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## **MEMORANDUM**

November 10, 2020

From: Kaitlyn Dodson-Hamilton

To: Mr. Savat Khamphou, Interim City Engineer

Subj: Completion of the Mitigated Negative Declaration for the Rialto Baseline Storm Drain Project (SCH#: 2020090296)

The City of Rialto (City) received 6 written comment letters on the proposed Mitigated Negative Declaration for the Rialto Baseline Storm Drain Project, which was circulated for public review starting on September 18, 2020. The public review for the Rialto Baseline Storm Drain Project concluded on October 19, 2020. CEQA requires a Negative Declaration to consist of the Initial Study; copies of the comments; any responses to comments as compiled on the following pages; and any other Project-related material prepared to address issues evaluated in the Initial Study.

For this Project, the original Initial Study will be utilized as one component of the Final Mitigated Negative Declaration (MND) package. The attached responses to comments, combined with the Initial Study and the Mitigation Monitoring and Reporting Program, constitute the Final MND package that will be used by the City to consider the environmental effects of implementing the proposed Project.

The following parties submitted comments. The comments in this letter are addressed in the attached Responses to Comments:

1. California Department of Fish and Wildlife
2. San Bernardino County Department of Public Works
3. Santa Ana Regional Water Quality Control Board
4. Gresham Savage / Crow Holdings
5. Rialto Unified School District
6. OmniTrans

Because mitigation measures are required for this Project to reduce potentially significant impacts to a less than significant level, the Mitigation Monitoring and Reporting Program (MMRP) attached to this package is required to be adopted as part of this Final MND package. The MMRP has been incorporated by reference to this package for approval and implementation. The City consideration of the proposed Project and adoption of the Mitigated Negative Declaration will occur at a hearing, (April 13, 2021).

Do not hesitate to give me a call if you have any questions regarding the contents of this package.

A handwritten signature in black ink, appearing to read 'Kaitlyn Dodson-Hamilton' with a stylized flourish at the end.

Kaitlyn Dodson-Hamilton  
Attachments

**RESPONSE TO COMMENT  
LETTER #1  
CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**

- 1-1 The comment is noted and will be made available to the City decision-makers as part of the Final IS/MND package prior to a decision on the proposed Project. The City acknowledges the role of the California Department of Fish and Wildlife's (CDFW) as a commenter on this Project.
- 1-2 The County acknowledges the CDFW's role as a Trustee Agency, and as Responsible Agency under CEQA for this Project, and understands that authorization as provided by the Fish and Game Code for several Project-related activities may be required.

- 1-3 The Project location and Project Description outlined in this comment are accurate.
- 1-4 The comment is noted and will be made available to the City decision-makers as part of the Final IS/MND package prior to a decision on the proposed Project. The City appreciates the feedback and will revise the mitigation as suggested in this comment. The City concurs with CDFW's concurrence that an MND is appropriate for the Project.
- 1-5 The City understands the shortcomings in the mitigation provided to avoid, minimize, and mitigate potentially significant impacts to burrowing owl, and understands the revisions necessary to minimize the error within mitigation measures BIO-1 and BIO-2 pertaining to passive relocation and CDFW notification. As such, the following revision to mitigation measures BIO-1 and BIO-2 are hereby incorporated by reference (underlined text is new, text containing a strikeout is henceforth omitted):

**BIO-1** *Preconstruction presence/absence surveys for burrowing owl shall be conducted ~~within 30~~ no less than 14 days prior to any onsite ground disturbing activity by a qualified biologist. The burrowing owl surveys shall be conducted pursuant to the recommendations and guidelines established by the California Department of Fish and Wildlife in the "California Department of Fish and Wildlife 2012 Staff Report on Burrowing Owl Mitigation." In the event this species is not identified within the Project limits, no further mitigation is required, and a letter shall be prepared by the qualified biologist documenting the results of the survey. The letter shall be submitted to CDFW prior to commencement of Project activities. If during the preconstruction survey, the burrowing owl ~~if is~~ found to occupy the site, Mitigation Measure BIO- 2 shall be required.*

**BIO-2** *If burrowing owls are identified during the survey period, the City shall take the following actions to offset impacts prior to ground disturbance:*

*Active nests within the areas scheduled for disturbance or degradation shall be avoided ~~from February 1 through August 31, and a minimum of 250-foot buffer shall be provided until fledging has occurred, as confirmed by a qualified biologist.~~ Following fledging, owls may be passively relocated by a qualified biologist, as described below.*

