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**APPENDIX A.**  
**NOTICE OF PREPARATION AND SCOPING**  
**DOCUMENTS**

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# CITY OF ENCINITAS

## Notice of Preparation of a Draft Environmental Impact Report

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**FROM:** City of Encinitas,  
Development Services  
505 S. Vulcan Avenue  
Encinitas, California 92024

**TO:** State Clearinghouse, Responsible Agencies,  
Trustee Agencies, and Interested Persons

**PROJECT TITLE:** Piraeus Point  
**PROJECT APPLICANT:** Lennar Homes of California, LLC.  
**PROJECT LOCATION:** NE corner of Piraeus Street and Plato Place, Encinitas, CA 92024;  
County Assessor Parcel Nos. 254-144-01-00 and 216-110-35-00  
**PROJECT CASE NUMBERS:** MULTI-005158-2022; CDP-005161-2022; DR-005160-2022; SUB-005159-2022; and SUB-005391-2022

Pursuant to the California Environmental Quality Act (CEQA), the City of Encinitas (City) is issuing this Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the proposed project. Implementation of the project may require approvals from public agencies. As such, the City seeks input as to the scope and content of the EIR based on your agency's purview of the project (if any). In addition, comments are being solicited from other interested persons. Comments received in response to this NOP will be reviewed and considered by the City in determining the scope of the EIR.

### PROJECT DESCRIPTION AND LIKELY ENVIRONMENTAL EFFECTS:

Lennar Homes of California, LLC. (applicant) proposes the development of a 149-home residential townhome community on an approximately 11.8-acre site in the City of Encinitas. A portion of the project site is identified as one of 16 sites included in the City of Encinitas Housing Element Update, which the City adopted on March 13, 2019. The community would consist of 52 one-bedroom homes, 37 two-bedroom homes, and 60 three-bedroom homes for a total of 149 residential homes, which would be built within 16 separate three-story residential buildings. A total of 256 parking spaces are planned, including private garage spaces and outdoor shared parking. Proposed amenities include a pool, spa, pool house, and lounge seating. Of the 149 residential homes, 134 would be market-rate homes and 15 would be "very low" (50 percent of area median income) affordable residential homes. More than 50 percent of the project site would be permanently preserved and managed as biological open space. A Road Vacation on a 0.25 acre area of Plato Place is also proposed adjacent to the site.

The Project site is designated as R30 OL (Residential 30 Overlay), RR1 [Rural Residential; 0.51-1.0 dwelling units per acre (du/ac)] and RR2 (Rural Residential; 1.01-2.0 du/ac) by the City's General Plan and zoned as R30 OL (Residential 30 Overlay); RR1 (Rural Residential 1); and RR2 (Rural Residential 2). These land use and zoning designations are intended to support residential uses. The Project site is located within the Coastal Zone. City approval of a Density Bonus Tentative Map, Design Review Permit, Coastal Development Permit, and a Vacation (MULTI-005158-2022; SUB-005159-2022; CDP-005161-2022; DR-005160-2022; and SUB-005391-2022) will be required.

Additional information regarding the project, including project plans, may be reviewed on the City's website at: <https://encinitasca.gov/I-Want-To/Public-Notices/Development-Services-Public-Notices> under "Environmental Notices." It is anticipated that the EIR will focus on the following environmental issue areas: aesthetics, air quality, biological resources, cultural resources, energy, greenhouse gas emissions, geology and soils, hazards and hazardous materials, hydrology/water quality, mineral resources, noise, public services and recreation, transportation, tribal cultural resources, utilities and service systems, and wildfire.

### COMMENT PERIOD:

Please send your comments to Nick Koutoufidis, Senior Planner, Encinitas Development Services Department, 505 S. Vulcan Avenue, Encinitas, CA 92024, or via email to [nkoutoufidis@encinitasca.gov](mailto:nkoutoufidis@encinitasca.gov). **All comments must be received by no later than 5:00 p.m. on June 29, 2022.**

This Notice of Preparation can also be reviewed at the Encinitas Library at 540 Cornish Drive, Encinitas, CA 92024 and the Cardiff-by-the-Sea Library at 2081 Newcastle Avenue, Cardiff-by-the-Sea, CA 92007.



Nick Koutoufidis, Senior Planner  
City of Encinitas, Development Services Department

May 27, 2022

Date

**PROBABLE ENVIRONMENTAL EFFECTS:** The environmental factors checked below would be potentially affected by this project and involve at least one impact that is a "Potentially Significant Impact" or a "Less Than Significant With Mitigation Incorporated," as indicated by the checklist on the following pages.

- |  |  |   |
|--|--|---|
| <input checked="" type="checkbox"/> <u>Aesthetics</u>              | <input type="checkbox"/> <u>Agriculture/Forestry Resources</u>       | <input checked="" type="checkbox"/> <u>Air Quality</u>                        |
| <input checked="" type="checkbox"/> <u>Biological Resources</u>    | <input checked="" type="checkbox"/> <u>Cultural Resources</u>        | <input checked="" type="checkbox"/> <u>Energy</u>                             |
| <input checked="" type="checkbox"/> <u>Geology/Soils</u>           | <input checked="" type="checkbox"/> <u>Greenhouse Gas Emissions</u>  | <input checked="" type="checkbox"/> <u>Hazards &amp; Hazardous Materials</u>  |
| <input checked="" type="checkbox"/> <u>Hydrology/Water Quality</u> | <input type="checkbox"/> <u>Land Use &amp; Planning</u>              | <input checked="" type="checkbox"/> <u>Mineral Resources</u>                  |
| <input checked="" type="checkbox"/> <u>Noise</u>                   | <input type="checkbox"/> <u>Population &amp; Housing</u>             | <input checked="" type="checkbox"/> <u>Public Services</u>                    |
| <input checked="" type="checkbox"/> <u>Recreation</u>              | <input checked="" type="checkbox"/> <u>Transportation</u>            | <input checked="" type="checkbox"/> <u>Utilities/Service Systems</u>          |
| <input checked="" type="checkbox"/> <u>Wildfire</u>                | <input checked="" type="checkbox"/> <u>Tribal Cultural Resources</u> | <input checked="" type="checkbox"/> <u>Mandatory Findings of Significance</u> |

**DETERMINATION:** (To be completed by the Lead Agency)

On the basis of this initial evaluation:

- I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
- I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
- I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
- I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

Please note that the NOP signifies the beginning of the EIR review and public participation process. At the same time, the City contemplates further agency and public input as the Project proceeds through the City's environmental review process. During this process and before public circulation of the Draft EIR, the City anticipates some changes or additions to the Project, its description, and probable impacts in response to this NOP, and ongoing County staff input as it independently reviews the Project application and supporting documents. The iterative process is a necessary part of the City's EIR review process. However, the City does not anticipate circulating any new or revised Notices of Preparation for the Project provided the project-related changes or additions do not trigger substantial changes in the Project or its circumstances, or present new information of substantial importance as defined by CEQA. Instead, the Draft EIR that will be circulated for agency and public review will provide all interested entities and parties the opportunity to further comment on the Project and its probable environmental impacts when submitting public comments on the Draft EIR. Those comments also will be the subject of written responses that will be included in the Final EIR.



**Legend**  
[Red Outline] Project Site

Michael Baker  
INTERNATIONAL



PIRAEUS POINT  
**Project Location Map**

Figure 1

**From:** [Dodson, Kimberly@DOT](mailto:Dodson, Kimberly@DOT)  
**To:** [Nick Koutoufidis](mailto:Nick Koutoufidis)  
**Cc:** [State.Clearinghouse@opr.ca.gov](mailto:State.Clearinghouse@opr.ca.gov); [Eaton, Maurice A@DOT](mailto:Eaton, Maurice A@DOT)  
**Subject:** Piraeus Point NOP MND SCH#2022050516  
**Date:** Tuesday, June 28, 2022 11:56:35 AM  
**Attachments:** [SD 5 44.065 Piraeus Point NOP 06-28-2022.pdf](#)

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**[NOTICE:** Caution: External Email]

Hi Nick,

Please see the attached comment letter for the Piraeus Point project NOP SCH # 2022050516.

Thank you,

Kimberly D. Dodson, GISP, M. Eng.  
Associate Transportation Planner  
Caltrans District 11 LDR Branch  
4050 Taylor St., MS-240  
San Diego, CA 92110  
[Kimberly.Dodson@dot.ca.gov](mailto:Kimberly.Dodson@dot.ca.gov)  
Telework phone: 619-985-1587

## California Department of Transportation

DISTRICT 11  
4050 TAYLOR STREET, MS-240  
SAN DIEGO, CA 92110  
(619) 709-5152 | FAX (619) 688-4299 TTY 711  
[www.dot.ca.gov](http://www.dot.ca.gov)



June 28, 2022

11-SD-5  
PM 44.065  
Piraeus Point  
NOP/SCH#2022050516

Mr. Nick Koutoufidis  
Senior Planner  
City of Encinitas  
505 South Volcan Ave.  
Encinitas, CA 92024

Dear Mr. Koutoufidis:

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the Notice of Preparation for the Piraeus Point Project located near Interstate 5 (I-5). The mission of Caltrans is to provide a safe and reliable transportation network that serves all people and respects the environment. The Local Development Review (LDR) Program reviews land use projects and plans to ensure consistency with our mission and state planning priorities.

Safety is one of Caltrans' strategic goals. Caltrans strives to make the year 2050 the first year without a single death or serious injury on California's roads. We are striving for more equitable outcomes for the transportation network's diverse users. To achieve these ambitious goals, we will pursue meaningful collaboration with our partners. We encourage the implementation of new technologies, innovations, and best practices that will enhance the safety on the transportation network. These pursuits are both ambitious and urgent, and their accomplishment involves a focused departure from the status quo as we continue to institutionalize safety in all our work.

Caltrans is committed to prioritizing projects that are equitable and provide meaningful benefits to historically underserved communities, to ultimately improve transportation accessibility and quality of life for people in the communities we serve.

We look forward to working with the City of Encinitas in areas where the City and Caltrans have joint jurisdiction to improve the transportation network and connections between various modes of travel, with the goal of improving the experience of those who use the transportation system.

Caltrans has the following comments:

### **Traffic Impact Study**

- A Vehicle Miles of Travel (VMT) based Traffic Impact Study (TIS) should be provided for this project. Please use the Governor's Office of Planning and Research Guidance to identify VMT related impacts.<sup>1</sup>
- The TIS may also need to identify the proposed project's near-term and long-term safety or operational issues, on or adjacent any existing or proposed State facilities.

### **Hydrology and Drainage Studies**

- Please provide hydraulics studies, drainage and grading plans to Caltrans for review.
- Provide a pre and post-development hydraulics and hydrology study. Show drainage configurations and patterns.
- Provide drainage plans and details. Include detention basin details of inlets/outlet.
- Provide a contour grading plan with legible callouts and minimal building data. Show drainage patterns.
- On all plans, show Caltrans' Right of Way (R/W).
- Early coordination with Caltrans is recommended.
- Caltrans generally does not allow development projects to impact hydraulics within the State's Right-of-Way. Any modification to the existing Caltrans drainage and/or increase in runoff to State facilities will not be allowed.

### **Complete Streets and Mobility Network**

Caltrans views all transportation improvements as opportunities to improve safety, access and mobility for all travelers in California and recognizes bicycle, pedestrian and transit modes as integral elements of the transportation network. Caltrans supports improved transit accommodation through the provision of Park and Ride facilities, improved bicycle and pedestrian access and safety improvements, signal prioritization for transit, bus on shoulders, ramp improvements, or other enhancements that promotes a complete and integrated transportation network. Early coordination with Caltrans, in locations that may affect both Caltrans and the City of Encinitas, is encouraged.

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<sup>1</sup> California Governor's Office of Planning and Research (OPR) 2018. "Technical Advisory on Evaluating Transportation Impacts in CEQA." [http://opr.ca.gov/docs/20190122-743\\_Technical\\_Advisory.pdf](http://opr.ca.gov/docs/20190122-743_Technical_Advisory.pdf)

Mr. Nick Koutoufidis, Senior Planner

June 24, 2022

Page 3

To reduce greenhouse gas emissions and achieve California's Climate Change target, Caltrans is implementing Complete Streets and Climate Change policies into State Highway Operations and Protection Program (SHOPP) projects to meet multi-modal mobility needs. Caltrans looks forward to working with the City to evaluate potential Complete Streets projects.

Bicycle, pedestrian, and public transit access during construction is important. Mitigation to maintain bicycle, pedestrian, and public transit access during construction is in accordance with Caltrans' goals and policies.

### **Land Use and Smart Growth**

Caltrans recognizes there is a strong link between transportation and land use. Development can have a significant impact on traffic and congestion on State transportation facilities. In particular, the pattern of land use can affect both local vehicle miles traveled and the number of trips. Caltrans supports collaboration with local agencies to work towards a safe, functional, interconnected, multi-modal transportation network integrated through applicable "smart growth" type land use planning and policies.

The City should continue to coordinate with Caltrans to implement necessary improvements at intersections and interchanges where the agencies have joint jurisdiction.

### **Noise**

The applicant must be informed that in accordance with 23 Code of Federal Regulations (CFR) 772, the Department of Transportation (Caltrans) is not responsible for existing or future traffic noise impacts associated with the existing configuration of I-5.

### **Environmental**

Caltrans welcomes the opportunity to be a Responsible Agency under the California Environmental Quality Act (CEQA), as we have some discretionary authority of a portion of the project that is in Caltrans' R/W through the form of an encroachment permit process. We look forward to the coordination of our efforts to ensure that Caltrans can adopt the alternative and/or mitigation measure for our R/W. We would appreciate meeting with you to discuss the elements of the EIR that Caltrans will use for our subsequent environmental compliance.

An encroachment permit will be required for any work within the Caltrans' R/W prior to construction. As part of the encroachment permit process, the applicant must provide approved final environmental documents for this project, corresponding technical studies, and necessary regulatory and resource agency permits. Specifically, CEQA determination or exemption. The supporting documents must address all environmental impacts within the Caltrans' R/W and address any impacts from avoidance and/or mitigation measures.

