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memorandum

date January 26, 2022

to Kevin Martin, Vice President, Development, Lyon Living

from Scott Holbrook, Principal Ecologist; Florence Chan, Biologist

subject The Ritz-Carlton Residences - Biological Resources Technical Memorandum

Environmental Science Associates (ESA) is pleased to present this Biological Resources Technical Memorandum for The Ritz-Carlton Residences Project (Proposed Project) located in the City of Newport Beach, California. The Proposed Project is located on approximately 2.8 acres in the south end of the 9.5-acre property where the Newport Beach Marriott Resort Hotel is located and will involve conversion of up to 30% of the existing 532 hotel rooms to hotel-branded residences. The Proposed Project contemplates the demolition of the southernmost building, known as Harbor Landing, and construction of a new residential building. The new 22-story building will accommodate 159 hotel branded residences.

This memorandum includes a brief description of the Proposed Project, the methods and results of the biological resources investigation at the project site by ESA biologists, and describes potential project-related impacts to biological resources along with determinations regarding whether such impacts are deemed significant in accordance with CEQA Guidelines.

The Proposed Project is in an area covered by the City of Newport Beach General Plan and would be subject to implementation of applicable elements set forth in the General Plan Update EIR (SCH No. 2006011119. EIP 2006). Environmental evaluation of the Proposed Project is expected to require completion of an EIR Addendum consistent with Section 15164(a) of the State CEQA Guidelines. Therefore, with respect to the Proposed Project's potential effects on biological resources, this study included consideration as to whether an Addendum is adequate in accordance with CEQA. As explained more thoroughly below, this memorandum concludes that the Proposed Project will not result in any significant impacts to biological resources. Therefore, none of the conditions described in PRC Section 21166 and Section 15162 calling for preparation of a subsequent EIR have occurred, and preparation of an Addendum is appropriate insofar as biological effects are concerned.

1. Proposed Project

a. Project Site

The project site is the Newport Beach Marriott Resort Hotel, located at 900 Newport Center Drive in the City of Newport Beach (City). The Newport Beach Marriott Resort Hotel is a 9.53-acre property located immediately southwest of Fashion Island, within Newport Center. The resort hotel campus includes 532 hotel rooms and

expansive amenities, including three swimming pools, a day spa, restaurants, conference/ballroom space, meeting rooms, and ancillary support uses. The resort hotel components are contained within five separate buildings and one parking structure.

The buildings range from 30 feet in height to 151 feet in height and overlook the Newport Beach Country Club golf course. The buildings are predominantly oriented towards Newport Harbor and the Pacific Ocean to the south. The attached Existing Site Plan depicts the location of the existing buildings and the unit count.

The project site is accessible from Newport Center Drive and Santa Barbara Drive and includes approximately 698 parking spaces, including self-parking and valet parking options. The Newport Beach Marriott Resort Hotel was originally constructed in 1975 and renovated in 1986 including the construction of the Pacific Pointe building and the parking structure. The hotel operates under Use Permit 2095.

The Project Site is located within an unnumbered section within Township 6S South, Range 10W, as depicted on the U.S. Geological Survey (USGS) 7.5-minute topographic quadrangle map for Newport Beach, California. Figure 1, below depicts the project location and immediate vicinity.

