



CITY OF

NEWPORT BEACH

City Council Staff Report

February 13, 2024
Agenda Item No. 15

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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TITLE: Resolution No. 2024-10: Intent to Override Orange County Airport
Land Use Commission's Finding of Inconsistency for the Residences
of 1401 Quail Street (PA2023-0040)

ABSTRACT:

Pursuant to Section 4.3 of the 2008 John Wayne Airport Environs Land Use Plan (AELUP) and Section 21676(b) of the California Public Utilities Code, the City of Newport Beach is required to submit the Residences of 1401 Quail Street Project, a development of 67 for-sale condominium units atop a 146-space parking structure (Project), to the Orange County Airport Land Use Commission (ALUC) for a consistency determination with the AELUP. ALUC conducted a hearing on the matter on January 18, 2024, and found the Project to be inconsistent with the AELUP.

For the City Council's consideration is a request to consider overriding the ALUC's finding of inconsistency. This action would authorize staff to formally provide notice, pursuant to Public Utilities Code Section 21676 (b), to the ALUC and the State Department of Transportation of Aeronautics Program of the City's intention to override ALUC's inconsistency finding.

RECOMMENDATIONS:

- a) Conduct a public hearing;
- b) Find that the proposed overriding action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines because it has no potential for resulting in physical change to the environment, directly or indirectly; and
- c) Adopt Resolution No. 2024-10, *A Resolution of the City Council of the City of Newport Beach, California, Notifying the Orange County Airport Land Use Commission and State Department of Transportation, Aeronautics Program of the City's Intention to Find that the Residences at 1401 Quail Project is Consistent with the Purpose of the State Aeronautics Act and Overrule the Orange County Airport Land Use Commission's Determination that the Project is Inconsistent with the 2008 John Wayne Airport Environs Land Use Plan (PA2023-0040).*

DISCUSSION:

The subject property is located at the northwest corner of Quail Street and Spruce Street (Figure 1, below) and currently improved with a 22,956-square-foot office building. The project site is one of the 62 new housing opportunity sites in the Airport Area Environs (Airport Area), per the certified 6th Cycle Housing Element, and is located within the 60 dBA noise contour as shown in the updated noise contour maps adopted as part of the Housing Element Implementation Noise-Related Amendments. The Property is also located adjacent to the proposed Residences at 1400 Bristol Street Project and across the street from the entitled Residences at 1300 Bristol Street Project.

