



# 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 15, 2020.

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## ZONING ADMINISTRATOR ACTIONS MAY 14, 2020

- Item 1: GSP Waterpointe, LLC Condominiums Tentative Parcel Map No. NP2019-016 (PA2019-246)  
Site Address: 611 Poinsettia Avenue
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| Action: Approved by Resolution No. ZA2020-041 | Council District | 6 |
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- Item 2: 110 30th Street LLC Condominiums Tentative Parcel Map No. NP2020-005 and Coastal Development Permit No. CD2020-018 (PA2020-011)  
Site Address: 110 and 110 1/2 30th Street
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| Action: Approved by Resolution No. ZA2020-042 | Council District | 1 |
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- Item 3: Ghai Residence Coastal Development Permit No. CD2020-012 (PA2020-021)  
Site Address: 1124 West Ocean Front
- |   |                  |   |
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| Action: Approved by Resolution No. ZA2020-043 | Council District | 1 |
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- Item 4: 5009 Seashore LLC Residence Coastal Development Permit No. CD2019-076 (PA2019-264)  
Site Address: 5009 Seashore Drive
- |   |                  |   |
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| Action: Approved by Resolution No. ZA2020-044 | Council District | 1 |
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- Item 5: Tucci Residence Coastal Development Permit No. CD2020-006 (PA2020-016)  
Site Address: 3905 Marcus Avenue
- |   |                  |   |
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| Action: Approved by Resolution No. ZA2020-045 | Council District | 1 |
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- Item 6: Annual Review of the North Newport Center Development Agreement No. DA2007-002 (PA2009-023)  
Site Address: Fashion Island; Block 100, Block 400, Block 500, Block 600, and Block 800 of Newport Center Drive; and San Joaquin Plaza
- |   |                  |   |
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| Action: The Zoning Administrator found that the Irvine Company is in good faith compliance with the terms of the Development Agreement. | Council District | 5 |
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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. ZA2020-041

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING TENTATIVE PARCEL MAP NO. NP2019-016 FOR TWO (2)-UNIT CONDOMINIUM PURPOSES LOCATED AT 611 POINSETTIA AVENUE (PA2019-246)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by GSP Waterpointe, LLC (Applicant), with respect to property located at 611 Poinsettia Avenue, and legally described as Lot 11, Block 642 Corona del Mar Tract, requesting approval of a tentative parcel map for condominium purposes.
2. The applicant requests a tentative parcel map for two (2)-unit condominium purposes. A single-family dwelling will be demolished, and a new duplex has been permitted. No waivers of Newport Beach Municipal Code (NBMC) Title 19 (Subdivisions) are proposed. The tentative parcel map would allow each unit to be sold individually.
3. The subject property is located within the Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Element category is Two Unit Residential (RT).
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 May 14, 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 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 exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15315 under Class 15 (Minor Land Divisions) 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 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. The Tentative Parcel Map is for condominium purposes and is consistent with all of the requirements of the Class 15 exemption.

### SECTION 3. REQUIRED FINDINGS.

The Zoning Administrator determined in this case that the Tentative Parcel Map is consistent with the legislative intent of NBMC Title 20 (Planning and Zoning) and is approved based on the following findings per NBMC Section 19.12.070 (Required Findings for Action on Tentative Maps):

#### Finding:

*A. That the proposed map and the design or improvements of the subdivision are consistent with the General Plan and any applicable specific plan, and with applicable provisions of the Subdivision Map Act and this Subdivision Code.*

#### Facts in Support of Finding:

1. The Tentative Parcel Map is for two (2)-unit residential condominium purposes. A single-family dwelling will be demolished, and a new two-unit dwelling has been permitted. The proposed subdivision and improvements are consistent with the density of the R-2 Zoning District and the RT General Plan Land Use Designation.
2. The subject property is not located within a specific plan area.
3. The project has been conditioned to require public improvements, including the reconstruction of sidewalks, curbs, and gutters along the Poinsettia Avenue frontage and any damaged concrete alley panels consistent with NBMC Title 19.

#### Finding:

*B. That the site is physically suitable for the type and density of development.*

#### Facts in Support of Finding:

1. The lot is physically suitable for two (2)-unit residential development because it is regular in shape. A single-family dwelling will be demolished and a new duplex has been permitted.
2. The subject property is accessible from the alley and is adequately served by all existing utilities.

#### Finding:

*C. That the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat. However, notwithstanding the foregoing, the decision making body may nevertheless approve such a subdivision if an environmental impact report was prepared for the project and a finding was made pursuant to Section 21081 of the California*

*Environmental Quality Act that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.*

Facts in Support of Finding:

1. A single-family dwelling will be demolished and a new duplex has been permitted.
2. The property is located in an urbanized area that does not contain any sensitive vegetation or habitat.
3. The project is categorically exempt under Section 15315 (Article 19 of Chapter 3) of the CEQA Guidelines – Class 15 (Minor Land Alterations).

Finding:

*D. That the design of the subdivision or the type of improvements is not likely to cause serious public health problems.*

Fact in Support of Finding:

1. The Tentative Parcel Map is for residential condominium purposes. All improvements associated with the project will comply with all Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems. Public improvements will be required of the developer per NBMC Section 19.28.010 (General Improvement Requirements) and Section 66411 (Local Agencies to Regulate and Control Design of Subdivisions) of the Subdivision Map Act. All ordinances of the City and all Conditions of Approval will be complied with.

