



City of Huntington Beach Planning and Building Department

**STAFF REPORT**

**TO:** Planning Commission  
**FROM:** Scott Hess, AICP, Director of Planning and Building  
**BY:** Rosemary Medel, Associate Planner *RM*  
**DATE:** May 28, 2013

**SUBJECT: DEVELOPMENT AGREEMENT NO. 13-001 (BEACH AND ELLIS MIXED USE PROJECT - ELAN)**

**APPLICANT:** Greystar, Dan Milich, Senior Director – Development, 444 South Cedros Avenue, Suite 172, Solano Beach, CA 92075

**PROPERTY**

**OWNER** Elan Huntington Beach, LLC, c/o Greystar Capital Partners, Jerry Brand, 17885 Von Karman Avenue, Suite 450, Irvine, CA 92614

**LOCATION:** 18502-18552 Beach Blvd, Huntington Beach, CA 92646 (southeast corner of Beach and Ellis)

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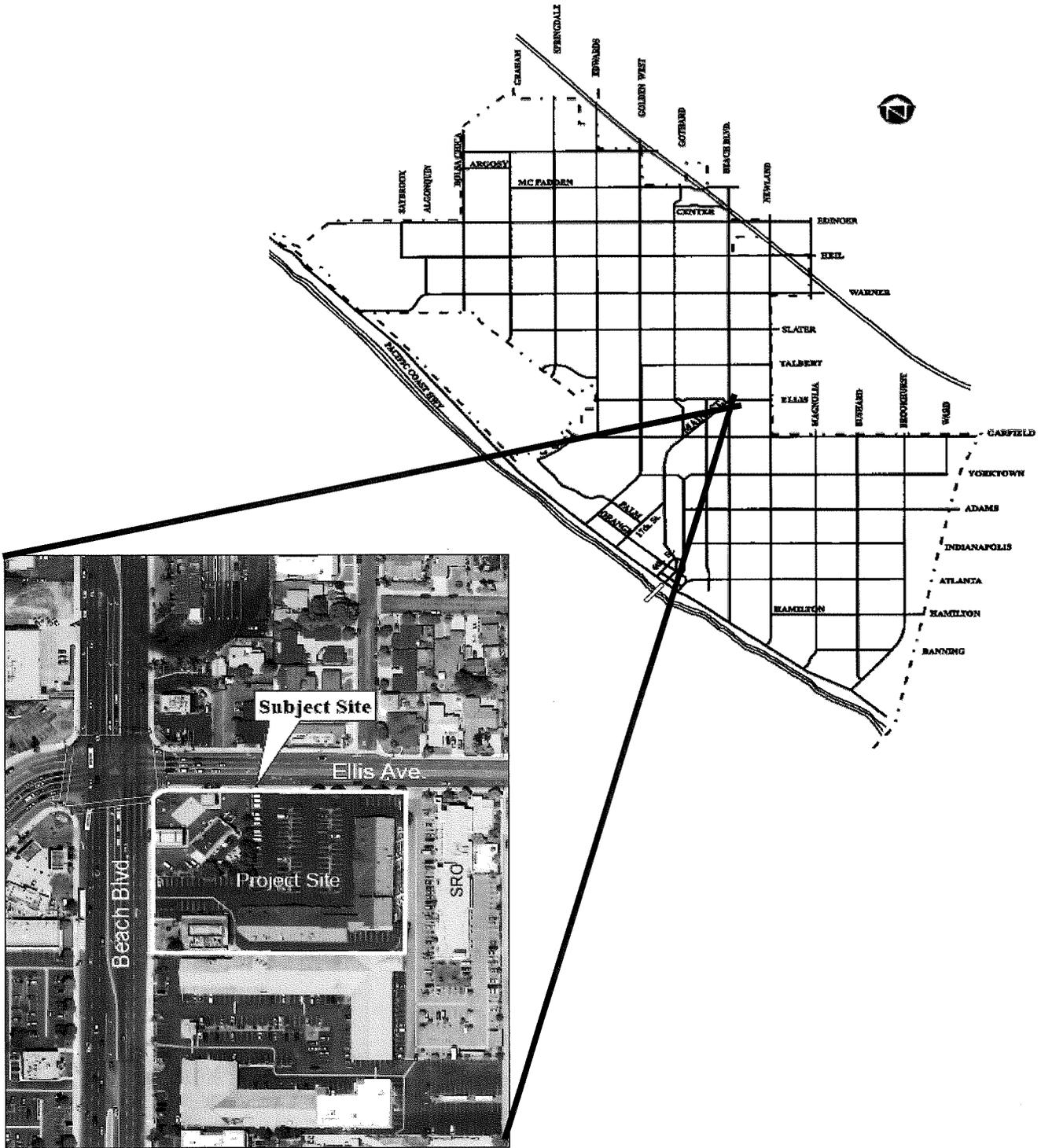
**STATEMENT OF ISSUE:**

- ◆ Development Agreement No. 13-001 represents a request for the following:
  - To enter into a Development Agreement between the City of Huntington Beach and Elan Huntington Beach, LLC pursuant to approvals for the Elan Project, a 274 unit residential mixed use development including six live-work units, 8,500 square feet of retail space, a leasing office and private recreational amenities including a public open space plaza (formally known as the Beach and Ellis Mixed Use Project).
  
- ◆ Staff's Recommendation: Approve Development Agreement No. 13-001 based upon the following:
  - Consistent with the General Plan;
  - Conforms to the provisions of Chapter 246 Development Agreements of the Huntington Beach Zoning and Subdivision Ordinance;
  - Consistent with the approved project and the Conditions of Approval and Mitigation Measures adopted pursuant to Site Plan Review No. 12-001 and Environmental Impact Report No. 10-004; and
  - Ensures the mutually beneficial development of the approved project and serves the affordable housing needs of the community by providing 27 affordable housing units.

**RECOMMENDATION:**

Motion to:

“Approve Development Agreement No. 13-001 with findings for approval (Attachment No. 1) and forward Draft Ordinance (Attachment No. 2) to the City Council for adoption.”



**VICINITY MAP  
DEVELOPMENT AGREEMENT NO. 13-001  
(ELAN DEVELOPMENT - BEACH AND ELLIS MIXED USE PROJECT  
18502-18552 BEACH BLVD)**

**ALTERNATIVE ACTION(S):**

The Planning Commission may take alternative actions such as:

- A. “Deny Development Agreement No. 13-001 with findings for denial.”
- B. “Continue Development Agreement No. 13-001 and direct staff accordingly.”

**PROJECT PROPOSAL:**

Development Agreement No. 13-001 represents a request to enter into a Development Agreement between the City of Huntington Beach and Elan Huntington Beach, LLC pursuant to approvals for the Elan Project, a 274 unit residential mixed use development including six live-work units, 8,500 square feet of retail space, a leasing office and private recreational amenities including a public open space plaza (formally known as the Beach and Ellis Mixed Use Project).

On June 4, 2012, the City Council approved Site Plan Review No. 12-001 for the Beach and Ellis Mixed Use project subject to conditions and mitigation measures. Condition No. 6.b. requires a development agreement to be approved by the City Council and recorded to provide affordable dwelling units in accordance with Section 2.2.3 of the BECSP and the Huntington Beach Zoning and Subdivision Ordinance (HBZSO) as well as to specify required traffic mitigation fees.

**ISSUES:**

**Subject Property Land Use, Zoning, and General Plan Designations:**

LOCATION	GENERAL PLAN	ZONING	LAND USE
Subject Property:	M-sp-d (Mixed Use – Specific Plan Overlay – Design Overlay)	SP-14 (Beach and Edinger Corridors Specific Plan)	Service Station , Commercial Center and Restaurant
North of Subject Property: (across Ellis Ave.)	M-sp-d, Residential Medium Density (RM-15)	SP-14, RM	Commercial, Water District pumping site and Residential
East of Subject Property	CG	CG	Single Room Occupancy (SRO)
South of Subject Property	M-sp-d	SP-14	General Commercial
West of Subject Property (across Beach Blvd):	M-sp-d	SP 14	General Commercial

**General Plan Conformance:**

The project site is located within the Town Center Neighborhood segments of the Beach and Edinger Corridors Specific Plan. The General Plan land use designation is Mixed Use - Specific Plan Overlay - Design Overlay (M-sp-d). The project is consistent with the following General Plan goals, policies and objectives:

A. Housing Element

Goal H 2: Provide adequate housing sites to accommodate regional housing needs.

Goal H 3: Assist in development of affordable housing.

Policy H 2.2: Facilitate the development of mixed use projects in appropriate commercial areas, including stand-alone residential development (horizontal mixed use) and housing above ground floor commercial uses (vertical mixed use). Establish mixed use zoning regulations.

Policy H 3.1: Encourage the production of housing that meets all economic segments of the community, including lower, moderate, and upper income households, to maintain a balanced community.

B. Land Use Element

Goal LU 4: Achieve and maintain high quality architecture, landscape, and public open spaces in the City.

Goal LU 4.2.4: Require that all development be designed to provide adequate space for access, parking, supporting functions, open space, and other pertinent elements.

Goal LU 7: Achieve a diversity of land uses that sustain the City's economic viability, while maintaining the City's environmental resources and scale and character.

Goal LU 8: Achieve a pattern of land uses that preserves, enhances, and establishes a distinct identity for the City's neighborhoods, corridors, and centers.

Policy LU 8.1.1: Accommodate land use development in accordance with the patterns and distribution of use and density depicted on the Land Use Plan Map, in accordance with the principles discussed below:

- a. Not applicable
- b. Vary uses and densities along the City's extended commercial corridors, such as Beach Boulevard.
- c. Increase diversification of community and local commercial nodes to serve adjacent residential neighborhoods.
- d. Not applicable
- e. Intermix uses and densities in large-scale development projects.
- f. Site development to capitalize upon potential long-term transit improvements.

- g. Establish linkages among community areas, which may include pedestrian and vehicular paths, landscape, signage, other streetscape elements, open space, transitions, in form, scale, and density of development, and other elements.

Goal LU 9: Achieve the development of a range of housing units that provides for the diverse economic, physical, and social needs of existing and future residents of Huntington Beach.

Policy LU 9.1.4: Require that recreational and open space amenities be incorporated in new multi-family developments and that they be accessible to and of sufficient size to be usable by all residents.

Goal LU 11: Achieve the development of projects that enable residents to live in proximity to their jobs, commercial services, and entertainment, and reduce the need for automobile use.

The development agreement would ensure that affordable housing is developed in accordance with the approved project and condition of approval requiring affordable housing. The project as a whole will provide an alternative housing choice for those wanting to live closer to public transportation, services and commercial retail, which encourages less reliance on automobile travel. The development agreement would guarantee that the project provides 27 on-site affordable units. In doing so, these units will satisfy the affordable housing obligations while providing housing for moderate income households.

**Zoning Compliance:**

The Elan Project, as approved pursuant to Site Plan Review No. 12-001 in 2012, is consistent with the development standards and regulations of the Beach and Edinger Corridors Specific Plan. Development Agreement No. 13-001 references the approved project and would ensure implementation of the project in accordance with the conditions of approval and mitigation measures adopted for the site plan review application.

**Urban Design Guidelines Conformance:** Not Applicable

**Environmental Status:**

The affordable housing requirements/agreement, which are executed via the proposed development agreement, was included in the scope of the proposed project's Environmental Impact Report (EIR No. 10-004) certified by the City Council on February 6, 2012.

**Environmental Board:** Not applicable

**Coastal Status:** Not applicable

**Redevelopment Status:** Not applicable

**Design Review Board:** Not applicable

**Subdivision Committee:** Not applicable.

**Other Departments Concerns and Requirements:**

Development Agreement No. 13-001 was drafted by the City Attorney's office in coordination with the Planning Division and Economic Development Department. In addition, Development Agreement No. 13-001 is consistent with conditions of approval for the project and applicable mitigation measures adopted for EIR No. 10-004, which was reviewed by the Building Division, Fire, Police, Public Works, Community Services and Economic Development Departments.

**Public Notification:**

Legal notice was published in the Huntington Beach Independent on May 16, 2013, and notices were sent to property owners of record and occupants within a 500 ft. radius of the project site, interested parties, and individuals/organizations that commented on EIR No. 10-004. As of May 21, 2012, no communications on Development Agreement No. 13-001 have been received.

**Application Processing Dates:**

DATE OF COMPLETE APPLICATION:  
February 26, 2013

MANDATORY PROCESSING DATE(S):  
Not Applicable

Development Agreement No. 13-001 is required pursuant to the conditions of approval for Site Plan Review No. 12-001, which was approved by the City Council on June 4, 2012.

**ANALYSIS:**

The Beach and Edinger Corridors Specific Plan, requires that a minimum of 10 percent of total units be provided as affordable housing for new residential development of three or more units. Condition No. 6.b. states that an affordable housing agreement be approved by the City Council and recorded to provide affordable dwelling units in accordance with the Specific Plan. The proposed agreement as submitted complies with this condition.

Consistency with the Beach and Edinger Corridors Specific Plan and General Plan

The City is authorized pursuant to California Government Code Section 65864 et. Seq. and Chapter 246 of the Huntington Beach Zoning and Subdivision Ordinance to enter into binding development agreements with persons or entities owning legal interests in real property located within the City. The objective of a development agreement is to provide assurances that an applicant can proceed with a project in accordance with existing policies and standards in place at the time of project approval. The City and developer desire to enter into a development agreement for the subject site in order to achieve the mutually beneficial development of the property and ensure that the project is developed in accordance with the approval project pursuant to Site Plan Review No. 12-001.

The development agreement would be effective for five years and vests the developer's right to construct the project pursuant to the terms of the agreement related to the affordable housing condition. Development Agreement No. 13-001 references the project pursuant to Site Plan Review No. 12-001. The development agreement is consistent with the General Plan land use designation as it relates to the approved project's consistency with the General Plan.

### Affordable Housing

The project is required to provide affordable housing in accordance with SP 14 and conditions of approval for the project. Of the 274 total units, the project will provide the equivalent of 27.4 affordable units. A total of 27 units will be developed onsite. The applicant will pay the fractional portion of 0.4 of the 10 percent requirement. The units will be available to moderate income level households. The development agreement stipulates these requirements in addition to the 55-year affordability period and the timing for which the affordable units shall be constructed. The development agreement also includes a separate affordable housing agreement exhibit to be recorded, which further specifies details for the affordable units including income requirements, household size and the timing for the affordability period to take effect. The Regional Housing Needs Assessment (RHNA) identifies a housing target requirement of 414 moderate income level units, which this project will contribute to. Considering the number of units under various stages of entitlement and construction, it is anticipated that the City could exceed the target by 95 units in this income category.

### Traffic Fees

The project is required to provide traffic mitigation fees in accordance with mitigation measures adopted pursuant to BECSP Program EIR No. 08-008. The traffic mitigation fees will provide for the project's fair share contribution to circulation system improvements necessary to mitigate traffic impacts resulting from implementation of the BECSP. Condition No. 6.b required that the traffic impact fees be included in the development agreement. This was required because the Citywide impact fee update had not yet been approved by City Council and there was uncertainty as to what the new fees would be and how they would apply. Because the fee is now adopted, the traffic impact fee item as part of Condition No. 6.b is no longer necessary as part of the development agreement; however, payment of the fees is still ensured through compliance with the mitigation measures and standard code requirements.

### **SUMMARY:**

Staff recommends approval of Development Agreement No. 13-001 because it is:

- Consistent with the General Plan;
- Conforms to the provisions of Chapter 246 Development Agreements of the Huntington Beach Zoning and Subdivision Ordinance;
- Consistent with the approved project and the Conditions of Approval and Mitigation Measures adopted pursuant to Site Plan Review No. 12-001 and Environmental Impact Report No. 10-004; and
- Ensures the mutually beneficial development of the approved project and serves the affordable housing needs of the community by providing 27 affordable housing units.

### **ATTACHMENTS:**

1. Suggested Findings for Development Agreement No. 13-001
2. Draft Ordinance – Elan Huntington Beach, LLC Development Agreement
3. Site Plan Review No. 12-001 – Notice of Action with Findings, Conditions of Approval and Mitigation Measures

SH:JJ:rm

## **ATTACHMENT NO. 1**

### **SUGGESTED FINDINGS FOR APPROVAL**

#### **DEVELOPMENT AGREEMENT NO. 13-001**

#### **SUGGESTED FINDINGS FOR CEQA:**

The Planning Commission finds that the proposed development agreement, which executes the required affordable housing agreement, is included in the scope of the proposed project's Environmental Impact Report (EIR No. 10-004) certified by the City Council on February 6, 2012.

#### **SUGGESTED FINDING FOR APPROVAL – DEVELOPMENT AGREEMENT NO. 13-001**

The development agreement is consistent with the General Plan and Beach and Edinger Corridor Specific Plan. Development Agreement No. 13-001 provides for construction of the Elan project, which complies with approved Site Plan Review No. 12-001 and was found to conform to the goals and policies of the General Plan as approved by the City Council on June 4, 2012. The development agreement ensures the construction of 27 affordable housing units within the project in accordance with the provisions of the Specific Plan for a 55 year period. The development agreement is consistent with the following General Plan.

#### A. Housing Element

Goal H 2: Provide adequate housing sites to accommodate regional housing needs.

Goal H 3: Assist in development of affordable housing.

Policy H 2.2: Facilitate the development of mixed use projects in appropriate commercial areas, including stand-alone residential development (horizontal mixed use) and housing above ground floor commercial uses (vertical mixed use). Establish mixed use zoning regulations.

Policy H 3.1: Encourage the production of housing that meets all economic segments of the community, including lower, moderate, and upper income households, to maintain a balanced community.

#### B. Land Use Element

Goal LU 4: Achieve and maintain high quality architecture, landscape, and public open spaces in the City.

Goal LU 4.2.4: Require that all development be designed to provide adequate space for access, parking, supporting functions, open space, and other pertinent elements.

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Goal LU 8: Achieve a pattern of land uses that preserves, enhances, and establishes a distinct identity for the City's neighborhoods, corridors, and centers.

Policy LU 8.1.1: Accommodate land use development in accordance with the patterns and distribution of use and density depicted on the Land Use Plan Map, in accordance with the principles discussed below:

- a. Not applicable
- b. Vary uses and densities along the City's extended commercial corridors, such as Beach Boulevard.
- c. Increase diversification of community and local commercial nodes to serve adjacent residential neighborhoods.
- d. Not applicable
- e. Intermix uses and densities in large-scale development projects.
- f. Site development to capitalize upon potential long-term transit improvements.
- g. Establish linkages among community areas, which may include pedestrian and vehicular paths, landscape, signage, other streetscape elements, open space, transitions, in form, scale, and density of development, and other elements.

