



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 August 14, 2020.

ZONING ADMINISTRATOR ACTIONS AUGUST 13, 2020

- Item 1: Daniels Residential Condominiums Tentative Parcel Map No. NP2020-009 and Coastal Development Permit No. CD2020-061 (PA2020-120)
Site Address: 1313 West Bay Avenue
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| Action: Approved by Resolution No. ZA2020-055 | Council District | 1 |
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- Item 2: AT&T Small Cell SLC4735 Minor Use Permit No. UP2019-027 and Coastal Development Permit No. CD2020-101 (PA2019-108)
Site Address: Public right-of-way, City streetlight number SLC4735, center median of Avocado Avenue at the intersection Kewamee Drive and Avocado Avenue
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| Action: Approved by Resolution No. ZA2020-056 | Council District | 6 |
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APPEAL PERIOD: An appeal or call for review may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered unless a different period of time is specified by the Municipal Code (e.g., Title 19 allows ten (10) day appeal period for tentative parcel and tract maps, lot line adjustments, or lot mergers). For additional information on filing an appeal, contact the Planning Division at 949 644-3200.

RESOLUTION NO. ZA2020-055

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING TENTATIVE PARCEL MAP NO. NP2020-009 AND COASTAL DEVELOPMENT PERMIT NO. CD2020-061 FOR TWO (2)-UNIT CONDOMINIUM PURPOSES LOCATED AT 1313 WEST BAY AVENUE (PA2020-120)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Niner Properties, LLC (Applicant), with respect to property located at 1313 West Bay Avenue, and legally described as Lot 9, Block 9 of Tract 626, requesting approval of a tentative parcel map and coastal development permit for two-unit condominium purposes.
2. A previously existing single-family residence and detached garage was demolished, and a new duplex is under construction, pursuant to Zoning and Building Code requirements. Approval of the Tentative Parcel Map will allow each unit to be sold individually. No waivers of Title 19 are proposed. The Tentative Parcel Map also requires the approval of a coastal development permit (CDP) pursuant to Newport Beach Municipal Code (NBMC) Title 21 (Local Coastal Program Implementation Plan).
3. The subject property is located within the Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Element category is Two Unit Residential (RT).
4. The subject property is located within the coastal zone and has a Coastal Land Use Designation of Two Unit Residential (RT-D) (20.0 – 29.9 DU/AC) and a Coastal Zoning District of Two-Unit Residential (R-2).
5. A public hearing was held on August 13, 2020, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California, observing restrictions due to the Declaration of a State Emergency and Proclamation of Local Emergency related to COVID-19. 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 subject Tentative Parcel Map is for two-unit 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 21 and approves the Coastal Development Permit based on the following findings per NBMC Section 21.52.015(F):

Finding:

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

Facts in Support of Finding:

1. The Tentative Parcel Map is for a property within a developed neighborhood, on an inland lot that is not near any natural landforms or environmentally sensitive areas.
2. A 3,219-square-foot duplex and attached 636-square-foot garage designed to condominium standards is currently under construction. The project site is located within the Categorical Exclusion Area and the issuance of building permits for demolition of the previously existing improvements and construction of the new duplex was excluded from the requirement to obtain a coastal development permit under NBMC Section 21.52.045 (Categorical Exclusions). The new construction will conform to all applicable development standards including parking. Approval of the Tentative Parcel Map will allow each unit to be sold individually as condominiums.
3. The project does not therefore involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities.
4. The project site is not located adjacent to a coastal view road, public viewpoint, public park or beach, or public access way, as identified in the Coastal Land Use Plan. Furthermore, an investigation of the project site and surrounding area did not identify any other public view opportunities. The project site may be located within the viewshed of distant public viewing areas. However, the project is located on an inland lot and affects a previously approved two-unit residential development that complies with all applicable Local Coastal Program (LCP) development standards and maintains a building envelope consistent with the existing neighborhood pattern of development. Therefore, the project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts to public views.

Finding:

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

Fact in Support of Finding:

1. The Tentative Parcel Map is located between the nearest public road and the sea or shoreline; however the project will not affect the public's ability to gain access to, use, and/or view the coast and nearby recreational facilities.
2. The project site is located between the nearest public road and the sea or shoreline. The residential lot does not currently provide nor does it inhibit public coastal access. 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 is a parcel map for two-unit condominium purposes and involves a two-family residence under construction on an inland lot.
3. The nearest vertical access to the public beach is available approximately 180 feet east of the project site, along 13th Street. Lateral access along the Pacific Ocean is provided along West Ocean Front, also approximately 180 feet south of the project site.

