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24 SUPERVISORS

25 SUPERIOR COURT OF THE STATE OF CALIFORNIA

26 FOR THE COUNTY OF ORANGE, CIVIL COMPLEX CENTER

27 FOOTHILL COMMUNITIES  
28 COALITION, an unincorporated  
association,

Plaintiff,

v.

COUNTY OF ORANGE, ORANGE  
COUNTY BOARD OF SUPERVISORS,  
and DOES 1 through 10, inclusive,

Respondents.

Case No. 30-2011-00467132-CU-WM-CXC

Assigned for all purposes to the Honorable Gail  
A. Andler, Department CX101

**JOINT OBJECTIONS OF REAL PARTIES  
IN INTEREST ROMAN CATHOLIC  
DIOCESE OF ORANGE AND KISCO  
SENIOR LIVING, LLC AND RESPONDENT  
COUNTY OF ORANGE AND ORANGE  
COUNTY BOARD OF SUPERVISORS TO  
PETITIONER'S PROPOSED JUDGMENT  
AND PROPOSED PEREMPTORY WRIT OF  
MANDATE; REQUEST FOR HEARING  
PURSUANT TO RULE 3.1590(k) OF THE  
CALIFORNIA RULES OF COURT**

1 ROMAN CATHOLIC DIOCESE OF  
2 ORANGE, KISCO SENIOR LIVING,  
3 LLC, and DOES 11 through 25, inclusive,

4 Real Parties in Interest.

[Concurrently Filed and Served with (Alternative  
Proposed) Judgment and (Alternative Proposed)  
Writ of Mandate]

Action Filed: April 14, 2011  
Trial Date: January 23, 2012

[CEQA Action]

8 Respondents County of Orange and Orange County Board of Supervisors (collectively,  
9 the "County") and Real Parties in Interest Roman Catholic Diocese of Orange and Kisco Senior  
10 Living, LLC (collectively, "Real Parties") submit this Respondents County of Orange and Orange  
11 County Board of Supervisors (collectively, the "County") and Real Parties in Interest Roman  
12 Catholic Diocese of Orange and Kisco Senior Living, LLC (collectively, "Real Parties") hereby  
13 object to the "[Proposed] Judgment Granting Peremptory Writ of Mandate ("Proposed  
14 Judgment") received by the Court on March 19, 2012, and submitted by Petitioner Foothill  
15 Communities Coalition, LLC ("FCC"). The Proposed Judgment and Proposed Peremptory Writ  
16 of Mandate are defective because they purport to vacate all project approvals related to Planning  
17 Application PA 090004 in a manner that expands upon the Court's stated decision and rationale  
18 contained in the Minute Order issued on March 8, 2012. For this reason, and those presented  
19 herein, the Court should reject the Proposed Judgment and Proposed Peremptory Writ submitted  
20 by FCC and, instead, enter the [Alternative Proposed] Judgment [Alternative Proposed]  
21 Peremptory Writ of Mandate submitted concurrently with these Objections by County and Real  
22 Parties.

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1     **JOINT OBJECTIONS TO PETITIONER'S PROPOSED JUDGMENT AND PROPOSED**  
2                                     **WRIT OF MANDATE**

3     **I. INTRODUCTION**

4             On March 8, 2012, this Court issued a Minute Order (“Minute Order”) concluding that  
5     “[t]he passing of the new zoning ordinance for [Senior Residential Housing] and applying it to  
6     one property was improper spot zoning.” In accordance with that conclusion, this Court ordered  
7     that “Petitioner is directed to file a proposed order vacating the ordinance amending the [North  
8     Tustin Specific Plan] *to the extent* it applied the new zoning category [SRH] to the one property  
9     and vacate all related project approvals.” (Emphasis added.)

10            However, despite this Court’s express and limited directive, Petitioner has lodged a  
11     Proposed Judgment and Proposed Peremptory Writ of Mandate that far exceeds the scope of this  
12     Court’s Minute Order. Specifically, *Petitioner’s submissions seek to vacate the entirety of all of*  
13     *the project approvals* (which involve 1 ordinance and 2 resolutions), rather than limiting them in  
14     the manner expressly articulated by this Court in its Minute Order.