We recommend that this project specifically identifies and assesses potential impacts caused by the project or impacts from mitigation efforts that occur within Caltrans' R/W that includes impacts to the natural environment, infrastructure including but not limited to highways, roadways, structures, intelligent transportation systems elements, on-ramps and off-ramps, and appurtenant features including but not limited to lighting, signage, drainage, guardrail, slopes and landscaping. Caltrans is interested in any additional mitigation measures identified for the project's draft Environmental Document.

### **Broadband**

Caltrans recognizes that teleworking and remote learning lessen the impacts of traffic on our roadways and surrounding communities. This reduces the amount of VMT and decreases the amount of greenhouse gas (GHG) emissions and other pollutants. The availability of affordable and reliable, high speed broadband is a key component in supporting travel demand management and reaching the state's transportation and climate action goals.

### **Right-of-Way**

- Per Business and Profession Code 8771, perpetuation of survey monuments by a licensed land surveyor is required, if they are being destroyed by any construction.
- Any work performed within Caltrans' R/W will require discretionary review and approval by Caltrans and an encroachment permit will be required for any work within the Caltrans' R/W prior to construction.

Mr. Nick Koutoufidis, Senior Planner  
June 24, 2022  
Page 5

Additional information regarding encroachment permits may be obtained by contacting the Caltrans Permits Office at (619) 688-6158 or emailing [D11.Permits@dot.ca.gov](mailto:D11.Permits@dot.ca.gov) or by visiting the website at <https://dot.ca.gov/programs/traffic-operations/ep>. Early coordination with Caltrans is strongly advised for all encroachment permits.

If you have any questions or concerns, please contact Kimberly Dodson, LDR Coordinator, at (619) 985-1587 or by e-mail sent to [Kimberly.Dodson@dot.ca.gov](mailto:Kimberly.Dodson@dot.ca.gov).

Sincerely,

*Maurice A. Eaton*

MAURICE EATON  
Branch Chief  
Local Development Review

**From:** [Ludovissy, Jennifer@Wildlife](mailto:Ludovissy, Jennifer@Wildlife)  
**To:** [Nick Koutoufidis](mailto:Nick Koutoufidis)  
**Cc:** [Mayer, David@Wildlife](mailto:Mayer, David@Wildlife); [Hailey, Cindy@Wildlife](mailto:Hailey, Cindy@Wildlife); [Lane, Jessie@Wildlife](mailto:Lane, Jessie@Wildlife); [OPR State Clearinghouse](#); [Snyder, Jonathan](#)  
**Subject:** Copy of letter re: Piraeus Point Project  
**Date:** Wednesday, June 29, 2022 3:31:52 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[2022050516 Piraeus Point NOP.pdf](#)

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[NOTICE: Caution: External Email]

Mr. Koutoufidis,

Please see attached copy for your records. If you have any questions, please contact Jessie Lane at [Jessie.Lane@wildlife.ca.gov](mailto:Jessie.Lane@wildlife.ca.gov).

Thank you,  
Jenny

**JENNY LUDOVISSY** | Staff Services Analyst

She/Her/Hers

[Create Account](#)



**South Coast Region 5**

3883 Ruffin Rd, San Diego, CA 92123

Office (858) 467-2702 | Cell (858) 716-7147





State of California – Natural Resources Agency  
 DEPARTMENT OF FISH AND WILDLIFE  
 South Coast Region  
 3883 Ruffin Road  
 San Diego, CA 92123  
 (858) 467-4201  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



June 29, 2022

Nick Koutoufidis  
 City of Encinitas  
 505 South Vulcan Ave.  
 Encinitas, CA 92024  
[NKoutoufidis@encinitasca.gov](mailto:NKoutoufidis@encinitasca.gov)

**Subject: Piraeus Point (Project), Notice of Preparation (NOP), SCH #2022050516**

Dear Mr. Koutoufidis:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) of an Environmental Impact Report (EIR) from the City of Encinitas for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

**CDFW ROLE**

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the state. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code. CDFW also oversees the Natural Community Conservation Planning (NCCP) program. The City prepared a draft NCCP Subarea Plan under the Subregional Multiple Habitat Conservation Program (MHCP) addressing the cities in north San Diego County; however, the plan was never finalized, and applicable permits have not been issued by the either CDFW or the U.S. Fish and Wildlife Service (USFWS).

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<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

Mr. Nick Koutoufidis  
City of Encinitas  
June 29, 2022  
Page 2 of 4

## PROJECT DESCRIPTION SUMMARY

**Proponent:** City of Encinitas (City)

**Objective:** The objective of the Project is to construct a 149-home residential community on an 11.8-acre site in Encinitas.

**Location:** The Project site is located on the northeast corner of Piraeus Street and Plato Place in Encinitas, CA. The Project site runs parallel to Interstate 5, bounded by La Costa Avenue to the north, extending southward beyond Sky Loft Road, and bounded by Plato Place to the south. Batiqitos Lagoon is located just north of the Project site, across La Costa Avenue.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

To enable CDFW to adequately review and comment on the proposed Project from the standpoint of the protection of plants, fish, wildlife, and natural habitats, we recommend the following information be included in the EIR:

### General Comments

- 1) **Biological Resource Inventory:** The document should contain a complete description of the Project, including purpose and need, that describes all habitats within or adjacent to the Project area, including all staging areas and access routes to the construction and staging areas. The Project area is described as the area in which potential effects may occur.

The document should also provide a complete assessment of the flora and fauna within and adjacent to the Project area, with particular emphasis upon identifying endangered, threatened, sensitive, and locally unique species and sensitive habitats. This should include a complete floral and faunal species compendium of the entire Project site, undertaken at the appropriate time of year. Species to be addressed should include all those which meet the CEQA definition (see CEQA Guidelines, § 15380). This should include sensitive wildlife species. Seasonal variations in use of the Project area by wildlife should also be addressed. Focused species-specific surveys, conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and USFWS.

- 2) **Biological Impacts:** To provide a thorough discussion of direct, indirect, and cumulative impacts expected to adversely affect biological resources, with specific measures to offset such impacts, the following should be addressed in the EIR:
  - a) Please provide a discussion of potential adverse impacts from lighting, noise, human activity, exotic species, recreational uses, and drainage. Mitigation measures proposed to alleviate such impacts should be included.

Mr. Nick Koutoufidis  
City of Encinitas  
June 29, 2022  
Page 3 of 4

b) Please provide a discussion regarding indirect Project impacts on biological resources, including resources in nearby public lands, open space, adjacent natural habitats, riparian ecosystems, and any designated and/or proposed or existing reserve lands.

c) CDFW also recommends that a habitat gain/loss table be included, which calculates the expected net habitat losses and gains of each type of habitat area lost, restored, enhanced, and created.

- 3) **Special-status Species:** The EIR should thoroughly analyze direct, indirect, and cumulative impacts to any special-status species likely to occur in the Project area. Impacts to species designated as Fully Protected (FPS) must be completely avoided; FPS may not be taken or possessed at any time per section 3511 of the Fish and Game Code. Avoidance measures for avian species may include phasing construction to occur outside of the nesting season, conducting species-specific surveys when construction will occur within 500 feet of a nesting site, retaining a qualified biological monitor on-site during construction, and implementation of no-activity buffers around active nests.

CDFW also considers adverse impacts to a species protected by the California Endangered Species Act (CESA), for the purposes of CEQA, to be significant without mitigation. As to CESA, take of any endangered, threatened, or candidate species that results from the Project is prohibited, except as authorized by state law (Fish & G. Code, §§ 2080, 2085).

Consequently, if the Project, Project construction, or any Project-related activity during the life of the Project will result in take of a species designated as endangered or threatened, or a candidate for listing under CESA, CDFW recommends that the City seek appropriate take authorization under CESA prior to implementing the Project. Appropriate authorization from CDFW may include an incidental take permit (ITP) or a consistency determination in certain circumstances, among other options (Fish and G. Code §§ 2080.1, 2081, subds. (b),(c)). Early consultation is encouraged, as significant modification to a project and mitigation measures may be required to obtain a CESA Permit. Revisions to the Fish and Game Code, effective January 1998, may require that CDFW issue a separate CEQA document for the issuance of an ITP unless the Project CEQA document addresses all Project impacts to CESA-listed species and specifies a mitigation, monitoring, and reporting program that will meet the requirements of an ITP. For these reasons, biological mitigation monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for a CESA ITP.

- 4) **Mitigation for Project-related Biological Impacts:** The EIR should include mitigation measures for adverse Project-related impacts to sensitive plants, animals, and habitats. Mitigation measures should emphasize avoidance and reduction of Project impacts. For unavoidable impacts, on-site habitat restoration or enhancement should be discussed in detail. If on-site mitigation is not feasible, or would not be biologically viable and therefore not adequately mitigate the loss of biological functions and values, off-site mitigation through habitat creation and/or acquisition and preservation in perpetuity should be discussed.
- 5) **Cumulative Effects Analysis:** A cumulative effects analysis should be developed as described under CEQA Guidelines, section 15130. General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar plant communities and wildlife habitats.

Mr. Nick Koutoufidis  
City of Encinitas  
June 29, 2022  
Page 4 of 4

## Specific Comments

- 6) **Coastal California Gnatcatcher:** The Project site is entirely within designated Critical Habitat for the federally threatened coastal California gnatcatcher (*Polioptila californica californica*). Protocol-level surveys should be conducted in accordance with protocols set forth by USFWS and the results included in the EIR.

## ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

## CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Jessie Lane, Environmental Scientist, at [Jessie.Lane@wildlife.ca.gov](mailto:Jessie.Lane@wildlife.ca.gov).

Sincerely,

DocuSigned by:

  
D700B4520375406...

David Mayer  
Environmental Program Manager  
South Coast Region

ec: Cindy Hailey, CDFW – [Cindy.Hailey@wildlife.ca.gov](mailto:Cindy.Hailey@wildlife.ca.gov)  
State Clearinghouse, OPR – [State.Clearinghouse@opr.ca.gov](mailto:State.Clearinghouse@opr.ca.gov)  
Jonathan Snyder, USFWS – [Jonathan\\_d\\_Snyder@fws.gov](mailto:Jonathan_d_Snyder@fws.gov)

**From:** [Carney, Kaitlin@Coastal](mailto:Carney,Kaitlin@Coastal)  
**To:** [Nick Koutoufidis](#)  
**Subject:** Automatic reply: Notice of Preparation for the Draft EIR for the Piraeus Point Project (MULTI-005158-2022)  
**Date:** Thursday, May 26, 2022 7:06:34 PM

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[**NOTICE:** Caution: External Email]

Thank you for your message. I am out of the office and will get back to you when I return on Tuesday, October 19. Thanks, Kaitlin

**From:** [buncelaw@aol.com](mailto:buncelaw@aol.com)  
**To:** [Nick Koutoufidis](#)  
**Subject:** Comments of Barona Band of Mission Indians on NOP for Pireaus Point project  
**Date:** Friday, June 10, 2022 9:19:35 AM

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[**NOTICE:** Caution: External Email]

Dear Mr. Koutoufidis,

I am writing in response to your Notice of Scoping Meeting for the EIR for the above project. I write on behalf of the Barona Band of Mission Indians, a federally-recognized Indian tribe whose reservation is located in rural east San Diego County, for which I serve as Tribal Attorney, and on whose behalf I respond to many environmental issues under the direction of Chairman Raymond Welch and the Tribal Council.

Has there been any notice regarding consultation under AB 52 regarding this project? The scope of this EIR should be sufficient to include an evaluation by a qualified cultural resource professional of the project site for apparent and non-apparent cultural resources prior to any ground disturbance. Please let me know the results of any such evaluation.

Sincerely,

Art Bunce  
Tribal Attorney

June 6, 2022

Nick Koutoufidis, MBA

Development Services Department

South Vulcan Ave, Encinitas, CA

Via email

Re: Piraeus Point

Dear Mr. Koutoufidis,

The Jamul Indian Village, a Kumeyaay Nation and a federally recognized Tribal Government ("Tribe") is in receipt of the City of Encinitas ("Agency") notice regarding the above stated project in Encinitas, CA ("Project"). The Tribe has reviewed the information provided and has determined that the Project falls within the boundaries of the Tribes area of traditional and cultural affiliation. In addition, there is the potential for the Project to impact Tribal Cultural Resources, as defined by Public Resources Code §21074. NE Corner of Piraeus Street and Plato Place. Therefore, the Tribe hereby requests consultation on the proposed Project, as described below.

The Tribe is part of the Kumeyaay Nation, which lived-in present-day San Diego Country, parts of Imperial County and northern Mexico for thousands of years. Although much of the Tribe's traditional use area is no longer under the jurisdiction of the Tribe, the Tribe's connection to the Tribal Cultural Resources outside of the reservation boundaries remains. Tribal Cultural Resources not only provide a connection to our past, but also serve an important role in our culture today. Therefore, the protection of Tribal Cultural Resources, on and off the reservation is of utmost importance to the Tribe and its citizens. To that end, the Tribe appreciates your compliance the California Environmental Quality Act and its guidelines and is hopeful that meaningful consultation, as defined by Government Code §65352.4, will result.

The Tribe requests for consultation under the provisions of the California Environmental Quality Act (Public Resources Code §21080.3.1) for the mitigation of potential Project impacts to Tribal Cultural Resources for the Project. The Tribe requests consultation on the following topics, which shall be included in consultation: (1) alternatives to the project; (2) recommended mitigation measures; and (3) significant effects of the Project.