Finding:

*E. That the design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision. In this connection, the decision making body may approve a map if it finds that alternate easements, for access or for use, will be provided and that these easements will be substantially equivalent to ones previously acquired by the public. This finding shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to the City Council to determine that the public at large has acquired easements for access through or use of property within a subdivision.*

Fact in Support of Finding:

1. The design of the development will not conflict with easements acquired by the public at large, for access through, or use of property within the proposed development, because there are no public easements located on the property.

Finding:

*F. That, subject to the detailed provisions of Section 66474.4 of the Subdivision Map Act, if the land is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 (Williamson Act), the resulting parcels following a subdivision of the land would not be too small to sustain their agricultural use or the subdivision will result in residential development incidental to the commercial agricultural use of the land.*

Facts in Support of Finding:

1. The property is not subject to the Williamson Act because the subject property is not designated as an agricultural preserve and is less than 100 acres in area.
2. The property was previously developed with a residential use and is located in a Zoning District that permits residential uses.

Finding:

*G. That, in the case of a "land project" as defined in Section 11000.5 of the California Business and Professions Code: (1) there is an adopted specific plan for the area to be included within the land project; and (2) the decision making body finds that the proposed land project is consistent with the specific plan for the area.*

Facts in Support of Finding:

1. California Business and Professions Code Section 11000.5 has been repealed by the Legislature. However, this project site is not considered a "land project" as previously defined in Section 11000.5 of the California Business and Professions Code because the project site does not contain 50 or more parcels of land.
2. The project is not located within a specific plan area.

Finding:

*H. That solar access and passive heating and cooling design requirements have been satisfied in accordance with Sections 66473.1 and 66475.3 of the Subdivision Map Act.*

Fact in Support of Finding:

1. The Tentative Parcel Map and any future improvements are subject to Title 24 of the California Code of Regulations (the California Building Code) that requires new

construction to meet minimum heating and cooling efficiency standards depending on location and climate. The Newport Beach Building Division enforces Title 24 compliance through the plan check and inspection process.

Finding:

- I. That the subdivision is consistent with Section 66412.3 of the Subdivision Map Act and Section 65584 of the California Government Code regarding the City's share of the regional housing need and that it balances the housing needs of the region against the public service needs of the City's residents and available fiscal and environmental resources.*

Fact in Support of Finding:

1. The proposed two (2)-unit dwelling is consistent with the intended uses of the R-2 Zoning District, which allows two (2) residential units on the property. Therefore, the Tentative Parcel Map for condominium purposes will not affect the City in meeting its regional housing need.

Finding:

- J. That the discharge of waste from the proposed subdivision into the existing sewer system will not result in a violation of existing requirements prescribed by the Regional Water Quality Control Board.*

Fact in Support of Finding:

1. The new two (2)-unit dwelling will be designed so that wastewater discharge into the existing sewer system complies with the Regional Water Quality Control Board (RWQCB) requirements.

Finding:

- K. For subdivisions lying partly or wholly within the Coastal Zone, that the subdivision conforms with the certified Local Coastal Program and, where applicable, with public access and recreation policies of Chapter Three of the Coastal Act.*

Fact in Support of Finding:

1. The subject property is not within the Coastal Zone.

**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 15315 under Class 15 (Minor Land Divisions) 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 Tentative Parcel Map No. NP2019-016, subject to the conditions set forth in Exhibit "A," which is attached here to and incorporated by reference.
3. This action shall become final and effective 10 days after the adoption of this Resolution unless within such time an appeal or call for review is filed with the Director of Community Development in accordance with the provisions of NBMC Title 19 Subdivisions.

**PASSED, APPROVED, AND ADOPTED THIS 14<sup>th</sup> DAY OF MAY, 2020.**



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Jaime Murillo  
Zoning Administrator

**EXHIBIT "A"****CONDITIONS OF APPROVAL****Planning Division**

1. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
2. Prior to the recordation of the Parcel Map, the In-Lieu Park Dedication fee in effect at the time shall be assessed for one (1) unit.
3. Subsequent to the recordation of the Parcel Map, the applicant shall apply for a building permit for a description change of the subject project development from "duplex" to "condominium." The development will not be condominiums until this permit is final.
4. The building permit for the new construction shall not be final until after recordation of the parcel map.
5. 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 19 (Subdivisions) of the Newport Beach Municipal Code.
6. 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 GSP Waterpointe, LLC Condominiums including, but not limited to, Tentative Parcel Map No. NP2019-016 (PA2019-246). 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.