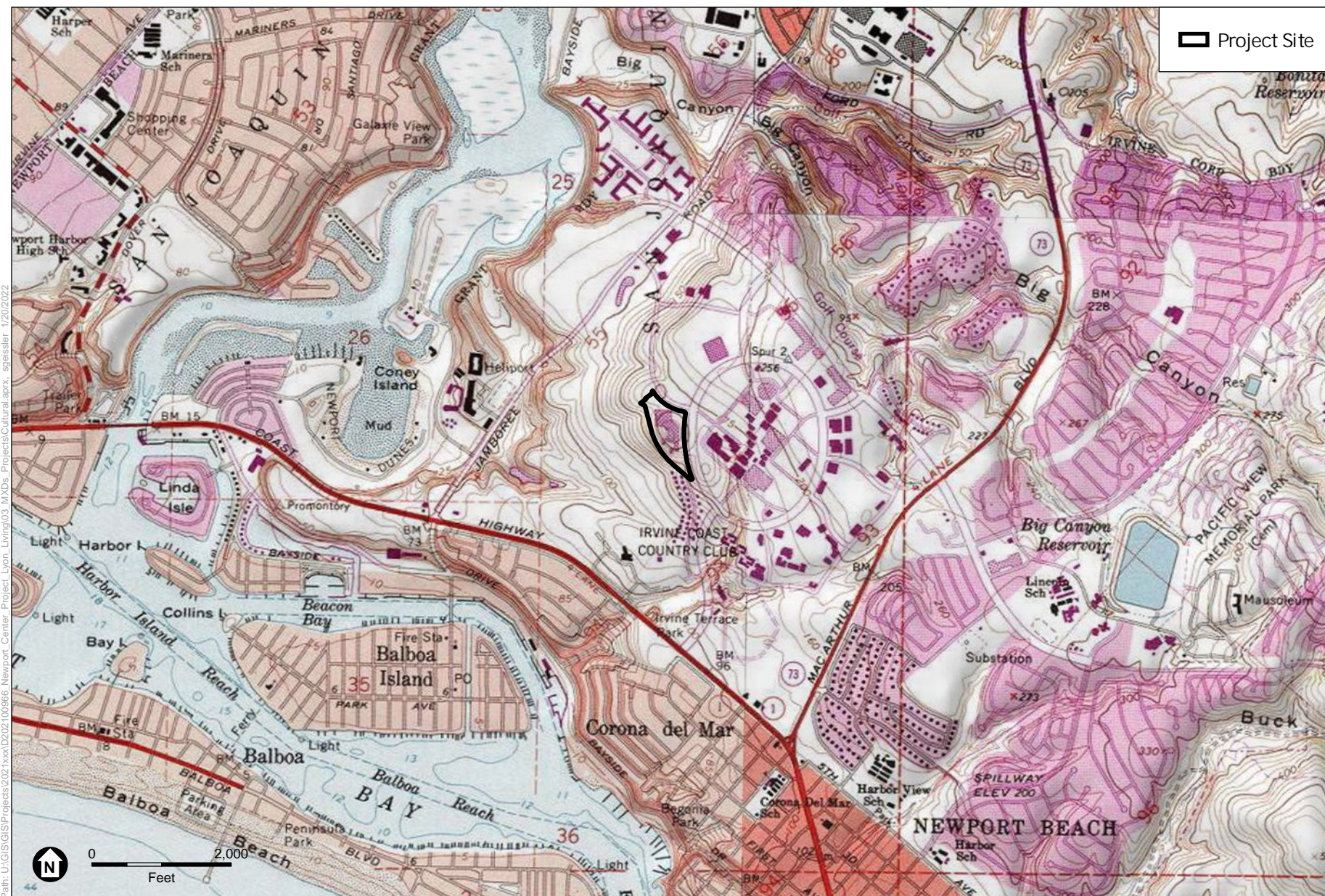
b. Surrounding Land Uses

The project site is located within the Newport Center-Fashion Island subarea, which is a largely mixed-use area of the City. Newport Center is bounded by MacArthur Boulevard to the east, San Joaquin Hills Road to the north, Jamboree Road to the west, and Pacific Coast Highway to the south. Land uses in the project area include the Fashion Island retail shopping center, major commercial office developments, residential developments including the Granville and Meridian condominium communities, the Colony at Fashion Island apartment homes, and the Newport Beach Country Club. The Meridian condominium community is located immediately adjacent to the project site on the north along Santa Barbara Drive, with the guard-gated Granville condominiums located immediately to the southeast. Mid-rise commercial office buildings are located across Santa Barbara Drive to the north, and Fashion Island is located across Newport Center Drive to the north/northeast. The Newport Beach Country Club golf course abuts the southern property line.

In addition to several residential communities, including Meridian, Granville, Colony at Fashion Island, Vivante Senior Housing (currently under construction), and other pending projects, Newport Center is characterized by high- and mid-rise office buildings surrounding Fashion Island, which provide residents and visitors shopping, entertainment, and restaurant amenities. The majority of the high-rise buildings are located in Blocks 400-600, with building heights exceeding 300 feet above ground level. Low- and mid-rise buildings are concentrated in the southeastern portion of Newport Center closest to MacArthur Boulevard and Pacific Coast Highway. Newport Center is considered a major employment center, which includes research and development and high technology businesses in addition to substantial medical office uses. The Newport Beach Civic Center is located in Newport Center between Avocado Avenue and MacArthur Boulevard.

c. Proposed Hotel Branded Residences

The proposed project at the Newport Beach Marriott Resort Hotel consists of the conversion of up to 30% of the existing 532 hotel rooms to hotel-branded residences. The project contemplates the demolition of the southernmost building, Harbor Landing, and construction of a new residential building. The project will result in the conversion of 133 hotel units from the demolished Harbor Landing building into hotel-branded residences and



SOURCE: USGS Topoquads: Newport Beach, Laguna Beach

Newport Center Project - Lyon Living

Figure 1
Project Location

the conversion of 26 hotel rooms from the Harbor Point building via interior reconfiguration into hotel-branded residences. Following the conversion on a one-to-one basis, the Harbor Point building will change from 153 hotel rooms to 127 hotel rooms, but the building itself will not be demolished and no exterior improvements are proposed.

The new 22-story building will accommodate up to 159 hotel-branded residences, representing 30% of the total units at the Newport Beach Marriott Resort Hotel. The total units at the Newport Beach Marriott Resort Hotel will remain unchanged at 532, with 373 hotel rooms and up to 159 hotel-branded residences.

The new building is proposed to be up to 295 feet above ground level, with limited projections for rooftop appurtenances such as elevator overruns and screened mechanical equipment, as permitted by City code. Onsite circulation for hotel drop-off/pick-up and parking will remain as existing. Residents and guests of the hotel-branded residences will be directed to a separate entrance on the south side of the property for access to the new residential building drop-off/pick-up, parking, and valet areas.

Parking spaces required by City code will be maintained in an existing 6-level, 400-space parking structure proposed to be demolished and rebuilt in substantially the same location and a new 5-level, 408-space subterranean parking structure constructed below the new building. The new building for the hotel-branded residences will be accessed via Newport Center Drive in two ways, including entrance into a porte cochere for valet parking, and through direct access into the below-grade parking structure.

The project will include the construction of new extensive hardscape and landscape areas, and guest-serving amenities including, but not limited to, a swimming pool, a fitness facility, and meeting rooms.

d. Future Operation

Operations for the hotel and the hotel branded residences will be managed by professionally trained Ritz-Carlton staff. While dedication of staff for the hotel and hotel-branded residences will be separate, they will remain under the same Marriott umbrella and General Manager. Marriott maintenance and groundskeeping staff will service both the hotel and the hotel-branded residences. A temporary sales office for the hotel-branded residences will be located within the hotel.

In addition to existing hotel amenities such as a lounge, fitness center, full-service spa, pools, event lawns, conference center, ballrooms and restaurants that will remain available for hotel guest and resident use, the project proposes new pool facilities, fitness facilities, meeting rooms, and other food service amenities for exclusive use of the residents. Recreation opportunities provided by the hotel include bike rentals and an event lawn area where hotel guests, residents, and guests of the hotel-branded residences may attend events.

e. Construction

Construction is anticipated to be completed in 42 months from the start of demolition. This timeline includes approximately 6 months of demolition and site preparation and approximately 36 months for construction of the new subterranean parking structure and residential building. Construction equipment will be staged completely onsite in the development area so as not to impede hotel operations and guests. Offsite parking will be provided daily for workers with a shuttle to the hotel, if necessary.

