

Attachment B

Draft Resolution Approving the General Plan Amendment

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 INSTITUTIONS (PI) TO MIXED-USE HORIZONTAL (MU-H3) FOR THE VIVANTE SENIOR HOUSING PROJECT LOCATED AT 850 AND 856 SAN CLEMENTE DRIVE (PA2018-185)

WHEREAS, an application was filed by Nexus Development Corporation representing Vivante Newport Center, LLC (“Applicant”), with respect to property located at 850 and 856 San Clemente Drive, and legally described as Parcel 2 of Newport Beach Lot Line Adjustment No. 95-3 together with Parcel 2 of Resubdivision No. 501, Assessor’s Parcel Nos. 442-261-05 and 442-261-17 (“Property”);

WHEREAS, the Applicant proposes the demolition of the existing Orange County Museum of Art (“OCMA”) (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 combination senior housing (90-unit residential dwelling units) and memory care facility (27 beds) (“Project”). The approximately 2.9 acre site is located on San Clemente Drive opposite the intersection with Santa Maria Road;

WHEREAS, in order to implement the Project, the Applicant, requests the following approvals from the City of Newport Beach (“City”):

- **General Plan Amendment** – To amend Anomaly No. 49 to change the land use category from PI (Private Institutions) to MU-H3 (Mixed-Use Horizontal). The proposed amendment also includes 90 additional dwelling units and would reduce the nonresidential floor area from 45,208 square feet to 16,000 square feet in Statistical Area L1. Table LU1 is amended to reflect a total of 540 dwelling units authorized within the MU-H3 land use designation,
- **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 appurtenances,

- **Development Agreement** – To provide public benefits should the Project be approved pursuant to Section 15.45.020 (Development Agreement Required) of the Newport Beach Municipal Code (“NBMC”) 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”) licenses, and ensure land 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 Project is developed in accordance with the applicable planned community and zoning code development standards and regulations pursuant to Section 20.52.080 (Site Development Reviews) of the NBMC,
- **Lot Merger** – To merge the two (2) existing parcels into one development site,
- **Addendum to Environmental Impact Report (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 Environmental Impact Report (“EIR”) is warranted pursuant to the California Environmental Quality Act (“CEQA”);

WHEREAS, the Property is designated PI (Private Institutions) by the General Plan Land Use Element and is located within the PC-19 (San Joaquin Plaza Planned Community) Zoning District;

WHEREAS, the Property is not located within the coastal zone; therefore, a coastal development permit is not required;

WHEREAS, a Planning Commission study session was held on April 18, 2019, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California, to introduce the Project to the Planning Commission. No action was taken at the study session;

WHEREAS, on July 18, 2019, the Airport Land Use Commission (“ALUC”) found the City of Newport Beach Vivante Senior Housing project to be consistent with the Airport Environs Land Use Plan for John Wayne Airport;

WHEREAS, the Planning Commission held a public hearing on July 18, 2019 in the Council Chambers at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the hearing was given in accordance with California Government Code Section 54950 *et seq.* (the “Ralph M. Brown Act”) and Chapters 15.45, 20.56 and 20.62 of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this hearing;

WHEREAS, on July 18, 2019, the Planning Commission adopted Resolution No. PC2019-021 by a unanimous vote of 5 ayes and 0 nays, recommending approval of the Project, and the land use entitlements referenced above, to the City Council;

WHEREAS, the City Council held a public hearing on August 13, 2019, in the Council Chambers at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with the Ralph M. Brown Act and Chapters 15.45, 20.56 and 20.62 of the NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at this public hearing;

WHEREAS, amendments to the City of Newport Beach General Plan (“General Plan”) and Planned Community Development Plan are legislative acts and neither the NBMC nor State Planning Law set forth any required findings for either approval or denial of such amendments;