**Public Works Department**

7. A parcel map shall be recorded. The Map shall be prepared on the California coordinate system (NAD83). Prior to recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of said map in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Sub-article 18. **The**



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**Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.**

8. All improvements shall be constructed as required by Ordinance and the Public Works Department.
9. All damaged sidewalk panels, curb, gutter and street along the Poinsettia Avenue property frontage and any damaged concrete alley panels along the alley property frontage shall be reconstructed as determined by the Public Works Department.
10. All existing overhead utilities shall be undergrounded.
11. No above ground improvements will be permitted within the rear alley setback. Smooth transitions between neighboring properties shall be provided.
12. New sod or low groundcovers of the type approved by the City throughout the Poinsettia Avenue parkway fronting the development site shall be installed.
13. A new 36-inch box street tree shall be installed along the Poinsettia Avenue public right-of-way.
14. Each unit shall be served by its individual water meter and sewer lateral and cleanout. Each water meter and sewer cleanout shall be installed with a traffic-grade box and cover.
15. An encroachment permit is required for all work activities within the public right-of-way.
16. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L.
17. All existing private improvements within the Poinsettia Avenue right of way, including but not limited to, pavers and decorative brick hardscape shall be removed.
18. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.

**Building Division**

19. Independent utility services shall be provided for each unit.
20. Independent fire risers shall be required for each unit.
21. Construction shall comply with the California Code of Regulations.

## RESOLUTION NO. ZA2020-042

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING TENTATIVE PARCEL MAP NO. NP2020-005 AND COASTAL DEVELOPMENT PERMIT NO. CD2020-018 FOR TWO-UNIT CONDOMINIUM PURPOSES LOCATED AT 110 and 110 ½ 30<sup>th</sup> Street (PA2020-011)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by 110 30<sup>th</sup> Street, LLC (Applicant), with respect to property located at 110 and 110 ½ 30<sup>th</sup> Street, and legally described as Northeasterly 15 feet of Lot 11 and the southwesterly 15 feet of Lot 12 in Block 29 of Newport Beach, County of Orange requesting approval of a tentative parcel map and a coastal development permit for condominium purposes.
2. The Applicant requests a coastal development permit and tentative parcel map for two-unit condominium purposes. A two-unit dwelling has been demolished and a new duplex is currently under construction. No waivers of Newport Beach Municipal Code (NBMC) Title 19 (Subdivisions) are proposed. The Tentative Parcel Map would allow each unit to be sold individually. The Tentative Parcel Map also requires the approval of a coastal development permit pursuant to NBMC Title 21 (Local Coastal Program Implementation Plan).
3. The subject property is located within the Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Element category is Two-Unit Residential (RT).
4. The subject property is also located within the coastal zone. The Coastal Land Use Plan designation is Two-Unit Residential (30.0 – 39.9 DU/AC) (RT-D) and it is within the Two-Unit Residential (R-2) Coastal Zoning District.
5. A public hearing was held on May 14, 2020, in the Council Chambers and via conference call at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the 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 exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15315 under Class 15 (Minor Land Divisions) 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 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 years, and the parcel does not have an average slope greater than 20 percent. The Tentative Parcel Map is for condominium purposes and is consistent with all of the requirements of the Class 15 exemption.

### SECTION 3. REQUIRED FINDINGS.

#### *Coastal Development Permit*

The Zoning Administrator determined in this case that the Tentative Parcel Map is consistent with the legislative intent of NBMC Title 21 (Local Coastal Program Implementation Plan) and approves the coastal development permit based on the following findings per NBMC Subsection 21.52.015(F):

#### Finding:

- A. *That the proposed map conforms to all applicable sections of the certified Local Coastal Program.*

#### Facts in Support of Finding:

1. The Tentative Parcel Map is for condominium purposes and meets all of the requirements of the Local Coastal Program, including NBMC Section 21.30.025 (Coastal Zone Subdivisions).
2. 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 and Building Division standards and policies. The new duplex construction was approved and is currently under construction. This will be addressed as part of the review.
3. The Tentative Parcel Map is for a property within a developed residential neighborhood. The subject property is approximately 160 feet from the West Ocean Front boardwalk and beach, is separated by a row of existing residential development and is within the Categorical Exclusion Area. The development of the duplex was approved pursuant to the Categorical Exclusion Order (CEO2019073).

#### Finding:

- B. *Conforms with the public access and public recreation policies of Chapter 3 of the Coastal Act if the project is 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 is located between the nearest public road and the sea or shoreline. NBMC 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 is a tentative parcel map for condominium purposes. A duplex has been demolished and will be replaced with a new duplex meeting all condominium standards. As such, 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.

*Tentative Parcel Map*

The Zoning Administrator determined in this case that the Tentative Parcel Map is consistent with the legislative intent of NBMC Title 20 (Planning and Zoning) and is approved based on the following findings per NBMC Section 19.12.070 (Required Findings for Action on Tentative Maps):

Finding:

- C. That the proposed map and the design or improvements of the subdivision are consistent with the General Plan and any applicable specific plan, and with applicable provisions of the Subdivision Map Act and this Subdivision Code.*

Facts in Support of Finding:

1. The Tentative Parcel Map is for two-unit residential condominium purposes. A duplex has been demolished and a new duplex is under construction. The proposed subdivision and improvements are consistent with the density of the R-2 Zoning District and the RT General Plan Land Use Designation.
2. The subject property is not located within a specific plan area.
3. The project has been conditioned to require public improvements, including the reconstruction of sidewalks, curbs, and gutters along the 30<sup>th</sup> Street property frontage consistent with NBMC Title 19 (Subdivision Code).

