

## **Attachment No. PC 1**

Draft Resolution with Findings and  
Conditions

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## RESOLUTION NO. PC2023-043

### A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH RECOMMENDING CITY COUNCIL ADOPTION OF A GENERAL PLAN AMENDMENT, PLANNED COMMUNITY DEVELOPMENT PLAN AMENDMENT, SITE DEVELOPMENT REVIEW, AFFORDABLE HOUSING IMPLEMENTATION PLAN, DEVELOPMENT AGREEMENT, ENVIRONMENTAL IMPACT REPORT ADDENDUM, AND TRAFFIC STUDY FOR THE 1400 BRISTOL STREET RESIDENTIAL PROJECT LOCATED AT 1400 BRISTOL STREET (PA2022-0296)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by The Picerne Group (Applicant), concerning property located at 1400 Bristol Street and legally described in Exhibit "A," which is attached hereto and incorporated by reference (Property).
2. The Applicant is requesting approval for the demolition of two existing office buildings and the development of 229 apartment units, including a 422-space parking structure (Project). The following approvals are requested to implement the Project as proposed:
  - **General Plan Amendment (GPA)**- A request to amend the existing General Plan land use designation from General Commercial Office (CO-G) to Mixed Use Horizontal 2 (MU-H2), and an additional 64 dwelling units above the General Plan allowance. The GPA includes a revision to Anomaly 16 of the General Plan Table LU2 (Anomaly Locations) to allow 64 residential dwelling units at the Property;
  - **Planned Community Development Plan Amendment (PCDP Amendment)**- An amendment to the Newport Place Planned Community (PC-11) Development Plan to include the project site within the Residential Overlay;
  - **Major Site Development Review (SDR)** - A site development review in accordance with the Newport Place Planned Community and Section 20.52.80 (Site Development Reviews) of the Newport Beach Municipal Code (NBMC), for the construction of the Project;
  - **Affordable Housing Implementation Plan (AHIP)** - A plan specifying how the Project would meet the City's affordable housing requirements, in exchange for a request of 50% increase in density. The Applicant seeks six development standard waivers related to park land dedication, building setbacks, building height, private open space for each residential unit, common open space for the entire Project, and overall residential project density pursuant to Chapter 20.32 (Density Bonus) of the NBMC and

Government Code Section 65915 (Density Bonus Law). The Applicant also seeks a development concession related to the mix of affordable units pursuant to Chapter 20.32 (Density Bonus) of the NBMC and Government Code Section 65915;

- **Development Agreement (DA)**– A Development Agreement between the Applicant and the City, pursuant to Section 15.45.020 (Development Agreement Required) of the NBMC, which would provide the Applicant with the vested right to develop the Project for a term of 10 years and to provide negotiated public benefits to the City;
  - **Addendum to the 2006 General Plan Update Program Environmental Impact Report** (Addendum) - Pursuant to the California Environmental Quality Act (CEQA), the Addendum addresses reasonably foreseeable environmental impacts resulting from the Project; and
  - **Traffic Study** - A traffic study pursuant to Chapter 15.40 (Traffic Phasing Ordinance) of the NBMC.
3. The Property is designated General Commercial Office (CO-G) by the General Plan Land Use Element and is located within the Newport Place Planned Community (PC-11 Newport Place) Zoning District in the Industrial Site 3A sub-area.
  4. The Property is not located within the coastal zone.
  5. A public hearing was held on December 7, 2023, in the Council Chambers at 100 Civic Center Drive, Newport Beach. A notice of the time, place, and purpose of the hearing was given in accordance with Government Code Section 54950 *et seq.* (Ralph M. Brown Act), and Chapter 15.45 (Development Agreements), Chapter 20.56 (Planned Community District Procedures), and Chapter 20.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to and considered by, the Planning Commission at this hearing.

## SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. On July 25, 2006, the City Council adopted Resolution No. 2006-75, thereby certifying the adequacy and completeness of the Environmental Impact Report (EIR) for the General Plan Update (SCH No. 2006011119). The EIR was prepared in compliance with CEQA Guidelines set forth in the California Public Resources Code Section 21000 *et seq.* and its implementing State regulations set forth in the California Code of Regulations Title 14, Division 6, Chapter 3 (CEQA Guidelines) and City Council Policy K-3. Additionally, in accordance with Section 15168(a) of the CEQA Guidelines, the City prepared the EIR as a Program Environmental Impact Report (PEIR). This PEIR analyzed the potential impacts of a citywide land use plan, and the goals and policies of 10 general plan elements.
2. Additionally, on November 22, 2011, the City Council adopted General Plan Amendment No. GP2008-003, thereby approving the City of Newport Beach Housing Element Update (2008-2014) and its associated Housing Element and Initial Study/Negative Declaration



under CEQA. The PEIR and Initial Study/Negative Declaration are collectively referred to herein as the “PEIR”.

3. Pursuant to Section 21166 of the California Public Resources Code and Section 15162 of the CEQA Guidelines, when an EIR has been certified for a project, no subsequent EIR is required unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:
  - a. Substantial changes are proposed in the Project which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
  - b. Substantial changes occur with respect to the circumstances under which the Project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
  - c. 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, shows any of the following:
    - i. The project will have one or more significant effects not discussed in the previous EIR;
    - ii. Significant effects previously examined will be substantially more severe than shown in the previous EIR;
    - iii. 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
    - iv. 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.
4. An Addendum to PEIR was prepared pursuant to Section 15162 (Subsequent EIRs and Negative Declarations) and 15164 (Addendum to an EIR or Negative Declaration) of the CEQA Guidelines.
5. The following environmental topics were analyzed for the Project: Aesthetics, Air Quality, Biological Resources, Cultural Resources, Energy, Geology and Soils, Greenhouse Gas Emissions, Hazards and Hazardous Materials, Hydrology and Water Quality, Land Use and Planning, Mineral Resources, Noise, Population and Housing, Public Services, Recreation, Transportation, Tribal Cultural Resources, Utilities and Service Systems, and Wildfire. The Addendum includes analysis of new topics that were

not included in the previous EIRs; specifically, it includes a new Energy, Wildfire, and Tribal Cultural Resources section. These additional analyses are appropriate for inclusion in the Addendum, but none result in new or increased significant impacts that would require preparation of a subsequent EIR pursuant to Section 15162 of the CEQA Guidelines.

6. On the basis of the PEIR and entire environmental review record, the Project will not result in any new significant impacts that were not previously analyzed in the PEIR. The Addendum confirms and provides substantial evidence that the potential impacts associated with this Project would either be the same or less than those described in the PEIR, as reduced by applicable General Plan Policies in the PEIR. In addition, there are no substantial changes to the circumstances under which the Project would be undertaken that would result in new or more severe environmental impacts than previously addressed in the PEIR, nor has any new information regarding the potential for new or more severe significant environmental impacts been identified. Therefore, in accordance with Section 15164 of the CEQA Guidelines, an addendum to the previously adopted PEIR is the appropriate environmental document for the Project. In taking action to approve any of the requested applications for the Project, the data presented in the PEIR, as augmented by the Addendum for this Project, are considered as part of the record.
7. The Addendum to the PEIR, is hereby recommended for adoption by the City Council given its analysis and conclusions. The Addendum to the PEIR and related and referenced documentation, constitute the administrative record upon which this decision was based, are on file with the Planning Division, City Hall, 100 Civic Center Drive, Newport Beach, California.
8. The Planning Commission finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time-consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages that may be awarded to a successful challenger.

### SECTION 3. REQUIRED FINDINGS.

#### **General Plan Amendment**

An amendment to the 2006 Newport Beach General Plan Land Use Element is a legislative act. Neither Title 20 (Planning and Zoning) nor California Government Code Section 65000 *et seq.*, set forth any required findings for either approval or denial of such amendments.

#### **Finding and Facts in Support of Findings:**

1. The request is to amend the General Plan Land Use designation from General Commercial Office (CO-G) to Mixed-Use Horizontal 2 (MU-H2). The MU-H2 designation applies to properties located in the Airport Area. It provides for a horizontal intermixing

of uses that may include regional commercial office, multifamily residential, vertical mixed-use buildings, industrial, hotel rooms, and ancillary neighborhood commercial uses.

2. The GPA and the resulting land use change are compatible with the existing surrounding uses and planned land uses identified by the General Plan, because the Project would introduce additional residential land uses in the Airport Area which includes a diverse mix of land uses including the gradual development of residential multifamily dwellings. Additionally, even with the conversion from CO-G to MU-H2, the building will be compatible with adjacent commercial properties architectural style and pedestrian connectivity. Additional residential development would support commercial properties within the Airport Area.
3. The requested GPA from CO-G to MU-H2 does not eliminate existing or future land uses to the overall detriment of the community given the site's size, location, and surrounding uses. The existing office buildings on-site were built in the 1970's and there are sufficient office facilities in the Airport Area to support the business needs of the community. The proposed change to allow residential uses would increase the City's housing stock including the provision of 23 units that will be affordable to lower incomes.
4. The Property is located in an area of the City that has sufficient utility systems to serve the Project once the Applicant completes a necessary upgrade to an off-site sewer line. As conditioned, applicant will replace the existing 10-inch vitrified clay pipe (VCP) pipe with a 12-inch sewer main, which is located near the intersection of Newport Place and Dove Street. This off-site improvement would result in approximately 435 linear feet of sewer line replacement. No off-site improvements other than typical utility connections are proposed or required as part of the Project (other than the pedestrian bridge that would cross the public right-of-way).
5. The Project is consistent with the following City of Newport Beach General Plan policies that establish fundamental criteria for the formation and implementation of new residential villages in the Airport Business Area (additional policy analysis is included in the EIR Addendum attached hereto as Exhibit "B"):

- a. ***Land Use Element Policy LU 1.1 (Unique Environment): Maintain and enhance the beneficial and unique character of the different neighborhoods, business districts, and harbor that together identify Newport Beach. Locate and design development to reflect Newport Beach's topography, architectural diversity, and view sheds.***

The Project enhances the distinct, urban character of the Airport Area by providing a means for replacing parking lots and 1970's era office buildings with attractive and functional residential development, in line with the General Plan goal of transitioning the Airport Area to a mixed-use community. The Property is not in or near any of the City's areas that feature the harbor, unique topography, or view sheds. The proposed project would introduce residential units to the Property consistent with the uses and urbanized character of the Airport Area and the proposed MU-H2 designation.

- b. **Land Use Element Policy LU 2.3** (*Range of Residential Choices*). Provide opportunities for the development of residential units that respond to community and regional needs in terms of density, size, location, and cost. Implement goals, policies, programs, and objectives identified within the City's Housing Element.

The Project establishes 229 multi-family residential units, including 23 affordable units for very low-income households. The Project responds to market needs and diversifies the City's housing stock by adding additional dwelling units to the Airport Area.

- c. **Land Use Element Policy LU 3.8** (*Project Entitlement Review with Airport Land Use Commission*) - Refer the adoption or amendment of the General Plan, Zoning Code, specific plans, and Planned Community development plans for land within the John Wayne Airport planning area, as established in the JWA Airport Environs Land Use Plan (AELUP), to the Airport Land Use Commission (ALUC) for Orange County for review, as required by Section 21676 of the California Public Utilities Code. In addition, refer all development projects that include buildings with a height greater than 200 feet above ground level to the ALUC for review.

The Project is within the boundaries of the Airport Environs Land Use Plan (AELUP), therefore, the overseeing agency, ALUC, must review the proposed GPA and PCDP Amendment pursuant to Government Code Section 65302.3 and Public Utilities Code Section 21676. The purpose of ALUC's review is to determine whether the Project is consistent with the AELUP prior to the City Council taking action on the Project. The Project is consistent with the noise and safety standards of the AELUP. With respect to noise, the City adopted noise-related amendments to the General Plan Noise and Land Use Elements, the Newport Place Planned Community (PC-11) and Title 20 (Planning and Zoning) contours to implement the 6<sup>th</sup> Cycle Housing Element. The Project is located within the updated 60 decibel (dBA) community noise equivalent level (CNEL) contour as shown in Figure N5 of the Noise Element of the General Plan, where residential development is allowed. As a result, the Project will be required to comply with the development standards set forth in Section 20.30.080(F) (Noise-Airport Environs Land Use Plan) of the NBMC. The Project sites is outside of any safety zones set forth in the AELUP, therefore, is consistent with the noise standards of the AELUP.

- d. **Land Use Element Policy 6.15.3** (*Airport Compatibility*). Require that all development be constructed in conformance with the height restrictions set forth by the Federal Aviation Administration (FAA), Federal Aviation Regulations (FAR) Part 77, and Caltrans Division of Aeronautics, and that residential development shall be allowed only on parcels with noise levels of less than John Wayne Airport 65 dBA CNEL noise contour area as shown in Figure N5 of the Noise Element of the General Plan, unless and until the City determines, based on substantial evidence, that the sites wholly within the 65 dBA CNEL noise contour shown in Figure N5 are needed for the City to satisfy its Sixth Cycle RHNA mandate. Nonresidential uses are, however, encouraged on parcels located wholly within the 65 dBA CNEL contour area.

The Project is located at 1400 Bristol Street and approximately 85 feet in height. The Federal Aviation Administration (FAA) conducted an aeronautical study of the Project pursuant to applicable Federal regulations and has determined no hazard to air navigation for the Project.

The Project is located within the updated 60 dBA CNEL contour as shown in Figure N5 of the Noise Element of the General Plan, where residential development is allowed, subject to the development standards set forth in Section 20.30.080(F) (Noise-Airport Environs Land Use Plan).

- e. **Land Use Element Policy LU 6.15.5 (Residential and Supporting Uses).** *Accommodate the development of a maximum of 2,200 multi-family residential units, including work force housing, and mixed-use buildings that integrate residential with ground level office or retail uses, along with supporting retail, grocery stores, and parklands. Residential units may be developed only as the replacement of underlying permitted nonresidential uses. When a development phase includes a mix of residential and nonresidential uses or replaces existing industrial uses, the number of peak hour trips generated by cumulative development of the site shall not exceed the number of trips that would result from development of the underlying permitted nonresidential uses. However, a maximum of 550 units may be developed as infill on surface parking lots or areas not used as occupiable buildings on properties within the Conceptual Development Plan Area depicted on Figure LU22 provided that the parking is replaced on site.*

General Plan Land Use Policy 6.15.5 established a development limit of 2,200 maximum dwelling units for the Airport Area. Of the 2,200 residential units allowed, 1,650 units may be developed as replacement of existing office, retail, and/or industrial uses. The remaining 550 units are classified as additive units meaning they are not required to replace other units and they may be constructed as “in-fill” units to existing commercial or office development within the Conceptual Development Plan Area (CDPA) of the Airport Area. Any eligible density bonus allowed by Government Code Sections 65915 (Density Bonus Law) and Chapter 20.32 (Density Bonus) of the NBMC are not included in the 2,200-unit allowance.

The 550 additive units have been previously allocated to the Uptown Newport and Residences at 4400 Von Karman projects. Considering the dwelling unit sum of the previously approved projects, the remaining and available development allocation within the Airport Area would be 353 dwelling units. With the development of this Project, there would be 264 dwelling units ( $353-89=264$ ) exclusive of density bonus units and units authorized through a GPA.

The Property is developed with existing two-story commercial office buildings totaling 38,764 square feet. Since the Project can be developed only as the replacement of the underlying nonresidential use (office)<sup>1</sup>, and the number of peak hour trips

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<sup>1</sup> Without a GPA.

generated by cumulative development of the Property shall not exceed the number of trips that would result from development of the underlying permitted nonresidential uses, a conversion rate of 2.29 dwelling units per 1,000 square feet of commercial floor area is required. This results in a total of 89 dwelling units. The Project includes a request for a GPA to increase the base units by 64 dwelling units, which results in a total base unit count of 153 dwelling units. With a 50% density bonus, a maximum of 230 units could be constructed and a total of 229 dwelling units are proposed.

Presently, there are a total of 353 remaining and available dwelling units in the Airport Area. Considering the dwelling unit sum of the previously approved projects and the proposed Project, the remaining development allocation within the Airport Area would be 264 (353-89) dwelling units excluding any density bonus units.

- f. ***Land Use Element Policy LU 6.15.6 (Size of Residential Villages).*** Allow development of mixed-use residential villages, each containing a minimum of 10 acres and centered on a neighborhood park and other amenities (as conceptually illustrated in Figure LU23). The first phase of residential development in each village shall encompass at least 5 gross acres of land, exclusive of existing rights-of-way. This acreage may include multiple parcels provided that they are contiguous or face one another across an existing street. At the discretion of the City, this acreage may also include part of a contiguous property in a different land use category, if the City finds that a sufficient portion of the contiguous property is used to provide functionally proximate parking, open space, or other amenity. The “Conceptual Development Plan” area shown on Figure LU22 shall be exempt from the 5-acre minimum, but a conceptual development plan described in Policy LU 6.15.11 shall be required.

The Property is 2.38 acres in size. The Residential Overlay of PC-11 allows residential development on sites containing less than 10 acres, if housing units affordable to lower income households are provided. The Project includes 23 dwelling units that will be affordable for very-low-income households. If the Planned Community Development Plan is amended to include the Project within the Residential Overlay, as requested by the Applicant, the Project will be exempt from General Plan Policy 6.15.6 (Size of Residential Villages).

- g. ***Land Use Policy LU 6.15.7 (Overall Density and Housing Types).*** Require that residential units be developed at a minimum density of 30 units and maximum of 50 units per net acre averaged over the total area of each residential village. Net acreage shall be exclusive of existing and new rights-of-way, public pedestrian ways, and neighborhood parks. Within these densities, provide for the development of a mix of building types ranging from townhomes to high-rises to accommodate a variety of household types and incomes and to promote a diversity of building masses and scales.

The Project proposes 153 base units at a density of 64 dwelling units per acre on the 2.38-net-acre site. A waiver from Policy 6.15.7 regarding maximum density has been requested by the Applicant as a part of the Project. The base density does not include the 50% density bonus of 77 units that is allowed by the State Bonus Density law

which includes 23 units set aside for affordable housing. Altogether, the Project has an overall density of 96 dwelling units per acre, which is exclusive of rights-of-ways, public pedestrian ways, and neighborhood parks.

The Project is a for rent apartment building with 229 units. There is a mixture of unit types, ranging from studios to two-bedroom units, accommodating a variety of household types and incomes. Of the 229 units, 23 units will be affordable to very low-income households and 206 units will be market-rate housing, which will increase the City's overall housing stock for various household income levels.

- h. **Land Use Policy LU 6.15.8** (*First Phase Development Density*). *Require a residential density of 45 to 50 units per net acre, averaged over the first phase for each residential village. This shall be applied to 100 percent of properties in the first phase development area whether developed exclusively for residential or integrating service commercial horizontally on the site or vertically within a mixed-use building. On individual sites, housing development may exceed or be below this density to encourage a mix of housing types, provided that the average density for the area encompassed by the first phase is achieved.*

The Project would be developed in one phase on an individual site with a density of 96 units per acre. The Project provides a mixture of residential unit types that include 23 units of affordable housing to very-low-income households. The proposed density is above the required minimum of 45 units per acre and the Applicant is requesting a development standard waiver allowed by State Density Bonus Law to exceed the maximum density of 50 units per acre.

- i. **Land Use Policy LU 6.15.9** (*Subsequent Phase Development Location and Density*). *Subsequent phases of residential development shall abut the first phase or shall face the first phase across a street. The minimum density of residential development (including residential mixed-use development) shall be 30 units per net acre and shall not exceed the maximum of 50 units per net acre averaged over the development phase.*

See finding LU 6.15.9 *First Phase Development Density* above.

- j. **Land Use Policy LU 6.15.13** (*Neighborhood Parks Standards*). *To provide a focus and identity for the entire neighborhood and to serve the daily recreational and commercial needs of the community within easy walking distance of homes, require dedication and improvement of at least 8 percent of the gross land area (exclusive of existing rights-of-way) of the first phase development in each neighborhood, or ½ acre, whichever is greater, as a neighborhood park. This requirement may be waived by the City where it can be demonstrated that the development parcels are too small to feasibly accommodate the park or inappropriately located to serve the needs of local residents, and when an in-lieu fee is paid to the City for the acquisition and improvement of other properties as parklands to serve the Airport Area.*

*In every case, the neighborhood park shall be at least 8 percent of the total Residential Village Area or one acre in area, whichever is greater, and shall have a minimum dimension of 150 feet. Park acreage shall be exclusive of existing or new rights-of-way, development sites, or setback areas. A neighborhood park shall satisfy some or all of the requirements of the Park Dedication Ordinance, as prescribed by the Recreation Element of the General Plan.*

The Project includes a waiver from Land Use Policy LU 6.15.13, as allowed by the policy, due to a 2.38-acre parcel size that is too small to feasibly accommodate a park.

- k. **Land Use Policy LU 6.15.14 (Location).** *Require that each neighborhood park is clearly public in character and is accessible to all residents of the neighborhood. Each park shall be surrounded by public streets on at least two sides (preferably with on-street parking to serve the park), and shall be linked to residential uses in its respective neighborhood by streets or pedestrian ways.*

See finding LU 6.15.13 above.

- l. **Land Use Policy LU 6.15.16 (On-Site Recreation and Open Space Standards).** *Require developers of multi-family residential developments on parcels 8 acres or larger to provide on-site recreational amenities. For these developments, 44 square feet of on-site recreational amenities shall be provided for each dwelling unit in addition to the requirements under the City's Park Dedication Ordinance and in accordance with the Parks and Recreation Element of the General Plan. On-site recreational amenities can consist of public urban plazas or squares where there is the capability for recreation and outdoor activity. These recreational amenities may also include swimming pools, exercise facilities, tennis courts, and basketball courts. Where there is insufficient land to provide on-site recreational amenities, the developer shall be required to pay cash in-lieu that would be used to develop or upgrade nearby recreation facilities to offset user demand as defined in the City's Park Dedication Fee Ordinance.*

*The acreage of on-site open space developed with residential projects may be credited against the parkland dedication requirements where it is accessible to the public during daylight hours, visible from public rights-of-way, and is of sufficient size to accommodate recreational use by the public. However, the credit for the provision of on-site open space shall not exceed 30 percent of the parkland dedication requirements.*

The Project is located on a 2.38-acre site and is not subject to Policy LU 6.15.16, as the policy only applies to properties consisting of eight acres or larger. However, the Project exceeds the 44 square feet per unit minimum by providing approximately 60 square feet per unit (approximately 13,800 square feet) of on-site recreational amenities including a large central courtyard, clubroom, media center, a roof deck, and a lounge area.



- m. **Land Use Policy LU 6.15.17** (*Street and Pedestrian Grid*). Create a pattern of streets and pedestrian ways that breaks up large blocks, improves connections between neighborhoods and community amenities, and is scaled to the predominantly residential character of the neighborhoods.

The Project is a podium style development with two driveways for vehicular circulation to the garage entries, accessed from Spruce Street and Bristol Street. Pedestrian connections are provided to public sidewalks along Spruce Street and Bristol Street. The Project retains the curb-to-curb dimension of both Bristol Street and Spruce Street and will include sidewalk easements to provide 10-foot-wide sidewalks.

- n. **Land Use Policy 6.15.18** (*Walkable Streets*). Retain the curb-to-curb dimension of existing streets, but widen sidewalks to provide park strips and generous sidewalks by means of dedications or easements. Except where traffic loads preclude fewer lanes, add parallel parking to calm traffic, buffer pedestrians, and provide short term parking for visitors and shop customers.

See finding Land Use Policy 6.15.17 above.

- o. **Land Use Policy 6.15.19** (*Connected Streets*). Require dedication and improvement of new streets as shown on Figure LU23. The illustrated alignments are tentative and may change as long as the routes provide the intended connectivity. If traffic conditions allow, connect new and existing streets across Macarthur Boulevard with signalized intersections, crosswalks, and pedestrian refuges in the median.

See finding Land Use Policy 6.15.17 above.

- p. **Land Use Policy 6.15.20** (*Pedestrian Improvements*). Require the dedication and improvement of new pedestrian ways as conceptually shown on Figure LU23. The alignment is tentative and may change as long as the path provides the intended connectivity. For safety, the full length of pedestrian ways shall be visible from intersecting streets. To maintain an intimate scale and to shade the path with trees, pedestrian ways should not be sized as fire lanes. Pedestrian ways shall be open to the public at all times.

The Project includes conditions of approval requiring the reconstruction of all broken and/or damaged curb, gutter, and sidewalk along Spruce and Bristol Street frontages to preserve and improve all existing sidewalks for pedestrian access.

- q. **Land Use Policy LU 6.15.22** (*Building Massing*). Require that high-rise structures be surrounded with low- and mid-rise structures fronting public streets and pedestrian ways or other means to promote a more pedestrian scale.

The Project is approximately 85 feet in height and is compatible with nearby properties as well as the larger pattern of development in the Airport Area, with building mass and scale similar to the nearby existing office developments and the

approved, but not yet construction 78-foot-tall residential apartment building at 1300 Bristol Street. The nearby property at 1451 Quail Street is developed with an approximately 37-foot tall office building. The property located across the street at 1400 Quail Street, is developed with an approximately 30-foot-tall office building. A project is currently being reviewed for an approximately 86-foot-high condominium project at 1401 Quail Street, which is adjacent to the site. The Project includes pedestrian connectivity to public sidewalks along Bristol Street and Spruce Street and pedestrian-scale landscaped areas around the apartment building. Lastly, the Project includes a pedestrian bridge across the Spruce Street right-of-way that would connect to the approved project at 1300 Bristol. The bridge would be connected to and accessible from the second level of both buildings, which would reduce the appearance of bulk and scale from the street level.

- r. **Land Use Policy LU 6.15.23 Sustainability Development Practices.** *Require that development achieves a high level of environmental sustainability that reduces pollution and consumption of energy, water, and natural resources. This may be accomplished through the mix and density of uses, building location and design, transportation modes, and other techniques. Among the strategies that should be considered are the integration of residential with jobs-generating uses, use of alternative transportation modes, maximized walkability, use of recycled materials, capture and re-use of storm water on-site, water conserving fixtures and landscapes, and architectural elements that reduce heat gain and loss.*

The Project is required to comply with the provisions of the Building and Energy Efficiency Standards (CCR, Title 24, Parts 6 and 11) and the Green Building Standards Code (CCR, Title 24, Part 11 - CALGreen). Additionally, the Project would implement water-efficient landscaping, water quality best management practices to treat surface runoff from the project site, and low impact development practices.

The Project is also adjacent to office developments in the Airport Area and would provide housing near employment opportunities. The Project includes pedestrian linkage to public sidewalks that would provide connections throughout the site and to adjacent and surrounding uses, thereby providing an alternative mode of public transportation for the residents and their visitors. The Project would also provide alternative forms of transportation to residents by locating close to the existing Orange County Transportation Authority (OCTA) bus routes provided along Bristol Street and Birch Street.

#### *Tribal Consultation (SB18)*

6. Pursuant to California Government Code Section 65352.3 (SB18), a local government is required to contact the appropriate tribes identified by the Native American Heritage Commission (NAHC) each time it considers a proposal to adopt or amend the General Plan. If requested by any tribe, the local government must consult for the purpose of preserving or mitigating impacts to cultural resources. The City received comments from the NAHC indicating that 12 tribal contacts should be provided notice regarding the proposed amendment. The tribal contacts were provided notice on January 26, 2023.

California Government Code Section 65352.3 requires notification 90 days prior to Council action to allow tribal contacts to respond to the request to consult. The Project will not be heard by the City Council until after the 90-day period, which expired on April 26, 2023. The City participated in consultations with three tribes: the Gabrieleno Band of Mission Indians – Kizh Nation, the Juaneno Band of Mission Indians, Acjachemen Nation-Belardes, and the Gabrielino Tongva Indians of California. Based on consultation with the participating Native American Tribes, conditions of approval have been included to address potential concerns regarding the protection of Tribal Cultural Resources.

### *Charter Section 423 Analysis*

#### Finding:

Charter Section 423 requires voter approval of any major General Plan amendment to the General Plan. A major General Plan amendment is one that significantly increases allowed density or intensity by 40,000 square feet of non-residential floor area, increases traffic by more than 100 peak hour vehicle trips (AM/PM), or increases residential dwelling units by 100 units. These thresholds apply to the total of increases resulting from the amendment itself, plus 80% of the increases resulting from other amendments affecting the same neighborhood (defined as a Statistical Area as shown in the General Plan Land Use Element) and adopted within the preceding 10 years.

Council Policy A-18 (Guidelines for Implementing Charter Section 423) requires that proposed amendments to the General Plan be reviewed to determine if a vote of the Newport Beach electorate would be required. This policy includes a provision that all General Plan amendments be tracked as “Prior Amendments” for 10 years to determine if minor amendments in a single Statistical Area cumulatively exceed the thresholds indicated above.

#### Facts in Support of Findings:

1. The Project is the first General Plan Amendment in Statistical Area L1 within the last 10 years that included additional dwelling units or non-residential floor area. The proposed amendment results in 64 additional dwelling units and no change in the square footage of non-residential floor area. Conversions of existing commercial development is allowed by the current General Plan (2,200 in-fill units maximum in the Airport Area based on conversion of existing commercial floor area). Reductions in commercial floor area are not tracked as part of the Charter Section 423 analysis. Density bonus units are not included in Charter Section 423 analysis nor the General Plan Anomaly calculations.
2. The 64 additional dwelling units result in a net increase of 24 a.m. peak hour trips and 25 p.m. peak hour trips based on the “Multifamily Housing (Mid Rise) Not Close to Rail” ITE 11<sup>th</sup> Edition trip rate for the proposed use, as provided in Council Policy A-18. No credit is given to the existing non-residential uses on-site because the existing office floor area was converted to residential dwelling units so that the proposed Project (less the density bonus and GPA units) is traffic neutral. Therefore, the Project individually does not exceed the Greenlight thresholds. Furthermore, since there have been no other applicable projects in the last 10 years, there is no need to analyze the cumulative development of 80% of prior

General Plan amendments from the last 10 years with the proposed project (i.e., cumulative analysis). As none of the thresholds specified by Charter Section 423 are exceeded, no vote of the electorate is required if the City Council chooses to approve the requested GPA.

### **Planned Community Development Plan Amendment**

An amendment to the Newport Place Planned Community Development Plan (PC-11), which is the zoning document for the Property, is a legislative act. Neither PC-11, Chapters 20.66 (Amendments), nor 20.56 (Planned Community Development District Procedures) of Title 20 (Planning and Zoning) of the NBMC, or Article 2 (Adoption of Regulations) of Chapter 4 (Zoning Regulations) of Division 1 (Planning and Zoning) of Title 7 (Planning and Land Use) of the California Government Code set forth any required findings for either approval or denial of such amendments to the NBMC.

However, the proposed amendment complies with the intent of Part III Residential Overlay of PC-11 as follows:

1. The proposed Project allocates 15% of the base units (23 dwelling units) as affordable for very-low-income households.
2. Given the location of subject property in the Airport Area which includes a mixture of service uses, hotels, Airport and commercial support services, professional offices, and new residential developments that cumulatively contain the ingredients of a planned community, the proposed PC Amendment would not disrupt the existing uses within the Planned Community and would add to this diversity of uses, assisting the City in larger scale community planning and the provision of additional housing opportunities.
3. The Property is located within 85 feet of the Residential Overlay. The property nearest to the site within the Residential Overlay is 1300 Bristol Street, across Spruce Street. The property at 1300 Bristol has been approved but not yet constructed as a residential apartment project. The proposed project at 1400 Bristol Street includes a pedestrian bridge that would extend from the subject site to the approved residential project at 1300 Bristol Street. The Project would be consistent with the anticipated future development of 1300 Bristol Street as well other adjacent properties within the Residential Overlay of PC-11. The proposed pedestrian bridge would support pedestrian connectivity that integrates the Project into the existing community and larger residential development that may occur in the future pursuant to Section F (Amenities and Neighborhood Integration) of the PCDP Amendment.
4. The Project would be subject to the appropriate site and project specific setbacks, density, and height limits for this urban location. All required parking is provided on-site. The Project compiles with the development standards identified for the Residential Overlay, except as modified by the allowed development standard waivers identified in the Affordable Housing Implementation Plan. The Residential Overlay provides a density range for proposed projects and references the Section 20.32 (Density Bonus) of the NBMC that prescribes the

maximum density bonus and incentives allowed. Although the PCDP Amendment references a maximum density bonus of 35%, the project requests a 50% density bonus, which is consistent with Section 20.32 (Density Bonus) of the NBMC that allows up to 80% density bonus depending on the percentage of affordable units being provided. Therefore, the proposed project is consistent with the intent of the density bonus assumptions in the Residential Overlay and within the maximum allowed by the density bonus provisions.

5. The PCDP Amendment requires a site development review in accordance with Section 20.52.080 of the NBMC. The Project includes a site development review, and all required findings are addressed below (Findings A through C below).
6. The PCDP Amendment requires the density for a residential development to be between 30 and 50 dwelling units per acre. The Project includes 153 base units, not including density bonus units. Since the Property is 2.28 acres in size, there is a base density of 67 dwelling units per acre. With the density bonus, there is a total of 229 dwelling units, which results in 96 units per acre. Both the base density and density bonus units are not consistent with the PCDP Amendment density requirement; however, the Applicant is requesting a development standard waiver which is required under California Government Code Section 65915(e) and Section 20.32.080 where application of the development standard would physically preclude construction of a density bonus project.
7. The Property is located near existing office buildings within the Airport Area and is not negatively impacted by noise, dust, smoke, vibration, odor, toxic or noxious matter that may be generated by existing commercial or industrial uses nearby.
8. Residential dwellings are to be permitted as replacement of existing nonresidential uses, and the number of peak hour trips generated by the Project is not to exceed the number of trips of the underlying permitted nonresidential use. The Property is developed with existing two-story commercial office buildings totaling 38,764 square feet. A standardized conversion rate of 2.29 dwelling units per 1,000 square feet of commercial floor area, as provided by the City Traffic Engineer, is required. This results in a total of 89 dwelling units, which is the proposed based density of the Project less the GPA units requested. The Applicant is requesting a GPA to increase the base units for the Project by 64 dwelling units. With a 50% density bonus or 77 dwelling units requested, a total of 229 dwelling units are proposed for the Project.
9. The Property is fully developed and does not support any natural resources and all potential environmental impacts associated with the Project are appropriately addressed through standard building permit procedures, conditions of approval, and the General Plan Policies identified in the 2006 General Plan EIR and summarized in Attachment B (EIR Addendum).

### **Major Site Development Review**

In accordance with Section 20.52.080(F) (Site Development Reviews – Findings and Decisions) of the NBMC, the following findings and facts in support of such findings are set forth as follows:

Finding:

*A. The proposed development is allowed within the subject zoning district.*

Fact in Support of Finding:

1. The Property is located within Industrial Site 3 of PC-11. The Project includes a request to amend Property's land use designation to be included as a part of the Residential Overlay of PC-11. The residential overlay allows for residential development consistent with the requested MU-H2 land use designation and subject to site development review.

Finding:

*B. The proposed development is in compliance with all of the following applicable criteria:*

- i. Compliance with this section, the General Plan, this Zoning Code, any applicable specific plan, and other applicable criteria and policies related to the use or structure;*
- ii. The efficient arrangement of structures on the site and the harmonious relationship of the structures to one another and to other adjacent developments; and whether the relationship is based on standards of good design;*
- iii. The compatibility in terms of bulk, scale, and aesthetic treatment of structures on the site and adjacent developments and public areas;*
- iv. The adequacy, efficiency, and safety of pedestrian and vehicular access, including drive aisles, driveways, and parking and loading spaces;*
- v. The adequacy and efficiency of landscaping and open space areas and the use of water efficient plant and irrigation materials; and*
- vi. The protection of significant views from public right(s)-of-way and compliance with NBMC Section 20.30.100 (Public View Protection).*

Facts in Support of Finding:

1. Refer to Facts under *General Plan Amendment and Planned Community Development Plan Amendment*, above that discuss the Project's consistency with the proposed Mixed Use Horizontal 2 (MU-H2) General Plan land use designation and the PC-11 (Newport Place Planned Community Development Plan) Zoning District including the Residential Overlay.
2. The proposed six-story residential building would be approximately 85 feet in height inclusive of architectural elements and rooftop mechanical equipment. The architecture would be high-quality and incorporate neutral colors with stone/tile, metal, and glass features. The proposed pedestrian bridge is designed to match the architectural style of the proposed building and the approved, but not yet constructed apartment building at 1300

Bristol Street. The pedestrian bridge includes “see-through” elements that reduce its mass and scale. The Project’s building mass including the pedestrian bridge are compatible with the surrounding office developments and anticipated future development.

3. The Project includes a variety of enhanced amenities such as private balconies for most of the units, an outdoor courtyard with pool and spa, a clubroom, a fitness center, roof deck, lounge area, and media room.
4. The Project includes 422 onsite parking spaces located in a gated parking structure. Therefore, upon completion of the Project, there would be adequate onsite parking exceeding the minimum required residential standard pursuant to State Density Bonus Law. The parking is largely screened from public view, with two of the three levels located entirely below grade and landscaping buffers around the first floor parking structure.
5. The Project site is generally flat and bordered by existing office buildings and developed roadways. The City’s General Plan does not identify any scenic vistas or view points on or proximate to the Project site. The nearest public view point to the Project site identified in the City’s General Plan is approximately 0.5 mile south at Bayview Park. The nearest coastal view designated portion of Jamboree Road is approximately 2,000 feet south of the site. Due to the distance and highly urbanized nature of the Project area, public coastal views along this view corridor would not be impacted by the Project.

Finding:

- C. The proposed development is not detrimental to the harmonious and orderly growth of the City, nor will it endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of person residing or working in the neighborhood of the proposed development.*

Facts in Support of Finding:

1. The Project has been designed to ensure that potential conflicts with surrounding uses are minimized to the extent possible to maintain a healthy environment for both surrounding businesses and residents by providing an architecturally pleasing project with articulation and building modulations to enhance the urban environment.
2. The proposed residential building has been designed to accommodate and provide safe access for emergency vehicles, delivery trucks, and refuse collections vehicles, as determined by the City Traffic Engineer. A Fire Department turnaround area is provided on-site at the rear of the property. Refuse collection is accommodated via an on-site staging area along the private driveway (accessed from Bristol Street) to ensure safe maneuvering by refuse vehicles. As conditioned, the project will also be required to accommodate sufficient queuing for vehicles onsite, so that vehicles waiting to enter the garage will not cause impacts to the Spruce Street right-of-way.
3. The Project site is located approximately 0.45-mile of the southernmost John Wayne Airport runway and is within the notification area of the AELUP for John Wayne Airport. However, the Project is below the maximum transitional imagery surface heights, and thus the Project

is within the building height limits of the AELUP. The property is located partially within the updated 65dBA CNEL noise contours for John Wayne Airport and Safety Zone 6 (Traffic Pattern Zone), where the likelihood of an accident is low. Consistent with the residential overlay, the Project shall be required to comply with conditions specified in Section 20.30.080(F) (Noise-Airport Environs Land Use Plan), including provisions of noise study, sound attenuation design features, and notice to all future residents of potential annoyances or inconveniences associated with residing in proximity to airport operations.

4. The Project will comply with all Building, Public Works, Fire Codes, City ordinances, and all conditions of approval.
5. As conditioned, the proposed pedestrian bridge shall be required to comply with standards of the Caltrans Highway Design Manual, which includes a minimum vertical clearance above the Spruce Street right-of-way. The final design of the bridge will be subject to City review, which will ensure that the bridge is constructed in a manner that will not obstruct views for motorists, cyclists, or pedestrians in the vicinity.

#### **Affordable Housing Implementation Plan**

The AHIP is consistent with the intent to implement affordable housing goals within the City pursuant to Government Code Sections 65915-65918 (State Density Bonus Law), and Title 20, Chapter 20.32 (Density Bonus) of the NBMC for the following reasons:

1. Consistent with the requested 50% density bonus, 23 units (15% of the base units) would be set aside as affordable units to lower income households. Lower income households are defined as households with 80% or less of the area median income, adjusted for family size for minimum term of 55 years for very low-income households. The Project is consistent the provisions of the Residential Overlay of Newport Place Planned Community, which requires a minimum of 15% of base units to be set aside for lower income households.
2. The State Density Bonus Law and the City's Density Bonus Code (NBCM Section 20.32 Density Bonus) provide for an increase in the number of units above General Plan and zoning limits for projects that include a minimum of 15% of the base units affordable to very-low-income households earning 50% or less of area median income. The Project's inclusion of 23 very-low-income units, which is 15% of the base unit count of 153 units makes the Project eligible for 77 additional units. Inclusive of all base units, density bonus units, and affordable units the total project includes 229 units.
3. In addition to the 77 density bonus units and parking reductions, the Project is entitled under California Government Code Section 65915(d), Section 20.32.070, to receive up to three incentives or concessions that would result in identifiable, financially sufficient, and actual cost reductions. The Project includes a development concession for the proposed affordable unit mix that does not meet Section 20.32.070 (Design and Distribution of Affordable Units) of the NBMC.

