



## STAFF REPORT SAN CLEMENTE PLANNING COMMISSION

Date: October 19, 2022

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**PLANNER:** Jennifer Savage, Assistant to the City Manager

**SUBJECT:** **654 Camino De Los Mares – 654 Camino De Los Mares – Senior Housing and Medical Office Development Agreement**

A request for a Development Agreement for a mixed-use project with 250 for-rent senior residential units and a 7,500 square foot medical office; subdivide one lot into two lots; rezone the property from Regional Medical Facilities 1 (RMF1) to Community Commercial 4 (CC4), change the General Plan designation from RMF to CC at 654 Camino De Los Mares, and includes requests for shared parking, an increase in floor area, and concession/incentive/waiver(s) pursuant to State Density Bonus law. The proposed Development Agreement would stipulate that the applicant is required to obtain all necessary approvals and permits/entitlements to allow the general plan amendment, zoning amendment, subdivide the lot, and construct the proposed development.

### **REQUIRED FINDINGS**

The following findings shall be made to approve the proposed Development Agreement. The draft Resolution (Attachment 1) provides an assessment of the project's compliance with these findings.

***Development Agreement, Section 17.16.230, Government Code Section 65867.5, to approve a development agreement:***

- a. The provisions of the agreement are consistent with the general plan and any applicable specific plan;
- b. The agreement provides that any tentative map will comply with Government Code Section 66473.7.

### **BACKGROUND**

The Planning Commission held a joint Study Session with City Council on August 31, 2022<sup>1</sup>. On October 5, 2022, the Planning Commission considered entitlement applications for the proposed development (General Plan Amendment (GPA) 22-097,

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<sup>1</sup> <https://www.san-clemente.org/home/showpublisheddocument/70263/637971177877730000>

Zoning Amendment (ZA) 22-098, Tentative Parcel Map (TPM) 22-099, Conditional Use Permit (CUP) 22-100, Site Plan Permit (SPP) 22-103, Architectural Permit (AP) 22-101)<sup>2</sup>.

Due to a noticing error for the October 5, 2022, Planning Commission meeting, the Planning Commission could not make a recommendation on the Development Agreement. The Planning Commission meeting on October 19, 2022, will allow the Planning Commission to make a recommendation.

### ***Noticing***

Public notices were distributed and posted per City and State requirements. In addition, City staff sent notice of the meeting to an email interest list.

## **PROJECT ANALYSIS**

### ***Development Agreement***

SCMC Section 17.16.230 allows Development Agreements pursuant to Government Code Section 65864.

When considering a development agreement, the City must find that:

- Provisions of the agreement are consistent with the general plan and any applicable specific plan; and
- That the agreement provides that any tentative map prepared for the subdivision included with the development agreement will comply with Section 66473.7.

Staff recommends that the findings can be made as described in the draft resolution (Attachment 1).

## **GENERAL PLAN CONSISTENCY**

Table 1 summarizes how the proposed Development Agreement is consistent with applicable General Plan policies.

**Table 1 - General Plan Consistency**

<b>Goals and Policies</b>	<b>Consistency Finding</b>
Land Use Element Primary Goal: "Achieve the City's Vision by establishing and maintain balance of uses that provides: 1) a diversity of residential neighborhoods and housing opportunities..."	The project would align with the diversity of multifamily residential uses of the subject neighborhood, specifically the adjacent properties.

<sup>2</sup> <https://www.san-clemente.org/home/showpublisheddocument/70772/638000597125370000>

<b>Goals and Policies</b>	<b>Consistency Finding</b>
Land Use Plan Primary Goal: "...4) provide opportunities for new residential, commercial, and job-generating uses in targeted areas..."	The project would provide new residential and commercial uses in the Camino de los Mares target area.
Land Use Plan Primary Goal: "...8) provide a diversity of land use areas that complement one another and are characterized by differing functional activities and intensities of use..."	The project would add to the diversity of uses in the Camino de los Mares focus area.
Land Use Plan Primary Goal: "...9) locate commercial, public services, recreation, transit opportunities and jobs near residents and businesses..."	The project would locate residential, commercial, and transit near each other.
Residential Land Use Goal: "Achieve a mix of residential neighborhoods and housing types that meets the diverse economic and physical needs of residents, that is compatible with existing neighborhoods and the surrounding environmental setting, and that reflects community expectations for high quality."	The project would add to the variety of housing types available in the City, and provide a high quality architectural style.
LU-1.01. General. We accommodate the development of a variety of housing types, styles, tenure and densities that are accessible to and meet preferences for different neighborhood types (e.g., mixed use pedestrian environments and traditional suburban neighborhoods), physical abilities and income levels, pursuant to the Land Use Plan and Housing Element.	The project would add to the variety of housing available in the City, including a variety of income levels, as part of a horizontal mixed-use project.
LU-1.06. Residential Infill. We require that new residential development be compatible with adjacent structures and land uses and we require: a. mitigation of noise, traffic (automobile and truck), lighting impacts of abutting commercial uses, where applicable; b. use of complementary building materials, colors, and forms, while allowing flexibility for distinguished design solutions.	The senior housing and medical office project is located adjacent to residential, commercial, and medical office uses. As conditioned, the project is required to mitigate noise, traffic, and lighting impacts. The senior housing is designed with the Spanish Colonial Revival architectural style, and the office is designed with a Spanish architectural style.

<b>Goals and Policies</b>	<b>Consistency Finding</b>
Camino de los Mares Focus Area Goal: Maintain and improve the Area as a community hub that provides diverse opportunities and commercial services for local residents and high quality medical services and related employment opportunities for San Clemente and surrounding communities.	The proposed use adds to the Camino de los Mares community hub with senior housing next to food, retail, and medical amenities, and the proposed use adds medical office uses.
LU-7.02. Medical Office Uses. We support the expansion of health care facilities and related medical offices that are consistent with the Land Use Plan and Zoning Code and are compatible with surrounding neighborhoods.	The project would construct new medical offices and support the enhancement of health care facilities in the Camnio de los Mares area.
LU-7.03. Collaboration with Health Care Providers. We collaborate with local health care providers and facilities to understand their changing requirements and help meet the needs of our residents.	The project would support the needs of the health care property owner and add medical offices to help meet the needs of residents.
LU-7.04. Entryways and Landscaped Corridors. We maintain entryways and an attractive, well-defined landscaped edge along Caminos Estrella and de Los Mares to signify arrival to the City of San Clemente and the Camino de Los Mares area.	The project would provide an attractive and well-defined landscaped edge along Camino de los Mares with additional parkway trees, private landscaping along the sidewalk, and seating area at the pedestrian paseo entry.
LU-7.06. Design Treatment. Within the Camino de los Mares Focus Area, development projects, including major remodels, shall have a Spanish architectural design, consistent with the Design Guidelines.	The project's senior housing buildings and medical office building would provide Spanish architectural style.
UD-3.01. Land Use Decisions. We use urban design standards and tools to minimize adverse impacts on adjacent properties when considering land use and zoning requests.	The project is designed with Spanish Colonial Revival and Spanish architectural styles, and is conditioned to minimize and mitigate potential impacts to adjacent properties.

Goals and Policies	Consistency Finding
Architecture and Landscaping Goal: Create and maintain a unique atmosphere and historic identity as “the Spanish Village by the Sea” where development exhibits high quality site planning, architecture and landscaping and reflect a lush Mediterranean landscaped character, emphasizing Spanish Architecture and drought tolerant and California native plantings.	The project is designed with Spanish Colonial Revival and Spanish architectural styles, and substantial landscaping in compliance with the General Plan and Zoning Ordinance.
M-4.01. Shared Parking. We encourage mixed-use and multiple use developments to implement shared parking techniques as a preferred approach for complementary land uses.	The project would utilize some shared parking between the senior housing use and the medical office use.
Infill Development Goal: To be a City that allows new infill development that is compatible with existing land uses, mitigates environmental impacts, and provides funds or mitigation to meet increased resident demands for services and facilities, generated from new development.	The project is conditioned to mitigate potential environmental impacts and fund any increased demand of services.

### **ENVIRONMENTAL REVIEW/COMPLIANCE (CEQA)**

The Planning Division prepared Addendum (Attachment 3) to the San Clemente Housing and Safety Elements Update PEIR (State Clearinghouse No. 2021020256) that was adopted by the City Council on October 5, 2021 (“2021 FEIR”). The Addendum analyzes the environmental effects of the proposed project in light of the 2021 FEIR, which analyzed potential environmental impacts associated with the development of a number of housing sites, including housing and office development at 654 Camino del los Mares. The Addendum has been prepared in accordance with relevant provisions of the California Environmental Quality Act (CEQA) of 1970 (as amended) and the State CEQA Guidelines.

According to Section 15164 of the State CEQA Guidelines, an addendum to a previously certified EIR or Negative Declaration is the appropriate environmental document in instances when “only minor technical changes or additions are necessary” and when the new information does not involve new significant environmental effects beyond those identified in the previous EIR. The analysis in the Addendum demonstrates that the proposed addendum involves only minor technical changes to the 2021 FEIR and would not result in any new or increased severity significant environmental effects beyond those

identified in the 2021 FEIR. As such, an addendum is the appropriate environmental document under CEQA.

### **ALTERNATIVES**

The Planning Commission may take any of the following actions:

1. Recommend approval of the application.
2. Recommend modifications to affect desired changes prior to recommendation of approval.
3. Recommend denial of the application.

### **RECOMMENDATION**

Staff recommends that the Planning Commission:

1. Recommend determining that the proposed addendum involves only minor technical changes to the 2021 FEIR and would not result in any new or increased severity significant environmental effects beyond those identified in the 2021 FEIR, and, as such, an addendum is the appropriate environmental document under Section 15164 of the State CEQA Guidelines.
2. Adopt Resolution PC 22-023, A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN CLEMENTE, CALIFORNIA RECOMMENDING THAT THE CITY COUNCIL APPROVE THE DEVELOPMENT AGREEMENT FOR A REQUEST TO DEVELOP A MIXED-USE PROJECT WITH 250 FOR-RENT SENIOR RESIDENTIAL UNITS AND A 7,500 SQUARE FOOT MEDICAL OFFICE; SUBDIVIDE ONE LOT INTO TWO LOTS; REZONE THE PROPERTY FROM REGIONAL MEDICAL FACILITIES 1 (RMF1) TO COMMUNITY COMMERCIAL 4 (CC4); AND CHANGE THE GENERAL PLAN DESIGNATION FROM RMF TO CC, LOCATED AT 654 CAMINO DE LOS MARES.

### ***Attachments:***

1. Resolution No. PC 22-023
2. Development Agreement
3. Addendum to the San Clemente Housing and Safety Elements Update EIR

## RESOLUTION NO. PC 22-023

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN CLEMENTE, CALIFORNIA RECOMMENDING THAT THE CITY COUNCIL APPROVE THE DEVELOPMENT AGREEMENT FOR A REQUEST TO DEVELOP A MIXED-USE PROJECT WITH 250 FOR-RENT SENIOR RESIDENTIAL UNITS AND A 7,500 SQUARE FOOT MEDICAL OFFICE; SUBDIVIDE ONE LOT INTO TWO LOTS; REZONE THE PROPERTY FROM REGIONAL MEDICAL FACILITIES 1 (RMF1) TO COMMUNITY COMMERCIAL 4 (CC4); AND CHANGE THE GENERAL PLAN DESIGNATION FROM RMF TO CC, LOCATED AT 654 CAMINO DE LOS MARES

WHEREAS, on March 21, 2022, an application was submitted by Hunsaker & Associates Irvine, Inc., 24451 Health Center Drive, Laguna Hills, CA, for Master Project (MP) 22-089, Architectural Permit (AP) 22-101, Conditional Use Permit (CUP) 22-100, General Plan Amendment (GPA) 22-097, Site Plan Permit (SPP) 22-103, Tentative Parcel Map (TPM) 22-099, Zoning Amendment (ZA) 22-098, and deemed complete on September 29, 2022; to demolish an existing medical building and surface parking lot; construct a mixed-use project with 250 for-rent senior residential units and a 7,500 square foot medical office; subdivide one lot into two lots; rezone the property from Regional Medical Facilities 1 (RMF1) to Community Commercial 4 (CC4); and change the General Plan designation from RMF to CC at 654 Camino De Los Mares.

WHEREAS, the Planning Division prepared an Addendum (Exhibit B of Resolution PC 22-021) to the San Clemente Housing and Safety Elements Update PEIR (State Clearinghouse No. 2021020256) that was adopted by the City Council on October 5, 2021 for the project in accordance with the California Environmental Quality Act (CEQA) Guidelines Section 15164 which allows an addendum to a previously certified EIR or Negative Declaration in instances when “only minor technical changes or additions are necessary” and when the new information does not involve new significant environmental effects beyond those identified in the previous EIR;

WHEREAS, the City's Development Management Team (DMT) reviewed the proposed project on three different occasions for compliance with the General Plan, Zoning Ordinance, and other applicable City regulations, and the DMT recommends approval with conditions contained in Exhibit A of Resolution PC 22-021;

WHEREAS, on May 25, 2022, July 27, 2022, and August 24, 2022, the City's Design Review Subcommittee (DRSC) reviewed the project's architecture and compliance with the Design Guidelines, and forwarded the project to the Planning Commission; and

WHEREAS, on August 31, 2022, the Planning Commission and City Council of the City of San Clemente held a study session on the subject applications, and information presented by the applicant, City staff, and other interested parties.

WHEREAS, on October 5, 2022, the Planning Commission of the City of San Clemente held a duly noticed public hearing on the entitlement applications, considered written and oral comments, and facts and evidence presented by the applicant, City staff, and other interested parties, and recommended denial of the entitlement applications.

WHEREAS, on October 19, 2022, the Planning Commission of the City of San Clemente held a duly noticed public hearing on the Development Agreement, considered written and oral comments, and facts and evidence presented by the applicant, City staff, and other interested parties.

NOW, THEREFORE, the Planning Commission of the City of San Clemente does hereby resolve as follows:

Section 1. Incorporation of Recitals.

The Planning Commission hereby finds that all of the facts in the Recitals are true and correct and are incorporated and adopted as findings of the Planning Commission as fully set forth in this resolution.

Section 2. CEQA Findings.

Based upon its review of the entire record, including the Staff Report, any public comments or testimony presented to the Planning Commission, and the facts outlined below, the Planning Commission hereby finds and determines that an addendum is the appropriate environmental document under California Environmental Quality Act (CEQA) Section 15164. An Addendum to the Program Environmental Impact Report (EIR) for the Housing and Safety Elements Update (State Clearinghouse No. 2021020256, adopted by the City Council on October 5, 2021, hereafter referred to as “2021 EIR”) was prepared by the City of San Clemente Community Development Department to evaluate whether development of senior housing and medical office at 645 Camino de los Mares would result in any new significant impacts or increased severity of impacts beyond those identified in the 2021 EIR. As Lead Agency under CEQA, and based on the findings contained in the Addendum (Exhibit B of Resolution PC 22-021), the City has determined that the project would not have any new or more severe impacts that were not previously identified in the EIR for the Housing and Safety Elements Update. The City also finds that the Addendum reflects the City’s independent judgment.

Under CEQA Guidelines Section 15164 of the State CEQA Guidelines, an Addendum to a previously certified EIR or Negative Declaration is the appropriate environmental document in instances when “only minor technical changes or additions are necessary” and when the new information does not involve new significant environmental effects beyond those identified in the previous EIR. The analysis contained in Exhibit B of Resolution PC 22-021 demonstrates that the proposed Addendum involves only minor technical changes to the 2021 EIR and would not result in any new or increased severity significant environmental effects beyond those identified in the 2021 EIR. As such, an addendum is the appropriate environmental document under CEQA.

Section 3. Development Agreement Findings.



With respect to the Development Agreement, the Planning Commission finds as follows:

- A. The provisions of the agreement are consistent with the general plan and any applicable specific plan.
  - a. The provisions of the Development Agreement are consistent with the goals and policies of the General Plan, including but not limited to:
    - i. Land Use Plan Primary Goal: "...8) provide a diversity of land use areas that complement one another and are characterized by differing functional activities and intensities of use..." in that the project would add to the diversity of uses in the Camino de los Mares focus area.
    - ii. Residential Land Use Goal: "Achieve a mix of residential neighborhoods and housing types that meets the diverse economic and physical needs of residents, that is compatible with existing neighborhoods and the surrounding environmental setting, and that reflects community expectations for high quality" in that the project would add to the variety of housing types available in the City, and provide a high quality architectural style.
    - iii. LU-1.01. General. We accommodate the development of a variety of housing types, styles, tenure and densities that are accessible to and meet preferences for different neighborhood types (e.g., mixed use pedestrian environments and traditional suburban neighborhoods), physical abilities and income levels, pursuant to the Land Use Plan and Housing Element in that the project would add to the variety of housing available in the City, including a variety of income levels, as part of a horizontal mixed-use project.
    - iv. Goal: Maintain and improve the area as a community hub that provides diverse retail opportunities and commercial services for local residents and high quality medical services and related employment opportunities for San Clemente and surrounding communities in that the proposed use adds to the Camino de los Mares community hub with senior housing next to food, retail, and medical amenities, and the proposed use adds medical office uses.
  - b. The Development Agreement is consistent with the General Plan Housing Element in that the Housing Element identified the site as a potential housing opportunity site and the project would provide housing, including affordable housing to very low income households.
- B. The agreement provides that any tentative map will comply with Government Code Section 66473.7 in that the Development Agreement includes provisions that the tentative map will comply with Government Code Section 66473.7.

#### Section 4. Planning Commission Recommendation.

Based on the foregoing recitals and findings, and the written and oral comments, facts, and evidence presented, the City of San Clemente Planning Commission hereby recommends the City Council approve the development agreement for a mixed-use project with 250 for-rent senior residential units and a 7,500 square foot medical office;

subdivide one lot into two lots; rezone the property from Regional Medical Facilities 1 (RMF1) to Community Commercial 4 (CC4); and change the General Plan designation from RMF to CC, located at 654 Camino De Los Mares.

PASSED AND ADOPTED at a regular meeting of the City of San Clemente Planning Commission on October 19, 2022.

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Chair

CERTIFICATION:

I HEREBY CERTIFY this Resolution was adopted at a regular meeting of the City of San Clemente Planning Commission on October 19, 2022, carried by the following roll call vote:

AYES:            COMMISSIONERS:  
NOES:            COMMISSIONERS:  
ABSTAIN:        COMMISSIONERS:  
ABSENT:         COMMISSIONERS:

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Secretary of the Planning Commission

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

City Clerk  
City of San Clemente  
910 Calle Negocio  
San Clemente, CA 92673

Exempt From Recorder's Fees Pursuant  
to GOVERNMENT CODE § 6103

(ABOVE SPACE FOR RECORDER'S USE ONLY)

**DEVELOPMENT AGREEMENT**

**BY AND BETWEEN**

**CITY OF SAN CLEMENTE, A CALIFORNIA MUNICIPAL CORPORATION**

**AND**

**SADDLEBACK MEMORIAL MEDICAL CENTER, A CALIFORNIA NON-PROFIT  
PUBLIC BENEFIT CORPORATION**

## DEVELOPMENT AGREEMENT

This **DEVELOPMENT AGREEMENT** dated for reference purposes only as of \_\_\_\_\_, 2022 (“Agreement”), is made and entered into by and between the **CITY OF SAN CLEMENTE**, a California municipal corporation (“City”) and **SADDLEBACK MEMORIAL MEDICAL CENTER**, a California non-profit public benefit corporation (“Owner”).

### RECITALS

A. All initially-capitalized words, terms, and phrases used, but not otherwise defined, in the Recitals shall have the meanings assigned to them in Section 1 of this Agreement, unless the context clearly indicates otherwise.

B. To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the legislature of the State of California adopted the Development Agreement Act. Pursuant to the Development Agreement Act and the San Clemente Municipal Code, the City is authorized to enter into an agreement with any person having a legal or equitable interest in real property to provide for the development of such property and to vest certain development rights therein. City enters into this Agreement pursuant to the provisions of the Development Agreement Act, the City’s General Plan, the City Municipal Code, and applicable City policies.

C. Owner is the owner of the Property which is comprised of an approximately.

D. Property is a 6.63 acre area of real property generally located at 654 Camino de Los Mares in the City of San Clemente, California (the “Property”), which real property is legally described in the Legal Description attached hereto as Attachment No. 1 of this Agreement and by this reference incorporated herein.

E. Owner desires to develop the Project including Private Improvements of commercial, residential, open space and ancillary uses on the Property in the City of San Clemente.

F. On October 5, 2021, the City Council approved amendments to the Housing Element of the City’s General Plan in which the Property was designated as a candidate site for a mixed-income housing project that would materially enhance City compliance with certain affordable and other housing mandates imposed on City by the State of California including, but not limited to, obligations of City to comply with the regional housing needs requirements as set forth in Government Code Section 65584, et seq.

G. Additionally, to develop the Project, Owner has submitted applications to the City for approval of a General Plan Amendment, Zone Change, Vesting Tentative Map, Architectural Permit, Site Plan Permit, a Conditional Use Permit, and this Agreement.

H. The Parties desire to enter into this Agreement in order to vest the development standards, fees, exactions, and applicable regulations governing the proposed uses on the Property.

I. The Parties also desire to enter into this Agreement in order to provide sufficient funding to ensure that adequate and appropriate community facilities and benefits are provided to the City and

its residents in connection with the development of the Project and that the Project site will be developed in accordance with City's General Plan and zoning.

J. This Agreement constitutes a current exercise of City's police powers to provide predictability to Owner in the development approval process by vesting the permitted uses(s), density, intensity of use, and timing and phasing of development in exchange for Owner's commitment to provide significant public benefits to City. This Agreement allows City to realize these public benefits and meet the needs of the City's residents and visitors to a greater extent than the land uses permitted under the General Plan.

K. On , 2022, as required by California Government Code Section 65867 and San Clemente Municipal Code Section 17.16.230, the Planning Commission of City held a duly-noticed public hearing to consider a recommendation to the City Council regarding approval of this Agreement. The Planning Commission found and determined that this Agreement:

- 1) Is within the scope of the CEQA Compliance Documents;
- 2) Is consistent with the City's General Plan;
- 3) Is compatible with the orderly development of the Property and the surrounding area;
- 4) Will have an overall positive impact on the health, safety, and welfare of the residents of the City by providing thirteen (13) very low income (as defined in Section 2.10.1 of this Agreement) housing units (or 5% of 250 units) at the Property;
- 5) Constitutes a lawful, present exercise of the City's police power and authority under the Development Agreement Act and the Municipal Code; and
- 6) Will be entered into pursuant to and in compliance with the requirements of the Development Agreement Act and the Municipal Code. Based on these findings and determinations, the Planning Commission recommended approval of this Agreement to the City Council.

L. On , 2022, the City Council held a duly-noticed public hearing to consider this Agreement. On , 2022, the City Council found and determined that this Agreement:

- 1) Is within the scope of the CEQA Compliance Documents;
- 2) Is consistent with the City's General Plan pursuant to Government Coder Section 65867.5(b);
- 3) Is compatible with the orderly development of the Property and the surrounding area;
- 4) Will have an overall positive effect on the health, safety, and welfare of the residents of the City by providing 13 very low income housing units (or 5% of 250 units) at the Property;
- 5) Constitutes a lawful, present exercise of the City's police power and authority under the Development Agreement Act and the Municipal Code; and
- 6) Is entered into pursuant to and in compliance with the requirements of the Development Agreement Act and the Municipal Code.

7) Will ensure a desirable and functional community environment, provide effective and efficient development of public and community facilities, assure attainment of maximum effective utilization of resources within the City, and provide other significant benefits to the City and its residents; and

8)

Strengthens the public planning process, encourages private participation in comprehensive planning, particularly with respect to the implementation of the City’s General Plan, and reduces the economic costs of development and government.

Based on these findings, the City Council finds that the best interests of the citizens of the City and the public health, safety and welfare will be served by entering into this Agreement.

M. On \_\_\_\_\_, 2022, the City Council introduced for first reading of the Enabling Ordinance. On \_\_\_\_\_, 2022, the City Council conducted the second reading of the Enabling Ordinance and thereafter adopted the Enabling Ordinance, thereby approving this Agreement.

N. The City and Owner wish to enter into this Agreement in order to set forth the terms and conditions of the vesting of certain development rights and to effectuate and memorialize the Parties' negotiated agreement of various City fees and exactions for the Project. By electing to enter into this Agreement, the City shall be bound by the obligations specified herein. The terms and conditions of this Agreement have undergone extensive review by the City's Planning Commission and the City Council and have been found to be fair, just, and reasonable.

O. All of the procedures required by CEQA have been satisfied based on the Environmental Impact Report Addendum (cite Addendum title, date and identifying number, if any) and the completion of certain studies evaluating the environmental impacts of the Project (the “EIR Addendum”). The City has made certain findings and determinations that this Agreement and the Project have been adequately analyzed and are supported by the CEQA Compliance Documents in compliance with all applicable requirements of CEQA.

P. This Agreement and the Project are consistent with the City’s General Plan, Municipal Code, and the applicable Land Use Regulations.

Q. The various exchanges contemplated in this Agreement are in the vital and best interest of the City and the welfare of its residents and are in accordance with the public purposes and provisions of applicable Laws.

The foregoing Recitals constitute a substantive part of and are hereby incorporated into this Agreement.

**AGREEMENT**

1. **Definitions.** As used in this Agreement, the following terms shall have the following meanings:

**Affordable Unit(s)** is defined in Section 2.8.1 of this Agreement.

**Affordable Units Complex** is defined in Section 2.8.2 of this Agreement.

**Agreement** means this Development Agreement.

**Annual Review** is defined in Section 12.1 of this Agreement.

**Applicable Land Use Regulations** means the Land Use Regulations in effect on the date this Agreement is executed by all Parties in accordance with Government Code Section 65866 including, but not limited to, the Entitlements.

**Applicable Rules** means this Agreement, the Applicable Land Use Regulations, the Development Agreement Act and the Municipal Code+.

**Building Codes** means standard, uniform codes governing construction then in effect at the time of submittal of the Development plans by Owner in connection with the Project.

**Building Permit** means the permit issued by the City for the construction of the foundations, footings, subterranean and vertical Private Improvements and required Public Improvements for each element of the Project.

**Business Day** means Monday through Friday, excepting holidays.

**CC&Rs** is defined in Section 2.9 of this Agreement.

**CEQA** means the California Environmental Quality Act (Pub. Res. Code § 21000, *et seq.* and the implementing regulations promulgated thereunder as set forth in Title 14 Cal. Code Regs. Section 15000, *et seq.*

**CEQA Compliance Documents** means the EIR Addendum, as defined in Recital O of this Agreement above as well as the CEQA findings made in connection with the approval of this Agreement. The CEQA findings concluded that: (1) with implementation of the mitigation measures identified in the EIR Addendum, the Project will result in no new significant impacts that were not analyzed in the Program EIR (cite Program EIR title, date and identification number) nor would the Project cause a substantial increase in the severity of any previously identified environmental impacts in the Program EIR; (2) the potential impacts associated with the Project would be the same or less than those described in the Program EIR; (3) there are no substantial changes to the circumstances under which the Project will be undertaken that would result in new or more severe significant environmental impacts than previously addressed in the Program EIR; and (4) no new information regarding the potential for new or more severe environmental impacts were identified since the Program EIR was approved.

**City** means the City of San Clemente, California, a municipal corporation.

**City Agency** means each and every agency, department, board, commission, authority, employee, and/or official acting under the authority of the City, including without limitation the City Council and Planning Commission.

**City Council** means the City's duly-elected and/or appointed City Council.



**City Manager** means the City Manager of the City and his or her authorized designees.

**Convey and Conveyance** means the sale, transfer or assignment, but not the leasing, of any portion of the Property or the sale, transfer or assignment of more than fifty percent (50%), cumulatively, of the ownership interests in Owner; provided, however, that a sale, transfer or assignment of the Property or any portion thereof or of the ownership interests in Owner to any corporation, partnership, limited liability company or other entity controlling, under the control of or in common control with Owner shall not constitute a Conveyance hereunder; provided further, expressly excluded from the definition of Convey and/or Conveyance is (a) any granting by Owner of any easements, access or use rights to any third party for utilities, right of way, reciprocal access or parking rights to adjacent or nearby property owners or occupants or other similar rights reasonably and customarily granted to third parties in connection with similar development projects and due diligence studies and/or inspections by prospective purchasers or tenants; (b) any Dedications or Reservations; (c) any sale, transfers or assignments of the Property or any portion thereof by Owner to any Financier for security purposes or otherwise included within the definitions of Encumber or Encumbrance; and/or (d) any sale, transfer or assignment of the Property to an entity in which Owner and/or Owner's affiliates has a direct or indirect ownership interest.

**County** means the County of Orange, California.

**Dedication and Dedicate** means Owner's grant of real property or an interest therein to the City or another governmental agency or public or private utility for a public purpose.

**Default** means the failure of a Party to perform any action or covenant required by this Agreement within the time periods provided, if applicable, following notice and opportunity to cure, as set forth in Section 13 of this Agreement.

**Development** shall have the same definition as in California Government Code Section 65927, as that statute exists on the date the Enabling Ordinance is adopted.

**Development Agreement Act** means Government Code Section 65864, *et seq.*

**Development Agreement Ordinance** means San Clemente Municipal Code Section 17.16.230 which the City adopted for considering, approving and administering development agreements including the Agreement.

**Development Exaction** means and include Development Impact Fees, Dedications, Reservations, special taxes, general taxes as they pertain to development of the Property (but not including ad valorem property taxes or other taxes that are applicable City-wide), improvements, and any other obligation to pay money, construct facilities, or Dedicate land as a condition of Development of the Project or of obtaining an Entitlement.

**Development Impact Fee** means any impact fee or exaction or other similar fee or charge (whether collected as a condition of issuance of a demolition, grading, building or certificate of occupancy permit, or otherwise) imposed by the City on and in connection with Development of the Project in accordance with this Agreement. Development Impact Fees do not include (a) Processing Fees and Charges, (b) impact fees, exactions, assessments or fair share charges or other similar fees or charges imposed by other governmental entities regardless of whether the

City is required to collect or assess such fees pursuant to applicable Laws (e.g., school district impact fees pursuant to Gov. Code § 65995) or (c) Fair Share Fees. The Development Impact Fees to be imposed on the Project pursuant to Section 3.3 of this Agreement are set forth in Attachment 2 of this Agreement and by this reference incorporated herein.

**Discretionary Action** means an action proposed by Owner which requires the exercise of judgment, deliberation and a decision on the part of the City as distinguished from an activity such as the issuance of Ministerial Permits and Approvals, which merely requires the City and/or any City Agency to determine whether there has been compliance with applicable, objective statutes, ordinances and/or regulations.

**Effective Date** means thirty (30) calendar days after the City Council's final approval of the Enabling Ordinance following the second reading thereof.

**Enabling Ordinance** means City Ordinance No. \_\_\_\_\_ by which this Agreement was approved by the City Council and as described in Recital M of this Agreement.

**Encumber and Encumbrance** means mortgages, deeds of trust, and any other device by which Owner pledges all or any portion of Owner's interest in the Property to secure a loan.