Finding:

- D. That the site is physically suitable for the type and density of development.*

Facts in Support of Finding:

1. The lot is physically suitable for a duplex development because it is rectangular in shape, topographically flat, and under development with a new duplex.

2. The subject property is accessible from the alley and is adequately served by existing utilities.

Finding:

*E. That the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat. However, notwithstanding the foregoing, the decision making body may nevertheless approve such a subdivision if an environmental impact report was prepared for the project and a finding was made pursuant to Section 21081 of the California Environmental Quality Act that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.*

Facts in Support of Finding:

1. A duplex has been demolished and a new duplex is currently under construction. There will be no change in land use or density as a result of this project.
2. The property is located in an urbanized area that does not contain any sensitive vegetation or habitat.
3. The project is categorically exempt under Section 15315 (Article 19 of Chapter 3), of the CEQA Guidelines – Class 15 (Minor Land Alterations).

Finding:

*F. That the design of the subdivision or the type of improvements is not likely to cause serious public health problems.*

Facts in Support of Finding:

1. The Tentative Parcel Map is for residential condominium purposes. All improvements associated with the project will comply with all Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems. Public improvements will be required of the developer per NBMC Section 19.28.010 (General Improvement Requirements) and Section 66411 (Local Agencies to Regulate and Control Design of Subdivisions) of the Subdivision Map Act. All ordinances of the City and all Conditions of Approval will be complied with.

Finding:

*G. That the design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision. In this connection, the decision making body may approve a map if it finds that alternate easements, for access or for use, will be provided and that these easements will be substantially equivalent to ones previously acquired by the public. This finding shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to the City Council to determine that the public at large has acquired easements for access through or use of property within a subdivision.*

Facts in Support of Finding:

1. The design of the development will not conflict with easements acquired by the public at large, for access through, or use of property within the proposed development, because there are no public easements located on the property.

Finding:

*H. That, subject to the detailed provisions of Section 66474.4 of the Subdivision Map Act, if the land is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 (Williamson Act), the resulting parcels following a subdivision of the land would not be too small to sustain their agricultural use or the subdivision will result in residential development incidental to the commercial agricultural use of the land.*

Facts in Support of Finding:

1. The property is not subject to the Williamson Act because the subject property is not designated as an agricultural preserve and is less than 100 acres in area.
2. The site is developed for residential use and is located in a Zoning District that permits residential uses.

Finding:

*I. That, in the case of a "land project" as defined in Section 11000.5 of the California Business and Professions Code: (1) there is an adopted specific plan for the area to be included within the land project; and (2) the decision making body finds that the proposed land project is consistent with the specific plan for the area.*

Facts in Support of Finding:

1. California Business and Professions Code Section 11000.5 has been repealed by the Legislature. However, this project site is not considered a "land project" as previously defined in Section 11000.5 of the California Business and Professions Code because the project site does not contain 50 or more parcels of land.

2. The project is not located within a specific plan area.

Finding:

*J. That solar access and passive heating and cooling design requirements have been satisfied in accordance with Sections 66473.1 and 66475.3 of the Subdivision Map Act.*

Fact in Support of Finding:

1. The Tentative Parcel Map and any future improvements are subject to Title 24 of the California Building Code that requires new construction to meet minimum heating and cooling efficiency standards depending on location and climate. The Newport Beach Building Division enforces Title 24 compliance through the plan check and inspection process.

Finding:

*K. That the subdivision is consistent with Section 66412.3 of the Subdivision Map Act and Section 65584 of the California Government Code regarding the City's share of the regional housing need and that it balances the housing needs of the region against the public service needs of the City's residents and available fiscal and environmental resources.*

Fact in Support of Finding:

1. The new duplex is consistent with the R-2 Zoning District, which allows two residential units on the property. Therefore, the Tentative Parcel Map for condominium purposes will not affect the City in meeting its regional housing need.

Finding:

*L. That the discharge of waste from the proposed subdivision into the existing sewer system will not result in a violation of existing requirements prescribed by the Regional Water Quality Control Board.*

Fact in Support of Finding:

1. The new duplex is designed so that wastewater discharge into the existing sewer system complies with the Regional Water Quality Control Board (RWQCB) requirements.

Finding:

*M. For subdivisions lying partly or wholly within the Coastal Zone, that the subdivision conforms with the certified Local Coastal Program and, where applicable, with public access and recreation policies of Chapter Three of the Coastal Act.*

Fact in Support of Finding:

1. The subject property is within the Coastal Zone. The Facts in Support of Findings A and B above are hereby incorporated by reference.

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 15315 under Class 15 (Minor Land Divisions) 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 Tentative Parcel Map No. NP2020-005 and Coastal Development Permit No. CD2020-018, 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 NBMC Title 19 (Subdivisions) and Title 21 (Local Coastal Program Implementation Plan). 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 14<sup>th</sup> DAY OF MAY, 2020.**



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Jaime Murillo  
Zoning Administrator



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

1. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
2. Subsequent to the recordation of the Parcel Map, the applicant shall apply for a building permit for a description change of the subject project development from "duplex" to "condominium." The development will not be condominiums until this permit is final.
3. The building permit for the new construction shall not be final until after recordation of the parcel map.
4. 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 NBMC Title 19 (Subdivisions) and Title 21 (Local Coastal Program Implementation Plan).
5. 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 110 and 110 ½ 30<sup>th</sup> Street, LLC Condominiums including, but not limited to, Tentative Parcel Map No. NP2020-005 and Coastal Development Permit No. CD2020-018 (PA2020-011). 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.

