



## CITY OF NEWPORT BEACH COMMUNITY DEVELOPMENT DEPARTMENT PLANNING DIVISION ACTION REPORT

TO: CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION  
FROM: Seimone Jurjis, Community Development Director  
SUBJECT: Report of actions taken by the Zoning Administrator, and/or Planning Division staff for the week ending May 1, 2020.

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### ZONING ADMINISTRATOR ACTIONS APRIL 30, 2020

- Item 1: OC Chief Auto Vehicle Storage Limited Term Permit No. XP2020-002 (PA2019-239)  
Site Address: 2302 Bristol Street  
Action: Approved by Resolution No. ZA2020-036 Council District 1
- Item 2: Bluffs Center Pylon Sign Comprehensive Sign Program No. CS2020-004 and Modification Permit No. MD2020-006 (PA2020-040)  
Site Address: 1300 Bison Avenue  
Action: Approved by Resolution No. ZA2020-037 Council District 4
- Item 3: Sailhouse Development Residence Coastal Development Permit No. CD2020-010 (PA2020-034)  
Site Address: 2642 Crestview Drive  
Action: Approved by Resolution No. ZA2020-038 Council District 6
- Item 4: Bogh Residence Coastal Development Permit No. CD2020-015 and Modification Permit No. MD2020-004 (PA2020-025)  
Site Address: 43 Balboa Coves  
Action: Approved by Resolution No. ZA2020-039 Council District 1
- Item 5: Faerber Residence Coastal Development Permit No. CD2020-013 (PA2020-029)  
Site Address: 405 Cortes Circle  
Action: Removed from Calendar Council District 3
- Item 6: Bragg Redevelopment and Lot Merger No. LM2019-006 and Coastal Development Permit No. CD2019-068 (PA2019-250)  
Site Address: 107 and 109 Via Yella  
Action: Approved by Resolution No. ZA2020-040 Council District 1

APPEAL PERIOD: An appeal or call for review may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered unless a different period of time is specified by the Municipal Code (e.g., Title 19 allows ten (10) day appeal period for tentative parcel and tract maps, lot line adjustments, or lot mergers). For additional information on filing an appeal, contact the Planning Division at 949 644-3200.

## RESOLUTION NO. ZA2020-036

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA APPROVING LIMITED TERM PERMIT NO. XP2020-002 FOR TEMPORARY VEHICLE STORAGE LOCATED AT 2302 BRISTOL STREET (PA2019-239)**

THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Craig and Lisa Long and Sheri Hines, with respect to property located at 2302 Bristol Street and legally described as Lot 1 of Tract No. 149 Bay View Heights Unit One requesting approval of a limited term permit.
2. The applicant proposes a Limited Term Permit (greater than 90 days) to allow the temporary use of a vacant gravel lot for vehicle storage. Approximately 14 vehicles, maximum, would be stored on the site. Employees would access the site as necessary to retrieve vehicles for off-site sales between the hours of 10 a.m. and 7 p.m. No test drives, car washing, vehicle repair, sales, or other activities would occur at the vehicle storage site. The vehicles to be parked on the site include new or previously owned vehicles awaiting transportation, and there will be no damaged or wrecked vehicles parked or stored at the site. A 6-foot-high locked roller gate will limit access to the site to employees and emergency responders.
3. The subject property is designated General Commercial Office (CO-G) by the General Plan Land Use Element and is located within the Santa Ana Heights Specific Plan (SP-7) (Professional, Administrative & Commercial Consolidation District) Zoning District.
4. The subject property is not located within the coastal zone.
5. A public hearing was held on April 30, 2020 in the Council Chambers at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15304 under Class 4 (Minor Alterations to Land) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment. Class 4 consists of minor public or private alterations in the condition of land, water and/or vegetation, which do not involve removal of mature, scenic trees except for forestry and agricultural purposes.

2. The proposed land use would meet the definition of Class 4(e) which allows minor temporary use of land having negligible or no permanent effects on the environment, including carnivals, outdoor festivals, sales of Christmas trees, and similar uses. The application does not include any major site improvements or the removal of mature, scenic trees. The use is the temporary parking of vehicles for an off-site land use on an existing gravel parking lot and does not involve any new construction other than landscaping, additional gravel, exit grid, and minor improvements.
3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

### SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.040 (Limited Term Permits) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

#### Finding:

- A. *This project has been reviewed, and it has been determined that it is categorically exempt from the requirements of the California Environmental Quality Act Guidelines under Class 4 (Minor Alterations to Land).*

#### Fact in Support of Finding:

1. Class 4 exempts minor temporary uses of land having negligible or no permanent effects on the environment, such as temporary vehicle storage.

#### Finding:

- B. *The operation of the requested limited duration use at the location proposed and within the time period specified would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the requested limited duration use.*

#### Facts in Support of Finding:

1. The use would be authorized for one (1) year, for a possible extension of an additional year if authorized by the Zoning Administrator.
2. The proposed vehicle storage is a passive use, with employees transporting vehicles to and from the site by appointment only, from 10 a.m. to 7 p.m. daily. The limited vehicle

trips and hours of operation would reduce any potential effects to persons residing or working in the neighborhood.

3. The subject property has been vacant since at least 2006. The subject lot, three (3) adjacent vacant lots, and a residential lot are all located within the Santa Ana Heights Specific Plan (SP-7) Professional, Administrative, and Commercial Consolidation District (PACC). The PACC is established to provide for the development and maintenance of professional and administrative office uses and commercial uses on lots located between South Bristol Street and Zenith Avenue in a manner which will ensure lot consolidation and vehicular access to and from South Bristol Street. The proposed vehicle storage use would maintain access from Bristol Street. Access to the site from Zenith Avenue would be prohibited and a fence or wall will remain in place along all property lines. Until the lots are consolidated, including the adjacent lot with an existing single-family residence, no development can occur on the sites. Temporary use of the site for vehicle storage will allow the property owner to make economic use of the site in the interim, prior to the consolidation of lots.
4. The adjacent lot fronting Bristol Street contains an existing single-family dwelling. The proposed vehicle storage use is passive, temporary, and has been conditioned to ensure compatibility with surrounding land uses. Landscaping is proposed along Bristol Street to soften the appearance of vehicles from the street. A 6-foot-high property line chain link fence with fabric screening (and a wall adjacent to the commercial building) will secure and screen the vehicle storage area. There would be no test driving of vehicles from the site, no service or washing of vehicles on-site, and no customers allowed on the premises.
5. The proposed parking area would be separated from the residential uses to the southeast by distance and a screened chain link fence. An approximately 3- to 5-foot-high block wall separates the subject site from the commercial building to the north. Additionally, the area would not be accessible to the public, thereby reducing any potential nuisances.
6. The proposed vehicle storage use is in keeping with other vehicle related uses along Bristol Street. For example, there is an Arco, Chevron, Fletcher Jones Airport Shuttle Facility, Gulliver USA (used car dealership), and Orange County Van Rental.
7. At the entrance to the site, a Knox box would be installed on the roller gate, and a 20-foot-wide drive aisle would be maintained on site, thereby allowing access by the Fire Department in the event of an emergency.
8. The Public Works Department has reviewed the project and provided conditions of approval to maintain adequate queuing space along Bristol Street, and a turn around area on site for the vehicles. Additionally, the proposed landscaping would comply with sight distance requirements to allow adequate visibility for employees entering and exiting the site.

Finding:

- C. *The subject lot is adequate in size and shape to accommodate the limited duration use without material detriment to the use and enjoyment of other properties located adjacent to and in the vicinity of the lot.*

Facts in Support of Finding:

1. The subject lot is a rectangle and contains approximately 8,250 square feet. The applicant proposes to store approximately 14 vehicles (maximum) within two (2) parking aisles. Each parking space would be approximately 9 feet by 19 feet which complies with City of Newport Beach standards for commercial parking spaces.
2. The design includes a pull-in space of 20 feet in depth at the entrance of the site. The 20 feet provides adequate space to have employees park a vehicle while they open or close the manual roller gate. The pull in space is accommodated completely on private property and would not obstruct the sidewalk along Bristol Street.
3. The existing lot is vacant and relatively flat. There is an existing layer of gravel on site with some vegetation beginning to grow. Additional gravel will be placed on the site to create an appropriate parking surface for vehicle storage.
4. No structures or property improvements are proposed or authorized other than new landscaping, additional layers of gravel, exit grid, and fencing.

Finding:

- D. *The subject lot is adequately served by streets or highways having sufficient width and improvements to accommodate the kind and quantity of traffic that the limited duration use would or could reasonably be expected to generate.*

Facts in Support of Finding:

1. The subject lot maintains adequate access from Bristol Street via an existing curb cut and driveway.
2. Traffic related to the proposed use would be minimal, as two (2) employees would be the only individuals accessing the site. The applicant's office (OC Chief Auto) is located approximately 0.3 miles from the storage lot, allowing employees to walk to the site to retrieve the vehicles.

