

# **Attachment A**

Draft Resolution Certifying the  
EIR and Mitigation Monitoring Program and  
Adopting CEQA Findings of Fact and Statement of Overriding Considerations

## **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, APPROVING A MITIGATION MONITORING AND REPORTING PROGRAM, AND ADOPTING CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS OF FACT AND A STATEMENT OF OVERRIDING CONSIDERATIONS IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT 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 site 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**, pursuant to California Environmental Quality Act (“CEQA”) as set forth in California Code of Regulations, Title 14, Division 6, Chapter 3, Public Resources Code Sections 21000, *et seq.*, and City Council Policy K-3, it was determined that the Original Project (“Museum House”) could have a significant adverse effect on the environment, and thus warranted the preparation of an EIR;

**WHEREAS**, on February 5, 2016, the City, as lead agency under CEQA, prepared a Notice of Preparation ("NOP") of the EIR and mailed that NOP to responsible and trustee public agencies, organizations and persons likely to be interested in the potential impacts of the Museum House Project, including any persons who had previously requested notice in writing;

**WHEREAS**, on February 22, 2016, the City held a public scoping meeting to present the Museum House Project and to solicit input from interested individuals, organizations, and responsible and trustee public agencies regarding environmental issues that should be addressed in the EIR;

**WHEREAS**, a Draft EIR (SCH No. 2016021023) ("DEIR") was prepared in compliance with CEQA, the State CEQA Guidelines, and City Council Policy K-3;

**WHEREAS**, the DEIR was circulated for a 45-day comment period beginning on August 17, 2016, and ending on September 30, 2016. The DEIR, comments, and responses to the comments were considered by the City Council in its review of the proposed project;

**WHEREAS**, the Final EIR, consisting of the NOP, Initial Study, Draft EIR, Responses to Comments, Revisions to the DEIR, and Mitigation Monitoring and Reporting Program ("MMRP") attached as Exhibits A and B, and incorporated herein by reference, were considered by the Planning Commission and City Council in its review of the proposed project;

**WHEREAS**, the Final EIR identifies significant impacts to the environment which are unavoidable in the areas of noise and vibration and more specifically short-term construction related noise impacts;

**WHEREAS**, 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 MMRP that was prepared in compliance with CEQA as 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. The Museum House Project reviewed under the EIR included an amendment to the City of Newport beach General Plan ("General Plan"), 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 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.

**WHEREAS**, the Applicant proposes the Project that includes additional land area to the Project site (856 San Clemente Drive), resulting in the demolition of the 23,662-square-foot OCMA and supporting administration offices building totaling approximately 37,567 square feet. The Project includes the construction of a 183,983-square-foot, six-story senior housing development (90 residential dwelling units) and memory care facility (27 beds). Due to these proposed changes of the Project compared with the Museum House Project considered in the EIR, 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. A revised MMRP was also prepared, and all applicable mitigation measures from the previous MMRP were included.

**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, including the Addendum to Final EIR No. ER2016-002 (SCH No. 2016021023), 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**, pursuant to California Public Resources Code Section 21080.3.1 (AB52), the City is required to consult with California Native American tribes that have requested in writing to be informed of proposed projects in the geographic area that is traditionally and culturally affiliated with the tribe. Two (2) tribes have requested notification in writing. The tribal contacts were provided notice on February 12, 2016. California Public Resources Code Section 21080.3.1 requires 30 days prior to City Council action to allow tribe contacts to respond to the request to consult. A response letter was received from the Gabrieleno Band of Mission Indians-Kizh Nation on April 9, 2019, requesting that a monitor from their tribe oversee ground-disturbing construction work. Staff consulted with their representative, Mr. Andrew Salas by phone and in writing regarding the matter. Mr. Salas expressed concern of the Project's location being an area with potential tribal cultural resources. In response, and out of abundance of caution, the Applicant has agreed to retain a tribal monitor in the unlikely event any resources are found and the EIR mitigation measures have been updated accordingly. As a result, Mr. Salas, the representative for the Gabrieleno Band of Mission Indians-Kizh Nation, agreed that the implementation of these mitigation measures would be sufficient and the consultation was closed;

**WHEREAS**, 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;

**WHEREAS**, the noise analysis concluded that even with nine (9) 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 (9) 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 MMRP, which is included as "Exhibit B." Although the Project requires less excavation and grading and has a shorter construction period, all previously identified noise mitigation will be applied;

**WHEREAS**, on the basis of the entire environmental review record, the Project will not result in any new significant impacts that were not analyzed in the EIR for the Museum House Project, nor will the Project cause a substantial increase in the severity of any previously identified environmental impacts. There are no known substantial adverse effects on the environment that would be caused by the project with the exception of short-term construction related noise impacts. Additionally, there are no long-term environmental goals that would be compromised by the Project, nor cumulative impacts anticipated in connection with the Project. 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 CEQA Guidelines, an Addendum to the previously adopted EIR is the appropriate environmental documentation for the Project. In taking action on any of the approvals for the proposed Project, the data presented in the EIR, as augmented by the Addendum, and the MMRP are considered as part of the record; and

**WHEREAS**, the City Council 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 which may be awarded to a successful challenger.

**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 Museum House Project Final EIR (SCH No. 2016021023) was prepared in compliance with CEQA, the State CEQA Guidelines, 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 3:** The City Council of the City of Newport Beach hereby certifies EIR Addendum No. ER2016-002 (SCH No. 2016021023), which is attached here to as Exhibit "A" and incorporated herein by reference. EIR No. ER2016-002 consists of the EIR Addendum, Appendices, and Certified EIR.

**Section 4:** The City Council of the City of Newport Beach hereby approves the Mitigation Monitoring Report Program attached hereto as Exhibit "B" and incorporated herein by reference.

**Section 5:** Pursuant to CEQA Guidelines Section 15091, the City Council has reviewed and hereby adopts the CEQA Findings and Facts in Support of Findings as shown in Exhibit "C," entitled "CEQA Findings of Fact Regarding the Environmental Effects of the Approval of the Vivante Senior Housing Project," which is hereby incorporated by reference.

**Section 6:** Pursuant to CEQA Guidelines Section 15093, the City Council has reviewed and hereby makes the Statement of Overriding Considerations to adverse environmental impacts, attached also as Exhibit "D" entitled "CEQA Statement of Overriding Considerations", which is hereby incorporated by reference. The City Council finds and declares that through its efforts to achieve the goals of the General Plan related to Newport Center, the project promotes the mixed-use environment envisioned by the General Plan.

**Section 7:** The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

**Section 8:** 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.

**Section 9:** The City Council 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 which may be awarded to a successful challenger.



**Section 10:** This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.

**ADOPTED** this 13<sup>th</sup> day of August, 2019.

\_\_\_\_\_  
Diane B. Dixon  
Mayor

**ATTEST:**

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

**APPROVED AS TO FORM:**  
CITY ATTORNEY'S OFFICE

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

Attachment(s):

- Exhibit "A" Environmental Impact Report Addendum No. 2016-002
- Exhibit "B" Mitigation Monitoring Report Program
- Exhibit "C" CEQA Findings of Fact Regarding the Environmental Effects of the Approval of the Vivante Senior Housing Project
- Exhibit "D" CEQA Statement of Overriding Considerations

## **Exhibit “A”**

### **Environmental Impact Report Addendum EIR Addendum (SCH No. 2016021023)**

- Addendum
- Appendices
- Certified EIR

*(Available separate due to bulk)*

[www.newportbeachca.gov/ceqa](http://www.newportbeachca.gov/ceqa)

## **Exhibit “B”**

### **Mitigation Monitoring Report Program**

June 2019 | **Mitigation Monitoring and Reporting Program**  
**State Clearinghouse No. 2016021023**

# **VIVANTE SENIOR LIVING PROJECT**

City of Newport Beach

*Prepared for:*

**City of Newport Beach**

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# 1. Mitigation Monitoring and Reporting Program

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## 1.1 PURPOSE OF MITIGATION MONITORING AND REPORTING PROGRAM

This Mitigation Monitoring and Reporting Program has been developed to provide a vehicle by which to monitor mitigation measures and conditions of approval outlined in the Vivante Senior Living Project EIR Addendum, State Clearinghouse No. 2016021023. The Mitigation Monitoring and Reporting Program (MMRP) has been prepared in conformance with Section 21081.6 of the Public Resources Code and City of Newport Beach Monitoring Requirements. Section 21081.6 states:

- (a) When making findings required by paragraph (1) of subdivision (a) of Section 21081 or when adopting a mitigated negative declaration pursuant to paragraph (2) of subdivision (c) of Section 21080, the following requirements shall apply:
  - (1) The public agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation. For those changes which have been required or incorporated into the project at the request of a responsible agency or a public agency having jurisdiction by law over natural resources affected by the project, that agency shall, if so requested by the lead or responsible agency, prepare and submit a proposed reporting or monitoring program.
  - (2) The lead agency shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based.

The State CEQA Guidelines Section 15097 provides clarification of mitigation monitoring and reporting requirements and guidance to local lead agencies on implementing strategies. The reporting or monitoring program must be designed to ensure compliance during project implementation. The City of Newport Beach is the lead agency for the Vivante Senior Living Project and is therefore responsible for implementing the MMRP. The MMRP has been drafted to meet the requirements of Public Resources Code Section 21081.6 as a fully enforceable monitoring program.

The MMRP consists of the mitigation program and the measures to implement and monitor the mitigation program. The MMRP defines the following for the mitigation measure outlined in Table 1, *Mitigation Monitoring Requirements*:

## Mitigation Monitoring and Reporting Program

- **Definition of Mitigation.** The mitigation measure contains the criteria for mitigation, either in the form of adherence to certain adopted regulations or identification of the steps to be taken in mitigation.
- **Responsible Party or Designated Representative.** Unless otherwise indicated, the project applicant is the responsible party for implementing the mitigation, and the City of Newport Beach or a designated representative is responsible for monitoring the performance and implementation of the mitigation measures. To guarantee that the mitigation measure will not be inadvertently overlooked, a supervising public official acting as the Designated Representative is the official who grants the permit or authorization called for in the performance. Where more than one official is identified, permits or authorization from all officials shall be required.
- **Time Frame.** In each case, a time frame is provided for performance of the mitigation measure or review of evidence that mitigation has taken place. The performance points selected are designed to ensure that impact-related components of project implementation do not proceed without establishing that the mitigation is implemented or ensured. All activities are subject to the approval of all required permits from local, state, and federal agencies with permitting authority over the specific activity.

The numbering system in Table 1 corresponds with the numbering system used in the EIR Addendum. The last column of the MMRP table will be used by the parties responsible for documenting when implementation of the mitigation measure has been completed. The ongoing documentation and monitoring of mitigation compliance will be completed by the City of Newport Beach. The completed MMRP and supplemental documents will be kept on file at the City of Newport Beach Community Development Department Planning Division.

## 1.2 PROJECT LOCATION

The project site is in the south-central portion of the City of Newport Beach (City), which is in the western part of Orange County in southern California. The City is bordered by Huntington Beach to the northwest, Costa Mesa to the north, Irvine to the northeast, unincorporated areas (Crystal Cove State Park) of Orange County to the southeast, and the Pacific Ocean to the south. Regional access to the project site is provided via Interstate 405 (I-405), State Route 55 (SR-55), SR-73 (San Joaquin Hills Transportation Corridor), and Highway 1 (Pacific Coast Highway).

The project site is in Newport Center, an area of the City that includes a mix of high- and low-rise office, residential, and hospitality buildings surrounding the Fashion Island regional mall. The site is approximately 2.9 acres and is at 850 and 856 San Clemente Drive (Assessor's Parcel Numbers 442-261-05 and 442-261-17, respectively). The project site is generally bounded by Santa Cruz Drive to the east, Santa Barbara Drive to the west, San Joaquin Hills Road to the north, and San Clemente Drive to the south.



## Mitigation Monitoring and Reporting Program

### 1.3 PROJECT SUMMARY

The proposed project consists of redeveloping the project site with the Vivante Senior Living Project, which is a multistory luxury senior living project that would provide assisted living units, a memory care unit, and various resident amenities and services.

The project site sits on two parcels that are approximately 2.9 acres. The proposed project would demolish the 23,632-square-foot, single-story OCMA building and the 14,556-square-foot single-story office building, remove the surface parking lots, grub onsite vegetation, and remove all ornamental trees onsite. The project site would be developed with the proposed luxury senior living project which includes a six-story plus basement, 183,500-square-foot, L-shaped, building which would be centrally located within the project site.

The proposed building would be constructed up to 69 feet in height and would house assisted living units and a memory care unit, and congregate care services, via a state-licensed residential care facility for the elderly, would be provided to residents in both the assisted living and memory care units. The proposed project would include 54 one-bed units (studios) and 36 two-bed units in the assisted living portion, and 27 beds are proposed in the nine memory care units. There would be a total of 153 beds within the 99 units proposed. Unit sizes would range from 530 square feet for one-bed units and up to 2,500 square feet for two-bed units. All units would be provided on the second to sixth floors of the building, with the exception of a couple of units on the ground level.