Goal LU 9: Achieve the development of a range of housing units that provides for the diverse economic, physical, and social needs of existing and future residents of Huntington Beach.

Policy LU 9.1.4: Require that recreational and open space amenities be incorporated in new multi-family developments and that they be accessible to and of sufficient size to be usable by all residents.

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The development agreement would ensure that affordable housing is developed in accordance with the approved project and condition of approval requiring affordable housing. The project as a whole will provide an alternative housing choice for those wanting to live closer to public transportation, services and commercial retail, which encourages less reliance on automobile travel. The development agreement would guarantee that the project provides 27 on-site affordable units. In doing so, these units will satisfy the affordable housing obligations while providing housing for moderate income households.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH  
ADOPTING A DEVELOPMENT AGREEMENT BY AND BETWEEN  
THE CITY OF HUNTINGTON BEACH AND ELAN HUNTINGTON BEACH  
(DEVELOPMENT AGREEMENT NO. 13-001)

WHEREAS, the City Council approved Site Plan Review No. 12-001 to develop an approximately 2.74 acre property located at 18502-18552 Beach Boulevard, Huntington Beach, California ("Property"), with 274 apartment units, including live work units, with a leasing office and private and public recreation and open space areas and 8,500 square feet of commercial area ("Project"), pursuant to the City of Huntington Beach Zoning and Subdivision Ordinance; and

The City and Elan Huntington Beach, LLC, a Delaware limited liability company ("Developer") each mutually desire to enter into a Development Agreement with one another to permit and ensure that the Property is developed in accordance with the approved Site Plan No. 12-001 and the City's zoning regulations to achieve the mutually beneficial development of the Property,

NOW, THEREFORE, the City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. That the City Council hereby finds that Development Agreement No. 13-001 conforms to Government Code Section 65864 et. seq. and that:

- a. Development Agreement No. 13-001 is consistent with the Huntington Beach General Plan; and
- b. Development Agreement No. 13-001 is consistent with Chapter 246 of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO) and the Huntington Beach Municipal Code; and
- c. Development Agreement No. 13-001 will not be detrimental to the health, safety and general welfare, and will not adversely affect the orderly development of the property because it is consistent with applicable land use regulations of the zoning regulations in effect at the time of project approval, mitigation measures adopted for the Project in accordance with EIR No.10-004, and conditions approved for Site Plan Review No.12-001; and
- d. The City Council has considered the fiscal effect of Development Agreement No. 13-001 on the City and the effect on the housing needs of the region in which the City is situated and has balanced these needs against the public service needs of its residents and available fiscal and environmental resources.

SECTION 2. Based on the above findings, the City Council of the City of Huntington Beach hereby approves Development Agreement No. 13-001 and adopts it by this ordinance pursuant to Government Code Section 65867.5. This action is subject to a referendum.

SECTION 3. This ordinance shall take effect 30 days after its adoption.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk

*Mike V. Latta*  
\_\_\_\_\_  
City Attorney

REVIEWED AND APPROVED:

INITIATED AND APPROVED:

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Director of Planning and Building

*dw*  
*5/7/13*  
*P.C.*  
*5/7/2013*

Exhibit A: Development Agreement No. 13-001

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

CITY OF HUNTINGTON BEACH  
2000 Main Street  
Huntington Beach, CA 92648  
Attention: Director of Planning and Building

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP  
1900 Main Street, 5th Floor  
Irvine, California 92614-7321  
Attention: R. Michael Joyce, Esq.

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(Space Above For Recorder's Use)

### DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made in Orange County, California, as of \_\_\_\_\_, 2013, by and between the CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California (the "City") and ELAN HUNTINGTON BEACH, LLC, a Delaware limited liability company (the "Property Owner").

#### RECITALS:

- A. The City is authorized pursuant to Government Code sections 65864 through 65869.5 and Huntington Beach Zoning and Subdivision Ordinance (HBZSO) Chapter 246 to enter into binding development agreements with persons or entities owning legal interests in real property located within the City.
- B. Property Owner is the owner of that certain real property more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Property").
- C. The City and the Property Owner each desire to enter into this Agreement affecting the Property in conformance with Government Code section 65864 et seq. and HBZSO 246 in order to achieve the mutually beneficial development of the Property in accordance with this Agreement.
- D. The Property Owner seeks to develop a project on the Property consisting of up to 274 dwelling units and live work units, 8,500 square feet of ground floor commercial uses, as more particularly set forth in the Development Plan (collectively, the "Project"), attached as

Exhibit B and incorporated herein, all in accordance with City regulations, as may be amended from time to time.

E. The City Council of the City (the "City Council") previously certified an environmental impact report No. 10-004 (the "EIR") for an area which includes the Project site, and the Planning Commission has conducted and approved an Environmental Assessment/Initial Study Checklist ("EA") for the Project in connection with the Planning Commission's approval of Site Plan Review 12-01 pursuant to the Beach and Edinger Corridors Specific Plan (BECSP), Town Center Neighborhood segment.

F. The City and the Property Owner each mutually desire to obtain the binding agreement of one another to permit and ensure that the Property is developed strictly in accordance with the provisions of this Agreement.

G. This Agreement will benefit the Property Owner and the City by eliminating uncertainty in planning and providing for the orderly development of the Project. Specifically, this Agreement (1) eliminates uncertainty about the validity of exactions to be imposed by the City, (2) provides for the construction of needed affordable housing, (3) ensures that development of the Property occurs within a reasonable timeframe, and (4) generally serves the public interest within the city and the surrounding region.

H. The Planning Commission and City Council have each given notice of their intention to consider this Agreement, and have each conducted public hearings thereon pursuant to the relevant provisions of the Government Code. The City Council has found that the provisions of this Agreement are consistent with the City's 1996 General Plan for development within the City, as amended (the "General Plan") and City zoning ordinances, as amended. The Planning Commission and City Council have also specifically considered the impacts and benefits of the Project upon the welfare of the residents of the City and the surrounding region. The City Council has determined that this Agreement is beneficial to the residents of the City and is consistent with the present public health, safety and welfare needs of the residents of the City and the surrounding region.

I. On \_\_\_\_\_, 2013, the Planning Commission held a duly noticed public hearing on this Agreement.

J. On \_\_\_\_\_, 2013, the City Council held a duly noticed public hearing on this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals which are hereby incorporated into the operative provisions of this Agreement by this reference and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the City and the Property Owner agree as follows:

1. Definitions.

1.1. "Affordable Dwelling Units" shall mean a Dwelling Unit available at Affordable Rent.

1.2. "Affordable Housing Agreement" shall collectively mean that certain Affordable Housing Agreement Restrictions—Rental (Declaration of Covenants, Conditions and Restrictions for Property) (AHARR) by and between the HBHA, the City and the Property Owner together with all attachments thereto, which was approved as to form as part of this Development Agreement. AHARR shall also include any and all amendments or modifications thereto.

1.3. "Affordable Rent" shall have the same meaning set forth in California Health and Safety Code section 50053, as more specifically set forth in the Agreement Containing Covenants Affecting Real Property to be attached to the Affordable Housing Agreement.

1.4. "Applicable Rules" shall mean the rules, regulations, ordinances and official policies of the City which were in force as of the Effective Date (as defined below), including, but not limited to, the General Plan, City zoning ordinances and other entitlements, development conditions and standards, public works standards, subdivision regulations, grading requirements, and provisions related to density, growth management, environmental considerations, and design criteria applicable to the Project. Applicable Rules shall not include building standards adopted by the City pursuant to Health and Safety Code sections 17922 and 17958.5.

1.5. "Area Median Income" shall mean the area median income for the County of Orange ("County") as published annually by the California Department of Housing and Community Development and determined in accordance with the U.S. Department of Housing and Urban Development criteria then in effect and published from time to time. For purposes of this Agreement, the qualifying limits shall be those limits for the County, as set forth in Title 25, California Code of Regulations, section 6932, as that section may be amended, modified or recodified from time to time. If the California Code of Regulations is amended or modified during the term of this Agreement so that such regulations do not specify the area median income from the County, the City shall negotiate in good faith to determine an equivalent authoritative source which determines median income for the County.

1.6. "City Council" shall mean the City Council of the City.

1.7. "City Manager" shall mean the City Manager of the City.

1.8. "County" shall mean Orange County.

1.9. "Development Impact Fees" shall mean and include all fees charged by the City in connection with the application, processing and approval or issuance of permits for the development of property, including, without limitation: application fees; permit processing fees; inspection fees; utility capacity fees; service or connection fees; library/cultural enrichment fees; traffic impact fees; development impact or major facilities fees; park fees; flood control fees; environmental impact mitigation fees; and any similar governmental fees, charges and exactions required for the development of the Project.

1.10. "Development Plan" shall mean Site Plan Review No. 12-001 approved by the City.

1.11. "Discretionary Actions" and "Discretionary Approvals" shall mean those actions and approvals which require the exercise of judgment, or imposition of a condition or obligation, by any officer, employee, review board, commission or department of the City. Discretionary Actions and Discretionary Approvals are distinguished from activities or approvals which merely require any officer, employee, review board, commission or department of the City to determine whether or not there has been compliance with applicable statutes, ordinances, regulations or conditions of approval.

1.12. "Dwelling Unit" shall mean a place in the Project that is legally available to be rented by a person or family.

1.13. "Effective Date" shall mean the date on which the ordinance approving this Agreement has been adopted by the City.

1.14. "HBHA" shall mean the Housing Authority of the City of Huntington Beach.

1.15. "Moderate Income Household" shall mean persons and families whose income conforms to the qualifying limits defined by California Health and Safety Code Section 50093(b) and set forth in Title 25, California Code of Regulations, Section 6932, as that section may be amended, modified or recodified from time to time. Generally, Moderate Income Household means income that exceeds eighty percent (80%) of the Area Median Income but does not exceed one hundred twenty percent (120%) of the Area Median Income, adjusted for family size by the California Department of Housing and Community Development ("HCD") in accordance with adjustment factors and adopted and amended from time to time by the United States Department of Housing ("HUD") pursuant to Section 8 of the United States Housing Act of 1937.

1.16. "Market Rate Rental Dwelling Unit" shall mean those Dwelling Units in the Project that are not Affordable Dwelling Units nor governed by the Affordable Housing Agreement.

1.17. "Periodic Review" shall have the meaning assigned to such term in Paragraph 10(a).

1.18. "Planning Commission" shall mean the Planning Commission of the City.

1.19. "Project" shall mean that development contemplated pursuant to the Development Plan, attached as Exhibit B.

1.20. "Recession" shall mean an economic recession as determined by the National Bureau of Economic Research, or any successor organization charged with the duty of determining the state of the United States economy.

1.21. "Subsequent Rules" shall mean the rules, regulations, ordinances and official policies of the City, adopted and becoming operative after the Effective Date, including, but not limited to, the General Plan, the Specific Plan, City zoning ordinances and other entitlements, development conditions and standards, public works standards, subdivision

regulations, grading requirements, and other provisions related to density, growth management, environmental considerations, and design criteria.

2. Term of Agreement. This Agreement shall become operative and commence upon the Effective Date and remain in effect for a term of five (5) years. Except for continuing obligations regarding affordable housing covenants and requirements, upon the expiration or termination of the term, this Agreement shall be deemed terminated and have no further force and effect.

3. Vested Right to Develop the Project. Subject to Paragraphs 3.3 through 3.8, below, and the Applicable Rules, the City hereby grants to the Property Owner the vested right to develop the Project on the Property to the extent and in the manner provided in this Agreement. Subject to Paragraphs 3.3 through 3.8, below, any change in the Applicable Rules adopted or becoming effective after the Effective Date (Subsequent Rules) shall not be applicable to or binding upon the Project or the Property. Subject to Paragraphs 3.3 through 3.8, below, this Agreement will bind the City to the terms and obligations specified in this Agreement and will limit, to the degree specified in this Agreement and under state law, the future exercise of the City's ability to regulate development of the Project.

3.1. No Conflicting Enactments. Subject to Paragraphs 3.3 through 3.8, below, neither the City Council nor any department of the City shall enact rules, regulations, ordinances or other measures which relate to the rate, timing, sequencing, density, intensity or configuration of the development of any part of the Project which is inconsistent or in conflict with this Agreement during the term of this Development Agreement.

3.2. Initiative Measures. Subject to Paragraphs 3.3 through 3.8, below, the Property Owner and the City intend that no moratorium or other limitation (whether relating to the rate, timing or sequence of the development of all or any part of the Project and whether enacted by initiative or otherwise) affecting parcel or subdivision maps (whether tentative, vesting tentative or final), building permits, certificates of occupancy or other entitlements shall apply to the Project to the extent such moratorium or other limitation is inconsistent or conflicts with this Agreement.

3.3. Federal or State Laws. Notwithstanding any provision to the contrary contained herein, the City expressly reserves the right to modify any of the Applicable Rules to the extent necessary to comply with applicable federal or state laws, codes or regulations which preempt local jurisdiction including, by way of example, and without limiting the generality of the foregoing, the California Environmental Quality Act, all building codes, and any safety regulations, but such modifications shall be made only to the extent required thereunder.

3.4. Emergency. Notwithstanding any provision to the contrary contained herein, the City expressly reserves the right to apply to the Project any development moratorium, limitation on the delivery of City-provided utility services, or other generally applicable emergency rule, regulation, law or ordinance affecting land use: (1) which is based on genuine health, safety and general welfare concerns (other than general growth management issues); (2) which arises out of a documented emergency situation, as declared by the President of the United States, Governor of California, or the Mayor, City Council or City Manager of the City; and (3)

based upon its terms or its effect as applied, does not apply exclusively, primarily or disproportionately to the Project or the Property.

3.5. Project Completion. This Agreement and the EIR and associated findings, are based on the expectation that the Project will be constructed as follows: up to 274 Market Rate Rental Dwelling Units including six (6) live/work units, 27 Affordable Dwelling Units and up to 8,500 square feet of ground floor commercial space will be completed for occupancy during the term of the Agreement.

3.6. Public Health Concerns. Notwithstanding any provision to the contrary contained herein, the City expressly reserves the right to apply to the Project any generally applicable rule, regulation, law or ordinance which does not affect the land use or development of the Project and which is based on concerns for the public health, safety or general welfare, including, but not limited to, building codes not otherwise preempted by State law.

3.7. New Engineering and Construction Standards. Notwithstanding any provision to the contrary contained herein, the City expressly reserves the right to modify any of the Applicable Rules if the City adopts new and/or amended regulations governing engineering and construction and grading standards and specifications including, without limitation, any and all uniform codes adopted by the City, including local amendments to these codes pursuant to state law allowing for such amendments; provided that such codes are uniformly applied to all new development projects of similar type as the Project within the City and provided further that any such modifications to grading standards can only be imposed prior to grading and any such modifications to engineering or construction standards can only be applied prior to the initiation of construction. Such codes include, without limitation, the City's Uniform Housing Code, Building Code, Plumbing Code, Mechanical Code, Electrical Code and Fire Code.

3.8. Cooperation and Indemnification. The City agrees to cooperate with the Property Owner in all reasonable manners in order to keep this Agreement in full force and effect. Notwithstanding the preceding sentence, in the event any legal action instituted by a third party or other government entity or official challenging the validity of this Agreement, the City and the Property Owner agree to cooperate in defending such action, with the Property Owner to indemnify the City pursuant to Paragraph 15 of this Agreement. In the event of any litigation challenging the effectiveness of this Agreement or any portion thereof, this Agreement shall remain in full force and effect while such litigation, including any appellate review, is pending, unless a court of competent jurisdiction orders otherwise.

#### 4. Development of the Property.

(a) Permitted Uses. The Property Owner agrees that the Property shall only be developed in accordance with the Development Plan and any conditions and mitigation measures imposed on the Project through final approval of the Project, and the provisions of this Development Agreement. Notwithstanding anything set forth in this Agreement to the contrary, unless the Property Owner proceeds with development of the Property, the Property Owner is not obligated by the terms of this Agreement to affirmatively act to develop all or any portion of the Project, pay any sums of money, dedicate any land, indemnify any party, or to otherwise meet or

perform any obligation with respect to the Project, except and only as a condition of development of any portion of the Project.

(b) Development Standards. All development and design requirements and standards applicable to the Project shall conform to the Development Plan and any conditions and mitigation measures imposed on the Project, the Huntington Beach Municipal Code, and any Applicable Rules.

(c) Development Impact Fees. In addition to the obligations set forth elsewhere in this Agreement, the Property Owner shall be responsible for paying when due all Development Impact Fees in connection with development of the Project at the rates in effect on the Effective Date. Subject to all applicable laws then in effect, the City shall have the right to charge and apply to the Property all Development Impact Fees as may be in effect on the Effective Date.

5. Affordable Housing. It is the intent of the parties that the Affordable Dwelling Units shall be constructed concurrently with the Market Rate Rental Dwelling Units. The Project is subject to the requirement of providing a total of 27 Affordable Dwelling Units, all of which shall be rental units and must remain Affordable Dwelling Units for at least fifty-five (55) years. The City and the Property Owner agree as a condition precedent to Development that an Affordable Housing Agreement be executed to memorialize the terms and conditions of the affordable housing components (attached hereto as Exhibit C). The Property Owner will provide affordable units for rent, which shall be made available to and occupied by Moderate Income Households. The Property Owner agrees to record said affordability covenant and Deed of Trust in favor of the City to assure that affordability covenant runs with the land and remains in effect for the affordability period. The Property Owner agrees to comply with all terms and provisions of the Affordable Housing Agreement and its attachments and acknowledges that any default thereunder shall also constitute a default under this Agreement.

It is contemplated that multiple temporary final inspections (to allow for occupancy) will be sought during the construction of the Project. When each temporary final inspection (to allow for occupancy) is sought, approximately ten percent (10%) of the units for which it is sought will be Affordable Dwelling Units.

6. Extension of Project Approvals. Unless a longer term would result under otherwise applicable state law, the term of any permits approved as part of the Project approvals shall be automatically extended for the term of this Agreement.

