



NEWPORT BEACH

City Council Staff Report

April 9, 2024
Agenda Item No. 11

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Seimone Jurjis, Assistant City Manager/Community Development Director - 949-644-3232, sjurjis@newportbeachca.gov

PREPARED BY: Liz Westmoreland, Senior Planner - 949-644-3234, lwestmoreland@newportbeachca.gov

TITLE: Ordinance Nos. 2024-8 and 2024-9 and Resolution Nos. 2024-22 and 2024-23: Approving the Residences at 1400 Bristol Street Project; and Resolution No. 2024-24: Overriding Orange County Airport Land Use Commission's Determination of Inconsistency (PA2022-0296)

ABSTRACT:

The Picerne Group (Applicant) is processing several entitlement applications that would allow for the development of 229 apartment units atop a 422-space parking structure and a pedestrian bridge that connects to the approved Residences at 1300 Bristol Street Project, over the Spruce Street right-of-way (Project) at 1400 Bristol Street. The Project is located in the Newport Place Planned Community (PC-11) at the northwest corner of Bristol Street and Spruce Street in the Airport Area. Implementation of the Project would require demolition of the two office buildings totaling 38,764-square-feet and a surface parking lot within the 2.38-acre site.

For the City Council's consideration is the adoption of two resolutions approving a General Plan Amendment, Site Development Review, Traffic Study, Affordable Housing Implementation Plan (AHIP), and acceptance of the environmental document. Also for the City Council's consideration is the introduction of two ordinances approving a Planned Community Development Plan Amendment and a 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 (ALUC)'s, 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. 2024-22, *A Resolution of the City Council of the City of Newport Beach, California, Adopting Addendum No. 7 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 1400 Bristol Street Project Located at 1400 Bristol Street (PA2022-0296);*

- c) Adopt Resolution No. 2024-23, *A Resolution of the City Council of the City of Newport Beach, California, Approving a General Plan Amendment, Site Development Review, Affordable Housing Implementation Plan and Traffic Study for the Residences at 1400 Bristol Street Project Located at 1400 Bristol Street (PA2022-0296)*;
- d) Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2024-8, *An Ordinance of the City Council of the City of Newport Beach, California, Approving a Planned Community Development Plan Amendment for the Residences at 1400 Bristol Street Project Located at 1400 Bristol Street (PA2022-0296)*, 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. 2024-9, *An Ordinance of the City Council of the City of Newport Beach, California, Approving a Development Agreement for the Residences at 1400 Bristol Street Project Located at 1400 Bristol Street (PA2022-0296)*, and pass to second reading on April 23, 2024; and
- f) Adopt Resolution No. 2024-24, *A Resolution of the City Council of the City of Newport Beach, California, Finding the Residences at 1400 Bristol Project is Consistent with the Purposes of the State Aeronautics Act and Overriding the Orange County Airport Land Use Commission's Determination that the Residences at 1400 Bristol is Inconsistent with the 2008 John Wayne Airport Environs Land Use Plan (PA2022-0296)*.

DISCUSSION:

The subject property is located in the Newport Place Planned Community (PC-11) and is approximately 2.38 acres in size. The property is rectangular in shape, located at the northwest corner of Bristol Street and Spruce Street, and adjacent to existing office buildings and surface parking. The north office property located at 1401 Quail Street is currently being considered for residential development (Residences at 1401 Quail Street Project).

Project Description

The Applicant is proposing to demolish the two existing office buildings and construct a 229 for-rent units atop a 422-space parking structure with a connecting bridge to the Residences at 1300 Bristol, over the Spruce Street right-of-way. The parking structure includes one level on-grade (podium level) and two levels below grade with five levels of residential above the podium.

