parking lot sweeping ■ Media filter devices for roof top drain spouts (including proprietary devices) ■ Biofiltration devices (swales, filter strips, and others) ■ Proprietary control measures (if supporting documentation is provided) ■ Drain inlet filters ■ Pet waste station ■ The upstream drainage area must be completely stabilized						

ATTACHMENT NO. 3.15

Mitigation Monitoring Program

Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
MM 4.7-2 (This MM incorporates Measure Utilities-8 from the Central Park Master Plan EIR) The project proponent shall prepare a Project Hydrology and Hydraulic Report and Drainage Plan that incorporates stormwater conveyance facilities to provide adequate site drainage and minimize erosive forces. This Hydrology and Hydraulic Report shall include analysis of stormwater runoff peak flow and total volume from the 2-year and 100-year storm events for both existing and developed conditions. Stormwater conveyance and detention features shall be designed and incorporated into the proposed project to reduce runoff forces to non-erosive rates for the 100-year storm events. To the maximum extent practicable, the Drainage Plan shall also reduce post-construction peak runoff rates and timing to existing conditions levels. Off-site road improvements shall be included in the Hydrology and Hydraulic Report and Drainage Plan. The Hydrology and Hydraulic Report shall include a Drainage Plan identifying any additional stormwater quantity BMPs, their locations, and design characteristics, along with the flow dissipation piping, bioswales, and vegetated buffer areas already identified on the Conceptual Grading and Utility Plan (Figure 3-7 in Section 3.0 [Project Description]). Supporting documentation shall be included to show that incorporation of these features will result in post-construction runoff erosive forces that do not exceed existing conditions erosive forces. The Public Works Department shall approve this Hydrology and Hydraulic Report and Site Drainage Plan prior to the issuance of a precise grading permit. It is recommended that the Site Drainage Plan be coordinated with the WQMP to maximize efficiency of stormwater runoff detention/retention and water quality treatment.	Hydrology and Hydraulic Report and Drainage Plan	Review and approve plan and documentation	Prior to issuance of a grading permit	Public Works		

ATTACHMENT NO. 3.16

Mitigation Monitoring Program

Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
MM 4.7-5 The project proponent shall prepare and implement a Nutrient and Pesticide Management Program. A Nutrient and Pesticide Management Program (NPMP) shall be prepared and implemented to minimize the risk of pollutants associated with landscape establishment and maintenance practices in runoff waters. This NPMP shall include guidelines, application regulations, and applicator training, and shall encourage minimization of chemical use.	Nutrient and Pesticide Management Program	Review and approve NPMP	Prior to issuance of a grading permit	Public Works		
Noise						
MM 4.9-1(a) (This MM is Measure Noise-3 from the Central Park Master Plan EIR) The City of Huntington Beach shall limit grading and construction activities to daily operation hours between 7:00 a.m. and 7:00 p.m. (Monday through Friday) and 8:00 a.m. to 5:00 p.m. on Saturdays. Construction shall not take place on Sundays or Federal holidays.	Contract language and notes on building plans	Review and approve building plans for inclusion	Prior to issuance of a building permit	Planning		
MM 4.9-1(b) (This MM is Measure Noise-5 from the Central Park Master Plan EIR) The U.S. Environmental Protection Agency has estimated that noise levels from construction equipment can be lowered as much as 13 dBA by implementing noise control features that require no major redesign or extreme cost. The City of Huntington Beach shall require that all construction equipment incorporate noise reduction control features. All vehicles and compressors should utilize exhaust mufflers, and engine enclosures as designed by the manufacturer should be in place at all times.	Contract language and notes on grading plans and building plans	Review and approve grading plans and building plans for inclusion	Prior to issuance of a grading permit and a building permit	Planning		

ATTACHMENT NO. 3.1

Mitigation Monitoring Program

Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
Recreation						
MM 4.11-1 (This MM is Measure Recreation-1 from the Central Park Master Plan EIR) At least thirty days prior to construction, the City of Huntington Beach shall post signs in the vicinity of the project site indicating the proposed construction schedule of the senior center facility (including location and hours of operation) and shall complete the permanent relocation of the disc golf course hole located at the southern boundary of the site back to the official disc golf course.	Final building plans and project grading plans	Ensure construction schedule signs are posted and disc golf course hole is relocated	At least 30 days prior to construction activity	Planning	_____	_____
Transportation/Traffic						
MM 4.12-4 The intersection of Goldenwest Street at Talbert Avenue shall be modified to include the project driveway as the west leg, with appropriate corresponding signal modifications and intersection lane improvements. The City Transportation Manager shall determine the ultimate signal modifications that are most appropriate for the project site. Design recommendations include, but are not limited to, the following: ■ Split phase operations for east-west movements ■ Adequate pedestrian green to accommodate a slower walk speed (e.g., 2.8 feet per second) ■ Address design site distance ■ Increased letter sizes on roadway signs ■ Increased signal clearance intervals	Street Improvement Plans & Traffic Control Plan	Review and approval of Street Improvement Plans & Traffic Control Plan	Prior to Certificate of Occupancy	City Transportation Manager	_____	_____
Utilities & Service Systems						
MM 4.13-1 (This MM is Measure Utilities-7 from the Central Park Master Plan EIR) If the Green Acres Project is not yet operational and able to supply water to the program level elements of the Master Plan prior to the development of final plans and specifications, additional studies will be undertaken to determine the extent to which one or a combination of the following measures will be necessary to reduce impacts to water supply systems for	Green Acres Project	Review status of Green Acres Project and ability to supply the project If Green Acres Project cannot supply water to the	Prior to issuance of a grading permit	Public Works	_____	_____