Finding:

- E. *Adequate temporary parking to accommodate vehicular traffic to be generated by the limited duration use would be available either on-site or at alternate locations acceptable to the Zoning Administrator.*

Facts in Support of Finding:

1. The temporary storage of vehicles does not generate an excess of vehicular traffic or significantly impact the parking for nearby businesses or residents. Employees would visit the site on an as-needed basis and no customers would be permitted onsite.
2. The Public Works Department has reviewed the on-site circulation and parking layout and provided conditions of approval to ensure compliance with the related requirements.

Finding:

- F. The limited duration use is consistent with all applicable provisions of the General Plan, any applicable specific plan, the Municipal Code, and other City regulations.*

Facts in Support of Finding:

1. The General Plan and Zoning Code establish the policies and implementing regulations to promote public health, safety, general welfare, economic vitality of neighborhoods, as well as the orderly development of the City, and to ensure the beneficial development of the City. The site is designated CO-G (General Commercial Office) by the General Plan, which allows for temporary or permanent commercial uses such as vehicle storage.
2. The site is located within the Santa Ana Heights Specific Plan (SP-7) Professional, Administrative, and Commercial Consolidation District (PACC). The PACC is established to provide for the development and maintenance of professional and administrative office uses and commercial uses on lots located between South Bristol Street and Zenith Avenue in a manner which will ensure lot consolidation and vehicular access to and from South Bristol Street. Until the lots are consolidated, no permanent structures may be erected on site, as a building site of 40,000 square feet is required (i.e. all of the lots in this district). However, temporary uses are allowed subject to the approval of a limited term permit. The proposed temporary vehicle storage is an appropriate use of the site as it is passive in nature and would maintain access from Bristol Street. The project complies with all other standards of the Zoning District including landscaping, lighting, and screening.
3. The temporary vehicle storage is conditioned such that it will comply with all applicable provisions of the General Plan, Municipal Code, and other City regulations.
4. The Building and Life Safety Services Divisions, and Public Works Department have reviewed the proposed use for compliance with City regulations and found it to be acceptable with the proposed conditions of approval.

SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15304 under Class 4 (Minor Alterations to Land) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves Limited Term Permit No. XP2020-002 subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

**PASSED, APPROVED, AND ADOPTED THIS 30<sup>th</sup> DAY OF APRIL 2020.**



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Jaime Murillo  
Principal Planner

**EXHIBIT "A"****CONDITIONS OF APPROVAL**

*(Project-specific conditions are in italics)*

**Planning Division**

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Limited Term Permit.
4. *The applicant shall comply with all Department of Motor Vehicles (DMV) Requirements for the proposed use.*
5. *Outdoor storage shall be prohibited onsite, apart from vehicles, as authorized by this permit.*
6. *Screening within the chainlink fence is required and the design shall be approved by the Planning Division prior to installation. Screening shall be maintained in good condition.*
7. *Operations shall occur between the hours of 8:00 am to 7:00 pm, daily.*
8. *Only two (2) employees maximum shall access the site at one (1) time.*
9. *No trash or debris shall be stored on-site.*
10. *Test driving of vehicles originating from this property shall be prohibited.*
11. *No test drives, car washing, vehicle repair, sales, or other activities shall occur at the vehicle storage site.*
12. *The vehicles to be parked on the site shall include new or previously owned vehicles awaiting transportation and there shall be no damaged or wrecked vehicles parked or stored at the site.*
13. *The Applicant shall comply with all requirements of NBMC Section 20.42 Sign Standards. Signs with off-site commercial messages (including advertisements for OC Chief Auto), painted signs, and inflated display signs are prohibited. Attention-attracting devices are prohibited.*



14. *Limited Term Permit No. XP2020-002 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.91.050 of the Newport Beach Municipal Code, unless an extension is otherwise granted.*
15. This Limited Term Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
16. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Limited Term Permit or the processing of a new Limited Term Permit.
17. A copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
18. Prior to operation, a final landscape plan shall be submitted to the Planning Division. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
19. *Prior to operation, a layer of decorative groundcover such as decomposed granite or similar material (approved by the Planning Division) shall be installed between the 10-foot landscaping buffer and the entrance gate.*
20. *Walpak style lighting is prohibited. Lighting shall be limited to the minimum necessary for security purposes. No light shall spill onto adjacent properties. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, if in the opinion of the Director of Community Development, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.*
21. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

	Between the hours of 7:00AM and 10:00PM		Between the hours of 10:00PM and 7:00AM	
Location	Interior	Exterior	Interior	Exterior

Residential Property	45dBA	55dBA	40dBA	50dBA
Residential Property located within 100 feet of a commercial property	45dBA	60dBA	45dBA	50dBA
Mixed Use Property	45dBA	60dBA	45dBA	50dBA
Commercial Property	N/A	65dBA	N/A	60dBA

22. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
23. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday, and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.
24. No outside paging system shall be utilized in conjunction with this establishment.
25. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
26. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney’s fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City’s approval of OC Chief Auto Vehicle Storage including, but not limited to, Limited Term Permit No. XP2020-002 (PA2019-239). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

**Fire Department**

27. The rolling chain link gate/fence shall have a Knox padlock installed on the gate for Fire Department access.

**Building Division**

28. *No customers are allowed on-site.*

**Public Works Department**

29. *No more than one (1) vehicle shall enter or exit the site at a time to ensure that vehicle queue does not impact the adjacent public right-of-way. Vehicles shall be prohibited from backing out onto the public right of way.*

30. *All improvements (landscaping, fencing, etc.) shall comply with the City's sight distance requirement. See City Standard 110-L.*

31. *The applicant shall prevent debris/gravel from project site from entering the public right-of-way.*

## **RESOLUTION NO. ZA2020-037**

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA APPROVING COMPREHENSIVE SIGN PROGRAM NO. CS2020-004 AND MODIFICATION PERMIT NO. MD2020-006 TO REPLACE AN EXISTING MONUMENT SIGN WITH A PYLON SIGN THAT HAS INCREASED SIGN AREA AND WIDTH LOCATED AT 1300 BISON AVENUE (PA2020-040)**

THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by the Irvine Company with respect to property located at 1300 Bison Avenue, and legally described as Parcel 1 of Parcel Map No. 2001-140, recorded in Book 326 Pages 48-50 by the County Recorder on July 5, 2002, requesting approval of a comprehensive sign program amendment and a modification permit for the Bluffs Retail Center ("Center").
2. The subject property is located within the Commercial, Sub-Area 5 of the Bonita Canyon Planned Community (PC50) and the General Plan Land Use Element category is General Commercial (CG).
3. The Applicant requests an amendment to the Bluffs Retail Center's comprehensive sign program to replace an existing monument sign with a pylon sign. Included is a modification permit request to allow increases of the sign's width up to 8 feet, 1 inch and area up to 120 square feet. If approved, this Comprehensive Sign Program and Modification Permit would supersede Comprehensive Sign Program No. CS2013-002 and Modification Permit No. MD2013-006 (PA2013-055).
4. The subject property is not located within the coastal zone; therefore, a coastal development permit is not required.
5. A public hearing was held on April 30, 2020, in the Council Chambers at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15311 under Class 11 (Accessory Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.

2. Class 11 includes construction or replacement of minor structures such as on-premise signs accessory to (or appurtenant to) existing commercial facilities. The proposed signage is incidental and accessory to the principal commercial use of the property as a retail shopping center and will not intensify or alter the use.
3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

### SECTION 3. REQUIRED FINDINGS.

#### ***Comprehensive Sign Program***

Pursuant to Newport Beach Municipal Code (NBMC) Section 20.42.120 (Comprehensive Sign Program), the Comprehensive Sign Program allows for an increase in sign height by twenty (20) percent above that allowed and an increase in sign area by thirty (30) percent above that allowed. The Program shall comply with the standards of the Zoning Code, except that deviations are allowed with regard to sign area, total number, location, and/or height of signs. In accordance with NBMC Section 20.42.120, the following standards and facts in support of such standards are set forth:

#### Standard:

- A. *The proposed sign program shall comply with the purpose and intent of this Chapter [Chapter 20.42], any adopted sign design guidelines and the overall purpose and intent of this Section [Section 20.42.120].*

#### Facts in Support of Standard:

1. The proposed Comprehensive Sign Program complies with the purpose and intent of NBMC Chapter 20.42 (Sign Standards) because it provides the Center with adequate identification while guarding against an excessive sign proliferation. The Comprehensive Sign Program preserves and enhances community appearance by regulating the type, size, location, quantity, and illumination of signs.
2. The proposed pylon sign is necessary to adequately identify the site and to distinguish it from the neighboring retail center. It will also help to improve motorists' navigation to the site from the heavily traveled MacArthur Boulevard.
3. Due to the central building of the Center being set back almost 400 feet from MacArthur Boulevard and the subject frontage extending 780 feet, the sign is compatible with the overall massing and bulk on-site. It would also integrate well into the existing on-site signage in respect to size, height, materials, and location.

4. Per NBMC Section 20.42.060(E) (Sign Height Measurement), sign height measurement from the adjacent street (MacArthur Boulevard) has been deemed the appropriate baseline in light of the site's physical characteristics. Grade elevation slopes downward by 6 feet from MacArthur Boulevard into the landscaped area of the sign's location. Within this landscaped area, the sign is situated between two (2) mature trees. If, alternatively, the surface grade beneath the sign were used to measure height, the elevation disparity and trees would reduce the sign's visibility and effectiveness to identify the site.