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WHEREAS, City Council Policy A-18 requires that proposed general plan amendments (“GPA”s) be reviewed to determine if a vote of the electorate would be required pursuant to Section 423 of the City Charter. If a GPA (separately or cumulatively with other GPAs within the previous 10 years generates more than 100 peak hour trips (a.m. or p.m.), adds 40,000 square feet of nonresidential floor area, or adds more than 100 dwelling units in a statistical area, a vote of the electorate would be required if the City Council approves the GPA. The Property is within Statistical Area L1. One (1) prior GPA in Statistical Area L1 has been approved since 2009. The amendment results in a reduction of nonresidential floor area (45,208 square feet to 16,000 square feet) and an increase of 90 dwelling units. The conversion of the 16,000 square feet of nonresidential floor area from private institutional use to a blended commercial rate and the addition of 90 dwelling units for the proposed facility results in a net increase of 26 a.m. peak hour trips and a net increase of 52 p.m. peak hour trips. These increases are based on the trip generation rates for the blended private institutions to blended commercial rate (for the convalescent care/memory care component) and residential apartment units (for senior housing/congregate care component), which are considered the best available comparable land uses in Council Policy A-18. 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 GPA No. GP2018-003;

WHEREAS, the future development of the Property affected by the proposed amendments will be consistent with the goals and policies of the Land Use Element of the General Plan; and will be consistent with the purpose and intent of the proposed amendment to the PC-19 Zoning District of the NBMC; and

WHEREAS, 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 four tribal contacts should be provided notice regarding the proposed amendment. The tribal contacts were provided notice on April 4, 2019. 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 City was not contacted by any tribal contacts during this 90 day period.

NOW, THEREFORE, the City Council of the City of Newport Beach resolves as follows:

Section 1: The City Council has considered the recommendation of the Planning Commission and has determined that modifications proposed by the City Council are not major changes that require referral back to the Planning Commission for its recommendation.

Section 2: The City Council hereby approves General Plan Amendment No. GP2018-003 as depicted in Exhibit “A,” to change the land use category from PI (Private Institutions) to MU-H3 (Mixed-Use Horizontal), amend Table LU1 to allow for 540 dwelling units within the MU-H3 land use designation, and amend Anomaly No. 49 (Table LU2 and associated figures), adding 90 additional dwelling units and reducing the nonresidential floor area from 45,208 square feet to 16,000 square feet in Statistical Area L1.

Section 3: Though not required to make specific findings, the General Plan amendment is consistent with the General Plan and Title 20 of the NBMC (“Zoning Code”) as provided herein:

1. The requested GPA from PI to MU-H3 does not eliminate existing or future land uses to the overall detriment of the community given the Property’s size, location, and surrounding uses. Numerous PI-designated properties are located throughout the City that can accommodate privately owned facilities that serve the public. Additionally, cultural institutions are allowed by right in 10 commercial and mixed-use zoning districts.
2. The requested GPA and resulting land use change are compatible with the surrounding existing uses and planned land uses identified by the General Plan because the Project would introduce a senior housing development (residential use) and memory care facility (nonresidential use) into the Newport Center area, which is currently a regional center of business and commerce that includes major retail, professional office, entertainment, recreation, and residential developments in a master planned mixed-use area. The Project would help to ensure adequate accommodations are available to the City’s aging population and is in furtherance of the policies set forth in the General Plan Land Use Element.
3. The requested GPA and resulting land use change is consistent with other applicable land use policies of the General Plan as provided below.

- a. *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 would replace the OCMA and the possibility to construct 45,208-square-foot private institutional buildings with a facility to serve the aging population defined as people over 60. This demographic comprises almost 22 percent of the City's total population according to latest available Census Bureau data from 2018. At present, there are approximately 752 units (congregate and independent living) and 265 beds (convalescent care) in similar facilities citywide.

- b. *Land Use Element Policy LU3.2 (Growth and Change). Enhance existing neighborhoods, districts, and corridors, allowing for re-use and infill with uses that are complementary in type, form, scale, and character. Changes in use and/or density/intensity should be considered only in those areas that are economically underperforming, are necessary to accommodate City's share of projected regional population growth, improve the relationship and reduce commuting distance between home and jobs, or enhance the values that distinguish Newport Beach as a special place to live for its residents. The scale of growth and new development shall be coordinated with the provision of adequate infrastructure and public services, including standards for acceptable traffic level of service.*

The Project would enhance Newport Center by providing an updated building that complies with all current Building and Fire Codes. The change in use, increase in dwelling units, and reduction of nonresidential floor area are appropriate given that the Project will provide additional, adequate accommodations for the City's aging population, which is continuing to grow and assist in meeting the City's housing goals. Terms may be included in the development agreement to further ensure public welfare and safety. The Project would result in a calculated overall increase of average daily trips ("ADT") by 129, based on trip counts for the existing site and the Institute of Transportation Engineers' ("ITE's") 2017 *Trip Generation Manual*, 10th Edition trip rate for a continuing care retirement community. The existing OCMA and administrative office building generated a calculated 164 average daily trips, while the Project is estimated to generate 293 ADT.

