

**Exhibit 10 - Response to Appeal Comments**  
**Appeal Application Nos. 2023-02 and 2023-03 for Cabrillo Town Center project**  
**(1901 E. Fourth Street)**

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***1. Response to Supporters Alliance for Environmental Responsibility***  
***(SAFER) Letter dated April 24, 2023***

*Appeal Application No. 2023-02 (SAFER)*

Pursuant to Section 41-645 of the SAMC, the appellant is requesting that the City Council overturn the Planning Commission's decision approving SPR No. 2023-01 and TTM No. 2023-03 based on compliance with the California Environmental Quality Act (CEQA). Specifically, the appellant states that: (1) The decision of the Planning Commission was in "violation" of CEQA; (2) The City's determination that the Project was analyzed in the 2010 Metro East Mixed Used (MEMU) Overlay Zone EIR and Subsequent EIR was incorrect; (3) The Project would have new and different significant environmental impacts that were not analyzed in the MEMU EIR; and (4) That a project-specific EIR should have been prepared to analyze the Project.

Staff notes that the appellant does not provide any substantial evidence that the Project would result in any new or more significant impacts than analyzed in the Certified EIR or that new mitigation is required. Moreover, the appellant does not provide information as to why they believe a project-specific EIR should have been prepared, or what new and different significant environmental impacts would result from the Project that have not already been analyzed in the EIR and Subsequent EIR. Nevertheless, a comprehensive response on the appeal items previously outlined has been prepared.

California Environmental Quality Act (CEQA) Compliance

Pursuant to Public Resources Code Section 21166 and Sections 15162 and 15168 of the CEQA guidelines, staff deemed that the Project is within the scope of the 2007 Metro East Mixed-Use Overlay Zone Environmental Impact Report (EIR), hereinafter referred to as "Certified EIR." Per Public Resources Code Section 21166 and Section 15162 (a), when an EIR has been certified, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole records, one or more of the following:

1. Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
2. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

**Exhibit 10 - Response to Appeal Comments**  
**Appeal Application Nos. 2023-02 and 2023-03 for Cabrillo Town Center project**  
**(1901 E. Fourth Street)**

---

3. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
  - A. The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
  - B. Significant effects previously examined will be substantially more severe than shown in the previous EIR;
  - C. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
  - D. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

CEQA Guidelines Section 15168(c) sets forth criteria to use a program EIR for “later activities.” Specifically, CEQA Guidelines Section 15168(c) states the following:

- c) Use with Later Activities. Later activities in the program must be examined in the light of the program EIR to determine whether an additional environmental document must be prepared.
  - 1) If a later activity would have effects that were not examined in the program EIR, a new Initial Study would need to be prepared leading to either an EIR or a Negative Declaration. That later analysis may tier from the program EIR as provided in Section 15152.
  - 2) If the agency finds that pursuant to Section 15162, no subsequent EIR would be required, the agency can approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document would be required. Whether a later activity is within the scope of a program EIR is a factual question that the lead agency determines based on substantial evidence in the record. Factors that an agency may consider in making that determination include, but are not limited to, consistency of the later activity with the type of allowable land use, overall planned density and building intensity, geographic area analyzed for environmental impacts, and covered infrastructure, as described in the program EIR.
  - 3) An agency shall incorporate feasible mitigation measures and alternatives developed in the program EIR into later activities in the program.

**Exhibit 10 - Response to Appeal Comments**  
**Appeal Application Nos. 2023-02 and 2023-03 for Cabrillo Town Center project**  
**(1901 E. Fourth Street)**

---

- 4) Where the later activities involve site-specific operations, the agency should use a written checklist or similar device to document the evaluation of the site and the activity to determine whether the environmental effects of the operation were within the scope of the program EIR.

Based on staff's analysis, the Certified EIR meets the definition under Guidelines Section 15168(a) because the Certified EIR analyzed the potential impacts associated with the MEMU Overlay Zone, which is a generally applicable plan containing rules, regulations and other general criteria governing a specified geographically contained area. The Certified EIR fully analyzed the potential environmental effects associated with the City's adoption of the MEMU and subsequent foreseeable development within the MEMU. As discussed below, the Project is fully consistent with the MEMU Overlay Zone and within the scope of the Certified EIR.

The Project Site is located in the Village Center District of the MEMU. Uses allowed in the Village Center District include a mix of commercial, office, and residential in mid-rise buildings of between 4 and 10 stories in a setting that provides open spaces, niches, and areas for gatherings and activities along streets, paseos, and interconnecting walkways that link the Village Center to adjacent districts and nearby public parks north of the Village Center District. The Project conforms to this description by including development of the Project Site with a mixed-use development including up to 507 residential dwelling units (including apartments, live/work units, and townhomes), approximately 26,800 square feet of commercial uses, and associated parking, utility infrastructure, landscaping, and open space in accordance with the Development Standards outlined in Table 1 in the Project Description of the Draft EIR portion of the Certified EIR.

As described in the Project Description section of this staff report, the Project Site would be separated into two distinct areas by a roadway (Parkcourt Place), which would traverse the site east/west. The northern portion of the Project Site would be developed with 58 townhomes and the southern portion would be developed with a five-story mixed-use building with 449 apartment units and 26,800 square feet of ground-floor commercial uses, which could include retail, office, and shopkeeper, surrounded by a central open space area and a pedestrian infrastructure to connect the Project to adjacent land uses. Therefore, the Project would be consistent with the allowable development under the MEMU. Finally, all applicable mitigation measures from the Certified EIR would be implemented by the Project, and each of the applicable mitigation measures would also be made conditions of approval for the Project.