**PUBLIC WORKS**

6. A parcel map shall be recorded. The Map shall be prepared on the California coordinate system (NAD88). Prior to recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of said map in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Sub-article 18. **The Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.**

7. Prior to recordation of the parcel map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Sub-article 18. Monuments (one-inch iron pipe with tag) shall be set On Each Lot Corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
8. An encroachment permit is required for all work activities within the public right-of-way.
9. All improvements shall be constructed as required by Ordinance and the Public Works Department.
10. Reconstruct the existing broken and/or otherwise damaged concrete sidewalk and curb and gutter along the 30<sup>th</sup> Street frontage and concrete alley panels along the alley frontage.
11. All existing overhead utilities shall be undergrounded.
12. All above ground improvements shall stay a minimum five-foot clear of the alley setback.
13. Each unit shall be served by its individual water service/meter and sewer lateral and cleanout. Each water meter and sewer cleanout shall be installed with a traffic-grade box and cover per City Standards.
14. Relocate existing SCE power pole and guy wire in the alley frontage.

### **BUILDING**

15. Independent utility services shall be provided for each unit.
16. Independent fire risers shall be required for each unit.
17. Construction shall comply with the California Code of Regulations.

## RESOLUTION NO. ZA2020-043

### A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2020-012 TO ALLOW THE ADDITION OF APPROXIMATELY 540 SQUARE FEET TO AN EXISTING SINGLE-FAMILY DWELLING LOCATED AT 1124 WEST OCEAN FRONT (PA2020-021)

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, with respect to property located at 1124 West Ocean Front, requesting approval of a coastal development permit.
2. The lot at 1124 West Ocean Front is legally described as Lot 7 of Block 11 of Tract 0234.
3. The applicant proposes an approximately 540-square-foot addition to an existing single-unit dwelling. The addition includes expanding the garage to create a conforming three (3)-car garage, expansions to the first and second floor living area, and the creation of a new third floor. The proposed development also includes additional appurtenances such as walls, fences, patios, hardscape, and drainage devices. The proposed residence complies with all applicable development standards including height, setbacks, and floor area limits. No deviations are requested.
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-C (Single-Unit Residential Detached – 10.0-19.9 DU/AC) and it is located within the R-1 (Single-Unit Residential) Coastal Zoning District.
6. A public hearing was held on May 14, 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 13503, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Class 3 (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 single-family residences and additions of up to 10,000 square feet to existing structures. The proposed project consists of an approximate 540-square-foot addition to an existing single-family residence.
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 (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 5,671 square feet and the proposed floor area is 4,881 square feet.
  - b. The proposed development provides the minimum required setbacks, which are 9 feet along the front property line abutting West Ocean Front, 3 feet along each side property line and 0 feet along rear property line abutting the alley.
  - c. The highest new guardrail is less than 24 feet from established grade (11.65 feet North American Vertical Datum of 1988 [NAVD88]) and the highest ridge is no more than 29 feet from established grade, which comply with the maximum height requirements.
  - d. The project includes a three (3)-car garage, complying with the minimum three (3)-car parking requirement for single-family dwellings of 4,000 square feet and greater.
2. The neighborhood is predominantly developed with two (2)- and three (3)-story, single- and two (2)-unit residences. The proposed design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development.

3. A Coastal Hazards Report and Sea Level Rise Analysis was prepared by GeoSoils, Inc., dated January 14, 2020 for the project. The current maximum tide water elevation is 7.7 feet (NAVD88). According to the report, the estimated sea level rise at the site appears to be between 3.2 and 5.5 feet for year 2100 utilizing different probabilistic scenarios, accounting for water levels rising in the range of 10.9 to 13.2 feet NAVD88. The Newport Beach City Council approved the use of the high estimate of the “low risk aversion” scenario, which is 3.2 feet by the year 2100, or 2.95 feet by 2096. Therefore, the sea level is estimated to likely reach approximately 10.65 feet NAVD88 over the next 75 years (i.e. the life of the structure). The report concludes that the proposed project is reasonably safe from shoreline erosion due to the lack of wave or wakes that can erode sand from the beach. There is a very wide (greater than 500 feet) sandy beach in front of the property. The current mean high tide line is over 580 feet from the site and it is unlikely that over the life of the structure that the mean high tide line will reach within 300 feet of the property. The finished floor elevation of the first floor of the proposed structure is 12.76 feet (NAVD88), which complies with the minimum 9.0-foot (NAVD88) elevation standard for new structures and exceeds the future likely sea level rise scenario of 10.65 feet NAVD88.
4. 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.
5. 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.
6. The property is located adjacent to the public beach. The subject site is approximately 580 feet from the ocean. 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 runoff 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.
7. Proposed landscaping complies 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.

