



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 29, 2020.

ZONING ADMINISTRATOR ACTIONS MAY 28, 2020

- Item 1: Youssef Land Eight, LLC Condominiums Tentative Parcel Map No. NP2020-002 (PA2020-039)
Site Address: 612 and 612 1/2 Goldenrod Avenue
Action: Approved by Resolution No. ZA2020-046 Council District 6
- Item 2: AT&T Small Cell SLC0902 Minor Use Permit No. UP2019-032 (PA2019-113)
Site Address: Public right-of-way, City streetlight number SLC0902, at the northwestern corner of 38th Street and Lake Avenue
Action: Approved by Resolution No. ZA2020-047 Council District 1
- Item 3: Stewart Residence Coastal Development Permit No. CD2019-057 (PA2019-224)
Site Address: 320 Alvarado Place
Action: Approved by Resolution No. ZA2020-048 Council District 1
- Item 4: La Plante Family Trust Mixed-Use Remodel and Addition Coastal Development Permit No. CD2019-072 (PA2019-260)
Site Address: 112 Agate Avenue
Action: Approved by Resolution No. ZA2020-049 Council District 5

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. ZA2020-046

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING TENTATIVE PARCEL MAP NO. NP2020-002 FOR TWO (2)-UNIT CONDOMINIUM PURPOSES LOCATED AT 612 and 612 ½ GOLDENROD AVENUE (PA2020-039)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Youssef Land Eight, LLC (Applicant), with respect to property located at 612 and 612 ½ Goldenrod Avenue, and legally described as Lot 14, Block 634 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 duplex has been demolished and a new two-unit dwelling is 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.
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 28, 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. An existing duplex has been demolished, and a new two-unit dwelling 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 Goldenrod 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. An existing duplex has been demolished and a new two-unit dwelling is under construction.
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. An existing duplex has been demolished and a new two (2)-unit dwelling is under construction.
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 two (2)-unit dwelling that is under construction 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. NP2020-002, 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 28th DAY OF MAY, 2020.



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. 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 Title 19 (Subdivisions) of the Newport Beach Municipal Code.
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 Youssef Land Eight, LLC Condominiums including, but not limited to, Tentative Parcel Map No. NP2020-002 (PA2020-039). 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 Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 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.**

8. 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, Subarticle 18. Monuments (1-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.
9. All improvements shall be constructed as required by Ordinance and the Public Works Department.
10. All damaged curb, gutter and sidewalk along the Goldenrod Avenue frontage and all damaged alley panels along the alley frontage shall be reconstructed per City Standard.
11. The existing street tree along the Goldenrod Avenue frontage shall be protected in place.
12. 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.
13. The existing sewer easement shall be maintained. No structural encroachments, including but not limited to stairs, foundations, walls, caissons are permitted within the limits of the existing easement.
14. All existing overhead utilities shall be undergrounded.
15. No above ground improvements are permitted within the 5-foot rear alley setback area.
16. New sod or low groundcovers of the type approved by the City shall be installed throughout the Goldenrod Avenue parkway fronting the development site.
17. An encroachment permit is required for all work activities within the public right-of-way.
18. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L.
19. 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

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

RESOLUTION NO. ZA2020-047

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING MINOR USE PERMIT NO. UP2019-032 FOR A SMALL CELL FACILITY LOCATED WITHIN THE PUBLIC RIGHT-OF-WAY ON CITY STREETLIGHT NUMBER SLC0902, NEAR THE NORTHWESTERN CORNER OF 38TH STREET AND LAKE AVENUE (PA2019-113)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by New Cingular Wireless, LLC ("Applicant"), with respect to City of Newport Beach Streetlight Number SLC0902, located within the public right-of-way, near the northwestern corner of 38th Street and Lake Avenue, requesting approval of a minor use permit.
2. The Applicant proposes the installation of a small cell wireless facility on a City-owned streetlight pole. Project implementation will be fully contained within the public right-of-way on 38th Street and includes the following: (1) Removal and replacement of an existing City streetlight; (2) Installation of a small cell wireless facility that consists of four (4) remote radio units, a raycap disconnect, and an omni-directional antenna within a 12-inch diameter screening shroud. This equipment would be fixed to the top of the replaced streetlight pole for a maximum height of 27 feet, 6 inches; and (3) Establishment of supporting equipment in an adjacent below-grade vault.
3. The streetlight is located within the public right-of-way. The proposal is regulated by City Council Policy L-23 (Siting of Wireless Telecommunications Equipment on City-Owned Property), as well as Newport Beach Municipal Code (NBMC) Chapter 20.49 (Wireless Telecommunication Facilities).
4. The project site is located within the coastal zone. It is also located between the first public roadway paralleling the sea and the sea. Pursuant to Section 21.49.040(B) (Prohibited Locations) of the NBMC, new facilities are not allowed to be located between the first public roadway paralleling the sea and the sea, unless they are generally located on an existing structure. In this case, the proposal is allowed as the facility would be installed at an existing streetlight pole location.
5. Although located within the coastal zone, the removal and installation of an existing streetlight pole is exempt from the requirements of a coastal development permit pursuant to Section 21.50.035(C)(4) (Repair and Maintenance) of the NBMC. In consultation with Coastal Commission staff, the modification of a streetlight for a small cell facility remains exempt, provided there is no visual resource impact. The project was reviewed for consistency with the Public View Protection regulations of Section 21.49.050(B) (Public View Protection) of the NBMC. It is not on a coastal bluff or canyon

nor is it adjacent to a coastal view road or public accessway, as identified on the Coastal Land Use Plan Map 4-3 (Coastal Views). The site also does not contain significant natural landforms or vegetation. While it is within approximately 175 feet of the Newport Island Park, an identified public coastal viewpoint, the proposed facility is not within the direct viewshed of the Rivo Alto and is grouped with three mature palm trees, such that it will be indistinguishable at a distance. It is also immediately across 38th Street from Lake Street Park; however, there are several mature palm trees between, and the view of the Rivo Alto is unimpacted. The project scope involves the removal and replacement of an existing City streetlight in the same location with the same luminaire height, such that it will blend with the existing streetscape. The replacement streetlight is consistent with the size, shape, style, and design of the existing pole. No above-ground mounted equipment is proposed, and the support equipment is proposed to be placed in underground handholes. All transmission equipment, including remote radio units and the raycap disconnect switch, are fully concealed within a screening shroud. The project will not have a negative impact on coastal views or coastal resources; therefore, a coastal development permit is not required.

