



# NEWPORT BEACH

## City Council Staff Report

April 9, 2024  
Agenda Item No. 12

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** Seimone Jurjis, Assistant City Manager/Community Development Director - 949-644-3232, [sjurjis@newportbeachca.gov](mailto:sjurjis@newportbeachca.gov)

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**TITLE:** Ordinance Nos. 2024-10 and 2024-11 and Resolution Nos. 2024-25 and 2024-26: Approving the Residences at 1401 Quail Street Project; and Resolution No. 2024-27: Overriding Orange County Airport Land Use Commission's Determination of Inconsistency (PA2023-0040)

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### **ABSTRACT:**

Intracorp Homes (Applicant), is processing several entitlement applications that would allow for the development of a 67-unit for-sale condominium building atop a 146-space parking structure (Project) at 1401 Quail Street. The Project is located in the Newport Place Planned Community (PC-11), at the northwest corner of Quail Street and Spruce Street in the Airport Area. Implementation of the Project would require demolition of the existing 22,956-square-foot office building and surface parking within the 1.71-acre site.

For the City Council's consideration is the adoption of two resolutions approving a General Plan Amendment, Site Development Review, Affordable Housing Implementation Plan (AHIP), Tentative Vesting Tract Map, and acceptance of the environmental document. Also for the City Council's consideration is the introduction of two ordinances approving the Planned Community Development Plan Amendment and Development Agreement for the Project. Lastly, the City Council will consider adopting a resolution overriding the January 18, 2024, Orange County Airport Land Use Commission's (ALUC), determination that the Project is inconsistent with the 2008 JWA Environs Land Use Plan (AELUP) pursuant to Public Utilities Code Section 21676(b). Approval of the Project and the adoption of the resolution to override the ALUC requires a two-thirds majority vote of the City Council.

### **RECOMMENDATIONS:**

- a) Conduct a public hearing;
- b) Adopt Resolution No. 2024-25, *A Resolution of the City Council of the City of Newport Beach, California, Adopting Addendum No. 8 to the 2006 General Plan Update Program Environmental Impact Report and 2008-2014 City of Newport Beach Housing Element Update Initial Study/Negative Declaration for the Residences at 1401 Quail Street Project Located at 1401 Quail Street (PA2023-0040);*

- c) Adopt Resolution No. 2024-26, *A Resolution of the City Council of the City of Newport Beach, California, Approving a General Plan Amendment, Site Development Review, Vesting Tentative Tract Map, and Affordable Housing Implementation Plan for the Residences at 1401 Quail Street Project Located at 1401 Quail Street (PA2023-0040)*;
- d) Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2024-10, *An Ordinance of the City Council of the City of Newport Beach, California, Approving a Planned Community Development Plan Amendment for the Residences at 1401 Quail Street Located at 1401 Quail Street (PA2023-0040)*, and pass to second reading on April 23, 2024;
- e) Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2024-11, *An Ordinance of the City Council of the City of Newport Beach, California, Approving a Development Agreement for the Residences at 1401 Quail Street Project Located at 1401 Quail Street (PA2023-0040)*, and pass to second reading on April 23, 2024; and
- f) Adopt Resolution No. 2024-27, *A Resolution of the City Council of the City of Newport Beach, California, Finding the Residences at 1401 Quail Project is Consistent with the Purposes of the State Aeronautics Act and Overriding 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 in the Newport Place Planned Community (PC-11) and is approximately 1.71 acres in size. The project site is rectangular in shape, located at the northwest corner of Quail Street and Spruce Street, and adjacent to office buildings to the north, west and south, as well as a surface parking lot utilized by Fletcher Jones Motorcars to the east. The property to the south, at the east corner of Bristol and Spruce (1300 Bristol Street), has been entitled for residential use and the office building that once occupied the site has been demolished. The abutting property to the south, at 1400 Bristol, is being proposed for residential development (Residences at 1400 Bristol Street) and will be considered by the City Council separately.

### **Project Description**

The applicant 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 base density allotted to the property based on the conversion of existing 22,956 square feet of office use would be 52 units if the requested General Plan amendment is approved. The applicant also proposes a 27.5%, or 15-unit, increase in density, pursuant to Government Code Section 65915 (Density Bonus Law) for a total of 67 residential units.

The applicant's project description and project plans are included as Attachment K.

The application 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 a 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 rights 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 (Addendum No. 8)** - 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 67 condominium units include 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 for-sale units, eight units would be 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 for-sale at market rate. While the overall unit mix would be 27, two-bedroom units and 40, three-bedroom units, all the proposed affordable units would be two-bedroom units. The affordable units would consist of the same size and amenities as the market-rate units and would be distributed throughout the Project.

Below is the proposed rendering of the Project.



