

5. Environmental Analysis

5.6 HAZARDS AND HAZARDOUS MATERIALS

This section of the Draft Environmental Impact Report (DEIR) evaluates the potential impacts of the proposed project on human health and the environment due to exposure to hazardous materials or conditions associated with the project site, project construction, and project operations. Potential project impacts and appropriate mitigation measures or standard conditions are included as necessary. The analysis in this section is based, in part, upon the following source:

- *Phase I Environmental Site Assessment, Orange County Museum of Art, 850 San Clemente Drive, Newport Beach, California 92660*, TRC Environmental Professional, November 10, 2015.

A complete copy of this study is included in the Technical Appendices to this Draft EIR (Volume II, Appendix H).

5.6.1 Environmental Setting

5.6.1.1 REGULATORY BACKGROUND

Federal, state, regional, and local laws, regulations, plans, or guidelines that are potentially applicable to the project site are summarized below.

Federal

Comprehensive Environmental Response, Compensation and Liability Act

The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) is a law developed to protect the water, air, and soil resources from the risks created by past chemical disposal practices. This law is also referred to as the Superfund Act and regulates sites on the National Priority List, which are called Superfund sites.

Emergency Planning and Community Right-To-Know Act

In 1986, Congress passed the Superfund Amendments and Reauthorization Act. Title III of this regulation is called the “Emergency Planning and Community Right-to-Know Act of 1986” (EPCRA). The act required the establishment of state commissions, planning districts, and local committees to facilitate the preparation and implementation of emergency plan. Under its requirements, local emergency planning committees (LEPCs) are responsible for developing a plan for preparing for and responding to a chemical emergency, including:

- An identification of local facilities and transportation routes where hazardous materials are present.
- The procedures for immediate response in case of an accident (this must include a community-wide evacuation plan).
- A plan for notifying the community that an incident has occurred.

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- The names of response coordinators at local facilities.
- A plan for conducting drills to test the plan.

The emergency plan is reviewed by the State Emergency Response Commission and publicized throughout the community. The LEPC is required to review, test, and update the plan each year. The Orange County Environmental Health Department (EHD) is responsible for coordinating hazardous material and disaster preparedness planning and appropriate response efforts with city departments and local and state agencies. The goal is to improve public and private sector readiness and to mitigate local impacts resulting from natural or manmade emergencies.

Another purpose of the EPCRA is to inform communities and citizens of chemical hazards in their areas. Sections 311 and 312 of EPCRA require businesses to report to state and local agencies the location and quantities of chemicals stored onsite. Under section 313 of EPCRA, manufacturers are required to report chemical releases for more than 600 designated chemicals. In addition to chemical releases, regulated facilities are also required to report offsite transfers of waste for treatment or disposal at separate facilities, pollution prevention measures, and chemical recycling activities. The US Environmental Protection Agency (EPA) maintains the Toxic Release Inventory database that documents the information that regulated facilities are required to report annually.

Resource Conservation and Recovery Act

The Resource Conservation and Recovery Act (RCRA) is the principal federal law that regulates generation, management, and transportation of hazardous waste. Hazardous waste management includes the treatment, storage, or disposal of hazardous waste.

Title 29, Code of Federal Regulations, Section 1926.62

Title 29, CFR Section 1926.62, sets standards for occupational health and environmental controls for lead exposure in construction, regardless of the lead content of paints and other materials. The standards include requirements addressing exposure assessment, methods of compliance, respiratory protection, protective clothing and equipment, hygiene facilities and practices, medical surveillance, medical removal protection, employee information and training, signs, recordkeeping, and observation and monitoring.

State

Hazardous Materials Release Notification

Many state statutes require emergency notification of a hazardous chemical release:

- California Health and Safety Codes Sections 25270.8, and 25507
- Vehicle Code Section 23112.5
- Public Utilities Code Section 7673, (PUC General Orders #22-B, 161)
- Government Code Sections 51018, 8670.25.5 (a)

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- Water Codes Sections 13271, 13272,
- California Labor Code Section 6409.1 (b)10

Requirements for immediate notification of all significant spills or threatened releases cover owners, operators, persons in charge, and employers. Notification is required regarding significant releases from facilities, vehicles, vessels, pipelines, and railroads. In addition, all releases that result in injuries or harmful exposure to workers must be immediately reported to the California Occupational Safety and Health Administration pursuant to the California Labor Code Section 6409.1(b).

