

Attachment E

Planning Commission Resolution No. PC2020-20 (excluding exhibits)

RESOLUTION NO. PC2020-020

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA RECOMMENDING THE CITY COUNCIL ADOPTION OF ENVIRONMENTAL IMPACT REPORT ADDENDUM NO. ER2020-002 AND APPROVAL OF GENERAL PLAN AMENDMENT NO. GP2014-004, ZONING CODE AMENDMENT NO. CA2014-009, PLANNED COMMUNITY DEVELOPMENT PLAN NO. PC2020-002, 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)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Saunders Property Company (“Applicant”), with respect to property 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 within the northerly portion of the Campus Tract, generally bounded by Birch Street, Campus Drive, MacArthur Boulevard and the extension of Corinthian Way (“Property”). See Exhibit “A” for legal description.
2. The Applicant proposes a Planned Community Development Plan that would allow redevelopment of the 16.46-acre Property with up to 329 residential dwelling units, exclusive of any density bonus as allowed pursuant to California Government Code Section 65915; and up to 297,572 square feet of office, retail, and commercial use (“Project”).
3. The Property is designated AO (Airport Office and Supporting Uses) by the City of Newport Beach General Plan (“General Plan”) Land Use Element and is located within the OA (Office-Airport) Zoning District.
4. The Applicant, requests the following approvals from the City of Newport Beach (“City”):
 - **General Plan Amendment (GP2014-004)** (“GPA”) – A request to change amend the General Plan Land Use Designation of the Property from AO (Airport Office and Supporting Uses) to MU-H2 Mixed-Use Horizontal 2 and to amend Table LU2 (Anomaly Locations) to add Anomaly No. 86 to allow for the development of 329 dwelling units, exclusive of any permitted density bonus, and 297,572 square feet of commercial uses;

- **Zoning Code Amendment (CA2014-009)** – A request to change the zoning district of the Property from OA (Office Airport) to PC-60 (Newport Airport Village Planned Community);
 - **Planned Community Development Plan (PC2020-002) (“PCDP”)** – A request to adopt the Newport Airport Village Planned Community Development Plan (“PCDP”). The PCDP sets the development design and use standards for the Property;
 - **Development Agreement (DA2014-003) (“DA”)** – 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 Project.
5. The Property is not located within the coastal zone; therefore, amending the Local Coastal Program or a coastal development permit is not required.
 6. A study session was held on April 23, 2020, in the Council Chambers located at 100 Civic Center Drive, Newport Beach to introduce the Project to the Planning Commission. No action was taken at the study session.
 7. The Planning Commission held a public hearing on June 4, 2020, in the Council Chambers at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the hearing was given in accordance with California Government Code Section 54950 *et. seq.* (“Ralph M. Brown Act”) and Chapters 15.45 (Development Agreements) and 20.62 (Public Hearings) of the Newport Beach Municipal Code (“NBMC”). Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. On July 25, 2006, the City Council adopted Resolution No. 2006-75, thereby certifying the adequacy and completeness of the Environmental Impact Report (“EIR”) for the General Plan 2006 Update (SCH No. 2006011119). The EIR was prepared in compliance with the CEQA set forth in the California Public Resources Code Section 21000 *et seq.* and its implementing State regulations set forth in the California Code of Regulations Title 14, Division 6, Chapter 3 (“CEQA Guidelines”) and City Council Policy K-3. Additionally, in accordance with Section 15168(a) of the CEQA Guidelines, the City prepared the EIR as a Program Environmental Impact Report (“PEIR”). This PEIR analyzed the potential impacts of a citywide land use plan, and the goals and policies of 10 general plan elements.

The General Plan designates the Property as AO (Airport Office and Supporting Uses). 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.