Therefore, pursuant to Public Resources Code Section 21166 and CEQA Guidelines Section 15162, there are no substantial changes to the circumstances under which the Project would be undertaken that would result in new or more severe significant impacts, and there is no new information of substantial importance that has become available that would result in new or more severe significant impacts. Moreover, no subsequent EIR would be required for the Project. Based on the analysis herein and the Certified EIR and

**Exhibit 10 - Response to Appeal Comments**  
**Appeal Application Nos. 2023-02 and 2023-03 for Cabrillo Town Center project**  
**(1901 E. Fourth Street)**

---

the whole of the record, under CEQA Guidelines Section 15168, the Certified EIR adequately described the Project activity for purposes of CEQA.

**2. Response to Southwest Mountain States Carpenters (SWMSRCC) Letter dated May 3, 2023**

*Appeal Application No. 2023-03 (SWMSRCC)*

Pursuant to Section 41-645(a) of the SAMC, this appellant is requesting that the City Council overturn the Planning Commission's decision approving SPR No. 2023-01 and TTM No. 2023-03 and provides four main reasons to substantiate the request, including: (1) Requirement of a local workforce; (2) Training requirements to prevent community spread of Covid-19 and other infectious diseases; (3) CEQA compliance; and (4) Inconsistency with the City's General Plan.

I. Requirement of a Local Workforce

*The appellant states that, "The city should require the use of a local workforce to benefit the community's economic development and environment."*

**Summary of Appeal Reasoning:** The appellant contends that the City should require that Project to be built using local workers who have graduated from a Joint Labor-Management Apprenticeship Program approved by the State of California. Moreover, the appellant states that local workforce policies and requirements benefit the local area economically and mitigate greenhouse gas, improve air quality, and reduce transportation impacts. Specifically, the appellant contends that local hire provisions requiring that a certain percentage of workers reside within 10 miles or less of the Project site can reduce the length of vendor trips, reduce greenhouse gas emissions, and provide localized economic benefits.

**Staff Response:** In April 2022, the City of Santa Ana City Council adopted an ordinance repealing and reenacting the City's inclusionary opportunity ordinance. The City's Affordable Housing Opportunity and Creation Ordinance (AHOCO) became effective in May of 2022. The ordinance provides provisions for local skilled and trained workforce requirements. Specifically, Section 41-1904 (c) of the SAMC, states that the use of a local skilled and trained workforce shall be phased in over time and shall only apply to a development project proposing twenty (20) or more lots or units opting to exercise the in-lieu fee payment option. Section 41-1904 further states that between November 16, 2021 and December 31, 2025, a project proposing twenty (20) or more lots or units exercising the option to pay the 15-dollars per square foot in-lieu fee amount shall not be required to utilize

**Exhibit 10 - Response to Appeal Comments**  
**Appeal Application Nos. 2023-02 and 2023-03 for Cabrillo Town Center project**  
**(1901 E. Fourth Street)**

---

a local skilled and trained workforce for completing the construction of the project.

As previously outlined in this report, the applicant has selected the option to satisfy the AHOCO by paying in-lieu fees in the amount of 15 dollars per square foot. Based on available figures for the project, the project will contribute an estimated \$8,043,600 in in-lieu fees, which must be spent on production of affordable housing in the City of Santa Ana (see Table 3 for the calculation methodology). Therefore, the applicant is in compliance with the AHOCO and is not required to provide local skilled and trained workforce.

Lastly, the provision of community benefits is not a requirement of CEQA. Further, the Project incorporates all applicable mitigation measures of the Certified EIR. Mitigation measures beyond those required by the Certified EIR are not required unless the Project would result in new or more severe impacts compared to those analyzed in the Certified EIR. The Project's CEQA Findings demonstrate that the Project is consistent with the MEMU and within the scope of the analysis provided in the Certified EIR.

**II. Training Requirements to Prevent Community Spread Of Covid-19 and Other Infectious Diseases**

*The appellant states that, "The City should impose training requirements for the Project's construction activities to prevent community spread of Covid-19 and other infectious diseases."*

**Summary of Appeal Reasoning:** The appellant contends that the City should require that Project to be built using a workforce trained in a rigorous Infection Control Risk Assessment ("ICRA") protocols. Moreover, the appellant contends that the City should adopt additional requirements to mitigate public health risks from the Project's construction activities such as requiring safe on-site construction work practices as well as training and certification for any construction workers on the Project Site. Specifically, the applicant contends that the City should require that all construction workers undergo COVID-19 Training and Certification before being allowed to conduct construction activities at the Project Site.

**Staff Response:** The applicant's request for the Planning Commission to mandate additional public health training is outside of the Planning Commission's purview and outside of their land use powers and duties, as outlined in Section 2-350.2 of the SAMC. Moreover, the request is well outside the scope of CEQA. The Project incorporates all applicable mitigation measures of the Certified EIR. Mitigation measures beyond those required by the Certified EIR are not required unless the Project would result in new or more severe impacts compared to those analyzed in the Certified

**Exhibit 10 - Response to Appeal Comments**  
**Appeal Application Nos. 2023-02 and 2023-03 for Cabrillo Town Center project**  
**(1901 E. Fourth Street)**

---

EIR. The Project's CEQA Findings demonstrate that the Project is consistent with the MEMU and within the scope of the analysis provided in the Certified EIR.

III. California Environmental Quality Act (CEQA) Compliance

- a. *The appellant contends that CEQA mandates preparation of an EIR for projects so that the foreseeable impacts of pursuing the project can be understood and weighed.*

**Summary of Appeal Reasoning:** The appellant contends that a subsequent EIR should have been prepared because there has been substantial changes to the MEMU, and new information of substantial importance has come out since the Certified EIR. Moreover, the appellant cites Section 15162 of the CEQA Guidelines.

**Staff Response:** Staff provides an analysis for why no subsequent EIR would be required, under the SAFER appeal analysis. To summarize, pursuant to Public Resources Code Section 21166 and CEQA Guidelines Section 15162, there are no substantial changes to the circumstances under which the Project would be undertaken that would result in new or more severe significant impacts, and there is no new information of substantial importance that has become available that would result in new or more severe significant impacts. Moreover, no subsequent EIR would be required for the Project. Based on the analysis herein and the Certified EIR and the whole of the record, under CEQA Guidelines Section 15168, the Certified EIR adequately described the Project activity for purposes of CEQA.

