

Item 8b - Exhibit 5
Mitigation Monitoring and Reporting Plan

4.0 MITIGATION MONITORING AND REPORTING PLAN

Mitigation Measure	Lead Agency Department	Action(s) Required	Required Time of Compliance	Action Taken	Verified By/Dept.	Date	Further Action Needed
BIOLOGICAL RESOURCES							
BIO-1	Public Works	<p>Pre-Construction Surveys (Plants and Wildlife) and Biological Monitoring</p> <p>Pre-Construction Surveys (Plants and Wildlife) and Biological Monitoring Wildlife Surveys: Prior to ground disturbance or vegetation clearing within the Project site, a qualified biologist shall conduct surveys for wildlife (no more than 14 days prior to site disturbing activities) where suitable habitat is present and directly impacted by construction activities. The qualified biologist must be approved by the City of Newport Beach prior to the commencement of surveys. Wildlife found within the Project site or in areas potentially affected by the Project will be relocated to the nearest suitable habitat that will not be affected by the project prior to the start of construction. Special-status species found within a Project impact area shall be relocated by an authorized biologist to suitable habitat outside the impact area.</p> <p>Plant Surveys: Prior to initial ground disturbance for any areas subject to ground disturbance, the Project proponent shall conduct pre-construction surveys for special-status plant species in all areas subject to ground-disturbing activity, including, but not limited to, slope grading, new access roads, staging areas, and Project construction. The surveys shall be conducted during the appropriate blooming period(s) by a qualified plant ecologist/biologist (approved by the City of Newport Beach) according to protocols established by the USFWS, CDFW, and CNPS. All listed plant species found shall be marked and avoided. Any populations of special-status plants found during surveys will be fully described, mapped, and a CNPS Field Survey Form or written equivalent shall be prepared.</p> <p>Prior to site grading, any populations of special-status plant species identified</p>	Prior to and during site disturbance				



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		<p>during the surveys shall be protected by a buffer zone. The buffer zone shall be established around these areas and shall be of sufficient size to eliminate potential disturbance to the plants from human activity and any other potential sources of disturbance including human trampling, erosion, and dust. The size of the buffer depends upon the proposed use of the immediately adjacent lands and includes consideration of the plant's ecological requirements (e.g., sunlight, moisture, shade tolerance, physical and chemical characteristics of soils) that are identified by the qualified plant ecologist or botanist. The buffer for herbaceous and shrub species shall be, at minimum, 50 feet from the perimeter of the population or the individual. A smaller buffer may be established, provided there are adequate measures in place to avoid the take of the species, with the approval of the City of Newport Beach. Highly visible flagging shall be placed along the buffer area and remain in good working order during the duration of any construction activities in the area.</p> <p>Where impacts to listed plants cannot be avoided, the USFWS and/or CDFW shall be consulted for authorization, as appropriate. Additional mitigation measures to protect or restore listed plant species or their habitat, including but not limited to a salvage plan including seed collection and replanting, may be required by the USFWS or CDFW before impacts are authorized.</p> <p>If non-listed CRPR 1, 2, 3, or 4 plants cannot be avoided, and Project-related impacts result in the loss of 10 percent or more of the local population (i.e., occurrences within ¼ mile of the Project impact location), compensatory mitigation will be required.</p> <p>Compensation: Compensation will be required for all impacts that exceed the 10 percent threshold (e.g. impacts to 15 percent of a population will only require compensation for 5 percent, the amount of impacts that exceed the 10 percent threshold). To compensate for permanent impacts to special-status plants (including areas located beneath the arrays), habitat</p>					



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		<p>(which may include preservation of areas within the undisturbed areas of the Project footprint, mitigation lands outside of the main Project site, or a combination of both) that is not already public land shall be preserved and managed in perpetuity at a 1:1 mitigation ratio (one acre preserved for each acre impacted). Compensation for temporary impacts shall include land acquisition and/or preservation at a 0.5:1 ratio. The preserved habitat for a significantly impacted plant species shall be of equal or greater habitat quality to the impacted areas in terms of soil features, extent of disturbance, and vegetation structure, and will contain verified extant populations, of the same size or greater, of the special-status plants that are impacted.</p> <p>Prior to the disturbance of habitat for or take of special-status plants the City of Newport Beach must present documentation of a recorded conservation easement(s) for all compensation/mitigation lands to the U.S. Army Corps of Engineers (USACE) and CDFW as applicable. Compensation lands shall be located within the San Diego Creek Watershed (including Newport Bay). An open space easement will be recorded on all property associated with the compensation/mitigation lands to protect the existing plant and wildlife resources in perpetuity. An open space easement can be held by CDFW or an approved land management entity and shall be recorded immediately upon the dedication or acquisition of the land.</p> <p>Biological Monitoring: Prior to the issuance of grading permits, the Project proponent shall provide written evidence to the City of Newport Beach, that the Project proponent has retained a qualified biological monitor with expertise in the species known to occur or with the potential to occur on the Project site. The qualified biologist shall be present during initial ground disturbance for each phase of construction. Once initial ground disturbance is complete, monitoring will occur periodically during all construction activities. The qualified biologist(s) shall be present at all times during ground-disturbing activities immediately adjacent</p>					



