

OC PLANNING REPORT

DATE: January 12, 2011

TO: Orange County Planning Commission

FROM: OC Planning/OC Communities Planning Unit

SUBJECT: Public Hearing on Planning Application PA090004 for a Specific Plan Amendment, Use Permit, and Site Development Permit.

PROPOSAL: (1) Specific Plan Amendment to amend the North Tustin Specific Plan to add a new Senior Residential Housing (SRH) Land Use District and change the site from Residential Single Family (100-RSF) to SRH; (2) a Use Permit pursuant to Ordinance 08-015 for a Senior Living Facility (per Zoning Code Section 7-4-142), including an 18 percent density bonus for senior housing pursuant to Government Code Section 65915(f)(3). A total of 153 residential units are proposed, comprised of: 130 base units and 23 density bonus units; and, (3) Site Development Permit for grading more than 5,000 cubic yards.

GENERAL PLAN LAND USE DESIGNATION: 1B "Suburban Residential"

ZONING: 100-RSF "Residential Single Family" District of the North Tustin Specific Plan

LOCATION: 11901 Newport Avenue, in the North Tustin community and within the Third (3rd) Supervisorial District¹

APPLICANT: Roman Catholic Diocese of Orange, owner
Kisco Senior Living, agent

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SYNOPSIS: OC Planning/OC Communities Planning Unit recommends that the Planning Commission recommend to the Board of Supervisors approval of Planning Application PA090004 for a Specific Plan Amendment, Use Permit and Site Development Permit and recommend approval and certification of Environmental Impact Report PA090004, subject to the attached Findings, Conditions of Approval, and Statement of Overriding Considerations.

¹ The Proposed Project's address is different from the address included in the plans and environmental document. The previous address, 13765 Newport Avenue, has been changed to 11901 Newport Avenue.

BACKGROUND AND EXISTING CONDITIONS

The project site is comprised of five (5) parcels and is an undeveloped site in North Tustin. The site has one (1) residential structure that is located off Ervin Lane.

The Prescott family gifted the largest parcel of the project site, APN 395-033-01, via a Grant Deed to the Roman Catholic Diocese of Orange on August 8, 1956. The North Tustin Specific Plan (“NTSP”) was adopted in 1982, which then designated the site “Residential Single Family” (100-RSF) per the NTSP Land Use District Map. When the property was gifted to the Diocese over fifty years ago, the Diocese originally planned to develop the site with St. Cecilia’s Church and a school, as permitted by the then County zoning of 100-E4 Small Estates District with approval of a Use Permit by the Planning Commission. The Planning Commission recommended denial of the application. The application was appealed to the Board of Supervisors and was approved. The action was subsequently litigated by two residents and the Tustin Heights Association, the forerunner to the current Foothill Community Association. As a result of extended court actions and a petition for a hearing by the State Supreme Court, although denied, the Diocese decided not to pursue the church proposal and St. Cecilia’s was ultimately built on a smaller parcel on Sycamore Street in Tustin. The current project site off Newport Avenue was held for a future use by the Diocese. In 2006, the Diocese retained Kisco Senior Living to assist in the design and implementation of an independent and assisted living senior community. Kisco Senior Living and their consultants held numerous neighborhood workshops and meetings to discuss the project concept between 2007 and 2010.

Proposed Project

The proposed project, the Springs at Bethsaida, is for the development of a 153-dwelling-unit senior living community on the 7.25 acre site. The senior living community consists of one two-story main building, with a central courtyard and basement common area and parking level, as well as 19 perimeter bungalows. The bungalows are single-story attached dwelling units located along the proposed project’s western side, along Ervin Lane and at the northeast corner of the property along the Newport Avenue frontage. The main interior courtyard includes recreational facilities, including but not limited to a pool, spa, water features, and seating areas.

The applicant is proposing a California Craftsmen architectural design of varying building materials with earth-tone colors. Landscaping is proposed throughout the entire site, including evergreen screening trees and hedges. The proposed plant palette incorporates layered landscaping along the perimeter, which will provide screening between the adjacent properties and the street frontage. A landscaped berm is proposed along Newport Avenue, to serve as additional screening and to soften the visual impacts of the project. More detailed discussion regarding design components of the California Craftsmen theme is provided under “Consistency with the NTSP”.

Primary access to the site will be from Newport Avenue opposite Ravenscrest Road. A second access drive is located across from Saint Regis Place along the southeast side of the property. The northwest corner of the site abuts Ervin Lane, but no vehicular access is planned from Ervin Lane. There will be an interior drive aisle that wraps around the main building, including two security gates to restrict nighttime truck deliveries. Surface parking is provided at the main entrance near Newport Avenue and at limited locations along the internal drive aisle. A total of 159 parking spaces will be provided, with 95 subterranean spaces, 51 surface spaces, and 13 garage spaces that are associated with the 13 bungalows located toward the rear of the property.

The NTSP sets forth the Land Use District for the proposed project site, which is currently Residential Single Family (100-RSF). The Residential Single Family District is established to provide for the development and maintenance of residential neighborhoods. Other uses, such as public libraries, museums, churches, and educational uses, and congregate care facilities are also allowed in the 100-RSF District, subject to the approval of a use permit. Please note that the proposed project is different from a congregate care facility, in that the proposed Springs at Bethesda includes both independent living and assisted living. Out of the 153 units, only 55 units are proposed to be assisted living.

For the proposed project, the applicant is requesting an amendment to the NTSP that adds the Senior Residential Housing (“SRH”) Land Use District to the residential uses permitted within the NTSP, and applies that SRH District to the proposed project site. The existing NTSP District for the site is Residential Single Family (100-RSF), which is proposed to be changed to SRH by the Specific Plan Amendment. The proposed project will also require approval of a Use Permit, pursuant to Section 7-9-142, Senior Living Facilities, of the County of Orange Zoning Code. The request for a Site Development Permit is for grading activities proposed that will involve over 5,000 cubic yards of dirt excavation for the proposed subterranean parking garage.

The draft language of the new SRH District, including proposed permitted uses, site development standards and setbacks, is included in Appendix L of the Draft EIR, and also as Attachment 4 of this staff report. The SRH District density would be up to 18 dwelling units per acre, plus any density bonuses as permitted by State law. This is consistent with the underlying General Plan Suburban Residential Land Use Designation. The proposed SRH District was designed to ensure that the site remains restricted for use as senior residential and is a direct result of community outreach and comments received at the Draft EIR Scoping Session. Along with senior housing, the SRH Land Use District would also allow detached single family residences, and the following principal permitted uses, subject to approval of a use permit: residential open space (including private trails and parks), churches, and schools.

The application includes a density bonus of 18 percent. Pursuant to Government Code Section 65915(f)(3), the developer is entitled to up to a 20 percent density bonus for a project providing 100 percent senior citizen housing. As a result, the 153 total residential units comprise: 130 base units and 23 density bonus units. Under density bonus law and the County’s General Plan,

qualifying senior citizen housing projects may exceed existing density limits. Section 65915(g)(2) states that a density bonus is an increase over the “otherwise maximum allowable residential density” under the Zoning Code and Land Use Element of the General Plan. No change to the current County General Plan Land Use Designation is necessary or being requested.

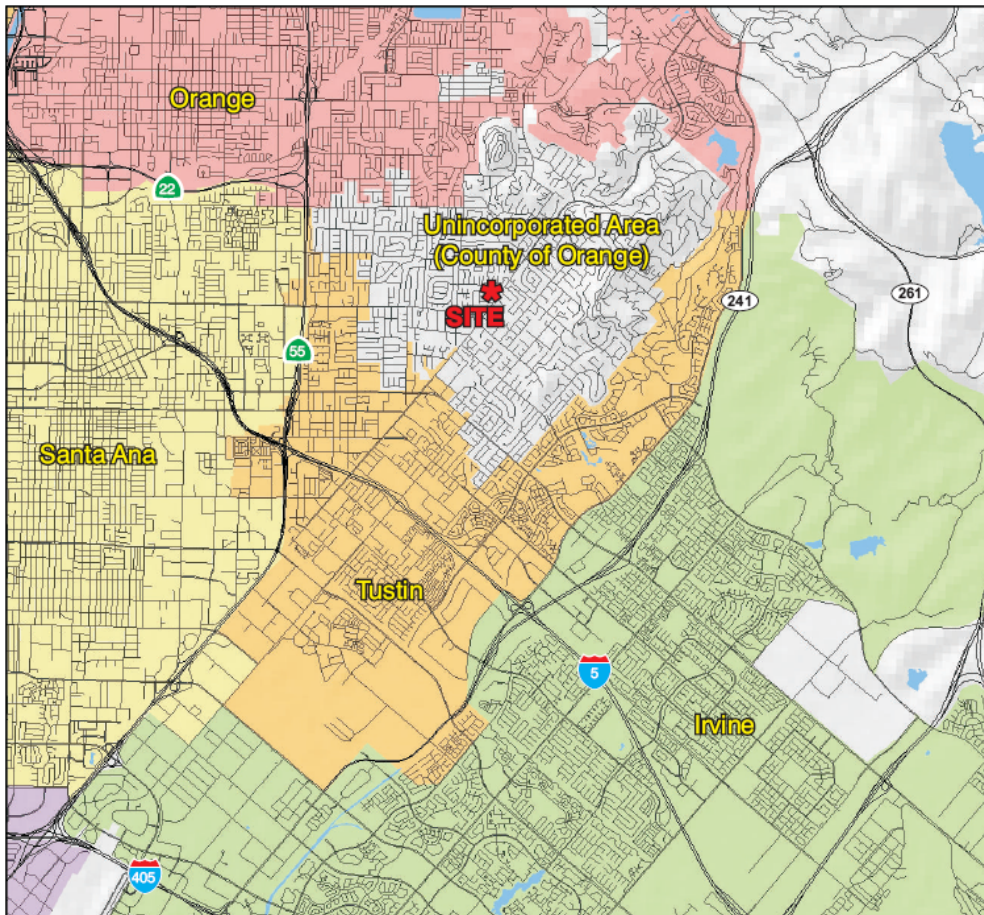
SURROUNDING LAND USE

The project site is surrounded by residential use to the north, east, south, and west.

