



CITY OF

NEWPORT BEACH

City Council Staff Report

August 13, 2019
Agenda Item No. 16

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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TITLE: Consideration of Planning and Land Use Entitlements for Vivante Senior Housing, Located at 850 and 856 San Clemente Drive (PA2018-185)

ABSTRACT:

The project consists of the demolition of the existing Orange County Museum of Art (23,632 square feet) and associated administrative office building (13,935 square feet) to accommodate the development of a 183,983-square-foot, six-story senior housing (90 residential dwelling units) and memory care facility (27 beds). The approximately 2.9-acre site is located on San Clemente Drive opposite the intersection with Santa Maria road in the Newport Center area. For City Council's consideration are the following planning applications: General Plan amendment, Planned Community Development Plan amendment, development agreement, major site development review, conditional use permit, lot merger, and addendum to the Environmental Impact Report (EIR addendum). The City Council will decide if the proposed use is an appropriate land use change for the community.

RECOMMENDATION:

- a) Conduct a public hearing;
- b) Take the following actions to approve the project:
 - i. Adopt Resolution No. 2019-74, *A Resolution of the City Council of the City of Newport Beach, California, Certifying Environmental Impact Report Addendum No. ER2016-002 and Approving a Mitigation Monitoring and Reporting Program for the Vivante Senior Housing Project Located at 850 and 856 San Clemente Drive (PA2018-185) (Attachment A);*
 - ii. Adopt Resolution No. 2019-75, *A Resolution of the City Council of the City of Newport Beach, California, Approving General Plan Amendment No. GP2018-003 to Change the Land Use Designation from Private Institutional (PI) to Mixed-Use Horizontal (MU-H3), and Adopting California Environmental Quality Act Findings of Fact and a Statement of Overriding Considerations for the Vivante Senior Housing Project Located at 850 and 856 San Clemente Drive (PA2018-185) (Attachment B);*

- iii. Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2019-13, *An Ordinance of the City Council of the City of Newport Beach, California, Adopting Planned Community Development Plan No. PC2018-001 Amending the San Joaquin Plaza Planned Community (PC-19) Located at 850 and 856 San Clemente Drive (PA2018-185)*, and pass on to a second reading on September 10, 2019 (Attachment C);
- iv. Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2019-14, *An Ordinance of the City Council of the City of Newport Beach, California, Approving Development Agreement No. DA2018-005 for the Vivante Senior Housing Project Located at 850 and 856 San Clemente Drive (PA2018-185)*, and pass on to a second reading on September 10, 2019 (Attachment D); and
- v. Adopt Resolution No. 2019-76, *A Resolution of the City Council of the City of Newport Beach, California, Approving Major Site Development Review No. SD2018-003, Conditional Use Permit No. UP2018-019, and Lot Merger No. LM2018-004, and Revocation of Use Permit No. UP2005-017-017 and Modification Permit No. MD2004-059 for the Vivante Senior Housing Project Located at 850 and 856 San Clemente Drive (PA2018-185)* (Attachment E).

FUNDING REQUIREMENTS:

There is no budget impact related to this application. The applicant is required to reimburse the City for all costs associated with the review of the application.

Implementation of the project should generate a small increase in revenue to the City due primarily to increased property taxes. In order to quantify the project's long-term fiscal implications on City resources, staff engaged a consultant to prepare a fiscal impact assessment in accordance with General Plan Implementation Policies 12.1 and 12.2 (Attachment F). The analysis used the City's fiscal impact model prepared for the 2006 General Plan (updated since) that calculates the average cost of public services required by new development based on the assumption that new development affects City services in the same way that existing development does.

The City's consultant concluded that the proposed project would result in an estimated annual revenue to the City of approximately \$41,569 while the existing museum land use has an annual cost to the City of about \$14,963. The result is a net annual increase of approximately \$56,562 to the City eliminating the cost of the museum land use. This positive benefit is in contrast to the existing public use of the site, which does not generate property tax for the City. The analysis identifies property taxes as the primary revenue source related to the project. It should be noted that the proposed project is anticipated to require additional emergency medical services beyond the current demand for the museum and administrative office buildings and this additional cost is considered in the fiscal analysis.