## Mitigation Monitoring and Reporting Program

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## Mitigation Monitoring and Reporting Program

**Table 1 Mitigation Monitoring Requirements**

Mitigation Measure		Responsibility for Implementation	Timing	Responsibility for Monitoring	Monitor (Signature Required) (Date of Compliance)
<b>5.1 AIR QUALITY</b>					
AQ-1	During construction, the construction contractor(s) shall require the use of interior paint with 0 grams per liter (g/L) of volatile organic compounds (VOC) (i.e., zero VOC paint). Paints that emit less than the low-VOC limits of South Coast Air Quality Management District (SCAQMD) Rule 1113 are known as "super-compliant paints." A list of super-compliant VOC coating manufacturers is available at SCAQMD's website ( <a href="http://www.aqmd.gov/prdas/brochures/paintguide.html">http://www.aqmd.gov/prdas/brochures/paintguide.html</a> ). Use of super-compliant interior paints shall be noted on building plans.	Project Applicant; Construction Contractor	During building plan check and construction	City of Newport Beach Community Development Department – Building Division	
AQ-2	The construction contractor(s) shall limit the daily amount of debris haul trips during the project's Orange County Museum of Art (OCMA) building demolition and asphalt demolition phase to a maximum of 32 truckloads per day (64 truck trips per day). Additionally, except for the building demolition activity, no other construction activities (onsite building debris reprocessing, administrative office building demolition, grading, building construction, etc.) shall commence until completion of the OCMA building debris hauling. These requirements shall be noted on all construction management plans and truck trips and mileage shall be documented.	Project Applicant; Construction Contractor	During grading and construction	City of Newport Beach Community Development Department – Building Division	
<b>5.2 CULTURAL RESOURCES</b>					
CUL-1	Prior to the issuance of grading permits, the project applicant shall demonstrate to the Community Development Department that an Orange County-certified professional archaeologist has been retained to monitor any potential impacts to archaeological resources throughout the duration of any ground-disturbing activities at the project site. The qualified archeologist shall be present at the pregrade meeting to discuss the monitoring, collection, and safety procedures of cultural resources, if any are found.	Project Applicant; Certified Archaeologist; Construction Contractor	Prior to issuance of grading permits	City of Newport Beach Community Development Department – Planning Division	

## Mitigation Monitoring and Reporting Program

**Table 1 Mitigation Monitoring Requirements**

	Mitigation Measure	Responsibility for Implementation	Timing	Responsibility for Monitoring	Monitor (Signature Required) (Date of Compliance)
	<p>If subsurface cultural resources are discovered during ground-disturbing activities, the construction contractor shall ensure that all work stops within 25 feet of the find until the qualified archeologist can assess the significance of the find and, if necessary, develop appropriate treatment or disposition of the resources in consultation with the City of Newport Beach and a representative of the affected Native American tribe (Gabrieleno or Juaneno). The archeological monitor shall have the authority to halt any project-related activities that may adversely impact potentially significant archaeological resources. Suspension of ground disturbances in the vicinity of the discoveries shall not be lifted until an archeological monitor has evaluated the discoveries to assess whether they are classified as significant cultural resources, pursuant to the California Environmental Quality Act and, if determined to be significant, to develop an appropriate treatment or disposition plan. As required by General Plan Policy HR 2.4, any scientifically valuable materials will be donated to a responsible public or private institution with a suitable repository, located within Newport Beach or Orange County, whenever possible.</p>				
CUL-2	<p>Prior to issuance of any grading permit, the Applicant shall provide satisfactory evidence that a Native American monitor (i.e., Gabrieleno Band of Mission Indians-Kizh Nation), has been retained to observe ground disturbance activities during grading and excavation activities. In the event that tribal cultural resources are discovered, the Native American monitor shall be included in the consultation on the recommended next steps.</p>	Project Applicant	During grading and construction	City of Newport Beach Community Development Department – Planning Division	

## Mitigation Monitoring and Reporting Program

**Table 1 Mitigation Monitoring Requirements**

Mitigation Measure		Responsibility for Implementation	Timing	Responsibility for Monitoring	Monitor (Signature Required) (Date of Compliance)
<b>5.3 GEOLOGY AND SOILS</b>					
GEO-1	<p>Based on the provided plans, sufficient space should be available for deep excavations to be accomplished using open cuts. If site access is limited, temporary shoring may be required for supporting the vertical sides of the required excavations. If shoring is required, it will conform to the Geotechnical Report and following requirements:</p> <p>Prior to issuance of grading permits, the City of Newport Beach Building Division shall confirm that the grading plans include the shoring requirements detailed in the project's geotechnical study. Cantilever, tied-back or internally braced shoring systems can be used for the subterranean excavation. Cantilever shoring systems are typically limited to a maximum retained height of 15 feet. Tied-back shoring walls will require a temporary or permanent easement from the adjacent property owners and the City of Newport Beach. The shoring system shall be designed to resist a lateral earth pressure equivalent to a fluid weighing 35 pounds per cubic foot. An allowable passive earth pressure of 275 psf per foot of depth below the bottom of the excavation shall be used for design of the shoring system. An allowable passive earth pressure of 550 psf per foot can be used for isolated soldier piles.</p> <p>If sufficient distance from the property line is available, it may be possible to excavate to the subgrade elevation without the use of shoring. Temporary slope in the marine terrace deposit may be excavated at slopes where the proportion of the height of the rise is less than or equal to the length of the slope (1H:1V). Alternatively, sloped excavations may be used to reduce the height of the shored excavation. In the case, the earth pressures above may be increased and will be handled on a case by case basis when the height of the sloped excavation is known.</p>	Project Applicant	Prior to issuance of grading permits	City of Newport Beach Community Development Department – Building Division	

## Mitigation Monitoring and Reporting Program

**Table 1 Mitigation Monitoring Requirements**

	Mitigation Measure	Responsibility for Implementation	Timing	Responsibility for Monitoring	Monitor (Signature Required) (Date of Compliance)
	All shoring and excavation shall comply with current Occupational Safety and Health Administration regulations and observed by the designated competent person on site.				
GEO-2	The bedding zone is defined as the area containing the material specified that is supporting, surrounding, and extending to one foot above the top of any proposed utility pipes. During grading and construction plan reviews, the City of Newport Beach Building Divisions shall confirm that the project's proposed bedding satisfies the requirements of the Standard Specifications for Public Works Construction (SSPWC) Section 306- 1.2.1. There shall be a 4-inch minimum of bedding below the pipe and 1-inch minimum clearance below a projecting bell. There shall be a minimum side clearance of 6 inches on each side of the pipe. Bedding material shall be sand, gravel, crushed aggregate, or native free-draining material having a sand equivalent of not less than 30, or other material approved by the engineer. Materials used for the bedding zone shall be placed and compacted with light mechanical means to reduce the potential of damaging the pipe; jetting shall not be allowed.	Project Applicant	Prior to issuance of grading permits	City of Newport Beach Community Development Department – Building Division	
GEO-3	Backfill shall be considered as starting 12 inches above the pipe. On-site excavated materials are suitable as backfill. During construction activities, any boulders or cobbles larger than three inches in any dimension shall be removed before backfilling. All backfill shall be placed in loose lifts not exceeding the thickness specified in the Geotechnical Report and be compacted to at least 90 percent relative compaction. The upper 12 inches below pavement shall be compacted at least to 95 percent relative compaction. Mechanical compaction will be required to accomplish compaction above the bedding along the entire pipeline alignments.  In backfill areas, where mechanical compaction of soil backfill is impractical due to space constraints, sand-cement slurry may be substituted for compacted backfill. The slurry shall contain one	Project Applicant; Construction Contractor	Prior to issuance of grading permits and during construction	City of Newport Beach Community Development Department – Building Division	

## Mitigation Monitoring and Reporting Program

**Table 1 Mitigation Monitoring Requirements**

	Mitigation Measure	Responsibility for Implementation	Timing	Responsibility for Monitoring	Monitor (Signature Required) (Date of Compliance)
	<p>and one-half sacks of cement per cubic yard and have a maximum slump of 5 inches. When set, such a mix typically has the consistency of hard compacted soil and allows for future excavation.</p> <p>A lean non-shrink concrete plug with a minimum width length of 3 feet shall be placed in the utility trenches at the location where off-site utilities enter the project boundaries to minimize the potential for off-site water flow onsite.</p>				
GEO-4	<p>All foundation excavations shall be observed and/or tested by the project applicant's geotechnical consultant before placement of concrete to verify that the foundations would be supported in competent soils. If soft or loose soils are encountered at the subgrade level, the soils shall be removed or brought to a near-optimum moisture content (<math>\pm 2</math> percent), recompact, and tested to a minimum of 95 percent relative compaction prior to placement of fill or footing or floor slab construction. Only granular soils shall be used for compacted fill.</p> <p>Mat foundations, if used in the project, may also derive lateral load resistance from passive resistance along the vertical sides of the foundations. Therefore, an ultimate passive fluid pressure of 275 pounds per cubic foot (pcf) shall be used. It is recommended that an ultimate sliding friction coefficient of 0.35 to be used for design. Passive and sliding resistance may be used in combination without reduction. The required factor of safety is 1.5 for static loads and 1.1 for wind or seismic loads.</p>	Project Applicant; Geotechnical Consultant	During grading and construction	City of Newport Beach Community Development Department – Building Division	
GEO-5	<p>Prior to the issuance of grading permits, the project applicant shall demonstrate to the Community Development Department that an Orange County-certified professional paleontologist has been retained to monitor any potential impacts to paleontological resources throughout the duration of any ground-disturbing activities at the project site. The paleontologist shall develop and implement a Paleontological Mitigation Plan, which shall include</p>	Project Applicant; Certified Paleontologist	Prior to issuance of grading permits	City of Newport Beach Community Development Department – Planning Division	

## Mitigation Monitoring and Reporting Program

**Table 1 Mitigation Monitoring Requirements**

Mitigation Measure	Responsibility for Implementation	Timing	Responsibility for Monitoring	Monitor (Signature Required) (Date of Compliance)
<p>the following minimum elements:</p> <ul style="list-style-type: none"> <li>▪ All earthmoving activities eight feet or more below the current surface shall be monitored full-time by a qualified paleontological monitor.</li> <li>▪ If fossils are discovered, the paleontological monitor has the authority to temporarily divert work within 25 feet of the find to allow recovery of the fossils and evaluation of the fossil locality.</li> <li>▪ Fossil localities shall require documentation, including stratigraphic columns and samples for micropaleontological analyses and for dating.</li> <li>▪ Fossils shall be prepared to the point of identification and evaluated for significance.</li> <li>▪ Significant fossils shall be cataloged and identified prior to being donated to an appropriate repository.</li> <li>▪ The final report shall interpret any paleontological resources discovered in the regional context and provide the catalog and all specialists' reports as appendices.</li> </ul> <p>An executed curation agreement shall be part of the plan, and the project proponent shall bear all expenses of the mitigation program, including curation of materials meeting significance criteria.</p>				



## Mitigation Monitoring and Reporting Program

**Table 1 Mitigation Monitoring Requirements**

Mitigation Measure		Responsibility for Implementation	Timing	Responsibility for Monitoring	Monitor (Signature Required) (Date of Compliance)
<b>4 NOISE</b>					
NOI-1	At least 30 days prior to commencement of demolition or any other construction activities, notification shall be given to all residents or businesses within 500 feet of the project site regarding the planned construction activities. The notification shall include a brief description of the project, the activities that would occur, the duration and hours when construction would occur. The notification shall also include the telephone number of the construction contractor's authorized representative to respond in the event of a vibration or noise complaint.	Project Applicant; Construction Contractor	At least 30 days prior to demolition or construction	City of Newport Beach Community Development Department – Building Division	
NOI-2	Prior to the beginning of construction activities, a sign shall be posted at the entrance to the job site, clearly visible to the public, that contains a contact name and telephone number of the construction contractor's authorized representative to respond in the event of a vibration or noise complaint. If the authorized representative receives a complaint, he/she shall investigate, take appropriate corrective action, and report the action to the City of Newport Beach's Community Development Director.	Project Applicant; Construction Contractor	Prior to construction	City of Newport Beach Community Development Department – Building Division	
NOI-3	Route all construction-related trips (including worker commuting, material deliveries, and debris/soil hauling) so as to minimize pass-bys or residential areas around the project site.	Project Applicant; Construction Contractor	During grading and construction	City of Newport Beach Community Development Department – Building Division	
NOI-4	All heavy construction equipment used on the proposed project shall be maintained in good operating condition, with all internal combustion, engine-driven equipment fitted with intake and exhaust mufflers, air intake silencers, and engine shrouds no less effective than as originally equipped by the manufacturer.	Project Applicant; Construction Contractor	During grading and construction	City of Newport Beach Community Development Department – Building Division	
NOI-5	Electrically powered equipment instead of pneumatic or internal combustion powered equipment shall be used to the extent possible.	Project Applicant; Construction Contractor	During grading and construction	City of Newport Beach Community Development Department – Building Division	

## Mitigation Monitoring and Reporting Program

**Table 1 Mitigation Monitoring Requirements**

	Mitigation Measure	Responsibility for Implementation	Timing	Responsibility for Monitoring	Monitor (Signature Required) (Date of Compliance)
NOI-6	All stationary noise-generating equipment shall be located as far away as possible from neighboring property lines; with particular attention paid to the residential complex (currently under construction) to the north of the project site.	Project Applicant; Construction Contractor	During grading and construction	City of Newport Beach Community Development Department – Building Division	
NOI-7	Limit all internal combustion engine idling both on the site and at nearby queuing areas to no more than five (5) minutes for any given vehicle or machine. Signs shall be posted at the job site and along queueing lanes to reinforce the prohibition of unnecessary engine idling.	Project Applicant; Construction Contractor	During grading and construction	City of Newport Beach Community Development Department – Building Division	
NOI-8	The use of noise producing signals, including horns, whistles, alarms, and bells will be for safety warning purposes only. Use smart back-up alarms, which automatically adjust the alarm level based on the background noise level, or switch off back-up alarms and replace with human spotters.	Project Applicant; Construction Contractor	During grading and construction	City of Newport Beach Community Development Department – Building Division	
NOI-9	A temporary noise barrier/curtain shall be erected between the construction zone and adjacent residential receptors to the north of the project site boundary. The temporary sound barrier shall have a minimum height of 16 feet and be free of gaps and holes and must achieve a Sound Transmission Class (STC) of 35 or greater. The barrier can be (a) a ¾-inch-thick plywood wall OR (b) a hanging blanket/curtain with a surface density of at least 2 pounds per square foot. For either configuration, the construction side of the barrier shall have an exterior lining of sound absorption material with a Noise Reduction Coefficient (NRC) rating of at least 0.7.	Project Applicant; Construction Contractor	During building plan check and grading and construction	City of Newport Beach Community Development Department – Building Division	