ATTACHMENT NO. 3.6

Mitigation Monitoring Program

Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
program level elements during the interim until water from the Green Acres Project is available: ■ Reduce the required irrigable areas by 10 percent; ■ Enhance the utilization of existing groundwater systems (i.e., subpotable wells); or ■ Supplement the irrigation supply with water from the domestic water system.		project, prepare study/studies identifying measures to reduce impacts to water supply systems				
MM 4.13-2 The developer shall install low-flow water devices and waterless urinals as part of the project.	Notes on building plans	Installation of low-flow water devices and waterless urinals	Prior to and during construction activities	Public Works	_____	____
MM 4.13-3 (This MM is Measure Utilities-9 from the Central Park Master Plan EIR) Prior to construction of program level elements, additional electrical load analyses shall be undertaken to determine the need for additional electrical transformers.	Electrical load analyses	Conduct electrical load analyses	Prior to construction activities	Public Works	_____	____

ATTACHMENT NO. 3.19

Council/Agency Meeting Held:_ _____ Deferred/Continued to:_____ ☐ Approved ☐ Conditionally Approved ☐ Denied	_____ City Clerk's Signature
Council Meeting Date: July 5, 2011	Department ID Number: CA 11-005

CITY OF HUNTINGTON BEACH
REQUEST FOR CITY COUNCIL ACTION

SUBMITTED TO: Honorable Mayor and City Council Members

SUBMITTED BY: Jennifer McGrath, City Attorney

PREPARED BY: Jennifer McGrath, City Attorney

SUBJECT: Set aside the City Council's certification of the Senior Center Environmental Impact Report ("EIR") No. 07-002 and issuance of the Conditional Use Permit ("CUP") No. 07-039 regarding the Senior Center in Central Park

---

Statement of Issue: On March 4, 2008, Parks Legal Defense Fund and a number of individuals (collectively "Parks") filed a lawsuit challenging the City's decision to build a Senior Center in Central Park. Parks' lawsuit contained the following four claims: first claim under the California Environmental Quality Act ("CEQA") asserting that the EIR failed to consider a reasonable range of alternatives to the project; second claim asserting that the November 2006 election violated CEQA and the City's Charter Section 612; third claim asserting a violation of the City's General Plan; and fourth claim asserting that the use of the Pacific City project's park in-lieu fees for funding the construction of the Senior Center violated the Quimby Act.

On February 10, 2009, in a separate trial, the trial court denied Parks' Charter Section 612 claim. On December 15, 2009, after a second trial, the trial court entered a judgment in Parks' favor on the remaining claims. The City appealed and Parks filed a cross appeal on the Charter Section 612 claim. On December 13, 2010, the Court of Appeal issued its opinion, ruling in the City's favor on the Charter Section 612 and Quimby Act claims, but ruling in Parks' favor on the EIR and General Plan claims.

Financial Impact: Not Applicable.

Recommended Action: Motion to:

Set aside the City Council's certification of EIR No. 07-002 so that a subsequent EIR may be prepared and set aside the issuance of CUP No. 07-039 regarding the Senior Center in Central Park so that a General Plan Amendment may be processed.

Alternative Action(s): Do not set aside the City Council's certification of EIR No. 07-002 and issuance of CUP No. 07-039 regarding the Senior Center in Central Park, and direct City staff accordingly.

ATTACHMENT NO. 4.1

REQUEST FOR COUNCIL ACTION

MEETING DATE: 7/5/2011 **DEPARTMENT ID NUMBER: CA 11-005**

Analysis: On March 4, 2008, Parks filed a lawsuit, challenging the City's decision to build a Senior Center in Central Park based on CEQA, Charter Section 612, the General Plan, and the Quimby Act. In a February 10, 2009, separate trial, the trial court denied Parks relief on its Charter Section 612 claim. A trial on the remaining claims took place on August 6, 2009. On December 15, 2009, the trial court entered a judgment and a writ of mandate in Parks' favor on the remaining claims. The City appealed and Parks filed a cross appeal on the Charter Section 612 claim.

On December 13, 2010, the Court of Appeal issued its opinion. The Court of Appeal ruled in the City's favor on the Charter Section 612 and Quimby Act claims. The Court of Appeal ruled in Parks' favor on the CEQA claim challenging the sufficiency of the EIR and the General Plan claim. Regarding the EIR, the Court of Appeal held that the EIR failed "to discuss the Kettler [School] site, as well as the other closed school sites that may have been available as alternative locations." (**Attachment 1** [Court of Appeal Opinion, page 11].) The Court of Appeal also held that the EIR failed to address "whether use of all the [Quimby Act] in-lieu fees from the Pacific City project ($20 to $25 million) as funding for the [S]enior [C]enter was likely to affect the City's ability to acquire open land to replace the acreage lost by building the [S]enior [C]enter." (**Attachment 1** [Court of Appeal Opinion, pages 12-13].) Regarding the CUP, the Court of Appeal held that the CUP violated the City's General Plan because the City's General Plan incorporated the Central Park Master Plan which "designated the land where the [S]enior [C]enter is proposed to be built as a low intensity recreation area." (**Attachment 1** [Court of Appeal Opinion, page 15].) Thus, the Court of Appeal ordered that the "[t]he certification of the EIR must be set aside" and "[t]he CUP must be set aside." (**Attachment 1** [Court of Appeal Opinion, page 20].) On February 16, 2011, the Court of Appeal sent the case back to the trial court.

