

ORDINANCE NO. 2024-10

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING A PLANNED COMMUNITY DEVELOPMENT PLAN AMENDMENT FOR THE RESIDENCES AT 1401 QUAIL STREET LOCATED AT 1401 QUAIL STREET (PA2023-0040)

WHEREAS, Section 200 of the City of Newport Beach ("City") Charter vests the City Council with the authority to make and enforce all laws, rules, and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitution, and the power to exercise, or act pursuant to any and all rights, powers and privileges, or procedures granted or prescribed by any law of the State of California;

WHEREAS, an application was filed by Intracorp Homes ("Applicant"), with respect to the property located at 1401 Quail Street and legally described as Parcel 1 of Resubdivision No. 341 ("Property");

WHEREAS, the Applicant is requesting approvals to demolish an existing office building and develop 67 for-sale condominium units, including a 146-space parking structure ("Project"), which requires the following approvals:

- General Plan Amendment ("GPA") – A request to amend the General Plan Land Use Designation of the Property from General Commercial Office (CO-G) to Mixed-Use Horizontal (MU-H2);
- Planned Community Development Plan Amendment ("PCDP Amendment") – An amendment to the Newport Place Planned Community (PC-11) Development Plan to include the Property within the Residential Overlay;
- Major Site Development Review ("SDR") - A site development review in accordance with the Newport Place Planned Community (PC-11) and Section 20.52.080 (Site Development Reviews) of the Newport Beach Municipal Code ("NBMC") to construct the Project;
- Tentative Vesting Tract Map ("VTM") – A Vesting Tentative Tract Map No. 19261 pursuant to Title 19 (Subdivisions) of the NBMC for 67 condominium dwelling units;

- Affordable Housing Implementation Plan (“AHIP”) – A plan specifying how the Project would meet the City’s affordable housing requirements, in exchange for a request of 27.5% increase in density including a request for four development standard waivers related to park land dedication, building setbacks, and building height along with two development concessions related to the mix of affordable units and a partial payment of the park in-lieu fees pursuant to Chapter 20.32 (Density Bonus) of the NBMC and Government Code Section 65915 *et seq.* (“State Density Bonus Law”);
- Development Agreement (“DA”) – A development agreement, between the Applicant and the City, pursuant to Section 15.45.020 (Development Agreement Required) of the NBMC, which would provide the Applicant with vested right to develop the Project for a term of ten years and provide negotiated public benefits to the City; and
- Addendum No. 8 to the 2006 General Plan Update Program Environmental Impact Reports and the 2008-2014 City of Newport Beach Housing Element Update and Initial Study/Negative Declaration (“Addendum No. 8”) – An addendum which addresses reasonably foreseeable environmental impacts resulting from the Project;

WHEREAS, the Property is designated General Commercial Office (CO-G) by the General Plan Land Use Element and located within the Newport Place Planned Community (PC-11) Zoning District in the Industrial Site 3A sub-area;

WHEREAS, the Property is not located within the coastal zone; therefore, amending the Local Coastal Program and obtaining a coastal development permit are not required;

WHEREAS, a public hearing was held by the Planning Commission on December 21, 2023 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 Government Code Section 54950 *et seq.* (“Ralph M. Brown Act”), and Chapter 15.45 (Development Agreements), Chapter 19.20 (Vesting Tentative Map), Chapter 20.56 (Planned Community District Procedures), and Chapter 20.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this hearing;

WHEREAS, at the hearing, the Planning Commission adopted Resolution No. PC2023-047 by a majority vote (6 ayes, 0 nays, 1 absent) recommending the City Council approve the Project;

WHEREAS, California Public Utilities Code ("CPUC") Section 21676(b) requires the City to refer the Project to the Orange County Airport Land Use Commission ("ALUC") to review for consistency with the 2008 John Wayne Airport Environs Land Use Plan ("AELUP");

WHEREAS, on January 18, 2024, the ALUC determined the Project is inconsistent with the AELUP;

