

Attachment A

Resolution No. 2022-65 to Adopt Addendum to MND

RESOLUTION NO. 2022-65

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, ADOPTING AN ADDENDUM TO MITIGATED NEGATIVE DECLARATION NO. ND2010-008 FOR THE TENNIS CLUB AT NEWPORT BEACH LOCATED AT 1602 EAST COAST HIGHWAY (PA2021-260)

WHEREAS, Section 200 of the City of Newport Beach (“City”) Charter vests the City Council with the authority to make and enforce all laws, rules, and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitution, and the power to exercise, or act pursuant to any and all rights, powers and privileges, or procedures granted or prescribed by any law of the State of California;

WHEREAS, in 2012, the City Council approved an application by Golf Realty Fund, Managing Owner (“Applicant”) for the reconstruction of the 3,725-square-foot tennis clubhouse, a reduction of tennis courts from 24 to seven courts, construction of a 27-room boutique hotel with 9,700 square feet of ancillary uses, five single-family residential units, and a development agreement for the property (“2012 Entitlements”) located at 1602 East Coast Highway, and legally described as Parcels A, B, C, and D of Parcel Map No. 2016-151 (commonly referred as the “Tennis Club Site” or “Property”);

WHEREAS, on November 20, 2018, the Zoning Administrator approved Coastal Development Permit No. CD2017-039, authorizing the redevelopment of the Property consistent with the 2012 Entitlements (2012 Entitlements and Coastal Development Permit No. CD2017-039 are collectively referred to as the “Approved Project”);

WHEREAS, the Applicant is requesting an amendment to the Approved Project to allow an increase in the number of future tennis courts from seven to eight, an increase in the number of future hotel rooms from 27 to 41, an increase to the gross floor area of ancillary hotel uses by 4,686 square feet, three attached condominium units and two single-family residences in-lieu of five single-family residences, and an amendment to the 2012 Development Agreement to account for the aforementioned changes to the Approved Project along with extending the term for an additional 10 years (“Project”);

WHEREAS, the following approvals are requested or required in order to implement the Project:

- General Plan Amendment (“GPA”) – An amendment to Anomaly No. 46 of Table LU2 of the 2006 Newport Beach General Plan Land Use Element to document

the conversion of 17 tennis courts to 27 hotel rooms authorized by City Council Resolution No. 2012-10, and the addition of 14 hotel rooms for a total of 41 rooms and one tennis courts for a total of eight tennis courts;

- Local Coastal Program Implementation Plan Amendment (“LCPA”) – An amendment to Section 21.26.055(S)(2) (Planned Community Coastal Zoning District Development Standards, Newport Beach Country Club (PC-47, Tennis Club) of the Newport Beach Municipal Code (“NBMC”) to modify the permitted uses and development standards allowed on the Property;
- Planned Community Development Plan Amendment (“PCDP Amendment”) – An amendment to Planned Community Development Plan No. 47 (Newport Beach Country Club Planned Community) to amend land use regulations and development standards on the Property;
- Major Site Development Permit Amendment (“SDA”) – An amendment to the existing site development review in accordance with PC-47 and Section 20.52.080 (Permit Review Procedures, Site Development Reviews) of the NBMC for the construction of the Project;
- Coastal Development Permit Amendment (“CDPA”) – A coastal development permit for the demolition of existing structures, further subdivision on the Property, and implementation of the Project;
- Vesting Tentative Tract Map Amendment (“VTMA”) – An amendment to Vesting Tentative Tract Map No. 15347 pursuant to Title 19 (Subdivisions) of the Newport Beach Municipal Code (“NBMC”) for a lot reduction created for the Approved Project and inclusion of the condominium ownership;
- Limited Term Permit Amendment (“XP”) – A limited term permit to allow temporary use of structures during construction on the Property, pursuant to NBMC Section 20.52.040;
- Development Agreement Amendment (“DA”) – A second amendment to the Development Agreement (DA2008-001), between the Applicant and the City, pursuant to Sections 15.45.020(A)(2)(c) (Buildings and Construction, Development Agreements Required, Development Agreement Required) and 15.45.070 (Buildings and Constructions, Development Agreements, Amendment/Cancellation) of the NBMC, which would provide vested rights to

develop the Project for an additional 10 years and provide negotiated public benefits to the City; and

- Addendum to previously adopted Mitigated Negative Declaration No. ND2010-008 (SCH2010091052) (“Addendum”) – Pursuant to the California Environmental Quality Act (“CEQA”), the Addendum addresses reasonably foreseeable environmental impacts resulting from the Project;

WHEREAS, the Property is designated Mixed-Use Horizontal 3/Parks and Recreation (MU-H3/PR) by the City of Newport Beach General Plan and is located within the Newport Beach Country Club Planned Community (PC-47) Zoning District;

WHEREAS, the Property is designated Mixed-Use Horizontal/Parks and Recreation (MU-H/PR) by the Coastal Land Use Plan and is located within the Newport Beach Country Club Planned Community (PC-47) Coastal Zone District;