## Mitigation Monitoring and Reporting Program

**Table 1 Mitigation Monitoring Requirements**

Mitigation Measure		Responsibility for Implementation	Timing	Responsibility for Monitoring	Monitor (Signature Required) (Date of Compliance)
<b>5.5 TRIBAL CULTURAL RESOURCES</b>					
CUL-1	<p>Prior to the issuance of grading permits, the project applicant shall demonstrate to the Community Development Department that an Orange County–certified professional archaeologist has been retained to monitor any potential impacts to archaeological resources throughout the duration of any ground-disturbing activities at the project site. The qualified archeologist shall be present at the pregrade meeting to discuss the monitoring, collection, and safety procedures of cultural resources, if any are found.</p> <p>If subsurface cultural resources are discovered during ground-disturbing activities, the construction contractor shall ensure that all work stops within 25 feet of the find until the qualified archeologist can assess the significance of the find and, if necessary, develop appropriate treatment or disposition of the resources in consultation with the City of Newport Beach and a representative of the affected Native American tribe (Gabrieleno or Juaneno). The archeological monitor shall have the authority to halt any project-related activities that may adversely impact potentially significant archaeological resources. Suspension of ground disturbances in the vicinity of the discoveries shall not be lifted until an archeological monitor has evaluated the discoveries to assess whether they are classified as significant cultural resources, pursuant to the California Environmental Quality Act and, if determined to be significant, to develop an appropriate treatment or disposition plan. As required by General Plan Policy HR 2.4, any scientifically valuable materials will be donated to a responsible public or private institution with a suitable repository, located within Newport Beach or Orange County, whenever possible.</p>	Project Applicant; Certified Archaeologist; Construction Contractor	Prior to issuance of grading permits	City of Newport Beach Community Development Department – Planning Division	

## Mitigation Monitoring and Reporting Program

**Table 1 Mitigation Monitoring Requirements**

Mitigation Measure		Responsibility for Implementation	Timing	Responsibility for Monitoring	Monitor (Signature Required) (Date of Compliance)
CUL-2	Prior to issuance of any grading permit, the Applicant shall provide satisfactory evidence that a Native American monitor (i.e., Gabrieleno Band of Mission Indians-Kizh Nation), has been retained to observe ground disturbance activities during grading and excavation. In the event that tribal cultural resources are discovered, the Native American monitor shall be included in the consultation on the recommended next steps.	Project Applicant	During grading and construction	City of Newport Beach Community Development Department – Planning Division	

## **Exhibit “C”**

### **CEQA Findings of Fact Regarding the Environmental Effects of the Approval of the Vivante Senior Housing Project**

**Exhibit C**  
**CEQA FINDINGS OF FACT**  
**FOR THE VIVANTE SENIOR HOUSING PROJECT**  
**FINAL ENVIRONMENTAL IMPACT REPORT ADDENDUM**  
**City of Newport Beach**

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**STATE CLEARINGHOUSE NO. 2016021023**

**I. INTRODUCTION**

The California Environmental Quality Act (CEQA) requires that a number of written findings be made by the lead agency in connection with certification of an environmental impact report (EIR) prior to approval of the project pursuant to Sections 15091 and 15093 of the CEQA Guidelines and Section 21081 of the Public Resources Code. The State CEQA Guidelines Section 15091 provides:

- (a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:
  - 1. Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the EIR.
  - 2. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can or should be adopted by such other agency.
  - 3. Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.
- (b) The findings required by subdivision (a) shall be supported by substantial evidence in the record.
- (c) The finding in subdivision (a)(2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives. The finding in subsection (a)(3) shall describe the specific reasons for rejecting identified mitigation measures and project alternatives.
- (d) When making the findings required in subdivision (a)(1), the agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures.

- (e) The public agency shall specify the location and custodian of the documents or other materials which constitute the record of the proceedings upon which its decision is based.
- (f) A statement made pursuant to Section 15093 does not substitute for the findings required by this section.

Public Resources Code Section 21061.1 defines “feasible” to mean “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.” CEQA Guidelines section 15364 adds another factor: “legal” considerations. (See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 565 (*Goleta II*).)

The concept of “feasibility” also encompasses the question of whether a particular alternative or mitigation measure promotes the underlying goals and objectives of a project. (*California Native Plant Soc. v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 1001 [“an alternative ‘may be found infeasible on the ground it is inconsistent with the project objectives as long as the finding is supported by substantial evidence in the record’”].) An alternative may also be rejected because it “would not ‘entirely fulfill’ [a] project objective.” *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 314-315.) “[F]easibility” under CEQA encompasses ‘desirability’ to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, and technological factors.” (*City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417; see also *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 715.)

With respect to a project for which significant impacts are not avoided or substantially lessened, a public agency, after adopting proper findings, may nevertheless approve the project if the agency first adopts a statement of overriding considerations setting forth the specific reasons why the agency found that the project’s “benefits” rendered “acceptable” its “unavoidable adverse environmental effects.” (CEQA Guidelines, §§ 15093, 15043, subd. (b); see also Pub. Resources Code, § 21081, subd. (b).) The California Supreme Court has stated, “[t]he wisdom of approving . . . any development project, a delicate task which requires a balancing of interests, is necessarily left to the sound discretion of the local officials and their constituents who are responsible for such decisions. The law as we interpret and apply it simply requires that those decisions be informed, and therefore balanced.” (*Goleta II*, *supra*, 52 Cal.3d at p. 576.)

When adopting Statements of Overriding Considerations, State CEQA Guidelines Section 15093 further provides:

- (a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered “acceptable.”
- (b) Where the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. This statement of overriding considerations shall be supported by substantial evidence in the record.
- (c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.

Having received, independently reviewed, and considered the Draft Environmental Impact Report (DEIR) and the Final Environmental Impact Report (FEIR) for the Museum House Project, SCH No. 2016021023 (collectively, the EIR), the Vivante Senior Housing Project EIR Addendum (Modified Project), as well as all other information in the record of proceedings on this matter, the following Findings of Facts (Findings) are hereby adopted by the City of Newport Beach (City) in its capacity as the CEQA Lead Agency.

These Findings set forth the environmental basis for the discretionary actions to be undertaken by the City for adoption and implementation of the Vivante Senior Housing Project. This action includes the certification of the following:

- Addendum to the Museum House Project Environmental Impact Report, SCH No. 2016021023, Vivante Senior Housing Project.

#### **A. DOCUMENT FORMAT**

These Findings have been organized into the following sections:

- Section I provides an introduction.
- Section II provides a summary of the project, overview of the discretionary actions required for approval of the project, and a statement of the project's objectives.
- Section III sets forth findings regarding the environmental impacts that were determined to be less than significant and not requiring consideration given the nature and location of the proposed project.
- Section IV sets forth findings regarding significant or potentially significant environmental impacts identified in the Addendum that the City has determined are either not significant or can feasibly be mitigated to a less than significant level through the imposition of project design features and/or mitigation measures. In order to ensure compliance and implementation, all of these measures are included in the Mitigation Monitoring and Reporting Program (MMRP) for the proposed project and adopted as conditions of the project by the Lead Agency. Where potentially significant impacts can be reduced to less than significant levels through adherence to project design features and/or mitigation measures, these findings specify how those impacts were reduced to an acceptable level. Section IV also includes findings regarding those significant or potentially significant environmental impacts identified in the DEIR and Addendum that will or may result from the project and which the City has determined cannot feasibly be mitigated to a less than significant level.
- Section V sets forth findings regarding alternatives to the Museum House project.

#### **B. RECORD OF PROCEEDINGS**

For purposes of CEQA and these Findings, the Record of Proceedings for the proposed project consists of the following documents and other evidence, at a minimum:

##### **Vivante Senior Housing Project (Modified Project)**

- The Vivante Senior Housing Project EIR Addendum
- All technical studies for the modified project
- The Mitigation Monitoring and Reporting Program for the modified project

##### **Museum House project (Original Project):**



- The NOP and all other public notices issued by the City in conjunction with the Museum House project
- The DEIR for the Museum House Project
- The FEIR for the Museum House Project
- All written comments submitted by agencies or members of the public during the public review comment period on the Museum House Project DEIR
- All responses to written comments submitted by agencies or members of the public during the public review comment period on the Museum House Project DEIR
- All written and verbal public testimony presented during a noticed public hearing for the Museum House Project
- The reports and technical memoranda included or referenced in the Response to Comments of the Museum House Project FEIR
- All documents, studies, EIRs, or other materials incorporated by reference in the Museum House Project DEIR and Museum House Project FEIR
- The EIR Resolution adopted by the City of Newport Beach in connection with the Museum House Project, and all documents incorporated by reference therein, including comments received after the close of the comment period and responses thereto
- Matters of common knowledge to the City of Newport Beach, including but not limited to federal, state, and local laws and regulations
- Any documents expressly cited in these Findings
- Any other relevant materials required to be in the record of proceedings by Public Resources Code Section 21167.6(c)

The documents and other material that constitute the record of proceedings on which these findings are based are located at the City of Newport Beach Community Development Department. The custodian for these documents is the City of Newport Beach. This information is provided in compliance with Public Resources Code Section 21081.6(a)(2) and 14 California Code Regulations Section 15091(e).

### **C. CUSTODIAN AND LOCATION OF RECORDS**

The documents and other materials that constitute the administrative record for the City's actions related to the project are at the City of Newport Beach Community Development Department, 100 Civic Center Drive, Newport Beach, California 92660. The City's Community Development Department is the custodian of the administrative record for the project. Copies of these documents, which constitute the record of proceedings, are and at all relevant times have been and will be available upon request at the offices of the Community Development Department. This information is provided in compliance with Public Resources Code Section 21081.6(a)(2) and 14 California Code Regulations Section 15091(e).

## **II. PROJECT SUMMARY**

The following project information is for the Vivante Senior Housing Project (Modified Project). Under CEQA, this project is eligible to be processed with an Addendum to the Environmental Impact Report (EIR) for the Museum House project previously proposed on the project site. As detailed below, the Vivante Senior Housing Project proposes 90 residential units and 27 memory care beds within a 6-story,

approximately 77-foot 10-inch high building. In comparison, the Museum House project would have provided 100 residential condominium units within a 25-story, approximate 295-foot tall building.

## **A. PROJECT LOCATION**

The City of Newport Beach is in the western part of Orange County in Southern California. The City is bordered by Huntington Beach to the northwest, Costa Mesa to the north, Irvine to the northeast, and unincorporated areas (Crystal Cove State Park) of Orange County to the southeast.

Regional access to the City is provided by various freeways, including Interstate 405 which runs north to south across the southern California region and intersects State Route 73 (San Joaquin Hills Transportation Corridor) and State Route 55. State Route 55 also runs north to south and terminates in the City of Costa Mesa. State Route 73 runs along the northwestern boundary of the City limits and connects with Interstate 5 further south in Laguna Niguel. Highway 1, also known as East/West Coast Highway, runs near the southeastern boundary of Newport Beach.

The project site is located in Newport Center, which includes residential, hospitality, and high- and low-rise office buildings surrounding the Fashion Island regional mall. The site itself is approximately 2.9 acres and is located at 850 and 856 San Clemente Drive in Newport Center (Assessor's Parcel Number 442-261-05 and 442-261-17, respectively). The project site is generally bounded by Santa Cruz Drive to the east, Santa Barbara Drive to the west, San Joaquin Hills Road to the north, and San Clemente Drive to the south.

## **B. PROJECT DESCRIPTION**

A senior housing project is proposed within a six-story plus basement, 183,983-square-foot, L-shaped, building. The building would be constructed up to 68 feet 8 inches to the top of the ceiling with roof and appurtenances up to 77 feet 10 inches and would house independent/assisted living, apartment style dwelling units and a memory care facility for senior citizens. Congregate care services via a Residential Care Facility for the Elderly (RCFE) state-licensed residential care facility for the elderly would be provided to residents in both the independent/assisted living dwelling units and memory care facility. Specifically, 54 one-bed dwelling units (studios) and 36 two-bed dwelling units are proposed in the independent/assisted living portion, and 27 beds are proposed in the memory care facility. Together, there would be a total of 126 beds within 90 apartment style units plus 27 memory care beds for a total of 153 beds. Unit sizes in the independent/assisted living portion would range from 530 square feet for one-bed units and up to 2,500 square feet for two-bed units. All of the units, with the exception of a couple of units on the ground level, would be provided on the second to sixth floors of the building.

### **Architectural Features**

The proposed architectural style would be Contemporary, and design elements (e.g., roof style, window fenestration and details, building materials) would be consistent with this architectural style. For example, design elements would include light-finish smooth-coat plaster walls; natural Travertine stone; vinyl windows; and metal railings, window trims, and porte-cochère. Building pop-outs and offsets; variations in building rooflines, materials, colors, and landscaping; and balconies would be added and modulated to offset the building's massing, provide human scale, promote visual interest and articulation, and provide relief to and variation in the building form and style.

### **Common Area Amenities**

Future project residents would have access to a number of amenities, recreation and entertainment areas, and services, including: indoor pool, dining hall (serving three meals per day), bar/lounge, small retail shop, fitness center, dance/yoga studio, salon, laundry room, movie theatre, bowling alley, card and game rooms, library, art studio, and activity lounge. All of these amenities would be provided on the basement and ground level of the building. However, the second floor would also feature a lounge, activity area, dining area, and wellness office

and medical room to serve the memory care facility. Staff would prepare food in two kitchens—one on the ground level and the other on the second floor.

Moreover, project residents would also have access to a large outdoor courtyard, which would feature a lounge with firepit, outdoor dining area, barbecue with bar seating, gardens and farm grove, fire pits with seating, event and game space, self-serve snack and drink stand with seating, five-hole putting course, and dog run with artificial pet turf.

Congregate care services would be provided for a portion of future project residents. Additionally, transportation services would be provided to residents for daily activities such as shows, shopping, dining, doctor appointments, etc. via numerous community sedans and shuttle vans.

### **Site Circulation and Parking**

#### **Parking**

Onsite parking areas would be provided in the western, southern, and eastern portions of the project site. A total of 118 parking spaces would be provided for future resident, guest, and staff use. All parking needs would be provided onsite in accordance with the City's parking requirements.

#### **Vehicular Circulation**

Primary vehicular access to the project site would be via a new, full-access driveway (all turning movements permitted) off San Clemente Drive opposite Santa Maria Road. The driveway would feature a small landscaped median finger to direct vehicles entering and exiting the project site. The driveway connects to internal private drive aisles, which would direct vehicles to the onsite surface parking areas in the western, southern, and eastern portions of the project site.