On May 20, 2011, the trial court stated that it would not relinquish its jurisdiction until the City Council complied with the Court of Appeal's opinion to set aside the certification of the EIR and issuance of the CUP. The trial court set a hearing date of July 12, 2011, for the City Council to take these actions. If the City Council sets aside the certification of the EIR and issuance of the CUP, the trial court will relinquish its jurisdiction of this lawsuit. If the City Council fails to set aside the certification of the EIR and issuance of the CUP by the July 12, 2011, hearing the trial court will continue to maintain its jurisdiction of this lawsuit and most likely restrain the City from taking any action on the EIR and the CUP.

Environmental Status: City staff anticipates presenting a subsequent EIR and General Plan Amendment to the Planning Commission at the end of the year and to the City Council early next year.

Strategic Plan Goal: Improve Internal and External Communication

Attachment(s):

No.	Description
1.	Court of Appeal Opinion, dated December 13, 2010

ATTACHMENT NO. 4.2

ATTACHMENT #1

ATTACHMENT NO. 4.3

COPY

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

COURT OF APPEAL-4TH DIST DIV 3
FILED
DEC 13 2010
Deputy Clerk

PARKS LEGAL DEFENSE FUND et al.,	
Plaintiffs and Appellants,	G043109
v.	(Super. Ct. No. 30-2008-00051261)
THE CITY OF HUNTINGTON BEACH et al.,	OPINION
Defendants and Appellants.	

Appeals from a judgment of the Superior Court of Orange County, David C. Velasquez, Judge. Affirmed in part, reversed in part.

Jennifer McGrath, City Attorney, Scott F. Field, Assistant City Attorney and John M. Fujii, Deputy City Attorney; Greines, Martin, Stein & Richland and Alison M. Turner for Defendants and Appellants.

Poole & Shaffery, Law Office of Mark J. Skapik, Mark C. Allen III and Geralyn L. Skapik for Plaintiffs and Appellants.

* * *

ATTACHMENT NO. 4.4

Parks Legal Defense Fund and a number of individuals (collectively Parks) filed a petition for a writ of mandate (petition) seeking injunctive and declaratory relief challenging the City of Huntington Beach's (the City) decision to build a senior center on open land in Central Park. The petition contained four causes of action. As to the second cause of action, the superior court denied petitioner's request to require the voters to approve the project a second time, as time-barred. The court granted Parks' request for relief on the remaining causes of action. Parks and the City each appeal from the part(s) of the judgment adverse to their position.

I.

FACTS

In June 2005, the City hired an architectural firm to study the feasibility of constructing and operating a new senior center based upon the growth of the City's senior population. The City anticipated a 64 percent increase in the senior population to over 50,000 by 2010. The March 2006 feasibility study concluded a building in excess of 45,000 square feet would be required to meet the needs of the senior community. The preferred site for the senior center is in the City's Central Park.

Before the City may construct in a city park any building in excess of 3,000 square feet or at a cost of more than $100,000, the City Charter requires an "affirmative vote of at least a majority of the electors voting on such proposition at a general or special election at which such proposition is submitted." (H.B. Charter, § 612(b).) On July 17, 2006, the City ordered Measure T placed on the ballot. The ballot measure read: "Shall a centrally located senior center building, not to exceed 47,000 square feet, be placed on a maximum of five acres of an undeveloped 14-acre parcel in the 356-acre Huntington Beach Central Park, generally located west of the intersection of Goldenwest Street and Talbert Avenue, between the disc golf course and Shipley Nature Center, following City Council approval of all entitlements and environmental review?" (Italics

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omitted.) The Huntington Beach voters passed the measure on November 7, 2006. The City subsequently began its environmental impact study.

Earlier that year, on October 16, 2006, the City entered into an agreement with the developer of the Pacific City Project, Makalon Atlanta Huntington Beach, LLC. (developer), whereby the developer would construct the proposed senior center with in-lieu fees assessed pursuant to the Quimby Act. (Gov. Code, § 66477 et seq.) Under the Quimby Act, a city may require a developer to dedicate an amount of land or pay fees in-lieu thereof for park or recreational purposes as a condition to the approval of a tentative map or parcel map. (Gov. Code, § 66477, subd. (a).) The Pacific City Project involved the proposed construction of a 165 room boutique hotel, 163,000 square feet of retail stores, 12,000 square feet of restaurants, a 2.0 acre open space/park, and 516 condominium units in the "Main-pier sub-area of the Huntington Beach Redevelopment Project" adjacent to Pacific Coast Highway. The proposed senior center location is a straight-line distance of 2.95 miles from the northwest corner of the Pacific City Project.

On February 20, 2007, the City contracted EIP Associates/PBS&J to prepare an environmental impact report (EIR) for the new senior center on a five-acre site within the 356-acre Huntington Central Park. The City gave notice on September 17, 2007, that a draft EIR had been prepared for an approximately 45,000 square feet senior center on undeveloped land within Central Park and of the public comment period. The location was zoned as a low intensity recreation area, which permitted "barbeque and picnic amendities, a restroom, tot-lot, open turf area, and parking uses."

