

# Bay Bridge Pump Station and Force Mains Replacement Project

(Project No. 5-67)

## ADDENDUM NO. 2 TO THE ENVIRONMENTAL IMPACT REPORT

SEPTEMBER 2025



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**Orange County Sanitation District**

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ADDENDUM NO. 2 TO THE ENVIRONMENTAL IMPACT REPORT

FOR THE

**Bay Bridge Pump Station and  
Force Mains Replacement Project  
(Project No. 5-67)**

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State Clearinghouse No. 2016111031

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1	Orange County Superior Court Case No. 30-2021-00194238 Ruling	
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## **I. Summary**

As Lead Agency, the Orange County Sanitation District (“OC San”) prepared the Draft Environmental Impact Report (“Draft EIR”) for the Bay Bridge Pump Station and Force Mains Replacement Project (State Clearinghouse No. 2016111031)<sup>1</sup>. The OC San’s Board of Directors ultimately certified the DEIR on February 24, 2021. On March 1, 2021, OC San submitted a Notice of Determination (“NOD”) for the Final EIR to both the State Clearinghouse and the Orange County Clerk’s Office (“County Clerk’s Office”). The County Clerk’s Office posted the NOD on March 1, 2021, and the State Clearinghouse posted the NOD on March 2, 2021.

On April 1, 2021, Bayside Village Marina filed a Verified Petition for Writ of Mandate against OC San in Orange County Superior Court alleging that the Draft EIR failed to comply with CEQA on numerous grounds. (Orange County Superior Court Case No. 30-2021-01194238.) On December 16, 2022, Judge William Claster of the Orange County Superior Court issued a ruling that upheld the Draft EIR in all respects except one. The Court issued a limited writ directing OC San to correct deficiencies in the Draft EIR’s description of the project’s proposed construction staging areas. The Court made this ruling (the “Ruling”) on December 16, 2022.

The Draft EIR explained that construction staging would occur somewhere in the “Adjacent Pump Station Work Area” (identified in Draft EIR Exhibit 3-6, *Adjacent Pump Station Work Areas*), which included both Lower Castaways Park and a portion of the Bayside Village Marina private property. The Draft EIR considered all potential impacts that could occur in the Adjacent Pump Station Work Area including, among others, impacts on biological resources, aesthetics, cultural resources, archeological resources, transportation, noise, land use plan consistency, and emergency response during construction activities.

The City of Newport Beach submitted a comment letter to OC San stating that the “City will likely neither support a permanent nor temporary easement through Lower Castaways Park” because the City plans to develop the site with park facilities. In responses to comments, OC San stated that, should Lower Castaways not be available, construction staging would occur elsewhere within the Adjacent Pump Station Work Area.

The Court found that, assuming Lower Castaways is not available, “it is unclear whether creating a staging area in the limited, designated space is even possible.” The Court concluded that no specific location with adequate square footage had been identified in the Draft EIR, nor was there any analysis as to whether Draft EIR Mitigation Measures AES-1 and TRA-1 would apply to any area other than the Lower Castaways.

The Court also noted that Draft EIR Mitigation Measure TRA-1 implies that construction staging could occur outside the Adjacent Pump Station Work Area. Draft EIR Mitigation Measure TRA-1 states in relevant part, “[construction drawings shall] identify any and all construction staging or material storage sites located outside of the project area.” The Court further noted that counsel for the District stated in a prior hearing that the lowest responsible bidder will have complete discretion to decide where staging would occur and how many staging sites would be necessary. The Court explained that because the Draft EIR’s analysis failed to account for impacts that could occur elsewhere, and the low responsible bidder could place the project staging

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<sup>1</sup> The Draft EIR refers to the 2020 Recirculated Draft EIR for the Project, which was circulated for public review in August 2020.

elsewhere in its sole discretion, Draft EIR Mitigation Measure AES-1 was “toothless.” The Court also questioned whether AES-1 imposed enforceable standards.

In July 2023, OC San prepared an Addendum (Addendum No. 1) to the Final EIR in response to the Ruling. Addendum No. 1 provided additional information regarding the proposed use of the Lower Castaways Park as a construction staging area and added a new construction staging area at OC San Plant No. 2, located in the City of Huntington Beach, for soil storage/drying activities. Addendum No. 1 modified Draft EIR TRA-1 to eliminate any reference to additional construction staging or material storage areas and, per a new condition of project approval, stated that the construction contractor would not have discretion to select staging areas. Finally, Addendum No. 1 modified and addressed the enforceability of Draft Mitigation Measure AES-1. Mitigation measures for public projects are considered enforceable when they are incorporated into the project design. (Public Resources Code § 21081.6(b); 14 Cal. Code Regs. § 15126.4(a)(2).) A resolution incorporating AES-1 into the project design was included with Addendum No. 1.

Addendum No. 1 considered all potential impacts that could occur within the proposed staging areas, including, among others, impacts on aesthetics, air quality, biological resources, cultural and tribal cultural resources, geology and soils, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, land use and planning, noise, population and housing, public services, recreation, transportation, utilities, and wildfire. Addendum No. 1 concluded that the additional staging area at OC San Plant No. 2 and revisions to Draft EIR Mitigation Measures AES-1 and TRA-1 would not result in new significant impacts or a substantial increase in significant impacts previously identified in the Draft EIR. Collectively, the Draft EIR, Final EIR, and Addendum No. 1 are referred to as the “previously analyzed project.”

The property owner at Bayside Village Marina LLC (“Bayside Village Property”) has offered to allow OC San’s Contractor to stage construction materials on a portion of its property. Thus, OC San wishes to analyze the environmental impacts of using a portion of the Bayside Village Property as a staging area for the project, in addition to the delivery of oversized loads in the nighttime hours. Specifically, in August 2025, the Contractor submitted a request to OC San to allow nighttime delivery of oversized loads via Coast Highway to the construction site. The current mitigation measures (specifically, TRA-1) restrict such oversized loads to weekdays between 9:00 a.m. and 3:00 p.m. Upon review, OC San determined that restricting nighttime deliveries of oversized loads along Coast Highway was not required to reduce environmental impacts. In fact, permitting nighttime deliveries of oversized loads along Coast Highway would present a safer alternative, one that Caltrans and the City of Newport Beach prefer. In response, OC San wishes to modify TRA-1 as shown in Section IV, *Environmental Assessment, Transportation*, below. Thus, OC San has prepared this Addendum (Addendum No. 2) in order to analyze the environmental impacts that may occur from adding a portion of the Bayside Village Property as a staging area, as well as nighttime delivery of oversized loads, is referred to herein as the “Modified Project”.

As set forth in detail below, the Modified Project would not result in new significant impacts or a substantial increase in the severity of previously identified significant impacts. As a result, an addendum is appropriate. (CEQA Guidelines §§ 15162, 15164.)

## **II. Applicable CEQA Principles**

When an EIR has been certified or a negative declaration adopted for a project, no subsequent or supplemental environmental review documentation shall be required unless one or more of the following events occurs:

- 1) Substantial changes are proposed in the project, which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- 2) Substantial changes occur with respect to the circumstances under which the project is undertaken, which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- 3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
  - A. The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
  - B. Significant effects previously examined will be substantially more severe than shown in the previous EIR;
  - C. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
  - D. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

The lead agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent or supplemental EIR have occurred. (CEQA Guidelines § 15164(a).) Circulation of an addendum for public review is not necessary (CEQA Guidelines § 15164(c)); however, the addendum must be considered in conjunction with the adopted Final EIR by the agency's decision-making body (CEQA Guidelines § 15164(d).)

### **III. Project Description: The Modified Project**

In addition to staging activities at 300 East Coast Highway in Newport Beach (the proposed Pump Station location), 100 Dover Drive in Newport Beach (Lower Castaways Park), and 22212 Brookhurst Street in Huntington Beach (OC San Plant No. 2), the Modified Project would add a staging area at a portion of the Bayside Village Property (Bayside Village Marina Staging Area), which is privately owned and currently operates as an RV storage and boat slip area; refer to Exhibit 1, *Added Staging Area and Truck Access*. Under existing conditions, vehicular access to the marina is provided by a private driveway along North Bayside Drive, secured by a gate with ingress and egress on either side of the manned guard station.

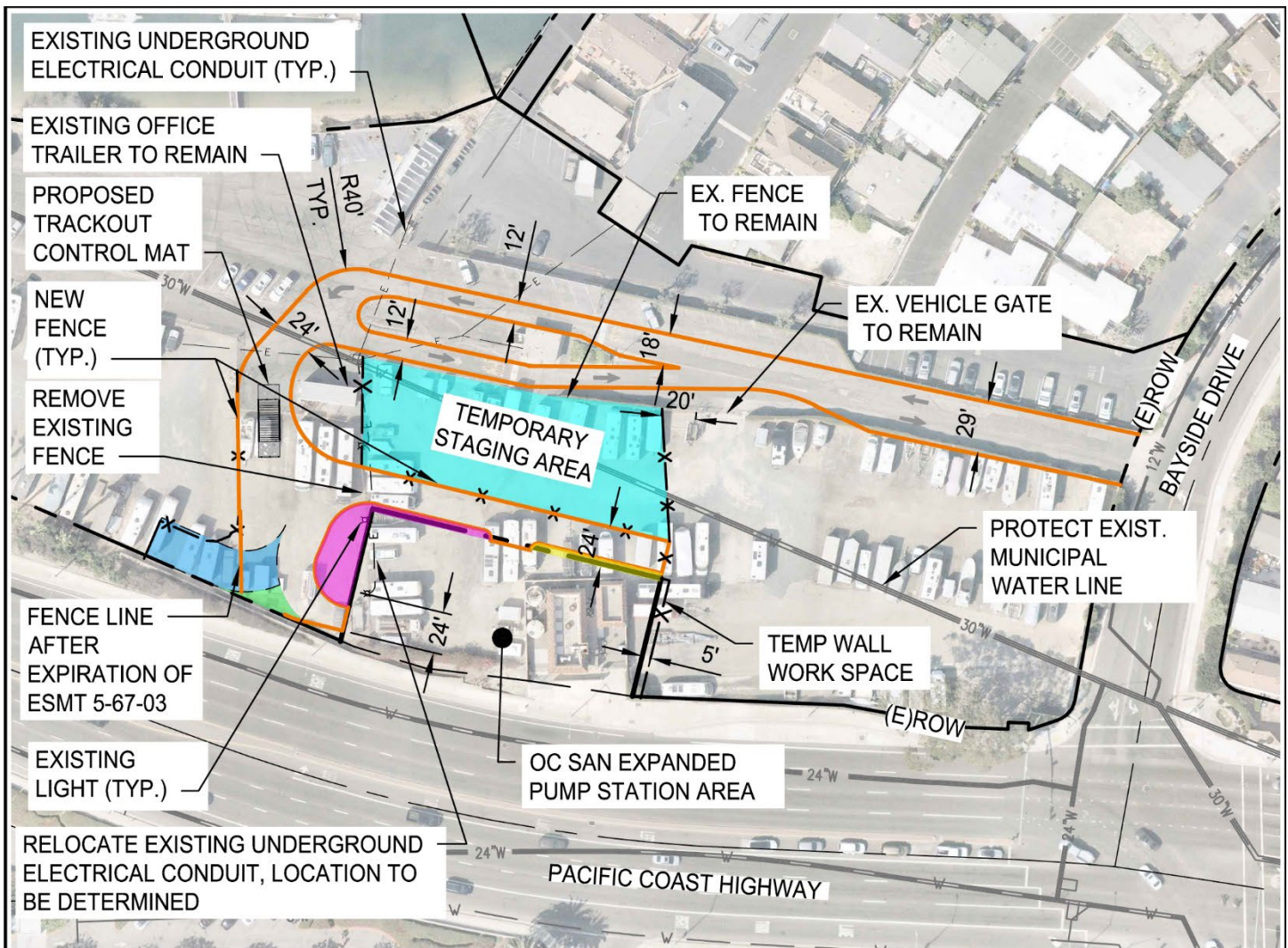
Proposed staging activities at this location would include storage of equipment and materials, loading and unloading of equipment and material, limited employee parking, and truck ingress/egress access. The staged construction materials would include piping, conduits, shoring, formwork, rebar, and other materials necessary for construction. Staged construction equipment at this location may include trucks, lifts, excavators, loaders, cranes, and other equipment necessary for the construction. Soil and dredged materials would not be stored on the Bayside Village Marina Staging Area.