**Entitlements** means (a) this Agreement; (b) General Plan Amendment No. \_\_\_\_\_; (c) Zone Change No. \_\_\_\_\_; (d) Vesting Tentative Map No. \_\_\_\_\_; Architectural Permit No. \_\_\_\_\_; Site Plan Permit No. \_\_\_\_\_; Conditional Use Permit No. \_\_\_\_\_; together with all other statutes, ordinances, decisions, resolutions, permits, rules, regulations, and official policies of the City that govern permitted uses, density, design, construction standards and specifications, density or intensity of use, height and size of buildings, Reservation or Dedication of land for public purposes, growth management, Development Impact Fees, Fair Share Fees, special taxes and special assessments used to mitigate the impacts of Development of the Project, other conditions, environmental analyses, and/or environmental mitigation, applicable to the Property or prerequisite to the Development and occupancy of the Project in effect on the Effective Date.

**Fair Share Fees** means the fees described in Section 3.2 and Attachment No. 2 of this Agreement, attached hereto and by this reference incorporated herein.

**Financier** means any mortgagee, beneficiary, or trustee as to an Encumbrance.

**Force Majeure** means problems or occurrences beyond the control of the affected Party that delay a Party's performance of its obligations under this Agreement. Examples of Force Majeure include, but are not limited to, floods, earthquakes, adverse weather conditions (with respect to weather sensitive work), pandemics, and other Acts of God; fires; wars; civil commotion, riots, and similar hostilities; strikes, picketing, and other labor difficulties; shortages of materials or supplies; inability of any government agency, including but not limited to the City, to provide adequate levels of public services or facilities to the Property, including, by way of illustration only, a lack of water caused by drought; Laws of other agencies (including, but not limited to, voter initiative or referenda, moratoria, and judicial decisions); and Litigation brought by a third party challenging the validity of this Agreement, an Entitlement or an existing Law.

**Hazardous Materials** means any substance, material or waste which is or becomes

regulated by any Laws, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "acutely hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law)), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated biphenyls, (viii) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. § 1317), (ix) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.* (42 U.S.C. § 6903), (x) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.* (42 U.S.C. § 9601), (xi) Methyl-Tertiary Butyl Ether, or (xii) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any Laws either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as "hazardous" or harmful to the environment.

**Hospital Litigation means** Owner's lawsuit disputing the validity of certain City land use regulations on the Property limiting its use to hospital-related uses (USDC, Cen. Dist., Case No. 8116-cv-00852-DOC-JCG). Owner and City subsequently entered into that certain Settlement Agreement dated as of June 18, 2019 which settled the case under which City and Owner have certain obligations (as amended and modified from time to time) ("Settlement Agreement").

**Indemnitees** means the City and its elected and appointed officials, employees, volunteers, agents, and representatives.

**Indemnitor** means, at the time of the accrual of any Liability (as defined in Section 15 of this Agreement) Owner or its successors in interest, whichever owns the Property and/or the Project, upon the date or dates on which such Liability shall have accrued.

**Land Use Regulations** means all ordinances, resolutions, codes, rules, regulations, official policies of the City adopted by ordinance or resolution governing the development and use of land, including, without limitation, the Development Agreement Ordinance and/or any other ordinance or resolution governing the permitted use of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, encroachment permits and the conveyance of rights and interests that provide for the use of or the entry upon public property and the design, improvement and construction standards and specifications applicable to the Development of the Project. Land Use Regulations does not include any City ordinance, resolution, code, rule, regulation or official policy governing:

(a) the conduct of businesses, professions, and occupations except subdivisions;

- (b) taxes and assessments;
- (c) the control and abatement of nuisances; and/or
- (d) the exercise of the power of eminent domain.

**Law** means any official legislative or administrative enactment or decision of a governmental agency or decision or ruling of a court that binds the Parties. The term Laws includes but is not limited to, case law, constitutional provisions, statutes, ordinances, initiatives, resolutions, policies, orders, rules, and regulations. A matter is a Law regardless of whether it was imposed by a legislative body (such as the City Council or State Legislature), an administrative agency (such as the Public Utilities Commission), the electorate (as by initiative or referendum), court (by judgment, order or opinion), or any other official body (such as the Planning Commission), and regardless of whether it is federal, state, or local.

**Legal Description** means the description of the Property set forth in Attachment No. 1 of this Agreement, attached hereto and by this reference incorporated herein.

**Liabilities** is defined in Section 15 of this Agreement.

**Litigation** means all forms of judicial or quasi-judicial proceedings, including but not limited to complaints (for damages, declaratory relief, or otherwise), arbitrations, judicial references, petitions (for traditional mandate, administrative mandate, or otherwise), and appeals, no matter how denominated.

**Material Change in the Project** means any change in the Project as described in the Entitlements that the City determines would require preparation of a subsequent or supplemental environmental impact report or mitigated negative declaration in accordance with Sections 15162 and 15163 of Title 14 of the California Code of Regulations, and such subsequent or supplemental environmental impact report or mitigated negative declaration concludes that the impact from such change in the Project would result in a new significant adverse environmental impact or a substantial increase in the severity of previously identified significant impact, and such new impact cannot be mitigated to a less than significant level.

**Ministerial Permits and Approvals** means the permits, approvals, plans, inspections, certificates, documents, licenses, and all other actions required to be taken by the City in connection with the implementation of the Entitlements which merely require the City and/or any City Agency to determine whether there has been compliance with applicable, objective provisions of statutes, ordinances and/or regulations, including without limitation, building permits, public works permits, grading permits, encroachment permits and other similar permits and approvals. The term Ministerial Permits and Approvals shall not include any Discretionary Actions.

**Municipal Code** means the City's Municipal Code.

**Notice** means any approval, disapproval, demand, appeal, document or other communication to be delivered to a Party or otherwise pursuant to this Agreement.

**Owner** means Memorial Health Care Services, Inc., a California non-profit public benefit corporation or its successors in interest in the Property and to this Agreement.

**Parties** means City and Owner.

**Party** means City or Owner as the context dictates.

**Permits** means all grading, building, and other permits required to be obtained by Owner prior to and as a condition precedent to the commencement of construction of the Private Improvements or the Required Public Improvements.

**Planning Commission** means the City's duly-appointed Planning Commission.

**Private Improvements** means the mix of commercial, residential, open space and ancillary uses that will be Developed on the Property as depicted on the Site Plan, which may be amended from time to time in accordance with this Agreement.

**Processing Fees and Charges** means all fees and charges required by the City uniformly in connection with review and approval of Entitlement applications, new construction, including, but not limited to, Project permits, building permit applications, building permits, grading permits, encroachment permits, tract maps, parcel maps, lot line adjustments, air right lots, street vacations, certificates of occupancy and other similar permits. Processing Fees and Charges shall not include Development Impact Fees, Fair Share Fees or any exaction or impact fee.

**Project** means the Development of the Private Improvements and the Required Public Improvements pursuant to this Agreement.

**Property** means the real property legally described in Attachment No. 1 of this Agreement, attached hereto and by this reference incorporated herein.

**Required Public Improvements** means and includes all public improvements required as a condition of approval of the Project and/or required by the CEQA Compliance Documents approved for the Project, which are described in Attachment No. 4 of this Agreement, attached hereto and by this reference incorporated herein.

**Reservation** means the setting aside of land for future public use, without any legal right, title, or interest being conveyed other than the promise to convey an interest upon payment of fair market value for such land.

**Reserved Powers** means the rights and authority excepted from the assurances and rights provided to Owner under this Agreement and reserved to the City under Section 5 of this Agreement.

**Site Plan** means the Site Plan depicted in Attachment No. 3 of this Agreement, attached hereto and by this reference incorporated herein.

**Special Review** is defined in Section 12.2 of this Agreement.

**State** means the State of California.

**Term** is defined in Section 9.2 of this Agreement.

2. **Obligations Under the Settlement Agreement and Development of the Property.** During the Term, Owner shall have the vested right to develop the Project at the Property as provided for in Section 4.1 of this Agreement and in accordance with the terms, provisions and conditions of this Agreement.

2.1 **Waiver of Right to Settlement Agreement Payments.** Upon approval of the Entitlements vested in accordance with this Agreement and following the running and expiration of any applicable period of administrative, arbitrative, judicial or electoral action, appeal, suit challenge, referendum, initiative, moratorium, vote, ballot or plebiscite that could be initiated or brought by any person or entity with respect to any of the Entitlements without the initiation, bringing, filing, notice, service, qualification or other commencement of any such action, appeal, suit, challenge, referendum, moratorium, initiative, vote, ballot or plebiscite, each of the foregoing in accordance with applicable Law and so long as none of the Entitlements shall have been revoked or modified without the written consent of Owner, which consent may be withheld in Owner's sole and absolute discretion, and Owner shall otherwise be entitled to develop the Project in accordance with this Agreement (whether or not any revocation, modification or inability to develop and operate the Property in accordance with this Agreement is caused by the exercise or existence of any of the Reserved Powers), Owner shall be deemed to have waived its right to receive any amount from City for costs incurred to maintain and secure the Property and the facilities thereon up to Fifteen Thousand Dollars (\$15,000.00) per month, whenever accruing, under Section 2(c)(4) of the Settlement Agreement.

2.2 **Uses.** Development of the Property shall occur in accordance with the Applicable Land Use Regulations, which uses shall include 250 senior housing units for persons qualifying under Civil Code Section 51.3(b)(1), (2) and (3) for occupancy of a senior citizen housing development, one (1) of which is a manager unit, and thirteen (13) of which must be rented to very low income household seniors) and a medical office building.

2.3 **Intensity.** Permitted density and intensity of use vested hereby shall be the maximum permitted by the Applicable Land Use Regulations, specifically 250 senior residential units (one a manager's unit, and 13 units for very low income households) on a 6.16 acre parcel resulting in density of 40.6 units per acre, and Building 3 consisting of 7,500 square feet of medical office on a 0.47 acre parcel resulting in 0.36 floor area ratio.

2.4 **Size and Design.** The maximum height and size of buildings vested hereby shall be as set forth in the Applicable Land Use Regulations, specifically Building 1 consisting of 90,473 square feet of residential with height up to 51'-3" feet (a partial 3- and 4-story, see Site Plans for details) and Building 2 consisting of 141,150 of residential with height up to 49'-6" feet (a partial 3- and 4-story, see plans for details), and Building 3 consisting of 7,500 square feet of medical office with a maximum height of 31'-0" feet.

2.5 **Description of the Development.** Development of the Project at the Property shall be in accordance with all Applicable Rules and any and all other documents submitted by Owner and approved by the City as set forth herein; provided, however, nothing contained herein shall be deemed or construed as requiring Owner to construct the Private Improvements, which may be constructed or not in accordance with Owner's complete and absolute discretion. In connection with and as a condition of approval for the Development of the Project, except as provided in Section 3.4 of this Agreement, Owner will be required to construct

the Required Public Improvements in connection with the Private Improvements. All construction on the Property shall adhere to the Building Codes in effect at the time a Building Permit is approved for such construction.

This Agreement, the Entitlements and the Development of the Project have been determined to be consistent with the current City's General Plan, the existing zoning restrictions affecting the Property and all other ordinances, policies and standards of the City in effect as of the Effective Date of this Agreement, along with exceptions permitted in accordance with City regulation and policy, and along with concessions permitted in accordance with State Density Bonus Law, all of which shall govern Development of the Project for the Term. No moratorium, whether adopted by the City or by initiative or referendum, shall apply to the Project for the entire Term. During the Term, to the extent there is a conflict between this Agreement and any amendments to the City's General Plan, zoning requirements, other Land Use Regulations or moratoria, whether adopted or imposed by the City or the electorate of the City by initiative or referendum, affecting Development of the Project, this Agreement shall control and supersede all such amendments.

2.6 **Issuance of Building Permits.** No building permit or certificate of occupancy shall be withheld from Owner if Owner has complied with the requirements of this Agreement. If necessary, the City shall use reasonable, good faith efforts to process in a prompt and timely manner any other Entitlements that are necessary for the completion of construction and occupancy of the Project, or any portion thereof.

2.7 **Timing of Development.** Owner shall obtain all Entitlements at its own cost for approval of the Project. City warrants that the City's General Plan and Zoning Code permit Development of the Project, and operation, and use of the Project, subject only to (i) those Development approvals yet to be obtained, if any; provided, however, that it is expressly understood by the parties hereto that City makes no representations or warranties with respect to approvals required by any other governmental entity and, except as otherwise provided in this Agreement, City hereby reserves full police power authority over the Project. In order to avoid the result in *Pardee Construction Co. v. City of Camarillo*, 37 Cal. 3d 465 (1984), Owner shall have the right, in the exercise of its sole and absolute discretion and subjective business judgment, to develop the Project in accordance with this Agreement at such rates and at such times as Owner deems appropriate.

2.8 **Tentative Subdivision Maps.** With respect to applications by Owner for approval of tentative subdivision maps for the Property, Owner may file and process vesting tentative maps in accordance with Government Code Section 66498.1, et seq., and the applicable provisions of City's Subdivision Code in effect on the Effective Date.

2.9 **Water Supply and Sanitary Sewer Service Infrastructure.** The City shall provide sufficient water and water delivery and sanitary sewer service infrastructure to serve the entire Project.

2.10 **Affordable Housing.**

2.10.1 **Development of Affordable Housing Units.** Owner shall construct or cause to be constructed five percent (5%) of the residential units developed with the Project (thirteen (13) of the residential units) as rental dwelling units affordable to very low income households, as defined Health and Safety Code Section 50105, ("Affordable Unit(s)"),

which shall be built within the Property and completed and ready for occupancy (as evidenced by the issuance of certificates of occupancy) according to the phasing plan contained in the Affordable Housing Agreement described below. The unit mix for these Affordable Units shall consist of studios, one bedroom and two bedroom units. Owner shall require any operator or manager of the Affordable Units to screen all tenants for eligibility with the affordable housing income requirements described in this Section 2.8.1 and certify compliance with same to the City and perform annual income recertification of all tenants of the Affordable Units. Following such annual certification, Owner shall advise City of the occupancy of the Affordable Units by delivering a “Certificate of Continuing Program Compliance” in a form to be approved by the City Attorney certifying: (i) the income of each household occupying an Affordable Unit; (ii) the number of Affordable Units in the Project which were occupied or deemed occupied by a individuals or families meeting the above income requirements, separated by each income level, during such period; (iii) the number of months during which each Affordable Unit was occupied; and (iv) any other reasonable requirement imposed by City to assure compliance with the provisions of this Section 2.8.1, as may be further described in the approved covenants required by Section 2.8.2 of this Agreement.

2.10.2 **Affordable Housing Agreement.** Prior to issuance of any grading or building permit, whichever comes first, Owner and City shall enter into an affordable housing agreement governing each Affordable Unit or complex of Affordable Units (“Affordable Units Complex”) to (1) include a phasing plan identifying that the market rate units will be issued occupancy approvals after the affordable units are issued occupancy approvals and (2) maintain the mix of affordable units for forty(40) years, (3) to impose maximum occupancy limits of 2 occupants per bedroom plus 1 additional occupant per dwelling unit, and (4) to properly maintain each Affordable Unit. The agreement shall further require the manager and operator of the Affordable Units Complex to maintain such Affordable Units Complex in good condition and repair at all times, provide adequate security, and impose leasing conditions on all tenants to maintain each Affordable Unit and the Affordable Units Complex free of any criminal activity, including but not limited to, drug-related criminal activity, on or near the Affordable Unit or Affordable Units Complex. “Drug-related criminal activity” means the illegal manufacture, sale, storage, distribution, use, or possession with intent to manufacture, sell, distribute, or use a controlled substance as defined in Section 102 of the Controlled Substance Act (21 U.S.C. 802). The terms of such agreement requiring each Affordable Unit and the Affordable Units Complex to be free of criminal activity shall further provide that violation of such requirements shall be a material violation of the lease of an Affordable Unit and good cause for immediate termination of the tenancy.

2.11 **Master Maintenance Association.** In the event the individual residential units within the Project, or any portion thereof, will be offered for sale, prior to recordation of the first final subdivision map for the residential portion of the Project, Owner shall provide draft covenants, conditions and restrictions (“CC&Rs”) for the residential portion of the Project to be offered for sale to the City in a form and substance reasonably acceptable to City’s Development Services Director and City Attorney for approval. The final approved CC&Rs shall be recorded with the Orange County Recorder’s Office. The CC&Rs shall provide that a master homeowners association shall be created and provisions made to adequately fund in perpetually maintenance in good condition and repair all common, park, recreation, parking and open space areas within the Project. The master homeowners association shall have the authority to transfer maintenance obligations to Project component homeowners associations in a form and substance reasonably



acceptable to the City's Community Development Director and City Attorney. Additionally, prior to recordation of the first final subdivision map for a commercial development within the Project containing more than one commercial unit, Owner shall provide draft CC&Rs to the City in a form and substance reasonably acceptable to the City's Community Development Director and City Attorney for the perpetual, full and adequate maintenance in good condition and repair all common areas within any such complex of commercial units. The final Community Development Director and City Attorney-approved CC&Rs shall be recorded with the Orange County Recorder's Office.

2.12 **Compliance with Laws.** Owner shall carry out the design and construction of the Project in conformity with all Land Use Regulations and applicable Laws to the extent they do not conflict with the Applicable Rules.

2.12.1 **Public Works Requirements.** To the extent Owner elects to construct the Required Public Improvements and Owner receive Development Impact Fee credit for same pursuant to Section 2.11.2 of this Agreement, Owner shall design and construct the Required Public Improvements in conformity with all applicable Laws (including, without limitation, with respect to the Required Public Improvements only, and not the Private Improvements, the requirements under California Law to pay prevailing wages and to hire apprentices and all applicable public bidding requirements) (collectively "Labor Laws"). The City and Owner acknowledge and agree that, due to the provision of reimbursements by the City for the Required Public Improvements, the construction and installation of the Required Public Improvements shall be considered "public works" pursuant to Labor Code Section 1720, *et seq.* Owner hereby agrees that, with respect to Owner's construction and installation of the Required Public Improvements, Owner and its contractors and subcontractors shall pay prevailing wages and employ apprentices in compliance with Labor Code Section 1770, *et seq.*, and shall be responsible for the keeping of all records required pursuant to Labor Code Section 1776, complying with the maximum hours requirements of Labor Code Sections 1810 through 1815, and complying with all regulations and statutory requirements pertaining thereto. Upon the periodic request of the City, Owner shall certify to the City that it is in compliance with these requirements. Nothing herein shall be deemed to make any part of the Project other than the Required Public Improvements a public work.

2.12.2 **Reimbursement of City Development Impact Fees.** To the extent that Owner constructs a Required Public Improvement for which a Development Impact Fee is otherwise imposed, Owner shall be eligible to receive a fee credit against the Development Impact Fee imposed on the Project for the same type of public facility so constructed.

### 3. **Development Exactions.**

3.1 **Reservations, Dedications, and Improvements.** Reservations and Dedications of land and the provision of Required Public Improvements for public purposes shall be only those required by this Agreement.

3.2 **Owner's Obligation to Pay Fees.** Upon issuance of each Building Permit for the Private Improvements, Owner shall pay all required Development Impact Fees (subject to the provisions of Section 3.3 of this Agreement), Fair Share Fees (fees assessed by City for Required Public Improvements, the cost of which is shared by other private and governmental

entities), Processing Fees and Charges imposed by the City all other fees and charges imposed by all other governmental agencies with jurisdiction over the Property or the Project within the time and in the manner prescribed by such agency and Owner shall receive such credits and/or reimbursements for Required Public Improvements constructed in accordance with the applicable provisions set forth in the Municipal Code and this Agreement.

3.3 **Development Impact Fees.** Development of the Project shall be subject to all Development Impact Fees imposed by the City in accordance with the applicable provisions of the Municipal Code or other City Council enactment; provided, however, City shall impose only those Development Impact Fees required to be paid and in the amount established by City as of the Effective Date. As further set forth in Sections 5.8 and 5.10 of this Agreement, nothing in this Agreement is intended to prevent the assessment of fees or other exactions by any governmental entity not affiliated with City.

3.4 **Provision of Real Property Interests.** Subject to the provisions of this Section 3.4, in any instance where Owner is required to construct Required Public Improvement on land not owned by Owner, City shall, at its sole cost and expense, provide or cause to be provided, the real property interests necessary for the construction of such Required Public Improvements. To the extent real property owned by the City as of the Effective Date is needed for right-of-way for Required Public Improvements, the City shall Dedicate such property for public right-of-way at no cost to Owner unless prevented from doing so by applicable Laws. Owner shall construct all Required Public Improvements as contemplated by Attachment No. 4 of this Agreement; provided, however, Owner's obligations with respect to Required Public Improvements on such public right-of-way shall be conditioned upon City providing access to the public right-of-way as required to fulfill Owner's obligations under this Agreement. If Owner is unable to obtain such required right of way, Owner shall request that the City obtain such required right-of-way (at City's sole cost and expense) subject to the time limitations set forth in Government Code Section 66462.5. Thereafter, the City shall use good faith efforts to obtain such required right-of-way. Nothing herein shall obligate the City to pursue eminent domain proceedings to acquire such public right-of-way. In the event City is unable to obtain the right-of-way necessary to construct and install a Required Public Improvement, the condition of approval or other requirement to construct and install such Required Public Improvement shall be waived by City.

4. **Vested Rights.** The following provisions shall apply to the Project until the expiration of the Term:

4.1 **Project Entitlements/Density.** Owner is hereby granted the vested right to Development of the Project in accordance with this Agreement including, but not limited to, the Applicable rules, subject only to the terms, provisions and conditions hereof.

4.2 **Enforcement.** Except to the extent this Agreement has been amended, modified, suspended or terminated in accordance with its terms, this Agreement shall be enforceable by either Party notwithstanding any change in any Applicable Land Use Regulations.

5. **Reserved Powers.** Notwithstanding any other provision of this Agreement, the following regulations shall apply to the Development of the Project as and to the extent that such regulations apply generally to similar developments proposed or approved within the City:

5.1 **Processing Fees and Charges.** The City's Processing Fees and Charges at the rates in effect when each application and decision subject thereto is deemed complete.

5.2 **Procedural Regulations.** Procedural regulations related to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and/or any other matter of procedure so long as such procedural regulations are uniformly and consistently applied by the City in a non-discriminatory manner.

5.3 **Uniform Building Codes.** Written regulations, policies and rules governing objective engineering and construction standards and specifications applicable to public and private improvements, including, without limitation, all Building Codes and similar codes adopted by the City and any local amendments to such codes adopted by the City.

5.4 **Police Power.** Any City ordinance, resolution, regulation, or official policy which is reasonably necessary to protect persons on the Property and in the community, or both, from conditions dangerous to their health, safety, or both, shall apply to the Project notwithstanding that the application of such ordinance, resolution, regulation, or official policy which would result in the impairment of Owner's vested rights under this Agreement. Any such regulations must constitute a valid exercise of the City's police power, applied and enforced in a uniform, consistent and non-discriminatory manner and must be applied and construed so as to provide the Owner, to the maximum extent possible, with the rights and assurances provided under this Agreement.

5.5 **Non-Conflicting Ordinances, Regulations and Official Policies.** Written regulations approved by the City that are not in material conflict with the Applicable Rules and do not materially and adversely impact Development of the Project. Any ordinance, regulation or policy adopted after the Effective Date, whether adopted by initiative or otherwise, limiting the rate or timing of Development of the Property or impacting and/or increasing any Development Exaction shall be deemed to materially conflict with the Applicable Rules and shall therefore not be applicable to Development of the Project.

5.6 **Conflicting Ordinances, Regulations and Official Policies.** Ordinances, regulations and official policies approved by the City that are in material conflict with the Applicable Rules shall be applicable and binding upon Owner and the Project only if Owner has given its written consent to the application of such Ordinances, regulations and official policies to Development of the Property and/or the Project.

5.7 **End Users.** Ordinances, regulations and official policies of the City that impose, levy, alter or amend fees, charges, or Land Use Regulations relating solely to post-Development conduct of consumers or end users of Development on the Property, so long as the City applies and enforces such ordinances, regulations and official policies in a uniform, consistent and non-discriminatory manner and such enactments do not impair Owner's vested rights to Develop or operate the Project.

5.8 **Laws.** Laws of the state and/or federal governments, including those of regional agencies or departments such as the Regional Water Quality Control Board, which override Owner's vested rights set forth in this Agreement shall apply to the Project and the Property, together with any City ordinances, resolutions, regulations and official policies to the

extent necessary to enable the City to comply with such overriding Laws; provided, however, that (i) Owner does not hereby waive its right to challenge or contest the validity of any Laws; and (ii) in the event that any such Law (or City ordinances, resolutions, regulations or official policies adopted or enacted pursuant thereto) prevents or precludes compliance with one or more provisions of this Agreement, the Parties shall negotiate in good faith the amendment or suspension of such provisions of this Agreement to ensure the minimal necessary interference with Owner's rights hereunder; provided, however, that no Party shall be bound to approve any amendment to this Agreement unless this Agreement is amended in accordance with the procedures applicable to the adoption and amendment of development agreements as set forth in the Development Agreement Act, the Development Agreement Ordinance, and this Agreement and each Party retains full discretion with respect thereto.

5.9 **Immediate Threat.** If the City Council finds that there is a severe and immediate threat to the health or safety of the City's residents due to the Development of the Project, the City may unilaterally suspend this Agreement for a period not to exceed the time required for notice and a public hearing before the City Council to determine whether suspension of this Agreement shall be extended; provided, however, that all applicable time limits set forth herein shall be extended for any such period of suspension, including, but not limited to, the Term.

5.10 **Regulation by Other Public Agencies.** The Parties acknowledge that other public agencies, not within the control of the City, may possess authority to regulate aspects of Development of the Project and the Property separately from the City. This Agreement does not limit the authority of such other public agencies. Nothing contained in this Agreement shall be construed as limiting, in any way, the authority of the City to impose on the Project any new or increased development impact fees or other fees or charges imposed by any other public agency with jurisdiction over the Property or Project, but collected by the City.

6. **Amendments.** This Agreement may be amended or terminated in whole or in part only in the manner provided for in Government Code Section 65868, the Development Agreement Ordinance and this Agreement. This provision shall not limit any remedy of the City or Owner as provided by this Agreement.

6.1 **Material Changes.** Owner may request amendments to the Entitlements without risk to any rights that have vested pursuant to this Agreement. Any such requested changes shall be subject to the City's standard and generally applicable review and approval procedures then in effect; provided, however, only a Material Change in the Project shall require an amendment to this Agreement. The City may condition such Material Change approval to ensure compliance with CEQA.

6.2 **Operating Memoranda.** This Agreement requires a close degree of coordination between the City and Owner. Refinements of planned Development of the Property may demonstrate that clarifications are appropriate with respect to the details of the City's and Owner's performance under this Agreement. City and Owner may effectuate such clarifications through operating memoranda approved by both Parties which, after execution, shall be attached hereto and made a part of this Agreement. No such operating memoranda shall constitute an amendment to this Agreement requiring public notice and hearing pursuant to Section 6 of this Agreement. Upon the City Attorney's reasonable approval, the City Manager may execute any operating memoranda without City Council action.

6.3 **Nature of Change in Law.** The provisions of this Agreement shall apply to the Development of the Project regardless of whether a change in the Entitlements is the result of the City Council or voter action, whether by initiative or referendum. The Parties intend hereby to avoid the result in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984) as provided in Section 2.6 of this Agreement.

7. **Owner Obligations.**

7.1 **Compliance With Law.** Owner shall comply with all Laws and the Entitlements.

7.2 **Nature of Dedications.** All Dedications made by Owner to the City shall be made free and clear of liens and encumbrances, other than easements or restrictions that in the reasonable determination of the City do not preclude or interfere with the dedicated purpose.

7.3 **Processing Fees.** Owner shall pay all Processing Fees and Charges pursuant to the fee schedules in effect at the time of application for such City approval. Owner shall also pay any additional third party, out-of-pocket costs reasonably incurred by the City for expedited processing requested by Owner.

7.4 **Costs of City Actions.** Owner shall pay all third party, out-of-pocket costs City reasonably incurs as authorized by and in furtherance of this Agreement within thirty (30) calendar days following receipt of appropriate documentation (including, for example, invoices) showing such costs. Such costs include, but are not limited to, the City's out-of-pocket, third party costs incurred to in connection with the City's efforts to seek assistance from other governments pursuant to Section 8.3 of this Agreement; and monitoring and review costs pursuant to Section 12 of this Agreement.

7.5 **Obligation to Construct the Required Public Improvements.** Notwithstanding anything to the contrary contained in this Agreement, (i) nothing contained in this Agreement shall be deemed or construed as creating any obligation on Owner to construct the Required Public Improvements unless and until the date the City issues a Building Permit(s) for the Private Improvements ("Building Permit Date"); and provided, further, prior to the Building Permit Date, Owner shall not be deemed to be in Default under this Agreement for the failure to commence construction of the Required Public Improvements for the Project. Until the Building Permit Date, or at any time after the completion and acceptance of the Required Public Improvements, Owner shall have the absolute right, exercisable upon the delivery of written notice to the City, to terminate this Agreement, in which event (i) Owner shall reimburse the City for all out-of-pocket third party costs actually incurred by the City in connection with and as required by this Agreement prior to the delivery of such termination notice; and (ii) the City shall execute and deliver to Owner for recordation a notice of termination of this Agreement, and thereafter this Agreement shall be of no further force or effect and neither Party shall have any further obligations hereunder.

8. **City Obligations.**

8.1 **Processing.** The City shall accept and process all completed applications for Permits for the Project in accordance with its standard policies and procedures applicable to all

applications for Permits and in accordance with the Permit Streamlining Act (Gov. Code § 65920, *et seq.*).

8.2 **Review.** The City shall provide sufficient staff to review compliance with this Agreement.

8.3 **Assistance From Other Governments.** The City shall use reasonable good faith efforts to seek, assist and cooperate with Owner in seeking all of the following as requested by Owner for Development of all or any part of the Project:

8.3.1 Necessary permits under the jurisdiction of or issued by the state or federal governments or any instrumentalities thereof.

8.3.2 Available tax benefits from the state or federal governments, including but not limited to affordable housing tax incentives and credits, sales tax exemptions and other tax benefits.

8.3.3 Available grants, loans, proceeds of bond issues and subsidies from the state or federal governments for affordable housing and other portions of the Project.

8.4 **Mitigation Fee Act.** The City shall comply with Government Code Section 66006 with respect to any fee it receives or cost it recovers pursuant to Development of the Property.

8.5 **Recordation of Agreement.** The City Clerk shall file this Agreement for recordation with the County Recorder of the County of Orange within ten (10) days after the Effective Date and execution of this Agreement by City and Owner. In connection with the expiration of the Term or any earlier termination of this Agreement, the City shall execute and deliver to Owner a recordable notice of termination of this Agreement in form and substance reasonably acceptable to Owner.

## 9. **Term.**

9.1 **Commencement.** This Agreement shall become effective on the Effective Date.

9.2 **Duration.** Unless terminated earlier pursuant to another provision hereof, the term this Agreement shall commence on the Effective Date and be in full force and effect until the twentieth (20th) anniversary of the Effective Date (“Term”). All Entitlements shall be valid and vested for the Term.

