



# NEWPORT BEACH

## City Council Staff Report

July 28, 2020  
Agenda Item No. 15

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

**FROM:** Seimone Jurjis, Community Development Director - 949-644-3232, sjurjis@newportbeachca.gov

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**TITLE:** Resolution No. 2020-73: Intent to Override the Airport Land Use Commission Finding of Inconsistency for the Newport Airport Village Project (PA2014-225)

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### **ABSTRACT:**

The applicant is processing a number of applications, including a General Plan Amendment and Planned Community Development Plan, that would allow for the future redevelopment of the 16.46-acre property with up to 444 dwelling units (329 base units and 115 density bonus units) and 297,572 square feet of retail, office, and other airport supporting uses. Prior to the City Council taking action on these applications, the City is required to submit the project to the Airport Land Use Commission (ALUC) for a consistency determination with the Airport Environs Land Use Plan (AELUP) for John Wayne Airport. ALUC conducted a hearing on the matter on July 16, 2020, and found the project was inconsistent with AELUP. For the City Council's consideration is a request to consider overriding the ALUC finding of inconsistency. This action would authorize staff to formally provide notice, pursuant to Public Utilities Code Section 21676 (b), to the ALUC and the State Division of Aeronautics of the City's intention to override the ALUC inconsistency finding.

### **RECOMMENDATION:**

- a) Conduct a public hearing;
- b) Find the adoption of this Resolution is not subject to CEQA pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines because it has no potential for resulting in physical change to the environment, directly or indirectly; and
- c) Adopt Resolution No. 2020-73, *A Resolution of the City Council of the City of Newport Beach, California, Notifying the Orange County Airport Land Use Commission and the State Division of Aeronautics of the City's Intention to Find that the Newport Airport Village Planned Community Development Plan is Consistent with the Purposes of the State Aeronautics Act and to Overrule the Orange County Airport Land Use Commission's Determination that the Newport Airport Village Planned Community Development Plan is Inconsistent with the Airport Environs Land Use Plan for the John Wayne Airport (PA2014-225).*

## **FUNDING REQUIREMENTS:**

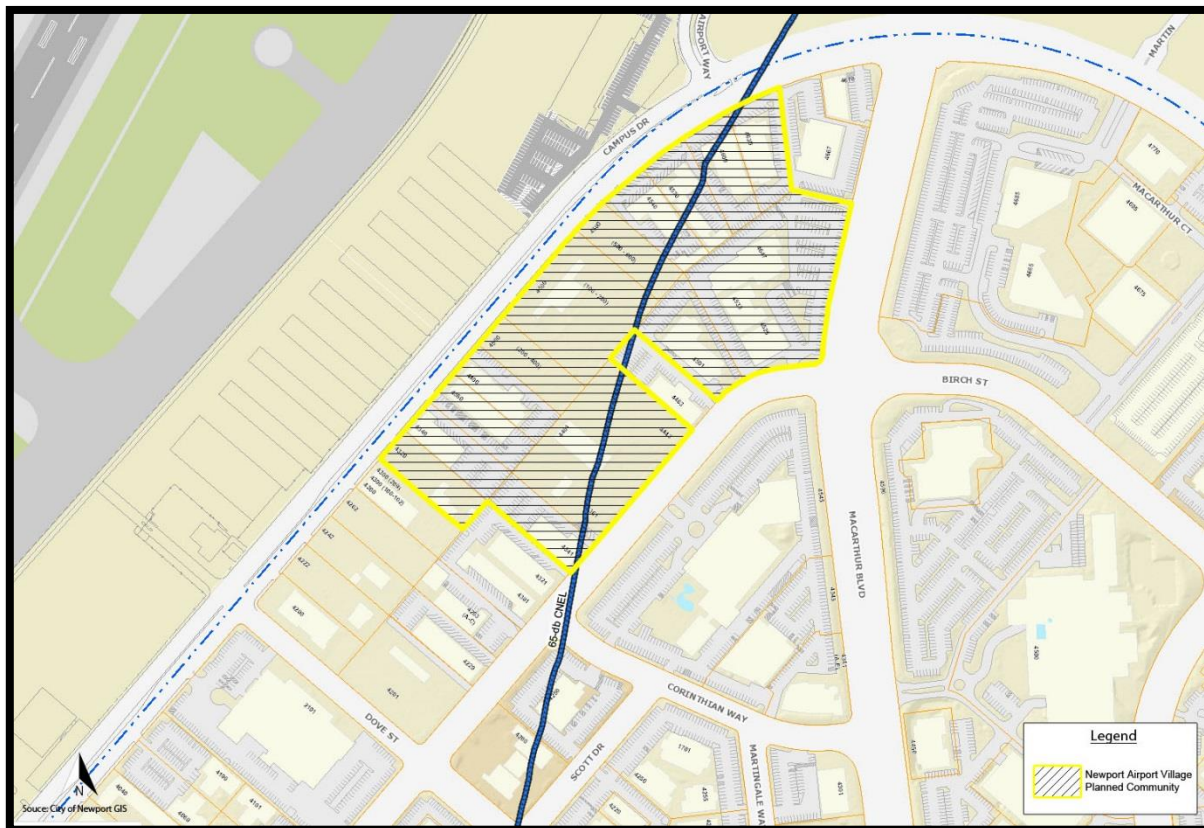
There is no fiscal impact related to this item.