- c. *Land Use Element Policy LU 3.3 (Opportunities for Change). Provide opportunities for improved development and enhanced environments for residents in the following districts and corridors, as specified in Policies 6.3.1 through 6.22.7:*

Fashion Island/Newport Center: expanded retail uses and hotel rooms and development of residential in proximity to jobs and services, while limiting increases in office development

The Project will provide additional, adequate accommodations for the City's aging population, which is continuing to grow and assist the City in meeting housing goals. The Project will be developed in close proximity to retail and service uses, restaurants, entertainment, and recreation amenities present in Fashion Island and would not result in increases in office development in the area.

- d. *Land Use Element Policy LU3.8 (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 two hundred (200) feet above ground level to the ALUC for review.*

On July 18, 2019, the ALUC reviewed the Project and found it consistent with the AELUP.

- e. *Land Use Element Policy LU 5.3.2 (Mixed-Use Building Location and Size of Nonresidential Uses). Require that 100 percent of the ground floor street frontage of mixed-use buildings be occupied by retail and other compatible nonresidential uses, unless specified otherwise by policies LU 6.1.1 through LU 6.20.6 for a district or corridor.*

The proposed nonresidential portion of the Project consists of a 27-bed memory care facility, which will be located on the second floor level of the building. While LU 5.3.2 requires nonresidential uses to be located on the ground floor level of mixed-use buildings, the memory care facility use has a unique need to limit access of its residents who could become a flight risk. For security purposes, this portion of the Project is located on the second floor level, while more common area amenities and services that serve all residents of the Project will be located on the ground floor and basement level portions of the building. This design, with common amenities at the first floor level, is consistent with the intent of this policy to create a synergy for residents and visitors to enter and utilize the building. All residents of the Project (memory care residents must be accompanied by a staff member) will have the opportunity to utilize these common area amenities that are located on the first floor level.

- f. Land Use Element Policy LU 5.3.3 (Parcels Integrating Residential and Nonresidential Uses). Require that properties developed with a mix of residential and nonresidential uses be designed to achieve high levels of architectural quality in accordance with policies LU 5.1.9 and LU 5.2.1 and planned to ensure compatibility among the uses and provide adequate circulation and parking. Residential uses should be seamlessly integrated with nonresidential uses through architecture, pedestrian walkways, and landscape. They should not be completely isolated by walls or other design elements. (Imp 2.1)*

The Project integrates residential and nonresidential uses into one cohesive building. The building design will provide a high level of architectural quality, utilizing materials such as smooth-coat plaster walls, natural travertine stone, vinyl windows, metal railings, window trims, and a porte-cochère. The nonresidential memory care facility will be integrated and located within a portion of the second floor level of the building. Residents of the memory care facility (accompanied by staff) will have the ability to mingle and utilize the same common area amenities such as activity rooms, outdoor gardens, seating areas, and dining areas that are provided for the rest of the senior housing. The Project will be served by a 118-space surface level parking lot and the number of parking spaces and circulation is designed to adequately accommodate residents, visitors, staff, shuttles, deliveries, moving vehicles and emergency vehicles.

- g. Land Use Element Policy LU 5.3.6 (Parking Adequacy and Location). Require that adequate parking be provided and is conveniently located to serve tenants and customers. Set open parking lots back from public streets and pedestrian ways and screen with buildings, architectural walls, or dense landscaping.*

The Project will be served by a 118-space surface level parking lot and the number of parking spaces and circulation is designed to adequately accommodate residents, visitors, staff, shuttles, deliveries, moving vehicles and emergency vehicles. The parking area is set back from San Clemente Drive and the adjacent sidewalk with site landscaping along the street frontage.

- h. Land Use Element Goal LU 6.14 (Newport Center/Fashion Island). A successful mixed-use district that integrates economic and commercial centers serving the needs of Newport Beach residents and the subregion, with expanded opportunities for residents to live close to jobs, commerce, entertainment, and recreation, and is supported by a pedestrian-friendly environment.*

Refer to Fact in Support of Finding 3c.