6. A public hearing was held on May 28, 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 Sections 15302 and 15303 under Class 2 (Replacement or Reconstruction) and Class 3 (New Construction or Conversion of Small Structures), respectively, of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment. Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one (1) use to another where only minor modifications are made in the exterior of the structure.
2. In this case, the proposal includes the removal and replacement of an existing City streetlight pole to install a small telecommunications wireless facility, including below-grade accessory equipment.
3. The exceptions to the Class 3 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.

Minor Use Permit

In accordance with NBMC Subsection 20.52.020(F) (Conditional Use Permits and Minor Use Permits), the following findings and facts in support of such findings are set forth:

Finding:

A. The use is consistent with the General Plan and any applicable specific plan.

Facts in Support of Finding:

1. The project site is designated as Public Right-of-Way (ROW), which is property held in trust by the City, and allows for the construction and maintenance of public roads, crosswalks, pedestrian walkways, electric transmission lines, oil or gas pipeline, water line, sanitary or storm sewer, or other similar uses. City Council Policy L-23 (Siting of Wireless Telecommunications Equipment on City-Owned Property) governs procedures and locations for siting wireless telecommunications equipment in the ROW. Streetlights are eligible for telecom use, subject to entitlements (such as this minor use permit request), yearly rent, and a license agreement.
2. General Plan Natural Resources Goal NR 21 recommends the “minimized visual impacts of signs and utilities.” The proposed design is consistent with NR 21 by introducing no new vertical obstructions in the ROW, employing stealth elements like colorization (painting to match the streetlight pole), and installing the associated equipment below grade. Conditions of Approval No. 21 and 22 prohibit advertising signage or identifying logos on any telecom facility except for small identification, address, warning, and similar information plates. Signage required by State or Federal regulations shall be allowed in its smallest permissible size.
3. General Plan Land Use Policy LU 6.1.3 promotes “architecture and planning that complements adjoining uses.” The proposed design adjoins residential uses and aligns with LU 6.1.3 by copying the size, shape, style, and design of the existing streetlight pole to decrease potential disruption of the visual environment. Adverse impact to circulation, aesthetics, sounds, or odor are not anticipated from project implementation.
4. General Plan Land Use Policy LU 4 calls for the “management of growth and change to protect and enhance the livability of neighborhoods and achieve distinct and economically vital business and employment districts, which are correlated with supporting infrastructure and public services and sustain Newport Beach’s natural setting.” The proposed small cell facility upholds the intent of LU 4 by providing infrastructure to add system capacity for service gaps that may occur for residents and businesses of the area in regular and high demand periods. It also benefits the community by improving the existing coverage and capacity to increase the voice and data system already in use by its customers. The facility is designed to adapt and accept

future technologies, such as 5G, and will help meet local demand and sustain the livability of the area.

5. The project site is not located within a specific plan area

Finding:

B. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.

Facts in Support of Finding:

1. See Fact in Support of Finding A.1.
2. Wireless telecommunication facilities are regulated by NBMC Chapter 20.49 (Wireless Telecommunication Facilities). Installing small cell equipment in the ROW assigns the project a Class 3 specification (Public Right-of-Way Installations) and requires the Applicant to obtain a minor use permit from the Zoning Administrator (NBMC Section 20.49.060 [Permit Review Procedures]).
3. NBMC Subsection 20.49.040(A) (Preferred Locations) prioritizes telecom facilities from most preferred (1) to least preferred (4) as follows: (1) collocation of a new facility at an existing facility; (2) Class 1 (Stealth/Screened); (3) Class 2 (Visible Antennas); Class 3 (Public Right-of-Way); and (4) Class 4 (Freestanding Structure). Although lower on the listing of priority facilities, the proposed facility consists of one (1) small cell facility that is designed to not visually dominate the surrounding area and instead to blend into the existing block.
4. NBMC Section 20.49.050 (General Development and Design Standards) requires projects to be visually compatible with surrounding structures. In reviewing this application, the Zoning Administrator shall consider the proposed facility's use of color blending, equipment screening, and the limited size of the equipment designed consistently with the aforementioned criteria. All telecommunications equipment on top of the streetlight pole would be concealed within a painted-to-match 12-inch diameter shroud. The proposed small cell facility would rely on likeness with the streetlight pole through style, color, and material to help disguise its presence. Engineering of the replacement streetlight pole accommodates and withstands the weight of the small cell equipment and has ability to display a future City banner, if needed. Electrical and wiring components of the telecommunications equipment are designed to be fully contained within the new streetlight pole. The overall height of 27 feet, 6 inches from finished grade to the top of the proposed facility complies with the maximum allowed. Equipment not contained within the shroud on the streetlight pole would be out of sight, located below the ground in the adjacent ROW. Condition of Approval No. 33 requires approved design drawings from Southern California Edison (SCE) of the power supply to the small cell facility before construction of the facility is to commence.