## **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. The project site is currently developed with a variety of commercial uses, including retail, restaurants, rental vehicle facilities and office buildings.

The project site 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 site is zoned OA (Office Airport) that allows uses consistent with the Land Use Plan Category.



**Figure 1 – Project Boundaries**

### **Project Description**

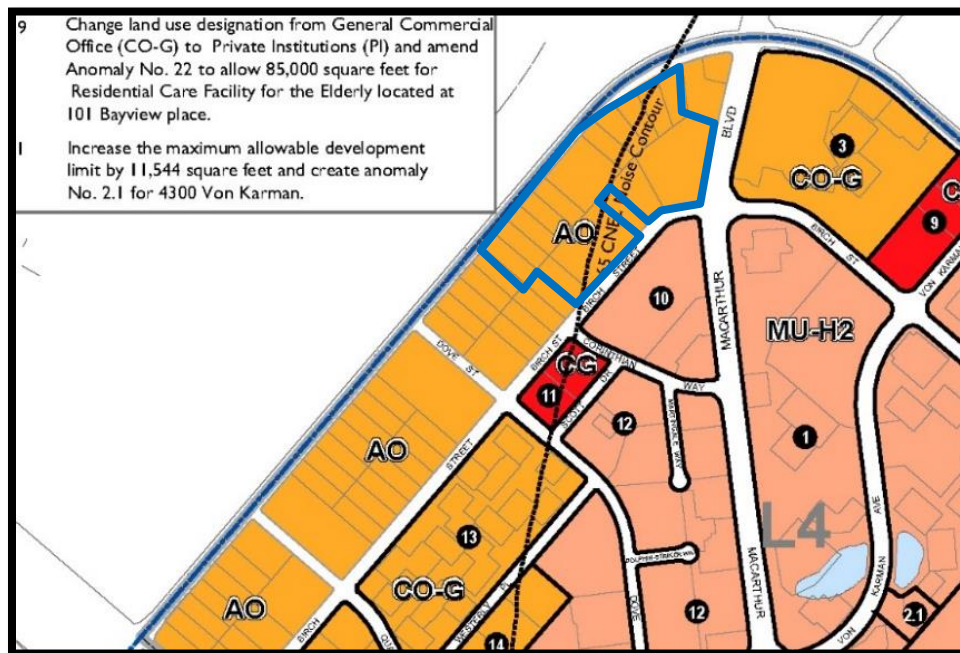
Although final action on the project will not be considered by the City Council at this time, the following details of the project is being provided to allow the Council to discuss the merits of the ALUC override request.