### General Plan Amendment

The subject property is in the Airport Area and currently has a General Plan Land Use designation as General Commercial Office (CO-G). The applicant is requesting to change the land use designation of the subject property, from the CO-G to Mixed-Use Horizontal 2 (MU-H2).

The MU-H2 designation applies to a majority of properties in the Airport Area and allows a maximum of 2,200 residential units, with 1,650 units as replacement of existing office, retail, and/or industrial uses at a maximum density of 50 units per net acre. Any eligible density bonus allowed by Government Code Section 65915 (State density bonus law) and NBMC Chapter 20.32 (Density Bonus) are not included in the 2,200 allowance or the 50 dwelling units per acre standard.

The Project helps implement the Sixth Cycle Housing Element through a General Plan amendment and aids the City of Newport Beach in its goal to provide new housing opportunities. If approved and the project is permitted, the City will take credit for the units in its annual reporting to the State on housing production.

The Project, as proposed, is consistent with all current General Plan policies, as included in the draft resolution (Attachment B). Furthermore, the EIR Addendum No. 8, prepared for the Project, includes a comprehensive analysis of all relevant General Plan policies.

#### *Charter Section 423 (Measure S) Analysis ("Greenlight")*

Charter Section 423 requires voter approval of any major General Plan amendment. A major General Plan amendment is one that significantly increases allowed density or intensity by 40,000 square feet of non-residential floor area, increases traffic by more than 100 peak hour vehicle trips (AM/PM), or increases residential dwelling units by 100 units. These thresholds apply to the total of increases resulting from the amendment itself, plus 80% of the increases resulting from other amendments affecting the same neighborhood (defined as a Statistical Area as shown in the General Plan Land Use Element) and adopted within the preceding 10 years.

Council Policy A-18 (Guidelines for Implementing Charter Section 423) requires that proposed amendments to the General Plan be reviewed to determine if a vote of the Newport Beach electorate would be required. This policy includes a provision that all General Plan amendments be tracked as "Prior Amendments" for 10 years to determine if minor amendments in a single Statistical Area cumulatively exceed the thresholds indicated above.

The property is within Statistical Area L4. The General Plan amendment would change the land use designation only and not result in an increase in development. The 52 base dwelling units are already included in the MU-H2 development capacity of 2,200 units and no increase in allowed floor area is proposed. As a result, there is no increase in AM or PM peak hour trips and the amendment is not classified as a major amendment requiring a vote of the electorate should the City Council choose to approve the General Plan amendment.

#### Newport Place Planned Community (Zoning Code) Amendment

The property is currently located within Industrial Site 3A and not within the Residential Overlay of PC-11. A request to allow the subject property to be added to the Residential Overlay of PC-11 is proposed to accommodate the proposed residential development. The Residential Overlay applies to most sites in PC-11. The Overlay currently applies to the sites across Spruce Street located approximately 85 feet away including the site at 1300 Bristol that has been approved but not yet constructed as a residential apartment project. The project would be consistent with the anticipated future development of 1300 Bristol as well other adjacent properties within the Overlay.

The Overlay allows for multiple-residential development as a stand-alone use if it includes a minimum of 15% of the base density for lower income households. The project provides this minimum number of affordable units by providing eight dwelling units as affordable for low-income households. The Overlay also contains development standards for multi-residential development, including density, height, setbacks, parking, signage, airport noise compatibility, amenities, and landscaping.

Although the Project includes waivers or reductions of the development standards, the overall intent of providing residential opportunities in the proposed Residential Overlay are being met.

#### Site Development Review

A Site Development Review application is required for multiple-residential development projects, pursuant to the Residential Overlay of PC-11 and consistent with NBMC Section 20.52.080 (Site Development Review). The required findings ensure the proposal is a quality project that is consistent with the General Plan policies, is compatible with the physical characteristics of the site and surroundings, and to reduce or minimize potential negative impacts. The site development review application ensures the project will be implemented consistent with the development standards established in the Residential Overlay of PC-11.

#### Vesting Tentative Tract Map

The applicant is requesting a vesting tentative tract map for condominium purposes, pursuant to Section 19.12.070 (Required Findings for Action on Tentative Maps (66412.3, 66473 et seq)) of the NBMC. The tentative vested tract map is required for the separate sale of each condominium unit and does not physically divide the lot into individual parcels. The proposed vesting tentative tract map is consistent with the Title 19 and applicable requirements of the Subdivision Map Act.

#### Affordable Housing Implementation Plan

The proposed Affordable Housing Implementation Plan (AHIP), dated November 28, 2023 (Exhibit D of Attachment B), illustrates compliance with the affordable housing requirements of the Residential Overlay of the Newport Place Planned Community, and density bonus allowances pursuant to Government Code Section 65915-65918 (Density Bonus Law) and NBMC Chapter 20.32 (Density Bonus Code).