DISCUSSION:

Project Setting

The site is located on the northwest portion of Newport Center. To the north are 524 apartment units known as Villas Fashion Island. To the east is a parking structure that serves surrounding land uses. To the west is an office building located at 888 San Clemente Drive. To the southwest across San Clemente Drive are 245 apartment units known as The Colony. To the southeast also across San Clemente Drive is a surface parking lot and office building occupied by Pacific Life.

The Property is presently occupied by the Orange County Museum of Art and supporting administrative office building. The site consists of two parcels, which are 86,910 square feet and 39,690 square feet (2.9 acres total) in area. Primary access is currently taken from a shared driveway to the southwest at 888 San Clemente Drive. A secondary access driveway is located at the northeast corner of the site providing access to and from Villas Fashion Island at the rear of the parking structure at 800 San Clemente Drive.

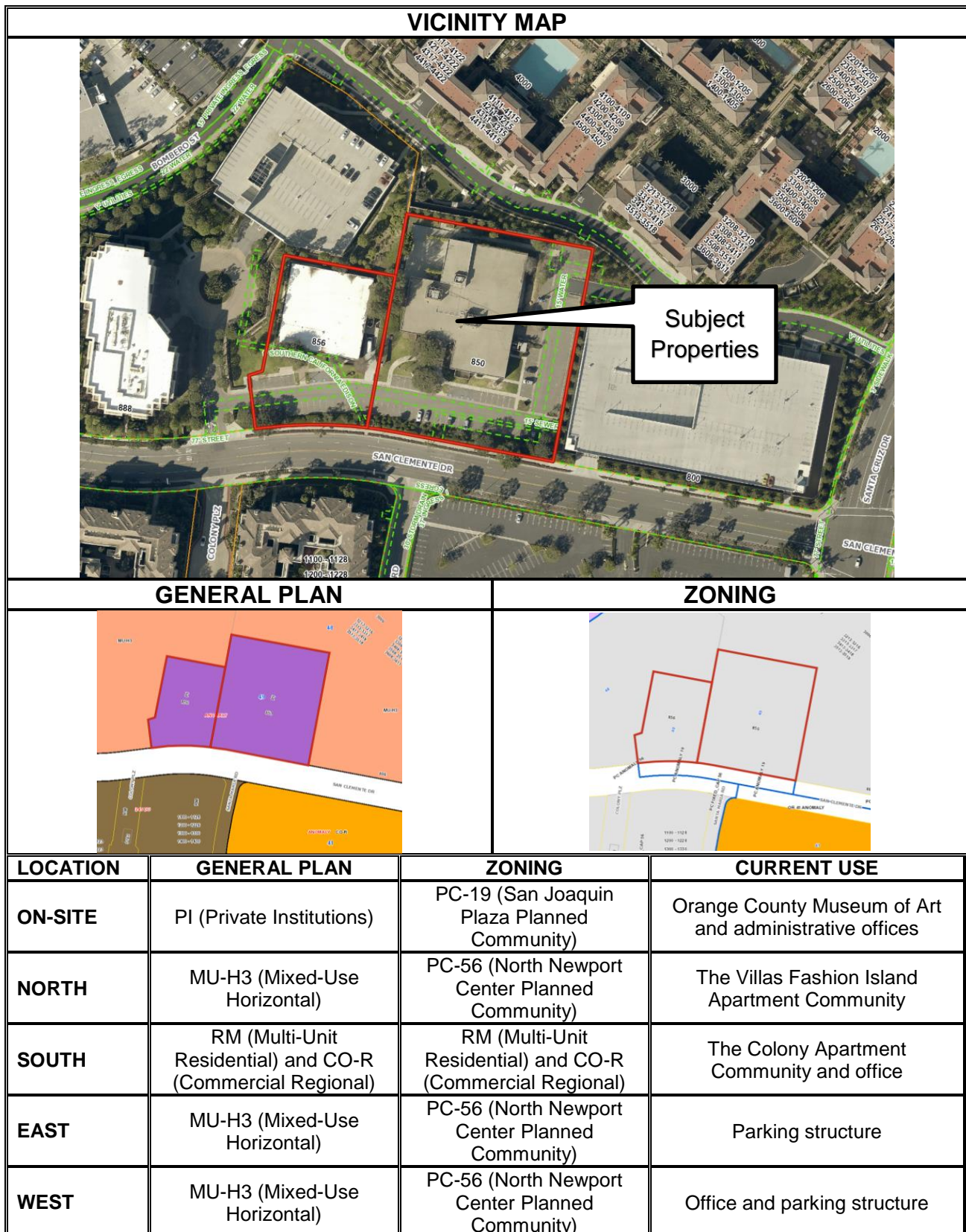
The current General Plan land use designation for the property is PI (Private Institutions). The PI land use designation is intended to provide for privately owned facilities that serve the public, including places for religious assembly, private schools, health care, cultural institutions, museums, yacht clubs, congregate homes, and comparable facilities. The site is designated as Anomaly No. 49, and the combined maximum development capacity is 45,208 square feet for both properties. This land use designation is based on the Orange County Museum of Art and associated administrative office building, which totals approximately 37,567 gross square feet.