The Tribe also requests consultation on the following discretionary topics checked below:

Type of environmental review necessary



EMAIL: [info@jamulindianvillage.com](mailto:info@jamulindianvillage.com)

TEL: 619.669.4785

FAX: 619.669.4817

ADDR: P. O. Box 612  
Jamul, CA 91935

[jamulindianvillage.com](http://jamulindianvillage.com)

- ☒ Significance of Tribal Cultural Resources, including any guidelines, regulations, policies or standards used by your Agency to determine the presence of Tribal Cultural Resources and their significance
- ☒ The Project's potential impacts on Tribal Cultural Resources
- ☒ Project alternatives and/or appropriate measures for preservation and/or mitigation that the Tribe may recommend, including, but not limited to:
  - (1) Avoidance and preservation of the resources in place, pursuant to Public Resources Code §21084.3, including, but not limited to, planning and construction to avoid the resources and protect the cultural and natural context, or planning greenspace, parks or other open space, to incorporate the resources with culturally appropriate protection and management criteria;
  - (2) Treating the resources with culturally appropriate dignity taking into account the tribal cultural values and meaning of the resources, including but not limited to the following:
    - (a) Protecting the cultural character and integrity of the resource;
    - (b) Protection the traditional use of the resource; and
    - (c) Protecting the confidentiality of the resource.
  - (3) Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
  - (4) Protecting the Tribal Cultural Resources in place.

Additionally, the Tribe would like to receive any cultural resources assessments or other assessments that have been completed on all or part of the Project's potential "area of Project effect" ("APE"), including, but not limited to:

- (1) The results of any record search that may have been conducted at an Information Center of the California Historical Resources Information System ("CHRIS"), including, but not limited to:
  - (a) A listing of any and all known cultural resources have already been recorded on or adjacent to the APE;
  - (b) Copies of any and all cultural resource records and study reports that may have been provided by the Information Center as part of the records search response;
  - (c) If the probability is low, moderate, or high that cultural resources are located in the APE.
  - (d) Whether the records search indicates a low, moderate or high probability that unrecorded cultural resources are located in the potential APE; and
  - (e) If a survey is recommended by the Information Center to determine whether previously unrecorded cultural resources are present.
- (2) The results of any archaeological inventory survey that was conducted, including:

- (a) Any report that may contain site forms, site significance, and suggested mitigation measures.
  
- (b) All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum, and not be made available for public disclosure in accordance with Government Code Section 6254.10.
  
- (3) The results of any Sacred Lands File ("SFL") check conducted through Native American Heritage Commission. The request form can be found at [http://www.nahc.ca.gov/slf\\_request.html](http://www.nahc.ca.gov/slf_request.html). United States Geological Survey 7.5-minute quadrangle name, township, range, and section required for the search.
  
- (4) Any ethnographic studies conducted for any area including all or part of the potential APE; and
  
- (5) Any geotechnical reports regarding all or part of the potential APE.

The Tribe would like to remind your agency that CEQA Guidelines section 15126.4(b)(3) states that *preservation in place is the preferred manner of mitigating impacts to archaeological sites*. Section 15126.4(b)(3) of the CEQA Guidelines has been interpreted by the California Court of Appeal to mean that "feasible preservation in place must be adopted to mitigate impacts to historical resources of an archaeological nature unless the lead agency determines that another form of mitigation is available and provides superior mitigation of impacts." *Madera Oversight Coalition v. County of Madera* (2011) 199 Cal.App.4th 48, *disapproved on other grounds*, *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439.

The Tribe is requesting a face-to-face meeting between the Agency and the Tribe's representatives to initiate the consultation. Please contact me at your earliest convenience either by email or phone in order to make arrangements.

Sincerely,



Lisa K. Cumper  
Tribal Historic Preservation Officer  
Jamul Indian Village of California

cc: Native American Heritage Commission

**From:** [Angelina Gutierrez](#)  
**To:** [Nick Koutoufidis](#)  
**Cc:** [Desiree Morales Whitman](#); [John Flores](#)  
**Subject:** Piraeus Point  
**Date:** Friday, June 17, 2022 3:33:38 PM  
**Attachments:** [image001.png](#)  
[Piraeus Point .pdf](#)

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[**NOTICE:** Caution: External Email]

Please see attached file thank you.

Respectfully,

Angelina Gutierrez  
Tribal Historic Preservation Office-Monitor Supervisor  
San Pasqual Environmental Department  
[angelinag@sanpasqualtribe.org](mailto:angelinag@sanpasqualtribe.org)  
Phone (760) 651-5219  
Cell: (760) 803-5648





## SAN PASQUAL BAND OF MISSION INDIANS

### SAN PASQUAL RESERVATION

June 17, 2022

#### TRIBAL COUNCIL

Stephen W. Cope  
Chairman

Justin Quis Quis  
Vice Chairman

Jenny Alto  
Secretary-Treasurer

Roberta Cameron  
Councilman

Melody S. Arviso  
Councilman

City of Encinitas  
Nick Koutoufidis  
Senior Planner  
505 S. Vulcan Avenue  
Encinitas CA. 92024

RE: Piraeus Point

Dear Mr. Koutoufidis ,

The San Pasqual Band of Mission Indians Tribal Historic Preservation Office has received your notification of the project referenced above. This letter constitutes our response on behalf of Desiree M. Whitman THPO Officer and San Pasqual Band of Mission Indians.

We have consulted our maps and determined that the project as described is not within the boundaries of the recognized San Pasqual Indian Reservation. It is, however, within the boundaries of the territory that the tribe considers its Traditional Use Area (TUA). Furthermore, we would like to engage in formal government to government consultation so that San Pasqual can have a voice in developing the measures that will be taken to protect these sites and mitigate any adverse impacts. We would appreciate being given access to any cultural resource reports that have been or will be generated during the environmental review process so we can contribute most effectively to the consultation process.

We appreciate your involvement with your initiative and look forward to working with you on future efforts. If you have questions or need additional information, please do not hesitate to contact me by telephone at 760-803-5648 or by e-mail at [Angelinag@sanpasqualtribe.org](mailto:Angelinag@sanpasqualtribe.org)

Respectfully,

Angelina Gutierrez  
Tribal Historic Preservation Office, Monitor  
Supervisor  
San Pasqual Band of Mission Indians

## NATIVE AMERICAN HERITAGE COMMISSION

May 27, 2022

Nick Koutoufidis  
City of Encinitas, Planning Division  
505 S. Vulcan Ave.  
Encinitas, CA 92024

**Re: 2022050516, Piraeus Point Project, San Diego County**

Dear Mr. Koutoufidis:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, § 15064.5 (b) (CEQA Guidelines § 15064.5 (b)). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines §15064 (a)(1)). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

**Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.**

[AB 52](#)



CHAIRPERSON  
**Laura Miranda**  
Luiseño

VICE CHAIRPERSON  
**Reginald Pagaling**  
Chumash

PARLIAMENTARIAN  
**Russell Attebery**  
Karuk

SECRETARY  
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Nomlaki

COMMISSIONER  
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Luiseño

COMMISSIONER  
**Stanley Rodriguez**  
Kumeyaay

EXECUTIVE SECRETARY  
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NAHC HEADQUARTERS  
1550 Harbor Boulevard  
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West Sacramento,  
California 95691  
(916) 373-3710  
[nahc@nahc.ca.gov](mailto:nahc@nahc.ca.gov)  
[NAHC.ca.gov](http://NAHC.ca.gov)

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

- 1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project:** Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:

  - a. A brief description of the project.
  - b. The lead agency contact information.
  - c. Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
  - d. A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).
- 2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report:** A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subds. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1(b)).

  - a. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).
- 3. Mandatory Topics of Consultation If Requested by a Tribe:** The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:

  - a. Alternatives to the project.
  - b. Recommended mitigation measures.
  - c. Significant effects. (Pub. Resources Code §21080.3.2 (a)).
- 4. Discretionary Topics of Consultation:** The following topics are discretionary topics of consultation:

  - a. Type of environmental review necessary.
  - b. Significance of the tribal cultural resources.
  - c. Significance of the project's impacts on tribal cultural resources.
  - d. If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).
- 5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process:** With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).
- 6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document:** If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:

  - a. Whether the proposed project has a significant impact on an identified tribal cultural resource.
  - b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

- 7. Conclusion of Consultation:** Consultation with a tribe shall be considered concluded when either of the following occurs:
- a.** The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
  - b.** A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).
- 8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document:** Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).
- 9. Required Consideration of Feasible Mitigation:** If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).
- 10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:**
- a.** Avoidance and preservation of the resources in place, including, but not limited to:
    - i.** Planning and construction to avoid the resources and protect the cultural and natural context.
    - ii.** Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
  - b.** Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
    - i.** Protecting the cultural character and integrity of the resource.
    - ii.** Protecting the traditional use of the resource.
    - iii.** Protecting the confidentiality of the resource.
  - c.** Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
  - d.** Protecting the resource. (Pub. Resource Code §21084.3 (b)).
  - e.** Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
  - f.** Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).
- 11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource:** An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:
- a.** The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
  - b.** The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
  - c.** The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

## SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: [https://www.opr.ca.gov/docs/09\\_14\\_05\\_Updated\\_Guidelines\\_922.pdf](https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf).

Some of SB 18's provisions include:

1. **Tribal Consultation**: If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).
2. **No Statutory Time Limit on SB 18 Tribal Consultation**. There is no statutory time limit on SB 18 tribal consultation.
3. **Confidentiality**: Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).
4. **Conclusion of SB 18 Tribal Consultation**: Consultation should be concluded at the point in which:
  - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
  - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>.

### NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center ([https://ohp.parks.ca.gov/?page\\_id=30331](https://ohp.parks.ca.gov/?page_id=30331)) for an archaeological records search. The records search will determine:
  - a. If part or all of the APE has been previously surveyed for cultural resources.
  - b. If any known cultural resources have already been recorded on or adjacent to the APE.
  - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
  - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
  - a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
  - b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

3. Contact the NAHC for:
  - a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
  - b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.
  
4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.
  - a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, § 15064.5(f) (CEQA Guidelines § 15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
  - b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
  - c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code § 7050.5, Public Resources Code § 5097.98, and Cal. Code Regs., tit. 14, § 15064.5, subdivisions (d) and (e) (CEQA Guidelines § 15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email address:  
[Andrew.Green@nahc.ca.gov](mailto:Andrew.Green@nahc.ca.gov).

Sincerely,

*Andrew Green*

Andrew Green  
Cultural Resources Analyst

cc: State Clearinghouse



ENCINITAS  
COMMUNITY  
COLLECTIVE

P.O. Box 235801 | Encinitas, CA 92023  
[encinitascommunitycollective@gmail.com](mailto:encinitascommunitycollective@gmail.com) | (760) 456-9042

June 29, 2022

Nick Koutoufidis, Senior Planner  
Development Services Department  
City of Encinitas  
505 South Vulcan Avenue,  
Encinitas, CA 92024



### LETTER OF CONCERN

RE: City of Encinitas Case No., MULTI-005158-2022; CDP-005161-2022; DR-005160-2022;  
SUB-005159-2022, and SUB-005391-2022”

Dear Mr. Koutoufidis:

As per City of Encinitas Notice of Preparation dated May 20, 2022 of a DRAFT Scoping Environmental Impact Report, the ECC has completed an in-depth Review of the above referenced Case No., for the “Piraeus Point Townhomes” project and is hereby attached as if fully set forth for your review and the City’s subsequent action.

The ECC supports the City’s General Plan and the Multi Habitat Conservation Program (MHCP) in recognizing that the irreplaceable sensitive habitat inland bluffs in North County need to be protected as legacy property. This requires identifying all of the environmental and quality of life impacts to the Encinitas community of the proposed “*Piraeus Point Townhomes.*”

This inland bluff project site is an important extension of the northern scenic visual corridor renowned as the “Gateway to Encinitas” as identified in the City of Encinitas General Plan. It is highly valued and appreciated by the City’s residents, visitors and all travelers of the Interstate Hwy-5 Corridor.

The subject property is clearly a legacy environmental connectivity inland bluff site that has been shown on several environmental studies for and behalf of State Agencies, see attached Appendices D.

It is evident that this environmentally sensitive bluff site is totally inappropriate to construct 16 monolithic densely packed 3-story structures with 149 Townhomes housing more than 350 to 500 people, with an excess of 300 vehicles.

The project is undeniably, ill-conceived.

The following is a synopsis of the attached ECC *Piraeus Point Townhomes Environmental Analysis* which addresses the issues of concern to this rural community, in depth and detail.

**Outline of Concerns Related to the proposed *Piraeus Point Townhomes*:**

- 1. Environmental Setting.** The proposed development is incompatible with the rural/residential character of the existing community, and will be a permanent blight on the existing neighborhood. It will degrade both the “quality of life” for the Piraeus Point Townhomes future residents, and the values of the existing surrounding properties.
- 2. Aesthetics.** The site has significant natural attributes with endangered species and flora, that make it a highly inappropriate choice for such a high density development.
- 3. Air Quality.** The project is located within 200 meters of I-5 Interstate/international Highway where more than 125,000 to 250,000 vehicles travel 24/7 to Mexico and Canada. The location is also in a Non-Attainment Ambient Air Quality Standards Area. The U.S. EPA Administrator finds that the current and projected concentrations of the six key well-mixed GHGs— CO<sub>2</sub>, CH<sub>4</sub>, N<sub>2</sub>O, HFCs, PFCs, and sulfur hexafluoride—in the atmosphere threaten the public health and welfare of current and future generations. Why would the City allow 500 future residents breathe the 250,000 vehicle emissions 24/7 for what purpose?
- 4. Biological Resources.** Coastal Sage Scrub (CSS) and Southern Maritime Chapparal have been identified and are a part of the Cannon Property Parcels A and B whereby nesting Gnatcatchers, an endangered species, have been observed. See Appendices D.

**Environmental Mitigation Credits Target Property - Parcel A APN 254-144-01-00 (6.93 Acres Gross/Net) and B APN 216-110-35-00 (4.39 Acres).** The goal of a preservation and environmental mitigation program is to protect the “Target” properties, i.e., Parcels A and B, from being developed. The said program would enhance the disturbed areas of CSS, reintroduce endangered species, through rehabilitation efforts and preserve existing high quality upland habitat through site protection (easements and fences), and manage the “Target” Parcels A and B, in perpetuity by a designated 3<sup>rd</sup> Party. Note this property was pursued by the City of Encinitas and SANDAG 2018 to purchase as a Protected Environmental Habitat. Why not again, this time follow through and act.