Saunders Property Company c/o Starpointe Ventures (“Applicant”) seeks approval of a General Plan Amendment, Zoning Code Amendment, Planned Community Development Plan (“PCDP”), and a Development Agreement as summarized below. The Applicant’s request does not include any project specific development or plans, but rather is for legislative approvals only. Should the subject applications be approved by the City Council, future development would require the processing of a site development review application and be required to comply with the development and use standards set forth in the PCDP.

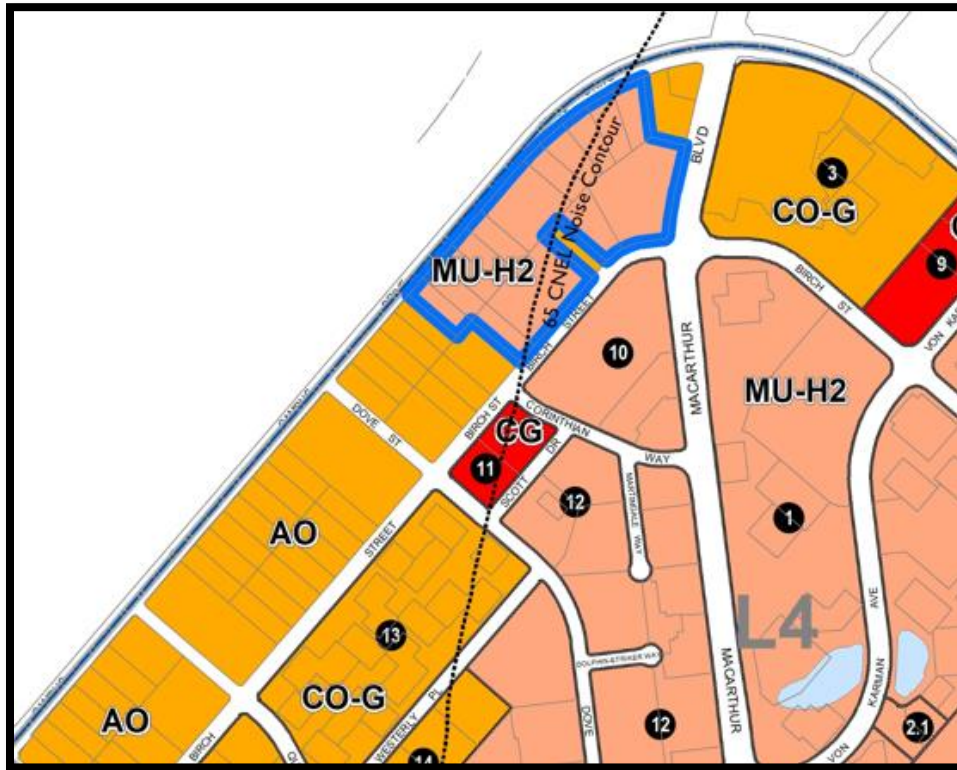
A complete analysis of the project and related entitlement findings can be found in the attached Planning Commission staff report (Attachment B).

### *General Plan Amendment*

The proposal would amend the General Plan Land Use Category of the site from Airport Office (AO) (Figure 2) to Mixed Use Horizontal 2 (MU-H2) (Figure 3). This change would alter the future focus of the property from uses that are intended to support or benefit from airport operations (e.g. professional offices, aviation retail, automobile rental and sales, hotels, ancillary retail and restaurant), to 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.



**Figure 2 – Existing Land Use Map**  
(Excerpt Land Use Element Figure LU11)



**Figure 3 – Proposed Land Use Map**

This General Plan Amendment would also provide Anomaly 86 to the General Plan Table LU2 (Anomaly Locations) establishing the following maximum development limits to the site:

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	

The General Plan contains a maximum limit of 2,200 dwelling units within the MU-H2 designation of the Airport Area. 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 designation (see Table 1).