During construction efforts, hotel operations will be slightly impacted, as guests will be redirected to a nearby offsite parking area. However, the hotel and all hotel amenities will remain in operation with possible minimal closure of select outdoor amenities subject to noise and dust during the grading and site preparation phase of construction.

2. Methods

a. Literature Review

Prior to performing a field survey of the Project site and adjacent study area, ESA reviewed aerial maps and databases to identify biological resources potentially occurring within the local vicinity of the Proposed Project and particularly within up to 500 feet of the Project's anticipated disturbance limits. The Biological Study Area (BSA) for this effort was considered to include the project and an additional study area buffer extending up to 500 feet from the anticipated limits of disturbance in natural open space or landscaped areas (e.g., on the adjacent golf course property). Recent and historical aerial imagery and the USGS 7.5-minute topographic quadrangle map were inspected. A list of sensitive plant and wildlife species and their habitats that are known to occur in the general area near the proposed project was compiled primarily from the California Department of Fish and Wildlife (CDFW), California Natural Diversity Database (CNDDDB), and California Native Plant Society (CNPS) Inventory of Rare and Endangered Plants. ESA queried CNDDDB and CNPS records for the following USGS 7.5-minute topographic quadrangle maps: Newport Beach, Seal Beach, Los Alamitos, Anaheim, Orange, Tustin, and Laguna Beach. Other data sources reviewed included U.S. Fish and Wildlife Service (USFWS) critical habitat maps (USFWS 2021a), the Information for Planning and Consultation (IPaC) (USFWS 2021B), and the National Wetlands Inventory (NWI) mapping (USFWS 2021c).

b. Field Surveys

An ESA biologist conducted a reconnaissance-level survey and a rooftop inspection survey to identify and characterize vegetation types on the property containing the Proposed Project, and to evaluate the potential for special status biological resources (e.g., special status or regulated habitats, or plant or wildlife species) to occur at the Project Site and in the BSA. The reconnaissance-level survey and a building rooftop survey were conducted by ESA biologist Florence Chan on October 14, 2021 and November 9, 2021, respectively. The survey effort involved pedestrian access over the majority of the site although active construction associated with the existing hotel restricted access to the northern part of the property. This access limitation was of no consequence to the biological survey effort as no resources occur in the construction area. A survey of the building rooftops was completed to determine possible current and recent usage by avian species. All species of plant and animals observed, including sign (e.g., presence of scat) as well as any audible detections, were noted during the site visits. Wildlife observations and other features were mapped utilizing Collector for ArcGIS and representative photographs were taken.

The database search results, literature review, and survey results identifying biological resources provide sufficient information to evaluate the potential presence and possible project effects on regulated and/or significant biological resources as the result of implementing the Proposed Project. These results provide the basis for recommending measures to avoid, minimize, or mitigate potential effects, if needed.

c. Regulatory Framework

For the purpose of this report, potential impacts to biological resources were also evaluated with reference to and with consideration of the following regulations, policies and statutes, as applicable (See Appendix A – Regulatory Framework for information regarding the relevant regulations noted below):

- California Environmental Quality Act (CEQA)
- Federal Endangered Species Act (ESA)
- California Endangered Species Act (CESA)
- Federal Clean Water Act (CWA)
- California Fish and Game Code (CFGF)
- Migratory Bird Treaty Act (MBTA)
- Porter-Cologne Water Quality Control Act (Porter-Cologne Act)
- City of Newport Beach Municipal Code (City)

3. Results

a. General Site Description

The Project site is located within the Newport Center-Fashion Island subarea, which is a largely mixed-use area of the City. Newport Center is bounded by MacArthur Boulevard to the east, San Joaquin Hills Road to the north, Jamboree Road to the west, and Pacific Coast Highway to the south. Surrounding designated land uses are residential and commercial areas to the north, east, and south. The Newport Beach Country Club golf course abuts the property from the west.

The western and southwestern perimeter of the Project Site is occupied by a dense band of non-native ornamental trees and shrubs. Although this vegetation band is partially landscaped, denser vegetation occurs on the relatively steep slope leading downhill towards suburban residential development and the golf course. There is substantial daytime activity by hotel personnel and guests on the Project Site.

b. Vegetation Types and Land Cover

The natural communities and land use types that occur observed on the Project Site were mapped in the field and generally characterized according to the Holland classification scheme (Holland 1986). Representative photographs of the Project Site and surrounding ornamental landscaping communities found on-site are included in Appendix B – Site Photographs.

(1) Ornamental Landscaping (Non-Native Trees)

Ornamental landscaping consisting mainly of non-native trees surround the hotel buildings, courtyard, swimming pools facilities, and also line the existing walkways on the property. Ornamental tree species identified include: eucalyptus (*Eucalyptus* sp.), Japanese privet (*Ligustrum japonicum*), sweetgum (*Liquidambar styraciflua*), queen palm (*Syagrus romanzoffiana*), and Peruvian pepper (*Schinus molle*). Although the vegetation is not native to the region, the ornamental trees and shrubs provide foraging and potential nesting habitat to some avian species.