Section 20.32.070 (Design and Distribution of Affordable Units) of the NBMC requires affordable units in a density bonus project reflect the same range of unit types in the



residential development as a whole. In this case, the Project provides a higher percentage of affordable studio units and fewer affordable two-bedroom units compared to market rate units. Granting this incentive will result in identifiable, financially sufficient, and actual project cost reductions by reducing the long-term rental subsidy costs associated with the two-bedroom units and affording additional rental income for the project to ensure financial feasibility.

The reduction in park in-lieu fees would allow the applicant to contribute to the overall fund for parks in the Airport Area, while providing identifiable cost reduction that make the provision of affordable units feasible.

4. In addition to the density bonus units, parking reductions, and concessions, the Project is entitled under California Government Code Section 65915(e), Section 20.32.080, and recent caselaw to receive waivers or reductions of development standards where application of the development standard would physically preclude construction of a density bonus project. In this case, the following development standards are entitled to waiver:
  - a. Park dedication requirement. General Plan Land Use Policy LU 6.15.13 requires a public park equal to 8% of the gross land area of the development, or a minimum one-half acre, whichever is greater, be provided. In this case, the 1.97-acre Project site is too small to feasibly accommodate a half-acre park.
  - b. Residential density. General Plan Land Use Policy LU 6.15.7 requires residential density between 30-50 units per acre. Inclusive of only the conversion units, the density would comply at 37 dwelling units per acre. Including the proposed GPA units, conversion units, and density bonus units, the Project would not comply at a density of 96 dwelling units per acre and a waiver is necessary to implement the project.
  - c. Street setbacks. The Newport Place Planned Community (PC-11) requires street setbacks of 30 feet from property lines. In this case, 30-foot setbacks along Bristol Street and Spruce Street would substantially decrease the development of the footprint of the Project. The Project is designed with 8-foot setbacks to Spruce Street and 18-foot setbacks to Bristol Street.
  - d. Building height. The Newport Place Planned Community (PC-11) limits building height to 55 feet from established grade. In this case, a higher building height is necessary to accommodate 229 residential units. The Project is designed with a height of approximately 85 feet from established grade.
  - e. Private open space. NBMC Section 20.18.030 (Residential Zoning Districts General Development Standards) requires a minimum of 5 percent of the gross floor area of each unit to be provided as open space. The Project's studio dwelling units and nine of the two-bedroom units (including 4 units which provide only 2 square feet less than the private open space requirement) are unable to achieve these minimum private open space standards given their size and location.
  - f. Common open space. NBMC Section 20.18.030 (Residential Zoning Districts General Developments Standards) requires a minimum of 75 square feet per unit be provided as common open space area. In this case, the requirement is 17,175 square feet (75

square feet per unit x 229 units). The Project as designed provides approximately 13,800 square feet of common open space due to space limitations on the 2.38-acre lot.

### **Traffic Study**

In accordance with Section 15.40.030 (Traffic Phasing Ordinance- Standards for Approval-Findings-Exemptions) of the NBMC, the following findings and facts in support of such findings are set forth:

#### **Finding:**

- A. *That a traffic study for the project has been prepared in compliance with this chapter and Appendix A [NBMC Chapter 15.40],*

#### **Fact in Support of Finding:**

1. A traffic study, entitled 1400 Bristol Street North Residences Traffic Impact Analysis, prepared by Ganddini Group, Inc., dated June 28, 2023, was prepared for the Project in compliance with Municipal Code Chapter 15.40 (Traffic Phasing Ordinance and Appendix A).

#### **Finding:**

- D. *That, based on the weight of the evidence in the administrative record, including the traffic study, one of the findings for approval in subsection 15.40.030(B) can be made:*
- i. *Construction of the project will be completed within 60 months of project approval in accordance with Section 15.40.030(B)(1) of the NBMC.*
  - ii. *Additionally, the project will neither cause nor make worse an unsatisfactory level of traffic service at any impacted intersection in accordance with Section 15.40.030(B)(1)(a) of the NBMC.*

#### **Facts in Support of Finding:**

1. Based on the weight of the evidence in the administrative record, including the Traffic Study, and the conditions of approval, all of the findings for approval in Section 15.40.030(B)(1)(a) can be made in that:
  - a. The Project is anticipated to be completed by the end of 2026, well within the 60-month criteria. Therefore, the Traffic Study addresses the entire project development.
  - b. The Traffic Study provides an evaluation of morning and evening peak hours at 13 existing intersections that are located in the City and the adjoining City of Irvine.
  - c. The Project is projected to generate an additional (i.e. net increase of) 624 daily trips, including 26 peak AM trips and 34 peak PM trips. When these trips distributed to these studied intersections, the analysis concludes that there is no significant impact as the

Project will neither cause nor make worse an unsatisfactory level of service at any impacted primary intersection, and all intersections are forecasted to continue to operate at acceptable Levels of Service.

Finding:

*B. That the project proponent has agreed to make or fund the improvements, or make the contributions, that are necessary to make the findings for approval and to comply with all conditions of approval.*

Fact in Support of Finding:

1. No improvements or mitigation are necessary because implementation of the Project will neither cause nor make worse an unsatisfactory level of traffic service at any impacted primary intersection within the City of Newport Beach. The applicant will be required to pay any applicable Traffic Fair Share fees for the net increase in vehicles trips, which will be used to fund future planned improvements to the City's circulation system. The Applicant will also be subject to the payment of San Joaquin Hills Transportation Corridor Fees.

**Development Agreement**

In accordance with Section 15.45.020(A)(2)(a) (Development Agreement Required) of the NBMC, a development agreement is required as the Project requires an amendment to the General Plan and PC-11 that includes the development of more than fifty residential units. In this case the Project has a total of 229 residential units. The proposed development agreement satisfies the requirements of Chapter 15.45 (Development Agreements) of the NBMC as follows:

1. A development agreement is requested by the Applicant, as the Project would include a total of 229 residential units and a General Plan amendment. The development agreement includes all the mandatory elements including a term of 10 years and public benefits that are appropriate to support conveying the vested development rights consistent with the City's General Plan, the NBMC, and Government Code Sections 65864 *et seq.*
2. Public benefits include the payment of a public safety fee to satisfy any obligation the Project could have to provide new emergency response services or Fire Department equipment to serve the Airport Area whether a Community Facilities District is formed or not. The Applicant has also agreed to pay a separate public benefit fee to be used by the City Council as it deems appropriate.

SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

The Planning Commission of the City of Newport Beach hereby recommends the following to the City Council:

- 52

Exhibit G – Traffic Study

Exhibit H – Conditions of Approval

**EXHIBIT "A"**  
**Legal Description**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

THAT PORTION OF BLOCK 50 OF IRVINE'S SUBDIVISION, AS SHOWN ON A MAP RECORDED IN BOOK 1, PAGE 88 OF MISCELLANEOUS RECORDS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, TOGETHER WITH THAT PORTION OF TRACT 706, AS SHOWN ON A MAP RECORDED IN BOOK 21, PAGE 25 OF MISCELLANEOUS MAPS, RECORDS OF SAID ORANGE COUNTY, DESCRIBED AS FOLLOWS:

PARCEL 2 IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP FILED IN BOOK 54, PAGE 11 OF PARCEL MAPS IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA.

EXCEPT THE FULL RIGHTS TO ALL MINERALS, PETROLEUM, GAS AND OTHER HYDROCARBON SUBSTANCES EXISTING BELOW FIVE HUNDRED (500) FEET FROM THE SURFACE OF SAID REAL PROPERTY DESCRIBED ABOVE, PROVIDED, HOWEVER, THAT GRANTOR HEREBY EXPRESSLY WAIVES THE RIGHT TO ENTER UPON THE SURFACE OF SAID REAL PROPERTY FOR THE PURPOSE OF EXPLORING FOR, OR PRODUCING THE MINERALS, PETROLEUM, GAS AND OTHER HYDROCARBON SUBSTANCES SO RESERVED IN DEED RECORDED JULY 1, 1977.

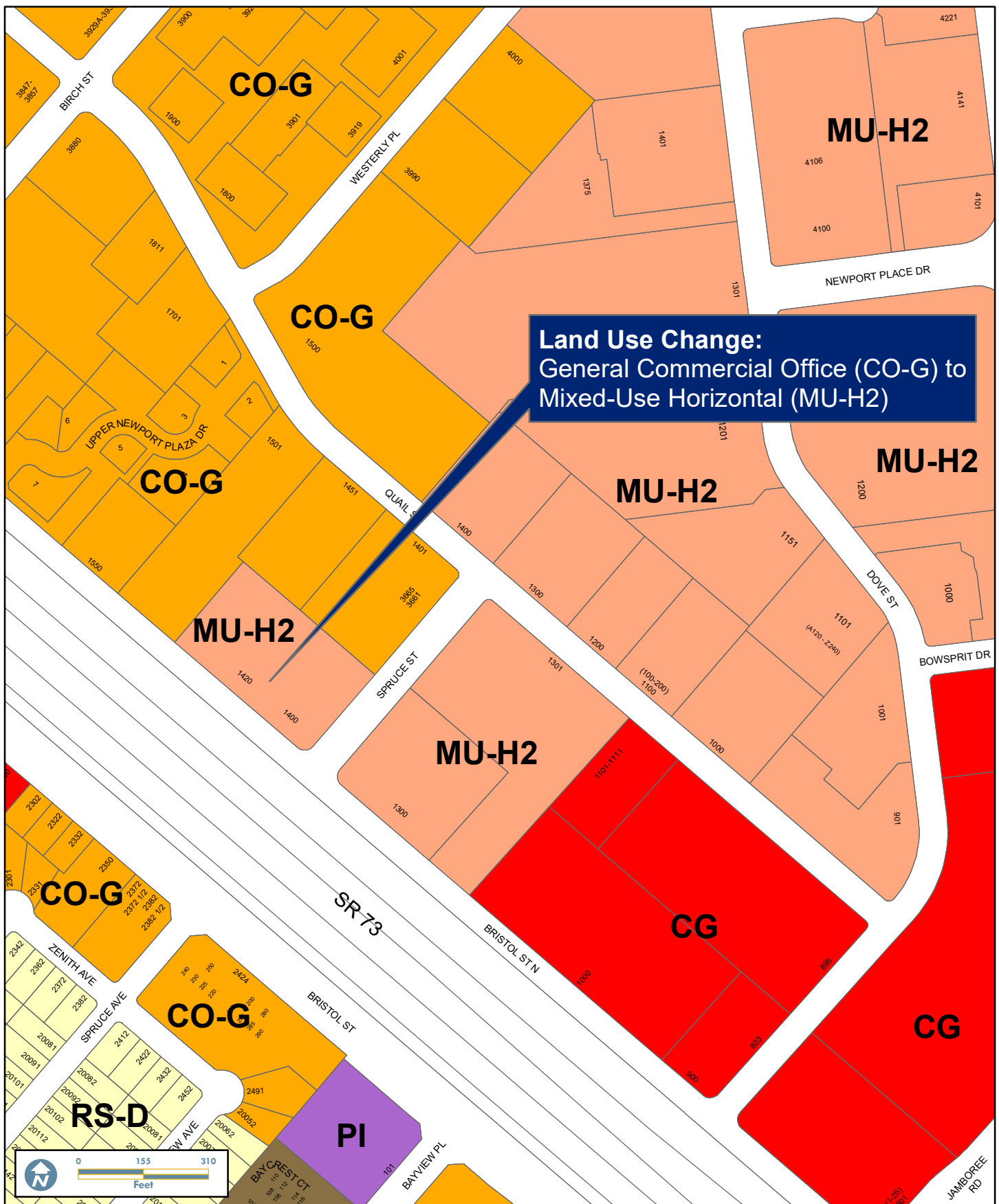
**EXHIBIT “B”**

**ADDENDUM TO THE 2006 GENERAL PLAN UPDATE (SCH NO. 2006011119)**

Available separately due to bulk at:  
[www.newportbeachca.gov/ceqa](http://www.newportbeachca.gov/ceqa)

**EXHIBIT “C”**  
**General Plan Amendment**





## PA2022-0296 General Plan Amendment 1400 Bristol St N

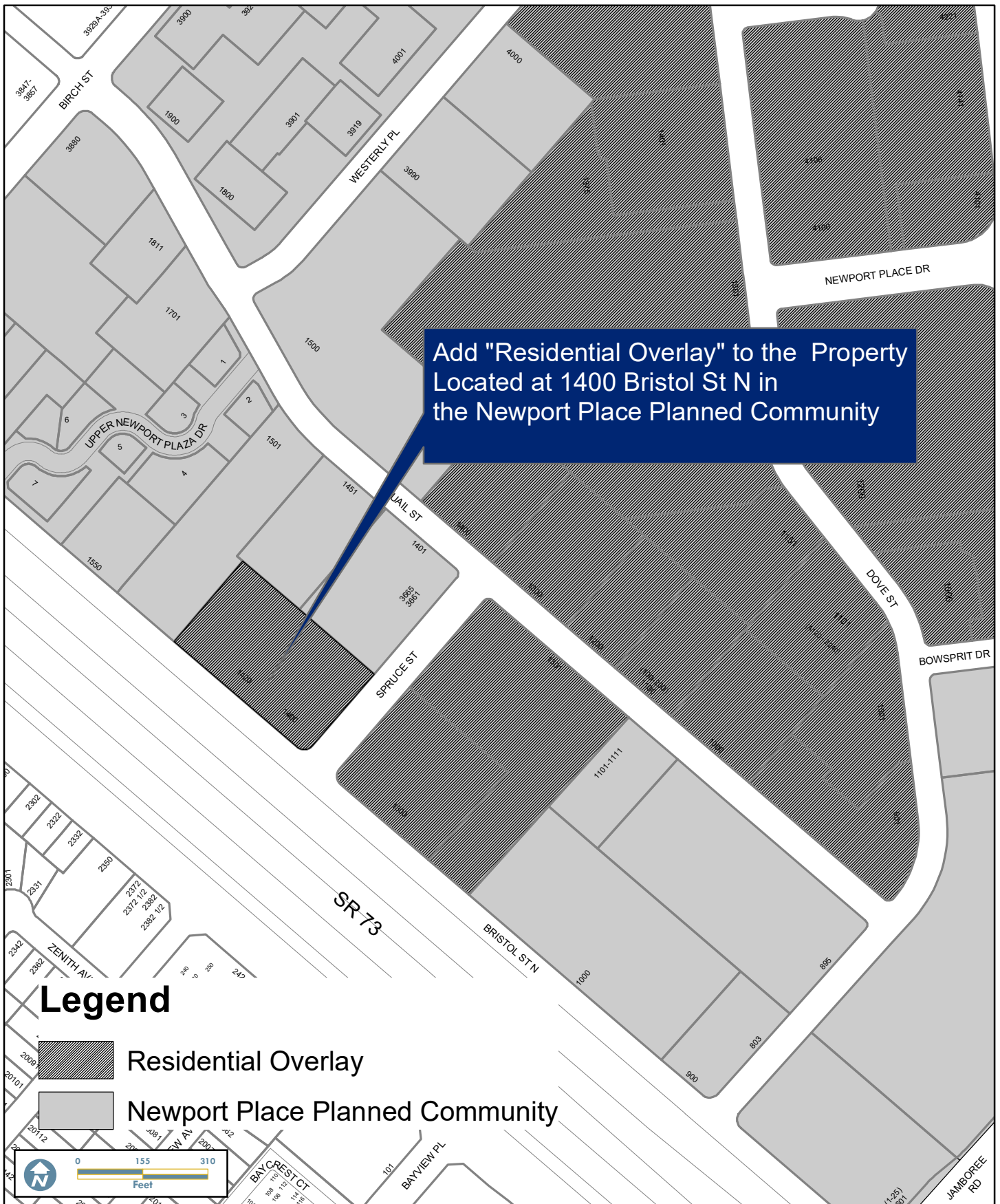


City of Newport Beach  
GIS Division  
November 22, 2023

**Table LU2    Anomaly Locations**

<b>Anomaly Number</b>	<b>Statistical Area</b>	<b>Land Use Designation</b>	<b>Development Limit (sf)</b>	<b>Development Limit (Other)</b>	<b>Additional Information</b>
16	L4	CO-G/ <u>MU-H2</u>	344,231	<u>64 Dwelling Units</u>	<u>89 dwelling units were converted from two existing 38,764 square foot office buildings consistent with LU 6.15.5 and 64 units were added through a GPA at 1400 Bristol Street (PA2022-0296)</u>

**EXHIBIT “D”**  
**Planned Community Development Plan Amendment**



**PA2022-0296**  
**PC-11 Newport Place Amendment**  
**1400 Bristol St N**



City of Newport Beach  
 GIS Division  
 November 22, 2023

**EXHIBIT “E”**  
**Development Agreement**

**Exhibit “E”**

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

City of Newport Beach  
3300 Newport Boulevard  
Newport Beach, CA 92663-3884  
Attn: City Clerk

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(Space Above This Line Is for Recorder’s Use Only)

This Agreement is recorded at the request and for the benefit of the City of Newport Beach and is exempt from the payment of a recording fee pursuant to Government Code §§ 6103 and 27383.

**DEVELOPMENT AGREEMENT**

**between**

**CITY OF NEWPORT BEACH**

**and**

**THE PICERNE GROUP**

**CONCERNING**

**“THE RESDENCES AT 1400 BRISTOL STREET ”**

## **DEVELOPMENT AGREEMENT**

### **(Pursuant to California Government Code Sections 65864-65869.5)**

This DEVELOPMENT AGREEMENT (the “Agreement”) is dated for reference purposes as of the \_\_\_ day of \_\_\_\_\_, 2024 (the “Agreement Date”), and is being entered into by and between the City of Newport Beach (“City”), and The Picerne Group, a California limited company “Property Owner”). City and Property Owner are sometimes collectively referred to in this Agreement as the “Parties” and individually as a “Party.”

### **RECITALS**

A. Property Owner is the owner of that certain real property located in the City of Newport Beach, County of Orange, State of California commonly referred to as 1400 Bristol Street and more particularly described in the legal description attached as Exhibit “A” and depicted on the site map attached hereto as Exhibit “B” (“Property”). The Property consists of approximately 2.38 acres and is a part of the Newport Place Planned Community shown on the City’s Zoning Map.

B. In order to encourage investment in, and commitment to, comprehensive planning and public facilities financing, strengthen the public planning process and encourage private implementation of the local general plan, provide certainty in the approval of projects in order to avoid waste of time and resources, and reduce the economic costs of development by providing assurance to property owners that they may proceed with projects consistent with existing land use policies, rules, and regulations, the California Legislature adopted California Government Code Sections 65864-65869.5 (the “Development Agreement Statute”) authorizing cities and counties to enter into development agreements with persons or entities having a legal or equitable interest in real property located within their jurisdiction.

C. On March 13, 2007, the City Council adopted Ordinance No. 2007-6, entitled “Ordinance Amending Chapter 15.45 of City of Newport Beach Municipal Code Regarding Development Agreements” (the “Development Agreement Ordinance”). This Agreement is consistent with the Development Agreement Ordinance.

D. The Parties wish to enter into Agreement for the construction of a multi-unit residential project consisting of 229 apartment units (including affordable units) atop of 422-space parking structure.

E. As detailed in Section 3 of this Agreement, Property Owner has agreed to provide the following significant public benefits as consideration for this Agreement: INSERT PUBLIC BENEFITS.

F. This Agreement is consistent with the City of Newport Beach General Plan (“General Plan”), including without limitation the General Plan’s designation of the Property as “MU-H2” (Mixed Use Horizontal 2) which provides for a horizontal intermixing of uses that may include regional commercial office, multifamily residential, vertical mixed-use buildings, industrial, hotel rooms, and ancillary neighborhood commercial uses and the Newport Place Planned Community that was adopted in 1970 by Ordinance No. 1369, and amended from time to

time, in order to establish appropriate zoning to regulate land use and development of property within the general boundaries of the Newport Place Planned Community.

G. In recognition of the significant public benefits that this Agreement provides, the City Council finds that this Agreement: (i) is consistent with the City of Newport Beach General Plan as of the date of this Agreement; (ii) is in the best interests of the health, safety, and general welfare of City, its residents, and the public; (iii) is entered into pursuant to, and constitutes a present exercise of, City's police power; (iv) Project's Addendum to the Environmental Impact Report (SCH# 20060111119) ("PEIR") that was certified by the City Council on July 25, 2006 for the 2006 General Plan Update and the Initial Study/Negative Declaration prepared in accordance with CEQA for the Newport Beach Housing Element Update (General Plan Amendment No. GP2008-003) adopted by the City Council on November 22, 2011 (the PEIR and Initial Study/Negative Declaration are collectively referred to herein as the "PEIR"), all of which analyze the environmental effects of the proposed development of the Project on the Property, and all of the findings, conditions of approval and mitigation measures related thereto; and (v) is consistent and has been approved consistent with provisions of California Government Code Section 65867 and City of Newport Beach Municipal Code chapter 15.45.

H. On December 7, 2023, City's Planning Commission held a public hearing on this Agreement, and made findings and determinations with respect to this Agreement, and recommended to the City Council that the City Council approve this Agreement.

I. On[INSERT DATE], the City Council held a public hearing on this Agreement and considered the Planning Commission's recommendations and the testimony and information submitted by City staff, Property Owner, and members of the public. On INSERT DATE, consistent with applicable provisions of the Development Agreement Statute and Development Agreement Ordinance, the City Council adopted its Ordinance No. 2024-\_\_\_ (the "Adopting Ordinance"), finding this Agreement to be consistent with the City of Newport Beach General Plan and approving this Agreement.

### AGREEMENT

NOW, THEREFORE, City and Property Owner agree as follows:

1. Definitions.

In addition to any terms defined elsewhere in this Agreement, the following terms when used in this Agreement shall have the meanings set forth below:

"Action" shall have the meaning ascribed in Section 8.10 of this Agreement.

"Adopting Ordinance" shall mean City Council Ordinance No. 2024-\_\_\_ approving and adopting this Agreement.

"Agreement" shall mean this Development Agreement, as the same may be amended from time to time.

"Agreement Date" shall mean INSERT DATE which date is the date the City Council adopted the Adopting Ordinance.



“CEQA” shall mean the California Environmental Quality Act (California Public Resources Code Sections 21000-21177) and the implementing regulations promulgated thereunder by the Secretary for Resources (California Code of Regulations, Title 14, Section 15000 *et seq.*) (“CEQA Guidelines”), as the same may be amended from time to time.

“City” shall mean the City of Newport Beach, a California charter city.

“City Council” shall mean the governing body of City.

“City’s Affiliated Parties” shall have the meaning ascribed in Section 10.1 of this Agreement.

“Claim” shall have the meaning ascribed in Section 10.1 of this Agreement.

“CPI Index” shall mean the Consumer Price Index published from time to time by the United States Department of Labor, Bureau of Labor Statistics for all urban consumers (all items) for the Los Angeles-Long Beach-Anaheim, California Area, All Urban Consumers, All Items, Base Period (1982-84=100), or, if such index is discontinued, such other similar index as may be publicly available that is selected by City in its reasonable discretion.

“Cure Period” shall have the meaning ascribed in Section 8.1 of this Agreement.

“Default” shall have the meaning ascribed to that term in Section 8.1 of this Agreement.

“Develop” or “Development” shall mean to improve or the improvement of the Property for the purpose of completing the structures, improvements, and facilities comprising the Project, including but not limited to: grading; the construction of infrastructure and public facilities related to the Project, whether located within or outside the Property; the construction of all of the private improvements and facilities comprising the Project; the preservation or restoration, as required of natural and man-made or altered open space areas; and the installation of landscaping. The terms “Develop” and “Development,” as used herein, do not include the maintenance, repair, reconstruction, replacement, or redevelopment of any structure, improvement, or facility after the initial construction and completion thereof.

“Development Agreement Ordinance” shall mean Chapter 15.45 of the City of Newport Beach Municipal Code.

“Development Agreement Statute” shall mean California Government Code Sections 65864-65869.5, inclusive.

“Development Exactions” shall mean any requirement of City in connection with or pursuant to any ordinance, resolution, rule, or official policy for the dedication of land, the construction or installation of any public improvement or facility, or the payment of any fee or charge in order to lessen, offset, mitigate, or compensate for the impacts of Development of the Project on the environment or other public interests.

“Development Plan” shall mean all of the land use entitlements, approvals and permits approved by the City for the Project on or before the Agreement Date, as the same may be amended from time to time consistent with this Agreement. Such land use entitlements, approvals and

permits include, without limitation, the following: (1) the Development rights as provided under this Agreement; (2) the amendment to the Newport Place Planned Community (PC-11) adopted pursuant to Ordinance No. 1369 and as amended by Ordinance No. 2024-\_\_\_; (3) General Plan Amendment adopted pursuant to Resolution No. 2024-\_\_\_; (4) Major Site Development Review adopted pursuant to Resolution No. 2024-\_\_\_; (5) Affordable Housing Implementation Plan adopted pursuant to Resolution No. 2024-\_\_\_; and Traffic Study adopted pursuant to Resolution No. 2024-\_\_\_.

“Development Regulations” shall mean the following regulations as they are in effect as of the Agreement Date and to the extent they govern or regulate the development of the Property, but excluding any amendment or modification to the Development Regulations adopted, approved, or imposed after the Agreement Date that impairs or restricts Property Owner’s rights set forth in this Agreement, unless such amendment or modification is expressly authorized by this Agreement or is agreed to by Property Owner in writing: the General Plan, the Development Plan, and, to the extent not expressly superseded by the Development Plan or this Agreement, all other land use and subdivision regulations governing the permitted uses, density and intensity of use, design, improvement, and construction standards and specifications, procedures for obtaining required City permits and approvals for development, and similar matters that may apply to development of the Project on the Property during the Term of this Agreement that are set forth in Title 15 of the Municipal Code (buildings and construction), Title 19 of the Municipal Code (subdivisions) and Title 20 of the Municipal Code (planning and zoning), but specifically excluding all other sections of the Municipal Code, including without limitation Title 5 of the Municipal Code (business licenses and regulations). Notwithstanding the foregoing, the term “Development Regulations,” as used herein, does not include any City ordinance, resolution, code, rule, regulation or official policy governing any of the following: (i) the conduct of businesses, professions, and occupations; (ii) taxes and assessments; (iii) the control and abatement of nuisances; (iv) the granting of encroachment permits and the conveyance of rights and interests which provide for the use of or entry upon public property; or (v) the exercise of the power of eminent domain.

“Effective Date” shall mean the latest of the following dates, as applicable: (i) the date that is thirty (30) days after the Agreement Date; (ii) if a referendum concerning the Adopting Ordinance, the Development Plan, or any of the Development Regulations approved on or before the Agreement Date is timely qualified for the ballot and a referendum election is held concerning the Adopting Ordinance or any of such Development Regulations, the date on which the referendum is certified resulting in upholding and approving the Adopting Ordinance and the Development Regulations; or (iii) if a lawsuit is timely filed challenging the validity of the Adopting Ordinance, this Agreement, and/or any of the Development Regulations approved on or before the Agreement Date, the date on which said challenge is finally resolved in favor of the validity or legality of the Adopting Ordinance, this Agreement, the Development Plan and/or the applicable Development Regulations, which such finality is achieved by a final non-appealable judgment, voluntary or involuntary dismissal (and the passage of any time required to appeal an involuntary dismissal), or binding written settlement agreement. Promptly after the Effective Date occurs, the Parties agree to cooperate in causing an appropriate instrument to be executed and recorded against the Property memorializing the Effective Date.

“Environmental Laws” means all federal, state, regional, county, municipal, and local laws, statutes, ordinances, rules, and regulations which are in effect as of the Agreement Date, and all federal, state, regional, county, municipal, and local laws, statutes, rules, ordinances, rules, and

regulations which may hereafter be enacted and which apply to the Property or any part thereof, pertaining to the use, generation, storage, disposal, release, treatment, or removal of any Hazardous Substances, including without limitation the following: the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601, et seq., as amended (“CERCLA”); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901, et seq., as amended (“RCRA”); the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. Sections 11001 et seq., as amended; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., as amended; the Clean Air Act, 42 U.S.C. Sections 7401 et seq., as amended; the Clean Water Act, 33 U.S.C. Section 1251, et seq., as amended; the Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq., as amended; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Sections 136 et seq., as amended; the Federal Safe Drinking Water Act, 42 U.S.C. Sections 300f et seq., as amended; the Federal Radon and Indoor Air Quality Research Act, 42 U.S.C. Sections 7401 et seq., as amended; the Occupational Safety and Health Act, 29 U.S.C. Sections 651 et seq., as amended; and California Health and Safety Code Section 25100, et seq.

“General Plan” shall mean City’s 2006 General Plan adopted by the City Council on July 25, 2006, by Resolution No. 2006-76, as amended through the Agreement Date but excluding any amendment after the Agreement Date that impairs or restricts Property Owner’s rights set forth in this Agreement, unless such amendment is expressly authorized by this Agreement, is authorized by Sections 8 or 9, or is specifically agreed to by Property Owner. The Land Use Plan of the Land Use Element of the General Plan was approved by City voters in a general election on November 7, 2006.

“Hazardous Substances” means any toxic substance or waste, pollutant, hazardous substance or waste, contaminant, special waste, industrial substance or waste, petroleum or petroleum-derived substance or waste, or any toxic or hazardous constituent or additive to or breakdown component from any such substance or waste, including without limitation any substance, waste, or material regulated under or defined as “hazardous” or “toxic” under any Environmental Law.

“Mortgage” shall mean a mortgage, deed of trust, sale and leaseback arrangement, or any other form of conveyance in which the Property, or a part or interest in the Property, is pledged as security and contracted for in good faith and for fair value.

“Mortgagee” shall mean the holder of a beneficial interest under a Mortgage or any successor or assignee of the Mortgagee.

“Notice of Default” shall have the meaning ascribed in Section 8.1 of this Agreement.

“Party” or “Parties” shall mean either City or Property Owner or both, as determined by the context.

“Project” shall mean all on-site and off-site improvements that Property Owner is authorized and/or may be required to construct with respect to each parcel of the Property, as provided in this Agreement and the Development Regulations, as the same may be modified or amended from time to time consistent with this Agreement and applicable law.

“Property” is described in Exhibit “A” and generally depicted on Exhibit “B”.

“Property Owner” shall mean The Picerne Group, a California limited liability company and any successor or assignee to all or any portion of the right, title, and interest in and to ownership of all or a portion of the Property.

“Public Benefit Fee” shall have the meaning ascribed in Section 3.1 of this Agreement.

“Subsequent Development Approvals” shall mean all discretionary development and building approvals that Property Owner is permitted to obtain to Develop the Project on and with respect to the Property after the Agreement Date consistent with the Development Regulations.

“Term” shall have the meaning ascribed in Section 2.4 of this Agreement.

“Termination Date” and “Lot Termination Date” shall have the meaning ascribed in Section 2.4 of this Agreement.

“Transfer” shall have the meaning ascribed in Section 11 of this Agreement.

## 2. General Provisions.

### 2.1 Plan Consistency, Zoning Implementation.

This Agreement and the Development Regulations applicable to the Property are consistent with the General Plan and the Newport Place Planned Community Development Plan (PC-11) as amended by the approvals in the Development Plan adopted concurrently herewith (including but not limited to the amendment to the General Plan and Newport Place Planned Community Development Plan (PC-47)).

### 2.2 Binding Effect of Agreement.

The Property is hereby made subject to this Agreement. Development of the Property is hereby authorized and shall be carried out in accordance with the terms of this Agreement.

### 2.3 Property Owner Representations and Warranties Regarding Ownership of the Property and Related Matters Pertaining to this Agreement.

Property Owner and each person executing this Agreement on behalf of Property Owner hereby represents and warrants to City as follows: (i) Property Owner or any co-owner comprising Property Owner is a legal entity and that such entity is duly formed and existing and is authorized to do business in the State of California; (ii) if Property Owner or any co-owner comprising Property Owner is a natural person that such natural person has the legal right and capacity to execute this Agreement; (iii) that all actions required to be taken by all persons and entities comprising Property Owner to enter into this Agreement have been taken and that Property Owner has the legal authority to enter into this Agreement; (iv) Property Owner’s entering into and performing its obligations set forth in this Agreement will not result in a violation of any obligation, contractual or otherwise, that Property Owner or any person or entity comprising Property Owner has to any third party; (v) that neither Property Owner nor any co-owner comprising Property Owner is the subject of any voluntary or involuntary petition in bankruptcy; and (vi) Property Owner has the authority and ability to enter into or perform any of its obligations set forth in this Agreement.

## 2.4 Term.

The term of this Agreement (the “Term” shall commence on the Effective Date and continue until \_\_\_\_\_ 20\_\_, unless otherwise terminated or modified pursuant to its terms.

Notwithstanding any other provision set forth in this Agreement to the contrary, if any Party reasonably determines that the Effective Date will not occur because (i) the Adopting Ordinance or any of the Development Regulations approved on or before the Agreement Date for the Project has/have been disapproved by City’s voters at a referendum election or (ii) a final non-appealable judgment is entered in a judicial action challenging the validity or legality of the Adopting Ordinance, this Agreement, and/or any of the Development Regulations for the Project approved on or before the Agreement Date such that this Agreement and/or any of such Development Regulations is/are invalid and unenforceable in whole or in such a substantial part that the judgment substantially impairs such Party’s rights or substantially increases its obligations or risks hereunder or thereunder, then such Party, in its sole and absolute discretion, shall have the right to terminate this Agreement upon delivery of a written notice of termination to the other Party, in which event neither Party shall have any further rights or obligations hereunder except that Property Owner’s indemnity obligations set forth in Article 10 shall remain in full force and effect and shall be enforceable, and the Development Regulations applicable to the Project and the Property only (but not those general Development Regulations applicable to other properties in the City) shall be repealed by the City after delivery of said notice of termination except for the Development Regulations that have been disapproved by City’s voters at a referendum election and, therefore, never took effect.

The Termination Date shall be the earliest of the following dates: (i) the tenth (10<sup>th</sup>) anniversary of the Effective Date; (ii) such earlier date that this Agreement may be terminated in accordance with Articles 5, 7, and/or Section 8.3 of this Agreement and/or Sections 65865.1 and/or 65868 of the Development Agreement Statute; or (iii) completion of the Project in accordance with the terms of this Agreement, including Property Owner’s complete satisfaction, performance, and payment, as applicable, of all Development Exactions, the issuance of all required final occupancy permits, and acceptance by City or applicable public agency(ies) or private entity(ies) of all required offers of dedication.

Notwithstanding any other provision set forth in this Agreement to the contrary, the provisions set forth in Article 10 and Section 14.11 (as well as any other Property Owner obligations set forth in this Agreement that are expressly written to survive the Termination Date) shall survive the Termination Date of this Agreement.

## 3. Public Benefits.

### 3.1 Public Benefit Fee.

As consideration for City’s approval and performance of its obligations set forth in this Agreement, Property Owner shall pay to City a fee that shall be in addition to any other fee or charge to which the Property and the Project would otherwise be subject to (herein, the “Public Benefit Fee”) in the total sum of INSERT DOLLAR AMOUNT (\$) which shall be due and payable prior to the issuance of the first building permit for the Project.

The City has not designated a specific project or purpose for the Public Benefit Fee. Owner acknowledges by its approval and execution of this Agreement that it is voluntarily agreeing to pay the Public Benefit Fee and that its obligation to pay the Public Benefit Fee is an essential term of this Agreement and is not severable from City's obligations and Owner's vested rights to be acquired hereunder, and that Owner expressly waives any constitutional, statutory, or common law right it might have in the absence of this Agreement to protest or challenge the payment of the Public Benefits identified in this Section 3.1 on any ground whatsoever, including without limitation pursuant to the Fifth and Fourteenth Amendments to the United States Constitution, California Constitution Article I Section 19, the Mitigation Fee Act (California Government Code Section 66000 *et seq.*), or otherwise. In addition to any other remedy set forth in this Agreement for Owner's default, if Owner shall fail to timely pay any portion of the Public Benefits identified in this Section 3.1 when due, City shall have the right to withhold issuance of any further building permits, occupancy permits, or other development or building permits for the Project.

3.2 Consumer Price Index (CPI) Increases. Any fee provided in this Section 3 (Public Benefit) shall be increased based upon percentage increases in the CPI Index as provided herein. The first CPI adjustment shall occur on the first anniversary of the City Council's adoption of the Adopting Ordinance (the first "Adjustment Date") and subsequent CPI adjustments shall occur on each anniversary of the first Adjustment Date thereafter until expiration of the Term of this Agreement (each, an "Adjustment Date"). The amount of the CPI adjustment on the applicable Adjustment Date shall in each instance be calculated based on the then most recently available CPI Index figures such that, for example, if the Effective Date of this Agreement falls on July 1 and the most recently available CPI Index figure on the first Adjustment Date (January 1 of the following year) is the CPI Index for November of the preceding year, the percentage increase in the CPI Index for that partial year (a 6-month period) shall be calculated by comparing the CPI Index for November of the preceding year with the CPI Index for May of the preceding year (a 6-month period). In no event, however, shall application of the CPI Index reduce the amount of the Public Benefit Fee (or unpaid portion thereof) below the amount in effect prior to any applicable Adjustment Date.

3.2 Other Public Benefits. INSERT OTHER PUBLIC BENEFITS.

4. Development of Project.

4.1 Applicable Regulations; Property Owner's Vested Rights and City's Reservation of Discretion With Respect to Subsequent Development Approvals.

Other than as expressly set forth in this Agreement, during the Term of this Agreement, (i) Property Owner shall have the vested right to Develop the Project on and with respect to the Property in accordance with the terms of the Development Regulations and this Agreement and (ii) City shall not prohibit or prevent development of the Property on grounds inconsistent with the Development Regulations or this Agreement. Notwithstanding the foregoing, nothing herein is intended to limit or restrict City's discretion with respect to (i) review and approval requirements contained in the Development Regulations, (ii) exercise of any discretionary authority City retains under the Development Regulations, (iii) the approval, conditional approval, or denial of any Subsequent Development Approvals applied for by Property Owner, or that are required, for Development of the Project as of the Agreement Date provided that all such actions are consistent with the Development Regulations, or (iv) any environmental approvals that may be required

under CEQA or any other federal or state law or regulation in conjunction with any Subsequent Development Approvals that may be required for the Project, and in this regard, as to future actions referred to in clauses (i)-(iv) of this sentence, City reserves its full discretion to the same extent City would have such discretion in the absence of this Agreement. In addition, it is understood and agreed that nothing in this Agreement is intended to vest Property Owner's rights with respect to any laws, regulations, rules, or official policies of any other governmental agency or public utility company with jurisdiction over the Property or the Project; or any applicable federal or state laws, regulations, rules, or official policies that may be inconsistent with this Agreement and that override or supersede the provisions set forth in this Agreement, and regardless of whether such overriding or superseding laws, regulations, rules, or official policies are adopted or applied to the Property or the Project prior or subsequent to the Agreement Date.

Property Owner has expended and will continue to expend substantial amounts of time and money in the planning and entitlement process to permit Development of the Project in the future. Property Owner represents and City acknowledges that Property Owner would not make these expenditures without this Agreement, and that Property Owner is and will be making these expenditures in reasonable reliance upon obtaining vested rights to Develop the Project as set forth in this Agreement.

Property Owner may apply to City for permits or approvals necessary to modify or amend the Development specified in the Development Regulations, provided that unless this Agreement also is amended, the request does not propose an increase in the maximum density, intensity, height, or size of proposed structures, or a change in use that generates more peak hour traffic or more daily traffic. In addition, Property Owner may apply to City for approval of minor amendments to existing tentative tract maps, tentative parcel maps, or associated conditions of approval, consistent with City of Newport Beach Municipal Code Section 19.12.090. This Agreement does not constitute a promise or commitment by City to approve any such permit or approval, or to approve the same with or without any particular requirements or conditions, and City's discretion with respect to such matters shall be the same as it would be in the absence of this Agreement.