The site is currently designated for Civic/Cultural/Professional/Office land uses in the PC-19 (San Joaquin Plaza Planned Community) Zoning District.

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Project Description

The applicant requests the following approvals from the City of Newport Beach:

- **General Plan Amendment** – To change the land use category of the project site from PI (Private Institutions) to MU-H3 (Mixed-Use Horizontal). Table LU1 would be amended to reflect a total of 540 dwelling units authorized within the MU-H3 land use designation. Additionally, the amendment would modify Anomaly No. 49 of Table LU2 to add 90 dwelling units and reduce the non-residential floor area from 45,208 to 16,000 square feet in Statistical Area L1.
- **Planned Community Development Plan Amendment** – To modify the San Joaquin Plaza Planned Community Development Plan (PC-19) to include development and design standards to allow for 90 senior dwelling units and 27 memory care beds. The applicant also requests an increase in the height limit from 65 feet to 69 feet with 10 feet for rooftop and mechanical appurtenances.
- **Development Agreement** – To provide public benefits should the project be approved pursuant to [Section 15.45.020 \(Development Agreement Required\)](#) of the Municipal Code because the requested General Plan Amendment includes 50 or more dwelling units and adds dwelling units within Statistical Area L1.
- **Conditional Use Permit** – To allow the operation of the proposed senior housing and memory care facility, alcohol service for dining hall and lounge areas in the form of a Type 47 (On Sale General) and Type 57 (Special On Sale General) Alcoholic Beverage Control (ABC) license, and ensure use compatibility.
- **Major Site Development Review** – To allow the construction of 90 senior dwelling units and a 27-bed memory care facility and to ensure the site is developed in accordance with the applicable planned community and zoning code development standards and regulations pursuant to Newport Beach Municipal Code (NBMC) [Section 20.52.080 \(Site Development Reviews\)](#).
- **Lot Merger** – To merge the two existing parcels into one development site.
- **Addendum to Environmental Impact Report (EIR) (SCH#2016021023)** – To address reasonably foreseeable environmental impacts resulting from the legislative and project specific discretionary approvals, the City has determined that an addendum to a previously certified EIR is warranted pursuant to the California Environmental Quality Act (CEQA).

The requested applications would allow the construction of an 183,983-square-foot, six-story combination senior housing (90 residential dwelling units) and memory care facility (27 beds). The proposed planned community (zoning) amendment would specifically allow this type of development and use only. Project plans are included in Attachment E and are summarized below.