- 5. Geology and Soils.** The project site is located on or within very close proximity to the State Recorded La Costa Avenue Fault as initially identified by noted geologist Leonard Eisenberg and confirmed by Norrie Robbins, PhD (Professor Geology, San Diego State University). See Appendices A.

**6. Hazardous Material/Hazardous Waste.** A 2-acre +/- area of Parcel A, was cultivated for use as a Commercial Agricultural growing business from approximately 1998 to 2010. The ECC has aerial photos of an agricultural operation. There are community witnesses of agricultural pesticides being sprayed on the crops (probably well beyond the scope of permitted activities). (Ref., Minor Use Permit, Coastal Development Permit Case No. 98-209 MIN/CDP). See Appendices C.

Additionally, a record exists of subsidence/landslide 2001 on this property, which blocked Piraeus for several days and a resultant lawsuit is on file related to same. (Among others, Ref., City of Encinitas v. Teresa M. Cannon and DOES-1 through 10, Case No GIN021848-1, Superior Court of the State of California, County of San Diego, North County Division, Vista.)

The property soils are of ancient origin and are unstable. The property is at risk.

**7. Noise.** The ambient Sound Pressure Level (SPL) emanating from the Interstate-5, Freeway traffic 24/7 located within 200 meters from the project site, was recorded 3:00 PM Saturday January 8, 2022. The average SPL recorded was 66.5 dBA with a peak SPL of 81.7 dBA. See Appendices B, photo of Sound Pressure Level reading location on the Cannon Property Parcel A. The ECC is also greatly concerned about the unhealthy increase in noise that this project will generate onsite from more than 300 vehicles, resulting in a significant contribution to the existing noise levels and the negative impact to the adjacent community.

**8. Public Services and Facilities.** The construction of the *Piraeus Point Townhomes* will without a doubt exacerbate the current "Safe Route to School" issue(s). The total lack of the City of Encinitas to provide for a meaningful SRTS program is a quantifiable negative significance per CEQA. With the "very low" income families with 50% of the median income and being subsidized by the U.S. Taxpayer and monitored by the IRS Code Section 142 and Section 42 per the Housing Economic Recovery Act (HERA) of 2008, to live in this future development is unconscionable that the neighborhood children cannot be protected by utilizing the same U.S. Taxpayer Funded Housing Bonds.

**9. Transportation and Circulation.** The number of daily vehicles trips from the *Piraeus Point Townhomes* project will be more than 300 vehicles multiplied by a factor of 3.0 +/- equals >890 vehicle daily trips. An allowance factor for service vehicles will also increase and exacerbate the traffic volume issue on Piraeus Street by a theoretical factor of 3.0 +/- for an estimated total of 900 +/- daily vehicle trips. This increase in vehicle traffic will seriously impact the intersection of Piraeus Street and La Costa Avenue resulting in a Level of Service (LOS) of an F-Rating. The lateral roads intersections of Plato Place, Olympus Road and Normandy Road will be seriously impacted. There is no public transit serving this area. Vehicular traffic flow south on Piraeus Street to Leucadia Blvd., is not possible due to its closure in 1998 by Caltrans I-5 Widening Program.

**10. Utilities and Service Systems – Wastewater.** The proposed *Piraeus Point Townhomes* 149 Equivalent Dwelling Units (EDU's) - with a population of 455\* or more, persons - new connections having the potential to disrupt wastewater flow. The ECC is

very much concerned with the present discharge capacity let alone discharging an additional \*34,125 gallons per day (GPD) into a 70 year +/- 8-inch gravity flow sewer line

(\*306 bedrooms + 149 persons for 2-person bedroom occupancy) = 455 persons x 75 gallons/day = 34,125 GPD).

**10.1 Water.** *The Piraeus Point Townhomes* will use an average of 75 GPD. [per the current Water Agencies Standards, Guidelines/San Dieguito Water District (SDWD)] including the irrigation water for drought tolerant plantings and trees. Based on 455 x 75 GPD capita per day usage the overall volume of water that will be consumed by this project equates to approximately 38-acre feet/year.

**10.2 Drought Issues.** Currently a Level 2 advisory water reduction is in effect (until June 10, 2023) for all SDWD customers. Level 2 means each customer shall voluntarily reduce their water consumption by 10% and landscaping irrigation for functional grass areas only. It appears incongruous that major residential projects that will consume more than 38-acre feet are being considered or worse approved, while existing customers are reducing their usage due to the 3<sup>rd</sup> year drought condition. At the very least a moratorium should be enacted on all construction projects during the 3<sup>rd</sup> year of a State wide drought condition.

**10.3 Stormwater.** The *Piraeus Point Townhomes* stormwater shall be pretreated prior to being discharged to the stormwater conveyance system. Stormwater overflows shall be discharged off site to an approved Best Available Control Technology (BACT) hydromodification pretreatment/retention location, possibly to the contiguous Environmental Mitigation Target Property Parcel B. Note all surface waters flow and subsurface drain to Batiquitos Lagoon.

**11.0 General Design Review.** It is to be noted that there are also no recreational yards associated with the *Piraeus Point Townhomes* since each stacked townhome shared walls with common 2-hour (see California Residential Construction Code) fire rated independent walls back-to-back and side-to-side. Note no common utilities in adjacent/shared walls shall be allowed. Because of the monolithic block concept a separation of 24ft., is designed for the drive-aisles. These drive-aisles are for access to the ground level garages and the Townhomes. Therefore, there are no ground level recreational yards. The Architect/Developer is utilizing the stepped roof(s) as a “recreational yard” however, the mandated solar photo voltaic panels (total 149 kW generation capability, plus A/C Heat Pump, outdoor furniture including BBQ equipment will need to be accommodated. It is to be noted, that during storm events 45 to 60 MPH winds or higher are quite common. Having loose furniture will be problematic. It is presumed the 149 Townhomes will have individual trash/recycling/organic waste containers x 3 = 437 separate containers. These will be located in the residents’ garages, not clear that this is the case.

**12.0 Parking Issues.** There shall be no spillover or visitor parking allowed on Plato Place or Piraeus Street, as both are currently non-conforming rural roads. All 300 +/- cars whether residents, visitors or service delivery vehicles shall be parked on *Piraeus Point Townhomes* property only. Possibly, Lennar Homes will consider constructing underground parking to accommodate the overflow parking of the more than 300 vehicles that inevitably will happen.

**13.0 Lighting.** Street Lamp Poles are required per the City SAC Meeting Report, on Piraeus Street only for the west property line parallel to Piraeus Street. However, the ECC is requesting that there shall be no pole lamps or roof-deck lighting or lights that project light into the night sky or the surrounding community. LEUCADIA is a DARK SKIES Community because of the sensitivity and close proximity to Batiquitos Lagoon.

**14.0 Trees and Plantings.** The ECC believes that the following setbacks: 1) A 60-foot set back along Piraeus 2) A 15-foot set back at Plato Place 3) A 16-foot east property line setback to accommodate the existing SDG&E high voltage overhead, wooden power poles 4) A 50-foot setback - per CEQA - from the ravine at the north property line will limit the available area for the required planting of 30 native trees per acre. All plantings shall be native drought tolerant and non-invasive.

**15.0 Low Income.** The ECC is requesting that 15% of the “very low-income” townhome units in lieu of the prescribed 10%, shall be sold for home ownership to independent, qualified (with an annual income of 50% of the median income in San Diego County as per the Multifamily Housing Program for the Tax Subsidy Project Limits (per 2008 HERA/HUD) and promulgated by California Department Housing Community Development CA-DHCD). As enforced and monitored by IRS Code Sections 142 and 42. This request is a social-equity moral issue - not an economic one. Lennar Homes as a publicly traded corporation should consider the Public Relations of voluntarily embracing the social equity compliance of this change.

**16.0 Application Project Review.** The ECC conducted a review of the Applicants package as follows:

**The Preliminary Hydrology Study** prepared January 19, 2022, is in error per **Section 1.2 Existing Conditions**. The subject property does not have greenhouses nor a single-family dwelling.

**Section 1.3 Proposed Project.** There is no connection to Sidonia Street from the local stormwater conveyance system.

**HERA 2008 Compliant:** It is to be noted that since HERA 2008 Taxpayer Funds are financing this project then fully compliance shall be initiated whereby elevators shall be installed for each Townhome, e.g., vertical transportation aka elevators are required for residents 55 years or older or people with disabilities. Without these Code required amenities the housing project will be seen as an age discrimination project, i.e., only for people who are less than 40 years of age and also “Low Income.”

**Planned Application Supplement City of Encinitas Development Services Department Form S.** A review of **Form S**, indicates that Parcel B is a strip of land that runs parallel to the east of a concrete drainage culvert contiguous with Piraeus Street north of Parcel A to south of Sky Loft Road thence from the north side of Sky Loft Road to La Costa Avenue. Parcel A area is 6.876 acres and Parcel B area is 4.93 acres. The parcels have been added to provide a gross acreage of 11.8 acres in order to meet the Encinitas Code Requirements

*for Lot Coverage of 65% Maximum.* This procedure of adding the two (2) parcels is invalid per Appendix C- 2013-2021 of the City Housing Element. Only APN 254-144-01-00, i.e., Parcel A area 6.93 acres is shown on page C-8 as Cannon Property (Piraeus) Site Number 02. The “gross/net” acreage for development is 6.93 acres. Therefore, **Form S, Lot Coverage** calculations need to be revised and resubmitted to the City for review. See Appendices E.

Further, Parcel B area 4.93 acres, is totally unbuildable and is located within the City of Encinitas Subarea Plan of the MHCP Coastal Sage Scrub (CSS) and Southern Maritime Chapparal and California Gnatcatchers. Additionally, SDG&E 12.6 kV distribution lines power poles - with stepdown transformers - crosses the south portion of Parcel B between Sky Loft Road and Plato Place, as per a ROW recorded easement and so noted within the Cannon Property Title Report.

Additionally, The City Housing Element Inclusionary Economic Analysis specifically for Townhomes - see pages 88-90/420 – indicate the allowable density of Townhomes is R-15, i.e., maximum of 15 townhomes per acre. Therefore, with approximately 4 acres of buildable acreage a quantity of 60 Townhomes is most likely the maximum quantity allowed for Parcel A. It is not clearly explained how 60 Townhomes per the City Housing Element can morph into 149 Townhomes. Is this magic or an illusion?

**IN CONCLUSION**, please be advised that this project is not welcomed by the surrounding community. It is ill-conceived, and if constructed, will be a permanent and an irreparable detriment to the existing community.

*Piraeus Point Townhomes* development will have a significant environmental impact within the Visual Scenic Corridor resulting from the destruction of this existing valuable wildlife habitat inland bluff. This project could never be perceived as a community benefit.

The ECC, as a Community Stakeholder, requests that they be kept informed in every stage of this pending development.

The ECC respectfully requests that Mr. Brian Grover and Mr. David Shepherd of Lennar Inc. exercise a thorough due diligence process including the evaluation of the multitude of critical issues that the ECC Draft Scoping EIR Review clearly identifies and describes. Each of these significant issues have to be addressed and resolved by Lennar Homes and the City to the satisfaction of the ECC. The ECC firmly believes that with careful and respectful evaluation, Lennar Homes will conclude that Piraeus Point Townhomes housing development project is neither an economical financial risk nor is it environmentally justifiable, that a major U.S. public corporation would be proud of. Further, when weighing each of the described CEQA categories, their sub-sets, the quantifiable data, Lennar Homes will be guided to choose not to exercise their “option to purchase” the Cannon Property and thereby avoiding to construct this “negative quality of life” constrained property



**ENCINITAS  
COMMUNITY  
COLLECTIVE**

PIRAEUS POINT TOWNHOMES

The ECC thanks you in advance for your review and careful consideration of these community concerns.

Sincerely,

A handwritten signature in blue ink, consisting of three stylized, overlapping loops that resemble the letters 'ECC'.

**Encinitas Community Collective**





ENCINITAS  
COMMUNITY  
COLLECTIVE

# PIRAEUS POINT TOWNHOMES

City of Encinitas Case No. MULTI-005158-2022;  
CDP-005161-2022; DR-005160-2022[ SUB-005159-2022  
and SUB-005391-2022

AN ENVIRONMENTAL REVIEW  
of a  
DRAFT SCOPING CALIFORNIA  
ENVIRONMENTAL QUALITY ACT,  
ENVIRONMENTAL IMPACT REPORT  
SUBMITTED BY LENNAR HOMES

Prepared by

Encinitas Community Collective  
P. O. Box 235801  
Encinitas, CA 92023

Submitted to

Nickolas Koutoufidis, Senior Planner,  
City of Encinitas, Development Services Department

June 29, 2022



## TABLE of CONTENTS

1.0	Introduction	3
2.0	Project Description, Location and Environmental Setting	4
2.1	Project Overview	
3.0	Environmental Setting	5
3.1	Aesthetics	7
3.2	Air Quality	5-12
3.3	Biological Resources	12-13
3.4	Geology and Soils	13-15
3.5	Hazards and Hazardous Materials	16
3.6	Noise	16-22
3.7	Public Services and Facilities	22-23
3.8	Transportation and Circulation	23-24
3.9	Utilities and Service Systems (Wastewater/Water/Stormwater)	25-28
4.0	Parking	28-29
5.0	Lighting	29
6.0	Trees and Plantings	29
7.0	Application Project Review	30
8.0	Conclusion	31

### Appendices

A	La Costa Fault Map	
B	Ambient Traffic Noise Measurement/Location Map	
C	Aerial Photos – Agricultural Activity	
D	Caltrans/SANDAG - North Coast Corridor Public Works Plan 2012	
E	City of Encinitas Housing Element, Appendix C 2021	

## 1.0 INTRODUCTION

1.1 The California Environmental Quality Act (CEQA) (aka Pub. Res. Code section 21000, et seq.) requires the City to identify significant environmental impacts of all projects that it approves, and to require the applicant to avoid or mitigate those impacts, if feasible. From an environmental impact standpoint, the ECC cannot overstate the importance of thoroughly analyzing the project based on an accurate description of the applicant's intended use of the project, especially where environmental impacts may be disguised or minimized by the applicant.