Given that the site is designated for office use by the General Plan, the applicant requests a General Plan Amendment from General Commercial Office (CO-G) to Mixed-Use Horizontal (MU-H2) to allow residential use. The base density allotted to the property if designated MU-H2 is 89 dwelling units. The General Plan Amendment also includes a request to increase the project's base density by 64 dwelling units for a total base of 153 dwelling units. The applicant also proposes a 50% density bonus to increase the total unit count to 229 pursuant to Government Code Section 65915 (Density Bonus Law) and Newport Beach Municipal Code (NBMC) Section 20. 32 (Density Bonus). The dwelling unit calculations are summarized below in Table 1.

Table 1: Dwelling Unit Summary

Units Based on Existing Nonresidential Uses	89
Additional Units Per Proposed General Plan Amendment	64
Total Base Units	153
Density Bonus (50%)	77
Total Units Permitted	230
Total Units Provided	229

The 229 apartment units include 40 studio units, 126 one-bedroom units, and 63 two-bedroom units. The studio units would be 515 square feet, the one-bedroom units would range from 613 to 896 square feet, and the two-bedroom units are proposed to range from 1,049 to 1,469 square feet.

Of the 229 units, 23 units would be affordable and restricted to very-low-income households. The remaining 203 units would be market-rate, for-rent apartment units. While there is an overall unit mix of studio (17.5%), one-bedroom (55%), and two-bedroom (27.5%) units, almost all the affordable units are one-bedroom or studio units. The Applicant's project description and project plans are included as Attachment K.

The following approvals are requested to implement the Project as proposed:

- **General Plan Amendment (GPA)**- A request to change the existing General Plan land use designation from General Commercial Office (CO-G) to Mixed Use Horizontal 2 (MU-H2) and add 64 dwelling units above the General Plan allowance to Anomaly 16 of the General Plan Table LU2 (Anomaly Locations);
- **Planned Community Development Plan Amendment**- An amendment to the Newport Place Planned Community (PC-11) to include the project site within the Residential Overlay;
- **Major Site Development Review** - A site development review in accordance with the Newport Place Planned Community and Section 20.52.80 (Site Development Reviews) of the Newport Beach Municipal Code (NBMC), for the construction of the Project;
- **Affordable Housing Implementation Plan (AHIP)** - A plan specifying how the Project would meet the City's affordable housing requirements, in exchange for a request of 50% increase in density. The Applicant seeks six development standard waivers related to park land dedication, building setbacks, building height, private open space for each residential unit, common open space for the entire Project, and overall residential project density pursuant to Chapter 20.32 (Density Bonus) of the NBMC and Government Code Section 65915 (Density Bonus Law). The Applicant also seeks two development concessions¹ related to the mix of affordable units and payment of park in-lieu fees pursuant to Chapter 20.32 (Density Bonus) of the NBMC and Government Code Section 65915;

¹ The terms concession and incentive are used interchangeably.

- **Traffic Study** - A traffic study pursuant to Chapter 15.40 (Traffic Phasing Ordinance) of the NBMC;
- **Development Agreement** – A Development Agreement between the Applicant and the City, pursuant to Section 15.45.020(A)(2)(a) (Development Agreement Required) of the NBMC, which would provide the Applicant with the vested right to develop the Project for a term of 10 years and to provide negotiated public benefits to the City; and
- **Addendum to the 2006 General Plan Update Program Environmental Impact Report** (Addendum 7) - Pursuant to the California Environmental Quality Act (CEQA), the Addendum addresses reasonably foreseeable environmental impacts resulting from the Project.

The project includes a steel truss pedestrian bridge that extends from the proposed project over the Spruce Street right-of-way to the approved residential apartment project at 1300 Bristol Street. The pedestrian bridge would be located on the second story, at the southern corner of the building. The pedestrian bridge is intended to provide connectivity between the two residential projects and allow sharing of amenities between the sites. The properties are owned and will be operated by the same entity. The applicant will be required to enter into a lease agreement (or other form of agreement) with the City of Newport Beach subject to the payment of fees for the use of air-space over the City's right-of-way.

The following is the proposed rendering of the Project including the pedestrian bridge.