- b. *The appellant contends that there are new transportation impact methodology requirements, not analyzed in the Certified EIR.*

**Summary of Appeal Reasoning:** The appellant contends that the Certified EIR uses the outdated Level of Service ("LOS") methodology to analyze traffic and transportation impacts. The appellant further states that in July 2020, Senate Bill ("SB") 743 took effect in order to help reduce transportation impacts. Specifically, in an effort to reduce greenhouse gas impacts and create long term sustainability, SB 743 changed the standard for evaluating transportation impacts under CEQA from a LOS standard to Vehicle Miles Traveled ("VMT") standard. Therefore, the appellant concludes that a subsequent EIR analyzing the Project's VMT is necessary in order to adequately assess the Project's transportation impacts.

**Staff Response:** The Project CEQA Findings demonstrate that the Project's potential transportation impacts are within the scope of the

**Exhibit 10 - Response to Appeal Comments**  
**Appeal Application Nos. 2023-02 and 2023-03 for Cabrillo Town Center project**  
**(1901 E. Fourth Street)**

---

analysis of the Certified EIR, including Exhibit 9G (Project LOS Analysis) and Exhibit 9H (Project VMT Information). As discussed therein, since adoption of the Certified EIR, the LOS metric for analyzing transportation and traffic impacts under CEQA has been replaced with analysis of VMT to address consistency with CEQA Guidelines Section 15064.3(b). However, recent California case law confirms that CEQA Guidelines Section 15064.3(b) only applies prospectively to CEQA documents that have not yet been circulated for public review and not to CEQA documents that rely on previously certified EIRs that complied with applicable CEQA requirements when publicly reviewed. The court in *Olen Properties Corporation v. City of Newport Beach* (2023) 93 Cal.App.5th 270 explicitly recognizes that VMT impacts were known of and understood in 2006 when the EIR in that case was certified (the same year as the original Certified EIR for the MEMU) and therefore do not constitute new information that would trigger recirculation. Thus, a project relying on a previously certified EIR under CEQA Guidelines 15168(c) is not required to provide a VMT analysis if: (1) the previously certified EIR evaluated transportation impacts based on LOS and (2) the subsequent project is within the scope of the impacts assessed in the previously certified EIR and any applicable mitigation measures are adopted.

The Certified 2006 EIR was certified well before CEQA Guidelines Section 15064.3(b) was adopted and relies on an LOS analysis, not a VMT analysis, to analyze the MEMU's transportation impacts. However, impacts associated with VMT were known of and understood at the time the Certified EIR was certified and therefore do not constitute new information. Moreover, the CEQA findings associated with the Project will not be circulated for public review. Therefore, no VMT analysis is required to evaluate the Project's consistency with the Certified EIR and the City is evaluating such consistency based only on LOS.

Nevertheless, a VMT Screening Assessment Memorandum ("Memo") has been produced for the Project for informational purposes only, in response to this comment. The Memo presents the VMT screening criteria, analysis methodology and the conclusion. The approach and methodology outlined in this Memo was consistent with the *City of Santa Ana Traffic Impact Study Guidelines (dated September 2019)*, which states that several types of projects can be screened out from a VMT assessment using identified criteria, indicating that these projects have the potential to reduce VMT per service population and result in a less-than-significant transportation impacts. Moreover, this Memo was thoroughly peer reviewed by the City's Traffic Engineer, who concluded that the VMT memo prepared for the Project shows the project is screened out from any full VMT analysis. Further, the Traffic Engineer confirmed that the Memo shows that the project is within a HQT, and it is consistent with the SCAG RTP/SCS.

**Exhibit 10 - Response to Appeal Comments**  
**Appeal Application Nos. 2023-02 and 2023-03 for Cabrillo Town Center project**  
**(1901 E. Fourth Street)**

---

Specifically, the Memo determines that the Project would not result in VMT impacts because it is located within a HQTAs, where existing transit service provided by OCTA provides service intervals no longer than 15 minutes during the peak commute hours, and because the proposed land use was consistent with the RTP/SCS as contained in SCAG's adopted Connect SoCal (2020–2045 RTP/SCS). Therefore, in accordance with the City of Santa Ana's guidelines, the proposed Project was deemed to be exempt from the preparation of any further VMT analysis and may be presumed to have a less than significant CEQA-related transportation impact.

- c. *The appellant contends that the Project requires new feasible mitigation measures to mitigate greenhouse gas impacts.*

**Summary of Appeal Reasoning:** The appellant contends that the Project requires new feasible mitigation measures not specified in the Certified EIR, such as electric vehicle ("EV") parking and charging stations and solar system installation. The appellant further contends that these measures are of particular importance given that the Certified EIR, "failed entirely to assess greenhouse gas ("GHG") impacts." Furthermore, the appellant states that the Certified EIR fails to specify the following: 1) new requirements that residential buildings must designate 10-percent of their parking spaces as EV capable; 2) equip 25-percent of the parking spaces with low power level EV charging receptacles; and 3) and equip 5-percent of the spaces with level EV supply equipment. Finally, the appellant contends that the Certified EIR fails to include a mitigation measure requiring the installation of photovoltaic and battery system, thus a subsequent EIR should have been prepared to specify and incorporate these additional feasible mitigation measures.