(2) Developed

The hotel facility, except the major ornamental landscape areas, is completely developed and no natural open space or other biological resources are present. Developed areas include the paved roads, parking lots, swimming pools, and all the buildings. For the most part, developed areas are barren, paved, or otherwise considered “hardscape” areas. However, small patches of ornamental shrubs and a few non-native trees are located in the developed areas. Common ornamental shrubs observed include bank Japanese privet (*Ligustrum japonicum*) and orange jubilee esperanza (*Tecomaria alata*).

c. Wildlife Observations

Although the Project Site is generally developed, the ornamental vegetation on site and in the adjacent golf course property afford foraging and potential nesting opportunities to common avian species. Avian species observed include: Anna’s hummingbird (*Calypte anna*), lesser goldfinch (*Carduelis psaltria*), American crow (*Corvus brachyrhynchos*), house finch (*Haemorhous mexicanus*), red-tailed hawk (*Buteo jamaicensis*), song sparrow (*Melospiza melodia*), Allen’s hummingbird (*Selasphorus sasin*), northern mockingbird (*Mimus polyglottos*), and white-crowned sparrow (*Zonotrichia leucophrys*).

d. Special Status Natural Communities

Sensitive natural communities and habitats are defined by the CDFW as those natural communities that have a reduced range and/or are imperiled as a result of residential and commercial development, agriculture, energy production and mining, or due to an influx of invasive and other problematic species.

According to the CNDDDB there are nine sensitive natural communities located within five miles of the Project Site. The nine sensitive natural communities include: California Walnut Woodland, Southern California Arroyo Chub/Santa Ana Sucker Stream, Southern Coast Live Oak Riparian Forest, Southern Coastal Salt Marsh, Southern Cottonwood Willow Riparian Forest, Southern Dune Scrub, Southern Foredunes, Southern Sycamore Alder Riparian Woodland, and Valley Needlegrass Grassland.

However, the Project area is completely developed and contains only ornamental landscaping and none of these sensitive natural communities occur on site or in the local area.

e. Aquatic Resources

No aquatic resources occur within the Project Site.

f. Special-Status Plant Species

Special-status plants include those listed, or candidates for listing, by the USFWS and CDFW, and species considered special-status by the CNPS (particularly Ranks 1A, 1B, 2A, 2B, and 3). Several special-status plant species were reported in the vicinity based on CNDDDB and CNPS, and a total of at least 52 special status plant species have been reported within the entire seven-quadrangle search.

The project site and the adjacent golf course area is developed or exhibits regularly maintained ornamental landscaping. These areas lack any potentially suitable habitat for special status plants. Therefore, no special-status plant species have potential to occur or be affected within the Project Site or in the BSA.

g. Special Status Wildlife Species

Special-status wildlife include those species listed or designated as candidates for listing as Endangered or Threatened under either the FESA and/or CESA, species designated as species of special concern in California, and species considered locally rare. A total of 58 special-status wildlife species have been reported to occur currently and/or historically within the 5-mile radius search area in the CNDDDB database.

Based on absence of suitable habitat, lack of any natural open space, and known geographic distributions and/or range restrictions, the majority of species reported in the local vicinity were considered and eliminated with regard to their potential to occur. Nevertheless, as detailed below, it was determined that two special-status wildlife species: white-tailed kite (*Elanus leucurus*) and American peregrine falcon (*Falco peregrinus anatum*), may have a low potential to occur within the BSA although they were not observed during the biological reconnaissance survey and are not expected to nest in the area with any regularity. These two species are both designated as “California Fully Protected” (CFP) species.

h. Wildlife Movement

For a great many species of wildlife, movement over the landscape is essential for foraging, breeding and genetic exchange, dispersal of young, migration and for other purposes important to survival of both individuals and populations. Wildlife movement corridors or habitat linkages are linear habitat features that connect blocks of habitat that would otherwise be disconnected. Functional wildlife movement corridors are especially important within highly fragmented habitat, such as developed or agricultural areas. Wildlife movement corridors generally refers to pathways used by terrestrial animals, although the term may also be used in reference to aquatic or avian species, and even encompasses the ability of plants to exchange genetic material by various means involving movement of wildlife. On a regional scale, movement corridors can include avian flyways, mountain ranges, or major river systems. On a more local scale, landscape linkages may include almost any overland or stream connection where open space strips, greenbelts, creeks, parks and wildlife preserves contribute to a network of interconnections between and among large patches of wildlife habitat.

The study area is within the City of Newport and the Project Site is both developed itself and generally surrounded by development. The study area is not identified as being within a Missing Linkage in the South Coast Missing Linkages report (South Coast Wildlands 2008). It is likely that only the most urban-adapted species, such as raccoon, possum, striped skunk, and coyote, along with a variety of smaller terrestrial species and numerous may utilize the landscaped and developed features on site as they move, but the value of the site for wildlife in general and for wildlife movement at either the local or regional level is not significant due to the lack of food, cover, or natural vegetation.

i. Nesting Birds

Although the Project Site is surrounded by residential and commercial development, the ornamental landscaping and even some structures on-site may provide nesting opportunities for a variety of avian species including song sparrow, mourning dove, black phoebe, and barn swallow. Any of the larger non-native tree specimens in the area, particularly eucalyptus or sweetgum, may also provide nesting habitat for urban-adapted raptor species such as red-shouldered hawk and Cooper’s hawk, although no raptor nests were noted during the survey. Figure 2 – *Nesting Potential*, below, identifies which areas may afford nesting opportunities.



SOURCE: ESA, 2021

Newport Center Project - Lyon Living

Figure 2
Nesting Potential

j. Legal Protection for Nesting Birds

In California, the active nests and eggs of all native bird species, except certain game birds, are protected under the California Fish and Game Code Section 3503, which states: “It is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by this code or any regulation made pursuant thereto.” In addition, the federal Migratory Bird Treaty Act (16 U.S. Code [USC] 703–711) makes it unlawful to take or kill individuals of most bird species found in the United States, unless that taking or killing is authorized pursuant to regulation 16 USC 703, 704. The federal definition of “Take” is defined as “to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect” (50 CFR 10.12). Thus, even if not designated as a special-status or “sensitive” species, most bird species, except exotic birds and game birds, are afforded protection under state and federal laws while they are engaged in breeding activity. However, unless a project may have a substantial adverse effect on a species identified as a candidate, sensitive, or special-status species, impacts involving the loss or destruction of a limited number of nests of non-sensitive species would not normally be categorized as “significant” or regarded as substantially adverse impacts to biological resources, and thus would not warrant mitigation to be imposed and enforced by a lead agency under CEQA.