8. Site evaluation (per Section 21.30.100 of the NBMC) revealed that the proposed three (3)-story design is consistent with the existing neighborhood pattern of development for one (1)- and two (2)-unit dwellings, and will not affect the existing views afforded from the public boardwalk or beach. The project will increase the size and height of the existing single-family dwelling and will continue to comply with all applicable development standards, including the third-floor design requirements that restrict square footage on the third floor in terms of size and location. There are no views currently through the project site, as it is developed with an existing two (2)-story, single-family dwelling with a third-floor roof deck.
9. Opportunities to enhance the visual quality of the coastal zone were also reviewed. The front of the proposed residence, which is visible from the boardwalk and public beach, will contain substantial architectural treatment and visual interest, in keeping with the design guidelines of the Zoning Code. The new third floor area is more than 30 feet from the front setback line along the boardwalk which is more than twice the minimum required 15-foot setback. Additionally, the covered roof deck is more than 19 feet from the front setback line along the boardwalk. The remodeled structure would comply with required setbacks, and will continue to maintain an additional setback along the front of the property on the first floor, beyond what is required by code. The design includes modulation of volume throughout the structure and low walls that prevent the appearance of the site being walled off from the boardwalk and streets. Therefore, the project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts to existing public views.

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.*

Facts in Support of Finding:

1. The project site is located between the nearest public road and the sea or shoreline. NBMC 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 is an addition to an existing single-family dwelling on standard R-1 lot. 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 (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.
2. Vertical access to the beach is available near the site along 11<sup>th</sup> Street and 12<sup>th</sup> Street. Once the street ends meet the boardwalk there are concrete paths leading toward the water. The closest path to the subject site is from 12<sup>th</sup> Street approximately 170 feet away. Lateral access is available on the beach and the boardwalk adjacent to the site on West Ocean Front.

SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2020-012, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
2. 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 14<sup>TH</sup> DAY OF MAY, 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. Prior to the issuance of the Certificate of Occupancy, 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.
3. 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.
4. 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.
5. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
6. This Coastal Development Permit does not authorize any development seaward of the private property.
7. 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.

8. 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.
9. 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.
10. 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.
11. 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.
12. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
13. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
14. 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.
15. 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.

16. 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.
17. 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.
18. 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.
19. 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.
20. 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.
21. 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.
22. 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.
23. 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.
24. This Coastal Development Permit No. CD2020-012 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.
25. 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 Ghai Residence including, but not limited to, Coastal Development Permit No. CD2020-012 (PA2020-021). 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. ZA2020-044

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2019-076 TO DEMOLISH AN EXISTING RESIDENTIAL DUPLEX AND CONSTRUCT A NEW THREE-STORY SINGLE-FAMILY RESIDENCE AND ATTACHED TWO-CAR GARAGE LOCATED AT 5009 SEASHORE DRIVE (PA2019-264)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by 5009 Seashore LLC, with respect to property located at 5009 Seashore Drive, requesting approval of a coastal development permit.
2. The lot at 5009 Seashore Drive is legally described as Lot 5, Block 50, Tract 523.
3. The applicant proposes to demolish an existing nonconforming duplex and construct new 1,887-square-foot, single-family residence with attached 409-square-foot garage.
4. The project will result in the reduction of one housing unit on the subject property. The coastal development permit application was deemed complete on December 27, 2019 and the property is therefore not subject to the provisions of Senate Bill 330, which became effective on January 1, 2020.
5. 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.
6. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RSD-D (Single-Unit Residential Detached) (20.0 – 29.9 DU/AC) and it is located within the R-1 (Single-Unit Residential) Coastal Zone District.
7. A public hearing was held on May 14, 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.

2. Class 3 exempts the demolition of up to three single-family residences and additions of up to 10,000 square feet to existing structures. The proposed project consists of the demolition of one residential duplex and the construction of a new 1,887-square-foot, single-family residence and attached 409-square-foot, two-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 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 2,478 square feet and the proposed floor area is 2,296 square feet.
  - b. The proposed development will provide the required setbacks, which are 5 feet along the front property line abutting the beach, 3 feet along the side property lines, and 0 feet along the rear property line abutting the alley.
  - c. The highest guardrail is less than 24 feet from established grade (13.20 feet North American Vertical Datum of 1988 [NAVD88]) 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 vehicles, complying with the minimum two-car garage parking requirement for single-family residences with less than 4,000 square feet of habitable floor area.
2. The proposed design, bulk, and scale of the development is consistent with the existing neighborhood's pattern of development and expected future development consistent with applicable development standards. The neighborhood is predominantly developed with two-story, single-family residences. However, some structures in the vicinity have three stories, including properties at 5001, 5105, and 5103 Seashore Drive.