WHEREAS, the Planning Commission held a public hearing on September 8, 2022, in the City Council Chambers, located at 100 Civic Center Drive, Newport Beach, California, at which time the Planning Commission considered the Project. A notice of time, place and purpose of the hearing was given in accordance with California Government Code Section 54950 *et seq.* (“Ralph M. Brown Act”), and Chapters 15.45 (Development Agreements), 19.12 (Tentative Map Review), 20.56 (Planning Community District Procedures), 20.62 (Public Hearings) and 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this hearing;

WHEREAS, at the hearing, the Planning Commission adopted Resolution No. PC2022-022 (5 ayes, 1 absent, 1 recusal) recommending approval of the Project to the City Council; and

WHEREAS, a public hearing was held by the City Council on September 27, 2022, in the City Council Chambers, located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the hearing was given in accordance with the Ralph M. Brown Act, and Chapters 15.45 (Development Agreements), 19.12 (Tentative Map Review), 20.56 (Planning Community District Procedures), 20.62 (Public Hearings) and 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at this hearing.

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

Section 1: On March 27, 2012, the Newport Beach City Council approved Mitigated Negative Declaration No. ND2010-008 (SCH 2010091052) and an Errata to Mitigated Negative Declaration No. ND2010-008 (together referred to as “MND”) that addressed the potential environmental effects associated with the Approved Project. The MND was prepared in compliance with the California Environmental Quality Act as set forth in Section 21000 *et seq.* of the California Public Resources Code, the State CEQA Guidelines set forth in Title 14, Division 6, Chapter 3 of the California Code of Regulations, (“CEQA Guidelines”), and City Council Policy K-3. The MND is attached hereto as Exhibit “A” and incorporated herein by reference.

Section 2: Pursuant to Section 21166 of the California Public Resources Code and Section 15162 of the CEQA Guidelines, when a negative declaration adopted for a project, no subsequent negative declaration is required unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

- a. Substantial changes are proposed in the project which will require major revisions of the previous negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- b. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- c. 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 negative declaration was adopted as complete, shows any of the following:
 - i. The project will have one or more significant effects not discussed in the previous negative declaration;
 - ii. Significant effects previously examined will be substantially more severe than shown in the adopted negative declaration;

- iii. 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
- iv. Mitigation measures or alternatives which are considerably different from those analyzed in the previous negative declaration would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

Section 3: Although the Project necessitates an amendment to the General Plan due to the increased number of hotel rooms and tennis courts, there are no proposed changes to the land uses permitted per the General Plan land use designation. Additionally, based on the changes associated with the Project, there are no conditions that would require the preparation of a subsequent or supplemental MND. As a result, an Addendum to the MND was prepared pursuant to Section 15162 (Subsequent EIRs and Negative Declarations) and 15164 (Addendum to an EIR or Negative Declaration) of the CEQA Guidelines.

Section 4: The following environmental topics were analyzed for the Project: Aesthetics, Air Quality, Biological Resources, Cultural Resources, Energy, Geology and Soils, Greenhouse Gas Emissions, Hazards and Hazardous Materials, Hydrology and Water Quality, Land Use and Planning, Noise, Population and Housing, Public Services, Recreation, Transportation, Utilities and Service Systems, and Wildfire. The Addendum includes analysis of new topics that were not included in the previous MND; specifically, it includes a new energy section and a new wildfire section. These additional analyses are appropriate for inclusion in the Addendum, but do not result in new or increased significant impacts that would require preparation of a subsequent MND pursuant to Section 15162 of the CEQA Guidelines.

Section 5: On the basis of the MND and entire environmental review record, the additional tennis court, hotel rooms, ancillary hotel uses, and conversion of three single-family residences to condominium units will not result in any new significant impacts that were not previously analyzed in the MND. The Addendum confirms and provides substantial evidence that the potential impacts associated with this Project would either be the same or less than those described in the MND, or as mitigated by applicable mitigation measures in the MND. In addition, there are no substantial changes to the circumstances under which the Project would be undertaken that would result in new or more severe environmental impacts than previously addressed in either the MND, nor has any new information regarding the potential for new or more severe significant environmental impacts been identified. Therefore, in accordance with Section 15164 of the CEQA Guidelines, an addendum to the previously adopted MND is the appropriate environmental document for the Project. In taking action to approve any of the requested applications for the Project, the data presented in the MND, as augmented by the Addendum for this Project, are considered as part of the record.

Section 6: The Addendum to the MND, is hereby adopted by the City Council given its analysis and conclusions. The Addendum to the MND and related referenced documentation, constitute the administrative record upon which this decision was based, are on file with the Planning Division, City Hall, 100 Civic Center Drive, Newport Beach, California.

Section 7: The City Council finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger.

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

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

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


ADOPTED this 27th day of September, 2022.

Kevin Muldoon
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney

Attachment(s): Exhibit A: Mitigated Negative Declaration No. ND2010-008 and an
Errata to Mitigated Negative Declaration No. ND2010-008
(MND)

Exhibit "A"

Mitigated Negative Declaration No. ND2010-008 and an Errata to Mitigated Negative Declaration No. ND2010-008 (MND)

Available separately due to bulk at:

<https://www.newportbeachca.gov/government/departments/community-development/planning-division/projects-environmental-document-download-page/environmental-document-download-page-arch>