

# **Attachment B**

Planning Commission Staff Report Dated June 4, 2020



## CITY OF NEWPORT BEACH PLANNING COMMISSION STAFF REPORT

June 4, 2020  
Agenda Item No. 4

**SUBJECT:** Newport Airport Village (PA2014-225)

- General Plan Amendment (GP2014-004)
- Zoning Code Amendment (CA2014-009)
- Planned Community Development Plan (PC2020-002)
- Development Agreement (DA2014-003)
- Addendum No. 3 to the 2006 General Plan Update PEIR and Addendum No. 1 to the 2014 Land Use Element Amendment SEIR (ER2020-002)

**SITE LOCATION:** Northerly portion of the Campus Tract, generally bounded by Birch Street, Campus Drive, MacArthur Boulevard and the extension of Corinthian Way

**APPLICANT:** Saunders Property Company c/o Starpointe Ventures

**OWNER:** Saunders Property Company

**PLANNER:** Gregg Ramirez, Principal Planner  
949-644-3219, gramirez@newportbeachca.gov

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### **PROJECT SUMMARY**

The applicant requests legislative approvals consisting of a General Plan Amendment (GPA), Zoning Code Amendment to approve the Newport Airport Village Planned Community Development Plan (PCDP), and a Development Agreement (DA) for a 16.46-acre project area within the Campus Tract, adjacent to the John Wayne Airport (JWA). Ultimately up to 444 dwelling units (329 base units and 115 density bonus units) and 297,572 square feet of retail, office, and airport supporting uses would be accommodated at the project site.

The GPA would change the land use category of the site from AO (Airport Office) to MU-H2 (Mixed Use Horizontal 2). No development capacity increase above what the General Plan currently allows for the Airport Area is proposed. The PCDP would establish permitted uses, development standards, and design guidelines for the future redevelopment of the project area with mixed-use and commercial development. The applicant requests a development agreement that would provide rights to develop the PCDP and public benefits consisting of the payment of substantial fees not otherwise required. No specific development project is included in this application. Future development projects would go through the City's existing Site Development Review process prior to building permit issuance. Minor development might be approvable at the staff level and more significant projects will require a public hearing with either the Zoning Administrator or Planning Commission depending upon the size of the project.

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The City has prepared an addendum to two previously certified Environmental Impact Reports in accordance with the California Environmental Quality Act to serve as the environmental analysis for this project.

## **RECOMMENDATION**

- 1) Conduct a public hearing;
- 2) Find that potential environmental impacts have been previously mitigated through the implementation of the policies of the General Plan as evaluated in Program Environmental Impact Report (PEIR) for the 2006 General Plan Update (SCH No. 2006011119) and the Supplemental Environmental Impact Report (SEIR) for the 2014 Land Use Element Amendment (SCH No. 2013101064); therefore, in accordance with Section 15164 of the California Environmental Quality Act (CEQA) Guidelines, an addendum to the previously adopted PEIR and SEIR is the appropriate environmental documentation for the Project;
- 3) Adopt Resolution No. PC2020-020 (Attachment No. PC 1) recommending the City Council adoption of Environmental Impact Report Addendum No. ER2020-002 and approval of General Plan Amendment No. GP2014-004 (including a waiver of the neighborhood park dedication requirement pursuant to General Plan Policy LU 6.15.13), Zoning Code Amendment No. CA2014-009, Planned Community Development Plan No. PC2020-002 (including a waiver of the density standards of General Plan Policy LU 6.15.7 pursuant to Government Code §65915(e)(1), and Development Agreement No. DA2014-003 for the Newport Airport Village Planned Community Project, located at 4341, 4361, and 4501 Birch Street; 4320, 4340, 4360, 4400, 4500, 4520, 4540, 4570, 4600 and 4630 Campus Drive; and 4525, 4533, and 4647 MacArthur Boulevard (PA2014-225).

## **INTRODUCTION**

### **Project Setting**

The 16.46-acre project site is generally located southeast of John Wayne Airport and is west of MacArthur Boulevard, south of Campus Drive, north of Birch Street, and about 550 feet north of Dove Street (Figure 1). The John Wayne Airport 65-dB Community Noise Equivalent Level (CNEL) noise contour transects the site, running from north to south and approximately half of the project area is located within the 65-dBA CNEL contour (Figure 2). Portions of the project area are also within the John Wayne Airport Safety Zone 3. The project site is currently developed with a variety of commercial uses, including retail, restaurants, rental vehicle facilities and office buildings.

The project area is within the Airport Area of the City and currently has a General Plan Land Use Plan Category of Airport Office (AO). Additionally, the project area is zoned OA (Office Airport) that allows uses consistent with the Land Use Plan Category.