3. The finished floor elevation of the proposed single-family residence is 15.08 feet (NAVD88), which complies with the minimum 9.00-foot (NAVD88) elevation standard. The Coastal Hazard Report concludes that the bay water elevation (currently 7.7 feet NAVD88) will not exceed the proposed flood protection curb around the proposed residence that will be a minimum of 10.65 feet (NAVD88 datum) for the anticipated 75-year life of the structure.
4. A Coastal Hazards Report prepared for the project by PMA Consulting, Inc. dated December 9, 2019, indicates a likely sea level rise projection of between 1.3 feet and 3.2 feet for the year 2100, resulting in a future water elevation of between 9.0 feet and 10.9 feet (NAVD88). The proposed finished floor elevation exceeds this projected range and is therefore protected from sea level rise under the “likely” scenario for the next 75 years. The Report also discusses shoreline erosion and concludes that the beach footprint of the site is stabilized and not subject to significant long-term erosion. Furthermore, the study also concludes that coastal hazards, including wave runup and overtopping, will not impact the property over the next 75 years and there is no anticipated need for a shoreline protection device over the life of the proposed development.
5. 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.
6. The property is located within 300 feet of coastal waters. 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 runoff 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 runoff on-site. Any water not retained on-site is directed to the City’s storm drain system.
7. Proposed landscaping complies with NBMC 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.
8. 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 project site may be located within the viewshed of distant public viewing areas; however, the project will replace an existing residential duplex with a new single-family residence that complies with all applicable Local Coastal Program (LCP) development standards. It will also maintain a building envelope consistent with the existing and anticipated neighborhood pattern of development. The site is located one lot east of 51<sup>st</sup> Street, which provides opportunities to view the beach and ocean.

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.*

Facts in Support of Finding:

1. The project site is located between the nearest public road and the sea or shoreline. NBMC 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 nonconforming residential duplex located on a standard 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. Furthermore, the project is designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.
2. The project is located adjacent to a public beach with an average width of more than 300 feet, is designed and sited so as not block or impede existing public access opportunities, and occurs within the confines of private property. Existing coastal access conditions will not be affected by the project. Coastal access is currently provided and will continue to be provided by street ends throughout the neighborhood with access to the beach and water, including the 51<sup>st</sup> Street end, which is located adjacent to the site.

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 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. 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. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2019-076, 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 14<sup>TH</sup> DAY OF MAY, 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. 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.
3. 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.
4. 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.
5. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
6. Any new development within the existing 14.5-foot deep encroachment area authorized by the existing encroachment permit shall require a new encroachment permit issued by the Public Works Department and a coastal development permit or other authorization by California Coastal Commission, unless the development is exempt from coastal development permit requirements pursuant to certified LCP Implementation Plan Section 21.52.035 and the Coastal Act.
7. 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.
- 8. 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.
  - 9. 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.
  - 10. 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.
  - 11. 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.
  - 12. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
  - 13. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
  - 14. 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.
  - 15. 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.

16. 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.
17. 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.
18. 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.
19. 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.
20. 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.
21. 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.
22. 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.
23. 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.
24. This Coastal Development Permit No. CD2019-076 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.
25. 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 5009 Seashore LLC Residence including, but not limited to, Coastal Development Permit No. CD2019-076 (PA2019-264). 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. ZA2020-045

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2020-006 TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND CONSTRUCT A NEW THREE (3)-STORY SINGLE-FAMILY RESIDENCE AND ATTACHED TWO (2)-CAR GARAGE LOCATED AT 3905 MARCUS AVENUE (PA2020-016)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Eric Aust Architect (“Applicant”), with respect to property located at 3905 Marcus Avenue, requesting approval of a coastal development permit.
2. The lot at 3905 Marcus Avenue is legally described as Lot 3 of Block 339 of Canal Section (“Property”).
3. The Applicant proposes to demolish the existing single-family residence and allow the construction of a new 2,825-square-foot, three (3)-story, single-family residence with a 562-square-foot garage. The project includes raising the existing bulkhead and replacement of tiebacks and deadmen. The design includes hardscape, walls, landscaping, and drainage facilities. The project complies with all applicable development standards and no deviations are requested. The proposed improvements are located entirely within the City’s permit jurisdiction pursuant to the Post LCP Certification Permit and Appeal Jurisdiction Map.
4. The Property is designated RT (Two-Unit Residential) by the General Plan Land Use Element and is located within the R-2 (Two-Unit Residential) Zoning District.
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RT-D (Two-Unit Residential – 20.0-29.9 DU/AC) and it is located within the R-2 (Two-Unit Residential) Coastal Zone District.
6. A public hearing was held on May 14, 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 2,825-square-foot, single-family residence and attached 562-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 (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 3,430 square feet and the proposed floor area is 3,387 square feet.
  - b. The proposed development provides the minimum required setbacks, which are 20 feet along the front property line abutting the Newport Bay, 3 feet along each side property line and 5 feet along the other property line abutting Marcus Avenue.
  - c. The highest guardrail is less than 24 feet from established grade (9.86 feet North American Vertical Datum of 1988 [NAVD88]) 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.
2. The neighborhood is predominantly developed with two (2)- and three (3)-story, single-family residences with scattered single-story properties. The proposed design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development.