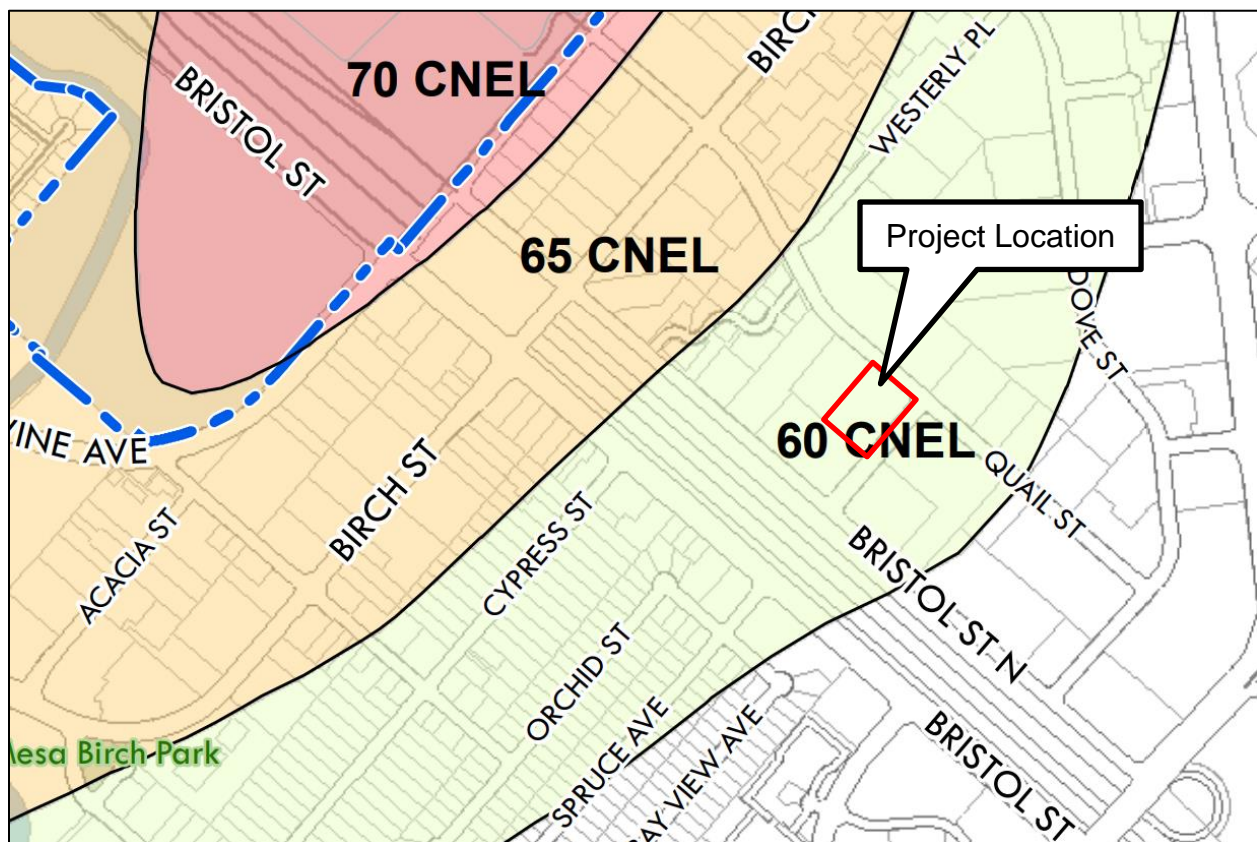


Figure 1: Project Location and Updated Noise Contours

Proposed Project

The applicant, Intracorp Homes, proposes to demolish the existing office building and associated surface parking and landscaping at the project site and construct 67 for-sale condominium units atop a 146-space parking structure. The parking structure is located on the podium level as well as a subterranean gated level underneath.

The Project consists of the following components:

- **General Plan Amendment** – A request to change the existing General Plan Land Use Designation of the Property from CO-G (General Commercial Office) to MU-H2 (Mixed-Use Horizontal);
- **Planned Community Development Plan Amendment** – An amendment to the Newport Place Planned Community (PC-11) to include the Property within the Residential Overlay;
- **Major Site Development Review** - A site development review in accordance with the Newport Place Planned Community (PC-11) and Section 20.52.80 (Site Development Reviews) of the Newport Beach Municipal Code (NBMC), for the construction of the Project;
- **Tentative Vesting Tract Map** – A Vesting Tentative Tract Map No. 19261 pursuant to Title 19 (Subdivisions) of the NBMC for condominium purposes of 67 dwelling units;
- **Affordable Housing Implementation Plan** - A program specifying how the Project would meet the City's affordable housing requirements, in exchange for a request of 27.5% increase in density. The Applicant seeks four development standard waivers related to park land dedication, building setbacks, and building height, pursuant to Chapter 20.32 (Density Bonus) of the NBMC and Government Code Section 65915 (Density Bonus Law). The Applicant also seeks two development concessions related to the mix of affordable units and a waiver of a portion of the required park in-lieu fees, pursuant to Chapter 20.32 (Density Bonus) of the NBMC and Government Code Section 65915;
- **Development Agreement** – A Development Agreement, between the Applicant and the City, pursuant to Sections 15.45.020.A.2.a (Development Agreement Required) of the NBMC, which would provide the Applicant with vested right to develop the Project for a term of 10 years and provide negotiated public benefits to the City; and
- **Addendum to the 2006 General Plan Update Program Environmental Impact Reports** - Pursuant to the California Environmental Quality Act (CEQA), the Addendum addresses reasonably foreseeable environmental impacts resulting from the Project.

The proposed Project is designed as a “podium style” structure that consists of five stories over one level of on-grade parking and one level of subterranean parking. The building height would be approximately 81 feet, including architectural elements, parapet, rooftop mechanical equipment, and roof access.

The Project is designed with a contemporary modern architectural style, intended to be reflective of the surrounding office setting. It is designed with a darker grey stucco finish on the podium and first floor levels and a white stucco finish for the floors above. (Figure 2, below).



Figure 2: Rendering from Spruce Street

The 67-condominium-unit project includes 27 two-bedroom units and 40 three-bedroom units. The two-bedroom units would range from 1,304 to 1,963 square feet with four differing layouts. The three-bedroom units would range from 2,097 to 3,174 square feet in size.

Of the 67 units, eight units would be for sale and restricted to low and very low-income households. Of the eight affordable units, six would be for very low-income households and two would be for low-income households. The remaining 59 units would be market-rate.