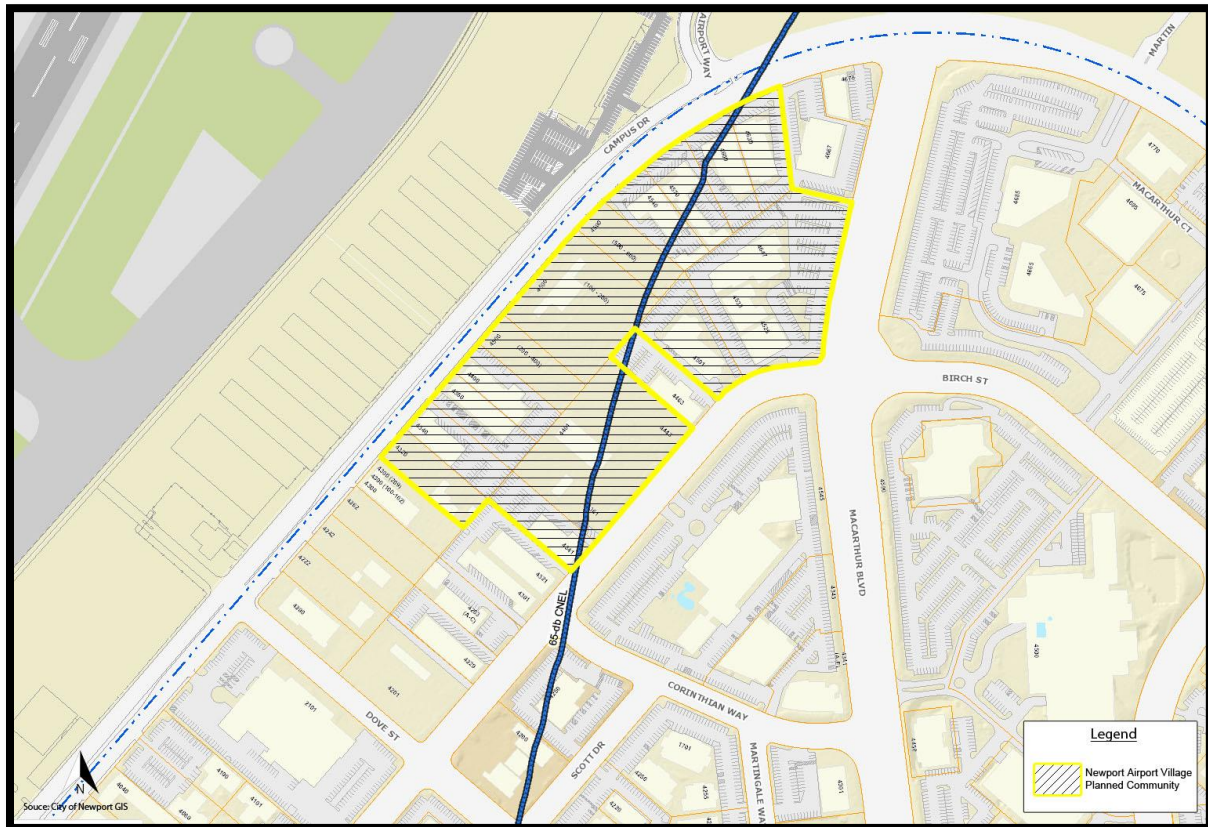


**Figure 1 – Vicinity Map**

John Wayne Airport (JWA), a commercial and general aviation airport, is owned and operated by the County of Orange and is located to the west and north of the site (across Campus Dr.). To the immediate northeast of the site, on the southwest corner of MacArthur Blvd. and Campus Dr., is a five-story office building and a small multi-tenant retail commercial building. Across MacArthur Blvd. is a nine-story office building that contains professional and medical office uses; a five-story apartment building at the intersection of Douglas and Martin Court; and multiple hotels and restaurants along



MacArthur Blvd. To the east (across Birch St) are several multi-story office buildings that range from three to fourteen stories, hotels, and retail and restaurant uses. Commercial services, including vehicle sales and repairs and a pharmacy; restaurants; and office uses, including medical offices occupy the properties to the south of the proposed planned community.



**Figure 2 – Project Boundaries**

### Project Description

Saunders Property Company c/o Starpointe Ventures (“Applicant”) seeks approval of the following applications:

- **General Plan Amendment (GP2014-004)** – A request to change the General Plan Land Use Designation of the project area from Airport Office (AO) to Mixed Use Horizontal 2 (MU-H2) and to amend Table LU2 (Anomaly Locations) to add the project area as an anomaly to allow for the development of 329 dwelling units, exclusive of any permitted density bonus, and 297,572 square feet of nonresidential floor area;

- **Zoning Code Amendment (CA2014-009)** – A request to change the zoning district of the project area from OA (Office Airport) to PC (Newport Airport Village Planned Community);
- **Planned Community Development Plan (PC2020-002)** – A request to adopt the Newport Airport Village Planned Community Development Plan (PCDP). The PCDP sets the development, design and land use standards for the project area;
- **Development Agreement (DA2014-003)** – A request for a Development Agreement between the Applicant and the City, which would provide vested rights to develop the planned community, while also providing negotiated public benefits; and
- **Addendum to the 2006 General Plan Update and the 2014 Land Use Element Amendment Environmental Impact Reports (ER2020-002)** – Pursuant to the California Environmental Quality Act (CEQA), the addendum will address reasonably foreseeable environmental impacts resulting from the legislative amendment requests.

As noted, this Applicant's request does not include any project specific development project or plans, but rather is for legislative approvals only. Should the applications be approved by the City Council, future development would be required to comply with the development and use standards set forth in the PCDP.

### Background

A similar, but more intensive project, was previously considered as part of the 2014 Land Use Element Update. Unlike the current proposal that limits development to the existing allocated units under the General Plan and allowed nonresidential intensity, the 2014 proposal would have increased the density in the Airport Area by 329 dwelling units and 238,077 sq. ft. of nonresidential uses in the larger 26.4-acre Campus Tract. Although the City Council approved the 2014 Land Use Element Update, it failed to obtain voter approval as required by Charter Section 423. The SEIR for that amendment was certified and the outcome of the vote did not nullify its certification. Additionally, the City Council did not rescind its certification of the SEIR, and therefore, it remains a certified resource.

On April 23, 2020, the Planning Commission held a study session to become familiar with the proposed project. The Applicant presented the project and staff discussed the process and summarized the requested applications. Through this process, the public was also provided an opportunity to participate and comment. Aside from general questions and discussion, the Commission discussed parkland dedication requirements, how the project can help meet the City's Regional Housing Needs Assessment (RHNA) obligations, and the future phasing of construction of residential and non-residential uses. The study session focused on how the project would measure up to the JWA Airport Environs Land

Use Plan (AELUP) and future Airport Land Use Commission (ALUC) review. No action was taken by the Planning Commission during or at the conclusion of the study session.

## **DISCUSSION**

### **General Plan Amendment**

The proposal would amend the General Plan Land Use Category from Airport Office (AO) to Mixed Use Horizontal 2 (MU-H2). The existing land use plan categories described below are shown in Figure 3.