#### 4.2 No Conflicting Enactments.

Except to the extent City reserves its discretion as expressly set forth in this Agreement, during the Term of this Agreement City shall not apply to the Project or the Property any ordinance, policy, rule, regulation, or other measure relating to Development of the Project that is enacted or becomes effective after the Agreement Date to the extent it conflicts with this Agreement. This Section 4.2 shall not restrict City's ability to enact an ordinance, policy, rule, regulation, or other measure applicable to the Project pursuant to California Government Code Section 65866 consistent with the procedures specified in Section 4.3 of this Agreement. In *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, the California Supreme Court held that a construction company was not exempt from a city's growth control ordinance even though the city and construction company had entered into a consent judgment (tantamount to a contract under California law) establishing the company's vested rights to develop its property consistent with the zoning. The California Supreme Court reached this result because the consent judgment failed to address the timing of development. The Parties intend to avoid the result of the *Pardee* case by acknowledging and providing in this Agreement that Property Owner shall have the vested right to Develop the Project on and with respect to the Property at the rate, timing, and sequencing that

Property Owner deems appropriate within the exercise of Property Owner's sole subjective business judgment, provided that such Development occurs in accordance with this Agreement and the Development Regulations, notwithstanding adoption by City's electorate of an initiative to the contrary after the Agreement Date. No City moratorium or other similar limitation relating to the rate, timing, or sequencing of the Development of all or any part of the Project and whether enacted by initiative or another method, affecting subdivision maps, building permits, occupancy certificates, or other entitlement to use, shall apply to the Project to the extent such moratorium or other similar limitation restricts Property Owner's vested rights in this Agreement or otherwise conflicts with the express provisions of this Agreement.

#### 4.3 Reservations of Authority.

Notwithstanding any other provision set forth in this Agreement to the contrary, the laws, rules, regulations, and official policies set forth in this Section 4.3 shall apply to and govern the Development of the Project on and with respect to the Property.

4.3.1 Procedural Regulations. Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, and any other matter of procedure shall apply to the Property, provided that such procedural regulations are adopted and applied City-wide or to all other properties similarly situated in City.

4.3.2 Processing and Permit Fees. City shall have the right to charge and Property Owner shall be required to pay all applicable processing and permit fees to cover the reasonable cost to City of processing and reviewing applications and plans for any required Subsequent Development Approvals, building permits, excavation and grading permits, encroachment permits, and the like, for performing necessary studies and reports in connection therewith, inspecting the work constructed or installed by or on behalf of Property Owner, and monitoring compliance with any requirements applicable to Development of the Project, all at the rates in effect at the time fees are due.

4.3.3 Consistent Future City Regulations. City ordinances, resolutions, regulations, and official policies governing Development which do not conflict with the Development Regulations, or with respect to such regulations that do conflict, where Property Owner has consented in writing to the regulations, shall apply to the Property.

4.3.4 Development Exactions Applicable to Property. During the Term of this Agreement, Property Owner shall be required to satisfy and pay all Development Exactions at the time performance or payment is due to the same extent and in the same amount(s) that would apply to Property Owner and the Project in the absence of this Agreement; provided, however, that to the extent the scope and extent of a particular Development Exaction (excluding any development impact fee) for the Project has been established and fixed by City in the conditions of approval for any of the Development Regulations approved on or before the Agreement Date, City shall not alter, increase, or modify said Development Exaction in a manner that is inconsistent with such Development Regulations without Property Owner's prior written consent or as may be otherwise required pursuant to overriding federal or state laws or regulations (Section 4.3.5 hereinbelow). In addition, nothing in this Agreement is intended or shall be deemed to vest Property Owner against the obligation to pay any of the following (which are not included within the definition of "Development Exactions") in the full amount that would apply in the absence of this Agreement:



(i) City's normal fees for processing, environmental assessment and review, tentative tract and parcel map review, plan checking, site review and approval, administrative review, building permit, grading permit, inspection, and similar fees imposed to recover City's costs associated with processing, reviewing, and inspecting project applications, plans, and specifications; (ii) fees and charges levied by any other public agency, utility, district, or joint powers authority, regardless of whether City collects those fees and charges; or (iii) community facility district special taxes or special district assessments or similar assessments, business license fees, bonds or other security required for public improvements, transient occupancy taxes, sales taxes, property taxes, sewer lateral connection fees, water service connection fees, new water meter fees, and the Property Development Tax payable under Chapter 3.12 of City's Municipal Code.

**4.3.5 Overriding Federal and State Laws and Regulations.** Federal and state laws and regulations that override Property Owner's vested rights set forth in this Agreement shall apply to the Property, together with any City ordinances, resolutions, regulations, and official policies that are necessary to enable City to comply with the provisions of any such overriding federal or state laws and regulations, provided that (i) Property Owner does not waive its right to challenge or contest the validity of any such purportedly overriding federal, state, or City law or regulation; and (ii) upon the discovery of any such overriding federal, state, or City law or regulation that prevents or precludes compliance with any provision of this Agreement, City or Property Owner shall provide to the other Party a written notice identifying the federal, state, or City law or regulation, together with a copy of the law or regulation and a brief written statement of the conflict(s) between that law or regulation and the provisions of this Agreement. Promptly thereafter City and Property Owner shall meet and confer in good faith in a reasonable attempt to determine whether a modification or suspension of this Agreement, in whole or in part, is necessary to comply with such overriding federal, state, or City law or regulation. In such negotiations, City and Property Owner agree to preserve the terms of this Agreement and the rights of Property Owner as derived from this Agreement to the maximum feasible extent while resolving the conflict. City agrees to cooperate with Property Owner at no cost to City in resolving the conflict in a manner which minimizes any financial impact of the conflict upon Property Owner. City also agrees to process in a prompt manner Property Owner's proposed changes to this Agreement, the Project and any of the Development Regulations as may be necessary to comply with such overriding federal, state, or City law or regulation; provided, however, that the approval of such changes by City shall be subject to the discretion of City, consistent with this Agreement.

**4.3.6 Public Health and Safety.** Any City ordinance, resolution, rule, regulation, program, or official policy that is necessary to protect persons on the Property or in the immediate vicinity from conditions dangerous to their health or safety, as reasonably determined by City, shall apply to the Property, even though the application of the ordinance, resolution, rule regulation, program, or official policy would result in the impairment of Property Owner's vested rights under this Agreement.

**4.3.7 Uniform Building Standards.** Existing and future building and building-related standards set forth in the uniform codes adopted and amended by City from time to time, including building, plumbing, mechanical, electrical, housing, swimming pool, and fire codes, and any modifications and amendments thereof shall all apply to the Project and the Property to the same extent that the same would apply in the absence of this Agreement.

4.3.8 Public Works Improvements. To the extent Property Owner constructs or installs any public improvements, works, or facilities, the City standards in effect for such public improvements, works, or facilities at the time of City's issuance of a permit, license, or other authorization for construction or installation of same shall apply.

4.3.9 No Guarantee or Reservation of Utility Capacity. Notwithstanding any other provision set forth in this Agreement to the contrary, nothing in this Agreement is intended or shall be interpreted to require City to guarantee or reserve to or for the benefit of Property Owner or the Property any utility capacity, service, or facilities that may be needed to serve the Project, whether domestic or reclaimed water service, sanitary sewer transmission or wastewater treatment capacity, downstream drainage capacity, or otherwise, and City shall have the right to limit or restrict Development of the Project if and to the extent that City reasonably determines that inadequate utility capacity exists to adequately serve the Project at the time Development is scheduled to commence.

5. Amendment or Cancellation of Agreement. This Agreement may be amended or canceled in whole or in part only by mutual written and executed consent of the Parties in compliance with California Government Code Section 65868 and Newport Beach Municipal Code Section 15.45.070 or by unilateral termination by City in the event of an uncured default of Property Owner.

6. Enforcement. Unless this Agreement is amended, canceled, modified, or suspended as authorized herein or pursuant to California Government Code Section 65869.5, this Agreement shall be enforceable by either Party despite any change in any applicable general or specific plan, zoning, subdivision, or building regulation or other applicable ordinance or regulation adopted by City (including by City's electorate) that purports to apply to any or all of the Property.

7. Annual Review of Property Owner's Compliance With Agreement.

7.1 General.

City shall review this Agreement once during every twelve (12) month period following the Effective Date for compliance with the terms of this Agreement as provided in Government Code Section 65865.1. Property Owner (including any successor to the Property Owner executing this Agreement on or before the Agreement Date) shall pay City a reasonable fee in an amount City may reasonably establish from time to time to cover the actual and necessary costs for the annual review. City's failure to timely provide or conduct an annual review shall not constitute a Default hereunder by City.

7.2 Property Owner Obligation to Demonstrate Good Faith Compliance.

During each annual review by City, Property Owner is required to demonstrate good faith compliance with the terms of the Agreement. Property Owner agrees to furnish such evidence of good faith compliance as City, in the reasonable exercise of its discretion, may require, thirty (30) days prior to each anniversary of the Effective Date during the Term.

7.3 Procedure. The Zoning Administrator shall conduct a duly noticed hearing and shall determine, on the basis of substantial evidence, whether or not Property Owner has, for the period under review, complied with the terms of this Agreement. If the Zoning Administrator finds that

Property Owner has so complied, the annual review shall be concluded. If the Zoning Administrator finds, on the basis of substantial evidence, that Property Owner has not so complied, written notice shall be sent to Property Owner by first class mail of the Zoning Administrator's finding of non-compliance, and Property Owner shall be given at least ten (10) calendar days to cure any noncompliance that relates to the payment of money and thirty (30) calendar days to cure any other type of noncompliance. If a cure not relating to the payment of money cannot be completed within thirty (30) calendar days for reasons which are beyond the control of Property Owner, Property Owner must commence the cure within such thirty (30) calendar days and diligently pursue such cure to completion. If Property Owner fails to cure such noncompliance within the time(s) set forth above, such failure shall be considered to be a Default and City shall be entitled to exercise the remedies set forth in Article 8 below.

#### 7.4 Annual Review a Non-Exclusive Means for Determining and Requiring Cure of Property Owner's Default.

The annual review procedures set forth in this Article 7 shall not be the exclusive means for City to identify a Default by Property Owner or limit City's rights or remedies for any such Default.

#### 8. Events of Default.

8.1 General Provisions. In the event of any material default, breach, or violation of the terms of this Agreement ("Default"), the Party alleging a Default shall deliver a written notice (each, a "Notice of Default") to the defaulting Party. The Notice of Default shall specify the nature of the alleged Default and a reasonable manner and sufficient period of time (ten (10) calendar days if the Default relates to the failure to timely make a monetary payment due hereunder and not less than thirty (30) calendar days in the event of non-monetary Defaults) in which the Default must be cured ("Cure Period"). During the Cure Period, the Party charged shall not be considered in Default for the purposes of termination of this Agreement or institution of legal proceedings. If the alleged Default is cured within the Cure Period, then the Default thereafter shall be deemed not to exist. If a non-monetary Default cannot be cured during the Cure Period with the exercise of commercially reasonable diligence, the defaulting Party must promptly commence to cure as quickly as possible, and in no event later than thirty (30) calendar days after it receives the Notice of Default, and thereafter diligently pursue said cure to completion. Notwithstanding the foregoing, the City is not required to give Property Owner notice of default and may immediately pursue remedies for a Property Owner Default that result in an immediate threat to public health, safety or welfare.

#### 8.2 Default by Property Owner.

If Property Owner is alleged to have committed a non-monetary Default and it disputes the claimed Default, it may make a written request for an appeal hearing before the City Council within ten (10) days of receiving the Notice of Default, and a public hearing shall be scheduled at the next available City Council meeting to consider Property Owner's appeal of the Notice of Default. Failure to appeal a Notice of Default to the City Council within the ten (10) day period shall waive any right to a hearing on the claimed Default. If Property Owner's appeal of the Notice of Default is timely and in good faith but after a public hearing of Property Owner's appeal the City Council concludes that Property Owner is in Default as alleged in the Notice of Default, the accrual date

for commencement of the thirty (30) day Cure Period provided in Section 8.1 shall be extended until the City Council's denial of Property Owner's appeal is communicated to Property Owner in writing.

### 8.3 City's Option to Terminate Agreement.

In the event of an alleged Property Owner Default, City may not terminate this Agreement without first delivering a written Notice of Default and providing Property Owner with the opportunity to cure the Default within the Cure Period, as provided in Section 8.1, and complying with Section 8.2 if Property Owner timely appeals any Notice of Default. A termination of this Agreement by City shall be valid only if good cause exists and is supported by evidence presented to the City Council at or in connection with a duly noticed public hearing to establish the existence of a Default. The validity of any termination may be judicially challenged by Property Owner. Any such judicial challenge must be brought within thirty (30) days of service on Property Owner, by first class mail, postage prepaid, of written notice of termination by City or a written notice of City's determination of an appeal of the Notice of Default as provided in Section 8.2.

### 8.4 Default by City.

If Property Owner alleges a City Default and alleges that the City has not cured the Default within the Cure Period, Property Owner may pursue any equitable remedy available to it under this Agreement, including, without limitation, an action for a writ of mandamus, injunctive relief, or specific performance of City's obligations set forth in this Agreement. Upon a City Default, any resulting delays in Property Owner's performance hereunder shall neither be a Property Owner Default nor constitute grounds for termination or cancellation of this Agreement by City and shall, at Property Owner's option (and provided Property Owner delivers written notice to City within thirty (30) days of the commencement of the alleged City Default), extend the Term for a period equal to the length of the delay.

### 8.5 Waiver.

Failure or delay by either Party in delivering a Notice of Default shall not waive that Party's right to deliver a future Notice of Default of the same or any other Default.

### 8.6 Specific Performance Remedy.

Due to the size, nature, and scope of the Project, it will not be practical or possible to restore the Property to its pre-existing condition once implementation of this Agreement has begun. After such implementation, both Property Owner and City may be foreclosed from other choices they may have had to plan for the development of the Property, to utilize the Property or provide for other benefits and alternatives. Property Owner and City have invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement. It is not possible to determine the sum of money which would adequately compensate Property Owner or City for such efforts. For the above reasons, City and Property Owner agree that damages would not be an adequate remedy if either City or Property Owner fails to carry out its obligations under this Agreement. Therefore, specific performance of this Agreement is necessary to compensate Property Owner if City fails

to carry out its obligations under this Agreement or to compensate City if Property Owner fails to carry out its obligations under this Agreement.

#### 8.7 Monetary Damages.

The Parties agree that monetary damages shall not be an available remedy for either Party for a Default hereunder by the other Party; provided, however, that (i) nothing in this Section 8.7 is intended or shall be interpreted to limit or restrict City's right to recover the Public Benefit Fees due from Property Owner as set forth herein; and (ii) nothing in this Section 8.7 is intended or shall be interpreted to limit or restrict Property Owner's indemnity obligations set forth in Article 10 or the right of the prevailing Party in any Action to recover its litigation expenses, as set forth in Section 8.10. In no event shall damages be awarded against the City upon an event of default or upon termination of this Agreement. Owner expressly agrees that the City, any City agencies and their respective elected and appointed councils, boards, commissions, officers, agents, employees, volunteers and representatives (collectively, for purposes of this Section 8.7, "City") shall not be liable for any monetary damage for a Default by the City or any claims against City arising out of this Agreement. Owner hereby expressly waives any such monetary damages against the City. The sole and exclusive judicial remedy for Owner in the event of a Default by the City shall be an action in mandamus, specific performance, or other injunctive or declaratory relief.

#### 8.8 Additional City Remedy for Property Owner's Default.

In the event of any Default by Property Owner, in addition to any other remedies which may be available to City, whether legal or equitable, City shall be entitled to receive and retain any Development Exactions applicable to the Project or the Property, including any fees, grants, dedications, or improvements to public property which it may have received prior to Property Owner's Default without recourse from Property Owner or its successors or assigns.

#### 8.9 No Personal Liability of City Officials, Employees, or Agents.

No City official, employee, or agent shall have any personal liability hereunder for a Default by City of any of its obligations set forth in this Agreement.

#### 8.10 Recovery of Legal Expenses by Prevailing Party in Any Action.

In any judicial proceeding, arbitration, or mediation (collectively, an "Action") between the Parties that seeks to enforce the provisions of this Agreement or arises out of this Agreement, the prevailing Party shall not recover any of its costs and expenses, regardless of whether they would be recoverable under California Code of Civil Procedure Section 1033.5 or California Civil Code Section 1717 in the absence of this Agreement. These costs and expenses include, but are not limited to, court costs, expert witness fees, attorneys' fees, City staff costs (including overhead), and costs of investigation and preparation before initiation of the Action.

#### 9. Force Majeure.

Neither Party shall be deemed to be in Default where failure or delay in performance of any of its obligations under this Agreement is caused, through no fault of the Party whose performance is prevented or delayed, by floods, earthquakes, other acts of God, fires, wars, riots or similar hostilities, strikes or other labor difficulties, state or federal regulations, or court actions.

Except as specified above, nonperformance shall not be excused because of the act or omission of a third person. In no event shall the occurrence of an event of force majeure operate to extend the Term of this Agreement. In addition, in no event shall the time for performance of a monetary obligation, including without limitation Property Owner's obligation to pay Public Benefit Fees, be extended pursuant to this Section.

10. Indemnity Obligations of Property Owner.

10.1 Indemnity Arising From Acts or Omissions of Property Owner.

Property Owner shall indemnify, defend, and hold harmless City and City's officials, employees, agents, attorneys, and contractors (collectively, the "City's Affiliated Parties") from and against all suits, claims, liabilities, losses, damages, penalties, obligations, and expenses (including but not limited to attorneys' fees and costs) (collectively, a "Claim") that may arise, directly or indirectly, from the acts, omissions, or operations of Property Owner or Property Owner's agents, contractors, subcontractors, agents, or employees in the course of Development of the Project or any other activities of Property Owner relating to the Property or pursuant to this Agreement. City shall have the right, in its sole discretion, to select and retain counsel to defend any Claim filed against City and/or any of City's Affiliated Parties, and Property Owner shall pay the reasonable cost for defense of any Claim. The indemnity provisions in this Section 10.1 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

10.2 Third Party Litigation.

In addition to its indemnity obligations set forth in Section 10.1, Property Owner shall indemnify, defend, and hold harmless City and City's Affiliated Parties from and against any Claim against City or City's Affiliated Parties seeking to attack, set aside, void, or annul the approval of this Agreement, the Adopting Ordinance, any of the Development Regulations for the Project (including without limitation any actions taken pursuant to CEQA with respect thereto), any Subsequent Development Approval, or the approval of any permit granted pursuant to this Agreement. Said indemnity obligation shall include payment of attorney's fees, expert witness fees, City staff costs, and court costs. City shall promptly notify Property Owner of any such Claim and City shall cooperate with Property Owner in the defense of such Claim. If City fails to promptly notify Property Owner of such Claim, Property Owner shall not be responsible to indemnify, defend, and hold City harmless from such Claim until Property Owner is so notified and if City fails to cooperate in the defense of a Claim Property Owner shall not be responsible to defend, indemnify, and hold harmless City during the period that City so fails to cooperate or for any losses attributable thereto. City shall be entitled to retain separate counsel to represent City against the Claim and the City's defense costs for its separate counsel shall be included in Property Owner's indemnity obligation, provided that such counsel shall reasonably cooperate with Property Owner in an effort to minimize the total litigation expenses incurred by Property Owner. In the event either City or Property Owner recovers any attorney's fees, expert witness fees, costs, interest, or other amounts from the party or parties asserting the Claim, Property Owner shall be entitled to retain the same (provided it has fully performed its indemnity obligations hereunder). The indemnity provisions in this Section 10.2 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

### 10.3 Environmental Indemnity.

In addition to its indemnity obligations set forth in Section 10.1, from and after the Agreement Date Property Owner shall indemnify, defend, and hold harmless City and City's Affiliated Parties from and against any and all Claims for personal injury or death, property damage, economic loss, statutory penalties or fines, and damages of any kind or nature whatsoever, including without limitation attorney's fees, expert witness fees, and costs, based upon or arising from any of the following: (i) the actual or alleged presence of any Hazardous Substance on or under any of the Property in violation of any applicable Environmental Law; (ii) the actual or alleged migration of any Hazardous Substance from the Property through the soils or groundwater to a location or locations off of the Property; and (iii) the storage, handling, transport, or disposal of any Hazardous Substance on, to, or from the Property and any other area disturbed, graded, or developed by Property Owner in connection with Property Owner's Development of the Project. The foregoing indemnity obligations shall not apply to any Hazardous Substance placed or stored on a separate legal lot within the Property after the Lot Termination Date for said lot, as provided in Section 2.4 of this Agreement. The indemnity provisions in this Section 10.3 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

### 11. Assignment.

Property Owner shall have the right to sell, transfer, or assign (hereinafter, collectively, a "Transfer") Property Owner's interest in or fee title to the Property, in whole or in part, to any person, partnership, joint venture, firm, or corporation (which successor, as of the effective date of the Transfer, shall become the "Property Owner" under this Agreement) at any time from the Agreement Date until the Termination Date; provided, however, that no such Transfer shall violate the provisions of the Subdivision Map Act (Government Code Section 66410 et seq.) or City's local subdivision ordinance and any such Transfer shall include the assignment and assumption of Property Owner's rights, duties, and obligations set forth in or arising under this Agreement as to the Property or the portion thereof so Transferred and shall be made in strict compliance with the following conditions precedent: (i) no transfer or assignment of any of Property Owner's rights or interest under this Agreement shall be made unless made together with the Transfer of all or a part of the Property; and (ii) prior to the effective date of any proposed Transfer, Property Owner (as transferor) shall notify City, in writing, of such proposed Transfer and deliver to City a written assignment and assumption, executed in recordable form by the transferring and successor Property Owner and in a form subject to the reasonable approval of the City Attorney of City (or designee), pursuant to which the transferring Property Owner assigns to the successor Property Owner and the successor Property Owner assumes from the transferring Property Owner all of the rights and obligations of the transferring Property Owner with respect to the Property or portion thereof to be so Transferred, including in the case of a partial Transfer the obligation to perform such obligations that must be performed off of the portion of the Property so Transferred that are a condition precedent to the successor Property Owner's right to develop the portion of the Property so Transferred. Any Permitted Transferee shall have all of the same rights, benefits, duties, obligations, and liabilities of Owner under this Agreement with respect to the portion of, or interest in, the Property sold, transferred, and assigned to such Permitted Transferee; provided, however, that in the event of a Transfer of less than all of the Property, or interest in the Property, no such Permitted Transferee shall have the right to enter into an amendment of this Agreement

that jeopardizes or impairs the rights or increases the obligations of the Owner with respect to the balance of the Property, without Owner's written consent.

Notwithstanding any Transfer, the transferring Property Owner shall continue to be jointly and severally liable to City, together with the successor Property Owner, to perform all of the transferred obligations set forth in or arising under this Agreement unless the transferring Property Owner is given a release in writing by City, which release shall be only with respect to the portion of the Property so Transferred in the event of a partial Transfer. City shall provide such a release upon the transferring Property Owner's full satisfaction of all of the following conditions: (i) the transferring Property Owner no longer has a legal or equitable interest in the portion of the Property so Transferred other than as a beneficiary under a deed of trust; (ii) the transferring Property Owner is not then in Default under this Agreement and no condition exists that with the passage of time or the giving of notice, or both, would constitute a Default hereunder; (iii) the transferring Property Owner has provided City with the notice and the fully executed written and recordable assignment and assumption agreement required as set forth in the first paragraph of this Section 11; and (iv) the successor Property Owner either (A) provides City with substitute security equivalent to any security previously provided by the transferring Property Owner to City to secure performance of the successor Property Owner's obligations hereunder with respect to the Property or the portion of the Property so Transferred or (B) if the transferred obligation in question is not a secured obligation, the successor Property Owner either provides security reasonably satisfactory to City or otherwise demonstrates to City's reasonable satisfaction that the successor Property Owner has the financial resources or commitments available to perform the transferred obligation at the time and in the manner required under this Agreement and the Development Regulations for the Project. Any determination by the City in regards to the second paragraph of Section 11 subpart (iv) (A) and/or (B) shall be documented in writing.

## 12. Mortgagee Rights.

### 12.1 Encumbrances on Property.

The Parties agree that this Agreement shall not prevent or limit Property Owner in any manner from encumbering the Property, any part of the Property, or any improvements on the Property with any Mortgage securing financing with respect to the construction, development, use, or operation of the Project.

### 12.2 Mortgagee Protection.

This Agreement shall be superior and senior to the lien of any Mortgage. Nevertheless, no breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value. Any acquisition or acceptance of title or any right or interest in the Property or part of the Property by a Mortgagee (whether due to foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination, or otherwise) shall be subject to all of the terms and conditions of this Agreement. Any Mortgagee who takes title to the Property or any part of the Property shall be entitled to the benefits arising under this Agreement.

### 12.3 Mortgagee Not Obligated.



Notwithstanding the provisions of this Section 12.3, a Mortgagee will not have any obligation or duty under the terms of this Agreement to perform the obligations of Property Owner or other affirmative covenants of Property Owner, or to guarantee this performance except that: (i) the Mortgagee shall have no right to develop the Project under the Development Regulations without fully complying with the terms of this Agreement; and (ii) to the extent that any covenant to be performed by Property Owner is a condition to the performance of a covenant by City, that performance shall continue to be a condition precedent to City's performance.

12.4 Notice of Default to Mortgagee; Right of Mortgagee to Cure.

Each Mortgagee shall, upon written request to City, be entitled to receive written notice from City of: (i) the results of the periodic review of compliance specified in Article 7 of this Agreement, and (ii) any default by Property Owner of its obligations set forth in this Agreement.

Each Mortgagee shall have a further right, but not an obligation, to cure the Default within ten (10) days after receiving a Notice of Default with respect to a monetary Default and within thirty (30) days after receiving a Notice of Default with respect to a non-monetary Default. If the Mortgagee can only remedy or cure a non-monetary Default by obtaining possession of the Property, then the Mortgagee shall have the right to seek to obtain possession with diligence and continuity through a receiver or otherwise, and to remedy or cure the non-monetary Default within thirty (30) days after obtaining possession and, except in case of emergency or to protect the public health or safety, City may not exercise any of its judicial remedies set forth in this Agreement to terminate or substantially alter the rights of the Mortgagee until expiration of the thirty (30)-day period. In the case of a non-monetary Default that cannot with diligence be remedied or cured within thirty (30) days, the Mortgagee shall have additional time as is reasonably necessary to remedy or cure the Default, provided the Mortgagee promptly commences to cure the non-monetary Default within thirty (30) days and diligently prosecutes the cure to completion.

13. Bankruptcy. The obligations of this Agreement shall not be dischargeable in bankruptcy.

14. Miscellaneous Terms.

14.1 Reserved.

14.2 Notices.

Any notice or demand that shall be required or permitted by law or any provision of this Agreement shall be in writing. If the notice or demand will be served upon a Party, it either shall be personally delivered to the Party; deposited by a reliable courier service that provides a receipt showing date and time of delivery with courier charges prepaid. The notice or demand shall be addressed as follows:

TO CITY:

City of Newport Beach  
100 Civic Center Drive  
Newport Beach, California 92660  
Attn: City Manager

With a copy to:

City of Newport Beach  
100 Civic Center Drive  
Newport Beach, California 92660  
Attn: City Attorney

TO PROPERTY OWNER:

Ken Picerne  
The Picerne Group  
5000 Birch Street, Ste. 600  
Newport Beach, CA 92660

Either Party may change the address stated in this Section 13.1 by delivering notice to the other Party in the manner provided in this Section 13.1, and thereafter notices to such Party shall be addressed and submitted to the new address. Notices delivered in accordance with this Agreement shall be deemed to be delivered upon the earlier of: (i) the date received or (iii) three business days after deposit in the mail as provided above.

#### 14.3 Project as a Private Undertaking.

Any future Development of the Project is a private undertaking. Neither Party will be acting as the agent of the other in any respect, and each Party will be an independent contracting entity with respect to the terms, covenants, and conditions set forth in this Agreement. This Agreement forms no partnership, joint venture, or other association of any kind. The only relationship between the Parties is that of a government entity regulating the Development of private property by the owner or user of the Property.

#### 14.4 Cooperation.

Each Party shall cooperate with and provide reasonable assistance to the other Party to the extent consistent with and necessary to implement this Agreement. Upon the request of a Party at any time, the other Party shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record the required instruments and writings and take any actions as may be reasonably necessary to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

#### 14.5 Estoppel Certificates.

At any time, either Party may deliver written notice to the other Party requesting that that Party certify in writing that, to the best of its knowledge: (i) this Agreement is in full force and effect and is binding on the Party; (ii) this Agreement has not been amended or modified either orally or in writing or, if this Agreement has been amended, the Party providing the certification shall identify the amendments or modifications; and (iii) the requesting Party is not in Default in the performance of its obligations under this Agreement and no event or situation has occurred that with the passage of time or the giving of Notice or both would constitute a Default or, if such is not the case, then the other Party shall describe the nature and amount of the actual or prospective Default.

The Party requested to furnish an estoppel certificate shall execute and return the certificate within thirty (30) days following receipt. Requests for the City to furnish an estoppel certificate shall include reimbursement for all administrative costs incurred by the City including reasonable attorney's fees incurred by the City in furnishing an estoppels certificate.

#### 14.6 Rules of Construction.

The singular includes the plural; the masculine and neuter include the feminine; "shall" is mandatory; and "may" is permissive.

#### 14.7 Time Is of the Essence.

Time is of the essence regarding each provision of this Agreement as to which time is an element.

#### 14.8 Waiver.

The failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, and failure by a Party to exercise its rights upon a Default by the other Party, shall not constitute a waiver of that Party's right to demand strict compliance by the other Party in the future.

#### 14.9 Counterparts.

This Agreement may be executed in two (2) or more counterparts, each of which shall be identical and may be introduced in evidence or used for any other purpose without any other counterpart, but all of which shall together constitute one (1) and the same agreement.

#### 14.10 Entire Agreement.

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter addressed in this Agreement.

#### 14.11 Severability.

The Parties intend that each and every obligation of the Parties is interdependent and interrelated with the other, and if any provision of this Agreement or the application of the provision to any Party or circumstances shall be held invalid or unenforceable to any extent, it is the intention of the Parties that the remainder of this Agreement or the application of the provision to persons or circumstances shall be rendered invalid or unenforceable. The Parties intend that neither Party shall receive any of the benefits of the Agreement without the full performance by such Party of all of its obligations provided for under this Agreement. Without limiting the generality of the foregoing, the Parties intend that Property Owner shall not receive any of the benefits of this Agreement if any of Property Owner's obligations are rendered void or unenforceable as the result of any third party litigation, and City shall be free to exercise its legislative discretion to amend or repeal the Development Regulations applicable to the Property and Property Owner shall cooperate as required, despite this Agreement, should third party litigation result in the nonperformance of Property Owner's obligations under this Agreement.

The provisions of this Section 14.11 shall apply regardless of whether the Effective Date occurs and after the Termination Date.

14.12 Construction.

This Agreement has been drafted after negotiation and revision. Both City and Property Owner are sophisticated parties who were represented by independent counsel throughout the negotiations or City and Property Owner had the opportunity to be so represented and voluntarily chose to not be so represented. City and Property Owner each agree and acknowledge that the terms of this Agreement are fair and reasonable, taking into account their respective purposes, terms, and conditions. This Agreement shall therefore be construed as a whole consistent with its fair meaning and applicable principle or presumptions of contract construction or interpretation, if any, shall be used to construe the whole or any part of this Agreement in favor of or against either Party.

14.13 Successors and Assigns; Constructive Notice and Acceptance.

The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to Development of the Property: (i) is for the benefit of and is a burden upon every portion of the Property; (ii) runs with the Property and each portion thereof; and (iii) is binding upon each Party and each successor in interest during its ownership of the Property or any portion thereof. Every person or entity who now or later owns or acquires any right, title, or interest in any part of the Project or the Property is and shall be conclusively deemed to have consented and agreed to every provision of this Agreement. This Section 14.13 applies regardless of whether the instrument by which such person or entity acquires the interest refers to or acknowledges this Agreement and regardless of whether such person or entity has expressly entered into an assignment and assumption agreement as provided for in Section 11.

14.14 No Third Party Beneficiaries.

The only Parties to this Agreement are City and Property Owner. This Agreement does not involve any third party beneficiaries, and it is not intended and shall not be construed to benefit or be enforceable by any other person or entity.

14.15 Applicable Law and Venue.

This Agreement shall be construed and enforced consistent with the internal laws of the State of California, without regard to conflicts of law principles. Any action at law or in equity arising under this Agreement or brought by any Party for the purpose of enforcing, construing, or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Orange, State of California, or the United States District Court for the Central District of California. The Parties waive all provisions of law providing for the removal or change of venue to any other court.

14.16 Section Headings.

All section headings and subheadings are inserted for convenience only and shall not affect construction or interpretation of this Agreement.

14.17 Incorporation of Recitals and Exhibits.

All of the Recitals are incorporated into this Agreement by this reference. Exhibits A and B are attached to this Agreement and incorporated by this reference as follows:

EXHIBIT DESIGNATION	DESCRIPTION
A	Legal Description of Property
B	Depiction of the Property

14.18 Recordation.

The City Clerk of City shall record this Agreement and any amendment, modification, or cancellation of this Agreement in the Office of the County Recorder of the County of Orange within the period required by California Government Code section 65868.5 and City of Newport Beach Municipal Code section 15.45.090. The date of recordation of this Agreement shall not modify or amend the Effective Date or the Termination Date.

**SIGNATURE PAGE TO  
DEVELOPMENT AGREEMENT**

**“OWNER”**

The Picerne Group, a California limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**“CITY”**

CITY OF NEWPORT BEACH, a municipal corporation and charter city

\_\_\_\_\_  
, Mayor

ATTEST:

\_\_\_\_\_  
Leilani I. Brown  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Aaron C. Harp, City Attorney

STATE OF CALIFORNIA  
COUNTY OF ORANGE

On \_\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signature on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public in and for  
said County and State

STATE OF CALIFORNIA  
COUNTY OF ORANGE

On \_\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signature on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public in and for  
said County and State

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

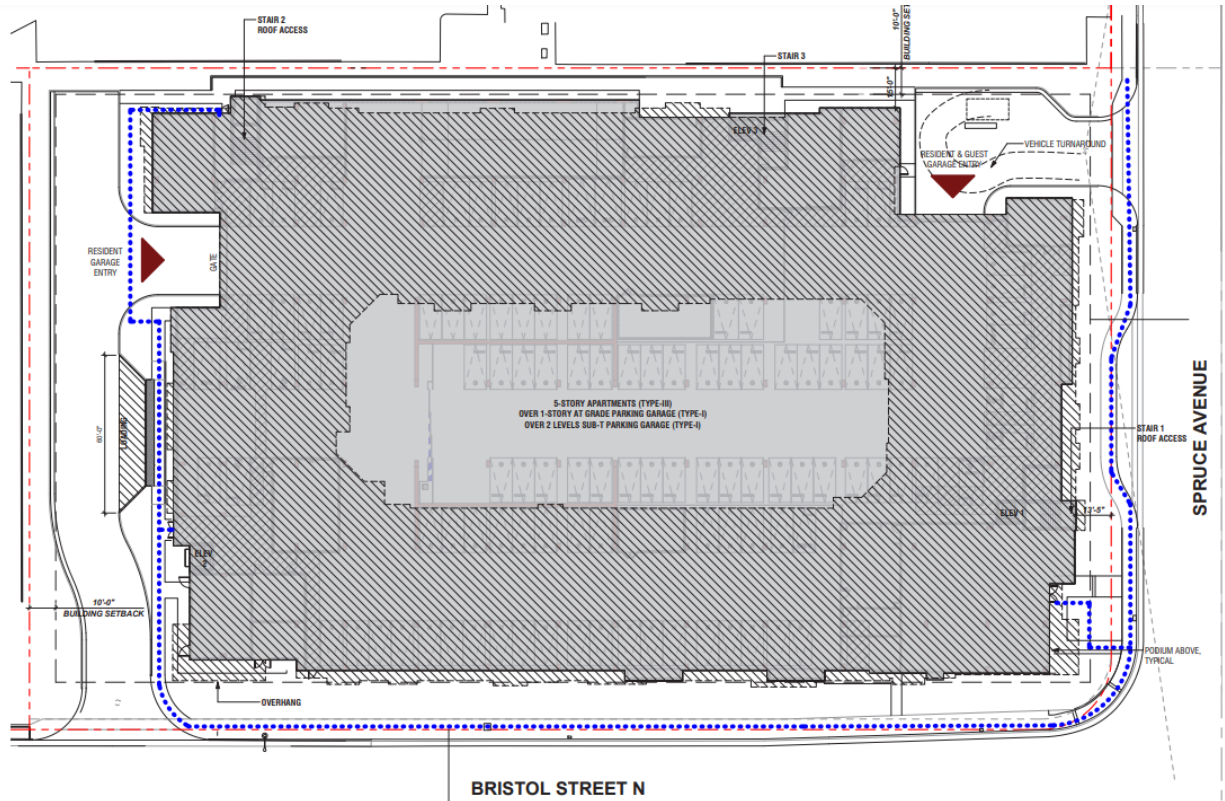
THAT PORTION OF BLOCK 50 OF IRVINE'S SUBDIVISION, AS SHOWN ON A MAP RECORDED IN BOOK 1, PAGE 88 OF MISCELLANEOUS RECORDS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, TOGETHER WITH THAT PORTION OF TRACT 706, AS SHOWN ON A MAP RECORDED IN BOOK 21, PAGE 25 OF MISCELLANEOUS MAPS, RECORDS OF SAID ORANGE COUNTY, DESCRIBED AS FOLLOWS:

PARCEL 2 IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP FILED IN BOOK 54, PAGE 11 OF PARCEL MAPS IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA.

EXCEPT THE FULL RIGHTS TO ALL MINERALS, PETROLEUM, GAS AND OTHER HYDROCARBON SUBSTANCES EXISTING BELOW FIVE HUNDRED (500) FEET FROM THE SURFACE OF SAID REAL PROPERTY DESCRIBED ABOVE, PROVIDED, HOWEVER, THAT GRANTOR HEREBY EXPRESSLY WAIVES THE RIGHT TO ENTER UPON THE SURFACE OF SAID REAL PROPERTY FOR THE PURPOSE OF EXPLORING FOR, OR PRODUCING THE MINERALS, PETROLEUM, GAS AND OTHER HYDROCARBON SUBSTANCES SO RESERVED IN DEED RECORDED JULY 1, 1977.



**EXHIBIT B**  
**DEPICTION OF PROPERTY**



**EXHIBIT “F”**  
**Affordable Housing Implementation Plan**

***1400 BRISTOL STREET NORTH***

***AFFORDABLE HOUSING IMPLEMENTATION PLAN AND DENSITY BONUS  
APPLICATION***

***August 11, 2023***

**Prepared by**

**Springbrook**   
**Realty Advisors, Inc.**

**1400 BRISTOL STREET NORTH**  
**AFFORDABLE HOUSING IMPLEMENTATION PLAN AND DENSITY BONUS**  
**APPLICATION**  
**August 11, 2023**

***Project Description & Affordability Level***

The Picerne Group (“Picerne”) is proposing the 1400 Bristol Street North development (“Project”) on a 2.38 acre site located in the Newport Place Planned Community (“Property”). The site is generally bounded by Bristol Street North on the South and Spruce Street on the East, with low rise office buildings and surface parking on the North and West sides. The Newport Beach General Plan designates the project site as General Commercial Office (CO-G) and the zoning is Planned Community (“PC”) 11, (“PC-11”). A General Plan Amendment to redesignate the site as Mixed Use Horizontal 2 (MU-H2) and a PC Amendment to include the property in the PC-11 Residential Overlay are being proposed as part of the overall project application. The site is currently developed as 1970’s era two story office buildings with surface parking.

The Project is planned to consist of 229 units including 153 base units and 76 density bonus units. The Newport Place Development Standards, as revised by Council Resolution No. 2023-13 on July 25, 2023 (“Development Standards”), provide that 15 percent of the base units within a residential development shall be affordable to Lower Income households. Lower Income Households, as defined in California Health and Safety Code Section 50079.5, are defined as households earning 80 percent or less of area median income, adjusted for family size, including both Very Low and Low income categories. The affordable housing requirement for this project, as required by the Development Standards, is 23 units (15% of 153 Base units).

***Eligibility for Density Bonus***

Picerne will be providing 23 units (15% of base units) affordable to Very Low Income households (“Very Low Income Units”). This will comply with the provisions of Government Code Section 65915 applicable to a 50% density bonus. Rents for the Very Low Income Units will be computed in accordance with Health and Safety Code Sec. 50053, as required by Government Code Section 65915(c)(1).

### ***Density Bonus Computation and Term of Affordability***

The density bonus computation for the Project per Government Code Section 65915 is shown below:

**Table 1**  
**Density Bonus Computation**

Units Based on Existing Nonresidential Uses	89
Additional Units Per Proposed General Plan Amendment <sup>1</sup>	64
Total Base Units	153
Density Bonus (50%)	77
Total Units Permitted	230
Total Units Provided	229

Picerne intends to operate the apartment project as a rental community. The 23 Very Low Income Units will remain rent restricted for a minimum of 55 years, per Government Code Section 65915(c)(1), more than the 30-year affordability term set forth in the Development Standards.