5. Existing residential properties that surround the site are in the R-1 (Single-Unit Residential) and R-2 (Two-Unit Residential) Zoning Districts. These residentially zoned sites allow for structures up to 24 feet for flat roof elements and 29 feet to the ridge of a sloped roof. The overall height of existing Streetlight No. SLC0902 sits below the maximum allowable height for residential structures and the proposed replacement streetlight with small cell equipment on top will also sit below this maximum by 1 foot, 6 inches.
6. The streetlight is separated from the nearest residences by a triangular-shaped vacant parcel to the west and the 38th Street right-of-way to the southeast. These distances provide a larger buffer from residential structures than any other streetlight location in the vicinity. Furthermore, keeping the luminaire the same height as the existing streetlight lessens visual obtrusion from the proposed small cell facility with the line of the existing development.
7. Submitted materials from the Applicant demonstrate the proposal would conform with Federal Communications Commission (FCC) Rules and Regulations regarding safety and radio frequency (RF) emissions.
8. The proposed telecom facility will comply with applicable requirements of the NBMC with construction as shown on the plans and implementation of the conditions of approval.

Finding:

- C. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.*

Facts in Support of Finding:

1. City of Newport Beach Streetlight No. SLC0902 is located within the public right-of-way on the northwestern side of 38th Street near the northwestern corner of the Lake Avenue intersection. It is immediately adjacent to a vacant parcel that is triangular and approximately that is approximately 65 feet wide at its base. Beyond this parcel to the northwest is a block of two (2)-unit residential development. All surrounding land uses are residential and vary in density from two (2)- to single-unit residential. The only exceptions are the 38th Street Park and the Newport Island Park, which are both designated Parks and Recreation (PR).
2. Under the new FCC Order, wireless providers are not required to demonstrate a significant coverage gap, a qualification previously required by local jurisdictions in order to support an application. Pursuant to the Order, the City cannot “materially [inhibit] the introduction of new services or the improvement of existing services.” Moreover, pursuant to Section 332(c)(7)(B)(i)(II) of U.S. Code Title 47 (Telecommunications), the City may “not regulate the placement, construction or modification of wireless service facilities in a manner that prohibits the provision of personal wireless services.” Although

not required, the Applicant produced a coverage map for the project. This map indicates the proposed facility would boost the supply of capacity and coverage in the vicinity.

3. Streetlight No. SLC0902 serves as a part of the City's existing streetlight inventory. The Applicant proposes to: (1) remove and replace SLC0902 with a new streetlight in the same location; (2) maintain the existing luminaire height of 21 feet; (3) install telecommunications equipment for a small cell wireless facility on top of the new streetlight pole resulting in an overall height of 27 feet, 6 inches; and (4) establish new below-grade support equipment adjacent to the streetlight, within the public right-of-way.
4. The replacement streetlight pole design is consistent with the size, shape, style, and design of that existing, including the attached light arm and luminaire. For safety and circulation of the area during construction, Condition of Approval No. 37 requires traffic control plans illustrating compliance with the 2016 WATCHBook to be reviewed and approved by the Public Works Department prior to the issuance of any building permit.
5. The proposed telecom facility is anticipated to enhance coverage and capacity for residents, visitors and businesses in the neighborhood by providing wireless access to voice and data transmission services. The proposed telecom facility is not expected to result in any material changes to the character of the local community.
6. See Facts in Support of Finding B.4, B.5, B.6 and B.7.
7. The proposed facility will be unmanned, will have no impact on the circulation system, and, as conditioned, will not generate noise, odor, smoke, or any other adverse impacts to adjacent land uses.

Finding:

D. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.

Facts in Support of Finding:

1. Adequate public and emergency vehicle access, public services, and utilities are provided to and around the subject site, and the proposed use will not change this.
2. The proposed facility will be unmanned and will have no permanent impact on the circulation system and adjacent land uses due to its location in the parkway, outside of existing vehicle or pedestrian circulation areas.
3. The Public Works Department and Utilities Department have reviewed the project proposal and do not have any concerns regarding access, public services, or utilities provided to the existing neighborhood and surrounding area.

Finding:

E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.

Facts in Support of Finding:

1. The proposed facility will only require periodic maintenance and will not generate any type of significant adverse impacts to the environment, such as noise, odor, smoke, etc.
2. The proposed facility must and will comply with the applicable Federal and State rules, regulations and standards thus, ensuring public health and safety.
3. See Facts in Support of Finding B.4, B.5, B.6, B.7, and B.8
4. The proposed telecom facility will be effectively blended based upon the design and location with the incorporation of the conditions of approval to the greatest extent feasible. As a result, the proposed facility at this location is not expected to result in conditions that are materially detrimental to nearby property owners, residents, and businesses, nor to public health or safety.

Wireless Telecommunications Facility

In accordance with NBMC Subsection 20.49.060(H)(1) (General Findings for Telecom Facilities), the following additional findings and facts in support of such findings are set forth:

Finding:

F. The proposed telecom facility is visually compatible with the surrounding neighborhood.

Facts in Support of Finding:

1. See Facts in Support of Finding B.4, B.5, and B.6.
2. The closest residentially zoned property is located approximately 40 feet southeast of the project site and is buffered by the 38th Street right-of-way, which has a 4- to 5-foot-wide parkway area with vegetation of varying heights on its southeastern side. The proposed streetlight will blend in with the surrounding streetscape. There are no public parks immediately adjacent to the proposed project. The proposed facility and below-grade accessory equipment meets the City's design parameters approved by the City's Master License Agreement, which emphasizes stealth techniques and best practices to not be materially detrimental to the surrounding area.