7. Subsequent Discretionary Action and Approval. The City agrees not to unreasonably withhold, condition or delay any Discretionary Action or Discretionary Approval or other action or approval by the City which may be required by the Project subsequent to the execution of this Agreement. Upon the filing of a complete application and payment of appropriate processing fees by the Property Owner, the City shall promptly commence and diligently schedule and convene all required public hearings in an expeditious manner consistent with the law and process all Discretionary Actions and Discretionary Approvals in an expeditious manner.

8. Compliance Review.

(a) Periodic Review. Pursuant to Government Code section 65865.1, the City Manager or his or her designee shall, not less than once in every twelve (12) months, review the Project and this Agreement to ascertain whether or not the Property Owner is in full compliance with the terms of the Agreement (the "Periodic Review").

(b) Review Procedure. During a Periodic Review, the Property Owner shall provide information reasonably requested by the City Manager or his or her designee that the Project is being developed in good faith compliance with the terms of this Agreement. If, as a result of a Periodic Review, the City finds and determines on the basis of substantial evidence that the Property Owner has not complied in good faith with the terms or conditions of this Agreement, the City shall issue a written "Notice of Non-Compliance" to the Property Owner specifying the grounds therefore and all facts demonstrating such non-compliance. The Property Owner's failure to cure the alleged non-compliance within sixty (60) days after receipt of the notice, or, if such noncompliance is not capable of being cured within sixty (60) days, the Property Owner's failure to initiate all actions required to cure such non-compliance within sixty (60) days after receipt of the notice and completion of the cure of such non-compliance within one hundred twenty (120) days, shall constitute a default under this Agreement on the part of the Property Owner and shall constitute grounds for the termination of this Agreement by the City as provided for below. If requested by the Property Owner, the City agrees to provide to the Property Owner a certificate that the Property Owner is in compliance with the terms of this Agreement, provided the Property Owner reimburses the City for all reasonable and direct costs and fees incurred by the City with respect thereto.

(c) Termination or Modification for Non-Compliance. Pursuant to Government Code section 65865.1, if the City Council finds and determines, on the basis of substantial evidence, that the Property Owner has not complied in good faith with the terms or conditions of this Agreement, the City Council may modify or terminate this Agreement. Any action by the City with respect to the termination or modification of this Agreement shall comply with the notice and public hearing requirements of Government Code section 65867 in addition to any other notice required by law. Additionally, the City shall give the Property Owner written notice of its intention to terminate or modify this Agreement and shall grant the Property Owner a reasonable opportunity to be heard on the matter and to oppose such termination or modification by the City.

9. Modification, Amendment, Cancellation or Termination.

9.1. Amendment and Cancellation. Pursuant to Government Code section 65868, this Agreement may be amended or canceled, in whole or in part, by mutual written consent of the City and the Property Owner or their successors in interest. Public notice of the parties' intention to amend or cancel any portion of this Agreement shall be given in the manner provided by Government Code section 65867. Any amendment to the Agreement shall be subject to the provisions of Government Code section 65867.5.

9.2. Modification. The City Planning and Building Director, with the consent of the Property Owner, may make minor modifications to the Agreement without the need for

formal action by the City's Planning Commission or City Council as long as such modifications do not alter the Term of this Development Agreement, the permitted uses, density or intensity of uses, the maximum height or size of buildings, provisions for reservations or Dedication of land, conditions, terms, restrictions and requirements relating to Subsequent Discretionary Actions and Approvals, and monetary contributions by the Property Owner.

10. Defaults, Notice and Cure Periods, Events of Default and Remedies.

10.1. Default By the Property Owner.

10.1.1. Default. If the Property Owner does not perform its obligations under this Agreement in a timely manner, the City may exercise all rights and remedies provided in this Agreement, provided the City shall have first given written notice to the Property Owner as provided in Paragraph 15(a) hereof.

10.1.2. Notice of Default. If the Property Owner does not perform its obligations under this Agreement in a timely manner, the City through the City Manager may submit to the Property Owner a written notice of default in the manner prescribed in Paragraph 15(a) identifying with specificity those obligations of the Property Owner under this Agreement which have not been timely performed. Upon receipt of any such written notice of default, the Property Owner shall promptly commence to cure the identified default( s) at the earliest reasonable time after receipt of any such written notice of default and shall complete the cure of any such default(s) no later than sixty (60) days after receipt of any such written notice of default, or if such default(s) is not capable of being cured within sixty (60) days, no later than one hundred twenty (120) days after receipt of any such written notice of default, provided the Property Owner commences the cure of any such default(s) within such sixty (60) day period and thereafter diligently pursues such cure at all times until any such default(s) is cured.

10.1.3. Failure to Cure Default Procedure. If after the cure period provided in Paragraph 10.1.2 has elapsed, the City Manager finds and determines the Property Owner, or its successors, transferees and/or assignees, as the case may be, remains in default and that the City intends to terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, the City's Planning and Building Director shall make a report to the Planning Commission and then set a public hearing before the Planning Commission in accordance with the notice and hearing requirements of Government Code sections 65867 and 65868. If after public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that the Property Owner, or its successors, transferees and/or assigns, as the case may be, has not cured a default under this Agreement pursuant to this Paragraph 10, and that the City shall terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, the Property Owner, and its successors, transferees and/or assigns, shall be entitled to appeal that finding and determination to the City Council. Such right of appeal shall include, but not be limited to, an objection to the manner in which the City intends to modify this Agreement if the City intends as a result of a default of the Property Owner, or one of its successors or assigns, to modify this Agreement. In the event of a finding and determination that all defaults are cured, there shall be no appeal by any person or entity. Subject to Paragraph 4(a) above, nothing in this Paragraph 10 or this Agreement shall be construed as modifying or abrogating the City Council's review of

Planning Commission actions or limiting the City's rights and remedies available at law or in equity, which shall include (without limitation) compelling the specific performance of the Property Owner's obligations under this Agreement.

10.1.4. Termination or Modification of Agreements. The City may terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, after such final determination of the City Council or, where no appeal is taken, after the expiration of the applicable appeal periods described herein. There shall be no modifications of this Agreement unless the City Council acts pursuant to Government Code sections 65967.5 and 65868, irrespective of whether an appeal is taken as provided herein.

10.1.5. Lender Protection Provisions.

10.1.5.1. Notice of Default. In addition to the notice provisions set forth in Paragraph 15(a)(2), the City shall send a copy of any notice of default sent to the Property Owner or any of its successors or assigns to any lender that has made a loan then secured by a deed of trust against the Property, or a portion thereof, provided such lender shall have (a) delivered to the City written notice in the manner provided in Paragraph 15(a) of such lender's election to receive a copy of any such written notice of default and (b) provided to the City a recorded copy of any such deed of trust. Any such lender that makes a loan secured by a deed of trust against the Property, or a portion thereof, and delivers a written notice to the City and provides the City with a recorded copy of any such deed of trust in accordance with the provisions of this Paragraph 10.1.5.1 is herein referred to as a "Qualified Lender."

10.1.5.2. Right of a Qualified Lender to Cure a Default. The City shall send a written notice of any Property Owner default to each Qualified Lender. From and after receipt of any such written notice of default, each Qualified Lender shall have the right to cure any such default within the same cure periods as provided to the Property Owner hereunder. If the nature of any such default is such that a Qualified Lender cannot reasonably cure any such default without being the owner of the Property, or the applicable portion thereof, (as reasonably determined by the City), then so long as the Qualified Lender(s) is (are) diligently proceeding (as reasonably determined by the City) to foreclose the lien of its deed of trust against the owner of the Property, or the applicable portion thereof, and after completing any such foreclosure promptly commences the cure of any such default and thereafter diligently pursues the cure of such default to completion, then such Qualified Lender shall have an additional one hundred twenty (120) days following such foreclosure to cure any such default.

10.1.5.3. Exercise of the City's Remedies. Notwithstanding any other provision of this Agreement, the City shall not exercise any right or remedy to cancel or amend this Agreement during any cure period.

10.2. Default by the City.

10.2.1. Default. In the event the City does not accept, process or render a decision in a timely manner on necessary development permits, entitlements, or other land use or building approvals for use as provided in this Agreement upon compliance with the requirements therefore, or as otherwise agreed to by the City and the Property Owner, or the City

otherwise defaults under the provisions of this Agreement, subject to Paragraph 10.3, the Property Owner shall have all rights and remedies provided herein or by applicable law, which shall include compelling the specific performance of the City's obligations under this Agreement provided the Property Owner has first complied with the procedures in Paragraph 10.2.2.

10.2.2. Notice of Default. Prior to the exercise of any other right or remedy arising out of a default by the City under this Agreement, the Property Owner shall first submit to the City a written notice of default stating with specificity those obligations which have not been performed under this Agreement. Upon receipt of the notice of default, the City shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of such default(s) no later than thirty (30) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided the City shall continuously and diligently pursue each remedy at all times until such default(s) is cured. In the case of a dispute as to whether the City is in default under this Agreement or whether the City has cured the default, or to seek the enforcement of this Agreement, the City and the Property Owner may submit the matter to negotiation/mediation pursuant to Paragraph 15(o) of this Agreement.

10.3. Monetary Damages. The Property Owner and the City acknowledge that neither the City nor the Property Owner would have entered into this Agreement if either were liable for monetary damages under or with respect to this Agreement or the application thereof. Both the City and the Property Owner agree and recognize that, as a practical matter, it may not be possible to determine an amount of monetary damages which would adequately compensate the Property Owner for its investment of time and financial resources in planning to arrive at the kind, location, intensity of use, and improvements for the Project, nor to calculate the consideration the City would require to enter into this Agreement to justify such exposure. Therefore, the City and the Property Owner agree that neither shall be liable for monetary damages under or with respect to this Agreement or the application thereof and the City and the Property Owner covenant not to sue for or claim any monetary damages for the breach of any provision of this agreement. The foregoing waiver shall not be deemed to apply to any fees or other monetary amounts specifically required to be paid by the Property Owner to the City pursuant to this Agreement, including, but not limited to, any amounts due pursuant to Paragraph 15(g) and 15(m). The foregoing waiver shall also not be deemed to apply to any fees or other monetary amounts specifically required to be paid or credited by the City to the Property Owner pursuant to this Agreement, including, but not limited to any fee credits specifically required to be credited by the City to the Property Owner or its assignee(s).

11. Administration of Agreement and Resolution of Disputes. The Property Owner shall at all times have the right to appeal to the City Council any decision or determination made by any employee, agent or other representative of the City concerning the Project or the interpretation and administration of this Agreement. All City Council decisions or determinations regarding the Project or the administration of this Agreement shall also be subject to judicial review pursuant to Code of Civil Procedure section 1094.5, provided that, pursuant to Code of Civil Procedure section 1094.6, any such action must be filed in a court of competent jurisdiction not later than ninety (90) days after the date on which the City Council's decision becomes final. In addition, in the event the Property Owner and the City cannot agree whether a default on the part of the Property Owner, or any of its successors or assigns, under this

Agreement exists or whether or not any such default has been cured, then the City or the Property Owner may submit the matter to negotiation/mediation pursuant to Paragraph 15(o).

12. Recordation of this Agreement. Pursuant to Government Code section 65868.5, the City Clerk shall record a copy of this Agreement in the Official Records of the County within ten (10) days after the mutual execution of this Agreement.

13. Constructive Notice and Acceptance. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is, and shall be, conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Property.

14. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the City and the Property Owner and their respective successors and assigns. No other person or entity shall have any right of action based upon any provision of this Agreement.

15. Miscellaneous.

(a) Notices. All notices which are allowed or required to be given hereunder shall be in writing and (1) shall be deemed given and received when personally delivered or (2) shall be sent by registered or certified mail or overnight mail service, addressed to the applicable designated person by one party to the other in writing, and shall be deemed received on the second business day after such mailing.

If to the City:

City of Huntington Beach  
2000 Main Street  
Huntington Beach, CA 92648  
Attn: City Manager  
Tel. No.: (714) 536-5575  
Fax No.: (714) 536-5233

If to the Property Owner:

Elan Huntington Beach, LLC  
c/o Greystar Capital Partners  
17885 Von Karman Avenue, Suite 450  
Irvine, CA 92614  
Attn: Jerry Brand  
Tel. No.: (949) 242-8685  
Fax No.: (949) 705-0009

Allen Matkins Leck Gamble Mallory & Natsis LLP  
1900 Main Street, 5th Floor  
Irvine, California 92614-7321  
Attn: R. Michael Joyce, Esq.  
Tel. No.: (949) 553-1313  
Fax No.: (949) 553-8354

(b) Severability. If any part of this Agreement is declared invalid for any reason, such invalidity shall not affect the validity of the remainder of the Agreement unless the invalid provision is a material part of the Agreement. The other parts of this Agreement shall remain in effect as if this Agreement had been executed without the invalid part. In the event any material provision of this Agreement is determined to be invalid, void or voidable, the City or the Property Owner may terminate this Agreement.

(c) Entire Agreement; Conflicts. This Agreement represents the entire agreement between the City and the Property Owner with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written, between the City and the Property Owner with respect to the matters contained in this Agreement. Should any or all of the provisions of this Agreement be found to be in conflict with any other provision or provisions found in the Applicable Rules or the Subsequent Applicable Rules, then the provisions of this Agreement shall govern and prevail.

(d) Further Assurances. The City and the Property Owner agree to perform, from time to time, such further acts and to execute and deliver such further instruments reasonably to effect the intents and purposes of this Agreement, provided that the intended obligations of the City and the Property Owner are not thereby modified.

(e) Inurement and Assignment. This Agreement shall inure to the benefit of and bind the successors and assigns of the City and the Property Owner, may be assigned by either the City or the Property Owner to any party or parties purchasing all or any part of the Property, or any interest therein pursuant to the provisions of this Paragraph 15(e). The specific rights and obligations of this Agreement shall be deemed covenants running with the land that concern and affect the Property Owner's interest in the Property. Prior to the Property Owner's assignment of any rights, duties or obligations under this Agreement, the Property Owner shall present such information required by the City in its commercially reasonable discretion to demonstrate to the City's satisfaction that the proposed successor and/or assignee has the financial ability and experience to fulfill those specific rights, duties and obligations under the Agreement that the successor and/or assignee would assume. The City shall have the right to approve the proposed successor and/or assignee, provided that the City's approval may not be unreasonably withheld, conditioned or delayed. The provisions of this Paragraph 15(e) shall be self-executing and shall not require the execution or recordation of any further document or instrument. The City's approval rights over a successor or assignee of the Property Owner shall terminate upon issuance of the final inspection for the project.

(f) Negation of Agency. The City and the Property Owner acknowledge that, in entering into and performing under this Agreement, each is acting as an independent entity and not as an agent of the other in any respect. Nothing contained herein or in any document

executed in connection herewith shall be construed as making the City and the Property Owner joint venturers, partners or employer/employee.

(g) Attorney's Fees. In the event of any claim, dispute or controversy arising out of or relating to this Agreement, including an action for declaratory relief, the prevailing party in such action or proceeding shall not be entitled to recover its court costs and reasonable out-of-pocket expenses.

(h) Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought.

(i) Force Majeure. Performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to one or more of the following events, providing that anyone or more of such event(s) actually delays or interferes with the timely performance of the matter to which it would apply and despite the exercise of diligence and good business practices and such event(s) are beyond the reasonable control of the party claiming such interference: war, terrorism, terrorist acts, insurrection, strikes, lock-outs, unavailability in the marketplace of essential labor, tools, materials or supplies, failure of any contractor, subcontractor, or consultant to timely perform (so long as the Property Owner is not otherwise in default of any obligation under this Agreement and is exercising commercially reasonable diligence of such contractor, subcontractor or consultant to perform), riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, a Recession or unusually severe weather. An extension of time for any such cause (a "Force Majeure Delay") shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of actual knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the party claiming such delay and interference delivers to the other party written notice describing the event, its cause, when and how such party obtained knowledge, the date and the event commenced, and the estimated delay resulting therefrom.

(j) Paragraph Headings. The paragraph headings contained in this Agreement are for convenience and identification only and shall not be deemed to limit or define the contents to which they relate.

(k) Time of Essence. Time is of the essence of this Agreement, and all performances required hereunder shall be completed within the time periods specified. Any failure of performance shall be deemed as a material breach of this Agreement.

(l) Counterparts. This Agreement and any modifications hereto may be executed in any number of counterparts with the same force and effect as if executed in the form of a single document.

(m) Indemnification. The Property Owner agrees, as a condition of approval of this Agreement, to indemnify, defend and hold harmless at the Property Owner's expense, the

City, the City Council, and the City's agents, officers and employees from and against any claim, action or proceeding to attack, review, set aside, void or annul the approval of this Agreement to determine the reasonableness, legality or validity of any provision hereof or obligation contained herein. The Property Owner also agrees to indemnify the City, the City Council, and the City's officials, agents and employees for any claims, acts or proceedings relating to the Property Owner's failure to comply with the Project's affordable housing requirements.

The indemnity described in this section is not subject to the provisions of paragraph 4.a. providing that obligations cease if the Project does not go forward; provided, however, that the indemnity described in the first sentence of this section shall terminate when the applicable statute of limitations for the legal challenges described therein terminates.

The City shall promptly notify the Property Owner of any such claim, action or proceeding of which the City receives notice, and the City will cooperate fully with the Property Owner in the defense thereof. The Property Owner shall provide a defense to the City with counsel reasonably selected by the Property Owner and the City to defend both the City and the Property Owner, and shall reimburse the City for any court costs which the City may be required to pay as a result of any such claim, action or proceeding. The City may, in its sole discretion, participate in the defense of any such claim, action or proceeding at its own expense, but such participation shall not relieve the Property Owner of the obligations of this Paragraph 15(m).

(n) Hold Harmless Agreement. The City and the Property Owner mutually agree to, and shall hold each other and each of the other's elective and appointed councils, boards, commissions, directors, officers, partners, agents, representatives and employees harmless from any liability for damage or claims for personal injury, including death, and from claims for property damage which may arise from the activities of the other or the other's contractors, subcontractors, agents, or employees which relate to the Project whether such activities be by the City or the Property Owner, or by any of the City's or the Property Owner's contractors, subcontractors, or by anyone or more persons indirectly employed by, or acting as agent for the Property Owner, any of the Property Owner's or the City's contractors or subcontractors. The City and the Property Owner agree to and shall defend the other and each of the other's elective and appointive councils, boards, directors, commissioners, officers, partners, agents, representatives and employees from any suits or actions at law or in equity for damage caused or alleged to have been caused by reason of the aforementioned activities which relate to the Project.

(o) Alternative Dispute Resolution Procedure.