WHEREAS, pursuant to Sections 21670 and 21676 of CPUC, the City Council may, after a public hearing, propose to overrule the ALUC with a two-thirds vote, if it makes specific findings that the Project is consistent with the purpose of Section 21670 of the CPUC to protect the public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses;

WHEREAS, a public hearing was held by the City Council on February 13, 2024, in the City Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place, and purpose of the hearing was given in accordance with CPUC Code Section 21676(b) and the Ralph M. Brown Act. Evidence, both written and oral, was presented to, and considered by, the City Council at this hearing;

WHEREAS, at the conclusion of the hearing, the City Council adopted Resolution No. 2024-10 by unanimous vote (7 ayes, 0 nays) to notify the ALUC and State Department of Transportation Aeronautics Program ("Aeronautics Program") of the City's intent to override ALUC's inconsistency finding;

WHEREAS, notice of the City's intent to override the ALUC inconsistency determination, along with Resolution No. 2024-10 was sent via certified mail and emailed to the ALUC and the Aeronautics Program on February 14, 2024;

WHEREAS, the City received timely comments in response to the notice of the City's intent to override the ALUC inconsistency determination from the ALUC, and the Aeronautics Program in accordance with CPUC Section 21676; and

WHEREAS, a public hearing was held by the City Council on April 9, 2024, in the City Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with the Ralph M. Brown Act, Chapter 15.45 (Development Agreements), Chapter 19.20 (Vesting Tentative Maps), Chapter 20.56 (Planned Community District Procedures), and Chapter 20.62 (Public Hearings) of the NBMC, and CPUC Section 21676(b). Evidence, both written and oral, was presented to, and considered by, the City Council at this meeting.

NOW THEREFORE, the City Council of the City of Newport Beach ordains as follows:

Section 1: The City Council has considered the recommendation of the Planning Commission and determined that modifications to the Project made by the City Council, if any, are not major changes that require referral back to the Planning Commission for consideration and recommendation.

Section 2: The PCDP Amendment to the Newport Place Planned Community (PC-11) is a legislative act. Neither the Newport Place Planned Community (PC-11), Chapters 20.56 (Planned Community District Procedures) and 20.66 (Amendments) of the NBMC, nor Section 65000 *et seq.* of the California Government Code set forth any required findings for approval of such amendments. Notwithstanding the foregoing, the PCDP Amendment complies with Part III (Residential Overlay) of the Newport Place Planned Community (PC-11) based on the following findings:

1. The Project allocates 15% of the base units (eight dwelling units) as affordable units. Of the eight units, six are restricted to very-low-income households and two are restricted to low-income households.
2. Given the location of the Property in the Airport Area which includes a mixture of service uses, hotels, John Wayne Airport and commercial support services, professional offices, and new residential developments that cumulatively contain the ingredients of a planned community, the PCDP Amendment would not disrupt the existing uses within the Newport Place Planned Community (PC-11) and would add to this diversity of uses, assisting the City in larger scale community planning and the provision of additional housing opportunities.
3. The Property is located within 85 feet of the Residential Overlay set forth in the Newport Place Planned Community (PC-11). The property nearest to the site

within the Residential Overlay is 1300 Bristol Street, across Spruce Street. The property at 1300 Bristol has been approved but not yet constructed as a residential apartment project. The Project would be consistent with the anticipated future development of 1300 Bristol and the proposed Residences at 1400 Bristol Project as well other adjacent properties within the Residential Overlay of Newport Place Planned Community (PC-11).