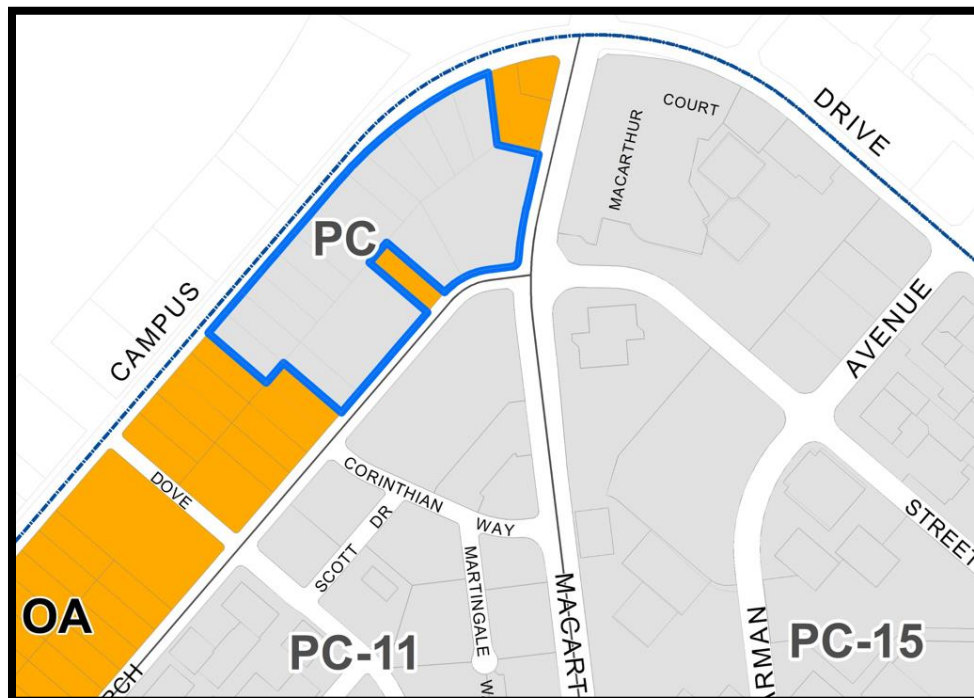


Table 1 – Airport Area Residential Units					
Residential Development Allocation	Base Units			Density Bonus Units	Project Totals With Density Bonus
	Replacement Units	Additive Units	Total Units		
General Plan Development Limit (MU-H2)	1650	550	2,200		
<b>Approved Projects</b>					
Uptown Newport	632	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>		

It is important to note that the 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.

### *Zoning Code Amendment*

The Zoning Code Amendment would rezone the site from OA (Office Airport) to PC-60 (Planned Community - Newport Airport Village Planned Community) to implement the proposed MU-H2 land use designation.