Direction	North Tustin Land Use District	Existing Use
North:	100-RSF “Residential Single Family”	Single Family Residential
East:	100-RSF “Residential Single Family”	Single Family Residential
South:	100-RSF “Residential Single Family”	Single Family Residential
West:	100-RSF “Residential Single Family”	Single Family Residential

Below is a regional location map, which depicts the geographic location of the project site.

REGIONAL LOCATION MAP



AERIAL PHOTOS OF PROJECT SITE





REFERRAL FOR COMMENT AND PUBLIC NOTICE

A Notice of Hearing was mailed to all property owners of record within 300 feet of the subject site and all individuals that requested to be notified on December 30, 2010. Additionally, a notice was posted at the site, at 300 N. Flower, Santa Ana, and at 10 Civic Center Plaza, Santa Ana, as required by established public hearing posting procedures.

The North Tustin Advisory Committee (“NTAC”) reviewed the project and associated Draft EIR at its June 30, 2010 meeting. At that time, the NTAC voted to recommend denial of the project with a 4-3 vote. A copy of the recorded minutes from the NTAC’s June 30, 2010 meeting is provided as Attachment 10.

All comments from County Departments and Divisions have been addressed in the EIR by Project Design Features or Mitigation Measures, or via recommended Conditions of Approval. The only exception to this would be with the significant unavoidable adverse impacts of the project related to air quality and noise. The short term significant and unavoidable adverse impacts related to air quality and noise are discussed in the recommended Statement of Overriding Considerations, which is provided as Attachment 7.

PROJECT CHRONOLOGY

Below is a timeline listing key dates of the permit application and EIR process;

- January 15, 2009 – Current Planning Application submitted, required revisions
- April 29, 2009 – Planning Application submittal deemed complete
- July 20, 2009 - Notice of Preparation of EIR for project posted for public review period of 30 days
- August 11, 2009 - Scoping meeting for Notice of Preparation held at the Tustin Unified School District Office
- January 11, 2010 - Screencheck DEIR submitted to County for review
- May 3, 2010 to June 18, 2010 - Public Notice and 45-day public review of Draft EIR
- June 30, 2010 - NTAC meeting to discuss proposed project; NTAC voted to recommend denial of project (4-3 vote)
- July 13, 2010 to August 27, 2010 - Public Notice and 45-day public review of Recirculated Draft EIR (see below)
- December 30, 2010 – Responses to Comments on Draft EIR sent to commenting parties

CALIFORNIA ENVIRONMENTAL QUALITY ACT (“CEQA”)

Overview of Project Environmental Impact Report (“EIR”)

The EIR for this project is comprised of the following documents:

- Draft EIR – This is the initial document that was circulated for public review for 45 days between May 3, 2010 and June 18, 2010. In summary, it includes the project description, environmental analysis, discussion of significant impacts, alternatives analyses, discussion regarding impacts, and technical studies as part of the appendices;
- Recirculated Draft EIR – This is Chapter 5.14, *Global Climate Change*, of the Draft EIR. The public review period for the recirculated DEIR began Tuesday, July 13, 2010 and ended on Friday, August 27, 2010.
- Final EIR – This includes a summary of responses to issues raised by multiple commentors, the comment letters received during the public review period, responses to comments, and revisions to the Draft EIR. The revisions to the Draft EIR contain an additional land

swap/park alternative analysis, a supplemental traffic study, and a preliminary water quality management plan (WQMP). Please note that the County has reviewed the preliminary WQMP and found it to be acceptable. Also, the additional land swap/park alternative was analyzed in an effort to respond to a comment raised during the public review period for the Draft EIR. It does not constitute any significant new information that would require recirculation of the Draft EIR. Although it is an alternative considerably different from others previously analyzed, the County determined that it would not be feasible and is provided for information purposes only.

The Draft EIR addresses the environmental effects associated with development of the Springs at Bethsaida Senior Living Community (proposed project). CEQA requires that local government agencies, prior to taking action on projects over which they have discretionary approval authority, consider the environmental consequences of such projects. An EIR is a public document designed to provide the public and local and State governmental agency decision makers with an analysis of potential environmental consequences to support informed decision making.

The County determined that an EIR would be required for this project and issued a Notice of Preparation ("NOP") and Initial Study on July 20, 2009 (See Draft EIR Appendix A). Comments received during the public review period, which extended from July 20, 2009 to August 21, 2009, are contained in Draft EIR Appendix B.

The County held one scoping meeting for the Draft EIR on August 11, 2009. Draft EIR Table 2-2 summarizes the issues identified during the scoping meetings by commenter in order of appearance, along with a reference to the section(s) of the Draft EIR where the issues are addressed.

The County prepared and circulated the Draft EIR for public review and comment from May 3, 2010 to June 18, 2010. In accordance with Section 15088.5 of the Guidelines for California Environmental Quality Act (CEQA Guidelines), 14 Cal. Code of Regs. § 15100 et seq., a portion of Draft EIR, specifically Section 5.14, Global Climate Change, was subsequently recirculated for public review and comment. The public review period for the Recirculated Draft EIR began Tuesday, July 13, 2010 and ended on Friday, August 27, 2010. No additional comments were received for the recirculated Section 5.14, Global Climate Change, of the Draft EIR.

After public comments were received on the Draft EIR, responses to comments were prepared to respond to the comment letters received. As previously mentioned, the public comments and responses to comments are both contained in the Final EIR, along with an additional alternative analysis, a supplemental traffic analysis and a preliminary water quality management plan. As mentioned above, this new land swap/park alternative that is included in the Final EIR does not constitute any significant new information that would require recirculation of the Draft EIR. The County determined that it would not be feasible; however it is being provided for informational purposes in response to a comment received during the public review period of the Draft EIR.

Impacts Considered Less than Significant

Section 2 and Section 8 of the Draft EIR identify four environmental impact categories as not being significantly affected by, or affecting the proposed project and as such are not discussed in detail in the Draft EIR. This determination was made by the County in its preparation of the Initial Study. The following topical issues are not addressed in the Draft EIR:

- Agricultural
- Population and Housing
- Biological Resources
- Mineral Resources

The Initial Study, included as Draft EIR Appendix A, concluded that all hazards impacts would be less than significant. However, in response to community input, a comprehensive discussion of potential hazards and hazardous materials exposure is now included in the EIR. The following topical issue is addressed in the Draft EIR:

- Hazards and Hazardous Materials

Potentially Significant Adverse Impacts

The DEIR analyzed fourteen environmental factors identified as potentially significant impacts if the proposed project is implemented. These factors were:

- Land Use and Planning
- Geology and Soils
- Hydrology and Drainage
- Water Quality
- Transportation/Circulation
- Air Quality
- Noise
- Aesthetics
- Cultural/Scientific Resources
- Hazards and Hazardous Materials
- Recreation
- Public Services
- Utilities and Service Systems
- Global Climate Change

Unavoidable Significant Adverse Impacts

From the fourteen environmental factors listed above, three short-term construction related impacts were found to be significant and unavoidable. Unavoidable adverse impacts may be considered significant on a project-specific or cumulative basis.

Draft EIR Chapter 1, Executive Summary, contains Table 1-1, which summarizes the impacts, mitigation measures, and levels of significance before and after mitigation. While mitigation measures would reduce the level of impact, the following short term impacts would remain significant, unavoidable, and adverse after mitigation measures are applied:

- Air Quality – Impact 5.6-1 Air Quality Management Plan (“AQMP”) Consistency Impacts due to Short-Term Emissions of nitrogen oxides (“NOX”)

Mitigation Measures 6-3 through 6-5 applied to short-term construction activities and long-term operation of the project would lessen impacts associated with Impact 5.6-1. Construction activities would take approximately 21 months. However, no additional feasible mitigation measures are available to reduce short-term air pollutant emissions of NOX to below the South Coast Air Quality Management District (SCAQMD) regional thresholds in order for the project to not significantly contribute to the nonattainment designation of the Southern California Air Basin to ensure AQMP consistency. Consequently, Impact 5.6-1 would remain significant and unavoidable. Exceeding the SCAQMD regional thresholds is common for construction projects that require significant quantities of soil import/export, as is the case with this project, due to the amount of soil excavation and export associated with the proposed subterranean parking.

- Air Quality – Impact 5.6-2 Short-Term Air Impacts from Construction Vehicles

Incorporation of Mitigation Measure 6-1 would reduce NOX emissions from off-road construction vehicles to the extent feasible; however NOX emissions from on-road vehicles from soil hauling operations during rough grading would still exceed the SCAQMD regional threshold. Soil haul would occur for three weeks during the approximately 21-month construction schedule. Consequently, Impact 5.6-2 would remain significant and unavoidable for NOX and would also contribute to cumulative air quality impacts and would be cumulatively considerable.

- Noise – Impact 5.7-6 Short-Term Construction Noise Impacts

Implementation of Mitigation Measures 7-3 through 7-7 would reduce noise generated by construction activities associated with the project to the extent feasible. While project-related construction activities would occur during the least noise-sensitive portion of the day and mitigation measures would help to reduce noise generated by construction activities, due to the length of construction activities (approximately 21 months) and level of noise from the combination of construction activities (ranging from 60 to 77 dBA), Impact 5.7-6 would remain significant and unavoidable.

If the County, as the Lead Agency, determines that unavoidable significant adverse impacts will result from the project, the County must prepare a “Statement of Overriding Considerations” before it can approve the project. A Statement of Overriding Considerations states that the decision-making body has balanced the benefits of the proposed project against its unavoidable significant environmental effects and has determined that the benefits of the project outweigh

the adverse effects and, therefore, the adverse effects are considered to be acceptable. Attachment 7 includes a recommended Statement of Overriding Considerations for your Commission's review.

Summary of Project Alternatives

CEQA states that an EIR must address "a range of reasonable alternatives to the project, or to the location of the project, which could feasibly attain the basic objectives of the project, but would avoid or substantially lessen any of the significant effects of the project and evaluate the comparative merits of the alternatives" (14 Cal. Code of Reg. 15126.6(a)). As noted in Section 8.0 of the Draft EIR, a number of impacts relating to Land Use and Planning, Agricultural Resources, Population and Housing, Geophysical, Hydrology and Drainage, Water Quality, Transportation/Circulation, Air Quality, Noise, Biological Resources, Aesthetics, Recreation, Mineral Resources, Hazards, Public Services and Utilities were determined to have no impact or a less than significant impact without mitigation. All other potentially significant impacts of the project can be mitigated to a less than significant level with the exception of the significant unavoidable impacts described in Section 6.0. The significant unavoidable adverse impacts of the project are the following:

- Air Quality: Construction emissions would exceed the South Coast Air Quality Management District's ("SCAQMD") regional threshold for NOx and would not be consistent with the applicable Air Quality Management Plan.
- Air Quality: Construction activities associated with the proposed project would generate short-term emissions that exceed the SCAQMD's regional threshold criteria for NOx and would significantly contribute to the nonattainment designations of the South Coast Air Basin for O3, PM10, and PM2.5.
- Noise: Noise associated with the demolition, site preparation, and construction of the project would temporarily increase the ambient noise environment.