Figure 1: Rendering from Bristol Street at the intersection of Spruce Street

General Plan Amendment

The subject property is located in the Airport Area and is currently designated as General Commercial Office (CO-G) by the General Plan Land Use Element. The applicant is requesting to change the land use designation of the subject property from the CO-G designation 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 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) and the requested 64 GPA units are not included in the 2,200-unit policy allowance.

The GPA also includes a revision to Anomaly 16 of the General Plan Table LU2 (Anomaly Locations) to allow 64 additional residential dwelling units at the Property. Conversions of existing commercial space to dwelling units and density bonus units are not tracked within Table LU2 (Exhibit B of Attachment B).

The project helps implement the Sixth Cycle Housing Element and aids the City 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 on housing production to the state.

The project, as proposed, is consistent with all relevant General Plan policies, as included in the proposed resolution (Attachment B). Furthermore, the EIR Addendum 7, prepared for the Project, includes a comprehensive analysis of all relevant General Plan policies.

Charter Section 423 (Measure S) Analysis

Charter Section 423, as implemented through Council Policy A-18 (Guidelines for Implementing 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.

The proposed amendment results in 64 additional dwelling units and no change in the square footage of non-residential floor area. Conversions of existing commercial development is allowed by the current General Plan. Reductions in commercial floor area are not tracked as part of the Charter Section 423 analysis. Density bonus units are not included in the Charter Section 423 analysis because density bonus is mandated by State law and allowed at any site designated for housing. There have been no other General Plan amendments in this Statistical Area within the last 10 years.

Newport Place Planning Community (Zoning Code) Amendment

The property is currently located within Industrial Site 3A of PC-11 and not within the Residential Overlay (Overlay) of PC-11. The industrial zoning designation was established in 1972 with the adoption of the planned community text. Office development is and remains an allowed use. A request to allow the subject property to be added to the Overlay of PC-11 is necessary to accommodate the proposed residential development. Further change to PC-11 is not necessary as the intent of the residential overlay is to allow housing regardless of the underlying zoning category. The property is located within 85 feet of properties subject to the Overlay.

The Overlay allows for multiple residential development as a stand-alone use provided that 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 23 dwelling units as affordable for very-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 is 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 and compatible with physical characteristics of the site and surroundings 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.

Traffic Study

Section 15.40 (Traffic Phasing Ordinance) of the NBMC requires a traffic study to be prepared prior to issuance of building permits if a proposed project generates an excess of 300 new average daily trips (ADT). Ganddini Group Inc. prepared a traffic study dated June 28, 2023 (Exhibit E of Attachment B). The analysis concludes that there is no significant impact as the project will neither cause nor make worse an unsatisfactory level of service at any impacted primary intersection, and all intersections are forecasted to continue to operate at acceptable levels of service. Findings related to the preparation of the traffic study are provided in Attachment B.

Affordable Housing Implementation Plan

The applicant has prepared an Affordable Housing Implementation Plan (AHIP), dated August 11, 2023 (Exhibit D of Attachment B) to illustrate compliance with the affordable housing requirements of the Residential Overlay of Newport Place Planned Community and density bonus allowances pursuant 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 23 units of the project's 153 base units would be set aside as affordable units to very-low-income households for 55 years. The 15% allocation of very-low-income households makes the project entitled to a density bonus of 50% (77 units) above the maximum number of units allowed by the General Plan.

In addition to the 77 density bonus units requested, the project is entitled to receive three 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. The applicant requests the following incentives:

Incentive/Concession Requests:

- a. Affordable unit mix that does not meet NBMC Section 20.32.110 (Design and Distribution of Affordable Units). This section requires affordable units in a density bonus project reflect the same range of unit types in the residential development as a whole. Granting this incentive would result in identifiable, financially sufficient, and actual project cost reductions by reducing the long-term rental subsidy costs associated with the two-bedroom units and affording additional rental income for the project to ensure financial feasibility.
- b. Partial In-Lieu Park 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 \$581,247 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 Waivers