(1) Dispute. If a dispute arises concerning whether the City or the Property Owner or any of the Property Owner's successors or assigns is in default under this Agreement or whether any such default has been cured or whether or not a dispute is subject to this Paragraph (a "Dispute"), then such dispute shall be subject to negotiation between the parties to this Agreement, and if then not resolved shall be subject to non-binding mediation, both as set forth. below, before either party may institute legal proceedings.

(2) Negotiation. If a Dispute arises, the parties agree to negotiate in good faith to resolve the Dispute. If the negotiations do not resolve the Dispute to the reasonable

satisfaction of the parties within 15 days from a written request for a negotiation, then each party shall give notice to the other party identifying an official or executive officer who has authority to resolve the Dispute to meet in person with the other party's designated official or executive officer who is similarly authorized. The designated persons identified by each party shall meet in person for one day within the 20-day period following the expiration of the 15-day period and the designated persons shall attempt in good faith to resolve the Dispute. If the designated persons are unable to resolve the Dispute, then the Dispute shall be submitted to non-binding mediation.

(3) Mediation.

(i) Within 15 days following the designated persons' meeting described in paragraph 15(o)(2), above, either party may initiate non-binding mediation (the "Mediation"), conducted by Judicial Arbitration & Mediation Services, Inc. ("JAMS") or other agreed upon mediator. Either party may initiate the Mediation by written notice to the other party.

(ii) The mediator shall be a retired judge or other mediator, selected by mutual agreement of the parties, and if they cannot agree within 15 days after the Mediation notice, the mediator shall be selected through the procedures regularly followed by JAMS. The Mediation shall be held: within 15 days after the Mediator is selected, or a longer period as the parties and the mediator mutually decide.

(iii) If the Dispute is not fully resolved by mutual agreement of the parties within 15 days after completion of the Mediation, then either party may institute legal proceedings.

(iv) The parties shall bear equally the cost of the mediator's fees and expenses, but each party shall pay its own attorneys' and expert witness fees and any other associated costs.

(4) Preservation of Rights. Nothing in this Paragraph shall limit a party's right to seek an injunction or restraining order from a court in circumstances where such equitable relief is deemed necessary by a party to preserve such party's rights.

(p) Reference of California Law. Unless expressly stated to the contrary, all references to statutes herein are to the California codes.

(q) Interpretation. The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has independently reviewed this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

IN WITNESS WHEREOF, the City and the Property Owner have each executed this Agreement as of the date first written above.

ELAN HUNTINGTON BEACH, LLC,  
a Delaware limited liability company

CITY OF HUNTINGTON BEACH,  
a California municipal corporation

By: GS HUNTINGTON BEACH 274, LLC,  
a Delaware limited liability company,  
its sole member

\_\_\_\_\_  
Mayor

By: GS HUNTINGTON BEACH 274  
HOLDINGS, LLC, a Delaware  
limited liability company,  
its managing member

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: Jerry Brand

\_\_\_\_\_  
City Attorney

Name: JERRY BRAND

Title: Vice President

INITIATED AND APPROVED:

\_\_\_\_\_  
Director of Planning and Building

REVIEWED AND APPROVED:

\_\_\_\_\_  
City Manager

ACKNOWLEDGMENT

State of California )  
County of Orange )

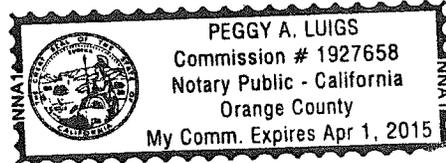
On April 1, 2013, before me, Peggy A. Luigs,  
(insert name of notary)

Notary Public, personally appeared Jerry Brand,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same  
in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that  
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Peggy A. Luigs



(Seal)

**ACKNOWLEDGMENT**

State of California )  
County of Orange )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name of notary)

Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that  
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

**ACKNOWLEDGMENT**

State of California )  
County of Orange )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name of notary)

Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that  
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1: (Affecting a Portion of APN: 157-471-05)

THE NORTHERLY 175 FEET OF THE WESTERLY 243 FEET OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 5 SOUTH, RANGE 11 WEST.

EXCEPTING THEREFROM THE WESTERLY 88 FEET AND THE NORTHERLY 40 FEET.

ALSO EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PARCEL:

BEGINNING AT THE INTERSECTION OF A LINE THAT IS PARALLEL WITH AND DISTANT 40 FEET SOUTHERLY, MEASURED AT RIGHT ANGLES WITH THE NORTH LINE OF SAID SOUTHWEST QUARTER, WITH A LINE THIS IS PARALLEL WITH AND DISTANT 88 FEET EASTERLY, MEASURED AT RIGHT ANGLES WITH THE WEST LINE OF SAID SOUTHWEST QUARTER; THENCE, EASTERLY ALONG SAID FIRST MENTIONED PARALLEL LINE A DISTANCE OF 30.20 FEET TO THE BEGINNING OF A CURVE THAT IS CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 30 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90° 23' 09" AN ARC DISTANCE 47.33 FEET TO A POINT ON SAID LAST MENTIONED PARALLEL LINE; THENCE NORTHERLY ALONG SAID LAST MENTIONED PARALLEL LINE A DISTANCE OF 30.20 FEET TO THE POINT OF BEGINNING.

PARCEL 2: (Affecting the remainder of APN: 157-471-05)

BEGINNING AT THE INTERSECTION OF A LINE THAT IS PARALLEL WITH AND DISTANT 175 FEET SOUTHERLY, MEASURED AT RIGHT ANGLES FROM THE NORTH LINE OF THE SOUTHWEST QUARTER WITH A LINE THAT IS PARALLEL WITH AND DISTANT 88 FEET EASTERLY MEASURED AT RIGHT ANGLES FROM THE WEST LINE OF THE SOUTHWEST QUARTER; THENCE EASTERLY ALONG SAID FIRST MENTIONED PARALLEL LINE A DISTANCE OF 155 FEET; THENCE, SOUTHWESTERLY IN A STRAIGHT LINE TO A POINT ON SAID LAST MENTIONED PARALLEL LINE THAT IS 15 FEET SOUTHERLY OF THE POINT OF BEGINNING; THENCE, NORTHERLY ALONG SAID LAST MENTIONED PARALLEL LINE A DISTANCE OF 15 FEET TO THE POINT OF BEGINNING.

PARCEL 3: (Affecting APN: 157-471-04)

THE NORTH ONE-HALF OF THE NORTHWEST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF SECTION 36, TOWNSHIP 5 SOUTH, RANGE 11 WEST AS SHOWN ON A MAP RECORDED IN BOOK 51 AT PAGE 7 OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY OF ORANGE.

EXCEPTING THEREFROM THE EASTERLY 160 FEET.

ALSO EXCEPTING THEREFROM THE NORTHERLY 175 FEET OF THE WESTERLY 243 FEET.

ALSO EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT THE INTERSECTION OF A LINE THAT IS PARALLEL WITH AND DISTANT 175 FEET SOUTHERLY, MEASURED AT RIGHT ANGLES FROM THE NORTH LINE OF SAID SOUTHWEST QUARTER, WITH A LINE THAT IS PARALLEL WITH AND DISTANT 88 FEET EASTERLY MEASURED AT RIGHT ANGLES FROM THE WEST LINE OF SAID SOUTHWEST QUARTER; THENCE EASTERLY ALONG SAID FIRST MENTIONED PARALLEL LINE A DISTANCE OF 155 FEET; THENCE SOUTHWESTERLY IN A STRAIGHT LINE TO A POINT OF SAID LAST MENTIONED PARALLEL LINE THAT IS 15 FEET SOUTHERLY OF THE POINT OF BEGINNING; THENCE NORTHERLY ALONG SAID LAST MENTIONED PARALLEL LINE A DISTANCE OF 15 FEET TO THE POINT OF BEGINNING.

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ALSO EXCEPTING FROM A PORTION OF SAID LAND ONE-HALF OF ALL OIL, GAS, MINERALS AND OTHER HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET, BUT WITHOUT THE RIGHT OF SURFACE ENTRY TO TAKE, MARKET, MINE, EXPLORE OR DRILL FOR SAME, AS RESERVED IN THE DEED FROM JOHN H. REYNOLDS AND WIFE, RECORDED MAY 9, 1961 IN BOOK 5715 PAGE 609, OFFICIAL RECORDS.

END OF LEGAL DESCRIPTION

**EXHIBIT B**  
**THE PROJECT**  
**(APPROVED SITE PLAN)**



RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

CITY OF HUNTINGTON BEACH  
2000 Main Street  
Huntington Beach, CA 92648  
Attention: City Clerk

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP  
1900 Main Street, 5th Floor  
Irvine, California 92614-7321  
Attention: R. Michael Joyce, Esq.

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(Space Above For Recorder's Use)

AFFORDABLE HOUSING AGREEMENT RESTRICTIONS—RENTAL  
(DECLARATION OF CONDITIONS, COVENANTS AND RESTRICTIONS  
FOR PROPERTY)

This Affordable Housing Agreement and Declaration of Conditions, Covenants and Restrictions for Property (the "Declaration") is made as of \_\_\_\_\_, 2013, by and between ELAN HUNTINGTON BEACH, LLC, a Delaware limited liability company (the "Property Owner" or "Covenantor") and THE HOUSING AUTHORITY OF THE CITY OF HUNTINGTON BEACH, a California municipal corporation (the "Housing Authority" or "Covenantee").

R E C I T A L S :

A. Property Owner is the owner of record of that certain real property located at 18502-18552 Beach Boulevard, Huntington Beach, California 92646 (the "Subject Property"), in the City of Huntington Beach, County of Orange, State of California legally described in the attached Exhibit A.

B. The Property Owner seeks to develop a project on the Property consisting of 274 dwelling units and associated uses. The project also includes approximately 8,500 square feet of ground floor commercial uses, as more particularly set forth in the Development Plan (collectively, the "Project") approved by Site Plan Review No. 12-001, all in accordance with the General Plan, as it may be amended from time to time (the "General Plan") adopted by the City Council of the City (the "City Council") and the Zoning Code.

C. The City imposed conditions of approval on the Project, in part that the Property Owner provide affordable housing. As part of the plan to provide affordable housing, the City and the Property Owner entered into a Development Agreement which requires as a condition that an Affordable Housing Agreement be executed requiring the Property Owner to provide affordable rental units for a certain period of time. Specifically, the Property Owner is required to/has agreed to provide 27 units within the Project available for rent to households earning Moderate-Income (as that term is defined in the Development Agreement) for a period of 55 years as further defined herein. The execution and recordation of this Declaration is intended to fully satisfy that condition.

NOW, THEREFORE, the parties hereto agree and covenant as follows:

1. Affordability Covenants. Covenantor agrees for itself and its successors and assigns, and every successor to Covenantor's interest in the affordable unit, or any part thereof that the Project approved by Site Plan Review 12-01, which consists of 274 units, 27 of which shall be designated as affordable and shall be held subject to this Declaration for fifty-five years from the date final inspection has been approved by the City as follows:

(a) Qualified Households. Covenantor agrees to make available, restrict occupancy to, and to lease 27 units for the duration of the Affordability Period as defined herein. These 27 units may sometimes be referred to as an "Affordable Unit" or, collectively, the "Affordable Units." Each Affordable Unit shall be occupied by Moderate-Income Households as that term is defined in the Development Agreement adjusted for the actual number of persons in the Household that will reside in the Affordable Unit.

As used in this Declaration, the term "Household" shall mean one or more persons, whether or not related, living together in an Affordable Unit that rent or lease any portion of the Affordable Unit.

As used in this Declaration, the term "Covenantor" shall mean the Property Owner, its successors and assigns, and every successor to the Property Owner's interest in the Project, or any part thereof.

(b) Duration. The term of this agreement shall commence on the date that the Final Inspection for the fifteenth (15th) affordable unit is approved by the City and will continue for 55 years thereafter ("Affordability Period"). The covenant contained in this Section 1 shall run with the Project and shall automatically terminate and be of no further force or effect upon the expiration of the Affordability Period.

(c) Income Qualification. Prior to the lease of an Affordable Unit to any Household, Covenantor shall submit to the Covenantee a completed income computation and certification form, in such form as is generally used by City in administering its affordable housing program as may be amended from time to time. Covenantor shall certify that, to the best of its knowledge, each Household is a Moderate-Income Household that meets the eligibility requirements established for the particular Affordable Unit occupied by such Household. Covenantor shall obtain an income certification from each adult member of the Household and shall certify that, to the best of Covenantor's knowledge, the income of the Household is

truthfully set forth in the income certification form. Furthermore the Covenantor shall, on renewal of the annual lease for the particular Affordable Unit, again obtain income certification from each adult member of the Household and submit to the Covenantee a recertification form that shall certify, to the best of Covenantor's knowledge, each Household is a Moderate-Income Household that meets the eligibility requirements established for the particular Affordable Unit occupied by such Household. Covenantor shall verify the income certification of the Household in one or more of the following methods:

- (1) Obtain two (2) paycheck stubs from two (2) most recent pay periods for each adult member of the Household.
- (2) Obtain a copy of an income tax return certified to be true and complete for the most recent tax year in which a return was filed, for each adult member of the Household.
- (3) Obtain an income verification certification from the employer of each adult member of the Household.
- (4) Obtain an income verification certification from the Social Security Administration and/or the California Department of Social Services if the Household receives assistance from such agencies.
- (5) Obtain an alternate form of income verification reasonably requested by Covenantee, if none of the above forms of verification is available to Covenantor.

If, at the time of the annual lease renewal of an Affordable Unit to an eligible Household, the Covenantor learns that Household's income increases above the income level permitted for that unit, the Household shall continue to be permitted to reside in such Affordable Unit, for no more than one year. Notwithstanding the foregoing, Covenantor, at the City's discretion, shall have the option, in its commercially reasonable discretion, to designate another dwelling unit as an Affordable Unit during that one year period so that the Household may continue to occupy a unit in the Project, if the Household and the Covenantor so agree.

(d) Determination of Affordable Rent for the Affordable Units. The rent for each Affordable Unit (the "Affordable Rent") shall be adjusted annually by the following formula established by California Health and Safety Code Section 50053 upon the publication of the revised Area Median Income. This methodology sets the moderate income rent at 1/12 of thirty percent (30%) of one-hundred ten percent (110%) of the Area Median Income adjusted for family size appropriate to the unit. As used herein, for the purpose of calculating the Affordable rent, "adjusted for family size appropriate to the unit" shall mean a household of one person in the case of a studio Affordable Dwelling Unit, two persons in the case of a one-bedroom Affordable Dwelling Unit, and a household of three persons in the case of a two-bedroom Affordable Dwelling Unit. The income limits and Affordable Rents in effect as of the date of this Agreement are attached hereto as Exhibit B and incorporated herein by this reference.

COVENANTOR UNDERSTANDS AND KNOWINGLY  
AGREES THAT THE MAXIMUM RENTAL PAYMENTS TO  
BE ESTABLISHED BY THIS FORMULA ARE NOT

NECESSARILY EQUAL TO THE FAIR MARKET RENT FOR THE AFFORDABLE UNITS, AND MAY BE ESTABLISHED AT A LEVEL SUBSTANTIALLY BELOW THE FAIR MARKET RENT LEVELS.

COVENANTOR HEREBY AGREES TO RESTRICT THE AFFORDABLE UNITS ACCORDINGLY.

COVENANTOR'S INITIALS

In the event state law referenced herein is amended, the terms of this Agreement shall automatically be amended to remain consistent with State law.

(e) Annual Report. Within sixty (60) days after the end of each calendar year during the Affordability Period, Covenantor shall submit to Covenantee a report verifying Covenantor's compliance with the provisions of this Declaration ("Annual Report"). Covenantor's final Annual Report shall be submitted to Covenantee within sixty (60) days after the end of the Affordability Period. Each Annual Report shall identify the location of the Affordable Units for the applicable reporting period, the identity of each Household member occupying an Affordable Unit during any portion of such period, the income and household size of each such Household, the Affordable Rent for each of the Affordable Units, and the rent actually charged pursuant to the lease or rental agreement. If Covenantee prescribes a particular form to be utilized by Covenantor in preparing the Annual Report, Covenantor shall utilize said form, provided that it complies substantially with the foregoing requirements.

2. Non-Discrimination Covenants. Covenantor covenants by and for itself, its successors and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, sexual orientation, creed, ancestry, national or ethnic origin, age, family or marital status, handicap or disability, in the use, occupancy, tenure, or enjoyment of the Affordable Unit, nor shall Covenantor itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, subtenants, or vendees in the Affordable Unit.

Covenantor and its successors and assigns shall refrain from restricting the leasing of the Affordable Unit on the basis of race, color, religion, sex, sexual orientation, creed, ancestry, national or ethnic origin, age, family or marital status, handicap or disability, of any person. All such leases shall contain or be subject to substantially the following nondiscrimination or nonsegregation clause:

"The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators; and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, religion, sex, sexual orientation, creed, ancestry, national or ethnic origin, age,

family or marital status, handicap or disability in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

3. Use Restrictions. During the Affordability Period, Covenantor shall be required to take all reasonable steps necessary to ensure that each Household renting an Affordable Unit has knowledge of all terms and conditions of this Declaration by including in each and every lease and rental agreement a clause which incorporates this Declaration by reference and makes this Declaration a part of an attachment to such lease or rental agreement. In addition, during the Affordability Period, each lease or rental agreement for any of the Affordable Units shall contain provisions that the Affordable Unit shall be occupied, used, and maintained as follows:

(a) The Affordable Unit shall be used only for private dwelling purposes, with appurtenant facilities, and for no other purposes; provided, however, that home occupation businesses conducted in compliance with the City's Municipal Code and other City regulations shall be considered an appropriate use for private dwelling purposes;

(b) Household Size. The maximum number of persons that may occupy an Affordable Unit shall be based on unit size:

<u>Unit Size</u>	<u>Household Size</u>
0 bedroom (studio)	2 persons
1 bedroom	3 persons
2 bedrooms	5 persons

(c) the Household shall not permit or suffer anything to be done or kept upon the premises which will increase the rate of insurance on any building, or on the contents thereof, and shall not impair the structural integrity thereof obstruct or interfere with the rights of other occupants, or annoy such occupants by unreasonable noises or otherwise, nor shall any Household commit or permit any nuisance on the premises or fail to keep the premises free of rubbish, clippings, and trash or commit or suffer any illegal act to be committed thereon;

(d) The Household shall not sublease any or all parts of the Affordable Unit without prior written approval from Covenantor and Covenantee;

(e) The Household shall comply with all of the lawful requirements of all governmental authorities with respect to the premises;

(f) No person shall be permitted to occupy the premises for transient or hotel purposes; and

(g) The Household shall comply in all respects with this Declaration and any failure by the Household to comply with the terms of this Declaration shall be a default under the Household's lease or rental agreement.