A number of individuals voiced their opposition to the project and EIR. Opposition grounds included the failure to consider alternative sites and that the proposed in-lieu funding violated the Quimby Act.

The City's planning commission certified the final EIR and approved a conditional use permit (CUP) on December 11, 2007. The final EIR consisted of the draft EIR with text changes and responses to comments. The mayor appealed the

decision. On February 4, 2008, after a public hearing on the appeal, the city council voted to approve the resolution certifying the final EIR and approved the CUP for the senior center.

Parks filed a petition on March 4, 2008. The petition alleged the City's certification of the EIR violated the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.),[1] inter alia, in that it failed to consider "a reasonable range of alternatives" including possible school sites that became available after the draft EIR was prepared, but before certification of the final EIR.

The second cause of action alleged the City violated CEQA and City Charter section 612 by purporting to approve the project without voter approval as required by the City Charter. The petition alleged the voters' action in approving Measure T in 2006 was not final approval. The third cause of action alleged the City violated its general plan and failed to modify the general plan or its zoning ordinance to accommodate the proposed senior center. The fourth cause of action sought declaratory relief and alleged the City's intended use of park in-lieu fees to fund construction of the proposed senior center violated the Quimby Act.

The superior court bifurcated the trial on the petition. On February 10, 2009, the court held the second cause of action was time-barred under section 21167, subdivision (a) and Government Code section 65009, subdivision (c)(1). It found that in certifying the EIR the City abused its discretion by failing to proceed in the manner provided by law and the City's findings regarding the lack of feasible alternative sites lacked substantial evidence. The court also found the EIR failed to discuss the consequences to the City of open space park land and the loss of funds to replace the land because the City planned to divert the in-lieu funds to finance the senior center rather than replenish the lost open space. The court also found the CUP was issued in violation

[1] All further statutory references are to the Public Resources Code, unless otherwise stated.

of the City's general plan. Lastly, the court found that use of in-lieu funds from the Pacific City project to finance the senior citizen center violated the Quimby Act because (1) the funds were not intended to be used to provide for park and open space land, and (2) using the entire in-lieu fee to pay for 100 percent of the cost of building the senior citizen center bore no reasonable relationship to the degree to which the future inhabitants of the Pacific City project would use the center. The court found that in all other respects, the City did not abuse its discretion in certifying the EIR.

The court directed the City to set aside and vacate the EIR for the proposed senior center in Central Park, all actions of the city council on Feburary 4, 2008 regarding the proposed senior center, and the issuance of the CUP. The court further found the senior center may not be funded by the in-lieu fees without violating the Quimby Act and the City's enabling ordinance, Huntington Beach Municipal Code section 254.08.

II

DISCUSSION

A. *Rules Applicable to CEQA Review*

"CEQA is a comprehensive scheme designed to produce long-term protection to the environment. [Citation.]" (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 112.) The Legislature has enacted CEQA Guidelines to be followed in the process. (Cal. Code Regs., tit. 14, § 15000 et seq.)[2] "These Guidelines are binding on all public agencies in California." (Guidelines, § 15000.) CEQA requires "that major consideration is given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian." (§ 21000, subd. (g).) The public policy behind CEQA includes the idea "that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects

[2] All references to "Guidelines" are to the State CEQA guidelines, which implement CEQA. (Cal. Code Regs., tit. 14, § 15000 et seq.)

ATTACHMENT NO. 4.8

of such projects . . . ." (§ 21002.) CEQA therefore requires the public agency to "mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so." (§ 21002.1, subd. (b).)

The "heart and soul of CEQA" is the EIR. (*Planning & Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 911.) "Whenever a project may have a significant and adverse physical effect on the environment, an EIR must be prepared and certified. [Citations.]" (*Mountain Lion Foundation v. Fish & Game Com.*, *supra*, 16 Cal.4th at p. 113.) The EIR's function is "to identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided." (§ 21002.1, subd. (a).)

Additonally, the EIR "inform[s] the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR 'protects not only the environment but also informed self-government.' [Citation.]" (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564 (*Goleta II*).) Our review of the City's certification of the EIR for the senior center is "limited to deciding 'whether there was a prejudicial abuse of discretion . . . [which] is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.' [Citation.]" (*Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 823.) "Generally speaking, an agency's failure to comply with the procedural requirements of CEQA is prejudicial when the violation thwarts the act's goals by precluding informed decisionmaking and public participation. [Citations.]" (*San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.* (2006) 139 Cal.App.4th 1356, 1375.) "'Substantial evidence is defined as 'enough relevant information and reasonable inferences from [the information supplied by the EIR] that a fair argument can be made to support a conclusion, even though other conclusions might

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also be reached.'" [Citations.] . . . "Substantial evidence shall include facts, reasonable assumptions predicated on facts, and expert opinion supported by facts.'" [Citation.] 'In determining whether substantial evidence supports a finding, the court may not consider or reevaluate the evidence presented to the administrative agency. [Citation.] All conflicts in the evidence and any reasonable doubts must be resolved in favor of the agency's findings and decision. [Citation.] [¶] In applying that standard, rather than the less deferential independent judgment test, "the reviewing court must resolve reasonable doubts in favor of the administrative findings and decision."' [Citation.]" (*Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 596.) In any action reviewing a public agency's decision relating to a CEQA determination, "the court shall not exercise its independent judgment on the evidence but shall only determine whether the act or decision is supported by substantial evidence in the light of the whole record." (§ 21168.)