### ***Reduction in Parking***

As provided for in Government Code Sec. 65915(p) and Section 20.32.030 of the City's Zoning Code the 1400 Bristol Street North project is eligible for a reduction in parking requirements.

Government Code Section 65915(p) provides the following:

- (1) Upon the request of the developer, no city, county, or city and county shall require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivision (b), that exceeds the following ratios:
  - a. Zero to one bedroom: 1.0 onsite parking space per unit
  - b. Two to three bedrooms: 1.5 onsite parking spaces per unit.
- (2) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide "onsite parking" through tandem parking or uncovered parking, but not through street parking.

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<sup>1</sup> Per Section 423 of the City Charter, with approval of the proposed General Plan Amendment, up to an additional 100 dwelling units are permitted in the Airport Area by without a vote of the electorate.

Table 2 below is a summary of Government Code Sec. 65915 parking requirements vs. spaces to be provided:

**Table 2**  
**Parking Requirements**

<b>Unit Type</b>	<b>Number of Units</b>	<b>Stalls/Unit Per Gov. Code 65915</b>	<b>Total Stalls Per Gov. Code 65915</b>
Studio	40	1.0	40
1 Bedroom	126	1.0	126
2 Bedroom	63	1.5	95
Total Parking Stalls Required			261
Total Parking Stalls Provided			422
Parking Provided in Excess of Minimum Requirement			161

Picerne requests that parking requirements be calculated in accordance with Government Code Sec. 65915(p). As shown above, the Project will provide 422 onsite parking spaces for its residential units, which is 161 spaces more than the requirements of Sec. 65915 (p).

### ***Development Incentive Request***

Pursuant to Government Code Section 65915(d)(1) and Section 20.32 of the City's Zoning Code, Picerne is entitled to three concessions or incentives due to providing at least fifteen percent (15%) of the units as affordable for Very Low Income households. Picerne requests the following development incentive:

Section V.F.1 of the Development Standards provides that "Affordable units shall reflect the range of numbers of bedrooms provided in the residential development project as a whole." Picerne requests that the 23 Very Low Income units be provided utilizing the unit mixes as shown below:

**Table 3**  
**Unit Mix**

<b>Unit Type</b>	<b>Total Units</b>	<b>Very Low Income Units</b>
Studio	40	14
1 Bedroom	126	8
2 Bedroom	63	1
<b>Total</b>	<b>229</b>	<b>23</b>

This incentive will result in cost reductions which will provide for the affordable rents to be set in accordance with Government Code Sec. 65915(c). Pursuant to Government Code Sec. 65915(d)(1) “The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of any of the following:” (summarized from pertinent sections) (A) the concession or incentive does not result in identifiable and actual cost reductions, (B) would have an adverse impact on public health and safety or on a site listed as a historical site, or (C) is contrary to state or federal law. Government Code Sec. 65915(a)(2) further provides that a jurisdiction “shall not condition the submission, review, or approval of an application pursuant to this chapter on the preparation of an additional report or study that is not otherwise required by state law, including this section.”

Picerne reserves the right to request up to an additional two incentives or concessions in the future.

### ***Development Standards Waiver Request***

Government Code Sec. 65915(e)(1) provides that a city or county may not apply any development standard (including height limits) that will have the effect of physically precluding the construction of a density bonus project at the density permitted under the density bonus statute. The only exceptions to this prohibition are if the development standards waiver would have an impact on health and safety as delineated in Government Code Sec. 65589.5(d), impact on property listed in the California Register of Historical Resources, or if the development standards waiver would be contrary to state or federal law. For the proposed project, the applicant is requesting the following development standard waivers:

1. General Plan Park Dedication Requirement: Pursuant to General Plan Policy LU 16-15.13, a public park equal to 8 percent of the gross land area of the total development, or a minimum one-half-acre, whichever is greater, shall be provided. This requirement would mandate a one-half-acre park on the 2.38 acre site. The General Plan allows a waiver of its park dedication requirement where it can be demonstrated that the development parcels are too small to feasibly accommodate the park or inappropriately located to serve the needs of local residents. The applicant therefore requests waiver of the General Plan Policy LU 16-15.13 public park dedication requirement.
2. PC-11 Development Standards Deviation (30-foot Street Setback): PC-11 development standards require street setbacks of 30 feet from the property line. A 30-foot setback would substantially reduce the Project’s development footprint, making it infeasible and impossible to support the proposed 229 dwelling units. Applicant therefore requests a waiver of the PC-11 30-foot setbacks.
3. PC-11 Development Standards Deviation (Building Height): PC-11: The Development Standards limit building heights to 55 feet. Given the constraints imposed by the street setbacks, the perimeter road, and the utilities required to serve the Property, imposition of

the 55 foot height limit would physically preclude the development of the proposed 229 dwelling units. The proposed building height is 85 feet.

4. Private Open Space: Newport Beach Municipal Code Section 20.18.030 (Table 2-3) requires a minimum of 5% of the gross floor area of each unit to be set aside as private open space with a minimum dimension of 6 feet. The Project's studio dwelling units and 9 of the two-bedroom units (including 4 units which provide 2 sf less than the private open space requirement) are unable to achieve these minimum private open space standards given their size and location. Therefore, Applicant requests a waiver from this private open space requirement since adherence to this development standard would physically preclude the Project as proposed.
5. Newport Beach Municipal Code Common Open Space: Newport Beach Municipal Code Section 20.18.030 (Table 2-3) requires a minimum of 75 square feet/unit (17,175 sf total) to be designated as common open space. The applicant requests a waiver to reduce the 75 square feet/unit (17,175 sf total) requirement to approximately 60 square feet/unit (13,800 sf total, or 3,375 sf less than the City requirement). This waiver is necessary in order to accommodate the project's proposed density given the constraints imposed by the street setbacks, the perimeter road, and the utilities required to serve the project site.
6. General Plan Land Use Policy 6.15.7: General Plan Land Use Policy 6.15.7 (Overall Density and Housing Type) and Section IV.A.4 of the PC-11 zoning standards prescribe a density range of 30-50 dwelling units per acre ("du/ac"). The Project proposes 153 "base" units on a 2.38 acre parcel, which equates to 64 du/ac. The Project's 153 base units are comprised of 89 units from the conversion of the office building to residential and 64 additional units allocated to the Airport Area (Statistical Area L4) under the General Plan. The Project qualifies for a 50% density bonus (i.e., 77 units) in exchange for providing the necessary level of affordable housing. To the extent required, Applicant requests a waiver from the maximum base density standards under LU Policy 6.15.7 and Section IV.A.4 of the PC-11 in order to construct the Project at the density sought.

Additional detail as to these waiver requests has been submitted separately as part of the development application. Waiver of these requirements is necessary to accommodate the additional units permitted by the density bonus. Government Code Section 65915(e)(1) requires that the waiver requests be approved.

### ***Income Limits and Examples of Eligible Tenants for Affordable Homes***

Lower Income Households are defined as households whose gross income does not exceed 80% of area median income, adjusted for household size. Lower Income Households include Very Low Income Households whose gross income does not exceed 50% of area median income, adjusted for household size. Table 4 on the following page shows the maximum income limits for Very Low Income Households as determined by the U.S. Department of Housing and Urban Development and the California Department of Housing and Community Development ("HCD") with household sizes appropriate for the 1400 Bristol Street North project:



**Table 4**  
**Maximum Income Limits**

<b>Household Size</b>	<b>Very Low Income Households Maximum Annual Income - 2023/2024</b>
1 Person	\$50,250
2 Person	57,400
3 Person	64,600
4 Person	71,750
5 Person	77,500

Higher income limits apply to larger families; those families however are not considered to be a target market for the Project, where the unit mix consists of studios, one-bedroom, and two-bedroom apartment homes. These income limits are updated annually.

The 23 affordable homes that Picerne will provide will be rented to eligible Very Low Income Households. As shown in Table 4, Very Low Income Households includes incomes ranging from \$50,250 per year for a one-person household to \$77,500 per year for a five-person household.

As such this could include City employees, school district employees, health care workers, restaurant and other retail workers, and other occupations which provide needed services to our community. While household size, overtime pay, summer jobs, or second jobs may affect eligibility, the income limits above are reflective of pay to many public or health care sector workers, as shown in Table 5 on the following page:

**Table 5**  
**Examples of Qualifying Salaries**

<u>Position</u>	<u>Pay Range</u>	<u>Information</u> <u>Source</u>	<u>Comments</u>
Human Resources Specialist I	\$64,356-\$90,444	City	May qualify for Very Low units depending on household size.
Park Patrol Officer	\$45,420-\$63,924	City	Will qualify for Very Low Income units depending on household size.
Licensed Vocational Nurse (LVN)	\$60,000-\$87,000	Glassdoor	May qualify for Very Low units depending on household size.
Newport-Mesa Unified School District ("NMUSD") Teacher	\$64,354-\$98,740	NMUSD Website	Credentialed teacher with no advanced education and up to 5 years experience may qualify for Very Low Income units depending on household size.
NMUSD Library Technician.	\$46,020-\$55,932	NMUSD Website	At entry level will qualify for Very Low Income units.
NMUSD Maintenance Worker	\$57,468-\$85,116	NMUSD Website	May qualify for Very Low units depending on household size.

The pay ranges shown above are as of 2022 and are subject to update. Retired persons or couples or young business professionals starting their careers may also qualify to rent the affordable homes at 1400 Bristol Street North. In order to provide opportunities for workers to live in one of the affordable homes, the City could provide guidelines providing for acceptance of applications on a priority basis from classes of individuals who qualify under the income limits in effect. The guidelines could provide for priority treatment for City residents, City employees, employees of the local school district, and employees of major health care institutions or other categories identified by the City for priority treatment.

### ***Rental Rate Limits for Affordable Homes***

The 23 Very Low Income Units shall be rented at an affordable rent calculated in accordance with the provisions of Section 50053 of the Health and Safety Code. Section 50053 of the Health and Safety Code limits affordable rent to 30% of total income for a Very Low Income household, as calculated in Table 6 on the following page. That section also requires that the rent for a studio unit assumes a one-person household for rent calculation purposes, a one-bedroom unit assumes a two-person household, and a two-bedroom unit assumes a three-person household. The rents calculated are then adjusted by a utility allowance as determined annually by the County of Orange Housing & Community Services Department. As of October 1, 2022, the reduction for the utility allowance is \$149.00 per month for a studio unit, \$163.00 per month for a one-bedroom unit, and \$215.00 per month for a two-bedroom unit. The utility allowance utilized assumes gas cooking, gas space heating, gas water heating, as well as electricity, air conditioning, and water, sewer, and trash fees which are assumed to be paid by the tenant.

The maximum rent levels for 2023/24 by income level are shown in Table 6 on the next page:

**Table 6**  
**Maximum Rents by Bedroom Count**

<b>Bedrooms</b>	<b>Maximum Annual Rent</b>	<b>Maximum Monthly Rent</b>	<b>Utility Allowance</b>	<b>Affordable Rent</b>
<i>Very Low Income<sup>2</sup></i>				
Studio	\$13,418	\$1,118	\$149	\$969
1 Bedroom	15,338	1,278	163	1,115
2 Bedroom	17,250	1,438	215	1,223

Picerne will enter into an affordable housing agreement, in recordable form, with the City prior to obtaining the first building permit for any residential unit. That agreement will ensure that the maximum rents for the affordable apartment homes will be calculated using the methodologies as utilized in Table 6. The rental rates shown will be updated prior to the commencement of rental activities and on an ongoing basis to reflect then current income limits, utility allowances, and any changes in applicable regulations and statutes.

### ***Unit Mix, Design, and Location of Affordable Homes***

While the exact location of each of the affordable homes within the 1400 Bristol Street North site has not yet been determined, the affordable homes will be spread throughout the development to avoid concentration of affordable homes in any area. The affordable homes shall be comparable in the quality of construction and exterior design to the market rate homes. As provided for in the Development Standards, all affordable homes will have access to the facilities and amenities offered by the development.

### ***Requested City of Newport Beach Assistance***

#### **Financial Assistance**

Picerne is not requesting any direct financial assistance from the City of Newport Beach for this project.

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<sup>2</sup> Rents for Very Low Income units calculated in accordance with Section 50053 of the Health and Safety Code.

**EXHIBIT “G”**  
**Traffic Study**

# **1400 BRISTOL STREET NORTH RESIDENCES TRAFFIC IMPACT ANALYSIS**

City of Newport Beach

June 28, 2023



Traffic Engineering • Transportation Planning • Parking • Noise & Vibration  
Air Quality • Global Climate Change • Health Risk Assessment

# 1400 BRISTOL STREET NORTH RESIDENCES TRAFFIC IMPACT ANALYSIS

City of Newport Beach

June 28, 2023

*prepared by*

Bryan Crawford  
Giancarlo Ganddini, PE, PTP



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Project No. 19604

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## EXECUTIVE SUMMARY

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The purpose of this study is to evaluate the potential for transportation impacts resulting from development of the proposed project both in the context of the City of Newport Beach's discretionary authority for conformance with locally established operational standards and the California Environmental Quality Act (CEQA). Although this is a technical report, effort has been made to write the report clearly and concisely. A glossary is provided in Appendix A to assist the reader with terms related to transportation engineering.

This study was prepared in consultation with City of Newport Beach staff and in accordance with the procedures and methodologies for assessing transportation impacts established by the City of Newport Beach. To assess the project's conformance with local operational standards, this study evaluates the project's effect on traffic operations in accordance with the City's Traffic Phasing Ordinance (TPO) and, if necessary, identifies recommended improvements or corrective measures to alleviate operational deficiencies substantially caused or worsened by the proposed project. In addition to existing (2022) conditions, this report analyzes forecast traffic conditions for year 2027 (one year after project opening).

For CEQA purposes, this study also evaluates the significance of project-related transportation impacts using cumulative methodology as well as vehicle miles traveled (VMT) analysis relative to criteria established by the City of Newport Beach as the lead agency and, if necessary, identifies any feasible mitigation measures to mitigate any significant impacts. Additionally, analysis was also prepared for Year 2027 cumulative and Post 2030 General Plan Buildout conditions in support of the project's proposed addendum to the 2006 General Plan Environmental Impact Report (EIR).

### *Project Description*

The 2.38-acre project site is addressed at 1400 and 1420 Bristol Street North, located at the northwest corner of Bristol Street North and Spruce Street, in the City of Newport Beach, California. The project site is currently developed with existing office buildings totaling 38,764 square feet.

The proposed project involves demolition of the existing office buildings and construction of a new six-story podium apartment building comprised of 230 residential dwelling units (207 market rate and 23 affordable units), podium level amenity space, a business center/leasing office, and 422 parking spaces in an on-grade parking garage with two subterranean levels. Vehicular access is proposed to be maintained at Spruce Street with the existing project driveway on Bristol Street North relocated approximately 65 feet to the northwest. The proposed project is anticipated to be fully operational by year 2026.

### *Existing Conditions*

The study intersections currently operate at Levels of Service D or better during the peak hours for Existing (2022) conditions.

### *Project Trip Generation*

The existing project site land use is estimated to generate approximately 420 daily trips, including 59 trips during the AM peak hour and 56 trips during the PM peak hour. The proposed project site land use is forecast to generate approximately 1,044 daily trips, including 85 trips during the AM peak hour and 90 trips during the PM peak hour. Therefore, the proposed project is forecast to result in a net increase of approximately 624 net new daily trips, including 26 net new trips during the AM peak hour and 34 net new trips during the PM peak hour.

### *TPO Impact Analysis*

The addition of project-generated trips is not forecast to cause any study intersection to operate deficiently (Level of Service E or F) or worsen a deficient intersection operation by more than one percent of capacity; therefore, the proposed project is forecast to result in no Level of Service impacts at the study intersections for TPO Year 2027 With Project conditions and no improvements are required.

### *CEQA Impact Analysis*

The addition of project-generated trips is not forecast to cause any study intersection to operate deficiently (Level of Service E or F) or worsen a deficient intersection operation by more than one percent of capacity; therefore, the proposed project is forecast to result in no significant Level of Service impacts at the study intersections for CEQA Year 2027 With Project conditions and no new mitigation measures are required.

### *CEQA General Plan Comparison Impact Analysis*

The addition of project-generated trips is not forecast to cause any study intersection to operate deficiently (Level of Service E or F) or worsen a deficient intersection operation by more than one percent of capacity; therefore, the proposed project is forecast to result in no significant Level of Service impacts at the study intersections for Post 2030 General Plan Buildout With Project conditions and no new mitigation measures are required.

### *VMT Screening*

The proposed project is located in a City defined low-VMT area for residential use (lower than 85 percent of Countywide average VMT per capita). Per the City VMT guidelines and screening criteria, the project is considered to have a less than significant impact on VMT.

### *Congestion Management Program (CMP)*

Since the proposed project has indirect access to a CMP facility (e.g., MacArthur Boulevard or Jamboree Road) and is forecast to generate less than 2,400 daily trips, the proposed project does not satisfy the criteria for preparation of a separate CMP impact analysis.

### *Site Access and Circulation*

Vehicular access is proposed to be maintained at Spruce Street with the existing project driveway on Bristol Street North relocated approximately 65 feet to the northwest. Since Bristol Street North is a one-way street, the relocated project driveway at Bristol Street North will continue to provide right turn in/out only access. The project driveway at Spruce Street will continue to provide full access. Based on review of the adjacent development and lane configurations along Bristol Street North and Spruce Street, the existing lane configurations are anticipated to provide adequate circulation. The final parking and circulation will be reviewed and approved by the City of Newport Beach.

# 1. INTRODUCTION

This section describes the project location, project description, study area, and analysis scenarios.

## PROJECT DESCRIPTION

The 2.38-acre project site is addressed at 1400 and 1420 Bristol Street North, located at the northwest corner of Bristol Street North and Spruce Street, in the City of Newport Beach, California. The project site is currently developed with existing office buildings totaling 38,764 square feet. Figure 1 shows the project location map.

The proposed project involves demolition of the existing office buildings and construction of a new six-story podium apartment building comprised of 230 residential dwelling units (207 market rate and 23 affordable units), podium level amenity space, a business center/leasing office, and 422 parking spaces in an on-grade parking garage with two subterranean levels. Vehicular access is proposed to be maintained at Spruce Street with the existing project driveway on Bristol Street North relocated approximately 65 feet to the northwest. The proposed project is anticipated to be fully operational by year 2026. Figure 2 illustrates the project site plan.

## STUDY AREA

Based on scoping discussions with City of Newport Beach staff, the study area consists of the following study intersections within the City of Newport Beach, three of which share jurisdiction with the City of Irvine:

Study Intersections <sup>1</sup>	Jurisdiction
1. Campus Drive (NS) at Bristol Street North (EW)	Newport Beach
2. Irvine Avenue/Campus Drive (NS) at Bristol Street South (EW)	Newport Beach
3. Birch Street (NS) at Bristol Street North (EW)	Newport Beach
4. Birch Street (NS) at Bristol Street South (EW)	Newport Beach
5. MacArthur Boulevard (NS) at Campus Drive (EW)	Newport Beach/Irvine
6. MacArthur Boulevard (NS) at Birch Street (EW)	Newport Beach
7. MacArthur Boulevard (NS) at Newport Place Dr/Von Karman Avenue (EW)	Newport Beach
8. MacArthur Boulevard (NS) at Jamboree Road (EW)	Newport Beach/Irvine
9. MacArthur Boulevard (NS) at Bison Avenue (EW)	Newport Beach
10. Jamboree Road (NS) at Campus Drive (EW)	Newport Beach/Irvine
11. Jamboree Road (NS) at Bristol Street North (EW)	Newport Beach
12. Jamboree Road (NS) at Bristol Street South (EW)	Newport Beach
13. Jamboree Road (NS) at Eastbluff Drive/University Drive (EW)	Newport Beach

## ANALYSIS SCENARIOS

In accordance with the City of Newport Beach Traffic Phasing Ordinance (TPO), this traffic report evaluates the following analysis scenarios based on one year after the anticipated project opening year:

- Existing (2022) Conditions;
- TPO Year 2027 Without Project; and
- TPO Year 2027 With Project

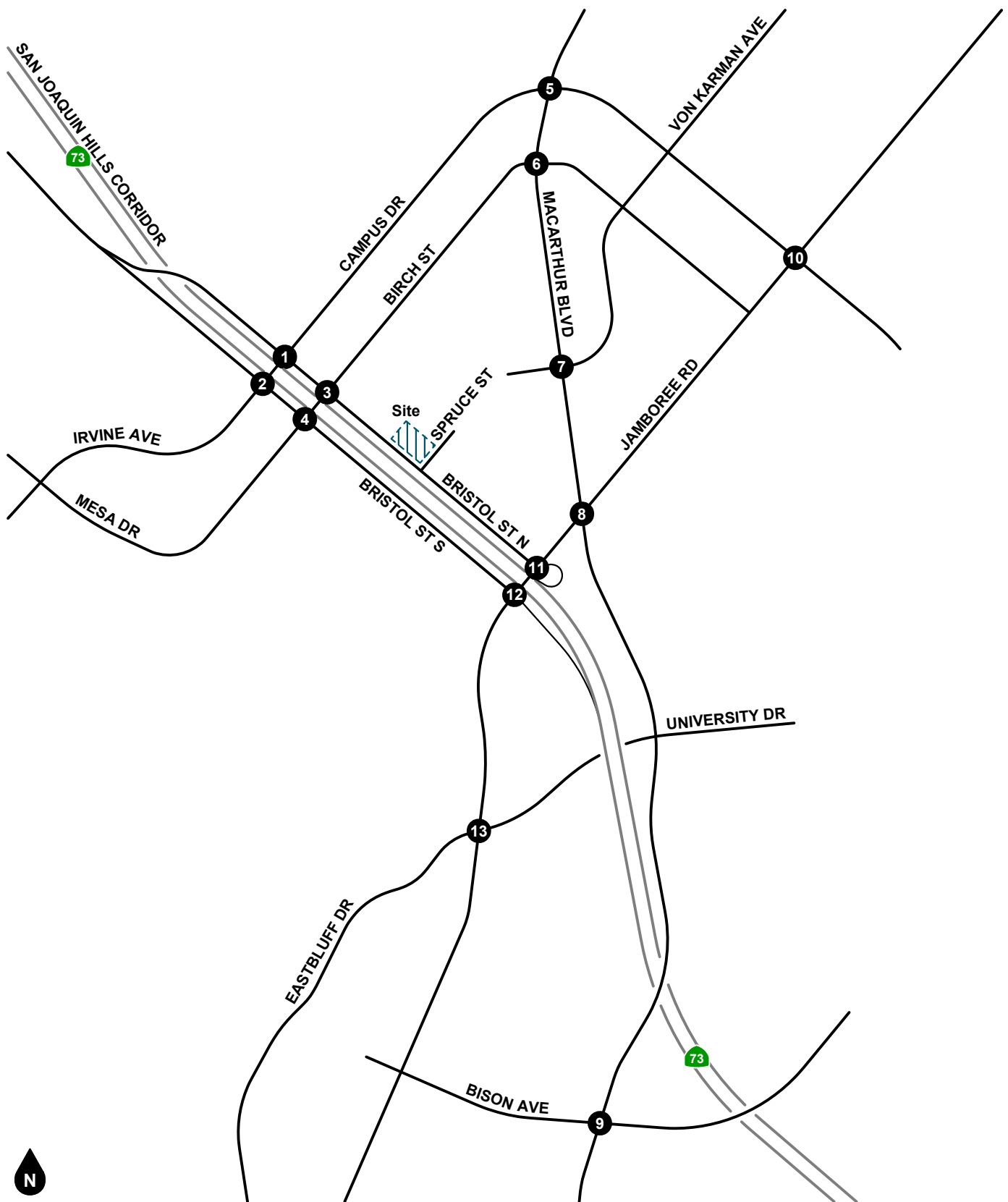
<sup>1</sup> (NS) = North-South roadway; (EW) = East-West roadway

Additionally, this study also evaluates the following analysis scenarios in support of the project's proposed cumulative CEQA analysis:

- d) CEQA Year 2027 Without Project;
- e) CEQA Year 2027 With Project;

Lastly, this study evaluates the following analysis scenarios in support of the project's proposed addendum to the 2006 General Plan Environmental Impact Report (EIR):

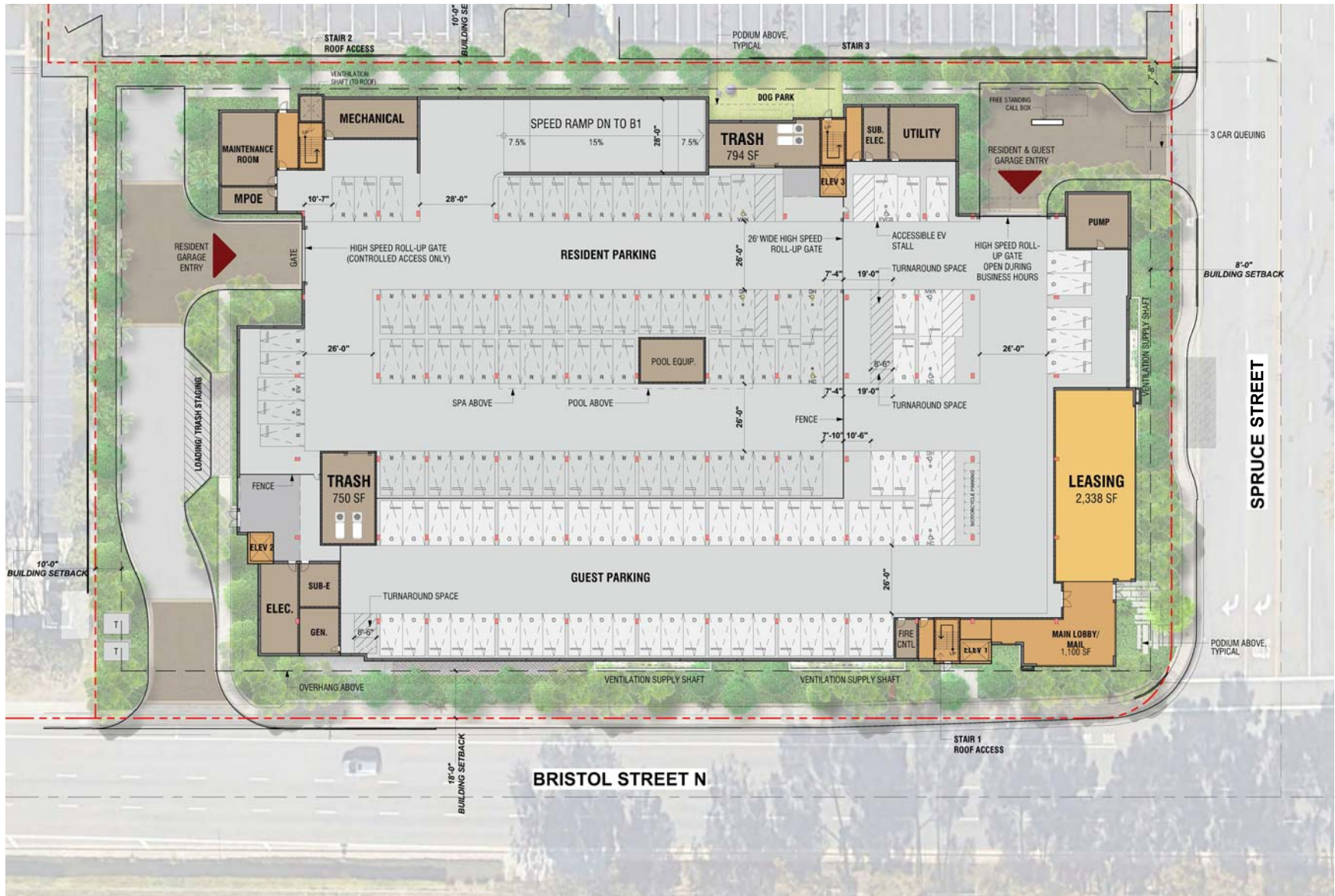
- f) General Plan Comparison: Post 2030 General Plan Buildout Without Project; and
- g) General Plan Comparison: Post 2030 General Plan Buildout With Project.



**Legend**

● # Study Intersection

**Figure 1**  
**Project Location Map**



**Figure 2**  
**Site Plan**



## 2. METHODOLOGY

This section discusses the analysis methodologies used to assess transportation facility performance as adopted by the respective jurisdictional agencies.

### TRAFFIC PHASING ORDINANCE ANALYTICAL METHODOLOGY (Non-CEQA)

To establish consistency with the City of Newport Beach General Plan and other City requirements, all proposed land use projects generating 300 or more daily trips are required to prepare a Level of Service analysis for transportation impacts consistent with Chapter 15.40 (Traffic Phasing Ordinance) of the City of Newport Beach Municipal Code. The TPO requires assessment of development project impacts on the City's arterial circulation system based on the Intersection Capacity Utilization (ICU) methodology. While operational ICU analysis is required for conformance with the City's TPO requirements, it is noted that a project's effect on automobile delay (as measured by Level of Service) shall not constitute a significant environmental impact in accordance with current CEQA provisions.

### Intersection Capacity Utilization Methodology

In accordance with City of Newport Beach requirements, level of service analysis of signalized intersections is based on the ICU methodology. The ICU methodology compares the volume of traffic using the intersection to the capacity of the intersection. The resulting volume-to-capacity (V/C) ratio represents that portion of the hour required to provide sufficient capacity to accommodate all intersection traffic if all approaches operate at capacity. The volume-to-capacity ratio is then correlated to a performance measure known as level of service based on the following thresholds:

Level of Service	Volume/Capacity Ratio
A	$\leq 0.60$
B	$> 0.60$ to $\leq 0.70$
C	$> 0.70$ to $\leq 0.80$
D	$> 0.80$ to $\leq 0.90$
E	$> 0.90$ to $\leq 1.00$
F	$> 1.00$

Source: Transportation Research Board, Interim Materials on Highway Capacity, Transportation Research Circular No. 212, January 1980.

Level of service is used to qualitatively describe the performance of a roadway facility, ranging from Level of service A (free-flow conditions) to Level of Service F (extreme congestion and system failure).

The ICU and Level of Service calculations for this study were performed using the Traffix software. In accordance with City of Newport Beach TPO requirements, the ICU calculations assume a lane capacity of 1,600 vehicles per hour per lane and no factor for yellow time. The project-related increase in ICU is rounded to three decimal places and then rounded to two decimal places.

### Performance Standards

The City of Newport Beach has established Level of Service D as the minimum acceptable Level of Service for its arterial roadway system, except at the following locations where Level of Service E or better is acceptable:



- Any intersection in the Airport Area shared with City of Irvine;
- Dover Drive at Coast Highway;
- Marguerite Avenue at Coast Highway; and
- Goldenrod Avenue at Coast Highway.

### **Substantial Operational Deficiency Criteria**

In accordance with the City's TPO, the following criteria are used to determine if a proposed project will result in a substantial Level of Service impact and is required to provide improvements/corrective measures:

- A substantial project impact is defined to occur if the addition of project-generated trips is forecast to cause/worsen a deficient intersection operation (generally Level of Service E or F) and increase the intersection capacity utilization by one percent or more of capacity (i.e., V/C increases by 0.010 or more).

If a project is forecast to cause or worsen a substantial Level of Service impact, the project must construct or provide funding for improvements, to the extent feasible, such that the project-related increase in capacity utilization does not exceed the City-established criteria.

### **CUMULATIVE AND GENERAL PLAN ANALYTICAL METHODOLOGY (CEQA)**

Although Level of Service impacts no longer constitute a significant environmental impact based on current CEQA provisions, a Level of Service analysis and significant impact evaluation were also prepared for Year 2027 cumulative and Post 2030 General Plan Buildout conditions, which did include evaluation of Level of Service impacts based on relevant thresholds of significance at the time of preparation. The purpose of the General Plan Comparison analysis is to document whether any new traffic-related impacts would occur compared to the 2006 General Plan EIR based on the proposed project.

### **Thresholds of Significance for General Plan EIR Addendum**

Year 2027 cumulative and Post 2030 General Plan Buildout conditions are analyzed based on the same ICU methodology used for the TPO analysis. Based on the 2006 General Plan EIR, the following criteria are used to determine if the proposed project would result in a significant Level of Service impact requiring new mitigation measures.

- A significant transportation impact is defined to occur if the addition of project-generated trips is forecast to cause/worsen a deficient intersection operation (generally Level of Service E or F) and increase the intersection capacity utilization by one percent or more of capacity (i.e., V/C increases by 0.010 or more).

### **VEHICLE MILES TRAVELED ANALYTICAL METHODOLOGY (CEQA)**

The metric used to evaluate the transportation impact of land use and transportation projects under CEQA is known as vehicle miles traveled (VMT). In general terms, VMT quantifies the amount and distance of automobile travel attributable to a project or region. Additional information and a detailed project assessment is provided in the Vehicle Miles Traveled section presented later in this report.

### 3. EXISTING CONDITIONS

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This section describes the existing transportation setting in the project vicinity.

#### EXISTING ROADWAY SYSTEM

Figure 3 identifies the lane geometry and intersection traffic controls for existing conditions based on a field survey of the study area. Regional access to the project area is provided by the San Joaquin Hills Corridor (State Route 73) freeway south of the project site running between Bristol Street North and Bristol Street South. The key north-south roadways providing local circulation are Irvine Avenue, Campus Drive, Birch Street, MacArthur Boulevard, and Jamboree Road. The key east-west roadways providing local circulation are Bristol Street North, Bristol Street South, Newport Place Drive, Von Karman Avenue, Bison Avenue, Eastbluff Drive, and University Avenue.

#### PEDESTRIAN FACILITIES

Existing pedestrian facilities in the project vicinity are shown on Figure 4.

#### BICYCLE ROUTES

On-street bicycle facilities are provided in the project area along Bristol Street North. Bristol Street North adjacent to the project site has Class II Bike Lane (On-Road Striped) and also is classified as a Class I (Off-Road Paved) Bikeway (sidewalk riding is permitted). Roadways that provide on-street bicycle facilities near the project site include Bristol Street South, Birch Street, and intermittent areas of Jamboree Road and Campus Road.

#### TRANSIT FACILITIES

Figure 5 shows the existing transit routes available in the project vicinity. As shown on Figure 5, Orange County Transportation Authority Route 57 services Bristol Street North adjacent to the project site. A bus stop is located along Bristol Street North adjacent to the project site at the northwest corner of the Spruce Street and Bristol Street North intersection.

#### GENERAL PLAN CONTEXT

Figure 6 shows the City of Newport Beach General Plan Master Plan of Streets and Highways roadway classifications map. This figure shows the nature and extent of arterial and collector highways that are needed to adequately serve the ultimate development depicted by the Land Use Element of the General Plan. The City of Newport Beach General Plan roadway cross-sections are depicted on Figure 7.

#### EXISTING TRAFFIC VOLUMES

Existing peak hour intersection volumes were developed from intersection turning movement counts collected in March/April 2022 during typical weekday AM and PM peak periods of commuter traffic. The AM peak period was counted between 7:00 AM and 9:00 AM and the PM peak period was counted between 4:30 PM and 6:30 PM. The actual peak hour within the peak period is the four consecutive 15-minute periods with the highest total volume of all approaches. Thus, the PM peak hour at one intersection may occur at 4:45 PM to 5:45 PM if those four consecutive 15-minute periods have the highest combined volume. Count worksheets are provided in Appendix B.

Based on the project's application date, existing volume and Level of Service conditions were established for year 2022.

Figure 8 and Figure 9 show the Existing AM peak hour and PM peak hour intersection turning movement volumes.

#### **EXISTING INTERSECTION LEVEL OF SERVICE**

Existing intersection Levels of Service are summarized in Table 1. Detailed Level of Service worksheets are provided in Appendix C.

As shown in Table 1, the study intersections currently operate at Levels of Service D or better during the peak hours for Existing (2022) conditions.

**Table 1**  
**Existing (2022) Intersection Levels of Service**

ID	Study Intersection	Traffic Control <sup>1</sup>	AM Peak Hour		PM Peak Hour	
			V/C <sup>2</sup>	LOS <sup>3</sup>	V/C <sup>2</sup>	LOS <sup>3</sup>
1.	Campus Dr (NS) at Bristol St North (EW)	TS	0.36	A	0.61	B
2.	Irvine Ave/Campus Dr (NS) at Bristol St South (EW)	TS	0.49	A	0.44	A
3.	Birch St (NS) at Bristol St North (EW)	TS	0.47	A	0.51	A
4.	Birch St (NS) at Bristol St South (EW)	TS	0.34	A	0.35	A
5.	MacArthur Blvd (NS) at Campus Dr (EW) <sup>4</sup>	TS	0.33	A	0.53	A
6.	MacArthur Blvd (NS) at Birch St (EW)	TS	0.28	A	0.37	A
7.	MacArthur Blvd (NS) at Newport Pl Dr/Von Karman Ave (EW)	TS	0.31	A	0.35	A
8.	MacArthur Blvd (NS) at Jamboree Rd (EW) <sup>4</sup>	TS	0.37	A	0.45	A
9.	MacArthur Blvd (NS) at Bison Ave (EW)	TS	0.38	A	0.41	A
10.	Jamboree Rd (NS) at Campus Dr (EW) <sup>4</sup>	TS	0.48	A	0.49	A
11.	Jamboree Rd (NS) at Bristol St North (EW)	TS	0.34	A	0.35	A
12.	Jamboree Rd (NS) at Bristol St South (EW)	TS	0.58	A	0.60	A
13.	Jamboree Rd (NS) at Eastbluff Dr/University Dr (EW)	TS	0.54	A	0.57	A

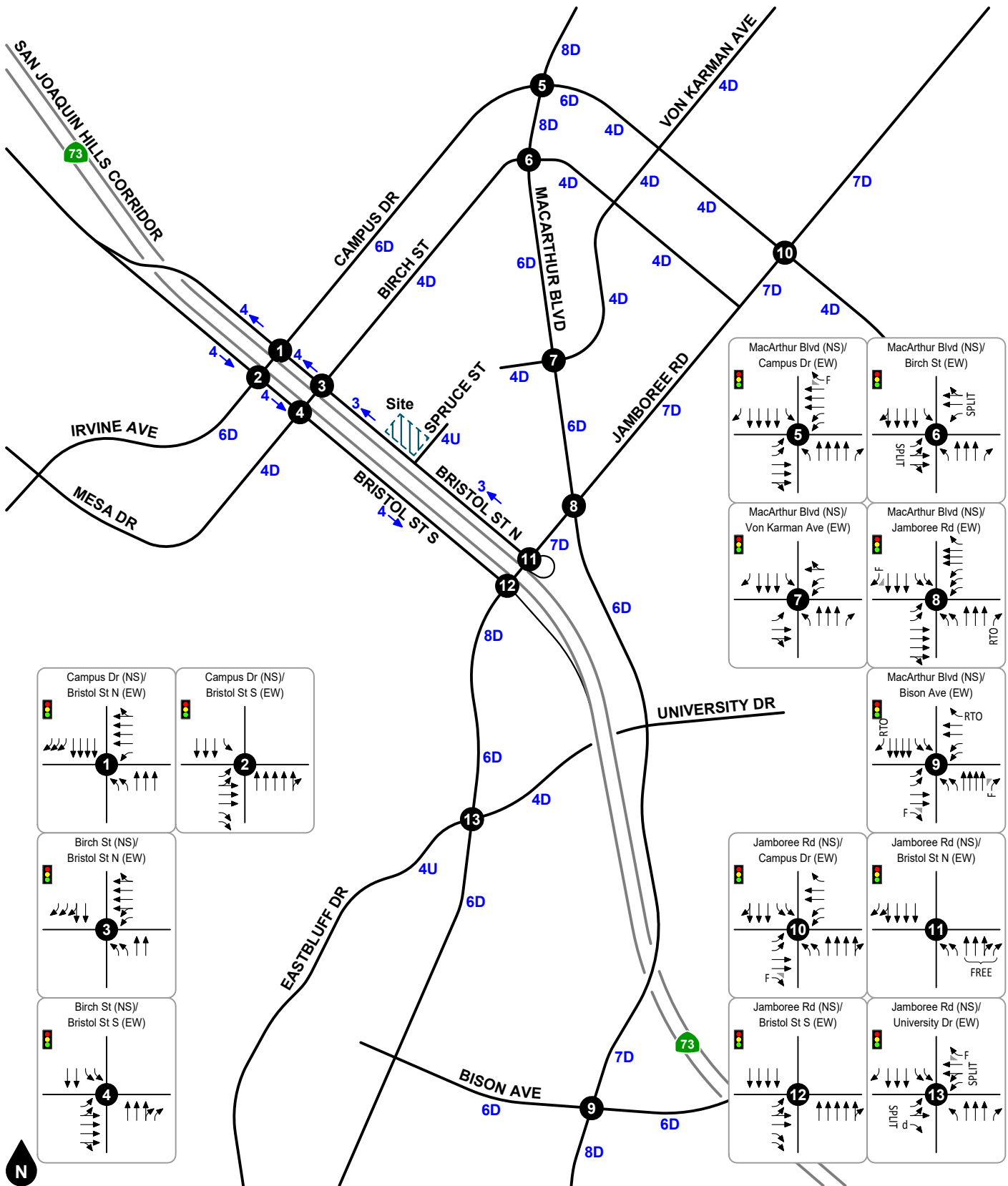
Notes:

(1) TS = Traffic Signal

(2) V/C = Volume/Capacity

(3) LOS = Level of Service

(4) Level of Service E is acceptable; shared jurisdiction with City of Irvine.