Standard:

- B. The proposed signs shall enhance the overall development, be in harmony with, and relate visually to other signs included in the Comprehensive Sign Program, to the structures and/or developments they identify, and to surrounding development when applicable.*

Facts in Support of Standard:

1. Approval would permit one (1) pylon sign in a landscaped area approximately 150 feet north of the northeast corner of MacArthur Boulevard and Bison Avenue. This location is already developed with an existing monument sign that this pylon sign would replace. Approval of this request does not change the number of signs on-site, and, therefore will not contribute to an overabundance of signage that will have a detrimental effect on the neighborhood. The nearest residences orient away from the Center and are located over 600 feet away from the sign location on the south side of Bison Avenue.
2. The Center is developed with commercial tenant frontages oriented either inward and away from Bison Avenue or facing MacArthur Boulevard. The access to the Center, however, is limited to two (2) existing driveways on Bison Avenue. Moreover, the Center is located on the boundary between the cities of Newport Beach and Irvine and separated from other development areas by Bison Avenue, MacArthur Boulevard, and the 73 Freeway. This location has created a challenge for project identification, particularly for traffic entering Newport Beach from MacArthur Boulevard and Bison Avenue. The addition of the pylon sign will further identify the Center to incoming traffic to Newport Beach.
3. The proposed pylon sign will utilize architectural materials, colors, and scale that harmonize with the Center's existing character and sign program.
4. See Facts in Support of Standard A.1 and A.3.

Standard:

- C. The sign program shall address all signs, including permanent, temporary, and exempt signs.*

Fact in Support of Standard:

1. The Comprehensive Sign Program includes all project signage. Any future temporary and exempt signs not specifically addressed in the program shall be regulated by the provisions of NBMC Chapter 20.42.

Standard:

*D. The sign program shall accommodate future revisions that may be required because of changes in use or tenants.*

Facts in Support of Standard:

1. The Comprehensive Sign Program has been developed to be effective for commercial uses and allow flexibility for future changes in tenants.
2. It is not anticipated that future revisions to the Comprehensive Sign Program will be necessary to accommodate changes in tenants or uses. However, the Community Development Director may approve minor revisions to the Comprehensive Sign Program if the intent of the original approval is not affected.

Standard:

*E. The program shall comply with the standards of this Chapter, except that deviation are allowed with regard to sign area, total number, location, and/or height of signs to the extent that the Comprehensive Sign Program will enhance the overall development and will more fully accomplish the purposes and intent of this Chapter.*

Facts in Support of Standard:

1. The Comprehensive Sign Program allows for deviations with regards to the type, number, and location of wall signs. The approval conforms to the intent of NBMC Chapter 20.42, and enhances the overall development by integrating the project's signs to be appropriately located and scaled.
2. The proposed Comprehensive Sign Program is consistent with NBMC Chapter 20.42, and is being processed concurrently with a Modification Permit consistent with NBMC Section 20.52.050 to allow the sign area and sign width to be larger than the standard Zoning Code limitations in order to increase the visibility of the signs. All other previously approved signage allowances will remain the same and the facts to support their approval are unchanged.
3. The standard requirement would result in smaller tenant names, whose size would be ineffective for motorist site identification and create clutter detrimental to the overall appearance of the development.

Standard:

*F. The Approval of a Comprehensive Sign Program shall not authorize the use of signs prohibited by this Chapter [Chapter 20.42].*

Fact in Support of Standard:

1. The Comprehensive Sign Program does not authorize the use of prohibited signs.

Finding:

*G. Review and approval of a Comprehensive Sign Program shall not consider the signs' proposed message content.*

Fact in Support of Standard:

1. The proposed sign program amendment contains no regulations affecting sign message or content. The existing sign program for the Center establishes the general content of all approved sign types. The proposed amendment to the sign program carries forward the design criteria established upon the adoption of the original sign program and reinforces the high quality conveyed by the existing building architecture of the Center.

***Modification Permit***

Pursuant to NBMC Section 20.42.110, deviations in sign height greater than twenty (20) percent and sign area greater than thirty (30) percent are subject to the approval of a modification permit. In accordance with NBMC Section 20.52.050 (Modification Permits), the following findings and facts in support of such findings are set forth:

Finding:

*H. The requested modification will be compatible with existing development in the neighborhood.*

Facts in Support of Finding:

1. The subject property is located in the Bonita Canyon (PC50) Planned Community and abuts the 73 Freeway to the west. The increase in sign area and width is compatible with the existing development in the neighborhood because there are several other commercial uses located along MacArthur Boulevard that employ the use of similar signage and logos for identification purposes, such as the nearby retail center.
2. The frontage on MacArthur Boulevard measures approximately 780 feet in width and the central building for the Center is set back almost 400 feet from the street. Considering this context, the pylon sign's proposed increase of area and width are compatible with the overall massing and bulk of the Center.



Finding:

- I. The granting of the modification is necessary due to the unique physical characteristic(s) of the property and/or structure, and/or characteristics of the use.*

Facts in Support of Finding:

1. The proposed pylon sign for the Center serves as central identification for motorists travelling north and south on MacArthur Boulevard. Existing trees in the pylon sign's proposed location in a landscape area further obstruct visibility. MacArthur Boulevard, moreover, is designated as a Major Roadway (eight lanes divided) by the Public Works Department and has a speed limit of 55 miles per hour. Considering the site's location and orientation on MacArthur Boulevard, an increase in sign area and width for the pylon sign are necessary to assist motorists in identifying the center during heavy vehicular traffic.
3. The frontage on MacArthur Boulevard measures approximately 780 feet in width and the central building for the Center is set back almost 400 feet from the street. Considering this context, the pylon sign's proposed increase of area and width are compatible with the overall massing and bulk of the Center.

Finding:

- J. The granting of the modification is necessary due to practical difficulties associated with the property and that the strict application of the Zoning Code results in physical hardships that are inconsistent with the purpose and intent of the Zoning Code.*

Facts in Support of Finding:

1. The purpose and intent of the sign regulations is to provide users adequate identification while preserving and enhancing the community's appearance by regulating the type, size, location, quality, design, character, scale, color, illumination, and maintenance of signs. The sign regulations also encourage the design of signs to be complementary to the buildings and uses to which they relate and are harmonious with their surroundings.
2. The proposed increase in the maximum area and width does not interfere with the purpose and intent of the Zoning Code, as it provides for adequate identification of the site while guarding against the excessive and confusing proliferation of signs. The proposed increase addresses the practical difficulty of reduced visibility for motorists traveling in heavy vehicular traffic on MacArthur Boulevard and to identify the Center location.

Finding:

- K. There are no alternatives to the modification permit that could provide similar benefits to the Applicant with less potential detriment to surrounding owners and occupants, the neighborhood, or to the general public.*

Fact in Support of Finding:

1. NBMC Section 20.42.080 (Standards for Specific Types of Permanent Signs) allows pylon signs a maximum width of thirty (30) percent times the height (or 6 feet in this case). Section 20.42.070 (Standards for Permanent Signs) allows a maximum sign area of 1.5 times the tenant frontage or 75 square feet maximum. Due to the design of the building frontage, the increased width and area for the pylon sign is necessary to provide improved identification for the subject property. Sign alternatives would provide inadequate visibility to motorists travelling on MacArthur Boulevard.

Finding:

- L. The granting of the modification would not be detrimental to public health, safety, or welfare, to the occupants of the property, nearby properties, the neighborhood, or the City, or result in a change in density or intensity that would be inconsistent with the provisions of this Zoning Code.*

Facts in Support of Finding:

1. This approval will allow for an increase in the width and size of the pylon sign, but will not result in a change in intensity or density of the existing commercial use.
2. The proposed pylon sign would be in scale with signs in the surrounding area and will not adversely affect or be detrimental to persons, property, or improvements in the surrounding neighborhood.
3. Compliance with the Municipal Code and the attached conditions of approval is required and will further ensure that the proposed use will not be detrimental.

## SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Zoning Administrator of the City of Newport Beach hereby approves Comprehensive Sign Program No. CS2020-004 and Modification Permit No. MD2020-006, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
2. The Zoning Administrator of the City of Newport Beach hereby finds this Project exempt from the California Environmental Quality Act pursuant to Section 15311 under Class 11 (Accessory Structures) of the CEQA Guidelines, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment. The exceptions identified in Section 15300.2 do not apply.
3. This resolution supersedes Comprehensive Sign Program No. CS2013-002 and Modification Permit No. MD2013-006 (PA2013-055), which upon vesting of the rights authorized by this approval shall become null and void. However, the vested rights

granted by Comprehensive Sign Program No. CS2013-002 and Modification Permit No. MD2013-006 (PA2013-055), shall continue and are incorporated into this Comprehensive Sign Program as Exhibit "B".

4. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

**PASSED, APPROVED, AND ADOPTED THIS 30<sup>TH</sup> DAY OF APRIL, 2020.**



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Jaime Murillo  
Zoning Administrator

**EXHIBIT "A"**

## CONDITIONS OF APPROVAL

1. The development shall be in substantial conformance with the approved plans, comprehensive sign program, and sign matrix.
2. *Locations of signs are limited to the designated areas and shall comply with the limitations specified in the Sign Matrix.*
3. Sign location shall comply with the City's line of sight requirements per City Standard STD-110-L.
4. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
5. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this approval.
6. *A building permit shall be obtained prior to commencement of installation of the pylon sign.*
7. All proposed signs shall be in conformance with the approved Comprehensive Sign Program for the project site and provisions of Chapter 20.42 (Signs) of the NBMC.
8. This Modification may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
9. All signs must be maintained in accordance with Section 20.42.170 (Maintenance Requirements) of the NBMC.
10. The sign installation shall comply with the California Building Code.
11. A copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
12. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.

13. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 Planning and Zoning of the NBMC.
14. To the fullest extent permitted by law, Applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of Bluffs Center Pylon Sign, but not limited to, Comprehensive Sign Program No. CS2020-004 and Modification Permit No. MD2020-006 (PA2020-040). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Applicant, City, and/or the parties initiating or bringing such proceeding. The Applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

## RESOLUTION NO. ZA2020-038

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2020-010 TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND CONSTRUCT A NEW SINGLE-FAMILY RESIDENCE WITH AN ATTACHED TWO (2)-CAR GARAGE AND ACCESSORY STRUCTURES LOCATED AT 2642 CRESTVIEW DRIVE (PA2020-034)**

THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Brion Jeannette Architecture (Applicant), with respect to property located at 2642 Crestview Drive, requesting approval of a coastal development permit.
2. The lot at 2642 Crestview Drive is legally described as Lot 62 of Tract 1014.
3. A coastal development permit to allow the demolition of an existing single-family residence and the construction of a new three (3)-story, 3,868-square-foot, single-family residence with an attached, 635-square-foot, two-car garage. The project also includes additional appurtenances such as site walls, fences, patios, drainage devices, and landscaping. The design complies with all applicable development standards, including height, setbacks, and floor area limit, and no deviations are requested.
4. The subject property is designated Single-Unit Residential Detached (RS-D) by the General Plan Land Use Element and is located within the Single-Unit Residential (R-1) Zoning District.
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Single-Unit Residential Detached (RSD-B [6.0 – 9.9 DU/AC]) and it is located within the Single-Unit Residential (R-1) Coastal Zone District.
6. A public hearing was held on April 30, 2020, in the Council Chambers at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code (NBMC). Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is categorically exempt pursuant to Title 14 of the California Code of Regulations Section 15303, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Class 3 (New Construction or Conversion of Small Structures), because it has no potential to have a significant effect on the environment. The exceptions to this categorical exemption under Section 15300.2

are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

2. Class 3 exempts the demolition of up to three (3) single-family residences and additions of up to 10,000 square feet to existing structures. The proposed project consists of the demolition of one (1) single-family residence and the construction of a new 3,868-square-foot, single-family residence, including an attached 635-square-foot, two (2)-car garage.
3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

### SECTION 3. REQUIRED FINDINGS.

In accordance with Section 21.52.015 (Coastal Development Permits, Findings and Decision) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

#### Finding:

- A. *Conforms to all applicable sections of the certified Local Coastal Program.*

#### Facts in Support of Finding:

1. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
  - a. The maximum floor area limitation is 5,440 square feet and the proposed floor area is 4,503 square feet.
  - b. The proposed development provides the minimum required setbacks, which are 10 feet along the front property line abutting Crestview Drive, 3 feet along each side property line, and 10 feet along the rear property line abutting the alley.
  - c. The highest guardrail is less than 24 feet from established grade (12.93 feet based on the North American Vertical Datum of 1988 [NAVD 88]) and the highest ridge is no more than 29 feet from established grade, which comply with the maximum height requirements.

- d. The project includes garage parking for a total of two (2) vehicles, complying with the minimum two (2)-car garage parking requirement for single-family residences with less than 4,000 square feet of habitable floor area.
1. The neighborhood is predominantly developed with one (1)- and two (2)-story, single-family residences. The proposed design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development. Three-story homes are allowed subject to certain development standards.
  2. The development is located on an inland property in a developed area approximately 450 feet from the bay. The project site is separated from the bay (the nearest body of water) by The Bayshore Apartment complex and Newport Marina, as well as several rows of residences. The finished floor elevation of the first floor of the proposed structure is 13.90 feet (NAVD 88), which complies with the minimum 9.0-foot (NAVD 88) elevation standard for new structures. The identified distances from the coastal hazard areas coupled with the 9.0-foot (NAVD 88) finish floor elevation will help to ensure the project is reasonably safe for the economic life of the structure.
  3. The property is located in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance.
  4. A Construction Erosion Control Plan was provided to implement temporary Best Management Practices (BMPs) during construction to minimize erosion and sedimentation and to minimize pollution of run-off and coastal waters derived by construction chemicals and materials. The project design also addresses water quality through the inclusion of a post construction drainage system that includes drainage and percolation features designed to retain dry weather and minor rain event run-off on-site. Any water not retained on-site is directed to the City's storm drain system.
  5. Proposed landscaping complies with Implementation Plan Section 21.30.075 (Landscaping). A condition of approval is included that requires drought-tolerant species. Prior to issuance of building permits, the final landscape plans will be reviewed to verify invasive species are not planted.
  6. The project site is not located adjacent to a coastal view road, public access way, or coastal viewpoint as identified in the Coastal Land Use Plan. The nearest coastal viewpoint is at Lower Castaways Park, approximately 600 feet northeast, and is the project cannot be seen not from this vantage point.

Finding:



- B. Conforms with the public access and public recreation policies of Chapter 3 of the Coastal Act if the project is located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone.*

Fact in Support of Finding:

1. The project site is located between the nearest public road and the sea or shoreline in the private community of Bayshores. Developed in 1941, Bayshores is a 258-lot single-family gated community located on the Lido Channel southwest of the Coast Highway and Newport Bay Bridge. The 39-unit Anchorage Apartment complex is also located within the community. The community is accessible from Coast Highway via Bay Shores Drive, a private street. The shoreline is on the south and east sides of the community and consists of bulkheads and two small sandy beaches. Public access points to the shore can be found along Coast Highway and Castaways Park.
2. The residential lot does not currently provide nor does it inhibit public coastal access. Vertical and lateral access to the bay front is available adjacent to the Bayshores community at the Balboa Bay Club, approximately 1,800 feet from the subject property. Public access points to the shore can be found along Coast Highway and Castaways Park.
3. Coastal Land Use Plan Policy 3.1.5-3 requires public access consistent with public access policies for any new development in private/gated communities causing or contributing to adverse public access impacts. Implementation Plan Section 21.30A.040 (Determination of Public Access/Recreation Impacts) requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project replaces an existing single-family residence located on a coastal lot with a new single-family residence. Therefore, the project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities. Furthermore, the project is designed and sited so as not to block or impede existing public access opportunities.

SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No.CD2020-010, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
2. The Zoning Administrator of the City of Newport Beach hereby finds this Project exempt from the California Environmental Quality Act pursuant to Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not

damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

**PASSED, APPROVED, AND ADOPTED THIS 30<sup>th</sup> DAY OF APRIL, 2020.**



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Jaime Murillo  
Zoning Administrator

**EXHIBIT "A"**

## CONDITIONS OF APPROVAL

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The Applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of Native Birds pursuant to MBTA:
  - A. The construction area shall be inspected for active nests. If birds are observed flying from a nest or sitting on a nest, it can be assumed that the nest is active. Construction activity within 300 feet of an active nest shall be delayed until the nest is no longer active. Continue to observe the nest until the chicks have left the nest and activity is no longer observed. When the nest is no longer active, construction activity can continue in the nest area.
  - B. It is a violation of state and federal law to kill or harm a native bird. To ensure compliance, consider hiring a biologist to assist with the survey for nesting birds, and to determine when it is safe to commence construction activities. If an active nest is found, one or two short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.
3. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) shall be implemented prior to and throughout the duration of construction activity as designated in the Construction Erosion Control Plan.
4. *The elevator design shall comply with provisions of NBMC Section 20.30.060.D.6 (Elevator Shafts, Enclosed Stairwells).*
5. The discharge of any hazardous materials into storm sewer systems or receiving waters shall be prohibited. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control run-off. A designated fueling and vehicle maintenance area with appropriate berms and protection to prevent spillage shall be provided as far away from storm drain systems or receiving waters as possible.
6. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stock piles and construction materials shall be covered, enclosed on all sites, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway.