2. Additionally, the City Council adopted Resolution Nos. 2007-79 and 2012-62 on December 11, 2007 and July 24, 2012, respectively. These resolutions approved CEQA addendums 1 and 2 to the PEIR for the General Plan 2006 Update to analyze changes to the development intensities within the North Newport Center Planned Community (NNCPC) Development Plan. No analysis of the Property was included in these addendums.
3. On July 22, 2014, the City Council adopted Resolution 2014-65, thereby certifying the adequacy and completeness of a Supplemental EIR No. ER2014-002 (SEIR) as part of an update to the Land Use Element of the General Plan (SCH No. 2013101064). The SEIR was prepared in compliance with CEQA, CEQA Guidelines and City Council Policy K-3. 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 amendment that was the focus of the SEIR designated the Property as MU-H2 (Mixed-Use Horizontal 2), among other changes to the General Plan Land Use Element. The SEIR analyzed the impacts of potential development of an additional 238,077 square feet of office space and 329 dwelling units at the Property in addition to the 358,498 commercial floor area allowed by the general plan prior to the amendment. The 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 building, industrial, hotel rooms, and ancillary neighborhood commercial uses. As a result of failing to obtain voter approval in the November 2014 general election, as required by Charter Section 423, the General Plan Land Use Element amendment was not approved or implemented; however, City Council Resolution No. 2014-65 certifying the SEIR remains valid and effective because it was not rescinded by the outcome of the vote or by action of the City Council.

4. Pursuant to Section 21166 of the California Public Resources Code and Section 15162 of the CEQA Guidelines, when an EIR has been certified for a project, no subsequent EIR is required unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:
 - a. Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
 - b. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

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- c. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete, shows any of the following:
- i. The project will have one or more significant effects not discussed in the previous EIR;
 - ii. Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - iii. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
 - iv. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.
5. The Applicant is proposing to amend the General Plan Land Use Designation from Airport Office (AO) to Mixed Use Horizontal 2 (MU-H2) and to amend Table LU2 (Anomaly Locations) to add the Property as Anomaly No. 86; and rezone the Property from OA (Office Airport) to PC (Newport Airport Village Planned Community). This change will allow the construction of 329 dwelling units, exclusive of any permitted density bonus, and 297,572 square feet of commercial uses. The commercial floor area is a reduction from what the General Plan currently would allow for the Property. The dwelling units would come from the remaining portion of the 2200 units currently allocated to properties designated MU-H2 in the Airport Area by the General Plan Land Use Element and the units would not increase planned residential development in the area. Due to the similarity between the proposed project and the prior project considered in the PEIR and SEIR, an Addendum to the EIR was prepared pursuant to Section 15162 (Subsequent EIRs and Negative Declarations) and 15164 (Addendum to an EIR or Negative Declaration) of the CEQA Guidelines.
6. The following environmental topics were analyzed for the proposed Project: 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. The Addendum includes analysis of new topics that were not included in the previous EIRs; specifically, it includes a new energy section and a new wildfire section. These additional analyses are appropriate for inclusion in the Addendum, but none result in new or increased significant impacts that would require preparation of a subsequent EIR pursuant to Section 15162 of the CEQA Guidelines.

7. 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 for the General Plan 2006 Update (SCH No. 2006011119) or the SEIR for the update to the Land Use Element of the General Plan (SCH No. 2013101064). The potential impacts associated with this Project would either be the same or less than those described in either the PEIR or SEIR 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 or SEIR, 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 and SEIR is the appropriate environmental document for the Project. In taking action to approve any of the requested applications for the proposed Project, the data presented in the PEIR and SEIR, as augmented by the Addendum for this Project, are considered as part of the record.
8. The Addendum to the PEIR and SEIR, is hereby recommended for adoption by the City Council given its analysis and conclusions. The Addendum to the PEIR and SEIR and all materials, which constitute the record upon which this decision was based, are on file with the Planning Division, City Hall, 100 Civic Center Drive, Newport Beach, California.
9. The Planning Commission finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger.

SECTION 3. FINDINGS.

I. General Plan Amendment

Amendments to the General Plan are a legislative act. Neither Title 20 (Planning and Zoning) of the Newport Beach Municipal Code, the Charter of the City of Newport Beach, nor California Government Code Section 65350 *et seq.* set forth any required findings for either approval or denial of amendments to the General Plan. Notwithstanding the foregoing, the proposed amendments are consistent with the General Plan for the reasons provided hereafter:

1. The request is to amend the General Plan Land Use designation from AO (Airport Office and Supporting Services) to MU-H2 (Mixed-Use Horizontal 2). According to the General Plan, *"The 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 PCDP would provide for a combination of residential development, airport supporting uses, and a variety of commercial land uses consistent with the description of the MU-H2 land use category.

2. The GPA does not eliminate existing or future land uses to the overall detriment of the community given the site's size, location, and surrounding uses. Designating the Property to MU-H2 without the development capacity allows the Property to be developed with residential or mixed-use development consistent with other sites in the Airport Area.
3. The GPA is consistent with the following General Plan policies (additional policy analysis is included in the EIR Addendum attached hereto as Exhibit B):

a. Land Use Element Policy LU 1.1 - Unique Environment: Maintain and enhance the beneficial and unique character of the different neighborhoods, business districts, and harbor that together identify Newport Beach. Locate and design development to reflect Newport Beach's topography, architectural diversity, and view sheds.