- i. Land Use Element Policy LU 6.14.2 (Newport Center ["MU-H3," "CO-R," "CO-M," and "RM" designations]). Provide the opportunity for limited residential, hotel, and office development in accordance with the limits specified by Tables LU1 and LU2. (Imp 2.1)*

Refer to Fact in Support of Finding 3b and 3c.

- j. Land Use Element Policy LU 6.14.4 (Development Scale). Reinforce the original design concept for Newport Center by concentrating the greatest building mass and height in the northeasterly section along San Joaquin Hills Road, where the natural topography is highest and progressively scaling down building mass and height to follow the lower elevations toward the southwesterly edge along East Coast Highway. (Imp 2.1, 3.1, 4.1)*

The Project is located at the northwesterly portion of Newport Center. The existing development in Newport Center is consistent with LU 6.14.4 as the majority of the office towers over 200 feet and the Island Hotel are located in northeasterly section in Blocks 500 and 600. The type and design of a structure, not just the use, are important in determining if the bulk and scale of the building are appropriate for this particular location. Additionally, per NBMC Section 20.30.060 (Height Limits and Exceptions), height limits in planned communities are not bound by its limitations provided that appropriate findings are made. The existing PC-19 (San Joaquin Plaza Planned Community) development standards limit building height to 65 feet in height while the proposed Project height is 68 feet 8 inches (with an additional 10 feet allowed for appurtenances). The building design, bulk, and scale, is consistent with the height and grade of other buildings located in the immediate vicinity of Newport Center and will not create a substantial shade or shadow impact on adjacent development such as Villas Fashion Island.

Section 4: The requested GPA from PI to MU-H3 does not eliminate existing or future land uses to the overall detriment of the community given the site's size, location, and surrounding uses. Numerous PI designated properties are located throughout the City that could accommodate private institutions. Additionally, private institutions are allowed by right in 10 commercial and mixed-use zoning districts.

Section 5: General Plan Amendment No. GP2018-003 does not require voter approval pursuant to Section 423 of the City Charter in that there has been one (1) prior GPA in Statistical Area L1, where the Property is located, over a 10 year period. The amendment reduces the nonresidential floor area, results in 90 additional dwelling units, results in 21 additional a.m. peak hour trips, and results in 42 additional p.m. peak hour trips.

Section 6: The Museum House Project Final EIR (SCH No. 2016021023) was prepared in compliance with the California Environmental Quality Act ("CEQA") as set forth in the California Code of Regulations, Title 14, Division 6, Chapter 3, and City Council Policy K-3. By Resolution No. 2016-126, the City Council, having final approval authority over the Project, adopted and certified as complete and adequate the Museum House Project Final Environmental Impact Report (SCH No. 2016021023) and adopted "Mitigation Monitoring and Reporting Program." Resolution No. 2016-126 is hereby incorporated by reference.

Section 7: The Vivante Senior Housing Environmental Impact Report Addendum (EIR Addendum) (SCH No. 2016021023) was prepared for the Project in compliance with CEQA, the State CEQA Guidelines, and City Council Policy K-3. By Resolution No. 2019-____, the City Council having final approval authority over the Project, adopted and certified as complete and adequate the Vivante Senior Housing Project Final Environmental Impact Report Addendum (SCH No. 2016021023) and adopted "Mitigation Monitoring and Reporting Program." Resolution No. 2019-____ is hereby incorporated by reference.

Section 8: The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

Section 9: If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

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Section 10: This resolution shall take effect immediately upon the effective date of City Council Ordinance No. 2019-____, adopting Planned Community Development Plan Amendment No. PC2018-001, and City Council Ordinance No. 2019-____, adopting Development Agreement No. DA2018-005, and the City Clerk shall certify the vote adopting the resolution.


ADOPTED this 13th day of August, 2019.