Existing public access to the RV storage area and to the dock structures in the marina would not be obstructed or altered during project construction. Ingress and egress for both renters and project construction vehicles would be provided via the existing driveway to the property along the west side of Bayside Drive. For larger truck loads, both ingress and egress would occur at the vehicle ingress of the driveway, as depicted in Exhibit 1. As larger trucks are unable to complete the exit turn in the egress lane, larger trucks would exit through the guard shack ingress point and utilize a flagger at that time. All other vehicles would exit through the egress point of the guard shack.

No changes to proposed staging/hauling activities at Lower Castaways Park or OC San Plant No. 2 would result from the Modified Project; these project features would remain the same as that considered in Addendum No. 1. However, in order to minimize potential safety concerns pertaining to the hauling of oversized loads on public right-of-way, the Modified Project proposes nighttime deliveries of oversized loads at the project driveway at East Coast Highway subject to applicable Caltrans permit(s). Examples of oversized loads would include delivery of the grout plant, large drill, tunneling machine sections, plant equipment, and other materials/equipment. Delivery of such equipment would also include movement of equipment to/from the proposed pump station and launch shaft location as well as the reception shaft area.

It is acknowledged that given the construction period for the proposed project (Fall of 2025 through Winter of 2028), staging of these materials may be utilized at any of these three locations, depending on availability at the time of staging. Should utilization of Lower Castaways Park as a staging location terminate, such staging activities would shift to the Bayside Village Marina Staging Area and OC San Plant No. 2.





### LEGEND

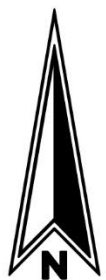
- x — x — NEW FENCE BY SHEA
- E — EXISTING UNDERGROUND ELECTRICAL CONDUIT
- LIMITS OF PROPOSED OC SAN ACCESS ROAD
- TEMPORARY STAGING AREA

### TEMPORARY CONSTRUCTION EASEMENT

- PCL 5-67-04
- PCL 5-67-05
- PCL 5-67-06

### TEMPORARY ROADWAY EASEMENT

- PCL 5-67-03



SCALE:  
1"=100'

Source: Arcadis, 2025





#### **IV. Environmental Assessment**

Potential environmental impacts associated with the temporary use of the Adjacent Pump Station Work Area and Lower Castaways Park for construction staging purposes during implementation of the previously analyzed project were evaluated in the Draft EIR. Potential environmental impacts associated with the temporary use of OC San Plant No. 2 for construction staging purposes were evaluated in Addendum No. 1. The Modified Project would include a staging area within the existing Bayside Village Property (Bayside Village Marina Staging Area). It is acknowledged that the Draft EIR did evaluate potential staging activities at a portion of this staging area, at the existing RV storage area depicted in Draft EIR Exhibit 3-6, *Adjacent Pump Station Work Areas*. As noted above and depicted in Exhibit 1, activities would be limited to equipment and materials storage, limited employee parking, and truck ingress/egress. The Modified Project would not change staging/hauling activities at Lower Castaways Park or OC San Plant No. 2. Potential impacts due to implementation of the Modified Project are discussed below.

##### **Aesthetics/Light and Glare**

The potential aesthetic/visual impacts associated with the temporary use of the Adjacent Pump Station Work Area, which included Lower Castaways Park and a portion of the Bayside Marina Village property for construction staging purposes were analyzed in the Draft EIR. (Draft EIR, p. 3-12, 3-13, 5.1-16, 5.1-17, 5.1-18.)

The potential aesthetic/visual impacts associated with the temporary use of OC San Plant No. 2 for construction staging purposes were analyzed in Addendum No. 1. (Addendum No. 1, p. 9, 10, 11.) Identified changes since the Draft EIR were limited to the potential visibility of stockpiled soil at the new staging site. Overall, with implementation of modified Mitigation Measure AES-1, which would require screening for staging areas, impacts related to degraded visual quality, including visual impacts from stockpiling at the OC San Plant No. 2, would be less than significant.

The Modified Project would include an additional construction staging location at the Bayside Village Marina Staging Area, a portion of which was considered for staging in the Draft EIR. Under existing conditions, Bayside Village Marina Staging Area already blocks views of coastal bluffs along Coast Highway; as such, temporary construction staging activities would not increase view blockage of scenic resources, such as coastal bluffs, compared to existing conditions. While the storage of construction equipment and materials would result in short-term impacts to existing visual character/quality, these impacts would be temporary and cease once construction is completed. Nonetheless, the Modified Project would implement Mitigation Measure AES-1 from the previously analyzed project, and as modified by Addendum No. 1, to ensure that the staging area is screened from public view. Under existing conditions, nighttime security lighting is used at the existing pump station and within the RV storage area; other sources of light and glare in the general vicinity include existing streetlights and headlights along adjacent roadways and security lighting associated with adjacent development. As staging activities at the Bayside Village Marina Staging Area would be limited to the storage of equipment and materials, loading and unloading of equipment and material, limited employee parking, and truck ingress/egress access, and would not increase haul trips or require changes to

nighttime activities, for staging purposes, previously considered, impacts related to light and glare would not change from the previously analyzed project.

The Modified Project would allow delivery of oversized loads in the nighttime hours. The Draft EIR analyzed nighttime lighting at the delivery locations, since the project proposed 24-hour construction activities in these areas for the purpose of replacing the force mains. The addition of nighttime lighting as a result of oversized load deliveries at these locations would not result in substantial increases in the nighttime lighting at these locations. As detailed in the Draft EIR, short-term light and glare impacts associated with construction activities would likely be limited to nighttime lighting (for construction and security purposes). Mitigation Measure AES-3 would require a construction safety lighting plan. Nighttime security lighting, as necessary, would be oriented downward and away from adjacent residential areas. With implementation of Mitigation Measure AES-3, impacts in this regard would be reduced to less than significant levels. (Draft EIR p. 5.1-19.) With compliance with the Draft EIR Mitigation Measure AES-3, the Modified Project would not result in any significant change in impacts related to light and glare from the previously analyzed project.

The Modified Project would not change any operational aspects of the previously analyzed project.

Following implementation of Mitigation Measure AES-1, as modified by Addendum No. 1, and considering the short-term duration of staging activities at the Bayside Village Marina Staging Area, the Modified Project would not result in new significant impacts or a substantial increase in previously identified significant impacts pertaining to aesthetics.

**AES-1** Prior to issuance of any grading and/or demolition permits, whichever occurs first, engineering drawings and specifications shall be prepared by the Project Engineer, or their designee, and submitted for review and approval by the Orange County Sanitation District Director of Engineering. These documents shall, at a minimum, indicate the equipment and vehicle staging areas, stockpiling of materials, screening/fencing, and haul route(s). Staging areas shall be sited away from public views, to the extent feasible and reasonable. Construction haul routes shall minimize impacts to sensitive uses in the project area by avoiding local residential streets. Staging areas shall be screened utilizing temporary fencing with opaque materials to buffer views of construction equipment and materials for the duration of construction.

**AES-3** Prior to any nighttime construction activities, a construction safety lighting plan shall be prepared by the Project Engineer, or their designee, and submitted to the Orange County Sanitation District Director of Engineering for review and approval. The plan shall include, but not be limited to, the following:

- Identify all required construction lighting fixtures, anticipated locations and heights, and maximum wattage required;

- Ensure all construction-related lighting fixtures (including portable fixtures) are shielded and oriented downward and away from adjacent sensitive areas (including residential and biologically sensitive areas);
- Provide the minimal wattage necessary to provide adequate nighttime visibility and safety at the construction site; and
- Demonstrate that nighttime construction lighting does not spillover onto adjacent residential properties.

### **Air Quality**

The potential air quality impacts associated with the temporary use of the Adjacent Pump Station Work Area for construction staging purposes were analyzed in the Draft EIR. (Draft EIR, p. 3-12, 3-13, 5.2-13, 5.2-14, 5.2-15, 5.2-16, 5.2-17, 5.2-19, 5.2-20, 5.2-24, 5.2-25.)

The potential air quality impacts associated with the temporary use of OC San Plant No. 2 for construction staging purposes were analyzed in Addendum No. 1. (Addendum No. 1, p. 11, 12.) Changes considered since the Draft EIR were limited to the addition of new haul truck trips (approximately 1,674) to and from the new staging area. Nevertheless, Addendum No. 1 concluded that hauling activities would not exceed the South Coast Air Quality Management District's (SCAQMD) significance thresholds. Overall, the previously analyzed project was determined to result in less than significant air quality impacts.

The Modified Project would include an additional construction staging location at the Bayside Village Marina Staging Area, a portion of which was considered for staging in the Draft EIR. The Modified Project would allow nighttime hauling of oversized loads at the project driveway at East Coast Highway. However, the Modified Project would not require additional hauling, compared to that analyzed in the Draft EIR, nor would the project result in any increased staging/hauling activities at Lower Castaways Park or OC San Plant No. 2. Rather, by adding an additional staging area in proximity to construction activities, the Modified Project has the potential to reduce air quality emissions due to fewer/shorter construction truck trips. As a result, short-term construction staging activities under the Modified Project would not exceed SCAQMD's significance thresholds and would result in the same or less construction-related air quality impacts on sensitive receptors compared to those identified by the previously approved project.

The Modified Project would not change any operational aspects of the previously analyzed project. As such, it is not anticipated that the Modified Project would conflict with any applicable air quality plans, as these plans are primarily concerned with long-term impacts.

Following adherence to SCAQMD's rules and regulations, the Modified Project would not result in new significant impacts or a substantial increase in previously identified significant impacts pertaining to air quality.



## Biological Resources

The potential impacts on biological resources associated with the temporary use of the Adjacent Pump Station Work Area for construction staging purposes were analyzed in the Draft EIR. (Draft EIR, p. 3-12, 3-13, 5.3-13, 5.3-14, 5.3-15, 5.3-16, 5.3-17, 5.3-19, 5.3-20, 5.3-21, 5.3-23, 5.3-24, 5.3-25.)