Finding:

G. The proposed telecom facility complies with height, location and design standards, as provided for in this chapter.

Facts in Support of Finding:

1. The 27-foot, 6-inch tall small cell facility would comply with the maximum height limit of 35 feet for telecom facilities installed on streetlights within the public right-of-way.
2. See Facts in Support of Finding B in its entirety.
3. The application includes documentation indicating the need to provide and improve coverage to the residential areas within the City of Newport Beach. Moreover, the additional system capacity provided by the proposed facility will address service gaps that occur during high demand periods, as well as service gaps that exist at all demand periods to the surrounding area. The proposed small cell site will help AT&T to meet its coverage objectives and improve coverage to nearby areas that are currently marginal.

Finding:

H. An alternative site(s) located further from a residential district, public park or public facility cannot feasibly fulfill the coverage needs fulfilled by the installation at the proposed site.

Facts in Support of Finding:

1. See Fact in Support of Finding C.2.
2. Three nearby streetlights were identified and investigated by the Applicant as possible alternate locations for this small cell facility; however, all sites were found by the Applicant to be not viable. Furthermore, they are less desirable from an aesthetic standpoint, as there is minimal setback from the residential structures and nearly no landscaping to help soften the facility and blend it into the existing streetscape
 - a. Alternative Site #1 at City Streetlight No. SLC0903 is located approximately 135 feet southwest of the proposed location. This pole is located on a narrow sidewalk immediately in front of a three-story residential structure that is oriented towards 38th Street at the River Avenue intersection. The existing pole is approximately 3 feet, 6 inches from the private concrete block wall and only 10 feet from the residential structure without any landscaping in between. Installation of a small cell facility with its necessary underground supporting equipment at this location would not comply with Americans with Disabilities Act (ADA) requirements and would further constrict pedestrian movement along the sidewalk area. Additionally, this alternative would be less desirable, as there are no softening features that would help blend the facility into the streetscape

- b. Alternative Site #2 at City Streetlight No. SLC0901 is located approximately 210 feet southeast of the proposed location. This pole is located on a narrow sidewalk immediately in front of a two-story residential structure that is oriented towards Lake Avenue at the 37th Street intersection. The existing pole is approximately 4 feet from the private fence and only 11 feet from the residential structure without any landscaping in between. Installation of a small cell facility with its necessary underground supporting equipment at this location would not comply with ADA requirements and would further constrict pedestrian movement along the sidewalk area. Additionally, this alternative would be less desirable, as there are no softening features that would help blend the facility into the streetscape
- c. Alternative Site #3 at City Streetlight No. SLC0904 is located approximately 227 feet northwest of the proposed location. This pole is located immediately adjacent to the front patio of an existing, single-story residence. The existing pole is approximately 3 feet from the private wall and only 7 feet from the residential structure with minimal landscaping in between. Installation of a small cell facility with its necessary underground supporting equipment at this location would not comply with ADA requirements and would further constrict pedestrian movement along the sidewalk area. Additionally, this alternative would be less desirable, as there are no softening features that would help blend the facility into the streetscape.

Finding:

- 1. An alternative plan that would result in a higher preference facility class category for the proposed facility is not available or reasonably feasible and desirable under the circumstances.*

Facts in Support of Finding:

1. See Fact in Support of Finding C.2.
2. AT&T's analysis concluded that a more preferred location as defined by NBMC Subsection 20.49.040(A) (Preferred Locations), such as a collocation or a Class 1 or 2 facility, would not be technically feasible from an RF or construction perspective. The analysis explained that small cell facilities are low powered and must be located at the precise location selected to serve the network traffic demands of the specific limited area. Further, this type of service cannot be accomplished with a traditional macro collocation or building mounted site in the area.

NOW, THEREFORE, BE IT RESOLVED:

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15302 and 15303 under Class 2 (Replacement or Reconstruction) and Class 3 (New Construction or Conversion of Small Structures), respectively, of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no

potential to have a significant effect on the environment. The exceptions to the Class 3 exemption do not apply.

2. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2019-032, 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 20 Planning and Zoning.

PASSED, APPROVED, AND ADOPTED THIS 28TH DAY OF MAY, 2020.



Jaime Murillo
Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

Planning Division

1. The development shall be in substantial conformance with the plans, including elevation exhibits and visual simulations, stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
4. The telecom facility approved by this permit shall comply with all applicable Federal and State rules, regulations, and standards.
5. The replacement pole shall be reconstructed in the exact location of the existing streetlight pole.
6. The reconstructed streetlight pole design shall be consistent with the size (including diameter), shape, style, and design of the existing streetlight pole to the greatest extent feasible, including the attached light arm and luminaire. All mounted equipment shall be painted to match the color and style of the replacement streetlight pole.
7. All accessory support equipment of this facility shall be installed underground.
8. All electrical and antenna wiring shall be fully encased within the reconstructed streetlight pole.
9. The telecom facility approved by the Use Permit shall comply with any easements, covenants, conditions, or restrictions on the underlying City-trust property upon which the facility is located.
10. Anything not specifically approved by this permit is not permitted and must be addressed in a separate and subsequent review.
11. Prior to building permit final, a Height Certification Inspection shall be required prior to final of building permits. The small cell facility and base streetlight pole approved by this permit shall not exceed a total of 27 feet, 6 inches in height from existing grade. The top of the new luminaire shall not exceed a total of 21 feet in height from existing grade and shall match the height and shape of the existing luminaire.