1.2 The proposed project does not comply with the City's Planned Residential Development regulations, which provide, in relevant portion: "Planned residential developments shall relate harmoniously to the topography of the site, shall make suitable provision for the preservation of steep slopes, water courses, drainage areas, wooded areas, rock outcroppings, and similar natural features, and shall otherwise be designed to retain such natural features to the greatest extent possible." Further, "[l]ots and structures shall be designed to follow and not significantly alter the natural contour of the land." (EMC § 30.16.020(B)3.)

- 1.3 During its Initial Draft Study (SCOPING), the City should be able to determine that the project will have a significant effect on the environment, requiring a thoroughly detailed Environmental Impact Report in compliance with CEQA complete with exhibits, maps, guidelines from each of the governing agencies at ALL levels including but not limited to U.S. EPA; U.S. Department of Education; U.S. Department of Transportation; U.S. Department of Health, Center for Disease Control; U.S. Department of Housing and Urban Development. Further the equivalent State, County and City Departments are hereby referenced, as if fully set forth. Further, in an aid to understand the overall impact of such a development the City shall listen to the citizens of the community where the proposed project is to be constructed. It is to be noted that a CPP meeting was held by the developer Lennar Homes on June 13, 2022 at the a Cost Resort Hotel, Carlsbad. For the record more than 70 community residents attended the CPP. Not one attendee supported the developers housing project. More than 25 attendees spoke about the project which they all were familiar with the design, location, architectural layout small cramped stacked shared walls townhomes with no yard all enjoined with 24 foot wide "drive-aisles." The townhomes have no yards but a cramped roof is used for the location of the units heat pump AC unit, solar panels, exhaust fans vents, plumbing piping vents, roof drains a small picnic table. Access is via a narrow stairwell 8 flights of stairs from the ground floor. A marvelous view of highway I-5 with all its noise and air pollutants, etc. This is not rural living this is high rise Townhome living next to an interstate freeway. *No microphones made available.*

1.3.1 This EIR Review was previously submitted as an Environmental Analysis February 20, 2022 to Brian Grover, Nolan Communities, also to David Shepherd, and Jeff Roos, Lennar, Anna Colamussi and Nick Koutoufidis City of Encinitas. The Environmental Analysis was based on

known issues that are subject to and required by, a conforming CEQA compliant project. Subsequently since February 20, 2022 Lennar Homes have developed a CEQA driven DRAFT Scoping EIR that was made publicly available for review comments June 20, 2022.

Therefore, the ECC have revised their Environmental Analysis (EA) and revised same with the Lennar Draft Scoping EIR review comments and the EA document is now entitled “An Environmental Review of a Draft Scoping California Environment Quality Act, Environmental Impact Report. The EA CEQA issues have remained in the body of the EA, however the ECC review comments are identified in italics, to aid the reader. Many of the EA issues remain as is and it is the ECC’s opinion that where the Lennar Draft Scoping EIR does not adequately address the CEQA issues the ECC provides such comments and thereby remain as such to be addressed by Lennar, et al., per their future - revised - DRAFT EIR.

The ECC observed environmental issues and conducted an analysis of the proposed housing development property, Parcel A, (APN: 254-144-01), to evaluate the stated impacts as described in this EIR Review. It is clear that the project would impose significant and unavoidable negative environmental impacts upon the sensitive flora and fauna of the undeveloped vacant natural inland bluff site, the endangered species, aesthetics, geological resources, interstate Highway 5 traffic noise, on-site traffic generated noise, nuisance cooking odors permeating the community, as well as the surrounding environment including the contiguous and adjacent La Costa Preservation Parcel(s) with Multi Habitat Conservation Program (HCP) pristine habitats and the nearby Batiquitos Lagoon-No Take). These negative impacts and more will require extensive mitigation to the satisfaction of the governing agencies and the community at large.

## 2.0 PROJECT DESCRIPTION, LOCATION AND ENVIRONMENTAL SETTING

### 2.1 Project Overview and Location

2.1.1 It is proposed that 149 Unit Multi-Family Residential Townhomes aka *Piraeus Point Townhomes* will be constructed on Parcel A, APN: 254-144-01-00, Zoned RR-2.0, vacant land. The applicant’s proposed project, with its substantial grading *approximately 60,000 cubic yards (CY)* and the addition of 16 massive, bulky structures, would significantly degrade the existing scenic character and quality of the natural undisturbed inland bluffs and its surroundings. The ECC wants to be perfectly clear that this proposed 149 Unit *Piraeus Point Townhomes* Housing Element project is totally inappropriate for this specific location for the following reasons and concerns:

2.1.2 An analysis of the *Piraeus Point Townhomes* developed area per City Housing Element Appendix-C = 6.93 acres. Living space area = 171,000 sq. ft./43,560 sq. ft = 3.93 acres. Total buildings sq. ft. = 203,663/43,560 sq. ft. = 4.675 acres. Landscaping (includes internal roads

and drive aisles = 87,898 sq. ft./43,560 sq. ft. = 2.017 acres = Total developed acreage = 4.675 + 2.017 = 6.692 acres. Unaccounted acreage = 6.93 - 6.692 = 0.238 acres or 10,357 sq. ft.

**2.1.3 Height issues.** ECC is requesting a 35-foot maximum height limit for these units, inclusive of roof top equipment, plumbing pipe vents, solar panel(s), air-conditioning units, etc.

**2.1.4** The City mandate of installing solar voltaic panels (SVP) system(s) and/or a DC microgrid system(s) for each townhome recreational flat roof deck may not be cost effective.

*In consideration that each roof deck square footage is contingent upon the number of bedrooms. Thereby a single bedroom Townhome has only net 40 sq.ft available for solar panels, a 2 bedroom has approximately net 80 sq.ft and a 3 bedroom has net 120 sq.ft. Noting that solar panels are 20% +/- efficient they need to be installed at an array tilt of 20° facing 180° either west or east avoiding shading from, e.g., roof access stair well walls, neighbors 5-foot perimeter fences, potted plants, furniture, sun umbrellas, not counting dust, dirt, etc. Further, with multiple sanitary plumbing roof vents, bathroom exhaust vents, kitchen exhaust vents, roof deck drains, heat pump and electrical equipment code clearances, will also limit actual solar panel locations. These standard Building Code clearances are inherent restraints to (any) the solar panel power systems efficiency towards reducing the owner(s) SDG&E power bills. The ROI payback time may well exceed the useful life-cycle (economics) of the solar power system(s) components, e.g., DC to AC inverter(s) thereby negating any true electrical power savings. The City of Encinitas per the approved CAP requires residential solar voltaic panels produce 1 watt of power per sq.ft of residential area annually. The actual residential sq ft for the 149 Townhomes equals 171,300 sq. ft . Therefor the CAP is limited to 171 kWh total generation The DRAFT EIR indicates an overall PV generation of 245,206 kWh/yr. more than the CAP mandate. The calculations need to be verified.*

**Population:** The population total of the residents of the 149 Unit *Piraeus Point Townhomes* for the purpose of this Environmental Analysis is based upon the following: Total of 306 bedrooms + 149 persons for 2-person bedroom occupancy = 455 persons, estimated.

### 3.0 ENVIRONMENTAL SETTING

#### Natural Grade

a. The existing natural grade elevations of the Cannon Property APN: 254-144-01, Parcel A are variable as determined by the existing topographical contours depicted in the Applicants package to the City. Of extreme concern to the ECC is the potential for an arbitrary grade location in the vicinity of the east property line that will impact the residences contiguous to the former Cannon Property (Parcel A) aka Piraeus Investments LLC, east property line/boundary.

b. The ECC's concern is extensive grading will be required where it is estimated within the DRAFT EIR more than 58,000 CY will be exported. The proposed east property setback reinforced concrete retaining wall height shall not be more than 4 feet above the existing east property line natural grade.

c. With the "top of wall" elevation established, the ECC requests that the maximum building height of the *Piraeus Point Townhomes* shall be lower, thereby not exceeding the "Top of wall" elevation, as noted.

*Extensive reinforced concrete buttress type retaining walls will be required at the east and north property setbacks that have encroached into the >25% slope areas. Of concern to the ECC community is the imported fill aka landslide fill, by the City of Encinitas to stabilize the property after the 2001 subsidence, i.e., landslide that blocked Piraeus Street. The saturated soil caused by uncontrolled irrigation of an 2-acre agricultural activity caused soil expansion, slippage and separation of the different geological layers of the native soils as defined in Geocon Corporation Geological Investigations of the sites soils Standard Classifications. Knowing that natural seepage pathways are present (water table not found) within the site soils at various depths can be viewed as a unconfined aquifer with different layers of geological formations with different hydraulic conductivities. The overall gross transmissivity of the unconfined aquifer creates a cause of concern when storm events such as a 10-year, 25-year and quite recently back to back 100-years storms events occur. Again, drainage of the site is of utmost concern to the community to prevent another catastrophic subsidence event.*

*Geocon reports that the developer Lennar is proposing of using cantilevered-micropiles and/or horizontal bored "soil nail walls" at the east property line including >30 feet high buttress retaining wall at the north property line. These proposed methods of maximizing and stabilizing the perimeter excavations setbacks is interesting but has limitations due to the inherent instability of the existing geological layers with several possible unconfined aquifers at varying depths. Geocon reports that several borings conducted "perched" areas of moist geological layers, suggesting pathways of irrigation water or possible leaking underground water distribution piping.*

*Cantilevered-micropiles require penetration into bedrock for stability, so states the manufacturers of these systems.. The Geocon Report does not discuss bedrock, nor were the conducted borings advanced to encounter bedrock. In fact groundwater depth is also not known, however Piraeus Street at Plato Place is 80 ft +/- AMSL or Batiquitos Lagoon, 400 yards +/- to the north.*

*With the presence of the high voltage 12.6 kV distribution overhead power lines under tension supported by 45ft. +/- wooden poles with an "Underbuild" sub-transmission lines and multiple stepdown transformers provide utility power to the community. If a "soil nail wall" is constructed parallel to the Cannon Property east property line the multiple vertical and horizontal centerline distances of the 12 inch diameter horizontal west to east borings will potentially undermine the existing SDG&E power poles. With hundreds of horizontal borings each one represents a pathway for*

*subsurface water to travel and thereby potentially destabilizing the Cannon Property soils and the contiguous properties east of the Cannon Property.*

*It is strongly recommended therefore, that Lennar shall underground all electrical utilities and communication cables currently supported by the SDG&E power poles, to avoid undermining the existing power poles and contiguous properties to east.*

*Geocon stated that limited literature was available towards information on Earthquakes and Faults in San Diego County. The ECC reminds Geocon of a publication authored by Professor Phillip Kern, PhD, Geology SDSU, entitled *Earthquakes and Faults in San Diego County, ed., 1989.**

### 3.1 AESTHETICS

**3.1.1 Existing Conditions.** The land is currently vacant. Two (2) acres were permitted to be used as an agricultural operation in accord with the EMC Title 30, 30.33 Urban Agriculture whereby the property was cultivated for agricultural purposes for approximately the years 1998 to 2010. See aerial photographs Appendices A. The property is subject to EMC Title 30, 30.32 Ecological Resource Zone; EMC Title 30, 30.34.030 Hillside/Inland Bluff Overlay Zone; EMC Title 30, 34.40 Floodplain Overlay Zone. Specifically the north property line overlies a natural floodplain ravine receiving water course surface waters from the contiguous and adjacent properties to the east property line.

- Historically unstable geology, with the known visible State of California registered “La Costa Fault” located 150 yards east of the Piraeus Street/La Costa Avenue juncture. The La Costa Fault is listed and depicted in the State Geologic files. As noted, the La Costa Fault is visible from La Costa Avenue inland north bluff face, south of Batiquitos Lagoon and traverses in a south westerly direction towards Piraeus Street. See page 7 and Appendices A.

**3.1.2 Analysis of Project Effects and Determination as to significance.** The Bulk and Mass of the proposed condominiums will be out of character with the community in violation of the EMC Title 30, 30.34.030 Hillside/Inland Bluff Overlay Zone. It is proposed that 149 Unit *Piraeus Point Townhomes* will be constructed on Zoned RR-2 vacant land. The gross calculated area is 6.692 acres (as submitted by the Applicant to the City, Form S, February 3, 2022) subject to EMC Title 30, 30.34.030 Hillside/Inland Bluff Overlay Zone, specifically grading of steep slopes. The net buildable area on APN: 254-144-01-00 is 6.692 acres +/-.

**3.1.3 Cumulative Impact Analysis.** The proposed project will have a highly visible and adverse impact on visual scenic vistas/corridors. The site is currently a vacant inland bluff, covered with native species. It is one of the first major landforms on the northern boundary of the City of Encinitas. Its visual character complements the Batiquitos Lagoon and existing State owned mitigated Pristine Habitat Preservation Parcel to the north and adds visual appeal for motorists on the I-5 freeway and La Costa Avenue. The Applicant’s proposed project, with its substantial grading and the addition of 16 massive, bulky structures, would significantly degrade the existing visual scenic character and

quality of the inland bluffs and its surroundings. The ECC wants to be perfectly clear that this proposed 149 Unit *Piraeus Point Townhomes* Housing Element project is inappropriate for this specific location for the following reasons below and permission to construct shall be denied.