Diane B. Dixon
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



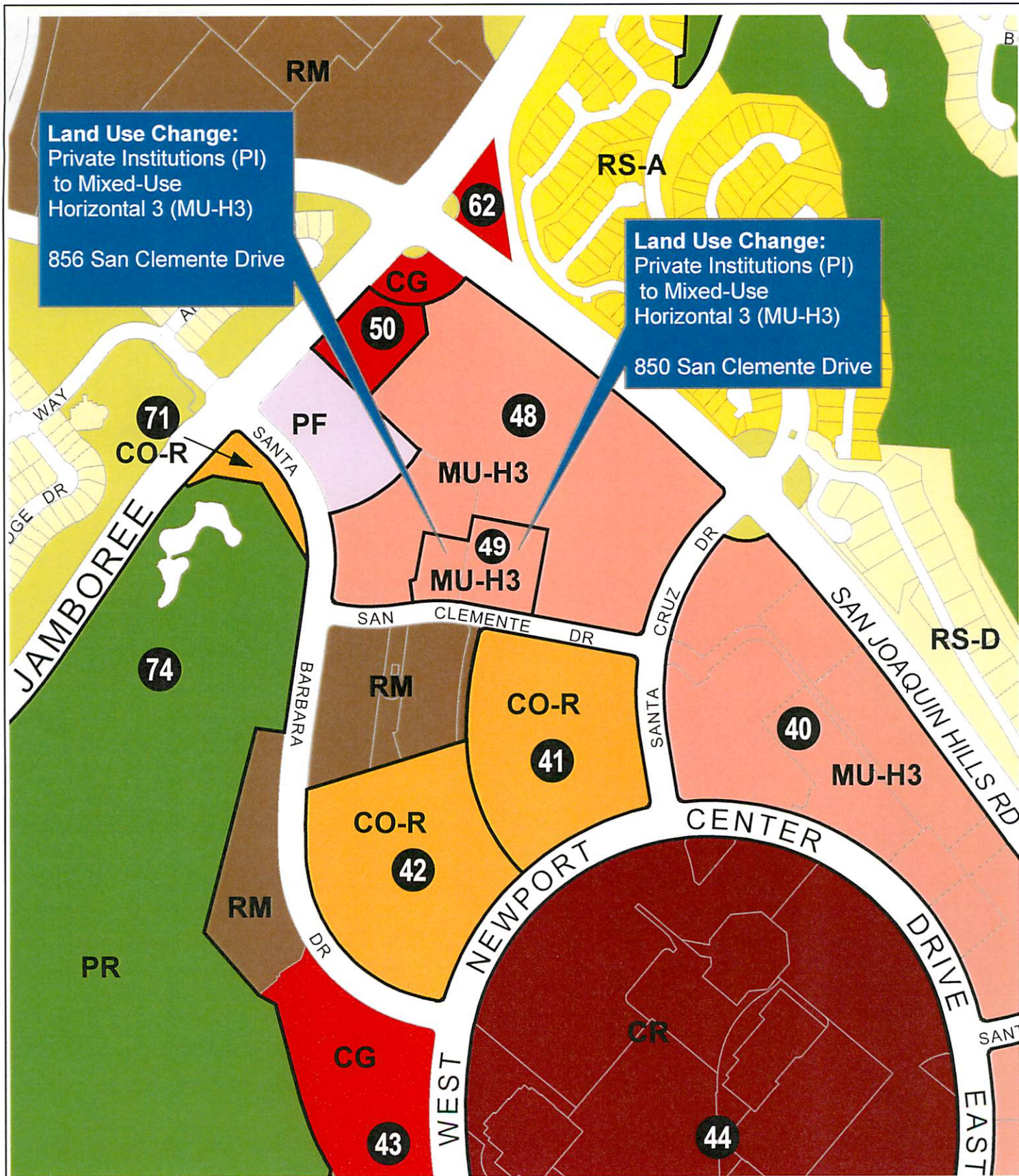
for Aaron C. Harp
City Attorney

Attachments:

Exhibit "A" General Plan Land Use Amendments

Exhibit “A”