As described in Section 7 of the Draft EIR, five alternatives were considered but rejected during the project scoping/planning process:

- Two-Story Above-Ground Alternative
- No Development/Existing Use Alternative
- Tustin Legacy Alternative Site
- Saint Thomas More Catholic Parish Alternative Site
- Holy Sepulcher Cemetery Alternative Site

In addition, five project alternatives were identified and analyzed in detail for relative impacts as compared to the proposed project:

- No Project/Existing Zoning (Single Family Homes) Alternative
- Church/Parish Center Alternative
- School with Campus Chapel Alternative
- Aboveground Parking/Reduced Density Alternative

- 17th Street and Newport Avenue Alternative Site

These alternatives were developed to avoid or substantially lessen the significant impacts of the project. Please refer to Section 7 of the Draft EIR for a complete discussion of how the alternatives were selected and the relative impacts associated with each alternative. In addition to the five project alternatives mentioned above, a sixth project alternative was analyzed in response to comments received during the public review period of the Draft EIR. This sixth alternative is a Park/Land Swap Alternative, which is contained in Appendix A of the Final EIR. It does not constitute any significant new information that would require recirculation of the Draft EIR.

DISCUSSION/ANALYSIS

The NTSP, which was adopted by the Board of Supervisors on September 29, 1982, regulates development in the North Tustin area of the unincorporated County of Orange. The NTSP serves as the Land Use Plan for the community. The proposed project requires a Specific Plan Amendment to change the current Residential Single Family (100-RSF) Land Use District to the newly proposed SRH District. Below is a comparison of the site development standards of the existing Residential Single Family (100-RSF) District with the new SRH District that is proposed.

Project Comparison between 100-RSF District and SRH District Site Development Standards

STANDARD	100-RSF District Standards	Proposed SRH District Standards
Building site area	10,000 s.f.	7 acres min.
Building site width	100 feet	400 feet min.
Building height	35 feet max.	35 feet max.
Front setback	25 feet min.	20 feet min.
Rear setback	25 feet min.	25 feet min.
Side setback	10% of avg. ultimate net width, max. 20 feet	15 feet min.
Building site coverage	50% max.	40% max

The proposed project is consistent with the site development standards of the SRH (Senior Residential Housing) District.

Consistency with General Plan

The project site’s General Plan Land Use Designation is 1B, “Suburban Residential.” The Suburban Residential Land Use Designation is characterized by a wide range of housing types, from estates on large lots to attached dwelling units (townhomes, condominiums, and clustered developments). According to the General Plan, this Land Use Designation permits the greatest flexibility for residential development. Residential building intensity for Suburban Residential ranges from 0.5 to 18 dwelling unit per acre. Residential building intensity in excess of the standards identified in the General Plan may be accomplished, in certain circumstances, through

a residential density bonus. Pursuant to Government Code Section 65915(f)(3), a residential density bonus of up to 20 percent can be utilized for projects meeting certain affordability criteria and/or providing housing for senior citizens. The proposed project is for attached dwelling units within the density limits considered by the Suburban Residential Land Use Designation and is therefore consistent with the General Plan's Land Use Designation. With the density bonus, the project's density is 21 dwelling units per acre.

The County's General Plan includes a Housing Element. The Housing Needs Assessment (Section III) of the Housing Element acknowledges that the special housing needs of seniors are an important concern in the County of Orange. The elderly maintain special needs related to housing construction and location. The Housing Element states that every effort should be made to maintain the dignity, self-respect, and quality of life of mature residents in the County. This applies to mature citizens who prefer to stay in their own dwellings and those who relocate to a retirement community. According to the Housing Element, housing is one of the top five concerns among the senior population. According to the State of California, Department of Finance, in 2000 the total population of seniors in Orange County, age 55 years and older, was at 509,043, which comprised about 17.8% of the total population. Orange County's senior population increased to 702,919, comprising 21.8% of the total population in 2010. It is anticipated to increase to 945,081 in 2020, which is an estimated 26.8% of the estimated total population (State of California, Department of Finance, Race/Ethnic Population with Age and Sex Detail, 2000–2050. Sacramento, CA, July 2007). This is approximately an 86% increase within ten years.

The proposed project is for a 100 percent senior living community, and it will be deed restricted for those 55 years of age and older. There are two types of living arrangements proposed – independent living and assisted living. Some independent living units would be located in the main building. Additionally, the bungalows would serve as independent living units, and are a good transition for people moving from larger homes to a senior living campus. The independent residential units do not require licensing from the State of California. The proposed project would not be a nursing facility and would not offer nursing service. This project provides two different housing types, thus enabling residents to age in one place and not have to move as circumstances change.

A detailed analysis of the proposed project's consistency with the applicable goals and policies of the various elements of the County of Orange General Plan is provided in Table 5.1-1, General Plan Consistency Analysis, of the Draft EIR. The analysis in Table 5.1-1 concludes that the proposed project would be consistent with the applicable goals and policies of the County of Orange General Plan.

In addition to land use consistency, as previously described, the project is also consistent with the General Plan's residential density limits. Under the Suburban Residential Land Use Designation, and with application of a 20 percent density bonus, as permitted by State law (Government Code

Section 65915(f)(3)), 156 residential units would be permitted. The project applicant is electing to utilize an 18 percent density bonus and proposing 153 residential units instead of 156 units. The 153 units proposed would be strictly designated for senior citizens. With the application of this density bonus provision, the 153 residential units proposed is comprised of 130 base units and 23 density bonus units. Additional discussion regarding the application of the density bonus to the project is contained in the Final EIR, under Section 2.8, which is a topical response for comments received about the project and its consistency with the General Plan.

The residential land uses proposed by this senior living project are consistent with those identified in the Suburban Residential Land Use Designation. The proposed senior living project is also consistent with the stated goal of the Housing Element of providing housing to special needs groups, particularly the elderly, in a way that maintains the dignity, self-respect, and quality of life of mature residents in the County. Lastly, the proposed project is consistent with the allowable density, per the General Plan Suburban Residential Land Use Designation.

Consistency with the NTSP

The project site is located within the NTSP. Land Use Districts within the NTSP serve as the applicable zoning designations. The project site's Land Use District is currently Residential Single Family (100-RSF). The 100 prefix indicates a requirement of a 100-foot frontage for each building site. Permitted uses are single detached dwelling units per building site (10,000 square feet minimum), noncommercial parks and playgrounds, riding and hiking trails, and community care facilities with six or fewer people, and public facilities. Other principal uses, such as community care facilities serving seven to twelve persons, churches, and educational institutions, are permitted subject to approval of a site development permit or a use permit.

In order to allow attached housing, a Specific Plan Amendment is required to modify the land use designation in the NTSP to a new residential category, Senior Residential Housing ("SRH"). The NTSP provides several goals and policies to ensure compatibility with the existing community, promote innovative development concepts and balance housing opportunities. The proposed project is a residential use and the surrounding areas are also residential uses. The project site is surrounded on three sides (the north, south, and west) by one- and two-story single-family homes. Across the street to the east of Newport Avenue are similar single-family homes within the Saint Regis Place and Ravencrest subdivisions. The proposed senior housing project is residential in character and would meet all development standards established in the NTSP, as shown in Table 5.1-2 of the Draft EIR. Additionally, 19 single-story bungalows are located along the far easterly and westerly portions of the project site, which were designed to be similar in scale to the surrounding residential units. The draft language of the new SRH Category, including proposed permitted uses, site development standards and setbacks, is included in Appendix L of the Draft EIR, and as Attachment 3 of this staff report.

The site's design and orientation, including the subterranean parking, enhanced setbacks, building heights, and earthen berm along Newport Ave, visually maintain the area's residential

character. The proposed architectural design and the proposed layered landscaping make this project's design suitable for the North Tustin community. The California Craftsmen architectural design provides for the varying of building mass and alternation of the materials, such as stone and woodwork, and colors of the exterior of the building. The design of the two-story main building and bungalows along the perimeter incorporates variations in the roofline and architectural details and includes overhanging eaves, recessed entrances, window articulation, separated wall surfaces, tapered square columns, and varied setbacks. The project's aesthetic compatibility is discussed in further detail in Section 5.8 of the Draft EIR.

A detailed analysis of the proposed project's consistency with the major land use design goals and policies of the various sections of the NTSP is provided in Table 5.1-2 of the Draft EIR. The analysis in Table 5.1-2 concludes that the proposed project would be consistent with the major applicable goals and policies of the NTSP. Additional discussion is contained in the Final EIR, under Sections 2.6 and 2.7, which are both topical responses for comments received about the project and its consistency with the NTSP.

The project proposes a new SRH District with site development standards that are comparable to those of the RSF District, as demonstrated in the table on the previous page. The proposed Springs at Bethsaida is designed such that the setbacks are comparable to setback requirements of the RSF District. The bungalows located closest to Newport Avenue (Bungalow 14, Sheet A2 of Attachment 11) are over 32 feet away from the property line. This exceeds the minimum setback requirement of both the proposed new SRH District and the RSF District.

The height of the main building is proposed to be 35 feet, measured from the finished first floor level, which is proposed to be at 225.00 above sea level for the main building. This finished floor elevation is similar to the existing level for properties immediately north of the project site, off Ervin Lane, but is a slightly higher elevation than properties south of the project site, by approximately nine (9) feet. The finished floor elevation of the 13 bungalows in the rear is comparable to the existing elevation of the properties immediately south of the project site, which is approximately 216.00 above sea level, and the height of the bungalows are proposed to be up to 16 feet above finished floor. The height for the bungalows and the main building are consistent with the height limits for the RSF District. Additionally, landscaping is proposed along the perimeter of the property, and includes evergreen screening trees and hedges that will soften the visual impacts of the project for the adjacent neighbors.