*The ECC strongly recommends as previously proposed and supported by the City of Encinitas in 2017 that the Cannon Property be purchased for the sole purpose as mitigation property for habitat preservation and held in perpetuity by SANDAG as a preservation parcel.*

**3.2 AIR QUALITY.** This section addresses potential air quality impacts that will result from construction and/or operation of the *Piraeus Point Townhomes* project. The following addresses the existing air quality conditions in the project area, identifies applicable regulations, identifies and analyzes environmental impacts, and recommends measures to reduce or avoid adverse impacts anticipated from implementation of the project.

**3.2.1 Existing Conditions.** Air quality and dispersion of air pollution in an area is determined by such natural factors as topography, meteorology, and climate, coupled with atmospheric stability. The factors affecting the dispersion of air pollution with respect to the air basin are discussed below.

**Topography.** The topography in the San Diego Air Basin (SDAB) varies greatly, from beaches on the west to mountains and desert to the east. The topography in between consists of inland coastal bluffs, mesa tops intersected by natural canyon areas. The region's topography influences air flow and the dispersal and movement of pollutants in the basin. The mountains to the east prevent air flow mixing and prohibit dispersal of pollutants in that direction.

- **Meteorology and Climate.** Encinitas, is a coastal area, has a Mediterranean climate characterized by warm, dry summers and mild, wet winters. The mean annual temperature in the City is 60 degrees Fahrenheit (°F). The average annual (wet season) precipitation is 11 inches, from November to April. Winter low temperatures average 54°F, and summer temperatures average 71°F. The average relative humidity is 69 percent and is based on the yearly average humidity at LindberghField.
- The dominant meteorological feature affecting the region is the Pacific High Pressure Zone, which produces the prevailing westerly to northwesterly winds. These winds tend to blow pollutants away from the coast toward the inland areas. Consequently, air quality near the coast is generally better than that at the base of the coastal mountain range. Most of the city consists of coastal plains, which lie adjacent to the Pacific Ocean and extend approximately 6 miles east of the Pacific Ocean. Because of its locational advantage, the easterly portion of the city has a mild climate with cool summers on the coast, where marine fog is common.
- The *Piraeus Point Townhomes* project is located within 200 meters of I-5 Interstate Highway where more than 125,000 vehicles travel each day. The location is also in a Non-Attainment

Ambient Air Quality Standards Area. The U.S. EPA Administrator finds that the current and projected concentrations of the six key well-mixed GHGs— CO<sub>2</sub>, CH<sub>4</sub>, N<sub>2</sub>O, HFCs, PFCs, and sulfur hexafluoride—in the atmosphere threaten the public health and welfare of current and future generations.

- This Environmental Analysis also provides information on Air Toxics which is integral with the air quality in the I-5 Interstate transportation corridor, to the developer and the City of Encinitas, the project lies within less than 200 meters on I-5 a major interstate freeway with more than 125,000 vehicles travelling each day, whereby the residents of *Piraeus Point Townhomes* will be subjected daily to the identified Air Toxics.
- Toxic air pollutants-also known as Hazardous Air Pollutants or HAPs-are those that are known to cause or suspected of causing cancer or other serious life-threatening health ailments. The

Clean Air Act Amendments of 1990 listed 188 HAPs and addressed the need to control toxic emissions from the transportation sector. In 2001, EPA issued its first Mobile Source Air Toxics Rule, which identified 21 Mobile Source Air Toxic (MSAT) compounds as being hazardous air pollutants that required regulation. A subset of six of these MSAT compounds were identified as having the greatest influence on health to the population living within a 200-meter radius of a major Interstate Freeway, i.e., I-5.

- It would be unconscionable for the City to ignore the data on known health effects and approve this densely compacted project thereby subjecting the *Piraeus Point Townhome* residents and the surrounding community to known carcinogen pollutants, i.e., benzene, 1,3-butadiene, formaldehyde, acrolein, acetaldehyde, and diesel particulate matter (DPM). The City and the developer are aware of the prevailing wind from the SW to the NW. Therefore, the emission gases and particulates from Interstate I-5 corridor, will circulate within the townhome structures will be breathed and thereby affect every one of the project 455 or more residents, adults and children. Exacerbating this indirect emission issue is the actual on-site generation of emissions including Green House Gases (GHG) emanating from the 300 or more residential and service vehicles making 1,980 Vehicle Trips per Day (MVT) or more than 693,500 MVT per year from this 2.017 internal roads/drive aisles acre site. This extreme concentration of cancer causing pollutants will be detrimental to the quality of life to the community.
- To address stakeholders concerns and requests for a MSAT analysis during project development and mitigation, the Federal Highway Administration (FHWA) developed the Interim Guidance on Air Toxic Analysis in the National Environmental Policy Act (NEPA) Documents.

### 3.2.2 Regulatory Framework

#### Federal

- **Non-Attainment Ambient Air Quality Standards Area.** The project location is in a Non-Attainment Ambient Air Quality Standards Area. The U.S. EPA Administrator finds that the current and projected concentrations of the six key well-mixed GHGs— CO<sub>2</sub>, CH<sub>4</sub>, N<sub>2</sub>O, HFCs, PFCs, and sulfur hexafluoride—in the atmosphere threaten the public health and welfare of current and future generations.

**Green House Gases (GHG) Endangerment.** In *Massachusetts v. Environmental Protection Agency* 549 U.S. 497 (2007), decided on April 2, 2007, the Supreme Court found that four GHGs, including CO<sub>2</sub>, are air pollutants subject to regulation under Section 202(a)(1) of the Federal Clean Air

Act (CAA). The Court held that the EPA Administrator must determine whether emissions of GHGs from new motor vehicles cause or contribute to air pollution, which may reasonably be anticipated to endanger public health or welfare, or whether the science is too uncertain to make a reasoned decision. On December 7, 2009, the EPA Administrator signed two (2) distinct findings regarding GHGs under section 202(a) of the CAA:

- **Endangerment Finding.** The U.S. EPA Administrator finds that the current and projected concentrations of the six key well-mixed GHGs— CO<sub>2</sub>, CH<sub>4</sub>, N<sub>2</sub>O, HFCs, PFCs, and sulfur hexafluoride—in the atmosphere threaten the public health and welfare of current and future generations.
- **Cause or Contribute Finding.** The Administrator finds that the combined emissions of these well-mixed GHGs from motor vehicles and motor vehicle engines contribute to the GHG pollution, which threatens public health and welfare.
- These findings do not impose requirements on industry or other entities. However, this was a prerequisite for implementing GHG emissions standards for vehicles, as discussed. The U.S. Supreme Court upheld the EPA Administrator's findings.

#### CALIFORNIA

##### Legislative Actions to Reduce GHGs

- The State of California legislature has enacted a series of bills reduce GHGs. AB 32 was specifically enacted to address GHG emissions. Other legislation such as Title 24 and Title 20 energy standards were originally adopted for other purposes such as energy and water

conservation, but also provide GHG reductions.

- **AB 32.** The California State Legislature enacted AB 32, which requires that GHGs emitted in California as defined include CO<sub>2</sub>, CH<sub>4</sub>, N<sub>2</sub>O, HFCs, PFCs, sulfur hexafluoride, and nitrogen trifluoride. The California Air Resources Board (CARB) is the state agency charged with monitoring and regulating sources of GHGs. AB 32 further states the following:

*“Global warming poses a serious threat to the economic well-being of Californians, public health, natural resources, and the environment of California. The potential adverse impacts of global warming include the exacerbation of air quality problems, ... an increase in the incidences of infectious diseases, asthma, and other human health-related problems.*

#### **Local**

- The accumulation of on-site generated pollutants makes this project a likely candidate for the Applicant to submit to the San Diego County APCD a review of the Regulations Rule 20.3 for New Source Review (NSR) of vehicle emission pollutants whether stationary or mobile based on the health effects and GHG. Therefore, an NSR may be socially justified by SDC/APCD.

**3.2.3 Analysis of Project Effects and Determination as to significance.** Sensitive populations (sensitive receptors) in proximity to localized sources of toxics and carbon monoxide are of concern. Land uses considered sensitive receptors include residences, schools, playgrounds, childcare centers, long-term health care facilities, rehabilitation centers, convalescent centers, and retirement homes.

- The >455 residents of *Piraeus Point Townhomes* are sensitive receptors to the emissions emitted from more than 300 motor vehicles making at least **980** motor vehicle trips per day with primarily gasoline fueled vehicles. or more than 358,000 MVT annually from the net 2.017 acres consisting of internal roads and drive aisles. The gasoline base emissions pollutants consist of but not limited to: O<sub>3</sub>, CO, CO<sub>2</sub>, benzene, 1,3-butadiene, formaldehyde, acrolein, acetaldehyde, and diesel particulate matter (DPM).
- The on-site source of airborne pollutants will rise vertically between the 149 townhome row type structures into open windows and also transported by the SW to NE prevailing wind to the community. Therefore, the carcinogen pollutants and particulates will be breathed, absorbed and will affect every one of the *Piraeus Point Townhome* residents and the surrounding community residents.

**3.2.4 Cumulative Impact Analysis.** The air quality impact of Piraeus Point Townhomes will be significant due to the density of the 149 townhomes on 6.93 acres or less. The surrounding drive

aisles or internal transit areas between the 3-story row type townhomes, used for egress and ingress is approximately 2.017 acres. The motor vehicle emissions will be concentrated in these narrow transit (drive aisles) areas as the residents exit and enter their garages. The accumulation of gasoline/petroleum base pollutants, i.e., Greenhouse Gases (GHG) will be significant and injurious to the health of not only the 455 residents or more but also to the surrounding community.

- An average motor vehicle per the US EPA emits annually 37,333 lbs/CO<sub>2</sub>. With more than 300 vehicles including, service vehicles, trash trucks, moving vans, visitors, etc., entering/leaving on a daily basis making more than 1,980 motor vehicle trips per day all within a concentrated area of 2.017 acres cannot be ignored. The accumulation of pollutants makes this project a potential candidate for a NSR of the motor vehicle emissions and therefore consideration of an analysis by SDC/APCD Regulations NSR Rule 20.3.
- Further, as a cumulative effect the Municipal Solid Waste (MSW), i.e., household trash, generates GHG consisting of CH<sub>4</sub> (methane gas) CO<sub>2e</sub> (carbon dioxide equivalency). The total of GHG generated by MSW at *Piraeus Point Townhomes* site is based on the following: \*4.9lbs MSW/day/per person, x 375 (residents) x 365 = 670,687 lbs/yr or 335 tons. The percentage of recycled materials = 32.1% the net MSW transported to a landfill is 455,396 lbs. The amount of CH<sub>4</sub> and CO<sub>2e</sub> = emitted from landfilled MSW = 39% or 88 Metric Tons (MTT).
- Therefore, the cumulative effect of vehicle exhaust gases and the MSW is significant and is harmful to the health and quality of life for the *Piraeus Point Townhomes* and the community.
- Re: The U.S. EPA states that GHG gases CH<sub>4</sub>, CO<sub>2e</sub> are a serious contributor to the overall GHG emissions. \*Center for Sustainable Systems University of Michigan.
- **Construction Activities Emissions.** Project construction activities would generate CO<sub>2e</sub> and CH<sub>4</sub> emissions. Detailed project construction equipment and scheduled future hours of operation are unknown to the ECC. Standard similar type construction equipment and duration are normally estimated and the results would be tabulated. Construction related emissions are expected from the construction activities per the following:
  - Crushing
  - Grading
  - Building Construction
  - Paving
  - Architectural Coating

#### Construction Vehicle Trips

Construction emissions for construction worker vehicles traveling to and from the Project site, as well as vendor trips (construction materials delivered to the Project site) etc., shall be conducted per CalEEMod, or equal and tabulated within the project EIR.

- **Construction Equipment.** Typical site specific construction fleet may vary due to specific project needs at the time of construction. The associated construction equipment by phase is detailed in Table 3.2.4:

**TABLE 3.2.4 MOTORIZED CONSTRUCTION EQUIPMENT ASSUMPTIONS**

Activity	Equipment	Amount	Hours Per Day
Site Preparation	Crawler Tractors	TBD	TBD
	Rubber Tired Dozers	TBD	TBD
Compaction	Roller	TBD	TBD
Grading/Trenching//Excavation	Crawler Tractors	TBD	TBD
	Excavators	TBD	TBD
	Graders	TBD	TBD
	Rubber Tired Dozers	TBD	TBD
Building Construction	Cranes	TBD	TBD
	Crawler Tractors	TBD	TBD
	Forklifts	TBD	TBD
	Generator Sets/Diesel	TBD	TBD
	Welders/Diesel Gen-Set	TBD	TBD
Paving	Pavers	TBD	TBD
	Paving Equipment	TBD	TBD
	Rollers	TBD	TBD
Architectural Coating	Air Compressors	TBD	TBD

Source: CalEEMod model output, See Appendix 3.1 detailed model outputs. Tabulation to be completed by others

- **Construction Emission Summary.** The construction phase Project emissions, GHGs shall be quantified and amortized over the life of the Project per the San Diego County Air Pollution Control District Published Regulations Rules and Guidelines.
- **Operational Emissions.** Operational activities associated with the proposed Project will result in emissions of CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O from the following primary on site mobile and stationary sources which shall be tabulated and presented in the EIR:
  - Area Source Emissions

- Energy Source Emissions
- Mobile Source Emissions
- Water Supply, Treatment, and Distribution
- Solid Waste
- BBQs
- HVAC

**3.2.4 Response to the DRAFT scoping EIR Air Quality is as follows:**

- *The Elimination of the Risk of Cancer to the Piraeus Point Townhome residents due to the proximity of the Interstate I-5 Freeway is preposterous and an assault on the commonsense of the proposed project residents and is based on a probability of use of the home to avoid cancer. The sampling points on the subject site indicated that a significant risk was evidentiary.*
- *However, the consultant discounted the health risk by indicating that air tight homes provide for protection form air bourn contaminants. There is no addressing the fact that these homes have roof top yards which are promoted by Lennar for the residents to use for recreation. Is Lennar going to install a sign for each roof top use the roof deck at your own risk since you will contract cancer when enjoying the view of the freeway.*
- *The all electric homes will have heat pumps to provide heating and cooling. Most likely a small manual outside air intake damper will be adjusted to provide 15 CFM per person when operational. This setting would be fixed, if it exists at all. With tight residential homes ventilation is required for bathrooms where there are no outside windows. Kitchen and bathroom exhaust air fans need make up air to complete the ventilation cycle. The makeup air will be drawn from the outside which is contaminated with pollutants from the freeway.*
- *Further, residential heat pumps not provided with MERVE 16 filters. MERVE 16 filters are for commercial installations such as hospitals, medical centers. The filter rating for residential units have MERVE 7 ratings or 30% per the Dust Spot Test. Further the residents will not operate their AC units 24/7 their electrical bills would be thousands of \$\$ per month at 60 cents kWH.*
- *The conclusion from LDN Consulting Inc., per Table 3 that freeway pollutants do not represent a cancer risk is patently false. LDN needs to talk to the community cancer survivors before publishing their false statement.*
- *The ECC believes the Lennar Draft Scoping EIR does not address the Air Quality concerns as identified herein and therefor the responses are deemed inadequate.*

### 3.3 BIOLOGICAL RESOURCES

**3.3.1 Existing Conditions.** Coastal Sage Scrub (CSS) and Southern Maritime Chapparal have been identified and are a part of the Cannon Property Parcels A and B whereby nesting Gnatcatchers, an endangered species, have been observed.