Secondary vehicular access to the project site would be provided via the existing asphalt-paved private street (Access Drive) located at the rear of the property that connects to the adjacent apartment development, the Villas at Fashion Island. Use of this secondary access would be provided via an access easement entered into by and between The Irvine Company and the project applicant. This private street connects to the northeastern end of the project site. It also serves as access for emergency response vehicles.

#### **Pedestrian Circulation**

Pedestrian access to the project site would be via the existing public sidewalk along San Clemente Drive. A portion of the sidewalk would be removed to construct the new driveway proposed off San Clemente Drive. A short walkway would be provided along the western portion of the driveway, which would connect to the public sidewalk on San Clemente Drive. The walkway would lead to a striped, accessible path of travel that would provide pedestrian access to the main building entry.

Internally, sidewalks would be provided along the western, southern, and eastern edges of the building. These sidewalks would provide access to the main and other building entries, outdoor courtyard, and surface parking areas. Once in the building, project residents, guests, and staff would be able to access the upper floors via stairs or an elevator.

### **C. DISCRETIONARY ACTIONS**

Implementation of the project within the City of Newport Beach will require several actions by the City, including:

- General Plan Amendment (GP2018-003)
- Planned Community Development Plan Amendment (PC2018-001)

- Development Agreement (DA2018-005)
- Conditional Use Permit (UP2018-019)
- Major Site Development Review (SD2018-003)
- Lot Merger (LM2018-004)
- Addendum No. 1 to Environmental Impact Report No. ER2015-002 (SCH#2016021023)

### III. FINDINGS REGARDING LESS THAN SIGNIFICANT IMPACTS

#### A. IMPACTS DETERMINED TO BE LESS THAN SIGNIFICANT IN THE ADDENDUM

The following impacts were evaluated in the Addendum and compared to the impacts as analyzed in the original Museum House project EIR. Given that the original project authorized a more intense development than the proposed Vivante project, a general reduction in the level of environmental impacts would occur for the senior housing project (Modified Project). The Addendum substantiated that these impacts would be less than significant without mitigation.

- (a) **Aesthetics:** The project site is located in a highly urbanized portion of the City and does not exhibit any significant visual resources or scenic vistas, nor would the proposed project impact scenic resources within a state scenic highway. The proposed building and site improvements fit into the overall layout of the project site, and the architectural elements and design would ensure compatibility with the surrounding uses. Additionally, except for the windows, the proposed building materials and architectural treatments are not reflective and would not create substantial daytime glare; light sources of the proposed project would be similar to that of the surrounding uses and would be designed to prevent spillover.
- (b) **Agriculture and Forestry Resources:** The project site does not contain Prime Farmland, Unique Farmland, or Farmland of Statewide Importance. There are no active Williamson Act contracts applicable to the project site. No portion of the project area includes forest resources, and the site is not zoned for forest land, timberland, or timberland production.
- (c) **Air Quality:** Development of the proposed project would not conflict or obstruct implementation of applicable air quality plans, and construction and operational activities of the proposed project would not create objectionable odors that could affect a substantial number of people.
- (d) **Biological Resources:** The proposed project site is in an urban environment and would not adversely impact candidate, sensitive, or special status species; riparian habitat or other sensitive natural communities; federally protected wetlands; native resident or migratory fish or wildlife species; or wildlife corridors or nursery sites. The project also would not conflict with any local ordinances protecting biological resources, adopted Habitat Conservation Plan or Natural Community Conservation Plan.
- (e) **Cultural Resources:** The proposed project would not impact historical resources and would not disturb any human remains.
- (f) **Energy:** Construction and operational activities of the proposed project would not result in wasteful or unnecessary energy demands, and the proposed project would not conflict with a state or local plan for renewable energy or energy efficiency.
- (g) **Geology and Soils:** The proposed project would not expose people or structure to potential substantial adverse effects involving rupture of a known earthquake fault as delineated on the most recent Alquist-Priolo Earthquake Zoning Map or based on other substantial evidence of a known fault. Impacts related

to strong seismic ground shaking, liquefaction, and landslides would be less than significant and the proposed project would not use septic systems or alternative waste water disposal systems.

- (h) **Greenhouse Gas Emissions:** The proposed project would not generate greenhouse gas emissions that would have a significant impact on the environment, and the proposed project would not conflict with the CARB Scoping Plan or SCAG's RTP/SCS.
- (i) **Hazards and Hazardous Materials:** The proposed project would not create a significant hazard to the public or environment through routine transport, use, or disposal of hazardous materials, or through reasonably foreseeable upset and accident conditions. The project also would not handle or operate hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school. The site is not located on a list of hazardous materials per Government Code Section 65962.5. Impacts to airport safety hazards for the proposed project would be less than significant. The proposed project would not impair implementation of or physically interfere with an adopted emergency response/evacuation plan or expose people or structures to potential wildland fire hazards.
- (j) **Hydrology and Water Quality:** The proposed project would have less than significant impacts to water quality during construction and operational activities, groundwater recharge, on- or offsite erosion or siltation, on-or offsite flooding, and stormwater drainage system capacities. The proposed project would not redirect or impede flood flows, and the project site would not risk release of pollutants to project inundation due to flood hazard, tsunami, or seiche zones. The proposed project would not conflict or obstruct a water quality control plan or groundwater management plan.
- (k) **Land Use and Planning:** The proposed project would not physically divide an established community or conflict with a land use plan, policy, or regulation
- (l) **Mineral Resources:** The proposed project would not result in the loss of availability of a known mineral resource or locally important mineral resource recovery site.
- (m) **Noise:** The proposed project would have less than significant impacts to generating excessive groundborne vibration or groundborne noise levels. The project would not expose people residing or working in the project area to excessive noise levels from a public airport or private airstrip.
- (n) **Population and Housing:** The proposed project would not displace any housing or residents. The proposed project would have a less than significant impact to population and housing growth.
- (o) **Public Services:** Impacts to fire and police services, and park facilities would be less than significant, and no impacts to schools would occur as a result of project implementation. Other public service facilities, such as libraries, would not be adversely impacted by development of the proposed project.
- (p) **Recreation:** The proposed project would have a less than significant impact on existing neighborhood and regional parks. The proposed project would not require the construction or expansion of recreational facilities that could adversely affect the environment.
- (q) **Transportation:** The proposed project would have less than significant impacts to the circulation system and would not conflict with CEQA Guidelines § 15064.3, subdivision (b). Additionally, the proposed project would not significant increase hazardous conditions due to design features or incompatible uses, and the proposed project would not result in inadequate emergency access.
- (r) **Tribal Cultural Resources:** The proposed project would not impact listed or eligible historical resources.
- (s) **Utilities and Service Systems:** The proposed project would not result in a substantial increase in demand for water, wastewater, and stormwater facilities, and energy use would be less than significant. Impacts to water supplies, wastewater treatment, and solid waste generation would be less than significant. The proposed project would comply with laws and regulations governing solid waste disposal.

- (t) **Wildfire:** The proposed project is not in or near an SRA or I.R.A., or lands classified as high fire hazard severity zones, and therefore, the proposed project would not impair an adopted emergency response plan or evacuation plan, exacerbate fire risks, or expose people or structures to significant risks.

#### IV. FINDINGS REGARDING POTENTIALLY SIGNIFICANT ENVIRONMENTAL IMPACTS

The following potentially significant environmental impacts were analyzed in the Museum House project DEIR and subsequently in the Vivante Senior Housing Addendum (Modified Project). Because of environmental analysis of the project and the identification of relevant General Plan policies, compliance with existing laws, codes, and statutes, and the identification of feasible mitigation measures, some potentially significant impacts have been determined by the City to be reduced to a level of less than significant, and the City has found—in accordance with CEQA Section 21081(a)(1) and State CEQA Guidelines Section 15091(a) (1)—that “Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.” This is referred to herein as “**Finding 1.**”

Where the City has determined—pursuant to CEQA Section 21081(a)(2) and State CEQA Guidelines Section 15091(a)(2)—that “Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency,” the City’s finding is referred to herein as “**Finding 2.**”

Where, as a result of the environmental analysis of the project, the City has determined that either (1) even with the identification of project design features, compliance with existing laws, codes and statutes, and/or the identification of feasible mitigation measures, potentially significant impacts cannot be reduced to a level of less than significant, or (2) no feasible mitigation measures or alternatives are available to mitigate the potentially significant impact, the City has found in accordance with CEQA Section 21081(a)(3) and State CEQA Guidelines Section 15091(a)(3) that “Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.” This is referred to herein as “**Finding 3.**”

##### A. IMPACTS MITIGATED TO LESS THAN SIGNIFICANT

The following summary describes impacts of the original Museum House project that, without mitigation, would result in significant adverse impacts. Upon implementation of the mitigation measures provided in the Museum House project certified EIR, the impacts would be considered less than significant.

The impact summary for the Museum House project is followed by the impact summary for the Modified Project (Vivante). Mitigation measures as included in the 2016 certified EIR for the Museum House project were reproduced in the Addendum, and in these Findings of Fact as they apply to the Modified Project. As needed, mitigation measures have been renumbered, modified, refined, and/or supplemented to ensure mitigation is implemented as intended for the Modified Project. Modifications to the mitigation measures are identified in ~~strikeout~~ text to indicate deletions and **underline bold** text to signify additions.

Note that the updated CEQA Guidelines have moved Paleontological impacts to the Geology and Soils section. Additionally, impacts related to tribal resources have been moved to the Tribal Cultural Resources section.

##### 1. Air Quality

###### Original Project

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**Impact 5.2-2: Construction activities associated with implementation of the Museum House project would generate short-term emissions that exceed the South Coast Air Quality Management District's regional construction threshold for volatile organic compounds.**

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Construction activities for the Museum House project would temporarily increase particulate matter (PM<sub>10</sub>), fine particulate matter (PM<sub>2.5</sub>), volatile organic compounds (VOC), nitrogen oxides (NO<sub>x</sub>), sulfur oxides (SO<sub>x</sub>), and carbon monoxide (CO) regional emissions within the South Coast Air Basin (SoCAB). Activities would include demolition of the existing Orange County Museum of Art (OCMA) building, site preparation, grading, utility trenching, construction of the 25-story condominium tower, and offsite sewer improvement. Maximum daily construction emissions would not exceed SCAQMD's regional construction significance thresholds for NO<sub>x</sub>, CO, SO<sub>2</sub>, PM<sub>10</sub>, and PM<sub>2.5</sub>. However, the maximum daily emissions of VOC generated from the combined building construction, asphalt paving, and architectural coating activities would exceed SCAQMD's regional construction significance threshold for VOC. Consequently, impacts to regional air quality from project-related construction activities would be significant unless mitigated.

Implementation of Mitigation Measure 2-1 would reduce short-term VOC emissions associated with construction activities to less than significant levels.

**Modified Project**

Similar to the Museum House project, the Modified Project would incorporate mitigation measure AQ-1 in order to reduce maximum daily construction emissions for the proposed project.

**Mitigation Measures**

**2-1AQ-1** During construction, the construction contractor(s) shall require the use of interior paint with 0 grams per liter (g/L) of volatile organic compounds (VOC) (i.e., zero VOC paint). Paints that emit less than the low-VOC limits of South Coast Air Quality Management District (SCAQMD) Rule 1113 are known as "super-compliant paints." A list of super-compliant VOC coating manufacturers is available at SCAQMD's website (<http://www.aqmd.gov/prdas/brochures/paintguide.html>). Use of super-compliant interior paints shall be noted on building plans.

**Finding**

**Finding 1** – The City hereby makes Finding 1. Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the certified EIR and Addendum. These changes are identified in the form of the mitigation measure above. The City of Newport Beach hereby finds that implementation of the mitigation measure is feasible, and the measure is therefore adopted.

**Original Project**

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**Impact 5.2-4: Construction of the Museum House project would expose sensitive receptors to substantial pollutant concentrations.**

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The maximum daily NO<sub>x</sub>, CO, and PM<sub>2.5</sub> construction emissions generated from onsite construction-related activities would be less than their respective SCAQMD localized significant thresholds (LSTs). However, PM<sub>10</sub> emissions generated during the overlapping building demolition, asphalt demolition, building demo debris haul, and asphalt demo debris haul phase would exceed the SCAQMD LSTs. Therefore, project-related construction activities would expose sensitive receptors to substantial pollutant concentrations unless mitigated.

Implementation of Mitigation Measure 2-2 would limit the total overall daily haul truck miles traveled to 680 miles to reduce PM<sub>10</sub> emissions generated by haul trucks. Therefore, with incorporation of mitigation, localized construction impacts would be less than significant.

### **Modified Project**

Similar to the Museum House project, the Modified Project would incorporate mitigation measure AQ-2 in order to ensure that criteria pollutant significance thresholds are not exceeded.

### **Mitigation Measures**

~~2-2~~**AQ-2** The construction contractor(s) shall limit the daily amount of debris haul trips associated with the project's **Orange County Museum of Art (OCMA)** building demolition phases to a maximum of ~~3247~~ truckloads per day (~~6434~~ truck trips per day) **Additionally, except for the building demolition activity, no other construction activities (onsite building debris reprocessing, administrative office building demolition, grading, building construction, etc.) shall commence until completion of the OCMA building debris hauling.** These requirements shall be noted on all construction management plans and truck trips and mileage shall be documented.

### **Finding**

**Finding 1** – The City hereby makes Finding 1. Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the certified EIR and Addendum. These changes are identified in the form of the mitigation measures above. The City of Newport Beach hereby finds that implementation of the mitigation measure is feasible, and the measure is therefore adopted.

## **2. Cultural Resources**

### **Original Project**

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#### **Impact 5.3-1: Development of the project could impact archaeological resources.**

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No archaeological resources have been recorded within the project site. The nearest archaeological site (P-30-000136) was 300 feet southwest of the site and was excavated in 1964, and there are a number of archaeological sites within a half mile of the project site.

Construction activities associated with the Museum House project would require excavation of at least 20 to 25 feet for the underground garage, which would be below previously graded depths for construction of the existing OCMA building. Newport Beach is associated with various early Native American peoples who inhabited the larger region. Therefore, it is possible that previously undiscovered archaeological resources may be found. The Newport Beach City Council has adopted formal guidelines—Archaeological Guidelines (K-5)—that would ensure any impacts to archaeological resources would be minimized.