k. Tree Protection

Trees within the Project Site on the existing facility’s property are not subject to protection under the City of Newport Beach Municipal Code, as they are not on City property or within a right-of-way. Therefore, a tree survey was not conducted for this project. However, up to 10 Mexican fan palms (*Washingtonia robusta*) exist within the narrow landscaped strip between the sidewalk and the west side of Newport Center Drive. These Mexican fan palms are considered ‘Neighborhood Trees’, which are designated as Special City Trees within the City of Newport Beach and are specifically noted in Exhibit A of City Council Policy G1 – Special City Trees. Therefore, if it is determined that any of these trees would be subject to damage or removal, the Proposed Project would be required to comply with the relevant code section. Specifically, “if the proposed development requires the removal of City trees, the property owner must submit a tree removal form to the Municipal Operations Director, pay all related tree removal and one for one replacement costs, and meet all provisions of City Council Policies L-2 and L-6 and City Municipal Code Sections 13.08 and 13.09, or any successor policies or sections.”

4. Project Effects

This section describes the potential effects of the Proposed Project on biological resources that may occur on or adjacent to the Project Site. A project is generally considered to have a significant effect if it proposes or results in any of the conditions described in the significance thresholds presented below (in *italics*), absent specific evidence to the contrary. Conversely, if a project does not propose or result in any of the following conditions, it would generally not be considered to have a significant effect on biological resources, absent specific evidence of such an effect. These significance thresholds are taken from Appendix G of the 2021 CEQA Guidelines.

Significance Threshold – Issue 1: *Would the proposed project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?*

a. Special-Status Plants

No special-status plants and no native plant communities occur within the Proposed Project. No special-status plant species were considered to have any potential to occur since the Proposed Project site is completely developed with hardscape, structures, and ornamental landscaping.

Therefore, **no impact** related to a substantial adverse effect on any plant species identified as candidate, sensitive, or special-status in local or regional plans, policies, or regulations by CDFW or USFWS would occur as a result of the Proposed Project. No mitigation for special status plants is needed.

b. Special-Status Wildlife

The study area does not occur in or near any designated Critical Habitat for any federally-listed species. Furthermore, the Proposed Project occurs within existing developed or landscaped areas, which will not directly impact any potentially suitable natural habitat for special status wildlife. Although the Proposed Project will be implemented in a highly developed area containing ornamental landscaping rather than natural habitat, two sensitive wildlife species may have a low potential to occur in the Proposed Project area. The American peregrine falcon, a California Fully Protected species, is known to have nested historically near the top of the Marriott Hotel in the early nineties (over 25 years ago) and has been sighted within a 4-mile radius of the property in the past 10 years (eBird 2021). However, no evidence of current or recent usage by peregrine falcon was observed during the rooftop survey. Nevertheless, the existing rooftop, and rooftops of adjacent buildings could provide potential overwintering and nesting opportunities for this species. White-tailed kites may also have a low potential to nest in the tree canopy along the western and southwestern project boundary and in the golf course to the west. The potential for either of these species to nest in the immediate area is considered low due to the level of human and mechanical activity.

Notably, with regard to redevelopment or infill projects in existing developed areas in the City, the biological resources section of the City of Newport Beach General Plan Update EIR anticipated that “the proposed General Plan Update would allow infill development throughout the Planning Area, following existing land use patterns. The Update would concentrate new development and redevelopment in several specified subareas: Newport Center/Fashion Island, Balboa Village, Balboa Peninsula, West Newport Mesa, West Newport Highway, Mariners’ Mile, and the Airport Area.” The same section also made clear that “implementation of Policies NR 10.1 and NR 10.2 would ensure that all future development cooperates with federal, state, and private resource protection agencies/organizations...” (p. 4.3-27) and further acknowledged that “implementation of the proposed General Plan Update would be subject to all applicable federal, state, and local policies and regulations related to the protection of biological resources (p. 4.3-28). Thus, implementation of the Proposed Project is subject to compliance with the federal Migratory Bird Treaty Act (MBTA) and the California Fish and Game Code,

If any nesting activity occurs in the project vicinity, project-related demolition or construction could indirectly affect nesting activity and adversely affect individual birds, if present. Such adverse effects would be potentially significant since white-tailed kite and the peregrine falcon are fully protected in California, which means take of

these species is prohibited and State law makes no provisions for incidental take of these species. Likewise, other raptors, such as Cooper's hawk, are protected under the MBTA and the California Fish and Game Code.

In addition, the same demolition and construction activities that could affect raptor species, if present, could also adversely affect other birds during the nesting season. Therefore, Standard Condition BIO-1 is prescribed to be included as part of project implementation to avoid or minimize potential impacts on nesting birds and part "c" of this Standard Conditions will provide for complete avoidance of adverse effects or "take" of listed or Fully Protected avian species. Therefore, with regard to special status wildlife species designated as Fully Protected in California and nesting birds protected under the California Fish and Game Code and the Migratory Bird Treaty Act, the Proposed Project is determined to result in a less-than-significant impact through adhering to the policies established under the General Plan EIR Update and by complying with existing regulations. No additional mitigation is required.

Significance Threshold – Issue 2: *Would the proposed project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?*

No riparian habitat or sensitive natural communities occur on the Project Site. Therefore, **no impact** would occur to any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by CDFW or USFWS.