9.3 **Termination.** This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

9.3.1 **Automatic Termination.** If not previously terminated in accordance with this Agreement, this Agreement shall automatically terminate and be of no further force or effect upon completion of the Project in accordance with the terms, provisions and conditions of this Agreement and any further amendments thereto and the issuance of all occupancy permits and acceptance by the City of all dedications and improvements required by

Development of the Project.

9.3.2 **Expiration**. Expiration of the Term.

9.3.3 **Final Judgment**. Entry of a final judgment setting aside, voiding or annulling the adoption of the Enabling Ordinance.

9.3.4 **Referendum**. The timely adoption of a referendum measure overriding or repealing the Enabling Ordinance. Owner acknowledges that, pursuant to Article 2, Section 11 of the California Constitution and California Elections Code Section 9235, *et seq.* (collectively, the "Referendum Laws"), the electors of the City may, within thirty (30) days after adoption of the Enabling Ordinance, file a petition in accordance with Elections Code Section 9237 to require the City to either repeal the Enabling Ordinance or hold an election to obtain voter approval of such and this Agreement. In the event a valid referendum petition challenging adoption of the Enabling Ordinance is timely filed in accordance with the Referendum Laws, the City shall submit the Enabling Ordinance to the voters for approval in accordance with the Referendum Laws.

9.3.5 **Termination Based on Default**. Termination of this Agreement based on any material Default of any Party (except as otherwise provided in this Agreement) after complying with the termination proceedings required by this Agreement.

9.3.6 **Termination Under Section 7.5**. Termination of this Agreement pursuant to Section 7.5 of this Agreement.

9.4 **Effect of Agreement on Title**. The Parties shall record an appropriate release upon termination of this Agreement as to all or any part of the Property, in form and substance acceptable to Owner.

9.5 **Force Majeure Extensions**. The Term of this Agreement and the time for performance by either Party of any of its obligations hereunder shall be extended by the period of time that a Force Majeure event exists. Such delay shall not be deemed to be a Default. In addition, the Term of this Agreement shall be extended day-for-day by delays arising from the pendency of Litigation relating to this Agreement or to the Development contemplated hereby. There shall be no extension for Force Majeure unless the Party claiming that a Force Majeure event exists shall give notice thereof to the other Party within thirty (30) days of actually learning of a Force Majeure event.

## 10. **Financing, Transfer, and Assignment**.

10.1 **Right to Encumber**. Owner may, in its sole and absolute discretion, obtain or allow one or more Encumbrances. Unless otherwise required by Law, neither entering into nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any Encumbrance made in good faith and for value. In connection with any Encumbrance, the City shall execute and deliver to a Financier of any Encumbrance an estoppel certificate as requested by such Financier in accordance with Section 13.8 of this Agreement.

10.2 **Mortgage Protection**. This Agreement shall be superior and senior to the lien of any Encumbrance. Notwithstanding the foregoing, no breach of this Agreement shall

defeat, render invalid, diminish, or impair the lien of any Encumbrance made in good faith and for value, and any acquisition or acceptance of title or any right or interest in or with respect to the Property or any portion thereof, or to this Agreement, by a Financier (whether pursuant to foreclosure, lease termination or otherwise) shall upon written election by the Financier within sixty (60) days after receipt of such right, title or interest, be subject to all of the terms and conditions of this Agreement and any such Financier who takes title to the Property or any portion thereof, or to this Agreement, shall also be entitled to the rights and obligations arising under this Agreement.

10.3 **Financier Not Obligated.** Notwithstanding the provisions of this Section 10, a Financier will not have any rights, obligations or duties pursuant to the terms set forth in this Agreement to perform the obligations of Owner or other affirmative covenants of Owner hereunder or to guarantee such performance, unless such Financier expressly assumes the rights and obligations of the Owner and except that (a) the Financier shall, upon written election by the Financier within sixty (60) days after receipt of such right, title or interest, have no right to develop the Project without materially complying with the terms of this Agreement, and (b) to the extent that any covenant to be performed by Owner is a condition to the performance of any covenant by the City, the performance thereof by Owner or Financier or any other person or entity shall continue to be a condition precedent to the City's performance hereunder. If a Financier so expressly assumes the rights and obligations of the Owner under this Agreement, such Financier shall not be liable for any interest, penalties, fines or any damages from any breach or default accruing prior to the date of such notice. Although not obligated to do so, upon written election by the Financier within sixty (60) days after receipt of such right, title or interest, any Financier may do any act or thing required of Owner hereunder, and do any act or thing which may be necessary and properly done in the performance and observance of the agreements, covenants and conditions hereof to prevent termination of this Agreement in accordance with Section 10.4 below. Any Financier and its agents and contractors shall have full access to the Property for purposes of accomplishing any of the foregoing. Any of the foregoing done by any Financier shall be as effective to prevent a termination of this Agreement as if the same would have been done by the Owner.

10.4 **Notice of Default to Financier; Right of Financier to Cure.** Each Financier shall, upon written request to City be entitled to receive written notice from City of the result of the Annual Review and of any default by Owner of its obligations set forth in this Agreement simultaneously with the delivery of such notices to the Owner. Each Financier shall have the right, but not an obligation, to cure such default within ninety (90) days after receipt of such notice or, if such default can only be remedied or cured by such Financier upon obtaining possession of the Property, such Financier shall have the right to seek or obtain possession with diligence and continuity through a receiver or otherwise, and to remedy or cure such default within ninety (90) days after obtaining possession, and, except in case of emergency or to protect the public health or safety as determined by the City in its reasonable discretion, City may not exercise any of its remedies set forth in this Agreement until expiration of such ninety (90) day period whether commencing upon receipt of notice or upon obtaining possession of the interests covered by a Encumbrance, as applicable; provided, however, that in the case of a default which cannot reasonably be remedied or cured or the remedy or cure of which cannot be commenced within such ninety (90) day period, the Financier shall have such additional time as is reasonably necessary to remedy or cure such default. Any notice of termination delivered in violation of this Section 10.4 shall be rendered void. In any case where, sixty (60) days after receipt by the



Financier of the notice of the Owner's default, the holder of any Encumbrance creating a lien or encumbrance upon the Property, or any part thereof, has not exercised the option to cure, or, if it has exercised the option, is not proceeding diligently with the cure, the City may proceed with termination of this Agreement and any further obligations of City hereunder.

10.5 **Bankruptcy.** Notwithstanding the foregoing provisions of this **Section 10**, if any Financier is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Owner, the times specified in Section 10.4 for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition. In addition, if this Agreement is rejected or otherwise terminated in connection with any such proceeding, then upon the request of any Financier, a new development agreement upon the same terms and conditions set forth in this Agreement shall, at the election of Financier, be entered into between such Financier and City.

10.6 **Termination Subject to Financier's Rights.** All rights of City to terminate this Agreement, vis-a-vis the Financier, as a result of the occurrence of any default shall be subject to, and conditioned upon, City having first given to each Financier written notice of the default as required under Section 10.4 above, and all Financiers having failed to remedy such default or acquire Owner's interests hereunder, or having failed to commence foreclosure or other appropriate proceedings in the nature thereof as set forth in Section 10.4 above.

10.7 **No Cancellation.** There shall be no cancellation, surrender or modification of this Agreement by joint action of the Parties without a minimum of ninety (90) days prior written notice to each Financier who has requested such notice.

10.8 **Notice.** Owner and/or any Financier shall have the right to give notice to the City of the existence of an Encumbrance. Thereafter, the City shall serve each Financier with copies of all Notices given to Owner pursuant to this Agreement.

10.9 **Transfer or Assignment.** Subject to Section 10.10, Owner shall have the right to sell, transfer, or assign its rights and obligations under this Agreement (collectively, an "Assignment") in connection with a transfer of Owner's interest in all or any portion of the Property or Owner's lease of all or substantially all of the residential or commercial portions of the Property, or both, each as designated by the Applicable Rules (such interest transferred or leased, the "Transferred Property"). No Assignment shall be made unless made together with the sale, transfer, lease or assignment of all or part of the Property. Any mortgage, deed of trust, or other form of conveyance for financing of the Project (other than a lease of the type described in the first sentence of this Section 10.9) shall not be considered an Assignment for purposes of this Section 10.9. Within fifteen (15) business days after any Assignment, Owner shall notify City in writing of the Assignment and provide City with an agreement, in a form reasonably acceptable to City, executed by the purchaser, transferee, lessee or assignee (collectively, the "Assignee") to expressly and unconditionally assume all duties and obligations of Owner under this Agreement.

10.10 **Effect of Assignment.** Subject to Section 10.9, upon an Assignment the Assignee shall be liable for the performance of all obligations of Owner with respect to Transferred Property, but shall have no obligations with respect to the portions of the Property, if any, not transferred or leased (the "Retained Property"). The owner or lessee of the Retained Property shall

be liable for the performance of all obligations of Owner with respect to Retained Property, but shall have no further obligations or Liabilities (as defined in Section 15 of this Agreement) with respect to the Transferred Property. The Assignee's exercise, use and enjoyment of the Property shall be subject to the terms of this Agreement to the same extent as if the Assignee were the Owner.

10.11 **City's Consent to Assignment.** The City's consent shall not be required to an Assignment unless, at the time of the Assignment, Owner has been determined to be in default of this Agreement and the default has not been cured. If Owner is in default, City shall consent to any Assignment which provides adequate security to City, in the reasonable exercise of City's discretion, to guarantee the cure of the default upon completion of the Assignment.

## 11. **Binding Effect.**

11.1 **Entirety of Property.** Except as otherwise provided in this Agreement, all of the Property shall be and remain subject to this Agreement throughout the Term unless sooner terminated in accordance with this Agreement.

11.2 **Property and Agreement Remain Linked.** Owner shall have the right to sell, transfer, lease or assign the Property or any portion thereof and its rights under the Agreement. However, except as otherwise provided in this Agreement, any person acquiring any interest in the Property shall do so subject to this Agreement. Conversely, no sale, transfer, lease or assignment of any right or interest under this Agreement shall be made unless made together with a corresponding sale, transfer, lease or assignment as to the Property or any portion thereof. If less than all of the Property is sold or leased, the purchaser or lessee of that portion of the Property shall be responsible for all Development related to the acquired portion, including Development Exactions and the Required Public Improvements applicable to that portion of the Property or Project acquired by such purchaser or lessee, and the original Owner (or its successors as to the entire Property) shall remain responsible for all such matters outside such portion of the Property or Project unless such obligations are (i) assigned by Owner; (ii) assumed by the purchaser or lessee as documented in writing; or (iii) no longer applicable because such obligations have been completed prior to the date of such transfer; provided, however, the obligations of Owner under this Agreement shall not apply to the purchaser or lessee of any portion of the Property where Development has been completed.

11.3 **Binding on Financiers.** This Agreement shall bind all Financiers and every owner of the Property, or part thereof, whose title is acquired by foreclosure or deed-in-lieu of foreclosure; provided, however, such Financier and their respective successors and assigns shall not be liable for any interest, penalties, fines or any damages from any pre-foreclosure (or deed-in-lieu of foreclosure) Default accruing prior to the date such party takes title to the Property or any portion thereof through completion of a foreclosure action or execution and delivery of a deed-in-lieu of foreclosure.

## 12. **Compliance Review.**

12.1 **Annual Review.** This Agreement shall be subject to annual review ("Annual Review") by the City pursuant to the applicable provisions of the Municipal Code on or before each anniversary of the Effective Date and/or conduct a Special Review, as described in Section 12.2 of this Agreement, in order to ascertain the good faith compliance by Owner with the

terms, provisions and conditions of this Agreement. Within thirty (30) days of receipt of written notice from the City Manager of the City's intent to conduct a Special Review and/or Annual Review, Owner shall submit a report, in a form reasonably required by the City Manager, describing its compliance with this Agreement during the immediately preceding twelve (12) month period.

12.2 **Special Review**. A Special Review of compliance with this Agreement may be made either by agreement of the Parties or by initiation in one or more of the following ways:

12.2.1 **City Manager**. Recommendation of the City Manager, based on an alleged default of Owner;

12.2.2 **City Council**. Action of the City Council.

12.3 **Procedure for Annual Review and/or Special Review**. With respect to either Annual Review or Special Review, the provisions of the applicable provisions of the Municipal Code shall be followed.

12.4 **Certificate of Agreement Compliance**. If, at the conclusion of an Annual Review or Special Review, Owner is found to be in compliance with this Agreement, the City shall, upon request by Owner, issue a Certificate of Agreement Compliance ("Certificate") to Owner (and any Financier) stating that, after the most recent Annual Review or Special Review and based upon the information known or made known to the City Manager and City Council that (i) this Agreement remains in full force and effect; and (ii) Owner is not in Default under this Agreement. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after an Annual Review or Special Review and shall state the anticipated date of commencement of the next Annual Review. Owner may record the Certificate with the County Recorder of the County of Orange.

12.5 **Failure by the City**. The failure of the City to conduct any Annual Review shall not constitute a Default under this Agreement, affect Owner's obligations hereunder, or render this Agreement or any portion thereof invalid or void.

### 13. **Default**.

13.1 **Default by Owner**. Owner shall be in Default under this Agreement if it does any or any combination of the following and does not cure the same within the applicable Notice and cure period, if any, set out below:

13.1.1 **Fraud**. Practices any intentional fraud or deceit upon the City, as reasonably determined by the City Council, in which case no right to cure shall apply; provided, however, Owner shall be given prior Notice of such determination and the opportunity to respond to any allegations at a duly noticed public hearing before the City Council at which evidence may be submitted and testimony received.

13.1.2 **Material Default**. Fails to cure a material Default of this Agreement of the type described in this Section 13.1.2 within the time required by this Agreement following a written notice of Default from the City to Owner. With respect to any payment default involving an obligation to pay money to the City, such cure period shall be fifteen (15) Business

Days following Owner's receipt of written notice from the City of failure to pay when due, and with respect to all other events of Default, such cure period shall not be less than thirty (30) calendar days from Owner's receipt of written notice from the City; provided, further, if a Default not involving the payment of money to City cannot reasonably be cured within such thirty (30) day period, then Owner shall not be deemed in Default under this Agreement if Owner commences such cure within such thirty (30) day period and thereafter diligently pursues such cure to completion within a reasonable period of time.

13.2 **Default by the City.** The City shall be in Default under this Agreement only if it fails to cure a material breach of this Agreement within the time set forth in a written notice of Default from Owner to the City; provided, however, with respect to any payment Default, such cure period shall not be less than fifteen (15) Business Days following the City's receipt of written Notice from Owner, and with respect to all other events of Default, such cure period shall not be less than thirty (30) calendar days following the City's receipt of written Notice from Owner; provided, further, if such Default cannot reasonably be cured within such thirty (30) day period, then the City shall not be deemed in Default under this Agreement if the City commences such cure within such thirty (30) day period and thereafter diligently pursues such cure to completion within a reasonable period; provided, further, the Term and the time for Owner's performance of its obligations hereunder shall be extended on a day-for-day basis during such cure period to the extent Owner is actually prejudiced by the City's Default hereunder.

13.3 **Notice of Default.** A Party alleging a Default shall serve written notice thereof on the other Party. Each such notice shall state with specificity all of the following:

13.3.1 **Nature of Default.** The nature of the alleged Default.

13.3.2 **Manner of Cure of Default.** The manner in which the alleged Default may be satisfactorily cured.

13.3.3 **Time to Cure Default.** Subject to the provisions of Sections 13.1 and 13.2 of this Agreement, a period of time in which the Default may be cured.

13.4 **Remedies for Default.** The Parties acknowledge and agree that the nature of the Project and the terms of this Agreement render ordinary remedies at law inadequate for a Default under this Agreement. The Parties also acknowledge and agree that it would not be feasible or possible to restore the Property to its pre-Development condition once implementation of the Agreement has begun. Therefore, the Parties agree that, except as otherwise expressly provided in this Agreement, the remedies for a Default under this Agreement shall be limited to one or more of the following:

13.4.1 **Default by City.** The remedies for Default by the City shall be limited to injunctive relief, mandate (traditional and/or administrative), specific performance, and/or restitution/reimbursement for unused fees and for Dedications and improvements to the extent not required for Development completed as of the date Owner gave the City Notice of Default pursuant to Section 13.3 of this Agreement.

13.4.2 **Default by Owner.** The remedies for Default by Owner shall be limited to injunctive relief, specific performance, termination, and/or restitution.

13.5 **Service of Process.** In the event that any legal action is commenced by Owner against the City or City against Owner, service of process shall be made in such manner as may be provided by Law.

13.6 **Rights and Remedies Are Cumulative.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other Party.

13.7 **Inaction Not a Waiver of Default.** Any failures or delays by either Party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

13.8 **Estoppel Certificate.** Each of the Parties shall at any time and from time to time upon not less than thirty (30) days prior notice by the other Party, execute, acknowledge and deliver to such other Party a certificate in writing certifying that this Agreement is in full force and effect, stating which provisions of this Agreement have been fully performed, and stating whether or not to the actual knowledge of the signer of such certificate such other Party is in Default in performing or observing any provision of this Agreement, and, if in Default, specifying each such Default of which the signer may have knowledge, and such other matters as such other Party may reasonably request. It is intended that any such certificate delivered by Owner to City may be relied upon by the City or any successor in interest to the City, and it is further intended that any such certificate delivered by the City to Owner may be relied upon by Owner or any prospective assignee of Owner's interest in the Project, Property or this Agreement and any Financier. Reliance on any such certificate shall not extend to any Default as to which the signer of the certificate had no actual knowledge at the time the statement was signed.

14. **Appeal of Administrative Decisions.** Owner may appeal directly to the City Council any decision by City staff, including, but not limited to, the City Manager, concerning an interpretation and/or administration of this Agreement or any part hereof. Owner shall file any such appeal with the City Clerk within twenty (20) Business Days after Owner receives Notice of the staff decision; provided, however, that a failure to timely file an appeal shall not nullify the right to such appeal except to the extent the City is actually prejudiced by such failure to timely appeal. The City Council shall render a decision at an open, public meeting held within sixty (60) calendar days following Owner's delivery of the appeal to the City Clerk.

15. **Indemnification.** Indemnitor shall pay for, save, protect, defend, indemnify and hold harmless the Indemnitees from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including, without limitation, third party tort claims, civil or criminal penalties, fines and/or monetary sanctions), losses, costs or expenses (including, without limitation, consultant's fees, investigation and laboratory fees, attorney's fees and remedial and response costs) (the foregoing are hereinafter collectively referred to as "Liabilities") which may now or in the future be incurred or suffered by the Indemnitees (or any of them) by reason of, resulting from, in connection with or arising in any manner whatsoever as a direct or indirect result of any of the following: (i) any claim, action or proceeding brought by a third party against any Indemnitee to

attack, set aside, void or annul the approval of this Agreement or the Entitlements except any such claim, action or proceeding to attack, review or set aside the City's General Plan; (ii) any Indemnitor's release of water from the Property or the Project; and/or (iii) Development of the Project; provided, however, that the foregoing indemnity shall not apply to any Liabilities to the extent arising or occurring as a result of the negligence or willful misconduct of any Indemnitee. The City shall have the right to reject or consent to any particular law firm or attorney engaged by Owner to represent the City; provided, however, the City's consent shall not be unreasonably withheld; and further provided that if the City elects to retain separate counsel following assumption of defense by Owner under this Section 15, all fees and expenses associated with retention of such separate counsel shall be at the City's sole cost and expense. The City shall cooperate in good faith with Owner when Owner is acting pursuant to this Section 15. Indemnitor's obligations under this Section 15 shall survive termination of this Agreement with respect to any Liabilities covered by this Section 15 that arose during the Term and shall terminate upon the expiration of the statute of limitation applicable to such surviving Liabilities covered under this Section 15.

16. **Insurance Requirements.** Owner shall purchase and maintain in full force and effect until completion of all Development contemplated by this Agreement policies of insurance in accordance with this Section 16 and shall cause its contractors to purchase and maintain in full force and effect in accordance with Section 16.2 of this Agreement, the following policies of insurance:

16.1 **Owner's Liability Insurance.** Liability insurance with the minimum insurance coverages set forth below:

16.1.1 **Commercial General Liability.** Commercial General Liability Insurance with a combined single limit of liability of Two Million Dollars (\$2,000,000.00) for bodily injury, personal injury and property damage, arising out of any one occurrence. The City shall be named as an "additional insured" under such policy as it applies to Owner's activities under this Agreement. The insurance provided herein shall be considered "primary" insurance.

16.1.2 **Workers Compensation.** Workers compensation and employer's liability insurance as required by Law.

16.2 **Insurance During Construction.** Prior to commencing Project construction activities within the Property, Owner shall obtain and require its contractors and their subcontractors to obtain and thereafter maintain, so long as such Project construction activity is occurring and until the completion of such Project construction, the minimum insurance coverages set forth below:

16.2.1 **Workers Compensation.** Workers compensation and employer's liability insurance as required by any applicable law or regulation.

16.2.2 **Commercial General Liability.** Commercial General Liability insurance covering all operations by or on behalf of the contractors and subcontractors, which shall include the following minimum limits of liability and coverages:

- (a) Required coverages:
  - (i) Premises and Operations.

- (ii) Products and Completed Operations.
- (iii) Contractual Liability, insuring the indemnity obligations assumed by contractor under the contract documents.
- (iv) Broad Form Property Damage (including Completed Operations).
- (v) Explosion, Collapse and Underground Hazards.
- (vi) Personal Injury Liability.
- (b) Minimum limits of liability:
  - (i) \$2,000,000 each occurrence (for bodily injury and property damage).
  - (ii) \$2,000,000 for Personal Injury Liability.
  - (iii) \$2,000,000 aggregate for Products and Completed Operations.
  - (iv) \$2,000,000 general aggregate applying separately to this Project.

16.2.3 **Automobile Liability.** Automobile liability insurance, including coverage for owned, hired and non-owned automobiles. The limits of liability shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage. Owner's contractors shall require each of its subcontractors to include in their liability insurance policies coverage for automobile contractual liability.

16.3 **Terms of Insurance.** All insurance required by this Section 16 shall be written on an occurrence basis and procured from companies rated by Best's Rating Guide not less than A-VIII, and which are authorized to do business in California. All insurance may be provided under (i) a combination of primary and excess policies; (ii) an individual policy covering the Property; (iii) a blanket policy or policies which includes other liabilities, properties and locations of Owner; provided, however, that if such blanket commercial general liability insurance policy or policies contain a general policy aggregate of less than Two Million Dollars (\$2,000,000), then Owner shall also maintain excess liability coverage necessary to establish a total liability insurance limit of Two Million Dollars (\$2,000,000); (iv) a plan of self-insurance, provided that Owner notifies the City of its intent to self-insure (which notice shall be deemed to have been delivered to City upon the full execution of this Agreement) and shall, upon request, deliver to the City each calendar year a copy of its annual report that is audited by an independent certified public accountant which discloses that Owner has One Hundred Million Dollars (\$100,000,000) of both net worth and net current assets; or (v) a combination of any of the foregoing insurance programs. To the extent any deductible is permitted or allowed as a part of any insurance policy pursuant to this Section 16, Owner shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided, however, that in no event shall any deductible exceed One Hundred Thousand Dollars (\$100,000.00) unless Owner complies with the requirements regarding self-insurance pursuant to Subsection (iv) of this Section 16.3. Owner shall furnish to the City, upon request, a certificate(s) or memorandum(s) of insurance, or statement of self-insurance evidencing that the insurance required to be carried by Owner in accordance with this Section 16 is in full

force and effect.

16.4 **Additional Insured.** Any insurance policy under which the City is an additional insured shall include the following provisions:

16.4.1 **Severability.** Severability of interests.

16.4.2 **Reduction or Voidability.** An act or omission of one (1) of the insureds or additional insureds which would void or otherwise reduce coverage, shall not reduce or void the coverage as to the other insureds.

16.4.3 **Contractual Liability.** Contractual liability coverage with respect to any indemnity obligation set forth in this Agreement.

The procurer of such insurance shall promptly serve Notice on (and in any event within five (5) Business Days) the City of any intent to cancel, reduce (in amount or in coverage provided) or other material modification of insurance coverage required by this Section 16 as soon as such procurer has actual knowledge thereof and shall deliver a copy of any Notices received from the insurer related thereto.

17. **Representations and Warranties.**

17.1 **City Representations.** The City represents and warrants to Owner as follows, which warranties and representations are effective as of the date of this Agreement:

17.1.1 **Existence.** The City is a municipal corporation, duly incorporated pursuant to the laws of the State of California.

17.1.2 **Authority.** The execution, performance, and delivery of this Agreement by the City have been fully authorized by all requisite actions on the part of the City required by Law.

17.1.3 **No Default.** The City's execution, delivery, and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which the City is a party or by which it is bound.

17.2 **Owner's Representations.** Owner represents and warrants to the City as follows, which warranties and representations are effective as of the date of this Agreement:

17.2.1 **Authority.** Owner has full right, power and lawful authority to develop the Private Improvements, the Required Public Improvements and to undertake all obligations as provided in this Agreement. The execution, performance, and delivery of this Agreement by Owner has been fully authorized by all requisite actions on the part of Owner required by Law.

17.2.2 **Interest in Property.** Owner represents that Owner (or its affiliates) owns or has entered into agreements to acquire fee title to the Property. Owner further represents that it (or its affiliates) has the legal authority to encumber the Property by recordation of this Agreement.



17.2.3 **No Conflict.** To the best of Owner's knowledge, Owner's execution, delivery, and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement, or order to which Owner is a party or by which it is bound.

17.2.4 **No Owner Bankruptcy.** To the best of Owner's knowledge, Owner is not the subject of a current or threatened bankruptcy proceeding.

18. **Miscellaneous.**

18.1 **Time of Essence.** Time is of the essence of each provision of this Agreement in which time is an element.

18.2 **Further Documents.** The City and Owner shall sign, deliver and if appropriate record any additional documents necessary to effectuate the purposes of this Agreement.

18.3 **Notices.** All Notices and other communications given pursuant to this Agreement shall be in writing and shall be deemed received when delivered upon the first Business Day after prepayment with a recognized overnight delivery service with instructions to deliver the next Business Day, or upon the fifth calendar day after deposit in the United States mail, first-class, registered or certified, postage prepaid, return receipt requested at the following addresses:

**If to City:**

City of San Clemente 910 Calle  
Negocio  
San Clemente, CA 92673 Attn: City  
Manager  
Tel: (949) 361-8200  
Email: cityhall@san-clemente.org

**With a copy to:**

Best Best & Krieger, Attorneys at Law  
18101 Von Karman Avenue  
Suite 1000  
Irvine, CA 92612  
Attn: Scott C. Smith, City Attorney  
Tel: (949) 263-6561  
Email: scott.smith@bbklaw.com

**If to Owner:**

Saddleback Memorial Medical Center  
24451 Health Center Drive  
Laguna Hills, CA 92653  
Attn: Thomas Leary,  
Senior Vice President & Chief Legal Officer  
Tel: 714-377-3245  
Email: TLeary2@memorialcare.org

**With a copy to:** Nossaman, LLP  
18101 Von Karman Avenue  
Suite 1800  
Irvine, CA 92612  
Attn: Gregory W. Sanders, Esq.  
Tel: (949) 833-7800  
Email: gsanders@nossaman.com

Any Party may, from time to time by written Notice to the other designate a different address which shall be substituted for the one specified above.

18.4 **Entire Agreement.** This Agreement contains the entire agreement between the Parties regarding the subject matter hereof, and all prior agreements or understandings, oral or written, are hereby merged herein.

18.5 **Waiver.** No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding, unless it is executed in writing by a duly authorized representative of the Party against whom enforcement of the waiver is sought.

18.6 **Relationship of the Parties.** Nothing contained herein, nor any action taken or document created pursuant hereto, shall be construed as creating the relationship of partners, joint venturers, or any other association of any kind or nature between the City and Owner.

18.7 **No Third Party Beneficiaries.** This Agreement is made and entered into for the sole benefit of the Parties, any Financiers and their respective successors in interest. No other person (such as a taxpayer or citizens' group) shall have any right of action based upon any provision of this Agreement.

18.8 **Non Liability of Certain Individuals.**

18.8.1 **Officials and Employees of the City.** No official or employee of the City shall be personally liable to Owner or any successor in interest in the event of any Default by the City or for any amount which may become due to Owner or its successors or on any other obligations under the terms of this Agreement.

18.8.2 **Owner Parties.** No officer, director, manager, member, or employee of Owner (or any of their respective officers, directors, shareholders, partners, members, managers, employees, trustees, or beneficiaries) shall be personally liable to the City or its successor in interest in the event of any Default by Owner or for any amount which may become due from Owner or its successors or on any other obligations of Owner under the terms of this Agreement.

18.9 **City Approvals and Actions.** The City shall maintain authority under this Agreement and the authority to implement this Agreement through the City Manager (or his or her duly authorized representative). The City Manager shall have the authority to make approvals,

issue interpretations, waive provisions, execute implementing documents and/or make and execute further agreements on behalf of the City (collectively, "City Manager Action") so long as such City Manager Action(s) does not materially change the uses or Development permitted on the Property, or materially or substantially add to the costs incurred or to be incurred by the City or Owner as specified herein, and such interpretations, waivers and/or further agreements may include extensions of time to perform; provided, however, in the event Owner disagrees with any City Manager Action(s), Owner may appeal such City Manager Action(s) to the City Council and shall be entitled to a public hearing on such appeal. All other material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the City Council. The City Manager retains full discretion to submit any matter to the City Council for approval notwithstanding that such matters may be considered immaterial.

18.10 **Counterparts.** This Agreement may be signed in multiple counterparts which together shall constitute a binding agreement.

18.11 **Rules of Construction.** Captions and headings in this Agreement are for convenience only and are not guides for interpretation. This Agreement is the result of negotiations between Parties who were each represented by counsel. No ambiguity in this Agreement, if any, shall be interpreted against one Party. This Agreement has been prepared and negotiated jointly and equally by the Parties. This Agreement shall not be construed against either Party on the ground that a Party prepared the Agreement.

18.12 **Computation of Time.** The time in which any act is to be done under this Agreement is computed by excluding the first day and including the last day, unless the last day is a holiday, Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Sections 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

18.13 **Legal Advice.** Each Party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any rights which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or their respective agents, employees or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

18.14 **Governing Law and Venue.** This Agreement is entered into and will be performed in the County of Orange, California, and shall be governed by the laws of the State of California. Any legal action or proceeding concerning this Agreement shall be filed and prosecuted in the Superior Court in the County of Orange, California or the United States District Court for the Central District of California.

18.15 **Attorneys' Fees.** In any action between the Parties to interpret, enforce, reform, modify, rescind or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing Party in such action shall be entitled, in addition to injunctive relief or any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs, expert witness fees and attorneys' fees.

18.16 **Severability**. If a Court invalidates part of this Agreement, the remainder shall remain in force and effect unless the invalidation materially impairs a Party's consideration, in which event this entire Agreement shall terminate.

18.17 **Recitals and Attachments**. All recitals and attachments to this Agreement are incorporated herein.