4. The Project would be subject to the appropriate site and project specific setbacks, density, and height limits for this urban location. All required parking is provided on-site. The Project complies with the development standards identified for the Residential Overlay, except as modified by the allowed development standard waivers identified in the Affordable Housing Implementation Plan. The Residential Overlay provides a density range for proposed projects and references the Section 20.32 (Density Bonus) of the NBMC that prescribes the maximum density bonus and incentives allowed. The Project includes a density bonus of 27.5%, where the PCDP Amendment references a maximum density bonus of 35%. Therefore, the Project is consistent with the intent of the density bonus assumptions in the Residential Overlay.
5. The Newport Place Planned Community (PC-11) requires an SDR in accordance with Section 20.52.080 (Site Development Reviews) of the NBMC. The Project includes an SDR, and all required findings are addressed in a separate resolution.
6. The PCDP Amendment requires the density for a residential development to be between 30 and 50 dwelling units per acre. The Project includes 52 base units, not including density bonus units. Since the Property is 1.71 acres in size, there is a base density of 30 dwelling units per acre. With density bonus, there is a total of 67 dwelling units, which results in 39 units per acre. Both the density with and without the density bonus units are consistent with the PCDP Amendment density requirement.
7. The Property is located near existing office buildings within the Airport Area and is not negatively impacted by noise, dust, smoke, vibration, odor, toxic or noxious matter that may be generated by existing commercial or industrial uses nearby.
8. Residential dwellings are permitted as replacement of existing nonresidential uses, and the number of peak hour trips generated by the Project is not to exceed the number of trips of the underlying permitted nonresidential use. The

Property is developed with an existing one-story commercial office building totaling 22,956 square feet. A standardized conversion rate of 2.29 dwelling units per 1,000 square feet of commercial floor area, as provided by the City Traffic Engineer, is required. This results in a total of 52 dwelling units, which is the proposed based density of the Project. With a 27.50% density bonus or 15 dwelling units request, a total of 67 (52+15) dwelling units are proposed for the Project.

9. The Property is fully developed and does not support any natural resources and all potential environmental impacts associated with the Project are appropriately addressed through standard building permit procedures, conditions of approval, and the General Plan Policies identified in Addendum No. 8.

Section 3: The City Council hereby approves the Newport Place Planned Community (PC-11) Development Plan Amendment, as set forth in Exhibit "A," which is attached hereto and incorporated herein by reference and finds that the PCDP Amendment complies with the purpose set forth in Section 20.56.010 (Purpose) of the NBMC, with all other provisions of the existing Planned Community District Regulations and exhibits remaining unchanged and in full force and effect.

Section 4: Environmental Impact Report Addendum No. 8 was prepared for the Project in compliance with the California Environmental Quality Act ("CEQA") set forth in California Public Resources Code Section 2100 *et seq.*; CEQA's implementing regulations set forth in CCR Title 14, Division 6 Chapter 3 ("CEQA Guidelines") and City Council Policy K-3 (Implementation Procedures for the California Environmental Quality Act) to ensure that the Project will not result in new or increased environmental impacts. On the basis of the entire environmental 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) and the City of Newport Beach Housing Element Initial Study/Negative Declaration. The potential impacts associated with this Project would either be the same or less than those described in the PEIR and the City of Newport Beach Housing Element Initial Study/Negative Declaration. 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 the PEIR or the City of Newport Beach Housing Element Initial Study/Negative Declaration, nor has any new information regarding potential for new or more severe significant environmental impacts been identified.

The City Council 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 5: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section 6: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 7: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414. This ordinance shall be effective thirty (30) calendar days after its adoption.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 9th day of April, 2024, and adopted on the 23rd day of April, 2024, by the following vote, to-wit:

AYES: _____

NAYS: _____

ABSENT: _____

WILL O'NEILL, MAYOR

ATTEST:

LEILANI I. BROWN, CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

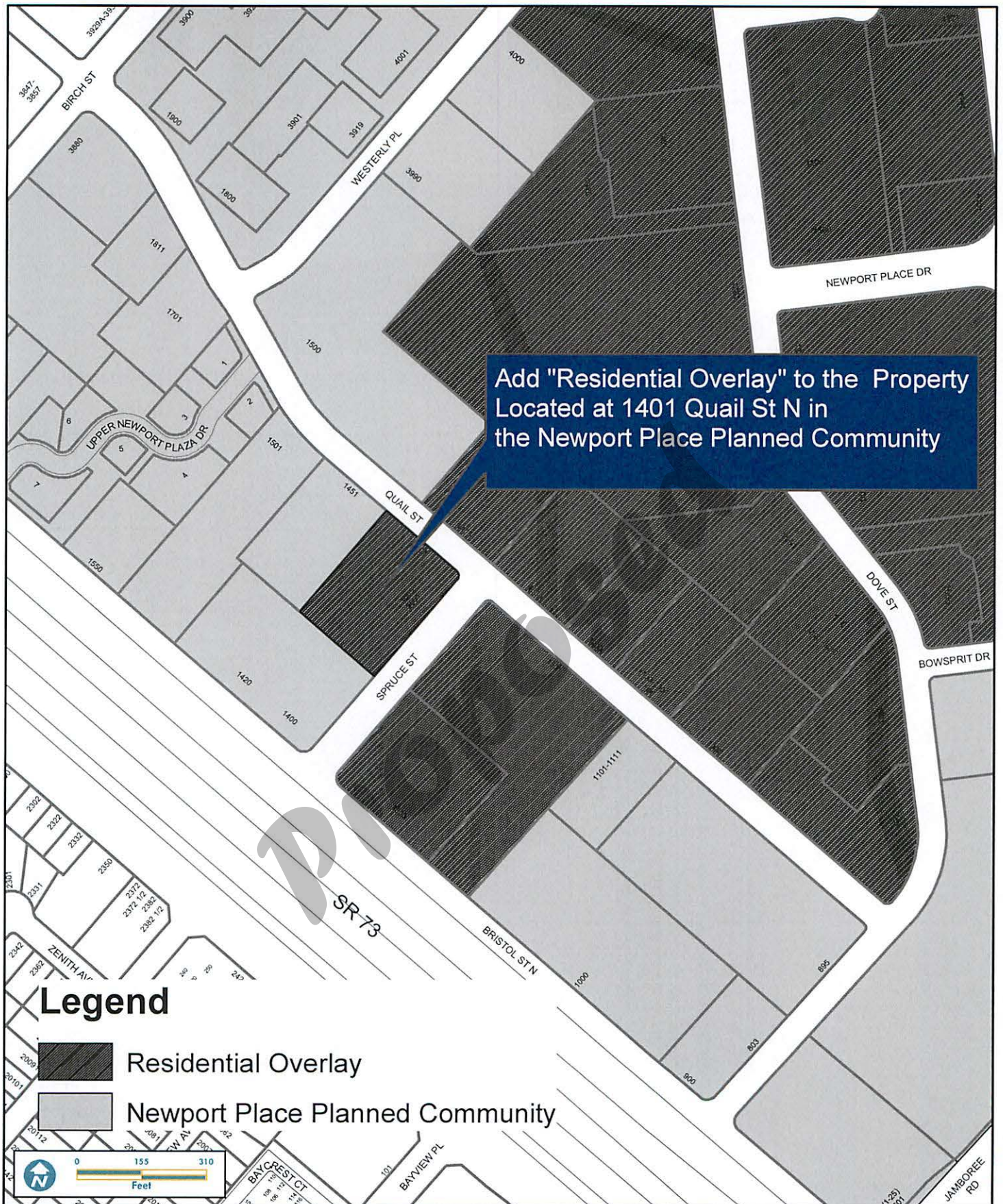


AARON C. HARP, CITY ATTORNEY

Attachment: Exhibit "A" – Newport Place Planned Community (PC-11) Development Plan Amendment

Exhibit "A"
Newport Place Planned Community (PC-11) Development Plan Amendment

Proposed



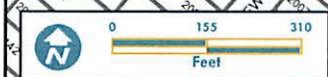
Legend



Residential Overlay



Newport Place Planned Community



PA2023-0040 PC-11 Newport Place Amendment 1401 Quail St



City of Newport Beach
GIS Division
November 22, 2023