"[A] court's proper role in reviewing a challenged EIR is not to determine whether the EIR's ultimate conclusions are correct but only whether the EIR is sufficient as an informational document. [Citation.]" (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 407 (*Laurel Heights*).) "We may not, in sum, substitute our judgment for that of the people and their local representatives. We can and must, however, scrupulously enforce all legislatively mandated CEQA requirements." (*Goleta II, supra*, 52 Cal.3d at p. 564.)

B. *Sufficiency of the EIR*

1. *Alternative Sites*

"The core of an EIR is the mitigation and alternatives section." (*Goleta II, supra*, 52 Cal.3d at p. 564.) The petition asserted and the superior court found that the EIR failed to adequately discuss feasible alternative sites for the senior center. The draft EIR considered the following possible alternatives to the project: (1) continued uses

allowed by the general and master plans, which would prohibit building the senior center in the park; (2) reducing the size of the proposed senior center from 45,000 to 30,000 square feet and building the center at the location of the Rogers Senior Center; (3) development of "multiple, smaller-scale senior centers throughout the City"; and (4) an alternative site for the senior center, again in Central Park, at the northwest corner of Ellis Avenue and Goldenwest Street. The proposed location for the senior center and the alternative site each consist of open space in Central Park. Although the initial feasibility study conducted in 2006 acknowledged the potential use of closed school sites as alternative locations for the senior center, the EIR did not discuss the use of such sites as alternative locations.

A number of citizens voiced their concern about the draft EIR's failure to consider closed school sites, including the Kettler School property, as possible alternative locations for the senior center. The 2006 initial feasibility study specifically discussed the Kettler School site. The study noted that "[g]iven the significant amount of acreage, the option exists to develop either the main campus . . . or the school play fields adjacent to Edison Park, . . ." The response (see Guidelines, § 15088, subd. (a)) to the suggestion of the citizens was: "The school district board has not yet declared the Kettler School property surplus. Therefore, the City does not have the option to purchase the property under the Naylor Act. Consequently, the Draft EIR did not evaluate this property as an alternative site because the City's ability to purchase it is speculative."

"An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project, and evaluate the comparative merits of the alternatives." (Guidelines, §§ 15126.6, subd. (a), 15364.) "'A local agency must make an initial determination as to which alternatives are feasible and which are not. [Citation.] If an alternative is identified *as at least potentially feasible*, an in-depth discussion is required. [Citation.] On the other hand, when the infeasibility of an alternative is readily apparent, it "need not

be extensively considered.'" [Citation.] 'Even as to alternatives that are rejected, however, the "EIR must explain why each suggested alternative either does not satisfy the goals of the proposed project, does not offer substantial environmental advantages[,] or cannot be accomplished."' [Citation.]" (*Center for Biological Diversity v. San Bernardino* (2010) 185 Cal.App.4th 866, 883, italics added.)

The Kettler School site had aspects that recommend it as a possible alternative site for the project. According to the City's 2006 initial feasibility study, Kettler School would accommodate the proposed building, exterior programs, and future expansion. It has parking, would benefit from being close to Edison Park, is adjacent to compatible park uses, has significant vegetation, mature trees, and has potential compatibility with the Edison Community Center. Because it has already been developed, building the senior center at the school site would arguably reduce certain adverse environmental impacts that would occur with building the center in the park. (§ 21002; Guidelines, § 15126.6, subds. (a), (b).) "[T]he discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly." (Guidelines, § 15126.6, subd. (b).) Thus, if feasible, the EIR should have discussed the alternative in detail. (*Goleta II, supra*, 52 Cal.3d at p. 566 [EIR must consider alternative location which offers substantial environmental advantage and may be feasibly accomplished].)

The question then, is whether the Kettler School was a feasible alternative site within the meaning of CEQA. More specifically, given the favorable information relating to that site in the initial feasibility study, did the fact that the school district had not declared Kettler School as surplus property at the time of the draft EIR make the site infeasible?

The Naylor Act (Ed. Code, §§ 17485 et seq., formerly Ed. Code, §§ 39390 et seq.) "governs the disposal of certain kinds of surplus school property." (*City of Moorpark v. Moorpark Unified School Dist.* (1991) 54 Cal.3d 921, 923.) "The net effect of the Act is to make surplus school property available to local communities at less than present market value, while assuring that participating school districts recover at least the cost of acquiring the property." (*Id.* at pp. 923-924) If a school district decides to sell or lease surplus property, that land must first be offered to the city in which it is situated. (Ed. Code, § 17489, subd. (a).) With certain allowances, the sale price may not exceed the school district's cost of acquisition, and may be as low as 25 percent of market value. (Ed. Code, § 17491, subd. (a).)