18.18 **Mutual Covenants**. The covenants contained herein are mutual covenants which constitute conditions to the concurrent or subsequent performance of the other covenants.

ATTACHMENTS

- Attachment No. 1      Legal Description of the Property
- Attachment No. 2      Fair Share Fees
- Attachment No. 3      Site Plan
- Attachment No. 4      Required Public Improvements

**[Signatures appear on following page.]**

**IN WITNESS WHEREOF**, Owner and the City have executed this Agreement on the date first above written.

**CITY:**

**CITY OF SAN CLEMENTE**,  
a California municipal corporation

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

**OWNER:**

**SADDLEBACK MEMORIAL MEDICAL CENTER**, a California non-profit public benefit corporation

\_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Scott C. Smith, City Attorney

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public,

personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public,

personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC

**ATTACHMENT NO. 1**  
**LEGAL DESCRIPTION OF THE PROPERTY**



**ATTACHMENT NO. 2**  
**FAIR SHARE FEES**

**ATTACHMENT NO. 3**

**SITE PLAN**

**ATTACHMENT NO. 4**  
**REQUIRED PUBLIC IMPROVEMENTS**



Addendum to the City of San Clemente  
Housing and Safety Elements Update Program  
Environmental Impact Report for the  
San Clemente Senior Housing & Medical  
Office Project  
San Clemente, California

Prepared for  
City of San Clemente  
910 Calle Negocio  
San Clemente, CA 92673

Prepared by  
RECON Environmental, Inc.  
3111 Camino del Rio North, Suite 600  
San Diego, CA 92108  
P 619.308.9333

RECON Number 9335-6  
September 29, 2022

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- C: Air Quality and Greenhouse Gas Analysis
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- I: Preliminary Water Quality Management Plan
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- K: Hydrology Analysis
- L: Noise and Vibration Impact Analysis
- M: Vehicle Miles Traveled Analysis

CITY OF SAN CLEMENTE  
ADDENDUM TO ADOPTED PROGRAM ENVIRONMENTAL IMPACT REPORT

This document is an Addendum to the San Clemente Housing and Safety Elements Update PEIR (State Clearinghouse No. 2021020256) that was adopted by the City Council on October 5, 2021, hereafter referred to as "2021 FEIR"). The Addendum analyzes the environmental effects of the proposed project in light of the Final PEIR, which analyzed potential environmental impacts associated with the development of a number of housing sites, including housing development at 654 Camino del los Mares. The Addendum has been prepared in accordance with relevant provisions of the California Environmental Quality Act (CEQA) of 1970 (as amended) and the State CEQA Guidelines.

According to Section 15164 of the State CEQA Guidelines, an addendum to a previously certified EIR or Negative Declaration is the appropriate environmental document in instances when "only minor technical changes or additions are necessary" and when the new information does not involve new significant environmental effects beyond those identified in the previous EIR. The analysis herein demonstrates that the proposed addendum involves only minor technical changes to the 2021 FEIR and would not result in any new or increased severity significant environmental effects beyond those identified in the 2021 FEIR. As such, an addendum is the appropriate environmental document under CEQA.

**1. Project Title**

San Clemente Senior Housing & Medical Office Project

**2. Lead Agency Name and Address**

City of San Clemente  
910 Calle Negocio  
San Clemente, CA 92673

**3. Contact Person and Phone Number**

Jennifer Savage  
Assistant to the City Manager  
City of San Clemente  
(949) 361-6186  
savagej@san-clemente.org

**4. Project Location**

654 Camino del los Mares, San Clemente, CA 92673  
Assessor's Parcel Number 675-072-19-00



**5. Project Applicant/Sponsor's Name and Address**

Memorial Care Health System  
17360 Brookhurst Street  
Fountain Valley, CA 92708

**6. General Plan Designation**

Existing: Regional Medical Facilities (RMF)  
Proposed: Community Commercial (CC4)

**7. Zoning**

Existing: Regional Medical Facilities (RMF1)  
Proposed: Community Commercial (CC4)

All reports and documents referenced in this Addendum are on file with the City of San Clemente, Community Development Department, 910 Calle Negocio, San Clemente, California 92673. Telephone Number: (949) 361-6100. A digital copy is available from the City website: <https://www.san-clemente.org/departments-services/environmental-documents-for-current-projects>.

**8. Statement of Environmental Findings**

An Addendum to the Program Environmental Impact Report (PEIR) for the Housing and Safety Elements Update was prepared by the City of San Clemente (City), Community Development Department to evaluate whether development of senior housing and medical office at 645 Camino de los Mares would result in any new significant impacts or increased severity of impacts beyond those identified in the 2021 FEIR for the Housing and Safety Elements Update. As Lead Agency under CEQA, and based on the findings contained in the attached Addendum, the City has determined that the project would not have any new or more severe impacts that were not previously identified in the PEIR for the Housing and Safety Elements Update. The City also finds that the Addendum reflects the City's independent judgment.

The location and custodian of the documents and any other materials which constitute the record of proceedings upon which the City bases its determination to adopt this Addendum are as follows: City of San Clemente, Community Development Department, 910 Calle Negocio, San Clemente, California, Custodian: Jennifer Savage, Assistant to the City Manager.

**9. Previous Environmental Document**

The 2021 FEIR determined that implementation of the Housing and Safety Elements Update would result in significant and unavoidable direct and/or cumulative impacts related to Air Quality (Direct and Cumulative), Greenhouse Gas (Direct and Cumulative), Land Use (Direct), Noise (Direct and Cumulative), and Transportation (Direct and Cumulative). The 2021 FEIR determined that implementation of the Housing and Safety Elements Update would result in impacts that would be mitigated to a level less than significant related to Biological Resources (Direct and Cumulative),

Cultural and Tribal Resources (Direct and Cumulative), Geology and Soils (Direct and Cumulative), and Hazards and Hazardous Materials (Direct). All other impacts were determined to be less than significant or would have no impact.

## 10. Summary of Original Project

The original project consisted of updates to the City's Housing and Safety Elements as described below.

**Housing Element Update:** The City prepared the 6th Cycle Housing Element Update (2021-2029) to identify the City's housing needs and outline goals, policies, and programs to address them. The Housing Element evaluated ways to accommodate the Regional Housing Needs Assessment (RHNA) of 982 new housing units allocated to the City by the Southern California Association of Governments (SCAG). To this end, the City identified an inventory of available sites that could accommodate the City's RHNA allocation through a combination of sources including accessory dwelling units (ADUs) and vacant and underutilized sites (Housing Sites). The project evaluated rezoning of specific sites to allow development ranging from residential medium (24 dwelling units per acre [du/ac]), residential medium high (30 du/ac), or residential high (40 du/ac). Although the 2021 FEIR evaluated rezoning of these sites, including the site at 654 Camino del los Mares, rezones were not adopted with certification of the FEIR. The City's intent was to implement rezoning at a future date, such as when development is proposed. Relevant to this addendum, the FEIR evaluated development at 645 Camino de los Mares of up to 238 housing units and 7,500 square feet of commercial space. The site is referred to as Site V in the FEIR.

The Housing Element also included a program to allow by-right approval of housing projects that include 20 percent of the units as housing affordable to lower income households. The ministerial process is implemented through a Housing Overlay that provides objective development standards. The City's existing architectural and design review process is used for projects in the Affordable Housing Overlay Zone. Future development consistent with the Housing Element was anticipated to be processed either ministerially, using the City's existing Affordable Housing Overlay Zone or a subsequently approved Housing Overlay Zone, or with a discretionary process.

**Safety Element Update:** The project also included an update to the Safety Element, including figure updates for the issues of geologic, seismic and soil hazards, flood hazards, potential tsunami inundation areas, fire hazard severity zones, critical facilities, and hazardous materials sites. Updates to the Safety Element did not affect the potential for development to occur or result in any physical change as it is a policy document.

## 11. Project Site Existing Conditions and Surrounding Land Use(s)

The 6.63-acre project site is located at 654 Camino del los Mares in San Clemente, California and is a Housing Site identified in the City's Housing Element Update sites inventory. The project site is located on the south side of Camino de los Mares, approximately 545 feet west of the intersection with Marbella. The project site is currently developed with a vacant hospital facility and supporting access drives and parking areas. The project site is located within an urban environment surrounded by a mixture of commercial and residential uses. Existing commercial uses are located along the project's western boundary, and to the north across Camino de los Mares. The San Clemente Villas

by the Sea assisted living facility is located adjacent to the project's southeastern boundary, while Interstate 5 (I-5) is located south of the project site. Figure 1 presents the regional location and Figure 2 presents an aerial photograph of the project site and vicinity.

## 12. Project Description

The project would implement housing and medical office at 654 Camino del los Mares, a site evaluated for approval of rezoning and a general plan amendment under the 2021 Final EIR. The project would demolish the existing buildings on-site and construct a 250-dwelling unit senior housing complex consisting of two residential apartment buildings (Building 1, 99 units and Building 2, 151 units), and a 7,500-square-foot (sf), two-story medical office (Building 3). The senior housing complex would consist of 61 studio units (540 sf), 119 one-bedroom units (650–897 sf), and 70 two-bedroom units (985–1,120 sf), for a total of 192,568 net leasable square feet. The project proposes both indoor and outdoor amenities for the residents, including a common clubroom, fitness center, roof-top deck, resort style pool deck, landscaped courtyards, and central paseo walkway. Both the senior housing and medical office would have all-access drives with surface parking areas around the perimeters of the buildings.

Access to the project site would be provided via Camino del los Mares with two entries at the west and east ends of the project's frontage. The west entry would serve as the main entry and drop-off site, while the east entry would be the main access point for the medical office building as well as a secondary access point for the senior apartments. In order to reinforce the right-in and right-out turning movements at the western driveway, the project would make median improvements within Camino de Los Mares, and introduce signage and a center island at the driveway entrance to direct traffic. These changes would improve safety for turns into or out of the western driveway. The site would have a total of 312 parking spaces, of which 249 would be for the senior apartments, two would be for the manager's unit, 38 for the medical office, and the remaining 23 would be part of a shared parking agreement. Figure 3 presents the proposed site plan. Construction of the project is anticipated to begin in the fall of 2023 and would continue for 18 to 24 months.

The project would require the following discretionary actions:

- General Plan Amendment to change the land use designation from Regional Medical Facilities (RMF) to Community Commercial (CC4).
- Zoning Code Amendment to change the zoning designation from Regional Medical Facilities (RMF1) to Community Commercial (CC4).
- Vesting Tentative Parcel Map to subdivide the property into two parcels.
- Conditional Use Permit for a proposed senior housing use under the Community Commercial (CC4) zone.
- Site Plan Permit for development of a new non-residential building and a tentative map.
- Architectural Permit for development of a new non-residential building and a new residential development of five or more units.

Compared to the development assumptions for the site analyzed in the 2021 Final EIR, the project is consistent except 12 additional senior housing units are proposed. The 2021 Final EIR evaluated development of 238 units, while the project proposes 250 units. This addendum addresses the increase in units to ensure no new or more severe impacts would result. Additionally, it should be

noted that the 2021 FEIR authorized up to a maximum of 1,564 residential units, but not all sites are likely to be developed, resulting in a conservative estimate of impacts. Additionally, the PEIR assumed the General Plan designation and zone at 654 Camino del los Mares would change from Regional Medical Facility to Community Commercial, or CC4 allowing up to 45 units per acre. The project is consistent with this zone and designation.

**13. Other Required Agency Approvals or Permits Required**

General Construction Permit (San Diego Regional Water Quality Control Board)

**14. New Significant Environmental Effects or Substantially More Severe Environmental Effects Compared to Those Identified in the Previous CEQA Document**

The subject areas checked below were determined to be new significant environmental effects or to be previously identified effects that have a substantial increase in severity either due to a change in project, change in circumstances or new information of substantial importance, as indicated by the checklist and discussion on the following pages.

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Aesthetics                | <input type="checkbox"/> Agriculture and Forestry Resources | <input type="checkbox"/> Air Quality                        |
| <input type="checkbox"/> Biological Resources      | <input type="checkbox"/> Cultural Resources                 | <input type="checkbox"/> Energy                             |
| <input type="checkbox"/> Geology/Soils             | <input type="checkbox"/> Greenhouse Gas Emissions           | <input type="checkbox"/> Hazards & Hazardous Materials      |
| <input type="checkbox"/> Hydrology/Water Quality   | <input type="checkbox"/> Land Use/Planning                  | <input type="checkbox"/> Mineral Resources                  |
| <input type="checkbox"/> Noise                     | <input type="checkbox"/> Population/Housing                 | <input type="checkbox"/> Public Services                    |
| <input type="checkbox"/> Recreation                | <input type="checkbox"/> Transportation                     | <input type="checkbox"/> Tribal Cultural Resources          |
| <input type="checkbox"/> Utilities/Service Systems | <input type="checkbox"/> Wildfire                           | <input type="checkbox"/> Mandatory Findings of Significance |

**15. Determination**

Based on all available information in light of the entire record, the analysis in this Addendum, and pursuant to Section 15164 of the State CEQA Guidelines, the City has determined the following:

- There are no substantial changes proposed in the project which will require major revisions of the previous environmental document due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- Substantial changes have not occurred with respect to the circumstances under which the project is undertaken which will require major revisions of the previous environmental document due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

- There is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous environmental document was certified as complete or was adopted, shows any of the following:
  - a. The project will have one or more significant effects not discussed in the previous environmental document;
  - b. Significant effects previously examined will be substantially more severe than shown in the previous environmental document;
  - c. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
  - d. Mitigation measures or alternatives which are considerably different from those analyzed in the previous environmental would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

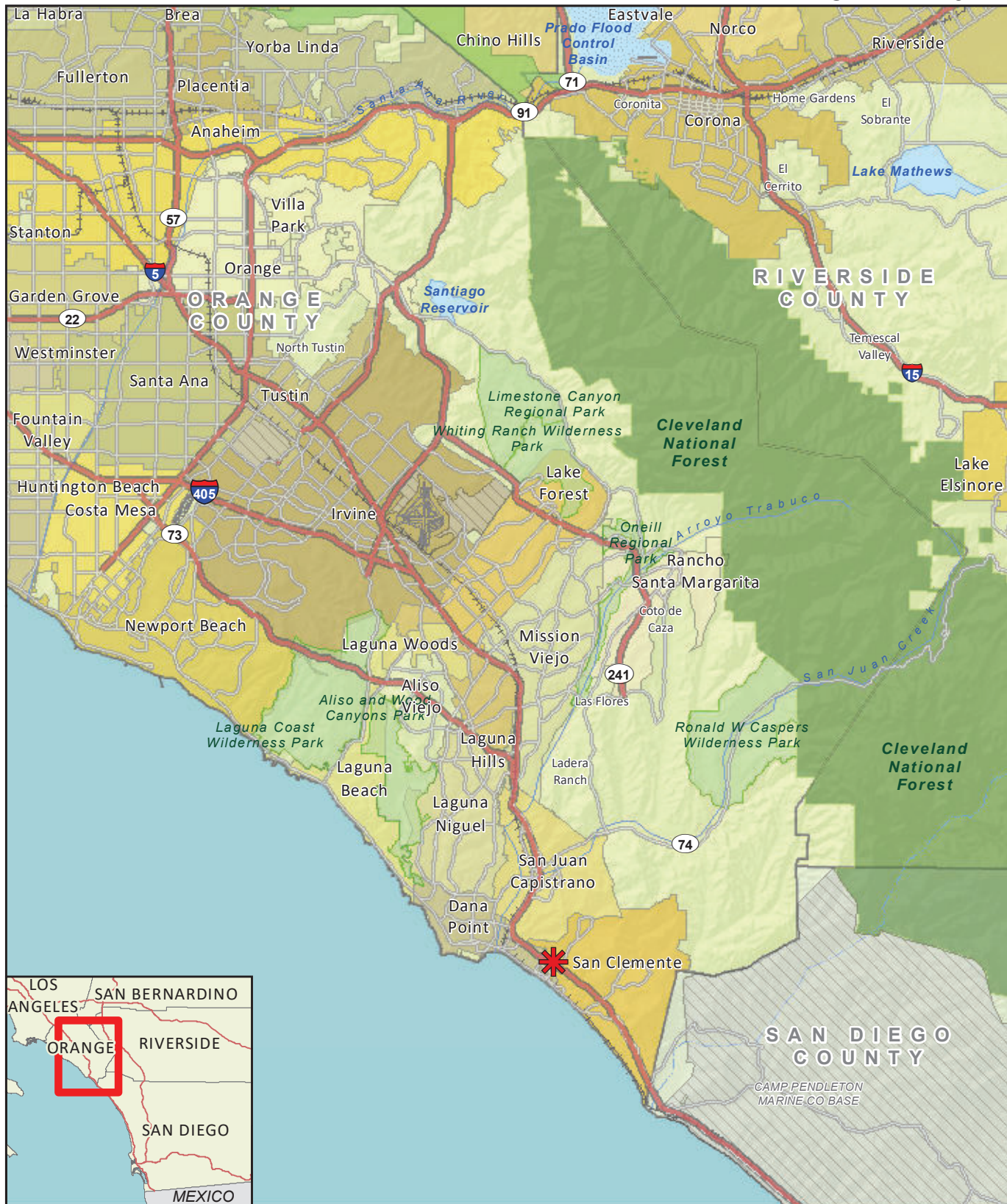
Based upon a review of the current project, none of the situations described in Section 15164 of the State CEQA Guidelines apply. No changes in circumstances have occurred, and no new information of substantial importance has manifested, which would result in new significant or substantially increased adverse impacts as a result of the project. Therefore, this Addendum has been prepared in accordance with Section 15164 of the State CEQA Guidelines. The Housing and Safety Elements Update PEIR has been incorporated by reference pursuant to CEQA Guidelines Section 15150. Public review of this Addendum is not required per CEQA.

Jennifer Savage  
Signature

29 Sept. 2022  
Date

Jennifer Savage, Assistant to the City Manager  
Printed Name and Title

City of San Clemente  
For



 Project Location

FIGURE 1  
Regional Location



Map Source: TCA Architects



FIGURE 3  
Site Plan



## 15.1 Aesthetics

### Scenic Vistas

#### 2021 FEIR

The 2021 FEIR determined that the Safety Element Update is a policy document that would not result in any physical development that could have a substantial adverse effect on a scenic vista. The 2021 FEIR determined that adherence to regulatory requirements, including the San Clemente Municipal Code (SCMC), the design principles contained within the City's Design Guidelines, and applicable General Plan policies focused on preservation of scenic vistas and views, would ensure that future development of Housing Sites would not have a substantial adverse effect on a scenic vista, and impacts would be less than significant.

#### Project

The Visual, Light, Glare, Shade, and Shadow Memorandum (Visual Memo) completed for the project evaluated potential impacts related to aesthetics (Appendix A). A scenic vista is made up of three components: public viewing location; viewing corridor; and viewing scene. Review of Figures 4.1-1 and 4.1-2a of the 2021 FEIR determined that the project site is not visible from a City-Designated View Corridor. Although views of the Pacific Ocean and canyons do exist over the project site, implementation of the project would not block these view corridors, primarily because of the extensive landform and elevation changes north of the project site. With the exception of two or three private homes that would have a portion of their views of the Pacific Ocean obscured by the four-story height of the project, land areas to the north would continue to have public and private views over the project site. It should be noted that private views are not protected views under CEQA. Additionally, the project would not contrast with the viewing scene (the horizon, water body/ocean or other coastal visual resources). Therefore, the project would not have a new or more substantial adverse effect on a scenic vista than previously analyzed, and impacts would be less than significant. No new impact would occur.

### Scenic Resources

#### 2021 FEIR

The 2021 FEIR determined that the Safety Element Update is a policy document that would not result in any physical development that could substantially damage any scenic resources. The 2021 FEIR determined that adherence to regulatory requirements, including the SCMC, the City's provisions of the Master Landscape Plan for Scenic Corridors, and applicable General Plan policies, would ensure that future development of Housing Sites would not degrade scenic resources, and impacts would be less than significant.

#### Project

Views of a regionally significant viewing scene (the ocean, waterfront, and horizon line) exist from I-5, and would be considered as scenic vistas. I-5 has the potential for scenic designation from Caltrans if adopted by the City. Regardless of the status of designation, the project is located on the

north side of I-5, making it impossible to block motorist views of the ocean, canyons or other unique landforms.

The project site, although part of the broader viewing scene, is not itself the focus of views. The project would not remove scenic resources such as natural landforms, rock outcrops, natural areas, or other elements that make up the visual character and community character of the surrounding area. As described in Section 15.5 below, there are no designated historic buildings or designated historic resources located within or near the project site. Furthermore, the vacant hospital facility and supporting structures on-site that would be demolished do not qualify as historic resources. An Arborist Report was prepared for the project consistent with the requirements of the City's Trees Ordinances (Ord. 17.64.060 and 17.84.020(B)) (Appendix B). The Arborist Report documented that the project site currently possesses 175 ornamental landscape trees, 77 of which are in good condition, 69 are in fair condition, and 29 are in poor condition. All the tree species found on-site are common non-native ornamental landscape trees that are readily available at commercial nurseries. Most of the trees are growing in less-than-optimal conditions, and none would be required to be preserved on site. Furthermore, the project would be consistent with all City regulations, including installation of new landscaping with drought-tolerant plant material that would enhance the scenic quality of the project site. Therefore, the project would not result in new or more substantial damage to any scenic resources than previously analyzed, and impacts would be less than significant. No new impact would occur.

### **Visual Character and Quality**

#### **2021 FEIR**

The 2021 FEIR determined that the Safety Element Update is a policy document that would not result in any physical development that could substantially degrade existing visual character or quality. The 2021 FEIR determined that adherence to applicable sections of the SCMC and the City's Design Guidelines, as well as land use plans that provide supplemental development regulations for those areas within the City's Focus Areas and/or Specific Plan Areas, would ensure that development of the Housing Sites would not substantially degrade the existing visual character or quality of public views of the site and its surroundings, and impacts would be less than significant.

#### **Project**

Visual quality is associated with the delicate balance of uniqueness and uniformity, as well as the organization of the visual environment into either a chaotic, bland, unique or highly intact compositional arrangement of natural and man-made features. If a project introduces chaotic elements or removes elements that contribute to the intactness of an area, then a potential visual quality impact can occur. The project's architecture would be a positive form and have aesthetically balanced detailing and materials. The project is designed to relate to the forms, materials, and colors of structures in the immediately surrounding area in terms of color, material, style, and scale. Project architecture and its forms would be aesthetically organized and simple, and are intended to enhance the City's character of "Spanish Village by The Sea."

The City is characterized by tall hills to the east with some ridgeline development, large slopes made up of mostly housing, bluffs and mesa tops on each side of the freeway, and ocean views to the

west. Land uses change from housing developments, to commercial complexes and strip commercial development with some business parks and employment centers are common to the eastern hills of the City. The materials, scale, architectural detailing, and color of the project's buildings would be consistent with the existing elements of the adjacent buildings, and would be consistent with much of the style and architectural treatments found throughout the viewshed. The project would have an overall low contrast with the existing setting. The overall architectural character of the immediate commercial and institutional community is that of Spanish revival, Spanish colonial, or mission style architecture. The common building materials of the adjacent community include mostly stucco with a high percentage of buildings using red clay tile roofing and heavy beam rafters.

The visual character of the existing and undeveloped portions of the project site are not considered to have a high or moderately high visual quality, are not part of a larger viewing scene or area that has high or moderate visual quality or community character associated with it. The project would not contrast with or dominate the visual character or visual quality of the adjacent areas, nor would the project change the visual character of the surrounding areas. Therefore, the project would not result in new or more substantial impacts relating to the existing visual character or quality of the site and its surroundings, and impacts would be less than significant. No new impact would occur.

### **Light and Glare**

#### **2021 FEIR**

The 2021 FEIR determined that the Safety Element Update is a policy document that would not result in any physical development that could generate a substantial source of light or glare that would adversely affect day or nighttime views. The 2021 FEIR determined that development of the Housing Sites would be required to comply with SCMC standards related to light and glare (Chapter 17.24.130) and General Plan Policies NR-7.1, NR-7.2, and NR-7.3, which serve to minimize light pollution and trespass in order to preserve dark skies, and impacts would be less than significant.

#### **Project**

Glare can occur during both daytime and nighttime hours. Daytime glare is caused by the reflection of sunlight or artificial light from highly polished surfaces, such as window glass or reflective materials, and to a lesser degree, from broad expanses of light-colored surfaces. Daytime glare generation is common in urban areas and is typically associated with mid- to high-rise buildings with exterior façades largely or entirely comprised of highly reflective glass or mirror-like materials from which the sun can reflect, particularly following sunrise and prior to sunset. Daytime glare generation is typically related to sun angles, although glare resulting from reflected sunlight can occur regularly at certain times of the year. Glare can also be produced during evening and nighttime hours by artificial light directed or reflected toward a light-sensitive land use.

The City's standard of permitting indicates that all proposed glazing (e.g., glass exterior surfaces or windows) would be required to meet current building code requirements to minimize reflectivity in order to avoid creating glare in off-site locations. Additionally, building facade features would be required, such as window shades, stepped building setbacks, angled building sides, and other architectural features that would reduce direct sunlight onto the building surface and minimize glare. The project proposes to install solar panels on the carports, which can be a source of glare. However,

most solar panels are designed with anti-reflective glass front surface and only reflects about two percent of incoming light. Reflective Coating (AR Coating) is a technical means to reduce reflection that also increases light absorption of solar cells and thus increase its performance. The project would be required to utilize panels that follow these standards, and therefore would not create an impact to adjacent parcels or motorists. The project would not include any other reflective materials that could generate glare, such as polished surfaces, mirror like window films, or highly reflective gloss painting.

Outdoor lighting would be subject to the requirements of City's Lighting Ordinance (Section 17.24.130, which states the following:

Exterior lighting shall be energy-efficient and shielded or recessed so that direct glare and reflections are contained within the boundaries of the parcel, and shall be directed downward and away from adjoining properties and public rights-of-way. No lighting shall blink, flash, or be of unusually high intensity or brightness. All lighting fixtures shall be appropriate in scale, intensity and height to the use. Security lighting shall be provided at all entrances/exits.

The project has developed a lighting plan that would ensure consistency with the City's Lighting Ordinance described above, which would prevent light from spilling over onto adjacent properties. Additionally, the Visual Memo determined that project lighting would not affect nighttime views from surrounding properties. Therefore, the project would not create a new or more substantial source of light or glare that would adversely affect day or nighttime views in the area than previously analyzed, and impacts would be less than significant. No new impact would occur.

### **15.2 Agriculture Resources**

#### **2021 FEIR**

Section 8.1 of the 2021 FEIR determined that the City does not possess any active farmland cultivation, zoning for agricultural use, or Williamson Act Contract. Additionally, no forest lands are present. Therefore, the 2021 FEIR found that the Housing and Safety Elements Update would not result in any impacts to agricultural or forestry resources.

#### **Project**

There is no change to the analysis provided in the 2021 FEIR. No agricultural resources are present and therefore, no new or more severe impacts would occur.

### **15.3 Air Quality**

#### **Consistency with Air Quality Plans**

#### **2021 FEIR**

The 2021 FEIR determined that the Safety Element Update is a policy document that would not result in any physical development that could increase regional emissions. The 2021 FEIR determined that development of the Housing Sites would be inconsistent with the South Coast Air Quality

Management District (SCAQMD) 2016 Air Quality Management Plan (2016 AQMP), because buildout under the plan would exceed the population estimates assumed for the 2016 AQMP and would cumulatively contribute to the nonattainment designations of the South Coast Air Basin (Basin). No mitigation measures were available that would reduce impacts associated with the inconsistency with the 2016 AQMP, and impacts were determined to remain significant and unavoidable. Overriding considerations were prepared to support approval of the Housing Element Update notwithstanding the remaining significant impacts.

### **Project**

The project is located within the Basin, which is under the jurisdiction of the SCAQMD. The Air Quality and Greenhouse Gas Analysis prepared for the project evaluated the project's consistency with the 2016 AQMP (Appendix C). Consistent with the 2021 FEIR, the project would require a General Plan amendment to change the land use designation from Regional Medical Facilities (RMF) to Community Commercial (CC4) to allow for development of the senior housing complex and medical office. Therefore, growth forecasting in the 2016 AQMP for the project site was based on the existing Regional Medical Facilities (RMF) land use designation, which has a higher trip generation rate than senior housing and medical office. Based on the former hospital use, the project site was estimated to generate approximately 1,405 average daily trips (ADT). The current project would generate 1,080 ADT, which would be 325 ADT fewer than the former hospital use. Consequently, the proposed senior housing complex and medical office would generate fewer vehicle trips compared to the hospital use used for growth forecasting in the 2016 AQMP, and thereby generate fewer emissions compared to what was assumed in the 2016 AQMP. Therefore, the project would result in fewer trips than what was considered in the 2016 AQMP and would not obstruct or conflict with implementation of the Regional Air Quality Strategy (RAQS). Although the FEIR determined conflicts with the RAQS to be significant, development at this particular site would be consistent with the RAQS for the reasons discussed above. Therefore, the project would not result in any new or more severe impacts compared to the 2021 FEIR analysis.

### **Cumulative Net Increases of Criteria Pollutants**

#### **2021 FEIR**

The 2021 FEIR determined that the Safety Element Update is a policy document that would not result in any physical development that could violate air quality standards. The 2021 FEIR determined that development of the Housing Sites could generate short-term emissions that would exceed the SCAQMD's significance thresholds that could cumulatively contribute to the nonattainment designations of the Basin. Although implementation of 2021 FEIR mitigation measure AQ-1 would reduce criteria air pollutant emissions from construction-related activities to the extent feasible, the 2021 FEIR determined that impacts would remain significant and unavoidable.

### **Project**

SCAQMD has established daily emissions thresholds for construction and operation of a project in the Basin. The emissions thresholds were established based on the attainment status of the Basin with regard to air quality standards for specific criteria pollutants. Because the concentration standards were set at a level that protects public health with an adequate margin of safety, these

emissions thresholds are regarded as conservative and would overstate an individual project's contribution to health risks.

Construction and operation air emissions were calculated using California Emissions Estimator Model (CalEEMod). Table 1 presents the total projected construction maximum daily emission levels for each criteria pollutant and compares emissions to the SCAQMD regional significance thresholds. As shown in Table 1, maximum daily construction emissions for each separate phase of construction of the project would not exceed the daily SCAQMD regional thresholds for all criteria pollutants. In addition to the construction period thresholds of significance, the project is required to comply with regional rules that assist in reducing short-term air pollutant emissions. SCAQMD Rule 403 requires that fugitive dust be controlled with best-available control measures so that the presence of such dust does not remain visible in the atmosphere beyond the property line of the emission source. In addition, SCAQMD Rule 403 requires implementation of dust suppression techniques to prevent fugitive dust from creating a nuisance off-site.