Hazardous Materials Disclosure Programs

The Unified Program administered by the State of California consolidates, coordinates, and makes consistent the administrative requirements, permits, inspections, and enforcement activities for environmental and emergency management programs, which include: Hazardous Materials Release Response Plans and Inventories (business plans), the California Accidental Release Prevention (CalARP) Program, and the Underground Storage Tank (UST) Program. The Unified Program is implemented at the local government level by Certified Unified Program Agencies (CUPAs).

The CUPA for the Newport Beach area is the Orange County EHD, which is responsible for regulating hazardous materials business plans and chemical inventory, hazardous waste and tiered permitting, underground storage tanks, aboveground storage tanks, and risk management plans.

Hazardous Materials Business Plans

Both the federal government (Code of Federal Regulations) and the State of California (California Health and Safety Code) require all businesses that handle more than a specified amount—or “reporting quantity”—of hazardous or extremely hazardous materials to submit a hazardous materials business plan to its CUPA. According to the EHD guidelines, the preparation, submittal, and implementation of a business plan is required by any business that handles a hazardous material or a mixture containing a hazardous material in specified quantities.

Business plans must include an inventory of the hazardous materials at the facility. Businesses must update the whole plan at least every three years and the chemical portion every year. Also, business plans must include emergency response plans and procedures to be used in the event of a significant or threatened significant release of a hazardous material. These plans need to identify the procedures for immediate notification of all appropriate agencies and personnel, identification of local emergency medical assistance appropriate for potential accident scenarios, contact information for all company emergency coordinators, a listing and location of emergency equipment at the business, an evacuation plan, and a training program for business personnel.

The EHD currently reviews submitted business plans and updates. Businesses that handle hazardous materials are required by law to provide an immediate verbal report of any release or threatened release of hazardous materials if there is a reasonable belief that the release or threatened release poses a significant present or potential hazard to human health and safety, property, or the environment. The EHD is also

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charged with the responsibility of conducting compliance inspections of regulated facilities in Orange County.

California Accidental Release Prevention Program

CalARP became effective on January 1, 1997, in response to Senate Bill 1889 (Chapter 715, Statutes of 1996). CalARP aims to be proactive and therefore requires businesses to prepare risk management plans, which are detailed engineering analyses of the potential accident factors present at a business and the mitigation measures that can be implemented to reduce this accident potential. This requirement is coupled with the requirements for preparation of hazardous materials business plans under the Unified Program, implemented by the CUPA.

Leaking Underground Storage Tanks

Leaking USTs have been recognized since the early 1980s as the primary cause of groundwater contamination from gasoline compounds and solvents. In California, regulations aimed at protecting against UST leaks have been in place since 1983 (Health and Safety Code). This was a year before RCRA was amended to add Subtitle I, which required UST systems to be installed in accordance with standards that address the prevention of future leaks. The State Water Resources Control Board has been designated the lead California regulatory agency in the development of UST regulations and policy.

Older tanks are typically single-walled steel tanks. Many of these have leaked as a result of corrosion, punctures, and detached fittings. As a result, the State of California required the replacement of older tanks with new double-walled fiberglass tanks with flexible connections and monitoring systems. UST owners were given 10 years to comply with the new requirements—the deadline was December 22, 1998. However, many UST owners did not act by the deadline, so the state granted an extension for their replacement ending January 1, 2002. The California Regional Water Quality Control Boards, in cooperation with the Office of Emergency Services, maintain an inventory of leaking USTs in a statewide database.

California Code of Regulations, Title 22, Division 4.5

Title 22, Division 4.5, of the California Code of Regulations (CCR) sets forth the requirements for hazardous-waste generators; transporters; and owners or operators of treatment, storage, or disposal facilities. These regulations include the requirements for packaging, storage, labeling, reporting, and general management of hazardous waste prior to shipment. In addition, the regulations identify standards applicable to transporters of hazardous waste. These regulations specify the requirements for transporting shipments of hazardous waste, including manifesting, vehicle registration, and emergency accidental discharges during transportation.