Consistency with Zoning Code Section 7-9-142, Senior Living Facilities

The project would also require a Use Permit for a Senior Living Facility, as defined by Section 7-9-142, Senior Living Facilities, of the County of Orange Zoning Code. A Senior Living facility may be permitted in any district, planned community, or in any specific plan area zoned for multi-family residential or commercial uses, subject to the approval of a use permit by the Planning Commission, unless otherwise authorized by an administrative site development permit in accordance with the base district regulations. The Senior Living Facilities ordinance was adopted

to facilitate more housing for senior citizens, considered a special needs group.

With the proposed new SRH District, the project site would continue to be zoned primarily for residential uses, and would be conditioned to limit the residential use for Senior Residential Housing. Single family residences consistent with the Residential Single Family (100-RSF) District are also outright permitted. Residential open space, churches and schools are principal permitted uses that require Planning Commission approval of a use permit.

A deed restriction would also be placed on the property requiring land uses be in conformance with the project as described in the EIR and the proposed SRH District site development standards. In addition, the Use Permit is another land use control used by the County to minimize any potentially harmful effect of a zone change on neighboring properties. A modification of the land use in the NTSP would meet the intent of the land use design goals and polices, enhance the role of medium and high density housing, a stated goal of the NTSP, and permit additional variety of residential densities on the project site and would fulfill the need for additional senior housing in the community, which is consistent with the County of Orange General Plan.

Spot Zoning

The Draft EIR includes a discussion regarding the concern that this proposed project represents illegal “spot zoning”. The Final EIR also addresses comments received during the public review period for the Draft EIR, which included comments expressing concern that the proposal to amend the Land Use District for the project site is spot zoning.

Many residents in and around the NTSP area have expressed concern that incremental "spot zoning" of parcels from medium- and low-density residential to commercial or higher density residential use is occurring. Some community members indicated that they believe this will encourage a widespread change to uses incompatible with the existing character of the community, particularly commercial uses, and prevent future opportunities for development of compatible land uses within a long-term planning framework.

The proposed project is a residential, not commercial, facility. Some public comment letters indicated that they believe the amenities that are proposed for the residences transform the project into a commercial use. These amenities and services are ancillary uses that are intended to support the principal use, which is senior residential. These services are accessible and utilized only by residents of the project and their guests. No “walk-in customers” could access these services, because they will be located past the front desk. Per Zoning Code Section 7-9-24, the definition of “Commercial” is, “operated or conducted on a frequent basis for the purpose of financial gain.” Since the amenities are a service that is not open to the general public and would only be accessible to the residents of the Springs at Bethsaida, it would not be considered a commercial use, as it is not being operated or conducted on a frequent basis for financial gain. Since the proposed project is considered a residential use, it is not considered illegal spot zoning since it is compatible with the residential use immediately surrounding the site.

The ability to update zoning is recognized as being within the general grant of authority to local governments to regulate land use. In *Arnel Development Co. v. City of Costa Mesa* (1980) 28 Cal.3d 511, 514-521, the court stated that "California precedent has settled the principle that zoning ordinances, whatever the size of parcel affected, are legislative acts." Municipalities may rezone property in accordance with a comprehensive plan to meet the changing needs of the community. The planning and zoning law (Government Code § 65000 et seq.) states that its provisions regulating zoning are meant to be minimally restrictive of local authority. "[T]he legislature declares that in enacting this chapter it is its intention to provide only a minimum of limitation in order that counties and cities may exercise the maximum degree of control over local zoning matters." (§ 65800.) Rezoning may involve a broad area or a single property. Simply rezoning a single parcel of land is not necessarily illegal spot zoning. Courts have found that:

any zoning ordinance which allows for amendment allows spot zoning. Spot zoning may be invalid or valid. If it is an arbitrary and unreasonable deviation to the small area to a use inconsistent with the uses to which the rest of the district is restricted and made for the sole benefit of the private interests of the owner, it is invalid. On the other had, if zoning a small parcel is in accord and in harmony with the comprehensive plan and is done for the public good – is to serve one or more of the public health, safety, morals and general welfare, it is valid.²

Courts have also found that:

The validity of spot zoning depends upon more than the issue of the size of the spot, and spot zoning as such is not necessarily invalid, but depends instead on the facts and circumstances appearing in each particular case. Spot zoning is invalid where some or all of the following factors are present: 1) a small parcel of land is singled out for the special and privileged treatment; 2) the singling out is not in the public interest but only for the benefit of the landowner; 3) and the action is not in accord with a comprehensive plan. However, spot zoning is not regarded as illegal per se and courts do not consider the rezoning in this way to be illegal spot zoning where it is in the public interest and not solely for the benefit of the developer [citations omitted]. It is illegal only when there is a change that is otherwise than part of well-considered and comprehensive plan calculated to serve the general welfare of the community.³

Consequently, illegal spot zoning is the arbitrary, capricious, and unreasonable treatment of a limited area within a particular district resulting in the deviation from a comprehensive plan. By definition, rezoning will not be an illegal spot zoning if it benefits the public welfare and is

² Shelby Green, *Development Agreements: Bargained for Zoning That is Neither Illegal Contract or Conditional Zoning* (May 24, 2004). bepress Legal Series. Working Paper 274.

³ Id

consistent with the jurisdiction's comprehensive general land use plan.

Changing the land use designation within the NTSP of this parcel does not set a precedent for any future land use changes or rezones. A rezoning is a legislative act and the decision to rezone rests with the Board of Supervisors for the County of Orange, the local legislative body. Every General Plan, Zoning and Specific Plan Amendment is considered on its own merit. The project site would continue to be zoned only for residential use as the principal permitted use. Other principal permitted uses, such as park, school, or church, require Planning Commission approval of a use permit.

The County has the legal ability to use discretion related to this Specific Plan amendment request, based on the proposed residential use, design elements, and operational characteristics of the project proposal. It is staff's view that the proposed project does not represent an arbitrary, capricious, or unreasonable use of the project site. The County has the authority to amend the North Tustin Specific Plan to accommodate changing needs of the community.

Proposed Project's On-Site Amenities and Services

Section 3 of the Draft EIR discusses the two living arrangements types being proposed – independent living and assisted living. All residents will have the following amenities and services available on-site:

- Ecumenical Chapel
- Beauty Salon
- Administrative areas
 - Service rooms
 - Kitchen
 - Laundry service
 - Air conditioned trash room
- Library/Den
- In home theater
- Dining areas
 - Main dining room
 - Bistro
 - Country kitchen
 - Ice cream parlor
- Wellness/spa/fitness center
- Resident sundries store (run by club and game room residents)
- Woodworking shop
- Living room
- Activity room

The independent living units would be equipped with small kitchens as well as washers and dryers in order to promote and maintain an independent lifestyle. As a part of independent living,

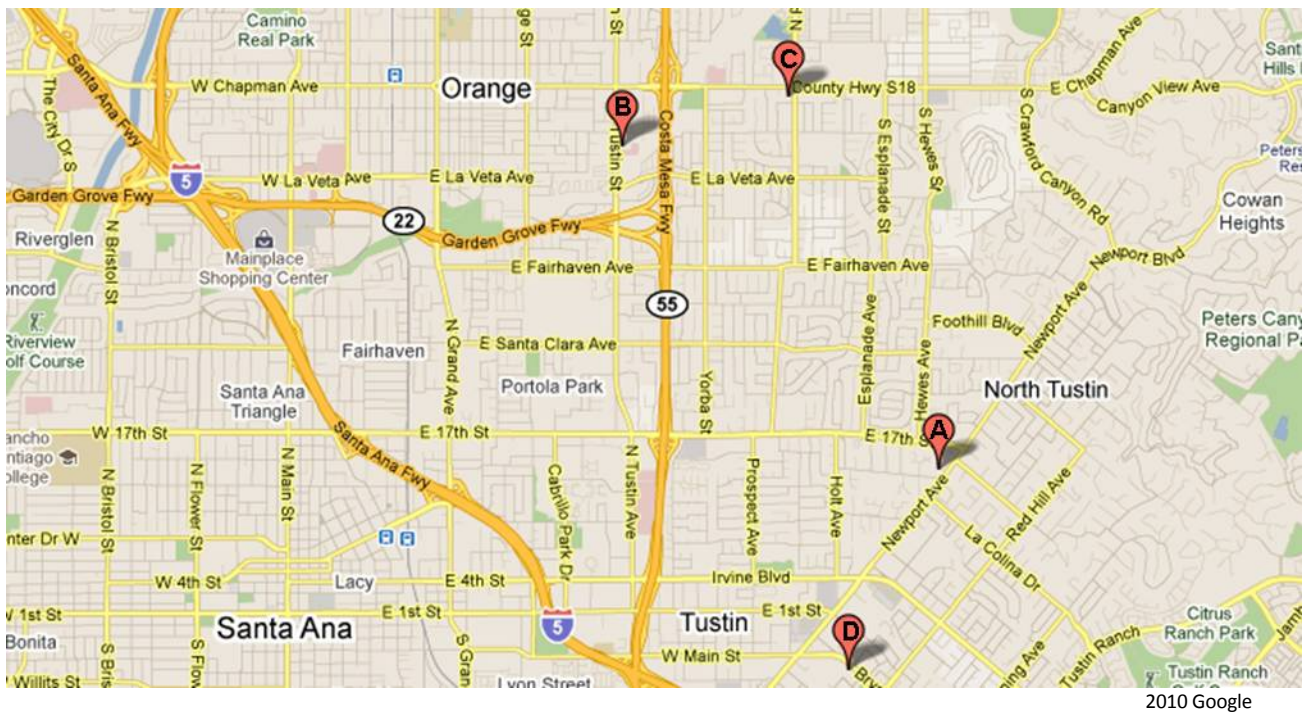
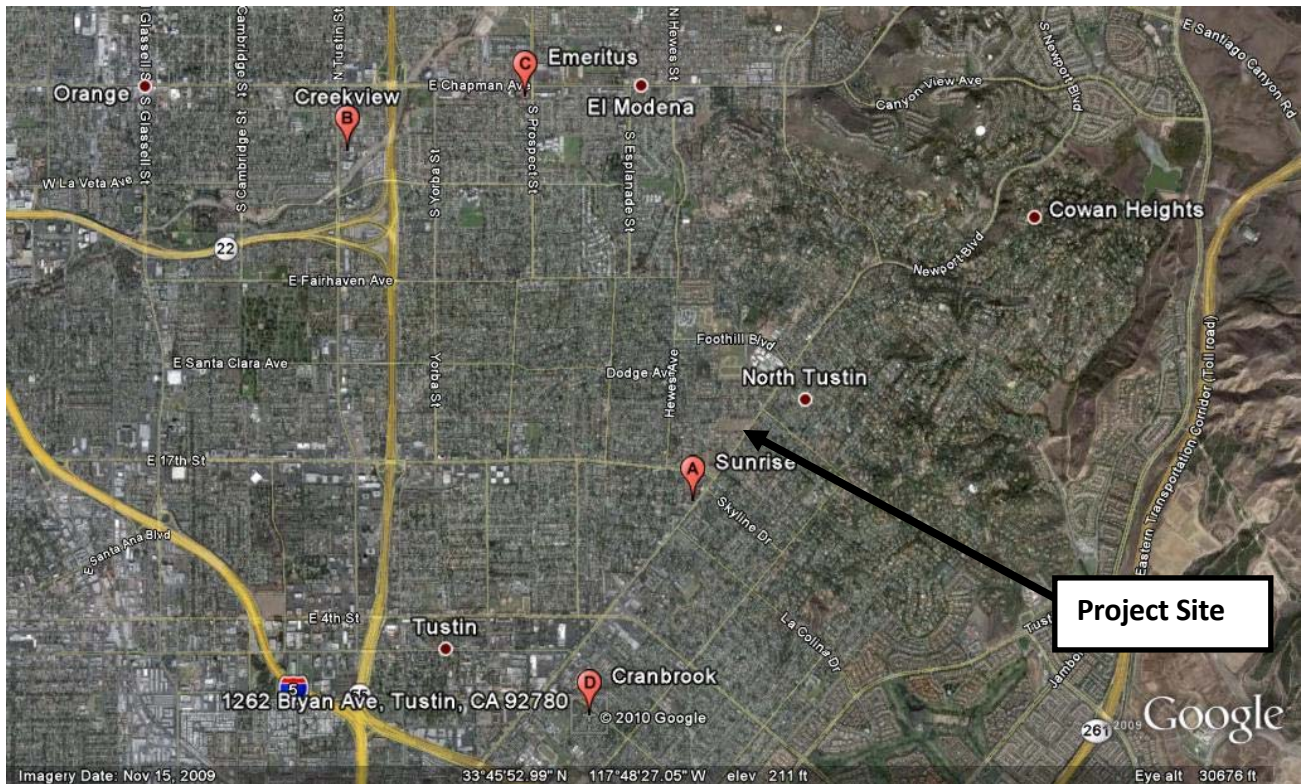
there would be a host of services provided including: meals and snacks; activities including a wellness program; housekeeping; transportation; maintenance and 24-hour emergency response. Assisted living would offer additional care with activities of daily living. This would include all meals, medication monitoring, and assistance with dressing and bathing. The assisted living units would be located in a separate wing within the main building and would be licensed by the State of California Department of Social Services and subject to all regulations associated with Residential Care Facilities for the Elderly (RCFE). This would not be a nursing facility and would not offer nursing service. According to the applicant, the average age of persons moving into the senior living community would be between 76 and 82.