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12. Prior to building permit issuance, all contractors and subcontractors shall have a valid City of Newport Beach business license.
 13. 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.
 14. The Applicant shall continually maintain the wireless telecom facility so that it retains its original appearance at the time the building permit is finalized by the City of Newport Beach.
 15. On an annual basis, the Applicant shall conduct maintenance inspections of the wireless telecom facility, including the small cell facility and below-grade equipment areas, and make all necessary repairs. The Community Development Director may require additional inspections and/or maintenance activities at his/her discretion.
 16. The Applicant shall not prevent the City of Newport Beach from having adequate spectrum capacity on the City's 800 MHz radio frequencies at any time.
 17. The facility shall transmit at the approved frequency ranges established by the FCC. The Applicant shall inform the City in writing of any proposed changes to the frequency range in order to prevent interference with the City's Public Safety radio equipment.
 18. The telecommunications facility shall at no time interfere with the frequencies used by the City of Newport Beach for public safety. "Comprehensive advanced planning and frequency coordination" engineering measures shall prevent interference, especially in the choice of frequencies and radio ancillary hardware. This is encouraged in the "Best Practices Guide" published by the Association of Public-Safety Communications Officials-International, Inc. ("APCO"), and as endorsed by the FCC.

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19. Should interference with the City's Public Safety radio equipment occur, use of the telecom facility authorized by this permit may be suspended until the radio frequency interference is corrected and verification of the compliance is reported.
 20. The Applicant shall provide a "single point of contact" for carriers in its Engineering and Maintenance Departments that is monitored 24 hours per day to ensure continuity on all interference issues, and to which interference problems may be reported. The name, telephone number, and email address of that person shall be provided to the Community Development Department and Newport Beach Police Department's Support Services Commander prior to activation of the facility. If the point of contact changes, the City shall be immediately alerted and updated.
 21. No advertising signage or identifying logos shall be displayed on the telecom facility except for small identification, address, warning, and similar information plates. A detail of the information plates depicting the language on the plate shall be included in the plans submitted for issuance of building permits.
 22. Appropriate information warning signs or plates shall be posted on the base streetlight pole of the transmitting antenna. In addition, contact information (e.g., a telephone number) shall be provided on the warning signs or plates. The location of the information warning signs or plates shall be depicted on the plans submitted for construction permits. Signage required by State or federal regulations shall be allowed in its smallest permissible size.
 23. Prior to the final of building permits, the Applicant shall schedule an evening inspection by the Code Enforcement Division to confirm compliance with lighting. The telecom facility shall be lighted to the extent deemed necessary by the Newport Beach Police and Utilities Departments for security lighting and consistency with other streetlights in the area.
 24. The Applicant shall maintain the telecom facility in a manner consistent with this approval.
 25. The Applicant shall ensure that its telecom facility complies with the most current regulatory, operations standards, and radio frequency emissions standards adopted by the FCC. The Applicant shall be responsible for obtaining and maintaining the most current information from the FCC regarding allowable radio frequency emissions and all other applicable regulations and standards. This information shall be made available by the Applicant upon request of the Community Development Director.
 26. The facility shall comply with all applicable provisions of U.S. Code Title 47 (Telecommunications) rules and regulations, including those related to FCC Radio Frequency safety.
 27. Prior to final of building permits, the Applicant shall schedule an inspection by the Planning Division to ensure materials and colors match existing architecture as

illustrated in the approved photographic simulations and in conformance with NBMC Section 20.49.050.

28. Any operator who intends to abandon or discontinue use of a telecom facility must notify the Planning Division by certified mail no less than thirty (30) days prior to such action. The operator shall have ninety (90) days from the date of abandonment or discontinuance to reactivate use of the facility, or remove the telecom facility and restore the site.
29. The City reserves the right and jurisdiction to review and modify any permit approved pursuant to NBMC Chapter 20.49, including the conditions of approval, based on changed circumstances. The operator shall notify the Planning Division of any proposal to change the height or size of the facility; increase the size, shape, or number of antennas; change the facility's color or materials or location on the site; or increase the signal output above the maximum permissible exposure ("MPE") limits imposed by the radio frequency emissions guidelines of the FCC. Any changed circumstance shall require the operator to apply for a review of the modification, and possible amendment to the use permit, prior to implementing any change.
30. Minor Use Permit No. UP2019-032 shall expire unless exercised within 24 months from the date of approval as specified in NBMC Section 20.54.060 (Time Limits and Extensions), unless an extension is otherwise granted.
31. Construction activities shall comply with NBMC Section 10.28.040, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7 a.m. and 6:30 p.m., Monday through Friday. Noise-generating construction activities are not allowed on Saturdays, Sundays or holidays.
32. This Use 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.
33. A copy of the Resolution, including conditions of approval Exhibit "A," and approved drawings from Southern California Edison (SCE) for the power supply and design, shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
34. The Applicant shall promptly notify the City if the landscaped parkway of the subject streetlight pole is negatively affected or otherwise damaged by project implementation.
35. 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 AT&T Small Cell SLC0902, including, but not limited to, Minor Use Permit No. UP2019-032 (PA2019-113). 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

36. Prior to the issuance of a building permit, an encroachment permit shall be required.
37. Prior to the issuance of a building permit, traffic control plans illustrating compliance with the 2016 WATCHBook requirements shall be reviewed and approved by the Public Works Department before their implementation. Large construction vehicles shall not be permitted to travel narrow streets as determined by the Public Works Department. Disruption caused by construction work along roadways and by movement of construction vehicles shall be minimized by proper use of traffic control equipment and flagman.