The AO land use plan category is described on page 3-13 of the General Plan Land Use Element as: “[t]he AO designation is intended to provide for the development of properties adjoining the John Wayne Airport for uses that support or benefit from airport operations. These may include professional offices, aviation retail, automobile rental, sales, and service, hotels, and ancillary retail, restaurant, and service uses.” The AO category provides for a, “floor area to land area ratio of 0.5, except for warehousing which may be developed at a floor area to land ratio of 0.75.”

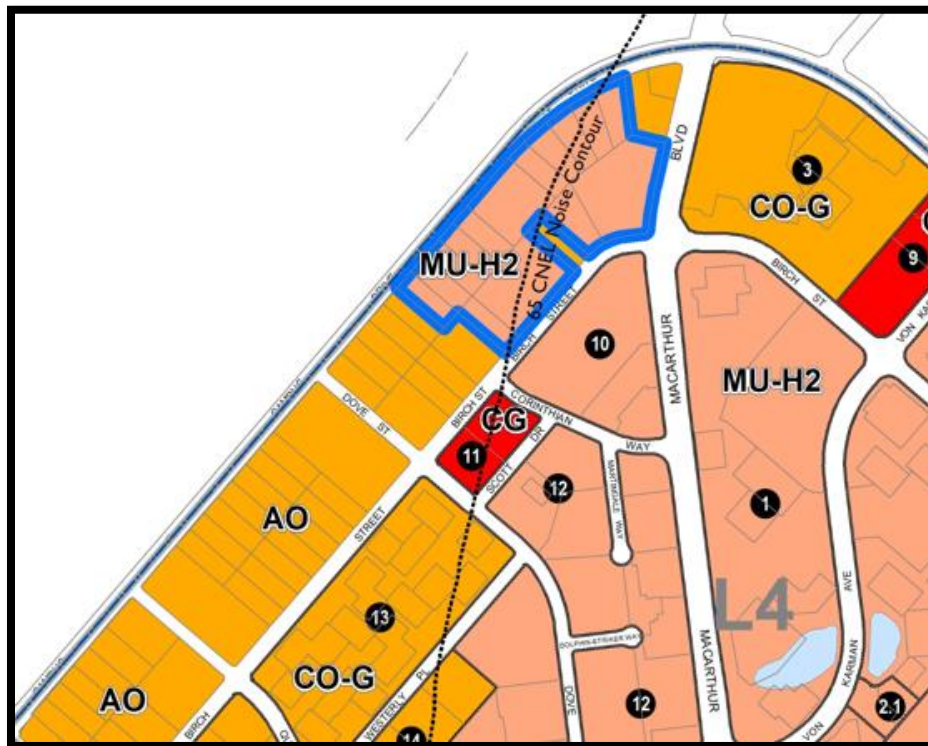


**Figure 3 – Existing Land Use Map  
(Excerpt Land Use Element Figure LU11)**



The MU-H2 land use plan category is described on page 3-14 of the General Plan: “[t]he MU-H2 designation applies to properties located in the Airport Area. It provides for a horizontal intermixing of uses that may include regional commercial office, multi-family residential, vertical mixed-use buildings, industrial, hotel rooms, and ancillary neighborhood commercial uses.” It also provides that, “[r]esidential: maximum of 2,200 units as replacement of existing office, retail, and/or industrial uses at a maximum density of 50 units per adjusted gross acre, of which a maximum of 550 units may be developed as infill. Nonresidential Uses: as defined by Table LU2 [Anomaly Locations].”

The revised land use designation would be consistent with the properties to the east of the project area, which are across Birch Street, between Corinthian Way and MacArthur Boulevard (Figure 4).



**Figure 4 – Proposed Land Use Map**

#### Airport Area Dwelling Units

The MU-H2 designation and General Plan Policy LU 6.15.5 (Residential and Supporting Uses) allows a maximum of 2,200 residential units of which 1,650 units may be developed as replacement of existing office, retail, and/or industrial uses. The remaining 550 units are classified as additive units, meaning they are not required to replace other units and they may be constructed as “in-fill” units to existing commercial or office development within the Conceptual Development Plan Area (CDPA) of the Airport Area as illustrated in Figure LU22 of the General Plan Land Use Element (Attachment No. PC 2). Any eligible

density bonus allowed by Government Code §65915 (Density Bonus Law) and Newport Beach Municipal Code (NBMC) Chapter 20.32 (Density Bonus) are not included in the 2,200-unit allowance or the 50 dwelling units per acre standard. As indicated, the proposed amendment will not increase the existing nonresidential floor area currently allowed or the 2,200 dwelling unit limit.

*Land Use Element Policy LU 6.15.5 Residential and Supporting Uses*

*Accommodate the development of a maximum of 2,200 multi-family residential units, including work force housing, and mixed-use buildings that integrate residential with ground level office or retail uses, along with supporting retail, grocery stores, and parklands. Residential units may be developed only as the replacement of underlying permitted nonresidential uses. When a development phase includes a mix of residential and nonresidential uses or replaces existing industrial uses, the number of peak hour trips generated by cumulative development of the site shall not exceed the number of trips that would result from development of the underlying permitted nonresidential uses. However, a maximum of 550 units may be developed as infill on surface parking lots or areas not used as occupiable buildings on properties within the Conceptual Development Plan Area depicted on Figure LU22 provided that the parking is replaced on site.*

The City applies conversion factors to determine consistency with the trip neutral requirement of this policy as established by the Airport Area Residential and Mixed-Use Adjustment Factors document created by the City's Traffic Engineer. The existing site is allowed 358,498 square feet of commercial square footage. The applicant has requested a total of 329 replacement dwelling units that requires the conversion of 60,926 square feet of commercial floor area (5.4 du/s per 1,000 square feet) to be consistent with LU 6.15.5.