Table 1 Project Construction Emissions in Pounds Per Day						
Project Construction	Maximum Pollutant Emissions (lbs/day)					
	VOC	NOx	CO	SOx	PM10	PM2.5
Demolition	0.7	15.2	17.7	<0.1	2.4	0.9
Site Preparation and Grading	0.9	22.7	23.2	0.1	7.8	4.1
Building Construction	1.1	10.2	18.2	0.1	3.4	1.3
Architectural Coating	9.5	1.4	3.2	<0.1	0.6	0.2
Paving	1.3	11.3	17.7	<0.1	0.8	0.7
<b>Maximum (lbs/day)</b>	<b>11.9</b>	<b>22.7</b>	<b>39.1</b>	<b>0.1</b>	<b>7.8</b>	<b>4.4</b>
SCAQMD Thresholds	75.0	100.0	550.0	150	150.0	55.0
<b>Exceeds Thresholds?</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>
SOURCE: Appendix C.						
NOTE: Maximum emissions of volatile organic compounds and carbon monoxide occurred during the overlapping building construction, architectural coating, and paving phases.						
CO = carbon monoxide			PM <sub>10</sub> = particulate matter less than 10 microns in size			
lbs/day = pounds per day			SCAQMD = South Coast Air Quality Management District			
NO <sub>x</sub> = nitrogen oxides			SO <sub>x</sub> = sulfur oxides			
PM <sub>2.5</sub> = particulate matter less than 2.5 microns in size			VOC = Volatile organic compounds			

Table 2 presents the total projected operational emissions generated by the project. As shown in Table 2, operational emissions would not exceed any of the SCAQMD's regional thresholds for criteria pollutants.

Table 2 Project Operational Emissions in Pounds Per Day						
Source	Pollutant Emissions (lbs/day)					
	VOC	NO <sub>x</sub>	CO	SO <sub>x</sub>	PM <sub>10</sub>	PM <sub>2.5</sub>
Area Sources	6.7	4.0	22.2	<0.1	0.4	0.4
Energy Sources	0.1	0.7	0.3	<0.1	0.1	0.1
Mobile Sources	2.8	2.9	27.2	0.1	7.4	2.0
<b>Total Project Emissions</b>	<b>9.5</b>	<b>7.6</b>	<b>49.7</b>	<b>0.1</b>	<b>7.9</b>	<b>2.6</b>
SCAQMD Thresholds	55.0	55.0	550.0	150.0	150.0	55.0
<b>Exceeds Thresholds?</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>
SOURCE: Appendix C. NOTE: Values may not add correctly due to rounding. CO = carbon monoxide lbs/day = pounds per day NO <sub>x</sub> = nitrogen oxides PM <sub>2.5</sub> = particulate matter less than 2.5 microns in size PM <sub>10</sub> = particulate matter less than 10 microns in size SCAQMD = South Coast Air Quality Management District SO <sub>x</sub> = sulfur oxides VOC = Volatile organic compounds						

The SCAQMD published its Final Localized Significance Threshold Methodology in July 2008, recommending that all air quality analyses include an assessment of air quality impacts to nearby sensitive receptors.<sup>1</sup> This guidance was used to analyze potential localized air quality impacts associated with construction of the project. Localized significance thresholds (LST) are developed based on the size or total area of the emission source, the ambient air quality in the source receptor area, and the distance to the project. Sensitive receptors include residences, schools, hospitals, and similar uses that are sensitive to adverse air quality.

LSTs are based on the ambient concentrations of that pollutant within the project Source Receptor Area (SRA) and the distance to the nearest sensitive receptor. For the project, the appropriate SRA for the LST is the nearby Capistrano Valley area (SRA 21). SCAQMD provides LST screening tables for 25, 50, 100, 200, and 500-meter source-receptor distances. As identified above, the closest sensitive receptors to the project site are the San Clemente Villas by the Sea, which are adjacent to the project site. In cases where receptors may be closer than 82 feet (25 meters), any distances within the 82-foot (25-meter) buffer zone can be used. As such, the minimum distance of 82 feet was used. Based on the anticipated construction equipment, it is assumed that the maximum daily disturbed acreage for the project would be 2.5 acres.<sup>2</sup>

Project construction and operation emissions were compared to the LST screening tables in SRA 21, based on a 25-meter source-receptor distance and a disturbed acreage of 2.5-acres. Table 3 compares construction emissions to the recommended LST thresholds. As shown in Table 3, construction emissions would not exceed any of the SCAQMD LST thresholds. Table 4 compares

<sup>1</sup>South Coast Air Quality Management District. 2008b. *Final Localized Significance Threshold Methodology*. July.

<sup>2</sup>South Coast Air Quality Management District. n.d. *Fact Sheet for Applying CalEEMod to Localized Significance Thresholds*. Website: <http://www.aqmd.gov/docs/default-source/ceqa/handbook/localized-significance-thresholds/caleemod-guidance.pdf> (accessed July 2022).

operational emissions to the LST thresholds. As shown in Table 4, operational emissions would not exceed any of the SCAQMD LST thresholds.

Table 3 Project Localized Construction Emissions in Pounds Per Day				
Source	NO <sub>x</sub>	CO	PM <sub>10</sub>	PM <sub>2.5</sub>
On-Site Project Emissions	17.1	21.2	6.9	3.8
Localized Significance Threshold	142.0	1,128.0	7.0	4.7
<b>Exceeds Threshold?</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>
SOURCE: Appendix C. NOTE: Source Receptor Area 21, based on a 2.5-acre construction disturbance daily area, at a distance of 25 meters from the project boundary. CO= carbon monoxide                      PM <sub>2.5</sub> = particulate matter less than 2.5 microns in size NO <sub>x</sub> = nitrogen oxides                      PM <sub>10</sub> = particulate matter less than 10 microns in size				

Table 4 Project Localized Operational Emissions in Pounds Per Day				
Source	NO <sub>x</sub>	CO	PM <sub>10</sub>	PM <sub>2.5</sub>
On-Site Project Emissions	4.1	23.6	<1.0	<1.0
Localized Significance Threshold	142.0	1,128.0	2.2	1.2
<b>Exceeds Threshold?</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>
SOURCE: Appendix C. NOTE: Source Receptor Area 21, based on a 2.5-acre construction disturbance daily area, at a distance of 25 meters from the project boundary. CO= carbon monoxide                      PM <sub>2.5</sub> = particulate matter less than 2.5 microns in size NO <sub>x</sub> = nitrogen oxides                      PM <sub>10</sub> = particulate matter less than 10 microns in size				

Construction and operation of the project would not exceed SCAQMD thresholds related to construction or operational emissions. As shown in Tables 3 and 4, project specific construction and operational emissions would not exceed the LSTs. Therefore, the project would not result in a new or substantially greater cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment, and impacts would be less than significant. No new impact would occur.

## Sensitive Receptors

### 2021 FEIR

The 2021 FEIR determined that the Safety Element Update is a policy document that would not result in any physical development that could generate substantial pollutant concentrations. The 2021 FEIR determined that development of the Housing Sites would not result in a carbon monoxide (CO) hot spot or expose sensitive receptors to TACs from construction activities, stationary sources, or mobile sources, and impacts would be less than significant.



## Project

The Air Quality and Greenhouse Gas Analysis prepared for the project evaluated the project's potential to generate CO hotspots or generate health risks on nearby sensitive receptors (see Appendix C).

### CO Hot Spot Analysis

Vehicular trips associated with the project would contribute to congestion at intersections and along roadway segments in the project vicinity. The primary mobile-source pollutant of local concern is CO, a direct function of vehicle idling time, and therefore of traffic flow conditions. CO transport is extremely limited; under normal meteorological conditions, CO disperses rapidly with distance from the source. However, under certain extreme meteorological conditions, CO concentrations near a congested roadway or intersection may reach unhealthy levels, affecting local sensitive receptors (e.g., residents, schoolchildren, the elderly, and hospital patients). Typically, high CO concentrations are associated with roadways or intersections operating at unacceptable levels of service or with extremely high traffic volumes. In areas with high ambient background CO concentrations, modeling is recommended to determine a project's effect on local CO levels.

An assessment of project-related impacts on localized ambient air quality requires that future ambient air quality levels be projected. Existing CO concentrations in the immediate project vicinity are not available. Ambient CO levels monitored at the Mission Viejo station (the closest stations to the project site) showed a highest recorded 1-hour concentration of 1.7 peak particulate matter (ppm; the State standard is 20 ppm) and a highest 8-hour concentration of 0.9 ppm (the State standard is 9 ppm) during the past 3 years. The highest CO concentrations would normally occur during peak traffic hours; hence, CO impacts calculated under peak traffic conditions represent a worst-case analysis.

The Air Quality and Greenhouse Gas Analysis documented that the project would generate 73 AM peak-hour trips and 92 PM peak-hour trips. The level of service evaluation completed in the Transportation Impact Analysis determined that the addition of the project traffic would not create any significant adverse impacts to nearby intersections (LSA 2022). Given the extremely low level of CO concentrations in the project area, and that the project would not result in any impacts related to LOS, project-related vehicles are not expected to contribute significantly to result in the CO concentrations exceeding the State or federal CO standards. The project would not result in a new or substantially greater CO concentration levels than previously analyzed, and impacts would be less than significant. No new or more severe impacts would occur compared to the 2021 FEIR.

### Health Risk on Nearby Sensitive Receptors

Sensitive receptors are defined as people that have an increased sensitivity to air pollution or environmental contaminants. Sensitive receptor locations include schools, parks and playgrounds, day care centers, nursing homes, hospitals, and residential dwelling units. Land uses adjacent to the project site include residential and commercial uses. The nearby sensitive receptors to the project area include the residential area of San Clemente Villas by the Sea, which are located adjacent to the southeastern project boundary.

Construction of the project may expose surrounding sensitive receptors to airborne particulates and a small quantity of construction equipment pollutants (i.e., usually diesel-fueled vehicles and equipment). However, construction contractors would be required to implement measures to reduce or eliminate emissions by following SCAQMD rules for standard construction practices. As shown in Tables 1 through 4 above, the project would not exceed any of the local or regional emissions thresholds during construction or operation. Therefore, the project would not expose sensitive receptors to new or substantially greater pollutant concentrations than previously analyzed, and impacts would be less than significant. No new impact would occur.

### **Odors**

#### **2021 FEIR**

The 2021 FEIR determined that the Safety Element Update is a policy document that would not result in any physical development that could generate odors. The 2021 FEIR determined that construction of the Housing Sites would generate emissions, such as diesel exhaust, and volatile organic compounds from architectural coatings and paving activities may generate odors; however, these odors would be temporary, intermittent, and not expected to affect a substantial number of people. Additionally, noxious odors would be confined to the immediate vicinity of construction equipment. By the time such emissions reach a receptor (e.g., people in residential units, day care centers, schools, nursing homes, etc.), they would be diluted to well below any level of air quality concern, and impacts would be less than significant. Once operational, the Housing Sites would not be a source of objectionable odors, and impacts would be less than significant.

### **Project**

Odors associated with the project would be the same as that analyzed in the 2021 FEIR. During project construction, some odors may be present due to diesel exhaust. However, these odors would be temporary and limited to the construction period. Operation of the project would not include any activities or operations that would generate objectionable odors. Therefore, the project would not result in new or substantially greater impacts related to odors compared to the 2021 FEIR.

## **15.4 Biological Resources**

### **Sensitive Species**

#### **2021 FEIR**

The 2021 FEIR determined that the Safety Element Update is a policy document that would not result in any physical development that could impact any sensitive species. The 2021 FEIR determined that some of the Housing Sites would have the potential to impact sensitive species, which would be considered a significant impact. The 2021 FEIR found that implementation of the City's General Plan Mitigation Monitoring Program for future discretionary development, and implementation of 2021 FEIR Mitigation Framework BIO-1 for ministerial development, would reduce impacts to a level less than significant.

## Project

Consistent with the City's General Plan Mitigation Monitoring Program (Measure 3-1) which was incorporated by reference into the 2021 FEIR, a Biology Assessment was completed for the project that included a literature review to assist in determining the existence or potential occurrence of sensitive plant and animal species on the project site (Appendix D). Database records for the San Clemente, and Dana Point, California United States Geological Survey 7.5-minute quadrangles were reviewed on August 1, 2022, using the California Department of Fish and Wildlife's California Natural Diversity Database and the California Native Plant Society Electronic Inventory. On May 9, 2022, LSA Biologists Leo Simone and Heather Monteleone conducted a general evaluation of the biological resources within and immediately adjacent to the project site to evaluate the existing conditions in the designated project area and to identify any existing or potential biological resource issues that would require additional study.

Vegetation within the immediate vicinity of project consists of non-native ornamental, all derived from commercial nursery stock. No native vegetation was observed on, or within, the immediate vicinity of the project site. The lack of native habitat is typical of urban land uses, and there is no high value habitat within or directly adjacent to the project site. The habitat of existing urban development is indicated by the low diversity of faunal species. The nearest native vegetation that would be considered high value habitat is more than three miles from the project site. Therefore, the project would not result in the loss of sensitive habitat or any special-status species. However, ornamental vegetation may provide nesting habitat for migratory birds protected under the federal Migratory Bird Treaty Act (MBTA). Consequently, vegetation removal during the avian nesting period, which typically extends between February and September would have the potential to impact nesting migratory birds protected under the MBTA, which would be considered a significant impact. Implementation of mitigation measure MM-BIO-1 would reduce impacts related to nesting migratory birds to a level less than significant. Mitigation measure MM-BIO-1 is consistent with the requirements of Measure 3-1 listed in the City's General Plan Mitigation Monitoring Program, which was incorporated by reference into the 2021 FEIR. Therefore, the project would not have a new or substantially greater adverse effect on any sensitive species than previously analyzed, and impacts would be less than significant. The 2021 FEIR Mitigation Framework BIO-1 would not apply to this project, as it is not being processed ministerially. No new impact would occur.

## Mitigation Measures

### MM-BIO-1: Nesting Migratory Birds

No direct impacts shall occur to any nesting birds, their eggs, chicks, or nests during the breeding season. If vegetation removal activities must occur during the bird breeding season of February 1 to September 15, then a pre-construction survey would be necessary to confirm the presence or absence of breeding birds within the temporary parking lot. If nests or breeding activities are located on-site, then an appropriate buffer area around the nesting site shall be maintained until the young have fledged. The width of the buffer would be determined by a qualified biologist and biological monitoring would be required during construction. If no nesting birds are detected during the pre-construction survey, no avoidance measures would be required.

## **Sensitive Vegetation Communities**

### **2021 FEIR**

The 2021 FEIR determined that the Safety Element Update is a policy document that would not result in any physical development that could impact riparian habitat or other sensitive natural communities. The 2021 FEIR determined that some sites proposed for development under the Housing Element Update would have the potential to impact riparian habitat or other sensitive natural communities, which would be considered a significant impact. The 2021 FEIR found that implementation of the City's General Plan Mitigation Monitoring Program for future discretionary development, and implementation of PEIR Mitigation Framework BIO-1 for ministerial development, would reduce impacts to a level less than significant.

### **Project**

The project site is fully developed and does not possess any natural habitat, including riparian habitat. Therefore, the project would not have a substantial adverse effect on any riparian habitat or other sensitive natural community than previously analyzed. Mitigation measure BIO-1 would not apply to this project as it is not being processed ministerially. No new impact would occur.

## **Wetlands**

### **2021 FEIR**

The 2021 FEIR determined that the Safety Element Update is a policy document that would not result in any physical development that could impact wetlands. The 2021 FEIR determined that some sites proposed for development under the Housing Element Update would have the potential to impact wetlands, which would be considered a significant impact. The 2021 FEIR found that implementation of the City's General Plan Mitigation Monitoring Program for future discretionary development, and implementation of 2021 FEIR Mitigation Framework BIO-2 for ministerial development, would reduce impacts to a level less than significant.

### **Project**

The project site is fully developed and does not possess any federally protected wetlands, and no wetlands are located within proximity to the project site. Therefore, the project would not have a new or substantially greater adverse effect on state or federally protected wetlands than previously analyzed. Mitigation measure BIO-2 would not apply to this project as it is not being processed ministerially. No new impact would occur.

## **Wildlife Corridors**

### **2021 FEIR**

The 2021 FEIR determined that the Safety Element Update is a policy document that would not result in any physical development that could impact wildlife corridors or wildlife nursery sites. The 2021 FEIR determined that some sites proposed for development under the Housing Element Update would have the potential to impact wildlife corridors or wildlife nursery sites, which would be

considered a significant impact. The 2021 FEIR found that implementation of the City's General Plan Mitigation Monitoring Program for future discretionary development, and implementation of 2021 FEIR Mitigation Framework BIO-1 for ministerial development, would reduce impacts to a level less than significant.

### **Project**

As described above, no native vegetation was observed on, or within, the immediate vicinity of the project site. The lack of native habitat is typical of urban land uses, and there is no high value habitat within or directly adjacent to the project site. The Biological Assessment determined there is no evidence that wildlife movement occurs within the project site, and the faunal carrying capacity is expected to be very low due to the project location and proximity to surrounding commercial development. As described above, vegetation removal during the avian nesting period, which typically extends between February and September would have the potential to impact nesting migratory birds protected under the MBTA, which would be considered a significant impact. Implementation of mitigation measure MM-BIO-1 described above would reduce impacts related to nesting migratory birds to a level less than significant. Mitigation measure MM-BIO-1 would be consistent with the requirements of Measure 3-1 listed in the City's General Plan Mitigation Monitoring Program, which is consistent with the requirements of the 2021 FEIR. Therefore, the project would not have a new or substantially greater adverse effect on wildlife corridors than previously analyzed. The 2021 FEIR Mitigation Framework BIO-1 would not apply to this project as it is not being processed ministerially. No new impact would occur.

### **Habitat Conservation Planning**

#### **2021 FEIR**

The 2021 FEIR determined that the Safety Element Update is a policy document that would not result in any physical development that could conflict with the provisions of an adopted Habitat Conservation Plan (HCP), Natural Community Conservation Plan. The City is one of the signatories of the Southern Orange County Subregional HCP, but is not a participant receiving regulatory coverage for impacts to covered species. The 2021 FEIR determined that none of the Housing Sites are located within the HCP Reserve area which represents the areas needed for conservation to achieve the goals of the HCP. Therefore, the 2021 FEIR found that development at the Housing Sites would not conflict with the Southern Orange County Subregional HCP, and impacts would be less than significant.

### **Project**

The project site is not located within HCP Reserve area which represents the areas needed for conservation to achieve the goals of the HCP. Therefore, the project would not result in a new or substantially greater conflict with the Southern Orange County Subregional HCP than previously analyzed. No new impact would occur.

## Policies and Ordinances Protecting Biological Resources

### 2021 FEIR

The 2021 FEIR determined that the Safety Element Update is a policy document that would not result in any physical development that could conflict with any local policies or ordinances protecting biological resources. The 2021 FEIR determined that future discretionary development on Housing Sites would undergo an environmental review and would be subject to site specific mitigation measures to ensure impacts to biological resources are reduced to less than significant. Additionally, for future development that may proceed with a ministerial approval, implementation of 2021 FEIR Mitigation Framework BIO-1 and BIO-2 would ensure that the City applies applicable objective development standards to ensure consistency with City policies for the protection of biological resources. Therefore, the 2021 FEIR found that impacts related to policy and ordinance compliance To be

### Project

The project would be required to be consistent with all relevant SCMC regulations and General Plan policies. An Arborist Report documented that the project site currently possesses 175 ornamental landscape trees, 77 of which are in good condition, 69 are in fair condition, and 29 are in poor condition. All the tree species found on-site are common non-native ornamental landscape trees that are readily available at commercial nurseries. Most of the trees are growing in less-than-optimal conditions, and none would be required to be preserved on-site. As described in above, impacts to all other biological resources would be less than significant or mitigated to a level less than significant. Therefore, the project would not conflict with any local policies or ordinances protecting biological resources, such as tree preservation policy or ordinance, to any greater degree than previously analyzed and impacts would be less than significant. The 2021 FEIR Mitigation Framework BIO-1 and BIO-2 would not apply to this project as it is not being processed ministerially. No new impact would occur.

## 15.5 Cultural Resources

### Historic Resources

### 2021 FEIR

The 2021 FEIR determined that the Safety Element Update is a policy document that would not result in any physical development that could impact historic resources. The 2021 FEIR determined that adherence to applicable requirements of the City's Design Guidelines, Henry Lenny Architectural Design Guidelines, Architectural Overlay District and the SCMC would ensure impacts related to historic resources for both ministerial and discretionary projects developed under the Housing Element Update would be less than significant.

### Project

Consistent with the City's General Plan Mitigation Monitoring Program (Measure 4-1) which was incorporated by reference into the 2021 FEIR, a Cultural Resources Records Search Results was completed for the project (Appendix E). This report included completion of a records search for the

project at the South Central Coastal Information Center (SCCIC) that identified two thematic historic districts, the Spanish Colonial Revival Thematic Historic District and the Ole Hanson/Spanish Village by the Sea Thematic Historic District (see Appendix E). However, thematic historic districts consist of a group of resources linked together by a specific set of characteristics rather than cluster of resources located within a specific geographic region. Consequently, these thematic historic districts are noncontiguous and consist of various resources scattered throughout the City. There are no designated historic buildings associated with these thematic historic districts, or any other designated historic resources, located within or near the project site. Furthermore, the vacant hospital facility and supporting structures onsite that would be demolished do not qualify as historic resources. Therefore, the project would not cause a new or substantially greater adverse change in the significance of an historical resource pursuant to §15064.5 than previously analyzed. No new impact would occur.

### **Archaeological Resources**

#### **2021 FEIR**

The 2021 FEIR determined that the Safety Element Update is a policy document that would not result in any physical development that could impact archaeological resources. The 2021 FEIR determined that some sites proposed for development under the Housing Element Update would have the potential to encounter subsurface archaeological deposits, which could be considered a significant impact. The 2021 FEIR found that implementation of the City's General Plan Mitigation Monitoring Program for future discretionary development, and implementation of 2021 FEIR Mitigation Framework CUL-1 for ministerial development, would reduce impacts to a level less than significant.

#### **Project**

The Cultural Resources Records Search Results completed for the project at the SCCIC determined that 11 previous studies had been completed within one mile of the project site, two of which included portions of the project site. No previously identified archaeological resources were identified within the project site. However, the record search identified an expansive (15,600-square-meter) prehistoric artifact scatter was identified approximately 0.18-mile south of the project site. Furthermore, the prehistoric artifact scatter is located approximately 0.65 mile from the shoreline within the coastal corridor of a dense prehistoric habitation. Therefore, the presence of the prehistoric artifact scatter may be an indication that the project site may have moderate sensitivity for the presence of archaeological resources, which would be considered a significant impact. Implementation of the MM-CUL-1 would reduce impacts related to archaeological resources to a level less than significant. Mitigation measure MM-CUL-1 is consistent with the requirements of Measure 4-1 listed in the City's General Plan Mitigation Monitoring Program, which was incorporated by reference into the 2021 FEIR. Therefore, the project would not cause a new or substantially greater substantial adverse change in the significance of an archeological resource pursuant to §15064.5 than previously analyzed.

## Mitigation Measures

### MM-CUL-1: Archaeological Monitoring

A qualified archaeologist shall be retained for the project to conduct the following monitoring activities during construction:

- a. An archaeologist shall be on call during grading and other significant ground-disturbing activities.
- b. Should any cultural/scientific resources be discovered, no further grading shall occur in the area of the discovery until the Community Development Director concurs in writing that adequate provisions are in place to protect these resources.
- c. Unanticipated discoveries shall be evaluated for significance by an Orange County Certified Professional Archaeologist. If significance criteria are met, then the project shall be required to perform data recovery, professional identification, radiocarbon dates as applicable, and other special studies; submit materials to the California State University Fullerton or local archival facility, where available; and provide a comprehensive final report including appropriate records for the California Department of Parks and Recreation (Building, Structure, and Object Record; Archaeological Site Record; or District Record, as applicable).

## Human Remains

### 2021 FEIR

The 2021 FEIR determined that the Safety Element Update is a policy document that would not result in any physical development that could impact human remains. The 2021 FEIR determined that in the unlikely event that human remains are discovered during future development at Housing Sites, adherence to California Health and Safety Code Section 7050.5 and Public Resources Code Section 5097.98, the California Native American Graves Protection and Repatriation Act (2001), the federal Native American Graves Protection and Repatriation Act (1990), as well as AB 52 early consultation requirements, would ensure that impacts would be less than significant.

### Project

In the event human remains are encountered, State Health and Safety Code Section 7050.5 requires that no further disturbance shall occur until the County Coroner has made a determination of origin and disposition pursuant to Public Resources Code Section 5097.98. The County Coroner must be notified of the find immediately. If the remains are determined to be Native American, the County Coroner will notify the Native American Heritage Commission (NAHC), which will determine and notify a Most Likely Descendant (MLD). With the permission of the landowner or his/her authorized representative, the MLD may inspect the site of the discovery. The MLD shall complete the inspection within 48 hours of notification by the NAHC. The MLD will have the opportunity to offer recommendations for the disposition of the remains. Adherence to these requirements is consistent with the 2021 FEIR analysis and would ensure no new or more substantial impacts on human remains would occur than previously analyzed in the 2021 FEIR.



## Tribal Cultural Resources

### 2021 FEIR

As part of the 2021 FEIR, the City consulted with Native American Tribes. Although the City did not receive any requests for consultation or comments, the potential to uncover buried tribal cultural resources exists where development would disturb native soils. Therefore, the FEIR found that the potential for direct and/or indirect impacts to existing tribal cultural resources would be potentially significant.

### Project

The City received one request for consultation on the subject Senior Housing and Medical Office project. The tribe has requested Native American monitoring during all ground disturbing activities. However, implementation of MM-CUL-1 described above would ensure that a Native American monitor would be present during all ground disturbing activities. No changes to the project evaluated in the 2021 FEIR are proposed that would affect conclusions related to tribal cultural resources.

## 15.6 Energy

### Wasteful, Inefficient, or Unnecessary Consumption of Energy

#### 2021 FEIR

The 2021 FEIR determined that the Safety Element is a policy document that would not result in any physical development that would consume energy. The 2021 FEIR determined that there are no conditions in the project areas of the Housing Sites that would require non-standard equipment or construction practices that would increase fuel-energy consumption above typical rates. Consistent with state requirements, all construction equipment would meet California Air Resources Board (CARB) Tier 3 In-Use Off-Road Diesel Engine Standards. Development of the Housing Sites would not result in any unusual characteristics that would result in excessive long-term operational building energy demand. Therefore, the 2021 FEIR found that the Housing and Safety Elements Update would not result in potentially significant environmental impacts due to wasteful, inefficient, or unnecessary consumption of energy resources, and impacts would be less than significant.

### Project

#### Construction-Related Energy Use

During construction, energy use would occur in two general categories: fuel use from vehicles used by workers commuting to and from the construction site, and fuel use by vehicles and other equipment to conduct construction activities. The construction equipment and worker trips required for the project were determined as a part of the Air Quality and Greenhouse Gas (GHG) Analysis prepared for the project (see Appendix C). Heavy-duty construction equipment is usually diesel powered.

Project construction activities would temporarily contribute additional vehicle trips on the local circulation system, and would generate up to 233 daily worker trips during an approximately 20-month period. Demolition hauling would generate up to 285 vehicle trips, soil hauling would generate up to 1,347 vehicle trips, and deliveries of construction materials would periodically generate up to 48 additional vehicle trips. Fuel consumption associated with on-road worker trips and delivery trips were calculated using the total trips, trip lengths calculated in the Air Quality and GHG Analysis, and EMFAC2021 fuel consumption rates (Appendix F). Fuel consumption associated with on-site construction equipment was calculated using the equipment quantities and phase lengths calculated in the Air Quality and GHG Analysis and CARB OFF-ROAD model (see Appendix F). Off-site and on-site fuel consumption that would occur over the entire construction period is summarized in Tables 5 and 6, respectively.

Table 5 Off-site Construction Vehicle Fuel Consumption				
Trip Type	Total Vehicle Miles Traveled	Total Fuel Consumption (gallons)		Electricity Consumption
		Gasoline	Diesel	kWh
Workers	1,380,845	49,483	1,231	196,673
Hauling	32,640	--	194,428	--
Deliveries	331	--	1,973	--
<b>Total</b>	<b>1,413,816</b>	<b>49,483</b>	<b>197,632</b>	<b>196,673</b>

Table 6 On-site Construction Equipment Fuel Consumption					
Phase	Phase Length (Days)	Equipment	Amount	Total Usage Hours	Total Diesel Fuel Consumption (gallons)
Demolition	20	Concrete Industrial Saws	1	160	221
		Excavator	1	160	501
		Rubber Tired Dozers	2	320	1,641
Site Preparation and Grading	35	Rubber Tired Dozers	2	560	2,871
		Tractors/Loaders/Backhoes	2	560	1,048
		Excavator	1	280	877
		Grader	1	280	1,114
Building Construction	360	Crane	1	2,520	8,680
		Forklifts	3	8,640	8,076
		Tractors/Loaders/Backhoes	3	7,560	14,147
Paving	10	Paver	2	160	446
		Paving Equipment	2	160	389
		Rollers	2	160	255
Architectural Coatings	180	Air Compressor	1	1,080	1,103
<b>Total</b>					<b>39,500</b>

Consistent with federal requirements, all equipment was assumed to meet CARB Tier 3 In-Use Off-Road Diesel Engine Standards. There are no known conditions in the project area that would require nonstandard equipment or construction practices that would increase fuel-energy consumption above typical rates. Therefore, the project would not result in the use of excessive amounts of fuel or other forms of energy during construction greater than previously analyzed, and impacts would be less than significant during construction. No new impacts would occur.

Operation-Related Energy Use

During operation, energy use would be associated with transportation-related fuel use (gasoline, diesel fuel, and electric vehicles), and building-related energy use (electricity and natural gas).

*Transportation-Related Energy Use*

Buildout of the project and occupation by residents would result in transportation energy use. Trips by individuals traveling to and from the project site would result from use of passenger vehicles or public transit. Passenger vehicles would be mostly powered by gasoline, with some fueled by diesel or electricity. Public transit would be powered by diesel or natural gas, and could potentially be fueled by electricity. The project is anticipated to generate 1,080 daily trips. Vehicle emission factors and fleet mix were based on regional averages from the CARB Emission Factors 2021 model. Based on CalEEMod Air Quality and GHG Analysis, the project would generate 3,468,235 annual vehicle miles traveled (VMT) which equals approximately 9,502 daily VMT. Total gasoline and diesel fuel consumption was calculated using EMFAC2021 fuel consumption rates and fleet data for light duty autos, light duty trucks, light heavy duty trucks, and motorcycles. The results are summarized in Table 7.

Table 7 Vehicle Fuel/Electricity Consumption					
	Gasoline	Diesel	Electric	Plug-In Hybrid	Total
VMT	8,974	187	403	196	9,760
Fuel Consumed (gallons)	256,891	4,208	0	11,860	272,958
Electricity Consumer (kWh)	0	0	1,042	648	1,690
kWh = kilowatt hour.					

The Orange County Transit Authority Bus Route 1 runs along Camino de los Mares immediately adjacent to the project site. This route operates between San Clemente and Long Beach and connects to the San Clemente Metrolink Station. The proximity of regional shopping and local bus routes would help reduce VMT generated by the project. In addition, project fuel consumption would decline over time beyond initial operational year of the project as a result of continued implementation of increased federal and state vehicle efficiency standards. There is no component of the project that would result in unusually high vehicle fuel use during operation. As such, operation of the project would not create a land use pattern that would result in new or substantially greater wasteful, inefficient, or unnecessary use of energy than previously analyzed, and impacts would be less than significant. No new impact would occur.