California Fire Code

The 2013 California Fire Code (CCR Title 24 Part 9) sets requirements pertaining to fire safety and life safety, including for building materials and methods, fire protection systems in buildings, emergency access to buildings, and handling and storage of hazardous materials.

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California Building Code

CCR Title 24, Part 2, Section 907.2.11.2. Smoke alarms shall be installed and maintained on the ceiling or wall outside of each separate sleeping area in the immediate vicinity of bedrooms, in each room used for sleeping purposes, and in each story within a dwelling unit. The smoke alarms shall be interconnected in such a manner that the activation of one alarm will activate all of the alarms in the individual unit. Smoke alarms shall receive their primary power from the building wiring and shall be equipped with a battery backup.

California Health and Safety Code, Sections 17920.10 and 105255

Lead must be contained during demolition activities.

Regional

South Coast Air Quality Management District

SCAQMD Rule 1403 governs the demolition of buildings containing asbestos materials. Rule 1403 specifies work practices with the goal of minimizing asbestos emissions during building demolition and renovation activities, including the removal and associated disturbance of asbestos-containing material (ACM). The requirements for demolition and renovation activities include asbestos surveying, notification, ACM removal procedures and time schedules, ACM handling and cleanup procedures, and storage and disposal requirements for asbestos-containing waste materials.

Local

City of Newport Beach Fire Department Fire Prevention Guidelines

The Newport Beach Fire Department Life Safety Division has set fire prevention guidelines that address such matters as fire flow, fire access, building construction, flammable and combustible liquids, and fire protection systems.

Newport Beach Municipal Code: Building Height Limits for Airport Environs

Building height limits within the height restriction zone designated in the Airport Environs Land Use Plan for John Wayne Airport are regulated under Section 20.30.060(E), Height Limits and Exceptions, of the Newport Beach Municipal Code.

E. Airport Environs Land Use Plan (AELUP) for John Wayne Airport and Airport Land Use Commission (ALUC) Review Requirements.

1. AELUP Requirements.

- a. Buildings and structures shall not penetrate Federal Aviation Regulation (FAR) Part 77, Obstruction—Imaginary Surfaces, for John Wayne Airport unless approved by the Airport Land Use Commission (ALUC).

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- b. In compliance with FAR Part 77, applicants proposing buildings or structures that penetrate the 100:1 Notification Surface shall file a Form 7460-1, Notice of Proposed Construction or Alteration with the FAA. A copy of the FAA application shall be submitted to the ALUC and the applicant shall provide the City with FAA and ALUC responses.
2. Citywide Requirements. Development projects that include structures higher than two hundred (200) feet above existing grade shall be submitted to the Airport Land Use Commission (ALUC) for review. In addition, projects that exceed a height of two hundred (200) feet above existing grade shall file Form 7460-1 with the Federal Aviation Administration (FAA). (Ord. 2012-11 § 1 (Exh. A), 2012: Ord. 2010-21 § 1 (Exh. A)(part), 2010)

5.6.1.2 EXISTING CONDITIONS

Current and Historic Site Uses

The site is developed with the one-story, 23,632-square-foot Orange County Museum of Art building, constructed in 1977, and associated parking lots and landscaping.

Based on historical aerial photographs and topographic maps, the site was vacant before 1977.

Environmental Records Review

Onsite Listings

The project site is listed on the Haznet database of hazardous materials shipments manifests for shipment of about 8.8 tons of asbestos-containing waste offsite in 1996 during a renovation of the building; the wastes are presumed to have been generated during abatement and renovation. Unspecified organic liquid mixtures and waste laboratory chemicals were transferred offsite in 2000. These listings appear to relate to one-time cleanup operations and are not considered to represent an environmental concern.

Offsite Listings

Consideration of offsite environmental records in the Phase I Environmental Site Assessment was limited to records for adjoining and surrounding properties for the following factors:

- Whether the property is up-gradient or down-gradient to the project site vis-à-vis groundwater migration and soil vapor migration;
- Whether the hazardous materials release case has been closed by the relevant regulatory agency;
- The type of database and whether contamination on that property is known;
- The distance between the property and the project site.