**Staff Response:** The topic of GHG emissions impacts was not included in the CEQA Guidelines in place at the time the 2006 EIR was certified, and as such, was not included in the Certified EIR's analysis of the MEMU's potential impacts. However, both the existence of carbon dioxide and other greenhouse gases from fossil fuel combustion and other activities were known at the time the Certified EIR was approved. Since the approval of the Certified EIR, federal and state laws and regulations have been adopted to reduce GHG emissions, and the topic of GHG is included in the current version of the CEQA Guidelines. A detailed analysis of the Project's GHG emissions impacts is included in Exhibit 9 and 9D of this document. As summarized, the Project would not result in any significant impacts related to GHG emissions. Moreover, statutory/regulatory requirements do not need to be repeated as mitigation measures for the Project. The Project would be subject to all applicable solar photovoltaic (PV) and EV parking



**Exhibit 10 - Response to Appeal Comments**  
**Appeal Application Nos. 2023-02 and 2023-03 for Cabrillo Town Center project**  
**(1901 E. Fourth Street)**

---

requirements (i.e., statutory requirements) as outlined in the current 2022 California Green Building Code.

CEQA Guidelines Section 15064.4(a) assists lead agencies in determining the significance of the impacts of GHG emissions, giving them discretion to determine whether to assess impacts quantitatively or qualitatively. The City, Southern California Air Quality Management District (SCAQMD), Office of Planning and Research (OPR), CARB, California Air Pollution Control Officers Association (CAPCOA), and other applicable agencies have not adopted a numerical threshold of significance for assessing impacts related to GHG emissions. As a result, the methodology for evaluating a project's impacts related to GHG emissions focuses on its consistency with statewide, regional, and local plans adopted for the purpose of reducing and/or mitigating GHG emissions.

Exhibit 9 describes the extent to which the Project is consistent with or exceeds the performance-based standards included in the regulations outlined in the 2022 Climate Change Scoping Plan, the 2020-2045 RTP/SCS, and the City's CAP. Given the Project's substantial consistency with state, SCAG, and City GHG emissions reduction goals and objectives, the Project is consistent with applicable plans, policies, and regulations adopted for the purpose of reducing the emissions of GHG emissions. In the absence of adopted standards and established significance thresholds, and given this consistency, it is concluded that the Project's incremental contribution to GHG emissions and their effects on climate change would not be cumulatively considerable. Further, GHG emissions-related impacts have long been known and understood at the time the Certified EIR was certified, and therefore, does not constitute new information for the purposes of this analysis.

- d. *The appellant contends that the Project may have significant land use impacts which were not analyzed in the Certified EIR.*

**Summary of Appeal Reasoning:** The appellant contends that a subsequent EIR should have been prepared because the Project may have significant unanalyzed land use impacts stemming from the Project's request for a tentative tract map ("TTM"). The appellant cites the Section 3.7 (Public Actions and Approvals Required) in the Certified EIR, which states, "This EIR is intended as a Program EIR, and specific development proposals made in the Overlay Zone would be subject to separate environmental clearance/review." For this reason, the appellant contends that a subsequent EIR which specifically analyzes the Project's TTM request in its land use consistency analysis is necessary.

**Exhibit 10 - Response to Appeal Comments**  
**Appeal Application Nos. 2023-02 and 2023-03 for Cabrillo Town Center project**  
**(1901 E. Fourth Street)**

---

**Staff Response:** As part of the Project, the applicant is requesting approval of a TTM (County Map No. 19243) to consolidate four existing lots, and create two new legal lots (Parcel 1 and 2), one of which will be subdivided for condominium purposes for the townhome portion of the site. Parcel 1 will include 14,900 square feet of live/work space (19 live/work units) and 449 residential rental units. Parcel 2 will consist of eight 3-story townhome buildings containing a total of 58 residential for sale units. Upon completion of the subdivision, the lots will continue to be utilized for residential use in the form of attached tuck-under unit type structures (townhouse development), and commercial/residential mixed-use (wrap building), consistent with the objectives uses analyzed in the Certified EIR.

Pursuant to Section 3.2 (Project Objectives) of the Certified EIR, implementation of the MEMU was intended fulfill the following objectives:

- Create an active, mixed-use urban village where it is possible to live, work, shop and play all within a short walk of each other.
- Facilitate well-designed new mixed-use development projects that combine residential and nonresidential uses through innovative and flexible design solutions.
- Achieve the harmonious integration of new mixed-use development within the existing fabric of the mid-rise and high-rise office environment.
- Provide for a mix of housing in order to encourage a continuum of living and a variety of household types.
- Allow for the development of varied residential types in a mixed-use configuration including, but not limited to, loft-style units, live/work units, attached row houses, and high-quality stacked flats

Moreover, Section 3.3 (Project Description) of the Certified EIR outlines the primary elements in the MEMU, including:

- A potential increase in City population of 11,102 residents
- A potential increase in the number of available residences within City limits by 5,551 units
- The potential development of 1,275,440 gross square feet (gsf) of commercial (retail and service) space, as well as 3,410,507 gsf of office space. This corresponds to a potential net increase of approximately 963,000 sf of commercial space and 690,000 sf of office space beyond existing conditions.

As proposed, the TTM is required for the feasibility of the Project in order to provide for the intended mix of uses as envisioned by the City, in accordance with the MEMU and Certified EIR. Pursuant to the California Building Code requirements, no building or structure can be built over

**Exhibit 10 - Response to Appeal Comments**  
**Appeal Application Nos. 2023-02 and 2023-03 for Cabrillo Town Center project**  
**(1901 E. Fourth Street)**

---

legal property lines to ensure compliance with fire and safety separation requirements. Therefore, approval of the TTM is required in order for the applicant to provide the proposed mixed-use development project. Moreover, the TTM does not allow for the creation off additional units beyond what was previously analyzed in the Certified EIR. The units that would be created under the TTM would be consistent with the Certified EIR objectives, and would allow for multi-family residential townhouses (Parcel 2) and mixed commercial and residential uses (Parcel 1).

Based on the above analysis, the Project would be fully consistent with the allowable development under the MEMU and within the scope of the Certified EIR. In addition, all applicable mitigation measures from the Certified EIR would be implemented by the Project, and each of the applicable mitigation measures would also be made conditions of approval for the Project. Therefore, pursuant to Public Resources Code Section 21166 and CEQA Guidelines Section 15162, there are no substantial changes to the circumstances under which the Project would be undertaken that would result in new or more severe significant impacts, and there is no new information of substantial importance that has become available that would result in new or more severe significant impacts. Moreover, no subsequent EIR would be required for the Project. Based on the analysis herein and the Certified EIR and the whole of the record, under CEQA Guidelines Section 15168, the Certified EIR adequately described the Project activity for purposes of CEQA.