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

Finding:

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

Facts in Support of Finding:

1. The Tentative Parcel Map is for two (2)-unit residential condominium purposes. A single-unit residence and detached garage has been demolished and a new duplex is currently 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.

Finding:

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

Facts in Support of Finding:

1. The lot is physically suitable for two (2)-unit residential development because it is regular in shape and topographically level. An existing single-family residence has been demolished and a new duplex is currently under construction.
2. The subject property is accessible from the alley and is adequately served by all existing utilities.

Finding:

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

Facts in Support of Finding:

1. A single-family residence has been demolished and a new duplex is currently 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 under Class 15 (Minor Land Alterations).

Finding:

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

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:

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

Facts in Support of Finding:

1. The design of the development will not conflict with easements acquired by the public at large, for access through, or use of property within the proposed development, because there are no public easements located on the property.
2. Legal vehicle access is available to the property along West Bay Avenue and from the rear along the alley.

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Fact in Support of Finding:

1. The Tentative Parcel Map and any future improvements are subject to Title 24 of the California 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:

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

Fact in Support of Finding:

1. The two (2)-unit dwelling that is currently 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:

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

Fact in Support of Finding:

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

Finding:

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

Fact in Support of Finding:

1. The subject property is located within the Coastal Zone and a coastal development permit is requested in conjunction with the proposed tentative parcel map. The project complies with the certified Local Coastal Program (LCP) and public access and recreation policies of Chapter Three of the Coastal Act.
2. Facts in Support of Findings A and B above are hereby incorporated by reference.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15315 under Class 15 (Minor Land Divisions) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves Tentative Parcel Map No. NP2020-009 and Coastal Development Permit No. CD2020-061, 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 13th DAY OF AUGUST, 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 Daniels Residential Condominiums including, but not limited to, Tentative Parcel Map No. NP2020-009 and Coastal Development Permit No. CD2020-061 (PA2020-120). 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

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

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7. Prior to recordation of the parcel map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, 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.
 8. All improvements shall be constructed as required by Ordinance and the Public Works Department.
 9. 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.
 10. All existing overhead utilities shall be undergrounded.
 11. An encroachment permit is required for all work activities within the public right-of-way.
 12. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L.
 13. All non-standard improvements within the public right-of-way along the West Bay Avenue frontage, including but not limited to walls and a fence, shall be removed.
 14. All damaged curb, gutter and sidewalk along the West Bay Drive frontage and alley frontage shall be reconstructed per City Standard.
 15. 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.

RESOLUTION NO. ZA2020-056

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING MINOR USE PERMIT NO. UP2019-027 AND COASTAL DEVELOPMENT PERMIT NO. CD2020-101 FOR A SMALL CELL WIRELESS FACILITY LOCATED WITHIN THE PUBLIC RIGHT-OF-WAY ON CITY STREETLIGHT NUMBER SLC4735, ON THE CENTER MEDIAN OF AVOCADO AVENUE AT THE INTERSECTION OF KEWAMEE DRIVE (PA2019-108)