Recreational amenities typical of single family residential planned communities would be provided. The two wings of the main building would surround an interior courtyard with a fountain, swimming pool, and spa. The main building would provide other recreational amenities, such as a fitness center, a wellness center, a woodworking shop, small movie theater, club room, and lounge. The community would also include several dining and eating alternatives, including a main dining room. The aforementioned support areas and services are exclusively for use by residents of the Springs at Bethsaida and their invited guests. The amenities and services proposed as ancillary uses are consistent with the County’s Senior Living Facility Ordinance 08-016, Zoning Code Section 7-9-142.

Existing Senior Living Facilities within the Regional Vicinity

Below is a table that identifies four existing senior living facilities within the regional vicinity. A map is also included below, and depicts the location of these four facilities. The letters in the table correspond with the letters on the map, which identifies the location of each facility.

Name of Facility	Address	Services	Number of Units
(A.) Sunrise Senior Living	12291 South Newport Avenue Santa Ana, CA 92705	Assisted Living	60 units
(B.) Creekview Senior Community	353 South Tustin St. Orange, CA 92866	Independent Living	67 units
(C.) Emeritus at Orange	142 South Prospect Orange, CA 92869	Independent and Assisted Living	64 units
(D.) Cranbrook Senior Living of Tustin	1262 Bryan Avenue Tustin, CA 92780	Assisted Living	93 units



Two of the four existing facilities mentioned above, are near the North Tustin area, Sunrise Senior Living and Cranbrook Senior Living, the other two are around the City of Orange.

PUBLIC COMMENTS

A significant amount of comments have been received on this proposed project. Comment letters received during the Draft EIR public review period are all included in the Final EIR. Other general comment letters received are attached to this staff report as Attachment 9. The general issues of concern raised by residents are discussed below. To date, the County has received a total of approximately 70 general comment letters for this project proposal, which are provided as Attachment 9. This is in addition to the comment letters received during the Draft EIR public review period, which are contained in the Final EIR, Attachment 5.

ISSUES OF CONCERN RAISED BY RESIDENTS

The following are the main issues of concern that were raised by residents opposing this project proposal:

- Spot Zoning
- Zone Change Conflicts with the NTSP
- Precedent Setting for Future Growth
- Incompatible with Surrounding Neighborhood
- The NTSP protects from Zone Changes
- Inconsistent with the NTSP
- Inconsistent with the General Plan
- Project is a Commercial Use

Each of these issues of concern are addressed in the Final EIR, among other issues raised in comment letters submitted during the Draft EIR public review period and in general comment letters received. Section 2, *Summary of General Responses*, of the Final EIR includes a comprehensive response for each issue of concern.

CONCLUSION

The project furthers several General Plan Goals and Policies of the Land Use Element, Housing Element, Transportation Element, Public Services and Facilities Element, Resources Element, and Noise Element. Additionally, the design of the applicant's proposed project meets the standards and requirements of the County's Zoning Code and the Goals and Policies of the NTSP. The newly proposed SRH District for the NTSP is consistent with the project site's General Plan Land Use Designation and is also consistent with the County's Senior Living Facility Ordinance, Zoning Code Section 7-9-142. Staff's review of the applicant's proposed Specific Plan Amendment to amend the current RSF District to the new SRH District, Use Permit for the proposed senior living facility, and Site Development Permit for grading more than 5,000 cubic yards, subject to the attached Findings and Conditions of Approval, is consistent with the regulations of the County and North Tustin specifically. Staff supports the applicant's proposal and makes a recommendation as follows:

RECOMMENDED ACTION

OC Planning/OC Communities Planning Unit recommends that the Planning Commission:

- a) Receive staff report and public testimony as appropriate;
- b) Make the following recommendations to the Board of Supervisors:
 - a. Find and certify that the project’s EIR was prepared in compliance with the requirements of CEQA and the State CEQA Guidelines, reflects the County’s independent judgment and analysis, and that the EIR has identified all significant environmental effects of the Project and that it serves as adequate and appropriate environmental documentation for Planning Application 090004 and the Project.
 - b. Adopt the Findings with respect to each significant environmental effect and each alternative considered in the EIR, and find that the unavoidable significant environmental effects of Project (air quality and short-term construction noise impacts) are clearly outweighed by the economic, social, and other benefits of the Project as set forth in the Findings and Statement of Overriding Considerations; and
 - c. Approve Planning Application PA090004 for a Specific Plan Amendment, Use Permit, and Site Development Permit, subject to the attached Findings and Conditions of Approval.

Respectfully submitted,

Signature on file

Rick Lefevre, Acting Director
OC Planning

APPENDICES

- A. Recommended Findings
- B. Recommended Conditions of Approval

ATTACHMENTS

1. Applicant’s Letter of Justification
2. Site Photos – Simulations and Renderings
3. Draft SRH “Senior Residential Housing” District Text
4. Draft EIR
5. Final EIR
6. Draft EIR Findings
7. Draft Statement of Overriding Considerations
8. Draft Ordinance

9. General Public Comment Letters
10. North Tustin Advisory Committee Meeting Minutes of June 30, 2010
11. Site Plans

APPEAL PROCEDURE

The Approving Authority for this project is the Board of Supervisors, thus there is no appeal process, nor a Board of Appeals. The Planning Commission is serving as an advisory body and will be making a recommendation to the Board of Supervisors on the project and the associated environmental document. Should you have any comments on the project that have not yet been provided prior to the Planning Commission hearing, please submit your comments to OC Planning/OC Communities Planning Unit prior to the Board of Supervisors Public Hearing.



Appendix A Findings PA090004

-
- 1 **GENERAL PLAN** **PA090004**
That the use or project proposed is consistent with the objectives, policies, and general land uses and programs specified in the General Plan adopted pursuant to the State Planning and Zoning Law.
-
- 2 **ZONING** **PA090004**
That the use, activity or improvement(s) proposed, subject to the specified conditions, is consistent with the provisions of the Zoning Code, or specific plan regulations applicable to the property.
-
- 3 **COMPATIBILITY** **PA090004**
That the location, size, design and operating characteristics of the proposed use will not create unusual conditions or situations that may be incompatible with other permitted uses in the vicinity.
-
- 4 **GENERAL WELFARE** **PA090004**
That the application will not result in conditions or circumstances contrary to the public health and safety and the general welfare.
-
- 5 **PUBLIC FACILITIES** **PA090004**
That the approval of the permit application is in compliance with Codified Ordinance Section 7-9-711 regarding public facilities (fire station, library, sheriff, etc.).
-
- 6 **PROJECT LEVEL EIR** **PA090004 (Custom)**
That Final EIR PA090004 is hereby certified as complete and adequate and has been completed on compliance with the requirements of CEQA for the proposed project, and the proposed project is approved, based on the following findings:
- A. The County of Orange, as Lead Agency, has reviewed and considered the information in the EIR;
 - B. The certification of the Final EIR for the project reflects the independent judgment and analysis of the lead agency.
 - C. The decision-maker adopts the proposed resolution attached hereto, which include(s):
 - 1. Findings for each of the significant impacts identified in the Final EIR;
 - 2. A Statement of Overriding Consideration (if one or more impacts

cannot be mitigated to a level below significant); and,

3. A Mitigation Monitoring and Reporting Program.

7 **FISH & GAME - SUBJECT** **PA090004**

That pursuant to Section 711.4 of the California Fish and Game Code, this project is subject to the required fees as it has been determined that potential adverse impacts to wildlife resources may result from the project.