*If impacts on occupied burrows ~~in the non-nesting period~~ are unavoidable, onsite passive relocation techniques may be used if approved by the CDFW to encourage owls to move to alternative burrows provided by the City outside of the impact area.*

*If relocation of the owls is approved for the site by ~~the CDFW~~, CDFW shall require the City to hire a qualified biologist to prepare a plan for relocating the owls to a suitable site and conduct an impact assessment. A qualified biologist shall prepare and submit a passive relocation program in accordance with Appendix E (i.e., Example Components for Burrowing Owl Artificial Burrow and Exclusion Plans) of the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012) to the CDFW for review/approval prior to the commencement of disturbance activities onsite.*

*The relocation plan must include all of the following and as indicated in Appendix E:*

- *The location of the nest and owls proposed for relocation.*
- *The location of the proposed relocation site.*
- *The number of owls involved and the time of year when the relocation is proposed to take place.*
- *The name and credentials of the biologist who will be retained to supervise the relocation.*
- *The proposed method of capture and transport for the owls to the new site.*
- *A description of site preparation at the relocation site (e.g., enhancement of existing burrows, creation of artificial burrows, one-time or long-term vegetation control).*

The applicant shall conduct an impact assessment, in accordance with the Staff Report on Burrowing Owl Mitigation prior to commencing Project activities to determine appropriate mitigation, including the acquisition and conservation of occupied replacement habitat at no less than a 2:1 ratio.

Prior to passive relocation, suitable replacement burrows site(s) shall be provided at a ratio of 2:1 and permanent conservation and management of burrowing owl habitat such that the habitat acreage, number of burrows and burrowing owl impacts are replaced consistent with the Staff Report on Burrowing Owl Mitigation including its Appendix A within designated adjacent conserved lands identified through coordination with CDFW and the City of Rialto. A qualified biologist shall confirm the natural or artificial burrows on the conservation lands are suitable for use by the owls. Monitoring and management of the replacement burrow site(s) shall be conducted and a reporting plan shall be prepared. The objective shall be to manage the replacement burrow sites for the benefit of burrowing owls (e.g., minimizing weed cover), with the specific goal of maintaining the functionality of the burrows for a minimum of 2 years.

A final letter report shall be prepared by the qualified biologist documenting the results of the passive relocation. The letter shall be submitted to CDFW.

- 1-6 The City understands the request that focused surveys should be conducted for San Bernardino kangaroo rat (SBKR) and Los Angeles pocket mouse (LAPM). The City acknowledges that proposed revisions and clarifications to the mitigation provided to minimize impacts to SBKR and LAPM. As such, the following revisions to mitigation measures (MMs) **BIO-3**, **BIO-4**, **BIO-5**, and **BIO-6** as requested in this comment is hereby incorporated by reference:

**BIO-3** *Preconstruction presence/absence surveys for SBKR shall be conducted within ~~45~~ 365 days prior to any onsite ground disturbing activity ~~by a permitted biologist~~. SBKR surveys shall be conducted pursuant to the recommendations and guidelines established by the California Department of Fish and Wildlife and U.S. Fish and Wildlife Service (USFWS). If no presence of SBKR is found during the survey, mitigation measure ~~BIO-34~~ need not be enforced.*

**BIO-4** *In the event that the preconstruction survey determines the presence of SBKR, and complete avoidance is not possible, the Project proponent shall acquire a CESA Incidental Take Permit (ITP) prior to any vegetation- or ground disturbing activities. Any take of SBKR without take authorization would be a violation of Fish and Game Code section 2050 et seq. ~~the following actions shall be implemented:~~ The the City shall provide compensation for temporary loss of habitat ~~and individual to~~ SBKR in the following manner: ~~1) the City shall obtain a 2081 Incidental Take Permit (ITP) from the CDFW; the City shall offset the loss of the temporarily disturbed habitat to SBKR by purchase purchasing of acceptable suitable~~ SBKR habitat at a minimum 3:1 4:1 ratio depending on the habitat quality of the impact site and the location and habitat quality of the identified mitigation site; and any conserved habitat shall be provided with an appropriate endowment to ensure permanent protection and the conserved habitat shall be managed in perpetuity by an agency or party considered acceptable to the CDFW. No ground disturbance within potential SBKR habitat shall occur until an ITP is obtained by the City from CDFW and USFWS. Note that the final compensation package contained in the permit may differ from the above compensation package, ~~but the City finds that this compensation package shall at a minimum meet the requirements of this measure.~~*