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Table 5.6-1 Offsite Environmental Records Listings

Property and Address	Distance and Direction from Project Site (miles)	Database and Type of Site Listed	Reason for Listing and Regulatory Status
Pacific Mutual, XEROX 700 Newport Center Drive	0.2, S	Leaking Underground Storage Tank (LUST)	Diesel fuel leak affected soil; case closed 1990
		Registered Underground Storage Tank (UST); CA HIST CORTESE	Current and historic underground storage tanks
		Emissions Inventory (EMI)	Unspecified air emissions in 1990 and 1995
		Small Quantity Generator of hazardous wastes (SQG)	Hazardous waste generator (100 to 1,000 kg/220 to 2,205 pounds per month)
Pacific Financial, Pacific Mutual, Plaza 800 Newport Center Drive	0.2, S	LUST	gasoline leak affected soil; case closed 1990
		UST, CA HIST CORTESE	USTs
Pantera Auto Detail 3337 Colony Plaza	0.1, SW	EDR Historical Automotive Station	Historic automotive service business
Newport Beach Fire Station 3 868 Santa Barbara Drive	0.1, NW	UST, CA FID UST, SWEEPS UST, HIST UST	The site maintains four tanks containing motor vehicle fuel and petroleum products.
Newport Beach Police Department 870 Santa Barbara Drive	0.1, NW	LUST	
		UST, HIST UST, CA HIST CORTESE,	USTs (current and historic listings)
		California Hazardous Materials Incident Reporting System (CHMIRS) Emissions Inventory (EMI)	Unspecified incident 1990. Unspecified air emissions 1990.
Sterling Motors LTD, Land Rover Newport Beach 1540 Jamboree Road	0.2, NW	LUST	Releases of solvents, waste oil / motor oil/ hydraulic oil/ lubricating oil affected groundwater other than drinking water in 1998 and 2002; case closed 2002.
		UST, HIST UST, CA HIST CORTESE, SWEEPS UST, CA FID UST,	USTs (current and historic listings)
		Small Quantity Generator of hazardous wastes (RCRA-SQG)	The site generates ignitable waste.
Chevron, Terrible Herbst Chevron, Chevron #9-3042, 93042, Chevron Station No. 93042 1550 Jamboree Road	0.2, N	LUST	Gasoline release affected groundwater other than drinking water; case closed 2005. Remedial efforts included manual recovery of free product, excavation of hydrocarbon affected soil and recovery and treatment of hydrocarbon-affected vapor and groundwater. Impacted soil and groundwater exist beneath the facility and offsite to the west. This site is downgrade from the project site. This release is not considered a threat to the subject property.
		UST, HIST UST, CA HIST CORTESE, SWEEPS UST, CA FID UST,	USTs (current and historic listings)

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Table 5.6-1 Offsite Environmental Records Listings

Property and Address	Distance and Direction from Project Site (miles)	Database and Type of Site Listed	Reason for Listing and Regulatory Status
		RCRA NonGen/NLR	Hazardous waste handler
		HAZNET	2 shipments of hazardous wastes 2009 and 2013: tank bottom waste and unspecified.
Four Seasons Hotel 690 Newport Center Drive	0.2, SE	LUST	<p>Diesel fuel release affected groundwater other than drinking water; case closed 2015.</p> <p>Remediation activities performed at the site include free product recovery between 1998 and 2012. The monitoring well located nearest to OCMA (MW-6) was installed approximately 500 feet east of the OCMA eastern property boundary (within Santa Cruz Drive near the entrance to the Four Seasons). This monitoring well has not contained measurable concentration of petroleum hydrocarbons or VOCs since at least 2009. However, a heavy sheen of petroleum hydrocarbons was detected in the next closest monitoring well to OCMA (MW-5) on February 20, 2012.</p> <p>Given the nature of the reported release (i.e., diesel fuel) and distance between the release and the subject property, the release from the Four Seasons property is not considered a Recognized Environmental Condition. However, it should be noted that if construction dewatering is required to accommodate the proposed development on the subject property, the dewatering activities could alter local groundwater flow and ultimately induce migration of residual petroleum hydrocarbons in groundwater toward the subject property.</p>
		UST, HIST UST, CA HIST CORTESE, SWEEPS UST, CA FID UST,	USTs (current and historic listings)
		RCRA-SQG	
R&M Pacific Oro Inc., Texaco Service Station, Shell Oil, Fashion Island Services Inc. 1600 Jamboree Road	0.2, N	LUST	<p>Gasoline release affected groundwater other than drinking water; case closed 2014.</p> <p>Diesel fuel and gasoline release affected groundwater other than drinking water; case closed 1997.</p> <p>Remediation activities performed at the site included soil excavation. The OCHCA issued a Remedial Action Completion Certification on August 12, 2014. This site is downgrade from the subject property. This release is not considered a threat to the subject property.</p>
		UST, HIST UST, CA HIST CORTESE, SWEEPS UST, CA FID UST,	USTs (current and historic listings)
		RCRA-SQG	Hazardous waste generator