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		to, or within habitat that supports populations of listed or special-status species. If required, during pre-construction surveys and/or required monitoring efforts, the qualified biologist will relocate common and special-status species that enter the Project site; some special-status species may require specific permits prior to handling and/or have established protocols for relocation. Records of all detection, capture and release shall be reported to CDFW.					
BIO-2	Public Works	Environmental Awareness Training Prior to the issuance of any grading permits, the Project proponent shall submit proof to the City of Newport Beach, that all Project personnel attended an environmental awareness and compliance training program. The training program shall present the environmental regulations and applicable permit conditions that the Project team shall comply with. The training program shall include applicable measures established for the Project to minimize impacts to water quality and avoid sensitive resources, habitats and species. Dated sign-in sheets for attendees at these meetings shall be maintained and submitted to the City of Newport Beach.	Prior to grading or vegetation clearing				
BIO-3	Public Works	Implement Best Management Practices (BMPs) Prior to the issuance of any grading permits, the Project proponent shall submit grading plans and specifications to the City of Newport Beach, which indicate that the Project shall implement the following BMPs: <ul style="list-style-type: none"> • Restrict non-essential equipment to the existing roadways and/or ruderal areas to avoid disturbance to native vegetation. • All excavation, steep-walled holes or trenches in excess of six inches in depth shall will be covered at the close of each working day by plywood or similar materials or provided with one or more escape ramps constructed of earth dirt fill or wooden planks. Trenches will also be inspected for entrapped wildlife each morning prior to onset of construction activities and immediately prior to covering with plywood at the end of 	Prior to grading or vegetation clearing				



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		<p>each working day. Before such holes or trenches are filled, they will be thoroughly inspected for entrapped wildlife. Any wildlife discovered will be allowed to escape before construction activities are allowed to resume or removed from the trench or hole by a qualified biologist holding the appropriate permits (if required).</p> <ul style="list-style-type: none"> • Minimize mechanical disturbance of soils to reduce impact of habitat manipulation on small mammals, reptiles, and amphibians. • Removal/disturbance of vegetation shall be minimized to the greatest extent feasible. • Install and maintain appropriate erosion/sediment control measures, as needed, throughout the duration of work activities. • Vehicles shall not be driven, or equipment operated, in water covered/wetted portions of the stream channel, or where riparian vegetation may be destroyed, except as otherwise provided for in the permits/agreements from the CDFW, USACE, and/or Regional Water Quality Control Board (RWQCB). • No vehicles or equipment shall be refueled within 100 feet of an ephemeral drainage or wetland unless a bermed and lined refueling area is constructed. Spill kits shall be maintained on site in sufficient quantity to accommodate at least three complete vehicle tank failures of 50 gallons each. Any vehicles driven and/or operated within or adjacent to drainages or wetlands shall be checked and maintained daily to prevent leaks of materials. 					
BIO-4	Public Works	<p>Nesting Bird Surveys and Avoidance Measures Prior to issuance of grading permits, the Project proponent shall provide evidence to the City of Newport Beach, of compliance with the MBTA. Prior to initial site disturbance/issuance of grading permits, seasonally timed presence/absence surveys for nesting birds shall be conducted by a qualified biologist; the qualified biologist must be approved by the City of Newport Beach prior to the commencement of surveys. If</p>	Prior to and during vegetation clearing				