7. Trash and debris shall be disposed in proper trash and recycling receptacles at the end of each construction day. Solid waste, including excess concrete, shall be disposed in adequate disposal facilities at a legal disposal site or recycled at a recycling facility.
8. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
9. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
10. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Coastal Development Permit.
11. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
12. Prior to the issuance of building permits, the Applicant shall submit a final construction erosion control plan. The plan shall be subject to the review and approval by the Building Division.
13. Prior to the issuance of building permits, the Applicant shall submit a final drainage and grading plan. The plan shall be subject to the review and approval by the Building Division.
14. Prior to issuance of a building permit, a copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans.
15. Prior to issuance of a building permit, the Applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the Coastal Development file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11 inches by 17 inches. The plans shall accurately depict the elements approved by this Coastal Development Permit.
16. Prior to the issuance of building permits, the Applicant shall submit a final landscape and irrigation plan. These plans shall incorporate drought tolerant plantings, non-invasive plant species and water efficient irrigation design. The plans shall be approved by the Planning Division.
17. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing, and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall

be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.

18. Prior to the issuance of building permit, the Applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
19. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by the current property owner or agent.
20. This Coastal Development Permit No. CD2020-010 shall expire unless exercised within 24 months from the date of approval as specified in Section 21.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code, unless an extension is otherwise granted.
21. To the fullest extent permitted by law, Applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of Sailhouse Development Residence including, but not limited to, Coastal Development Permit No. CD2020-010 (PA2020-034). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Applicant, City, and/or the parties initiating or bringing such proceeding. The Applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages, which City incurs in enforcing the indemnification provisions set forth in this condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

## RESOLUTION NO. ZA2020-039

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2020-015 AND MODIFICATION PERMIT NO. MD2020-004 TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND CONSTRUCT A NEW THREE (3)-STORY, SINGLE-FAMILY RESIDENCE AND ATTACHED GARAGE LOCATED AT 43 BALBOA COVES (PA2020-025)**

THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by John T. Morgan Jr., with respect to property located at 43 Balboa Coves, requesting approval of a coastal development permit.
2. The property at 43 Balboa Coves is legally described as Lot 43 of Tract 1011.
3. The applicant requests a coastal development permit and modification permit to demolish an existing single-family residence and construct a new three (3)-story, 3,821-square-foot, single-family residence with an attached 697-square-foot, two (2)-car garage. The project includes accessory structures such as walls, fences, patios, drainage devices, and landscaping. The project also includes reinforcing and raising the height of an existing bulkhead to address coastal hazards protection. A modification permit is requested for a corner of the ground level and a portion of the second and third level decks to encroach a maximum of 18 inches (10 percent) into the 15-foot required waterfront setback. The proposed residence complies with all other applicable development standards including height, parking and floor area limits.
4. The subject property is designated RS-D (Single-Unit Residential Detached) by the General Plan Land Use Element and is located within the R-1 (Single-Unit Residential) Zoning District.
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RSD-A (Single Unit Residential Detached) (0.0-5.9 DU/AC) and it is located within the R-1 (Single-Unit Residential) Coastal Zone District.
6. A public hearing was held on April 30, 2020, in the Council Chambers at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is categorically exempt pursuant to Title 14 of the California Code of Regulations Section 15303, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Class 3 (New Construction or

Conversion of Small Structures), because it has no potential to have a significant effect on the environment.

2. Class 3 exempts the demolition of up to three (3) single-family residences and additions of up to 10,000 square feet to existing structures. The proposed project consists of the demolition of one (1) single-family residence and the construction of a new 3,821-square-foot, single-family residence and attached 697-square-foot garage.
3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

### SECTION 3. REQUIRED FINDINGS.

#### *Coastal Development Permit*

In accordance with Section 21.52.015 (Coastal Development Permits, Findings and Decision) of the Newport Beach Municipal Code (NBMC), the following findings and facts in support of such findings are set forth:

#### Finding:

- A. *Conforms to all applicable sections of the certified Local Coastal Program.*

#### Facts in Support of Finding:

1. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
  - a. The maximum floor area limitation is 4,934 square feet and the proposed floor area is 4,518 square feet.
  - b. The proposed development provides the minimum required setbacks of 5 feet along the front property line abutting the street and 3 feet along each side property line. The development provides a 13.5- to 25-foot setback along the waterfront, where a 15-foot setback is required. The Zoning Administrator is authorized to approve a maximum 10 percent deviation from the waterfront setback, in this case a maximum of 18 inches.
  - c. The highest guardrail is less than 24 feet from established grade (11.96 feet North American Vertical Datum of 1988 [NAVD 88]) and the highest ridge is no more than 29 feet from established grade, which comply with the maximum height requirements.

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- d. The project includes garage parking for a total of two (2) vehicles, complying with the minimum two (2)-car garage parking requirement for single-family residences with less than 4,000 square feet of habitable floor area.
  2. The neighborhood is developed with a mix of one (1)- and two (2)-story, single-family residences. A third level may be allowed subject to certain development standards. The proposed design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development.
  3. The property fronts on channel waters west of Newport Boulevard. The project site is protected by an existing private bulkhead with a height that varies from 9.28 feet to 9.32 feet (NAVD 88). The existing bulkhead will be replaced and raised to a height of 10.60 feet NAVD 88. The bulkhead will be designed and engineered to allow it to be raised in the future to protect the property if needed.
  4. A Coastal Hazards Analysis Report was prepared for the project by PMA Consulting, Inc., dated April 1, 2020. The current maximum bay water elevation is 7.7 feet (NAVD 88). According to the report, the estimated sea level rise at the site is approximately 6 feet over the next 75 years utilizing direct interpolation of the data for “high emissions 2090 and 2100” and “medium-high risk aversion,” accounting for the water level rising to 13.70 feet NAVD 88. The Newport Beach City Council has approved the use of the high estimate of the “low risk aversion” scenario, which is 3.2 feet by the year 2100, or 2.9 feet by 2094. Therefore, the sea level is estimated to likely reach 10.6 feet NAVD 88 over the next 75 years (i.e. the life of the structure). If future sea level rise is greater than the “low risk aversion” scenario by 2094 (10.6 feet NAVD 88), then the bulkhead can be raised without further encroachment towards the waterfront. Future raising of the bulkhead height would require a separate coastal development permit.
  5. The existing private bulkhead varies in height from 9.28 to 9.32 feet NAVD 88 and is proposed to be reinforced and raised to 10.6 feet NAVD 88 to address coastal hazards protection. The raising of the bulkhead requires a Coastal Development Permit (CDP) from the City of Newport Beach. The work does not require the use of mechanized equipment on the bay or beach, and the City may authorize these improvements pursuant to the Implementation Plan (IP) with the approval of a CDP. The Post-LCP (Local Coastal Program) Certification Permit and Appeal Jurisdiction Map (July 11, 2018) shows the line of the California Coastal Commission’s jurisdiction coterminous with the back of the sidewalk on the bayward side of the private bulkhead, thereby authorizing the City to permit improvements to the bulkhead that do not result in bayward encroachment or a replacement bulkhead. The bulkhead work would not impact public trust areas, submerged lands, or tidelands.
  6. The finished floor elevation of the first floor of the proposed living area is 12.55 feet NAVD 88, which exceeds the minimum 9.0-foot NAVD 88 elevation standard for new structures. The development will be required to be waterproofed to 10.6 feet NAVD 88 to accommodate future anticipated potential sea level rise.
  7. Pursuant to NBMC Section 21.30.030(C)(3)(i)(iv), the property owner will be required to enter into an agreement with the City waiving any potential right to protection to address situations in the future in which the development is threatened with damage or destruction



by coastal hazards (e.g., waves, erosion, and sea level rise). The property owner will also be required to acknowledge any hazards present at the site and unconditionally waive any claim to damage or liability against the decision authority, consistent with NBMC Section 21.30.015(D)(3)(c). Both requirements are included as conditions of approval that will need to be satisfied prior to final building inspection, and prior to the issuance of building permits, respectively.

8. The property is located in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance.
9. The project design includes a post-construction drainage system that includes drainage and percolation features designed to retain dry weather and minor rain event runoff on-site. Any water not retained on-site is directed to the City's storm drain system.
10. The property is located adjacent to a waterway. Pursuant to NBMC [Section 21.35.030 \(Construction Pollution Prevention Plan\)](#), a Construction Pollution Prevention Plan (CPPP) is required to implement temporary Best Management Practices (BMPs) during construction to minimize erosion and sedimentation and to minimize pollution of runoff and coastal waters derived from construction chemicals and materials. A CPPP has been prepared and included in the plan sets for review and approval prior to the issuance of construction permits. Construction plans and activities will be required to adhere to the approved CPPP.
11. Pursuant to NBMC [Section 21.35.050 \(Water Quality and Hydrology Plan\)](#), due to the proximity of the development to the shoreline and the development containing more than 75 percent of impervious surface area, a preliminary Water Quality and Hydrology Plan (WQHP) is required. A preliminary WQHP was prepared for the project by Commercial Development Resources (CDR), dated February 10, 2020, and includes a polluted runoff and hydrologic site characterization, a sizing standard for BMPs, use of an LID approach to retain the design storm runoff volume on site, and documentation of the expected effectiveness of the proposed BMPs. Construction plans will be reviewed for compliance with the approved WQHP prior to building permit issuance.
12. Proposed landscaping will be required to comply with Implementation Plan Section 21.30.075. A condition of approval is included that requires drought-tolerant species. Prior to issuance of building permits, the final landscape plans will be reviewed to verify invasive species are not planted.
13. The project site is not located adjacent to a coastal view road, public access way, or coastal viewpoint as identified in the Coastal Land Use Plan. The nearest coastal viewpoint is located at the Lido Channel Turning Basin on the other side of Newport Boulevard and is not visible from the site. The proposed single-family residence complies with all applicable Local Coastal Program development standards and maintains a building envelope consistent with the existing neighborhood pattern of development. Additionally, the project

does not contain any unique features that could degrade the visual quality of the coastal zone.