### *Non-Transportation-Related Energy Use*

Non-transportation energy use would be associated with electricity and natural gas. The Renewables Portfolio Standard (RPS) promotes diversification of the state's electricity supply and decreased reliance on fossil fuel energy sources. Renewable energy includes (but is not limited to) wind, solar, geothermal, small hydroelectric, biomass, anaerobic digestion, and landfill gas. Originally adopted in 2002 with a goal to achieve a 20 percent renewable energy mix by 2020 (referred to as the "Initial RPS"), the goal has been accelerated and increased by Executive Orders (EOs) S-14-08 and S-21-09 to a goal of 33 percent by 2020. In April 2011, SB 2 (1X) codified California's 33 percent RPS goal. SB 350 (2015) increased California's renewable energy mix goal to 50 percent by year 2030. SB 100 (2018) further increased the standard set by SB 350 establishing the RPS goal of 44 percent by the end of 2024, 52 percent by the end of 2027, and 60 percent by 2030. Once operational, the project would be served by San Diego Gas & Electric (SDG&E). As of 2020, SDG&E had a 39 percent procurement of renewable energy (CPUC 2021).

The California Code of Regulations, Title 24, is referred to as the California Building Code. It consists of a compilation of several distinct standards and codes related to building construction, including plumbing, electrical, interior acoustics, energy efficiency, handicap accessibility, and so on. Of particular relevance to GHG reductions are the California Building Code's energy efficiency and green building standards as outlined below.

Title 24, Part 11 of the California Code of Regulations is CALGreen. Beginning in 2011, CALGreen instituted mandatory minimum environmental performance standards for all ground-up new construction of commercial and low-rise residential buildings, state-owned buildings, schools, and hospitals. It also includes voluntary tiers (I and II) with stricter environmental performance standards for these same categories of residential and non-residential buildings. Local jurisdictions must enforce the minimum mandatory requirements and may adopt CALGreen with amendments for stricter requirements.

The project would, at a minimum, be required to comply with the mandatory measures included in the current 2019 Energy Code (California Code of Regulations, Title 24, Part 6) and the 2019 CALGreen standards. The mandatory standards require:

- Solar on single- and multi-family residential buildings
- Outdoor water use requirements as outlined in local water efficient landscaping ordinances or current Model Water Efficient Landscape Ordinance standards, whichever is more stringent;
- Requirements for water conserving plumbing fixtures and fittings;
- 65 percent construction/demolition waste diverted from landfills;
- Inspections of energy systems to ensure optimal working efficiency;
- Low-pollutant emitting exterior and interior finish materials such as paints, carpets, vinyl flooring, and particle boards;
- Dedicated circuitry to facilitate installation of electric vehicle charging stations in newly constructed attached garages for single-family and duplex dwellings; and

- Installation of electric vehicle charging stations for at least three percent of the parking spaces for all new multi-family developments with 17 or more units.

Similar to the compliance reporting procedure for demonstrating Energy Code compliance in new buildings and major renovations, compliance with the CALGreen operational water reduction requirements must be demonstrated through completion of water use reporting forms for new low-rise residential and non-residential buildings. The water use compliance form must demonstrate a 20 percent reduction in indoor water use by either showing a 20 percent reduction in the overall baseline water use as identified in CALGreen or a reduced per-plumbing-fixture water use rate.

Electricity and natural gas service to the project site is provided by SDG&E. Once operational, the proposed residential units would use electricity and natural gas to run various appliances and equipment, including space and water heaters, air conditioners, ventilation equipment, lights, and numerous other devices. Generally, electricity use is higher in the warmer months due to increased air conditioning needs, and natural gas use is highest when the weather is colder as a result of high heating demand. As a part of the Air Quality and GHG Analysis prepared for the project (see Appendix C), CalEEMod was used to estimate the total operational electricity and natural gas consumption associated with the project. Table 8 summarizes the anticipated operational energy and natural gas use.

Table 8 Operational Electricity and Natural Gas Use	
	Total Use
Electricity	1,103,313 kWh/Year
Natural Gas	2,855,275 kBTU/Year
kWh = kilowatt hour; kBTU = 1,000 British thermal units	

Buildout of the project would result in an increase of operational electricity and natural gas usage when compared to the existing condition. The project would be required to meet the mandatory energy requirements of 2019 CALGreen and the California Energy Code (Title 24, Part 6 of the California Code of Regulations) and would benefit from the efficiencies associated with these regulations as they relate to building heating, ventilating, and air conditioning mechanical systems, water-heating systems, and lighting. The project would include solar panels. Further, electricity would be provided to the project by SDG&E, which currently has an energy mix that includes 39 percent renewables and is on track to achieve 60 percent by 2030 as required by RPS. Therefore, there are no project features that would result in new or a substantially greater use of excessive amounts of energy compared to what was evaluated in the FEIR. The project would not create unnecessary energy waste, or conflict with any adopted plan for renewable energy efficiency. New or more severe energy impacts would not occur. No new impact would occur.

**Conflict with State or Local Energy Plans**

**2021 FEIR**

The 2021 FEIR determined that the Safety Element is a policy document that would not result in any physical development that would consume energy. Future development associated with implementation of residential development at the Housing Sites would be subject to compliance

with the California Building Code (Title 24) which aims to reduce excessive and inefficient energy use. By locating housing at existing retail sites and developing retail uses along with multi-family residential uses on the potential Housing Sites, non-commute vehicle trips would be reduced. Future discretionary development would be reviewed for conformance with Mobility and Complete Streets Element policies that are intended to reduce VMT throughout the City. Furthermore, future development would, at a minimum, be required to comply with the mandatory measures included in the current 2019 Energy Code (California Code of Regulations, Title 24, Part 6) and the 2019 CALGreen standards. Therefore, the 2021 FEIR found that the Housing and Safety Elements Update would not conflict with or obstruct a state or local plan for renewable energy or energy efficiency, and impacts would be less than significant.

### **Project**

The applicable State plans that address renewable energy and energy efficiency are CALGreen, the California Energy Code, and RPS. As discussed above, the project would be required to meet the mandatory energy requirements of 2019 CALGreen and the 2019 California Energy Code. Therefore, the project would not result in new or substantially greater impacts related to conflicts with energy plans compared to the FEIR. The project would comply with all aspects of CALGreen and the California Energy Code. No new or more severe impacts would result compared to the FEIR.

## **15.7 Geology and Soils**

### **Seismic Hazards and Unstable Geology**

#### **2021 FEIR**

The 2021 FEIR determined that the Safety Element is a policy document that would not result in any physical development that that could be affected by seismic ground shaking, ground rupture, unstable soils, liquefaction, landslide, or collapse. The 2021 FEIR determined that adherence to regulatory requirements including the California Building Code (CBC) and SCMC requirements for soils engineering/ engineering geology reports and erosion control plans would ensure that development of the Housing Sites would not cause substantial adverse effects associated with seismic hazards and unstable geology, and impacts would be less than significant.

### **Project**

No project changes have been identified that would affect the conclusion of the FEIR related to seismic hazards and unstable geology. As described in the Geologic and Seismic Hazards Review completed for the project (Appendix G), the project would be designed in accordance with all applicable current codes and standards utilizing the appropriate seismic design parameters to reduce seismic risk as defined by California Geological Survey (CGS) Chapter 2 of Special Publication 117a (CGS 2008), and the 2019 edition of the CBC, or the most current edition of the code at the time of project construction. The project would be required to comply with the SCMC.

The Geologic and Seismic Hazards Review completed for the project determined that the project site is not located within a liquefaction hazard zone based on the Seismic Hazard Zone Map for the Orange Quadrangle, nor is the site underlain by shallow groundwater or near-surface deposits of

non-cohesive soils prone to liquefaction. Therefore, the project would not cause new or substantially greater adverse effects involving liquefaction than previously analyzed.

The site is flat and mostly would not be susceptible to landslide except the southwestern portion of the project site may be susceptible to landslide. The project would implement the use of shear keys, flattening of the existing slope gradients, or assignments of structural setbacks behind top of slope areas in order to avoid landslides. Through these measures the project would ensure protection against landslides. The project would not cause new or substantially greater adverse effects involving strong seismic ground shaking, unstable geology, landslides, liquefaction or collapse than previously analyzed, and impacts would be less than significant. No new impact would occur.

### **Soil Erosion**

#### **2021 FEIR**

The 2021 FEIR determined that the Safety Element is a policy document that would not result in any physical development that could cause soil erosion. The 2021 FEIR determined that adherence to regulatory requirements including preparation of a storm water pollution prevention plan (SWPPP) and SCMC Chapter 15.36 (Grading Ordinance) would ensure that both future ministerial and discretionary development within the Housing Sites would not result in substantial soil erosion or the loss of topsoil, and impacts would be less than significant.

#### **Project**

The Preliminary Water Quality Management Plan (Appendix H) completed for the project identifies potential best management practices (BMPs) to be included as design features to protect against soil erosion, such as temporary catchment basins and/or sandbagging which would control runoff and contain sediment transport within the project site during construction. Following completion of the project, the project site would be improved with structures, hardscape, landscaping and appropriate drainage infrastructure. Therefore, the project would not result in new or substantially greater soil erosion or loss of topsoil than previously analyzed, and impacts would be less than significant. No new impact would occur.

### **Expansive Soils**

#### **2021 FEIR**

The 2021 FEIR determined that the Safety Element is a policy document that would not result in any physical development that would be susceptible to expansive soils. The 2021 FEIR determined that adherence to CBC requirements as adopted by the City (SCMC Section 15.36.180) would ensure that future ministerial and discretionary development would not create substantial direct or indirect risks associated with expansive soils, and impacts would be less than significant.

#### **Project**

The Geologic and Seismic Hazards Review completed for the project included expansion index testing of shallow soil samples that revealed a low to medium expansion potential. The report states that import material for replacement fill, if needed, should consist of soils with low expansion

potential, and implementation of standard engineering and earthwork construction practices, such as proper foundation design and controlled moisture conditioning or mixing with non-expansive soils, would reduce the risks associated with expansive soils (see Appendix G). The project would not create new or substantially greater direct or indirect risks to life or property associated with expansive soil than previously analyzed, and impacts would be less than significant. No new impact would occur.

### **Septic Systems**

#### **2021 FEIR**

The 2021 FEIR determined that the Safety Element is a policy document that would not result in any physical development that would require wastewater services. The 2021 FEIR determined that none of the Housing Sites would utilize septic tanks or alternative wastewater disposal systems, and no impact would occur.

#### **Project**

The project would connect to existing wastewater services lines that traverse the project site and would not require the use of septic tanks or alternative wastewater disposal systems. No new or substantially greater impact would occur.

### **Paleontological Resources and Unique Geology**

#### **2021 FEIR**

The 2021 FEIR determined that the Safety Element is a policy document that would not result in any physical development that could impact paleontological resources or unique geology. The 2021 FEIR found that implementation of the City's General Plan Mitigation Monitoring Program for future discretionary development, and implementation of 2021 FEIR Mitigation Framework PAL-1 for ministerial development, would, reduce impacts related to paleontological resources to a level less than significant.

#### **Project**

Consistent with the City's General Plan Mitigation Monitoring Program (Measure 4-2) which was incorporated by reference into the 2021 FEIR, a Paleontological Analysis was completed for the project (Appendix I). The project specific Paleontological Analysis determined that soils beneath the site consist of artificial fill and Capistrano Formation (see Appendix I). Artificial fill consists of sediments that have been removed from one location and transported to another location by human activity, rather than by natural means, and does not possess any paleontological sensitivity. The marine Capistrano Formation was deposited during the early Pliocene to late Miocene. Two facies that are distinguished by their depositional environments and corresponding compositions are located within the vicinity of the project. The turbidite facies formed in marine channel and sub-sea fan environments, and is composed of coarse-grained, poorly bedded, weakly cemented sandstone and conglomeratic sandstone. In contrast, the siltstone facies accumulated in deep shelf and slope environments and consists of white to pale gray, massive to poorly bedded, friable siltstone, mudstone, and diatomaceous shale. Only the siltstone facies are mapped within the project site. The



Capistrano Formation has produced abundant and diverse scientifically significant fossils, many of which come from the siltstone facies. Therefore, the Capistrano Foundation is considered to have high paleontological sensitivity. Although the fossil locality search did not identify any fossil localities within the boundaries of the project site, the search noted records of several fossil localities nearby from the Capistrano Formation. Therefore, project excavation within the Capistrano Foundation would have the potential to impact paleontological resources, which would be considered a significant impact, consistent with the FEIR. Implementation of mitigation measures MM-PAL-1 through MM-PAL-3 would reduce impacts related to paleontological resources to a level less than significant. Mitigation measures MM-PAL-1 through MM-PAL-3 are consistent with the requirements of Measure 4-2 listed in the City's General Plan Mitigation Monitoring Program, which was incorporated by reference into the 2021 FEIR. Therefore, the project would not cause a new or substantially greater adverse change in the significance of a unique paleontological resource or site or unique geologic feature than previously analyzed. No new or substantially more severe impact would occur.

### **Mitigation Measures**

#### **MM-PAL-1: Paleontological Resources Impact Mitigation Program**

A paleontologist who meets the qualifications established by the Society of Vertebrate Paleontology (SVP) shall be retained to develop a Paleontological Resources Impact Mitigation Program (PRIMP) for this project. The PRIMP shall be consistent with the standards of the SVP and include the methods that will be used to protect paleontological resources that may exist within the project site, as well as procedures for monitoring, fossil preparation and identification, curation into a repository, and preparation of a report at the conclusion of grading.

#### **MM-PAL-2: Paleontological Monitoring**

Excavation and grading activities in deposits with high paleontological sensitivity (i.e., the Capistrano Formation) shall be monitored by a qualified paleontological monitor following a PRIMP. No monitoring is required for excavations in deposits with no paleontological sensitivity (i.e., Artificial Fill). If paleontological resources are encountered during the course of ground disturbance, the paleontological monitor shall have the authority to temporarily redirect construction away from the area of the find. In the event that paleontological resources are encountered when a paleontological monitor is not present, work in the immediate area of the find shall be redirected, and the paleontologist or paleontological monitor shall be contacted to assess the find for scientific significance. If determined to be scientifically significant, the fossil shall be collected from the field.

#### **MM-PAL-3: Paleontological Resources Report**

Collected resources shall be prepared to the point of identification, identified to the lowest taxonomic level possible, cataloged, and curated into the permanent collections of a museum repository. At the conclusion of the monitoring program, a report of findings shall be prepared to document the results of the monitoring program.

## 15.8 Greenhouse Gas Emissions

### GHG Emissions

#### 2021 FEIR

The 2021 FEIR determined that the Safety Element is a policy document that does not have the potential to add growth or population to the City, and therefore would not generate GHG emissions. The 2021 FEIR determined that adoption of the Housing Element sites inventory would result in an increase in GHG emissions that exceed the 2017 Scoping Plan efficiency metrics and would result in an increase in VMT, resulting in a significant impact. Although implementation of Mitigation Framework GHG-1 would support GHG reductions for future ministerial development, and despite the City's continued implementation of the City's Climate Action Plan (CAP) and Sustainability Action Plan (SAP), the 2021 FEIR found that impacts would remain significant and unavoidable.

#### Project

The Air Quality and Greenhouse Gas Analysis prepared for the project evaluated the potential for the project to emit GHG (see Appendix C). GHG emissions associated with the project would occur over the short-term from construction activities, consisting primarily of emissions from equipment exhaust. There would also be long-term GHG emissions associated with project-related vehicular trips. CalEEMod results were used to quantify GHG emissions generated by the project. To provide guidance to local lead agencies on determining significance for GHG emissions in their CEQA documents, SCAQMD has provided screening thresholds. Though the SCAQMD has not published a quantified threshold beyond 2020, the Air Quality and Greenhouse Gas Analysis utilized a threshold of 2,400 metric tons of carbon dioxide equivalent (CO<sub>2</sub>e) per year or 3.8 metric tons of CO<sub>2</sub>e per year per service population, which was calculated for the buildout year of 2025 based on the GHG reduction goals of Senate Bill (SB) 32 and Executive Order B-30-15.

Demolition and construction activities associated with the project would produce combustion emissions from various sources. During construction, GHGs would be emitted through the operation of construction equipment and from worker and builder supply vendor vehicles, each of which typically use fossil-based fuels to operate. The combustion of fossil-based fuels creates GHGs such as CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O. Furthermore, CH<sub>4</sub> is emitted during the fueling of heavy equipment. Exhaust emissions from on-site construction activities would vary daily as construction activity levels change.

Lead agencies are required to quantify and disclose GHG emissions that would occur during construction, and the SCAQMD requires the construction GHG emissions to be amortized over the life of the project, defined as 30 years, added to the operational emissions, and compared to the applicable interim GHG significance threshold tier. Using CalEEMod, it was estimated that the project would generate 950.8 metric tons of CO<sub>2</sub>e during construction of the project. When annualized over the 30-year life of the project, annual emissions would be 31.7 metric tons CO<sub>2</sub>e.

Long-term operational GHG emissions are typically associated with mobile, area, and stationary sources as well as indirect emissions from sources associated with energy consumption, waste sources, and water sources. Following guidance from the SCAQMD, GHG emissions were estimated using CalEEMod. Table 9 presents the calculated GHG emissions for the project. As shown in Table 9,

the project would generate 1,876.1 metric tons of CO<sub>2</sub>e per year, which would be below the scaled numeric threshold of 2,400 metric tons of CO<sub>2</sub>e per year. Therefore, the project's contribution of GHG emissions would be below the SCAQMD threshold. Therefore, the project would not generate new or substantially greater GHG emissions than previously analyzed in the 2021 FEIR.

Table 9 Greenhouse Gas Emissions (metric tons per year)					
Emissions Source	Operational Emissions				Percentage of Total
	CO <sub>2</sub>	CH <sub>4</sub>	N <sub>2</sub> O	CO <sub>2</sub> e	
Area Sources	58.2	<0.1	<0.1	58.7	3
Energy Sources	422.6	<0.1	<0.1	424.5	23
Mobile Sources	1,083.6	<0.1	<0.1	1,098.6	60
Waste Sources	62.8	3.7	0.0	155.5	8
Water Sources	88.8	0.6	<0.1	107.1	6
<b>Total Operational Emissions</b>				<b>1,844.4</b>	<b>100</b>
Amortized Construction Emissions				31.7	-
<b>Total Annual Emissions</b>				<b>1,876.1</b>	-
SCAQMD Threshold				2,400	-
<b>Exceeds Threshold?</b>				<b>No</b>	-
SOURCE: Appendix C.					
CH <sub>4</sub> = methane		N <sub>2</sub> O = nitrous oxide			
CO <sub>2</sub> = carbon dioxide		SCAQMD = South Coast Air Quality Management District			
CO <sub>2</sub> e = carbon dioxide equivalent					

## Policies, Plans and Regulations to Reduce GHG Emissions

### 2021 FEIR

The 2021 FEIR determined that the Safety Element is a policy document that does not have the potential to add growth or population to the City, and therefore would not generate GHG emissions. The 2021 FEIR determined that development of the Housing Sites would increase GHG emissions and VMT in the City. Although implementation of mitigation measure GHG-1 would support GHG reductions for future ministerial development, and despite the City's continued implementation of the CAP and SAP, the 2021 FEIR found that impacts would remain significant and unavoidable.

### Project

The City adopted a CAP in January 2014. The project would be consistent with the alternative transportation goal of the CAP by expanding pedestrian networks. The project would implement internal walkways linking the residential units with the amenity areas and surface parking areas, as well as providing connection to the Camino de los Mares parkway for access to the nearby transportation (bus stops), commercial centers, and the medical office building. This expansion of network would encourage people, including residents of the project site, to walk instead of drive. Further, the senior housing in proximity to the Medical Offices would support reductions in VMT and associated GHG emissions. Additionally, the project would be consistent with the CAP land use goal,

increasing the planting of new trees by incorporating landscaped courtyards in the residential community.

The project would also be consistent with the CAP goal of increasing energy efficiency in new buildings by complying with the latest California Building Code (Title 24), including the latest CALGreen standards for energy efficiency. The project would replace older buildings that were built with less efficient standard codes, improving the overall efficiency of the project site. Construction of the project would include a diversion of construction waste from landfills to recycling consistent with current local and State standards and CAP goals to increase diversion and reduction of waste. Therefore, the project would be consistent with applicable CAP goals.

The project was analyzed for consistency with the goals of Assembly Bill (AB) 32 and the AB 32 Scoping Plan, as well as Executive Order B-30-15, SB 32, and AB 197. The AB 32 Scoping Plan contains GHG reduction measures that work towards reducing GHG emissions, consistent with the targets set by AB 32, Executive Order B-30-15 and codified by SB 32 and AB 197. AB 32 aimed at reducing GHG emissions to 1990 levels by 2020 and required the CARB to prepare a Scoping Plan that outlines the main State strategies for meeting the 2020 deadline and to reduce GHGs that contribute to global climate change. Executive Order B-30-15 added the immediate target of reducing GHG emissions to 40 percent below 1990 levels by 2030. CARB released a second update to the Scoping Plan, the 2017 Scoping Plan,<sup>3</sup> to reflect the 2030 target set by Executive Order B-30-15 and codified by SB 32. The companion bill to SB 32, AB 197, provides additional direction to the CARB related to the adoption of strategies to reduce GHG emissions. Additional direction in AB 197 intended to provide easier public access to air emissions data that are collected by CARB was posted in December 2016.

Overall, the AB 32 Scoping Plan contains GHG reduction measures that work towards reducing GHG emissions, consistent with the targets set by AB 32, Executive Order B-30-15 and codified by SB 32 and AB 197. The measures applicable to the project include energy efficiency measures, water conservation and efficiency measures, and transportation and motor vehicle measures. The project would comply with applicable energy measures through compliance with CALGreen energy conservation and green building standards. Compliance with CALGreen would also include measures related to the reduction of wastewater and water use. The project would also be required to comply with the California Model Water Efficient Landscape Ordinance. Therefore, the project would not conflict with any of the water conservation and efficiency measures. While specific regional emission targets for transportation emissions would not directly apply to the project, vehicles traveling to the project site would comply with the Pavley II (LEV III) Advanced Clean Cars Program. Therefore, the project would be consistent with the City's CAP goals and would not result in new or substantially greater conflicts with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of GHGs than previously analyzed in the 2021 FEIR.

<sup>3</sup>California Air Resources Board. 2017. *California's 2017 Climate Change Scoping Plan*. November.

## 15.9 Hazards and Hazardous Materials

### Transport, Use, or Disposal of Hazardous Materials/Accidental Release/Emissions Near a School

#### 2021 FEIR

The 2021 FEIR determined that the Safety Element Update is a policy document that would not result in any physical development that may require the transport, use, disposal of hazardous materials, or accidental release of hazardous materials. The 2021 FEIR determined that both ministerial and discretionary development on Housing Sites would be subject to extensive regulatory requirements including SCMC Chapter 8.36 (Hazardous Materials), the California Accidental Release and Prevention program, and other federal and state regulations relating to hazardous materials management and the SCMC requirements for the preparation and filing of Material Safety Data Sheet consistent with state laws would reduce impacts to a level less than significant.

#### Project

Construction and operation of the project would be subject to the regulatory requirements described in the 2021 FEIR. The project residential and commercial uses are consistent with allowable uses envisioned in the zone as part of the 2021 FEIR. The nearest school is Palisades Elementary School located approximately 0.9-mile northwest of the project site, greater than one quarter of a mile. Therefore, project would not create a significant hazard to the public or the environment through routine transport, use, or disposal of hazardous materials, including within one-quarter mile of a school. No new or more severe impacts related to hazardous materials emissions or accidental release would occur.

### Hazardous Materials Sites

#### 2021 FEIR

The 2021 FEIR determined that the Safety Element Update is a policy document that would not result in any physical development that may be located on a hazardous materials site. The 2021 FEIR determined that future discretionary development at Housing Sites would be subject to an environmental review under CEQA that would ensure site-specific evaluation of individual sites to ensure no hazardous conditions are present or if present, measures are taken to minimize risk. The 2021 FEIR determined that implementation of Mitigation Framework HAZ-1 would reduce impacts for ministerial projects to a level less than significant.

#### Project

A Phase I Environmental Site Assessment (ESA) was prepared for the project that evaluated whether the site is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 (Appendix J). The Phase I ESA conducted a record search for the project site which identified the following listings on hazardous materials databases:

- The project site is listed as active in the California Facility Index (CA FID) underground storage tank (UST) database. The project site is listed in the Emissions Inventory Data (EMI) system as producing one carbon monoxide ton per year and two oxides of nitrogen tons per year.

- The project site is listed in the Hazardous Waste Tracking System (HWTS) database with the inactive dates of 1999, 2000, 2001, 2005, and 2020.
- The project site is listed in the California Hazardous Waste Manifest (HAZNET) database maintained by the Department of Toxic Substances Control (DTSC) as having disposed of hazardous materials.
- The project site is listed in the Resource Conservation and Recovery Act Small Quantity Generator (RCRA-SQG) database. No violations were found.
- The project site is listed in the Facility Index System/Facility Registry System (FINDS) and Enforcement & Compliance History Information (ECHO) database as various healthcare facilities. The environmental interest type is listed as "other hazardous waste activities". No releases of hazardous substances are associated with the above listings.

Based on the review of database listings described above, the Phase I ESA determined that the project site does not qualify as a Recognized Environmental Conditions (REC). However, the Phase I ESA determined that the project site is listed in the UST database as having two USTs, one 550-gallon diesel UST and one 1,000-gallon product (not specified) UST. Both USTs are listed as active. The project site is listed in the California Environmental Reporting System (CERS) as a leaking underground storage tank (LUST) cleanup site. According to the Environmental Data Resources (EDR) Report, the leak was found on August 12, 1991, during inventory control. The cause of the leak is listed as corrosion. Approximately 190 gallons of diesel was leaked into the soils in the vicinity of the UST. The EDR Report lists that the leak was stopped by removing the contents of the UST. Furthermore, the Orange County Health Care Agency (OCHCA) provided documents summarizing the activities associated with the clean-up of a diesel release onsite. The site received case closure and a No Further Action (NFA) letter on March 11, 1992. Based on the issuance of a NFA letter by the OCHCA, the Phase I ESA determined that this onsite listing is considered a Historical Recognized Environmental Conditions (HREC), which is defined as "a previous release of hazardous substances or petroleum products affecting the subject property that has been addressed to the satisfaction of the applicable regulatory authority or authorities and meeting unrestricted use criteria established by the applicable regulatory authority or authorities without subjecting the subject property to any controls (for example, activity and use limitations or other property use limitation)." The Phase I ESA did not identify any surrounding properties listed as hazardous materials sites in any regulatory databases. Therefore, as the project site has been remediated and cleared by the OCHCA, the project is not located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5. No new or substantially greater impacts associated with hazardous materials sites than previously analyzed in the 2021 FEIR would occur.

### **Airport Hazards**

#### **2021 FEIR**

The 2021 FEIR determined that the City is not located within an Airport Land Use Compatibility Plan or within two miles of a public airport or public use airport. Therefore, the 2021 FEIR found that the Housing and Safety Elements Update would not result in an airport safety hazard or excessive noise for people residing or working in the project area.

## **Project**

The project site is not located within an Airport Land Use Compatibility Plan or within two miles of a public airport or public use airport. Therefore, the project would not result in a new or substantially greater safety hazard or excessive noise for people residing or working in the project area than previously analyzed. No new or more severe impact would occur compared to what was evaluated in the 2021 FEIR.

## **Emergency Response**

### **2021 FEIR**

The 2021 FEIR determined that the Safety Element Update is a policy document that would not result in any physical development, and the Housing Sites are located within existing developed areas and along major transportation corridors in the City that would allow for evacuation and response. Development at the Housing Sites would not physically interfere with any emergency response or evacuation plans because they would not include any features that would prevent continued implementation of these plans, and impacts would be less than significant.

## **Project**

The project site is located within an urban environment along a developed transportation corridor that would allow for emergency evacuation. The project would utilize the existing driveway connections to Camino de los Mares. In order to reinforce the right-in and right-out turning movements at the western driveway, the project would make median improvements within Camino de Los Mares, and introduce signage and a center island at the driveway entrance to direct traffic. These changes would improve safety for turns into or out of the western driveway and support emergency evacuation and response. The project would not make any other changes to the existing circulation network. Therefore, the project would not impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan beyond that previously analyzed, and no new or more severe impacts would occur compared to what was evaluated in the 2021 FEIR.

## **Wildland Fires**

### **2021 FEIR**

The 2021 FEIR determined that the Safety Element Update is a policy document that would not result in any physical development, and implementation of Safety Element policies by the City focused on increasing wildfire safety through increased coordination with fire protection agencies, using the latest mapping to determine wildfire risks, and supporting efforts to evaluate wildfire evacuation and safety planning. The 2021 FEIR determined that development of the Housing Sites, especially within or adjacent to Very High Fire Hazard Severity Zone (VHFHSZ), could result in impacts related to wildfire. However, future ministerial and discretionary development at the Housing Sites would be required to adhere to all regulatory requirements in place to minimize wildfire hazards including applicable sections of the SCMC, fire and building codes, and requirements from the fire chief that would be identified during future building permit reviews. Additionally, implementation of General Plan Policies S-3.02 through S-3.06 in the City's General Plan Safety Element would further protect

land uses within the VHFHSZ and enhance wildfire safety. Therefore, the 2021 FEIR determined that the Housing and Safety Elements Update would not expose people or structures either directly or indirectly to a significant risk of loss, injury, or death involving wildland fires, and impacts would be less than significant.

## **Project**

The project site is located in an urbanized area and is not within, or adjacent to, an area identified as a VHFHSZ. The project would not result in new or more severe impact related to exposure of people or structures to wildland fires.

## **15.10 Hydrology and Water Quality**

### **Water Quality**

#### **2021 FEIR**

The 2021 FEIR determined that the Safety Element Update is a policy document that would not result in any physical development that could impact water quality. The 2021 FEIR determined that development of the Housing Sites would be subject to federal, state, and local regulations aimed at controlling water quality impacts. Both discretionary and ministerial development would be required to adhere to regulatory requirements including MS4 requirements, SCMC Chapters 13.40 (Stormwater Runoff Control), and Chapter 15.36 (Grading Ordinance), which include requirements to ensure storm water runoff is captured and treated and erosion control measures are implemented. Adherence to these requirements would ensure that impacts associated with water quality would be less than significant.

## **Project**

The Preliminary Water Quality Management Plan (PWQMP) prepared for the project determined that site is currently serviced by three existing storm drain lines (Appendix K). Runoff from the western portion of the project site is conveyed along the existing western drive aisle southerly to an existing inlet located in the southwestern portion of the site. Runoff is ultimately discharged to the existing storm drain line servicing Ocean View Plaza and conveyed southerly under I-5 to an existing wetland and natural drainage area, and then southeasterly through an existing golf course, prior to discharging to Prima Deshecha Canada and the Pacific Ocean to the south.