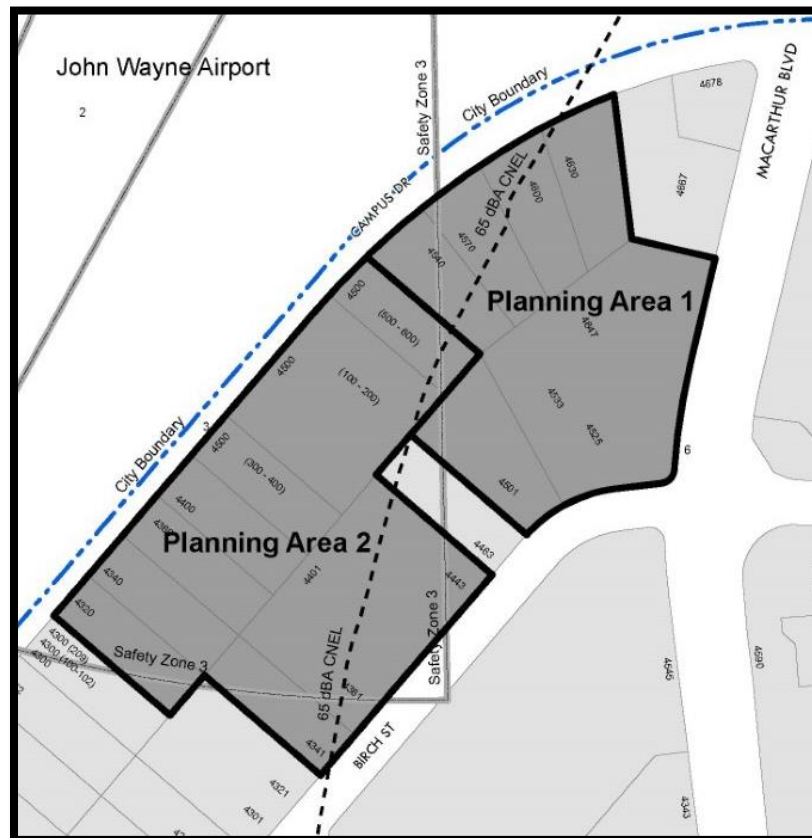


**Figure 4 – Proposed Zoning Map**

This rezone would allow for the adoption of the Planned Community Development Plan (PCDP), which would set the development standards and land use regulations for the project site.

### *Planned Community Development Plan*

The draft Newport Airport Village PCDP is attached to this report as Attachment C. 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. Planning Area 2 is limited to nonresidential uses with a 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.



**Figure 5 – Planning Areas**

The PCDP also establishes the development standards that future development would need to abide by, a summary of which is contained in Table 2.

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

### *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 Plan Policy Waiver In-Lieu Park Fee: \$2,500,000
- Public Safety Fee: \$1,000,000 for Fire Life Safety staffing, services, or equipment

### Planning Commission Review

On June 4, 2020, the Planning Commission conducted a duly noticed public hearing to consider the requested application (Attachment D). Other than the applicant and his representative, only one member of the public addressed the Planning Commission regarding the request. At the conclusion of the public hearing, the Planning Commission adopted Resolution No. PC2020-20 (Attachment E), thereby recommending the City Council approve the project, by a 6-0 vote.

## **DISCUSSION:**

### **Airport Land Use Commission**

The project site falls within the airport planning area of the Airport Environs Land Use Plan (AELUP) for the John Wayne Airport. Section 4.3 of the AELUP and Section 21676(b) of the Public Utilities Code requires the City submit the project to the ALUC for a consistency determination with the AELUP. ALUC conducted a hearing on the matter on July 16, 2020 (Attachment F), to which staff and the project proponent attended. ALUC voted (6-0) to find the project is inconsistent with the AELUP based on noise, safety, and height.

#### *Noise*

The AELUP uses the Community Noise Equivalent Level (CNEL) system for measuring noise impacts, which is a weighted average of noise over time. The John Wayne Airport 65 dB CNEL noise contour transects the Property, running from north to south with approximately half of the project site located within the 65-dBA CNEL noise contour and the other half located within the 60-dBA CNEL noise contour. A measurement of 65-dBA CNEL is generally considered too noisy for residential developments. For areas within the 65-dBA CNEL noise contour, the AELUP does not support residential development. However, for areas outside of the 65-dBA CNEL noise contour, residential development is permitted, provided the units have sufficient sound attenuation.

To meet these standards, the PCDP prohibits residential developments within the 65-dBA CNEL noise contour. For dwelling units outside of the contour, the PCDP requires all dwelling units be designed to provide an interior ambient noise level that does not exceed 45-dBA between 7 a.m. and 10 p.m. and 40-dBA between 10 p.m. and 7 a.m. Furthermore, all prospective purchasers and tenants are required to be notified about potential noise generated from John Wayne Airport. It is important to note that these restrictions are also included in the goals and policies of Newport Beach General Plan Noise Element, which the ALUC found to be consistent with the AELUP in 2006.