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 SLC4735, located within the public right-of-way, in the center median of Avocado Avenue near Kewamee Drive, requesting approval of a minor use permit and a coastal development 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 Avocado Avenue 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 equipment shroud. This equipment would be fixed to the top of the replaced streetlight pole for a maximum height of 27 feet, 5 inches; and (3) Establishment of new below-grade support equipment adjacent to the streetlight.
3. The streetlight pole 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 is located within the Coastal Zone. Subsection 21.49.020(B) (Permit and Agreement Required) of the NBMC requires a coastal development permit for a wireless telecommunication facility unless said facility is exempted by Subsection 21.49.020(C) (Exempt Facilities). In this case, the Project does not meet any of the prescribed exemptions; therefore, a coastal development permit is required.
5. A public hearing was held on August 13, 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 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 cell 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. 20 and 21 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). 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) and 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, 5 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. 32 requires approved design drawings from Southern California Edison (SCE) for the power supply to the small cell facility before construction of the facility is to commence.
5. The project has been reviewed pursuant to Subsection 20.49.050(B) of the NBMC. In accordance with Section 20.30.100 (Public View Protection) and General Plan Natural Resources Policy NR 20.3 (Public Views), the location is not located within a protected public view corridor and, therefore, would not have any impact to public views.
6. The existing development which surrounds the median on Avocado Avenue is entirely residential. The zoning designations range from R-1 (Single-Unit Residential) to the west, R-2 (Two-Unit Residential) to the east and to the south, and RM (Multiple Residential) to the north. Both the R-1-and R-2 zoning districts allow for principal structures up to 29 feet in height for sloped roof elements, while RM allows up to 33 feet for sloped roof elements. The height of the replacement streetlight with proposed equipment will not exceed the height limitations of the surrounding structures and will not stick out.
7. An existing Hong Kong Orchid tree is located within the center median, immediately adjacent to the streetlight. The Hong Kong Orchid has large thick leaves and vibrant purplish red flowers. The tree helps to provide a visual distraction from the proposed equipment. Additionally, there are tall palm and eucalyptus trees in the median that will help screen the equipment.

8. 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.
9. 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. SLC4735 serves as a part of the City's existing streetlight inventory. The Applicant proposes to remove and replace SLC4735 with a new streetlight in the same location while maintaining the existing luminaire heights of 21 feet, 1 inch for the left luminaire sensor and 20 feet, 11 inches for the right luminaire sensor, as viewed when looking north on Avocado Avenue. The telecommunications equipment will be installed on top of the new streetlight pole resulting in an overall height of 27 feet, 5 inches. All supporting equipment will be installed below-grade adjacent to the streetlight, within the public right-of-way.
2. The replacement streetlight pole design is consistent with the size, shape, style, and design of that existing, including the attached light arms and luminaire sensors. 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.
3. 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.
4. Under FCC Orders, 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.
5. See Facts in Support of Finding B.4, B.6, and B.7.

6. The proposed facility will be unmanned, will have no impact on the circulation system, and, designed and 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.6, B.7, B.8, and B.9.
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.6, and B.7.
2. The streetlight is located within a landscaped median and separated from any surrounding residence by two (2) lanes of travel on Avocado Avenue. There are other City streetlights, street signs, and wayfinding signs common to City streetscapes adorning Avocado Avenue. The proposed streetlight and associated equipment will blend into the existing streetscape.
3. There are no public parks near the proposed project.
4. 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, 5-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. Three (3) alternative streetlights neighboring the project were identified and investigated by the Applicant, but these sites were found not practicable.
2. Alternative Site #1 at City Streetlight No. SLC4734 is located approximately 150 feet southwest of the proposed streetlight. This location is also in a landscaped median along Avocado Avenue and is situated between two (2) tall eucalyptus trees. The trees are taller than the streetlight and most of the foliage of these trees grows near the top of the tree, above the height of the streetlight, while the trunk is somewhat barren. Furthermore, the trees are located over 25 feet away from the streetlight and are not immediately adjacent. The trees in this location provide less screening than the proposed location and the small cell facility is anticipated to be more visually intrusive in this location.
3. Alternative Site #2 at City Streetlight No. SLC4736 is located approximately 240 feet northeast of the proposed streetlight, at the intersection of Fourth Avenue and Avocado Avenue. This location is also in a landscaped median on Avocado Avenue and abuts a pedestrian ramp. While the pedestrian ramp does not prevent the installation of the necessary below grade equipment, the lack of surrounding trees to provide visual distraction, screening, or masking renders the proposed equipment more likely to be visually intrusive at this location.
4. Alternative Site #3 at City Streetlight No. SLC4720 is located approximately 310 feet northwest of the proposed streetlight. This streetlight is located within the sidewalk of Kewamee Drive and immediately adjacent to a condominium building. The sidewalk in this location is narrow. There is less than 3 feet in width from the back of the existing streetlight to the edge of sidewalk and a replacement streetlight would not be able to be installed in accordance with American with Disabilities Act (ADA) requirements. The proposed project is infeasible at this location.
5. There is an existing condominium complex at the intersection of Avocado Avenue and Kewamee Drive. The property is zoned RM (Multiple Residential) and while the RM zoning district does permit the installation of wireless telecommunication facilities where the maximum allowable number of dwelling units is more than four (4), a small cell facility at this location would not be technically feasible from an RF perspective. 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. Small cell facilities use an omnidirectional antenna that propagates in 360 degrees and function most efficiently on an unobstructed, vertical, structure such as a streetlight or utility pole. Most of the signal would be blocked by the structures of the condominium complex.