State Licensing – Residential Care Facility for the Elderly (RCFE): The new facility will operate as a RCFE and will be licensed by the State Department of Social Services (DSS). RCFEs are often referred to as assisted living or congregate care. They are licensed non-medical facilities that provide rooms, meals, housekeeping, supervision, management of medication, and personal care assistance with basic activities like hygiene, dressing, and eating.

Facility Composition: As proposed, there will be 90 senior housing units (54 one-bedroom units and 36 two-bedroom units) and 27 memory care beds (six, two-bedroom suites with four beds each and three studios with one bed each). The senior housing units are designed as flats with full kitchen facilities. The units range in size between 530 square feet to 2,500 square feet. Because of the kitchens and independent access, the proposed units are defined as dwelling units per Title 20 (Planning and Zoning) of the Newport Beach Municipal Code. The memory care facility occupies approximately half of the second floor level and would be approximately 15,382 gross square feet. The memory care beds do not provide independent access or kitchens and therefore, this portion of the facility would not be classified as residential units and is categorized as nonresidential floor area per the Zoning Code.

The facility includes common resident dining areas, a fitness room, a yoga room, an indoor pool, a lounge area with bowling alley, a beauty salon, an art room, a theater, a library, a golf simulator, and support uses such as offices, mechanical and storage rooms, mail room, laundry, and housekeeping. Residents would have access to a large outdoor courtyard that would feature a lounge with a fire pit, outdoor dining area, barbecue with bar seating, gardens, five-hole golf putting course, and a dog run with artificial pet-friendly turf. The common areas would be accessible for residents including memory care residents when accompanied by staff. The project provides 15,487 square feet of landscaped area and extensive common open space amenities including outdoor seating areas, raised gardens and vegetable planters, bocce ball court, outdoor kitchen, dog park, and putting green. The project's perimeter and street landscaping will complement the existing street tree pattern (seven 48-inch box Rusty Leaf Fig trees), enhance the pedestrian experience, and soften the view of the building façade.

The facility will be staffed at all times with varying shifts, which could range from 15 to 30 employees with a maximum of 45 employees at the busiest time of a peak shift change.

Height: The maximum building height allowed by the existing development standards is 65 feet. The applicant proposes a building that is 68 feet 8 inches in height to the top of the ceiling with roof and mechanical appurtenances that extend up to 77 feet 10 inches measured from finished grade at the building entrance. Refer to exhibits showing height limits for the area provided as Attachments G and H.

Setbacks: Site design includes useable open space, landscaping, residential amenities, and building setbacks that are similar or greater than those required on adjoining properties. The project is designed to be compatible with the adjoining residential and commercial uses by incorporating perimeter landscaping and site walls, as well as a setback of 36 feet from the adjoining residential properties to the north. The nearest buildings are at least 100 feet away at Villas Fashion Island. The neighboring properties within the PC-56 (North Newport Center Planned Community) require a 15-foot setback from major rights-of-way such as San Clemente Drive. The proposed project is consistent by providing a 94-foot setback along San Clemente Drive.

Parking and Vehicle Access: The Zoning Code requires a total of 117 parking spaces (1.2 parking spaces per dwelling unit of congregate care/senior housing and one parking space for every three beds of memory care). A total of 118 parking spaces are provided on-site.

A new driveway will be created for site access and it will be located directly across from Santa Maria Drive. The new driveway will serve as the primary entry and exit. Secondary egress and emergency access will occur across an existing access drive at the northeast corner of the property.

Deliveries would occur within a loading zone adjacent to the refuse collection area at the northwest corner of the building accessed from the surface parking lot.

Building Materials: The proposed building is designed in an L-shape and is centrally located on the property as shown on the project plans (Attachment E). The exterior would be comprised predominantly of light-finish, smooth-coat plaster walls, natural Travertine stone, vinyl windows, metal railings, window trims, and a porte-cochère. Massing off-sets, variations of roofline, varied textures, recesses, articulation, and design accents on the elevations would be integrated into the façade to enhance the building's architectural style.