15            For the reasons described below, Real Parties and Respondents hereby (1) object to the  
16     Proposed Judgment and Proposed Peremptory Writ of Mandate submitted by Petitioner, (2)  
17     request that the Court instead enter the concurrently-filed Alternative Proposed Judgment and  
18     Alternative Proposed Peremptory Writ of Mandate jointly filed by Real Parties and Respondents,  
19     and (3) order a hearing on these objections and the proposed submissions regarding same.

20     **II. REAL PARTIES AND RESPONDENTS JOINTLY OBJECT TO THE PROPOSED**  
21                                     **JUDGMENT AND PROPOSED PEREMPTORY WRIT OF MANDATE AS A**  
22                                     **MATTER OF LAW**

23            As a preliminary matter, Real Parties and Respondents jointly object to Paragraphs 1  
24     through 5 of the Proposed Judgment and Paragraphs 1-3 of the Proposed Writ of Mandate  
25     because they are erroneous as a matter of law. These issues have been previously addressed in  
26     the (1) Respondents’ Opposition to the Petition for Writ of Mandate and Joinder in Real Parties’  
27     Opposition, (2) Real Parties’ Opposition to the Petition for Writ of Mandate and Joinder in  
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1 Respondents' Opposition, (3) Respondents' and Real Parties' Joint Supplemental Brief Re:  
2 *Avenida San Juan Partnership v. City of San Clemente*, and the (4) Joint Sur-Reply of  
3 Respondents and Real Parties, and are hereby incorporated by this reference into this Objection.

4 **III. PETITIONER'S PROPOSED JUDGMENT AND PROPOSED WRIT OF**  
5 **MANDATE EXCEED AND IMPROPERLY EXPAND THE SCOPE OF THE**  
6 **COURT'S MINUTE ORDER**

7 Petitioner's Proposed Judgment and Proposed Peremptory Writ of Mandate should not be  
8 entered by this Court because *Petitioner's submissions attempt to vacate the entirety* of all of the  
9 project approvals. This, however, is not what was directed by the Court in its Minute Order.

10 The relevant approvals involved in this Project consist of (1) Ordinance No. 11-008, (2)  
11 Resolution 11-038, pertaining to CEQA, and (3) Resolution 11-039, approving a Use Permit and  
12 Site Development Permit for the Project. Thus, there are 3 separate approvals, one of which  
13 executes four separate actions, that are at issue in this case.

- 14 • Ordinance No. 11-008 executes 4 separate decisions/actions of the Orange County  
15 Board of Supervisors. Specifically, it (1) amends the NTSP to include the SRH  
16 zoning amendment, (2) applies the SRH zoning amendment to Real Parties'  
17 property, (3) adopts CEQA findings and a Statement of Overriding Considerations,  
18 and (4) adopts the Mitigation Monitoring and Reporting Program. (*See*,  
19 Administrative Record ("AR") at 9-10.)
- 20 • Resolution 11-038 makes certain CEQA findings related to the project. (AR 119-  
21 120.)
- 22 • Resolution 11-039 approves a Use Permit and Site Development Permit for the  
23 Project. (AR 131-134.)

24 The Minute Order concludes that "[t]he passing of the new zoning ordinance for [Senior  
25 Residential Housing] and applying it to one property was improper spot zoning" and orders  
26 Petitioner "to file a proposed order vacating the ordinance amending the [North Tustin Specific  
27 Plan] *to the extent* it applied the new zoning category [SRH] to the one property and vacate all  
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1 related project approvals.” (Minute Order, p.1-2 [emphasis added].) In addition, the Court  
 2 declined to rule on the remaining CEQA issues. (Minute Order, p. 2 [“The ruling on the CEQA  
 3 issues raised by petitioner is unnecessary given the ruling on the zoning issue.”].) Therefore,  
 4 Petitioner was directed to prepare an order that vacates only those portions of the project  
 5 approvals “to the extent” the SRH zone was applied to just the one property of the Project. It  
 6 directed nothing further.