General Plan Land Use Amendments



GP2018-003 (PA2018-185)
General Plan Amendment
850 / 856 San Clemente Drive

0 400 800 Feet



Table LU1 Land Use Plan Categories

<i>Land Use Category</i>	<i>Uses</i>	<i>Density/ Intensity</i>
MIXED-USE HORIZONTAL— MU-H	The MU-H designation is intended to provide for the development of areas for a horizontally distributed mix of uses, which may include general or neighborhood commercial, commercial offices, multi-family residential, visitor-serving and marine-related uses, and/or buildings that vertically integrate residential with commercial uses.	
Mixed-Use Horizontal 1— MU-H1	<p>The MU-H1 designation provides for a horizontal intermixing of uses.</p> <p>For properties located on the inland side of Coast Highway in the Mariners' Mile Corridor, (a) the Coast Highway frontages shall be developed for marine-related and highway-oriented general commercial uses in accordance with CM and CG designations; and (b) portions of properties to the rear of the commercial frontage may be developed for free-standing neighborhood-serving retail, multi-family residential units, or mixed-use buildings that integrate residential with retail uses on the ground floor in accordance with the CN, RM, CV, or MU-V designations respectively.</p> <p>Properties located in the Dover Drive/Westcliff Drive area may also be developed for professional offices or mixed-use buildings that integrate residential with retail or office uses on the ground floor in accordance with the CO and MU-V designations respectively.</p>	<p>Commercial or Office only: floor area to land ratio of 0.5.</p> <p>Multi-Family Residential only: 20.1–26.7 units per acre.</p> <p>Mixed-Use Buildings: floor area to land ratio of 1.5; where a minimum floor area to land ratio of 0.25 and maximum of 0.5 shall be used for nonresidential purposes and a maximum of 1.0 for residential.</p>
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, multi-family residential, vertical mixed-use buildings, industrial, hotel rooms, and ancillary neighborhood commercial uses.	<p>Residential: maximum of 2,200 units as replacement of existing office, retail, and/or industrial uses at a maximum density of 50 units per adjusted gross acre, of which a maximum of 550 units may be developed as infill.</p> <p>Nonresidential Uses: as defined by Table LU2</p>
Mixed-Use Horizontal 3— MU-H3	The MU-H3 designation applies to properties located in the Newport Center . It provides for the horizontal intermixing of regional commercial office, hotel, multi-family residential and ancillary commercial uses. Within the Tennis Club, residential uses may be developed as single-family units.	<p>Residential: maximum of 450 540 units</p> <p>Hotel: 65 rooms in addition to those specified in Table LU2</p> <p>Other: Nonresidential: As specified by Table LU2</p>

Table LU2 Anomaly Locations

Anomaly Number	Statistical Area	Land Use Designation	Development Limit (sf)	Development Limit (Other)	Additional Information
37	L1	CO-R	131,201	2,050 Theater Seats (not included in total square footage)	
38	L1	CO-M	443,627		
39	L1	MU-H3	408,084		
40	L1	MU-H3	1,426,634	425 Hotel Rooms (included in total Square Footage)	
41	L1	CO-R	327,671		
42	L1	CO-R	286,166		
43	L1	CV		611 Hotel Rooms	
44	L1	CR	1,619,525	1,700 Theater Seats (not included in total square footage)	
45	L1	CO-G	162,364		
46	L1	MU-H3/PR	3,725	24 Tennis Courts	Residential permitted in accordance with MU-H3.
47	L1	CG	105,000		
48	L1	MU-H3	337,261		
49	L1	PI MU-H3	45,208 16,000	90 Dwelling Units	
50	L1	CG	25,000		
51	K1	PR	20,000		
52	K1	CV		479 Hotel Rooms	
53	K1	PR	567,500		See Settlement Agreement
54	J1	CM	2,000		
55	H3	PI	119,440		
56	A3	PI	1,343,238	990,349 sf Upper Campus 577,889 sf Lower Campus	In no event shall the total combined gross floor area of both campuses exceed the development limit of 1,343,238 sq. ft.
57	Intentionally Blank				
58	J5	PR	20,000		
59	H4	MU-W1	247,402	144 Dwelling Units (included in total square footage)	
60	N	CV	*3,035,000	2,150 Hotel Rooms (2,960,000 square feet for hotel rooms and related commercial uses identified in Newport Coast LCP) 75,000 square feet for Day Use Commercial	Newport Coast LCP Planning Area 13 *Correction per Planning Commission Resolution 2030 adopted October 6, 2016
61	N	CV	125,000		Newport Coast LCP Planning Areas 3B and 14
62	L2	CG	2,300		
63	G1	CN	66,000		
64	M3	CN	74,000		
65	M5	CN	80,000		
66	J2	CN	138,500		
67	D2	PI	20,000		
68	L3	PI	71,150		
69	K2	CN	75,000		
70	D2	RM-D			Parking Structure for Bay Island (No Residential Units)
71	L1	CO-G	11,630		