Other Actions: The recommendation includes the revocation of Use Permit No. UP2015-017 (PA2015-086), which allows beer and wine sales at the museum, and revocation of Modification Permit No. MD2004-059 (PA2004-184), which allows flagpoles/signage beyond that allowed by the NBMC are included in the recommendations. These revocations would become effective at the time of demolition permit issuance for the proposed project.

A detailed discussion of the project components, including an analysis of applicable General Plan policies, Planned Community development standards, project architecture, and the required project findings related to the site development review, conditional use permit, and lot merger are provided in the Planning Commission staff report dated July 18, 2019 (Attachment M).

Charter Section 423 (Measure S) Analysis

Pursuant to Charter Section 423 (Charter) and Council Policy A-18, an analysis must be prepared to establish whether a proposed General Plan amendment requires a vote by the electorate if it is approved by City Council. Any proposed amendment is combined with 80 percent of the increases in traffic, dwelling units, and non-residential floor area allowed by previous General Plan amendments (approved within the preceding 10 years) within the same statistical area. The Charter specifies the following thresholds: 100 dwelling units (density), 100 a.m. peak hour trips and 100 p.m. peak hour trips (traffic), and 40,000 square feet of non-residential floor area (intensity). If any one of the thresholds is exceeded, and the City Council approves the requested General Plan amendment, the amendment would be classified as a "major amendment" and be subject to voter consideration.

The project site is located within Statistical Area L1 of the General Plan Land Use Element and would result in an increase of 90 dwelling units to Anomaly No. 49 of Table LU2. There has been one prior major amendment approved within Statistical Area L1 in the past 10 years Attachment I. The amendment authorized the Newport Beach Country Club to construct a larger clubhouse by increasing the development allocation by 21,000-square-foot pursuant to General Plan Amendment No. GP2008-005.

Table 1 summarizes the changes created by the proposed Amendment with the addition of 90 dwelling units to Anomaly No. 49. As indicated, none of the thresholds specified by Charter Section 423 would be exceeded, and therefore, a vote would not be required.

Table 1: Charter Section 423 Analysis Summary Statistical Area L1				
	Increase in Allowed Floor Area (sq. ft.)	Increase in A.M. Peak Hour Trips	Increase in P.M. Peak Hour Trips	Increase in Allowed Dwelling Units
GP2018-003 (PA2018-185) 850 and 856 San Clemente Drive	0	27	52	90
Prior Amendments (80%)	0	0	0	0
• Newport Beach Country Club GP2008-005 (PA2008-152)	21,000	0	0	0
TOTALS	16,800	27	52	90
Charter Section 423 Thresholds	40,000	100	100	100
Vote	No	No	No	No

If the proposed General Plan Amendment is approved by City Council, 80 percent of the increases attributable to the subject General Plan amendment will be tracked for 10 years. Therefore, 72 of the 100 residential units would be used, leaving 28 residential units available for another property without triggering a vote per Charter Section 423.

Development Agreement

Pursuant to [NBMC Chapter 15.45 \(Development Agreements\)](#), a development agreement is required because the applicant is requesting a General Plan amendment of more than 50 units in Statistical Area L1 (Newport Center). The Code requires contents to include a term and identify the permitted uses, density or intensity of the use, height and size of buildings, and provisions for reservation or dedication of land for public purposes if required by the City. In this case, there are no reservations of land and the agreement includes all the required planning and construction elements listed above. The term of the agreement is 10 years and the project will be constructed in one phase. The draft agreement includes the payment of a \$3,150,000 (\$35,000 per unit) public benefit fee prior to the issuance of the first building permit. The City Council will retain the sole discretion to determine how fee is to be allocated. The applicant has indicated to staff that they are in agreement with the terms. The draft Development Agreement is provided as Attachment D.