4. Covenants for Benefit of Housing Authority. All covenants without regard to technical classification or designation shall be binding for the benefit of the Covenantee and such covenants shall run in favor of Covenantee for the entire period during which time such covenants shall be in force and effect. The Covenantee, in the event of any breach of any such covenants, shall have the right to exercise all the rights and remedies and to maintain any such action at law or suits in equity or other proper legal proceedings to enforce and to cure such breach to which it or any other beneficiaries of these covenants may be entitled during the term, specified for such covenants, except the covenants against discrimination which may be enforced at law or in equity at any time in perpetuity.

5. Binding on Successors and Assigns. The covenants and agreements established in this Declaration shall, without regard to technical classification and designation, be binding on Covenantor and any successor to Covenantor's right, title, and interest in and to all or any portion of the Project, for the benefit of and in favor of the Housing Authority of the City of Huntington Beach. All the covenants contained in this Declaration shall remain in effect for the Affordability Period, and shall automatically terminate and be of no further force or effect after such time. Upon expiration of the Affordability Period, Covenantee agrees to cooperate with Covenantor, at no cost to Covenantee in removing this Declaration of record from the Subject Property.

6. Counterparts. This Agreement may be executed in a number of counterparts, each of which shall be an original, but all of which shall constitute one and the same document.

7. Notices. All notices which are allowed or required to be given hereunder shall be, in writing and (1) shall be deemed given and received when personally delivered or (2) shall be sent by registered or certified mail or overnight mail service, addressed to the applicable designated person by one party to the other in writing, and shall be deemed received on the second business day after such mailing.

If to the Housing Authority:

City of Huntington Beach  
2000 Main Street  
Huntington Beach, CA 92648  
Attn: City Manager  
Tel. No.: (714) 536-5575  
Fax No.: (714) 536-5233

If to the Property Owner:

Elan Huntington Beach, LLC  
c/o Greystar Capital Partners  
17885 Von Karman Avenue, Suite 450  
Irvine, CA 92614  
Attn: Jerry Brand  
Tel. No.: (949) 242-8685  
Fax No.: (949) 705-0009

Allen Matkins Leck Gamble Mallory & Natsis LLP  
1900 Main Street, 5th Floor  
Irvine, California 92614-7321  
Attn: R. Michael Joyce, Esq.  
Tel. No.: (949) 553-1313  
Fax No.: (949) 553-8354

8. Applicable Law.

(a) If any provision of this Agreement or portion thereof, or the application of any provision to any person or circumstances, shall to any extent be held invalid, inoperative, or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby and it shall not be deemed that any such invalid provision affects the consideration for this Agreement; and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(b) This Agreement shall be construed in accordance with the laws of the State of California and all applicable HUD Housing Quality Standards and City Codes.

**[Signatures and Jurats to Follow]**

IN WITNESS WHEREOF, the Covenantee and Covenantor have caused this instrument to be executed on their behalf by their respective officers hereunto duly authorized as of the date set forth above.

ELAN HUNTINGTON BEACH, LLC,  
a Delaware limited liability company

CITY OF HUNTINGTON BEACH,  
a California municipal corporation

By: GS HUNTINGTON BEACH 274, LLC,  
a Delaware limited liability company,  
its sole member

\_\_\_\_\_  
Mayor

By: GS HUNTINGTON BEACH 274  
HOLDINGS, LLC, a Delaware  
limited liability company,  
its managing member

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_

\_\_\_\_\_  
City Attorney

Name: \_\_\_\_\_

Title: \_\_\_\_\_

INITIATED AND APPROVED:

\_\_\_\_\_  
Director of Planning and Building

REVIEWED AND APPROVED:

\_\_\_\_\_  
City Manager

**ACKNOWLEDGMENT**

State of California )  
County of Orange )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name of notary)

Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that  
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

**ACKNOWLEDGMENT**

State of California )  
County of Orange )

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Signature \_\_\_\_\_

(Seal)

**ACKNOWLEDGMENT**

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County of Orange )

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WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

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**LEGAL DESCRIPTION**

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END OF LEGAL DESCRIPTION

**EXHIBIT B**  
**INCOME LIMITS AND AFFORDABLE RENTS**

2013 QUALIFYING INCOME AND RENT SCHEDULE  
 ELAN APARTMENT PROJECT  
 HUNTINGTON BEACH, CALIFORNIA

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I. 2013 Orange County Income Information

<u>Household Size</u>	<u>HCD Median</u>	<u>HUD Median</u>
1 Person	\$61,050	
2 Persons	69,750	
3 Persons	78,500	
4 Persons	87,200	87,200
5 Persons	94,200	

II. Household Income Limits as Defined by the California Health & Safety Code

	<u>Moderate Income (Section 50093)</u>	
1 Person	\$53,950 -	\$73,250
2 Persons	61,850 -	83,700
3 Persons	69,350 -	94,200
4 Persons	77,050 -	104,650
5 Persons	83,250 -	113,000

III. California Health & Safety Code Section 50053 Affordable Housing Cost Calculations

	<u>Moderate Income</u>		
	<u>Studio</u>	<u>1-Bdrm</u>	<u>2-Bdrm</u>
Benchmark Household Size	1	2	3
% of HCD Median Income	110%	110%	110%
Household Income for Rent Calculation	\$67,155	\$76,725	\$86,350
% of Income Allotted to Gross Rent	30%	30%	30%
Allowable Gross Rent	\$1,879	\$1,918	\$2,159
(Less) Utilities Allowance	28	39	47
Allowable Net Rent	\$1,851	\$1,879	\$2,112

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<sup>1</sup> Based on utilities published by (OCHA 10/1/2012). Includes Gas: Cooking, Heating, Water Heater. Electric: Basic.

Prepared by: Keyser Marston Associates, Inc.  
 File name: Elan\_Inc\_Rent\_Exp\_3\_11\_13; Inc\_Rent



# City of Huntington Beach

2000 Main Street ♦ Huntington Beach, CA 92648  
(714) 536-5227 ♦ www.huntingtonbeachca.gov

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## Office of the City Clerk

Joan L. Flynn, City Clerk

### NOTICE OF ACTION

June 11, 2012

Ben Brosseau Consulting, Inc.  
15149 Camarillo Street  
Sherman Oaks, CA 91403

**Subject:** Appeal of Site Plan Review No. 12-01 (Beach and Ellis Mixed Use Project)

**Request:** SPR 12-01 analyzes a request for the development of the Beach and Ellis Mixed Use Project to permit 274 residential units (six live work units), 8,500 square feet of retail space, associated private and public open space and parking on 2.74 acres located at the southeast corner of Beach Blvd and Ellis Avenue

**Applicant:** Ben Brosseau Consulting, Inc.

**Appellant:** Mayor Don Hansen

**Property Owner:** Morrie Golchech, Progressive Property Mgmt., 10527 Santa Monica Blvd., Ste. 350, Los Angeles CA 90025

On Monday, June 4, 2012, the Huntington Beach City Council took action on your request and approved Site Plan Review No. 12-01 (Beach and Ellis Mixed Use Project) with findings and conditions of approval, and CEQA Findings of Fact.

If there are any further questions, please contact Rosemary Medel, Associate Planner at (714) 374-1684.

Sincerely,

Joan L. Flynn, CMC  
City Clerk

**Att:** Findings/Conditions of Approval for Site Plan Review No. 12-001  
CEQA Findings of Fact  
Page 9, June 4, 2012 Action Agenda

**c:** Scott Hess, Director of Planning and Building  
Rosemary Medel, Associate Planner  
Morrie Golchech, Progressive Property Management

FINDINGS FOR APPROVAL – SITE PLAN REVIEW NO. 12-001:

1. Site Plan Review No. 12-001 for the construction of a mixed use development consisting of 274 multi-family residential units and 8,500 square feet of commercial area and associated improvements will not be detrimental to the general welfare of persons working or residing in the vicinity or detrimental to the value of property and improvements in the neighborhood as this development replaces a mostly vacant and underperforming commercial center. The mixed-use residential and commercial development, with the recommended conditions of approval, incorporates architectural and design elements that provide maximum compatibility of design with the existing and anticipated development surrounding the project site, promotes pedestrian accessibility, and promotes the image of the Huntington Beach envisioned within the Beach and Edinger Corridors Specific Plan (BECSP). Structures on the project site are four to six stories in height and feature enhanced building materials and colors, building recesses and façade offsets, and variation in massing composition. The neighborhood will benefit from the proposed 17,540 sf of publicly accessible open space. The project's conformance with the Beach and Edinger Corridors Specific Plan further ensures that the form, height, and architectural design convey an overall high level of quality.
2. The proposed mixed use project will not adversely affect the Circulation Plan of the BECSP. The project will reduce the number of ingress/egress driveways at the site from six to two thereby reducing conflicts with through traffic and the potential for accidents. The proposed northerly garage entrance will be relocated to directly across from Patterson Lane to reduce peak hour traffic impacts of west bound traffic from the project site. The project will dedicate 2 ft along Beach Blvd and four ft along Ellis Ave to accommodate the Palm Tree Blvd and Neighborhood Street public right-of-way improvements consistent with the BECSP. No additional street improvements are required to improve capacity/efficiency on intersection operations; however, the project will pay fees commensurate with the project's contribution of traffic on the area-wide roadway system.
3. The project complies with the applicable provisions of the Beach and Edinger Corridors Specific Plan (SP14) and other applicable regulations. The project complies with the development standards in terms of height, setbacks, minimum onsite parking, open space and architectural regulations. The project also ensures that the form and architectural design convey an overall high level of quality materials consistent with the vision of the Specific Plan.
4. The granting of the site plan review will not adversely affect the General Plan. It is consistent with the Land Use Element designation of Mixed Use – Specific Plan Overlay – Design Overlay on the subject property. In addition, it is consistent with the following goals and policies of the General Plan:

A. Air Quality Element

Goal AQ 1: Improve regional air quality by a) decreasing reliance on single occupancy vehicular trips, b) increasing efficiency of transit, c) shortening vehicle trips through a more efficient jobs-housing balance and a more efficient land use pattern, and d) increasing energy efficiency.

Policy AQ 1.10.1: Continue to require the utilization and installation of energy conservation features in all new construction.

B. Circulation Element

Goal CE 2: Provide a circulation system which supports existing, approved and planned land uses throughout the City while maintaining a desired level of service on all streets and at all intersections.

Objective CE 3.2: Encourage new development that promotes and expands the use of transit services.

Policy CE 6.1.6: Maintain existing pedestrian facilities and require new development to provide pedestrian walkways and bicycle routes between developments, schools, and public facilities.

C. Growth Management Element

Policy GM 1.1.7: Ensure that new development site design incorporates measures to maximize policing safety and security.

Policy GM 2.1.4: Ensure that new development site design incorporates measures to maximize fire safety and prevention.

D. Hazardous Materials Element

Goal HM 1: Reduce, to the greatest degree possible, the potential for harm to life, property and the environment from hazardous materials and hazardous waste.

Objective HM 1.1: Promote the proper handling, treatment and disposal of hazardous materials and hazardous waste.

Policy HM 1.4.4: Require that owners of contaminated sites develop a remediation plan with the assistance of the Orange County Environmental Management Agency (EMA).

E. Housing Element

Goal H 2: Provide adequate housing sites to accommodate regional housing needs.

Goal H 3: Assist in development of affordable housing.

Policy H 2.2: Facilitate the development of mixed use projects in appropriate commercial areas, including stand-alone residential development (horizontal mixed use) and housing above ground floor commercial uses (vertical mixed use). Establish mixed use zoning regulations.

Policy H 3.1: Encourage the production of housing that meets all economic segments of the community, including lower, moderate, and upper income households, to maintain a balanced community.

F. Land Use Element

Goal LU 4: Achieve and maintain high quality architecture, landscape, and public open spaces in the City.

Goal LU 4.2.4: Require that all development be designed to provide adequate space for access, parking, supporting functions, open space, and other pertinent elements.

Goal LU 7: Achieve a diversity of land uses that sustain the City's economic viability, while maintaining the City's environmental resources and scale and character.

Goal LU 8: Achieve a pattern of land uses that preserves, enhances, and establishes a distinct identity for the City's neighborhoods, corridors, and centers.

Policy LU 8.1.1: Accommodate land use development in accordance with the patterns and distribution of use and density depicted on the Land Use Plan Map, in accordance with the principles discussed below:

- a. Not applicable
- b. Vary uses and densities along the City's extended commercial corridors, such as Beach Boulevard.
- c. Increase diversification of community and local commercial nodes to serve adjacent residential neighborhoods.
- e. Intermix uses and densities in large-scale development projects.
- f. Site development to capitalize upon potential long-term transit improvements.
- g. Establish linkages among community areas, which may include pedestrian and vehicular paths, landscape, signage, other streetscape elements, open space, transitions, in form, scale, and density of development, and other elements.

Goal LU 9: Achieve the development of a range of housing units that provides for the diverse economic, physical, and social needs of existing and future residents of Huntington Beach.

Policy LU 9.1.4: Require that recreational and open space amenities be incorporated in new multi-family developments and that they be accessible to and of sufficient size to be usable by all residents.

Goal LU 11: Achieve the development of projects that enable residents to live in proximity to their jobs, commercial services, and entertainment, and reduce the need for automobile use.

Policy LU 11.1.2: Limit commercial uses in mixed use development projects to those uses that are compatible with the residences.

Policy LU 11.1.4: Require the incorporation of adequate onsite open space and recreational facilities to serve the needs of the residents in mixed use development projects.

Policy LU 11.1.5: Require that mixed use developments be designed to mitigate potential conflicts between the commercial and residential uses, considering such issues as noise, lighting, security, and truck and automobile access.

Policy LU 11.1.6: Require that the ground floor of structures that horizontally integrate housing with commercial uses locate commercial uses along the street frontage (housing may be located to the rear and/or on upper floors).

Policy LU 11.1.7: Require that mixed use development projects be designed to achieve a consistent and high quality character, including the consideration of the:

- a. Visual and physical integration among the commercial and residential uses (Plates LU-3 and LU-4);
- b. Architectural treatment of building elevations to convey the visual character of multiple building volumes and individual storefronts and residential units

#### G. Noise Element

Policy N 1.2.1: Require, in areas where noise levels exceed an exterior  $L_{dn}$  of 60 dB(A) and an interior  $L_{dn}$  of 45 dB(A), that all new development of "noise sensitive" land uses, such as housing, health care facilities, schools, libraries, and religious facilities, include appropriate buffering and/or construction mitigation measures that will reduce noise exposure to levels within acceptable limits.

Policy N 1.2.3: Require development, in all areas where the ambient noise level exceeds an  $L_{dn}$  of 60 dB(A), to conduct an acoustical analysis and incorporate special design measures in their construction, thereby, reducing interior noise levels to the 45 dB (A)  $L_{dn}$  level.

Policy N 1.5.1: Require that commercial and residential mixed use structures minimize the transfer or transmission of noise and vibration from the commercial land use to the residential land use. The design measures may include: (1) the use of materials which mitigate sound transmission; or (2) the configuration of interior spaces to minimize sound amplification and transmission.

#### H. Recreation and Community Services Element

Policy RCS 2.1.1: Maintain the current park per capita ratio of 5.0 acres per 1,000 persons, which includes the beach in the calculation.

#### I. Urban Design Element

Goal UD 1: Enhance the visual image of the City of Huntington Beach.

Objective UD 1.3: Strengthen the visual character of the City's street hierarchy in order to clarify the City's structure and improve Citywide identity.

Policy UD 1.1.3: Require a consistent design theme and/or landscape design character along the community's corridors that reflects the unique qualities of each district. Ensure that streetscape standards for the major commercial corridors, the residential corridors, and primary and secondary image corridors provide each corridor with its own identity while promoting visual continuity throughout the City.

#### J. Utilities Element

Objective U 1.2: Ensure that existing and new development does not degrade the City's surface waters and groundwater basins.

Objective U 1.3: Minimize water consumption rates through site design, use of efficient systems, and other techniques.

Policy U 1.3.2: Continue to require the incorporation of water conservation features in the design of all new and existing uses such as the use of native plants, low flow toilets and water efficient appliances.

The project would provide a mixed use, urban infill development with 274 rental units increasing housing options for diverse household types, promoting alternative modes of transportation, creating a local sense of place, reducing infrastructure and maintenance costs, and allowing for more efficient use of land resources. The area has a variety of complementary uses that are critical to any vibrant community such as the Five Point Shopping Center, several commercial centers, Senior Housing projects and its proximity to the beach at a distance of 0.75 miles. The proposed project maximizes the density contributing to one of the two most urbanized areas envisioned within the Specific Plan: Town Center Neighborhood. The project promotes walking between the various commercial uses and services reducing vehicular trips and pollution. The proposed project and unit mix was designed to provide new urban lifestyle being embraced by the younger population providing more technology, less space needed not as dependent on their own individual automobile. The project is required to meet the City's affordable housing obligations providing 27 on-site affordable units. The proposed project will provide work force housing to the residents of Huntington Beach and Northern Orange County. The proposed project incorporates architectural and design principles to provide a pedestrian-oriented scale and ensure maximum design compatibility with the surrounding commercial, quasi-residential use and multiple family neighborhood. The project will be designed and certified to a Green Point Rated rating program for the residential portion of the project and LEED Silver Certified rating for the commercial portion of the project and will meet City noise requirements. Bicycle parking is located within the garage providing sufficient area to accommodate 70 spaces. Residential parking areas would be well-lit with parking for residents secured from public and commercial parking areas. Guest parking is located next to the commercial parking stalls and behind the secured gated residential parking area. The project would comply with the BECSP and other City codes to reduce water consumption and stormwater runoff. The project will incorporate sustainable site development strategies, utilize water savings features, emphasize recycling of resources and materials and maximize indoor environmental quality through design features and community policies. The project will result in remediation of the site. Mitigation Measures 4.6-1 through 4.6-3 ensure remediation of contaminated soils containing hazardous materials prior to development of the proposed project and provide supplemental procedures in the event of unanticipated discoveries of contaminants during construction. As described in the EIR some site remediation has already occurred and is ongoing with regulatory protocols in place. If unknown contamination is encountered, a Risk Management Plan shall be prepared and implemented that identifies the contaminants of concern and the potential risk posed to human health.