**BIO-5** *Preconstruction presence/absence surveys for LAPM shall be conducted in conjunction with SBKR trapping within 30 days prior to any onsite ground disturbing activity. LAPM survey shall be conducted pursuant to the recommendations and guidelines established by the California Department of Fish and Wildlife. If no presence of LAPM is found during the survey, mitigation measure ~~BIO-56~~ need not be enforced.*

**BIO-6** *In the event that the preconstruction survey determines the presence of LAPM, the following actions shall be implemented: 1) the City shall prepare and implement a set of avoidance and minimization measures aimed at protecting special-status small mammals from Project-related impacts. The proposed avoidance and minimization measures shall be provided to CDFW for review and approval no fewer than 30 days prior to the initiation of Project activities 2) the City shall provide compensation for temporary loss of habitat to and individual LAPM in the following manner: 1) the City shall obtain a 2081 Incidental Take Permit (ITP) from the CDFW; the City shall offset the loss of the temporarily disturbed habitat by purchase purchasing of acceptable suitable LAPM habitat at a 4:1 2:1 ratio; and any conserved habitat shall be provided with an appropriate endowment to ensure permanent protection and the conserved habitat shall be managed in perpetuity by an agency or party considered acceptable to the CDFW. No ground disturbance shall occur within potential LAPM habitat until CDFW approves appropriate mitigation and avoidance and minimization measures an ITP is obtained by the City. Note that the final compensation package contained in the permit may differ from the above compensation package, ~~but the City finds that this compensation package shall at a minimum meet the requirements of this measure.~~*

- 1-7 The City understands the requested clarification to the mitigation provided to minimize impacts to nesting birds and their nests. As such, the following revision to MM **BIO-8** as requested in this comment is hereby incorporated by reference:

**BIO-8** *The State of California prohibits the “take” of active bird nests. To avoid an illegal take of active bird nests, any grubbing, brushing or tree removal should be conducted outside of the ~~the State~~ identified nesting season (generally, Raptor nesting season is February 15 January 1 through July 31 September 15; and migratory passerine bird nesting season is March 15 February 1 through September 1). ~~Alternatively~~ Additionally, the site shall be evaluated surveyed by a qualified biologist 3 days prior to the initiation of ground disturbance to determine the presence or absence of nesting birds, at the appropriate time of day/night, during appropriate weather conditions. Active bird nests **MUST** be avoided during the nesting season. If an active nest is located in the Project construction area it will be flagged and a 300-foot avoidance buffer placed around it for passerines and a 500-foot avoidance buffer for raptors. No activity shall occur within the 300-foot or 500-foot buffer until the young have fledged the nest, as confirmed by a qualified biologist.*

- 1-8 The City understands CDFW's concerns pertaining to Riversidean Alluvial Fan Sage Scrub (RAFSS). A careful review of the alternative indicates that there is a minor potential for the proposed Project to impact RAFSS that may be located within the footprint of the selected alternative, Alternative 1. As such, pursuant to CEQA Section 15074(b), the City agrees with CDFW's recommendation to adopt the following mitigation measure:

**BIO-9 Any impacts to RAFSS shall be mitigated at a minimum 3:1 or greater depending on the location and habitat quality of the mitigation site.**



- 1-9 The City appreciates CDFW's insight pertaining to the San Bernardino County Flood Control District's (SBCFCD) obligatory mitigation within Cactus Basin No. 3. Pursuant to CEQA Section 15074(b), the City shall implement the following mitigation measure to ensure coordination with SBCFCD to ensure that the Project would minimize impacts to restored habitat onsite:

**BIO-10 The City shall work with SBCFCD to minimize impacts to their obligatory habitat mitigation within Cactus Basin No. 3. The City shall work collaboratively with SBCFCD to avoid and minimize impacts to the greatest extent feasible.**

The City has selected Alternative 1 as it has been identified as the only feasible alternative for the storm drain alignment that works hydraulically, avoids the relocation of backbone infrastructure, avoids the jurisdictional limits of dam, and limits the potential for flooding and erosion in Rialto Channel downstream of Baseline Rd. As such, the City has agreed to adopt the mitigation measures requested in this comment letter by CDFW to minimize impacts to sensitive species and natural communities to the maximum extent practicable.