Consistent with the affordable housing requirements of the Residential Overlay, 15%, or eight units of the project's 52 base condominium units, would be set aside as affordable units to low or very low-income households. Per Section 20.32.140 (Occupancy and Resale of Ownership Units) of the NBMC, if a low or very low-income unit is initially occupied by a low or very low-income household and offered at an affordable housing cost, the unit will be subject to an equity sharing agreement, unless sold to a nonprofit housing corporation. Upon resale, the seller of the unit retains the value of any improvements, the down payment, and the seller's proportionate share of the appreciation, and the City recaptures any initial subsidy and its proportionate share of the appreciation. The City's share is returned to be used to support affordable housing development in the future.

In addition to the 15 density bonus units, the project is entitled to receive two incentives or concessions that would result in identifiable, financially sufficient, and actual cost reductions. A reduction or waiver of any City imposed fee or dedication of land is considered an incentive or concession, however, the decision to approve the incentive/concession is at the sole discretion of the City Council and not guaranteed. In this case, the applicant requests two of the following incentives:

*Incentive/Concession Requests:*

1. Affordable Unit Mix: NBMC Section 20.32.110 (Design and Distribution of Affordable Units) requires affordable units in a density bonus project to reflect the same range of unit types in the residential development as a whole. The Project provides all eight affordable units as two-bedroom units, whereas the overall unit mix includes 27, two-bedroom units (40%) and 40, three-bedroom units (60%). There are no affordable units that are three-bedroom units. Granting this incentive will result in identifiable, financially sufficient, and actual project cost reductions for the Project. This incentive has been requested and granted in all previous projects where density bonus has been requested.
2. Partial Park In-lieu Fee Waiver: Pursuant to General Plan Policy General Plan Land Use Policy LU 6.15.13, the Applicant is required to dedicate a ½ acre of land for a neighborhood park or pay an in-lieu fee for the City to acquire and improve parks in the Airport Area. The applicant is required to pay \$1,837,500 for the in-lieu park fee (1/2-acre park equivalent). The Applicant is contributing approximately \$513,300 for this purpose; therefore, an incentive/concession is required to waive the remaining fee. The reduction in park in-lieu fees would allow the applicant to contribute to the overall fund for parks in the Airport Area, while providing an identifiable cost reduction that make the provision of affordable units feasible. Because the request includes a waiver of a City-imposed fee, the Council has the discretion to approve, deny or modify this concession.

*Development Standard Waiver Requests:*

In addition to the density bonus units, parking reductions, and financial incentives and concessions, the Project is entitled to receive unlimited waivers or reductions of development standards if they would physically prevent the project from being built at the permitted density. In this case, the Project applicant requests a waiver of the following four development standards, described in greater detail in the December 21, 2023 Planning Commission staff report (Attachment F):

1. Park Dedication Requirements (two waivers)
2. Street Setbacks
3. Building Height

### Development Agreement

In accordance with Section 15.45.020.A.2.a (Development Agreement Required) of the NBMC, a development agreement is required if the proposed project includes an amendment to PC-11 and a General Plan Amendment to change the land use designation. Additionally, the Project includes the development of 50 or more residential units.

The applicant requests a 10-year term of agreement. The agreement provides assurance that the applicant may proceed with the proposed Project in accordance with existing policies, rules and regulations, and conditions of approval.

The development agreement provides vested rights to develop the project. The total fee will have three components: a public safety fee, a park in-lieu fee, and a general public benefit fee (Table 1). The public safety fee will assist the City with the cost of an additional ambulance unit that will be stationed at Fire Station No. 7 to serve this area or other public safety needs. The park fee will be used consistent with City Council Policy B-1 (Park Fee Policy) or for the future acquisition and development of a neighborhood park in the Airport Area. The public benefit fee will be used solely at the City Council’s discretion. These fees are subject to annual adjustments, based on the CPI Index.

*Table 1: Projected Public Benefit Fees (Subject to future CPI Adjustment)*

Category	Fee
Public Safety	\$141,600
Reduced Park In-Lieu	\$513,300
General Public Benefit	\$1,628,400
<b>Total</b>	<b>\$2,283,300</b>

Finally, the agreement includes all mandatory elements, including public benefits that are appropriate to support conveying the vested development rights consistent with the City’s General Plan, NBMC, and Government Code Sections 65864 *et seq.*

The Development Agreement can be found as Exhibit A of Attachment D of this report.

### Planning Commission Review and Recommendation

On December 21, 2023, the Planning Commission conducted a duly noticed public hearing to consider the requested applications. The Planning Commission discussed the new housing projects coming to the city and specifically appreciated that the project was for-sale housing. Two members of the public addressed the Planning Commission regarding the request, discussing General Plan policies and building setbacks. At the conclusion of the public hearing, the Planning Commission voted to adopt Resolution No. PC2023-047, recommending the City Council approve the Project.