The PCDP enhances the distinct, urban character of the Airport Area by providing a means for replacing parking lots and small-scale commercial structures with attractive and functional mixed-use development, in line with the General Plan goal of transitioning the Airport Area to a mixed-use community. The Property is not in or near any of the City's areas featuring the harbor, unique topography, or view sheds. The proposed project would introduce a mix of land uses, including residential units to the Property consistent with the uses and urbanized character of the JWA area and the MU-H2 designation.

b. Land Use Element Policy LU 2.3 - Range of Residential Choices: Provide opportunities for the development of residential units that respond to community and regional needs in terms of density, size, location, and cost. Implement goals, policies, programs, and objectives identified within the City's Housing Element.

c. LU 3.8 Project Entitlement Review with Airport Land Use Commission -. Refer the adoption or amendment of the General Plan, Zoning Code, specific plans, and Planned Community development plans for land within the John Wayne Airport planning area, as established in the JWA Airport Environs Land Use Plan (AELUP), to the Airport Land Use Commission (ALUC) for Orange County for review, as required by Section 21676 of the California Public Utilities Code. In addition, refer all development projects that include buildings with a height greater than 200 feet above ground level to the ALUC for review.

The project is within the boundaries of the Airport Environs Land Use Plan (AELUP). The overseeing agency, ALUC, must review the proposed General Plan Amendment and PCDP pursuant to Government Code §65302.3 and Public Utilities Code §21676. The purpose of the review is to determine the project's consistency with the AELUP prior to the City Council taking action on the proposed project. The residential units would be limited to a 6.02-acre portion of the 16.46-acre project site that is subject to noise ranging between 60 dB CNEL and less than 65 dB CNEL and not located within JWA Safety Zone 3. All residential types are deemed "conditionally consistent" with nearby aircraft operations by AELUP provided sound attenuation is provided and notification of future residents and the public is posted. The PCDP

includes regulations for sound attenuation and the posting of signs in outdoor common areas and a neighborhood park if developed. The residential portion of the project is located in JWA Safety Zone 6 and the AELUP allows residential uses in that zone. The PCDP does not introduce any new noise-sensitive uses that are inconsistent with AELUP Noise Impact Zones or compatibility qualities of the AELUP Safety Zones. Despite the project's consistency with the AELUP, the ALUC may find the project inconsistent and should they do so, approval of the project would require the Newport Beach City Council to override this determination with a two-thirds vote.

The PCDP allows for multi-family residential uses, including affordable units, offering a variety of product types that can respond to market needs and diversify the City's housing stock.

- d. Land Use Element Policy LU 5.1.1 - Compatible but Diverse Development: Establish property development regulations for residential projects to create compatible and high-quality development that contributes to neighborhood character.*

The PCDP includes development standards and residential design guidelines to create a compatible and high-quality development that contributes to the emerging urban neighborhood character of the Airport Area.

- e. Land Use Element Policy LU 5.4.1 - Site Planning: Require that new and renovated office and retail development projects be planned to exhibit a high-quality and cohesive "campus environment," characterized by the following:*

- Location of buildings around common plazas, courtyards, walkways, and open spaces,*
- Incorporation of extensive on-site landscaping that emphasizes special features such as entryways,*
- Use of landscape and open spaces to break the visual continuity of surface parking lots,*
- Common signage program for tenant identification and wayfinding,*
- Common streetscapes and lighting to promote pedestrian activity,*
- Readily observable site access, entrance drives and building entries and minimized conflict between service vehicles, private automobiles, and pedestrians.*

The development of the Planned Community will result in high quality, cohesive development based upon the PCDP regulations. Pedestrian and bicycle connections are required between the residential areas and non-residential areas, primary access to the residential buildings will face a public right-of-way or central courtyard, and signs will be reviewed to ensure compatibility with the development.

- f. LU 6.15.1. Land Use Districts and Neighborhoods. Provide for the development of distinct business park, commercial, and airport-serving districts and residential*

neighborhoods that are integrated to ensure a quality environment and compatible land uses.