Density bonus units do not count towards the capacity limits of the General Plan since State Housing Law excludes these types of dwelling units from maximum allowable densities under the General Plan. In considering the Newport Airport Village project, in conjunction with the other approved and pending projects within the MU-H2 land use designation, there would be 430 remaining units available for other properties with the MU-H2 land use plan category designation (see Table 1 below). The approval of the proposed amendment would specifically allocate 329 units of the remaining units available to a portion of the project site, and they could not be developed at some other site designated MU-H2. Residential units in the Airport Area have been slow to develop over the last 13 years since the opportunity was first introduced with the comprehensive update of the General Plan in 2006. A variety of factors contribute to this circumstance but the principal one is the existing land value. The property owner believes the value of the land, along with other factors, contributes to create a viable housing opportunity site. Given the approaching high RHNA allocation, the City may need this housing opportunity site to comply with the State mandate.

Table 1 – Airport Area Residential Units					
Residential Development Allocation	Base Units			Density Bonus Units	Project Totals With Density Bonus
	Replacement Units	Additive Units	Total Units		
General Plan Development Limit (MU-H2)	1650	550	2,200		
<b>Approved Projects</b>					
Uptown Newport	632	290	922	322	1,244
Newport Crossings	259	0	259	91	350
<b>Projects Under Review</b>					
The Koll Center Residences		260	260	52	312
<b>Proposed Newport Airport Village</b>	329	0	329	115	444
<b>Remaining Development Allocation</b>	<b>430</b>	<b>0</b>	<b>430</b>		

#### Airport Office Floor Area Limits

Currently the Airport Office (AO) land use designation allows a floor area ratio (FAR) of 0.5 which results in 358,498 square feet for the project site. Due to the conversion of nonresidential floor area to dwelling units, the existing 0.5 FAR over the project site would no longer be permissible. To reflect the reduction of floor area due to the conversion allocated to the project site, the GPA would add Anomaly No. 86 to Table LU2 (Anomaly Locations) of the General Plan.

Table LU2 Anomaly Locations					
Anomaly Number	Statistical Area	Land Use Designation	Development Limit (sf)	Development Limit (Other)	Additional Information
86	L4	MU-H2	Nonresidential development 297,572	329 dwelling units	

#### General Plan Consistency

The proposed applications are legislative acts. Neither the NBMC nor State planning law specify findings that need to be adopted to approve the requested General Plan Amendment. Nevertheless, the project is consistent with the General Plan since “[t]he MU-H2 designation applies to properties located in the Airport Area. It provides for a horizontal intermixing of uses that may include regional commercial office, multifamily residential, vertical mixed-use buildings, industrial, hotel rooms, and ancillary neighborhood commercial uses.” The allowed uses of the MU-H2 land use category are broad enough to allow for the existing uses of the AO category while allowing residential or mixed-use development at the density described. The proposed PCDP regulations

would provide for a combination of residential development, airport supporting uses, and a variety of commercial land uses consistent with the MU-H2 designation.

The draft Planning Commission resolution (Attachment No. PC 1) includes an analysis of relevant Airport Area polices. Furthermore, the EIR Addendum includes a comprehensive analysis of all relevant General Plan polices. The analysis shows the requested amendments are consistent with all applicable General Plan polices. However, two warrant additional discussion as they require a policy waiver to achieve consistency.

#### General Plan Policy Waiver - LU 6.15.13 Neighborhood Parks Standards

General Plan Policy LU 6.15.13 is specific to the Airport Area. The policy is intended to ensure that adequate neighborhood parks are developed to serve new residential villages. The policy itself allows the City to waive the dedication requirement under certain circumstances and the applicant requests the requirement be waived.

*LU 6.15.13 Neighborhood Parks Standards. To provide a focus and identity for the entire neighborhood and to serve the daily recreational and commercial needs of the community within easy walking distance of homes, require dedication and improvement of at least 8 percent of the gross land area (exclusive of existing rights-of-way) of the first phase development in each neighborhood, or ½ acre, whichever is greater, as a neighborhood park. This requirement may be waived by the City where it can be demonstrated that the development parcels are too small to feasibly accommodate the park or inappropriately located to serve the needs of local residents, and when an in-lieu fee is paid to the City for the acquisition and improvement of other properties as parklands to serve the Airport Area.*

*In every case, the neighborhood park shall be at least 8 percent of the total Residential Village Area or one acre in area, whichever is greater, and shall have a minimum dimension of 150 feet. Park acreage shall be exclusive of existing or new rights-of-way, development sites, or setback areas. A neighborhood park shall satisfy some or all of the requirements of the Park Dedication Ordinance, as prescribed by the Recreation Element of the General Plan.*

The Applicant believes it would be inappropriate to locate a neighborhood park within the project site due to its proximity to John Wayne Airport. Pursuant to the policy, the Applicant has agreed to pay an in-lieu park fee of \$2,500,000. The value was established by City Council Resolution No. 2007-30.

A significant portion of the project site is impacted by high noise levels within JWA Safety Zone 3 and locating a park in such areas may not be appropriate or desirable. Additionally, predominant uses in Planning Area 2 (see Figure 6) are vehicle storage lots for car rental agencies operating with long-term leases. Air quality in the area and the limited residential density planned for the Airport Area are also factors suggesting a new public park within the proposed project site may not be desirable. If the park dedication

was required, the best potential location would be within Planning Area 1, outside the 65-dBA CNEL noise contour and JWA Safety Zone 3 further reducing the available land for residential or mixed-use development. In this scenario, a 1-acre dedication of 6.02 acres of relatively unconstrained land is a significant percentage of the area potentially available for residential use. If the dedication were required in conjunction with the first phase density bonus development, the cost of the dedication could render the density bonus project financially infeasible. These or other potential factors could provide sufficient grounds for the City Council to waive the dedication requirement. If the City Council chooses not to waive the parkland dedication requirement, development of the future park would be required in accordance with this policy. With either choice, neighborhood park dedication or waiver, the proposed project is consistent with this policy. Staff believes the reasons cited above compelling to waive the dedication requirement. The recommended actions for project approval include a recommendation to the City Council to waive the policy.