Airport Land Use Commission (ALUC)

John Wayne Airport is located approximately 2.94 miles north of the property and is the nearest public airport. The Project is within the notification area of the Airport Environs Land Use Plan (AELUP) for John Wayne Airport. Since the proposed project includes General Plan and PC amendments, review for consistency with the AELUP is required by Section 21676(b) of the Public Utilities Code.

On July 18, 2019, the ALUC reviewed the proposed project and found it consistent with the AELUP (Attachment J). However, the ALUC did include two conditions on the consistency determination where the project would be required to return to the ALUC for another consistency determination: (1) if there are changes to the proposed use and/or (2) an increase in building height after being heard by the City of Newport Beach Planning Commission.

Planning Commission Review and Recommendation

The Planning Commission held a public hearing on July 18, 2019. Staff and the applicant provided presentations that explained the requested approvals and described the project. The main topics discussed by the Planning Commission were the public benefit fee under negotiation, site and landscape improvements for compatibility with surrounding land uses, the need for senior housing in the community and the availability of medical services in the area, the quality of the building's architecture, the City's bird protection policies, and the need for a construction management plan.

Following the conclusion of the public comments and discussion, the Planning Commission determined that the proposed legislative amendments and project site design including circulation, landscaping, height, and setbacks were consistent with all applicable General Plan policies, compatible with the surrounding land uses, and that all applicable findings for approval for the requested applications could be made. The Planning Commission voted unanimously (5-0, with two absences) to recommend that the City Council approve the project as proposed by the applicant. The Planning Commission resolution, meeting minutes, and staff report are attached for reference as Attachments K, L, and M.

Public Comments

Since the application submittal in August of 2018, seven public comment letters have been received related to the project. All correspondence received prior to production of this report is attached as Attachment N. Staff will provide an update of any additional public comments received at the public hearing.

ENVIRONMENTAL REVIEW

On November 29, 2016, the City Council adopted Resolution No. 2016-126 certifying [Environmental Impact Report No. ER2016-002](#) for the Museum House project and approving a mitigation monitoring and reporting program (MMRP) that was prepared in compliance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and City Council Policy K-3. The project reviewed under the EIR included a General Plan amendment, Planned Community Development Plan amendment, tentative vesting tract map, major site development review, traffic study, and development agreement to allow demolition of the existing 23,632-square-foot Orange County Museum of Art (OCMA) building to accommodate the development of a 25-story, 100-unit residential condominium building with two levels of subterranean parking on a two-acre site ("Original Project").

The Applicant proposes to include additional land area to the project site (856 San Clemente Drive). Due to the differences between the Original Project and the proposed Vivante Senior Housing project, an addendum to the EIR was prepared pursuant to Section 15162 (Subsequent EIRs and Negative Declarations) and 15164 (Addendum to an EIR or Negative Declaration) of the State CEQA Guidelines. The City retained PlaceWorks to prepare the addendum because they prepared the EIR for the Original Project. A revised Mitigation Monitoring and Reporting Program (MMRP) was also prepared, and all applicable mitigation measures from the previous MMRP were included (Attachment No. PC 1, Exhibit B). Where necessary, mitigation measures have been updated, refined, and/or supplemented to ensure mitigation is implemented as intended for the Modified Project (Vivante). However, no mitigation measures have been added. Modified mitigation measures provide the same level of mitigation.

The following environmental topics were identified as potentially affected by the implementation of the proposed project: Aesthetics, Air Quality, Cultural Resources, Geology/Soils, Greenhouse Gas Emissions, Hazards/Hazardous Materials, Hydrology and Water Quality, Land Use/Planning, Noise, Population and Housing, Public Services recreation, Transportation/Traffic, and Utilities and Sewer Services. These topics were the subject of the draft EIR analysis, and potential impacts were identified. The document includes mitigation measures to reduce the potentially significant adverse effects to a less than significant level related to Air Quality, Cultural Resources, Geology and Soils and Transportation/Traffic.