The potential impacts on biological resources associated with the temporary use of OC San Plant No. 2 for construction staging purposes were analyzed in Addendum No. 1. (Addendum No. 1, p. 13, 14.) Identified changes since the Draft EIR were limited to the presence of ornamental trees at Lower Castaways, where nesting birds could be present. Overall, following implementation of Mitigation Measure BIO-2, as modified by Addendum No. 1, which would require nesting bird surveys and subsequent nest avoidance, impacts related to biological resources would be less than significant.

The Modified Project would include a new staging area within the fully developed Bayside Village Marina Staging Area. However, it is acknowledged that the majority of this staging area was analyzed in the Draft EIR; refer to Figure 4, *Vegetation Communities and Land Uses*, of the Biological Resources Report included in Appendix 11.3, *Biological Resources Reports*, of the Draft EIR. The vast majority of the soils on-site have been significantly altered due to compaction and construction of the RV storage area and existing pump station. The only vegetation that exists on site consists of a limited area of ornamental non-native grasses and shrubs along Coast Highway. Thus, the proposed staging area within the Bayside Village Marina Staging Area does not present suitable habitat for sensitive/special-status biological resources. Additionally, there are no riparian habitats, wetlands, or environmentally sensitive area (ESA) present at the Bayside Village Marina Staging Area. Due to the presence of ornamental landscaping on site, there is a potential for nesting birds to be present and impacted during construction. As a result, Draft EIR Mitigation Measure BIO-2, as modified by Addendum No. 1, would apply to the Modified Project in order to reduce construction impacts to biological resources to less than significant levels. The nighttime hauling of oversized loads would not change any construction-related aspects of the previously analyzed project pertaining to biological resources.

The Modified Project would not change any operational aspects of the previously analyzed project.

Following implementation of Draft EIR Mitigation Measure BIO-2, as modified by Addendum No. 1, and considering the short-term duration of construction staging activities, the Modified Project would not result in new significant impacts or a substantial increase in previously identified significant impacts pertaining to biological resources.

**BIO-2** Should construction activities occur within the nesting season, all suitable habitat surrounding the project site and Orange County Sanitation District (OC San) Plant No. 2 shall be thoroughly surveyed for the presence of nesting birds by a qualified biologist, defined as an individual with a bachelor's degree or above in a biological science field and demonstrated field experience, within three days prior to commencement of site disturbance activities.

If an active avian nest is discovered in proximity to the project site or OC San Plant No. 2 during the nesting bird survey, construction activities (those activities that could result in direct or indirect impacts to active nests either through noise, light, or physical contact) shall stay outside of a 300- foot buffer around the active nest. For raptor species, this buffer shall be expanded to 500 feet. The qualified biologist shall be present to delineate the boundaries of the buffer area and to monitor the active nest in order to ensure that nesting behavior is not adversely affected by construction activities. If the qualified biologist determines that nesting behavior is adversely affected by construction activities, the qualified biologist shall halt construction activities that result in the adverse effect and file a written report to OC San and the construction contractor stating the recommended course of action. The buffer area and limitations on construction may be reduced upon approval by the California Department of Fish and Wildlife, and only if the nesting behaviors are not disrupted by construction activities, as determined by the qualified biologist. Once the young have fledged, normal construction activities shall be allowed to occur.

### **Cultural Resources**

The potential cultural resources impacts associated with the temporary use of the Adjacent Pump Station Work Area for construction staging purposes were analyzed in the Draft EIR. (Draft EIR, p. 3-12, 3-13, 5.4-15, 5.4-16.)

The potential cultural resources impacts associated with the temporary use of OC San Plant No. 2 for construction staging purposes were analyzed in Addendum No. 1. (Addendum No. 1, p. 14.) Overall, as no historic resources are located within the project area, and as no grading or excavation is proposed at project staging areas, impacts to cultural resources for the previously analyzed project were determined to be less than significant.

The Modified Project would include an additional construction staging location at the Bayside Village Marina Staging Area, a portion of which was considered for staging in the Draft EIR. Activities at construction staging areas under the Modified Project would be temporary during construction, would cease when construction is completed, and would not require any ground disturbing activities that could impact previously undiscovered cultural resources. Construction impacts would be less than significant. The nighttime hauling of oversized loads would not change any construction-related aspects of the previously analyzed project pertaining to cultural resources.

The Modified Project would not change any operational aspects of the previously analyzed project.

The Modified Project, therefore, would not result in new significant impacts or a substantial increase in previously identified significant impacts pertaining to cultural resources.

## **Geology and Soils**

The potential geology and soils impacts associated with the temporary use of the Adjacent Pump Station Work Area for construction staging purposes were analyzed in the Draft EIR. (Draft EIR, p. 3-12, 3-13, 5.4-15, 5.4-16.)

The potential geology and soils impacts associated with the temporary use of OC San Plant No. 2 for construction staging purposes were analyzed in Addendum No. 1. (Addendum No. 1, p. 15.) Identified changes since the Draft EIR were limited to the addition of soil drying/stockpiling at the new staging area, which could result in erosion. However, Addendum No. 1 required compliance with SCAQMD Rule 403 during construction to prevent fugitive dust, as well as compliance with OC San established protocols and existing regulations to minimize the potential of erosion at proposed staging areas during construction. Overall, geology and soils impacts associated with the previously analyzed project were determined to be less than significant.

As the Modified Project would include the Bayside Village Marina Staging Area, the majority of which was previously analyzed in the Draft EIR. As described in the Draft EIR, the Modified Project would not be located on a geologically sensitive area, including within an earthquake fault zone or zones prone to landslides, lateral spreading, subsidence, liquefaction or collapse. Proposed staging activities under the Modified Project would be temporary during construction, would cease when construction is completed, and would not require any new ground disturbing activities not previously considered in the Draft EIR that could impact previously undiscovered paleontological resources. Additionally, the Modified Project would not result in any new stockpiling activities that could result in fugitive dust emissions or erosion. The nighttime hauling of oversized loads would not change any construction-related aspects of the previously analyzed project. No new significant geology and soils impacts would result from implementation of the Modified Project.

The Modified Project would not change any operational aspects of the previously analyzed project.

The Modified Project, therefore, would not result in new significant impacts or a substantial increase in previously identified significant impacts pertaining to geology and soils.

## **Greenhouse Gas Emissions**

The potential greenhouse gas (GHG) emissions impacts associated with the temporary use of the Adjacent Pump Station Work Area for construction staging purposes were analyzed in the Draft EIR. (Draft EIR, p. 3-12, 3-13, 5.6-11, 5.6-12, 5.6-13.)

The potential GHG emission impacts associated with the temporary use of OC San Plant No. 2 for construction staging purposes were analyzed in Addendum No. 1. (Addendum No. 1, p. 15, 16.) Identified changes since the Draft EIR were limited to the addition of new haul truck trips (approximately 1,674) to and from the new staging area. Nevertheless, it was determined that emissions created by off-road construction equipment



and on-road vehicles (including haul truck trips) affiliated with construction staging areas would not exceed the SCAQMD's GHG emissions significance thresholds, and therefore would not conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing GHG emissions. Impacts for the previously analyzed project related to GHG emissions were determined to be less than significant.

The Modified Project would include the Bayside Village Marina Staging Area, a majority of which was considered for staging in the Draft EIR. The Modified Project would allow nighttime hauling of oversized loads at the project driveway at East Coast Highway. However, the Modified Project would not require additional hauling, compared to that analyzed in the Draft EIR, nor would the Modified Project change any staging/hauling activities at Lower Castaways Park or OC San Plant No. 2. As such, it is not anticipated that the Modified Project would exceed the SCAQMD's GHG emissions significance threshold. Further, it is acknowledged that by adding an additional staging area in proximity to construction activities, the Modified Project has the potential to reduce GHG emissions due to fewer/shorter construction truck trips.

The Modified Project would not change operational aspects of the previously analyzed project. As such, it is not anticipated that the Modified Project would conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing GHG emissions, as these plans are primarily concerned with long-term impacts.

The Modified Project, therefore, would not result in new significant impacts or a substantial increase in previously identified significant impacts pertaining to GHG emissions.

### **Hazards and Hazardous Materials**

The potential hazards and hazardous materials impacts associated with the temporary use of the Adjacent Pump Station Work Area for construction staging purposes were analyzed in the Draft EIR. (Draft EIR, p. 3-12, 3-13, 5.5-15, 5.7-13, 5.7-14, 5.7-15, 4.7-16, 5.7-17, 5.7-20.)

The potential hazards and hazardous materials impacts associated with the temporary use of OC San Plant No. 2 for construction staging purposes were analyzed in Addendum No. 1. (Addendum No. 1, p. 16, 17, 18, 19.) Identified changes since the Draft EIR include the presence of existing soil contamination and existing hazardous materials site conditions documented at OC San Plant No. 2, which could expose humans to hazardous substances through an accidental release. Nonetheless, it was determined that compliance with the National Pollutant Discharge Elimination System (NPDES) General Permit, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activities, impacts would be less than significant. The NPDES General Permit requires the proper handling and discharge of harmful pollutants that could affect water quality in the area. Therefore, compliance with the NPDES General Permit would ensure that any harmful pollutants or hazardous materials would be properly handled and disposed of to prevent unsafe exposure to construction workers. As project construction would require temporary lane closures to allow for staging and work area access, and as OC San Plant No. 2 is situated in the proximity of identified evacuation routes for the

Tsunami Hazard Zone, the previously analyzed project included Mitigation Measure TRA-1, as modified by Addendum No. 1, to require that emergency access is maintained during all construction activities.

The Modified Project would include the Bayside Village Marina Staging Area, the majority of which was considered for staging in the Draft EIR. As discussed in the Draft EIR, staging at this location would not occur at an existing listed hazardous materials site. The Modified Project's proposed staging activities would be temporary during construction, would cease when construction is completed, and would not involve any demolition of on-site structures or ground disturbing activities. Additionally, as construction staging would not require dredging or earthwork, it was determined that impacts related to the routine transport, use, or disposal of hazardous materials, or accident conditions involving the release of hazardous materials would be less than significant. Further, the Modified Project's use of potentially hazardous materials associated with truck hauling operations, including oils, lubricants, and vehicle fuels, would comply with applicable Federal, State and local regulatory requirements. Mitigation Measure TRA-1, as modified by Addendum No. 1, would apply to the Modified Project to ensure that emergency response and evacuation is maintained during construction.

Regarding emergency access, the Modified Project proposes ingress and egress for both renters and project construction vehicles would be provided via the existing driveway to the property along the west side of Bayside Drive. For larger truck loads, both ingress and egress would occur at the vehicle ingress of the driveway, as depicted in Exhibit 1. As larger trucks are unable to complete the exit turn in the egress lane, larger trucks would exit through the guard shack ingress point and utilize a flagger at that time. All other vehicles would exit through the egress point of the guard shack. In order to ensure that these activities occur, Draft EIR Mitigation Measure TRA-1, as modified by Addendum No. 1, would require a Construction Management Plan (CMP) to identify necessary traffic controls and detours, and a construction phasing plan to reduce impacts to local streets and plan for traffic control signage and detours along identified haul routes. The CMP would also specify the hours during which hauling activities could occur and would require traffic control barricades, cones, flaggers, and/or warning signs to reduce construction-related impacts to adjacent streets. With compliance with TRA-1, temporary construction-related impacts would be less than significant.