Significance Threshold – Issue 3: *Would the proposed project have a substantial adverse effect on state or federally protected wetlands (including but not limited to marsh, vernal pool, coastal) through direct removal, filling, hydrological interruption, or other means?*

No wetlands or "waters" subject to state or federal regulatory jurisdiction, such as waters of the United States, pursuant to CWA Section 404, or streams or lakes, pursuant to California Fish and Game Code Section 1600 et al., occur on the Project Site. The Project Site does not contain any resources that would be regulated under the CWA or California Fish and Game Code Section 1600 et al., and there are no potential offsite impacts that could be regulated under the CWA or California Fish and Game Code Section 1600. Therefore, **no impact** would occur with respect to a substantial adverse effect on state or federally protected wetlands (including but not limited to marsh, vernal pool coastal) through direct removal, filling, hydrological interruption, or other means for on-site resources.

Significance Threshold – Issue 4: *Would the proposed project interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?*

The Project Site does not contribute to or function as part of a travel or migration route for terrestrial or avian wildlife species. The Proposed Project site is not part of a regionally important or vital wildlife movement corridor. Also, no known or expected native wildlife nursery sites occur in the project vicinity and no such resources would be affected by the Proposed Project. Therefore, the Proposed Project would have **no impact** that would impede wildlife movement or the use of native wildlife nursery sites.

Significance Threshold – Issue 5: Would the proposed project conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?

Trees within the Project Site that are not on property owned by the City of Newport Beach or within a public right-of-way and thus, are not subject to the City of Newport Beach Municipal Code sections 13.08 or 13.09 that protect trees in the City. At the time of this study it could not be absolutely confirmed that none of the Mexican fan palms that occur along the public street adjacent to the Proposed Project would be damaged or require removal (e.g., for site access). In any case, the owner/applicant is required to comply with the applicable municipal code section(s). Therefore, in the event that the Proposed Project would encroach into the City right-of-way and require removal of City trees, the property owner would submit a tree removal form to the Municipal Operations Director, pay all related tree removal and one for one replacement costs, and meet all provisions of City Council Policies L-2 and L-6 and City Municipal Code Chapters 13.08 and 13.09, or any successor policies or sections. Therefore, as the result of complying with the relevant Municipal Code Sections, implementation of the Proposed Project would have **no significant impact** with regard to a conflict with local policies or ordinances protecting biological resources. No additional mitigation is required.

Significance Threshold – Issue 6: Would the proposed project conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?

The Proposed Project is situated in a developed area that lies within the overall planning area that is addressed under the Orange County Central and Coastal Natural Community Conservation Plan / Habitat Conservation Plan (NCCP/HCP). The Proposed Project and the Newport Center area around it was developed prior to the establishment of the NCCP/HCP and the Project Site is not within or adjacent to any natural areas that comprise the NCCP/HCP Reserve System. Moreover, the Project Site contains no habitat areas or resources subject to the provisions of the NCCP/HCP, or any other approved local, regional, or state habitat conservation plan. The Project Site is within an existing developed area and will not directly impact any habitat subject to any conservation planning instruments. Therefore, implementation of the Proposed Project will have **no impact** with respect to any conflicts with established conservation plans in the region.

c. Potential Effects on Nesting Birds

As noted previously, although the Project Site supports only non-native, landscaped vegetation, such areas may be used by ground nesting birds, some songbirds, and other common avian species. Some bird species may also nest on existing structures or in construction material and equipment. As discussed above with regard to legal protection for nesting birds, even common native and migratory species and their nests and eggs are protected from unnecessary destruction during breeding.

The Proposed Project could harm active nests and breeding birds, if present, in the course of construction. CEQA does not specifically require that limited impacts to a small number of common birds with no special-status should be considered biologically significant or substantially adverse. However, California Fish and Game Code Section 3503 protects the active nests and eggs of all native bird species, except certain game birds, and the federal Migratory Bird Treaty Act (16 USC 703–711) makes it unlawful to take or kill individuals of most native and migratory bird species found in the United States. As noted above, the City of Newport Beach General Plan Update EIR references the policy that projects are expected to cooperate with regulatory agencies and comply

with existing regulations. Therefore, implementation of Standard Condition BIO-1 below, prescribed to be incorporated into the Proposed Project, would ensure compliance with state and federal laws that protect nesting birds by conducting preconstruction surveys and requiring implementation of avoidance measures. As the result of adhering to policies established in the General Plan Update and through complying with existing State and federal regulations pertaining to the protection of nesting birds, impacts would be **less than significant**. No additional mitigation is required.

5. Nesting Bird Protection

The following Standard Condition is prescribed to be incorporated into the Proposed Project to assure compliance with State and federal statutes that protect nesting birds, including raptors.

Standard Condition BIO-1. Impacts to nesting birds would be avoided by conducting construction activities outside of the bird nesting season (i.e., from September 1 to February 14 for most birds, from July 1 to January 14 for raptors). However, if demolition and/or construction activities must occur during the nesting season, the following measures shall apply during the time frames indicated:

- A. Prior to work during the bird nesting season (February 15 to August 31 for most birds, January 15 to June 31 for raptors), a qualified biologist shall conduct a pre-construction survey of all suitable habitat for the presence of nesting birds no more than 14 days prior to construction activities. The results of the pre-construction survey shall be valid for 14 days; if construction activities do not commence within 14 days following the survey or if activities cease for more than 14 consecutive days, a new pre-construction nesting bird survey shall be conducted before construction resumes.
- B. If any active nests are found during a pre-construction nesting bird survey, a buffer of up to 300 feet for most bird species and 500 feet for raptors, or as determined appropriate by the qualified biologist (based on species-specific tolerances and site-specific conditions such as “line-of-site” between nest and work areas), shall be delineated, flagged, and avoided until the nesting cycle is complete (i.e., the qualified biologist determines that the young have fledged or the nest has failed). Alternatively, the qualified biologist may recommend other measures to minimize disturbances to active nests that may include but are not limited to limiting the duration of certain activities, placing sound and/or visual barriers (e.g., noise blankets on temporary chain-link fencing), and/or providing full-time monitoring by a qualified biologist.
- C. As a provisional additional mitigation element, in case surveys identify white-tailed kite or American peregrine falcon as present on site or within 500 feet of construction activity, such occurrence shall be documented and CDFW shall be notified. If an active nest of either species is encountered, a minimum buffer of 500 feet shall be delineated, flagged, and avoided by construction activity until the nesting cycle is complete (i.e., the qualified biologist determines that the young have fledged or the nest has failed). Alternatively, a qualified biologist may recommend other measures as noted in Item B, above. However, CDFW must be consulted prior to any reduction of avoidance buffers or implementation of other measures as no take is allowed of these species.