8 **NCCP NOT SIGNIFICANT** **PA090004**

That the proposed project will not have a significant unmitigated impact upon Coastal Sage Scrub habitat and therefore, will not preclude the ability to prepare an effective subregional Natural Communities Conservation Planning (NCCP) Program.

9 **PARKING AND CIRCULATION** **PA090004 (Custom)**

That the access, parking and circulation facilities will not result in excess traffic safety hazards.

10 **DEVELOPMENT TYPE** **PA090004**

That the proposed site is physically suitable for the proposed type of development.

11 **DEVELOPMENT DENSITY** **PA090004**

That the proposed site is physically suitable for the proposed density of development.



Appendix B

Conditions of Approval

PA090004

1 CP CP NA BASIC/ZONING REG PA090004

This approval constitutes approval of the proposed project only to the extent that the project complies with the Orange County Zoning Code and any other applicable zoning regulations. Approval does not include any action or finding as to compliance of approval of the project regarding any other applicable ordinance, regulation or requirement.

2 CP CP NA BASIC/TIME LIMIT PA090004

This approval is valid for a period of 36 months from the date of final determination. If the use approved by this action is not established within such period of time, this approval shall be terminated and shall thereafter be null and void.

3 CP CP NA BASIC/PRECISE PLAN PA090004

Except as otherwise provided herein, this permit is approved as a precise plan. If the applicant proposes changes regarding the location or alteration of any use or structure, the applicant shall submit a changed plan to the Director, PDS, for approval. If the Director, PDS, determines that the proposed change complies with the provisions and the spirit and intent of the approval action, and that the action would have been the same for the changed plan as for the approved plot plan, he may approve the changed plan without requiring a new public hearing.

4 CP CP NA BASIC/COMPLIANCE PA090004

Failure to abide by and faithfully comply with any and all conditions attached to this approving action shall constitute grounds for the revocation of said action by the Orange County Planning Commission.

5 CP CP NA BASIC/OBLIGATIONS PA090004

Applicant shall defend with counsel approved by the County of Orange in writing, indemnify and hold harmless the County of Orange, its officers, agents and employees from any claim, action or proceeding against the County, its officers, agents or employees to attack, set aside, void, or annul any approval of the application or related decision, or the adoption of any environmental documents, findings or other environmental determination, by the County of Orange, its Board of Supervisors, Planning Commission, Zoning Administrator, or Director of Planning concerning this application. The County shall promptly notify the applicant of any such claim, action or proceeding.

6 CP CP NA BASIC/APPEAL EXACTIONS PA090004

Pursuant to Government Code Section 66020, the applicant is hereby informed that the 90-day approval period in which the applicant may protest the fees, dedications, reservations or other exactions imposed on this project through the conditions of approval has begun.

7 CP CP CP DEED RESTRICTION PA090004 (Custom)

Prior to the issuance of any grading and/or building permits, applicant shall record against title to property a Declaration of Restrictions to ensure that the site will remain as a 100% senior living community exclusively for residents 55 years of age and over. The Declaration of Restrictions shall also indicate a restriction on the maximum number of residents that shall not exceed 191.

The Declaration shall be provided to the Manager, OC Communities Planning for review and approval, prior to recordation of such deed restriction. Any changes or modifications to such Declaration of Restrictions shall be ineffective, void in fact and in law, unless said changes or modifications bears the approving signature of the Director of Planning of the County of Orange or his/her City counterpart if the subject premises are subsequently annexed to a city or become incorporated within a city.

8 CP CP CP SUBDIVISION PA090004 (Custom)

Prior to the issuance of any grading and/or building permits, the applicant shall obtain and record a subdivision map or lot line adjustment to consolidate the existing parcels into one single legal building site.

9 SG SG G DRAINAGE STUDY PA090004

Prior to the issuance of any grading permits, the following drainage studies shall be submitted to and approved by the Manager, Subdivision and Grading:

- A. A drainage study of the project including diversions, off-site areas that drain onto and/or through the project, and justification of any diversions; and
- B. When applicable, a drainage study evidencing that proposed drainage patterns will not overload existing storm drains; and
- C. Detailed drainage studies indicating how the project grading, in conjunction with the drainage conveyance systems including applicable swales, channels, street flows, catch basins, storm drains, and flood water retarding, will allow building pads to be safe from inundation from rainfall runoff which may be expected from all storms up to and including the theoretical 100-year flood.

10 EP H NA MEDICAL WASTE DISPOSAL PA090004 (Custom)

Applicant/operator shall store, transport, and dispose of all on-site generated medical waste that meets medical waste criteria in accordance with California Code Section 118286, and in a manner to the satisfaction of the Manager, HCA/Environmental Health Division. Applicant shall keep storage, transportation, and disposal records on site and open for inspection to any government agency upon request.

11 F F G ACCESS GATES PA090004
[Com] Service Code: 1.13

Prior to the issuance of any grading permits, the applicant shall obtain the approval from the Fire Chief for the construction of any gate across required fire department access roads. Please contact the Orange County Fire Authority at (714) 573-6100 or visit the Orange County Fire Authority website to obtain a copy of the "Guidelines for Design and Installation of Emergency Access Gates and Barriers."

12 F F SB ARCHITECTURAL BUILDING PLANS PA090004
[Com] Service Codes: 1.14-1.17

Prior to the issuance of a building permit, the applicant shall submit architectural plans for the review and approval of the Fire Chief if required per the "Orange County Fire Authority Plan Submittal Criteria Form." Please contact the Orange County Fire Authority at (714) 573-6100 for a copy of the Site/Architectural Notes to be placed on the plans prior to submittal.

13 SG SG G GEOLOGY REPORT PA090004 (Custom)

Prior to the issuance of a grading permit, the applicant shall submit a geotechnical report to the Manager, Permit Services, for approval. The report shall include the information and be in the form as required by the Grading Code and Grading Manual.

14 CP CP CP PRIVATE LANDSCAPING PA090004 (Custom)

1. Prior to the issuance of precise grading permits, the applicant shall prepare a detailed landscape plan for the project area which shall be approved by the Manager, Permit Services in consultation with the Manager, OC Communities Planning Unit. The plan shall be certified by a licensed landscape architect or a licensed landscape contractor, as required, as taking into account approved preliminary landscape plan, County Standard Plans for landscape areas, adopted plant palette guides, applicable scenic and specific plan requirements, water conservation measures contained in the County of Orange Landscape Code (Ord. No. 09-010).
2. Prior to the issuance of certificates of use and occupancy, applicant shall install said landscaping and irrigation system and shall have a licensed landscape architect or licensed landscape contractor, certify that it was installed in accordance with the approved plan.
3. Prior to the issuance of any certificates of use and occupancy, the applicant shall furnish said installation certification, including an irrigation management report for each landscape irrigation system, and any other implementation report determined applicable, to the Manager, Permit Services.

15 BP BP RGB RESIDENTIAL NOISE PA090004 (Custom)

The applicant shall sound attenuate all residential dwellings against present and projected noise (which shall be the sum of all noise impacting the project) so that the composite interior standard of 45 dBA CNEL for habitable rooms and a source specific exterior standard of 65.dBA CNEL for outdoor living areas is not exceeded. The applicant shall provide a report prepared by a County-certified acoustical consultant, which demonstrates that these standards will be satisfied in a manner consistent with Zoning Code Section 7-9-137.5, as follows:

A. Prior to the recordation of a subdivision map or prior to the issuance of grading permits, as determined by the Manager, Permit Services, the applicant shall submit an acoustical analysis report to the Manager, Permit Services, for approval. The report shall describe in detail the exterior noise environment and preliminary mitigation measures. Acoustical design features to achieve interior noise standards may be included in the report in which case it may also satisfy "B" below.

B. Prior to the issuance of any building permits for residential construction, the

applicant shall submit an acoustical analysis report describing the acoustical design features of the structures required to satisfy the exterior and interior noise standards to the Manager, Permit Services, , for approval along with satisfactory evidence which indicates that the sound attenuation measures specified in the approved acoustical report have been incorporated into the design of the project.

C. Prior to the issuance of any building permits, the applicant shall show all freestanding acoustical barriers on the project's plot plan illustrating height, location and construction in a manner meeting the approval of the Manager, Permit Services.

16 BP BP BG NOISE GENERATING EQUIPMENT PA090004 (Custom)

Prior to the issuance of any grading or building permits, the applicant shall obtain the approval of the Manager, Permit Services, of an acoustical analysis report and appropriate plans which demonstrate that the noise levels generated by this project during its operation shall be controlled in compliance with Orange County Codified Ordinance, Division 6 (Noise Control). The report shall be prepared under the supervision of a County-certified Acoustical Consultant and shall describe the noise generation potential of the project during its operation and the noise mitigation measures, if needed, which shall be included in the plans and specifications of the project to assure compliance with Orange County Codified Ordinance, Division 6 (Noise Control).

17 BP BP G CONSTRUCTION NOISE PA090004 (Custom)

A. Prior to the issuance of any grading permits, the project proponent shall produce evidence acceptable to the Manager, Permit Services, that:

- (1) All construction vehicles or equipment, fixed or mobile, operated within 1,000' of a dwelling shall be equipped with properly operating and maintained mufflers.
- (2) All operations shall comply with Orange County Codified Ordinance Division 6 (Noise Control).
- (3) Stockpiling and/or vehicle staging areas shall be located as far as practicable from dwellings.

B. Notations in the above format, appropriately numbered and included with other notations on the front sheet of the project's permitted grading plans, will be considered as adequate evidence of compliance with this condition.

18 CP CP G SOLID WASTE PA090004 (Custom)

Prior to the issuance of any building permit, the applicant shall obtain approval from the Manager, OC Communities Planning Unit, of a site plan delineating the capacity, number, and location of all proposed solid waste and recyclable collection areas.

19 SG SG G SIGHT DISTANCE PA090004 (Custom)

Prior to the issuance of any grading permits, the applicant shall provide adequate sight distance per Standard Plan 1117 at all street intersections, in a manner meeting the approval of the Manager, Permit Services. The applicant shall make all necessary revisions to the plan to meet the sight distance requirement such as removing slopes or other encroachments from the limited use area in a manner meeting the approval of the Manager, Permit Services.