3. A Coastal Hazards Report and Sea Level Rise Analysis was prepared by PMA Consulting, Inc. dated February 24, 2020, for the project. The current maximum bay water elevation is 7.7 feet NAVD88 and may exceed the existing 6.58 feet NAVD88 top of bulkhead elevation during high tide or storm events. The report analyzes future sea level rise scenarios assuming a 2.95-foot increase in the maximum water level over the next 75 years (i.e. the life of the structure). Therefore, the sea level is estimated to reach approximately 10.65 feet NAVD88 (the likely range for sea level rise over 75-year design life of the structure based on low risk aversion estimates for sea level rise provided by the State of California, Sea Level Rise Guidance: 2018 Update). Once the existing seawall/bulkhead is repaired, reinforced, and raised per the report's recommendations, flooding, wave runup, and erosion will not significantly impact this property over the proposed 75-year economic life of the development. A waterproofing material is also proposed be constructed around the perimeter of the dwelling that would protect against flooding up to an elevation of 10.65 feet (NAVD88). Flood shields (sandbags and other barriers) can be deployed across the openings to protect and prevent flooding to the structure. The report concludes that the proposed project will be safe from flooding hazards for the next 75 years with the reinforced and capped bulkhead and a flood protection material. Therefore, the project has been conditioned to raise or cap the bulkhead and include a waterproofing material up to 10.65 feet (NAVD88).
4. The finished floor elevation of the proposed single-family residence is 9.86 feet (NAVD88), which complies with the minimum 9.00-foot (NAVD88) elevation standard. The Coastal Hazards Report concludes that the bay water elevation (currently 7.7 feet NAVD88) will not exceed the proposed flood protection flashing around the single-family residence at 10.65 feet (NAVD88) for the anticipated 75-year life of the structure.
5. 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.
6. The proposed improvements including the replacement of deadmen/tiebacks and raising the bulkhead are located entirely within private property and the City's permit jurisdiction pursuant to the Post LCP Certification Permit and Appeal Jurisdiction Map. The permit jurisdiction boundary is coterminous with the exterior of the bulkhead, and no improvements are proposed bayward of the existing bulkhead. Additionally, no mechanized equipment will be required or utilized bayward of the existing bulkhead to implement the project as designed. If any improvements are requested bayward of the existing bulkhead, approval from the California Coastal Commission will be required.
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 property is located adjacent feet of coastal waters. 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 runoff 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 runoff on-site. Any water not retained on-site is directed to the City's storm drain system.
9. Pursuant to Municipal Code Section 21.35.050, due to the proximity of the development to the shoreline and the development containing more than 75 percent of impervious surface area, a Water Quality and Hydrology Plan (WQHP) is required. A preliminary WQHP has been prepared for the project by Toal Engineering, Inc. The WQHP includes a polluted runoff and hydrologic site characterization, a sizing standard for best management practices (BMPs), use of a Low Impact Design (LID) approach to retain the design storm runoff volume on site, and documentation of the expected effectiveness of the proposed BMPs.
10. Proposed landscaping complies 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
11. The project site is not located adjacent to a coastal view road or public access way, but is located near a designated Coastal Viewpoint as identified in the Coastal Land Use Plan. The nearest viewpoint is located at Newport Island Park, which is accessible to the public and provides opportunities to view the bay. The residence is not located between the park and the bay and would not obscure views from this public area. The third story of the proposed structure may be visible from the park, with two (2) existing residences obstructing views between the park and proposed residence. However, the proposed single-family residence complies with all applicable Local Coastal Program (LCP) development standards and maintains a building envelope consistent with the existing neighborhood pattern of development. The project complies with all third-floor standards of the NBMC which limit the size and location of the third floor. Additionally, the project does not contain any unique features that could degrade the visual quality of the coastal zone.

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.*



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 a standard R-2 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 (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.
2. Vertical access to the bay is available near the site along 39th Street. Lateral access is available along the bay at the Newport Island Park where there is a small access point and beach. The project does not include any features that would obstruct access along these routes.

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 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. CD2020-006, 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 14<sup>TH</sup> DAY OF MAY, 2020.**



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. *Prior to issuance of building permits, the project plans shall be updated to reflect that a waterproofing material and flashing will be constructed around the proposed residence as an adaptive flood protection device up to 10.65 feet (NAVD88). Flood shields (sandbags and other barriers) can be deployed across the openings to protect prevent flooding to the structure.*
3. *Prior to final building permit inspection for the new residence, the existing seawall shall be raised to provide a minimum elevation of 10.65 feet NAVD88. All improvements shall occur landward of the existing bulkhead. The use of mechanized equipment in Newport Bay shall be prohibited without prior approval from the California Coastal Commission.*
4. Prior to final building permit inspection for the new residence, 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 including the repair and maintenance, enhancement, reinforcement, or any other activity affecting the bulkhead, that results in any encroachment seaward of the authorized footprint of the bulkhead or other shoreline protective device. The agreement shall be binding against the property owners and successors and assigns.
5. 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.
6. 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.
7. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.

8. This Coastal Development Permit does not authorize any development seaward of the private property.
9. The use of mechanized equipment bayward of the existing bulkhead is prohibited under this Coastal Development Permit. If the use of mechanized equipment is required and/or proposed bayward of the existing bulkhead, then approval from the California Coastal Commission is required.
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 or two 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. 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.
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 or the processing of a new coastal development 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.
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 applicant shall submit a final construction erosion control plan. The plan shall be subject to the 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 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.
22. 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.
23. Prior to 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 construction pollution prevention plan (CPPP) and WQHP/WQMP and any changes could require separate review and approval by the Building Division.
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.

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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 permit, 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. This Coastal Development Permit No. CD2020-006 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.
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 Tucci Residence including, but not limited to, Coastal Development Permit No. CD2020-006 (PA2020-016). 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.