RESOLUTION NO. ZA2020-048

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2019-057 TO REPLACE AN EXISTING FLAT ROOF WITH A SLOPED ROOF AND REMODEL AN EXISTING NONCONFORMING DUPLEX LOCATED AT 320 ALVARADO PLACE (PA2019-224)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Jeff Roberts and Associates, with respect to property located at 320 Alvarado Place, requesting approval of a coastal development permit.
2. The lot at 320 Alvarado Place is legally described as Lot 49, Block C of the Newport Bay Tract.
3. The applicant proposes to replace an existing flat roof with a sloped roof and to remodel an existing non-conforming two-unit residence. The existing flat roof reaches 20 feet 8 inches, whereas the proposed sloping roof will reach a maximum of 26 feet 9.5 inches. The height of the existing structure will increase by approximately 6 feet (30 percent). The project complies with maximum height standards and no additional square footage is proposed. The existing duplex is non-conforming because it is a two-unit dwelling located in the R-1 zoning district and only provides two parking spaces where two are required per dwelling unit. The existing duplex is also non-conforming to rear and front setback requirements. The existing building encroaches one foot into the required five-foot rear alley setback and would remain as part of the proposed project. The existing balcony at the front of the building encroaches approximately 2 feet 10 inches into the front yard setback of 5 feet, and proposed work in this area would be limited to repair and maintenance. No new encroachments are proposed.
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-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.
6. A public hearing was held on May 28, 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 15301, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Class 1 (Existing Facilities), because it has no potential to have a significant effect on the environment.
2. Class 1 includes remodels of existing structures. The proposed project consists of façade changes and replacement of a flat roof with a sloped roof on an existing duplex.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The property is currently developed with a 2,204.5 square foot duplex with a two-space carport. The applicant requests to repair and maintain the interior of the duplex, improve the façade, and replace the existing roof. The height of the duplex will increase from 20 feet 8 inches to approximately 26 feet 9.5 inches, which is an increase of approximately 30 percent.
2. The property is zone R-1, which provides for the construction of a single-family residence. The use is considered legal nonconforming due to density because the structure includes two dwelling units where only one unit is allowed by the current Newport Beach Municipal Code (NBMC). Building permit records indicate that the structure was legally constructed as a duplex with attached carport in 1966. Pursuant to Section 21.38.050 and 20.38.050 (Nonconforming Uses) of the NBMC, improvements to the residence are limited to minor modifications only, such as repair and maintenance.
3. The property is also considered legally non-conforming due to parking, as two parking spaces are provided where four (two per unit) are required for a duplex.
4. The structure is legally nonconforming due to setbacks, as the existing second floor balcony is setback approximately 2 feet 2 inches from the front property instead of the required 5 feet. The balcony is an accessory structure that is limited to repair and maintenance. The proposed support columns located on the balcony are new and will comply with the 5-foot front yard setback. The second floor is also non-conforming due to rear setback requirements.
5. A Coastal Development Permit is required because 1) the project includes an increase in height of greater than 10 percent from existing conditions, 2) the existing structure does not include two parking spaces per unit therefore, the project cannot be excluded

pursuant to the Newport Beach Categorical Exclusion Order CE-5-NPB-16-1-A1, and 3) the project does not qualify for a Waiver for de minimus development because the property is located within the Coastal Commission's Appeal Jurisdiction.

6. The existing duplex includes two stories with an outdoor staircase on the second-floor deck that provides access to the roof. However, there is no protective barrier (i.e. parapet or guardrail) on the roof, which does not comply with current building code standards. The proposed remodel includes removal of the existing flat roof and replacement with a sloped roof. Therefore, the existing staircase to the roof would be walled off and inaccessible, and the existing safety/fall hazard would be eliminated.
7. The proposed development complies with all other applicable residential development standards including, but not limited to, floor area limitation, setbacks, and height.
 - a. The maximum floor area limitation is 2,880 square feet and the proposed floor area is 2,204.5 square feet. No additional floor area is proposed.
 - b. The existing development provides most of the minimum required setbacks, which are 5 feet along the front property line abutting Alvarado Place, 3 feet along each side property line and 5 feet along the rear property line abutting the alley. The existing balcony railing is nonconforming due to front setback requirements and the second floor is non-conforming due to rear setback requirements. The existing second floor balcony is setback approximately 2 feet 2 inches from the front property instead of the required 5 feet. The balcony is an accessory structure that is limited to repair and maintenance. The proposed support columns are new and will be located outside of the five-foot front yard setback. The second floor is nonconforming because it encroaches one foot into the required five-foot rear alley setback. No change or increase to this legal nonconforming encroachment is proposed.
 - c. The highest guardrail is on the second-floor balcony and is less than 24 feet from established grade (7.8 feet NAVD88). The highest ridge is no more than 29 feet from established grade, which complies with the maximum height requirements.
8. The neighborhood is predominantly developed with two-story, single-family and multi-family residences. The proposed design, bulk, and scale of the roof change and façade remodel is consistent with the existing neighborhood pattern of development.
9. The development is located on an inland property in a developed area approximately 170 feet from the bay. The project site is separated from the bay (the nearest body of water) by three residences and the Edgewater Avenue Boardwalk. Due to the distance from coastal waters a Water Quality Management Plan (WQMP), Construction Pollution Prevention Plan (CPPP), and Erosion Control Plan are not required.
10. 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.

11. The existing finished floor elevation of the structure is 8.2 feet NAVD88, which does not comply with the minimum required finished floor elevation of 9.0 feet NAVD88. However, the proposed scope of work does not include an addition or major remodel that would require the finished floor to be raised to meet the minimum requirement for new structures.
12. 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. There are no coastal viewpoints near the site. The proposed roof change and façade remodel will maintain a building envelope consistent with the existing neighborhood pattern of development. Additionally, the project does not contain any unique features that could degrade the visual quality of the coastal zone.