7 Petitioner, however, submitted a Proposed Judgment and a Proposed Peremptory Writ of  
 8 Mandate that vacates the entirety of all 3 project approvals, without any attempt to reconcile the  
 9 narrow scope of the Minute Order with the scope of the proposed submissions.

10 **A. Objections to Proposed Judgment and Alternative Language Regarding Same**

11 Specifically, set forth below is a chart explaining how Petitioner has expanded the scope  
 12 of the Minute Order into a Judgment that encompasses the CEQA claims that this Court declined  
 13 to rule upon (and thereby necessarily rejected Petitioner’s claims for relief relating thereto)<sup>1</sup>:  
 14

<u>Text of Proposed Judgment</u>	<u>Objection to Text of Proposed Judgment</u>	<u>Text of Alternative Proposed Judgment (Deletions in Strikeout; Additions in Underline)</u>
¶ 1. Petitioner shall have judgment against respondents County of Orange and Orange County Board of Supervisors, and real parties in interest Roman Catholic Diocese of Orange and Kisco Senior Living, LLC, as set forth below, setting aside and vacating all approvals related to Planning Application PA 090004 (“The Springs at Bethsaida” project).	The portion of this proposed paragraph that reads “...setting aside and vacating all approvals related to Planning Application PA 090004 (“The Springs at Bethsaida” project)...” is overbroad and inconsistent with the Minute Order. This language should be stricken and revised to include the language in the Alternative Proposed Judgment.	¶ 1 should read as follows:  Petitioner shall have judgment against respondents County of Orange and Orange County Board of Supervisors, and real parties in interest Roman Catholic Diocese of Orange and Kisco Senior Living, LLC, as set forth below, setting aside and vacating all approvals related to Planning Application PA 090004 (“The Springs at Bethsaida” project)

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25 <sup>1</sup> Inclusion in the Judgment of a statement that all remaining claims are rejected is necessary as a matter of judicial  
 26 efficiency and economy as well as for a complete adjudication of the merits when this matter proceeds to an appeal.  
 27 Also, while this Court’s Minute Order encourages the parties to continue settlement discussions, Real Parties and  
 28 Respondents have made a concerted effort prior to the issuance of the Minute Order to engage Petitioner in a  
 productive settlement discussion. In fact, counsel for Real Parties and Respondents conducted a settlement call with  
 Petitioner’s counsel on January 27, 2012. Real Parties then made an express and confidential settlement offer to  
 Petitioner on February 10, 2012. Petitioner declined to respond.

		to the extent those approvals apply the SRH zoning category to the one property of the Project. All other claims for relief, including relief under the California Environmental Quality Act, are declined and rejected.
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**B. Objections to Proposed Writ of Mandate and Alternative Language Regarding Same**

In addition, Petitioner’s Proposed Writ of Mandate also ignores the limiting language of the Minute Order. Quite simply, in attempting to vacate the entirety of Ordinance 11-008, Petitioner goes far beyond the scope of the Minute Order. Specifically, the text of the SRH zoning amendment to the NTSP was attached to Ordinance No. 11-008 as Exhibit 4. (AR at 110-113.) The text of the SRH amendment makes no reference to one property, or the specific property involved here, but instead creates standards and permitted uses throughout the NTSP area. (AR 110-113.) The application of the SRH amendment to Real Parties’ property was accomplished by amending a map within the NTSP. (AR at 114-115.) This was a separate and distinct action and should be the only portion of Ordinance No. 11-008 declared void by this Court. In accord with the Court’s Minute Order, the SRH amendment to the NTSP, and the portions of Ordinance No. 11-008 adopting it, should remain.