20 CP CP B WATER QUALITY MANAGEMENT PLAN PA090004 (Custom)

Prior to the issuance of any grading or building permits, the applicant shall submit for review and approval by the Manager, Permit Services, a Final Water Quality Management Plan (WQMP), consistent with the Preliminary WQMP that was submitted, specifically identifying Best Management Practices (BMPs) that will be used onsite to control predictable pollutant runoff. The applicant shall utilize the WQMP template and Model WQMP provided by the County. This WQMP shall identify, at a minimum, the routine structural and non-structural measures specified in the current Drainage Area Management Plan (DAMP). The WQMP must also:

- Address Site Design BMPs (as applicable) such as minimizing impervious areas, maximizing permeability, minimizing directly connected impervious areas, creating reduced or “zero discharge” areas, and conserving natural areas;
- Incorporate applicable Routine Source Control BMPs as defined in the DAMP;
- Include an Operation and Maintenance (O&M) Plan that identifies the mechanism(s) by which long-term O&M of all structural BMPs will be provided;
- Include GIS coordinates for all structural BMP(s);
- Be incorporated into all subsequent grading and building permits submitted for plan check. The BMP Exhibit from the approved WQMP shall be included as a sheet in all plan sets submitted for plan check and all BMPs shall be depicted on these plans. Grading and building plans must be consistent with the approved BMP exhibit.

21 CP CP G WQMP FOR PRIORITY PROJECTS PA090004 (Custom)

Prior to the issuance of any grading or building permits, the applicant shall include in the WQMP the following additional Priority Project information in a manner meeting the approval of the Manager, Permit Services:

- Include post-construction Treatment Control BMP(s) as defined in the DAMP;
- GIS coordinates for the location of all Treatment Control BMP(s);
- For applicants relying on Regional Treatment Controls, discuss applicable regional water quality and/or watershed program;
- Include a Operation and Maintenance (O&M) Plan that (1) describes the long-term operation and maintenance requirements for post-construction Treatment Control BMP (s); (2) identifies the entity that will be responsible for long-term operation and maintenance of the referenced Treatment Control BMP(s); and (3) describes the mechanism for funding the long-term operation and maintenance of the referenced Treatment Control BMP(s).

22 BI BI U COMPLIANCE WITH THE WQMP PA090004 (Custom)

Prior to the issuance of a certificate of use and occupancy, the applicant shall demonstrate compliance with the County’s NPDES Implementation Program in a manner meeting the satisfaction of the Manager, Inspection, including:

- Demonstrate that all structural Best Management Practices (BMPs) described in the BMP Exhibit from the project’s approved WQMP have been implemented, constructed and installed in conformance with approved plans and specifications;
- Demonstrate that the applicant has complied with all non-structural BMPs described in

the project's WQMP;

- Submit for review and approval an Operations and Maintenance (O&M) Plan for all structural BMPs (the O&M Plan shall become an attachment to the WQMP);
- Demonstrate that copies of the project's approved WQMP (with attached O&M Plan) are available for each of the initial occupants;
- Agree to pay for a Special Investigation from the County of Orange for a date (12) twelve months after the issuance of a Certificate of Use and Occupancy for the project to verify compliance with the approved WQMP and O&M Plan; and
- Demonstrate that the applicant has agreed to and RECORDED one of the following: 1) the CC&R's (that must include the approved WQMP and O&M Plan) for the project Home Owner's Association; 2) a water quality implementation agreement that has the approved WQMP and O&M Plan attached; or 3) the final approved Water Quality Management Plan (WQMP) and Operations and Maintenance (O&M) Plan.

23 CP CP G STORMWATER POLLUTION PREVENTION PLAN PA090004 (Custom)

Prior to the issuance of any grading or building permits, the applicant shall demonstrate compliance with California's General Permit for Stormwater Discharges Associated with Construction Activity by providing a copy of the Notice of Intent (NOI) submitted to the State Water Resources Control Board and a copy of the subsequent notification of the issuance of a Waste Discharge Identification (WDID) Number; or other proof of filing in a manner meeting the satisfaction of the Manager, Permit Services,. Projects subject to this requirement shall prepare and implement a Stormwater Pollution Prevention Plan (SWPPP). A copy of the current SWPPP shall be kept at the project site and be available for County review on request.

24 CP CP GB EROSION AND SEDIMENT CONTROL PLAN PA090004 (Custom)

Prior to the issuance of any grading or building permit, the applicant shall submit a Erosion and Sediment Control Plan (ESCP) in a manner meeting approval of the Manager, Permit Services,, to demonstrate compliance with the County's NPDES Implementation Program and state water quality regulations for grading and construction activities. The ESCP shall identify how all construction materials, wastes, grading or demolition debris, and stockpiles of soil, aggregates, soil amendments, etc. shall be properly covered, stored, and secured to prevent transport into local drainages or coastal waters by wind, rain, tracking, tidal erosion or dispersion. The ESCP shall also describe how the applicant will ensure that all BMP's will be maintained during construction of any future public rights-of-way. The ESCP shall be updated as needed to address the changing circumstances of the project site. A copy of the current ESCP shall be kept at the project site and be available for County review on request.

25 CP CP GB DRAINAGE FACILITIES PA090004 (Custom)

Prior to issuance of grading or building permits, drainage studies that demonstrate the following shall be submitted to and approved by Manager, Permit Services:

1. All surface runoff and subsurface drainage directed to the nearest acceptable drainage facility, via sump pumps if necessary, as determined by the Manager, Permit Services.
2. Drainage facilities discharging onto adjacent property shall be designed to imitate the manner in which runoff is currently produced from the site and in a manner meeting the satisfaction of the Manager, Permit Services. All drainage facilities must be consistent

with the County of Orange Grading Ordinance and Drainage Manual.

26 LP LP G PROJECT DESIGN FEATURE 3-1 PA090004 (Custom)

Prior to the issuance of any grading permits, the applicant shall provide evidence, for review and approval by the Manager, Permit Services, that the following project design feature has been incorporated into the project design:

PDF 3-1 The proposed project includes an onsite detention facility with a minimum storage capacity of 0.57 acre-feet that would retain excess stormwater runoff before it exits the site through the 18-inch reinforced concrete pipe.

27 LP LP R PROJECT DESIGN FEATURE 5-1 PA090004 (Custom)

Prior to the issuance of any building permits, the applicant shall provide evidence, for review and approval by the Manager, OC Communities, that the following project design feature has been incorporated into the project design:

PDF 5-1: The senior citizen residential community shall provide a free shuttle service to transport residents to scheduled medical appointments, grocery, pharmacy, department stores and restaurants within a 20-mile radius.

28 CP CP CP PROJECT DESIGN FEATURE 5-2 PA090004 (Custom)

Prior to issuance of Certificate of Use and Occupancy, applicant shall provide evidence for review and approval by Manager, OC Communities Planning Unit, that the following Project Design Feature has been satisfied:

PDF 5-2: The senior citizen community would function on a credit system, where residents would charge food or sundry items to their accounts. Any ancillary services provided for the convenience of residents would only be accessible to and utilized by project residents. All ancillary uses would be located past the front desk and would function on a credit system thus minimizing cash transactions.

29 CP CP B PROJECT DESIGN FEATURES 7-1, 7-2, 7-3, & 7-4 PA090004 (Custom)

Prior to the issuance of any building permits, applicant shall provide evidence for review and approval by the Manager, OC Communities Planning Unit, that the following Project Design Features have been satisfied:

PDF 7-1: Incorporate sound walls and berming with landscape screening along Newport Avenue.

PDF 7-2: The property owner of the proposed project shall restrict regularly scheduled truck deliveries to the daytime hours of 7:00 AM to 7:00 PM.

PDF 7-3: The property owner of the proposed project shall prohibit exterior alarms on the building except as required by the Orange County Fire Authority.

PDF 7-4: Incorporate setbacks to exceed County requirements so that along Newport the building setbacks range from 32' to 73', on Ervin the building setbacks range from 20' to 50 feet, on the North the building setbacks range from 43' to 53' and on the south the setbacks

range from 55' to 75' with extensive landscape buffers.

30 CP CP CP PROJECT DESIGN FEATURES 8-1, 8- 2, 8-3 & 8-4 PA090004 (Custom)

Prior to the issuance of any building permits, applicant shall provide evidence for review and approval by the Manager, OC Communities, that the following project design features have been satisfied:

- PDF 8-1: Provide only one-story structures along Newport Avenue, Ervin Lane and along the west property line which directly abuts existing single family residences.
- PDF 8-2: Limit the building height of the central residential structure to the limits of the North Tustin Specific Plan, i.e. two-story or 35'.
- PDF 8-3: Incorporate setbacks to exceed County requirements so that along Newport the building setbacks range from 32' to 73', on Ervin the building setbacks range from 20' to 50 feet, on the North the building setbacks range from 43' to 53' and on the south the setbacks range from 55' to 75' with extensive landscape buffers.
- PDF 8-4: Applicant shall install 8-foot high evergreen landscaping along the project's northern and southern boundaries as extensive landscape buffers upon completion of grading, and prior to issuance of any building permits.

31 F F F PROJECT DESIGN FEATURES 12-1, 12- 2, 12-3 & 12-4 PA090004 (Custom)

Prior to the issuance of any grading permits, the applicant shall provide evidence, for review and approval by the Manager, OC Communities, that the following project design feature has been incorporated into the project design:

PDF 12-1 The project will be designed to meet the requirements of the California Fire Code related to automatic sprinkler systems, supervised fire alarm systems, access to and around structures, turning radius and access for large fire department vehicles, and water supply systems to fire hydrants and fire sprinkler systems.

PDF 12-2 All electrically operated gates and access doors shall install emergency opening devices as approved by the Orange County Fire Authority.

PDF 12-3 Prior to issuance of the first building permit for the project, the project applicant or successor in interest shall enter into a Secured Fire Protection Agreement with the Orange County Fire Authority (OCFA) for payment of fees which will fund capital improvements necessary to establish adequate fire protection facilities, equipment, and/or personnel as determined by OCFA.

PDF 12-4 The project applicant shall comply with all applicable Orange County Fire Authority codes, ordinances, and standard conditions regarding fire prevention and suppression measures, relating to water improvement plans, fire hydrants, automatic fire extinguishing systems, fire access, access gates, combustible construction, water availability, fire sprinkler system, etc.