Therefore, if the Gnatcatcher habitat is lost, which is probable, due to the proposed *Piraeus Point Townhomes* development, it is the ECC's understanding that the Cannon Family, per Brian Grover, January 1, 2022, proposed the following:

**Mitigation Target Property - Parcel B – APN 216-110-35-00 (4.39 Acres)**

The goal of a preservation and mitigation program is to remove the likelihood of a development potential of the “Target” property, i.e., Parcel B. The said program would enhance those areas of CSS where disturbed, through rehabilitation efforts and preserve existing high quality upland habitat through site protection (easements and fence), and manage the “Target” parcel in perpetuity by a designated 3<sup>rd</sup> Party.

The proposed preservation and management of the native uplands vegetation communities on Parcel B will preserve:

- Occupied California gnatcatcher habitat by removing extant habitat from the threat of development;
- Southern Maritime Chaparral and coastal sage scrub habitat and ecosystem continuity through connectivity between coastal wetlands and native uplands;
- Sensitive plants and cultural resources onsite;
- Wildlife connectivity with Batiquitos Lagoon and surrounding native open space that connects to Encinitas Creek and other drainages into the lagoon and out to the Pacific coastline; and,
- Natural topography adjacent to Batiquitos Lagoon that is highly visible from the I-5 Corridor and significantly contributes to the scenic quality and landscape character.

Again, it is understood that the following is a suggestion only whereby, should the Cannon Family Trust, aka Piraeus Investments LLC, decide to offer as “mitigation property, i.e., Parcel A and B” the said properties shall be dedicated and transferred by Quitclaim Deed, or other approved instrument, to, e.g., the Batiquitos Lagoon Foundation (BLF) a 501(3)(C), Corporation and/or SANDAG. The property shall be held in perpetuity and maintained as a “Natural Habitat and Environmental Preserve.” The mitigation property would be administered by an independent 3<sup>rd</sup> Party, e.g., the BLF. Contact Batiquitos Lagoon Foundation, for further details. The BLF address: P.O. Box 131741, Carlsbad, CA 92013. BLF website: [www.batiquitoslagoon.com](http://www.batiquitoslagoon.com).

- See **Appendices D.**, North Coast Corridor Public Works Plan/Transportation and Resource Enhancement Program Mitigation Site Assessment for the noted La Costa Preservation Parcel. Prepared by Dudek on behalf of Caltrans, and SANDAG August 2012. Within **Appendices D** are certified maps of the location of CSS, Southern Marine Chaparral, and the California Gnatcatcher. The Cannon Family Trust Properties, aka Piraeus Investments LLC. Parcel A and B are contiguous with the La Costa Mitigation Preservation Parcel thereby providing an existing habitat connectivity for the California Gnatcatcher parallel to the I-5 Scenic Visual Corridor frontage road.

**3.3.2 Cumulative Impact Analysis.** The loss of the Coastal Sage Scrub (CSS) the Southern Maritime Chapparal that have been identified on the Cannon Family Trust Property aka Piraeus Investment LLC, Parcels A and B including nesting Gnatcatchers, an endangered species, will be significant.

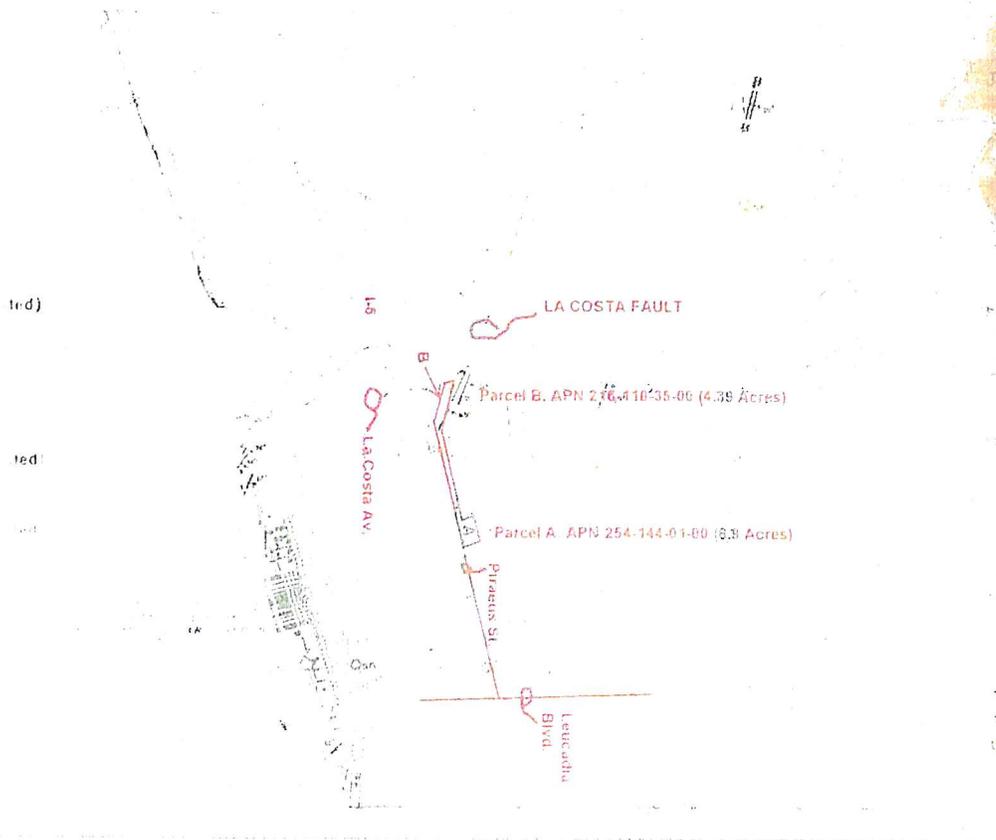
- *The ECC believes the Lennar Draft Scoping EIR does not address the Biological Resources concerns as identified herein and therefor the responses are deemed inadequate*

### 3.4 GEOLOGY and SOILS

**3.4.1 Existing Conditions.** The bluff and project areas were formed during the Eocene Epoch as the oceans rose and fell. The latest geologic outcroppings elevation 80 feet +/- above sea level (ASL) were developed during the Pleistocene Epoch when the Batiquitos Lagoon was formed and during the retreat of the last ice age known as the Holocene period of 11,800 years. Batiquitos Lagoon was formed as the inland waters meandered to the ocean, namely Encinitas Creek, the Escondido Creek and the San Marcos Creek all drain to Batiquitos Lagoon.

- The proposed project is to be constructed adjacent to pristine inland coastal bluffs that were formed during the early Eocene epoch. During the latter part of the Eocene epoch, a deep bench was formed. During the subsequent Pleistocene epoch, the transgressive and regressive ocean deposition of marine terrace (sandstone) took place. This deposition formed a cap over the bluff area. Over time, the bluff has eroded and deep canyons and rifts are clearly visible, e.g., the sites north property line.
- Based upon the ECC review of the Lennar Homes project Application Package it appears the project will require the export of a minimum of 60,000 +/- CYs of ancient marine terrace deposits and the importation of thousands of cubic yards of “engineered” soil. The soil will be required for compaction in order to establish a base foundation that can support the large 16 townhome structures anchored to monolithic concrete pads.

The project site is located on or within very close proximity to the La Costa Avenue Fault (depicted below), as initially identified by noted geologist Leonard Eisenberg and confirmed by Professor Norrie Robbins, PhD (Geology, San Diego State University).



(Source: Leonard Eisenberg)

**3.4.2 Regulatory Framework.** Pursuant to City of Encinitas Engineering Design Manual Chapter 3, Section 3.604.2 and EMC Chapter 23.24, prior to any Grading Plan Submittal, the project area needs to be investigated per the Alquist-Priolo Act of 1972.

- This requires a Registered Engineering Geologist to conduct a full geologic reconnaissance of the project area to determine potential hazard zones or areas and define the La Costa Avenue Fault Rupture Zone including **other** known faults underlying Batiquitos Lagoon.
- Geologic Investigations must conform with the California Geologic Survey's Guidelines for Evaluating the Hazard of Surface Fault Rupture and the California Board of Geologists and Geophysicists Geologic Guidelines for Earthquake and/or Fault Hazard Reports.

**3.4.3 Threshold for Determination as to significance.** The rupture of any known geologic fault has the potential for causing a landslide, should a seismic shaking occur on the high-pressure

water mains on the subject property, a potential exists towards causing a rupture of the underground water mains piping distribution system.

- **Site History** - ECC is very much aware and have the history - as does the City of Encinitas - towards how unstable the project site/property has been over the years, with several subsidence(s) events occurring 2 or 3 times over the past 25 years. The City did file a cause of action with the California State Superior Court, North County Division, Vista due to the endangerment of life and property due to overwatering by the Agricultural Business operator.
- The ECC requests in advance, a copy of the Geotechnical Investigation Soils Testing Report complete with a site layout indicating the location of the referenced test boreholes, including the water table elevation.

**3.4.4 Analysis of Project Effects and Determination as to significance.** Significant trenching for underground utilities will be required, and for irrigation landscaping. To protect the surrounding sensitive habitats preserved areas, plantings shall be native, drought tolerant and non-invasive.

- Note that ignoring the natural continuing erosion process and adding to it by removing the marine terrace deposits and then landscaping and irrigating with thousands of gallons per year is of great concern to the community.

**3.4.5 Cumulative Impact Analysis.** It is to be noted that a 4.1 moderate earthquake event occurred Sunday January, 2022 at 9:46 AM in Valley Center, San Diego County, approximately 28 miles NE of the project site. The seismic event was felt in the coastal cities of Encinitas, Carlsbad and Oceanside. Source: [www.USGS.com](http://www.USGS.com)

- Should the swimming pool be constructed with a typical volume of 25,000 to 45,000 gallons of water the weight of the water and construction would range from 200 to 300 tons respectfully. In the event of a seismic event this volumw/mass could potentially be destructive
- *The ECC believes the Lennar Draft Scoping EIR does not address the Geology and Soils concerns as identified herein and therefor the responses are deemed inadequate.*

### 3.5 HAZARDS and HAZARDOUS MATERIALS

**3.5.1 Existing Conditions.** A 2-acre area of Parcel A, was cultivated for use as a Commercial Agricultural growing business from approximately 1998 to 2010. The ECC has aerial photos of an agricultural operation. There are community witnesses of agricultural pesticides being

sprayed on the crops (probably well beyond the scope of permitted activities). (Ref., Minor Use Permit, Coastal Development Permit Case No. 98-209 MIN/CDP). See Appendices C.

Additionally, a record exists of subsidence/landslide due to uncontrolled irrigation of the agricultural crops in 2001 and a resultant lawsuit is on file related to the same. (Among others, Ref., City of Encinitas v. Teresa M. Cannon and DOES, Case No GIN021848-1, Superior Court of the State of California, County of San Diego, North County Division, Vista.)

- **Standard Environmental Record Sources.** Aerial photos of the years in operation have been obtained. The photos and an analysis of the agricultural activities are attached as Appendices C.

**3.5.2 Regulatory Framework.** Regulated or banned pesticides as per U.S. 40 CFR, and California Proposition 65, Cancer Causing Agents, that are equal to or above the reportable limits shall be removed from the site to an approved Treatment Storage and Disposal Facility, if found.

**3.5.3 Analysis of Project Effects and Determination as to significance.** The ECC is requesting that the soil on the Cannon property “Parcel A” shall be sampled and analyzed by a State Certified Analytical Laboratory. The soil samples shall be obtained at depths of 1ft, 2ft, 3ft and 4ft on a 10ft x 10ft (maximum) matrix. The ECC hereby requests a certified copy of the Soil Sampling Report.

**3.5.4 Cumulative Impact Analysis.** In the event of positive sampling results of the regulated or banned pesticides as per U.S. 40 CFR, and California Proposition 65, Cancer Causing Agents, that are equal to or above the reportable limits, for residential developments, shall be removed from the site via a Manifest and transported to a licensed Treatment Storage and Disposal Facility, for treatment and disposal.