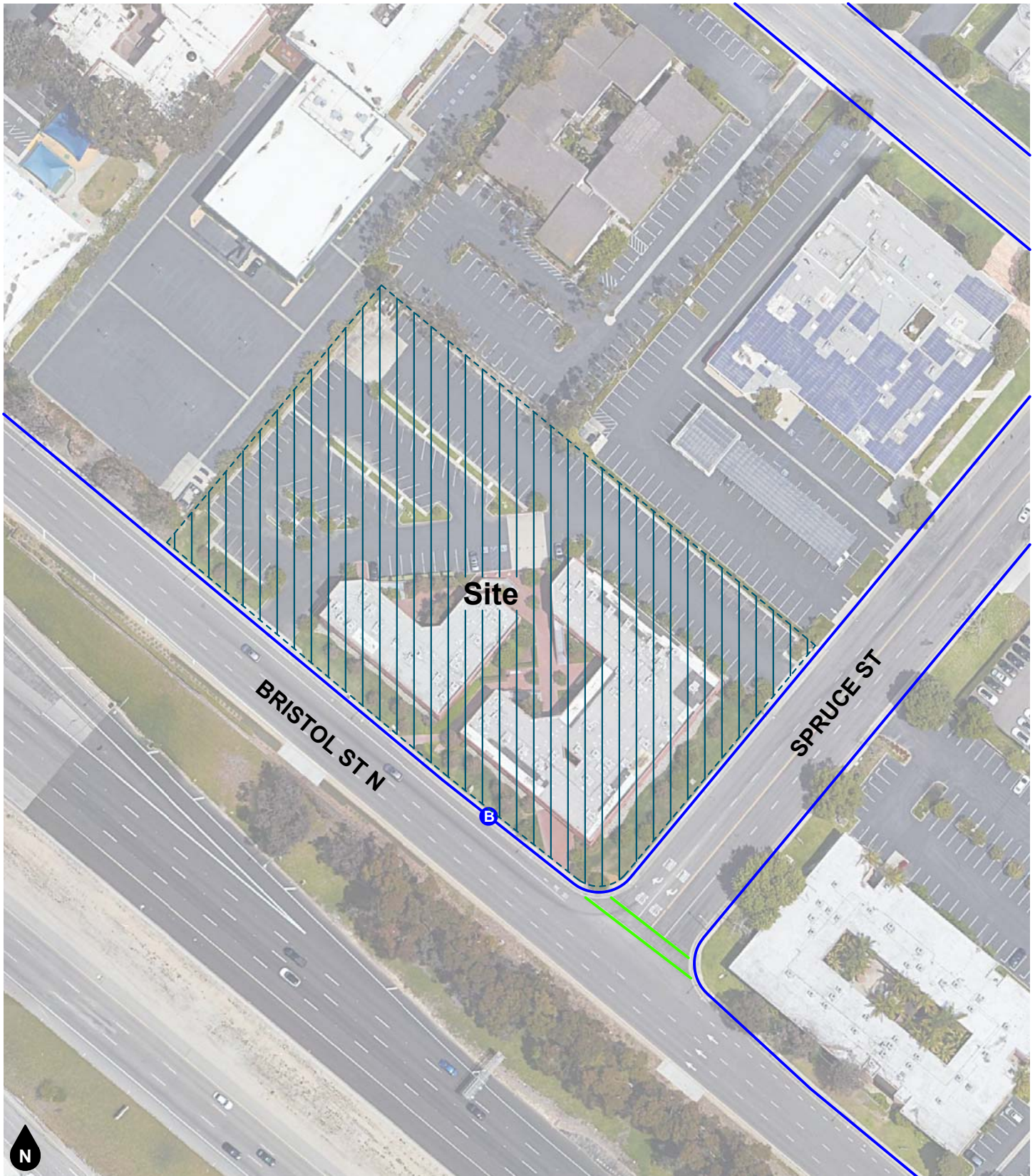


#### Legend

- Traffic Signal
- #D #Lane Divided Roadway
- #U #Lane Undivided Roadway
- #LW #Lanes (One-Way)
- Existing Lane
- RTO Right Turn Overlap
- F Free Right Turn Lane
- SPLIT Split Signal Phasing
- d De Facto Turn Lane

**Figure 3**  
**Existing Lane Geometry and Intersection Traffic Controls**





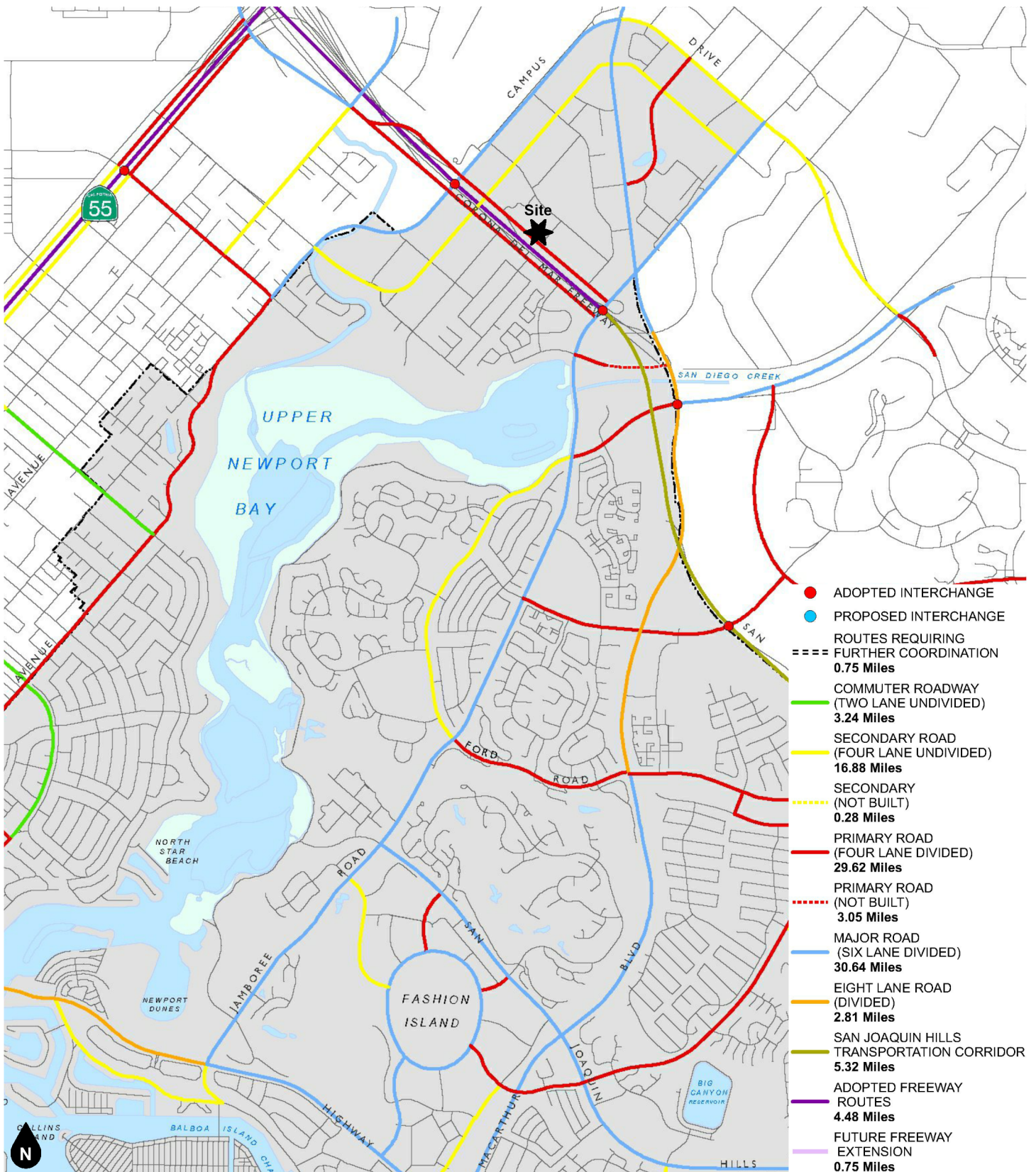
Legend

- Sidewalk
- Cross Walk
- B Bus Stop

**Figure 4**  
**Existing Pedestrian Facilities**



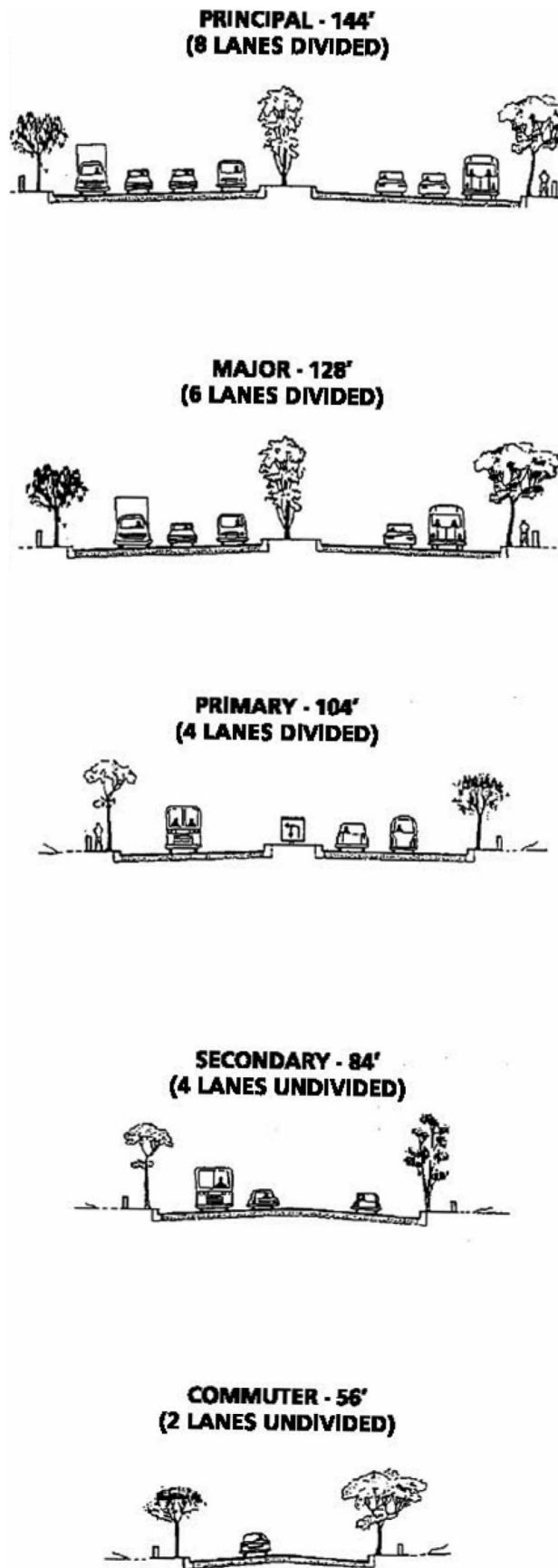




**Figure 6**  
**City of Newport Beach General Plan**  
**Master Plan of Streets and Highways**

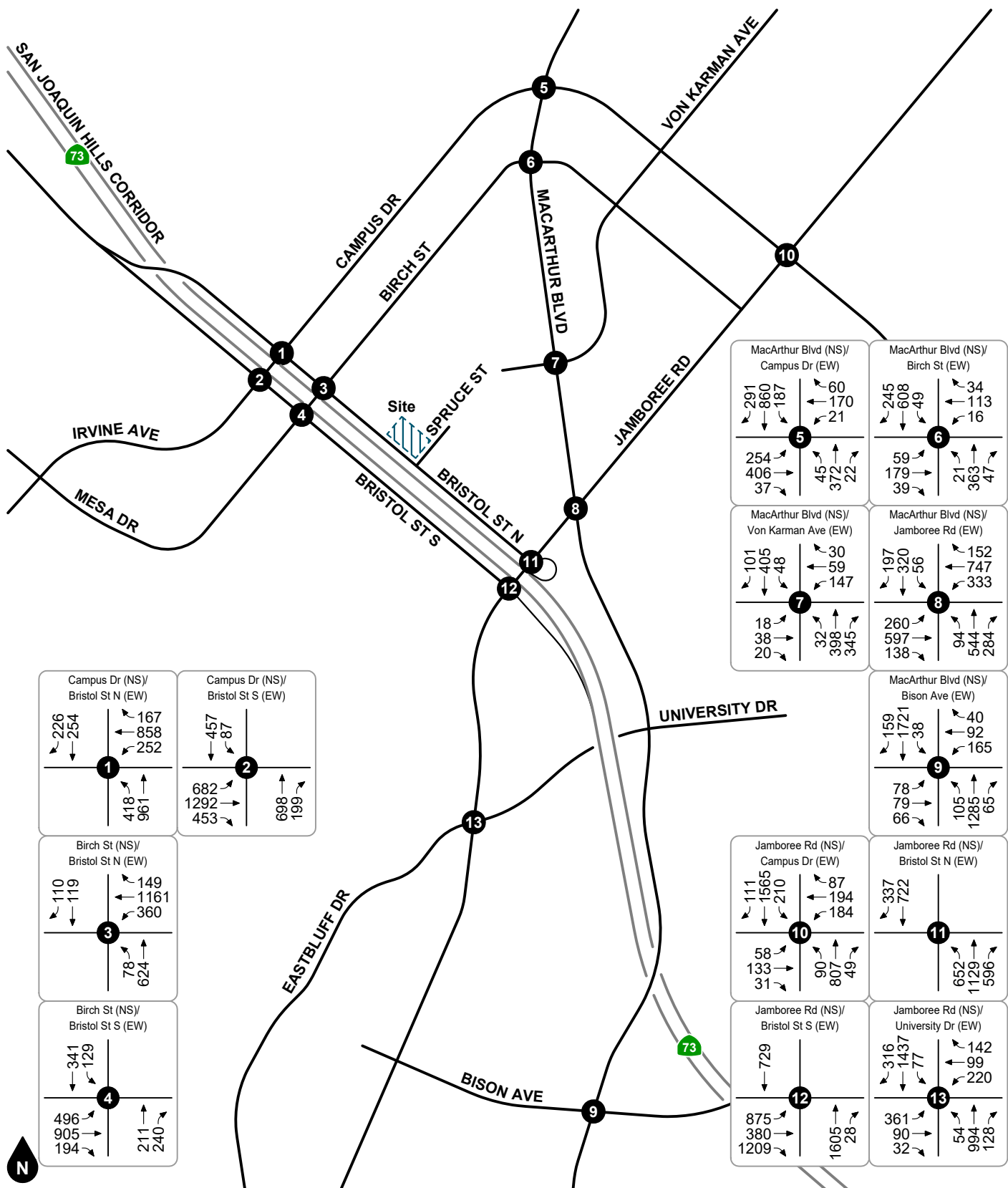
Source: City of Newport Beach



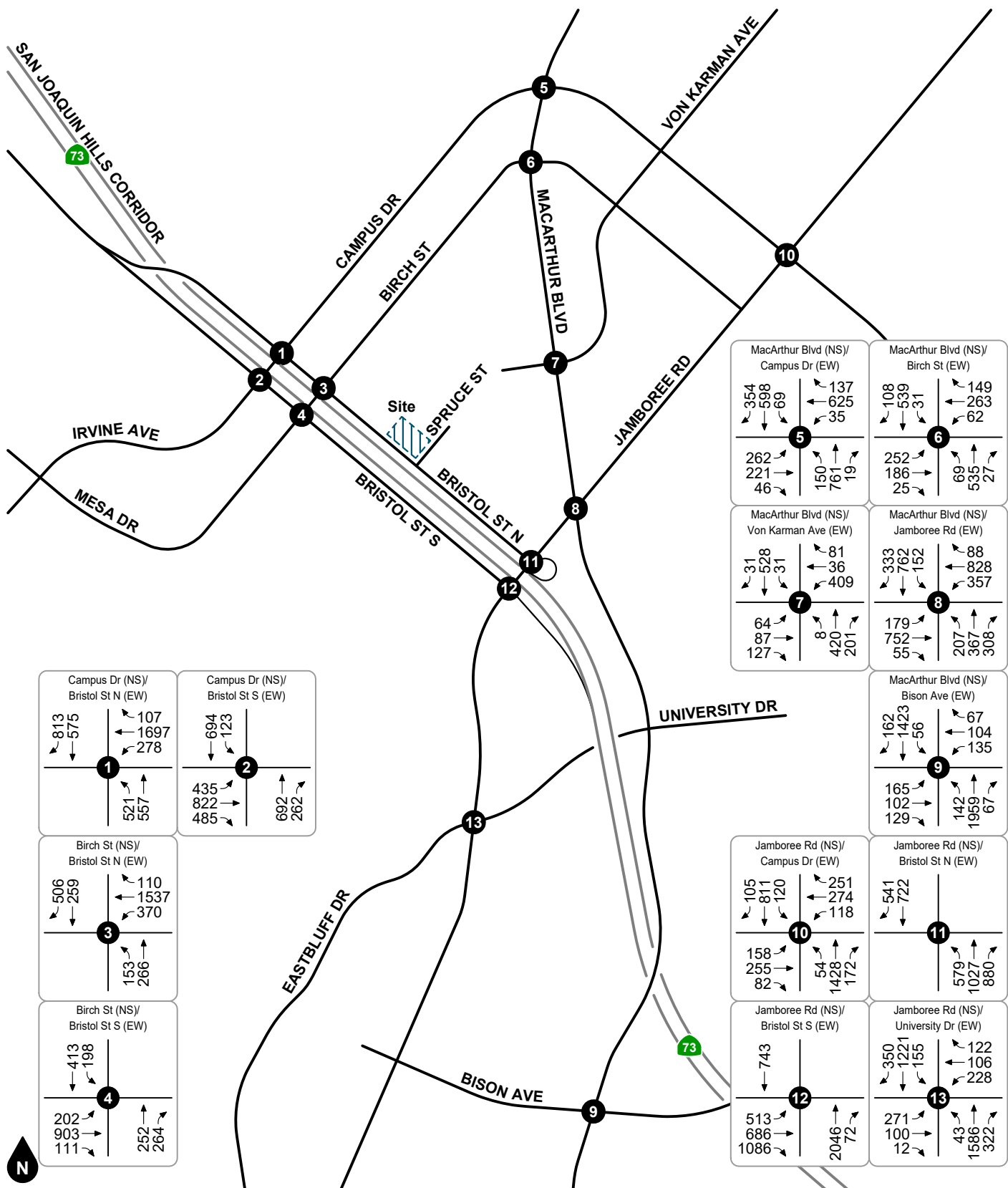


**Figure 7**  
**City of Newport Beach General Plan Roadway Cross-Sections**

Source: City of Newport Beach



**Figure 8**  
 Existing AM Peak Hour Intersection Turning Movement Volumes



Legend

# Study Intersection

**Figure 9**  
Existing PM Peak Hour Intersection Turning Movement Volumes

## 4. PROJECT FORECASTS

---

This section describes how project trip generation, trip distribution, and trip assignment forecasts were developed. The forecast project volumes are illustrated on figures contained in this section.

### PROJECT TRIP GENERATION

Table 2 shows the project trip generation based upon trip generation rates obtained from the Institute of Transportation Engineers (ITE) *Trip Generation Manual* (11<sup>th</sup> Edition, 2021). Based on review of the ITE land use description, trip generation rates for general office building (Land Use Code 710) and multifamily housing (mid-rise) not close to transit (Land Use Code 221) were determined to adequately represent the existing and proposed land uses and were selected for use in this analysis. The project trip generation forecast is determined by multiplying the trip generation rates by the land use quantities.

As shown in Table 2, the existing project site land use is estimated to generate approximately 420 daily trips, including 59 trips during the AM peak hour and 56 trips during the PM peak hour. The proposed project site land use is forecast to generate approximately 1,044 daily trips, including 85 trips during the AM peak hour and 90 trips during the PM peak hour. Therefore, the proposed project is forecast to result in a net increase of approximately 624 net new daily trips, including 26 net new trips during the AM peak hour and 34 net new trips during the PM peak hour.

### PROJECT TRIP DISTRIBUTION AND ASSIGNMENT

Figure 10 thru Figure 13 show the forecast directional distribution patterns for the project generated trips. The project trip distribution patterns were developed in consultation with City of Newport Beach staff based on review of existing volume data, surrounding land uses, and the local and regional roadway facilities in the project vicinity.

The project-generated AM and PM peak hour intersection turning movement volumes are shown on Figure 14 and Figure 15.

**Table 2**  
**Project Trip Generation**

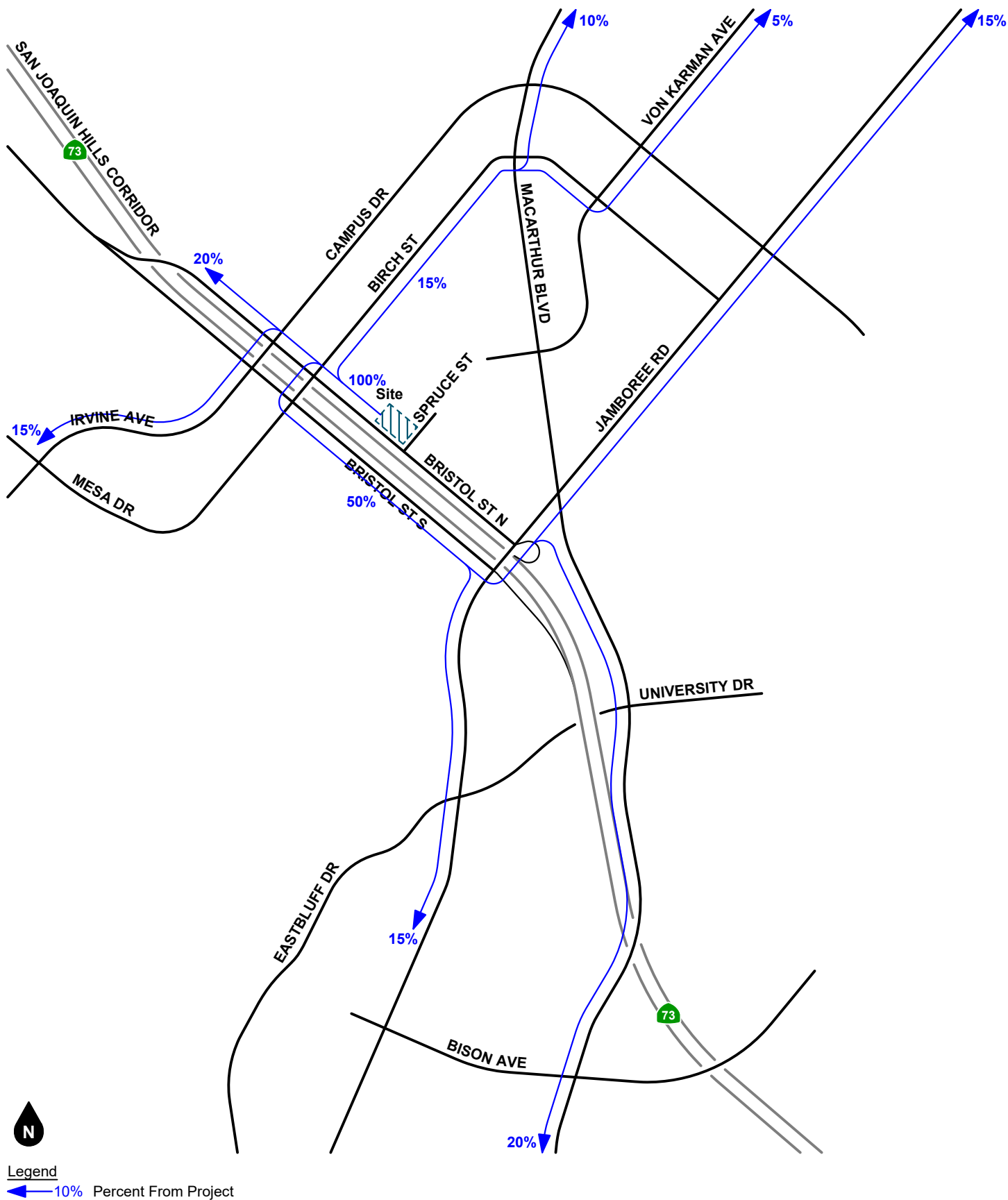
Trip Generation Rates									
Land Use	Source <sup>1</sup>	Unit <sup>2</sup>	AM Peak Hour			PM Peak Hour			Daily
			% In	% Out	Rate	% In	% Out	Rate	
General Office Building	ITE 710	TSF	88%	12%	1.52	17%	83%	1.44	10.84
Multifamily Housing (Mid-Rise)	ITE 221	DU	23%	77%	0.37	61%	39%	0.39	4.54

Trips Generated									
Land Use	Quantity	Unit <sup>2</sup>	AM Peak Hour			PM Peak Hour			Daily
			In	Out	Total	In	Out	Total	
<u>Existing</u>									
General Office Building	38.764	TSF	52	7	59	9	47	56	420
<u>Proposed</u>									
Multifamily Housing (Mid-Rise)	230	DU	21	64	85	55	35	90	1,044
NET PROJECT TRIPS GENERATED			-31	+57	+26	+46	-12	+34	+624

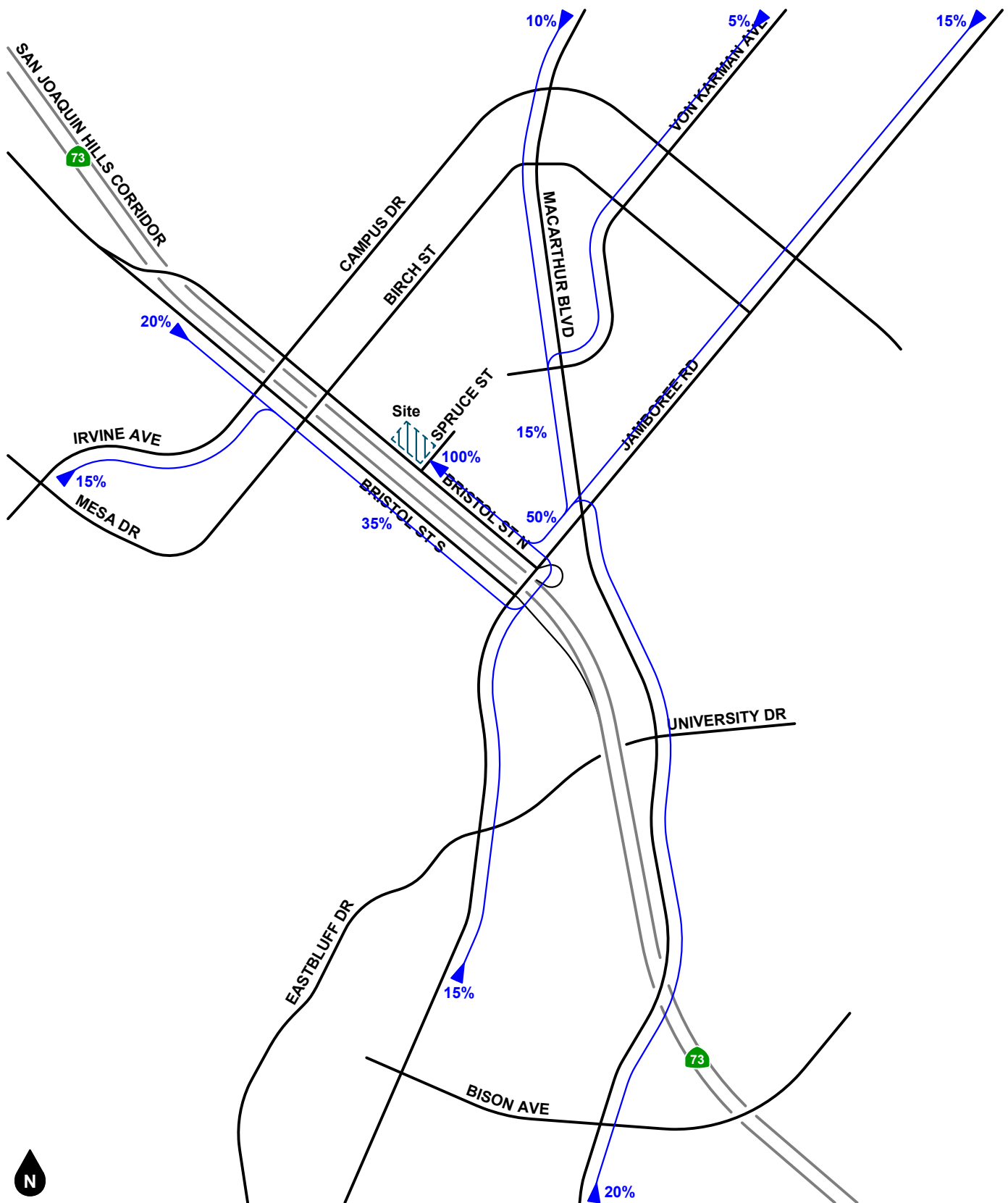
Notes:

(1) ITE = Institute of Transportation Engineers *Trip Generation Manual* (11th Edition, 2021); ### = Land Use Code

(2) TSF = Thousand Square Feet (Gross Floor Area); DU = Dwelling Units



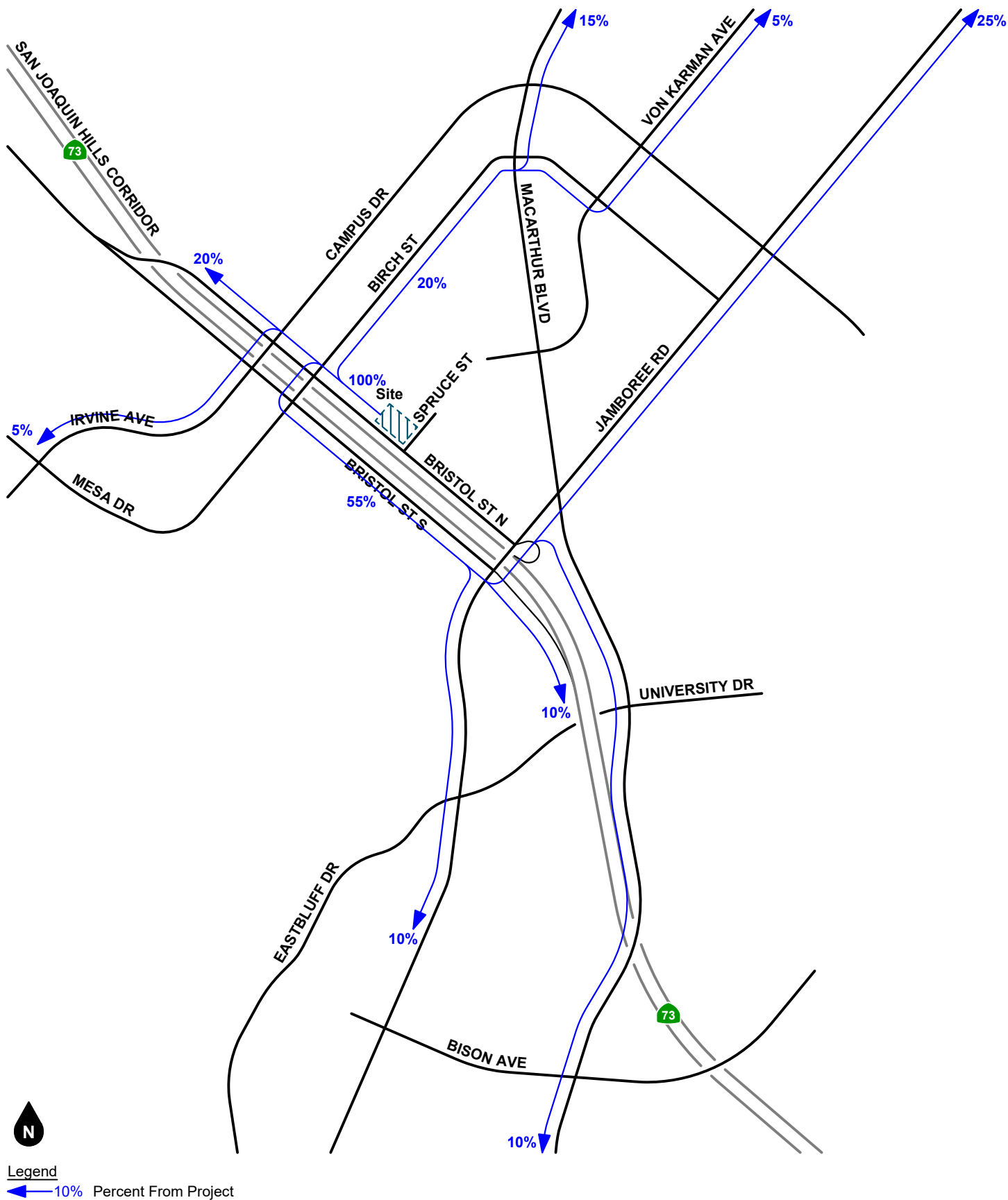
**Figure 10**  
**Project Outbound Trip Distribution - Existing General Office Building**



Legend

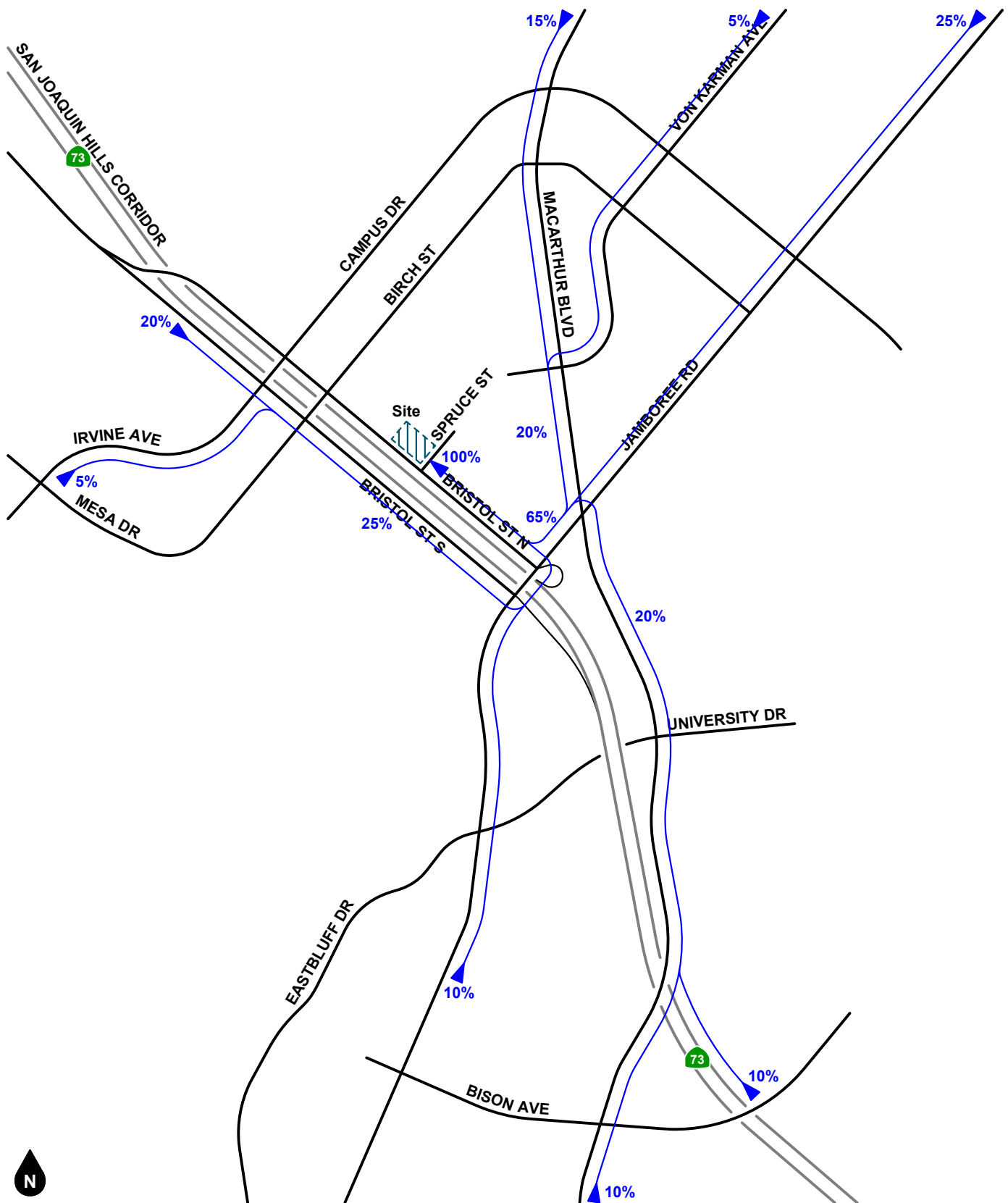
← 10% Percent To Project

**Figure 11**  
Project Inbound Trip Distribution - Existing General Office Building



**Figure 12**  
**Project Outbound Trip Distribution - Proposed Residential**

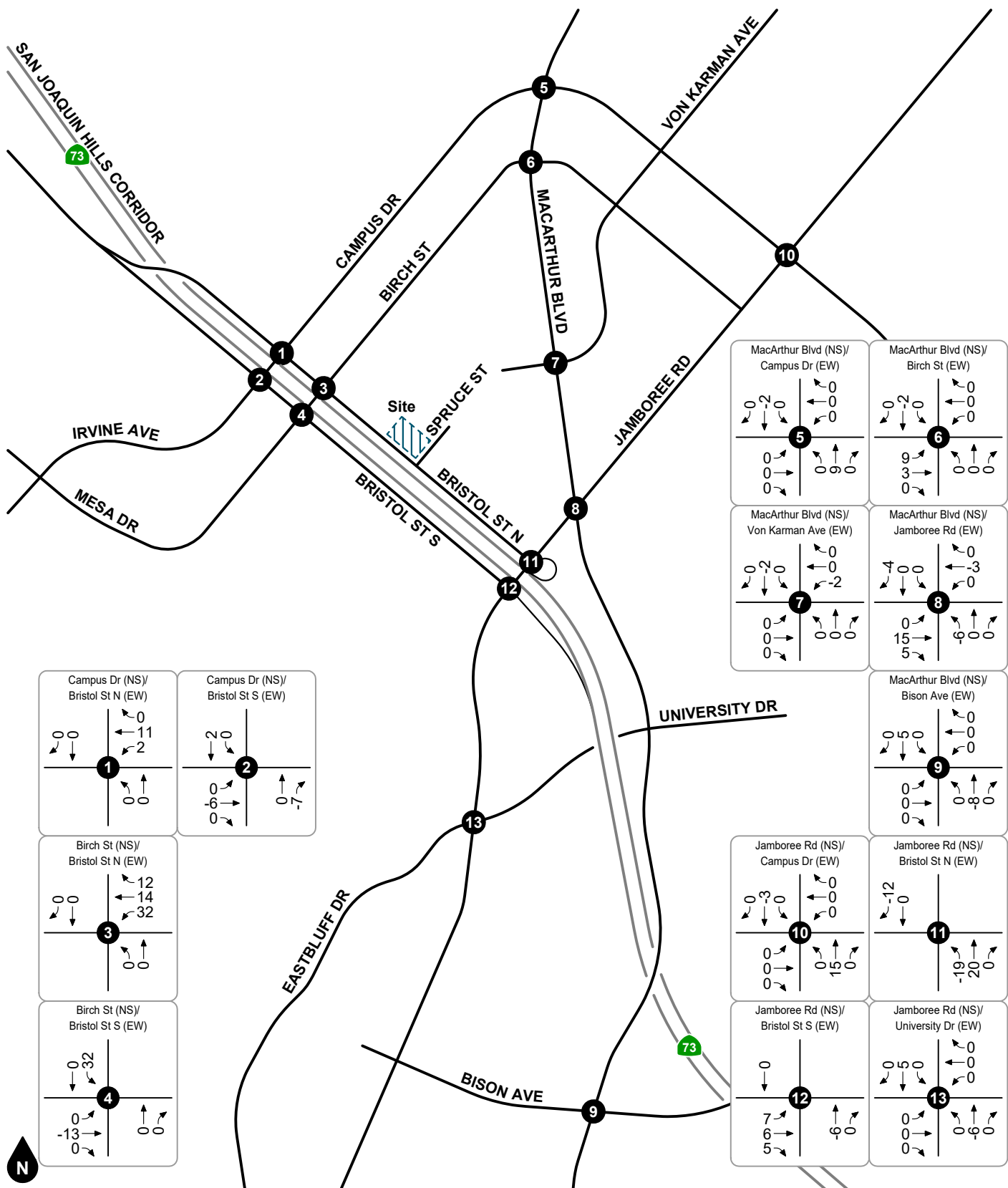




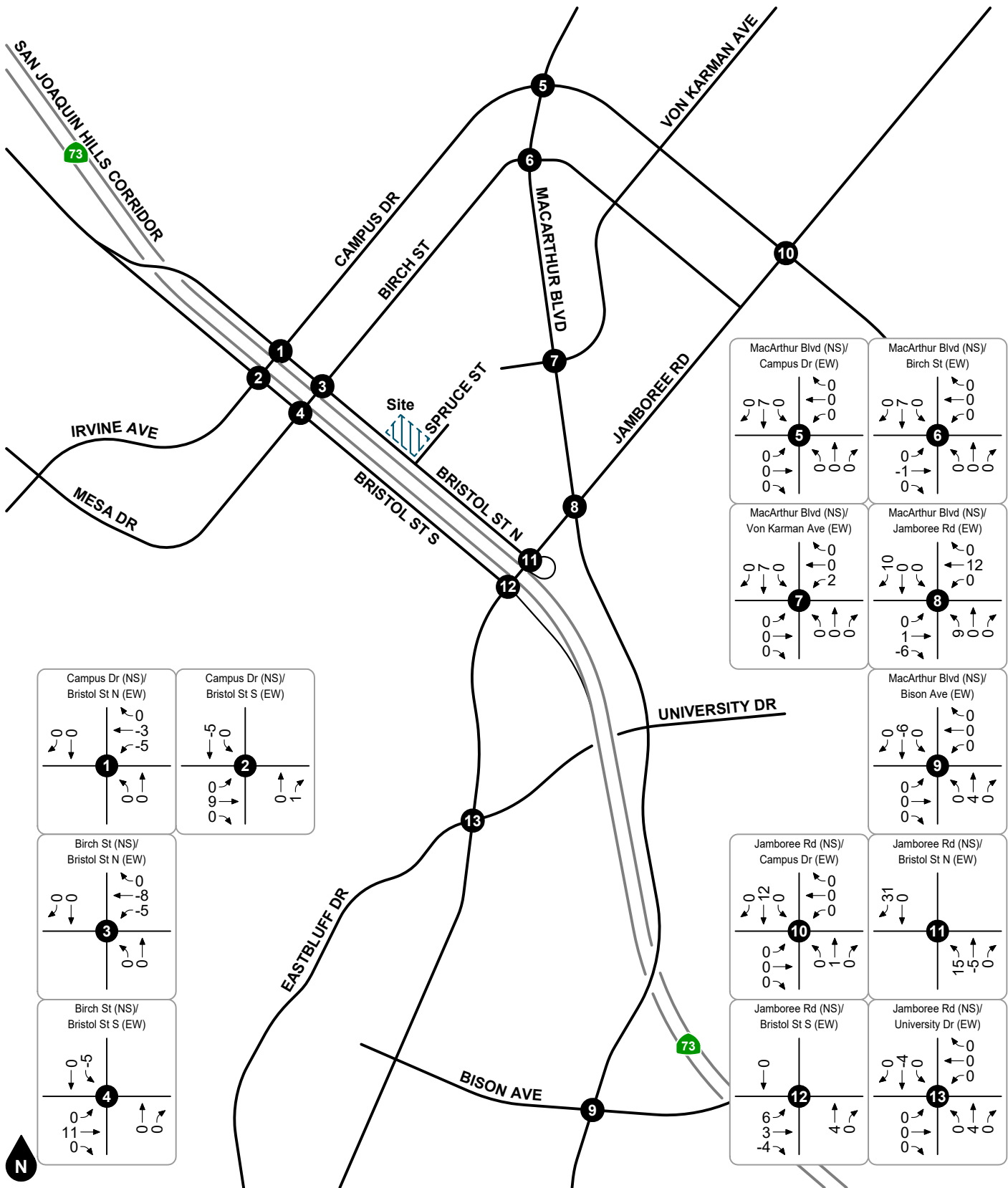
Legend

← 10% Percent To Project

**Figure 13**  
**Project Inbound Trip Distribution - Proposed Residential**



**Figure 14**  
**Project (Net)**  
**AM Peak Hour Intersection Turning Movement Volumes**



**Figure 15**  
**Project (Net)**  
**PM Peak Hour Intersection Turning Movement Volumes**

## 5. FUTURE VOLUME FORECASTS

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This section describes how future volume forecasts for the TPO scenarios were developed. Forecast study area volumes are illustrated on figures contained in this section.