For CEQA purposes, "'[f]easible' means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (§ 21061.1.) The fact that the City did not own a particular parcel of property at a given moment does not necessarily make the location an infeasible alternative. CEQA does not require the alternative be immediately available, only that it be "capable of being accomplished in a successful manner within a reasonable period of time." (§ 21061.1.) Whether an alternative site is owned by the proponent of the project is "simply a factor" to be considered in determining feasibility. (*Goleta II*, *supra,* 52 Cal.3d at p. 575, fn. 7; Guidelines, §15126.6, subd. (f)(1) [whether site is owned by proponent is "[a]mong the factors that may be taken into account when the feasibility of alternatives"].) In *Goleta II*, the court recognized that even in situations where the proponent of a project is a private party that owns the proposed location of a project, there still may be cases "in which the consideration of alternative sites is necessary and proper." (*Goleta II*, *supra,* 52 Cal.3d at p. 575.) Those instances are necessarily increased when the proponent is a governmental agency. "Understandably, the government's power of eminent domain and access to public lands suggest that alternative sites may be more feasible, more often, when the developer is a public rather

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than a private agency." (*Id.* at p. 574.) The guidelines require the EIR to discuss "acquisition" when relevant. (Guidelines, § 15126; see *San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 751 [EIR defective for failure to discuss possibility of land trade between private developer and United States Forest Service].)

The City argues the possibility of acquiring any of the school sites was too speculative to require in-depth discussion by the EIR, because the school district had not offered to sell surplus property and the City's ability to purchase such property, even at (well) below market rates was uncertain. Had the City inquired of the school district and been informed the locations are not for sale, the point might be well taken. However, it does not appear the City ever inquired. The latter claim — the City's ability to purchase school sites at below market rates was uncertain — rings hollow, given the City's December 3, 2007 decision to approve its November 2007 surplus school property purchasing plan, which included a recommendation to purchase 7.73 acres of the Kettler School property, a total of 24.6 acres from three other school sites, and directed the City's staff to update the plan as new sites are identified as surplus.

Given the fact that the Kettler School site may have been available at well below market value — not to mention the fact that the site had been considered as a potential site in the initial feasibility study — it must be concluded the site was at least "potentially feasible." The EIR's failure to discuss the Kettler site, as well as the other closed school sites that may have been available as alternative locations rendered the EIR deficient as an informative document. (*Goleta II, supra,* 52 Cal.3d at p. 564.) As a result, the City's certification of the final EIR was a prejudicial abuse of discretion, requiring the certification be set aside.

2. *Failure to Consider Loss of Open Land or Purchase of Open Land*

The superior court found the EIR failed to accurately describe the project in that the City incorrectly presumed the land in Central Park upon which the senior center is to be constructed "has no value, is underused land, is surplus land, or is vacant land. However, the City's General Plan and its Central Park Plan demonstrate the importance to the City of park land and open space land within the city." The court noted that if the City were to use all the in-lieu funds from the Pacific City project to build the senior center, the net result is a loss of open space not only within Central Park, but also within the City as a whole. The EIR failed to discuss the environmental impact to the park and the city caused by the redirection of the in-lieu funds away from the purchase of open space toward construction of the senior center.

We agree with the City that the EIR adequately described the loss of open space in Central Park. The EIR did not, however, discuss the loss of open space throughout the City, caused by the City's use of all the Quimby Act funds to construct the senior center instead of creating more open space. (See Guidelines, § 15131.)

With regard to the loss of open space, the EIR states: "Currently, 231 acres, or 65 percent, of Central Park are developed or planned for use as passive recreational areas. The change from passive to active at the project site would represent a 2 percent reduction of passive recreational space in Central Park . . . ." It also observed that building the senior center in the park would "reduc[e] the amount of undeveloped open space within Central Park" and concluded, "[t]his would be considered a significant cumulative impact of the proposed project."

As noted above, the City did approve a plan in December 2007 to purchase surplus school property. The purchase of 10.6 acres for park open space was included in the plan. That plan which might have provided an alternative site for the senior center was not included in the EIR. The EIR should have addressed whether use of all the in-lieu fees from the Pacific City project ($20 to $25million) as funding for the senior center

was likely to affect the City's ability to acquire open land to replace the acreage lost by building the senior center.

3. *The Raptors (Birds of Prey)*

The EIR found "[d]evelopment of the proposed project would have a substantial adverse impact to raptor foraging habitat" and urged implementation of a mitigation measure that included "dedication as open space, conservation and/or enhancing areas of raptor foraging habitat at a ratio of 1:1 for acres of impact on raptor foraging habitat to provide suitable habitat values and functions for raptors." The mitigation measure further provided that enhancement "would include, but not be limited to, the planting of native trees within and adjacent to conserved areas of raptor foraging habitat."

Parks contends that as it relates to the issue of the impact on raptors, the EIR was defective because there was no evidence the mitigation measure will mitigate the impact on the raptors. It is not the City's burden to demonstrate the mitigation measure was sufficient. As we have stated before, "Where an EIR is challenged as being legally inadequate, a court presumes a public agency's decision to certify the EIR is correct, thereby imposing on a party challenging it the burden of establishing otherwise. [Citations.]" (*Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 530.) Parks has not carried its burden on this issue.

C. *Measure T Statute of Limitations*

The second cause of action alleged the City violated CEQA and section 612 of the City's Charter by "purporting to finally approve the project without a vote of the people as required by" section 612 of the City's Charter. As noted above, the issue was put to the voters in 2006 as Measure T and was approved by the voters on November 7, 2006. That vote was without benefit of an EIR. If the vote was an approval

of a "project" for CEQA purposes, section 21167, subdivision (a) required any action to be filed within 180 days of the approval, a date that expired prior to the filing of the present petition.