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		<p>construction activities carry over into a second nesting season(s) the surveys will need to be completed annually until the Project is complete. A minimum of three survey events, three days apart shall be conducted (with the last survey no more than three days prior to the start of site disturbance), if construction is scheduled to begin during avian nesting season (February 15th through September 15th); surveys for raptors shall be conducted from January 1st to August 15th. Surveys shall be conducted within 500 feet of all Project activities.</p> <p>If special-status species are observed, consultation with U.S. Fish and Wildlife Service (USFWS) and/or CDFW is required. If breeding birds with active nests are found prior to or during construction, a qualified biological monitor shall establish a 300-foot buffer around the nest and no activities will be allowed within the buffer(s) until the young have fledged from the nest or the nest fails. The prescribed buffers may be adjusted by the qualified biologist based on existing conditions around the nest, planned construction activities, tolerance of the species, and other pertinent factors. The qualified biologist shall conduct regular monitoring of the nest to determine success/failure and to ensure that Project activities are not conducted within the buffer(s) until the nesting cycle is complete or the nest fails. If construction occurs outside of avian nesting season, only a single presence/absence survey will be required.</p>					
BIO-5	Public Works	<p>Focused Western Pond Turtle Surveys and Avoidance Measures</p> <p>Prior to ground disturbance or vegetation clearing, a qualified biologist shall be retained to conduct focused surveys for western pond turtle within the Project site and adjacent habitats to a distance of 200 feet away; the qualified biologist must be approved by the City of Newport Beach prior to the commencement of surveys. Focused surveys shall occur between April 1st and September 1st (breeding season) and shall consist of a minimum of four daytime surveys, to be completed prior to ground disturbance or vegetation clearing. The qualified biologist shall conduct focused, systematic surveys for</p>	Prior to grading or vegetation clearing				



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		<p>western pond turtle nesting sites. The survey area shall include all suitable nesting habitat located within 200 feet of occupied habitat in which ground disturbance will occur. Surveys will entail searching for evidence of pond turtle nesting, including remnant eggshell fragments, which may be found on the ground following nest depredation.</p> <p>If an active western pond turtle nesting area would be adversely impacted by construction activities, the nesting area with an appropriate buffer shall be avoided. If avoidance of the nesting area is determined to be infeasible, the qualified biologist shall coordinate with the CDFW to identify if it is possible to relocate the pond turtles. Eggs or hatchlings shall not be moved without written authorization from the CDFW.</p> <p>During the design phase of the Project, modifications will be made to the water wheel structure (in coordination with a qualified biologist), to minimize potential access to the structure by aquatic species such as western pond turtle. This may include, but is not limited to, the installation of vertical surfaces where turtles (or other aquatic species) may attempt to access the structure.</p> <p>A qualified biologist with demonstrated expertise with western pond turtles shall monitor construction activities where pond turtles are present. The qualified biologist will be present full-time during all vegetation removal activities immediately adjacent to, or within, habitat that supports populations of western pond turtles, and part time for all remaining activities. If the installation of fencing to prevent turtles from entering the work area is deemed necessary by the qualified biologist, one pre-construction survey for southwestern pond turtles shall be conducted at the time of the fence installation.</p>					
BIO-6	Public Works	<p>Conduct Protocol Surveys for Least Bell's Vireo A qualified avian biologist shall conduct focused protocol surveys in suitable habitat within 500 feet of proposed Project disturbance areas within the breeding season prior to the start of construction.</p>	Prior to construction				



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		The surveys shall be of adequate duration to verify potential nest sites if work is scheduled to occur during the breeding season and follow established protocols. If a territory or nest is confirmed in a previously unoccupied area, the CDFW and USFWS shall be notified within 48 hours. In coordination with the CDFW and USFWS, a 300 foot disturbance-free buffer shall be established and demarcated by fencing or flagging. This buffer may be adjusted as determined by a qualified avian biologist in coordination with the CDFW and USFWS. The City, in consultation with the qualified biologist, shall halt construction if activities outside of but near the 300-foot buffer are determined to be negatively impacting the nesting birds. The qualified biologist shall devise methods to reduce the noise and/or disturbance in the vicinity as needed. This may include methods such as, but not limited to, turning off vehicle engines and other equipment whenever possible to reduce noise, installing a protective noise barrier between the nest site and the construction activities, and working in other areas until the young have fledged. All active nests shall be monitored on a weekly basis until the nestlings fledge.					
BIO-7	Public Works	Install Turbidity Curtains The Project proponent shall install turbidity curtains around the in-water construction area prior to initiation of in-water construction activities (i.e., pile removal or installation). Turbidity curtains shall consist of a hanging weighted curtain with a surface float line and shall extend from the surface to the bottom of the San Diego Creek.	Prior to in-water construction activities				
BIO-8	Public Works	Vegetation Removal and Replacement Construction activities shall be done in such a manner as to minimize the removal of native vegetation. If native vegetation removal cannot be avoided, and the removal is approved by the City of Newport Beach, the impacted plant communities shall be replaced at a mitigation ratio of 1:1. Sensitive communities, including jurisdictional wetlands, shall be replaced at a mitigation ratio of 3:1. The compensation for the loss of habitats may be achieved either by a) on-site habitat creation or	Prior to and post-construction				