Finding:

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

Fact in Support of Finding:

1. The project site is not 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 includes replacing an existing flat roof with a sloped roof and remodeling the front façade of an existing duplex. 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 adjacent to the site along Alvarado Place. Lateral access is available along a boardwalk on Edgewater Avenue. 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 15301 under Class 1 (Existing Facilities) 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. CD2019-057, 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 28TH 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. 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.
3. Demolition beyond the approved scope of work requires planning division approval prior to commencement of work. Approval of revisions to project plans are not guaranteed. Any changes in the current scope of work may require the entire structure to be remodeled or redeveloped in conformance with the current Zoning Code Development Standards.
4. *The existing nonconforming second floor balcony is limited to repair and maintenance such as the replacement of the existing railing. If additional work is proposed beyond repair and maintenance, the balcony shall be revised to comply with current setback requirements of the NBMC. The proposed columns shall be located outside of the front yard setback of 5 feet.*
5. *If the Building Division deems the structure "new", the Planning Division will consider the structure as new construction and the building must comply with all NBMC Standards including setbacks, height, density, minimum finished floor elevation, and parking.*
6. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
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. If ground disturbance is required, the applicant shall submit a final construction erosion control plan prior to the issuance of building permits. The plan shall be subject to the review and approval by the Building Division.
16. If ground disturbance is required, the applicant shall submit a final drainage and grading plan prior to the issuance of building permits. The plan shall be subject to the review and approval by the Building Division.
17. 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.

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 permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
21. 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.
22. This Coastal Development Permit No. CD2019-057 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.
23. 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 Stewart Duplex Remodel including, but not limited to, Coastal Development Permit No. CD2019-057 (PA2019-224). 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.

Building Division

24. *Living Room indicated on the second-floor unit is considered a bedroom and shall comply with all code requirements for bedrooms.*

RESOLUTION NO. ZA2020-049

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2019-072 TO RENOVATE AN EXISTING NONCONFORMING MIXED-USE BUILDING AND ADD A 235-SQUARE-FOOT RESIDENTIAL THIRD STORY AND ROOF TOP DECK LOCATED AT 112 AGATE AVENUE (PA2019-260).

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Aslan Companies, Inc, ("Applicant") with respect to property located at 112 Agate Avenue, requesting approval of a coastal development permit (CDP).
2. The lot at 112 Agate Avenue is legally described as Lot 31 of Block 9, Resubdivision of Section 1, Balboa Island.
3. The Applicant proposes the renovation of an existing nonconforming mixed-use building. The project generally includes installing small landscape planters on the ground floor level, reconfiguring and refreshing the existing commercial storefront, remodeling the residential second floor, and constructing a third-story addition with a roof deck. The project would result in a net addition of 65 square feet of floor area bringing the total gross floor area of the building to 3,158 square feet. The CDP is required as the project will increase the height of the existing structure by more than 10 percent.
4. The subject property is designated MU-W2 (Mixed Use Water Related) by the General Plan Land Use Element and is located within the MU-W2 (Mixed Use Water) Zoning District.
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is MU-W (Mixed Use Water) and it is located within the MU-W2 (Mixed Use Water Related) Coastal Zone District.
6. A public hearing was held on May 28, 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 15301, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Class 1 (Existing Facilities) because it has no potential to have a significant effect on the environment.

2. Class 1 includes additions to existing structures. The proposed project includes the renovation of an existing nonconforming building and the addition of a 235-square-foot residential third floor and roof top deck.

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 project site is zoned MU-W2 (Mixed-Use Water). This Coastal Zoning District provides for marine-related uses to be intermixed with general commercial, visitor-serving commercial and residential dwelling units on the upper floors. The renovated laundromat will serve residents with a year-round service while supporting visitors and tourism to Balboa Island. The residential unit is limited to the second and third floor and the overall mix of uses within the building conforms with the intent and purpose of the zoning district.
2. The property is currently developed with a 3,093-square-foot mixed-use building. There is an existing 1,634-square-foot commercial laundromat on the ground floor with a single 1,459-square-foot residential unit above. The Applicant proposes to add small landscape planters to the frontage along Agate Avenue, reconfigure the existing storefront resulting in a 47-square-foot reduction of nonresidential floor area, remodel the second floor resulting in a 123-square-foot reduction of residential floor area, add a 235-square-foot third-floor bedroom and bathroom, and add a partially covered roof top deck and patio. The total increase in residential floor area is 112 square feet, which is less than 10 percent of the existing residential floor area. The project ultimately results in a net addition of 65 square feet, bringing the total gross floor area of the building to 3,158 square feet with a Floor Area Ratio (FAR) of 1.24. The height of the building will increase from 21 feet, 7 inches to 31 feet, which complies with the allowed height limit in the MU-W2 District.
3. The existing building was built in 1962, in accordance with Use Permit No. UP0678. There are multiple design features that do not conform to the current development standards. NBMC Subsection 21.38.030(C) defines a "legal nonconforming structure" as any structure that was lawfully erected but does not conform with the current development standards for the zoning district in which it is located by reason of adoption or amendment of the Zoning Code. The following are considered legal nonconformities:
 - a. The ground-floor laundromat has an existing gross floor area of 1,634 square feet and a resultant FAR of 0.64, whereas the current Code allows only 0.50;