**CONDITIONS OF APPROVAL – SITE PLAN REVIEW NO. 12-001:**

1. The site plan received May 7, 2012, floor plans and elevations received May 1, 2012 and revised colored elevations received May 2, 2012 for Site Plan Review No. 12-001, shall be the conceptually approved design except as amended by the conditions specified as follows:

- a) The north (Ellis) elevation shall be revised to reflect the relocation of the Ellis driveway per the site plan dated May 7, 2012.
  - b) East elevation (west garage exterior wall) of Plaza, shall be enhanced through use of landscaping, upgraded materials, installation of public art or other design feature approved by the Planning Division.
  - c) Rooflines of east and south elevations of Building 2 shall be designed at varied heights to create a visual break.
  - d) Removable bollards shall be installed at both the north and south entrances of the Plaza.
  - e) Existing surface and sub-surface utilities (electrical pullboxes/vaults/manholes/vent pipes/manholes/vent pipes/traffic signal control pullboxes/cabinets, etc.) located along Beach Blvd and Ellis Ave frontages of the project site shall be relocated to allow for construction of the street standards and specifications of BECSP and to allow for maximum visibility of the new commercial component of the mixed use project. All utility relocation shall be permitted through the appropriate agency or utility company and coordinated with the City of Huntington Beach Planning and Building Department.
2. Comply with all mitigation measures adopted for the project in conjunction with certified Environmental Impact Report No. 10-004.
  3. At least 14 days prior to any grading activity, the property owner/developer shall provide notice in writing to property owners of record and tenants of properties within a 500-foot radius of the project site as noticed for the public hearing. The notice shall include a general description of planned grading activities and an estimated timeline for commencement and completion of work and a contact person name with phone number. Prior to issuance of the grading permit, a copy of the notice and list of recipients shall be submitted to the Planning and Building Department.
  4. Prior to issuance of a precise grading permit, the following shall be completed:
    - a) The project site is located in close vicinity to Orange County Water Districts' Seawater Intrusion Barrier and Groundwater Replenishment System. The applicant shall coordinate with, and obtain approval and permit from OCWD, for the construction of the proposed underground parking structure/foundation, and shall satisfy all OCWD requirements to mitigate any impact to the said Seawater Intrusion Barrier and Groundwater Replenishment System. A copy of the permit/approval shall be transmitted to the Public Works Department.
    - b) If tie-backs or other method of horizontal anchoring systems are proposed for construction of any temporary and/or permanent earth retaining structure, no encroachment of such anchor shall be allowed within the public right-of-way.
    - c) Caltrans encroachment permits for work within the Caltrans right-of-way (for construction of sidewalks, driveways, utility connections, drainage etc.) shall be obtained by the applicant prior to City issuance of a grading permit. Since Caltrans does not allow any increase in drainage above existing onto Beach Boulevard, the applicant shall include a Hydrology Study for Caltrans review and approval with the encroachment permit application. A copy of each submittal, encroachment permit, traffic control plans and/or other permission granted by Caltrans shall be transmitted to the Public Works Department.
  5. Prior to submittal for building permits, the following shall be completed:

- a) One set of project plans and one 8 ½ inch by 11 inch set of all colored renderings, elevations, and materials sample and color palette, revised pursuant to Condition of Approvals and Code Requirements, shall be submitted for review, approval and inclusion in the entitlement file, to the Planning Division.
  - b) Zoning entitlement conditions of approval, code requirements identified herein and code requirements identified in separately transmitted memorandum from the Departments of Fire and Public Works shall be printed verbatim on one of the first three pages of all the working drawing sets used for issuance of building permits (architectural, structural, electrical, mechanical and plumbing) and shall be referenced in the sheet index. The minimum font size utilized for printed text shall be 12 point.
  - c) Contact the United States Postal Service for approval of mailbox location(s).
6. Prior to issuance of a building permit the following shall be completed:
- a) The property owner/developer shall provide a Landscape Maintenance License Agreement to address the continuing maintenance and liability for all landscaping, irrigation, furniture and enhanced hardscape that encroaches into the Beach Blvd and Ellis Avenue Rights-of-Way. The agreement shall describe all aspects of maintenance such as enhanced sidewalk cleaning, trash cans, disposal of trash, signs, tree or palm replacement and any other aspect of maintenance that is warranted by the development plan improvements proposed. The agreement shall state that the property ownership shall be responsible for all costs associated with maintenance, repair, replacement, liability and fees imposed by the County, City and/or Caltrans.
  - b) A Development Agreement shall be approved by the City Council and recorded. The Agreement shall provide for affordable dwelling units in accordance with the Beach and Edinger Corridors Specific Plan (BECSP) and the Huntington Beach Zoning and Subdivision Ordinance as well as required traffic mitigation fees. The number and location of units and affordability terms shall be set forth in the Development Agreement.
  - c) A public art element, approved by the Design Review Board, Director of Planning and Building, and the Cultural Services Supervisor, shall be depicted on the plans. Public Art shall be innovative, original, and of artistic excellence; appropriate to the design of the project; and reflective of the community's cultural identity (ecology, history, or society).
7. Prior to occupancy of the first dwelling unit and/or commercial tenant, the following shall be completed:
- a) A Parking Management Plan, approved by the property owner/developer shall be submitted for review and approval by the Planning Division. Said plan shall depict designated (residents/ tenants / employees / guests / public/ customers / carpooling) parking space locations.
  - b) The property owner/developer shall submit proof of registration with the GreenPoint Rated and LEED Silver program and a checklist of how certification is proposed to be achieved. Within 45 days of final building permit approval, the property owner/developer shall provide a final report by an accredited third party stating that the project has achieved LEED Silver for the retail portion of the development. The residential units shall receive a GreenPoint Rated certification that is equivalent of LEED Silver. The developer shall provide the City with evidence of said certification.

- c) Interior of parking structure shall be painted white to reflect natural light and increase illumination. Lighting shall be placed in a manner to illuminate the interior of vehicles allowing individuals approaching their vehicles to see inside prior to their entry.
  - d) If complex will restrict entry to residents only by locked entry points, then those security systems shall be user friendly to the Police and Fire Departments.
  - e) Addresses and unit numbers shall be painted on the roofs of the apartments. Unit number on interior shall be a minimum of 3' x 1 ½ ".
  - f) The existing power poles along the easterly side of the project property line shall be undergrounded.
  - g) The property owner/developer shall submit documentation to the Planning Division showing compliance with the Acoustical Study dated April 26, 2012.
8. Operation and use of the project shall comply with the following:
- a) Live work units shall not be rented separately.
  - b) Security gates shall be installed at the southern paseo at the east property line entrance and the area immediately east of the fire lane. This area shall be accessible to residents only after dark and shall remain open during daylight hours.
9. Signage is not approved as part of Site Plan No. 12-001 and shall not be installed prior to approval of a Planned Sign Program by the Planning Division.
10. The developer or developer's representative shall be responsible for ensuring the accuracy of all plans and information submitted to the City for review and approval.

**INDEMNIFICATION AND HOLD HARMLESS CONDITION:**

The owner of the property which is the subject of this project and the project property owner/developer if different from the property owner, and each of their heirs, successors and assigns, shall defend, indemnify and hold harmless the City of Huntington Beach and its agents, officers, and employees from any claim, action or proceedings, liability cost, including attorney's fees and costs against the City or its agents, officers or employees, to attack, set aside, void or annul any approval of the City, including but not limited to any approval granted by the City Council, Planning Commission, or Design Review Board concerning this project. The City shall promptly notify the property owner/developer of any claim, action or proceeding and should cooperate fully in the defense thereof.

BEACH & ELLIS MIXED USE PROJECT  
FINDINGS OF FACT  
ENVIRONMENTAL ASSESSMENT NO. 12-001

## INTRODUCTION

This document presents the potential impacts that were identified in the Environmental Assessment for the currently proposed project as well as the previously approved EIR (EIR No. 10-004) and the findings that are required in accordance with Section 15091 of the CEQA Guidelines. The possible findings for each significant and/or potentially significant adverse impact are as follows:

- (a) Changes or alterations have been required in, or incorporated into the project which avoid, substantially lessen, or reduce the magnitude of the significant environmental effect as identified in the EIR ("Finding 1").
- (b) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the findings. Such changes have been adopted by such other agency or can and should be adopted by such other agency ("Finding 2").
- (c) Specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives in the EIR ("Finding 3").

CEQA requires that the lead agency adopt mitigation measures or alternatives, where feasible, to avoid or substantially reduce significant environmental impacts that would otherwise occur as a result of a project. Project modification or alternatives are not required, however, where they are infeasible or where the responsibility for modifying the project lies with some other agency (CEQA Guidelines §15091(a)(3)). Public Resources Code Section 21061.1 defines "feasible" to mean "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors." (See also *Citizens of Goleta Valley v. Board of Supervisors* [Goleta II] [1990] 52 Cal.3d 553, 565 [276 Cal. Rptr. 410].)

This document presents the City of Huntington Beach findings as required by CEQA, cites substantial evidence in the record in support of each of the findings, and presents an explanation to supply the logical step between the finding and the facts in the record (State CEQA Guidelines §15091). Additional facts that support the findings are set forth in the Environmental Assessment for the currently proposed project as well as the previously approved EIR (EIR No. 10-004).

Table 1 (CEQA Findings for the Beach and Ellis Mixed Use Project Environmental Assessment) summarizes the potentially significant impacts of the currently proposed project in the Environmental Assessment that were reduced to less-than-significant levels with mitigation as well as the project-level and cumulative significant impacts. The currently proposed project would allow for development of 274 apartment dwelling units and 8,500 sf of commercial uses.

**Table 1 CEQA Findings for the Beech and Ellis Mixed Use Project Environmental Assessment**

Impact Statement	Impact Summary	Findings
<p><b>Aesthetics</b></p> <p><b>Impact XIII (d)</b> Implementation of the currently proposed project would introduce new sources of light and glare into the project vicinity that could adversely affect day or nighttime views in the area. However, with implementation of mitigation measures, this impact is considered less than significant.</p>	<p>The currently proposed project has heights that range from three to six stories. Buildings generally three or more stories in height have the potential to include large building faces that could introduce reflective surfaces that could increase existing levels of daytime glare. The currently proposed project could, therefore, serve as a new source of light and glare in the area, and impacts would be potentially significant. However, implementation of mitigation measure BECSP MM4.1-2 would reduce impacts to a less-than-significant level.</p> <p>The provision of non-reflective facade treatments for new structures would ensure that impacts related to daytime glare would be reduced to a less-than-significant level by reducing the reflective properties of the building materials employed, such as glass, metal, or finished concrete.</p>	<p>Finding 1. The City finds that the identified changes or alterations in the project, which would reduce Impact XIII (d) to less-than-significant levels, are hereby incorporated into the project. No additional mitigation measures are necessary with the implementation of mitigation measure MM4.1-2.</p>
<p><b>Air Quality</b></p> <p><b>Impact V (a)</b> Implementation of the currently proposed project could violate an air quality standard and contribute substantially to an existing or projected air quality violation for criteria air pollutants. Even with mitigation measures, this impact is considered significant and unavoidable.</p>	<p>Construction of the currently proposed project would generate emissions that exceed the thresholds of significance recommended by the SCAQMD for VOC, a criteria pollutant. Implementation of mitigation measures BECSP MM4.2-1 through BECSP MM4.2-14 would reduce construction-related emissions however, they may not reduce these emissions to levels below the SCAQMD thresholds. No further feasible mitigation measures are available and this impact would be considered significant and unavoidable.</p>	<p>Finding 3. The City finds that even with implementation of all feasible mitigation measures and compliance with applicable requirements, construction emissions of the currently proposed project could result in an exceedance of established thresholds for daily construction emissions. No mitigation measures in addition to BECSP MM4.2-1 through BECSP MM4.2-14 are feasible to reduce construction air quality impacts.</p>
<p><b>Impact V (b)</b> Implementation of the currently proposed project could expose sensitive receptors to substantial pollutant concentrations. With incorporation of mitigation measures, this impact is considered less than significant.</p>	<p>For the purposes of this analysis, the nearest existing sensitive receptors to the project site would be the existing SRO units along Ellis Avenue immediately adjacent and to the east of the project site, and the single-family properties along Ellis Avenue to the north of the proposed project site, located approximately 75 feet from the project site's property line.</p> <p>With the implementation of mitigation measures BECSP MM4.2-1 through BECSP MM4.2-11 and Project MM4.2-15, emissions will be reduced during construction. Therefore, with mitigation, impacts to localized sensitive receptors will be less than significant during construction.</p>	<p>Finding 1. The City finds that the identified changes or alterations in the project, which would reduce Impact V (b) to less-than-significant levels, are hereby incorporated into the project. No additional mitigation measures are necessary with the implementation of mitigation measure BECSP MM4.2-1 through BECSP MM4.2-11 and Project MM4.2-15.</p>
<p><b>Impact V (e)</b> Implementation of the currently proposed project would result in a cumulatively considerable net increase of criteria pollutants for which the proposed project region is in</p>	<p>Construction of the currently proposed project would generate emissions that would exceed the thresholds of significance recommended by the SCAQMD for VOC. Because the South Coast Air Basin is currently in nonattainment for O3 (for which VOC and NOX are precursors) and PM10 under national and state standards, and is in nonattainment</p>	<p>Finding 3. The City finds that even with implementation of all feasible mitigation measures and compliance with applicable requirements, construction emissions of the</p>

**Table 1 CEQA Findings for the Beach and Ellis Mixed Use Project Environmental Assessment**

Impact Statement	Impact Summary	Findings
<p>nonattainment under an applicable federal or state ambient air quality standard. This impact is considered <i>significant and unavoidable</i>.</p>	<p>for CO under national standards, projects could cumulatively exceed an air quality standard or contribute to an existing or projected air quality exceedance. Implementation of mitigation measures BECSP MM4.2-1 through BECSP MM4.2-14 would reduce VOC emissions, but not to a less than significant level. Therefore, even with mitigation emissions during construction will remain significant and unavoidable and cumulatively considerable.</p>	<p>currently proposed project would result in an exceedance of established thresholds for daily emissions in the cumulative scenario. No feasible mitigation measures in addition to mitigation measures BECSP MM4.2-1 through BECSP MM4.2-14 are available.</p>
<p><b>Cumulative Air Quality</b></p>	<p>The proposed project would exceed SCAQMD thresholds for the pollutants and precursors of ozone for which the Basin is in nonattainment. Therefore, the currently proposed project would make cumulatively considerable contributions of these pollutants during construction of the currently proposed project. Mitigation measures BECSP MM4.2-1 through BECSP MM4.2-14 will be implemented during construction activities to reduce emissions to the extent feasible but the potential impact will not be reduced to a less-than-significant impact. Therefore, the currently proposed project would result in a significant and unavoidable cumulative air quality impact.</p>	<p>Finding 3. The City finds that even with implementation of all feasible mitigation measures, compliance with applicable requirements, and changes to the project, construction and operational emissions of the proposed project would result in an exceedance of established thresholds for daily emissions in the cumulative scenario. No feasible mitigation measures in addition to mitigation measures MM4.2-1 through MM4.2-14 are available.</p>
<p><b>Biological Resources</b></p> <p><b>Impact VII (a)</b> Construction of the proposed project could have a substantial adverse effect, either directly or through habitat modifications, on birds protected under the <i>Migratory Bird Treaty Act</i>. However, with mitigation measures, this impact is considered <i>less than significant</i>.</p>	<p>Vegetation on the project site is limited to trees and landscaping associated with the existing commercial uses. Within the parking lot trees located on the project site, there is the potential for birds protected under the MBTA to nest. Prior to any construction activities occurring between February 15 and August 31 annually (breeding season), a nesting bird survey would be conducted as required by mitigation measure BECSP MM4.3-1.</p> <p>In the event that active nests are identified within 250 feet of the construction site, a 100-foot no work buffer would be maintained between the nest and construction activity. Consultation with the CDFG and USFWS is also encouraged. This survey would be submitted to the City of Huntington Beach prior to issuance of a grading permit. As such, implementation of mitigation measure BECSP MM4.3-1 would ensure protection of migratory bird species and habitat through focused surveys and the proposed project would result in a less than significant impact.</p>	<p>Finding 1. The City finds that the identified changes or alterations in the currently proposed project, which would reduce Impact VII (a) to less-than-significant levels, are hereby incorporated into the currently proposed project. No additional mitigation measures are necessary with the implementation of mitigation measure BECSP MM4.3-1.</p>
<p><b>Cultural Resources</b></p> <p><b>Impact XIV (b&amp;d)</b> Construction activities associated with implementation of the currently proposed project could cause a substantial adverse change in the significance of an archaeological resource or disturb human remains.</p>	<p>A records search was conducted by the South Central Coastal Information Center (SCCIC) of the BECSP area. This search indicated that archaeological resources are present within the BECSP area, though not on the project site. These sites have likely been destroyed or capped since they were first discovered. In addition, the NAHC identified the presence of Native American cultural resources in the immediate BECSP</p>	<p>Finding 1. The City finds that the identified changes or alterations in the currently project, which would reduce Impact XIV (b&amp;d) to less-than-significant levels, are hereby incorporated into the project. No additional mitigation</p>