Finding:

- B. Conforms to the public access and public recreation policies of Chapter 3 of the Coastal Act if the project is located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone.*

Facts in Support of Finding:

1. The project site is located between the nearest public road and the sea or shoreline. Implementation Plan Section 21.30A.040 requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact, and be proportional to the impact. In this case, the project replaces an existing single-family residence located on an R-1 lot with a new single-family residence. Therefore, the project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities.
2. The project is designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.

In accordance with NBMC Section 21.52.090 (Relief from Implementation Plan Development Standard), the Zoning Administrator may approve a waiver to a development standard of the Implementation Plan only after making all of the following findings:

Finding:

- C. The Zoning Administrator has considered the following:*
- i. Whether or not the development is consistent with the certified Local Coastal Program to the maximum extent feasible; and*
  - ii. Whether or not there are feasible alternatives that would provide greater consistency with the certified Local Coastal Program and/or that are more protective of coastal resources.*

Facts in Support of Finding:

1. With the exception of the minor modification, the proposed development complies with and is consistent with the certified LCP. Fact in Support of Findings A and B above.
2. The subject property located on a channel of Newport Harbor and protected by an existing bulkhead. There are no coastal resources to protect on the property. The requested 18-inch encroachment is on an area of the lot allowed to be redeveloped with hardscape and accessory structures. Therefore, the requested encroachment will not impact coastal resource any greater than a compliant structure.

Finding:

*D. The granting of the modification is necessary due to practical difficulties associated with the property and that the strict application of the Implementation results in physical hardships.*

Facts in Support of Finding:

1. The granting of the modification is necessary due to the acutely angled waterfront setback line. The acute angle makes it difficult to design a structure with wall angles that result in functional interior rooms and deck space.
2. The acutely angled waterfront setback line makes it difficult to design a structure of similar size and siting as other residential structures in the neighborhood. The proposed structure provides more than the required setback along most of its width and requiring further reduction in the depth of the home creates a hardship for the applicant that is inconsistent with the purpose and intent of the Municipal Code.

*E. The modification complies with the findings required to approval a coastal development permit in NBMC Section 21.52.015(F).*

Fact in Support of Finding:

1. Facts in Support of Findings A and B above are hereby incorporated by reference.

*F. The modification will not result in development that blocks or significantly impedes public access to and along the sea or shoreline and to coastal parks, trails, or coastal bluffs.*

Fact in Support of Finding:

1. The property does not currently provide access to the sea or shoreline, nor does it provide access to any coastal parks, trails, or coastal bluffs.
2. The project site is not located adjacent to a coastal view road, public access way, or coastal viewpoint as identified in the Coastal Land Use Plan. The nearest coastal viewpoint is located at the Lido Channel Turning Basin on the other side of Newport Boulevard and is not visible from the site. The proposed single-family residence complies with all applicable Local Coastal Program development standards and maintains a building envelope consistent with the existing neighborhood pattern of development. Additionally, the project does not contain any unique features that could degrade the visual quality of the coastal zone.
3. Facts in Support of Finding B above are hereby incorporated by reference.

Finding:

*G. The modification will not result in development that blocks or significantly impairs public views to and along the sea or shoreline or to coastal bluffs and other scenic coastal areas.*

Facts in Support of Finding:

1. Facts in Support of Finding B above are hereby incorporated by reference.

Finding:

*H. The modification will not result in development that has an adverse effect, either individually or cumulatively, on coastal resources, including wetlands, sensitive habitat, vegetation or wildlife species.*

Fact in Support of Finding:

1. There are no coastal resources on the property nor are there any in the immediate area that could be affected by the redevelopment of the property, which is protected by an existing bulkhead that is proposed to be raised. The setback encroachment is located in an area allowed to be developed with hardscape and accessory structures. The requested encroachments will not result in greater impact to coastal resource than a compliant structure.

Finding:

*I. The granting of the modification will not be contrary to, or in conflict with, the purpose of this Implementation Plan, nor to the applicable policies of the Local Coastal Program.*

Fact in Support of Finding:

1. Relief from development standards is provided to address practical difficulties related to unique or unusual circumstances and the deviation process is part of the LCP. The proposed development complies with all applicable standards and policies of the LCP. Facts in support of Findings A, B and C are hereby incorporated by reference.

### *Modification Permit*

In accordance with Section 20.52.050.E (Modification Permits – Required Findings) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

*J. The requested modification will be compatible with existing development in the neighborhood.*

Facts in Support of Finding:

1. The neighborhood is comprised of a mix of one (1)-, two (2)- and three (3)-story residential structures. The design, bulk, and scale of the proposed development is consistent with the existing neighborhood pattern of development and expected future development.
2. The new structure is sited similarly to structures on adjacent properties. The new structure is approximately 29 feet wide and maintains or exceeds the 15-foot waterfront setback along all but 3.5 feet of the building width. Apart from its most northwesterly corner, the new structure maintains a 15- to 25-foot waterfront setback and complies with all other applicable development standards.

Finding:

*K. The granting of the modification is necessary due to the unique physical characteristic(s) of the property and/or structure, and/or characteristics of the use.*

Fact in Support of Finding:

1. The granting of the modification is necessary due to the acutely angled waterfront setback line. The acute angle makes it difficult to design a structure with wall angles that result in functional interior rooms and deck space.

Finding:

*L. The granting of the modification is necessary due to practical difficulties associated with the property and the strict application of the Zoning Code results in physical hardships that are inconsistent with the purpose and intent of the Zoning Code.*

Fact in Support of Finding:

1. The acutely angled waterfront setback line makes it difficult to design a structure of similar size and siting as other residential structures in the neighborhood. The proposed structure provides more than the required setback along most of its width and requiring further reduction in the depth of the home creates a hardship for the applicant that is inconsistent with the purpose and intent of the Zoning Code.

Finding:

*M. There are no alternatives to the modification permit that could provide similar benefits to the applicant with less potential detriment to surrounding owners and occupants, the neighborhood, or to the general public.*

Fact in Support of Finding:

1. Alternatives to the requested modification permit would be to design the new structure with acutely angled walls to match the acutely angled setback line, or to reduce the overall depth of the home by approximately 2 feet. The proposed structure already

provides more than the required setback along most of its width, and these alternatives would provide lesser benefits to the applicant by further reducing the square-footage and functional space of the new structure.

Finding:

*N. The granting of the modification would not be detrimental to public health, safety, or welfare, to the occupants of the property, nearby properties, the neighborhood, or the City, or result in a change in density or intensity that would be inconsistent with the provisions of this Zoning Code.*

Facts in Support of Finding:

1. The new structure is sited similarly to structures on adjacent properties. The new structure is approximately 29 feet wide and maintains or exceeds the 15-foot waterfront setback along all but 3.5 feet of the building width. Apart from its most northwesterly corner, the new structure maintains a 15- to 25-foot waterfront setback and complies with all other applicable development standards.
2. The proposed development maintains the intent of the Zoning Code by providing greater than the required waterfront setback along most of its width, thereby providing adequate separation, light and access to the waterfront and adjacent structures.

SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Zoning Administrator of the City of Newport Beach hereby finds this Project is categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2020-015 and Modification Permit No. MD2020-004, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

**PASSED, APPROVED, AND ADOPTED THIS 30<sup>TH</sup> DAY OF APRIL, 2020.**



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Jaime Murillo  
Zoning Administrator

**EXHIBIT "A"**

## CONDITIONS OF APPROVAL

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. *The third floor deck shall be re-designed to comply with the required setbacks.*
3. *Prior to issuance of building permits, the project plans shall be updated to reflect that the development is waterproofed up to 10.6 feet North American Vertical Datum of 1988 (NAVD 88). Flood shields (sandbags and other barriers) can be deployed across the openings to prevent flooding to the structure.*
4. *Prior to issuance of building permits, the existing bulkhead or similar flood protection improvement shall be raised or replaced to provide a minimum elevation of 10.6 feet (NAVD 88). All improvements shall occur landward of the existing bulkhead.*
5. Prior to final building permit inspection, an agreement in a form approved by the City Attorney between the property owner and the City shall be executed and recorded waiving rights to the construction of future shoreline protection devices to address the threat of damage or destruction from waves, erosion, storm conditions, landslides, seismic activity, bluff retreat, sea level rise, or other natural hazards that may affect the property, or development of the property, today or in the future. The agreement shall be binding against the property owners and successors and assigns.
6. Prior to the issuance of a building permit, the property owner shall submit a notarized signed letter acknowledging all hazards present at the site, assuming the risk of injury or damage from such hazards, unconditionally waiving any claims of damage against the City from such hazards, and to indemnify and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of development. This letter shall be scanned into the plan set prior to building permit issuance.
7. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter sensitive habitat, receiving waters, or a storm drain or result in impacts to environmentally sensitive habitat areas, streams, the beach, wetlands or their buffers. No demolition or construction materials shall be stored on public property.
8. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
9. This Coastal Development Permit does not authorize any development seaward of the private property.