High quality, integrated development, including mixed use, residential, office, and retail uses, is addressed through the Land Use and Development Regulations (Section II), Architectural Design Considerations (Section III), and Residential Design Guidelines (Section IV) sections of the PCDP provide a comprehensive set of standards and guidelines to implement this policy.

- g. LU 6.15.2. Underperforming Land Uses. Promote the redevelopment of sites with underperforming retail uses located on parcels at the interior of large blocks for other uses, with retail clustered along major arterials (e.g., Bristol, Campus, MacArthur, and Jamboree), except where intended to serve and be integrated with new residential development.*

The PCDP facilitates the reuse of underperforming properties by allowing the addition of mixed-use and residential use. Land Use and Development Regulations (Section II), Architectural Design Considerations (Section III), and Residential Design Guidelines (Section IV) provide a comprehensive set of standards and guidelines to promote high-quality new development.

- h. LU 6.15.3. Airport Compatibility. Require that all development be constructed in conformance with the height restrictions set forth by Federal Aviation Administration (FAA), Federal Aviation Regulations (FAR) Part 77, and Caltrans Division of Aeronautics, and that residential development be located outside of the 65 dBA CNEL noise contour specified by the 1985 JWA Master Plan.*

The Project would be constructed in conformance with the FAA's height restrictions, and all residential development would be located outside the 65 dBA CNEL noise contour and outside the boundaries of Safety Zone 3 where high density residential development is not allowed. The Applicant has received a determination of no hazard to aviation with development up to 85 feet in height from the FAA.

- i. LU 6.15.4 Priority Uses. Accommodate office, research and development, and similar uses that support the primary office and business park functions such as retail and financial services, as prescribed for the "CO-G" designation, while allowing for the re-use of properties for the development of cohesive residential villages that are integrated with business park uses.*

Office and commercial uses would be compatible with residential uses in accordance with the Land Use and Development Regulations (Section II) and Architectural Design Considerations (Section III) of the PCDP. Residential uses would support local retail, restaurants, and services. The PCDP design and connectivity requirements would integrate residential and non-residential uses and ensure adequate circulation and parking within the PC District.

- j. 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 GPA and PCDP provides development capacity and standards for mixed-use development. The proposed development limit is 329 dwelling units (plus up 115 density bonus when affordable housing is provided) and 297,572 square feet for commercial development. The Property is not located within the Conceptual Development Plan Area depicted on Figure LU22, and therefore, any residential units allocated to the site are not any portion of the 550 infill units allocated to the Conceptual Development Plan Area As described in Chapter 3 of the Addendum, the Project's residential uses would replace some of the permitted underlying commercial development capacity. Specifically, the 329 units would replace 60,926 square feet of permitted retail commercial uses using the City-approved Airport Area Residential and Mixed-Use Adjustment factors prepared by the City Traffic Engineer to ensure that the number of peak hour trips generated by the redevelopment of the Property would not exceed the number of trips attributable to the existing permitted non-residential uses. Any density bonus units, up to 115 units in this case are above and beyond what the General Plan allocates in accordance with Chapter 20.32 (Density Bonus) of the Newport Beach Municipal Code and State law.

Two (2) projects have been approved within the Airport Area to date. Uptown Newport was approved for 632 replacement units, 290 additive units, and with a density bonus of 322 units for a total of 1,244 residential units. Newport Crossings was approved for 259 replacement units and 91 density bonus units. Therefore, the total remaining number of replacement units is 759 units and the 329 units requested by the applicant would not exceed the remaining units to be allocated pursuant to this policy. If approved, 430 replacement dwelling units would be available for other MU-H2 (Mixed-Use Horizontal 2) designated properties in the Airport Area.

- k. LU 6.15.6. Size of Residential Villages. Allow development of mixed-use residential villages, each containing a minimum of 10 acres and centered on a neighborhood park and other amenities (as conceptually illustrated in Figure LU23). The first phase of residential development in each village shall encompass at least 5 gross acres of land, exclusive of existing rights-of-way. This acreage may include multiple parcels provided that they are contiguous or face one another across an existing street. At the discretion of the City, this acreage may also include part of a contiguous property in a different land use category, if the City finds that a sufficient portion of the*

contiguous property is used to provide functionally proximate parking, open space, or other amenity. The "Conceptual Development Plan" area shown on Figure LU22 shall be exempt from the 5-acre minimum, but a conceptual development plan described in Policy LU 6.15.11 shall be required.