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Table 5.6-1 Offsite Environmental Records Listings

Property and Address	Distance and Direction from Project Site (miles)	Database and Type of Site Listed	Reason for Listing and Regulatory Status
		EDR Historical Automotive Station	Historic automotive service business
Asphalto Waste Water Sump 840 Newport Center Drive	0.2, S	HIST UST Waste Management Unit Database System (WMUDS)/SWAT	19 USTs. Treats and/or disposes of liquid or semisolid wastes from any servicing, producing, manufacturing operation. It is considered a minor threat to water quality.
Big Canyon Country Club 1850 Jamboree Road	0.5, NE	LUST	Gasoline release affected groundwater other than drinking water; case closed 2001.
		UST, CA HIST CORTESE, SWEEPS UST, CA FID UST,	USTs (current and historic listings)
Newport Center Cleaners 521 Newport Center Drive	0.5, SE	Haznet	28 hazardous waste shipments from the site through 2005 including hydrocarbon solvents and halogenated solvents.
		RCRA NonGen/NLR	Hazardous waste handler
		Drycleaners	Historic drycleaners
		Spills, Leaks, Investigations and Cleanup (SLIC)	None specified
Loral Aerospace Corporation, Ford Aerospace Corp Aeronutronic, 1000 Ford Road	1.1, NE	Treatment, Storage, and Disposal Facilities (RCRA-TSDF) Comprehensive Environmental Response, Compensation, and Liability Information System: No Further Remedial Action Planned (CERC-NFRAP) Corrective Action Report (CORRACTS) , 2020 COR ACTION, US FIN ASSUR, CA SLIC, CA EMI, CA ENVIROSTOR, CA HWP	The site was engaged in the treatment, storage, or disposal of hazardous waste. The site required multiple corrective actions from 1991 to 2001, including groundwater extraction and treatment. The site has potentially affected groundwater and soil due to volatile organic compound contaminants. Cleanup status is currently open and undergoing verification monitoring as of 2011. Relatively low concentrations of chlorinated hydrocarbons have been detected in the groundwater monitoring wells associated with this site.
		RCRA-SQG	Hazardous waste generator
		PCB Activity Database System (PADS)	generators, transporters, commercial storers and/or brokers and disposers of polycarbonated biphenyls (PCBs)
		2020 Corrective Action Program List	Site requiring corrective action
		Financial Assurance (FIN ASSUR): owners and operators required to prove they will have sufficient funds for the clean-up, closure, and post-closure care of their facilities	
		SLIC, EMI	Cleanup program site. Hazardous air emissions in 1987, 1990, and 1995.

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Table 5.6-1 Offsite Environmental Records Listings

Property and Address	Distance and Direction from Project Site (miles)	Database and Type of Site Listed	Reason for Listing and Regulatory Status
		EnviroStor Hazardous Waste Program	
Mr. Best Cleaners 2039 East Coast Highway	1.0, S	Voluntary Cleanup Program (VCP) EnivroStor	

Sources: TRC 2015; SWRCB 2015.