- 1-10 The City will obtain a CESA ITP should the Project result in take of State-listed CESA species. The City appreciates the information provided by CDFW in this comment, and will ensure this comment is made available to the City decision-makers for consideration prior to a decision on the proposed Project
- 1-11 The City will report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The link to CNDDDB field survey form provided will be retained in the Project file, as will the email address that is provided in this comment. Additionally, the link pertaining to the types of information reported to CNDDDB will be retained in the Project file.

- 1-12 The City understands the assessment of CDFW filing fees, and understands that the Applicant will be responsible for the payment of a filing fee upon filing the Notice of Determination for this Project.
- 1-13 The comment is noted and will be made available to the City decision-makers as part of the Final IS/MND package prior to a decision on the proposed Project. The City appreciates the feedback and, as previously stated, will revise the mitigation as suggested in this comment. These measures will be included in the Final Initial Study/Mitigated Negative Declaration as requested in this comment.
- 1-14 Thank you for your comments and your time. The contact information provided in this comment will be retained in the Project file.

**RESPONSE TO COMMENT  
LETTER #2  
SAN BERNARDINO COUNTY DEPARTMENT OF PUBLIC WORKS**

- 2-1 The comment is noted. The 95% progress set of construction documents has been submitted to SBCFCD for an encroachment permit. Comments were received on November 3, 2020. The City will address and incorporate those comments into the Final design for the Project.
- 2-2 The comment is noted and will be made available to the City decision-makers as part of the Final IS/MND package prior to a decision on the proposed Project. The City understands that the recommendations made in this comment letter are general in nature. The City received specific comments from SBCFCD on November 3, 2020, and as stated under response to comment 2-1, the City will address and incorporate those comments into the Final design for the Project.
- 2-3 The IS/MND included the City's General Plan Flooding Hazards Map for reference as part of the flood hazard discussion. The project will result in no modifications to delineation of the floodplain. The City hereby incorporates the FEMA panels listed within this comment by reference.
- 2-4 The City understands that the proposed storm drain is subject to the adopted 2015 Renaissance Specific Plan. The proposed Project has been designed to comply with the 2015 Drainage Study for the Cactus Basins, as prepared by SBCFCD. The drainage area, flowrates, and volumes tributary to the Proposed Project do not exceed the conditions set forth by SBCFCD. The IS/MND would install a new storm drain within the City of Rialto, the impacts of which have been fully evaluated with appropriate mitigation to minimize impacts provided therein.

- 2-5 Thank you for your comment. The City understands that the San Bernardino County Flood Control District (District) possesses a fee-owned Right-of-Way along the eastern border of the Project, and understands that any new construction activities on the District's right-of-way or facilities require a permit from the District. An encroachment permit application has been submitted to the County. The City will encroach on District right-of-way, and will obtain a permit from the District prior to construction within District owned right-of-way. Impacts pertaining to the proposed Project activities in District right-of-way within Cactus Basin No. 3 have been fully evaluated as part of the whole of the IS/MND.
- 2-6 The comment is noted and will be made available to the City decision-makers as part of the Final IS/MND package prior to a decision on the proposed Project. The City will include the San Bernardino County Department of Public Works in the circulation list for all future Project notices, public reviews, and public hearings.

**RESPONSE TO COMMENT  
LETTER #3  
SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD**

- 3-1     The comment is noted and will be made available to the City decision-makers as part of the Final IS/MND package prior to a decision on the proposed Project. The City will submit a 401 Application and fee with notice to the contact requested in this comment letter, Jason Bill of the Regional Board office.

**RESPONSE TO COMMENT  
LETTER #4  
GRESHAM SAVAGE / CROW HOLDINGS**

- 4-1 The comment is noted and will be made available to the City decision-makers as part of the Final IS/MND package prior to a decision on the proposed Project.
- 4-2 The description of the Project contained in this comment is accurate.