#### General Plan Policy Waiver - LU 6.15.7. Overall Density and Housing Types

*LU 6.15.7. Overall Density and Housing Types. Require that residential units be developed at a minimum density of 30 units and maximum of 50 units per net acre averaged over the total area of each residential village. Net acreage shall be exclusive of existing and new rights-of-way, public pedestrian ways, and neighborhood parks. Within these densities, provide for the development of a mix of building types ranging from townhomes to high-rises to accommodate a variety of household types and incomes and to promote a diversity of building masses and scales.*

The residential component of the project is 329 units (excluding density bonus units) within the 16.46-acre residential village, and the density is about 20 dwelling units per acre (du/ac) and below the minimum 30 du/ac standard. If the density bonus units were included, the result would be about 27 du/ac. To comply, additional units would need to be included and required to be replacement units pursuant to Policy LU 6.15.5, meaning the additional units would come at the expense of underlying permitted nonresidential uses. The 16.46-acre property is partially constrained by the JWA 65-dBA CNEL noise contour and all residential use is inconsistent in this high noise area. The property is also partially constrained by JWA Safety Zone 3 that limits residential uses to very low densities if not deemed unacceptable because of noise.

Planning Area 1 is 7.14 acres and the area outside both the 65 dBA CNEL noise contour and Safety Zone 3 where residential use would be allowed consistent with the AELUP is further limited to 6.02 acres. To comply with Policy LU 6.15.7, 493 units would need to be constructed on 6.02 acres resulting in a density of 81.9 du/ac without including potential density bonus units which would exceed the maximum allowable density. However, California Government Code Section 65915(e)(1) prohibits a city from applying a development standard that will have the effect of physically precluding the construction of a development for projects that propose a density bonus. The waiver of height



standards, number of stories and setbacks to accommodate project amenities such as an interior courtyard, community plaza and high ceilings have been interpreted as physical constraints that warrant a waiver pursuant to Government Code §65915(e)(1) in *Wollmer v. City of Berkeley*, (2011) 193 Cal. App. 4th 1329. Staff believes the application of the density standards of Policy LU 6.15.7 would have precluded the proposed density bonus units of the project given the constraints, and therefore, it must be waived if the project is approved. It should be noted that the project would create an opportunity for housing (including affordable housing) that would be approximately 46 du/acre, not including the density bonus units in Planning Area 1, which is within the density range of the Policy LU 6.15.7. The requirement to waive this policy in no way diminishes the City's discretion to deny the proposed project.

#### Housing Element and Regional Housing Needs Assessment (RHNA)

If the proposed land use element is approved, corresponding changes to the Housing Element would be authorized. Corresponding maps, figures and tables would be updated. Most notably, PCDP Planning Area No. 1 would be added to the City's Housing Site Inventory. Credit would be given for the project towards the City's upcoming RHNA allocation for the next housing element cycle (2021-2029) due to the fact that project meets all criteria as a viable housing opportunity site pursuant to State Housing Element Law. Credit might not be given if construction occurs prior to the next housing element cycle.

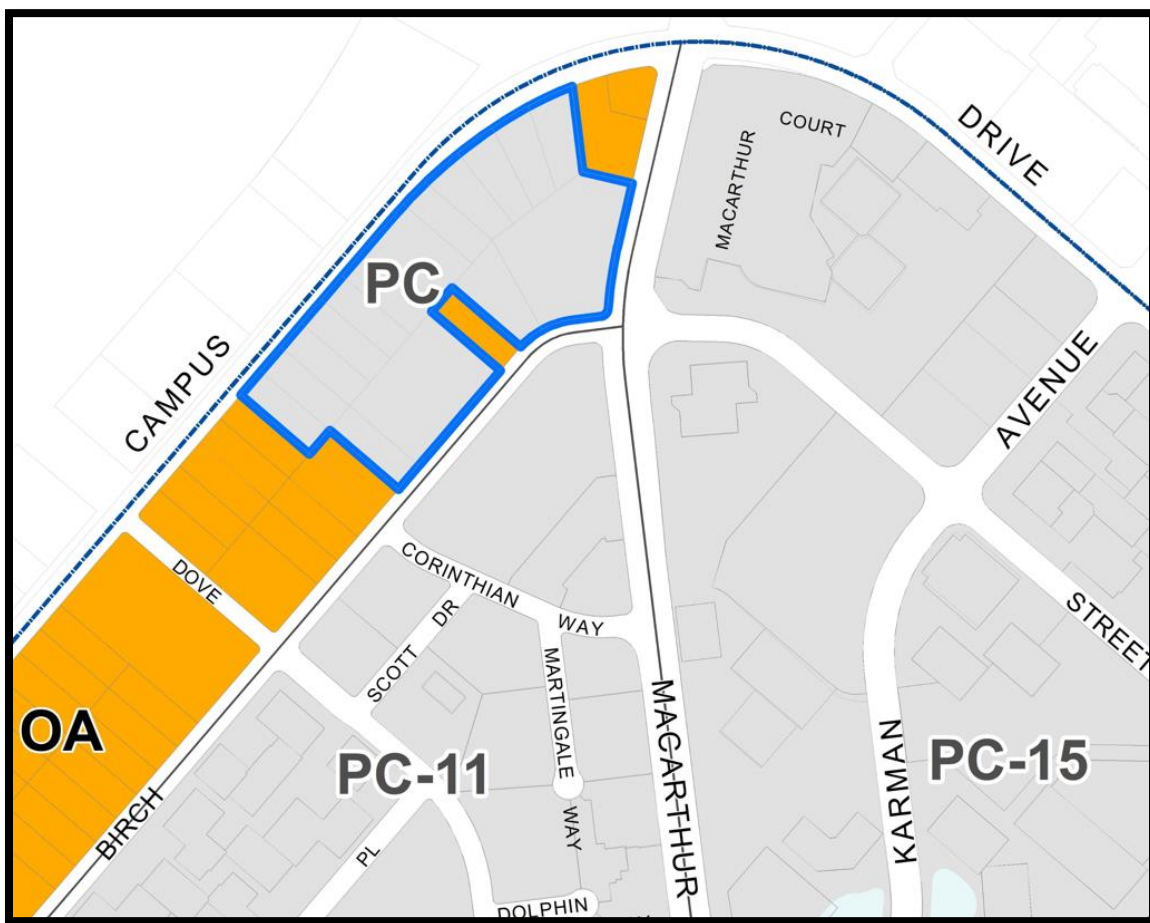
#### Zoning Code Amendment

The Applicant requests the project site be rezoned from OA (Office Airport) to PC (Planned Community - Newport Airport Village Planned Community) to implement the proposed MU-H2 land use plan category (the GPA). This rezone would allow for the adoption of the Planned Community Development Plan (PCDP), which sets the development standards and land use regulations for the project area.