**IV. Inconsistency with the General Plan**

- a. The appellant contends that the Project is inconsistent with the General Plan because there are no onsite affordable units.*

**Summary of Appeal Reasoning:** The appellant contends that the Project “runs afoul to the General Plan” since it does not provide any affordable housing units. The appellant cites General Plan, Policy Open Space (OS-1.10) which states, “encourage private and commercial recreational facilities that are physically open to the public and are affordable to residents of surrounding neighborhoods, and serve community needs”. Moreover, the appellant cites General Plan, Policy Urban Design (UD-2.8) which states, that the City must “explore development and subdivision options that promote new opportunities for sustainable, livable, and affordable development.” Finally, the appellant concludes that the Project conflicts with the General Plan as it does not provide affordable housing units, and for that reason the City should have prepared a subsequent EIR to assess the Project’s land use impacts.

**Exhibit 10 - Response to Appeal Comments**  
**Appeal Application Nos. 2023-02 and 2023-03 for Cabrillo Town Center project**  
**(1901 E. Fourth Street)**

---

**Staff Response:** The Affordable Housing Opportunity and Creation Ordinance (AHOCO) was adopted in 2011, then known as the Housing Opportunity Ordinance (HOO), and amended in 2015, 2020, and most recently in May of 2022. The ordinance was adopted to implement the City's General Plan Housing Element Goal of providing affordable housing within the City. Since inception, the Inclusionary Housing Fund has generated \$28.2 million that has been used to develop new affordable housing, provide emergency shelter, and create homeownership opportunities. A total of 107 affordable housing units have been created, and an additional 86 units have been committed through such fees.

The AHOCO outlines various on-site affordable requirements for eligible ownership and rental projects. However, provisions allow for the payment of in-lieu fees rather than building the affordable housing units on-site. The Project would be a market-rate residential development with no units dedicated to affordable housing for lower-income residents. However, the Project would be required to pay an inclusionary housing in-lieu fee, consistent with the City's AHOCO, to further the production of affordable housing units and development within the City. As previously outlined, the Project will contribute an estimated \$8,043,600 in in-lieu fees, which must be spent on production of affordable housing in the City of Santa Ana.

Moreover, the Project would not remove any housing or affordable housing units. Rather, it would increase the housing stock of market-rate and affordable housing units through payment of an in-lieu fee. The Project would result in a net increase of 507 total units which consists of wide range of housing types, including apartment units at different bedroom counts and townhome style units, consistent with the City's General Plan goals and policies. Therefore, the Project is in compliance with the AHOCO and the City's General Plan Land Use and Housing Element.

*General Plan Consistency*

The City's AHOCO, and specifically the in-lieu provisions, are consistent with various goals in policies in the City's General Plan Housing Element (HE), including Goal 2 and 3, and policies HE-2.7, HE-3.1, and HE-3.2, outlined below:

**Goal 2** – Foster an inclusive community with a diversity of quality housing, affordability levels, and living experiences that accommodate Santa Ana's residents and workforce of all household types, income levels, and age groups.

**Exhibit 10 - Response to Appeal Comments**  
**Appeal Application Nos. 2023-02 and 2023-03 for Cabrillo Town Center project**  
**(1901 E. Fourth Street)**

---

- **Policy HE-2.7**

**Affordable Component.** Pursuant to the Affordable Housing Opportunity and Creation Ordinance (AHOCO), require eligible rental and ownership housing projects to include at least 15 percent of the rental housing units as affordable for low-income households; or 10 percent of the rental units affordable to very low-income households; or 5 percent of rental units affordable to lower income households (5 percent to low-income, 3 percent to very low-income, and 2 percent to extremely low-income households); or at least 5 percent of the units ineligible ownership projects affordable to moderate-income households. Implement various strategies using the in-lieu fees generated by AHOCO to provide a wide array of affordable housing options.

**Goal 3** – Increase opportunities for extremely low-, very low-, low-, and moderate-income individuals and families to find affordable housing, and afford a greater choice of rental and homeownership opportunities.

- **Policy HE-3.1**

**Rental Assistance.** Provide rental assistance for individuals and families with extremely low-, very low-, and low-incomes with funding from the federal government.

- **Policy HE-3.2**

**Homeownership.** Expand homeownership opportunities for low- and moderate-income residents and workers in Santa Ana through the provision of financial assistance, education, and collaborative partnerships.

Lastly, the in-lieu provisions, are consistent with the Item No. 25 in the City's the Housing Implementation Strategy, within the Housing Element, which outlines the following objective:

**Item No. 25 – Affordable Housing Opportunity and Creation Ordinance (AHOCO)**

Collect and leverage in-lieu fees with other sources to support the production and/or rehabilitation of affordable housing for extremely low-,

**Exhibit 10 - Response to Appeal Comments**  
**Appeal Application Nos. 2023-02 and 2023-03 for Cabrillo Town Center project**  
**(1901 E. Fourth Street)**

---

very low-, and low-income families with a goal of funding eight projects for the planning period.

*Inclusionary Housing Fund*

Funding for this program is provided using revenues generated through in-lieu fees from the AHOCO. Funds can be used to increase and improve the supply of housing affordable to moderate income (120 percent AMI), low- (80 percent AMI), very low- (50 percent AMI) and extremely low-income (30 percent AMI) households in the City. Funds can be used to make loans to eligible borrowers to provide affordable housing. Funds are also being used to provide down payment assistance for first time home buyers. The City has used its inclusionary revenues to fund the development of many of its more recent affordable apartment properties.