- b. There is no commercial parking provided, whereas the current requirement would be seven (7) parking spaces for the laundromat use;
 - c. The residential parking provided is in the form of a two (2)-space carport, whereas the current requirement is two (2) enclosed parking spaces; and
 - d. The existing building is set back only five (5) feet from the rear property line, whereas the current requirement is 10 feet. At present, there are stairs and site walls within the rear setback.
4. The proposed addition to the residential portion is designed in accordance with NBMC Section 21.38.060 (Nonconforming Parking), which allows for additions up to a maximum of 10 percent of the existing gross floor area of the structure within any 10-year period without requiring the parking to be brought into compliance with current Code. Furthermore, the renovation of the laundromat will result in the overall reduction of the commercial FAR. The commercial FAR will decrease from 0.64 to 0.62 which ultimately makes the building more conforming.
 5. The proposed development complies with applicable mixed-use development standards including, but not limited to, floor area limitation, setbacks, and height.
 - a. The maximum floor area limitation is 3,187.5 square feet and the proposed floor area is 3,158 square feet. The proposed residential FAR of 0.62 along with the proposed commercial FAR of 0.62 results in an overall FAR of 1.24 which is consistent with the maximum allowable FAR of 1.25 for the MU-W2 Zoning District.
 - b. The proposed development complies with the minimum required setbacks of the property which are 0 feet along the front property line abutting Agate Avenue, 0 feet along each side property line, and 10 feet along the rear property line abutting the alley.
 - c. The highest guardrail is less than 26 feet from established grade (6.55 feet based on the North American Vertical Datum of 1988 [NAVD88]) and the highest ridge is no more than 31 feet from established grade, which comply with the maximum height requirements.
 6. The neighborhood is predominantly developed with two (2)-story residential structures intertwined with two (2)-story mixed-use buildings that also have commercial on the ground floor and residential above. The adjacent two (2)-story MU-W2 properties along Agate Avenue have heights generally around 20 feet from finished grade to the top of the structure; however if the properties were to be demolished and redeveloped, they would be allowed a maximum height of 31 feet measured from a finished floor elevation of 9.00 feet NAVD88. As this project is the remodel of an existing structure, the height of the structure is being measured from the average existing grade of 6.55 feet NAVD88. The proposed height of the building conforms to the development standards of the Zoning District and actually results in a lower overall height than a new structure.

7. The development is located on an inland property in a developed area approximately 185 feet from the bay. The project site is separated from the bay (the nearest body of water) by a row of structures, both the South Bay Front pedestrian walkway (also known as the boardwalk or the Balboa Island Loop) and the South Bay Front Alley, as well as a City-owned concrete seawall/bulkhead. The bulkhead is part of a larger bulkhead system which surrounds Balboa Island. The finished floor elevation of the first floor of the existing structure is 6.71 feet (NAVD88). While this elevation would not comply with the minimum 9.0-foot (NAVD88) elevation standard for new structures, this project is not considered a new structure based on the project valuation in accordance with NBMC Subsection 15.50.200(C). Conditions of Approval No. 2 and 3 included in Exhibit "A" of this resolution stipulate that if at any point, the valuation of the project increases to be considered substantial improvement (and thus a new structure), this CDP will no longer be valid, and a new CDP will need to be obtained for the new development.
8. Because the project was not deemed a new structure, it was not evaluated in accordance with NBMC Section 20.48.130 (Mixed-Use Projects) and a site development review approval is not required.
9. 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.
10. The property is located within 185 feet of coastal waters. A Water Quality and Hydrology Plan (WQHP) has not been required; however, 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. Furthermore, this project proposes no paving or grading.
11. New landscaping within the planters will be verified for compliance with NBMC Section 21.30.075 (Landscaping). Condition of Approval No. 17 requires drought-tolerant species and prohibits invasive species. Prior to issuance of building permits, the final landscape plans will be reviewed to verify invasive species are not planted.
12. The project site is not located adjacent to a designated coastal view road or Coastal Viewpoint as identified in the Coastal Land Use Plan.

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. NBMC Section 21.30A.040(A) 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 renovates an existing mixed-use building. 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 existing development does not currently provide nor does it inhibit public coastal access. The existing building is located on an interior lot approximately 180 feet northeast of the Balboa Island Loop, where lateral access is provided and will continue to be provided. The Balboa Island Loop grants users with bay views and the opportunity to travel the outer perimeter of Balboa Island. Vertical access to the Balboa Island Loop is provided by Agate Avenue.
3. The nearest designated coastal viewpoint is approximately one-half mile east of the site at the intersection of Park Avenue and Grand Canal. The project site is located adjacent to Balboa Island Park, which is accessible to the public and provides some limited opportunities to view the bay. The proposed addition complies with all applicable Local Coastal Program (LCP) development standards and maintains a building envelope consistent with the allowable neighborhood pattern of development. Additionally, Agate Avenue is a highly traveled corridor that terminates at the Balboa Island Ferry. The reconfiguration of the commercial storefront, installation of landscape planters, and façade renovation will refresh the building and provide an enhanced pedestrian experience. The project will create an improved view corridor down Agate Avenue.

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 15301 under Class 1 (Existing Facilities) 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.CD2019-072, 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 28TH 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. After building permit issuance, any potential revisions beyond the scope of work reviewed and approved under this Coastal Development Permit (CDP) shall be discussed with the Planning and Building Divisions. Approval of revisions to project plans are not guaranteed. The Applicant acknowledges that any changes in the current scope of work may require the entire structure to be demolished and redeveloped in conformance with the current development standards.
3. If at any time the project is deemed to be a substantial improvement (i.e., a new structure) pursuant to NBMC 15.50.200(C), this CDP shall be void and a new CDP shall be obtained.
4. The residential third floor addition area shall not be used separately or independently from occupants of the residential unit located on the second floor. The second and third floor residential area shall be considered and used as a single unit, unless explicitly authorized by the Planning Division and in compliance with any applicable regulations in affect that may allow for such separation.
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. 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.

7. 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.
8. 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.
9. 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.
10. 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.
11. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
12. 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.
13. This CDP 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.
14. 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.
15. 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.
16. 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.

17. 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.
18. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing, and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
19. Prior to the issuance of building permit, the Applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
20. 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.
21. This Coastal Development Permit No. CD2019-072 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 NBMC, unless an extension is otherwise granted.
22. 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 La Plante Family Trust Mixed-Use Remodel and Addition including, but not limited to, Coastal Development Permit No. CD2019-072 (PA2019-260). 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.