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		<p>enhancement of impacted communities with similar species compositions to those present prior to construction, b) off-site creation or enhancement of California sycamore woodlands and southern riparian scrub communities, or c) participation in an established mitigation bank program.</p> <p>Prior to the removal of native vegetation, if on or off-site mitigation is required, a Habitat Mitigation and Monitoring Plan shall be prepared that will guide all restoration and monitoring activities. This plan shall include, at a minimum, the following:</p> <ul style="list-style-type: none"> • Proposed species list for creation/enhancement; • Planting/seeding methodology; • Irrigation plan; • Weeding schedule; • Success criteria; • Monitoring methodology and schedule; and • Reporting requirements. 					
CULTURAL RESOURCES							
CR-1	Public Works	<p>Retain a Native American Monitor</p> <p>The project proponent will be required to retain the services of a Tribal monitor approved by the Gabrieleño Band of Mission Indians-Kizh Nation who will be present on-site during the construction phases that involve ground disturbing activities. Ground disturbing activities are defined by the Gabrieleño Band of Mission Indians-Kizh Nation as activities that may include, but are not limited to, pavement removal, pot-holing or auguring, grubbing, tree removals, boring, grading, excavation, drilling, and trenching, within the project area. The Tribal Monitor will complete daily monitoring logs that will provide descriptions of the day's activities, including construction activities, locations, soil, and any cultural materials identified. The on-site monitoring shall end when the project site grading and excavation activities are completed, or when the Tribal Representatives and monitor have indicated that the site has a low potential for impacting Tribal Cultural Resources.</p>	During ground disturbing activities				



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CR-2	Public Works	<p>Unanticipated Discovery of Tribal Cultural and Archaeological Resources</p> <p>Upon discovery of any archaeological resources, cease construction activities in the immediate vicinity of the find until the find can be assessed. All archaeological resources unearthed by project construction activities shall be evaluated by the qualified archaeologist and tribal monitor approved by the Gabrieleño Band of Mission Indians-Kizh Nation. If the resources are Native American in origin, the Gabrieleño Band of Mission Indians-Kizh Nation shall coordinate with the landowner regarding treatment and curation of these resources. Typically, the Tribe will request reburial or preservation for educational purposes. Work may continue on other parts of the project while evaluation and, if necessary, mitigation takes place (CEQA Guidelines Section 15064.5 [f]). If a resource is determined by the qualified archaeologist to constitute a “historical resource” or “unique archaeological resource”, time allotment and funding sufficient to allow for implementation of avoidance measures, or appropriate mitigation, must be available. The treatment plan established for the resources shall be in accordance with CEQA Guidelines Section 15064.5(f) for historical resources and Public Resources Code Sections 21083.2(b) for unique archaeological resources. Preservation in place (i.e., avoidance) is the preferred manner of treatment. If preservation in place is not feasible, treatment may include implementation of archaeological data recovery excavations to remove the resource along with subsequent laboratory processing and analysis. Any historic archaeological material that is not Native American in origin shall be curated at a public, non-profit institution with a research interest in the materials, such as the Natural History Museum of Los Angeles County or the Fowler Museum, if such an institution agrees to accept the material. If no institution accepts the archaeological material, they shall be offered to a local school or historical society in the area for educational purposes</p>	During construction				