Based on this, staff is of the opinion that allowing residential development outside of the 65-dBA CNEL noise contour is consistent with the AELUP and overriding the ALUC's finding would be appropriate.

#### *Safety*

Portions of the project site are located within Safety Zone 3 for John Wayne Airport, with the remainder located in Safety Zone 6. According to the AELUP, Zone 3 precludes high density residential; however, commercial development is allowed. Zone 6, which is less restrictive than Safety Zone 3, allows all residential uses and commercial development (excepting high intensities uses, such as outdoor stadiums).



Staff believes that the PCDP is consistent with the safety zone requirements as it explicitly prohibits residential dwelling units within Safety Zone 3. Further, the permitted nonresidential uses include lower intensity retail and offices uses, as well as uses that are currently allowed in the OA zone. The remainder of the site is within Safety Zone 6, which according to the AELUP has “generally low likelihood of accident occurrence.” Basic compatible qualities listed in the AELUP include residential uses and most nonresidential uses, excluding very high intensity uses, such as outdoor stadiums. In consistency with these allowances, the PCDP permits residential uses within the zone, as well as a variety of low intensity nonresidential uses.

ALUC also expressed a concern about overflight of the property. Notwithstanding this, the Federal Aviation Administration (“FAA”) conducted an aeronautical study for the Project consistent with the Federal Aviation Regulations. The FAA issued a “Determination of No Hazard to Air Navigation” on April 28, 2020, thereby finding the structure does not exceed obstruction standards and would not be a hazard to air navigation. The FAA’s determination is based on an 80-foot maximum height, whereas the PCDP currently proposes an 85-foot maximum height. Prior to the City Council taking final action on the project, the applicant would need to obtain a revised Determination of No Hazard to Air Navigation from the FAA or revised the application to comply with the 80-foot height limit. It is staff’s opinion that provided the project complies with the FAA’s requirements, approval of the Newport Airport Village PCDP will not create a safety hazard and overriding the ALUC finding is warranted.

### *Height*

In determining height limits, AELUP Section 2.1.3 provides that the Federal Aviation Regulations are the only definitive standard available and are the standards most generally used. This section of the AELUP also identifies the FAA as the single “Authority” for analyzing project impact on airport or aeronautical operations, or navigational-aid siting, including interference with navigational-aids or published flight paths and procedures along with reporting results of such studies and project analyses. As previously noted, the FAA issued a “Determination of No Hazard to Air Navigation” based on an 80-foot maximum height. Although the PCDP currently proposes an 85-foot maximum height, the applicant would need to obtain a revised Determination of No Hazard to Air Navigation from the FAA or revise the PCDP to comply with the 80-foot height limit prior to the City Council’s final action.

The project site is located in the 300-foot High Rise Height Area, as depicted in Map H-1 (High Rise and Shoreline Height Limit Areas) (attachment G). On August 19, 2010, ALUC found the revisions to Title 20 (Planning and Zoning) of the NBMC to be consistent with the AELUP. The 2010 Zoning Code Update included Section 20.30.060(C)(2)(e) (High Rise Height Area) of the NBMC and Map H-1 (High Rise and Shoreline Height Limit Areas), which authorizes a 300 foot height limit in the High Rise Height Area. As previously stated, the maximum allowed building height under the PCDP within the permitted building envelope is 85 feet.

Considering the FAA’s finding and the ALUC previous consistency finding, staff believes that overriding the ALUC finding on height would be proper.