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APPENDIX A – REGULATORY FRAMEWORK

1.1 Federal

1.1.1 Endangered Species Act (USC, Title 16, Sections 1531 through 1543)

The federal Endangered Species Act (FESA) and subsequent amendments provides for the conservation and protection of wildlife and plant species that are listed or proposed for listing as endangered or threatened species and the ecosystems upon which they depend. The FESA also provides statutory framework for the conservation and recovery of threatened and endangered species as well as for the conservation of designated critical habitat that USFWS determines is required for the survival and recovery of these listed species.

Section 7 of the FESA requires federal agencies, in consultation with and assistance from the Secretary of the Interior or the Secretary of Commerce, as appropriate, to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of threatened or endangered species or result in the destruction or adverse modification of critical habitat for these species. The USFWS and National Marine Fisheries Service (NMFS) share responsibilities for administering the FESA. Regulations governing interagency cooperation under Section 7 are found in CCR Title 50, Part 402. The opinion issued at the conclusion of consultation will include a statement authorizing “take” (to harass, harm, pursue, hunt, wound, kill, etc.) that may occur incidental to an otherwise legal activity. Although federal funding is not expected, if the proposed Program were to receive federal funding the funding agency would be required to initiate a consultation with USFWS under Section 7. The consultation process would then lead to issuance of a Biological Opinion from USFWS. In most cases, a Biological Opinion addresses a project’s potential to result in “take” of listed species (as defined below), and includes mandatory conditions that would allow for limited incidental take to occur subject to prescribed conditions.

Section 9 lists those actions that are prohibited under the FESA. Although take of a listed species is prohibited, it is allowed when it is incidental to an otherwise legal activity. Section 9 prohibits take of listed species of fish, wildlife, and plants without special exemption. The definition of “harm” includes significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns related to breeding, feeding, or shelter. “Harass” is defined as actions that create the likelihood of injury to listed species by disrupting normal behavioral patterns related to breeding, feeding, and shelter significantly.

Section 10 provides a means whereby a non-federal action with the potential to result in take of a listed species can be allowed under an incidental take permit which may be issued once a HCP is approved. Application procedures are found at 50 CFR 13 and 17 for species under the jurisdiction of USFWS and 50 CFR 217, 220, and 222 for species under the jurisdiction of NMFS.

1.1.2 Migratory Bird Treaty Act (16 USC 703 through 711)

The Migratory Bird Treaty Act (MBTA) is the domestic law that affirms, or implements, a commitment by the U.S. to four international conventions (with Canada, Mexico, Japan, and Russia) for the protection of a shared migratory bird resource. The MBTA makes it unlawful at any time, by any means, or in any manner to pursue, hunt, take, capture, or kill migratory birds. “Migratory bird” means any bird protected by any of the treaties and currently includes 1,027 bird species in the United States (50 CFR 10.13), regardless of whether the particular species actually migrates. The law also applies to the removal of nests occupied by migratory birds during the breeding season. The MBTA makes it unlawful to take, pursue, molest, or disturb these species, their nests, or their eggs anywhere in the United States.

1.1.3 Federal Clean Water Act (33 USC 1251 through 1376)

The USACE regulates “discharge of dredged or fill material” into “waters” of the United States, which includes tidal waters, interstate waters, and “all other waters, interstate lakes, rivers, streams (including excluding ephemeral drainages), mud flats, sand flats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes or natural ponds, the use, degradation, or destruction of which could affect interstate or foreign commerce or which are tributaries to waters subject to the ebb and flow of the tide” (33 C.F.R. 328.3(a)), pursuant to provisions of Section 404 of the Clean Water Act (CWA). The CWA also excludes certain features from this regulation, including “wastewater recycling facility constructed on dry land” (see 33 CFR Section 230.3 (o)(2)(vii)). Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not considered waters of the United States.

1.2 State

1.2.1 California Endangered Species Act (CFG Code Section 2050 et seq.)

The California Endangered Species Act (CESA) establishes the policy of the state to conserve, protect, restore, and enhance threatened or endangered species and their habitats. The CESA mandates that state agencies should not approve projects that would jeopardize the continued existence of threatened or endangered species if reasonable and prudent alternatives are available that would avoid jeopardy. There are no state agency consultation procedures under the CESA. For projects that would affect a listed species under both the CESA and the FESA, compliance with the FESA would satisfy the CESA if CDFW determines that the federal incidental take authorization is “consistent” with the CESA under CFG Code Section 2080.1. For projects that would result in take of a species listed under the CESA only, the project operator would have to apply for a take permit under Section 2081(b).

1.2.2 California Fish and Game Code Section 1600 et seq.

CDFW is responsible for protecting and conserving fish and wildlife resources, and the habitats upon which they depend. Under Section 1600 of the California Fish and Game Code, CDFW administers the Lake and Streambed Alteration (LSA) Program and regulates all substantial diversions, obstructions, or changes to the natural flow or bed, channel, or bank of any river, stream, or lake (which typically include reservoirs), which supports fish or wildlife.

Applicants proposing changes to such regulated water resources must submit a Lake or Streambed Alteration Notification to CDFW for such projects. CDFW will then determine if the proposed activity may substantially adversely affect an existing fish or wildlife resource and will issue a final agreement for the applicant's signature that includes reasonable measures necessary to protect the resource. Preliminary notification to CDFW, and project review by CDFW may occur during or after the California Environmental Quality Act (CEQA) environmental review process but prior to project implementation.