4-3 The comment is noted and will be made available to the City decision-makers as part of the Final IS/MND package prior to a decision on the proposed Project. The proposed Project is a vital infrastructure Project that will benefit the drainage system of existing entities, as well as future developments within the City. Under CEQA, a Project must analyze impacts to cumulative Projects including “past, present, and probable future Projects”; the Olive Avenue Development would constitute a probable future Project. The Application for the Olive Avenue Development, owned by Crow Holdings, has not been formally accepted as a complete application. The City has reviewed the Olive Avenue Development site plan as it is presently proposed. The City has determined that the proposed Project would not hinder development of the Olive Avenue Development Project, as the proposed Project would be installed below ground, and would be installed along the boundaries of the Project where no vertical structures could be installed due to the City’s setback requirements. A storm drain easement through the Olive Avenue Development property is necessary because of the following conditions:

1. The Rialto Channel is currently undersized downstream of Baseline Rd and can only convey 650 cubic feet per second (cfs) before it starts overflowing. All properties tributary to Rialto Channel are required to mitigate the 100-year peak discharge to pre-development levels.
2. The design of the Cactus Basins by San Bernardino County Flood Control District assumed that Rialto Channel will be improved downstream of Baseline Road to convey 1,250 cfs. To mitigate the 100-year peak discharge down to 1,250 cfs, San Bernardino County Flood Control District determined that Storm Drain Line D of the *Renaissance Specific Plan* (Baseline Road West of Ayala) needs to discharge to Cactus Basin No. 3.
3. Storm Drain Line E of the *Renaissance Specific Plan* (Baseline Road East of Ayala) needs to discharge to Rialto Channel, downstream of Baseline Road. Construction of Cactus Basin No. 3 was completed in 2017. Any alternative discharge location is not acceptable to the San Bernardino County Flood Control District.
3. The *2015 Drainage Study to the Renaissance Specific Plan* is a publicly-adopted document. The Olive Avenue Development property is subject to the provisions included in the *Renaissance Specific Plan*.
4. Detention in Cactus Basin No. 3 is achieved by a jurisdictional dam, permitted by the Division of Safety of Dams (California Department of Water Resources). Any encroachment to the limits of the jurisdiction dam must be minimized.
5. Alternative alignments through Fitzgerald Ave or to the West boundary of the Olive Avenue Development property are infeasible due to the depth of excavation (over 50 feet deep), hydraulics, and the conflicting crossing with the trunk sewer underneath Baseline Road.
6. The storm drain alignment retained by the City assumes a 60-foot easement along the east boundary of the Olive Avenue Development property, allows for the crossing of the trunk sewer line in Baseline Road, and avoids the dam jurisdictional limits.

From a civil standpoint, the public storm drain will be within the required setback from the proposed surface development and *should not* impact the building footprint. The alignment of utilities within the Olive Avenue Development property may be acceptable within the City easement, upon review and concurrence from the City. Parking, fire access, and a drive aisle on top of the easement are acceptable, upon review and concurrence from the City.

Ultimately, the proposed Baseline Storm Drain Project would serve as a benefit to the Renaissance Specific Plan, and mitigate the existing flooding conditions by the Olive

Avenue Development, and as a benefit to developments within this area of the City, as the Project would enhance drainage efficiency in the Project area.

4-4 Please refer to the response to comment 4-3, above, which fully responds to this comment.

4-5 The City disagrees that there is substantial evidence such that an EIR should be prepared. Section 15064, Determining the Significance of the Environmental Effects Caused by a Project states the following, which is applicable to the proposed Project:

*(f) The decision as to whether a Project may have one or more significant effects shall be based on substantial evidence in the record of the lead agency.*

*(4) The existence of public controversy over the environmental effects of a Project will not require preparation of an EIR if there is no substantial evidence before the agency that the Project may have a significant effect on the environment.*

*(5) Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion support by facts.*

The commenter has not provided substantial evidence that an EIR should be prepared, and as determined in the IS/MND every impact category, including cumulative impacts, discussed throughout these responses to comments have been determined to be less than significant, in some cases with mitigation incorporated. Any perceived factual errors identified in your comments are either unsubstantiated or are otherwise resolved within these responses to comments. Accordingly, and after careful consideration of your comments and the evidence in the record, City staff concludes and recommends that an EIR is not required for this Project.

4-6 This comment references CEQA, the CEQA Guidelines, and case law interpreting CEQA and the CEQA Guidelines, which does not require a response.