32 CP CP B PROJECT DESIGN FEATURE 13-1 PA090004 (Custom)

PDF 13-1: 2008 Building and Energy Efficiency Standards (CCR Title 24): Prior to the issuance of a building permit, development plans for new structures shall be required to

demonstrate that the project meets the 2008 Building and Energy Efficiency Standards. Commonly known as Title 24, these standards are updated periodically to allow consideration and possible incorporation of new energy efficiency technologies and methods. The 2008 standards are approximately 15 percent more energy efficient than the 2005 Building and Energy Efficiency Standards. Plans submitted for building permits shall include written notes demonstrating compliance with the 2008 energy standards and shall be reviewed and approved by the Public Utilities Department prior to issuance of building permits. Design strategies to meet this standard may include maximizing solar orientation for daylighting and passive heating/cooling, installing appropriate shading devices and landscaping, utilizing natural ventilation, and installing cool roofs. Other techniques include installing insulation (high R value) and radiant heat barriers, low-e window glazing, or double-paned windows.

33 CP CP B MITIGATION MEASURE 6-1 PA090004 (Custom)

Mitigation Measure 6-1: Prior to issuance of grading permits, the construction contractor shall demonstrate to the County of Orange Manager, Building Services, that the construction contractor shall utilize off-road construction equipment that conforms to Tier 3 of the United States Environmental Protection Agency, or higher emissions standards. Prior to construction, the construction contractor shall be made aware of this requirement prior to the start of construction activities. Use of Tier 3 or higher off-road construction equipment shall be stated on all grading plans. The construction contractor shall maintain a list of all operating equipment in use on the project site. The construction equipment list shall state the makes, models, and numbers of construction equipment onsite.

34 CP CP G MITIGATION MEASURE 6-2 PA090004 (Custom)

MM 6-2: Prior to issuance of grading permits, the construction contractor shall demonstrate to the County of Orange Manager, Building Services, that all construction equipment has been maintained and tuned. During the construction period, the construction contractor shall properly maintain and tune all construction equipment to minimize noise emissions.

35 CP CP G MITIGATION MEASURES 6-3, 6-4, & 6- PA090004 (Custom)

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MM 6-3: Prior to issuance of grading permits, the construction contractor shall demonstrate to the County of Orange Manager, Building Services, that during the construction period, the construction contractor shall apply nontoxic chemical soil stabilizers to reduce wind erosion on all disturbed areas and exposed ground surfaces.

MM 6-4: Prior to issuance of grading permits, the construction contractor shall demonstrate to the County of Orange Manager, Building Services, that during the construction period, the construction contractor shall water exposed ground surfaces and disturbed areas a minimum of every three hours on the construction site and a minimum of three times per day during all construction activities.

MM 6-5: Prior to issuance of grading permits, the construction contractor shall demonstrate to the County of Orange Manager, Building Services, that during the construction period, the construction contractor shall ensure that a minimum 24-inch freeboard on trucks hauling dirt, sand, soil, or other loose materials is maintained and/or tarp materials with a fabric cover or other suitable means.

36 CP CP B MITIGATION MEASURE 7-1 PA090004 (Custom)

MM 7-1 Prior to the approval of final building plans, the applicant shall demonstrate that the interior noise levels in habitable rooms shall not exceed 45 dBA CNEL, as defined by Title 24, Part 2, of the California Building Code through installation of Sound Transmission Class (STC) windows and doors, with an STC-rating of 25 (STC-25), on windows and/or doors for the eastern façade of the main senior living community building facing Newport Avenue.

37 CP CP B MITIGATION MEASURE 7-2 PA090004 (Custom)

MM 7-2 Prior to issuance of grading permits, the construction contractor shall demonstrate to the County of Orange Manager, Building Services, that the construction contractor shall not operate jackhammers, loaded trucks, and large off-road construction equipment that generate equivalent levels of vibration as a large dozer as based on the Federal Transit Administration's Transit Noise and Vibration Impact Assessment study (2006), within 15 feet of the western boundary line and within 10 feet of the southern boundary line of the project in order to minimize vibration impacts from construction to nearby vibration sensitive structures.

38 CP CP G MITIGATION MEASURE 7-3 PA090004 (Custom)

MM 7-3 Prior to issuance of grading permits, the construction contractor shall demonstrate to the County of Orange Manager, Building Services, that, all construction equipment has been maintained and tuned. During the construction period, the construction contractor shall properly maintain and tune all construction equipment to minimize noise emissions.

39 CP CP G MITIGATION MEASURE 7-4 PA090004 (Custom)

MM 7-4 Prior to issuance of grading permits, the construction contractor shall demonstrate to the County of Orange Manager, Building Services, that all equipment has been fitted with air intake silencers and engine shrouds no less effective than as originally equipped by the manufacturer to minimize noise emissions.

40 CP CP G MITIGATION MEASURE 7-5 PA090004 (Custom)

MM 7-5 Prior to issuance of grading permits, the construction contractor shall demonstrate to the County of Orange Manager, Building Services, that the construction contractor shall locate all stationary noise sources (e.g., generators, compressors, staging areas) as far from noise-sensitive receptors (property line) as is feasible.

41 CP CP G MITIGATION MEASURE 7-6 PA090004 (Custom)

MM 7-6 Prior to the issuance of grading permits, Project Applicant shall contract with a certified acoustical engineer to oversee the installation of sound blankets at the boundaries of the project site. The construction contractor shall install, under the direction of the certified acoustical engineer, temporary sound blankets a minimum of eight feet tall with a Sound Transmission Class (STC) rating of 18 or higher at the northern, southern, and western boundary of the project site prior to grading activities and shall be maintained until the completion of the exterior of the main community building. Sound blankets would reduce noise by 5 to 8 dBA (FHWA 2006). If a masonry block wall with a minimum height of six feet is erected along the northern, southern, and western boundary of the project site, the sound blankets at each corresponding side may be removed once the walls are fully constructed.

42 CP CP G MITIGATION MEASURE 7-7 PA090004 (Custom)

MM 7-7 Prior to issuance of grading permits, the construction contractor shall demonstrate to the County of Orange Manager, Building Services, that during the construction period,

material delivery, soil haul trucks, and equipment servicing shall be restricted to the hours of 7:00 AM to 8:00 PM as set forth in the Codified Ordinances of the County of Orange, Title 4, Division 6, Noise Control, Article 1, Section 4-6-7.

43 CP CP G MITIGATION MEASURES 9-1 & 9-2 PA090004 (Custom)

MM 9-1: Prior to the issuance of a grading permit, construction plans shall be evaluated by the County of Orange to determine if there will be ground disturbance greater than six feet below the surface. If earthmoving is shallower than six feet, no mitigation is required.

MM 9-2: Prior to the issuance of any grading permit, the applicant shall provide written evidence to the County of Orange Manager, Building Services, that applicant has retained a County-certified archaeologist, to observe grading activities greater than six feet in depth and salvage and catalogue archaeological resources as necessary. The archaeologist shall be present at the pre-grade conference, shall establish procedures for archaeological resource surveillance, and shall establish, in cooperation with the applicant, procedures for temporarily halting or redirecting work to permit the sampling, identification, and evaluation of the artifacts as appropriate. If the archaeological resources are found to be significant, the archaeological observer shall determine appropriate actions, in cooperation with the project applicant, for exploration and/or salvage. Prior to the release of the grading bond the applicant shall obtain approval of the archaeologist's follow-up report from the Manager of OC Parks in consultation with Manager, Building Services. The report shall include the period of inspection, an analysis of any artifacts found and the present repository of the artifacts. Applicant shall prepare excavated material to the point of identification. Applicant shall offer excavated finds for curatorial purposes to the County of Orange, or its designee, on a first refusal basis. These actions, as well as final mitigation and disposition of the resources, shall be subject to the approval of the Manager of OC Parks in consultation with Manager, Building Services. Applicant shall pay curatorial fees if an applicable fee program has been adopted by the Board of Supervisors, and such fee program is in effect at the time of presentation of the materials to the County of Orange or its designee, all in a manner meeting the approval of the Manager of OC Parks in consultation with Manager, Building Services.

44 CP CP G MITIGATION MEASURE 9-3 PA090004 (Custom)

Mitigation Measure 9-3: Prior to the issuance of any grading permit, the project applicant shall provide written evidence to the County of Orange Manager, Building Services, that applicant has retained a County certified paleontologist to observe grading activities greater than six feet in depth and salvage and catalogue fossils as necessary. The paleontologist shall be present at the pre-grade conference, shall establish procedures for paleontological resource surveillance, and shall establish, in cooperation with the applicant, procedures for temporarily halting or redirecting work to permit sampling, identification, and evaluation of the fossils. If the paleontological resources are found to be significant, the paleontologist shall determine appropriate actions, in cooperation with the applicant, which ensure proper exploration and/or salvage.

Prior to the release of the grading bond the applicant shall submit the paleontologist's follow up report for approval by the Manager of OC Parks in consultation with Manager, Building Services. The report shall include the period of inspection, a catalogue and analysis of the fossils found, and the present repository of the fossils. Applicant shall prepare excavated material to the point of identification. The applicant shall offer excavated finds for curatorial purposes to the County of Orange, or its designee, on a first refusal basis. These actions, as well as final mitigation and disposition of the resources, shall be subject to approval by OC

Parks. Applicant shall pay curatorial fees if an applicable fee program has been adopted by the Board of Supervisors, and such fee program is in effect at the time of presentation of the materials to the County of Orange or its designee, all in a manner meeting the approval of the Manager of OC Parks in consultation with Manager, Building Services.

45 CP CP G MITIGATION MEASURE 11-1 PA090004 (Custom)

MM 11-1: Prior to issuance of grading permits, the construction contractor shall demonstrate to the County of Orange Manager, Building Services, that the removal of the four aboveground storage tanks (ASTs) from the project site shall be completed in accordance with the current regulatory guidelines prior to residential development.

46 CP CP G MITIGATION MEASURE 11-2 PA090004 (Custom)

MM 11-2: Prior to issuance of grading permits, the construction contractor shall demonstrate to the County of Orange Manager, Building Services, that the stained soil beneath the tractor and any additional stained soil shall be separated during site grading and disposed of in accordance with current regulatory guidelines.