The noise analysis concluded that even with nine mitigation measures, the construction-related noise impact would be significant and unavoidable. In particular, the impact is due to the proximity of the apartments to the north of the site which will be occupied prior to the start of construction. The nine mitigation measures address vehicle and equipment maintenance and the erection of a temporary sound barrier/curtain between the construction site and apartments. All mitigation measures are identified in the Mitigation Monitoring and Reporting Program. Although the proposed project requires less excavation and grading and has a shorter construction period, (a less impactful project but still a significant and unavoidable impact) all previously identified noise mitigation will be applied.

The analysis in the addendum shows that the Project will not result in any new significant impacts that were not analyzed in the EIR for the Original Project, nor will the project cause a substantial increase in the severity of any previously identified environmental impacts. The potential impacts associated with this Project would either be the same or less than those described in the EIR. 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 EIR, 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 State CEQA Guidelines, an addendum to the previously adopted EIR is the appropriate environmental documentation for the Modified Project. Updated Findings of Fact and Statement of Overriding Considerations (Exhibits “C” and “D” to Attachment A) must be adopted for the proposed project by City Council, since these documents were previously rescinded with the Original Project’s General Plan amendment resolution. In taking action on any of the approvals for the proposed project, the City Council will consider the whole of the data presented in the EIR, as augmented by the addendum, and the MMRP. A copy of the draft EIR addendum is provided as Exhibit “A” to Attachment A.

SUMMARY

Overall, the proposed project would result in the redevelopment of an under-utilized private institutional site with compatible senior housing and a memory care facility that serves the needs of the aging population in Newport Beach. The environmental effects of project implementation are limited and short-term and the overall benefits of the project outweigh the negative effects in staff’s opinion. Although the fiscal benefits from senior housing would not be as significant compared to market-rate housing, the proposed project would generate sufficient revenue to cover municipal services. Staff recommends that the City Council certify the EIR addendum, approve the project applications, and rescind what would become outdated and unnecessary discretionary approvals related to the existing museum use.

ALTERNATIVES

The recommendations above provide for project approval. The City Council has additional alternatives:

1. The City Council may require specific changes to the project to address issues or concerns identified by the City Council. If the requested changes are substantial, staff will return with a revised resolution incorporating new findings and/or conditions.
2. The City Council can continue this item to provide additional time for consideration.
3. As an alternative the City Council may choose to deny the requested legislative amendments and other zoning entitlements required to allow the development.

NOTICING

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item). Notice of this application was published in the Daily Pilot, mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicant, and posted on the subject property at least 10 days before the scheduled meeting, consistent with the provisions of the NBMC. A courtesy notice of the hearing was also emailed to the interested parties list for this project. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

ATTACHMENTS:

- Attachment A – Resolution No. 2019-74 – Certifying the EIR and Mitigation Monitoring Program and Adopting CEQA Findings of Fact and Statement of Overriding Considerations
- Attachment B – Resolution No. 2019-75 – Approving the General Plan Amendment
- Attachment C – Ordinance No. 2019-13 – Approving the Planned Community Development Plan Amendment
- Attachment D – Ordinance No. 2019-14 – Approving the Development Agreement
- Attachment E – Resolution No. 2019-75 – Approving the Major Site Development Review, Conditional Use Permit, and Lot Merger and Revocation of the Existing Use Permit and Modification Permit (Includes Project Plans)
- Attachment F – Fiscal Impact Analysis
- Attachment G – Map H-1 High Rise and Shoreline Height Limitation
- Attachment H – Newport Center Building Height Exhibits
- Attachment I – Statistical Area L1 Section 423 Table
- Attachment J – ALUC Determination Letter, July 18, 2019
- Attachment K – Planning Commission Resolution
- Attachment L – Draft Planning Commission Minutes, July 18, 2019
- Attachment M – Planning Commission Staff Report, July 18, 2019
- Attachment N – Public Comments
- Attachment O – Police Department Memorandum and Statistics
- Attachment P – Visual Simulations