**Table 1 CEQA Findings for the Beach and Ellis Mixed Use Project Environmental Assessment**

<i>Impact Statement</i>	<i>Impact Summary</i>	<i>Findings</i>
<p>With incorporation of mitigation measures, this impact is considered <i>less than significant</i>.</p>	<p>area and noted that the general area was considered sensitive for cultural resources. Finally, representatives from the Gabrielino Tongva Nation contacted PBS&amp;J to express their concerns about the sensitivity of the BECSP area for Native American resources and burial grounds. Therefore, the BECSP area is considered to be sensitive for the presence of Native American cultural resources, including human remains. However, because the project site has been previously disturbed and is considered to be entirely developed, and the records search conducted by the SCCIC did not identify archeological resources on the project site, archeological resources are not likely to be encountered as a result of the currently proposed project and mitigation measure BECSP MM4.4-2(a) would not be applicable. However, earthmoving activities could result in the uncovering of previously unidentified resources. Incorporation of mitigation measure BECSP MM4.4-2(b) would reduce any impacts from this occurrence to a less than significant level.</p>	<p>measures are necessary with implementation of mitigation measure MM4.4-2(b).</p>
<p><b>Impact XIV (c)</b> Construction activities associated with implementation of the currently proposed project could result in the disturbance of paleontological resources. With incorporation of mitigation measures, this impact is considered <i>less than significant</i>.</p>	<p>According to a paleontological records search performed by the Natural History Museum of Los Angeles County in September 2008 for the BECSP area, no previously recorded paleontological resources are located within the BECSP area, including the proposed project site. However, the search did identify several paleontological resources in the BECSP vicinity, as well as soils that often contain vertebrate and invertebrate fossils. As such, the BECSP EIR concluded that the entire plan area, including the project site is considered sensitive for paleontological resources. In compliance with mitigation measure BECSP MM4.4-3(a), a records search for the project site was conducted for EIR No. 10-004, and turned up negative for the presence of paleontological resources on the project site. However, because of the area's sensitivity, the currently proposed project is required to comply with mitigation measure BECSP MM4.4-3(b) in the event that a previously unidentified unique paleontological resource or geological feature is discovered during ground disturbing activities. As such, the currently proposed project would result in a less than significant impact to paleontological resources.</p>	<p>Finding 1. The City finds that the identified changes or alterations in the currently proposed project, which would reduce Impact XIV (c) to less-than-significant levels, are hereby incorporated into the project. No additional mitigation measures are necessary with implementation of mitigation measure MM4.4-3(b).</p>
<p><b>Geology and Soils</b></p>	<p><b>Impact III (a)</b> Future development under the currently proposed project could expose people and/or structures to potentially substantial adverse effects, including the risk of loss, injury, or death, involving fault rupture, strong seismic groundshaking, seismic-related ground failure, including liquefaction, and/or landslides. With implementation of mitigation measures and compliance with applicable State and City regulations, this impact is considered less than</p>	<p>Finding 1. The City finds that the identified changes or alterations in the currently proposed project, which would reduce Impact III (a) to less-than-significant levels, are hereby incorporated into the project. No additional mitigation measures are necessary with the implementation of mitigation measure BECSP MM4.5-1.</p>

**Table 1 CEQA Findings for the Beach and Ellis Mixed Use Project Environmental Assessment**

Impact Statement	Impact Summary	Findings
<p>significant.</p> <p>Impact III (b) Construction of the currently proposed project could result in substantial soil erosion, loss of top soil, changes in topography or unstable soil conditions. However, with compliance with slope stability, soil stability, and seismic-resistant design standards for structures proposed for human occupancy required by the City of Huntington Beach General Plan, Building Code, and Grading and Excavation Code and implementation of code requirements and mitigation measures, this impact is considered less than significant.</p>	<p>state requirements pertaining to geologic, soil, and seismic hazards. Additionally, as required by mitigation measure BECSP MM4.5-1, a soils and geotechnical report would be prepared for the proposed project and submitted to the City with the first submittal of a grading plan for the project. The design, grading, and structural recommendations of the final soil and geotechnical report would be incorporated into the currently proposed project's grading plan. In light of the strict regulations in place to control development of structures in a seismically active region, and the incorporation of project-specific design recommendations into project plans, the currently proposed project's impact due to exposure to seismically induced groundshaking, and seismic-related ground failure would be less than significant.</p> <p>Grading and excavation would expose soil to erosional processes and could result in the loss of topsoil during construction. As part of the project, a site-specific Stormwater Pollution Prevention Plan (mitigation measure PROJECT MM4.5-2), which is part of the NPDES Municipal General Permit, would be prepared. Implementation of Best Management Practices during construction activities as required by the NPDES permit would reduce the potential for soil erosion or the loss of topsoil. Unstable soil conditions would be addressed through compliance with the Grading and Excavation Code and incorporation of the recommendations of the project-specific Geotechnical Engineering Feasibility Report into the currently proposed project's final grading plan, as required by mitigation measure BECSP MM4.5-1. Compliance with applicable requirements would ensure that this impact remain less than significant.</p>	<p>Finding 1. The City finds that the identified changes or alterations in the currently proposed project, which would reduce Impact III (b) to less-than-significant levels, are hereby incorporated into the currently proposed project. No additional mitigation measures are necessary with the implementation mitigation measure BECSP MM4.5-1.</p>
<p>Impact III (c) The currently proposed project could be located on a geologic unit that would become unstable as a result of the project and potentially result in on or off-site landslide, lateral spreading, subsidence, liquefaction or collapse. However, with compliance with slope and soil stability standards required by the City of Huntington Beach General Plan, Building Code, and Grading and Excavation Code, as well as implementation of code requirements and mitigation measures, this impact is considered less than significant.</p>	<p>According to the Preliminary Geotechnical Evaluation, the groundwater at the site ranges from approximately 30 to 59 feet below existing grades, which is consistent with the historical ground water data for the project that indicates groundwater depths in excess of 30 feet. Based on this depth to groundwater, the Preliminary Geotechnical Evaluation concluded that ground water is not likely to be encountered during foundation construction; however, higher localized and seasonal perched ground water conditions may accumulate below the surface depending on numerous factors including seasonal rainfall, local irrigation, and ground water pumping, among others. Due to the potential for shallow groundwater, dewatering activities could be needed during the excavation (grading and shoring) and subgrade construction (for building foundation) stages of construction. Temporary shoring, dewatering wells, storage tanks, filters, and erosion control measures would be required to comply with the City's Grading Manual (Chapter 17.05.030 of the Huntington Beach Municipal Code). Dewatering activities would be required in order to comply with the NPDES Permit for Groundwater Discharge from the Santa Ana Regional Water Quality Control Board. Additionally, the currently proposed project would be designed according to the recommendations of the project-specific</p>	<p>Finding 1. The City finds that the identified changes or alterations in the currently proposed project, which would reduce Impact III (c) to a less-than-significant level, are hereby incorporated into the currently proposed project. No additional mitigation measures are necessary with the implementation of code requirement BECSP CR4.5-1 and mitigation measure BECSP MM4.5-1.</p>

**Table 1 CEQA Findings for the Beach and Ellis Mixed Use Project Environmental Assessment**

Impact Statement	Impact Summary	Findings
<p>Geotechnical Report, required by code requirement BECSP CR4.5-1. The currently proposed project would be designed, constructed, and operated in conformance with Section 1802.2.1 (Questionable Soils) of the City's Municipal Code and Title 17 Excavation and Grading Code.</p>	<p>The currently proposed project site is identified as having a very low potential for liquefaction to occur. In the event that liquefaction does occur, the primary effect is expected to be ground surface settlement due to the consolidation of the liquefied material. Settlement could also be caused by loads generated by large earthmoving equipment or occur as a result of the placement of new fill or structural loads above the existing grade. Potential impacts associated with settlement would be addressed through the incorporation of specific engineering recommendations to be included in the final soils and geology report prepared for the currently proposed project, as required by code requirement BECSP CR4.5-1, and included in the currently proposed project's final grading plans consistent with mitigation measure BECSP MM4.5-1. Additionally, the currently proposed structures would be designed, constructed, and operated in conformance with Section 1802.2.1 (Questionable Soils) of the 2010 CBC and Title 17 Excavation and Grading Code. As such, the currently proposed project would not be located on an unstable geologic unit or soil that could become unstable. Therefore, would be a less than significant impact.</p>	<p>Finding 1. The City finds that the identified changes or alterations in the currently proposed project, which would reduce Impact III (d) to a less-than-significant level, are hereby incorporated into the currently proposed project. No additional mitigation measures are necessary with the implementation of code requirement BECSP CR4.5-1 and mitigation measure BECSP MM4.5-1.</p>
<p>Impact III (d) The currently proposed project site is identified as having a "low to moderate" potential for expansive soils. However, with compliance with soil stability standards required by the City of Huntington Beach General Plan, Building Code, and Grading and Excavation Code, and implementation of code requirements and mitigation measures, this impact is considered less than significant.</p>	<p>The currently proposed project site is identified as having a "low to moderate" potential for expansive soils on the Expansive Soils Distribution map, Figure EH-12 of the Huntington Beach General Plan Environmental Hazards Element. Risks associated with expansive soil are addressed through adherence to Section 1802.2.1 (Questionable Soils) from the 2010 CBC and Title 17 (Excavation and Grading Code), as well the incorporation of recommendations of the final soils and geology study, as required by code requirement BECSP CR4.5-1 into the currently proposed project's grading plans (Mitigation Measure BECSP MM4.5-1). As such, potential risks to life and property associated with expansive soils would be less than significant.</p>	<p>Finding 1. The City finds that the identified changes or alterations in the currently proposed project, which would reduce Impact IX (b) to a less-than-significant level, are hereby incorporated into the currently proposed project. No additional mitigation measures are necessary with the implementation of mitigation measures BECSP MM4.6-1, BECSP MM4.6-2, and BECSP MM4.6-3.</p>
<p><b>Hazards and Hazardous Materials</b></p> <p>Impact IX (b) Implementation of the currently proposed project could create a potential significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment. However, with compliance with existing regulations and implementation of mitigation measures, this impact</p>	<p>In order to address the potential for encountering contamination within the project area, a Phase I ESA report and a Phase II investigation report were prepared, as required by mitigation measure BECSP MM4.6-1, to investigate potential contamination and require remediation if necessary, prior to issuance of any occupancy permits. The Phase I, completed in January 2007 by SCS, revealed that the active gas station is a LUST site with ongoing remediation of soil and quarterly groundwater monitoring under the oversight of the SARWQCB and OCHCA. To remediate any existing conditions at the project site various work plans have been submitted to and were approved by OCHCA.</p>	<p>Finding 1. The City finds that the identified changes or alterations in the currently proposed project, which would reduce Impact IX (b) to less-than-significant levels, are hereby incorporated into the currently proposed project. No additional mitigation measures are necessary with the implementation of mitigation measures BECSP MM4.6-1, BECSP MM4.6-2, and BECSP MM4.6-3.</p>

**Table 1 CEQA Findings for the Beach and Ellis Mixed Use Project Environmental Assessment**

Impact Statement	Impact Summary	Findings
<p>is considered less than significant.</p>	<p>These work plans include an Additional Site Assessment to address potential soil and groundwater contamination, separate phase hydrocarbon removal, soil vapor survey, and the installation of a "deep zone" groundwater monitoring well. Remediation efforts would continue with implementation of the proposed project for an indeterminate time. As part of the proposed project, existing monitoring equipment that is currently located outside will be relocated within the proposed parking garage to allow for testing and treatment of the aquifer. Identification and remediation of known contamination on the project site was required by the previously certified EIR and is also required for the proposed project. Mitigation measures to be implemented include BECSP MM4.6-1 and BECSP MM4.6-2, which requires the preparation and implementation of a Risk Management Plan in the event that unknown or unidentified soil and/or groundwater is encountered would minimize the potential risk of contamination created by implementation of the proposed project.</p> <p>The currently proposed project site is located within a Methane Overlay District and is therefore subject to mitigation measure BECSP MM4.6-3, which requires the project to comply with HBFD City Specification No. 429, Methane District Building Permit Requirement prior to issuance of a grading permit. Specifically, the Applicant would be required to submit a plan for the testing of soils for the presence of methane gas to determine if a problem exists and to rule methane out as a potential concern to the HBFD prior to commencement of sampling. In the event that methane gas is discovered, appropriate measures to reduce the potential impacts of methane gas to future occupants and visitors of the project site would be required as per City Specification No. 429 (Methane District Building Permit Requirements) and mitigation measures BECSP MM4.6-3. Implementation of mitigation measure BECSP MM4.6-3 would reduce any impacts associated with methane gas by ensuring that appropriate testing and methods of gas detection are implemented at the project site, as required by the HBFD. As such, the potential impacts associated with methane gas would be reduced to a less than significant level.</p>	<p>3.</p>
<p>Impact IX (g) The currently proposed project could impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan. However, with implementation of mitigation measures, this impact is considered less than significant.</p>	<p>Temporary short-term construction impacts on street traffic adjacent to the project site due to roadway and infrastructure improvements and the potential extension of construction activities into the right-of-way could result in a reduction of the number of lanes or temporary closure of segments of Beach Boulevard or Ellis Avenue. Similar to the analysis in the previously certified EIR, any such impacts would be limited to the construction period of the project and would affect only adjacent streets or intersections. However, mitigation measure BECSP MM4.6-4 would ensure that emergency response teams for the City of Huntington Beach, including HBFD and Huntington Beach Police Department (HBPD) would be notified of any lane closures during construction activities on the project site and that a minimum one lane would remain open at all times to provide adequate emergency access to the site and surrounding neighborhoods. Implementation</p>	<p>Finding 1. The City finds that the identified changes or alterations in the currently proposed project, which would reduce Impact IX (g) to less-than-significant levels, are hereby incorporated into the currently proposed project. No additional mitigation measures are necessary with the implementation of mitigation measures BECSP MM4.6-4.</p>

**Table 1 CEQA Findings for the Beach and Hills Mixed Use Project Environmental Assessment.**

Impact Statement	Impact Summary	Findings
<p><b>Hydrology and Water Quality</b></p> <p><b>Impact IV (a)</b> Implementation of the currently proposed project could violate water quality standards or waste discharge requirements. However, with implementation of mitigation measures, this impact is considered less than significant.</p>	<p>of mitigation measure BECSP MM4.6-4 would ensure that proposed development would provide adequate access for emergency vehicles, and the proposed project would result in a less than significant impact.</p> <p>The currently proposed project would be subject to all existing regulations associated with the protection of water quality. The applicable waste discharge requirements (WDRs), the NPDES General Permit for construction activities, De Minimus Threat General Permit, and Municipal NPDES Permit are considered protective of water quality during construction and would, therefore, prevent a substantial violation of water quality standards and minimize the potential for contributing additional sources of polluted runoff during construction of the proposed project. These existing regulations, programs, and policies would ensure that the potential for discharge of polluted stormwater from construction sites to affect beneficial uses of receiving waters and water quality standards, where applicable, would not be substantial. Implementation of existing regulatory requirements would ensure that on-site erosion and siltation are minimized and that construction of the proposed project would not result in the exceedance of water quality standards. Compliance with the existing regulatory requirements described above, as well as implementation of mitigation measure BECSP MM4.7-1, would ensure that construction and operation of the proposed project would not result in the violation of water quality standards. This impact would be less than significant.</p>	<p>Finding 1. The City finds that the identified changes or alterations in the currently proposed project, which would reduce Impact IV (a) to less-than-significant levels, are hereby incorporated into the currently proposed project. No additional mitigation measures are necessary with the implementation of mitigation measure MM4.7-1.</p>
<p><b>Impact IV (b)</b> Implementation of the currently proposed project could substantially deplete groundwater supplies or interfere substantially with groundwater recharge. However, with implementation of mitigation measures, this impact is considered less than significant.</p>	<p>According to the Preliminary WQMP prepared for the currently proposed project site, the depth to groundwater at the site ranges from between 30 to 60 feet below the existing grade. In the event that permanent dewatering activities are necessary on the project site, the proposed project would require coverage under the De Minimus Threat General Permit or an individual WDR/ NPDES Permit, and consequently would be subject to discharge quantity limitations, groundwater dewatering, and surface drainage. Additionally, as required by mitigation measure BECSP MM4.7-2, a Hydrology Study was prepared for the currently proposed project which includes recommended BMPs. Treatment control water quality BMPs (CDS units and Contech StormFilter) will pre-treat/treat urbanized runoff from the project site and protect local water resources to the maximum extent practicable. Volume-based BMPs are designed to capture and treat what is usually described as the "first flush" of runoff from a storm event. Volume-based BMPs include extended detention basins, wet detention basins, retention/infiltration systems and water quality treatment wetlands. The water quality capture volume may be included as part of the configuration of the detention basins (for example, in a forebay), or as a stand-alone water quality basin. Implementation of BMPs and compliance with existing regulatory requirements would ensure that permanent groundwater dewatering does not cause or contribute to a lowering of the local groundwater table that would affect</p>	<p>Finding 1. The City finds that the identified changes or alterations in the currently proposed project, which would reduce Impact IV (b) to less-than-significant levels, are hereby incorporated into the currently proposed project. No additional mitigation measures are necessary with the implementation of BMPs and mitigation measure BECSP MM4.7-2.</p>

**Table 1 CEQA Findings for the Beech and Ellis Mixed Use Project Environmental Assessment**

Impact Statement	Impact Summary	Findings
<p>Impact IV (c&amp;d) Implementation of the currently proposed project could substantially alter the existing drainage pattern of the site or area or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on or off-site. However, with implementation of mitigation measures, this impact is considered less than significant.</p>	<p>nearby water supply wells, such that impacts would be less than significant. Although the project site is not a designated groundwater recharge area, as described under the Drainage and Downstream Conditions heading, runoff from the project site ultimately drains into Sully-Miller Lake, which has no discharge except for groundwater recharge. Therefore, the runoff from the project site would continue to contribute to groundwater recharge and would not affect City groundwater wells, resulting in a less than significant impact.</p> <p>Implementation of the currently proposed project would not alter the existing drainage pattern of streams or rivers and would not result in off-site erosion hazards. The project site is located within an entirely urbanized area and would discharge to the City streets, underground storm drain systems, and ultimately to Huntington Harbor. The project site is currently approximately 95 percent impervious. With implementation of the currently proposed project, the amount of impervious surface area will remain similar to existing conditions, but would yield increased runoff compared to the existing condition of a 25-year storm event. However, incorporation of on-site attenuation and detention system into project design, as recommended in the Hydrology Study and described in the WCMP prepared for the project site, would mitigate the increased runoff and subsequently the proposed site runoff will conform to the current capacity of the existing downstream storm drain system and would not result in flooding or erosion. To ensure that runoff from the site derived from the site does not result in flooding or erosion, mitigation measure BECSP MM4.7-4 would be implemented, which requires adequate storm drain capacity to be demonstrated and if capacity is not sufficient, corrective action would be taken, so as to avoid off-site flooding or erosion. Accordingly, this impact is considered less than significant.</p>	<p>Finding 1. The City finds that the identified changes or alterations in the currently proposed project, which would reduce Impact IV (c&amp;d) to less-than-significant levels, are hereby incorporated into the currently proposed project. No additional mitigation measures are necessary with the implementation of mitigation measure MM4.7-4.</p>
<p>Impact IV (e&amp;f) Implementation of the currently proposed project could create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff or otherwise substantially degrade water quality. However, with implementation of mitigation measures, this impact is considered less than significant.</p>	<p>According to the BECSP EIR, the storm drain system serving the project site is currently constrained for build out of the City's General Plan and may be constrained for existing conditions. As such, the BECSP EIR concluded that future development in the vicinity of the project site would have potentially significant impacts on both existing and planned storm drain systems. To address this, implementation of modified mitigation measures BECSP MM4.7-3 and BECSP MM4.7-4 is required to assess the contribution of a project to potential system capacity constraints and provide for construction of necessary upgrades such that potential impacts to storm drain system capacities would not be substantial. As required by modified BECSP MM4.7-3, a site specific Hydrology Study was prepared to identify the potential effects of stormwater runoff from the site on the existing storm drain system and provides for site drainage design so as to not increase peak storm event flows over existing conditions for the design storm events. Additionally, BECSP MM4.7-4 requires that adequate capacity in the storm drain system is demonstrated to accommodate discharge from the proposed project. According to the</p>	<p>Finding 1. The City finds that the identified changes or alterations in the currently proposed project, which would reduce Impact IV (e&amp;f) to less-than-significant levels, are hereby incorporated into the currently proposed project. No additional mitigation measures are necessary with the implementation of mitigation measures MM4.7-1, BECSP MM4.7-3, and BECSP 4.7-4.</p>