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10. The applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of Native Birds pursuant to MBTA:
    - A. The construction area shall be inspected for active nests. If birds are observed flying from a nest or sitting on a nest, it can be assumed that the nest is active. Construction activity within 300 feet of an active nest shall be delayed until the nest is no longer active. Continue to observe the nest until the chicks have left the nest and activity is no longer observed. When the nest is no longer active, construction activity can continue in the nest area.
    - B. It is a violation of state and federal law to kill or harm a native bird. To ensure compliance, consider hiring a biologist to assist with the survey for nesting birds, and to determine when it is safe to commence construction activities. If an active nest is found, one (1) or two (2) short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.
  11. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) shall be implemented prior to and throughout the duration of construction activity as designated in the Construction Erosion Control Plan.
  12. The discharge of any hazardous materials into storm sewer systems or receiving waters shall be prohibited. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. A designated fueling and vehicle maintenance area with appropriate berms and protection to prevent spillage shall be provided as far away from storm drain systems or receiving waters as possible.
  13. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stockpiles and construction materials shall be covered, enclosed on all sites, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway.
  14. Trash and debris shall be disposed in proper trash and recycling receptacles at the end of each construction day. Solid waste, including excess concrete, shall be disposed in adequate disposal facilities at a legal disposal site or recycled at a recycling facility.
  15. Revisions to the approved plans may require an amendment to this Coastal Development Permit and/or Modification Permit or the processing of a new coastal development permit and/or Modification Permit.
  16. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.

17. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Coastal Development Permit and Modification Permit.
18. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
19. Prior to the issuance of building permits, the final WQHP/WQMP shall be reviewed and approved by the Building Division. Implementation shall be in compliance with the approved CPPP and WQHP/WQMP and any changes could require separate review and approval by the Building Division.
20. Prior to the issuance of building permits, the applicant shall submit a final drainage and grading plan. The plan shall be subject to the review and approval by the Building Division.
21. Prior to the issuance of building permits, a copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans.
22. Prior to issuance of building permits, the applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the Coastal Development file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11 inches by 17 inches. The plans shall accurately depict the elements approved by this Coastal Development Permit.
23. Prior to the issuance of building permits, the applicant shall submit a final landscape and irrigation plan. These plans shall incorporate drought tolerant plantings, non-invasive plant species and water efficient irrigation design. The plans shall be approved by the Planning Division.
24. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing, and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
25. Prior to the issuance of building permits, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
26. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by the current property owner or agent.

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27. This Coastal Development Permit No. CD2020-015 and Modification Permit No. MD2020-004 shall expire unless exercised within 24 months from the date of approval as specified in Section 21.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code, unless an extension is otherwise granted.
  28. Prior to the issuance of building permits, the applicant shall obtain a coastal development permit or other authorization of improvement for areas within the California Coastal Commission's permit jurisdiction, as determined by the California Coastal Commission.
  29. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Bogh Residence including, but not limited to, Coastal Development Permit No. CD2020-015 and Modification Permit No. MD2020-004 (PA2020-025). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages, which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

## RESOLUTION NO. ZA2020-040

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING LOT MERGER NO. LM2019-006, A WAIVER OF PARCEL MAP REQUIREMENT, AND COASTAL DEVELOPMENT PERMIT NO. CD2019-068 FOR A LOT MERGER AND ASSOCIATED ADDITION TO A SINGLE-FAMILY RESIDENCE LOCATED AT 107 AND 109 VIA YELLA (PA2019-250)**

THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by William Guidero, with respect to property located at 107 and 109 Via Yella, requesting approval of a lot merger and coastal development permit. The property at 107 Via Yella is legally described as Lot 388 of Tract No. 907. The lot at 109 Via Yella is legally described as Lot 387 of Tract No. 907.
2. The applicant proposes a lot merger and requests to waive the parcel map requirement for properties under common ownership. The applicant also requests an associated coastal development permit for the lot merger and a 2,251-square-foot, two (2)-story addition to the existing single-family residence located at 107 Via Yella.
3. The subject properties are designated RS-D (Single-Unit Residential Detached) by the General Plan Land Use Element and are located within the R-1 (Single-Unit Residential Zoning District).
4. The subject properties are located within the coastal zone. The Coastal Land Use Plan category is Single-Unit Residential Detached – 10.0-19.9 DU/AC (RSD-C) and they are located within the Single-Unit Residential (R-1) Coastal Zone District.
5. A public hearing was held on April 30, 2020, in the Council Chambers at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15303 and 15315 under Class 3 (New Construction or Conversion of Small Structures) and Class 15 (Minor Land Divisions) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3.
2. The Class 3 exemption includes the construction of up to three (3) single-family residences in an urbanized area. The proposed project consists of the demolition of one (1) single-family residence and a 2,251-square-foot, two (2)-story addition and alteration to an existing single-family residence.

3. The Class 15 exemption allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four (4) or fewer parcels when the division is in conformance with the General Plan and Zoning; no variances or exceptions are required; all services and access to the proposed parcels are available; the parcel was not involved in a division of a larger parcel within the previous two (2) years; and the parcel does not have an average slope greater than 20 percent. This exemption includes a minor lot merger not resulting in the creation of any new parcel that complies with the conditions specified above.
4. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

### SECTION 3. REQUIRED FINDINGS.

#### ***Lot Merger***

In accordance with Section 19.68.030 (Lot Mergers) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

#### Finding:

- A. *Approval of the merger will not, under the circumstances of this particular case, be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the City, and further that the proposed lot merger is consistent with the legislative intent of this title.*

#### Facts in Support of Finding:

1. The proposed lot merger to combine two (2) complete lots by removing the interior lot lines between them will not result in the creation of additional parcels.
2. The project is in an area with an average slope of less than 20 percent.
3. The lot merger is consistent with the purpose and intent of Title 19 (Subdivisions).
4. Any future development on the proposed parcel will be subject to the Zoning Code development standards, which are intended to promote orderly development, protect neighborhood character, and preserve public health, safety, and general welfare of the City.

Finding:

*B. The lots to be merged are under common fee ownership at the time of the merger.*

Fact in Support of Finding:

1. The two (2) lots to be merged are under common fee ownership.

Finding:

*C. The lots as merged will be consistent or will be more closely compatible with the applicable zoning regulations and will be consistent with other regulations relating to the subject property including, but not limited to, the General Plan and any applicable Coastal Plan or Specific Plan.*

Facts in Support of Finding:

1. The merged parcels will retain the Single-Unit Residential (R-1) zoning designation, consistent with the surrounding area. The R-1 Zoning District is intended to provide areas appropriate for a detached single-family residence located on a single lot.
2. The Land Use Element of the General Plan designates the subject site as Single-Unit Residential Detached (RS-D), which applies to a range of single-family residential dwelling units. The Coastal Land Use Plan designates this site as Single-Unit Residential Detached (RSD-C), which provides for density ranges from 10.0 to 19.9 dwelling units per acre. The land use will remain the same and the merger is consistent with the land use designations of the General Plan and Coastal Land Use Plan.
3. The subject property is not located within a Specific Plan area.
4. Section 20.18.030 of the Zoning Code and Section 21.18.030 of the Local Coastal Program (LCP) Implementation Plan establish minimum lot area and width requirements. The proposed merger would result in a 5,284-square-foot parcel that is in conformance to the minimum 5,000-square-foot interior lot area standard of the Zoning Code. Additionally, the proposed merger would create one (1) approximately 60-foot-wide parcel, exceeding the minimum 50-foot interior lot width standard of the Zoning Code.
5. The existing lots do not meet the minimum width or lot area requirements of the Zoning code, as the individual lots are approximately 30 feet wide and contain approximately 2,640 square feet. Merging the two (2) lots would create one (1) parcel that meets the minimum requirements of the Zoning Code and LCP Implementation Plan for lot width and area.

Finding:

*D. Neither the lots as merged nor adjoining parcels will be deprived of legal access as a result of the merger.*

Fact in Support of Finding:

1. Legal access is provided from Via Yella, and will remain unchanged. The site does not currently provide access to any other properties. Thus, no adjoining parcels will be deprived of legal access as a result of the merger.