As a public agency generated initiative, Measure T was not exempt from CEQA compliance. (*Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, 171.) The vote committed the City to going forward with the project. The petition, claiming an EIR was required before putting the matter to a vote, was not filed until March 2008, and is untimely under section 21167. That section requires an action alleging "that a public agency is carrying out or has approved a project that may have a significant effect on the environment without having determined whether the project may have a significant effect on the environment shall be commenced within 180 days from the date of the public agency's decision to carry out or approve the project." (§ 21167, subd. (a).) To the extent the second cause of action challenges the CUP on the ground that the voters were not provided an EIR before Measure T was voted on, Parks challenges the City's "proceedings, acts or determinations taken, done, or made prior to" the issuance of the CUP. (Gov. Code, 65009, subd. (c)(1)(F).) That being the case, the cause of action accrued in 2006, when the City put Measure T on the ballot. Section 65009's time limit, 90 days, expired prior to the filing of the instant petition in 2008. (Gov. Code, § 65009, subd. (c)(1).) According, the trial court did not err in concluding the second cause of action was time-barred.

D. *The CUP and Violation of the City's General Plan*

Government Code section 65300 requires every city to "adopt a comprehensive, long-term general plan for the physical development of the . . . city." The general plan must include: "A land use element that designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment

of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land." (Gov. Code, § 65302, subd. (a).) As we observed in *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, "The general plan functions as a '"constitution for all future developments,"' and land use decisions must be consistent with the general plan and its elements. [Citation.]" (*Id.* at p. 782.) A project must be compatible with the policies and objectives of the general plan, but "[p]erfect conformity is not required." (*Ibid.*)

"We review decisions regarding consistency with a general plan under the arbitrary and capricious standard. These are quasi-legislative acts reviewed by ordinary mandamus, and the inquiry is whether the decision is arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair. [Citations.] Under this standard, we defer to an agency's factual finding of consistency unless no reasonable person could have reached the same conclusion on the evidence before it. [Citation.]" (*Endangered Habitats League, Inc. v. County of Orange, supra*, 131 Cal.App.4th at p. 782, fn. omitted.)

The superior court found the CUP violated the City's general plan. That plan requires "structures located in the City's parks and open spaces be designed to maintain the environmental character in which they are located" (Huntington Beach General Plan, LU 14.1.3, II-LU-44, and the City to acquire and develop its "parks in accordance with the Parks and Recreation Element of the General Plan." (Huntington Beach General Plan, LU 14.1.5, II-LU-44.) The recreation element of the general plan, recognizes "[a]ll designated park lands need to be preserved with proper land use designation." (Huntington Beach General Plan, III-RCS-6.) The recreation element further required development of system wide parks and recreation master plan "incorporate[ing] the Central Park Master Plan." (Huntington Beach General Plan, I-RSC 4, III-RCS-17.) The Central Park master plan in turn designated the land where the senior center is proposed to be built as a low intensity recreation area, which would

permit picnic and barbeque amenities, tot-lot, restrooms, open turf area, and parking uses. The project would result in high intensity use.

The City claims that while it recognizes the project is inconsistent with the low intensity designation by the Central Park master plan, the park's general plan is not part of the City's general plan, and an amendment of the park plan after issuance of the CUP to bring the CUP into compliance with the park general plan is permissible. It is not.

The City's general plan specifically required the parks and recreation master plan to incorporate the Central Park master plan. As stated above, a general plan functions as a constitution for all future developments, and compliance with the Central Park master plan was, in effect, constitutionally compelled. The government may not justify the violation of a constitutionally compelled provision because it intends to subsequently amend its constitution. It must comply with the law as presently enacted. The trial court properly found the CUP violated the City's general plan.

E. *Declaratory Relief* (*Quimby Act*)

Subject to conditions not present here, "[t]he legislative body of a city or county may, by ordinance, require the dedication of land or impose a requirement of the payment of fees in lieu thereof, or a combination of both, for park or recreational purposes as a condition of the approval of a tentative map or parcel map." (Gov. Code, § 66477, subd. (a).) "This section shall be known . . . as the Quimby Act." (Gov., Code, § 66477, subd. (g). The purpose of Quimby Act in-lieu fees is to "maintain and preserve open space for the recreational use of the residents of new subdivisions." (*Home Builders Assn. of Tulare/King Counties, Inc. v. City of Lemoore* (2010) 185 Cal.App.4th 554, 566.) The City's Quimby Act ordinance declares the City has determined "that the public interest, convenience, health, safety and welfare require five acres of property for

each 1,000 persons residing within the City be devoted to local park and recreational purposes." (Huntington Beach Zoning and Subdivision Ord., § 254.08C.)

As stated above, the City intends to fund construction of the new 45,000 square foot senior center, including banquet facilities and meeting rooms, with all or substantially all of the $20 to $25 million in-lieu fees from the Pacific City Project. The superior court granted Park's request for declaratory relief and held use of the in-lieu funds violates the Quimby Act for "for two reasons: Firstly, the funds are not intended by the City to be used to provide for park and open space, and secondly, using the entire [sum of] in lieu fees to pay for 100 [percent] of the cost to build the senior center bears no reasonable relationship to [the] degree to which the proposed senior center will be used by the future inhabitants of the Pacific City project." The court also found "the proposed senior center building and its intended usage does not satisfy the customary notion of a park." The City contends the Quimby Act does not require use of fees toward what would customarily be considered a park, the senior center is a recreational facility, the Quimby Act expressly authorizes use of in-lieu fees for the development of recreation facilities, and the senior center would serve Pacific City residents. We need not address these issues because we agree with the City's contention that Parks' declaratory relief action is time-barred.