None of the hazardous materials sites listed in Table 5.6-1 are considered environmental concerns for the project site for reasons including their distance from the project site; their location upgrade or downgrade of the site; the locations of known hazardous materials contamination from those sites; and most of the cases have been closed.

Asbestos

Asbestos is the name of a group of silicate minerals that are heat resistant, and thus were commonly used as insulation and fire retardant. Inhaling asbestos fibers has been shown to cause lung disease (asbestosis) and lung cancer (mesothelioma). Beginning in the early 1970s, a series of bans on the use of certain ACMs in construction were established by the EPA and the Consumer Product Safety Commission. Most US manufacturers voluntarily discontinued the use of asbestos in certain building products during the 1980s. Requirements for limiting asbestos emissions from building demolition and renovation activities are specified in SCAQMD Rule 1403 (Asbestos Emissions from Demolition/Renovation Activities).

California Government Code Sections 1529 and 1532.1 provide for exposure limits, exposure monitoring, respiratory protection and good working practice by workers exposed to lead and ACM.

Based on the original date of building construction (1977), asbestos-containing building materials may be present in certain building materials. Observed suspect ACMs included dry wall and joint compound and the building roofing material. Suspect ACM, where potentially present, was observed in good condition. Asbestos may also be present in latent or hidden building elements that are not visible during a routine inspection. Examples of latent or hidden building elements that may also contain asbestos include asbestos cement piping and thermal insulation associated with structural support members. While it appears that asbestos abatement activities were performed in conjunction with the 1996 building expansion, it is not known whether asbestos-containing building materials remain. A definitive determination as to the possible presence of asbestos in building materials can only be made through sampling and analysis of suspect building materials. Prior to demolition or significant remodeling, completion of a predemolition asbestos survey is required per SCAQMD Rule 1403.

Lead

Lead was formerly used as an ingredient in paint (before 1978) and as a gasoline additive; both of these uses have been banned. Lead is listed as a reproductive toxin and a cancer-causing substance; it also impairs the

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development of the nervous system and blood cells in children. Those demolishing pre-1978 structures may presume the buildings contain lead-based paint without an inspection. Lead must be contained during demolition activities (California Health & Safety Code sections 17920.10 and 105255). Title 29 CFR Part 1926 establishes standards for occupational health and environmental controls for lead exposure. The standard also includes requirements addressing exposure assessment, methods of compliance, respiratory protection, protective clothing and equipment, hygiene facilities and practices, medical surveillance, medical removal protection, employee information and training, signs, recordkeeping, and observation or monitoring.

Based on the original date of construction, lead-based paint might have been applied to the interior or exterior building surfaces. Lead-based paint sampling is recommended as a component of the required future predemolition asbestos and hazardous materials building survey.

Radon

Radon is a naturally occurring colorless, odorless, and tasteless gas produced by the decay of uranium and radium. Radon levels vary from place to place depending on the underlying geology. Radon can be a health risk, mainly as a cause of lung cancer.

The EPA has designated three zones of classification that indicate the predicted average indoor screening level of radon per county. Orange County is classified in Zone 3, which indicates a predicted radon level below 2 picoCuries per liter of air (pCi/L). The EPA "Action Level" is 4 pCi/L.

Radon testing was performed at 30 sites within the zip code of the property. Radon was detected at these sites at an average concentration of 0.763 pCi/L. Thus, radon gas is not considered to warrant additional investigation or analysis.

Airport Environs Land Use Plan for John Wayne Airport

The project site is approximately 2.9 miles south of the most southern point of John Wayne Airport (JWA) and is within the airport environs land use plan (AELUP) for JWA. The Federal Aviation Administration (FAA) regulates airspace surrounding public-use airports to prevent obstructions to air navigation. The site is within the notification area for JWA, where proponents of projects that would develop structures exceeding certain height limits must notify the FAA and ALUC.

Per Federal Aviation Regulation (FAR) Part 77, Section 77.13(a), notice to the FAA is required for any proposed structure more than 200 feet above the ground level (AGL) of its site. Notices to the FAA provide a basis for evaluating project impacts on operational procedures and air navigation. Coinciding with the FAA regulation, the ALUC also requires notification of all such proposals. Upon notification, the FAA would conduct an aeronautical study to determine whether the proposed structure would pose a hazard to air navigation. The proposed residential building would be 295 feet AGL; therefore, the project is required to notify both the FAA and ALUC.