In addition to the density bonus units, parking reductions, and financial concessions, the Project is entitled to receive unlimited waivers or reductions of development standards if the development standard would physically prevent the project from being built at the permitted density. In this case, the Applicant requests waivers of the following development standards, described in greater detail in the December 7, 2023, Planning Commission staff report (Attachment F):

1. Park dedication requirement
2. Residential density
3. Street setbacks
4. Building height
5. Private open space
6. Common open space

Development Agreement

In accordance with Section 15.45.020.A.2.a (Development Agreement Required) of the NBMC, a development agreement is required as 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, and this duration should be sufficient to implement the project. 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. Additionally, the agreement helps the applicant avoid a waste of resources and escalated costs of the proposed project while encouraging a commitment to private participation in comprehensive planning. Staff supports the requested 10-year term.

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 3). The public safety fee will assist the City with the costs of an additional ambulance unit that will be stationed at Fire Station No. 7 and will 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. The general public benefit fee is subject to inflation after two years, based on the CPI Index.

Table 3: Projected Public Benefit Fees

Category	Fee
Public Safety	\$232,560
Reduced Park In-Lieu	\$581,247
General Public Benefit	\$2,893,383
Total	\$3,707,190

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 B of Attachment D of this report.

Planning Commission Review and Recommendation

On December 7, 2023, the Planning Commission conducted a duly noticed public hearing to consider the requested applications. The Planning Commission discussed the merits of the project, its amenities, required off-site sewer improvements, and the project’s contribution to the City’s Regional Housing Needs Allocation. One member of the public addressed the Planning Commission regarding the request. At the conclusion of the public hearing, the Planning Commission voted 6-0, with one Commissioner absent, to adopt Resolution No. PC2023-043, recommending the City Council approve the project. The Planning Commission staff report, meeting minutes, and resolution are included for reference as Attachment Nos. 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 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 concentration of people in areas susceptible to aircraft accidents.

On February 13, 2024, the City Council held a public hearing and adopted Resolution No. 2024-9 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 ALUC on March 12, 2024 and the Caltrans Aeronautics Program on March 12, 2024 (Attachment I). The letter from ALUC reiterates its concerns about the Project and outlines its response to the City's proposed findings of the potential override. The letter from 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 concern, 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 Economics dated March 12, 2024 (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 fiscal impact model is designed to calculate the average cost of public services required by new development, on the assumption that new development affects City services in approximately the same way that existing development does.

The report concludes that the proposed residential rental project would generate a negative fiscal impact for the City, higher than the negative fiscal impact of the existing office use of the site. Annually, the existing office use generates a negative fiscal impact of about \$47,229 per year and the project would generate a negative fiscal impact of approximately \$74,503. This is consistent with the original fiscal analysis of residential uses in the 2006 General Plan, although in recent years some very high value luxury residential projects have shown a positive fiscal benefit. The net impact of the growth in land uses at buildout of the General Plan compared to existing land uses in 2006 when the plan was adopted, would result in a positive fiscal impact for the General Fund of \$21.7 million per year. Additionally, the project will be required to pay public benefit fees as part of the development agreement, which would offset some of the impacts. The project would also provide much needed housing opportunities in the City in furtherance of the certified Housing Element, including 23 rental units affordable to very-low-income households.

ENVIRONMENTAL REVIEW:

Environmental Impact Report Addendum No. 7 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 or Negative Declaration 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. 7 and its technical appendixes are available online at the City's website at: 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. 2024-22

Attachment B – Resolution No. 2024-23

Attachment C – Ordinance No. 2024-8

Attachment D – Ordinance No. 2024-9

Attachment E – Resolution No. 2024-24

Attachment F – Planning Commission Staff Report (no attachments)

Attachment G – Planning Commission Meeting Minutes

Attachment H – Planning Commission Resolution No. 2023-043 (no exhibits)

Attachment I – ALUC and Caltrans Comment Letters

Attachment J – Fiscal Impact Memorandum dated March 12, 2024

Attachment K – Applicant's Project Description and Project Plans