The Property is 16.46 acres in total area and does not include a centered public park. The Property is not identified on Figure LU22 or Figure LU23. The first phase, Planning Area 1, allows residential and mixed-use development is 7.14 acres and would be developed in one phase. The remaining area would be developed in subsequent phases after existing commercial leases expire. The Applicant requests the City Council waive the park dedication requirement pursuant to Policy LU 6.15.13 and instead, pay the park in-lieu fee. If the City Council waives the dedication requirement, the proposed project is consistent with this policy.

- I. 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 (without density bonus units) within the 16.46-acre residential village and the density is about 20 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 non-residential 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 Zones 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 Airport Environs Land Use Plan for JWA is further limited to 6.02 acres. To comply with the 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 units per acre 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. 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 waiver under Section 65915(e)(1). Wollmer v. City of Berkeley, (2011) 193 Cal. App. 4th 1329. With the waiver of LU 6.15.7 pursuant to Government Code §65915(e)(1), the 30-50 du/acre over the total area of each

residential village would not be required. However, the Project would create a 46 du/acre development not including the density bonus units in Planning Area 1 which is within the density range of the Policy LU 6.15.7.

- m. LU 6.15.8. First Phase Development Density. Require a residential density of 45 to 50 units per net acre, averaged over the first phase for each residential village. This shall be applied to 100 percent of properties in the first phase development area whether developed exclusively for residential or integrating service commercial horizontally on the site or vertically within a mixed-use building. On individual sites, housing development may exceed or be below this density to encourage a mix of housing types, provided that the average density for the area encompassed by the first phase is achieved.*

The PCDP is divided into two (2) planning areas. Planning Area 1 allows residential and mixed-use development and is 7.14 acres. Three hundred twenty-nine dwelling units constructed over 7.14 acres results in a density of 46 du/acre which is consistent with LU 6.15.8. Planning Area 2 allows commercial development only and is 9.32 acres.

- n. LU 6.15.9 Subsequent Phase Development Location and Density. Subsequent phases of residential development shall abut the first phase or shall face the first phase across a street. The minimum density of residential development (including residential mixed-use development) shall be 30 units per net acre and shall not exceed the maximum of 50 units per net acre averaged over the development phase.*

The residential component of the PCDP in Planning Area 1 would be developed in one phase and checked for consistency with this requirement. Planning Area 2 only includes non-residential development. Therefore, there would be no subsequent phases of residential development.

- o. LU 6.15.12. Development Agreements. A Development Agreement shall be required for all projects that include infill residential units. The Development Agreement shall define the improvements and public benefits to be provided by the developer in exchange for the City's commitment for the number, density, and location of the housing units.*

The proposed project includes a development agreement which will be implemented through the PCDP.

- p. 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.

No park is proposed, and the Applicant asks the City Council to waive the requirement. The Applicant believes the location proximate to John Wayne Airport is inappropriate to serve the needs of the area and they have agreed to pay an in-lieu fee consistent with this policy. A significant portion of the Property is impacted by high noise levels and 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 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 Property may not be desirable. If the park dedication was required, the best potential location would be within Planning Area 1 outside the 65 dBA 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 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 outcome the City Council chooses, neighborhood park dedication or waiver, the Project is consistent with LU 6.15.13.

- q. LU 6.15.14 Location. Require that each neighborhood park is clearly public in character and is accessible to all residents of the neighborhood. Each park shall be surrounded by public streets on at least two sides (preferably with on-street parking to serve the park), and shall be linked to residential uses in its respective neighborhood by streets or pedestrian ways.*

No public park is proposed, and the Applicant asks the City Council to waive the neighborhood park dedication requirement pursuant to Policy 6.15.13 and, instead, pay an in-lieu fee. If the City Council acts to waive the park dedication, this policy would not apply. If the City Council chooses not to waive the parkland dedication, development of the future park would be posted as a public park in accordance with this policy.

- r. *LU 6.15.15. Aircraft Notification. Require that all neighborhood parks be posted with a notification to users regarding proximity to John Wayne Airport and aircraft overflight and noise.*

The Project would comply with notification requirements related to aircraft overflight and noise if parks are developed.