- 4-7 This comment references CEQA, the CEQA Guidelines, and case law interpreting CEQA and the CEQA Guidelines, which does not require a response. However, caselaw and more specifically the commenters argument that “the EIR is the very heart of CEQA” does not account for the circumstances for a specific Project. This is an individual Project, for which no significant impacts have been identified with the implementation of mitigation, therefore, CEQA clearly indicates that a Negative Declaration, in this case with mitigation measures, is the appropriate CEQA environmental determination. Furthermore, the State Clearinghouse receives vastly more negative declarations and mitigated negative declarations than EIRs on a yearly basis. In 2019, the State Clearinghouse received a total of 1,386 MNDs and NDs, and only 322 EIRs, as such for every 1 EIR received by the State Clearinghouse, 4.3 MNDs or NDs are received. Therefore, the suggestion that “the EIR is the very heart of CEQA” misrepresents the reality that the majority of documents prepared to comply with CEQA are not EIRs. Additionally, please refer to the response to comment 4-4, above; the proposed Project does not exceed the significance threshold for an EIR as set forth in CEQA Statute 15064.
- 4-8 The City disagrees that MNDs are appropriate “in very limited circumstances,” please refer to the responses to comments 4-4 and 4-7, above.
- 4-9 This comment references CEQA, the CEQA Guidelines, and case law interpreting CEQA and the CEQA Guidelines, which does not require a response.

- 4-10 This comment references CEQA, the CEQA Guidelines, and case law interpreting CEQA and the CEQA Guidelines, which does not require a response.
- 4-11 This comment references CEQA, the CEQA Guidelines, and case law interpreting CEQA and the CEQA Guidelines, which does not require a response.
- 4-12 This comment references CEQA, the CEQA Guidelines, and case law interpreting CEQA and the CEQA Guidelines, which does not require a response.
- 4-13 This comment references CEQA, the CEQA Guidelines, and case law interpreting CEQA and the CEQA Guidelines, which does not require a response.
- 4-14 This comment references CEQA, the CEQA Guidelines, and case law interpreting CEQA and the CEQA Guidelines, which does not require a response.
- 4-15 This comment references CEQA, the CEQA Guidelines, and case law interpreting CEQA and the CEQA Guidelines, which does not require a response.
- 4-16 Respectfully, the City disagrees that the commenter has provided “substantial evidence” than an EIR should be prepared for this Project. As determined in the IS/MND, every impact category, including cumulative impacts (discussed throughout these responses to comment), was concluded, based on substantial evidence, to have no significant impacts that cannot be minimized to a less than significant level with mitigation measures. Any perceived factual errors identified in your comments are either unsubstantiated or are otherwise resolved within these responses to comments. Accordingly, and after careful consideration of your comments and the evidence in the record, City staff concludes and recommends that an EIR is not required for this Project.
- 4-17 Respectfully, the City believes that the commenter has incorrectly extrapolated the meaning of piecemealing under CEQA. Piecemealing is when an agency intentionally splits its own Project into two or more separate components, specifically to qualify for exemptions (CEQA Statute 21159.27). The relationship between the City’s infrastructure Project, and the Olive Avenue Development Property is not an issue of piecemealing because the City is not involved in proposing the Olive Avenue Development Project or serving as an advocate on behalf of the Olive Avenue Development Project. The section of CEQA that the commenter quotes (i.e. “whole of the action”) is the definition of a Project under CEQA, when this Project and the Olive Avenue Development Property are two distinct Projects, and the Olive Avenue Development requires entitlements from the City to allow a private development. The City believes that, as stated under response to comment 4-3, under CEQA, a Project must analyze impacts to cumulative Projects including “past, present, and probable future Projects” and the Olive Avenue Development would constitute a probable future Project. The discussion under 4-3 and the responses contained herein demonstrate that the proposed Project will not result in significant cumulative impacts when considered in relation to the Olive Avenue Development.
- 4-18 Please refer to responses to comments 1-5 through 1-7, which revise MMs **BIO-1** through **BIO-6**, as well as **BIO-8** have been modified as requested by CDFW, and MMs **BIO-9** and **BIO-10** have been added to meet their standards. CDFW being the State agency with authority over a Project’s direct and indirect impacts to biological resources, has concurred that, with these modifications, MMs **BIO-1** through **BIO-6**, and **BIO-8** through **BIO-10** meet CDFW standards to mitigating environmental effects on biological resources. These

mitigation measures have been incorporated by reference through these responses to comments as part of the Final IS/MND package. As such, the City disagrees with the commenter, as the MMs identified in this comment (specifically MMs **BIO-1** through **BIO-6**) will reduce the Project's impacts to biological resources. Furthermore, the City notes that the commenter appears to misunderstand the purpose of a preconstruction survey, and fundamentally disagrees with the insinuation that "Preconstruction surveys are intended as last-minute, one-time salvage and rescue operations targeting readily detectable nests or individuals before they may be crushed under heavy construction machinery." To clarify for the record, the City notes that a preconstruction survey is most commonly implemented because certain species are mobile, such as burrowing owl, and while such species were not detected during the initial biological survey, evidence of suitable habitat exists such that this mobile species may move into the site during the interim period after the approval is granted and prior to ground disturbing activities. Verification that a species is present or absent is typically completed a few weeks prior to construction, not a day or two before construction as this comment suggests. Furthermore, the mitigation measures provided and modified herein include provisions for treatment should a species be detected that have been deemed acceptable to CDFW, thus proving that these measures are adequate under CEQA.