Inclusionary housing requirements cannot be confiscatory or deprive an owner of a fair and reasonable return. California Gov't Code § 65583(a) requires assessments of the potential and actual constraints on the development of housing. Within that context, it is important for affordable housing programs to be set up to balance the interests of property owners and developers against the public benefit created by the production of affordable housing units. As such, the in-lieu fees above are based on an evaluation of the affordable housing requirements that could be supported from an economic perspective. The results of this analysis were translated into order-of-magnitude estimates of the in-lieu fee amounts that could be charged on a financially feasible basis.

**3. Response to Southwest Mountain States Carpenters (SWMSRCC) Letter dated August 17, 2023**

*Appeal Application No. 2023-03 – SWMSRCC, Letter Dated August 17, 2023*

As previously mentioned, the City received a supplemental comment letter on August 17, 2023, from Mitchell M. Tsai, on behalf of the SWMSRCC. Staff notes that this letter is outside of the 10-day appeal period, as outlined in Section 41-645(b) of the SAMC. Therefore, the subsequent appeal items do not satisfy the requirements of SAMC Section 41-645 and should not be considered. Nonetheless, staff has prepared a comprehensive response below on all appeal items received.

In the subsequent letter, the appellant is requesting that the City Council overturn the Planning Commission's decision approving SPR No. 2023-01 and TTM No. 2023-03 based on compliance with CEQA. Specifically, the appellant makes outlines the following: (1) That a project-specific EIR should have been prepared to analyze the Project; (2) VMT requirements; (3) Infeasible transportation mitigation requirements in the Certified EIR; (4) Adequate analyzes of noise impacts; (5) GHG impacts; (6) Land use impacts not

**Exhibit 10 - Response to Appeal Comments**  
**Appeal Application Nos. 2023-02 and 2023-03 for Cabrillo Town Center project**  
**(1901 E. Fourth Street)**

---

analyzed in the Certified EIR; and (7) Inconsistency with the City's General Plan. Staff notes that the following have been previously addressed and will not be discussed further, as no new information was provided: (1) That a project-specific EIR should have been prepared to analyze the Project; (2) VMT requirements; (5) GHG impacts; (6) Land use impacts not analyzed in the Certified EIR; and (7) Inconsistency with the City's General Plan.

I. California Environmental Quality Act (CEQA) Compliance

- a. *The appellant contends that the City's Transportation Mitigation Requirement is infeasible for the Project*

**Summary of Appeal Reasoning:** The appellant contends that the Project is not consistent with the *City of Santa Ana Traffic Impact Study Guidelines* (dated September 2019). Therefore, the appellant contends that a subsequent EIR must be conducted in order to assess whether the Project can adequately mitigate the Project's transportation impacts and whether the Project conflicts with the City's Resolution.

**Staff Response:** As previously discussed, the Project would not result in any significant LOS impacts, which is the metric utilized in the Certified EIR. Further, the VMT Screening Memo for the Project CEQA Findings, demonstrates, for informational purposes only (and not as a legal requirement), that the Project would not result in significant VMT impacts. Therefore, no VMT-related mitigation measures are required.

- b. *The appellant contends that the Certified EIR fails to adequately analyze the Project's noise impacts. Specifically, the appellant contends that the Certified EIR fails to identify all nearby sensitive receptors.*

**Summary of Appeal Reasoning:** The appellant contends that the Certified EIR does not adequately describe the environmental setting because it fails to capture all of the nearby sensitive receptors. Specifically, the appellant contends that although the Certified EIR identifies a total of 15 nearby sensitive receptors, the locations selected are almost all on busy streets or close to freeways, and therefore do not represent quieter locations that are set back and/or shielded from major traffic routes. Thus, the appellant contends that a subsequent EIR must be prepared to assess ambient noise conditions for receivers further away from major traffic routes and/or shielded by intervening structures such as the Lake Diane apartment complex.

**Staff Response:** The Certified EIR analyzed potential noise impacts at 15 sensitive receptors. While the nearest sensitive uses vary at different locations in and around the MEMU, and as specific development plans had

**Exhibit 10 - Response to Appeal Comments**  
**Appeal Application Nos. 2023-02 and 2023-03 for Cabrillo Town Center project**  
**(1901 E. Fourth Street)**

---

not yet been determined at individual sites at the time the Certified EIR was prepared, it was assumed that sensitive receptors could be as close as 50 feet from where construction would take place. The comment alleges that impacts to the Lake Dianne Apartments were not analyzed. However, the Lake Dianne Apartments are located 80 feet away from the Project Site, greater than the 50 feet assumed as the nearest sensitive receptor by the Certified EIR. Thus, the potential impacts to the Lake Dianne Apartments are within the scope of those analyzed by the Certified EIR.

In June 2023, DKA Planning, an expert noise consulting firm, took short-term noise measurements near the Project site to determine the current ambient noise conditions near the four nearest sensitive receptors: Cabrillo Park, 2001 E. 4th Street, the southeast corner of 4th Street and Cabrillo Park Drive, and 618 Sherry Lane. The residence at 724 N. Parkcenter within the Lake Dianne Apartments is assumed to have the same ambient noise conditions as Cabrillo Park given its immediate proximity to Cabrillo Park and similarity in surrounding uses. For reference, Exhibit 9F (Noise Technical Report) outlines the Project CEQA Findings.

Regarding construction, the Project would comply with SAMC Section 18-314 and construction activities would be limited to the hours of 7:00 A.M. and 8:00 P.M. on Monday through Saturday, and would be prohibited on Sundays and federal holidays. Exhibit 9F demonstrates that construction of the Project would not increase ambient noise levels at the nearest sensitive receptors by more than 5 A-weighted decibels (dBA), and thus would not result significant noise impacts, including to the closest residence of the Lake Dianne Apartments. Furthermore, Exhibit 9F demonstrates that Project operation, including noise associated with mechanical and landscaping equipment, vehicles, outdoor and recreational uses, and trash and recycling services, would not increase ambient noise levels at the nearest sensitive receptors by more than 5 dBA, and thus would not result in significant noise impacts, including to the closest residence of the Lake Dianne Apartments.