The Modified Project would also allow nighttime hauling of oversized loads at the project driveway at East Coast Highway subject to applicable Caltrans permit(s). Nighttime hauling of oversized loads would reduce potential traffic hazard conflicts with vehicles, bicyclists, and pedestrians, as oversized hauling would occur in the nighttime hours when these activities are less likely to occur. This aspect of the Modified Project would result in less impacts than those considered as part of the Draft EIR, where these activities occurred solely during daytime hours. As such, the Modified Project would not result in new significant impacts or a substantial increase in previously identified significant impacts pertaining to hazards and hazardous materials during construction.

The Modified Project would not change any operational aspects of the previously analyzed project.

Following implementation of Draft EIR Mitigation Measure TRA-1, as modified by Addendum No. 1, and considering the short-term duration of staging activities at the Bayside Village Marina Staging Area, the Modified Project would not result in new significant impacts or a substantial increase in previously identified significant impacts pertaining to hazards and hazardous materials.

**TRA-1** Prior to initiation of construction activities, engineering drawings and specifications, and/or contractor shop drawings shall be prepared by the Project Engineer, or designee, and submitted for review and approval by the Orange County Sanitation District, California Department of Transportation (Caltrans), City of Huntington Beach Public Works Department, and the City of Newport Beach Public Works Department. These documents shall, at a minimum, address the following:

- Traffic control protocols shall be specified for any lane closure, detour, or other disruption to traffic circulation, including bicycle and pedestrian trails. Disruption to traffic circulation shall be minimized to the greatest extent feasible. Bicycle and pedestrian trails shall remain open, to the greatest extent feasible, during construction or shall be re-routed to ensure continued connectivity.
- Bus stop access impacts shall be coordinated with, and approved by, the Orange County Transportation Authority.
- At least one week before any construction activities that would affect travel on nearby roadways, the construction contractor shall notify the City of Huntington Beach Public Works Department, City of Newport Beach Public Works Department and Caltrans, as applicable, of construction activities that could impede movement (such as lane closures) along roadways, to allow for planning temporary detours or identifying alternative emergency access routes where appropriate. Surrounding property owners shall also be notified of project activities through advanced mailings.
- Identify construction vehicle haul routes for the delivery of construction materials (i.e., lumber, tiles, piping, windows, etc.) to the site; necessary traffic controls and detours; and a construction phasing plan for the project to reduce impacts to local streets and plan for traffic control signage and detours along identified haul routes to minimize impacts to existing traffic flow.
- Specify the hours during which hauling activities can occur and methods to mitigate construction-related impacts to adjacent streets such as traffic control barricades, cones, flaggers, and warning signs.
- Require the contractor to keep all haul routes clean and free of debris, including but not limited to gravel and dirt resulting from project



construction. The Contractor shall clean adjacent streets, as directed by the Orange County Sanitation District, of any project material which may have been spilled, tracked, or blown onto adjacent City of Newport Beach, City of Huntington Beach, and Caltrans streets or areas.

- ~~Hauling of oversize loads shall be allowed between the hours of 9:00 a.m. and 3:00 p.m. only, Monday through Friday.~~ No hauling or transport shall be allowed during nighttime hours (10:00 p.m. to 7:00 a.m.), weekends, or Federal holidays, with the exception of overside loads for the purpose of minimizing safety risk. Oversized hauling activities may occur along Coast Highway in the nighttime hours subject to the applicable Caltrans permit. All oversized loads shall not occur during peak traffic hours of 7:00 a.m. to 9:00 a.m. and 5:00 p.m. to 7:00 p.m. on weekdays. Any oversized loads utilizing Coast Highway shall obtain a Caltrans permit for such activities.
- Use of local streets shall be prohibited, except when required to provide direct access to the project site and in compliance with the approved project haul routes.
- Haul trucks entering or exiting public streets shall yield to public traffic at all times.
- If hauling operations cause any damage to existing pavement, streets, curbs, and/or gutters along the haul route, the contractor shall be fully responsible for repairs. The repairs shall restore the damaged property to its original condition.
- All construction-related staging of vehicles shall be kept out of the adjacent public roadways and shall occur on the project site or within additional off-street staging areas previously identified and arranged.
- Construction-related lane closures would only occur between the hours of 8:30 a.m. and 3:30 p.m., Monday through Friday, with the exception of oversized hauling activities. More or less restrictive closure hours may be prescribed by the City.
- Use of a construction flagperson (as deemed appropriate by the Orange County Sanitation District) to assist in maintaining efficient vehicle travel in both directions (particularly during peak travel hours) and use of construction signage and safe detour routes for pedestrians and bicyclists when travel lanes and sidewalks along Coast Highway are affected.
- The engineering drawings and specifications shall meet standards established in the current California Manual on Uniform Traffic Control Device (MUTCD).

## **Hydrology & Water Quality**

The potential hydrology and water quality impacts associated with the temporary use of the Adjacent Pump Station Work Area for construction staging purposes were analyzed in the Draft EIR. (Draft EIR, p. 3-12, 3-13, 5.8-16, 5.8-17, 5.8-18, 5.8-19, 8-6.)

The potential hydrology and water quality impacts associated with the temporary use of OC San Plant No. 2 for construction staging purposes were analyzed in Addendum No. 1. (Addendum No. 1, p. 19, 20.) Identified changes since the Draft EIR included stockpiling activities at the new staging area, which could result in water contamination due to erosion. Additionally, it should be noted that the Draft EIR analyzed staging areas within the Santa Ana Region Basin Plan (Basin Plan) within the jurisdiction of the Santa Ana Regional Water Quality Control Board (RWQCB), but the OC San Plant No. 2 is located within the Orange County Groundwater Basin and, therefore, is within the jurisdiction of the Orange County Water District (OCWD). Nevertheless, it was determined that the previously analyzed project would result in less than significant impacts related to water quality and hydrology.

The Modified Project would include the Bayside Village Marina Staging Area, the majority of which was considered for staging in the Draft EIR. As described in the Draft EIR, staging at this location would not be within a flood hazard. (Draft EIR, p. 8-6.) However, the site is located within an area that could be subject to inundation as a result of a tsunami or seiche within Newport Bay. The Modified Project's staging activities would be temporary during construction, cease when construction is completed, and would not require any ground disturbing activities that could interfere with groundwater recharge or substantially alter the existing drainage pattern of the site or area. Additionally, the Modified Project would not require any changes to hauling or stockpiling that could result in water contamination due to erosion or any increased risk of release of pollutants due to inundation from a tsunami or seiche. The Modified Project would not result in any new significant impacts pertaining to increased water demand during construction, compared to that considered in the previously analyzed project documentation. The nighttime hauling of oversized loads would not change any construction-related aspects of the previously analyzed project pertaining to hydrology and water quality. As such, the Modified Project would not result in any new significant impacts or any substantial increases in previously identified hydrology or water quality impacts during construction.

The Modified Project would not change any operational aspects of the previously analyzed project.

The Modified Project, therefore, would not result in new significant impacts or a substantial increase in previously identified significant impacts pertaining to hydrology and water quality.

## **Land Use and Planning**

The potential land use and planning impacts associated with the temporary use of the Adjacent Pump Station Work Area for construction staging purposes were analyzed in the Draft EIR. (Draft EIR, p. 3-12, 3-13, 5.9-8., 5.9-9, 5.9-12, 5.9-14, 5.9-15, 5.9-16, 5.9-17).

The potential land use and planning impacts associated with the temporary use of OC San Plant No. 2 for construction staging purposes were analyzed in Addendum No. 1. (Addendum No. 1, p. 20, 21.) Overall, as no changes to land uses or zoning designations would occur as a result of temporary construction staging, impacts to land use and planning for the previously analyzed project were determined to be less than significant.

The Modified Project would include the Bayside Village Marina Staging Area, the majority of which was considered for staging in the Draft EIR. The Modified Project's proposed staging activities would be temporary during construction, would cease when construction is completed, and would not require or result in changes to land uses or zoning designations. Additionally, during construction staging, including truck ingress and egress to the staging site, public access to the marina, including rented areas for RV storage and boat slips, would remain accessible. As such, the Modified Project would be consistent with the recreational policies of the California Coastal Act. Last, the nighttime hauling of oversized loads would not change any construction-related aspects of the previously analyzed project pertaining to land use and planning. Construction impacts would be less than significant.

The Modified Project would not change any operational aspects of the previously analyzed project.

The Modified Project, therefore, would not result in new significant impacts or a substantial increase in previously identified significant impacts pertaining to land use and planning.

## Noise

The potential noise impacts associated with the temporary use of the Adjacent Pump Station Work Area for construction staging purposes were analyzed in the Draft EIR. (Draft EIR, p. 3-12, 3-13, 5.10-12, 5.10-13, 5.10-14, 5.10-15, 5.10-16, 5.10-17, 5.10-18).

The potential noise impacts associated with the temporary use of OC San Plant No. 2 for construction staging purposes were analyzed in Addendum No. 1. (Addendum No. 1, p. 21, 22, 23.) Identified changes since the Draft EIR are limited to the increase in haul trips (approximately 1,674 trips), which could result in short-term construction noise impacts. However, with implementation of Draft EIR Mitigation Measures NOI-1, as modified by Addendum No. 1, potential noise impacts would be less than significant. Specifically, Mitigation Measure NOI-1 would reduce short-term construction noise impacts by requiring mobile equipment to be muffled and requiring best management practices such as avoiding noise sensitive uses while hauling and prohibiting construction activities outside of allowable hours specified by the Municipal Code. Mitigation Measure Overall, noise impacts associated with the additional haul truck trips would be temporary and cease upon completion of construction. Impacts for the previously analyzed project related to noise were determined to be less than significant.

The Modified Project would include the Bayside Village Marina Staging Area, the majority of which was considered for staging in the Draft EIR. The Modified Project would not change construction equipment assumptions considered in the Draft EIR. The Modified Project would allow nighttime hauling of oversized loads at the project driveway at East



Coast Highway. However, the Modified Project would not require additional hauling, compared to that analyzed in the Draft EIR, nor would the Modified Project change any staging/hauling activities at Lower Castaways Park or OC San Plant No. 2.

The Modified Project would allow delivery of oversized loads in the nighttime hours. The Draft EIR analyzed nighttime construction noise at the delivery locations, since the project proposed 24-hour construction activities in these areas for the purpose of replacing the force mains. The addition of nighttime noise as a result of oversized load deliveries at these locations would not result in substantial increases in the nighttime lighting at these locations, compared to that analyzed in the Draft EIR. As detailed in the Draft EIR, Mitigation Measure NOI-2 requires the preparation of a Construction Noise Control Plan to demonstrate sensitive receptors would not be disturbed by construction noise levels prior to issuance of demolition or building permits. The Construction Noise Control Plan would identify noise reduction measures (e.g., temporary construction noise barriers, sound-attenuating enclosures, etc.) to minimize construction noise levels at off-site sensitive receptors and demonstrate compliance with Municipal Code Chapter 10.26 and 10.28. Compliance with Municipal Code Chapter 10.26 and 10.28 would ensure sensitive receptors are not disturbed outside of allowable construction hours. With the implementation of Mitigation Measure NOI-2, nighttime noise levels would be reduced below the City's nighttime noise standards. As such, sensitive receptors would not be disturbed by construction noise as mitigated nighttime construction noise would not exceed the City's exterior nighttime noise standard of 50 dBA and/or interior nighttime noise standard of 40 dBA. In conclusion, the addition of nighttime noise as a result of oversized load deliveries at these locations would not result in substantial increases in the nighttime lighting at these locations, compared to that analyzed in the Draft EIR.