Runoff from the central and eastern portions of the project site are serviced by two existing storm drain lines located in the southeastern and the eastern portions of the site. These two storm drains convey flows to an existing storm drain line located within the existing apartment complex located east of the project site. Runoff is then conveyed easterly and then southerly under I-5, prior to discharging to an existing natural drainage and wetland and then southeasterly through an existing golf course, prior to discharging to Prima Deshecha Cañada and the Pacific Ocean to the south. The project does not receive run-on from off-site areas.

In the post-project condition, runoff from the site would be conveyed similar to pre-project conditions, with hydromodification controls employed to retain the site's pre-development runoff flow rates and volumes. To satisfy the project's requirement for Low Impact Development (LID) BMPs,



hydromodification, and treat storm water pollutants of concerns, the project has been divided into five Drainage Management Areas (DMAs) as follows:

- DMA 1 (1.674 acres): Consists of the western and northern segment of the project site. Runoff would be conveyed southwesterly to an infiltration well located at the western portion of the project site.
- DMA 2 (4.463 acres): Consists of the central and southern portion of the project site. Runoff would be conveyed southwesterly to an infiltration well for retention.
- DMA 3 (0.019 acre): Consists of existing landscaping, sidewalk and portion of the project's southern entrance that drain away from the project site to the existing gutter in Camino de los Mares. Runoff from this area is not hydrologically connected to the project's onsite DMAs. No improvements are proposed for this area. No treatment is proposed for this area.
- DMA 4 (0.448 acres): Consists of existing slopes and temporary disturbed areas (designated as 4-1 and 4-2) at the project's southwestern limits required for remedial grading that would be returned to natural state. No treatment is proposed.
- DMA 5 (0.064 acre): Consists of parkway and median improvements to Camion de los Mares. Runoff from this area would be discharged to Camino de los Mares and is not hydrologically connected to the project's onsite DMAs. Improvements within DMA would consist of the following:
  - DMA 5-1 (0.002 acres): Replace existing pavement with extended paved median. No BMPs are proposed.
  - DMA 5-2 (0.035 acres): Replace existing paved median and turn lane with landscaped median. Area is considered self-retaining as would consist almost entirely of depressed landscaping areas.
  - DMA 5-3 (0.027 acres): The project would add two feet of sidewalk width and extend sidewalk to reconfigure project's southern entrance. Runoff would be addressed via hydrologic source control BMP (HSC-3 Street Trees) designed to maximum extent practicable standards per U.S. Environmental Protection Agency's Green Streets Manual.

Implementation of the infiltration facilities listed above would include water quality treatment that would ensure that runoff in the post-project condition would not violate any water quality standards or waste discharge requirements. Therefore, the project would not result in new or substantially greater impact on water quality than previously analyzed, and impacts would be less than significant. No new impact would occur.

### **Groundwater**

#### **2021 FEIR**

The 2021 FEIR determined that the Safety Element Update is a policy document that would not result in any physical development that could have an adverse effect related to groundwater. The 2021 FEIR stated that a majority of the City's water is sourced from imported and recycled water, with approximately 5 percent of the City's water supply portfolio for Fiscal Year 2019-2020 pumped for municipal use through two groundwater wells (wells #6 and #8). The 2021 FEIR determined that both

redevelopment and new development on vacant sites would be required to comply with applicable storm water management requirements that focus on retention and infiltration of waters on-site. Additionally, development at all Housing Sites would be required to comply with current stormwater regulations that prioritize infiltration and treatment of stormwater and generally require increased on-site infiltration and higher standards of water quality protection compared to water quality standards that would have been implemented on existing developed sites. Therefore, the 2021 FEIR determined that the Housing and Safety Elements Update would not substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that they may impede sustainable groundwater management of the basin, and impacts would be less than significant.

### **Project**

The project site was evaluated as a potential rezone site (Site V) in the Housing Element Update that would be redeveloped with 238 multi-family residential units and 7,500 square feet of commercial space. The project has been slightly revised compared to the Housing Element Update to develop 250 senior housing units and 7,500 square feet of medical offices. The redesigned residential component would not substantively increase demand for water supply compared to what was evaluated in the 2021 FEIR. In fact, residents in a senior housing development may have lower demand for water supply compared to residents in multi-family units. The project would not utilize a groundwater well and would be served through a standard connection to the City of San Clemente Water Utility, drawing water from the City's overall supply portfolio. As described above, the project would introduce two infiltrations wells on-site. These infiltration wells would increase infiltration compared to pre-project conditions, and therefore improve groundwater recharge onsite. Therefore, the project would not result in new or substantially greater impact on groundwater supplies or interference with groundwater recharge than previously analyzed, and impacts would be less than significant. No new impact would occur.

### **Drainage Patterns/Storm Water Runoff**

#### **2021 FEIR**

The 2021 FEIR determined that the Safety Element Update is a policy document that would not result in any physical development that could result in impacts related to drainage patterns and storm water runoff. The 2021 FEIR determined that development of the Housing Sites would be subject to federal, state, and local regulations aimed at reducing polluted storm water and avoiding overloading the City's drainage system. Both ministerial and discretionary development would be required to adhere to regulatory requirements including SCMC Chapter 13.40 (Stormwater Runoff Control) which includes requirements for the elimination or reduction of storm water run-off. Impacts associated with drainage patterns and storm water runoff would be less than significant. Adherence to these requirements would ensure that impacts associated with drainage patterns and storm water runoff would be less than significant.

### **Project**

The Hydrology Analysis completed for the project evaluated peak stormwater flows during the 2-, 20-, and 100-year storm events in the pre-project and post-project conditions. As shown in Table 10,

the project would reduce peak flows during 2-, 20-, and 100-year storm events in the post-project condition. Therefore, the project would not result in new or substantially greater impact related to drainage patterns or storm water runoff than previously analyzed, and impacts would be less than significant. No new impact would occur.

Table 10 Storm Water Flow Rates in Cubic Yards Per Second			
	Existing	Proposed	Change
West			
2-Year Storm Event	2.60	2.60	0.00
10-Year Storm Event	4.80	4.70	0.00
100-Year Storm Event	7.50	6.75	-0.75
Northeast			
2-Year Storm Event	2.90	2.90	0.00
10-Year Storm Event	5.30	5.20	-0.10
100-Year Storm Event	8.20	8.00	-0.20
Southeast			
2-Year Storm Event	4.20	4.20	0.00
10-Year Storm Event	7.70	7.70	0.00
100-Year Storm Event	11.80	8.24	-3.56

## Flood Hazard/Tsunami Inundation

### 2021 FEIR

The 2021 FEIR determined that Policy S-2.03 of the Safety Element reinforces application of Federal Emergency Management Agency regulations prohibiting development within a flood zone unless adequate assurances are provided against flood hazards. The 2021 FEIR also determined that the Safety Element update includes policies supporting implantation of adaptation strategies of the Coastal Resiliency Plan and incorporates this future document and the City's Sea Level Rise Vulnerability Assessment by reference. The 2021 FEIR determined that future development of the Housing Sites would be required to conform to applicable federal, state, and City regulatory standards to effectively avoid and/or address potential impacts associated with development in flood zones, and none of the Housing Sites are within areas anticipated to be affected by tsunami or future sea level rise scenarios. Therefore, the 2021 FEIR determined that the Housing and Safety Elements Update determined that impacts associated with flood hazards and tsunami inundation would be less than significant.

### Project

The project would be constructed entirely with the footprint of Site V that was evaluated in the 2021 FEIR. Review of Figure 4.8-2 of the 2021 FEIR determined that Site V is not located within a flood hazard zone, and review of Figure 4.8-3 of the 2021 FEIR determined that Site V is not located within the 2021 Tsunami Hazard Area. Therefore, the project would not result in new or substantially greater impact related to flood hazards and tsunami than previously analyzed. No new impact would occur.

## 15.11 Land Use and Planning

### Physically Divide an Established Community

#### 2021 FEIR

The 2021 FEIR determined that the Safety Element is a policy document that would not result in any physical development, and none of the Housing Sites would require any new major infrastructure or improvements that could physically divide an established community. Therefore, the 2021 FEIR determined that the Housing and Safety Elements Update would not physically divide an established community, and impacts would be less than significant.

#### Project

There are no changes to the project that would affect the conclusions of the FEIR. The project site is located within an urban environment along a developed transportation corridor and was one of the sites evaluated for development in the PEIR. The project would redevelop a vacant hospital facility and supporting structures to a senior housing facility and medical office and would be constructed entirely within the project site without affecting adjacent properties. The project would utilize the existing driveway connections to Camino de los Mares and would not alter the existing circulation network. The project would connect to existing utilities that are already serving the surrounding development. Therefore, the project would not result in new or more severe impacts related to physical division of an established community compared to what was disclosed in the 2021 FEIR.

### Conflicts with Plans and Policies

#### 2021 FEIR

The 2021 FEIR determined that adoption of the Safety Element would ensure consistency with state law and provide additional policy in the City's General Plan for the purpose of avoiding environmental impacts related to wildfire and climate change including sea level rise. The 2021 FEIR determined that future discretionary projects under the Housing Element Update would be subject to implementation of the City's General Plan Mitigation Monitoring Requirements to ensure environmental impacts are minimized. However, future ministerial development would not be subject to an extensive policy review for consistency with General Plan policies and/or other applicable plans, and impacts related to policy inconsistency would remain significant and unavoidable.

#### Project

As described in Section 15.5 above, the project would mitigate all potential impacts to cultural resources to a level less than significant. As described in Section 15.7 above, the project would mitigate all potential impacts on paleontological resources to a level less than significant. As described in Section 15.8 above, the project would be consistent with the City's CAP. As demonstrated throughout this Addendum, all other environmental impacts not requiring mitigation would be less than significant or would have no impact. The project would not cause a new or substantially greater or more severe impacts related to conflicts with any land use plan, policy, or

regulation adopted for the purpose of avoiding or mitigating an environmental effect compared to what was previously analyzed.

## **15.12 Mineral Resources**

### **2021 FEIR**

The 2021 FEIR determined in Chapter 8.3 that the majority of land within the City is designated as MRZ-1, which is land where adequate geologic information indicates that no significant mineral deposits are present (8,464.95 acres). The remainder, located within the southwestern portion of the City (3,279.23 acres), is designated as MRZ-3, land for which the significance of mineral resources cannot be determined. Neither of these MRZ categories are considered significant mineral resources. The City's land use map does not delineate any mineral resource recovery sites or designate any land for mineral resource production. Therefore, the 2021 FEIR determined that the Housing and Safety Elements Update would not impact any known mineral resources that would be of value to the region, the state, or locally.

The 2021 FEIR determined that the City's land use map does not delineate any mineral resource recovery sites or designate any land for mineral resource production. Therefore, the 2021 FEIR determined that the Housing and Safety Elements Update would not impact any mineral resource recovery sites.

### **Project**

The project site is located in an area designated as MRZ-3, which is not considered a significant mineral resource. The project site is not delineated as a mineral resource recovery site on any land use plans. Therefore, the project would not result in a new or substantially greater impact related to the loss of availability of a known mineral resource that would be of value to the region or residents of the state or the City, compared to what was previously analyzed.

## **15.13 Noise**

### **Noise Standards**

#### **2021 FEIR**

The 2021 FEIR determined that the Safety Element Update is a policy document that would not result in any physical development that could have an adverse effect related to noise standards. The 2021 FEIR determined that development of the Housing Sites would not result in any impacts related to vehicular ambient noise, railroad noise, or stationary noise. The 2021 FEIR determined that implementation of the City's General Plan Mitigation Monitoring Program for future discretionary development, and implementation of 2021 FEIR Mitigation Framework NOS-1 for ministerial development, would reduce impacts associated with land use noise compatibility to a level less than significant. However, the 2021 FEIR determined even after implementation of Final PEIR Mitigation Framework NOS-2 for ministerial development, impacts related to construction noise would remain significant and unavoidable.

## Project

A site-specific Noise and Vibration Impact Analysis was prepared for the project (Appendix L). Two long-term noise measurements were recorded in the vicinity of the project site in order to calculate the average hourly equivalent level ( $L_{eq}$ ) and community noise equivalent level (CNEL) at each location, which incorporate the evening and nighttime hours. Sources that dominate the existing noise environment include traffic on I-5, light traffic on Camino de los Mares, and occasional aircraft noise. Noise measurement data collected during the long-term noise monitoring are summarized in Table 11. Figure 4 presents the noise measurement locations.

Location	Description	Date	Daytime Noise Levels <sup>1</sup> (dBA $L_{eq}$ )	Evening Noise Levels <sup>2</sup> (dBA $L_{eq}$ )	Nighttime Noise Levels <sup>3</sup> (dBA $L_{eq}$ )	Daily Noise Level (CNEL)
LT-1	654 Camino de los Mares, on top of roof, near southwest corner of building, approximately 3 ft from edge of roof, 300 ft from I-5 centerline.	4/13/2022	66.9–68.0	65.2–67.0	59.4–66.8	71.0
LT-2	654 Camino de los Mares, north side of building facing Camino de los Mares, approximately 80 ft from Camino de los Mares centerline.	4/13/2022	61.8–62.9	59.3–61.4	46.6–60.7	64.1

SOURCE: Appendix L.

<sup>1</sup>Daytime Noise Levels = noise levels during the hours from 7:00 a.m. to 7:00 p.m.  
<sup>2</sup>Evening Noise Levels = noise levels during the hours from 7:00 p.m. to 10:00 a.m.  
<sup>3</sup>Nighttime Noise Levels = noise levels during the hours from 10:00 p.m. to 7:00 a.m.  
 CNEL = Community Noise Equivalent Level      I-5 = Interstate 5  
 dBA = A-weighted decibels                       $L_{eq}$  = equivalent continuous sound level  
 ft = foot/feet



## Short-term Construction Impacts

Two types of short-term noise impacts would occur during project construction: (1) equipment delivery and construction worker commutes; and (2) project construction operations.

The first type of short-term construction noise would result from transport of construction equipment and materials to the project site and construction worker commutes. Based on the Air Quality and Greenhouse Gas Impact Analysis for the San Clemente Senior Housing Project, the project would generate an estimated total of 285 hauling truck trips over a 20-day demolition phase (14 trips per day) and an estimated total of 1,357 hauling truck trips over a 35-day grading phase (39 trips per day) (see Appendix C). These transportation activities would incrementally raise noise levels on access roads leading to the site. It is expected that larger trucks used in equipment delivery would generate higher noise impacts than trucks associated with worker commutes. The single-event noise from equipment trucks passing at a distance of 50 feet from a sensitive noise receptor would reach a

Image Source: NearMap (flown June 2022)



-  Project Boundary
-  Noise Measurement Location

0 Feet 200



FIGURE 4  
Noise Measurement Locations

maximum level of 84 A-weighted decibels maximum sound level (dBA  $L_{max}$ ). However, the pieces of heavy equipment for grading and construction activities would be moved on-site just one time and would remain on-site for the duration of each construction phase. This one-time trip, when heavy construction equipment is moved on- and off-site, would not add to the daily traffic noise in the project vicinity. The total number of daily vehicle trips would be minimal when compared to existing traffic volumes on the affected streets, and the long-term noise level change associated with these trips would not be perceptible. Therefore, equipment transport noise and construction-related worker commute impacts would be short-term and would not result in a significant off-site noise impact.

The second type of short-term noise impact is related to noise generated during demolition, site preparation, grading, building construction, architectural coatings, and paving on the project site. Construction is undertaken in discrete steps, each of which has its own mix of equipment, and, consequently, its own noise characteristics. These various sequential phases would change the character of the noise generated on the project site. Therefore, the noise levels vary as construction progresses. Composite noise level of each construction phase was calculated as presented in Table 12.

Phase	Equipment (Quantity)	Composite Noise Level at 50 feet (dBA $L_{eq}$ )
Demolition	Concrete Saw (1), Excavator (1), Dozer (2)	86
Site Preparation and Grading	Excavator (1), Grader (1), Dozer (2), Tractor (2)	87
Building Construction	Crane (1), Forklift (3), Tractor (2)	84
Paving	Paver (2), Paving Equipment (2), Roller (2)	86
Architectural Coating	Air Compressor (1)	74
SOURCE: Appendix L. dBA $L_{eq}$ = average A-weighted hourly noise level		

Composite construction noise levels at a distance of 50 feet would range from 74 dBA  $L_{eq}$  to 87 dBA  $L_{eq}$ , with the highest noise levels occurring during the site preparation phase. The Noise and Vibration Analysis then adjusted noise levels based on distances to the nearest sensitive receptor. Table 13 shows the nearest sensitive uses that surround the project site, the distances of their respective property lines from the center of construction activities, which represents the acoustic center of construction noise, and the noise levels expected during site preparation and grading activities, which would generate the greatest noise levels. These noise level projections do not take into account intervening topography or barriers, and therefore can be considered conservative estimates.



Table 13 Potential Construction Noise Impacts During Site Preparation and Grading		
Receptor	Distance (feet)	Noise Level (dBA $L_{eq}$ )
San Clemente Villas Senior Living (Southeast)	260	73
Commercial (West and North)	350	70
SOURCE: Appendix L. dBA $L_{eq}$ = average A-weighted hourly noise level		

While construction noise will vary, it is expected that composite noise levels during construction at the nearest off-site residential land uses to the southeast would reach 73 dBA  $L_{eq}$  during the site preparation phase. It is expected that composite noise levels during construction at the nearest commercial land uses to the west and north would reach 70 dBA  $L_{eq}$ . These predicted noise levels would only occur when all construction equipment is operating simultaneously at the closest point of construction, and therefore are assumed to be conservative in nature. While construction-related short-term noise levels have the potential to be higher than existing ambient noise levels in the project area under existing conditions, the noise impacts would no longer occur once project construction is completed.

Noise impacts associated with construction activities are regulated by the City's noise ordinance. The project would be required to comply with the construction hours specified in the City's Noise Ordinance, which states that construction activities are allowed between 7:00 a.m. and 6:00 p.m., Monday through Friday, and between 8:00 a.m. and 6:00 p.m. on Saturday. Construction is not permitted outside of these hours, on a Sunday, or on a City-recognized holiday, unless a temporary waiver is granted by the development services director or his/her authorized representative, or in emergencies, including maintenance work on City rights-of-way.

As it relates to off-site uses, construction-related noise impacts would remain below the 80 dBA  $L_{eq}$  and 85 dBA  $L_{eq}$  construction noise level criteria, as established by the Federal Transit Authority (FTA) for residential and commercial land uses, respectively. Therefore, impacts associated with construction noise would be considered less than significant. To minimize noise impacts even further to the extent feasible, the project construction would utilize the following practices:

- All construction vehicles or equipment, fixed or mobile, operated within 1,000 ft of a dwelling shall be equipped with operating and maintained mufflers.
- Stockpiling and/or vehicle storage areas shall be located as far as practicable from and out of view of dwellings.

Therefore, the project would not result in a new or substantially greater impact related to construction noise compared to what was previously analyzed, and impacts would be less than significant. No new impact would occur.

#### Operational Traffic Noise Impacts on Off-Site Receivers

The project would generate 1,080 daily trips. The Noise and Vibration Analysis evaluated potential traffic noise impacts on off-site receivers based on a peak-hour traffic volume of 1,899 vehicle trips on Camino de los Mares. Assuming the ADT is ten times the peak-hour traffic, the ADT in the vicinity

of the project would be 18,990 vehicle trips. The addition of project-related vehicle trips would result in an increase of approximately 0.24 CNEL along Camino de los Mares. A noise level increase of less than 3 dBA would not be perceptible to the human ear. Therefore, the project would not result in a new or substantially greater impact related to traffic noise impacts on off-site receivers compared to what was previously analyzed, and impacts would be less than significant. No new impact would occur.

#### Operational On-Site Generated Noise

The project would include rooftop heating, ventilation, and air conditioning (HVAC) units. While Building 3 (Health Center Building) would contain rooftop HVAC equipment, noise impacts would only occur during daytime operational hours. For the proposed living units in Buildings 1 and 2, the HVAC equipment could operate 24 hours per day. The Noise and Vibration Analysis estimated that rooftop HVAC equipment for a single unit would generate a noise level of 66.6 dBA  $L_{eq}$  at 5 feet.

Table 14 presents the noise levels from HVAC equipment at the nearest noise-sensitive location. The closest off-site sensitive uses to the proposed location of an on-site HVAC unit would be located approximately 140 feet away. According to the site plan, 20 banks of HVAC units are proposed to be installed. Per the building plans, each building would have parapet walls to hide the mechanical equipment, which would reduce noise levels by a minimum of 5 dBA, resulting in a reference level of 72.4 dBA  $L_{eq}$  at 5 feet from each bank of HVAC units. After distance attenuation, noise generated from the four closest banks of HVAC equipment would be up to 48.0 dBA  $L_{eq}$  at the nearest sensitive use. This noise level would not exceed the City's exterior daytime (7:00 a.m. to 11:00 p.m.) and nighttime (11:00 p.m. to 7:00 a.m.) noise standards of 55 dBA  $L_{eq}$  and 50 dBA  $L_{eq}$ , respectively. Additionally, the projected noise level would be below the quietest existing ambient noise levels at the nearest off-site sensitive building façade. The other 16 banks of HVAC equipment would be further away and would receive greater noise reduction due to additional rooftop parapet shielding, and thus are not expected to contribute to the combined noise level. Therefore, the project would not result in a new or substantially greater impact related to operational on-site noise compared to what was previously analyzed, and impacts would be less than significant. No new impact would occur.

Table 14 Summary of HVAC Noise Levels						
Off-Site Land Use (Direction)	Distance from HVAC Units (ft)	Reference Noise Level for 1 Unit at 5 ft (dBA L <sub>eq</sub> )	Reference Noise for a Bank of 12 Units at 5 ft (dBA L <sub>eq</sub> ) <sup>1</sup>	Distance Attenuation (dBA)	Noise Level (dBA L <sub>eq</sub> )	Combined Noise Level (dBA L <sub>eq</sub> )
San Clemente Villas Senior Living (Southeast)	140	66.6	72.4	29	43.0	48.0
	150			30	43.0	
	190			32	41.0	
	195			32	41.0	

SOURCE: Appendix L.  
<sup>1</sup>Includes a minimum reduction of 5 dBA provided by rooftop parapet walls.  
dBA = A-weighted decibel(s)  
ft = foot/feet  
HVAC = heating, ventilation, and air conditioning  
L<sub>eq</sub> = equivalent continuous sound level

On-Site Land Use Compatibility

While impacts to the project site from the surrounding environment are not considered an impact related to CEQA, the following analysis assesses compliance with the local land use compatibility standards. The project is in an area where parcels to the east, west, and north are currently occupied and operational. For this reason, this analysis relies on the existing measured noise levels as well as future predicted noise levels to provide the most accurate description of the noise environment related to traffic noise impacts. The City’s General Plan does not provide land use compatibility standards for future development. Therefore, for the purposes of this analysis, the County’s exterior noise level standard of 65 CNEL was used to determine project compatibility. The interior noise level standard for residential uses is 45 CNEL.

*Exterior Noise Assessment*

As shown in Table 11 above, the existing measured noise levels at the project site range from approximately 64.1 CNEL on the northern portion of the site, close to Camino de los Mares, to 71.0 CNEL on the southern portion of the site, close to I-5.

To assess the exterior noise levels at the proposed pool area south of Building 1, the future noise levels were based on existing measured noise levels and an estimated noise increase based on future growth. The Noise and Vibration Impact Analysis determined that the annual average daily traffic (AADT) on I-5 in the vicinity of the project is 179,700. The estimated future AADT, assuming a time period of 20 years and a 1 percent growth rate, would be 215,640, resulting in a 0.8 dB increase. Therefore, the exterior noise levels at the recreational pool area closest to I-5 would approach 72 CNEL.

The project would include a six-foot-high combo masonry and glass pool barrier that would be located around the pool area at Building 1. Additionally, the project would include a six-foot-high combo stucco wall and glass safety and sound barrier that would be located at the perimeter of the

rooftop deck. Noise levels would be reduced by approximately 8 dBA at each location, resulting in a noise level of 64 CNEL. Noise levels at these locations would be below the County's 65 CNEL exterior noise level standard. Therefore, with the proposed barriers, no additional noise reduction features would be necessary to comply with land use compatibility standards.

The project would also include an additional outdoor recreation area in the form of the central courtyard in the northern portion of Building 2, which would be considered an exterior sensitive use. With future exterior noise levels approaching 64.4 CNEL (existing noise level of 64.1 CNEL + 0.3 CNEL growth from the project) and significant noise reduction provided by the building on all sides, the noise level would be well below the County's 65 CNEL exterior noise level standard. Therefore, no additional noise reduction features would be required. All other courtyard areas including those between Building 1 and Building 2, as well as the courtyard on the southern portion of Building 2 are not considered noise sensitive as they are points of access from the exterior sidewalks and interior units. Therefore, the project would not result in a new or substantially greater impact related to exterior noise compatibility compared to what was previously analyzed, and impacts would be less than significant. No new impact would occur.

#### *Interior Noise Assessment*

Per Title 24 of the California Code of Regulations, an interior noise level standard of 45 CNEL or less is required for all habitable rooms (i.e., rooms used for living, sleeping, eating, and cooking). Consistent with the 2021 FEIR, which incorporated by reference the City's General Plan Mitigation Monitoring Requirements, the Noise and Vibration Impact Analysis included a detailed analysis of the noise reduction requirements and needed noise insulation features in order to meet the interior noise standards (City's General Plan Mitigation Monitoring Program Measure 10-1). Based on the expected future exterior noise levels at the southern façades of Buildings 1 and 2 closest to I-5, noise levels would approach 72 CNEL and a minimum noise reduction of 27 dBA would be required. Because the project would include a form of mechanical ventilation, windows and doors could remain closed.

The Noise and Vibration Impact Analysis utilized previously completed sample interior noise calculations assume standard building construction and upgraded window assemblies. Based on reference information from transmission loss test reports for various Milgard windows, the southern, western, and eastern façades would require windows with sound transmission class (STC) ratings of approximately 30–35, depending on the glass-to-wall ratio at the façades with a view of I-5. For units facing Camino de los Mares, as well as units facing the center of the project buildings, interior noise levels of 45 CNEL or less would be achieved by using standard building construction along with standard windows (typically in the STC 25–28 range). Therefore, the project would not result in a new or substantially greater impact related to interior noise compared to what was previously analyzed, and impacts would be less than significant. No new impact would occur.

### **Groundborne Noise and Vibration**

#### **2021 FEIR**

The 2021 FEIR determined that the Safety Element Update is a policy document that would not result in any physical development that could generate excessive groundborne vibration or groundborne

noise. The 2021 FEIR determined that implementation of the City's General Plan Mitigation Monitoring Program for future discretionary development, and implementation of 2021 FEIR Mitigation Framework NOS-3 for ministerial development, would reduce impacts associated with excessive groundborne vibration and groundborne noise to a level less than significant.

### **Project**

An analysis of construction vibration using vibration levels in VdB for human annoyance and assessing the potential for building damages using vibration levels in PPV (in/sec). This is because vibration levels calculated in root-mean-square (RMS), representing an average condition, are best for characterizing human response to building vibration, while calculating vibration levels in PPV is best for characterizing the potential for damage representing maximum vibration conditions.

In order to determine the potential for annoyance, the distance between the nearest off-site buildings and the center of project construction is utilized to represent the average condition. To assess potential vibration damage, the distance of assessment is measured between the nearest off-site buildings and the project construction boundary (assuming the construction equipment would be used at or near the project setback line). Bulldozers and other heavy-tracked construction equipment (expected to be used for this project) would generate approximately 0.089 PPV in/sec or 87 VdB of groundborne vibration when measured at 25 feet, based on the FTA Manual.

As shown in Table 15, vibration levels are expected to approach 56 VdB at the closest residence located immediately southeast of the project site and 53 VdB at the closest commercial uses located west and north of the project site, which are below the 78 VdB and 84 VdB thresholds for annoyance, respectively.

The closest structure to the project site is the residence to the southeast of the site, approximately 25 ft from the limits of construction activity. As shown in Table 16, it is expected that vibration levels generated by dump trucks and other large equipment that would be as close as 25 ft from the property line would generate groundborne vibration levels of up to 0.089 PPV (in/sec) at the closest structure to the project site and would not exceed the 0.2 PPV (in/sec) threshold. All other structures are further away and would experience lower vibration levels. Because construction activities are regulated by the City's Municipal Code, which states that construction activities are only allowed between 7:00 a.m. and 6:00 p.m., Monday through Friday, and between 8:00 a.m. and 6:00 p.m. on Saturday, vibration impacts would not occur during the more sensitive nighttime hours.

Table 15 Potential Construction Vibration Annoyance Impacts at Nearest Receptor			
Receptor (Location)	Reference Vibration Level (VdB) at 25 ft <sup>1</sup>	Distance (ft) <sup>2</sup>	Vibration Level (VdB)
Residence (Southeast)	87	260	56
Commercial (West and North)		350	53
SOURCE: Appendix L. <sup>1</sup> The reference vibration level is associated with a large bulldozer, which is expected to be representative of the heavy equipment used during construction. <sup>2</sup> The reference distance is associated with the average condition, identified by the distance from the center of construction activities to surrounding uses. ft = foot/feet VdB = vibration velocity decibel(s)			

Table 16 Potential Construction Vibration Damage Impacts at Nearest Receptor			
Receptor (Location)	Reference Vibration Level (PPV) at 25 ft <sup>1</sup>	Distance (ft) <sup>2</sup>	Vibration Level (PPV)
Residence (Southeast)	0.089	25	0.089
Commercial (West)		40	0.044
Commercial (North)		120	0.008
SOURCE: Appendix L. <sup>1</sup> The reference vibration level is associated with a large bulldozer, which is expected to be representative of the heavy equipment used during construction. <sup>2</sup> The reference distance is associated with the peak condition, identified by the distance from the perimeter of construction activities to surrounding structures. ft = foot/feet PPV = peak particle velocity			

The streets surrounding the project site are paved, smooth, and unlikely to cause significant groundborne vibration. Additionally, the rubber tires and suspension systems of buses and other on road vehicles make it unusual for on-road vehicles to cause groundborne noise or vibration problems. Additionally, once constructed, the project would not contain uses that would generate groundborne vibration. Therefore, the project would not result in a new or substantially greater impact related to vibration compared to what was previously analyzed, and impacts would be less than significant. No new impact would occur.

## Aircraft Noise

### 2021 FEIR

The 2021 FEIR determined that no portions of the City are within the 65 CNEL noise contours of any airport and the Housing and Safety Elements Update would not expose people residing or working in the area to excessive noise levels.

## **Project**

The project site is not located within 65 CNEL noise contours of any airport. Therefore, the project would not result in a new or substantially greater impact related to exposure of people to excessive airport noise levels compared to what was previously analyzed in the 2021 FEIR.

### **15.14 Population and Housing**

#### **Induce Unplanned Population Growth**

##### **2021 FEIR**

The 2021 FEIR determined that the Safety Element Update is a policy document that does not have the potential to add growth or population to the City. The 2021 FEIR determined that the Housing Element Update would allow for development of residential units to meet the City's future housing needs identified in the 2020 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) and assist in the City's ability to meet its RHNA goals. Therefore, the 2021 FEIR determined that the Housing and Safety Elements Update would not induce substantial unplanned population growth in an area, either directly or indirectly, and impacts would be less than significant.