- *Again, The ECC is requesting that ALL CONTAMINATED SOILS shall be REMOVED from the site and shall not be buried or encapsulated on site whether or not the Townhomes Project is constructed.*
- *The ECC believes the Lennar Draft Scoping EIR (Geocon) did not address the Hazards and Hazardous Materials concerns as identified and discussed herein and therefor the responses are deemed inadequate. The Phase one ESA personnel were unaware of the 1998 to 2010 agricultural operations. No soil sampling or a lab analysis was conducted by Geocon. Therefore, the Phase One ESA needs to be reconducted and soil samples taken as per the Department Of Toxic Substances Control (DTSC) Interim Guidance for Sampling Agricultural Properties (3<sup>rd</sup> Rev) August 2008. A minimum of four (4) bore samplings shall be taken per acre. A total number of required samples shall be not less than eight (8). Sampling depth shall be 6 inches. Samples shall be analyzed at a California Certified Laboratory. The chemicals of concern are: arsenic, Organo Chlorine Phosphates (OCPs) , e.g., DDT, toxaphene, aldrin, dieldrin, Follow DTSC QA/QC protocol per SW-846.*

## 3.6 NOISE

### 3.6.1 Definition of Noise

Noise - unwanted sound.

- Sound pressure - small oscillatory pressure variations above and below ambient atmospheric pressure that produce the auditory sensation of sound (in  $N/m^2$ , where 1 Newton/meter<sup>2</sup> = 1 pascal [Pa]).
- Sound pressure level - 20 times the common logarithm of the ratio of measured sound pressure over the reference sound pressure, expressed mathematically in decibels (dB), as follows:  
WAS Section 9.3 Design Guidelines Page 4 of 18 Revised: 05/01/2007 Sound pressure level (dB) = 20 LOG<sub>10</sub> T Measured Sound Pressure Z; H Reference Sound Pressure -N Where the reference sound pressure = 20 micro-pascal (20  $\mu$ Pa).
- A-weighting - an acoustic frequency adjustment to a sound pressure level, which simulates the sensitivity of human hearing. An A-weighted sound pressure level (dBA) results from either manually or electronically applying the frequency dependent A-weighting factors.
- Noise level, sound level or overall sound level - the single number A-weighted sound pressure level as read on a sound level meter set to A-weighting. This level is also the energy sum of the A-weighted sound pressure level spectrum.
- Overall sound pressure level - the single number unweighted sound pressure level as read on a sound level meter set to linear. This level is also the energy sum of the sound pressure level spectrum.
- Leq - the equivalent continuous sound level or energy average sound level over a set period of time (usually one hour).
- TWA - the 8-hour time-weighted averaged occupational noise exposure level. 9. Octave band - the interval between two frequencies having a ratio of 2 to 1.

**3.6.2 Existing Conditions.** The ambient Sound Pressure Level (SPL) emanating from the Interstate-5, freeway traffic located within 200 meters from the project site. was recorded on Saturday January 8, 2022, at 3:00 PM. The average SPL recorded was 66.5 dBA with a peak SPL of 81.7 dBA. See photo of Sound Pressure Level reading at the Cannon Property Parcel A, Map, location. Appendices B.

### 3.6.3 Regulatory Framework Federal

A proximity to major roadways estimates the percentage of people who live within 200 meters, or approximately 650 feet, of a high traffic roadway that carries over 125,000 vehicles per day. Data on the location of roads and traffic levels come from the 2011 National Transportation Atlas Database; data on population come from the 2010 Census.

- **Transportation and Health Connection.** According to CDC, more than 11 million people in the United States live within 150 meters (or approximately 500 feet) from a major highway (Boehmer et al., 2013). The vehicle traffic on these roadways is a major source of noise and air pollutants, such as particulate matter, nitrogen oxides, carbon monoxide, and ozone, which are known health hazards (U.S. EPA, 2010a, b, 2009, 2008).
- Specifically, exposure to traffic-related pollution is linked to asthma and other respiratory symptoms, development of childhood asthma, and cardiovascular disease and death (National Heart, Lung, and Blood Institute National Asthma Education and Prevention Program, 2007; Health Effects Institute, 2010).
- For example, one study estimated that 8% of childhood asthma cases in Los Angeles County, California, could be partly attributed to living close to a major road (Perez et al., 2012). Living near a major road also has been associated with decreased lung function in adults with asthma (Balmes et al., 2009). Increasing the distance from the road to more than 150 meters, or approximately 500 feet, might decrease concentrations of some air pollutants by at least 50% (Karnar et al., 2010).
- Also, research has demonstrated that traffic noise at normal urban levels can also lead to stress and sleep disturbances, both of which can lead to a higher risk for type 2 diabetes (Sørensen et al, 2013).
- **Moving Forward Program.** This indicator may help inform how future roadways are designed and influence future land use development and land use policies affecting the environment near roadways. Shifting land use patterns and investing in strategies that increase air quality might lead to improved health outcomes.
- One Los Angeles County-based study estimated that a 20% reduction in regional air pollution and a 3.6% decrease in population living near major roadways would result in 5,900 fewer cases of asthma caused by near-roadway pollution exposure (Perez et al., 2012).
- Transportation officials can also use the information from this indicator to consider air pollution mitigation strategies, including using vegetative buffers or sound walls to dilute traffic emission concentrations in the near roadway environment (U.S. EPA, 2015; Baldauf et al., 2008).

## References

Baldauf R, Thoma E, Khlystov A. Impacts of noise barriers on/near-road air quality. *Atmospheric Environment* 2008;42:7502

<http://www.sciencedirect.com/science/article/pii/S1352231008005311>.

Balmes JR; Earnest G, Katz PP; Yelin EH; Eisner MD; Chen H; Trupin L; Lurmann F, Blanc PD. Exposure to traffic: Lung fun.

## State

- **California Noise Control Act of 1973.** California Health and Safety Code Sections 46000 through 46080, known as the California Noise Control Act, find that excessive noise is a serious hazard to public health and welfare and that exposure to certain levels of noise can result in physiological, psychological, and economic damage. The act also finds that there is a continuous and increasing bombardment of noise in urban, suburban, and rural areas. The act declares that the State of California has a responsibility to protect the health and welfare of its citizens by the control, prevention, and abatement of noise. It is the state's policy to provide an environment for all Californians that is free from noise that jeopardizes their health or welfare.

## Local

- **City of Encinitas General Plan.** The City of Encinitas General Plan is the primary source of long-ranged planning and policy direction used to guide growth and preserve the quality of life within the City of Encinitas. The Encinitas General Plan states that a goal of the City is to analyze proposed land uses to ensure that the designations would contribute to a proper balance of land uses within the community. The relevant goals for the project include:

GOAL 1: Provide an acceptable noise environment for existing and future residents of the City of Encinitas.

Policy 1.7: Apply Title 24 of the California Administrative Code, associated with noise insulation standards, to single-family dwellings.

GOAL 2: Require that new development be designed to provide acceptable indoor and outdoor noise environments.

Policy 2.1: The Noise and Land Use Compatibility Guidelines and the accompanying discussion set forth the criteria for siting new development in the City of Encinitas. Any project which would be located in a normally unacceptable noise exposure area, based on the Land Use Compatibility Guidelines, shall require an acoustical analysis. Noise mitigation in the future shall be incorporated in the project as needed. As a condition of approval of a project, the City may require post-construction noise monitoring and sign off by an acoustician to ensure that City requirements have been met.

GOAL 3: Ensure that residents are protected from harmful and irritating noise sources to the greatest extent possible.

Policy 3.1: The City will adopt and enforce a quantitative noise ordinance to resolve neighborhood conflicts and to control unnecessary noise in the City of Encinitas. Examples of the types of noise sources that can be controlled through the use of a quantitative noise ordinance are

barking dogs, noisy mechanical equipment such as swimming pool and hot tub pumps, amplified music in commercial establishments, etc.

GOAL 4: Provide for measures to reduce noise impacts from stationary noise sources.

Policy 4.1: Ensure inclusion of noise mitigation measures in the design and operation of new and existing development.

- **City of Encinitas Municipal Code.** The City’s Municipal Code establishes noise criteria to prevent noise and vibration that may jeopardize the health or welfare of the City’s citizens or degrade their quality of life.

**Chapter 9.32** Noise Abatement and Control Ordinance, and Chapter 30.40, Performance Standards, establish property line noise level limits. These limits apply to existing uses, but will also apply to future uses and are used for evaluating potential impacts of future on-site generated noise levels.

**Chapter 9.32.410** states that it shall be unlawful for any person, including the City, to operate construction equipment at any construction site on Sundays, and days appointed by the President, Governor or the City Council for a public fast, thanksgiving or holiday.

Notwithstanding the above, a person may operate construction equipment on the above-specified days between the hours of 10:00 a.m. and 5:00 p.m. No such equipment, or combination of equipment regardless of age or date of acquisition, shall be operated so as to cause noise at a level in excess of 75 decibels for more than eight hours during any 24-hour period when measured at or within the property lines of any property which is developed and used either in part or in whole for residential purposes.

- The permissible property line noise limits are summarized in Table 3.8-2. As stated in the Municipal Code: Every use shall be so operated that the noise generated does not exceed the following levels at or beyond the lot line and does not exceed the limits of any adjacent zone. Monitoring of the specific noise levels at the east property lines shall be conducted by the Developer and submit their findings to the City for evaluation and action as required to meet compliance. Said action shall be the responsibility of the Developer to the satisfaction of the community.

**TABLE 3.6.3 CITY OF ENCINITAS EXTERIOR NOISE LIMITS**

Adjacent Zone	Noise Level [dB(A)]	
	7:00 a.m. to 10:00 p.m.	10:00 p.m. to 7:00 a.m.
Rural Residential (RR), Rural Residential-1 (RR-1), Rural Residential-2 (RR-2), Residential-3 (R-3), Residential-5 (R-5), Residential-8 (R-8)	50	45

Residential-11 (R-11), Residential Single Family-11 (RS-11), Residential-15 (R-15), Residential-20 (R-20), Residential-25 (R-25), Mobile Home Park (MHP)	55	50
Office Professional (OP), Limited Local Commercial (LLC), Local Commercial (LC), General Commercial (GC), Limited Visitor Serving Commercial (L-VSC), Visitor Serving Commercial (VSC)	60	55
Light Industrial (L-I), Business Park (BP)	60	55

**3.6.4 Analysis of Project Effects and Determination as to significance** The ECC does not see the necessity of a Swimming Pool/Spa and operating equipment that will generate noise pollution day and night via its use, into the community. The ECC suggests instead, a water element, such as a fountain, waterfall, complete with a compact park/meeting area for the residents/families to enjoy as an enhanced amenity without traveling outside the confines of the *Piraeus Point Townhomes*.

- Considerable sound energy absorbing construction material(s), e.g., doors, windows, sound transmission class (STC) rated exterior walls and condominium orientation may be required to attenuate the uncomfortable/disturbing noise (sound energy) to a level acceptable to the residents of *Piraeus Point Townhomes* and compliance with the City of Encinitas EMC residential sound ordinance.
- Swimming Pool: If constructed, any and all sounds generated even after construction will travel in an easterly direction to the existing residential community, where most of the affected neighborhoods are located. The incorporation of sound absorbent type construction materials, i.e., means and methods, will most likely be required, for compliance.

### 3.6.5 Cumulative Impact Analysis

Exposure of persons to, or generation of, noise levels in excess of Federal and State standards established in the local general plan or noise ordinance, or applicable standards of other agencies, shall be attenuated.

Exposure of persons to, or generation of, excessive ground borne vibration or ground borne noise levels, shall be attenuated.

A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project. A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project is an extreme annoyance and a significant factor.

The geographic extent of the cumulative setting for noise consists of the project site and its location to the I-5 Interstate Freeway, within 200 meters. Ambient noise levels in the project area are generated by vehicle traffic on Piraeus Street, Plato Place and the I-5 Interstate

Freeway. As a result, the primary factor for cumulative noise impact analysis is the consideration of future traffic noise levels along area roadways. Cumulative noise impacts would occur primarily as a result of increased traffic created by this proposed project of more than 980 vehicle trips per day.

When two identical sources ( $S1 = 80$  dB and  $S2 = 80$  dB) each are producing identical SPL, The sound intensity of S1 and S2 are combined via log 10 formula/calculation to obtain a sound intensity value. The sound intensity value is converted back to dBA via log 10 formula/calculations to obtain 83.1 dB. This value indicates that adding two unrelated sounds of the same intensity together is equivalent to a 3 dB increase in the total SPL

With regard to traffic noise intensity, traffic volumes would need to increase in volume order to provide to the receiver a perceptible change in ambient noise levels. As cumulative traffic volumes increase the SPL also increases proportionally, e.g., an approximately 27 percent increase in I-5 traffic volume, will also generate a significant cumulative noise impact as expected from the I-5 Interstate freeway as the traffic builds up say 5:00 AM (early hours) to its highest peak in the afternoon as normally expected. Accordingly, the project's estimated 1,980 MVT is a cumulatively significant factor.

- *The Lennar Draft Scoping EIR addresses the Noise concerns towards the requirement of construction materials to provide an increase sound attenuation and absorbance by requiring wood framing and thicker drywall materials to provide high STC rating of the perimeter wall constructions including doors and windows as identified herein and therefore the responses are deemed adequate for construction. Airbourne noise emanating from the Interstate -5 Freeway is a product of the this transportation corridor. The EIR recommends the installation of glass sound walls, fencing in and around the perimeters of the roof top "yards" or recreational patios, at a height of 5 feet above the roof surface to deflect the high sound levels from reaching the "Seated" occupants.*
- *The proposed swimming pool area will also have perimeter sound barriers of an unknown material to reduce or deflect the freeway noise levels.*
- *It is to be noted that the AC Heat Pump units will be roof mounted and will contribute to the noise and vibration levels within the perimeter parapet wall enclosure.*

### 3.7 PUBLIC SERVICES and FACILITIES

**3.7.1 Existing Conditions.** Without guarded crosswalks or stop signs at intersections, the ability of the children to walk to school safely is a most serious issue that the City of Encinitas has thus far, failed to address.

**3.7.2 Regulatory Framework.** Safe Routes to School (SRTS) programs are in place with the U.S. Government U.S. Centers for Disease Control and Prevention through the American Recovery and Reinvestment Act 2010 -2012. Other sources of funding Federal SRTS Grants are available. The