1.2.3 California Fish and Game Code Sections 2080 and 2081

Section 2080 of the California Fish and Game Code states that “No person shall import into this state [California], export out of this state, or take, possess, purchase, or sell within this state, any species, or any part or product thereof, that the Commission [State Fish and Game Commission] determines to be an endangered species or threatened species, or attempt any of those acts, except as otherwise provided in this chapter, or the Native Plant Protection Act, or the California Desert Native Plants Act.” Pursuant to Section 2081, CDFW may authorize individuals or public agencies to import, export, take, or possess state-listed endangered, threatened, or candidate species. These otherwise prohibited acts may be authorized through Incidental Take permits or Memoranda of Understanding if the take is incidental to an otherwise lawful activity, impacts of the authorized take are minimized and fully mitigated, the permit is consistent with any regulations adopted pursuant to any recovery plan for the species, and the project operator ensures adequate funding to implement the measures required by CDFW, which makes this determination based on available scientific information and considers the ability of the species to survive and reproduce.

1.2.4 California Fish and Game Code Sections 3503, 3503.5, 3513, and 3800

Under these sections of the California Fish and Game Code, a project operator is not allowed to conduct activities that would result in the taking, possessing, or destroying of any birds of prey; the taking or possessing of any migratory nongame bird as designated in the MBTA; the taking, possessing, or needlessly destroying of the nest or eggs of any raptors or nongame birds protected by the MBTA; or the taking of any nongame bird pursuant to California Fish and Game Code Section 3800.

Section 3800 of the CFG Code affords protection to all nongame birds, which are all birds occurring naturally in California that are not resident game birds, migratory game birds, or fully protected birds. Section 3513 of the CFG Code upholds the MBTA by prohibiting any take or possession of birds that are designated by the MBTA as migratory nongame birds except as allowed by federal rules and regulations promulgated pursuant to the MBTA.

1.2.5 California Environmental Quality Act Guidelines Section 15380

Although threatened and endangered species are protected by specific federal and state statutes, California Environmental Quality Act (CEQA) Guidelines Section 15380(b) provides that a species not listed on the federal or state list of protected species may be considered rare or endangered if the species can be shown to meet certain specified criteria. These criteria have been modeled after the definition in FESA and the section of the California Fish and Game Code dealing with rare or endangered plants or animals. This section is included in CEQA primarily to deal with situations in which a public agency is reviewing a project that may have a significant effect on, for example, a candidate species that has not been listed by

either USFWS or CDFW. Thus, CEQA provides an agency with the ability to protect a species from the potential impacts of a project until the respective government agencies have an opportunity to designate the species as protected, if warranted. CEQA also calls for the protection of other locally or regionally significant resources, including natural communities. Although natural communities do not at present have legal protection of any kind, CEQA calls for an assessment of whether any such resources would be affected and requires findings of significance if there would be substantial losses. Natural communities listed by CNDDB as sensitive are considered by CDFW to be significant resources and fall under the State CEQA Guidelines for addressing impacts. Local planning documents such as General Plans often identify these resources as well.

1.2.6 California Water Quality Control Act (Porter-Cologne California Water Code Section 13260)

The State Water Resources Control Board and the RWQCB (together “Boards”) are the principal state agencies with primary responsibility for the coordination and control of water quality. The Boards regulate activities pursuant to Section 401(a)(1) of the federal CWA as well as the Porter-Cologne Water Quality Control Act (Porter-Cologne) (Water Code Section 13260). Section 401 of the CWA specifies that certification from the State is required for any applicant requesting a federal license or permit to conduct any activity including but not limited to the construction or operation of facilities that may result in any discharge into navigable waters. The certification shall originate from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable water at the point where the discharge originates or will originate. Any such discharge will comply with the applicable provisions of Sections 301, 302, 303, 306, and 307 of the CWA.

In Porter-Cologne, the Legislature declared that the “State must be prepared to exercise its full power and jurisdiction to protect the quality of the waters in the State from degradation...” (California Water Code Section 13000). Porter-Cologne grants the Boards the authority to implement and enforce the water quality laws, regulations, policies and plans to protect the groundwater and surface waters of the State. It is important to note that enforcement of the State’s water quality requirements is not solely the purview of the Boards and their staff. Other agencies (e.g., CDFW) have the ability to enforce certain water quality provisions in state law.

The State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State (procedures), adopted by the State Water Resources Control Board on April 2, 2019, became effective May 28, 2020. The Procedures include a definition for wetland waters of the state that include (1) all wetland waters of the U.S.; and (2) aquatic resources that meet both the soils and hydrology criteria for wetland waters of the U.S. but lack vegetation.

1.3 Regional or Local

1.3.1 City of Newport Beach

Tree Protection Ordinance (Council Policy G-1, No. 13.09,)

Pursuant to the City’s Tree Protection Ordinance, a tree permit is required prior to damaging or removing any trees located on City property or in the public right-of-way.



PHOTOGRAPH 1: Mature trees and vegetation at the southern point of the project site. Looking northwest.



PHOTOGRAPH 2: Landscaped courtyard. Looking south.

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SOURCE: ESA, 2021

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PHOTOGRAPH 3: Landscaped courtyard. Looking west.



PHOTOGRAPH 4: Dense vegetation along the western project boundary. Looking northwest.

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SOURCE: ESA, 2021

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PHOTOGRAPH 5: Hotel building and well maintained landscape in the courtyard. Looking north.



PHOTOGRAPH 6: Walkway between hotel and parking lot. Looking north.

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SOURCE: ESA, 2021

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PHOTOGRAPH 7: Swimming pool facility. Looking north.



PHOTOGRAPH 8: Looking south along Newport Center Drive, the hotel parking lot is on the right.

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SOURCE: ESA, 2021

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Appendix B
Representative Site Photos