The proposed staging activities at Bayside Village Marina Staging Area would not result in any significant changes to noise analyzed as part of the Draft EIR. Therefore, the Modified Project would not result in new significant impacts or a substantial increase in previously identified impacts pertaining to noise.

The Modified Project would not change any operational aspects of the previously analyzed project.

The Modified Project, therefore, would not result in new significant impacts or a substantial increase in previously identified significant impacts pertaining to noise.

**NOI-2** Prior to issuance of Demolition or Building Permits, the Orange County Sanitation District, or designee, shall retain a qualified Acoustical Engineer, defined as an individual with a bachelor's degree or above in acoustics, physics, or another closely related engineering discipline and demonstrated field experience, to prepare a Construction Noise Control Plan. The Construction Noise Control Plan shall identify the types, location, and duration of equipment to be used during project construction. Construction noise levels shall be quantified and estimated at the nearest sensitive uses (i.e., residences, schools, churches, recreation/park facilities, hospitals, libraries, etc.) within 1,000 feet of the project construction area. Based on proposed construction hours and equipment to be used, the Construction Noise Control Plan shall identify noise reduction measures to minimize construction noise levels at off-site sensitive uses, demonstrating compliance with the Newport Beach Municipal Code Chapter 10.26 and 10.28. Noise reduction measures may include the use of sound blankets, sound walls/barriers, noise shrouds, and/or limiting the use of heavy noise-emitting equipment to non-sensitive hours (during daytime work hours and not after 5:00 p.m., etc.). The noise reduction measures shall be included in the project engineering drawings and specifications, and/or contractor shop drawings for review by the City of Newport Beach Planning Division. All noise reduction measures identified in the Construction Noise Control Plan approved by the City of Newport Beach shall be included in all project designs and construction plans for the project.

### **Population and Housing**

The potential population and housing impacts associated with the temporary use of the Adjacent Pump Station Work Area for construction staging purposes were analyzed in the Draft EIR. (Draft EIR, p. 3-12, 3-13, 8-1).

The potential population and housing impacts associated with the temporary use of OC San Plant No. 2 for construction staging purposes were analyzed in Addendum No. 1. (Addendum No. 1, p. 23.) Impacts associated with the temporary use of construction staging areas during implementation of the previously analyzed project were determined to be less than significant.

The Modified Project would include the Bayside Village Marina Staging Area, the majority of which was considered for staging in the Draft EIR; there are no existing residents or housing at this proposed staging location. The Modified Project would not cause a change in the labor force resulting in unplanned population growth in the area, nor any operational aspects of the previously analyzed project. Further, the nighttime hauling of oversized loads would not change any aspect of population and housing, as analyzed in the Draft EIR. The Modified Project, therefore, would not result in new significant impacts or a substantial increase in previously identified significant impacts pertaining to population and housing.

## **Public Services**

The potential public services impacts associated with the temporary use of the Adjacent Pump Station Work Area for construction staging purposes were analyzed in the Draft EIR. (Draft EIR, p. 3-12, 3-13, 8-1).

The potential public services impacts associated with the temporary use of OC San Plant No. 2 for construction staging purposes were analyzed in Addendum No. 1. (Addendum No. 1, p. 23, 24.) Overall, temporary construction staging activities would not result in the need for new or physically altered fire, police, school, parks and recreational, or other public service facilities, and impacts would be less than significant.

As discussed above under *Population and Housing* analysis, the Modified Project would not result in unplanned population growth in the area. As such, it is not anticipated that the Modified Project would require new or physically altered fire, police, school, parks and recreational, or other public service facilities during construction.

The Modified Project would not change operational aspects of the previously analyzed project.

The Modified Project, therefore, would not result in new significant impacts or a substantial increase in previously identified significant impacts pertaining to public services.

## **Recreation**

The potential recreation impacts associated with the temporary use of the Adjacent Pump Station Work Area for construction staging purposes were analyzed in the Draft EIR. (Draft EIR, p. 3-12, 3-13, 8-1).

The potential recreation impacts associated with the temporary use of OC San Plant No. 2 for construction staging purposes were analyzed in Addendum No. 1. (Addendum No. 1, p. 24.) Overall, temporary construction staging activities would result in less than significant impacts related to recreation.

As discussed above under *Population and Housing* analysis, the Modified Project would not result in unplanned population growth in the area. As such, it is not anticipated that the Modified Project would result in new residents using existing recreational facilities or requiring additional recreational facilities. Additionally, during construction staging, including truck ingress and egress to the staging site, public access to the marina, including rented areas for RV storage and boat slips, would remain accessible. Impacts would be less than significant. The Modified Project would not result in any new significant impacts or a substantial increase in previously identified significant impacts during construction.

The Modified Project would not change operational aspects of the previously analyzed project.

The Modified Project, therefore, would not result in new significant impacts or a substantial increase in previously identified significant impacts pertaining to recreation.

## Transportation

The potential transportation impacts associated with the temporary use of the Adjacent Pump Station Work Area for construction staging purposes were analyzed in the Draft EIR. Draft EIR, p. 3-12, 3-13, 5.11-6, 5.11-7, 5.11-8, 5.11-9, 5.11-10, 5.11-11).

The potential transportation impacts associated with the temporary use of OC San Plant No. 2 for construction staging purposes were analyzed in Addendum No. 1. (Addendum No. 1, p. 24, 25, 26, 27.) Identified changes since the Draft EIR are limited to the increase in haul trips (approximately 1,674 trips), which could result in impacts related to the existing roadway circulation system, transit/bicycle/pedestrian access, hazardous design features, and emergency access. The previously analyzed project determined that implementation of Draft EIR Mitigation Measure TRA-1, as modified by Addendum No. 1, would reduce such impacts to less than significant levels. Specifically, Mitigation Measure TRA-1 would require implementation of a CMP that would include a variety of measures to minimize traffic safety impacts. Within implementation of Draft EIR Mitigation Measure TRA-1, as modified by Addendum No. 1, it was determined that the previously analyzed project would result in less than significant transportation impacts.

As depicted in Exhibit 1, the Modified Project would require truck access to the Bayside Village Marina Staging Area, similar to that considered by the previously analyzed project as part of the Draft EIR. The Modified Project proposes ingress and egress for project construction vehicles would be provided via the existing driveway to the property along the west side of Bayside Drive. For larger truck loads, both ingress and egress would occur at the vehicle ingress of the driveway, as depicted in Exhibit 1. As larger trucks are unable to complete the exit turn in the egress lane, larger trucks would exit through the guard shack ingress point and utilize a flagger at that time. All other vehicles would exit through the egress point of the guard shack. In order to ensure that these activities occur, Draft EIR Mitigation Measure TRA-1, as modified by Addendum No. 1, would require a Construction Management Plan (CMP) to identify necessary traffic controls and detours, and a construction phasing plan to reduce impacts to local streets and plan for traffic control signage and detours along identified haul routes. The CMP would also specify the hours during which hauling activities could occur and would require traffic control barricades, cones, flaggers, and/or warning signs to reduce construction-related impacts to adjacent streets. With compliance with TRA-1, emergency access would be maintained.

The Modified Project would also allow nighttime hauling of oversized loads at the project driveway at East Coast Highway subject to applicable Caltrans permit(s). Nighttime hauling of oversized loads would reduce potential traffic hazard conflicts with vehicles, bicyclists, and pedestrians, as oversized hauling would occur in the nighttime hours when these activities are less likely to occur. This aspect of the Modified Project would result in less impacts than those considered as part of the Draft EIR, where these activities occurred solely during daytime hours. As such, the Modified Project would not result in new significant impacts or a substantial increase in previously identified significant impacts pertaining to transportation during construction.

The Modified Project would not change any operational aspects of the previously analyzed project.



With implementation of Draft EIR TRA-1, as modified by Addendum No. 1, the Modified Project would not result in new significant impacts or a substantial increase in previously identified significant impacts pertaining to transportation.

**TRA-1** Prior to initiation of construction activities, engineering drawings and specifications, and/or contractor shop drawings shall be prepared by the Project Engineer, or designee, and submitted for review and approval by the Orange County Sanitation District, California Department of Transportation (Caltrans), City of Huntington Beach Public Works Department, and the City of Newport Beach Public Works Department. These documents shall, at a minimum, address the following:

- Traffic control protocols shall be specified for any lane closure, detour, or other disruption to traffic circulation, including bicycle and pedestrian trails. Disruption to traffic circulation shall be minimized to the greatest extent feasible. Bicycle and pedestrian trails shall remain open, to the greatest extent feasible, during construction or shall be re-routed to ensure continued connectivity.
- Bus stop access impacts shall be coordinated with, and approved by, the Orange County Transportation Authority.
- At least one week before any construction activities that would affect travel on nearby roadways, the construction contractor shall notify the City of Huntington Beach Public Works Department, City of Newport Beach Public Works Department and Caltrans, as applicable, of construction activities that could impede movement (such as lane closures) along roadways, to allow for planning temporary detours or identifying alternative emergency access routes where appropriate. Surrounding property owners shall also be notified of project activities through advanced mailings.
- Identify construction vehicle haul routes for the delivery of construction materials (i.e., lumber, tiles, piping, windows, etc.) to the site; necessary traffic controls and detours; and a construction phasing plan for the project to reduce impacts to local streets and plan for traffic control signage and detours along identified haul routes to minimize impacts to existing traffic flow.
- Specify the hours during which hauling activities can occur and methods to mitigate construction-related impacts to adjacent streets such as traffic control barricades, cones, flaggers, and warning signs.
- Require the contractor to keep all haul routes clean and free of debris, including but not limited to gravel and dirt resulting from project construction. The Contractor shall clean adjacent streets, as directed by the Orange County Sanitation District, of any project material which

may have been spilled, tracked, or blown onto adjacent City of Newport Beach, City of Huntington Beach, and Caltrans streets or areas.