- 4-19 The City disagrees that MM **BIO-7** allows it to delete mitigation if another agency implements different conditions. This measure is intended to meet the CDFW, Regional Water Quality Control Board and United States Army Corps of Engineers (USACE) requirements for permits that must be obtained *after* the CEQA approvals have been granted. These agencies may require different or modified measures to protect biological resources, but in no way would this measure enable a reduction in mitigation efficiency. The City hereby modifies MM **BIO-7** to further clarify that no mitigation measure shall be deleted or modified to be less effective than the present mitigation provided in the IS/MND:

**BIO-7** *The City shall prepare and submit a 1602 Streambed Alteration Agreement (SAA) to the California Department of Fish and Wildlife (CDFW), a Section 401 Certification Permit to the Santa Ana Regional Water Quality Control Board; and, a Section 404 (Nationwide Permit No. 43) Permit to the USACE. No ground disturbance within jurisdictional waters shall occur until the City obtains the above permits. Note that the final compensation package contained in the permit shall be implemented by the City. If the permit conditions are different than the mitigation listed in this Document to protect biological resources, the City shall implement the mitigation identified in the permits, which must be equivalent or more effective in mitigating or avoiding potential significant effects and the substitution of any mitigation measure will not cause any potentially significant effect on the environment.*

- 4-20 Please refer to responses to comment 4-18 and 4-19 above. CEQA Statute 15126.4(a)(1)(B) states that "Formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the Project and which may be accomplished in more than one specified way." The City has created real performance standards through mitigation to be met for this Project.

In relation to the comment stating that the "IS/MND must specify what mitigation measures will be implemented, not simply state that mitigation measures may be developed at a later time by a different agency if necessary," this is addressed through the revision to MM **BIO-7** above, in which mitigation measures that are specific to the permitting process—

which occurs after CEQA approvals, and prior to construction—may be modified or replaced with equivalent or more effective mitigation to meet the requirements of the permit. These requirements are determined only once an application has been submitted for such a permit. Through obtaining a permit, in this case several permits designed to minimize impacts to jurisdictional features within the Project footprint, the conditions of the permit are sufficient mitigation to minimize impacts to biological resources for this Project. As such, the suggestion that the Project has proposed mitigation that will be developed at a later time is incorrect. The City's mitigation sets forth that it considers the minimum required mitigation, but accepts the agency's ability to require additional mitigation.

The commenter alleges that the IS/MND improperly defers identification of specific mitigation measures to address significant impacts and does not commit to enforceable performance standards. This comment does not specify which of the numbered mitigation measures included in the IS/MND—beyond those already addressed under responses to comments 4-18 and 4-19, above—alleged suffer from this infirmity. The City disagrees with the commenter's characterization of the IS/MND, and without specific references to mitigation measures, cannot respond further in detail.

- 4-21 Please refer to responses to comments 4-18 through 4-20, above. This comment summarizes CEQA principles and caselaw. The City disagrees with the commenter's characterization of the IS/MND, and will address the specific references to mitigation measures in response to comment 4-22.
- 4-22 The City hereby modifies the following mitigation measures pursuant to CEQA Statute 15074.1 as part of these responses to comments to address the commenter's concerns pertaining to enforceable language:

**AIR-2 Exhaust Emissions Control.** *The following measures shall be incorporated into Project plans and specifications for implementation:*

- *Utilize ~~well-tuned~~ off-road construction equipment that has met or exceeded the maker's recommendations for vehicle/equipment maintenance schedule.*
- *~~Establish a preference for Contractors~~ shall using utilize Tier 4 3 or better heavy equipment.*
- *Enforce 5-minute idling limits for both on-road trucks and off-road equipment.*

**GEO-2 Excavated areas shall be ~~properly~~ backfilled and compacted such that erosion does not occur. Paved areas disturbed by this Project will be repaved in such a manner that roadways and other disturbed areas are returned to ~~as near the pre-Project conditions~~ or better.**

The Commenter appears to be referring to MM **GEO-4**, not **GEO-3** in their comment.