- s. *LU 6.15.16 On-Site Recreation and Open Space Standards. Require developers of multi-family residential developments on parcels 8 acres or larger to provide on-site recreational amenities. For these developments, 44 square feet of on-site recreational amenities shall be provided for each dwelling unit in addition to the requirements under the City's Park Dedication Ordinance and in accordance with the Parks and Recreation Element of the General Plan. On-site recreational amenities can consist of public urban plazas or squares where there is the capability for recreation and outdoor activity. These recreational amenities may also include swimming pools, exercise facilities, tennis courts, and basketball courts. Where there is insufficient land to provide on-site recreational amenities, the developer shall be required to pay cash in-lieu that would be used to develop or upgrade nearby recreation facilities to offset user demand as defined in the City's Park Dedication Fee Ordinance.*

The acreage of on-site open space developed with residential projects may be credited against the parkland dedication requirements where it is accessible to the public during daylight hours, visible from public rights-of-way, and is of sufficient size to accommodate recreational use by the public. However, the credit for the provision of on-site open space shall not exceed 30 percent of the parkland dedication requirements.

Section II of the PCDP requires 75 square feet of common open space per dwelling unit in a future residential or mixed-use project and it exceeds the minimum standard. Separate from the City's park dedication and/or in-lieu requirement under the General Plan, Chapter 19.52 (Park Dedications and Fees) of the NBMC also require park dedication and/or in-lieu fees in accordance with California Government Code Section 66477 *et seq.* also referred to as the Quimby Act. However, Chapter 19.52 only applies to subdivisions or condominiums. While the Applicant plans the construction of apartments that would not generate a park dedication requirement, condominium development would be allowed by the PCDP. Should a condominium project be proposed, it would be subject to NBMC Chapter 19.52. Should a future residential development include publicly accessible open space that meets the policy criteria, the Applicant could request a credit toward parkland dedication requirements (if any). Please refer to the discussion of Policy LU 6.15.13 for additional analysis regarding park dedication requirements.

- t. *LU 6.15.17 Street and Pedestrian Grid. Create a pattern of streets and pedestrian ways that breaks up large blocks, improves connections between neighborhoods and community amenities, and is scaled to the predominantly residential character of the neighborhoods.*

Any new streets and pedestrian ways in the PC District would be designed to break up large blocks, improve connections and links between uses and be scaled to the residential component of the PC District in Planning Area 1, as described in the Land Use and Development Regulations (Section II) and Architectural Design Considerations (Section III), of the PCDP. The City would confirm compliance during future Site Development Review process.

- u. LU 6.15.21 Required Spaces for Primary Uses. Consider revised parking requirements that reflect the mix of uses in the neighborhoods and overall Airport Area, as well as the availability of on-street parking.*

Future development will be required to comply with City of Newport Beach Municipal Code parking requirements, including Section 20.32.040 of the Newport Beach Municipal Code for a density bonus project. The City will confirm compliance with these standards during Site Development Review.

4. City Council Policy A-18 requires that proposed GPAs be reviewed to determine if a vote of the electorate would be required pursuant to Section 423 of the City Charter. If a GPA (separately or cumulatively with other GPAs within the previous ten (10) years) generates more than one hundred (100) peak hour trips (a.m. or p.m.), adds forty thousand (40,000) square feet of nonresidential floor area, or adds more than one hundred (100) dwelling units in a statistical area, a vote of the electorate would be required if the City Council approves the GPA.
 - a. The Property is located in Statistical Area L4. The GPA would change the land use designation only and not result in an increase in development. The 329 dwelling units requested are already included in the MU-H2 development capacity of 2,200 dwelling units and no increase in allowed floor area is proposed. Consequently, there is no increase in a.m. or p.m. peak hour trips pursuant to the Institute of Transportation Engineers ("ITE") trip rates included as Exhibit B of City Council Policy A-18. 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 GPA.
5. Pursuant to California Government Code Section 65352.3 (SB18), a local government is required to contact the appropriate tribes identified by the Native American Heritage Commission ("NAHC") each time it considers a proposal to adopt or amend the General Plan. If requested by any tribe, the local government must consult for the purpose of preserving or mitigating impacts to cultural resources. The City received comments from the NAHC indicating that four (4) tribal contacts should be provided notice regarding the GPA. The tribal contacts were provided notice on April 29, 2020. California Government Code Section 65352.3 requires notification 90 days prior to Council action to allow tribal contacts to respond to the request to consult. The City was not contacted by any tribal contacts to date. SB 18 requires tribal consultation to be closed prior to the approval of the general plan amendment. Accordingly, consultation must be closed prior to City Council action on the GPA.