The purpose of the PC district as provided in NBMC §20.56.10 is to:

- 1) Provide for the classification and development of land as coordinated, comprehensive projects in order to take advantage of the superior environment resulting from large-scale community planning,*
- 2) Allow diversification of uses as they relate to each other in a physical and environmental arrangement while ensuring substantial compliance with the spirit, intent, and provisions of this Zoning Code, and*
- 3) Include various types of uses, consistent with the General Plan through the adoption of a development plan and text materials that identify land use relationships and associated development standards.*

NBMC §20.56.020(A) requires that a PC district contain at least 10 acres of improved land unless the City Council waives the minimum acreage requirement. At 16.46 acres, the Newport Airport Village PC District will not require such a waiver. NBMC §20.56.030 requires a PCDP to contain land use regulations and NBMC §20.56.040 requires a PCDP include property development standards. The proposed PCDP includes these provisions as summarized below. NBMC §20.56.050 outlines the procedure to adopt a PCDP and it provides for the contents of the PCDP itself. In summary, staff believes the proposed PCDP meets these Code requirements and recommends the Planning Commission concur by adopting a recommendation to the City Council that it be adopted by ordinance. Figure 5 below depicts the proposed Zoning Map.



**Figure 5 – Proposed Zoning Map**

### Planned Community Development Plan

The draft Newport Airport Village PCDP is within Exhibit E of Attachment No. PC 1. The PCDP is divided into the following sections:

- I. Introduction and Purpose – Introduces the project, site, and surrounding area.
- II. Land Use and Development Regulations – Creates the permitted uses and development standards.
- III. Architectural Design Considerations – Provides principles and concepts to guide the site layout and architectural design of buildings.
- IV. Residential Design Guidelines – Establishes specific architectural standards that residential developments will need to comply with.
- V. Plan Administration and Implementation – Sets the process to review development and amending the PCDP. Site Development Review is required for the development of new buildings.

To achieve a mixed-use environment, Newport Airport Village PC District is divided into two planning areas (see Figure 5). Planning Area 1 would accommodate all of the dwelling units, plus up to 94,583 square feet of nonresidential (food service, retail, offices, and personal services) uses. It is important to note that all dwelling units would be required to be located outside of John Wayne Airport's 65-dBA CNEL zone and Safety Zone 3 as shown in Figure 6. Planning Area 2 is limited to nonresidential uses with an FAR of 0.5. This would include food services, bars/nightclubs, retail sales, offices, personal services, and most uses permitted or conditionally permitted within the Office Airport (OA) zone. A summary of the proposed development standards is contained in Table 2.

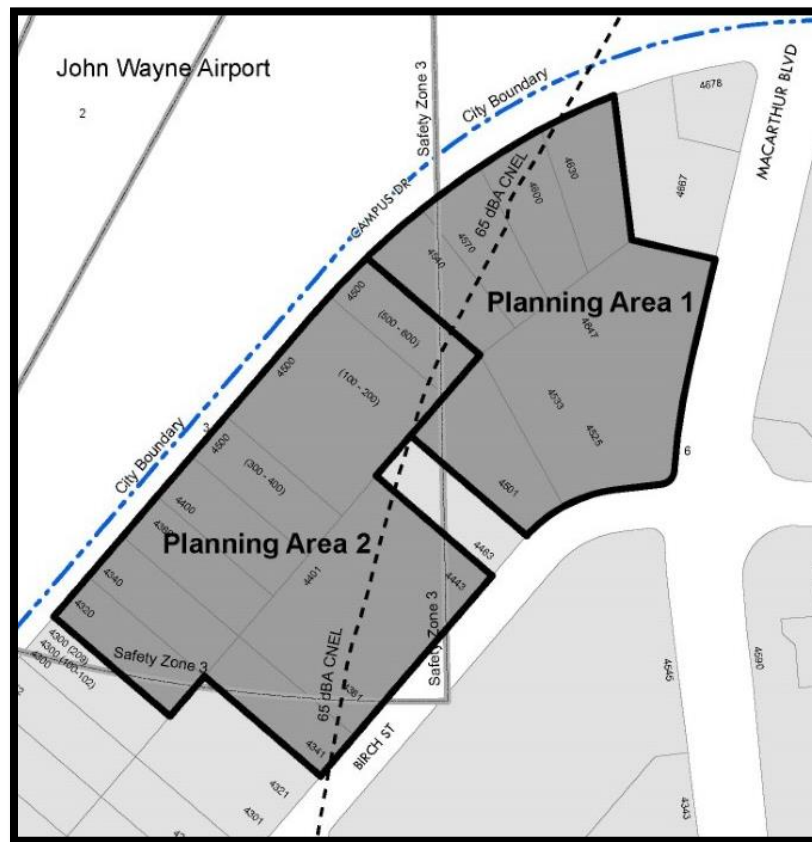


Figure 6 – Planning Areas

Table 2 – Development Standards		
Development Standard	Planning Area 1	Planning Area 2
Housing Density	30 units/acre minimum 46 units/acre maximum	N/A
Building Height	85' (residential and mixed-use) 37' (nonresidential)	37', an increase to 55' is allowed with approval of a Site Development Permit
Setbacks	Buildings under 20' in height 10' from street property line 5' from internal property line  Buildings 20' or greater in height 20' from street property line 5' from internal property line	15' from street property line 5' from internal property line
Floor Area	94,583 square feet	0.5 Floor Area Ratio (202,989 square feet)
Open Space	Private – 5% gross floor area/unit Common – 75 square feet/unit	N/A

### Traffic Analysis

To assess any potential traffic issues, a traffic analysis was prepared by Urban Crossroads for use in the CEQA analysis based on the Newport Beach Traffic Model (NBTM). As noted previously, the proposed project includes less development than studied in the 2014 Land Use Element Amendment Traffic Impact Analysis and consequently the project results in fewer peak hour and average daily trips (ADT) for the project site.