Finding:

- I. *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. Fact in Support of finding H.5 is incorporated by reference.
2. The Applicant'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.

Coastal Development Permit

In accordance with Subsection 21.52.015(F) (Coastal Development Permits, Findings and Decision) of the NBMC, the following findings and facts in support of such findings are set forth:

Finding:

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

Facts in Support of Finding:

1. The project is considered a Class 3 (Public Right-of-Way) installation. Section 21.49.040 (Telecom Facility Preferences and Prohibited Locations) of the NBMC lists Class 3 installations as third on the installation preference list. It is not proposed at a location that is prohibited by NBMC Subsection 21.49.040(B) (Prohibited Locations).
2. See Fact in Support of Finding I.2.
3. The project has been reviewed pursuant to Subsection 21.49.050(B) of the NBMC. The project complies with Section 21.30.100 (Scenic and Visual Quality Protection) of the NBMC. The subject location is not located between the first public roadway paralleling the sea and the sea, is not on a coastal bluff or canyon, not adjacent to or within the viewshed of a public viewpoint, coastal view road, public park or beach, or public accessway, as identified on the Coastal Land Use Plan Map 4-3 (Coastal Views), and does not contain significant natural landforms or vegetation. The project scope involves the removal and replacement of an existing City streetlight in the same location with the same luminaire heights. The project has been designed to blend with its surroundings while it will be visible. 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. There will be no negative impacts on coastal views or coastal resources with the project's implementation.

4. The proposed replacement streetlight and antenna structure will comply with the maximum allowable height limit of 35 feet from existing finished grade.

Finding:

- K. *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. Streetlight No. SLC4735 is not located between the nearest public road and the sea or shoreline. The project site is within an existing street median on Avocado Avenue. All equipment will be either concealed within the replacement pole or vaulted below grade. There will be no changes or obstructions to the pedestrian right-of-way and access on Avocado Avenue will be unaffected. As such, the project will not affect the public's ability to gain access to, use, and/or view the coast and nearby recreational facilities.
2. The project will allow the installation of a small cell facility that complies with all applicable Local Coastal Program (LCP) development standards and maintains development attributes consistent with the existing and anticipated future surrounding neighborhood pattern of development. Therefore, the project does not have the potential to degrade public views within the Coastal Zone.

SECTION 4. DECISION.

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. UP2019-027 and Coastal Development Permit No. CD2020-101, 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. The project site is not located within the appeal area of the coastal zone; therefore, final action by the City may not be appealed to the California Coastal Commission.

PASSED, APPROVED, AND ADOPTED THIS 13TH DAY OF AUGUST, 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 approval.
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, 5 inches (27' 5") in height from existing grade (maximum elevation of 117.2 feet based on the North American Vertical Datum of 1988 [NAVD88]).

12. Prior to building permit issuance, all contractors and subcontractors shall have a valid City of Newport Beach business license.
13. 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.
14. 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.
15. 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.
16. 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.
17. 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.
18. 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.
19. The Applicant shall provide a "single point of contact" for the carrier 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, fax 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.
20. 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.
21. 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.

22. 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.
23. The Applicant shall maintain the telecom facility in a manner consistent with this approval.
24. 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.
25. 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.
26. 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.
27. 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.
28. The City reserves the right and jurisdiction to review and modify any permit approved pursuant to NBMC Chapters 20.49 and 21.49, 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.
29. Minor Use Permit No. UP2019-027 and Costal Development Permit No. CD2020-101 shall expire unless exercised within 24 months from the date of approval as specified in

Sections 20.54.060 and 21.54.060 (Time Limits and Extensions) of the NBMC unless an extension is otherwise granted.

30. 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.
31. This approval 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.
32. 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.
33. 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.
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 SLC4735, including, but not limited to, Minor Use Permit No. UP2019-027 and Coastal Development Permit No. CD2020-101 (PA2019-108). 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.