Further, the Project would also implement Mitigation Measures MM-OZ 4.9-1 through MM-OZ 4.9-7 of the Certified EIR to protect residential receptors and to minimize construction and operational noise and vibration levels. Thus, the Project would not result in any new or increased significant impacts related to substantial temporary or permanent increase in noise and vibration beyond impacts already identified in the Certified EIR.

- c. The appellant contends that the Certified EIR fails to adequately characterize ambient noise conditions.*



**Exhibit 10 - Response to Appeal Comments**  
**Appeal Application Nos. 2023-02 and 2023-03 for Cabrillo Town Center project**  
**(1901 E. Fourth Street)**

---

**Summary of Appeal Reasoning:** The appellant contends that the Certified EIR does not identify sensitive receptors. Moreover, they contend that the Certified EIR fails to adequately characterize ambient noise conditions. Therefore, the appellant contends that a subsequent EIR must be prepared to adequately characterize the ambient noise conditions by: (1) conducting 24-hour baseline noise measurements at locations selected to represent baseline ambient noise conditions at all sensitive receivers around the Project site; and (2) conducting continuous monitoring or, at a minimum, conducting 15- minute readings at 9AM – 5PM (daytime); 8PM – 10PM (evening); and 1AM – 3AM (nighttime).

**Staff Response:** First, this comment essentially challenges the adequacy of the Certified EIR analysis by making allegations about how the ambient noise measurements were taken. However, any challenge to the Certified EIR is untimely. The Notice of Determination was filed with the County Clerk and posted on March 23, 2007, and the statute of limitations closed in April 2007, and any challenge to the Certified EIR must have been filed before then.

Second, this comment does not present any evidence, let alone substantial evidence, that the Project would result in any new or more significant impacts than analyzed in the Certified EIR or that new mitigation is required. Nonetheless, in June 2023, DKA Planning took short-term noise measurements near the Project site to determine the current ambient noise conditions near the four nearest sensitive receptors: Cabrillo Park, 2001 E. 4th Street, the southeast corner of 4th Street and Cabrillo Park Drive, and 618 Sherry Lane. The residence at 724 N. Parkcenter within the Lake Dianne Apartments is assumed to have the same ambient noise conditions as Cabrillo Park given its immediate proximity to Cabrillo Park and similarity in surrounding uses. Noise measurements were taken on a weekday afternoon using a Quest Technologies Sound Examiner SE-400 Meter that complies with the American National Standards Institute (ANSI) and International Electrotechnical Commission (IEC) for general environmental measurement instrumentation. In the absence of a protocol for establishing ambient noise levels for construction analyses, 15-minute measurements were used to characterize typical noise levels during hours when construction is likely to occur. No construction will occur at night. As the major source of ambient noise in the area (traffic) was stable, 15-minute durations were deemed to be sufficient to characterize ambient noise levels.

- d. *The appellant contends that the Certified EIR's significance threshold is inadequate.*

**Summary of Appeal Reasoning:** The appellant contends that CEQA Guidelines require that both temporary/periodic and permanent noise

**Exhibit 10 - Response to Appeal Comments**  
**Appeal Application Nos. 2023-02 and 2023-03 for Cabrillo Town Center project**  
**(1901 E. Fourth Street)**

---

impacts be identified and addressed. However, the thresholds of significance proposed in the Certified EIR would apply to operational (i.e. permanent) noise impacts only. Moreover, the appellant states that the Certified EIR contends that noise level increases less than 5 dba are insignificant so long as the Community Noise Equivalent Level (CNEL) at sensitive receptors is below 65 dba. However, the appellant contends that it would be possible for noise from the Project to exceed the allowed limits according to the SAMC while remaining well below the proposed CNEL 65 significance threshold. Therefore, the appellant contends that a subsequent EIR must be prepared which revises the threshold of significance as follows: Any temporary or permanent noise impact resulting from the Project shall be considered significant if either one of the following conditions apply: (1) the Project results in noise levels in excess of standards established in the SAMC or General Plan; or (2) the Project results in a noise level increase of 5 dBA or more.

**Staff Response:** First, this comment essentially challenges the adequacy of the Certified EIR analysis by making allegations about the significance thresholds used. However, any challenge to the Certified EIR is untimely. The Notice of Determination was filed with the County Clerk and posted on March 23, 2007 and the statute of limitations closed in April 2007, and any challenge to the Certified EIR must have been filed before then.

Second, this comment does not present any evidence, let alone substantial evidence, that the Project would result in any new or more significant impacts than analyzed in the Certified EIR or that new mitigation is required. Nonetheless, Exhibit 9F analyzes both the Project's noise impacts, both construction and operation. The analysis utilizes the same significance threshold as the Certified EIR, a 5 dBA over ambient threshold for construction impacts and a 5 dBA over ambient threshold for operational impacts.

Regarding construction, the Project would comply with SAMC Section 18-314 and construction activities would be limited to the hours of 7:00 A.M. and 8:00 P.M. on Monday through Saturday, and would be prohibited on Sundays and federal holidays. Exhibit 9F demonstrates that construction of the Project would not increase ambient noise levels at the nearest sensitive receptors by more than 5 dBA, and thus would not result significant noise impacts, including to the closest residence of the Lake Dianne Apartments.

Regarding operation, Exhibit 9F demonstrates that Project operation, including noise associated with mechanical and landscaping equipment, vehicles, outdoor and recreational uses, and trash and recycling services, would not increase ambient noise levels at the nearest sensitive receptors by more than 5 dBA, and thus would not result in significant noise impacts,

**Exhibit 10 - Response to Appeal Comments**  
**Appeal Application Nos. 2023-02 and 2023-03 for Cabrillo Town Center project**  
**(1901 E. Fourth Street)**

---

including to the closest residence of the Lake Dianne Apartments. Additionally, the Project would implement Mitigation Measures MM-OZ 4.9-1 through MM-OZ 4.9-7 of the Certified EIR to protect residential receptors and to minimize construction and operational noise and vibration levels. Thus, the Project would not result in any new or increased significant impacts related to substantial temporary or permanent increase in noise and vibration beyond impacts already identified in the Certified EIR.