Set forth below is a chart illustrating how Petitioner is expanding the scope of the Minute Order into a Writ of Mandate that encompasses the CEQA claims that this Court declined to rule upon (and thereby necessarily rejected Petitioner’s claims for relief relating thereto):

<u><b>Text of Proposed Writ of Mandate</b></u>	<u><b>Objection to Text of Proposed Writ of Mandate</b></u>	<u><b>Text of Alternative Proposed Writ of Mandate(Deletions in Strikeout; Additions in Underline)</b></u>
¶ 1. Set aside and vacate its adoption of Ordinance No. 11-008, amending the <i>North Tustin Specific Plan</i> to add a new senior residential housing (SRH) land use district and to change the land use district for 11901 Newport Avenue from	This proposed paragraph is overbroad and inconsistent with the Minute Order.in that it <i>attempts to set aside the entirety of Ordinance No. 11-008</i> rather than limiting it to just that portion which applies the SRH to the Project	¶ 1 should read as follows:  Set aside and vacate its <del>adoption of that portion of</del> Ordinance No. 11-008, amending the <i>North Tustin Specific Plan</i> <del>to add a that</del> <u>applies the new senior</u>

<p>1 residential single family (100- 2 RSF) to SRH.</p>	<p>property.</p> <p>Ordinance No. 11-008 (1) amends the NTSP to include the SRH zoning amendment, (2) applies the SRH zoning amendment to Real Parties' property, (3) adopts CEQA findings and a Statement of Overriding Considerations, and (4) adopts the Mitigation Monitoring and Reporting Program.</p> <p>The text of the SRH zoning amendment to the NTSP was attached to Ordinance No. 11-008 as Exhibit 4. (AR at 110-113.) The text of the SRH amendment makes no reference to one property, or the specific property involved here, but instead creates standards and permitted uses throughout the NTSP area. (AR 110-113.) The application of the SRH amendment to Real Parties' property was accomplished by amending a map within the NTSP. (AR at 114-115.) This was a separate and distinct action and should be the only portion of Ordinance No. 11-008 declared void by this Court.</p> <p>The Writ of Mandate should only vacate that portion of the Ordinance that applies the SRH zoning amendment to Real Parties' property and leave the remaining portions intact. The SRH amendment to the NTSP, the portions of Ordinance No. 11-008 adopting it, and the CEQA-related findings, should remain.</p>	<p>residential housing (SRH) land use district <del>and to change the land use district for to</del> 11901 Newport Avenue from residential single family <del>(100-RSF) to SRH.</del> <u>and correct any deficiencies in the approvals which apply the SRH to just one property.</u></p>
<p>¶ 2. Set aside and vacate all related Project approvals, including (without limitation)</p>	<p>This proposed paragraph is overbroad and inconsistent with the Minute Order in that</p>	<p>¶ 2 should read as follows: Set aside and vacate <del>all related</del></p>

<p>1 Resolution No. 11-038,  2 pertaining to CEQA, and  3 Resolution No. 11-039,  4 approving a Use Permit and  5 Site Development Permit for  6 the Project.</p>	<p>it <i>attempts to set aside</i>  <b>Resolution No. 11-038</b>  pertaining to CEQA. This  Court expressly declined to  rule on the CEQA claims and  therefore, Petitioner's CEQA  claims relating to anything  other than the spot zoning are  necessarily rejected and  should not be part of any writ  of mandate.</p>	<p>Project approvals, including  (without limitation)  <del>Resolution No. 11-038,</del>  <del>pertaining to CEQA, and</del>  Resolution No. 11-039,  approving a Use Permit and  Site Development Permit for  the Project.</p>
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7 For these reasons, if the Court intends to enter Judgment and issue a Writ of Mandate  
8 against Respondents and Real Parties, the Alternative Proposed Judgment and Alternative  
9 Proposed Writ of Mandate should be used. Petitioner's proposed submissions should be rejected.

10 **IV. THE COURT SHOULD ORDER A HEARING ON THE OBJECTIONS AND**  
11 **PROPOSED SUBMISSIONS PURSUANT TO RULE 3.1590(K) OF THE**  
12 **CALIFORNIA RULES OF COURT**

13 Rule 3.1590(k) of the California Rules of Court provides in relevant part that a  
14 trial court "may order a hearing on proposals or objections to a proposed judgment." Real  
15 Parties and Respondents believe that a hearing on Petitioner's proposed submissions, these  
16 objections and the alternative proposals regarding same would be helpful and productive to  
17 ensure that this matter is procedurally postured in an accurate and proper manner for the Court of  
18 Appeal.