Mitigation Measure 3-1 (CUL-1) implements General Plan Policy HR 2.2 requiring a qualified archaeologist to monitor all grading and/or excavation where there is a potential to affect such resources, and would reduce impacts to less than significant levels.

### **Modified Project**

Similar to the Museum House project, the Modified Project would incorporate mitigation measures CUL-1 and CUL-2 in order to reduce impacts to archaeological resources to less than significant.



## Mitigation Measures

- 3-4CUL-1** Prior to the issuance of grading permits, the project applicant shall demonstrate to the Community Development Department that an Orange County-certified professional archaeologist has been retained to monitor any potential impacts to archaeological resources throughout the duration of any ground-disturbing activities at the project site. The qualified archeologist shall be present at the pregrade meeting to discuss the monitoring, collection, and safety procedures of cultural resources, if any are found.

If subsurface cultural resources are discovered during ground-disturbing activities, the construction contractor shall ensure that all work stops within 25 feet of the find until the qualified archeologist can assess the significance of the find and, if necessary, develop appropriate treatment or disposition of the resources in consultation with the City of Newport Beach and a representative of the affected Native American tribe (Gabrieleño or Juaneño). The archeological monitor shall have the authority to halt any project-related activities that may adversely impact potentially significant archaeological resources. Suspension of ground disturbances in the vicinity of the discoveries shall not be lifted until an archeological monitor has evaluated the discoveries to assess whether they are classified as significant cultural resources, pursuant to the California Environmental Quality Act and, if determined to be significant, to develop an appropriate treatment or disposition plan. As required by General Plan Policy HR 2.4, any scientifically valuable materials will be donated to a responsible public or private institution with a suitable repository, located within Newport Beach or Orange County, whenever possible.

- 3-3CUL-2** Prior to issuance of any grading permit, the Applicant shall provide satisfactory evidence that a Native American monitor (i.e., Gabrieleño Band of Mission Indians-Kizh Nation), has been retained to observe ground disturbance activities during grading and excavation. In the event that tribal cultural resources are discovered, the Native American monitor shall be included in the consultation on the recommended next steps. ~~During construction activities, the project applicant shall allow representatives of cultural organizations, including Native American tribes (i.e. Gabrieleño Band of Mission Indians), to access the project site on a volunteer basis to monitor grading and excavation activities.~~

## Finding

**Finding 1** – The City hereby makes Finding 1. Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the certified EIR an Addendum. These changes are identified in the form of the mitigation measures above. The City of Newport Beach hereby finds that implementation of the mitigation measures is feasible, and the measures are therefore adopted.

## 3. Geology and Soils

### Original Project

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**Impact 5.4-3: Project development would not exacerbate existing hazards related to landslide, liquefaction, lateral spreading, subsidence, or collapse.**

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The project site is predominantly flat and is not identified as being in an area of the City that is subject to landslides. The project site's marine terrace deposits are not subject to liquefaction or lateral spreading because they are considered medium dense to dense, and the site is not in a state-designated Liquefaction Hazard Zone or identified by the City as being subject to liquefaction. The project site is also not over a groundwater basin,

and significant groundwater pumping would not occur; thus, ground subsidence is not considered a significant hazard. Additionally, the site is not susceptible to collapsible or compressible soils. Additionally, as stated above, the soils at the site are marine terrace deposits (dense to medium dense) that overlie bedrock of the Monterey Formation (stiff to hard claystone). Thus, the site is not susceptible to collapse because of low density soils and/or organic materials.

However, excavation activities related to the subterranean parking garage and utility trenches may cause instability in the site's geologic units. Thus, recommendations in the geotechnical study for excavation and backfill are reproduced as Mitigation Measures 4-1 (GEO-1) through 4-3 (GEO-3) to ensure impacts remain less than significant.

### **Modified Project**

Similar to the Museum House project, the Modified Project would incorporate mitigation measures GEO-1 through GEO-3 in order to reduce impacts as a result of geological hazards to less than significant.

### **Mitigation Measures**

**4-1GEO-1 Based on the provided plans, sufficient space should be available for deep excavations to be accomplished using open cuts. If site access is limited, temporary shoring may be required for supporting the vertical sides of the required excavations. If shoring is required, it will conform to the Geotechnical Report and following requirements:**

~~Given that the project would require excavation extending to the property line, shoring is required to support subterranean excavation.~~ Prior to issuance of grading permits, the City of Newport Beach Building Division shall confirm that the grading plans include the shoring requirements detailed in the project's geotechnical study. Cantilever, tied-back, or internally braced shoring systems can be used for the subterranean excavation. Cantilever shoring systems are typically limited to a maximum retained height of 15 feet. Tied-back shoring walls will require a temporary or permanent easement from the adjacent property owners and the City of Newport Beach. The shoring system shall be designed to resist a ~~uniform pressure equal to 25 pounds per square foot (psf)~~ **lateral earth pressure equivalent to a fluid weighing 35 pounds per cubic foot**. An allowable passive earth pressure of ~~200~~ **275** pounds per square foot (psf) per foot of depth below the bottom of the excavation shall be used for design of the shoring system. **An allowable passive earth pressure of 550 psf per foot can be used for isolated soldier piles.**

~~The residential tower would be approximately 26 feet from the property line. Therefore, If~~ **sufficient distance from the property line is available**, it may be possible to excavate to the subgrade elevation without the use of shoring. Temporary slope in the marine terrace deposit may be excavated at slopes where the proportion of the height of the rise is less than or equal to the length of the slope (1H:1V) in conformance with all provisions of the Geotechnical Report. Alternatively, sloped excavations may be used to reduce the height of the shored excavation. In that case, the earth pressures above may be increased and will be handled on a case by case basis when the height of the sloped excavation is known.

All shoring and excavation shall comply with current Occupational Safety and Health Administration regulations and be observed by the designated competent person on site.

**4-2GEO-2** The bedding zone is defined as the area containing the material specified that is supporting, surrounding, and extending to one foot above the top of any proposed utility pipes. During grading and construction plan reviews, the City of Newport Beach Building Divisions shall confirm that the project's proposed bedding satisfies the requirements of the Standard Specifications for Public Works Construction Section 306-1.2.1. There shall be a 4-inch minimum of bedding below the pipe and 1-inch minimum clearance below a projecting bell. There shall be a minimum side

clearance of 6 inches on each side of the pipe. Bedding material shall be sand, gravel, crushed aggregate, or native free-draining material having a sand equivalent of not less than 30, or other material approved by the engineer. Materials used for the bedding zone shall be placed and compacted with light mechanical means to reduce the potential of damaging the pipe; jetting shall not be allowed.

**4-3GEO-3** Backfill shall be considered as starting 12 inches above the pipe. Onsite excavated materials are suitable as backfill. During construction activities, any boulders or cobbles larger than three inches in any dimension shall be removed before backfilling. All backfill shall be placed in loose lifts not exceeding ~~6 to 8 inches in the~~ thickness **specified in the Geotechnical Report** and be compacted to at least 90 percent relative compaction. The upper 12 inches below pavement shall be compacted to at least 95 percent relative compaction. Mechanical compaction will be required to accomplish compaction above the bedding along the entire pipeline alignments.

In backfill areas, where mechanical compaction of soil backfill is impractical due to space constraints, sand-cement slurry may be substituted for compacted backfill. The slurry shall contain one **and one-half** sacks of cement per cubic yard and have a maximum slump of 5 inches. When set, such a mix typically has the consistency of hard compacted soil and allows for future excavation.

A lean non-shrink concrete plug with a minimum width length of 3 feet shall be placed in the utility trenches at the location where offsite utilities enter the project boundaries to minimize the potential for offsite water flow onsite.

## Finding

**Finding 1** – The City hereby makes Finding 1. Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the certified EIR and Addendum. These changes are identified in the form of the mitigation measures above. The City of Newport Beach hereby finds that implementation of the mitigation measures is feasible, and the measures are therefore adopted.

## Original Project

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### **Impact 5.4-4: Development of the project would not increase existing hazards arising from expansive soils.**

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Although the Monterey Formation claystone under the site is expansive, the tower would be supported on mat foundations and a core extending several feet into bedrock. A mat foundation is an above-ground foundation typically two to three feet thick (but can be as thick as 10 feet) to provide load-bearing capacity in expansive or collapsible soils. The weight of mat foundation and high-rise structure would provide sufficient pressure on the expansive soil to prevent soil expansion.

To ensure the mat foundations are properly installed, recommendations from the geotechnical report are reproduced as Mitigation Measure 4-4 (GEO-4) below. Upon compliance with the CBC and applicable mitigation measures, project development would not exacerbate existing hazards from expansive soils, and impacts would be less than significant.

## Modified Project

Similar to the Museum House project, the Modified Project would incorporate mitigation measure GEO-4 in order to reduce impacts as a result of expansive soils to less than significant.

## Mitigation Measures

**~~4~~GEO-4** All foundation excavations shall be observed and/or tested by the project applicant's geotechnical consultant before placement of concrete to verify that the foundations will be supported in competent soils. If soft or loose soils are encountered at the subgrade level, the soils shall be removed or brought to a near-optimum moisture content ( $\pm 2$  percent), recompacted, and tested to a minimum of 95 percent relative compaction prior to placement of fill or footing or floor slab construction. Only granular soils shall be used for compacted fill.

Mat foundations, if used in the project, may also derive lateral load resistance from passive resistance along the vertical sides of the foundations. Therefore, an ultimate passive fluid pressure of ~~350~~ 275 pounds per cubic foot shall be used. It is recommended that an ultimate sliding friction coefficient of ~~0.45~~ 0.35 be used for design. Passive and sliding resistance may be used in combination without reduction. The required factor of safety is 1.5 for static loads and 1.1 for wind or seismic loads.

## Finding

**Finding 1** – The City hereby makes Finding 1. Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the certified EIR and Addendum. These changes are identified in the form of the mitigation measures above. The City of Newport Beach hereby finds that implementation of the mitigation measure is feasible, and the measure is therefore adopted.

## Original Project

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**Impact 5.3-2: The Museum House project could destroy paleontological resources or a unique geologic feature.**

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The project site is entirely built out with the OCMA building and hardscape improvements; therefore, there are no unique geologic features onsite. However, given the location of other paleontological resources discovered within the vicinity of the project site, all subsurface excavation anticipated for tower supports and underground parking has a sensitivity to encounter paleontological resources. The City has adopted formal guidelines—Paleontological Guidelines (K-4)—that contain specific procedures and standards for examining and reporting on possible paleontological sites. Nevertheless, the applicant shall retain a qualified paleontologist to prepare and implement a paleontological mitigation plan prior to issuance of grading permits. The plan shall require a qualified paleontological monitor for all grading activities eight feet or more below the current surface and require temporary halt of work within 25 feet of any found fossils.

Implementation of Mitigation Measure 3-2 (GEO-5) would ensure impacts to potential paleontological resources are reduced to less than significant levels, and would implement General Plan Policy HR 2.2, which requires a qualified paleontologist to monitor all grading and/or excavation where there is a potential to affect such resources.

## Modified Project

Similar to the Museum House project, the Modified Project would incorporate mitigation measure 3-2 (now moved to the Geology and Soils section and renamed to GEO-5) in order to reduce impacts to paleontological resources and geologic features.

## Mitigation Measures

~~3-2~~**GEO-5** Prior to the issuance of grading permits, the project applicant shall demonstrate to the Community Development Department that an Orange County–certified professional paleontologist has been retained to monitor any potential impacts to paleontological resources throughout the duration of any ground-disturbing activities at the project site. The paleontologist shall develop and implement a Paleontological Mitigation Plan, which shall include the following minimum elements:

- All earthmoving activities eight feet or more below the current surface shall be monitored full-time by a qualified paleontological monitor.
- If fossils are discovered, the paleontological monitor has the authority to temporarily divert work within 25 feet of the find to allow recovery of the fossils and evaluation of the fossil locality.
- Fossil localities shall require documentation, including stratigraphic columns and samples for micropaleontological analyses and for dating.
- Fossils shall be prepared to the point of identification and evaluated for significance.
- Significant fossils shall be cataloged and identified prior to being donated to an appropriate repository.
- The final report shall interpret any paleontological resources discovered in the regional context and provide the catalog and all specialists' reports as appendices.

An executed curation agreement shall be part of the plan, and the project proponent shall bear all expenses of the mitigation program, including curation of materials meeting significance criteria.

## Finding

**Finding 1** – The City hereby makes Finding 1. Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the certified EIR and Addendum. These changes are identified in the form of the mitigation measures above. The City of Newport Beach hereby finds that implementation of the mitigation measure is feasible, and the measure is therefore adopted.

## 4. Tribal Cultural Resources

### Original Project

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**Impact 5.3-3: The Museum House project could impact tribal cultural resources.**

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There are no known tribal cultural resources, as defined in Public Resources Code Section 21074, in the project area. The City sent letters to 15 Native American contacts provided by the Native American Heritage Commission (NAHC) notifying them of the project and opportunity for tribal consultation. Only 2 of the 15 tribes responded—the Gabrieleno Band of Mission Indians, Kizh Nation, and United Coalition to Protect Panhe.

The City consulted with Andrew Salas, Chairman of the Gabrieleno Band of Mission Indians, who requested Native American tribal monitoring onsite during all construction activities. Consultation between the City and the Gabrieleno Band of Mission Indians ended with the conclusion that mitigation measures would be provided to ensure appropriate tribes would be notified if any resources are discovered during ground disturbing activities.

and that tribal cultural monitoring by the Gabrieleno Band of Mission Indians would be allowed onsite during construction activities on a voluntary basis, consistent with the City's General Plan Policy HR 2.3.

The United Coalition to Protect Panhe noted receipt of City's letter and did not request further consultation.

Although no tribal cultural resources were identified to be within the project site, Mitigation Measures 3-1 (CUL-1) and 3-3 (CUL-2) are provided to ensure appropriate tribes would be notified if any were to be found and allow Native American tribal monitoring on a voluntary basis consistent with General Plan Policy HR 2.3.

### **Modified Project**

Similar to the Museum House project, the Modified Project would incorporate mitigation measures CUL-1 and CUL-2 in order to reduce impacts to tribal cultural resources.