Government Code section 66499.37 provides: "Any action or proceeding to attack, review, set aside, void, or annul the decision of an advisory agency, appeal board, or legislative body concerning a subdivision, or of any of the proceedings, acts, or determinations taken, done, or made prior to the decision, *or to determine the reasonableness, legality, or validity of any condition attached thereto*, including, but not limited to, the approval of a tentative map or final map, shall not be maintained by any person unless the action or proceeding is commenced and service of summons effected within 90 days after the date of the decision. Thereafter all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the decision or

of the proceedings, acts, or determinations. The proceeding shall take precedence over all matters of the calendar of the court except criminal, probate, eminent domain, forcible entry, and unlawful detainer proceedings." (Italics added.)

The City issued the CUP for construction of the senior center on February 4, 2008. The trial court found the issuance of that CUP triggered the 90-day period under Government Code section 66499.37 and thus, Parks' petition was timely filed. Here the trial court erred. While the CUP was the triggering event for purposes of other issues raised in the petition, it was not the triggering event for purposes of determining the propriety of the Quimby Act provision imposed on the developer of the Pacific Center in 2006.

In *Timberidge Enterprises, Inc. v. City of Santa Rosa* (1978) 86 Cal.App.3d 873 (*Timberidge Enterprises, Inc.*), the City of Santa Rosa enacted a resolution adopting a school impact fee that could be imposed upon the city's approval of a subdivision map. The purpose of the fee was to alleviate overcrowding of schools caused by a new subdivision. The City of Santa Rosa imposed the fees on the plaintiffs as a condition of its approval of subdivisions to be developed by the plaintiffs. (*Id.* at p. 877.) The plaintiffs brought an action to declare the resolution and the fees imposed invalid. (*Ibid.*)

The City of Santa Rosa contended the action was untimely under Government Code section 66499.37. (*Timberidge Enterprises, Inc., supra,* 86 Cal.App.3d at p. 885.) The superior court rejected that argument and concluded the statute did not commence to run until such time as the fees were paid. The appellate court reversed. It found the event that triggered the commencement of the time period set forth in Government Code section 66499.37 was the approval of the subdivision map with attached condition. (*Id.* at p. 886.) "If the condition, as here, shall be that school impact fees be thereafter paid upon applications for permits to build upon the subdivision's lots, the statute's plain requirement is that an attack on the validity of the City's decision, and its attending condition, be made within the designated period. Upon

failure of interested parties to do so, the validity of the condition is normally placed beyond legal attack. And here, it will be remembered, plaintiffs' claim of right to recover school impact fees paid is founded solely on the premise of the related condition's invalidity." (*Ibid.*)

Like the appellate court in *Timberidge Enterprises, Inc.*, "we discern a patent legislative objective that the validity of such decisions of a local legislative body, or its advisory agency, be judicially determined as expeditiously as is consistent with the requirements of due process." (*Timberidge Enterprises, Inc., supra*, 86 Cal.App.3d at p. 886.) Indeed, since *Timberidge Enterprises, Inc.* was decided, the Legislature shortened the time frame in which challenges may be made to such decisions from 180 days to 90 days. (See Historical and Statutory Notes, 36E West's Ann. Gov. Code (2009 ed.) foll. § 66499.37, p. 382.)

In *Soderling v. City of Santa Monica* (1983) 142 Cal.App.3d 501, a developer challenged a condition imposed on the approval of a tentative tract map. The map and condition were approved on June 5, 1978, and the city subsequently gave the developer a 12-month extension of the tentative map. (*Id.* at pp. 503-504.) The developer's subsequent action challenging the city's 1980 denial of a final map, due to his failure to comply with the condition imposed in connection with the tentative map, was found to be untimely. (*Id.* at p. 505.) "The purpose of a conditional tentative map is to identify clearly the requirements to which a developer must conform; hence, he must demonstrate in his final map that he has resolved all of the deficiencies or problems enumerated in the tentative map. [Citation.] In other words, fulfillment of all tentative map conditions is, from the outset, a condition of final map approval. [Citations.]" (*Ibid.*)

On October 16, 2006, the City approved the owner participation agreement with the developer and the tentative tract map for the Pacific City development, a condition of which was the use of Quimby Act in-lieu funds for construction of a new

senior center on City owned property. If Parks was to challenge the in-lieu condition of that map, Government Code section 66499.37 required Parks to make the challenge within 90 days of the imposition of that condition, or not at all.

F. *Conclusion*

The certification of the EIR must be set aside because the EIR did not consider feasible alternative sites or whether the use of all the Quimby Act fees to fund construction of the senior center adversely impacts the City's ability to acquire open space within the City. The CUP must be set aside because it violates the City's general Plan. The challenge to the use of Quimby Act funds to finance construction of the senior center is time-barred, as is the challenge involving Measure T.

III

DISPOSITION

The judgment is affirmed except with regard to the declaratory relief action, which is reversed. Each party will bear their own costs on appeal.

MOORE, J.

WE CONCUR:

O'LEARY, ACTING P. J.

IKOLA, J.

ATTACHMENT NO. 4.23

G043109
Parks Legal Defense Fund et al. v. The City of Huntington Beach et al.

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