19 **V. CONCLUSION**

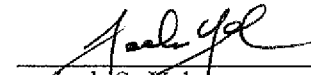
20 For each of the foregoing reasons, Respondents and Real Parties respectfully object to the  
21 Proposed Judgment and Proposed Writ of Mandate submitted by Petitioner and requests the Court  
22 to use the Alternative Proposed Judgment and Alternative Writ of Mandate submitted by  
23 Respondents and Real Parties if the Court continues to believe judgment should be entered in  
24 favor of Petitioner.



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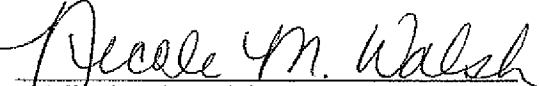
Dated: March 29, 2012

MANATT, PHELPS & PHILLIPS, LLP

By:   
\_\_\_\_\_  
Jack S. Yeh  
*Attorneys for Real Parties in Interest*  
ROMAN CATHOLIC DIOCESE OF ORANGE  
and KISCO SENIOR LIVING, LLC

Dated: March 29, 2012

NICHOLAS S. CHRISOS, COUNTY COUNSEL  
AND NICOLE M. WALSH, DEPUTY

By:   
\_\_\_\_\_  
Nicole M. Walsh, Deputy  
*Attorneys For Respondents*  
COUNTY OF ORANGE AND ORANGE  
COUNTY BOARD OF SUPERVISORS

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**PROOF OF SERVICE**

I, Terrie Auzenne, declare:

I am employed in Los Angeles County, Los Angeles, California. I am over the age of eighteen years and not a party to this action. My business address is Manatt, Phelps & Phillips, LLP, 11355 W. Olympic Blvd., Los Angeles, California 90064. On the date set forth below, I served the within:

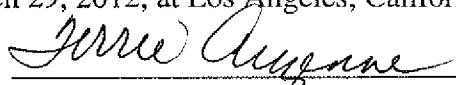
**JOINT OBJECTIONS OF REAL PARTIES IN INTEREST ROMAN CATHOLIC DIOCESE OF ORANGE AND KISCO SENIOR LIVING, LLC AND RESPONDENT COUNTY OF ORANGE AND ORANGE COUNTY BOARD OF SUPERVISORS TO PETITIONER'S PROPOSED JUDGMENT AND PROPOSED PEREMPTORY WRIT OF MANDATE; REQUEST FOR HEARING PURSUANT TO RULE 3.1590(k) OF THE CALIFORNIA RULES OF COURT**

on the interested parties in this action addressed as follows:

**SEE ATTACHED SERVICE LIST**

- (BY MAIL) By placing such document(s) in a sealed envelope, with postage thereon fully prepaid for first class mail, for collection and mailing at Manatt, Phelps & Phillips, LLP, Los Angeles, California following ordinary business practice. I am readily familiar with the practice at Manatt, Phelps & Phillips, LLP for collection and processing of correspondence for mailing with the United States Postal Service, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for collection.
- (BY OVERNIGHT MAIL) By placing such document(s) in a sealed envelope, for collection and overnight mailing at Manatt, Phelps & Phillips, LLP, Los Angeles, California following ordinary business practice. I am readily familiar with the practice at Manatt, Phelps & Phillips, LLP for collection and processing of overnight service mailing, said practice being that in the ordinary course of business, correspondence is deposited with the overnight messenger service, Federal Express, for delivery as addressed.
- (BY ELECTRONIC SERVICE) By submitting an electronic version of the document(s) to OneLegal, LLC, through the user interface at [www.onelegal.com](http://www.onelegal.com).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 29, 2012, at Los Angeles, California.

  
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Terrie Auzenne

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