Planning Commission Review and Recommendation

On December 21, 2023, the Planning Commission conducted a public hearing to consider the proposed Project. Two members of the public addressed the Planning Commission regarding the Project. At the conclusion of the public hearing, the Planning Commission recommended the City Council approve the Project, by a majority vote (6-0 with one Commissioner absent). The December 21, 2023, Planning Commission Staff Report, Planning Commission minutes excerpts, and Planning Commission Resolution No. PC2023-047 are attached as Attachments B, C, and D respectively.

Airport Land Use Commission Review

Section 4.3 of the AELUP and Section 21676(b) of the Public Utilities Code require the City to submit General Plan and Zoning Code amendments to the ALUC for a consistency determination with the AELUP. ALUC conducted a hearing on the matter at its January 18, 2024, meeting with city staff in attendance, and found the Project is inconsistent with the AELUP. The January 18, 2024, ALUC staff report is attached as Attachment E, and the ALUC inconsistency determination letter is attached as Attachment F.

ALUC Override Process

As a final review authority on legislative acts, the City Council may choose to override ALUC's determination by following a two-step process, which is established in Public Utilities Code Section 21676. The first step in the process is to conduct a public hearing to adopt a resolution of intention to override, a copy of which would be sent to ALUC and the State Division of Aeronautics to provide formal notification of the City's intent.

The second step in the process is that not less than 45-days after notification has been sent to ALUC and State Department of Transportation of Aeronautics Program, the City Council may conduct a second public hearing to consider adopting a resolution to override the ALUC. At this time, the Council may also consider the project entitlements and take final action on the application.

The following points are important to consider:

- The Council's adoption of the attached notification resolution does not constitute the project's approval nor does it predispose the City Council's future action on either the project or the consistency determination;
- The attached resolution notifying ALUC and the State Department of Transportation of Aeronautics Program of the City's intent, and the resolution to overrule ALUC, which will be presented at a future hearing, must be adopted by a two-thirds vote. Since there are seven Council members, five affirmative votes are needed to pass the resolution.

Public Utilities Code Section 21678 states that if the City overrides ALUC's action or recommendation, the operator of the airport shall be immune from liability from damages to property or personal injury caused by or resulting directly or indirectly from the City's decision to overrule the ALUC determination.

Importance of Project Toward Housing Needs

As an alternative to overriding the ALUC findings, the City Council can direct the applicant to redesign the project in a manner that the ALUC would find consistent with the AELUP. In this case, staff believes there may not be an alternative given that the ALUC simply does not want residential uses within this proximity to John Wayne Airport, despite the project's apparent consistency with the AELUP. The project site is ideal for the development of a residential project as it is identified as a housing opportunity site. Figure B-3 of the certified 6th Cycle Housing Element (below) displays the capacity and opportunity within the Airport Area which can help accommodate a portion of the City's RHNA. Ultimately, the Project implements the certified 6th Cycle Housing Element and aids the City in its goal to provide new housing opportunities.

Figure B-3: Airport Area Environs – Sites Inventory



ENVIRONMENTAL REVIEW:

Final action on the Project is not being considered at this time. A complete environmental analysis of the Project is contained in the attached December 21, 2023 Planning Commission Staff Report for which an addendum to an EIR is being proposed. The addendum concludes that the Project is no more impactful to the City than what was studied with the 2006 General Plan Program EIR and the 2013 Housing Element Update Initial Study/Negative Declaration. Nevertheless, the action that is currently before the City Council is consideration of adopting a resolution of intent to override the ALUC's finding that the project is not consistent with the AELUP.

The City Council finds the adoption of this resolution is not subject to California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Specifically, the resolution does not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment because it is limited to the notification of the City's intent to overrule the ALUC determination and it does not authorize the development of the property or commit the City to approve the Project. Potential project impacts will be analyzed when the City Council considered the Project.

FISCAL IMPACT:

There is no fiscal impact related to this item.

NOTICING:

Notice of this hearing was published in the Daily Pilot, mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicant, and posted on the subject property at least 10 days before the scheduled meeting, consistent with the provisions of the Newport Beach Municipal Code. Additionally, the agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENTS:

Attachment A – Resolution No. 2024-10

Attachment B – December 21, 2023 Planning Commission Staff Report (no attachments)

Attachment C – December 21, 2023 Planning Commission Minutes Excerpt

Attachment D – Planning Commission Resolution No. PC2023-047

Attachment E – January 18, 2024 ALUC Staff Report

Attachment F – January 23, 2024 ALUC Determination Letter