### CITY OF NEWPORT BEACH APPROVED PROJECTS

The City of Newport Beach staff provided a list of approved projects within the study area for use in the TPO analysis. The approved project list consists of future developments that have been approved, but have not been fully constructed and occupied. The approved project data is contained in Appendix D.

Trips associated with the following 17 projects are included in the TPO analysis:

- Fashion Island Expansion
- Temple Bat Yahm Expansion
- Hoag Hospital Phase III
- St. Mark Presbyterian Church
- 2300 Newport Blvd (Vue)
- Hoag Health Center 500-540 Superior
- North Newport Center
- 328 Old Newport Medical Office GPA
- Mariner's Pointe 23,105 SQ FT Commercial Center
- Back Bay Landing 300 ECH
- Balboa Marina West
- Newport Crossings
- Museum House – Vivante Senior Center
- Uptown Newport: Phase 1 – Trans Devel Rights (TDR)
- Uptown Newport: Phase 2 only
- Residences at 4400 VK
- Picerne Residential (1300 Bristol St N)

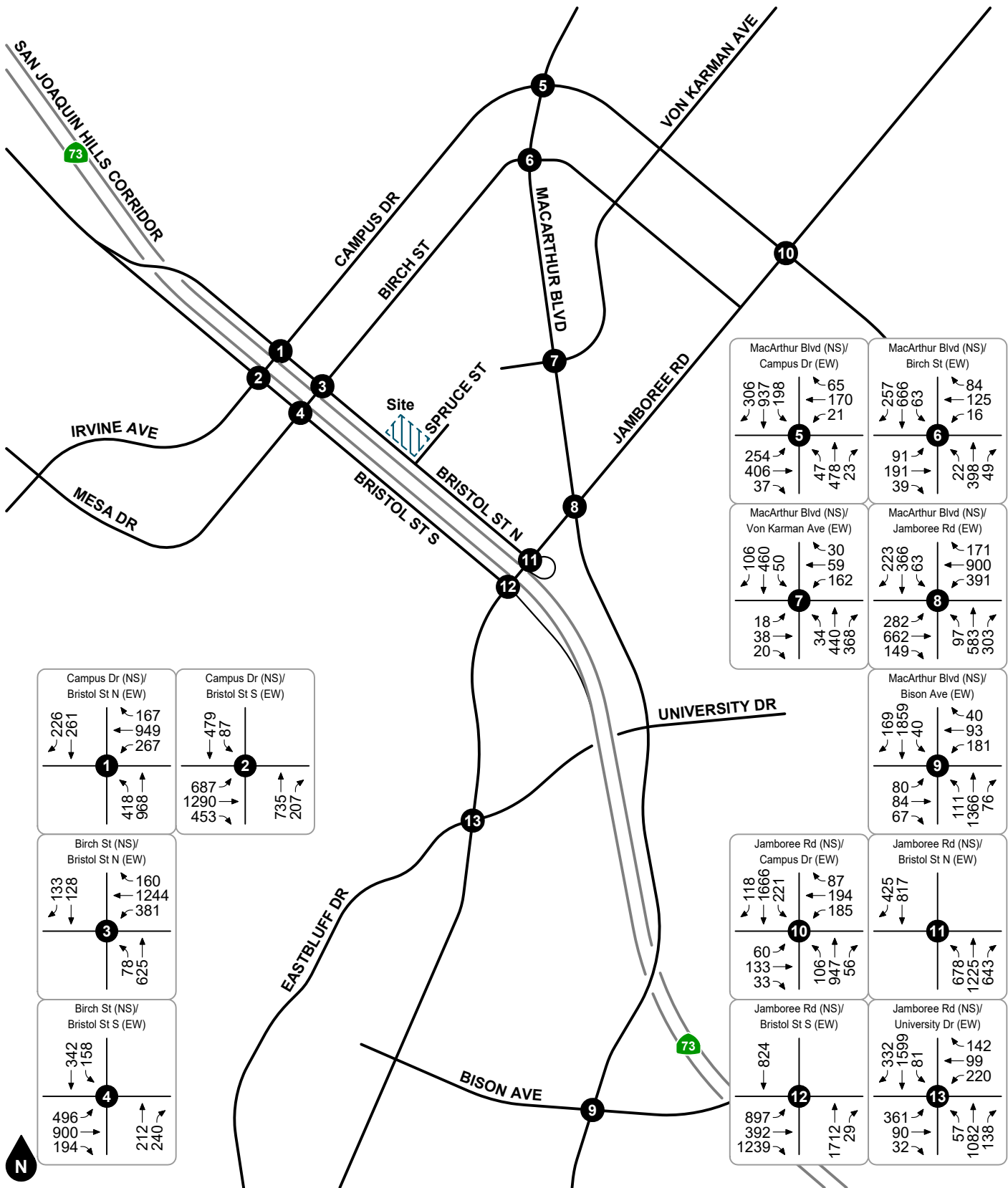
### AMBIENT GROWTH

To account for ambient growth on roadways, existing volumes were increased by a growth rate of one percent (1.0%) per year through year 2027 along applicable arterial highways (Irvine Avenue, Jamboree Road, and MacArthur Boulevard) in accordance with the City of Newport Beach Regional Traffic Annual Growth Rate. This equates to a growth factor of 1.05 along arterials with counts conducted in 2022.

### TPO YEAR 2027 VOLUME FORECASTS

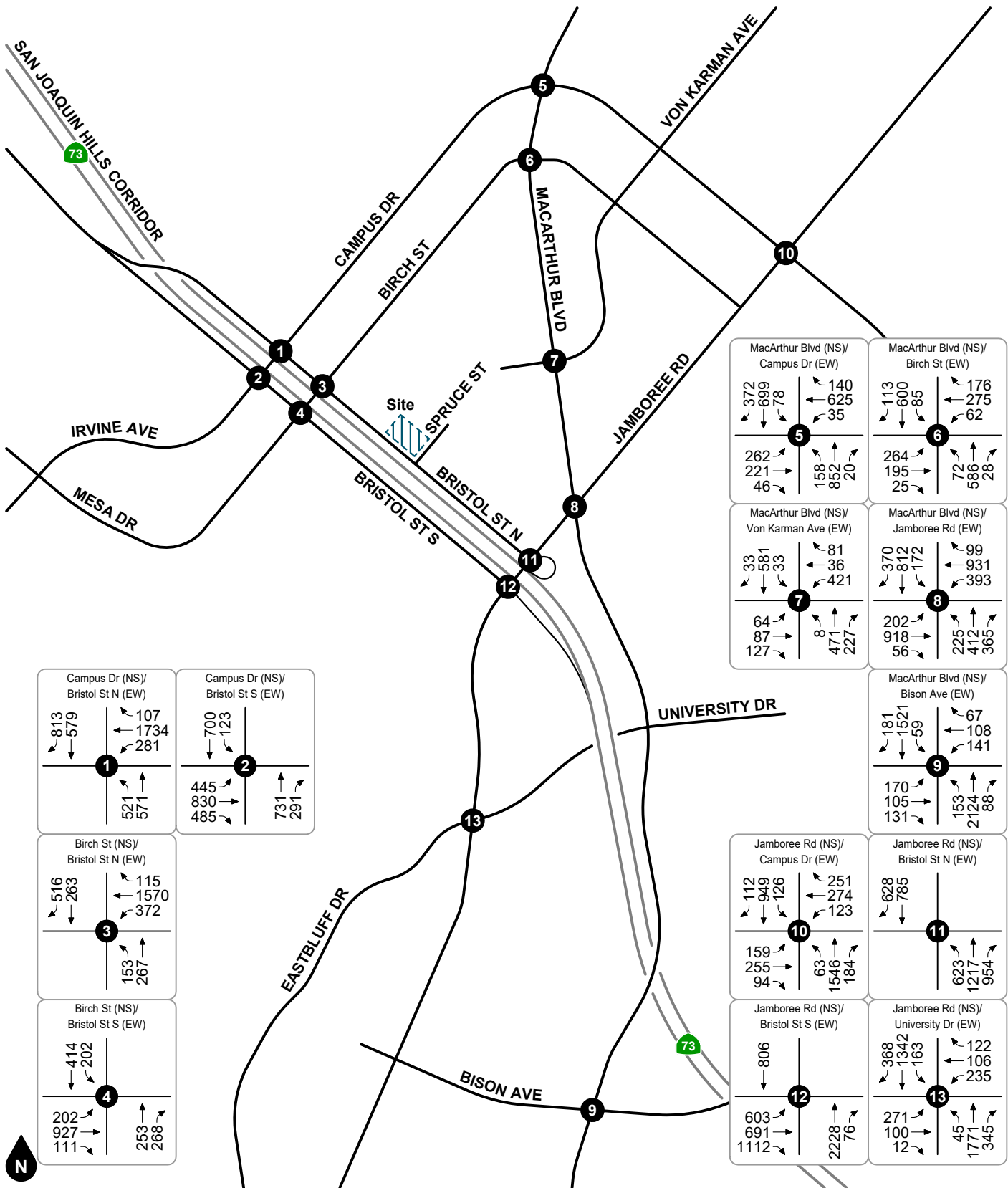
TPO Year 2027 Without Project volume forecasts were developed by adding ambient growth and approved projects trips to existing volumes. TPO Year 2027 Without Project AM and PM peak hour intersection turning movement volumes are shown on Figure 16 and Figure 17.

TPO Year 2027 With Project volume forecasts were developed by adding project-generated trips to TPO Year 2027 Without Project volumes. TPO Year 2027 With Project AM and PM peak hour intersection turning movement volumes are shown on Figure 18 and Figure 19.

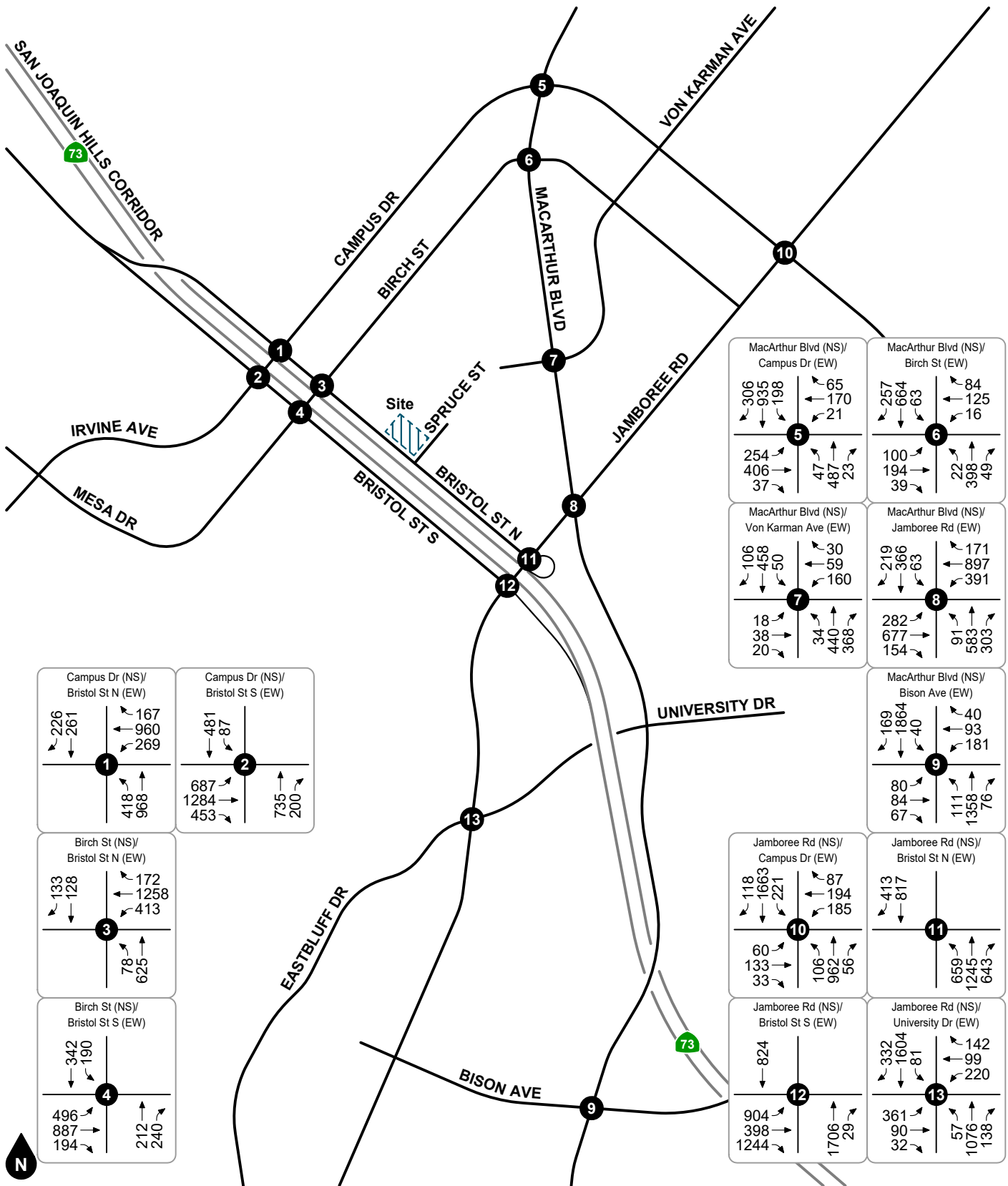


Legend  
# Study Intersection

**Figure 16**  
**TPO Year 2027 Without Project**  
**AM Peak Hour Intersection Turning Movement Volumes**

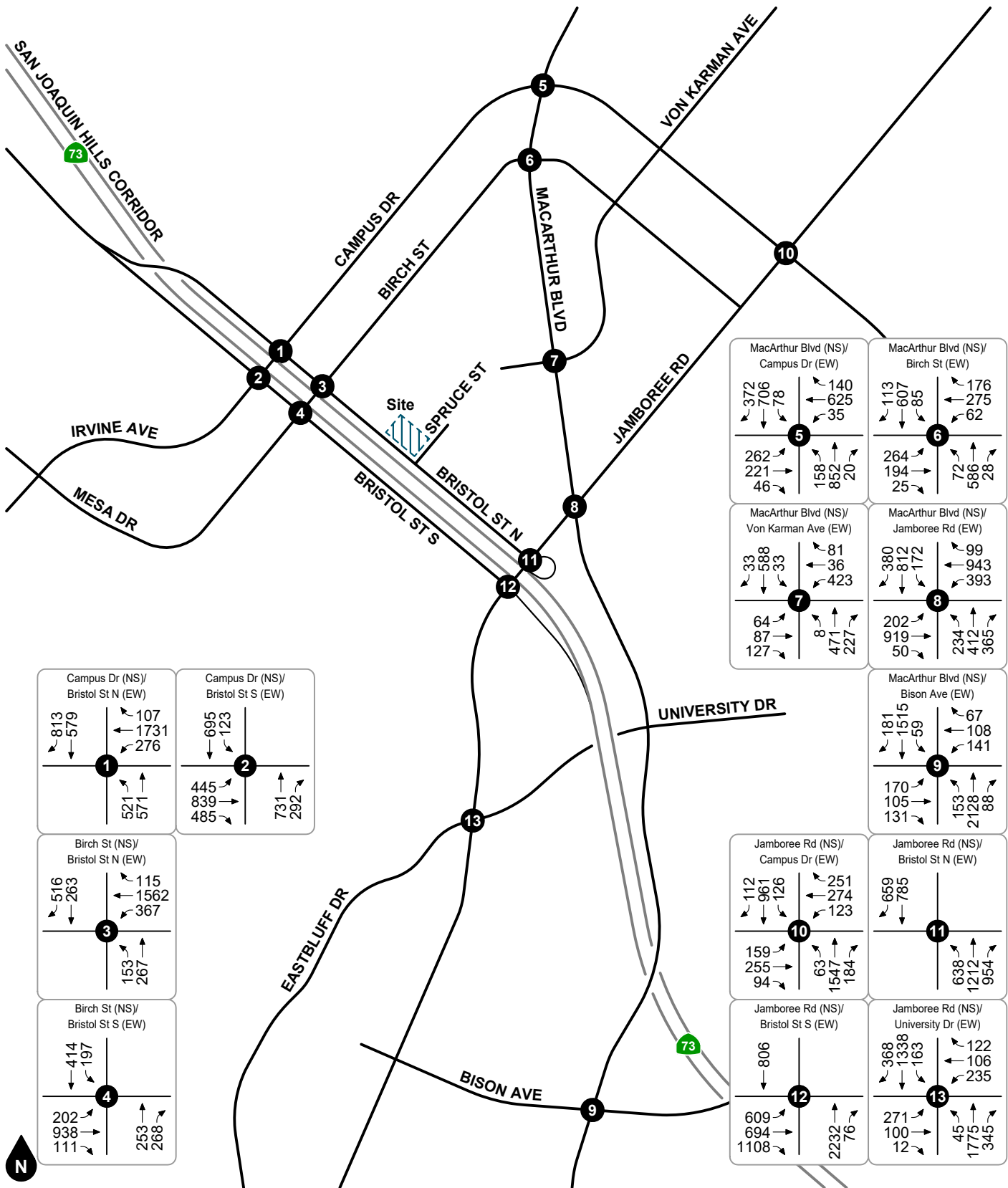


**Figure 17**  
**TPO Year 2027 Without Project**  
**PM Peak Hour Intersection Turning Movement Volumes**



Legend  
# Study Intersection

**Figure 18**  
**TPO Year 2027 With Project**  
**AM Peak Hour Intersection Turning Movement Volumes**



Legend  
# Study Intersection

**Figure 19**  
**TPO Year 2027 With Project**  
**PM Peak Hour Intersection Turning Movement Volumes**



## 6. TPO ANALYSIS

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Detailed intersection Level of Service calculation worksheets for each of the following analysis scenarios are provided in Appendix C.

### TPO YEAR 2027 ONE-PERCENT THRESHOLD ANALYSIS

Table 3 summarizes the City of Newport Beach TPO one-percent threshold analysis. In accordance with the City of Newport Beach TPO requirements, if project-generated peak hour approach volumes are greater than or equal to one percent of the forecast peak hour volumes on any approach of an intersection, then a detailed ICU analysis is required to assess the project-related change in ICU. The TPO one-percent analysis calculation worksheets are contained in Appendix E.

The following eight study intersections are forecast to exceed the TPO one-percent threshold and require ICU analysis:

3. Birch Street (NS) at Bristol Street North (EW)
4. Birch Street (NS) at Bristol Street South (EW)
5. MacArthur Boulevard (NS) at Campus Drive (EW)
6. MacArthur Boulevard (NS) at Birch Street (EW)
7. MacArthur Boulevard (NS) at Newport Place Drive/Von Karman Avenue (EW)
8. MacArthur Boulevard (NS) at Jamboree Road (EW)
10. Jamboree Road (NS) at Campus Drive (EW)
11. Jamboree Road (NS) at Bristol Street North (EW)

### TPO IMPACT ASSESSMENT

ICU and Levels of Service at the applicable study intersections for TPO Year 2027 Without and With Project conditions are shown in Table 4. As shown in Table 4, the study intersections are forecast to operate at Levels of Service D or better during the peak hours for TPO Year 2027 Without and With Project conditions.

Table 4 also calculates the net change in ICU at the applicable study intersections for TPO Year 2027 With Project conditions. As shown in Table 4, the addition of project-generated trips is not forecast to cause any study intersection to operate deficiently (Level of Service E or F) or worsen a deficient intersection operation by more than one percent of capacity; therefore, the proposed project is forecast to result in no Level of Service impacts at the study intersections for TPO Year 2027 With Project conditions and no improvements are required.

**Table 3**  
**TPO One-Percent Threshold Analysis Summary**

ID	Study Intersection	Peak Hour	Project Trips Exceed One Percent? <sup>1</sup>			
			Northbound	Southbound	Eastbound	Westbound
1. Campus Dr (NS) at Bristol St North (EW)		AM	No	No	No	No
		PM	No	No	No	No
2. Irvine Ave/Campus Dr (NS) at Bristol St South (EW)		AM	No	No	No	No
		PM	No	No	No	No
3. Birch St (NS) at Bristol St North (EW)		AM	No	No	No	<b>Yes</b>
		PM	No	No	No	No
4. Birch St (NS) at Bristol St South (EW)		AM	No	<b>Yes</b>	No	No
		PM	No	No	No	No
5. MacArthur Blvd (NS) at Campus Dr (EW)		AM	<b>Yes</b>	No	No	No
		PM	No	No	No	No
6. MacArthur Blvd (NS) at Birch St (EW)		AM	No	No	<b>Yes</b>	No
		PM	No	No	No	No
7. MacArthur Blvd (NS) at Newport PI Dr/Von Karman Ave (EW)		AM	No	No	No	No
		PM	No	<b>Yes</b>	No	No
8. MacArthur Blvd (NS) at Jamboree Rd (EW)		AM	No	No	<b>Yes</b>	No
		PM	No	No	No	No
9. MacArthur Blvd (NS) at Bison Ave (EW)		AM	No	No	No	No
		PM	No	No	No	No
10. Jamboree Rd (NS) at Campus Dr (EW)		AM	<b>Yes</b>	No	No	No
		PM	No	<b>Yes</b>	No	No
11. Jamboree Rd (NS) at Bristol St North (EW)		AM	No	No	No	No
		PM	No	<b>Yes</b>	No	No
12. Jamboree Rd (NS) at Bristol St South (EW)		AM	No	No	No	No
		PM	No	No	No	No
13. Jamboree Rd (NS) at Eastbluff Dr/University Dr (EW)		AM	No	No	No	No
		PM	No	No	No	No

Notes:

(1) If the project is forecast to contribute 1% or more of the projected TPO analysis year peak hour volume, then detailed Intersection Capacity Utilization analysis is required in accordance with the City of Newport Beach Traffic Phasing Ordinance.

**Table 4**  
**TPO Year 2027 Intersection Levels of Service and Impact Assessment**

ID	Study Intersection	Traffic Control <sup>1</sup>	TPO Without Project				TPO With Project				V/C Increase		Significant Impact?
			AM Peak Hour		PM Peak Hour		AM Peak Hour		PM Peak Hour		AM	PM	
			V/C <sup>2</sup>	LOS <sup>3</sup>	V/C <sup>2</sup>	LOS <sup>3</sup>	V/C <sup>2</sup>	LOS <sup>3</sup>	V/C <sup>2</sup>	LOS <sup>3</sup>			
3.	Birch St (NS) at Bristol St North (EW)	TS	0.49	A	0.52	A	0.49	A	0.52	A	0.00	0.00	No
4.	Birch St (NS) at Bristol St South (EW)	TS	0.35	A	0.36	A	0.36	A	0.36	A	+0.01	0.00	No
5.	MacArthur Blvd (NS) at Campus Dr (EW) <sup>4</sup>	TS	0.34	A	0.54	A	0.34	A	0.54	A	0.00	0.00	No
6.	MacArthur Blvd (NS) at Birch St (EW)	TS	0.31	A	0.42	A	0.31	A	0.42	A	0.00	0.00	No
7.	MacArthur Blvd (NS) at Newport Pl Dr/Von Karman Ave (EW)	TS	0.33	A	0.37	A	0.33	A	0.37	A	0.00	0.00	No
8.	MacArthur Blvd (NS) at Jamboree Rd (EW) <sup>4</sup>	TS	0.42	A	0.50	A	0.42	A	0.50	A	0.00	0.00	No
10.	Jamboree Rd (NS) at Campus Dr (EW) <sup>4</sup>	TS	0.50	A	0.52	A	0.50	A	0.52	A	0.00	0.00	No
11.	Jamboree Rd (NS) at Bristol St North (EW)	TS	0.37	A	0.39	A	0.36	A	0.41	A	-0.01	+0.02	No

Notes:

(1) TS = Traffic Signal

(2) V/C = Volume/Capacity

(3) LOS = Level of Service

(4) Level of Service E is acceptable; shared jurisdiction with City of Irvine.

## 7. CEQA ANALYSIS

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This section presents analysis of Year 2027 cumulative conditions. Detailed intersection Level of Service calculation worksheets for each of the following analysis scenarios are provided in Appendix C.

### CUMULATIVE PROJECTS

In addition to the approved projects in the City of Newport Beach (addressed in the TPO analysis), CEQA requires analysis of cumulative conditions. This CEQA analysis also includes traffic from pending projects in the Cities of Newport Beach and Irvine, in addition to the approved projects. Pending projects consist of projects that are in various stages of the application and approval process but are not yet approved. These projects are considered to be reasonably foreseeable projects in the vicinity of the project and must be included in the Cumulative conditions analysis for CEQA purposes. The Cities of Newport Beach and Irvine were consulted and provided the list of cumulative projects to be included in this analysis.

Table 5 includes the trip generation for cumulative projects as provided by the City of Newport Beach, University of California, Irvine, and City of Irvine. Figure 20 shows the cumulative projects location map. Cumulative Projects AM and PM peak hour intersection turning movement volumes are shown on Figure 21 and Figure 22.

### CEQA YEAR 2027 WITHOUT PROJECT VOLUME FORECASTS

CEQA Year 2027 Without Project volume forecasts were developed by adding cumulative projects trips to TPO Year 2027 Without Project volumes. CEQA Year 2027 Without Project AM and PM peak hour intersection turning movement volumes are shown on Figure 23 and Figure 24.

### CEQA YEAR 2027 WITH PROJECT VOLUME FORECASTS

CEQA Year 2027 With Project volume forecasts were developed by adding project trips to CEQA Year 2027 Without Project volumes. CEQA Year 2027 With Project AM and PM peak hour intersection turning movement volumes are shown on Figure 25 and Figure 26.

### CEQA YEAR 2027 IMPACT ASSESSMENT

ICU and Levels of Service at the applicable study intersections for CEQA Year 2027 Without and With Project conditions are shown in Table 6. As shown in Table 6, the study intersections are forecast to operate at Levels of Service D or better during the peak hours for CEQA Year 2027 Without and With Project conditions.

Table 6 also calculates the net change in ICU at the applicable study intersections for CEQA Year 2027 With Project conditions. As shown in Table 6, the addition of project-generated trips is not forecast to cause any study intersection to operate deficiently (Level of Service E or F) or worsen a deficient intersection operation by more than one percent of capacity; therefore, the proposed project is forecast to result in no significant Level of Service impacts at the study intersections for CEQA Year 2027 With Project conditions and no new mitigation measures are required.

**Table 5 (1 of 2)**  
**Cumulative Projects Trip Generation**

Project ID	Project Name	Land Use	Quantity <sup>1</sup>	Net Trips Generated						
				AM Peak Hour			PM Peak Hour			Daily
				In	Out	Total	In	Out	Total	
City of Newport Beach										
NB1	1600 Dove Street Residences	Existing Use								
		General Office	60.675 TSF	-59	59	0	45	-36	9	472
		Proposed Use								
		Multifamily Housing (Mid-Rise)	249 DU							
NB2	Sage Hill School Expansion	Private School (K-8)	150 ST	86	66	152	18	21	39	617
NB3	Mother's Market	Existing Use								
		Boat Sales	4.487 TSF	11	17	28	29	24	53	690
		Proposed Uses								
		Multifamily Housing	36 DU							
		Supermarket	5.096 TSF							
NB4	Newport Beach Porsche	Auto Dealership	143.494 TSF	195	72	267	139	208	347	3,995
NB5	The Garden Restaurant	Quality Restaurant	10.240 TSF	6	2	8	55	29	84	971
		Commercial Retail	0.747 TSF							
NB6	Newport Village	Existing Uses								
		John Siple/Johnson Yacht Sales	0.500 TSF	108	55	163	77	105	182	2,238
		Sun Country Marine	1.000 TSF							
		Powerhouse Vehicle Sales	17.000 TSF							
		WCH-Duffield Marine	2.000 TSF							
		General Office Building	7.185 TSF							
		WCH-A'Maree's	8.100 TSF							
		Marina	68 Berths							
		Proposed Uses								
		Multifamily Housing (Mid-Rise)	108 DU							
		General Office	55.280 TSF							
		Car Show Room	7.900 TSF							
		Single-Family Detached Residential	14 DU							
		General Office	36.620 TSF							
		Duffield Marine Sales/Office	2.000 TSF							
		Boat Show Room	10 EMP							
		High-Turnover Sit-Down Restaurant	3.815 TSF							
Quality Restaurant	9.100 TSF									
Marina	63 Berths									
NB7	Newport Coast	Multifamily Housing	564 DU	413	932	1,345	926	557	1,483	14,778
		Single-Family Detached Residential	954 DU							

**Table 5 (2 of 2)**  
**Cumulative Projects Trip Generation**

Project ID	Project Name	Land Use	Quantity <sup>1</sup>	Net Trips Generated						
				AM Peak Hour			PM Peak Hour			Daily
				In	Out	Total	In	Out	Total	
University of California, Irvine										
UCI	UCI North Campus Hospital Project	Hospital	144 Beds	526	163	689	202	520	722	8,550
		Ambulatory Care	225.000 TSF							
	UCI North Campus Child Health/Medical Office	Medical Office Building	168.000 TSF	331	79	410	162	414	576	5,531
City of Irvine										
IR1	Volar Apartments	Multifamily Housing (Mid-Rise)	930 DU	79	265	344	221	141	362	4,222
IR2	Futures Academy	Private School	5.621 TSF	8	1	9	1	7	8	61
IR3	Elements Phase 3	Multifamily Housing (Mid-Rise)	593 DU	50	169	219	141	90	231	2,692
		General Office Building	2.730 TSF	4	0	4	1	3	4	30
		Strip Retail Plaza (<40k)	5.000 TSF	7	5	12	16	16	32	272
		Coffee Donut Shop w/o Drive-Thru Window	2.730 TSF	130	125	255	44	44	88	1,393
		Health Fitness Club	6.900 TSF	5	4	9	14	10	24	205
IR4	Landmark	Hotel	386 RM	138	78	216	116	112	228	3,084
		General Office	448.000 TSF	599	82	681	110	535	645	4,856
IR5	Milani Apartments	Multifamily Housing (Mid-Rise)	287 DU	24	82	106	68	44	112	1,303
IR6	Elements	Multifamily Housing (Mid-Rise)	700 DU	60	199	259	167	106	273	3,178
IR7	Von Karman Quartz Office	General Office	16.538 TSF	22	3	25	4	20	24	179
Total				2,743	2,458	5,201	2,556	2,970	5,526	59,317

Sources:

Data provided by City of Newport Beach, City of Irvine, and UCI traffic studies.

ITE = Institute of Transportation Engineers *Trip Generation Manual* (11th Edition, 2021); ### = Land Use Code

Notes:

(1) TSF = Thousand Square Feet; DU = Dwelling Units; ST = Students; EMP = Employees; RM = Rooms

**Table 6**  
**CEQA Year 2027 Intersection Levels of Service and Impact Assessment**

ID	Study Intersection	Traffic Control <sup>1</sup>	CEQA Without Project				CEQA With Project				V/C Increase		Significant Impact?
			AM Peak Hour		PM Peak Hour		AM Peak Hour		PM Peak Hour				
			V/C <sup>2</sup>	LOS <sup>3</sup>	V/C <sup>2</sup>	LOS <sup>3</sup>	V/C <sup>2</sup>	LOS <sup>3</sup>	V/C <sup>2</sup>	LOS <sup>3</sup>	AM	PM	
1.	Campus Dr (NS) at Bristol St North (EW)	TS	0.458	A	0.677	B	0.459	A	0.676	B	+0.001	-0.001	No
2.	Irvine Ave/Campus Dr (NS) at Bristol St South (EW)	TS	0.543	A	0.492	A	0.541	A	0.494	A	-0.002	+0.002	No
3.	Birch St (NS) at Bristol St North (EW)	TS	0.498	A	0.535	A	0.504	A	0.533	A	+0.006	-0.002	No
4.	Birch St (NS) at Bristol St South (EW)	TS	0.361	A	0.364	A	0.361	A	0.365	A	0.000	+0.001	No
5.	MacArthur Blvd (NS) at Campus Dr (EW) <sup>4</sup>	TS	0.441	A	0.669	B	0.441	A	0.669	B	0.000	0.000	No
6.	MacArthur Blvd (NS) at Birch St (EW)	TS	0.355	A	0.479	A	0.355	A	0.479	A	0.000	0.000	No
7.	MacArthur Blvd (NS) at Newport Pl Dr/Von Karman Ave (EW)	TS	0.404	A	0.423	A	0.403	A	0.425	A	-0.001	+0.002	No
8.	MacArthur Blvd (NS) at Jamboree Rd (EW) <sup>4</sup>	TS	0.557	A	0.620	B	0.556	A	0.625	B	-0.001	+0.005	No
9.	MacArthur Blvd (NS) at Bison Ave (EW)	TS	0.450	A	0.476	A	0.451	A	0.477	A	+0.001	+0.001	No
10.	Jamboree Rd (NS) at Campus Dr (EW) <sup>4</sup>	TS	0.574	A	0.622	B	0.574	A	0.622	B	0.000	0.000	No
11.	Jamboree Rd (NS) at Bristol St North (EW)	TS	0.394	A	0.423	A	0.386	A	0.431	A	-0.008	+0.008	No
12.	Jamboree Rd (NS) at Bristol St South (EW)	TS	0.651	B	0.664	B	0.652	B	0.593	A	+0.001	-0.071	No
13.	Jamboree Rd (NS) at Eastbluff Dr/University Dr (EW)	TS	0.636	B	0.678	B	0.637	B	0.679	B	+0.001	+0.001	No

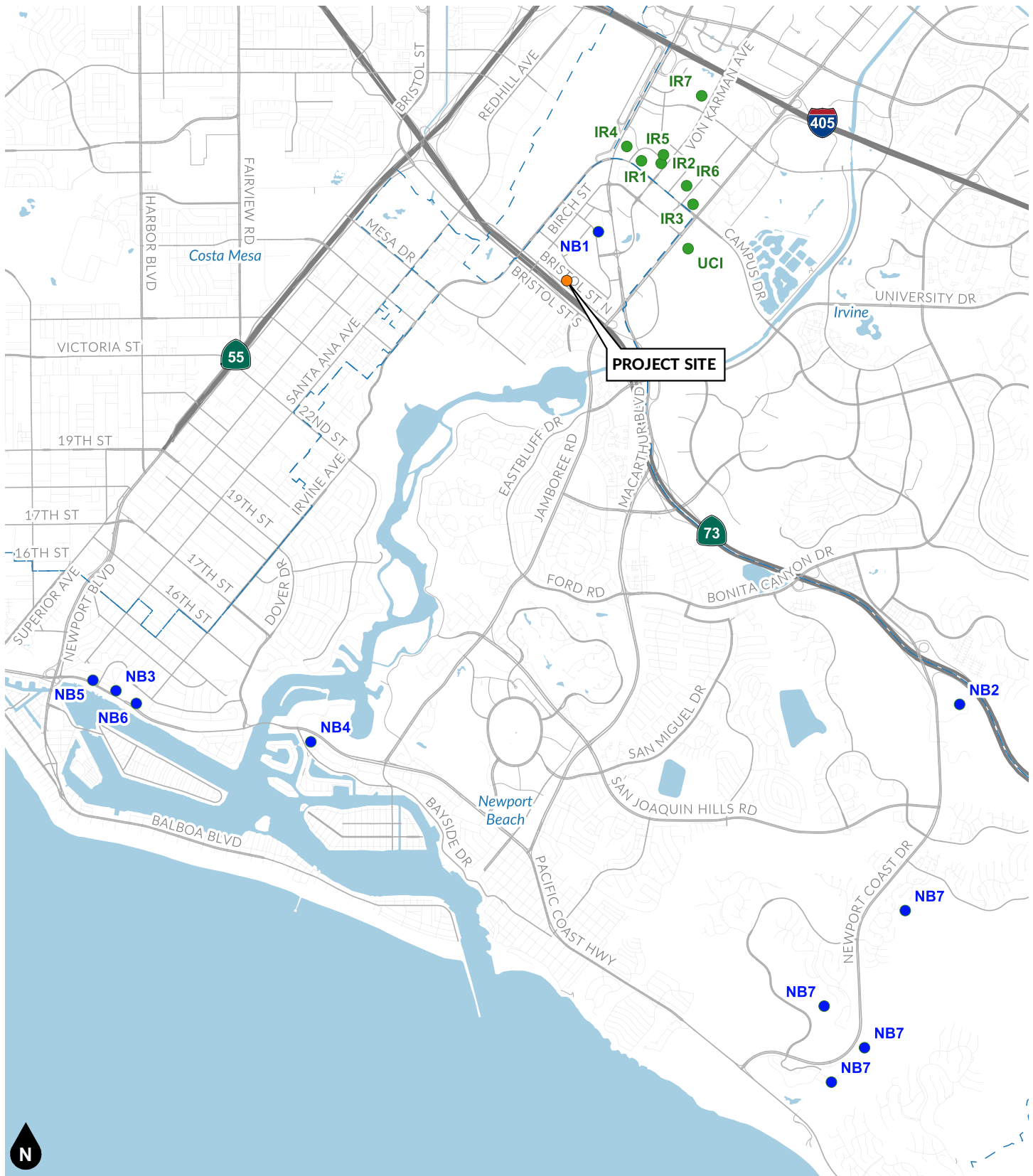
Notes:

(1) TS = Traffic Signal

(2) V/C = Volume/Capacity

(3) LOS = Level of Service

(4) Level of Service E is acceptable; shared jurisdiction with City of Irvine.