When compared to the land uses currently allowed on the site by the current General Plan, the proposed development without the density bonus results in 4 fewer AM peak hour trips, 73 fewer PM peak hour trips and 763 fewer average daily trips (ADT). With the density bonus, proposed development results in an increase of 52 AM peak hour trips, a decrease of 22 PM peak hour trips and a decrease of 199 ADT. As a result of these trip generation changes, the analysis did not identify any intersection or other traffic-related impacts that would be created by the proposed project.

### Charter Section 423 (AKA Greenlight Initiative)

City Council Policy A-18 requires that proposed GPAs be reviewed to determine if a vote of the electorate would be required pursuant to City Charter Section 423. If a GPA (separately or cumulatively with other GPAs within the previous 10 years within the same Statistical Area of the General Plan) generates more than 100 peak hour trips (a.m. or p.m.), adds 40,000 square feet of nonresidential floor area, or adds more than 100 dwelling units in a statistical area, a vote of the electorate would be required if the City Council approves the GPA.

The property is located in Statistical Area L4. The proposed General Plan Amendment would only change the land use designation of the site and not increase nonresidential floor area or residential units. The 329 dwelling units requested are already provided in the MU-H2 land use plan category and Policy LU 6.15.6. The 2,200-dwelling-unit allocation to the MU-H2 is not changing and the Amendment does not increase the amount of floor area proposed. Consequently, there is no increase in a.m. or p.m. peak hour traffic trips. As a result, the Amendment is not classified as a major amendment requiring a vote of the electorate should the City Council choose to approve the requested General Plan Amendment.

### Airport Noise

Being adjacent to the airport, there is a concern about noise affecting future residents. General Plan Policy, the Airport Environs Land Use Plan for John Wayne Airport (AELUP) and the propose PCDP will not permit residential units in areas subject to noise at 65 dBA CNEL or greater. The PCDP further requires that residential construction comply with NBMC Section 10.26.030, which requires the interior ambient noise level of the dwelling units does not exceed 45 dBA between 7:00 a.m. and 10:00 p.m., 40 dBA between 10:00



p.m. and 7:00 a.m. Additionally, should a neighborhood park be required, notification to future residents and the public by posting signs in outdoor open areas and recreation areas, is mandated by the draft PCDP. Residential use is considered “conditionally consistent” with the airport by the AELUP provided interior noise mitigation and exterior notice as described is provided. As a result, the proposed project is compatible with the airport and consistent with the adopted AELUP.

#### Airport Land Use Commission (ALUC)

Since the proposed project includes General Plan and Zoning Amendments and a PCDP, review for consistency with the Airport Environs Land Use Plan for John Wayne Airport (AELUP) is required by Section 21676(b) of the Public Utilities Code. The amendments will be forwarded to the ALUC for their review and a determination of consistency with the AELUP prior to the City Council consideration. Should the ALUC find the project consistent with the AELUP, the project can proceed to the City Council without further delay. If the ALUC finds the project inconsistent with the AELUP, which is their prerogative despite the fact that the amendments appear to be consistent with the adopted AELUP, the City Council would have to initiate a process to override the ALUC determination by a two-thirds vote of the City Council, should the Council choose to approve the project.

As indicated, staff believes the proposed project is consistent with the requirements and standards in the AELUP. Residential units would be located outside the 65 dBA CNEL noise contour line established by the AELUP, and the use would be “conditionally consistent” provided interior noise mitigation is provided and exterior notice of the proximity to operating aircraft is provided. These two conditions are mandated by the PCDP. The project site does include areas within JWA Safety Zones 3 and 6. Safety Zone 3 precludes high density residential, and the PCDP does not permit residential units within this zone. Commercial development allowed by the PCDP is permitted to be within Safety Zone 3. The remainder of the site is within Safety Zone 6, which is less restrictive than Safety Zone 3 and allows all residential uses and commercial development. Refer to Figure 6 to see the boundaries of 65 dBA CNEL and Safety Zone 3. Additionally, the Applicant has received a Determination of No Hazard to Air Navigation from the Federal Aviation Administration for 85 feet above ground level (AGL), which is the proposed PCDP height limit for residential and mixed-use buildings.

In summary, staff believes the proposed amendments are consistent with the adopted AELUP given the provisions of the PCDP, and as a result, staff supports a recommendation to adopt the amendments.

#### Fiscal Analysis

The City’s consultant, Applied Development Economics, Inc., has prepared an independent fiscal impact analysis (Attachment No. PC 3) based on the City’s Fiscal Impact Model in accordance with General Plan Implementation Programs 12.1 and 12.2. These programs require the preparation of a net fiscal analysis based upon an updated

model for significant development projects and General Plan Amendments. The City's 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 the same way that existing development does. The model concluded that the net impact of the growth in land uses at build-out of the General Plan compared to existing land uses in 2006 when the General Plan was last comprehensively updated, would result in a net positive fiscal impact for the General fund of \$21.7 million per year.

The analysis prepared for the proposed Newport Airport Village concludes that allowed land uses on the site generate \$153,364 while the proposed project would result in an annual cost of \$466,523 for a total of \$619,887 annually. Since the proposed project includes 329 units of the 1,650 replacement dwelling units already allowed in the MU-H2 land use designation, the net fiscal change is no different than that predicted in 2006. In other words, the City planned for this change by adopting the MU-H2 land use plan category and project approval "locates" a portion of that change to the project site and avoids it at a different MU-H2 site.