The Planning Commission staff report, meeting minutes, and resolution are attached for reference as Attachments F, G and H.

### Airport Land Use Commission (ALUC) Override

The project site falls within the airport planning area of the Airport Environs Land Use Plan (AELUP) for the John Wayne Airport. Section 4.3 of the AELUP and Section 21676(b) of the California Public Utilities Code (CPUC) 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 Project at its January 18, 2024, meeting and found the Project is inconsistent with the AELUP due to issues with noise, safety and concentrates people in areas susceptible to aircraft accidents.

On February 13, 2024, the City Council held a public hearing and adopted Resolution No. 2024-10 to notify ALUC and the California Department of Transportation (Caltrans), Aeronautics Program of the City's intent to override ALUC's determination, as afforded to the City in PUC Section 21676(b). Notice of the Council's action was sent to ALUC and the California Department of Transportation, Aeronautics Program on February 14, 2024, which initiated a 45-day comment period on the intent to override.

The City received comments from the ALUC on March 13, 2024 and the Caltrans Aeronautics Program on March 15, 2024 (Attachment I). The letter from the ALUC reiterates its concerns about the Project and outlines its response to the City's proposed findings of the potential override. The letter from the Caltrans Aeronautics Program also expresses concerns about noise and safety.

Staff believes that the noise and safety concerns have been adequately addressed. The Project is located within the updated 60 dBA CNEL contour, consistent with the updated noise contours approved as part of the Housing Element Implementation Noise-Related Amendments. Additionally, the Project has been conditioned to provide an acoustical report which describes the best design features of the structure that will satisfy noise standards, be attenuated to provide a maximum interior noise level of 45 dBA, and provide advanced air filtration systems to promote cleaner air without the opening of windows. These conditions of approval mitigate noise issues for the Project and are consistent with the 45 dBA interior noise standards of the AELUP.

With regard to safety concerns, the Project complies with the policies and regulations within the JWA Airport Planning Area and follows the safety standards of the AELUP as it is located within Safety Zone 6 and is not within the JWA Clear Zone/Runway Protection Zone. The FAA conducted an aeronautical study for the Project consistent with the Federal Aviation Regulations. The FAA issued a Determination of No Hazard to Air Navigation on August 21, 2023, thereby finding the Project does not exceed obstruction standards and would not be a hazard to air navigation.

As a final review authority on legislative acts, the City Council may choose to override ALUC's determination with a two-thirds vote if it makes specific findings that the Project is consistent with the purpose of Section 21670 of the CPUC to protect public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses.

### **FISCAL IMPACT:**

Pursuant to General Plan Implementation Program 12.1, a fiscal impact analysis was prepared for the project by Applied Development dated November 30, 2023 (Attachment J). The fiscal impact model used in the report calculates public service impacts for specific land uses that support the residential population, the employment base, and the visitor population in Newport Beach. It also calculates the public revenues that each type of land use typically generates for the City, including property taxes, sales taxes, and other taxes as well as a variety of user charges and fees.

The report concludes that the proposed ownership residential use of the site would generate a positive fiscal benefit for the City, particularly as compared to the negative fiscal impact of the existing office use of the site. Annually, the existing office use generates a negative fiscal impact of approximately \$42,000 per year. Based on the fiscal model analysis, the proposed project would generate a revenue surplus of approximately \$128,000 per year.

### **ENVIRONMENTAL REVIEW:**

Environmental Impact Report Addendum No. 8 has been prepared for the project in compliance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and City Council Policy K-3.

On the basis of the entire environmental review record, the project will not result in any new significant impacts that were not previously analyzed in the Program Environmental Impact Report (PEIR) for the General Plan 2006 Update (SCH No. 2006011119) or the Housing Element Initial Study/Negative Declaration. All potential impacts associated with this Project would either be the same or less than those described in either the PEIR that have been appropriately mitigated. 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 PEIR, 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 PEIR is the appropriate environmental document for the project.

The entire Addendum No. 8 and its technical appendixes are available online at the City's website at: [www.newportbeachca.gov/ceqa](http://www.newportbeachca.gov/ceqa).

**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 Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

**ATTACHMENTS:**

Attachment A – Resolution No. 2024-25

Attachment B – Resolution No. 2024-27

Attachment C – Ordinance No. 2024-10

Attachment D – Ordinance No. 2024-11

Attachment E – Resolution No. 2024-27

Attachment F – Planning Commission Staff Report

Attachment G – Planning Commission Meeting Minutes

Attachment H – Planning Commission Resolution No. 2023-047

Attachment I – ALUC and CalTrans Comment Letters

Attachment J – Fiscal Impact Memorandum dated November 30, 2023

Attachment K – Project Plans