### **Mitigation Measures**

- 3-4CUL-1** Prior to the issuance of grading permits, the project applicant shall demonstrate to the Community Development Department that an Orange County-certified professional archaeologist has been retained to monitor any potential impacts to archaeological resources throughout the duration of any ground-disturbing activities at the project site. The qualified archeologist shall be present at the pregrade meeting to discuss the monitoring, collection, and safety procedures of cultural resources, if any are found.

If subsurface cultural resources are discovered during ground-disturbing activities, the construction contractor shall ensure that all work stops within 25 feet of the find until the qualified archeologist can assess the significance of the find and, if necessary, develop appropriate treatment or disposition of the resources in consultation with the City of Newport Beach and a representative of the affected Native American tribe (Gabrieleno or Juaneño). The archeological monitor shall have the authority to halt any project-related activities that may adversely impact potentially significant archaeological resources. Suspension of ground disturbances in the vicinity of the discoveries shall not be lifted until an archeological monitor has evaluated the discoveries to assess whether they are classified as significant cultural resources, pursuant to the California Environmental Quality Act and, if determined to be significant, to develop an appropriate treatment or disposition plan. As required by General Plan Policy HR 2.4, any scientifically valuable materials will be donated to a responsible public or private institution with a suitable repository, located within Newport Beach or Orange County, whenever possible.

- 3-3CUL-2** **Prior to issuance of any grading permit, the Applicant shall provide satisfactory evidence that a Native American monitor (i.e., Gabrieleno Band of Mission Indians-Kizh Nation), has been retained to observe ground disturbance activities during grading and excavation. In the event that tribal cultural resources are discovered, the Native American monitor shall be included in the consultation on the recommended next steps.** ~~During construction activities, the project applicant shall allow representatives of cultural organizations, including Native American tribes (i.e. Gabrieleno Band of Mission Indians), to access the project site on a volunteer basis to monitor grading and excavation activities.~~

### **Finding**

**Finding 1** – The City hereby makes Finding 1. Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the certified EIR and Addendum. These changes are identified in the form of the mitigation measures above. The City of Newport Beach hereby finds that implementation of the mitigation measures is feasible, and the measures are therefore adopted.

## **B. SIGNIFICANT UNAVOIDABLE ADVERSE IMPACTS**

The following summary describes the significant, unavoidable adverse impacts of the Museum House (Original Project) and Vivante Senior Housing (Modified Project).

### **1. Noise**

#### **Original Project**

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**Impact 5.9-1: Construction activities would result in potentially significant temporary noise increases in the vicinity of the project site.**

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Construction activities would occur for approximately 28 months. Activities would include demolition of the existing OCMA building, site preparation, grading, utility trenching, construction of the 25-story condominium tower, and offsite sewer improvements. Two types of short-term noise impacts could occur during construction: (1) mobile-source noise from transport of workers, material deliveries, and debris and soil haul and (2) stationary-source noise from use of construction equipment. Existing uses surrounding the project site would be exposed to construction noise.

#### **Construction Vehicles**

##### *On-Road Transport of Workers and Vendor/Haul Trucks*

The transport of workers and equipment to the construction site would incrementally increase noise levels along site access roadways. Approximately 200 construction workers are expected to work throughout the 28-month construction period. The worst-case flow of construction-related trips would occur during the soil haul period, which includes site preparation, rough grading, and fine grading. There would be a total of 4,600 truck load trips during this period, which equates to 153 truckload trips per day over a 30-day soil haul period. This number of construction-related vehicle trips would be an increase of much less than 10 percent in total daily vehicle flows along Santa Barbara Drive and Santa Cruz Drive (which have average daily trip [ADT] flow rates of approximately 10,000 and 8,000, respectively). This would result in a noise level increase of much less than 0.5 dB (in the traffic-focused CNEL noise level metric) and would, therefore, have a less than significant impact on noise receptors along the truck routes.

#### **Construction Equipment**

Noise generated during construction is based on the type of equipment used, the location of the equipment relative to sensitive receptors, and the timing and duration of the noise-generating activities. Noise levels from project-related construction activities were calculated from the simultaneous use of all applicable construction equipment at spatially averaged distances (i.e., from the center of the general construction area) to the property line of the closest residences.

##### *Average Construction Noise Levels*

Short-term noise during the approximately 28-month construction period can be associated with site preparation, grading, and building construction of the proposed land uses. Using information provided by the City of Newport Beach and methodologies and inputs employed in the air quality assessment, the expected construction equipment mix was estimated and categorized by construction activity. The associated, aggregate sound levels—grouped by construction activity—are summarized in Table 1.

**Table 1 Museum House Construction Noise Levels, Energy-Average (Leq) Sound Levels**

Construction Activity Phase (duration)	Sound Level at Various Distances from Construction Activities, dBA Leq			
	Villas at Fashion Island Apts. (230 ft.)	Colony Apartments (260 ft.)	Big Canyon homes (950 ft.)	Island Hotel (1,100 ft.)
Demolition (2 months)	72	71	60	59
Site Prep (1 month)	67	66	54	53
Excavation 4 months)	67	66	54	53
Utility Trenching + Fine Grading (1 month)	68	67	55	54
Building Construction (22 months)	67	66	54	53
Building Const + Paving (overlaps with above)	70	69	58	57
Finishing / Landscaping (3 months)	67	66	54	53

Note: Calculations performed with the FHWA's RCNM software are included in Appendix J of the DEIR.

As shown, combined, spatially averaged noise levels for each construction phase would range between 66 and 72 dBA Leq at the Villas at Fashion Island and Colony Apartments, and 60 dBA Leq or lower at receptors at least 950 feet away. Assuming a typical interior noise reduction of 25 dB from exterior noise levels, the average noise levels due to project-related construction activities at the interior areas at the affected uses (i.e., closest units at the Villas of Fashion Island) would generally range from 28 to 47 dBA Leq.

### Maximum Construction Noise Levels

Maximum noise levels for each stage were calculated as if the loudest piece of construction equipment was operating by the site's property line next to the nearest sensitive receptors in the vicinity of the site. Table 2 shows that the maximum unmitigated noise levels from each construction stage at the nearest affected receptors would range from 55 to 79 dBA Lmax.

**Table 2 Museum House Construction Noise Levels, Maximum (Lmax) Sound Levels**

Construction Activity Phase (duration)	Sound Level at Various Distances from Construction Activities, dBA Lmax			
	Villas at Fashion Island (100 ft.)	Colony Apartments (150 ft.)	Big Canyon homes (770 ft.)	Island Hotel (910 ft.)
Demolition (2 months)	79	76	62	61
Site Prep (1 month)	74	71	56	55
Excavation (4 months)	74	71	56	55
Utility Trenching + Fine Grading (1 month)	75	72	57	56
Building Construction (22 months)	74	71	56	55
Building Const + Paving (overlaps with above)	77	74	60	59
Finishing / Landscaping (3 months)	74	71	56	55

Note: Calculations performed with the FHWA's RCNM software are included in Appendix J of the DEIR.

The maximum exterior noise levels during the loudest activity (demolition) would range from 79 dBA Lmax at the Villas at Fashion Island apartments to 61 dBA Lmax at the Island Hotel. Assuming a typical interior noise reduction of 25 dBA due to closed windows, the maximum noise levels during demolition would range from 55 dBA Lmax at the Villas at Fashion Island to 36 dBA Lmax at the Island Hotel.

### Construction Equipment Noise Summary

Adjacent sensitive receptors to the project site would be exposed to elevated noise levels during the construction period. The calculations presented in Tables 1 and 2 show that noise from demolition activities would be highest. Noise from the main construction of the residential building would have the longest duration and would last for the remaining 22 months.

The noise levels related to project construction at the Colony Apartments facing San Clemente Drive and the future Villas at Fashion Island residences facing the project site would be perceptible and/or potentially annoying at times, especially when equipment is operating at maximum power and nearest to the boundary of the site. The highest noise levels within the affected interior areas would be in the range of 42 to 47 dBA Leq



and in the range of 50 to 55 dBA L<sub>max</sub>, which would be audible and comparable to noise levels at a business office or for normal speech, potentially causing sporadic disturbances for these residences. And the highest noise levels within the affected exterior areas would be approximately 72 dBA L<sub>eq</sub> and 79 dBA L<sub>max</sub>.

The City of Newport Beach Municipal Code limits noise sources associated with construction, repair, remodeling, or grading of any real property to the hours of 7:00 AM and 6:30 PM on weekdays, and 8:00 AM and 6:00 PM on Saturdays. This same portion of the code exempts noise levels caused by construction equipment in having to meet the basic noise level limits of § 10.26.025 (Exterior Noise Standards). However, because of the magnitude of the noise levels within the then-completed nearest units at the Villas of Fashion Island complex and because of the extended length of the overall construction period, these impacts would be potentially significant.

Implementation of Mitigation Measures 9-1 (NOI-1) through 9-9 (NOI-9) would reduce construction noise impacts to the maximum extent feasible. However, given the expected noise levels during the two-month demolition phase (predicted to be as high as 47 dBA L<sub>eq</sub> and 55 dBA L<sub>max</sub> within living spaces at the closest, then-completed units at the Villas of Fashion Island property), coupled with the length of the site preparation/grading (4 months) and building construction phase (22 months) and its expected noise levels as high as 42 dBA L<sub>eq</sub> and 50 dBA L<sub>max</sub> within living spaces at the closest, then-completed units at the Villas of Fashion Island complex, significant construction noise impacts would remain.

## **Modified Project**

### **Construction Noise**

#### **Construction Vehicles**

The Original Project identified that a worst-case scenario during the soil haul period would be an average of 153 truckload trips per day over a 30-day period. This was estimated to yield a less than 0.5 dB increase, resulting in a less than significant impact. The Modified Project would result in an average of 1 soil haul trip per day over a 60-day period and a worst-case scenario of 112 demolition haul trips per day. The number of haul trips would be significantly less under the Modified Project than the Original Project's anticipated 153 truckload haul trips per day. Therefore, impacts under the Modified Project would be less than significant and reduced significantly from the Original Project.

#### **Construction Equipment**

The Original Project identified construction noise to be potentially significant due to the magnitude, duration of construction (28 months), and proximity (230 feet) to the Villas at Fashion Island complex (sensitive receptor). The nearest sensitive receptors under the Original Project varied from 230 feet to 1,100 feet, as measured from the center of the construction site. The Modified Project construction activities would take place over an approximate 18-month period and the nearest sensitive receptors would be 230 feet (The Colony) and 260 feet (Villas at Fashion Island), as measured from the center of the new Modified Project's project site. As with the Original Project, development of the Modified Project would be required to adhere to the requirements of the mitigation measures of the 2016 certified EIR, which are reproduced below.

Average construction noise levels under the Modified Project were computed using the FHWA Roadway Construction Noise Model and the anticipated construction equipment mix and phasing information provided by the project applicant. As with the Original Project, it is estimated that construction noise levels would be loudest during demolition (specifically asphalt demolition). The computed average noise levels for the Modified Project construction activities were up to 71 dBA L<sub>eq</sub> at both The Colony and the Villas at Fashion Island. This is 1 dBA less than predicted for average construction noise levels (72 dBA L<sub>eq</sub>) under the Original Project. Though the footprint of the building for the Modified Project is closer to the sensitive receptors, construction equipment is mobile throughout the project site and therefore construction noise levels are a result of analyzing from the acoustical center. Assuming a typical interior noise reduction of 25 dB with windows closed, average

noise levels due to project-related construction activities at the interior of the closest receptors (The Colony and Villas at Fashion Island) would be up to 46 dBA  $L_{eq}$ .

Maximum ( $L_{max}$ ) construction noise levels under the Original Project were estimated to reach up to 79 dBA  $L_{max}$  at a distance of 100 feet from the Villas at Fashion Island and up to 76 dBA  $L_{max}$  at a distance of 150 feet from The Colony Apartments. These worst case  $L_{max}$  noise levels of 76 and 79 dBA  $L_{max}$  would occur during demolition throughout at 2-month period. Under the Modified Project, the demolition activities would also result in the use of similar equipment and therefore similar noise  $L_{max}$  levels. Though the Modified Project would include the demolition of a second building, the nearest demolition activities to sensitive receptors would remain 100 feet to the north and 150 to the south.

Building construction distances would change, however. Under the Original Project the Villas at Fashion Island were 130 feet from the edge of building construction (which is where the footprint of the buildings would be constructed) and under the Modified Project the Villas at Fashion Island would be approximately 100 feet from the edge of the building construction footprint. Though the distance to sensitive receptors to the north would be reduced by approximately 23 feet, the duration of building construction, which is the time it would take to construct only the buildings and does not include other construction activities (demolition, site preparation, excavation, etc.), would go from 22 months under the Original Project (25-story building) to 14 months for the six-story building under the Modified Project. The duration of building construction, therefore, would be reduced by approximately 8 months under the Modified Project, resulting in a significant decrease in building construction noise relative to the Original Project. With implementation of Mitigation Measures NOI-1 through NOI-9 of the 2016 Certified EIR, which are reproduced below in Section 5.7.3, impacts due to construction equipment would be reduced but could still potentially be disruptive to occupants at the Villas at Fashion Island and The Colony. As shown in this section, the mitigation measures were renumbered (originally numbered as Mitigation Measures 9-1 (NOI-1) and 9-9 (NOI-9) in the 2016 Certified EIR) to ensure the mitigation is implemented as intended for the Modified Project. Though the duration of the entire construction period of the Modified Project, which would include all construction activities such as demolition, site preparation, excavation, constructing the proposed building, etc., is anticipated to take 18 months to construct compared with 28 months for the Original Project, construction noise levels would be similar to those identified under the Original Project and would remain significant and unavoidable.

Accordingly, no new significant impacts or impacts of greater severity than those previously identified in the 2016 Certified EIR would occur, and the level of impact remains unchanged from the 2016 Certified EIR. There are no changes or new significant information that would require preparation of an EIR.