Finding:

- E. The lots as merged will be consistent with the pattern of development nearby and will not result in a lot width, depth or orientation, or development site that is incompatible with nearby lots. In making this finding, the review authority may consider the following:*
- a. Whether the development of the merged lots could significantly deviate from the pattern of development of adjacent and/or adjoining lots in a manner that would result in an unreasonable detriment to the use and enjoyment of other properties.*
  - b. Whether the merged lots would be consistent with the character or general orientation of adjacent and/or adjoining lots.*
  - c. Whether the merged lots would be conforming or in greater conformity with the minimum lot width and area standards for the zoning district.*

Facts in Support of Finding:

1. Properties in the vicinity consist of lots of varying sizes. Although the proposed lot merger will create a larger lot, it will not create an excessively large lot in comparison to other conforming lots in the area. Existing lots in the vicinity that have similar lot area to the proposed lot include 222 Via Orvieto (5,280 square feet), 132 Via Undine (4,620 square feet) and 215 Via San Remo (6,600 square feet).
2. The proposed lot width is approximately 60 feet, which will not create an excessively wide lot in comparison to other existing lots in the area. Existing lots in the vicinity with similar lot width to the proposed lot include 222 Via Orvieto (approximately 60 feet), 132 Via Undine (approximately 52.5 feet) and 215 Via San Remo (approximately 75 feet).
3. The existing lots do not meet the minimum width or lot area requirements of the Zoning code, as the lots are approximately 30 feet wide and contain approximately 2,640 square feet each. Merging the two (2) lots would create one (1) parcel that meets the minimum requirements of the Zoning Code and LCP Implementation Plan for lot width and area.
4. Orientation and access to the parcel would remain from Via Yella. Thus, resulting lot configuration will not change the existing pattern of development in the area.

**Waiver of Parcel Map**

In accordance with Section 19.08.30.A.3 (Waiver of Parcel Map Requirement) of the Newport Beach Municipal Code, the Zoning Administrator may approve a waiver of the parcel map requirement in cases where no more than three (3) parcels are eliminated. The following finding and facts in support of such finding are set forth:

Finding:

*F. The proposed division of land complies with requirements as to area, improvement and design, flood water drainage control, appropriate improved public roads and property access, sanitary disposal facilities, water supply availability, environmental protection, and other applicable requirements of this title, the Zoning Code, the General Plan, and any applicable Coastal Plan or Specific Plan.*

Facts in Support of Finding:

1. Approval of the proposed lot merger would remove the existing interior lot line and allow the property to be utilized as a single development site. The proposed lot would comply with all design standards and improvements required for new subdivisions by Title 19, the Zoning Code, and General Plan.
2. The subject property is not subject to a Specific Plan. The property complies with the requirements of Title 21 LCP Implementation Plan.
3. The proposed lot merger combines the properties into a single parcel of land and does not result in the elimination of more than three (3) parcels.
4. The subject property is accessible from Via Yella. The site is served by all of the necessary public utilities.

***Coastal Development Permit***

In accordance with Section 21.52.015 (Coastal Development Permits, Findings and Decision) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

*G. Conforms to all applicable sections of the certified Local Coastal Program.*

Facts in Support of Finding:

1. The proposed lot merger is for development purposes and meets all of the requirements of the Local Coastal Program including NBMC Section 21.30.025 Coastal Subdivisions.
2. The lot merger is for a property within a developed neighborhood. The lots are currently utilized as two (2) individual building sites and do not provide public access or views of the sea or shoreline.
3. The proposed lot merger would result in one (1) approximately 60-foot wide by 88-foot deep parcel with an area of 5,284 square feet. The new lot would conform to the minimum lot width and area requirements identified in NBMC 21.18.030 (Residential Coastal Zoning Districts General Development Standards).



4. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
  - a. The maximum floor area limitation is 7,696 square feet and the proposed floor area is 5,216 square feet.
  - b. The proposed development provides the minimum required setbacks, which are 4 feet along the front property line abutting Via Yella, 4 feet along each side property line and 10 feet along the front property line on the strada.
  - c. The highest guardrail is less than 24 feet from established grade (13.75 feet North American Vertical Datum of 1988 [NAVD 88]) and the highest ridge is no more than 29 feet from established grade, which comply with the maximum height requirements.
  - d. The project includes garage parking for a total of three (3) vehicles, complying with the minimum three (3)-car garage parking requirement for single-family residences with more than 4,000 square feet of habitable floor area.
5. The neighborhood is primarily developed with two (2)-story single-family residences. The proposed design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development.
6. The finished floor elevation of the first floor of the proposed living area is 14.3 feet NAVD 88, which complies with the minimum 9.0-foot NAVD 88 elevation standard for new structures.
7. The property is located in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance.
8. The project site is located on an inland lot on Lido Isle. The nearest coastal viewpoint is located at the Lido Isle Bridge and is not visible from the site. The proposed single-family residence complies with all applicable Local Coastal Program development standards and maintains a building envelope consistent with the existing neighborhood pattern of development. Additionally, the project does not contain any unique features that could degrade the visual quality of the coastal zone.

Finding:

- H. *Conforms to the public access and public recreation policies of Chapter 3 of the Coastal Act if the project is located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone.*

Facts in Support of Finding:

1. The subject site is located between the nearest public road and the sea or shoreline. The site does not currently provide vertical or lateral access to the waterfront, nor would it provide access under the proposed conditions. Vertical access to the bay is available via street ends throughout the neighborhood. The project will not affect the public's ability to gain access to, use, and/or view the coast and nearby recreational facilities.
2. The lots are currently utilized as two (2) individual building sites and do not provide public access or views of the sea or shoreline.
3. The project site is not located adjacent to a coastal view road or coastal viewpoint identified by Local Coastal Program maps. The project site may be located within the viewshed of distant public viewing areas; however, the project will allow the development of a single-family residence that complies with all applicable Local Coastal Program development standards. It will also maintain a building envelope consistent with the existing and anticipated neighborhood pattern of development. Therefore, the project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts to public views. The project will not decrease availability of on-street public parking.

## SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15303 (New Construction or Conversion of Small Structures) and 15315 (Minor Land Divisions) under Class 3 and Class 15 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves Lot Merger No. LM2019-006 and Coastal Development Permit No. CD2019-068 subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal Implementation Plan, and Title 19 Subdivisions, of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

**PASSED, APPROVED, AND ADOPTED THIS 30<sup>th</sup> DAY OF APRIL, 2020.**



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Jaime Murillo  
Zoning Administrator

**EXHIBIT "A"**

## CONDITIONS OF APPROVAL

*(Project-specific conditions are in italics)*

1. The project shall be in substantial conformance with the approved lot merger exhibits and project plans stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The applicant shall comply with all federal, state, and local laws.
4. The map shall be submitted to the Public Works Department for final map review and approval. All applicable fees shall be paid.
5. Prior to the issuance of building permits for construction across the existing interior lot lines, recordation of the lot merger documents with the County Recorder shall be required.
6. *Prior to the recordation of the lot merger, a demolition permit for at least one (1) of the existing single-family developments on the project site shall be issued and finalized.*
7. *Prior to the recordation of the lot merger, the Applicant or their representative shall obtain, and receive final inspection for, a building permit to modify or replace the single-family development not demolished such that it maintains a conforming 4-foot side setback.*
8. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new Coastal Development Permit.
9. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
10. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 Planning and Zoning of the Newport Beach Municipal Code.
11. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter sensitive habitat, receiving waters, or a storm drain or result in impacts to environmentally sensitive habitat areas, streams, the beach, wetlands or their buffers. No demolition or construction materials shall be stored on public property.

12. The applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of Native Birds pursuant to MBTA:
  - A. The construction area shall be inspected for active nests. If birds are observed flying from a nest or sitting on a nest, it can be assumed that the nest is active. Construction activity within 300 feet of an active nest shall be delayed until the nest is no longer active. Continue to observe the nest until the chicks have left the nest and activity is no longer observed. When the nest is no longer active, construction activity can continue in the nest area.
  - B. It is a violation of state and federal law to kill or harm a native bird. To ensure compliance, consider hiring a biologist to assist with the survey for nesting birds, and to determine when it is safe to commence construction activities. If an active nest is found, one (1) or two (2) short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.
13. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) shall be implemented prior to and throughout the duration of construction activity as designated in the Construction Erosion Control Plan.
14. The discharge of any hazardous materials into storm sewer systems or receiving waters shall be prohibited. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. A designated fueling and vehicle maintenance area with appropriate berms and protection to prevent spillage shall be provided as far away from storm drain systems or receiving waters as possible.
15. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stockpiles and construction materials shall be covered, enclosed on all sites, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway.
16. Trash and debris shall be disposed in proper trash and recycling receptacles at the end of each construction day. Solid waste, including excess concrete, shall be disposed in adequate disposal facilities at a legal disposal site or recycled at a recycling facility.
17. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
18. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
19. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Coastal Development Permit.

20. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
21. Prior to the issuance of building permits, the applicant shall submit a final drainage and grading plan. The plan shall be subject to the review and approval by the Building Division.
22. Prior to the issuance of building permits, a copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans.
23. Prior to issuance of building permits, the applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the Coastal Development file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11 inches by 17 inches. The plans shall accurately depict the elements approved by this Coastal Development Permit.
24. Prior to the issuance of building permits, the applicant shall submit a final landscape and irrigation plan. These plans shall incorporate drought tolerant plantings, non-invasive plant species and water efficient irrigation design. The plans shall be approved by the Planning Division.
25. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing, and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
26. Prior to the issuance of building permits, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
27. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by the current property owner or agent
28. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's

approval of Bragg Lot Merger including, but not limited to, Lot Merger No. LM2019-006 and Coastal Development Permit No. CD2019-068 (PA2019-250). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.