- ~~Hauling of oversize loads shall be allowed between the hours of 9:00 a.m. and 3:00 p.m. only, Monday through Friday.~~ No hauling or transport shall be allowed during nighttime hours (10:00 p.m. to 7:00 a.m.), weekends, or Federal holidays, with the exception of overside loads for the purpose of minimizing safety risk. Oversized hauling activities may occur along Coast Highway in the nighttime hours subject to the applicable Caltrans permit. All oversized loads shall not occur during peak traffic hours of 7:00 a.m. to 9:00 a.m. and 5:00 p.m. to 7:00 p.m. on weekdays. Any oversized loads utilizing Coast Highway shall obtain a Caltrans permit for such activities.
- Use of local streets shall be prohibited, except when required to provide direct access to the project site and in compliance with the approved project haul routes.
- Haul trucks entering or exiting public streets shall yield to public traffic at all times.
- If hauling operations cause any damage to existing pavement, streets, curbs, and/or gutters along the haul route, the contractor shall be fully responsible for repairs. The repairs shall restore the damaged property to its original condition.
- All construction-related staging of vehicles shall be kept out of the adjacent public roadways and shall occur on the project site or within additional off-street staging areas previously identified and arranged.
- Construction-related lane closures would only occur between the hours of 8:30 a.m. and 3:30 p.m., Monday through Friday, with the exception of oversized hauling activities. More or less restrictive closure hours may be prescribed by the City.
- Use of a construction flagperson (as deemed appropriate by the Orange County Sanitation District) to assist in maintaining efficient vehicle travel in both directions (particularly during peak travel hours) and use of construction signage and safe detour routes for pedestrians and bicyclists when travel lanes and sidewalks along Coast Highway are affected.
- The engineering drawings and specifications shall meet standards established in the current California Manual on Uniform Traffic Control Device (MUTCD).

## **Tribal Cultural Resources**

The potential tribal cultural resources impacts associated with the temporary use of the Adjacent Pump Station Work Area for construction staging purposes were analyzed in the Draft EIR. (Draft EIR, p. 3-12, 3-13, 5.4-15, 5.4-16.)

The potential tribal cultural resources impacts associated with the temporary use of OC San Plant No. 2 for construction staging purposes were analyzed in Addendum No. 1. (Addendum No. 1, p. 27.) Overall, as no tribal cultural resources are located within the project area, and as no grading or excavation is proposed at project staging areas, impacts to tribal cultural resources for the previously analyzed project were determined to be less than significant.

The Modified Project would include the Bayside Village Marina Staging Area, the majority of which was considered for staging in the Draft EIR. Activities at construction staging areas under the Modified Project would be temporary during construction, would cease when construction is completed, and would not require any new ground disturbing activities, compared to the Draft EIR, that could impact previously undiscovered tribal cultural resources. Last, the nighttime hauling of oversized loads would not change any construction-related aspects of the previously analyzed project pertaining to tribal cultural resources. The Modified Project would not result in new significant impacts or a substantial increase in previously identified significant impacts during construction.

The Modified Project would not change any operational aspects of the previously analyzed project.

The Modified Project, therefore, would not result in new significant impacts or a substantial increase in previously identified significant impacts pertaining to tribal cultural resources.

## **Utilities**

The potential utilities impacts associated with the temporary use of the Adjacent Pump Station Work Area for construction staging purposes were analyzed in the Draft EIR. (Draft EIR, p. 3-12, 3-13, 6.1, 6.2, 6-14).

The potential utilities impacts associated with the temporary use of OC San Plant No. 2 for construction staging purposes were analyzed in Addendum No. 1. (Addendum No. 1, p. 28.) The previously analyzed project determined that temporary construction staging activities would result in less than significant impacts related to utilities.

The Modified Project would include the Bayside Village Marina Staging Area, the majority of which was considered for staging in the Draft EIR. Staging activities at this location would include storage of equipment and materials, loading and unloading of equipment and material, limited employee parking, and truck ingress/egress access. These proposed activities would be temporary and would cease when construction is completed. The Modified Project would also allow nighttime hauling of oversized loads. Such activities would not require any increases in the use of water, electrical, natural gas, or telecommunications facilities, generation of solid waste, or increased stormwater,

compared to that considered under the previously analyzed project in the Draft EIR. As such, no new physical changes to the environment would result in this regard.

The Modified Project would not change any operational aspects of the previously analyzed project.

The Modified Project, therefore, would not result in new significant impacts or a substantial increase in previously identified significant impacts pertaining to utilities and service systems.

### **Wildfire**

The potential wildfire impacts associated with the temporary use of the Adjacent Pump Station Work Area for construction staging purposes were analyzed in the Draft EIR. (Draft EIR p. 8-11 and 8-12.)

The potential wildfire impacts associated with the temporary use of OC San Plant No. 2 for construction staging purposes were analyzed in Addendum No. 1. (Addendum No. 1, p. 28, 29.) The previously analyzed project determined that temporary construction staging areas would not be located within very high, high, or moderate fire hazard severity zones, and therefore impacts related to wildland fire hazards would be less than significant.

As the Modified Project would include a new staging area located within a work area considered under the previously analyzed project, the Modified Project would not be located within a very high, high, or moderate fire hazard severity zone and would not result in new significant impacts or a substantial increase in the severity of previously identified significant impacts pertaining to wildfires. Further, the nighttime hauling of oversized loads would not change any construction-related aspects of the previously analyzed project pertaining to wildfire resources.

### **Other CEQA Considerations/Energy**

The potential energy impacts associated with the temporary use of the Adjacent Pump Station Work Area for construction staging purposes were analyzed in the Draft EIR. (Draft EIR p. 6-1, 6-2, and 6-7 through 6-18.)

The potential energy impacts associated with the temporary use of OC San Plant No. 2 for construction staging purposes were analyzed in Addendum No. 1. (Addendum No. 1, p. 29.) Identified changes since the Draft EIR were limited to the addition of new haul truck trips (approximately 1,674) to and from the new staging area. Truck trips from soil hauling activities would generate an increase in short-term vehicle trips on the circulation system during construction. The total fuel consumption is anticipated to have a nominal effect on the local and regional energy supplies. Additionally, haul trips and drying/stockpiling activities would be temporary during construction and would cease when construction is completed. Further, all construction activities would adhere to Federal, State, and local requirements for fuel efficiency (e.g., low carbon fuel standards, as applicable). Overall, impacts related to energy were determined to be less than significant.



The Modified Project would include the Bayside Village Marina Staging Area, the majority of which was considered for staging in the Draft EIR. The Modified Project would allow nighttime hauling of oversized loads at the project driveway at East Coast Highway. However, the Modified Project would not require additional hauling, compared to that analyzed in the Draft EIR, and would not change any staging/hauling activities at Lower Castaways Park or OC San Plant No. 2. Rather, by adding an additional staging area in proximity to construction activities, the Modified Project has the potential to reduce energy use due to fewer/shorter construction truck trips. As such, the Modified Project would not change the effects on the local and regional energy supplies, compared to the previously analyzed project, and therefore would not result in new significant impacts or a substantial increase in previously identified significant impacts pertaining to energy.

**ATTACHMENT 1**

**ORANGE COUNTY SUPERIOR COURT CASE NO. 30-2021-00194238 RULING**

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE**

Civil Complex Center  
751 W. Santa Ana Blvd  
Santa Ana, CA 92701

**SHORT TITLE:** BAYSIDE VILLAGE MARINA, LLC vs. ORANGE COUNTY SANITATION DISTRICT

**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC  
SERVICE**

**CASE NUMBER:**  
**30-2021-01194238-CU-WM-CXC**

I certify that I am not a party to this cause. I certify that the following document(s), dated , have been transmitted electronically by Orange County Superior Court at Santa Ana, CA. The transmission originated from Orange County Superior Court email address on December 16, 2022, at 2:21:32 PM PST. The electronically transmitted document(s) is in accordance with rule 2.251 of the California Rules of Court, addressed as shown above. The list of electronically served recipients are listed below:


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Clerk of the Court, by: , Deputy

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**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE**

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF ORANGE  
CIVIL COMPLEX CENTER**

**MINUTE ORDER**

DATE: 12/16/2022

TIME: 02:16:00 PM

DEPT: CX104

JUDICIAL OFFICER PRESIDING: William Claster

CLERK: G. Hernandez

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: . None

CASE NO: **30-2021-01194238-CU-WM-CXC** CASE INIT.DATE: 04/01/2021

CASE TITLE: **BAYSIDE VILLAGE MARINA, LLC vs. ORANGE COUNTY SANITATION  
DISTRICT**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

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EVENT ID/DOCUMENT ID: 73909236

**EVENT TYPE:** Under Submission Ruling

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**APPEARANCES**

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RE PETITIONER'S WRIT OF MANDATE

There are no appearances by any party.

The Court, having taken the above-entitled matter under submission on 12/14/2022 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now issues its ruling. The Court's ruling is attached hereto and incorporated herein by reference.

Court orders clerk to give notice.



**BAYSIDE VILLAGE MARINA LLC v. ORANGE COUNTY SANITATION DISTRICT 21-1194238**

Petitioner Bayside Village Marina LLC (Bayside) seeks a writ of mandate compelling Respondent Orange County Sanitation District (“OCSD” or the “District”) to vacate and set aside its approval of (1) the OCSD’s Bay Bridge Pump Station and Force Mains (“BBPS”) replacement project (“Project”) located on East Coast Highway in Newport Beach, and (2) the certification of the Recirculated Environmental Impact Report (“REIR”) for the Project. For the reasons set forth below, the Court GRANTS a limited writ as set forth below.

**I. BACKGROUND**

Bayside is the owner of 31.4 acres of property located at East Coast Highway in the City of Newport Beach, California between Newport Channel and Bayside Drive. (ROA 25, First Amended Verified Petition (Petition), ¶ 9; AR230.)

Approximately 24 acres of Bayside’s property are developed with mobile homes, and the remaining seven acres contain an outdoor storage space of RVs and small boats, parking and restrooms facilities for the Bayside Marina, a kayak rental and launch facility, parking and access to Pearson’s Port seafood market, and marine service equipment storage under the Coast Highway Bridge (“BVM Property”). (AR230, 011290.)

The seven acres are being developed as the “Back Bay Landing” Project, which is a mixed-use development that will be implemented pursuant to the Newport Beach- and Coastal Commission-approved Back Bay Planned Community Development Plan (“PCDP”). It will have a boat storage facility, retail stores and recreational marine-related facilities and residential units. (AR226, 230, 3274, 7539-97; Petition, ¶ 9.) Bayside is also the developer of this Back Bay project. (Petition, ¶ 9.)

OCSD owns and operates the BBPS, which is located at 300 East Coast Highway in Newport Beach, just east of the Newport Bay Channel. (ROA 103, Opp., p. 8; AR186.) BBPS transports sewage or wastewater through pipelines to OCSD’s

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sewage treatment plant in Huntington Beach and is a piece of critical infrastructures that conveys 50-60% of the total wastewater flow generated in Newport Beach. (ROA 103, Opp., p. 8; AR186.) BBPS is located on the southern boundary of Bayside's property, is surrounded on three sides by that property, and is adjacent to the Back Bay Landing Project. (AR230, 3206.)

The District's Project involves the construction of a new, larger pump station extending 100 feet to the west of the existing pump station and the installation of new force mains. (AR186 and 237.) The new pump station facilities will include a pump station, generator and odor control facilities. (AR186, 230.)

Planning on the Project started in 2013. (AR3206.) Since the Bayside Property, and particularly the Back Bay Landing Project, surrounds the Project, from 2014-2016, Bayside and OCSD exchanged information and worked together to discuss alternatives for the Project. (See e.g., AR3206, 6371-72, 7040-43, 7090, 7324, 7342-43, 15667, 16128-131.)