### Override Process

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

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

The following points are important to consider:

- The Council's adoption of the attached notification resolution does not constitute the Project's approval, nor does it predispose the City Council's future action on either the Project or the consistency determination;
- The attached resolution notifying ALUC and the State Division of Aeronautics of City's intent, and the resolution to overrule ALUC, which will be presented at a future hearing, must be adopted by a two-thirds vote. Since there are seven Council districts, five affirmative votes are needed to pass the resolution.
- Should the City Council ultimately overrule the ALUC decision, that action will not directly affect the City's status as a consistent agency with the AELUP, but it does not prevent ALUC from taking future actions.

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

### Virtual Meeting with Airport Director of John Wayne Airport

On June 24, 2020 a virtual meeting was held between the Newport Beach City Manager, Grace Leung and John Wayne Airport ("Airport"), Airport Director Barry Rondinella including staff from both agencies. Mr. Rondinella wanted to convey that the Airport did not support the proposed residential project. He gave two reasons why: 1) with the project's close proximity to the Airport, the Airport would ultimately be receiving a high number of noise complaints from the residents living in the project. This is especially troubling for the Airport since they have been working with the City on the current outstanding aircraft generated noise issues; and 2) the project's location is in the flight path of aircraft using the left runway of the Airport. The project and its residents become more at risk of aircraft related accidents.

### Airport Land Use Commission Call for Review

As stated above, ALUC found the project to be inconsistent with the AELUP based on noise, safety, and height. After the hearing was conducted, the Chair asked that an item be placed on a future ALUC agenda. At the time of the writing of this report, staff believes two items will return for the commission's consideration: 1) overview of overrides, what it means, and what actions can ALUC take regarding them; and 2) review of Newport Beach's consistency status and the past projects that have been overridden.

Any override of ALUC's decision on proposed projects is grounds to find Newport Beach as an inconsistent agency. ALUC may pursue a path to find Newport Beach to be inconsistent with the AELUP.

### Importance of Project towards Housing Needs

As an alternative to overriding the ALUC findings, the Council can direct the applicant to redesign the project in a manner that the ALUC would find consistent with the AELUP. In this case, staff believes the applicant would need to eliminate the residential component of their request. Given the extremely high Regional Housing Needs Allocation (RHNA) of 4,832 new dwelling units the City is expected to plan for in the upcoming 6<sup>th</sup> Cycle Housing Element Planning Period (2021-2029), staff believes this is not the most prudent option. If the project were approved, PCDP Planning Area No. 1 would be added to the City's Housing Sites Inventory as part of the Housing Element Update process. Credit could be given for the project towards meeting a significant portion of the City's upcoming RHNA due to the fact that project meets all criteria as a viable housing opportunity site pursuant to State Housing Element Law.

### **ENVIRONMENTAL REVIEW:**

Final action on the project is not being considered at this time. A complete environmental analysis of the project is contained in the attached Planning Commission resolution for which an addendum to an EIR is being proposed. Nevertheless, the action that is currently before the City Council is consideration of adopting a resolution of intent to override the ALUC's finding that the project is not consistent with the AELUP.

Adoption of the resolution of intent to override is not subject to CEQA pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines because it has no potential for resulting in physical change to the environment, directly or indirectly. Specifically, the resolution does not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment because it is limited to the notification of the City's intent to overrule the ALUC determination and it does not authorize the development of the Property or commit the City to approve the Project. Potential project impacts will be analyzed when the City Council considered the Project.

**NOTICING:**

Notice of this hearing was published in the *Daily Pilot*, mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways), including the applicant and an email select alert was sent to email subscribers of the Planning Division's notification list. The item also appears on the agenda for this meeting, which was posted at City Hall and on the City Website.

**ATTACHMENTS:**

Attachment A – Resolution No. 2020-72

Attachment B – Planning Commission Staff Report Dated June 4, 2020

Attachment C – Newport Airport Village Planed Community Development Plan

Attachment D – Planning Commission Minute Excerpts Dated June 4, 2020

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

Attachment F – ALUC Staff Report Dated July 16, 2020

Attachment G – Map H-1 (High Rise and Shoreline Height Limit Areas)