II. Zoning Code Amendment and Planned Community Development Plan

Amendments to Title 20 (Planning and Zoning) of the NBMC are legislative acts. Neither Chapters 20.66 (Amendments) and 20.56 (Planned Community Development District Procedures) of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code, the Charter of the City of Newport Beach, nor Article 2 (Adoption of Regulations) of Chapter 4 (Zoning Regulations) of Division 1 (Planning and Zoning) of Title 7 (Planning and Land Use) of the California Government Code set forth any required findings for either approval or denial of amendments to the Municipal Code. Nevertheless, rezoning the Property to PC-60 is consistent with the purpose of Planned Community Districts as specified in NBMC Section 20.56.010 for the following reasons:

1. PC-60 provides for the classification and development of 16.46 acres developed land. Permitted and conditionally permitted uses include residential, commercial, and airport supporting uses have been classified. Furthermore, development and use standards have been included in the PC to ensure future use of the Property does not impact the surrounding area.
2. In order to allow the diversification of uses, the PC-60 provides two planning areas; Planning Area 1 allows residential and mixed-use development, while Planning Area 2 allows nonresidential development. This allows future development of the PC to be consistent with the goals and policies of the MU-H2 land use designation horizontal mixed-use standards. To ensure the two planning areas relate to each other and can be integrated, the PC-60 requires internal pedestrian and bicycle connection.
3. The future development of the Property affected by the proposed amendments will be consistent with the goals and policies of the Land Use Element of the General Plan; and will be consistent with the purpose and intent of the PC-60 Development Plan.

III. Development Agreement

Development Agreement No. DA2014-003 satisfies the requirements of Chapter 15.45 (Development Agreements) of the NBMC as provided hereafter:

1. A development agreement is requested by the Applicant, as the Project would add more than 50 dwelling units within Statistical Area L4 (Airport Area). The development agreement includes all the mandatory elements including a term of 15 years for the residential portion of the proposed project and 20 years for the commercial portion 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.*
2. Public benefits include the payment of a \$1,000,000 public safety fee to satisfy any obligation the Project could have to provide new emergency response services or Fire Department equipment to serve the Airport Area whether a Community Facilities District is formed or not. The applicant has also agreed to pay a separate public benefit fee to be used by the City Council as it deems appropriate.

SECTION 4. DECISION.**NOW, THEREFORE, BE IT RESOLVED:**

1. The Planning Commission of the City hereby recommends the City Council of the City adopt Environmental Impact Report Addendum No. ER2020-002 to the 2006 General Plan Update (SCH No. 2006011119) and the 2014 Land Use Element Amendment (SCH No. 2013101064) Environmental Impact Reports, as depicted in Exhibit "B."
2. The Planning Commission of the City hereby recommends the City Council of the City approve General Plan Amendment No. GP2014-004 as depicted in Exhibit "C," to change the Land Use Designation of the Property from AO (Airport Office and Supporting Uses) to MU-H2 (Mixed-Use Horizontal 2 and to amend Table LU2 (Anomaly Locations) to add a portion of the Property as an anomaly to allow for the development of 329 dwelling units, exclusive of any permitted density bonus.
3. The Planning Commission hereby recommends the granting of a waiver of the neighborhood park dedication requirement pursuant to General Plan Policy LU 6.15.13 as a public park within the project site would be inappropriately located due to the proximity with John Wayne Airport.
4. The Planning Commission of the City hereby recommends the City Council of the City approve Zoning Code Amendment No. CA2014-009, to rezone the Property from OA (Office Airport) to PC-60 (Newport Airport Village Planned Community), as depicted in Exhibit "D."
5. The Planning Commission of the City hereby recommends the City Council of the City approve Planned Community Development Plan No. PC2020-002 (Zoning) as depicted in Exhibit "E" to set the permitted uses, development standards, and design guidelines for the Property.
6. The Planning Commission hereby recommends the granting of a waiver of the density standards provided in General Plan Policy LU 6.15.7 pursuant to Government Code §65915(e)(1) as it would make a density bonus project infeasible.
7. The Planning Commission of the City hereby recommends the City Council of the City approve Development Agreement No. DA2014-003, as set forth in Exhibit "F."

PASSED, APPROVED, AND ADOPTED THIS 4th DAY OF JUNE, 2020.

AYES: Ellmore, Klaustermeier, Kleiman, Koetting, Rosene, and Weigand

NOES:

ABSTAIN:

ABSENT: Lowrey

BY: 

Peter Koetting, Chairman

BY: 

Lee Lowrey, Secretary