#### Development Agreement

Pursuant to NBMC Section 15.45.020(A)(2)(a), a Development Agreement is required whenever a General Plan Amendment or Zoning Code Amendment is proposed that will result in the development of 50 or more dwelling units. The intent of the Development Agreement is to provide the property owner/developer a vested development right, while providing some public benefit to the community. In this case, the property owner/developer would have a vested right to develop 444 dwelling units (329 base units and up to 115 density bonus units) and 297,572 square feet of commercial floor area, provided the proposed development complies with the development regulations and design guidelines set forth in the PCDP. The vested right to develop is for 15 years for the residential portion of the project and 20 years for the nonresidential portion of the project. In consideration of the vested development right, the property owner/developer will pay the following in addition to standard impact fees:

- Public Benefit Fee: \$6,000,000 in three installments
- General Pan Policy Waiver In-Lieu Park Fee: \$2,500,000
- Public Safety Fee: \$1,000,000 for Fire Life Safety staffing, services, or equipment

The proposed Development Agreement (Exhibit F of Attachment No. PC 1) includes all the mandatory elements for consideration and public benefits that are appropriate to support conveying the vested development rights consistent with the General Plan, NBMC, and Government Code Sections 65864 et seq.

### Environmental Review

On July 25, 2006, the City Council certified a Program Environmental Impact Report (PEIR) for the General Plan 2006 Update (SCH No. 2006011119). The PEIR analyzed the potential impacts of a citywide land use plan, and goals and policies for 10 General Plan elements. The PEIR designated the project area as Airport Office and Supporting Uses (AO). The designation would allow up to 358,498 square feet of office based on the allowable 0.5 floor area ratio (FAR). The AO land use designation is intended to allow uses that support or benefit from operations of the adjoining John Wayne Airport. These may include professional offices; aviation; retail; automobile rental, sales, and service; hotels and ancillary retail, restaurant, and service uses. This designation specifies an FAR of 0.5, except for warehousing, which may be developed at an FAR of 0.75. Two previous addendums to the PEIR, which are unrelated to the project area, have been previously approved.

On July 22, 2014, the City Council certified a Supplemental EIR (SEIR) for the 2014 update to the Land Use Element of the General Plan (SCH No. 2013101064). The SEIR focused on a General Plan Land Use Element Amendment proposing both reduced and increased development capacities in various areas of the City. The SEIR evaluated the designation of the project site as Mixed Use-Horizontal 2 (MU-H2). The SEIR assessed the potential development of 238,077 square feet of office space and 329 additional dwelling units for the project site as an increase to what the General Plan would allow. As a result of failing to obtain voter approval, as required by Charter Section 423, the General Plan Land Use Element Amendment was not implemented. The result of the vote did not nullify the certification of the SEIR and the City Council has not rescinded its certification of the SEIR.

As a result of the proposed project changes from the analysis that was conducted in 2014, an Addendum to the PEIR and SEIR was prepared (Exhibit B of Attachment No. PC 1). The Addendum analyzed the following environmental topics: Aesthetics, Agriculture and Forestry Resources, Air Quality, Biological Resources, Cultural Resources, Energy, Geology and Soils, Greenhouse Gas Emissions, Hazards and Hazardous Materials, Hydrology, Land Use and Planning, Mineral Resources, Noise, Population and Housing, Public Services, Recreation, Transportation, Tribal Cultural Resources and Utilities and Service Systems. This Addendum also includes analysis of new topical sections that were not included in the previous EIRs; specifically, it includes a new energy section and a new wildfire section. These topics were included in the Addendum because the State CEQA checklist was updated to include them subsequent to both the PEIR and SEIR certifications. This proposed Newport Airport Village PCDP would result in the same or reduced development scope than what was analyzed in the PEIR and SEIR. Based on the environmental analysis conducted, any potential impact has already been appropriately addressed through the PEIR and SEIR.

Pursuant to Section 15162 of the CEQA Guidelines, when an EIR has been certified for a project, no subsequent EIR shall be required unless the City determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

1. *Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;*
2. *Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or*
3. *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 previous EIR was certified as complete, shows any of the following:*
  - a. *The project will have one or more significant effects not discussed in the previous EIR;*
  - b. *Significant effects previously examined will be substantially more severe than shown in the previous EIR;*
  - c. *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*
  - d. *Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.*

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 PEIR or the SEIR. All potential impacts would either be the same or less than those described in either the PEIR or SEIR and 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 or SEIR, nor has any new information regarding the potential for new or more severe significant environmental impacts been identified. In accordance with Section 15164 of the CEQA Guidelines, an addendum to the previously adopted PEIR and SEIR is the appropriate environmental documentation for the project.


### Alternatives

The Planning Commission has the discretion to recommend changes to the proposed project to address areas of concern or to improve the proposed plan. The Commission can also recommend the City Council not waive the neighborhood park dedication policy. Lastly, the Commission can recommend denial if it believes the proposed plan introduces incompatible uses to the area that cannot be adequately mitigated or if consistency with the MU-H2 and/or other applicable Airport Area policies are not in evidence.

### Public Notice

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 an email select alert was sent to email subscribers of the Planning Division's notification list. Notification is consistent with applicable provisions of the NBMC. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

Prepared by:

  
Gregg Ramirez  
Principal Planner

Submitted by:

  
Jim Campbell  
Deputy Community Development Director

### ATTACHMENTS

~~PC 1 Draft Resolution~~

~~Exhibit A – Legal Descriptions~~

~~Exhibit B – Addendum to EIRs~~

~~Exhibit C – General Plan Amendment~~

~~Exhibit D – Zoning Code Amendment~~

~~Exhibit E – Planned Community Development Plan~~

~~Exhibit F – Development Agreement~~

~~PC 2 Figure LU22 of the General Plan Land Use Element~~

~~PC 3 Fiscal Analysis~~