**GEO-4** *The length of trench which can be left open at any given time will be limited to that needed to ~~reasonably~~ perform construction activities, as dictated by the contractor. This will serve to reduce the amount of backfill stored onsite at any given time.*

**GEO-5** *Should any paleontological resources be encountered during construction of these facilities, earthmoving or grading activities in the immediate area of the finds shall be halted and an onsite inspection should be performed immediately by a qualified paleontologist. Responsibility for making this determination shall be with the City onsite inspector. The paleontological professional shall assess the find, determine its significance, and ~~make recommendations for~~ determine appropriate mitigation measures within the guidelines of the California Environmental Quality Act that shall be implemented to minimize any impacts to a paleontological resource.*

MM **NOI-1** does not require modification because the proposed Project will not cause a significant impact related to construction noise due to the fact that the Project will comply with the City of Rialto's Noise Ordinance, which prohibits construction activities between 5:30 PM and 7 AM Monday – Friday, and between 5 PM and 8 AM on Saturdays, with no construction activities permitted on Sundays or State holidays from October to April, and between 7 PM and 6 AM Monday – Friday and 5 PM to 8 AM on Saturdays, with no construction activities permitted on Sundays or State holidays from May to September. The proposed Project will only construct during permissible hours except in the event of an emergency, which is also exempt from the City's Noise Ordinance, and as a result MM **NOI-2** is a contingency measure intended to minimize impacts even farther below a level of less than significant; it is not required to reduce a significant impact.

***TRAF-1 The construction contractor will provide ~~adequate~~ traffic management resources that meet the County of San Bernardino, and the City of Rialto standards. The City shall require a construction traffic management plan for work in public roads that complies with the Work Area Traffic Control Handbook, or other applicable standard, to provide adequate traffic control and safety during excavation activities. The traffic management plan shall be prepared and approved by the City(s) and County prior to initiation of excavation or pipeline construction. At a minimum this plan shall include how to minimize the amount of time spent on construction activities; how to minimize disruption of vehicle and alternative modes of transport traffic at all times, but particularly during periods of high traffic volumes; how to maintain safe traffic flow on local streets affected by construction at all times, including through the use of adequate signage, protective devices, flag persons or police assistance to ensure that traffic can flow adequately during construction; the identification of alternative routes that can meet the traffic flow requirements of a specific area, including communication (signs, webpages, etc.) with drivers and neighborhoods where construction activities will occur; and at the end of each construction day roadways shall be prepared for continued utilization without any significant roadway hazards remaining.***

The City has modified the specific mitigation measures identified in this comment to provide equivalent or more effective measures, as allowed by CEQA Statute 15074.1 (Substitution of Mitigation Measures in a Proposed Mitigated Negative Declaration). Therefore, the commenter's assertion that "these mitigation measures alone, invalidates the adequacy of the IS/MND" is incorrect based on the clarifications and corrections provided herein.

- 4-23 The City disagrees with the commenter's characterization of the IS/MND, the commenter has not provided substantial evidence that an EIR should be prepared, and as determined in the IS/MND every impact category, including cumulative impacts, discussed throughout these responses to comments have been determined to be less than significant with mitigation incorporated. Accordingly, and after careful consideration of your comments and the evidence in the record, City staff concludes and recommends that an EIR is not required for this Project.

**RESPONSE TO COMMENT  
LETTER #5  
RIALTO UNIFIED SCHOOL DISTRICT**

- 5-1 The comment is noted and will be made available to the City decision-makers as part of the Final IS/MND package prior to a decision on the proposed Project. The description of the School District Boundaries is noted and the boundaries are hereby corrected by reference as part of these responses to comments.
- 5-2 The comment is noted and will be made available to the City decision-makers as part of the Final IS/MND package prior to a decision on the proposed Project. The City will retain the contact information provided in this comment in the Project file.

**RESPONSE TO COMMENT  
LETTER #6  
OMNITRANS**

- 6-1     The comment is noted and will be made available to the City decision-makers as part of the Final IS/MND package prior to a decision on the proposed Project. This Project does not include any sidewalk improvements as it will only install a storm drain, resulting in the road right-of-way returned to at or better than the original condition upon completion of the proposed Project, as enforced by MM **TRAF-2**.