- e. *The appellant contends that the Certified EIR's construction noise analysis and mitigation measures must be revised.*

**Summary of Appeal Reasoning:** The appellant contends that the characterization of construction noise impacts in the Certified EIR as less than significant, is inconsistent with the CEQA Guidelines since implementation of the MEMU would result in a significant adverse impact on noise. Furthermore, the appellant contends that the Certified EIR's imposed mitigation measure for construction noise impacts are improperly deferred since they are vague in nature and would likely be difficult or impossible to enforce in practice. Therefore, the appellant contends that a subsequent EIR must be prepared to adequately analyze and mitigate the Project's construction impacts.

**Staff Response:** First, this comment essentially challenges the adequacy of the Certified EIR analysis by making allegations about the significance conclusions and mitigation measures. However, any challenge to the Certified EIR is untimely. The Notice of Determination was filed with the County Clerk and posted on March 23, 2007 and the statute of limitations closed in April 2007, and any challenge to the Certified EIR must have been filed before then.

Second, this comment does not present any evidence, let alone substantial evidence, that the Project would result in any new or more significant impacts than analyzed in the Certified EIR or that new mitigation is required. Further, the Project's ability to implement the Certified EIR mitigation measures demonstrates that the measures are not vague and impossible to enforce. In fact the mitigation measures cited by this comment are standard best management practices that are regularly implemented in development projects and will be adopted as mandatory project conditions of approval. Thus, the Project would not result in any new or increased significant impacts related to substantial temporary or permanent increase in noise and vibration beyond impacts already identified in the Certified EIR.

- f. *The appellant contends that the Certified EIR's operation noise analysis underestimates the Project's impacts*

**Exhibit 10 - Response to Appeal Comments**  
**Appeal Application Nos. 2023-02 and 2023-03 for Cabrillo Town Center project**  
**(1901 E. Fourth Street)**

---

**Summary of Appeal Reasoning:** The appellant contends that the certified EIR's operation noise analysis and mitigation measures must be revised as the analysis presented in the Certified EIR does not adequately demonstrate that HVAC noise associated with the Project will be less than significant. Therefore, the appellant contends that a subsequent EIR must be prepared which: (1) revises the operational noise impact analysis; (2) includes an evaluation of Project design features that would be incorporated into the building design; (3) includes revised analysis; (4) includes the outdoor amenities in the operational noise impact analysis; and (5) supplements the operational noise mitigation measures as necessary.

**Staff Response:** This comment essentially challenges the adequacy of the Certified EIR analysis by making allegations about the operational noise impact analysis. However, any challenge to the Certified EIR is untimely. The Notice of Determination was filed with the County Clerk and posted on March 23, 2007 and the statute of limitations closed in April 2007, and any challenge to the Certified EIR must have been filed before then.

Further, this comment does not present any evidence, let alone substantial evidence, that the Project would result in any new or more significant impacts than analyzed in the Certified EIR or that new mitigation is required. As described in Exhibit 9F, noise impacts from rooftop mechanical equipment on nearby sensitive receptors would be negligible. First, most modern heat pumps are relatively quiet, with sound ratings of up to 60 decibels, equivalent to normal human conversation. Second, there would be no line-of-sight from these rooftop units to the sensitive receptors. Because the sensitive uses near the Project Site are one- to three-stories in height, there would be no sound path from the mechanical equipment to receptors that would be 20 to 45 feet lower than the roof of the Project. Third, the presence of the Project's roof edge creates an effective noise barrier that further reduces noise levels from rooftop HVAC units by 8 dBA or more. A parapet would further shield sensitive receptors near the Project Site. These design elements would be helpful in managing noise. For the townhomes, outdoor mechanical equipment for heating and cooling for each residence would likely be located on the ground level of each unit. This could include a ground-mounted heat pump that would generate noise during both heating and cooling sessions while air conditioners operate during cooling cycles. This equipment would include a number of sound sources, including compressors, condenser fans, supply fans, return fans, and exhaust fans. These units could be rated to generate a sound power between 51 and 76 dBA. Any off-site sensitive receptors would not experience elevated noise levels without a direct line-of-sight to these units. Given their location near each residence, any sound path from these units would be attenuated by the presence of the townhomes and structures in the Project, as well as the distance to off-site receptors (i.e., Cabrillo Park

**Exhibit 10 - Response to Appeal Comments**  
**Appeal Application Nos. 2023-02 and 2023-03 for Cabrillo Town Center project**  
**(1901 E. Fourth Street)**

---

to the north, Lake Dianne Apartments to the northeast). As a result, noise from HVAC units would negligibly elevate ambient noise levels, far less than the 5 dBA CNEL threshold of significance for operational impacts.

Regarding potential impacts related to composite outdoor uses, Exhibit 9F explains that the primary use of these spaces would be for human conversation, which would produce negligible noise increases. There are no amplified noise sources proposed at the Project. Vocal intensity increases about 0.38 dB for every 1.0 dB increase in noise levels above 55 dB. For example, the sound of a human voice at 60 dB would produce a noise level of 39 dB at ten feet, which would not elevate ambient noise levels at any of the analyzed sensitive receptors by more than 0.2 dBA  $L_{eq}$ . Moreover, noise levels from human speech would attenuate rapidly with greater distance, resulting in a 33 dB noise level at twenty feet, and 27 dB at 40 feet. Table 9 in Exhibit 9F demonstrates that Project operation, including noise associated with outdoor and recreational uses, would not increase ambient noise levels, and therefore would not result in significant noise impacts.