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CR-3	Public Works	<p>Professional Standards Native American monitoring and excavation during construction projects will be consistent with current professional standards. All feasible care to avoid any unnecessary disturbance, physical modification, or separation of human remains and associated funerary objects shall be taken.</p>	During construction				
CR-4	Public Works	<p>Unanticipated Discovery of Human Remains and Associated Funerary Objects Native American human remains are defined in PRC 5097.98 (d)(1) as an inhumation or cremation, and in any state of decomposition or skeletal completeness. Funerary objects, called associated grave goods in PRC 5097.98, are also to be treated according to this statute. Health and Safety Code 7050.5 dictates that any discoveries of human skeletal material shall be immediately reported to the County Coroner and excavation halted until the coroner has determined the nature of the remains. If the coroner recognizes the human remains to be those of a Native American or has reason to believe that they are those of a Native American, he or she shall contact, by telephone within 24 hours, the Native American Heritage Commission (NAHC) and PRC 5097.98 shall be followed.</p> <p>Resource Assessment & Continuation of Work Protocol: Upon discovery, the tribal and/or archaeological monitor will immediately divert work at minimum of 50 feet and place an exclusion zone around the burial. The monitor(s) will then notify the Tribe, the qualified lead archaeologist, and the construction manager who will call the coroner. Work will continue to be diverted while the coroner determines whether the remains are Native American. The discovery is to be kept confidential and secure to prevent any further disturbance. If the finds are determined to be Native American, the coroner will notify the NAHC as mandated by state law who will then appoint a Most Likely Descendent (MLD).</p> <p>Kizh-Gabrieleno Procedures for burials and funerary remains: If the Gabrieleno Band of Mission Indians – Kizh Nation is</p>	During construction				



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		<p>designated MLD, the following treatment measures shall be implemented. To the Tribe, the term "human remains" encompasses more than human bones. In ancient as well as historic times, Tribal Traditions included, but were not limited to, the burial of funerary objects with the deceased, and the ceremonial burning of human remains. These remains are to be treated in the same manner as bone fragments that remain intact. Associated funerary objects are objects that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later; other items made exclusively for burial purposes or to contain human remains can also be considered as associated funerary objects.</p> <p>Treatment Measures: Prior to the continuation of ground disturbing activities, the land owner shall arrange a designated site location within the footprint of the project for the respectful reburial of the human remains and/or ceremonial objects. In the case where discovered human remains cannot be fully documented and recovered on the same day, the remains will be covered with muslin cloth and a steel plate that can be moved by heavy equipment placed over the excavation opening to protect the remains. If this type of steel plate is not available, a 24-hour guard should be posted outside of working hours. The Tribe will make every effort to recommend diverting the project and keeping the remains in situ and protected. If the project cannot be diverted, it may be determined that burials will be removed. The Tribe will work closely with the qualified archaeologist to ensure that the excavation is treated carefully, ethically and respectfully. If data recovery is approved by the Tribe, documentation shall be taken which includes at a minimum detailed descriptive notes and sketches. Additional types of documentation shall be approved by the Tribe for data recovery purposes. Cremations will either be removed in bulk or by means as necessary to ensure completely recovery of all material. If the discovery of human remains includes four</p>					



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		<p>or more burials, the location is considered a cemetery and a separate treatment plan shall be created. Once complete, a final report of all activities is to be submitted to the Tribe and the NAHC. The Tribe does NOT authorize any scientific study or the utilization of any invasive diagnostics on human remains.</p> <p>Each occurrence of human remains and associated funerary objects will be stored using opaque cloth bags. All human remains, funerary objects, sacred objects and objects of cultural patrimony will be removed to a secure container on site if possible. These items should be retained and reburied within six months of recovery. The site of reburial/repatriation shall be on the project site but at a location mitigated between the Tribe and the landowner at a site to be protected in perpetuity. There shall be no publicity regarding any cultural materials recovered.</p>					
HYDROLOGY AND WATER QUALITY							
BIO-7	See above in Biological Resources						
NOISE							
NOI-1	Public Works	<p>Construction Noise Reduction</p> <p>A. Prior to the issuance of any grading permits, the project proponent shall produce evidence acceptable to the Manager, Building and Safety, that:</p> <ol style="list-style-type: none"> 1. All construction vehicles or equipment, fixed or mobile, operated within 1,000 feet of a dwelling shall be equipped with properly operating and maintained mufflers. 2. All operations shall comply with the City Noise Ordinance including limiting construction activities between the hours of 7:00 a.m. and 6:30 p.m. during weekdays and 8:00 AM to 6:00 PM on Saturdays. 3. Stockpiling and/or vehicle staging areas shall be located as far as practicable from dwellings. <p>B. Notations in the above format, appropriately numbered and included with other notations on the front sheet of the project's permitted grading plans, will be considered as adequate evidence of compliance with this condition.</p>	Prior to grading				



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TRIBAL CULTURAL RESOURCES							
CR-1	See above in Cultural Resources						
CR-2	See above in Cultural Resources						
CR-3	See above in Cultural Resources						
CR-4	See above in Cultural Resources						