### **Mitigation Measures**

- 9-4NOI-1** At least 30 days prior to commencement of demolition or any other construction activities, notification shall be given to all residents or businesses within 500 feet of the project site regarding the planned construction activities. The notification shall include a brief description of the project, the activities that would occur, the duration and hours when construction would occur. The notification shall also include the telephone number of the construction contractor's authorized representative to respond in the event of a vibration or noise complaint.
- 9-2NOI-2** Prior to the beginning of construction activities, a sign shall be posted at the entrance to the job site, clearly visible to the public, that contains a contact name and telephone number of the construction contractor's authorized representative to respond in the event of a vibration or noise complaint. If the authorized representative receives a complaint, he/she shall investigate, take appropriate corrective action, and report the action to the City of Newport Beach's Community Development Director.
- 9-3NOI-3** Route all construction-related trips (including worker commuting, material deliveries, and debris/soil hauling) so as to minimize pass-bys or residential areas around the project site.

- 9-4NOI-4** All heavy construction equipment used on the proposed project shall be maintained in good operating condition, with all internal combustion, engine-driven equipment fitted with intake and exhaust muffles, air intake silencers, and engine shrouds no less effective than as originally equipped by the manufacturer.
- 9-5NOI-5** Electrically powered equipment instead of pneumatic or internal combustion powered equipment shall be used to the extent possible.
- 9-6NOI-6** All stationary noise-generating equipment shall be located as far away as possible from neighboring property lines; with particular attention paid to the residential complex (currently under construction) to the north of the project site.
- 9-7NOI-7** Limit all internal combustion engine idling both on the site and at nearby queuing areas to no more than five (5) minutes for any given vehicle or machine. Signs shall be posted at the job site and along queuing lanes to reinforce the prohibition of unnecessary engine idling.
- 9-8NOI-8** The use of noise producing signals, including horns, whistles, alarms, and bells will be for safety warning purposes only. Use smart back-up alarms, which automatically adjust the alarm level based on the background noise level, or switch off back-up alarms and replace with human spotters.
- 9-9NOI-9** A temporary noise barrier/curtain shall be erected between the construction zone and adjacent residential receptors to the north of the project site boundary. The temporary sound barrier shall have a minimum height of 16 feet and be free of gaps and holes and must achieve a Sound Transmission Class (STC) of 35 or greater. The barrier can be (a) a 3/4-inch-thick plywood wall OR (b) a hanging blanket/curtain with a surface density of at least 2 pounds per square foot. For either configuration, the construction side of the barrier shall have an exterior lining of sound absorption material with a Noise Reduction Coefficient (NRC) rating of at least 0.7.

All the above conditions shall be included on the permit applicant drawings with verification by the Building Division Plan Check staff. Additionally, all the above conditions shall be verified in the field by the Building Division field inspection staff at the project site.

## **Finding**

**Finding 3** – The City hereby makes Finding 3 having found that there are no other mitigation measures that are feasible, taking into consideration specific economic, legal, social, technological or other factors, that would mitigate this impact to a less-than-significant level, and, further, that specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the EIR (CEQA Section 21081(a)(3) and State CEQA Guidelines Section 15091(a)(3)).

As described in the Statement of Overriding Considerations, the City has determined that this impact is acceptable because specific overriding economic, legal, social, technological, or other benefits, including regionwide or statewide environmental benefits, of the proposed project outweigh its significant effects on the environment.

## **V. FINDINGS REGARDING ALTERNATIVES (ORIGINAL PROJECT)**

The Vivante Senior Housing Project is proposed to be processed with an Addendum under the California Environmental Quality Act. An Addendum does not require evaluation of project alternatives. The findings regarding alternatives, therefore, are reproduced for the Museum House project (Original Project).

## **A. ALTERNATIVES CONSIDERED AND REJECTED DURING THE MUSEUM HOUSE PROJECT SCOPING/PROJECT PLANNING PROCESS**

The following is a discussion of the alternative considered during the scoping and planning process and the reasons why it was not selected for detailed analysis in the certified EIR.

### **Alternative Project Location**

CEQA requires that the discussion of alternatives focus on alternatives to the project or its location that are capable of avoiding or substantially lessening any significant effects of the project. The key question and first step in the analysis is whether any of the significant effects of the project would be avoided or substantially lessened by putting the project in another location. Only locations that would avoid or substantially lessen any of the significant effects of the project need be considered for inclusion in the EIR (Guidelines § 15126[5][B][1]). Key factors in evaluating the feasibility of potential offsite locations for EIR project alternatives include:

- if it is in the same jurisdiction
- whether development as proposed would require a General Plan Amendment, and;
- whether the project applicant could reasonably acquire, control, or otherwise have access to the alternative site (or the site is already owned by the proponent)

Since the project applicant does not own or control other property within the City, the evaluation of potential alternate sites focused on sites that could accommodate a development similar to the proposed project on properties that have been identified by the City as suitable for residential development.

It was assumed that the project would be developed based on the same plans detailed in Chapter 3, *Project Description*, of the DEIR. Table H32 of the Newport Beach 2014-2021 Housing Element includes an inventory of land suitable for residential development within Newport Beach. Based on the development limit and allowable density in the available areas, the proposed 100-unit condominium tower could be sited in Banning Ranch, John Wayne Airport Area, or Newport Center.

However, the Banning Ranch area is proposed as a planned community by Newport Banning Ranch, LLC and would accommodate 1,375 dwelling units, a 75-room resort inn and ancillary resort uses, 75,000 square feet of commercial uses, approximately 51.4 acres of parklands, and approximately 252.3 acres of permanent open space. Table H32 of the Housing Element states that there is a maximum development limit of 1,375 units; therefore, if the Banning Ranch project is approved as proposed, the Museum House project would not be able to relocate to this location.

Per the City's Housing Element, the John Wayne Airport Area can accommodate a realistic capacity of 2,061 units. There are several existing residential project applications in the Airport Area—Koll Newport Residential (260 units) and Uptown Newport Mixed Use Development (1,244 units, approved)<sup>1</sup>. In total, these cumulative projects would buildout 1,504 units of the 2,061 realistically allowed units, leaving 557 allowed units for future projects. Therefore, the proposed 100-unit condominium tower could potentially be built in the Airport Area.

As with the current project location, without mitigation, the development of the proposed residential tower within the Airport Area could be expected to result in significant construction-related noise, air quality and vibration impacts. Similarly, proposed excavation could result in significant cultural, paleontological, and geotechnical impacts. Development at this alternative location, therefore, would not be anticipated to eliminate or reduce any significant impacts. Moreover, additional constraints and impacts would be presented by the proximity to the John Wayne Airport (JWA). Most of the southwest portion of the Airport Area is located in

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<sup>1</sup> The Newport Place Residential project (384 units) was also a cumulative project proposed in the Airport Area but was denied by the Newport Beach City Council on July 26, 2016.

the JWA Airport Environs Land Use Plan (AELUP) 65 dBA CNEL contour, which is unsuitable for residential and other noise-sensitive uses. The project would also require notice to the Federal Aviation Administration (FAA) and Airport Land Use Commission (ALUC) because the proposed tower would be over 200 feet and within the obstruction imaginary surfaces area. An aeronautical analysis of the structure would be required to determine whether the tower causes a hazard to navigable airspace per Federal Aviation Regulations (FAR) Part 77. The project would also require approval by the ALUC. Therefore, there are restrictions to development of the proposed tower depending on where it is sited within the Airport Area.

Table H32 of the City's housing element identifies 608 additional units as the future development capacity for Newport Center, based on the existing General Plan. The following residential cumulative projects are currently built in Newport Center—Villas at Fashion Island (524 units under construction) and the Meridian (Santa Barbara) Condominiums (79 units completed); only 5 units remain that are unbuilt. In total, these cumulative projects would exceed the residential development capacity stated in the housing element. This supports the conclusion that there is a lack of alternative site locations in Newport Center that have the appropriate land use entitlements to support the proposed project.

Based on this review, there are no feasible alternative project sites within the City that would accommodate the proposed project and reduce or eliminate significant environmental impacts. Therefore, this alternative was considered but rejected for further consideration.

### **Reduced Height Alternative**

The Reduced Height Alternative was designed and considered in response to scoping process comments and for its potential to reduce or eliminate significant impacts associated with the project as proposed. As with the proposed project, this alternative is assumed to include 100 units, so its anticipated operational impacts (including traffic, public services, operational air quality and noise impacts, and utility needs) would be similar to the project as proposed.

The Reduced Height Alternative would decrease the proposed tower height from 295 feet to 65 feet (from podium to roof of last occupied space) to be consistent with the underlying zoning of the project site—San Joaquin Plaza Planned Community Development Plan (PCDP; PC-19). The building would be six stories of residential floors over two levels of parking (one level of ground parking and one underground level of parking). This height would be in keeping with the adjacent Villas at Fashion Place project and essentially extend the character of that development. Buildout of 100 units would generate an estimated 224 residents as with the proposed project. Grading for this alternative would require approximately 28,400 cubic yards of soil export compared to 45,000 cubic yards of soil export for the proposed project.

Given the substantial decrease in height, the building footprint would be much larger and encompass 78,426 square feet, covering approximately 90 percent of the project site compared to 30 percent under the proposed project. The larger building footprint would also decrease the amount of open space amenities and circulation area on the ground level compared to the proposed project. Site access would be provided at a single entryway along San Clemente Drive for residents/visitors and delivery; thus, the fire access lane proposed along the eastern project boundary under the proposed project would not be developed under this alternative.

### **Conclusion**

The Reduced Height Alternative would result in impacts marginally lesser or greater, or similar, to the less than significant impacts of the proposed project, depending on the resource area. For example, impacts to recreation and hydrology would be marginally greater than the proposed project, but still less than significant. The larger building footprint would also not allow the beneficial development of a modular wetland system within the ground level buffered landscaping area that the proposed project would provide. Further, the common indoor and outdoor amenities provided under the proposed project would be greatly reduced since the expanded building footprint would cover approximately 90 percent of the lot. Also, the proposed project's less than

significant greenhouse gas and air quality impacts would be slightly less due to the likely reduction in construction schedule.

Importantly, however, this alternative would not avoid or lessen the proposed project's significant and unavoidable construction noise impact. The Reduced Height Alternative would require construction of a 65-foot residential building in closer proximity to nearby sensitive receptors than the proposed project. Moreover, although the overall height of the building would be reduced, the construction equipment necessary for development of the Reduced Height Alternative, including with respect to demolition, grading, and building construction, would be consistent with the proposed project. Thus, construction noise impacts would be similar and remain significant and unavoidable. Also, the Reduced Height Alternative would result in a new significant and unavoidable aesthetic (shade/shadow) impact that was not generated by the proposed project. Compared to the proposed 295-foot tower, a 65-foot residential building would cast shadows on more dwelling units for longer hours and would exceed the North Newport Center Planned Community (PC-56) shade standard, causing a new significant and unavoidable shading impact.

A majority of the project objectives of the Museum House project would also either not be achieved or achieved to a lesser degree. For example, compared to the 295-foot tower, development of a 65-foot residential building onsite would not provide a fully amenitized residential community with state-of-the-art facilities to the same degree (No. 1); maximize the project's view opportunities of the Pacific Ocean and Newport Harbor (No. 3); contribute significant property tax revenue to the same degree (No. 6); generate temporary construction employment to the same degree (No. 7); or maximize onsite open space and provide a variety of onsite outdoor open space amenities (No. 9).

Given the aforementioned reasons, particularly the creation of a significant and unavoidable shading impact and the failure of the Reduced Height Alternative to avoid the significant and unavoidable construction noise impact of the proposed project, this alternative was considered but rejected for further consideration.

## **B. ALTERNATIVES SELECTED FOR FURTHER ANALYSIS**

The following alternatives were determined to represent a reasonable range of alternatives with the potential to feasibly attain most of the basic objectives of the project but avoid or substantially lessen any of the significant effects of the project.

- No Project/No Development Alternative
- Existing General Plan Alternative
- Reduced Density Alternative

An EIR must identify an "environmentally superior" alternative, and where the No Project Alternative is identified as environmentally superior, the EIR is required to identify as environmentally superior an alternative from among the others evaluated. Each alternative's environmental impacts are compared to the proposed project and determined to be environmentally superior, neutral, or inferior. Section 7.4 of the DEIR identifies the environmentally superior alternative.

### **No Project/ No Development Alternative**

Under the No Project/No Development Alternative, no development would occur onsite and the existing OCMA building would remain in its existing condition. Buildout of the No Project/No Development Alternative would not introduce any new residential or nonresidential development nor any associated residents or employees. The OCMA building would remain in operation at its current location.

**Finding:** The City Council rejects the No Project/No Development Alternative on the basis of policy and economic factors as explained herein. (See Pub. Resources Code, § 21061.1; CEQA Guidelines, § 15364; see also *City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417; *California Native Plant Soc. v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 1001; *Sequoia Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th

704, 715.) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible this project alternative identified in the FEIR.

The No Project/No Development Alternative would reduce the proposed project's significant and unavoidable construction noise impact. Also, because the alternative would not include any construction or new development, it would also reduce the project's less than significant impacts to the majority of environmental topical areas, including aesthetics, air quality, cultural resources, geology and soils, greenhouse gas emissions, hazards and hazardous materials, land use and planning, public services, recreation, transportation and traffic, and utilities and service systems. Population and housing and hydrology and water quality impacts would be greater for this alternative.

Most of the project objectives are related to providing a high quality residential development within the City. Objective No. 4 also provides a goal of implementing General Plan Policy LU 6.14.4 by developing a residential project that would reinforce the original design concept of Newport Center. The No Project/No Development Alternative, because it does not include any residential development, would not achieve any of the objectives—develop a fully amenitized residential community with state-of-the-art facilities near major activity centers (No. 1); provide housing to meet the City's needs (No. 2); maximize view opportunities of the City, Pacific Ocean, and Newport Harbor (No. 3); develop a residential project in Newport Center per General Plan Policy LU 6.14.4 (No. 4); create a landmark structure (No. 5); contribute significant property tax revenue (No. 6); generate temporary construction employment (No. 7); improve jobs-housing balance in the City (No. 8); or maximize onsite open space amenities (No. 9).

#### **Existing General Plan Alternative**

The Existing General Plan Alternative would either 1) develop the site with an alternate, allowable use under the current Private Institutions (PI) land use designation, or 2) expand/rebuild the existing OCMA building within the development limits outlined in the City's General Plan.