The AELUP also includes numerous standards and criteria and general planning guidance for the orderly growth of JWA and the area surrounding the airport, including noise and land use compatibility standards.

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5.6.2 Thresholds of Significance

According to Appendix G of the CEQA Guidelines, a project would normally have a significant effect on the environment if the project would:

- H-1 Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials.
- H-2 Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment.
- H-3 Emit hazardous emissions or handle hazardous or acutely hazardous materials, substance, or waste within one-quarter mile of an existing or proposed school.
- H-4 Be located on a site which is included on a list of hazardous materials compiled pursuant to Government Code Section 65962.5 and, as a result, would create a significant hazard to the public or the environment.
- H-5 For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would result in a safety hazard for people residing or working in the project area.
- H-6 For a project in the vicinity of a private airstrip, result in a safety hazard for people residing or working in the project area.
- H-7 Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan.
- H-8 Expose people or structures to a significant risk of loss, injury, or death involving wildland fires, including where wildlands are adjacent to the urbanized areas or where residences are intermixed with wildlands.

The Initial Study, included as Appendix A, substantiates that impacts associated with the following thresholds would either be less than significant or have no impact:

- Threshold H-1
- Threshold H-2
- Threshold H-3
- Threshold H-4
- Threshold H-6
- Threshold H-7
- Threshold H-8

These thresholds will not be addressed in the following analysis.

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5.6.3 Environmental Impacts

The following impact analysis addresses thresholds of significance for potentially significant impacts. The applicable thresholds are identified in brackets after the impact statement.

Impact 5.6-1: The project site is located within the jurisdiction of the airport land use plan for John Wayne Airport but would not create an obstruction to air navigation or cause potential safety hazards to people working or residing on the project site. [Threshold H-5]

Impact Analysis: As detailed under Impact 5.8-2 in Section 5.8, *Land Use and Planning*, the proposed project is in the notification area of JWA and the FAR Part 77 obstruction imaginary surfaces area. Per FAR Part 77, Section 77.13(a), notice to the FAA is required for any proposed structure more than 200 feet above the ground level (AGL) of its site. Notices to the FAA provide a basis for evaluating project impacts on operational procedures and air navigation. Coinciding with the FAA regulation, the ALUC also requires notification of all such proposals. Upon notification, the FAA would conduct an aeronautical study to determine whether the proposed structure would pose a hazard to air navigation. The proposed residential tower would be 295 feet AGL; therefore, the project is required to notify both the FAA and ALUC.

According to the ALUC, the transitional imaginary surface elevations at the project site are in the range of 970 to 1,020 feet above mean sea level (amsl) (Rigoni 2014). Therefore, projects that exceed 970 amsl would not be permitted at the site. The ground elevation of the project site is 187 feet amsl; therefore the 295-foot proposed tower would reach a height of 482 feet amsl and would not exceed the transitional imaginary surface elevations. Thus, the project would comply with building height limits regulated by the AELUP.

Additionally, the AELUP includes numerous standards and criteria, including noise and land use compatibility standards, to ensure orderly growth of JWA and the area surrounding the airport. The AELUP establishes a 60 dBA Community Noise Equivalent Level (CNEL) contour line to be used in determining if projects are incompatible with airport noise. The proposed project lies outside of the 60 dBA CNEL contour line and would, therefore, not conflict with any land use compatibility issues related to noise. The AELUP also identifies safety and compatibility zones that depict which land uses are acceptable and unacceptable in various portions of the airport environs, identified as Safety Zones 1 through 6. The project site would not fall within any of these zones and thus would not conflict with any of the limitations or restrictions for any safety zones.

The City would also bring the proposed project to ALUC for review of consistency with the AELUP for JWA, as required by Section 21676 of the California Public Utilities Code. Overall, impacts related to safety hazards would be less than significant.

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5.6.4 Cumulative Impacts

Hazardous Materials

Phase I Environmental Site Assessments (ESAs) are required for land purchasers to qualify for the Innocent Landowner Defense under CERCLA, to minimize environmental liability under other laws such as RCRA, and as a lender prerequisite to extend a loan for purchase of land.