**Table 1 CEQA Findings for the Beach and Ells Mixed Use Project Environmental Assessment**

Impact Statement	Impact Summary	Findings
<p><b>Noise</b></p> <p><b>Impact X (a)</b> Implementation of the currently proposed project could generate noise levels in excess of standards established by the City. However, with implementation of mitigation measures, this impact is considered less than significant.</p>	<p>Preliminary Hydrology Study, implementation will maintain a similar amount of impervious area as compared to existing site condition but would yield an increased runoff compared to the existing condition of a 25-year storm event. However, incorporation of on-site attenuation and detention system into project design, as described above and as recommended in the Hydrology Study, would mitigate the increased runoff and subsequently the proposed site runoff will conform to the current capacity of the existing downstream storm drain system. Implementation of treatment control water quality BMPs will pre-treat/treat urbanized runoff from the project site and minimize the project's pollution impact to levels acceptable to the state and local jurisdictions.</p> <p>With implementation of mitigation measure BECSP MM4.7-1, which requires the submittal and approval of a site-specific WQMP prior to issuance of a Precise Grading or Building Permit, project site drainage will be designed so as not to violate any water quality standards or waste discharge requirements, or otherwise degrade water quality. Implementation of modified mitigation measures BECSP MM4.7-3 and BECSP MM4.7-4 would ensure that the proposed project would not increase peak storm event flows over existing conditions and storm drain capacity is not exceeded as a result of the proposed project. As such, the proposed project would result in less than significant impacts relating to water quality, drainage, and runoff and would not result in any new significant environmental effects or substantial increases in the severity of previously identified significant effects related to water quality, drainage, or runoff.</p>	<p>Finding 1. The City finds that the identified changes or alterations in the currently proposed project, which would reduce Impact X (a) to less-than-significant levels, are hereby incorporated into the currently proposed project. No additional mitigation measures are necessary with the implementation of mitigation measures BECSP MM4.9-1 through BECSP MM4.9-3 (construction) and mitigation measures BECSP MM4.9-4 and BECSP MM4.9-5 (operational).</p>
<p><b>Impact X (a)</b> Implementation of the currently proposed project could generate noise levels in excess of standards established by the City. However, with implementation of mitigation measures, this impact is considered less than significant.</p>	<p>Demolition of all existing structures and construction of new mixed uses would occur with the currently proposed project. As analyzed in the certified EIR, the closest noise sensitive receptors to the project site would be the uses located immediately east of the site along Ellis Avenue and the residential uses located to the north of the project site across from Ellis Avenue. These residential uses are approximately 75 feet from the project site. Construction activity noise levels at these residential uses would be approximately 83 dBA during the excavation/grading and external finishing phases of the currently proposed project. While construction noise could be a nuisance to nearby sensitive uses, compliance with the City's Noise Ordinance would ensure that construction noise impacts remain less than significant. Implementation of identified mitigation measures BECSP MM4.9-1 through BECSP MM4.9-3 would reduce temporary construction noise impacts, and construction-related noise would be less than significant. Operational noise sources could include such stationary sources as rooftop HVAC systems which could result in noise levels that average between 50 and 65 dBA <math>L_{eq}</math> at 50 feet from the equipment. Implementation of mitigation measure MM4.9-4 would reduce this impact to a less-than-significant level. Additionally, the proposed project would introduce new noise activity in the area as residences are constructed and people</p>	<p>Finding 1. The City finds that the identified changes or alterations in the currently proposed project, which would reduce Impact X (a) to less-than-significant levels, are hereby incorporated into the currently proposed project. No additional mitigation measures are necessary with the implementation of mitigation measures BECSP MM4.9-1 through BECSP MM4.9-3 (construction) and mitigation measures BECSP MM4.9-4 and BECSP MM4.9-5 (operational).</p>

**CEQA Findings for the Beech and Ellis Mixed Use Project Environmental Assessment**

Impact Statement	Impact Summary	Findings
<p><b>Impact X (c)</b> The currently proposed project could cause a substantial permanent increase in ambient noise levels. With implementation of mitigation measures, this impact is considered <i>less than significant</i>.</p>	<p>are attracted to the new mix of uses. Implementation of mitigation measure MM4.9-5 would require an acoustical analysis of all new residences to ensure that noise levels in livable areas do not exceed established City criteria.</p> <p>There would be operational noise impacts generated by residential uses such as mechanical equipment (HVAC). Installation of shielding around HVAC systems would be required by mitigation measure BECSP MM4.9-4, which would further reduce HVAC noise levels. Mitigation measure BECSP MM4.9-5 would ensure that exterior living spaces, such as patios, are constructed in a manner so that noise levels, including noise from the occasional retail delivery, do not exceed the City's noise standards. The currently proposed project would result in an intensification of human activity at the proposed project site with the introduction of a permanent, residential population. This could increase noise levels at the identified off-site residential receptors. Similar to the project and Alternative 3, once operational, noise levels from residential and retail activities on the project site are not anticipated to be greater than the established 55 dBA limit for residential zones. With implementation of mitigation measures BECSP MM4.9-4 and BECSP MM4.9-5, operational noise would remain less than significant.</p>	<p>Finding 1. The City finds that the identified changes or alterations in the currently proposed project, which would reduce Impact X (c) to less-than-significant levels, are hereby incorporated into the currently proposed project. No additional mitigation measures are necessary with the implementation of mitigation measures BECSP MM4.9-4 and BECSP MM4.9-5.</p>
<p><b>Impact X (d)</b> Implementation of the currently proposed project could result in a substantial temporary or periodic increase in ambient noise levels. However, with implementation of mitigation measures, these impacts are considered <i>less than significant</i>.</p>	<p>Construction activities would represent a substantial temporary or periodic increase in ambient noise levels. As analyzed in the certified EIR, construction activities could reach 83 dBA at 50 feet. As such, the noise generated by construction activities for the currently proposed project could result in a temporary increase in ambient noise levels of over 3 dBA at uses adjacent to the project site. However, the construction activities would only occur during the permitted hours designated in the City of Huntington Beach Municipal Code, and thus would not occur during recognized sleep hours for residences or on days that residents are most sensitive to exterior noise (Sundays and holidays). As such, while an increase in ambient noise levels could occur from the construction activities associated with the currently proposed project, an adverse effect on the nearby residents would not occur because construction noise is not restricted pursuant to the Municipal Code as long as it occurs during permitted hours. Implementation of mitigation measures BECSP MM4.9-1 through BECSP MM4.9-3 would further reduce this impact to less than significant. In addition, similar to the project analyzed in the certified EIR, there would be no temporary or periodic noise increases to on- or off-site receptors due to operation of the proposed project.</p>	<p>Finding 1. The City finds that the identified changes or alterations in the currently proposed project, which would reduce Impact X (d) to less-than-significant levels, are hereby incorporated into the currently proposed project. No additional mitigation measures are necessary with the implementation of mitigation measures BECSP MM4.9-1 through BECSP MM4.9-3.</p>
<p><b>Public Services</b></p>		
<p><b>Impact XI (a)</b> Implementation of the currently proposed project would increase the demand for fire protection services. With implementation of mitigation measures, this impact is considered less than significant.</p>	<p>Development of 274 residential units would result in a new residential population of approximately 732 persons at the site. All development plans prepared for the currently proposed project would be reviewed by the Huntington Beach Fire Department prior to construction to ensure that adequate fire flows would be maintained. Compliance with all</p>	<p>Finding 1. The City finds that the identified changes or alterations in the currently proposed project, which would reduce Impact XI (a) to less-than-significant levels, are hereby incorporated</p>

**Table 1 CEQA Findings for the Beach and Ellis Mixed Use Project Environmental Assessment**

Impact Statement	Impact Summary	Findings
<p>than significant.</p>	<p>required policies, rules, and regulations would ensure that the currently proposed project would not require any new or physically altered fire facilities to maintain adequate response times and staffing, the construction of which could result in significant environmental impacts. In addition, implementation of mitigation measure BECSP MM4.11-1 would ensure that the HBFD receives adequate staffing and/or equipment to maintain acceptable levels of service.</p>	<p>into the currently project. No additional mitigation measures are necessary with the implementation of mitigation measure BECSP MM4.11-1.</p>
<p>Impact XI (b) Implementation of the currently proposed project would increase the demand for police protection services. With implementation of mitigation measures, this impact is considered less than significant.</p>	<p>The Huntington Beach Police Department has 235 sworn officers and currently employs a total of 215 sworn officers, currently protecting 203,484 residents in the City. The currently proposed project could result in up to 732 new residents. As analyzed in the certified EIR, and using the worst-case population increase scenario, the additional 732 residents generated by the currently proposed project is not expected to notably affect Huntington Beach Police Department resources given that general fund monies from increased property tax revenue associated with development as well as other fee revenues (i.e., building permit fees) may be used to augment equipment levels. Further, implementation of mitigation measure BECSP MM4.11-1 would ensure that adequate staffing levels are maintained. Therefore, persons on site or elsewhere in the City would not be exposed to increased risks as a result of the currently proposed project.</p>	<p>Finding 1. The City finds that the identified changes or alterations in the currently proposed project, which would reduce Impact XI (b) to less-than-significant levels, are hereby incorporated into the currently project. No additional mitigation measures are necessary with the implementation of mitigation measure BECSP MM4.11-1.</p>
<p><b>Transportation/Traffic</b></p> <p>Impact VI (a) The currently proposed project could conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system. With implementation of mitigation measures, this impact is considered less than significant.</p>	<p>All study intersections would operate at an acceptable LOS in 2030 with the BECSP build out with the exception of Beach Boulevard and Talbert Avenue, which would operate with a PM deficiency (LOS E). Because the reduction in ADT with the proposed project is too small to result in a change, the anticipated LOS at these intersections would not change. Therefore, although the currently proposed project would result in an increase in outbound vehicle trips in the AM peak hour, the proposed project would not contribute to the existing deficiency at the intersection of Beach Boulevard and Talbert Avenue as it would not contribute to vehicle trips during the PM peak hour. Regardless, the currently proposed project would be required to make a fair share contribution to the traffic improvements identified in mitigation measures BECSP MM4.13-13 and BECSP MM4.13-14 for the Beach Boulevard and Talbert Avenue intersection as part of the overall BECSP development. As such, the currently proposed project would not conflict with the City's acceptable LOS standard and a less than significant impact would occur.</p> <p>The currently proposed project would be required to implement mitigation measures BECSP MM4.2-8 through BECSP MM4.2-10 which would ensure that construction traffic does not block the free flow of traffic. The currently proposed project would also be required to submit a traffic control plan during construction to ensure appropriate emergency access during construction. Accordingly, the proposed project would result in less than significant construction-related traffic impacts.</p>	<p>Finding 1. The City finds that the identified changes or alterations in the currently proposed project, which would reduce Impact VI (a) to less-than-significant levels, are hereby incorporated into the currently project. No additional mitigation measures are necessary with the implementation of mitigation measures BECSP MM4.2-8 through BECSP MM4.2-10, BECSP MM4.13-13, and BECSP MM4.13-14.</p>

**Table 1 CEQA Findings for the Beach and Ellis Mixed Use Project Environmental Assessment**

Impact Statement	Impact Summary	Findings
<p><b>Cumulative Traffic</b></p>	<p>Development of the currently proposed project would result in following traffic related cumulative impacts under 2030 conditions. Operation of the currently proposed project would cumulatively contribute to an unacceptable Level of Service at two City intersections: Brookhurst Street at Adams Avenue and Beach Boulevard at Bolsa Avenue. Even with implementation of mitigation measures BECSP MM4.13-3 through BECSP MM4.13-9 and BECSP MM4.13-12, the Brookhurst Street at Adams Avenue intersection would remain at LOS E in the AM peak hour and the Beach Boulevard at Bolsa Avenue intersection would remain at LOS F in the PM peak hour. At both of these intersections, with the incorporation of mitigation measures, the impact to the intersection would be mitigated to a less than significant level, even though the LOS would not be considered acceptable. However, while these intersections are located within the cumulative study area of the BECSP, they are outside City jurisdiction to ensure mitigation completion. Therefore, the impact would be potentially significant.</p> <p>Operation of the currently proposed project would cumulatively contribute to an increase in delay at two Caltrans intersections and would increase traffic to the I-405 northbound loop ramp, which is currently deficient. The BECSP area would contribute traffic to the I-405 northbound loop ramp from Beach Boulevard, as well as the regional freeway system, which are both projected to have deficiencies in 2030. For a deficient Caltrans intersection, any increase in delay due to the project is considered a significant impact. The 2030 results show two locations in the BECSP area with impacts, both of which were identified in the intersection capacity utilization analysis as part of the BECSP environmental analysis: Beach Boulevard at Warner Avenue and Beach Boulevard at Garfield Avenue. Therefore, the currently proposed project would contribute to a deficient system for which there is no feasible mitigation to reduce impacts. Further, as these are under Caltrans jurisdiction, the City does not have jurisdiction to ensure mitigation completion. Therefore, the impact would be potentially significant.</p>	<p>Finding 2. The City finds changes or alterations that could reduce the potential impact of the currently proposed project are within the responsibility and jurisdiction of another public agency and not the agency making the findings.</p> <p>Finding 3. The City finds that even with implementation of all feasible mitigation measures (MM4.13-3 through MM4.13-19), the proposed project would result in a significant and unavoidable cumulative traffic impact. No additional feasible mitigation measures are available.</p>
<p><b>Utilities and Service Systems</b></p> <p><b>Impact XII (d)</b> Implementation of the currently proposed project would generate an additional demand for water. However, with the implementation of mitigation measures, this impact is considered less than significant.</p>	<p>Development of the currently proposed project would result in an increased demand for municipal water services compared to existing conditions. The City would be able to provide a reliable source of water to accommodate its existing users and the additional demand on water supplies created by the currently proposed project for the 20-year projection. The City's conservation programs coupled with increased groundwater would improve water supply reliability. In addition, implementation of mitigation measure BECSP MM4.14-1 would serve to reduce the municipal water demand from the currently proposed project. Therefore this impact would be less than significant.</p>	<p>Finding 1. The City finds that the identified changes or alterations in the currently project, which would reduce Impact XII (d) to less-than-significant levels, are hereby incorporated into the currently proposed project. No additional mitigation measures are necessary with the implementation of BECSP MM4.14-1.</p>
<p><b>Impact XII (e)</b> Implementation of the currently proposed project could require new sewer</p>	<p>The project developer would be responsible for constructing local mains and extensions to serve the currently proposed project. Prior to allowing additional connections to the</p>	<p>Finding 1. The City finds that the identified changes or alterations in the currently proposed</p>

**Table 1 CEQA Findings for the Beach and Ellis Mixed Use Project Environmental Assessment**

Impact Statement	Impact Summary	Findings
<p>connections, and could require or result in the construction of new or expanded wastewater conveyance systems. However, with implementation of code requirements and mitigation measures, this impact is considered less than significant.</p>	<p>sewer lines, the capacity of the existing sewers would need to be confirmed and a sewer study would be needed at the time of development to determine if the existing sewer lines need to be upgraded to accommodate the currently proposed project's sewer flow. The currently proposed project would be required to implement code requirements BECSP CR4.14-1 and BECSP CR4.14-2. In addition, any development connecting directly or indirectly to the OCSD sewer system is required to pay a connection fee in accordance with the OCSD Connection Fee Master Ordinance. The Connection Fee Program ensures that all users pay their fair share of any necessary expansion of the system, including expansion to wastewater treatment facilities. These fees are considered full mitigation under CEQA for potential impacts resulting from project development.</p> <p>Construction of the wastewater collection systems for the currently proposed project would adhere to existing laws and regulations, and the infrastructure would be sized appropriately for the project. Individual water and wastewater connections would occur as part of the currently proposed project. In addition, code requirements BECSP CR4.14-1 and BECSP CR4.14-2 would ensure that proper sewer connections are provided for at the project site. Therefore, this impact is considered less than significant.</p>	<p>project, which would reduce Impact XII (e) to less-than-significant levels, are hereby incorporated into the currently proposed project. No additional measures are necessary with the implementation of code requirements BECSP CR4.14-1 and BECSP CR4.14-2.</p>
<p><b>Greenhouse Gas Emissions</b></p> <p><b>Impact XVII (a)</b> Implementation of the currently proposed project could generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment. However, with implementation of mitigation measures, this impact is considered less than significant.</p>	<p>Construction of the currently proposed project would result in GHG emissions due to the operation of heavy construction equipment, worker commute trips, and building supply vendor vehicles. In addition, operation of the currently proposed project would result in GHG emissions as a result of direct sources such as motor vehicles, natural gas consumption, solid waste handling/treatment, and indirect sources such as electricity generation.</p> <p>Implementation of mitigation measures BECSP MM4.15-1 through BECSP MM4.15-9, which are consistent with strategies recommended by the CCAT, CAPCOA, and the California Attorney General, would reduce impacts associated with GHG emissions of the proposed project to less than significant levels.</p>	<p>Finding 1. The City finds that the identified changes or alterations in the currently proposed project, which would reduce Impact XVII (a) to less-than-significant levels, are hereby incorporated into the currently proposed project. No additional measures are necessary with the implementation of mitigation measures BECSP MM4.15-1 through BECSP MM4.15-9 as well as compliance with guidance provided by the CCAT, CAPCOA and the California Attorney General.</p>