According to the City's General Plan, the PI designation is intended to provide for privately owned facilities that serve the public, including places for religious assembly, private schools, healthcare, cultural institutions, museums, yacht clubs, congregate homes, and comparable facilities. The City's land use plan labels the site as Anomaly 49 with a development limit of 45,208 square feet. An adjacent PI-designated parcel is part of Anomaly 49 but not part of the project site. This adjacent parcel is built out with another OCMA-owned building of approximately 13,670 square feet. It is not within the project boundary and will not be demolished as part of the proposed project. Therefore, buildout of the project site under the existing General Plan would allow 31,538 square feet of Private Institutions use, and approximately 32 jobs would be generated.

The second option under the Existing General Plan Alternative is to expand or rebuild the existing OCMA building to the maximum buildout potential. As stated above, the site's development limit is 31,538 square feet. Thus, the existing museum building (23,632 square feet) could be expanded by 7,906 square feet to the maximum allowed square footage, or the site can be redeveloped with a new museum building at a maximum size of 31,538 square feet. Buildout of this option would similarly generate approximately 32 jobs.

Given the existence of the current OCMA building onsite, the logical project design feature under this alternative is an expansion of the building to its full buildout potential—approximately 7,906 additional square feet. Therefore, the analysis assumes buildout of this alternative to be an expanded museum.

**Finding:** The City Council rejects the No Project/Existing General Plan Alternative on the basis of policy and economic factors as explained herein. (See Pub. Resources Code, § 21061.1; CEQA Guidelines, § 15364; see also *City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417; *California Native Plant Soc. v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 1001; *Sequoiah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 715.) Specific economic, legal, social, technological, or other considerations, including provision of

employment opportunities for highly trained workers, make infeasible this project alternative identified in the FEIR.

The Existing General Plan Alternative would reduce impacts to the following environmental areas: aesthetics, air quality, cultural resources, greenhouse gas emissions, land use and planning, noise, public services, recreation, transportation and traffic, and utilities and service systems. Impacts to geology and soils, and hazards and hazardous materials would be similar and impacts to population and housing and hydrology and water quality would be greater. Overall, impacts would be reduced in comparison to the proposed project.

Most of the project objectives are related to providing a high-quality residential community in Newport Beach; therefore, development of the Existing General Plan Alternative would not achieve most of the project objectives. This alternative would not develop a fully amenitized residential community in the Newport Center area (No. 1); provide additional housing to meet the City's growing population and housing needs (No. 2); develop a residential project per Newport Beach General Plan Policy LU 6.14.4 (No. 4); contribute significant property tax revenue to the City (No. 6); or improve the jobs-housing balance in Newport Beach (No. 8).

This alternative also would not maximize the project's view opportunities of the Pacific Ocean and Newport Harbor (No. 3) or generate temporary employment in the construction industry (No. 7) to the same degree as the proposed project. However, an expanded museum would still be able to create a landmark structure with architectural features and materials that complement the project's location (No. 5) and maximize onsite open space by providing outdoor open space amenities (No. 9).

### **Reduced Density Alternative**

The Reduced Density Alternative would allow development of a 90-unit residential tower (10 fewer units) at a reduced height of 23 stories (271 feet, 6 inches). Table 3 provides a development summary comparison of the proposed project to this alternative. The building footprint and provided setbacks would remain the same. Buildout of this alternative would introduce approximately 201 residents and 20 jobs.

**Table 3 Proposed Project vs. Reduced Density Alternative Development Summary**

	Proposed Project	Reduced Density Alternative
Dwelling Units	100 units	90 units
Height	295 feet (25 stories)	271 feet and 6 inches (23 stories)
Building Area		
Tower	391,158 SF	359,167 SF
Parking Garage	115,828 SF	115,828 SF
Parking	250 spaces (200 residential/50 guest)	225 spaces (180 residential/45 guest)
Open Space		
Common Open Space	52,523 SF	52,523 SF
Common Indoor Space	20,855 SF	20,855 SF
Private Open Space	21,444 SF	19,302 SF

**Finding:** The City Council rejects the Reduced Density Alternative on the basis of policy and economic factors as explained herein. (See Pub. Resources Code, § 21061.1; CEQA Guidelines, § 15364; see also *City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417; *California Native Plant Soc. v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 1001; *Sequoia Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 715.) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible this project alternative identified in the FEIR.

The Reduced Density Alternative would reduce impacts to the following environmental areas: aesthetics, population and housing, public services, transportation and traffic, and utilities and service systems. Impacts to air quality, cultural resources, geology and soils, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, land use and planning, noise, and recreation would be similar.



This alternative is able to achieve all the objectives of the proposed project. Although slightly reduced in density and height, the 90-unit condominium tower and associated amenities would provide a fully amenitized residential community with state-of-the-art facilities within walking distance of employment opportunities, public facilities, and recreational and commercial amenities (No. 1); provide additional housing to meet the City's growing needs (No. 2); maximize the project's view opportunities (No. 3); develop a residential project that reinforces the design concept for Newport Center per General Plan Policy LU 6.14.4 (No. 4); create a landmark structure with compatible and complementary architectural features and materials (No. 5); contribute significant property tax revenue (No. 6); generate temporary construction related employment (No. 7); improve the job-housing balance in the City by providing housing within a major employment center (No. 8); and maximize onsite open space by providing outdoor open space amenities (No. 9).

## **Exhibit “D”**

### **CEQA Statement of Overriding Considerations**

**Exhibit D**

**STATEMENT OF OVERRIDING CONSIDERATIONS**

**Introduction**

The City of Newport Beach is the Lead Agency under CEQA responsible for preparation, review, and approval of the Addendum to the Final Environmental Impact Report (Final EIR) for the Museum House Project, "Original Project" (Vivante Senior Housing Project, "Modified Project"). As the Lead Agency, the City is also responsible for determining the potential environmental impacts of the proposed action and which of those impacts are significant and can be mitigated through imposition of mitigation measures to avoid or minimize those impacts to a level of less than significant. CEQA then requires the Lead Agency to balance the benefits of a proposed action against its significant unavoidable adverse environmental impacts in determining whether or not to approve the proposed project. In making this determination, the City is guided by State CEQA Guidelines Section 15093 which provides as follows:

CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."

When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the Final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the Final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.

If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.

In addition, Public Resources Code Section 21081(b) requires that where a public agency finds that specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in an EIR and thereby leave significant unavoidable effects, the public agency must also find that overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects of the project.

Pursuant to Public Resources Code Section 21081(b) and the State CEQA Guidelines Section 15093, the City has balanced the benefits of the project against the following unavoidable adverse impacts associated with the project and has adopted all feasible mitigation measures with respect to these impacts. The City also has examined alternatives to the project, none of which both meet the project objectives and is environmentally preferable to the Modified Project for the reasons discussed in the Findings of Facts (Findings).

The City of Newport Beach City Council, the Lead Agency for this project, having reviewed the Addendum to the Museum House Project Certified EIR for the Vivante Senior Housing Project, and reviewed all written materials including the Museum House Project certified EIR within the City's public record and heard all oral testimony presented at public hearings for the Museum House Project (Original Project) and Vivante Senior Housing (Modified Project), adopts this Statement of Overriding Considerations, which has balanced the

benefits of the Modified Project against its significant unavoidable adverse environmental impacts in reaching its decision to approve the project.

### **Significant Unavoidable Adverse Environmental Impacts**

Although most potential project impacts have been substantially avoided or mitigated, as described in the Findings of Fact, there remains one project impact for which complete mitigation is not feasible. The Museum House Project EIR (Original Project) identified the following significant unavoidable adverse impact of the project, which would continue to be applicable upon implementation of the Vivante Senior Housing Project (Modified Project):

#### ***Noise***

- **Impact 5.9-1:** Construction activities for the Vivante Senior Housing Project would result in significant temporary noise increases in the vicinity of the project site. Implementation of Mitigation Measures NOI-1 through NOI-9 would reduce construction noise impacts to the maximum extent feasible. However, given the expected noise levels during the demolition phase (predicted to be as high as 71 dBA Leq at both The Colony and the Villas at Fashion Island), coupled with the other phases of construction, all of which would take place between September 2019 through February 2021 (18 months), and expected noise levels (average noise levels due to project-related construction activities at the interior of the closest receptors (The Colony and Villas at Fashion Island) would be up to 46 dBA Leq), construction noise impacts would remain significant and unavoidable.

### **Statement Overriding Considerations**

The City, after balancing the specific economic, legal, social, technological, and other benefits including region-wide or statewide environmental benefits, of the Modified Project, has determined that the unavoidable adverse environmental impact identified above may be considered acceptable due to the following specific considerations which outweigh the unavoidable, adverse environmental impacts of the Modified Project, in accordance with CEQA Section 21081(b) and State CEQA Guideline Section 15093.

#### **1. Improve the jobs-housing balance in the City of Newport Beach**

Jobs-housing goals and ratios are advisory only, and no ideal jobs-housing ratio is adopted in state, regional, or city policies. While the American Planning Association recognizes that an ideal jobs-housing ratio will vary from jurisdiction to jurisdiction, its recommended target for an appropriate jobs-housing ratio is 1.5, with a recommended range of 1.3 to 1.7.

The Modified Project would bring 90 housing units and a 27-bed memory care facility into Newport Beach, which is a jobs-rich city. Based on the Southern California Association of Governments (SCAG), the City's jobs-housing ratio is projected to be 1.90 by 2040. Incorporating the 90 units into SCAG's projections would slightly decrease the City's jobs-housing ratio to 1.89, moving the City closer to the recommended jobs-housing range. Additionally, the Modified Project would create the equivalent of 35 to 40 full-time jobs through the residential and non-residential components of the Project. The assisted living and memory care facilities would require employees, and the amenities onsite, such as the bar/lounge, small retail shop, fitness center, and so forth, would also require employees to be hired. Therefore, the Modified Project would not significantly impact the jobs-housing goals and ratios, as both jobs and housing would be proposed under the Modified Project.

#### **2. Introduce an energy efficient building with distinct architectural features that complement the visual quality of Newport Center and Fashion Island**

The proposed building would be designed as a LEED-certified building. LEED is a system created and administered by the United States Green Building Council (USGBC) to evaluate the sustainability of a building.

LEED buildings are often fitted with the most efficient plumbing fixtures, irrigation designs, and electrical systems. Some building materials are often created using recycled materials and refuse from demolished buildings are often recycled for other uses. LEED certification often exceeds the standard Title 24 and other energy and water conservation requirements applied to construction.

Additionally, the building would include design elements such as light-finish smooth-coat plaster walls; natural Travertine stone; vinyl windows; and metal railings, window trims, and porte-cochère. Building pop-outs and offsets; variations in building rooflines, materials, colors, and landscaping; and balconies would be added and modulated to offset the building's massing, provide human scale, promote visual interest and articulation, and provide relief to and variation in the building form and style. The Modified Project's visual quality would further enhance the Newport Center and Fashion Island.

**3. Generate more revenue for the City of Newport Beach than the existing Orange County Museum of Art through property taxes, fees, and revenue expenditures from the project residents**

The City prepared a fiscal impact analysis on the Modified Project in accordance with Newport Beach General Plan Implementation Policies 12.1 and 12.2. The fiscal impact model is designed to calculate the average cost of public services required by new development, on the assumption that new development affects City services in the same way as existing development. Buildout of the Newport Beach General Plan compared to existing land uses in 2006 when the plan was adopted, would result in a positive fiscal impact for the City's general fund of \$21.7 million per year.

The project site is currently developed with the Orange County Museum of Art (OCMA) building and OCMA administrative office building. OCMA is closed to the public; however, it does host occasional private events. The proposed Vivante Senior Housing Project would have positive fiscal impacts as a result from property taxes, fees, and revenue expenditures from future project residents. The City engaged a consultant to prepare a fiscal impact analysis and concluded that the Modified Project would result in an estimated annual net revenue to the City of \$41,569 while the existing museum land use results in an annual net cost to the City of \$14,963. This results in an annual net increase of \$56,562 to the City. 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 Modified 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. Based on the fiscal model estimates for City services, it is projected that the revenues generated by the project would pay for City services that the project might require.

**4. Encourage a mixed-use environment that expands opportunities for residents to live close to jobs, schools, commercial centers, services, and recreation per General Plan Goal LU 6.14 and Policy CE 5.1.2.**

General Plan Goal LU 6.14 encourages "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." General Plan Policy CE 5.1.2 promotes "link[in] residential areas, schools, parks, and commercial centers so that residents can travel within the community without driving."

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. The Modified Project would further this goal and policy from the City's General Plan by providing additional opportunities for residents to live close to existing jobs, commerce, entertainment, and recreation in Newport Center. The property's location, approximately one-quarter mile from Fashion Island, particularly lends itself towards this land use goal.

Residential development at this location would provide a pedestrian-friendly environment by placing these uses within walking distance of employment, shopping, and entertainment.

**5. Provide amenities and facilities for senior citizens per General Plan Policy LU 2.8, Policy H 5.1, Housing Program 5.1.7, and General Plan Policy R4.7.**

General Plan Policy LU 2.8 calls for adequate infrastructure by accommodating “the types, densities, and mix of land uses that can be adequately supported by transportation and utility infrastructure (water, sewer, storm drainage, energy, and so on) and public services (schools, parks, libraries, seniors, youth, police, fire, and so on).” General Plan Policy H 5.1 encourages the “approval of housing opportunities for senior citizens and other special needs populations.” Housing Program 5.1.7 encourages “senior citizen independence through the promotion of housing services related to in-home care, meal programs, and counseling, and maintain a senior center that affords seniors opportunities to live healthy, active, and productive lives in the City.” Moreover, General Plan Policy R 4.7 calls for the provision of “quality services and programs which meet social, recreational and health needs of the senior population.”

The Modified Project would further these policies and programs from the City’s General Plan by providing housing for senior citizens that include on-site amenities and facilities that encourage independence and opportunities for recreation.

**Conclusion**

The City of Newport Beach has balanced the project’s benefits against the project’s significant unavoidable construction noise impact and finds that the project’s benefits outweigh the project’s significant unavoidable impact. This impact, therefore, is considered acceptable in light of the project’s benefits. The City finds that each of the benefits described above is an overriding consideration, independent of the other benefits, that warrants approval of the project notwithstanding the project’s significant unavoidable impact.