## **Project**

The project site was evaluated as a potential rezone site (Site V) in the Housing Element Update that would be redeveloped with 238 multi-family residential units and 7,500 square feet of commercial space. The project has been slightly revised compared to the Housing Element Update to develop 250 senior housing units and 7,500 square feet of medical offices. The proposed residential component would be consistent with the zoning designation evaluated as part of the FEIR. The project would be growth accommodating based on the demand for housing in the region and would support the City's Housing Element RHNA goals. Therefore, the project would not induce new or substantially greater impacts related to unplanned population growth compared to what was previously analyzed in the 2021 FEIR.

#### **Displace People or Housing**

##### **2021 FEIR**

The 2021 FEIR determined that the Safety Element Update is a policy document that does not have the potential to redevelop existing housing. The 2021 FEIR determined that implementation of the Housing Element Update would result in an increase in housing units in the City. Although the Housing Element Update would displace residential uses at two rezone sites, replacement housing would expand opportunities for housing in the City by providing increased density at redeveloped sites. Therefore, the 2021 FEIR determined that the Housing and Safety Elements Update would not displace substantial numbers of existing housing or people, and impacts would be less than significant.

## Project

The project site consists of a vacant hospital facility, does not possess any housing, and its redevelopment would not displace any residents. Therefore, the project would not result in new or substantially greater impacts relating to the displacement of existing people or housing compared to what was evaluated in the 2021 FEIR.

## 15.15 Public Services and Recreation

### Fire Protection

#### 2021 FEIR

The 2021 FEIR determined that the Safety Element Update is a policy document that does not have the potential to add growth or population to the City and would not, in itself have an impact on the need for new fire protection facilities. The 2021 FEIR determined that development at the Housing Sites would not directly result in sufficient demand to require construction of new fire facilities, since each incremental housing development would pay its fair share toward anticipated fire facility needs. Furthermore, construction of any future fire facilities would be under a separate environmental review and approval. Therefore, the 2021 FEIR determined that the Housing and Safety Elements Update would not result in substantial adverse physical impacts associated with the provision of new or physically altered fire protection facilities, and impacts would be less than significant.

## Project

The project site was evaluated as a potential rezone site (Site V) in the Housing Element Update that would be redeveloped with 238 multi-family residential units and 7,500 square feet of commercial space. The project has been slightly revised compared to the Housing Element Update to develop 250 senior housing units and 7,500 square feet of medical offices. The redesigned residential component would still be consistent with the Housing Element Update goal of meeting the City's future housing needs identified in the 2020 RTP/SCS and comply with state law. Furthermore, the addition of 12 units compared to what was evaluated in the PEIR would not substantially increase demand for fire protection services. Therefore, the project would not result in a new or substantially greater need for new or altered public service facilities than previously analyzed, and impacts would be less than significant. No new impact would occur.

### Police Protection

#### 2021 FEIR

The 2021 FEIR determined that the Safety Element Update is a policy document that does not have the potential to add growth or population to the City and would not, in itself have an impact on the need for new police protection services. The 2021 FEIR determined that development at the Housing Sites would not directly result in sufficient demand to require construction of new police facilities, since each incremental housing development would pay its fair share toward anticipated police facility needs. Furthermore, construction of any future police facilities would be under a separate environmental review and approval. Therefore, the 2021 FEIR determined that the Housing and Safety Elements Update would not result in substantial adverse physical impacts associated with the



provision of new or physically altered police protection facilities, and impacts would be less than significant.

### **Project**

The project site was evaluated as a potential rezone site (Site V) in the Housing Element Update that would be redeveloped with 238 multi-family residential units and 7,500 square feet of commercial space. The project has been slightly revised compared to the Housing Element Update to develop 250 senior housing units and 7,500 square feet of medical offices. The redesigned residential component would still be consistent with the Housing Element Update goal of meeting the City's future housing needs identified in the 2020 RTP/SCS and comply with state law. Furthermore, the addition of 12 units compared to what was evaluated in the 2021 FEIR would not substantially increase demand for police protection services. Therefore, the project would not result in a new or substantially greater need for new or altered police protection facilities than previously analyzed, and impacts would be less than significant. No new impact would occur.

### **Schools**

#### **2021 FEIR**

The PEIR determined that the Safety Element Update is a policy document that does not have the potential to add growth or population to the City needing school services. The PEIR determined that development at the Housing Sites would not directly result in sufficient demand to require construction of new school facilities, since each incremental housing development would pay its fair share toward anticipated school facility needs. Furthermore, construction of any future school facilities would be under a separate environmental review and approval. Therefore, the PEIR determined that the Housing and Safety Elements Update would not result in substantial adverse physical impacts associated with the provision of new or physically altered school facilities, and impacts would be less than significant.

### **Project**

The project site was evaluated as a potential rezone site (Site V) in the Housing Element Update that would be redeveloped with 238 multi-family residential units and 7,500 square feet of commercial space. The project has been slightly revised compared to the Housing Element Update to develop 250 senior housing units and 7,500 square feet of medical offices. The redesigned residential component would not serve families with school-aged children. Consequently, the project would not generate a new student population that would increase demand for school services. Therefore, the project would not result in the need for new or altered school facilities. No new impact would occur.

### **Library Services**

#### **2021 FEIR**

The PEIR determined that the Safety Element Update is a policy document that does not have the potential to add growth or population to the City needing additional public services such as libraries. The PEIR determined that development at the Housing Sites would not directly result in sufficient demand to require construction of new public facilities such as libraries, since each incremental housing development would pay its fair share toward anticipated facility needs. Furthermore, construction of any future public facilities would be under a separate environmental review and

approval. Therefore, the PEIR determined that the Housing and Safety Elements Update would not result in substantial adverse physical impacts associated with the provision of new or physically altered public facilities such as libraries, and impacts would be less than significant.

### **Project**

The project site was evaluated as a potential rezone site (Site V) in the Housing Element Update that would be redeveloped with 238 multi-family residential units and 7,500 square feet of commercial space. The project has been slightly revised compared to the Housing Element Update to develop 250 senior housing units and 7,500 square feet of medical offices. The redesigned residential component would not substantively increase demand for additional public services such as libraries compared to what was evaluated in the PEIR. Therefore, the project would not affect existing public facilities related to library services. No new impact would occur.

### **Parks and Recreation Facilities**

#### **2021 FEIR**

The PEIR determined that the Safety Element Update is a policy document that does not have the potential to add growth or population to the City needing park services. The PEIR determined that development at the Housing Sites would not directly result in sufficient demand to require construction of new park facilities, since each incremental housing development would pay its fair share toward anticipated park facility needs. Furthermore, construction of any future park facilities would be under a separate environmental review and approval. Therefore, the PEIR determined that the Housing and Safety Elements Update would not result in substantial adverse physical impacts associated with the provision of new or physically altered park facilities, and impacts would be less than significant.

The 2021 FEIR determined that development of the Housing Sites would increase use of existing park facilities and increase demand for additional park and recreation facilities. However, future residential units developed under the project would be required to pay in-lieu fees consistent with the Quimby Act to pay for additional park facilities within the City. Payment of such fees would allow the City to continue to implement numerous General Plan policies in place to maintain park and recreation facilities within the City. Furthermore, construction of any future park facilities would be under a separate environmental review and approval. Therefore, the 2021 FEIR determined that the Housing and Safety Elements Update would not increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated, and impacts would be less than significant.

### **Project**

The project site was evaluated as a potential rezone site (Site V) in the Housing Element Update that would be redeveloped with 238 multi-family residential units and 7,500 square feet of commercial space. The project has been slightly revised compared to the Housing Element Update to develop 250 senior housing units and 7,500 square feet of medical offices. The redesigned residential component would not substantively increase demand for parkland and recreational services compared to what was evaluated in the PEIR. Furthermore, the project would be required to pay park-in-lieu fees that would fund City public park facilities based on forecasted City-wide park

demand. The project also proposes both indoor and outdoor amenities for the residents, including a common clubroom, fitness center, roof-top deck, resort style pool deck, landscaped courtyards, and central paseo walkway. These amenities would be located entirely within the project footprint. The project park demands would be consistent with what was analyzed in the 2021 FEIR. No new or more severe impacts related to park and recreation facilities would result compared to what was analyzed in the 2021 FEIR. The project would not result in any new impacts or a substantial increase in severity of impacts related to parkland deterioration or provision of recreational facilities compared to what was evaluated in the 2021 FEIR.

## 15.16 Transportation

### Circulation System

#### 2021 FEIR

The 2021 FEIR determined that adoption of the Housing and Safety Elements Update would not physically impact any existing roadway, pedestrian, bicycle, or transit facilities. Future site-specific projects at Housing Sites would be subject to an engineering and design review that would ensure consistency with applicable policies related to transit, roadway, bicycle, and pedestrian facilities. Therefore, the 2021 FEIR determined that the Housing and Safety Elements Update would not conflict with a plan, ordinance, or policy addressing the circulation system, and impacts would be less than significant.

#### Project

The project would be consistent with the City's General Plan Mobility and Complete Streets Element because it would continue to provide safe access to the site for all users. Sidewalks are provided to access adjacent uses (e.g., Ocean View Plaza), consistent with the policies outlined in the City's Bicycle and Pedestrian Master Plan. The project would also be consistent with Policy M-2.07 because it would provide a mix of senior housing and medical office uses, and is located along an existing transit route (Orange County Transit Authority Route 1, Long Beach to San Clemente) on Camino de los Mares. The project would not alter any existing transportation facilities adjacent to and surrounding the project site (e.g., vehicular, transit, bicycle, or pedestrian). The project would utilize the existing driveway connections to Camino de los Mares. In order to reinforce the right-in and right-out turning movements at the western driveway, the project would make median improvements within Camino de Los Mares, and introduce signage and a center island at the driveway entrance to direct traffic. These changes would improve safety for turns into or out of the western driveway. The project would not make any other changes to the existing circulation network. Similarly, the project would not preclude implementation of a Class 3 Bike Route along Camino de los Mares as recommended in the City's Bicycle and Pedestrian Master Plan. Therefore, the project would not result in a new or substantially greater conflict with a plan, ordinance, or policy addressing the circulation system, including transit, roadway, bicycle, and pedestrian facilities than previously analyzed, and impacts would be less than significant. No new impact would occur.

## Vehicle Miles Traveled

### 2021 FEIR

The 2021 FEIR determined that the Safety Element Update is a policy document that does not have the potential to add growth or population to the City that would increase VMT. The 2021 FEIR determined that development of the Housing Sites in conjunction with buildout of the City's General Plan land use map and transportation network would result in a VMT efficiency representing 158 percent of the regional average for Orange County. This would be a significant impact. Implementation of 2021 FEIR Mitigation Framework TRA-1 would ensure that future ministerial development implements applicable General Plan policies that promote reduction in VMT, including the implementation of Transportation Demand Management programs. However, the effectiveness of VMT reducing measures is context-sensitive and would vary depending on the site-specific project site. Therefore, impacts associated with VMT would remain significant and unavoidable.

### Project

A Vehicle Miles Traveled Analysis was prepared for the project to identify whether the project's VMT generation would be consistent with the assumptions used in the 2021 FEIR for the project site (Appendix M). The project site was evaluated as a potential rezone site (Site V) in the 2021 FEIR. The 2021 FEIR analysis assumed the site would be redeveloped with 238 multi-family residential units and 7,500 square feet of commercial space. Compared to the 2021 FEIR analysis for the site, the project has been slightly revised to propose 250 senior housing units and 7,500 square feet of medical offices.

Table 17 presents a comparison of trip generation based on the land uses assumed in the 2021 FEIR compared to the current project. The current project consists of senior housing units rather than typical multi-family dwelling units that were evaluated in the 2021 FEIR. Similarly, the current project consists of medical office use rather than commercial (general office) use which was used as the basis for trip generation in the 2021 FEIR. As shown in Table 17, Site V was estimated to generate 1,162 ADT, and the current project is estimated to generate 1,080 ADT based on trip rates referenced from the Institute of Transportation Engineers Trip Generation Manual, 11th Edition. Overall, trip generation would decrease compared to the 2021 FEIR.

Table 17 Project Trip Generation Comparison			
	Development Assumptions	Trip Rate (ADT/Unit or TSF)	Average Daily Trips
<b>2021 FEIR Trip Generation</b>			
Multi-family Housing (Mid-Rise)	238 DU	4.54	1,081
General Office Building	7.500 TSF	10.84	81
Total 2021 FEIR Trip Generation			1,162
<b>Project Trip Generation</b>			
Senior Adult Housing – Multi-family	250 DU	3.24	810
Medical-Dental Office Building –Stand-Alone	7.500 SF	36.00	270
Total Current Project Trip Generation			1,080
<b>Net Trip Generation (Project – 2021 FEIR)</b>			(82)
SOURCE: Appendix M. ADT = average daily trips TSF = thousand square feet DU = dwelling unit			

In addition to the reduced average daily trips, the land uses proposed by the current project land would generate trips with shorter trip lengths than the uses previously analyzed in the 2021 FEIR, because the senior housing units would not be associated with a home-work commute for most units. Additionally, the medical office building would likely be used by the adjacent senior housing residents, reducing the distance of potential trips for medical needs. The proposed medical office building would offer other residential uses in the City a more convenient location than existing medical offices farther away.

Internal trip capture reductions were calculated between the proposed uses due to the interaction between the senior housing and medical office uses on site. Internal trip capture reductions were estimated using the National Cooperative Highway Research Program (NCHRP) 684 Trip Capture Estimation Tool, which is referenced in the ITE Trip Generation Handbook, 3rd Edition (2017). Based on the NCHRP 684 Trip Capture Estimation Tool, 3 percent of the senior housing outbound trips and 6 percent of the medical office inbound trips would occur internally during the AM peak-hour. Four percent of the senior housing outbound trips and 11 percent of the medical office inbound trips would occur internally during the PM peak-hour. The internal trip capture concept could also be applied to the senior housing use east of the project site (San Clemente Villas by the Sea), as those residents would be able to walk to the proposed medical office building rather than driving to other medical office buildings in San Clemente or beyond.

Furthermore, the project site is immediately east of Ocean View Plaza with a variety of uses including restaurant, retail, bank, supermarket, and drugstore. The future senior housing residents would be able to walk to these nearby uses rather than driving to similar uses in the City and beyond, which would result in a reduction in VMT. Due to the combination of lower trip generation and reduced trip length, the current project would generate less VMT compared to the previous project that was evaluated in the 2021 FEIR. Therefore, the project would not result in a new or substantially greater impact related to VMT than previously analyzed.

The 2021 FEIR concluded impacts related to VMT would be significant and unavoidable because VMT/capita would exceed the regional average for Orange County. The 2021 FEIR referenced consistency with Mobility Element Policy 1.21 as a means to reduce single-occupant vehicles and encourage alternative modes of transportation. The project, as discussed above is VMT reducing as it would locate senior housing in proximity to a medical office building and in proximity to other services within walking distance. The project incorporates pedestrian access to facilitate and encourage walking. The project has demonstrated consistency with City policy related to VMT reduction to the extent feasible. Implementation of the project would result in reduced VMT compared to what was analyzed in the 2021 FEIR. No new impacts or more severe impacts related to VMT would occur.

### **Hazards Due to a Design Feature**

#### **2021 FEIR**

The 2021 FEIR determined that the Housing and Safety Elements Update did not propose any changes to the existing roadway network, and future site-specific development would be designed consistent with established roadway design standards. Therefore, the 2021 FEIR determined that the Housing and Safety Elements Update would not substantially increase hazards, and impacts would be less than significant.

#### **Project**

The project would utilize the existing driveway connections to Camino de los Mares. In order to reinforce the right-in and right-out turning movements at the western driveway, the project would make median improvements within Camino de Los Mares, and introduce signage and a center island at the driveway entrance to direct traffic. These changes would improve safety for turns into or out of the western driveway. The project would not make any other changes to the existing circulation network. Any modifications to the existing connections to Camino de los Mares would be completed consistent with applicable safety standards. Therefore, the project would not result in a new or substantially greater increase hazards due to a geometric design feature or incompatible use than previously analyzed, and impacts would be less than significant. No new impact would occur.

### **Emergency Access**

#### **2021 FEIR**

The 2021 FEIR determined that the Housing and Safety Elements Update did not propose any changes to the existing roadway network, and access for future site-specific development to the existing roadway network would be configured consistent with established roadway design standards that would allow for emergency access. The City would continue to implement the Multi-Hazard Emergency Plan to ensure adequate emergency access within the City. Therefore, the 2021 FEIR determined that the Housing and Safety Elements Update would not result in inadequate emergency access, and impacts would be less than significant.

## Project

The project site is located within an urban environment along a developed transportation corridor that would allow for emergency access. The project would utilize the existing driveway connections to Camino de los Mares. In order to reinforce the right-in and right-out turning movements at the western driveway, the project would make median improvements within Camino de Los Mares, and introduce signage and a center island at the driveway entrance to direct traffic. These changes would improve safety for turns into or out of the western driveway and support emergency access. The project would not make any other changes to the existing circulation network. Any modifications to the existing connections to Camino de los Mares would be completed consistent with applicable safety standards related to emergency access. Therefore, the project would not result in new or substantially greater inadequate emergency access than previously analyzed, and impacts would be less than significant. No new impact would occur.

## 15.17 Utilities and Service Systems

### Utility Infrastructure

#### 2021 FEIR

The 2021 FEIR determined that the Safety Element Update is a policy document that is a policy document that would not result in any physical development that would require utility services. The 2021 FEIR determined that future development at the Housing Sites would be located within existing developed areas with access to utility infrastructure. Utility infrastructure improvements and relocations associated with the future Housing Sites would be evaluated in their respective subsequent environmental documents for discretionary projects, or as part of the ministerial review that will be implemented through an overlay zone that includes objective standards and requirements to reduce physical impacts to the extent feasible, and impacts would be less than significant.

## Project

Existing utility services are available adjacent to the site, and improvements would be limited to extension of pipelines onto the project site. Consequently, potential impacts associated with proposed on-site utility facilities have been considered within this environmental document. The project site was evaluated as a potential rezone site (Site V) in the Housing Element Update that would be redeveloped with 238 multi-family residential units and 7,500 square feet of commercial space. The project has been slightly revised compared to the Housing Element Update to develop 250 senior housing units and 7,500 square feet of medical offices. The redesigned residential component would not substantively increase demand for utility services compared to what was evaluated in the 2021 FEIR. In fact, residents in a senior housing development may have lower utility demand compared to residents in multi-family units. Therefore, the project would not result in a new or substantially greater increase in demand for utility services than previously analyzed, and impacts would be less than significant. No new impact would occur.

## Water Supply

### 2021 FEIR

The 2021 FEIR determined that the Safety Element Update is a policy document that would not result in any physical development that would increase demand for water supply. The City's UWMP anticipated that it would be able to acquire necessary water supplies to meet demand through 2045. Future residential uses anticipated in the Housing Element sites inventory and potential rezone sites would accommodate future population growth within the City anticipated by SCAG and would not introduce additional housing beyond what is projected. The 2021 FEIR determined that the Housing Sites have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years, and impacts would be less than significant.

### Project

The project site was evaluated as a potential rezone site (Site V) in the Housing Element Update that would be redeveloped with 238 multi-family residential units and 7,500 square feet of commercial space. The project has been slightly revised compared to the Housing Element Update to develop 250 senior housing units and 7,500 square feet of medical offices. The redesigned residential component would not substantively increase demand for water supply compared to what was evaluated in the 2021 FEIR. In fact, residents in a senior housing development may have lower demand for water supply compared to residents in multi-family units. Therefore, the project would not result in a new or substantially greater increase in demand for water supply than previously analyzed, and impacts would be less than significant. No new impact would occur.

## Wastewater Treatment

### 2021 FEIR

The 2021 FEIR determined that the Safety Element Update is a policy document that would not result in any physical development that would increase demand for wastewater treatment. Development at the Housing Sites would accommodate future population growth within the City anticipated by SCAG. Therefore, the project would not introduce additional housing that is not anticipated within the City, and would not increase demand for wastewater treatment beyond what has been planned and is anticipated by the City's service providers, and impacts would be less than significant.

### Project

The project site was evaluated as a potential rezone site (Site V) in the Housing Element Update that would be redeveloped with 238 multi-family residential units and 7,500 square feet of commercial space. The project has been slightly revised compared to the Housing Element Update to develop 250 senior housing units and 7,500 square feet of medical offices. The redesigned residential component would not substantively increase demand for wastewater treatment compared to what was evaluated in the 2021 FEIR. In fact, residents in a senior housing development may have lower demand for wastewater treatment compared to residents in multi-family units. Therefore, the project would not result in a new or substantially greater increase in demand for wastewater treatment than previously analyzed, and impacts would be less than significant. No new impact would occur.



## **Solid Waste**

### **2021 FEIR**

The 2021 FEIR determined that the Safety Element Update is a policy document that would not result in any physical development that would generate solid waste. The 2021 FEIR determined that adequate landfill capacity exists to serve development of the Housing Sites, and impacts would be less than significant. The 2021 FEIR additionally determined that the project would comply federal, state, and local management and reduction statutes related to solid waste, and impacts would be less than significant.

### **Project**

The project site was evaluated as a potential rezone site (Site V) in the Housing Element Update that would be redeveloped with 238 multi-family residential units and 7,500 square feet of commercial space. The project has been slightly revised compared to the Housing Element Update to develop 250 senior housing units and 7,500 square feet of medical offices. The redesigned residential component would not substantively increase solid waste generation compared to what was evaluated in the 2021 FEIR. Therefore, the project would not result in a new impact or substantial increase in severity of impacts related to solid waste generation.

Regarding consistency with regulations and policies, the City would continue to implement General Plan policies to reduce amount of material disposed at landfills, and the project would be subject to the same requirements. Therefore, the project would not result in a new or substantially greater impact related to conflicts with statutes and regulations related to solid waste compared to what was analyzed in the 2021 FEIR.

## **15.18 Wildfire**

### **Emergency Response Plans**

#### **2021 FEIR**

The 2021 FEIR determined that the Safety Element is a policy document that would not result in any physical development, and the Housing Sites are located within existing developed areas and along major transportation corridors in the City that would allow for evacuation and response. Development at the Housing Sites would not physically interfere with any emergency response or evacuation plans because they would not include any features that would prevent continued implementation of these plans, and impacts would be less than significant.

#### **Project**

The project site is located within an urban environment along a developed transportation corridor that would allow for emergency evacuation. The project would utilize the existing driveway connections to Camino de los Mares. In order to reinforce the right-in and right-out turning movements at the western driveway, the project would make median improvements within Camino de Los Mares, and introduce signage and a center island at the driveway entrance to direct traffic. These changes would improve safety for turns into or out of the western driveway and support

emergency response and evacuation. The project would not make any other changes to the existing circulation network. Therefore, the project would not result in any new impacts or substantially increase the severity of impacts related to emergency response plans or emergency evacuation plans beyond what was previously analyzed in the 2021 FEIR.

### **Wildfire**

#### **2021 FEIR**

The 2021 FEIR determined that the Safety Element is a policy document that would not result in any physical development, and implementation of Safety Element policies by the City focused on increasing wildfire safety through increased coordination with fire protection agencies, using the latest mapping to determine wildfire risks, and supporting efforts to evaluate wildfire evacuation and safety planning. The 2021 FEIR determined that development of the Housing Sites, especially within or adjacent to VHFHSZ, could result in impacts related to wildfire. However, future ministerial and discretionary development at the Housing Sites would be required to adhere to all regulatory requirements in place to minimize wildfire hazards including applicable sections of the SCMC, fire and building codes, and requirements from the fire chief that would be identified during future building permit reviews. Additionally, implementation of General Plan Policies S-3.02 through S-3.06 in the City's General Plan Safety Element would further protect land uses within the VHFHSZ and enhance wildfire safety. Therefore, the 2021 FEIR determined that the Housing and Safety Elements Update would not expose people or structures either directly or indirectly to a significant risk of loss, injury, or death involving wildland fires, and impacts would be less than significant.

### **Project**

The project site is located in an urbanized area and is not within, or adjacent to, an area identified as a VHFHSZ. Therefore, the project would not result in new impact or substantially increase the severity of an impact related to exposure of people or structures to a significant risk of loss, injury, or death involving wildland fires compared to what was previously analyzed in the 2021 FEIR.

### **Infrastructure**

#### **2021 FEIR**

The 2021 FEIR determined that the Safety Element Update is a policy document that would not result in any physical development that could result in fire risk. The 2021 FEIR determined that future ministerial and discretionary development at Housing Sites and associated infrastructure would be required to adhere to all regulatory requirements in place to minimize wildfire hazards including applicable sections of the SCMC, fire and building codes, and requirements from the fire chief that would be identified during future building permit reviews. Therefore, the 2021 FEIR determined that the Housing and Safety Elements Update would not require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment, and impacts would be less than significant.

## **Project**

As described in Section 15.19.a above, existing utility services are available adjacent to the site, and improvements would be limited to extension of pipelines onto the project site. Furthermore, the project would not increase demand for utility services beyond what was analyzed in the 2021 FEIR. Consequently, the project would not project would not construct any infrastructure facilities. Therefore, the project would not require the installation or maintenance of associated infrastructure that may a new or substantially greater fire risk than previously analyzed, and impacts would be less than significant. No new impact would occur.

## **Flooding and Landslides**

### **2021 FEIR**

The 2021 FEIR determined that the Safety Element Update is a policy document that would not result in any physical development that could result in fire risk. The 2021 FEIR determined that development of future Housing Sites would be required to comply with applicable regulations and policies related to flooding, drainage patterns, and landslides. Therefore, the 2021 FEIR determined that the Housing and Safety Elements Update would not expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes, and impacts would be less than significant.

## **Project**

Review of Figure 4.8-2 of the 2021 FEIR determined that the project site is not located within a flood hazard zone. As described in Section 4.7. above, the Geologic and Seismic Hazards Review completed for the project determined that the majority of the project site is flat and would not be subject to landslides. Implementation of measures identified in the Geologic and Seismic Hazards Review would ensure protection against landslides. Therefore, the project would not expose people or structures to a new impact or a substantial increase in the severity of impacts related to downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage compared to what was previously analyzed in the 2021 FEIR.

## **16.0 Mitigation Monitoring and Reporting Program Incorporated into the project**

The project shall be required to comply with the applicable mitigation measures outlined within the MMRP of the previously certified PEIR, including measures incorporated by reference from the City's General Plan Mitigation Monitoring Program, and those identified with the project-specific subsequent technical studies. The following MMRP presented in Table 18 below identifies measures that specifically apply to this project.

Table 18 Mitigation, Monitoring, and Reporting Program Incorporated into the Project			
Mitigation Measure	Timing of Verification	Responsible for Verification	Status/Date/Initials
<b>Biological Resources</b>			
<p><b>MM -BIO-1: Nesting Migratory Birds</b></p> <p>No direct impacts shall occur to any nesting birds, their eggs, chicks, or nests during the breeding season. If vegetation removal activities must occur during the bird breeding season of February 1 to September 15, then a pre-construction survey would be necessary to confirm the presence or absence of breeding birds within the temporary parking lot. If nests or breeding activities are located on-site, then an appropriate buffer area around the nesting site shall be maintained until the young have fledged. The width of the buffer would be determined by a qualified biologist and biological monitoring would be required during construction. If no nesting birds are detected during the pre-construction survey, no avoidance measures would be required.</p>	During Construction	City of San Clemente/ Qualified Biologist	
<b>Cultural Resources</b>			
<p><b>MM-CUL-1: Archaeological Monitoring</b></p> <p>A qualified archaeologist shall be retained for the project to conduct the following monitoring activities during construction:</p> <ol style="list-style-type: none"> <li>An archaeologist shall be on call during grading and other significant ground-disturbing activities.</li> <li>Should any cultural/scientific resources be discovered, no further grading shall occur in the area of the discovery until the Community Development Director concurs in writing that adequate provisions are in place to protect these resources.</li> <li>Unanticipated discoveries shall be evaluated for significance by an Orange County Certified Professional Archaeologist. If significance criteria are met, then the project shall be required to perform data recovery, professional identification, radiocarbon dates as applicable, and other special studies; submit materials to the California State University Fullerton or local archival facility, where available; and provide a comprehensive final report including appropriate records for the California Department of Parks and Recreation (Building, Structure, and Object Record; Archaeological Site Record; or District Record, as applicable).</li> </ol>	During Construction	City of San Clemente/ Qualified Archaeologist	

Table 18 Mitigation, Monitoring, and Reporting Program Incorporated into the Project			
Mitigation Measure	Timing of Verification	Responsible for Verification	Status/ Date/ Initials
<b>Geology and Soils</b>			
<p><b>MM-PAL-1: Paleontological Resources Impact Mitigation Program</b></p> <p>A paleontologist who meets the qualifications established by the Society of Vertebrate Paleontology (SVP) shall be retained to develop a Paleontological Resources Impact Mitigation Program (PRIMP) for this project. The PRIMP shall be consistent with the standards of the SVP and include the methods that will be used to protect paleontological resources that may exist within the project site, as well as procedures for monitoring, fossil preparation and identification, curation into a repository, and preparation of a report at the conclusion of grading.</p>	Prior to and during Construction	City of San Clemente/ Qualified Paleontologist	
<p><b>MM-PAL-2: Paleontological Monitoring</b></p> <p>Excavation and grading activities in deposits with high paleontological sensitivity (i.e., the Capistrano Formation) shall be monitored by a qualified paleontological monitor following a PRIMP. No monitoring is required for excavations in deposits with no paleontological sensitivity (i.e., Artificial Fill). If paleontological resources are encountered during the course of ground disturbance, the paleontological monitor shall have the authority to temporarily redirect construction away from the area of the find. In the event that paleontological resources are encountered when a paleontological monitor is not present, work in the immediate area of the find shall be redirected, and the paleontologist or paleontological monitor shall be contacted to assess the find for scientific significance. If determined to be scientifically significant, the fossil shall be collected from the field.</p>	During Construction	City of San Clemente/ Qualified Paleontologist	
<p><b>MM-PAL-3: Paleontological Resources Report</b></p> <p>Collected resources shall be prepared to the point of identification, identified to the lowest taxonomic level possible, cataloged, and curated into the permanent collections of a museum repository. At the conclusion of the monitoring program, a report of findings shall be prepared to document the results of the monitoring program.</p>	During Construction	City of San Clemente/ Qualified Paleontologist	

## 17.0 Checklist References

California Geological Survey (CGS)

- 2008 Special Publication 117A, Guidelines for Evaluating and Mitigating Seismic Hazards in California; originally adopted March 13, 1997 by the State Mining and Geology Board in Accordance with the Seismic Hazards Mapping Act of 1990, Revised and Re-Adopted September 11, 2008.

State of California Department of Conservation

- 2016 California Important Farmland Finder. <https://maps.conservation.ca.gov/dlrp/ciff/>

California Public Utilities Commission (CPUC)

- 2021 Renewables Portfolio Standard Annual Report, November 2021.