In June 2017, OCSD published a draft EIR that analyzed a version of the Project involving the demolition of the existing facility, construction of a new and larger facility adjacent to Bayside Drive and installation of force main improvements beneath the Newport Bay Channel north of the Bay Bridge. (AR236, AR9383-84.) The District never presented the 2017 Final EIR to its Board of Directors for approval due to conflicts with the planned development of the Back Bay Landing Project. (AR236, AR1501-1506.)

In July 2019, OCSD published a recirculated EIR with three alternatives for the Project. (AR236, AR11613-14.) During the public comment period, there were concerns regarding the three conceptual site plans, including confusion about one of the alternatives known as the South Pump Station. (AR236.) OCSD did not present the 2019 EIR to the OCSD Board.

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Instead, OCSD decided to select one conceptual site plan and construction method and update the EIR in its entirety. (AR236.) The concept chosen and analyzed in the 2020 recirculated EIR (REIR) is the Adjacent Pump Station, which is essentially the South Pump Station alternative in the 2019 REIR. (AR237.)

The Final EIR (FEIR) was published in January 2021 and approved on March 1, 2021. (AR1-3.)

**II. OVERVIEW OF CEQA PROCESS**

“CEQA is a comprehensive scheme designed to provide long-term protection to the environment. [Citation.]” (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 112.) It applies to “discretionary projects proposed to be carried out or approved by public agencies.” (Pub. Resources Code, § 21080(a).) “In enacting CEQA, the Legislature declared its intention that all public agencies responsible for regulating activities affecting the environment give prime consideration to preventing environmental damage when carrying out their duties. [Citations.] CEQA is to be interpreted ‘to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.’ [Citation.]” (*Mountain Lion Foundation, supra*, 16 Cal.4th at p. 112.)

An EIR, which has been described as “the heart of CEQA” (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564), “is required for any project that a public agency proposes to carry out or approve that may have a significant effect on the environment. [Citations.] An EIR must describe the proposed project and its environmental setting, state the objectives sought to be achieved, identify and analyze the significant effects on the environment, state how those impacts can be mitigated or avoided, and identify and analyze alternatives to the project,

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among other requirements. [Citations.]” (*Ballona Wetlands Land Trust v. City of Los Angeles* (2011) 201 Cal.App.4th 455, 465-66 (*Ballona*).)

Once a draft EIR is prepared, the public must be notified, and the draft and all documents it references must be made available for public review and comment. (Pub. Resources Code, §§ 21091(a), 21092; CEQA Guidelines, § 15087.<sup>1</sup>) The public agency acting as the lead agency then prepares a final EIR, which must include comments received from the public and from other agencies concerning the draft EIR, responses to those comments, and any revisions to the draft EIR. (CEQA Guidelines, §§ 15088, 15132; *Ballona, supra*, 201 Cal.App.4th at p. 466.)

**III. PROJECT DESCRIPTION**

**A. Overview**

Bayside asserts that the EIR description of the Project and its environmental setting is “inaccurate and unstable.” “The fundamental goal of an EIR is to inform decision makers and the public of any significant adverse effects a project is likely to have on the physical environment. [Citations.] To make such an assessment, an EIR must delineate environmental conditions prevailing absent the project, defining a baseline against which predicted effects can be described and quantified. [Citation.]” (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Ca1.4th 439, 447.) This generally includes providing “a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective.” (*Id.*, at p. 448; see CEQA Guidelines, § 15125(a).)

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<sup>1</sup> References to the CEQA Guidelines are to Cal. Code Regs., tit. 14, § 15000 et seq.



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“Without accurate and complete information pertaining to the setting of the project and surrounding uses, it cannot be found that the [EIR] adequately investigated and discussed the environmental impacts of the development project.” (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 729 (*San Joaquin Raptor*).) Thus, [i]f the description of the environmental setting of the project site and surrounding area is inaccurate, incomplete or misleading, the EIR does not comply with CEQA.” (*Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 87.)

**B. Failure to Identify Neighboring Commercial Operations**

Bayside contends that repeated use of the phrase “RV Storage facility” obscures “the site’s coastal-dependent, visitor serving uses.” (Pet. Supp. Br. at p. 16.) Indeed, a number of businesses on the west side of the Project site (e.g., Southwind Kayaks, Gondola Adventures) are not mentioned by name anywhere in any EIR.

While it is true that these businesses are not referenced by name and that the site is referred to as an RV Storage facility (presumably since RVs are stored near where the actual construction will take place), those references do not create an inaccurate picture of the Project. In fact, the EIR refers to these businesses on the west side of the Project as “commercial” or “commercial recreation marine uses” in a number of places. (AR230, 234, 260, 392, 436.) The businesses also are listed on Table 3-1 under “General Commercial.” (AR235.)

The fact that the site is called an RV Storage facility is not misleading when considering the EIR as a whole. The above-cited references to commercial activity and the various maps/photos of the Project site overcome this alleged shortcoming.

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A related purported flaw in the EIR's Project description is the failure to address the potential adverse physical impacts Project construction would have on these businesses. On the contrary, such analysis is found at AR 473-482 regarding noise and vibrations during construction, and at AR 302-305 with respect to air quality. In terms of traffic, the EIR makes clear that access to the Project site will be shared via Bayside Drive by construction vehicles and users of the commercial facilities. As to the added construction and operational traffic, the EIR addresses these issues at AR499 and in Impact Statement TRA-4.

**C. Construction Staging Area Description**

Bayside contends that the Project description is inaccurate and, indeed, is an "unstable moving target" by virtue of the failure to describe and evaluate a construction staging area. The Court agrees. The 2020 REIR includes several references to construction staging. Page 3-11 states: "Portions of the adjacent private property (currently a RV storage area) and Lower Castaways Park could be temporarily utilized for construction staging, if these areas are available during construction of the proposed project." (AR241.) Then, in response to a letter from the City of Newport Beach stating that the Lower Castaways would not be available (AR1120), the 2021 FEIR noted: "Should Lower Castaways not be available, construction staging would occur within other proposed areas of disturbance (as identified in the project boundary shown on 2020 Recirculated Draft EIR Exhibit 3-4)." (AR1127.)

Exhibit 3-4 is a Proposed Conceptual Site Plan that shows the areas (highlighted in yellow) where the proposed project construction will take place as well as the Lower Castaways. (AR238.) A virtually identical site plan (also highlighted in yellow) is found at Exhibit 3-6 which is entitled Adjacent Pump Station Work Areas. (AR243.) According to OCSD's supplemental brief, based on the unavailability of the Lower Castaways, "the construction staging will occur

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somewhere in this Adjacent Pump Station Work Area.” (OCSD Supp. Br. at p. 12.) Based on this statement, the District argues in its supplemental brief that it satisfied CEQA since the EIR “considered all potential impacts that could occur in the Adjacent Area.”

However, based on a review of Exhibits 3-4 and 3-6, it is unclear whether creating a staging area in the limited designated space is even possible. With the exception of the Lower Castaways, the Coast Highway and the Newport channel, it appears that the areas highlighted in yellow are where virtually all of the construction actually will take place. Certainly, no specific location with adequate square footage is identified, nor is there any analysis as to whether Mitigation Measures AES-1 and TRA-1 would apply to any area other than the Lower Castaways.

Perhaps a more significant problem with the statements in both the FEIR and supplemental brief about an alternative site in the project area is that they may well be inaccurate. Indeed, TRA-1 tends to contradict OCSD’s supplemental brief by virtue of acknowledging that future staging areas may be located off-site: “[construction drawings shall] identify any and all construction staging or material storage sites *located outside of the project site.*” (AR206 [emphasis added].)

Compounding this problem, counsel for the District told the Court at an earlier hearing that the lowest responsible bidder on the Project will have complete discretion to decide where staging will occur and how many staging sites will be necessary. (August 4, 2022 Transcript at pp. 11-12.) Importantly, by not limiting that comment to sites within the yellow-highlighted boundaries of Exhibits 3-4 or 3-6, the District appears to acknowledge that staging sites not identified in either the REIR or FEIR might be utilized. Given that uncertainty, Bayside’s argument regarding a lack of a complete, accurate and stable project description has merit.

More specifically, the District’s argument (OCSD Supp. Br. at p. 12) that the EIR considered all environmental impacts (biological, noise, aesthetics, etc.) in the

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Adjacent Area fails to account for any potential impacts that might occur if the construction staging area occurs elsewhere. Without identifying the area or areas where staging will occur, the public is left in the dark about whether that staging will have any effects on the environment at location(s) yet to be identified.

Counsel's statement that the lowest responsible bidder will have complete discretion with regard to construction staging also renders the mitigation measures of AES-1 toothless. AES-1 purports to minimize aesthetic impacts of construction by requiring the District's Director of Engineering to personally approve construction staging areas, transport routes, etc. before grading or demolition permits are issued. To the extent AES-1 actually imposes enforceable standards (which the Court questions), it cannot be reconciled with the vesting of complete discretion in the lowest responsible bidder.

**IV. CONSIDERATION OF ALTERNATIVES**

"An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation. An EIR is not required to consider alternatives which are infeasible. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason." (CEQA Guidelines, § 15126.6(a).)

The EIR identified five alternatives to the Project to analyze in detail: the "no project" scenario, the "adjacent project/microtunneling" scenario, the "original

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northeast pump station with horizontal directional drilling” scenario, the “rehabilitate in place with microtunneling” scenario, and the “pump station south relocation with microtunneling” scenario. (AR539-540.) Nearly 40 pages of analysis are devoted to comparing each of these alternatives to the Project. (AR540-578.)

Bayside does not challenge the analysis presented. Rather, it faults the EIR for failing to discuss two additional alternatives: the “Expand-in-Place” scenario and alternative alignments for the dual force mains south of East Coast Highway.

“Courts will defer to an agency’s selection of alternatives unless the petitioners (1) demonstrate that the chosen alternatives are “ ‘ “manifestly unreasonable and ... do not contribute to a reasonable range of alternatives,” ’ ” and (2) submit evidence showing the rejected alternative was both “feasible” and “adequate,” because it was capable of attaining most of the basic objectives of the project, taking into account site suitability, economic viability, availability of infrastructure, general plan consistency, and other relevant factors. [Citation.]” (*South of Market Community Action Network v. City and County of San Francisco* (2019) 33 Cal.App.5th 321, 345.)

The Court assumes for the sake of argument that the “Expand-in-Place” scenario and the alternative alignments for the dual force mains are both feasible and adequate. That is, the Court assumes Bayside has met the second prong of its burden.

However, Bayside fails to meet the first prong of its burden. “The ‘key issue’ is whether the range of alternatives discussed fosters informed decisionmaking and public participation. [Citation.]” (*Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (190 Cal.App.4th 316, 354.) Bayside complains that two alternatives were not considered, but it identifies no authority holding that the failure to consider a specific alternative or alternatives automatically renders the range of



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alternatives considered “manifestly unreasonable” or insufficient to “foster informed decisionmaking.” (Compare *id.*, at p. 355 [“Though one or more of these 328 imaginable alternatives *may* have represented the optimum number of residences that could have profitably been built while minimizing the agricultural impacts of the project to the fullest extent possible, the range of alternatives discussed in the EIR was sufficient to foster informed decisionmaking on this very question.”].)

**V. INCONSISTENCIES WITH PLANS**

**A. Overview**

Bayside contends the EIR is fatally flawed because it fails to disclose the Project’s inconsistencies with the PCDP, the Newport Beach Local Coastal Program (“LCP”), and the Coastal Act.