Phase I ESAs would likely be conducted for each related project involving a sale or lease of land. Where Phase I ESAs identified recognized environmental concerns on the affected project sites, Phase II ESAs would likely be conducted, consisting of sampling and testing of soil, soil vapor, and groundwater for hazardous materials and a human health hazard assessment based on the concentrations of any hazardous materials identified. Where Phase II ESAs identified hazardous materials in concentrations above regulatory action levels, hazardous materials would be cleaned up (Phase III ESA) to such action levels.

Moreover, strict compliance with existing regulations would ensure that the public would not be exposed to any risks related to hazardous materials during any future demolition or construction activities at nearby sites. As discussed above, existing regulations closely regulate the storage, transportation, and rehabilitation of hazardous substances, and all future projects would be subject to such regulations. Therefore, development, redevelopment, and/or reuse of related project sites would not cause substantial hazards to the public or the environment, and impacts would be less than significant.

Airport Land Use Planning

Proponents of projects that would develop structures over certain heights in the notification area for JWA are required to notify the FAA of the proposed structures. The FAA would then conduct an aeronautical study to determine whether the structure would pose a hazard to air navigation. Proponents of such projects are also required to notify the Orange County Airport Land Use Commission. If the plan or plans are inconsistent with the commission's plan, the local agency shall be notified and that local agency shall have another hearing to reconsider its plans. The local agency may overrule the commission after such hearing by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes stated in California Public Utilities Code Section 21670.¹

Review of any proposed structure over certain heights in the aforementioned notification by the FAA and the OALUC would reduce airport-related hazards to less than significant. No significant cumulative impact would occur, and project impacts would not be cumulatively considerable.

¹ California Public Utilities Code Section 21670 directs counties containing public-use airports to establish airport land use commissions and sets forth the selection process for commissioners. If there is no airport with scheduled airline service in a county, the county board of supervisors may exempt itself from this requirement through procedures set forth in section 21670.

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5.6.5 Existing Regulations and Standard Conditions

Existing Regulations

Federal

- United States Code Title 42 Sections 9601 et seq.: Comprehensive Environmental Response, Compensation and Liability Act and Superfund Amendments and Reauthorization Act
- United States Code Title 42, Sections 6901 et seq.: Resource Conservation and Recovery Act
- United States Code Title 42 Sections 11001 et seq: Emergency Planning & Community Right to Know Act
- Code of Federal Regulations Title 14 Part 77: Federal Aviation Regulation Part 77: Preservation of Navigable Airspace.

State

- California Health and Safety Code, Sections 17920.10 and 105255: Lead containment during demolition
- California Fire Code (CCR Title 24 Part 9)
- California Building Code (CCR Title 24 Part 2)

Regional

- South Coast Air Quality Management District Rule 1403: Asbestos removal

Local

- City of Newport Beach Fire Department Fire Prevention Guidelines
- Newport Beach Municipal Code Section 20.30.060(E): Building Height Limits – Airport Environs

City of Newport Beach Standard Conditions of Approval

There are no specific City-adopted standard operating conditions of approval related to hazards and hazardous materials that are applicable to the proposed project at this time; however, project-specific conditions of approval may be applied to the project by the City during the discretionary approval (site development review, tentative tract map, etc.), subsequent design, and/or construction process.

5.6.6 Level of Significance Before Mitigation

Upon implementation of regulatory requirements and standard conditions of approval, Impact 5.61 would be less than significant.

5. Environmental Analysis HAZARDS AND HAZARDOUS MATERIALS

5.6.7 Mitigation Measures

No mitigation measures are required.

5.6.8 Level of Significance After Mitigation

Impacts would be less than significant.

5.6.9 References

Rigoni, Kari (executive officer). 2014, December 9. E-mail correspondence. Airport Land Use Commission for John Wayne Airport.

TRC Environmental Professional (TRC). 2015, November 10. Phase I Environmental Site Assessment, Orange County Museum of Art, 850 San Clemente Drive, Newport Beach, California 92660.