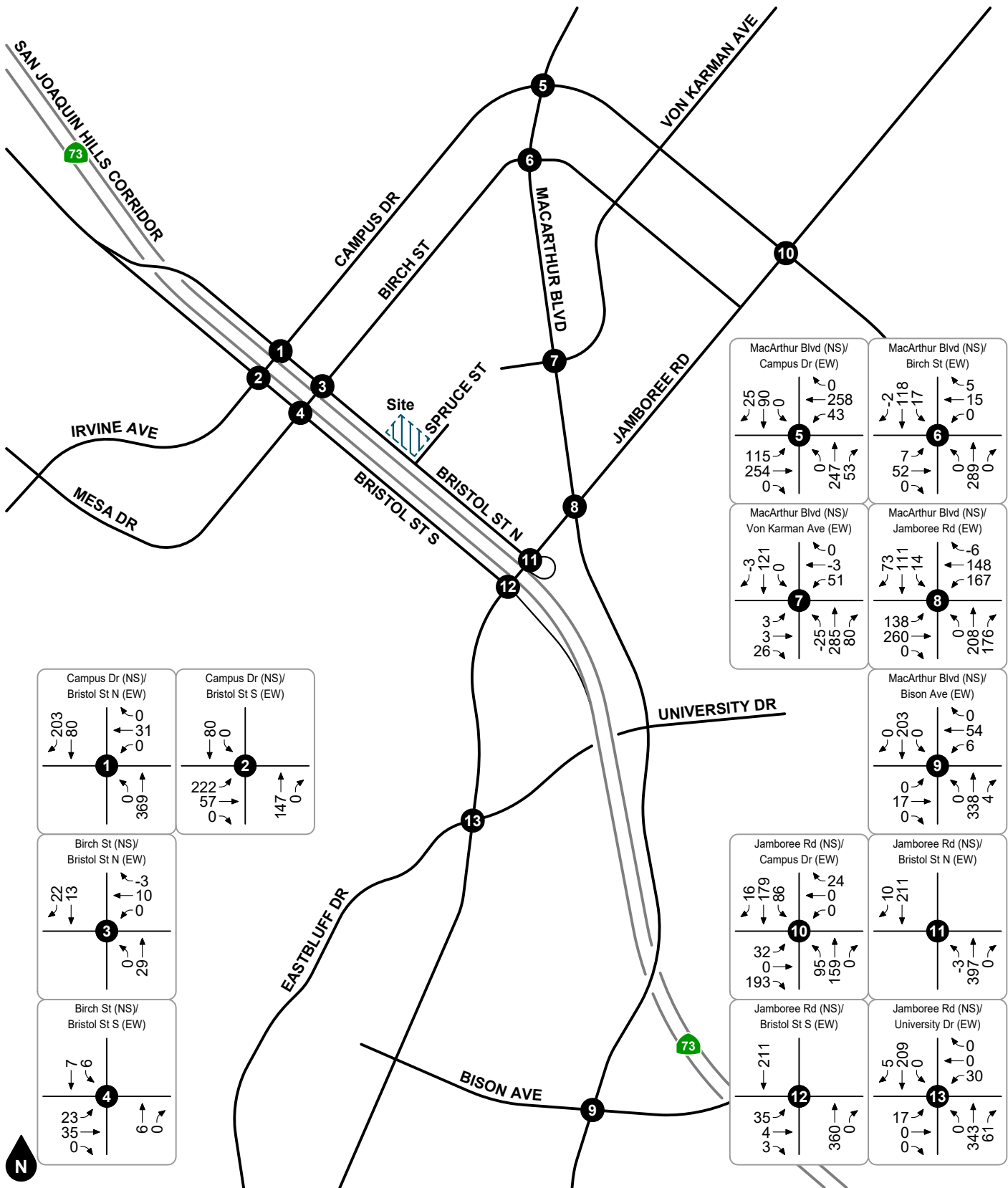
**Legend**

Other Development (see Table 5):

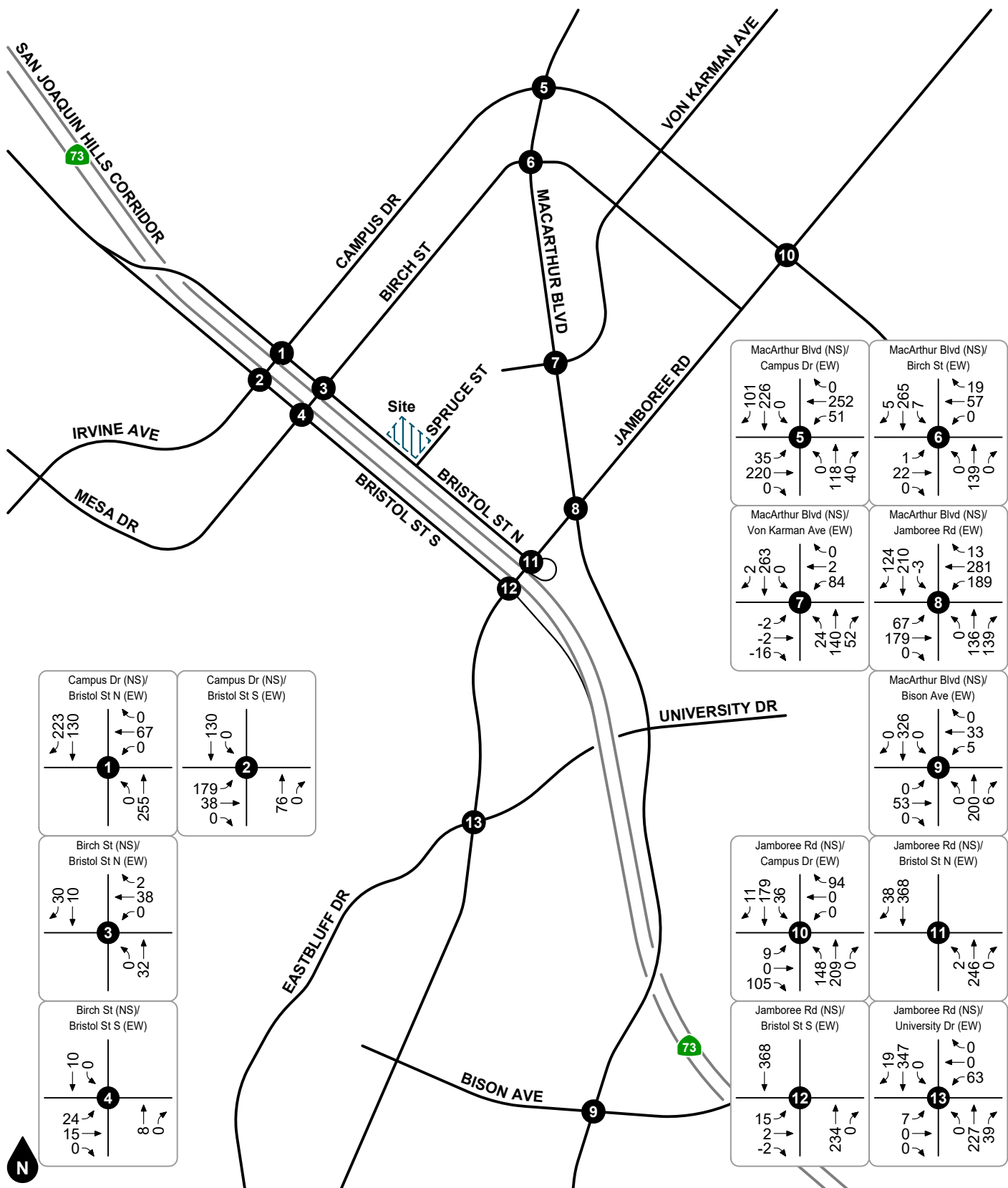
- City of Irvine
- City of Newport Beach

**Figure 20**  
**Cumulative Projects Location Map**



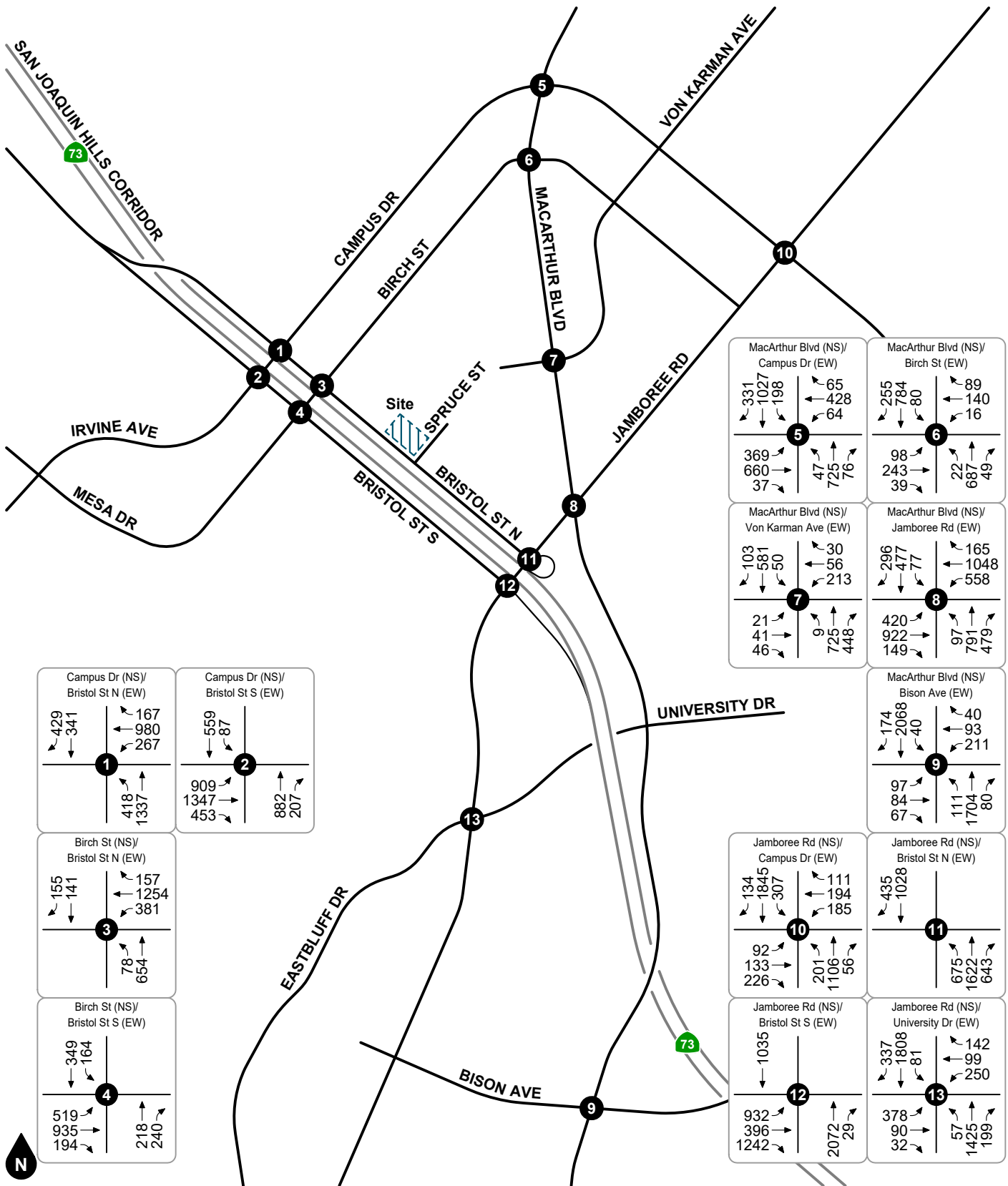


**Figure 21**  
**Cumulative Projects**  
**AM Peak Hour Intersection Turning Movement Volumes**



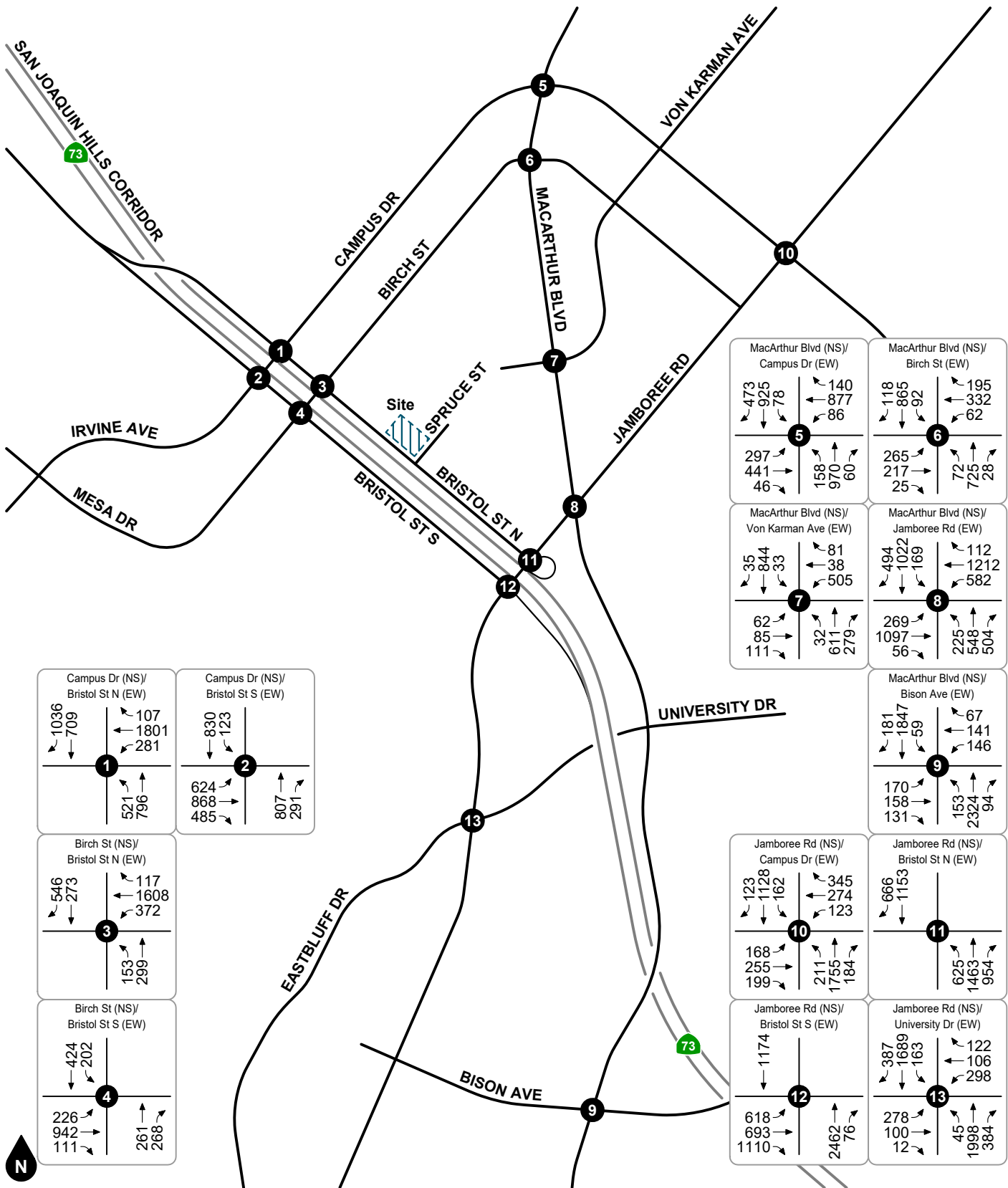
Legend  
# Study Intersection

**Figure 22**  
**Cumulative Projects**  
**PM Peak Hour Intersection Turning Movement Volumes**



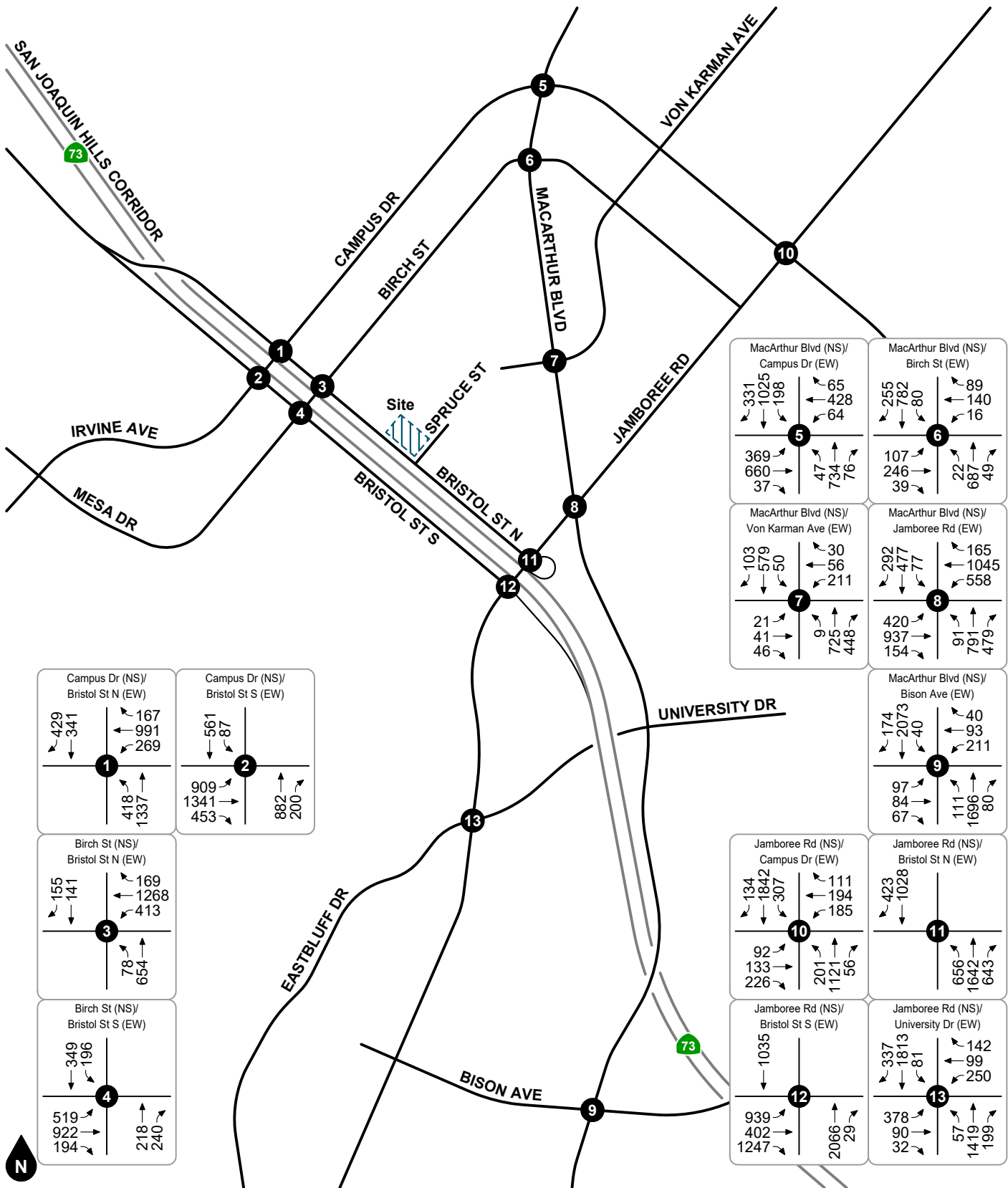
Legend  
# Study Intersection

**Figure 23**  
**CEQA Year 2027 Without Project**  
**AM Peak Hour Intersection Turning Movement Volumes**



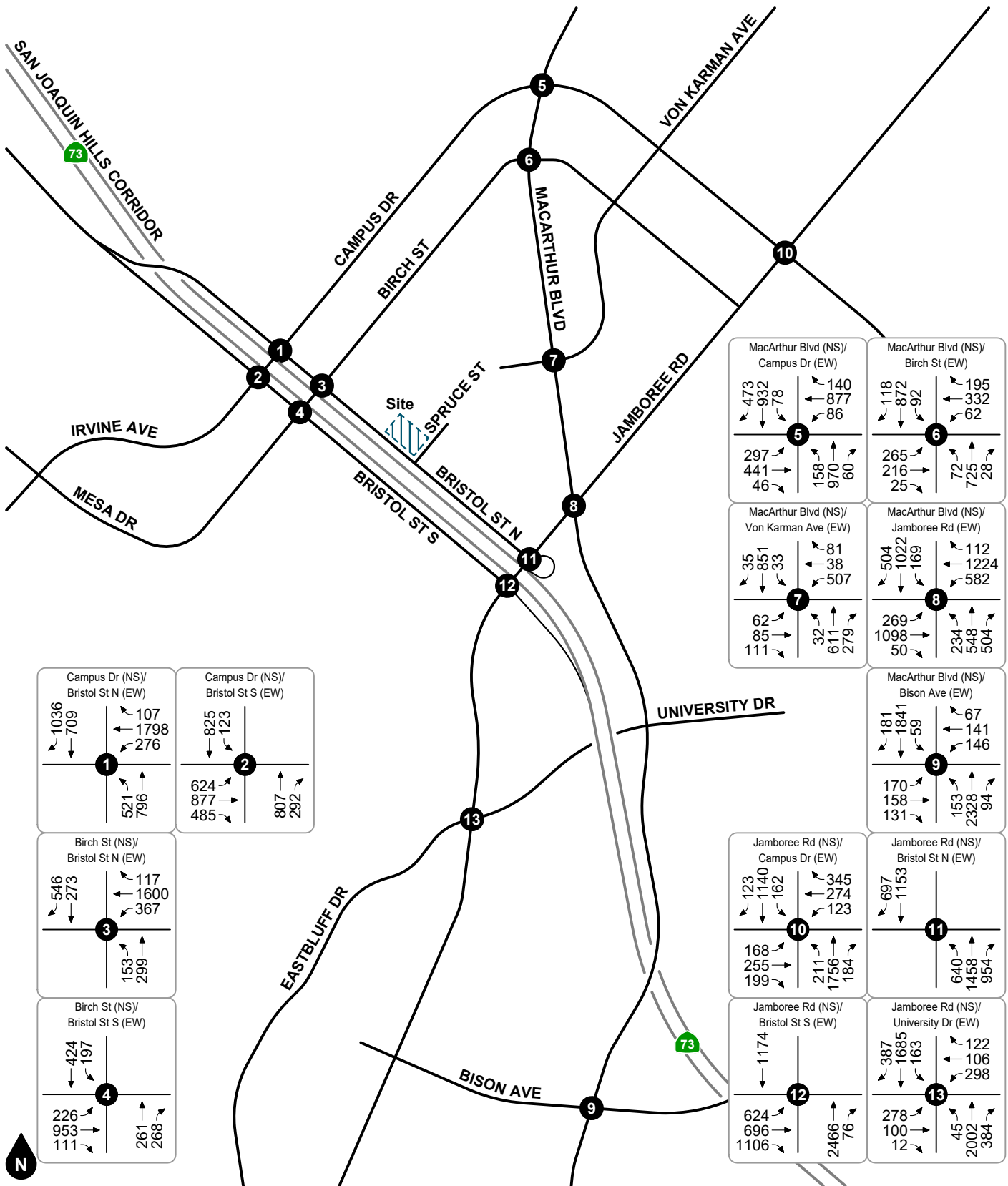
Legend  
# Study Intersection

**Figure 24**  
**CEQA Year 2027 Without Project**  
**PM Peak Hour Intersection Turning Movement Volumes**



Legend  
# Study Intersection

**Figure 25**  
**CEQA Year 2027 With Project**  
**AM Peak Hour Intersection Turning Movement Volumes**



Legend  
# Study Intersection

**Figure 26**  
**CEQA Year 2027 With Project**  
**PM Peak Hour Intersection Turning Movement Volumes**

## 8. GENERAL PLAN COMPARISON ANALYSIS

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This section presents analysis of Post 2030 General Plan Buildout conditions in support of the project's proposed addendum to the 2006 General Plan EIR. Detailed intersection Level of Service calculation worksheets for each of the following analysis scenarios are provided in Appendix C.

### GENERAL PLAN COMPARISON METHODOLOGY

This analysis compares the traffic analysis zone (TAZ) as analyzed in the Post 2030 General Plan Buildout traffic analysis with the proposed project. The Newport Beach Traffic Model (NBTM) TAZ 1390 was analyzed with 87 dwelling units of multifamily housing and 99,970 square feet of general office in the 2006 General Plan EIR. Since the project is constructing 230 multifamily housing dwelling units, the project is proposing 143 additional dwelling units compared to the 2006 General Plan EIR analysis. Therefore, Post 2030 General Plan Buildout With Project conditions were determined by adding the net increase in dwelling units proposed within TAZ 1390 to the Post 2030 General Plan Buildout forecasts originally evaluated in the 2006 General Plan EIR. The general office square footage stayed unchanged in this analysis.

### GENERAL PLAN COMPARISON TRIP GENERATION AND TRIP DISTRIBUTION

Table 7 shows the project trip generation based upon trip generation rates obtained from the Institute of Transportation Engineers (ITE) *Trip Generation Manual* (11th Edition, 2021). Based on review of the ITE land use description, trip generation rates for multifamily housing (mid-rise) not close to transit (Land Use Code 221) were determined to adequately represent the proposed land use and was selected for use in this analysis. The project trip generation forecast is determined by multiplying the trip generation rates by the land use quantity.

As shown in Table 7, the proposed increase in General Plan buildout units is estimated to generate approximately 649 additional daily trips, including 53 additional trips during the AM peak hour and 55 additional trips during the PM peak hour.

Project residential trip distribution patterns (see Figure 12 and Figure 13) were used for this analysis.

### POST 2030 GENERAL PLAN BUILDOUT WITHOUT PROJECT VOLUME FORECASTS

Post 2030 General Plan Buildout Without Project volume forecasts were provided by the City of Newport Beach based on the 2006 General Plan EIR. Post 2030 General Plan Buildout Without Project AM and PM peak hour intersection turning movement volumes are shown on Figure 27 and Figure 28.

### POST 2030 GENERAL PLAN BUILDOUT WITH PROJECT VOLUME FORECASTS

Post 2030 General Plan Buildout With Project volume forecasts were developed by adding the General Plan Comparison project trips to Post 2030 General Plan Buildout Without Project traffic volumes. Post 2030 General Plan Buildout With Project AM and PM peak hour intersection turning movement volumes are shown on Figure 29 and Figure 30.

### GENERAL PLAN COMPARISON IMPACT ASSESSMENT

ICU and Levels of Service at the applicable study intersections for General Plan Comparison: Post 2030 General Plan Buildout Without and With Project conditions are shown in Table 8. As shown in Table 8, the study intersections are forecast to operate at Levels of Service D or better during the peak hours for Post 2030 General Plan Buildout Without and With Project conditions, except for the following intersections:

- |   |                         |
|---|-------------------------|
| 1. Campus Drive (NS) at Bristol Street North (EW)   | (Both AM/PM Peak Hours) |
| 3. Birch Street (NS) at Bristol Street North (EW)   | (AM Peak Hour)          |
| 5. MacArthur Boulevard (NS) at Campus Drive (EW)    | (PM Peak Hour)          |
| 6. MacArthur Boulevard (NS) at Birch Street (EW)    | (PM Peak Hour)          |
| 10. Jamboree Road (NS) at Campus Drive (EW)         | (PM Peak Hour)          |
| 12. Jamboree Road (NS) at Bristol Street South (EW) | (AM Peak Hour)          |

Table 8 also calculates the net change in ICU at the study intersections for Post 2030 General Plan Buildout With Project conditions. As shown in Table 8, the addition of project-generated trips is not forecast to cause any study intersection to operate deficiently (Level of Service E or F) or worsen a deficient intersection operation by more than one percent of capacity; therefore, the proposed project is forecast to result in no significant Level of Service impacts at the study intersections for Post General Plan Buildout With Project conditions and no new mitigation measures are required.



**Table 7**  
**General Plan Comparison Trip Generation**

Trip Generation Rates									
Land Use	Source <sup>1</sup>	Unit <sup>2</sup>	AM Peak Hour			PM Peak Hour			Daily
			% In	% Out	Rate	% In	% Out	Rate	
Multifamily Housing (Mid-Rise)	ITE 221	DU	23%	77%	0.37	61%	39%	0.39	4.54

Trips Generated									
Land Use	Quantity	Unit <sup>2</sup>	AM Peak Hour			PM Peak Hour			Daily
			In	Out	Total	In	Out	Total	
Multifamily Housing (Mid-Rise) <sup>3</sup>	143	DU	13	40	53	34	21	55	649

Notes:

(1) ITE = Institute of Transportation Engineers *Trip Generation Manual* (11th Edition, 2021); ### = Land Use Code

(2) DU = Dwelling Units

(3) The General Plan comparison analysis evaluates an additional 143 DU to NBTM TAZ 1390. Project (230 DU) - TAZ 1390 (87 DU) = 143 DU.

**Table 8**  
**General Plan Comparison: Post 2030 General Plan Buildout Intersection Levels of Service and Impact Assessment**

ID	Study Intersection	Traffic Control <sup>1</sup>	General Plan Buildout Without Project				General Plan Buildout With Project				V/C Increase		Significant Impact?
			AM Peak Hour		PM Peak Hour		AM Peak Hour		PM Peak Hour				
			V/C <sup>2</sup>	LOS <sup>3</sup>	V/C <sup>2</sup>	LOS <sup>3</sup>	V/C <sup>2</sup>	LOS <sup>3</sup>	V/C <sup>2</sup>	LOS <sup>3</sup>	AM	PM	
1.	Campus Dr (NS) at Bristol St North (EW)	TS	<b>1.024</b>	<b>F</b>	<b>0.948</b>	<b>E</b>	<b>1.025</b>	<b>F</b>	<b>0.949</b>	<b>E</b>	+0.001	+0.001	No
2.	Irvine Ave/Campus Dr (NS) at Bristol St South (EW)	TS	0.893	D	0.774	C	0.893	D	0.775	C	0.000	+0.001	No
3.	Birch St (NS) at Bristol St North (EW)	TS	<b>0.916</b>	<b>E</b>	0.811	D	<b>0.919</b>	<b>E</b>	0.813	D	+0.003	+0.002	No
4.	Birch St (NS) at Bristol St South (EW)	TS	0.547	A	0.625	B	0.554	A	0.627	B	+0.007	+0.002	No
5.	MacArthur Blvd (NS) at Campus Dr (EW) <sup>4</sup>	TS	0.809	D	<b>1.241</b>	<b>F</b>	0.809	D	<b>1.241</b>	<b>F</b>	0.000	0.000	No
6.	MacArthur Blvd (NS) at Birch St (EW)	TS	0.796	C	<b>1.016</b>	<b>F</b>	0.797	C	<b>1.018</b>	<b>F</b>	+0.001	+0.002	No
7.	MacArthur Blvd (NS) at Newport Pl Dr/Von Karman Ave (EW)	TS	0.562	A	0.682	B	0.562	A	0.684	B	0.000	+0.002	No
8.	MacArthur Blvd (NS) at Jamboree Rd (EW) <sup>4</sup>	TS	0.877	D	0.858	D	0.878	D	0.861	D	+0.001	+0.003	No
9.	MacArthur Blvd (NS) at Bison Ave (EW)	TS	0.775	C	0.792	C	0.775	C	0.793	C	0.000	+0.001	No
10.	Jamboree Rd (NS) at Campus Dr (EW) <sup>4</sup>	TS	0.930	E	<b>1.180</b>	<b>F</b>	0.931	E	<b>1.182</b>	<b>F</b>	+0.001	+0.002	No
11.	Jamboree Rd (NS) at Bristol St North (EW)	TS	0.681	B	0.606	B	0.684	B	0.617	B	+0.003	+0.011	No
12.	Jamboree Rd (NS) at Bristol St South (EW)	TS	<b>0.942</b>	<b>E</b>	0.867	D	<b>0.947</b>	<b>E</b>	0.871	D	+0.005	+0.004	No
13.	Jamboree Rd (NS) at Eastbluff Dr/University Dr (EW)	TS	0.681	B	0.667	B	0.681	B	0.667	B	0.000	0.000	No

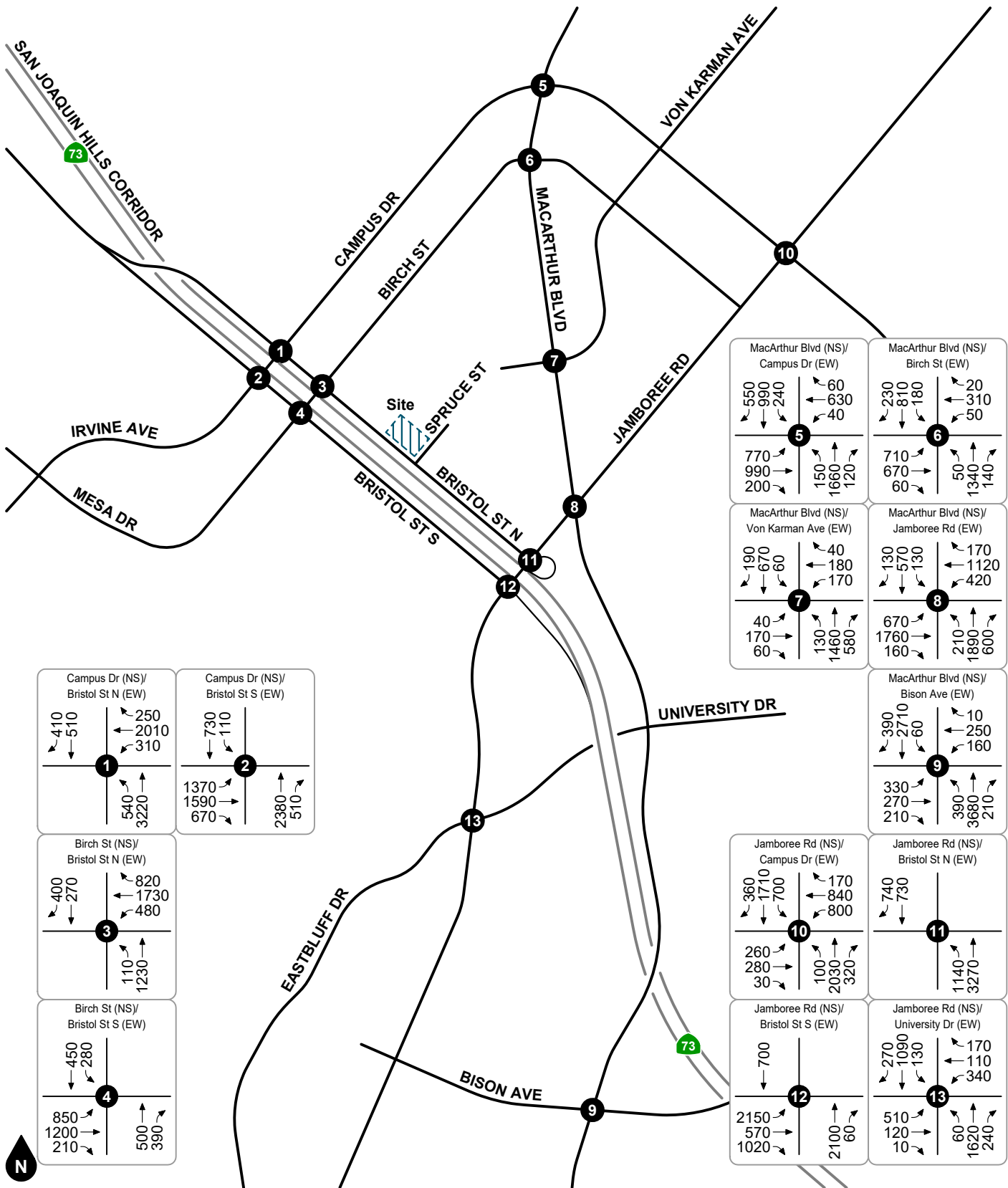
Notes:

(1) TS = Traffic Signal

(2) V/C = Volume/Capacity

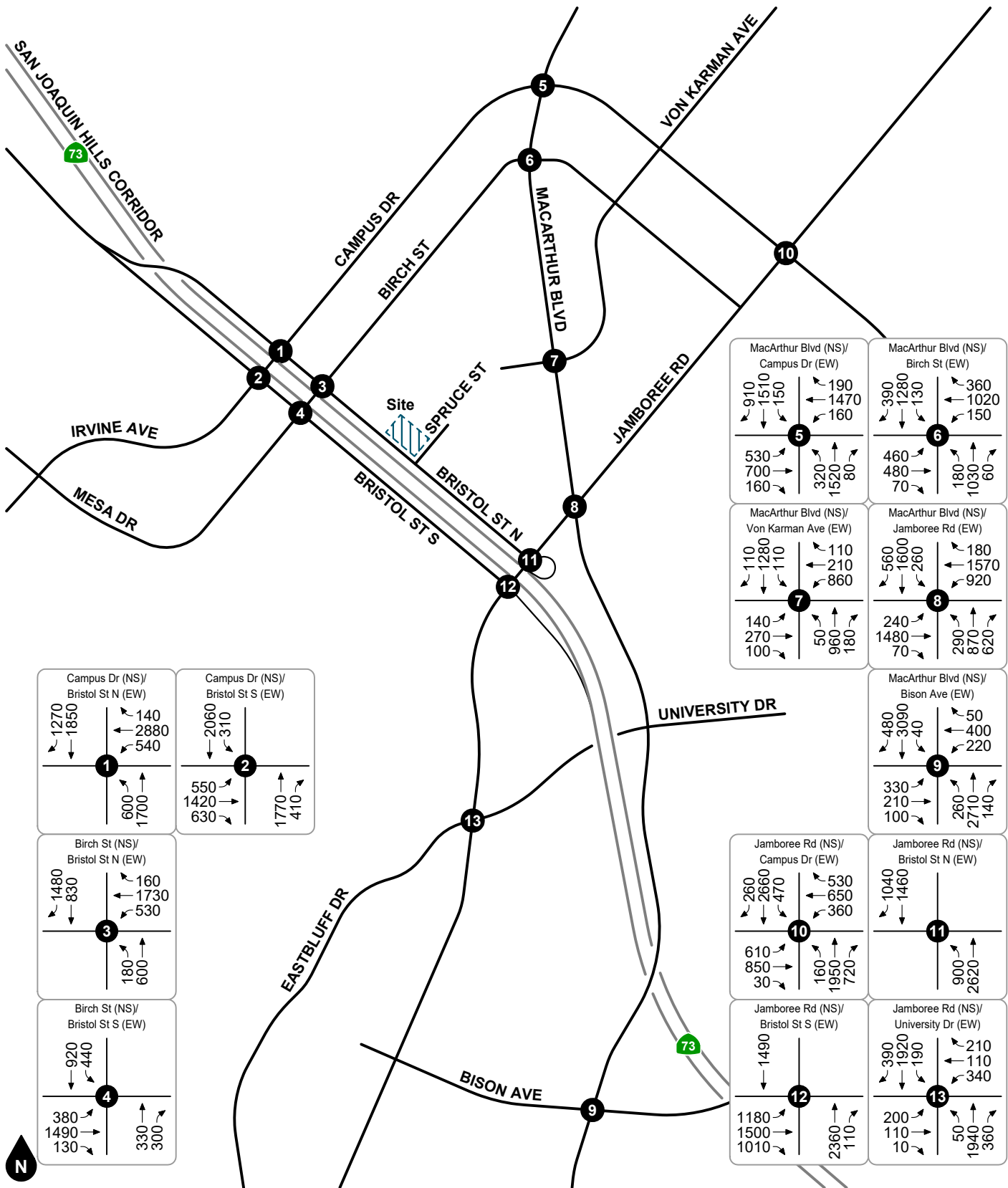
(3) LOS = Level of Service

(4) Level of Service E is acceptable; shared jurisdiction with City of Irvine.