An EIR must discuss “any inconsistencies between the proposed project and applicable general plans, specific plans and regional plan.” (CEQA Guidelines § 15125(d).) This includes inconsistencies with the Coastal Act. (*Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1233.) A determination of consistency “comes to this [C]ourt with a strong presumption of regularity. [Citation.] To overcome that presumption, an abuse of discretion must be shown. [Citations.] An abuse of discretion is established only if the city council has not proceeded in a manner required by law, its decision is not supported by findings, or the findings are not supported by substantial evidence. [Citation].” (*Sequoia Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 717.) “It is, emphatically, *not* the role of the courts to micro-manage these development decisions. Our function is simply to decide whether the city officials considered the applicable policies and the extent to which the proposed project conforms with those policies, whether the city officials made appropriate

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findings on this issue, and whether those findings are supported by substantial evidence.” (*Id.*, at pp. 719-20 [emphasis in original].)

In addition, Bayside’s opening brief suggests the EIR is inadequate to the extent it fails to explain why the District found the Project consistent with applicable plans. (Pet. Opening Br. at p. 19, lines 6-8.) Because EIRs need only evaluate inconsistencies with plans, no analysis is required if the project is consistent with plans. (*North Coast Rivers Alliance v. Marin Municipal Water Dist. Bd. of Directors* (2013) 216 Cal.App.4th 614, 632 [citing *City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 918-19].) Insofar as Bayside argues the explanation of consistency is inadequate (as opposed to arguing the finding of consistency is an abuse of discretion), this challenge fails.

**B. PCDP Inconsistency**

The PCDP contains zoning regulations that dictate acceptable land uses in each “Planning Area” it covers. It is undisputed that both the current pump station and the new pump station to be built as part of the Project are in Planning Area 1. According to the PCDP, “Wastewater Pump Station” is a permitted land use in Planning Area 1. (AR7615.)

Bayside nevertheless contends the Project is inconsistent with the PCDP. It argues that the PCDP “identifies the existence of the BBPS, however, only at its current size and location, not the expanded size and altered location contemplated by the Final EIR.” (Pet. Opening Br. at p. 18.) The claimed inconsistency apparently arises from conceptual drawings attached to the PCDP (for parking plans, public spaces, etc.) that show the BBPS in its current location in the context of the larger planning area. (See AR7650-7663.) That is, as the Court understands the argument, because the conceptual drawings show the current BBPS, any deviation is an inconsistency.

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As the District points out in opposition, the PCDP imposes specific numeric limits on the square footage of commercial, residential, marina, and dry dock use in Planning Area 1, but *not* wastewater pump use. (AR7612.) The conceptual drawings do not on their face appear to limit the size or the location of the pumping station, only to show it in relation to other then-existing uses for planning purposes. The only explicit limitation placed on a wastewater pump station by the PCDP is that it must be in Planning Area 1. As to Bayside's contention that AR7549 allows the pump station also to be in Planning Area 2 (a contention that the Court will accept even though it does not appear that AR7549 is in the record filed with the Court), that fact does not establish PCDP inconsistency. Accordingly, the Court cannot say the finding of consistency is unsupported by substantial evidence.

**C. LCP Consistency**

Bayside contends the Project is inconsistent with policy 2.1.9 of the LCP because that policy "mandate[s] protection and expansion of coastal-dependent over commercial/industrial uses." (Pet.'s Opening Br. at p. 17.) As the District points out, nothing in policy 2.1.9 or its associated sub-policies discusses the relative priority of coastal-dependent uses vis-à-vis *utility* uses like the Project. (Furthermore, it appears the only hard-and-fast priority is that coastal-dependent uses are prioritized over residential uses, not over commercial/industrial uses. See policy 2.1.9-1, at AR11289.)

In any event, the City correctly notes that relative priority matters only if the Back Bay Landing development and the Project are a zero-sum game in terms of developed square footage. Under the PCDP, square footage for a wastewater pump station does not count against commercial, residential, marina, or dry dock square footage. (See AR7612.) The Court cannot say the finding of consistency is unsupported by substantial evidence.

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**D. Coastal Act Consistency**

Bayside contends the Project is inconsistent with multiple sections of the Coastal Act, in particular Pub. Resources Code §§ 30213, 30221, 30222, 30224, and 30253(e), and policy 3.2.1-1 of the LCP, which similarly requires protection of coastal recreation opportunities.

The Court agrees with the District that § 30222 is inapplicable. On its face, that statute prioritizes “visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation . . . over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.” Again, the Project is a utility use, not one of the categories enumerated in this statute.

Of the remaining provisions, the only one discussed in any detail in Bayside’s briefing (opening, reply, or supplemental) is § 30253(e) of the Coastal Act. The remainder are simply referred to in laundry lists without discussion of any particular alleged inconsistencies. Because Bayside bears the burden of showing an abuse of discretion, the Court finds the failure to specifically discuss §§ 30123, 30221, and 30224 of the Coastal Act, as well as policy 3.2.1-1 of the LCP, means Bayside has not shown an abuse of discretion in the District’s finding of consistency.

As to § 30253(e), it provides: “New development shall . . . [w]here appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational use.” “Where appropriate” is an important qualifier here, as the District flags a competing provision of the Coastal Act, § 30231, which provides: “The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored

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through, among other means, minimizing adverse effects of waste water discharges and entrainment . . . .”

The administrative record contains evidence that the current pump station is deteriorating and does not meet current standards for construction, electrical equipment, or maintenance. (AR187.) The record also contains evidence that failure of the system could result in the release of sewage into Newport Bay. (AR187, 245.) Section 30231 of the Coastal Act imposes a mandatory policy for protecting water quality (it “shall be maintained”), while § 30253(e) only imposes a duty to protect recreational use “where appropriate.” On this record, the Court cannot say the District lacked substantial evidence to conclude its duties under § 30231 prevailed over its duties under § 30253(e), and thereby to conclude the Project is consistent with the Coastal Act. Put another way, Bayside must show the District abused its discretion in finding the “where appropriate” qualifier in § 30253(e) inapplicable here, and it has not met its burden to do so.

**VI. ADEQUACY OF RESPONSES TO COMMENTS**

Bayside contends the District’s response to comments prior to certification of the FEIR is inadequate. The Court agrees with the District that Bayside failed to exhaust its administrative remedies on this issue. “[T]he time for complaining about the inadequacy of [the District’s] responses was when the issue was before the agency and any alleged deficiency could be explained or corrected.” (*Towards Responsibility in Planning v. City Council* (1988) 200 Cal.App.3d 671, 682.) Bayside points to nothing in the record indicating that the alleged inadequacy of the District’s responses was raised at the administrative stage. As a result, this challenge is barred.

Bayside responds that the foregoing statement from *Towards Responsibility* is dictum unnecessary to the holding. This is true enough, as the Court of Appeal in that case found the agency’s response to comments adequate on the merits. But



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“[t]o say that dicta are not controlling [citation] does not mean that they are to be ignored; on the contrary, dicta are often followed.” (9 Witkin, *Cal. Procedure* (6th ed. 2022) Appeal § 532.) And while Bayside cites a number of cases on page 21 of its supplemental brief holding that inadequate responses to comments may render an EIR defective, none of those cases discusses the effect of the challenger’s failure to raise the inadequacy issue before the agency.

**VII. REMEDIES AND CONCLUSION**

For the reasons set forth above, Bayside’s petition is GRANTED on the ground that the description of the construction staging area is inadequate, and for the related reason that AES-1 is a toothless mitigation measure as a result.

Bayside asks the Court to set aside the District’s Project approvals and EIR certification. Public Resources Code § 21168.9 gives the Court discretion to fashion a narrower remedy. “The 1993 amendments to section 21168.9 expanded the trial court’s authority and ‘expressly authorized the court to fashion a remedy that permits some part of the project to go forward while an agency seeks to remedy its CEQA violations. In other words, the issuance of a writ need not always halt all work on a project.’ [Citation.]” (*San Bernardino Valley Audubon Soc. V. Metropolitan Water Dist. of Southern California* (2001) 89 Cal.App.4th 1097, 1104-1105.) “The choice of a lesser remedy involves the trial court’s consideration of equitable principles.” (*Id.*, at p. 1104.)

As discussed above, Bayside’s challenge is largely unsuccessful. And the vast majority of Bayside’s challenge has little, if anything, to do with construction staging issues. The Court therefore finds the remainder of the Project severable from the construction staging issues. The Court further finds severance will not prejudice full and complete compliance with CEQA, because the remainder of the Project is CEQA-compliant. (Pub. Resources Code § 21168.9(b).)

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In considering equitable principles to fashion a remedy, the Court is especially mindful of the severe risk to the environment that would be posed by the outdated pumping station and force mains failing and spilling raw sewage into Newport Bay. Furthermore, as explained in the District's filings in the companion eminent domain case, permitting from the relevant authorities is expected to take 9-12 months, with construction not starting for another six months after that. (See OC Superior Court case no. 2022-01251890, ROA 92, at pp. 2-3.) Based on representations made at the hearing, it appears that the City will not allow the permitting process to start without OCSD approval of the Project and its certification of the EIR. Of course, stalling that already lengthy process increases the risk of the very sewage spill the Project seeks to prevent.

Because the issues with construction staging are both severable and appear to be readily correctable, and given the overriding need for the Project, OCSD will not be required to withdraw its approvals for the Project and certification of the EIR. As explained by the court in *Preserve Wild Santee v. City of Santee* (2012) 210 Cal. App. 4<sup>th</sup> 260, 287-88:

In our view, a reasonable, commonsense reading of section 21168.9 plainly forecloses plaintiffs' assertion that a trial court must mandate a public agency decertify the EIR and void all related project approvals in every instance where the court finds an EIR violates CEQA. Such a rigid requirement directly conflicts with the "in part" language in section 21168.9, subdivision (a)(1), which specifically allows a court to direct its mandates to parts of determinations, parts of findings, or parts of decisions. Such a rigid requirement also conflicts with the language in section 21168.9, subdivision (b), limiting the court's mandates to only those necessary to achieve CEQA compliance and, if the court makes specified findings, to only "that *portion* of a determination, finding, or decision" violating CEQA. (*Italics added.*)

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Accordingly, the Court will impose the limited remedy of requiring OCSD to bring the EIR into CEQA compliance with respect to the construction staging issue and the related question of the enforceability of AES-1. Because the District's CEQA noncompliance involves construction issues, this means no construction or other physical activity may take place at the Project site until the District is in compliance with CEQA. Whether bringing the EIR into compliance can be accomplished via a supplemental EIR (CEQA Guidelines § 15163) or an addendum (CEQA Guidelines § 15164) will be left to OCSD to decide.

Note that the Court's order includes *only* these mandates, which are necessary to achieve compliance with CEQA. (See Pub. Resources Code § 21168.9(b).) In order to avoid unnecessary delay that increases the risk of a sewage spill, the District may continue to seek the necessary permits from the City, Coastal Commission, etc. to move forward with the Project, and it may continue to pursue the companion eminent domain action.

Bayside shall prepare a proposed order in accordance with this ruling and provide it to OCSD for comments before submitting it to the Court.