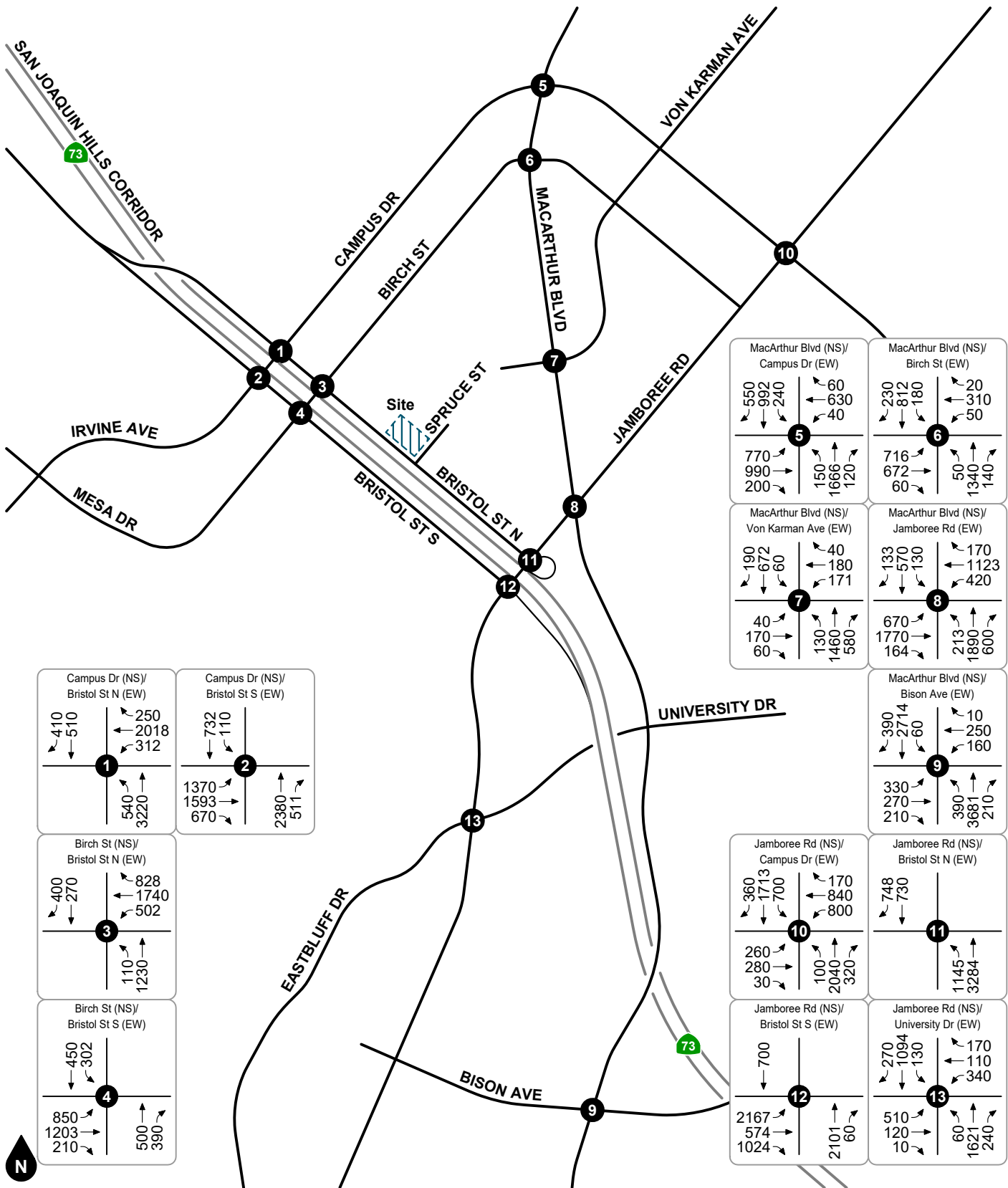


Legend  
# Study Intersection

**Figure 27**  
**Post 2030 General Plan Buildout Without Project**  
**AM Peak Hour Intersection Turning Movement Volumes**

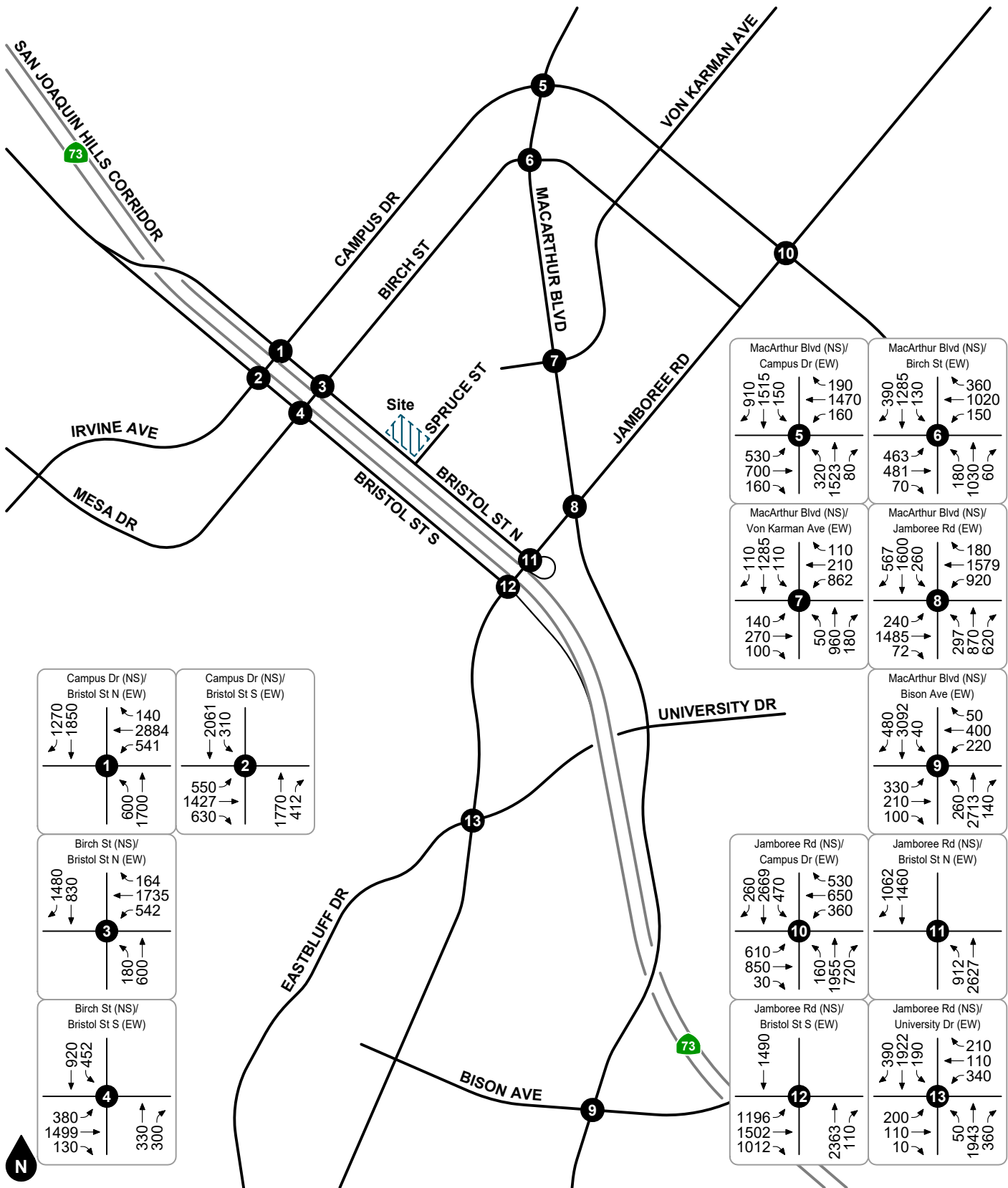


**Figure 28**  
 Post 2030 General Plan Buildout Without Project  
 PM Peak Hour Intersection Turning Movement Volumes



Legend  
 # Study Intersection

**Figure 29**  
 Post 2030 General Plan Buildout With Project  
 AM Peak Hour Intersection Turning Movement Volumes



Legend  
 # Study Intersection

**Figure 30**  
 Post 2030 General Plan Buildout With Project  
 PM Peak Hour Intersection Turning Movement Volumes

## 9. CONGESTION MANAGEMENT PROGRAM

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This section provides analysis of the project impacts at County facilities in accordance with typical Orange County Congestion Management Program (CMP) requirements.

### BACKGROUND

The Orange County CMP is a result of Proposition 111, which was a statewide initiative approved by the voters in June 1990. To prevent gas tax revenues from being used to promote future development, the legislation requires that a traffic impact analysis be prepared for new development. The traffic impact analysis is prepared to monitor and mitigate traffic impacts caused by new development. In Orange County, the Measure M Growth Management Program requires similar efforts; however, compliance with the CMP is required for local jurisdictions to receive Measure M2 funds.

The Legislature requires that adjacent jurisdictions use a standard methodology for conducting a traffic impact analysis. Although details vary from one county to another, the general approach selected by each county for conducting traffic impact analyses has common elements. The Orange County CMP uses the Intersection Capacity Utilization methodology for analysis of intersections within the designated CMP roadway system.

### CMP-MONITORED INTERSECTIONS

The following intersections in the City of Newport Beach are part of the CMP Highway System that require monitoring to ensure that Level of Service standards are maintained:

- Newport Boulevard at Coast Highway
- MacArthur Boulevard at Jamboree Road
- MacArthur Boulevard at Coast Highway

### REQUIREMENTS FOR IMPROVEMENTS

To determine whether the addition of project-generated trips results in an operational impact at a CMP study intersection, and thus requires improvements, the Orange County CMP utilizes the following requirements:

- An operational project impact is defined to occur when a proposed project is forecast to increase traffic demand at a CMP study facility by more than three percent of capacity ( $V/C > 0.03$ ), causing or worsening Level of Service F ( $V/C > 1.00$ ).

### CRITERIA FOR PREPARATION OF CMP IMPACT ANALYSIS

The Orange County CMP uses the following criteria to determine if a proposed development requires analysis:

- Development projects forecast to generate 2,400 daily trips or more and have indirect access to a CMP facility; or development projects forecast to generate 1,600 daily trips or more and have direct access to a CMP facility; or
- Projects with a potential to create an impact of more than three percent of Level of Service E capacity.

Since the proposed project has indirect access to a CMP facility (e.g., MacArthur Boulevard or Jamboree Road) and is forecast to generate less than 2,400 daily trips, the proposed project does not satisfy the criteria for preparation of a separate CMP impact analysis.

## 10. SITE ACCESS AND CIRCULATION

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This section includes a description of project improvements necessary to provide site access and an evaluation of site access and circulation. The following section is based on the site plan used in this traffic impact analysis.

### SITE ACCESS

Vehicular access is proposed to be maintained at Spruce Street with the existing project driveway on Bristol Street North relocated approximately 65 feet to the northwest. Since Bristol Street North is a one-way street, the relocated project driveway at Bristol Street North will continue to provide right turn in/out only access. The project driveway at Spruce Street will continue to provide full access. Based on review of the adjacent development and lane configurations along Bristol Street North and Spruce Street, the existing lane configurations are anticipated to provide adequate circulation.

Based on the forecast project trip distribution patterns, the majority of the project trips, particularly resident trips during the AM/PM peak hours, are expected to access the site via the project driveway at Bristol Street North. Bristol Street North is a three-lane arterial roadway at the project driveway that connects with other arterial and regional roadway facilities. Westbound traffic along Bristol Street North at the project driveway will operate in free-flow conditions. Right turns into the project site from Bristol Street North will have no conflicting vehicular movements and are therefore expected to cause minimal to no delays along Bristol Street North.

### ON-SITE CIRCULATION

The proposed project site plan indicates on-site subterranean drive aisles will be a typical minimum of 26 feet along the drive aisles with perpendicular parking spaces, which is generally adequate for two-way circulation and provides sufficient space for most vehicles to back out and conveniently exit the parking stall. The project site plan proposes drive aisles from Bristol Street North and Spruce Street that terminate at parking garage entrances/exits with perpendicular parking and drive aisles within the parking garage. The final parking layout and circulation will be reviewed and approved by the City of Newport Beach.

In accordance with the City of Newport Beach Municipal Code development standards for parking areas (Section 20.40.070.A.1c), both project driveways provide a minimum set back of five (5) feet between the property line and the first parking space accessed from a public street (within the parking garage). Additionally, the two basement level parking layouts proposed allow for full circulation with no dead-end drive aisles. The only dead-end drive aisle located on the proposed ground floor parking layout includes a turnaround parking space.



## 11. VEHICLE MILES TRAVELED (VMT)

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### BACKGROUND

California Senate Bill 743 (SB 743) directs the State Office of Planning and Research (OPR) to amend the California Environmental Quality Act (CEQA) Guidelines for evaluating transportation impacts to provide alternatives to Level of Service that “promote the reduction of greenhouse gas emissions, the development of multimodal transportation networks, and a diversity of land uses.” In December 2018, the California Natural Resources Agency certified and adopted the updated CEQA Guidelines package. The amended CEQA Guidelines, specifically Section 15064.3, recommend the use of Vehicle Miles Travelled (VMT) as the primary metric for the evaluation of transportation impacts associated with land use and transportation projects. In general terms, VMT quantifies the amount and distance of automobile travel attributable to a project or region. All agencies and projects State-wide are required to utilize the updated CEQA guidelines recommending use of VMT for evaluating transportation impacts as of July 1, 2020.

The updated CEQA Guidelines allow for lead agency discretion in establishing methodologies and thresholds provided there is substantial evidence to demonstrate that the established procedures promote the intended goals of the legislation. Where quantitative models or methods are unavailable, Section 15064.3 allows agencies to assess VMT qualitatively using factors such as availability of transit and proximity to other destinations. The Office of Planning and Research (OPR) *Technical Advisory on Evaluating Transportation Impacts in CEQA* (State of California, December 2018) [“OPR Technical Advisory”] provides technical considerations regarding methodologies and thresholds with a focus on office, residential, and retail developments as these projects tend to have the greatest influence on VMT.

### VMT ASSESSMENT AND SCREENING

The project VMT impact has been assessed in accordance with guidance provided by the City of Newport Beach *SB743 Implementation* (April 6, 2020) [“the City VMT Guidelines”] and City Council Policy K-3. The transportation guidelines provide a framework for “screening thresholds” for certain projects that are expected to cause a less than significant impact without conducting a detailed VMT study. The proposed project is considered a residential land use.

The City VMT Guidelines contain a map of VMT per capita for all existing Newport Beach residential areas (see Appendix F). VMT per capita in each area is compared to the regional average VMT per capita for Orange County. This map shows areas where residential development have a VMT per capita lower than the Orange County regional average and may therefore be presumed to result in a less than significant VMT impact based on guidance provided in the OPR Technical Advisory.

The proposed project is in an area with low residential VMT per capita. Therefore, the proposed project is presumed to have a less than significant impact on VMT since it satisfies the City-established screening criteria. No additional VMT modeling or mitigation measures are required.

## 12. CONCLUSIONS

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This section summarizes the findings and mitigation measures (if any) identified in previous sections of this study.

### PROJECT TRIP GENERATION

The existing project site land use is estimated per Table 2 to generate approximately 420 daily trips, including 59 trips during the AM peak hour and 56 trips during the PM peak hour. The proposed project site land use is forecast to generate approximately 1,044 daily trips, including 85 trips during the AM peak hour and 90 trips during the PM peak hour. Therefore, the proposed project is forecast to result in a net increase of approximately 624 net new daily trips, including 26 net new trips during the AM peak hour and 34 net new trips during the PM peak hour.

### TPO IMPACT ANALYSIS

The addition of project-generated trips is not forecast to cause any study intersection to operate deficiently (Level of Service E or F) or worsen a deficient intersection operation by more than one percent of capacity; therefore, the proposed project is forecast to result in no Level of Service impacts at the study intersections for TPO Year 2027 With Project conditions and no improvements are required.

### CEQA YEAR 2027 IMPACT ANALYSIS

The addition of project-generated trips is not forecast to cause any study intersection to operate deficiently (Level of Service E or F) or worsen a deficient intersection operation by more than one percent of capacity; therefore, the proposed project is forecast to result in no significant Level of Service impacts at the study intersections for CEQA Year 2027 With Project conditions and no new mitigation measures are required.

### CEQA GENERAL PLAN COMPARISON IMPACT ANALYSIS

The addition of project-generated trips is not forecast to cause any study intersection to operate deficiently (Level of Service E or F) or worsen a deficient intersection operation by more than one percent of capacity; therefore, the proposed project is forecast to result in no significant Level of Service impacts at the study intersections for General Plan Comparison: Post 2030 General Plan Buildout With Project conditions and no new mitigation measures are required.

### VMT SCREENING

The proposed project is located in an area with VMT per capita lower than the Orange County regional average for residential use. Per the City VMT Guidelines, the project is therefore presumed to have a less than significant impact on VMT.

### CONGESTION MANAGEMENT PROGRAM

Since the proposed project has indirect access to a CMP facility (e.g., MacArthur Boulevard or Jamboree Road) and is forecast to generate less than 2,400 daily trips, the proposed project does not satisfy the criteria for preparation of a separate CMP impact analysis.

### SITE ACCESS AND CIRCULATION

Vehicular access is proposed to be maintained at Spruce Street with the existing project driveway on Bristol Street North relocated approximately 65 feet to the northwest. Since Bristol Street North is a one-way street, the relocated project driveway at Bristol Street North will continue to provide right turn in/out only access.

The project driveway at Spruce Street will continue to provide full access. Based on review of the adjacent development and lane configurations along Bristol Street North and Spruce Street, the existing lane configurations are anticipated to provide adequate circulation.

## APPENDICES

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Appendix A Glossary  
Appendix B Volume Count Worksheets  
Appendix C Level of Service Worksheets  
Appendix D Approved Projects List and Cumulative Projects  
Appendix E TPO One-Percent Threshold Analysis  
Appendix F Existing VMT Per Population Map



**GANDDINI GROUP INC.**

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**EXHIBIT “H”****CONDITIONS OF APPROVAL**

*(Project-specific conditions are in italics)*

**Planning Division**

1. The development shall be in substantial conformance with the approved site plan, floor plans, landscape plans, and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The Project is subject to compliance with all applicable submittals approved by the City of Newport Beach (“City”) and all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. *Entitlements granted under PA2022-0296 shall expire unless exercised within twenty-four (24) months from the date of approval as specified in Section 20.54.060 of the Newport Beach Municipal Code (“NBMC”), unless an extension is otherwise granted by the City for a period of time provided for in the Development Agreement pursuant to California Government Code Section 66452.06(a).*
4. *The proposed residential development shall consist of 229 apartment units, inclusive of 153 base units (conversion and GPA units) and 77 density bonus units.*
5. *A minimum of 23 apartment units shall be made affordable to very-low-income households consistent with the approved Residences at 1400 Bristol Street Affordable Housing Implementation Plan and Density Bonus Application dated August 11, 2023.*
6. Maximum height of the residential structure shall be 85 feet. No building or any portion of structure, architectural feature or mechanical equipment shall exceed 85 feet.
7. *Prior to the issuance of a building permit, an affordable housing agreement shall be executed in a recordable form as required by the City Attorney’s Office.*
8. *The on-site recreational amenities including private balconies, a clubroom, podium courtyard, a roof deck, media room, business center, etc. as illustrated on the approved plans shall be provided and maintained for the duration of the Project. The exact mix of amenities may be modified from the original approved plans subject to the approval by the Community Development Director. The total floor area or open space area dedicated to on-site recreational amenities shall not be reduced.*
9. *The residential parking garage shall have the following features:*
  - a. *A safe, secure and well lighted and signed pedestrian paths for all users.*

- b. Adequate and uniform lighting throughout each parking level.*
  - c. Panic alarms and two-way communication systems in prominent locations on each parking level.*
- 10. *Prior to the issuance of a building permit, an acoustical analysis report, prepared by an acoustical engineer, shall be submitted to the Planning Division describing the acoustical design features of the structure that will satisfy the exterior and interior noise standards. The Project shall be attenuated in compliance with the report.*
- 11. *The residential structure shall be attenuated to provide an interior noise level of 45 dBA CNEL or less. Use of walls, berms, interior noise insulation, double paned windows, advance insulation systems, or other noise mitigation measures, as deemed appropriate by the City shall be incorporated in the design of the new residential structure to provide adequate noise attenuation.*
- 12. *The design of the residential structure shall provide adequate noise attenuation between adjacent units (common floor/ceiling) in accordance with the California Building Code (CBC).*
- 13. *Residential uses shall be indoor-oriented to reduce noise impingement on outdoor living areas.*
- 14. *Advanced air filtration systems for buildings shall be considered to promote cleaner air without the opening of windows.*
- 15. *Prior to the issuance of a building permit, the Applicant shall submit to the Community Development Department a final copy of FAA Determination of No Hazard to Air Navigation reflective of the proposed building height.*
- 16. *The Applicant shall comply with all applicable provisions of NBMC Chapter 15.38, Fair Share Traffic Contribution Ordinance, and Chapter 15.42, Major Thoroughfare and Bridge Fee Program. Prior to the issuance of a building permit, Fair Share Traffic Fees and Transportation Corridor Agency fees shall be paid for the Project.*
- 17. *Prior to the issuance of a building permit, the Applicant shall pay applicable school fees for the Project.*
- 18. *Prior to the issuance of a building permit, the Applicant shall pay applicable property development tax as required pursuant to NBMC Chapter 3.12 (Property Development Tax) for the Project.*
- 19. *Prior to the issuance of a building permit, the Applicant shall pay the Project's fair share of public safety fee, as determined by the Community Development Director, to fund the cost of staffing, services and equipment as necessary for fire-related public safety purposes.*

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20. *The Applicant shall comply with all provisions of the Development Agreement including payment and timing of the public benefit fees.*
21. *The property management company shall distribute a written disclosure statement prior to lease or rental of any residential unit. The disclosure statement shall indicate that the occupants will be living in an urban type of environment and that the noise, odor, and outdoor activity levels may be higher than a typical suburban residential area. In addition, potential annoyances or inconveniences associated with residing in proximity to airport operations such as noise, vibration, and odor may occur. The disclosure statement shall include a written description of the potential impacts to residents of both the existing environment and potential impacts based upon the allowed uses in the zoning district and proximity to airport. Each and every lessee or renter shall sign the statement acknowledging that they have received, read, and understand the disclosure statement. The Applicant shall covenant to include within all deeds, leases or contracts conveying any interest in the Project: (1) the disclosure and notification requirement stated herein; (2) an acknowledgment by all grantees or lessees that the property is located within an urban type of environment and that the noise, odor, and outdoor activity levels may be higher than a typical suburban residential area; and (3) acknowledgment that the covenant is binding for the benefit and in favor of the City of Newport Beach.*
22. *Disturbance to or removal of potential bird nesting habitat shall be prohibited during the migratory bird nesting season (February 1 through August 31) unless a migratory bird nesting survey is completed. If demolition and/or vegetation removal is planned to occur during the migratory bird nesting season (February 1 through August 31), then a migratory bird nesting survey shall be completed in accordance with the following requirements:*
- a. Within three (3) days prior to initiating demolition, tree removals and/or vegetation clearing, a nesting bird survey shall be conducted by a qualified biologist within the suitable habitat to be removed and within a 250-foot radius.*
  - b. If the survey reveals no active nesting, the proposed action may proceed.*
  - c. If the survey identifies the presence of active sensitive bird nests, then the nests shall not be disturbed unless the qualified biologist verifies through non-invasive methods that either (i) the adult birds have not begun egg-laying and incubation; or (ii) the juveniles from the occupied nests are capable of independent survival.*
  - d. If the biologist is not able to verify any of the conditions from sub-item "b," above, then no disturbance shall occur within a buffer zone specified by the qualified biologist for each nest or nesting site. The buffer zone shall be species-appropriate (no less than 100-foot radius around the nest for non-raptors and no more than a 500-foot radius around the nest for raptors, or as otherwise determined by the qualified biologist) and shall be sufficient to protect the nest from direct and indirect impacts from construction activities. The nests and buffer zones shall be field checked approximately weekly by a qualified biological monitor. The approved buffer zone shall be marked in the field with construction*



*fencing, within which no vegetation clearing or ground disturbance shall commence until the qualified biologist with City concurrence verify that the nests are no longer occupied and/or juvenile birds can survive independently from the nests.*

23. Any substantial modification to the approved Site Development Review plans, as determined by the Community Development Director, shall require an amendment to this Site Development Review application or the processing of a new application.
24. The project is subject to all applicable City ordinances, policies, and standards unless specifically waived or modified by the conditions of approval.
25. The applicant shall comply with all federal, state, and local laws. A material violation of any of those laws in connection with the use may be caused the revocation of the approved entitlements.
26. *All proposed signs shall be in conformance with the provisions of Chapter 20.42 (Signs) of the Newport Beach Municipal Code.*
27. A copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans before issuance of the building permits.
28. Prior to the issuance of a building permit, the applicant shall submit a landscape and irrigation plan prepared by a licensed landscape architect. These plans shall incorporate drought-tolerant plantings and water-efficient irrigation practices, and the plans shall be approved by the Planning Division.
29. All landscape materials and irrigation systems shall be maintained by the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing, and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
30. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, in the opinion of the Director of Community Development, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
31. Prior to the issuance of a building permit, the Applicant shall prepare photometric study for the Project in conjunction with a final lighting plan for approval by the Planning Division. All outdoor lighting fixtures shall be designed, shielded, aimed, located, and maintained to shield adjacent properties and to not produce glare onto adjacent

properties or roadways. Parking lot light fixtures and light fixtures on buildings shall be full cut-off fixtures.

32. Prior to the issuance of Final Certificate of Occupancy, the Applicant shall schedule an evening inspection by the Code Enforcement Division to confirm control of light and glare specified in conditions of approval.
33. Prior to the issuance of a building permit, the Applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
34. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified periods unless the ambient noise level is higher:

	Between the hours of 7:00 AM and 10:00 PM		Between the hours of 10:00 PM and 7:00 AM	
Location	Interior	Exterior	Interior	Exterior
Residential Property	45dBA	55dBA	40dBA	50dBA
Residential Property located within 100 feet of a commercial property	45dBA	60dBA	45dBA	50dBA
Mixed Use Property	45dBA	60dBA	45dBA	50dBA
Commercial Property	N/A	65dBA	N/A	60dBA

35. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or leasing agent.
36. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday, and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.
37. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes. Refuse collection shall comply with the loading a pick up location identified on approved plans. The Applicant's property management company shall contract with a franchised hauler on the City list of authorized companies.
38. The applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters if deemed necessary by the Planning Division. Cleaning and maintenance of trash dumpsters shall be done in compliance

with the provisions of Title 14, including all future amendments (including Water Quality related requirements).

39. *A qualified monitor, one from each consulting tribe (the Juaneño Band of Mission Indians - Acjachemen Nation, Gabrieleno Band of Mission Indians - Kizh Nation, and Gabrielino Tongva Indians of California), shall be retained and compensated as Native American Monitors for the project site prior to the commencement of any ground-disturbing activity to the completion of ground disturbing activities to monitor grading and excavation activities. A rotation schedule between the three tribes shall be established with the applicant. Voluntary monitoring by each consulting tribe is permitted on days that the tribe(s) is not scheduled to monitor.*
40. *The rotating monitors, one from each consulting tribe, shall be retained prior to the commencement of any "ground-disturbing activity" for the subject project at all project locations (i.e., both on-site and any off-site locations that are included in the project description/definition and/or required in connection with the project, including public improvement work if undertaken by the applicant). "Ground-disturbing activity" shall include, but is not limited to, any demolition that includes subterranean impacts, potholing, auguring, boring, grading, excavation, drilling, and trenching.*
41. *A copy of the executed monitoring agreement shall be submitted to the City prior to the commencement of any ground-disturbing activity, or the issuance of any permit necessary to commence a ground-disturbing activity.*
42. *The monitors shall complete daily monitoring logs that will provide descriptions of the relevant ground-disturbing activities, the type of construction activities performed, locations of ground-disturbing activities, soil types, cultural-related materials, and any other facts, conditions, materials, or discoveries of significance to the Tribe. Monitor logs will identify and describe any discovered TCRs, including but not limited to, Native American cultural and historical artifacts, remains, places of significance, etc., (collectively, tribal cultural resources, or "TCR"), as well as any discovered Native American (ancestral) human remains and burial goods. Copies of monitor logs shall be shared between the three monitors and provided to the project applicant/lead agency upon written request to the monitors.*
43. *On-site tribal monitoring shall conclude upon the latter of the following (1) written confirmation to the consulting tribes from a designated point of contact for the project applicant/lead agency that all ground-disturbing activities and phases that may involve ground-disturbing activities on the project site or in connection with the project are complete; or (2) a determination and written notification by the consulting tribes to the project applicant/lead agency that no future, planned construction activity and/or development/construction phase at the project site possesses the potential to impact TCRs of the consulting tribes.*
44. *Upon discovery of any TCRs, all construction activities in the immediate vicinity of the discovery shall cease (i.e., within the surrounding 50 feet) and shall not resume until the discovered TCR has been fully assessed by the monitor and/or archaeologist. The*

*monitors will recover and retain all discovered TCRs in the form and/or manner the tribes deem appropriate, in the tribes' sole discretion in coordination with the applicant, and for any purpose the tribes deem appropriate, including for educational, cultural and/or historic purposes.*

45. *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 Public Resources Code Section 5097.98, are also to be treated according to this statute.*
46. *If Native American human remains and/or grave goods are discovered or recognized on the project site, then Public Resource Code 5097.9 as well as Health and Safety Code Section 7050.5 shall be followed.*
47. *Human remains and grave/burial goods shall be treated alike per California Public Resources Code section 5097.98(d)(1) and (2).*
48. *Preservation in place (i.e., avoidance) is the preferred manner of treatment for discovered human remains and/or burial goods.*
49. *Any discovery of human remains/burial goods shall be kept confidential to prevent further disturbance.*
50. To the fullest extent permitted by law, the applicant shall indemnify, defend and hold harmless the City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs, and expenses (including without limitation, attorney's fees, disbursements, and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of Residences at 1400 Bristol Street including, but not limited to General Plan Amendment, Planned Community Development Plan Amendment, Major Site Development Review, Affordable Housing Implementation Plan, Development Agreement, Addendum to the 2006 General Plan Update Program Environmental Impact Report, and Traffic Study, PA2022-0296. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorney's fees, and other expenses incurred in connection with such claim, action, causes of action, suit, or proceeding whether incurred by the applicant, City, and/or the parties initiating or bringing the such proceeding. The applicant shall indemnify the City for all the City's costs, attorneys' fees, and damages that which City incurs in enforcing the indemnification provisions outlined in this condition. The applicant shall pay to the City upon demand any amount owed to the City under the indemnification requirements prescribed in this condition.

### **Public Works Department**

51. All improvements shall be constructed as required by Ordinance and the Public Works Department.
52. An encroachment permit shall be required for all work activities within the public right of way.
53. *The final Construction Management Plan (CMP) shall be reviewed and approved by the Community Development Director and the City Traffic Engineer prior to building permit issuance.*
54. *A Parking Management Plan (PMP) shall be reviewed and approved by the Community Development Director and City Traffic Engineer prior to building permit issuance. The PMP shall include information regarding gate operation, move-in and move-out, ride share area, guest parking areas and residential parking areas.*
55. *Parking layout and ramp slopes shall comply with the City Parking Lot Standard 805. Dead-end drive aisle in public areas and/or unassigned parking areas shall provide a dedicated turn around space and minimum 5-foot drive aisle extension.*
56. *The applicant shall reconstruct all existing broken and/or otherwise damaged curb, gutter and sidewalk along the Spruce Street and Bristol Street North frontages per City Standards.*
57. *The applicant shall construct an 8-foot wide sidewalk along the Bristol Street North frontage and dedicate all applicable easements to the City to accommodate the 8-foot wide sidewalk.*
58. *The applicant shall provide an additional 2-foot wide easement along the Bristol Street North frontage for sidewalk purposes to accommodate a 10-foot wide sidewalk. The applicant shall construct a 10-foot wide sidewalk along the Bristol Street North project frontage when other developments in the area occurs and/or future pedestrian/cyclist volumes/usage increase, as directed by the Public Works Department.*
59. *The applicant shall provide a 6-foot wide sidewalk around the proposed pull-out area. The applicant shall dedicate all applicable easements to the City to accommodate the 6-foot wide sidewalk.*
60. *All deliveries shall be accommodated on-site and prohibited from parking or stopping within the public right of way. Only ride share vehicles shall be permitted to utilize the pull-out area located on Spruce Street.*
61. *The proposed driveway shall be constructed per City Standard 161. The radius for the Bristol Street North driveway shall be minimum 20-foot radius and the radius for the Spruce Street driveway shall be 15-foot minimum.*
62. *All on-site fire hydrants shall be privately owned and maintained.*

63. *An encroachment permit and encroachment agreement shall be obtained for the proposed pedestrian bridge located across Spruce Street. The bridge vertical clearance heights shall comply with latest Caltrans Highway Design Manual.*
64. *All landscaping along the Spruce Street and Bristol Street North frontages shall comply with the City's line of sight standard 105.*
65. *Final design of the water and sewer services is subject to further review by the Public Works Department during plan check.*
66. *Final design of the modified storm drain inlets is subject to further review by the Public Works Department during plan check.*
67. *The Spruce Avenue entrance shall be designed to accommodate a turnaround area prior to the garage entry and a minimum 3 vehicle queue prior to the call box. The turnaround shall comply with the AASHTO turning templates. The vehicle queue shall be located entirely outside of the Spruce Avenue right-of-way.*
68. *Prior to the issuance of a Certificate of Occupancy, the Applicant shall coordinate with the City to complete the required off-site improvements identified in the Sewer Capacity Study dated August 11, 2023, to the satisfaction of the Public Works and Utilities Directors. The Applicant shall be responsible for their fair share cost of the improvements as determined by the City, which may include the payment and construction of the entire improvement.*

### **Building Division**

69. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. Approval from the Orange County Health Department is required before the issuance of a building permit.
70. The applicant shall employ the following best available control measures ("BACMs") to reduce construction-related air quality impacts:

#### **Dust Control**

- Water all active construction areas at least twice daily.
- Cover all haul trucks or maintain at least two feet of freeboard.
- Pave or apply water four times daily to all unpaved parking or staging areas.
- Sweep or wash any site access points within two hours of any visible dirt deposits on any public roadway.
- Cover or water twice daily any on-site stockpiles of debris, dirt, or other dusty material.
- Suspend all operations on any unpaved surface if winds exceed 25 mph.

#### **Emissions**

- Require 90-day low-NOx tune-ups for off-road equipment.

- Limit allowable idling to 30 minutes for trucks and heavy equipment

#### Off-Site Impacts

- Encourage carpooling for construction workers.
- Limit lane closures to off-peak travel periods.
- Park construction vehicles off traveled roadways.
- Wet down or cover dirt hauled off-site.
- Sweep access points daily.
- Encourage receipt of materials during non-peak traffic hours.
- Sandbag construction sites for erosion control.

#### Fill Placement

- The number and type of equipment for dirt pushing will be limited on any day to ensure that SCAQMD significance thresholds are not exceeded.
- Maintain and utilize a continuous water application system during earth placement and compaction to achieve a 10 percent soil moisture content in the top six-inch surface layer, subject to review/discretion of the geotechnical engineer.

71. All new construction shall comply with 2022 California Code Edition.
72. A grading bond shall be required prior to grading permit issuance.
73. A geotechnical report shall be submitted to the Building division for review prior to grading permit issuance.
74. A Water Quality Management Plan (WQMP) shall be submitted for review prior to grading permits issuance.
75. A drainage and hydrology study shall be submitted prior to grading permit issuance.
76. The Applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. Approval from the Orange County Health Department is required prior to the issuance of a building permit.
77. The Applicant shall employ the following best available control measures ("BACMs") to reduce construction-related air quality impacts:

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78. Prior to the issuance of a grading permit, a Storm Water Pollution Prevention Plan (SWPPP) and Notice of Intent (NOI) to comply with the General Permit for Construction Activities shall be prepared, submitted to the State Water Quality Control Board for approval and made part of the construction program. The Project Applicant will provide the City with a copy of the NOI and their application check as proof of filing with the State Water Quality Control Board. This plan will detail measures and practices that will be in effect during construction to minimize the project's impact on water quality.
79. Prior to the issuance of a grading permit, the Applicant shall prepare and submit a Water Quality Management Plan (WQMP) for the proposed project, subject to the approval of the Building Division and Code and Water Quality Enforcement Division. The WQMP shall provide appropriate Best Management Practices (BMPs) to ensure that no violations of water quality standards or waste discharge requirements occur.
80. A list of "good housekeeping" practices will be incorporated into the long-term post-construction operation of the site to minimize the likelihood that pollutants will be used, stored or spilled on the site that could impair water quality. These may include frequent parking area vacuum truck sweeping, removal of wastes or spills, limited use of harmful fertilizers or pesticides, and the diversion of storm water away from potential sources of pollution (e.g., trash receptacles and parking structures). The Stage 2 WQMP shall list and describe all structural and non-structural BMPs. In addition, the WQMP must also identify the entity responsible for the long-term inspection, maintenance, and funding for all structural (and if applicable Treatment Control) BMPs.
81. Prior to the building plan check submittal, the Applicant shall submit the Project for *Building Code Preliminary Review*.



82. *The residential dwelling units and their common use areas shall comply with Housing Accessibility per Chapter 11A.*
83. *The nonresidential portion of the development shall comply with the public accommodation requirements per Chapter 11B.*
84. *The new bridge over Spruce Street shall comply with CBC Section 3104 and all of its sub-sections under the Pedestrian Walkways and Tunnels requirements.*
85. *The pedestrian bridge shall comply with accessibility requirements.*

### **Electrical, Mechanical, Plumbing**

86. Prior to building permit issuance, project plans shall demonstrate compliance with the following:
  - a. Below grade enclosed parking garage requires exhaust and ventilation per CMC 403.7.1 and Energy Code 120.6(c).
  - b. Parking exhaust / ventilation from below grade must meet termination requirements based off CMC 502.2.2. Make up air for below grade parking garage shall be placed to avoid recirculation of contaminated garage air.
  - c. Indoor air quality requirements for dwelling units shall follow Energy code section 160.2 which states that operable windows are not allowed as means for providing outside air to dwelling areas.
  - d. Multifamily buildings shall meet the mandatory requirements for Electric Ready Buildings per Energy code section 160.9.

### **Real Property Division**

89. Prior to issuance of building permits for the pedestrian bridge, the Applicant shall demonstrate compliance with the following:
  - a. Applicant shall enter a lease agreement with the City for use of air rights over the Spruce Street right-of-way.
  - b. Applicant shall pay for the appraisal of air rights required prior to negotiation of lease terms.
  - c. Insurance and surety bonds shall be required.
90. Final details of bridge design, including materials used, height and other dimensions shall be subject to landlord (City) review and approval.

### **Fire Department**

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87. *systems, and the emergency responder radio system shall be inspected and approved by the Fire Marshal.*
  88. *Prior to the building permit issuance, a fire master plan shall be submitted and approved by the Fire Marshall.*
  89. *Prior to any foundation permit issuance for the garage basement area, a temporary fire department access way, as approved by the Fire Department, shall be provided until the permanent fire access way is installed. Required fire and life safety systems, including the fire sprinkler system, shall be operational in the garage basement areas used for parking by the construction crews and for storage of building materials and construction equipment.*
  90. *One elevator shall be gurney sized and equipped as a medical emergency elevator as CBC Section 3002.*
  91. Emergency responder radio coverage shall be required to comply with NBFD Guideline D.05 "Public Safety Radio Coverage" and CFC Section 510.
  92. Emergency power and Standby Power System shall be required as per CFC Section 604.2.14.
  93. An automatic sprinkler system shall be installed in accordance with CFC Section 903.2 amendment shall be provided throughout all buildings.
  94. A standpipe system shall be required and installed as per CFC Section 905.3.1.
  95. Fire Alarm system shall be provided as per CFC Section 907.2.9.
  96. New pedestrian bridge shall meet all fire department access requirements and shall not obstruct access.