



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 September 11, 2020.

ZONING ADMINISTRATOR ACTIONS SEPTEMBER 10, 2020

- Item 1: Mraz Residence Addition Coastal Development Permit No. CD2020-099 (PA2020-154)
Site Address: 2310 West Ocean Front
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| Action: Approved by Resolution No. ZA2020-059 | Council District | 1 |
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- Item 2: AT&T Small Cell SLC0007 Minor Use Permit No. UP2019-043 and Coastal Development Permit No. CD2020-120 (PA2019-150)
Site Address: Public right-of-way, City streetlight number SLC0007, parkway south of Ocean Boulevard at the intersection of Channel Road and Ocean Boulevard
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| Action: Approved by Resolution No. ZA2020-060 | Council District | 1 |
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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. ZA2020-059

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2020-099 FOR ADDITIONS TO AN EXISTING SINGLE-FAMILY RESIDENCE LOCATED AT 2310 WEST OCEAN FRONT (PA2020-154)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by John T. Morgan Jr., with respect to property located at 2310 West Ocean Front, requesting approval of a coastal development permit.
2. The property at 2310 West Ocean Front is legally described as Lot 6, Block 23 of Tract 512.
3. The applicant proposes to construct a 213-square-foot third story addition and a new third-floor deck area of approximately 446 square feet. A coastal development permit (CDP) is required for the project since the proposed addition exceeds 10 percent of the existing floor area and increases the overall height of the building by more than 10 percent.
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 online via Zoom on September 10, 2020, 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 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 of less than 50 percent to existing structures. The proposed project consists of an approximately 11.5 percent addition including a 213-square-foot

third story living area addition and new third floor deck area of approximately 446 square feet.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The property is currently developed with a two-story 1,848-square-foot, single-family residence and an attached 400-square-foot garage. The applicant proposes to construct a third-story, 213-square-foot living area addition to accommodate a den and bathroom, as well as a 446-square-foot deck area. The height of the existing structure will increase from 22 feet 8 inches to approximately 29 feet.
2. A CDP is required because 1) the project includes an increase in floor area that exceeds 10 percent of the existing floor area, 2) the project includes an increase in height of greater than 10 percent from existing conditions, 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.
3. 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 2,462 square feet and the proposed floor area is 2,461 square feet.
 - b. The project conforms to the minimum required setbacks, which are 5 feet along the front and rear property lines, and 3 feet along the side property lines.
 - c. The highest guardrail is less than 24 feet from established grade (12.77 feet North American Vertical Datum of 1988 [NAVD 88]) and the highest ridge is no more than 29 feet from established grade, which comply with the maximum height requirements.
 - d. The project includes garage parking for a total of two vehicles, complying with the minimum two-car garage parking requirement for single-family residences with less than 4,000 square feet of habitable floor area.
4. The surrounding neighborhood includes a mix of two- and three-story residential and commercial structures. The proposed design, bulk, and scale of the development is

consistent with the existing neighborhood pattern of development and expected future development consistent with applicable development standards.

5. The development is located more than 200 feet from coastal waters (Mean High Tide Line) and does not involve any ground disturbance activity, therefore a Water Quality Management Plan (WQMP), Construction Pollution Prevention Plan (CPPP), and Erosion Control Plan are not required.
6. The existing development is located on private property along the public boardwalk adjacent to the West Ocean Front beach. The beach in front of the boardwalk is approximately 300 feet wide before the Mean High Water Line of the Pacific Ocean. The addition of the third-story deck and living area is not subject to coastal hazards.
7. Although proposed scope of work does not include any modifications to the lowest finished floor level, the existing finish floor elevation of the existing dwelling is 14.18 feet based on North American Vertical Datum of 1988 (NAVD88), which exceeds the minimum 9.00-foot (NAVD88) minimum elevation standard required for new structures. Additionally, the State of California Sea Level Rise Guidance, 2018 Update, is currently considered the best available science for determining a range of sea level rise projections for use in reviewing coastal development permits. The existing finish floor elevation of the dwelling exceeds the upper limit of the likely range for sea level rise of 10.7 feet NAVD88 over the next 75-years based on the Low Risk Aversion estimates and the 13.7 feet NAVD88 Medium-High Risk Aversion estimates (0.5 percent probability).
8. Pursuant to NBMC Section 21.30.030(C)(3)(i)(iv), the property owner will be required to enter into an agreement with the City waiving any potential right to protection to address situations in the future in which the development is threatened with damage or destruction by coastal hazards (e.g., waves, erosion, and sea level rise). The property owner will also be required to acknowledge any hazards present at the site and unconditionally waive any claim to damage or liability against the decision authority, consistent with NBMC Section 21.30.015(D)(3)(c). Both requirements are included as conditions of approval that will need to be satisfied prior to the issuance of building permits for construction.
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 may be 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, if needed. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance.
10. The existing lowest finished floor elevation of habitable area is 14.18 feet based on North American Vertical Datum of 1988 (NAVD88), which complies with the minimum required finished floor elevation of 9.0 feet NAVD88. The proposed scope of work does not include any modifications to this lowest finished floor level.

11. The project site is not located adjacent to a coastal view road, public access way, or coastal viewpoint as identified in the Coastal Land Use Plan. The nearest identified public coastal viewpoint is located on the Newport Pier, approximately 1,500 feet southeast of the project site. The proposed additions 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 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. The existing residential development neither provides nor inhibits public coastal access. Implementation Plan Section 21.30A.040 (Determination of Public Access/Recreation Impacts) requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project involves upper story additions to an existing single-family residence. Therefore, the project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities.
2. Vertical access to the public beach is provided at various street ends throughout the neighborhood. Lateral access is provided along the West Ocean Front boardwalk in front of the project site. The project does not include any features that would obstruct access along these routes. Condition of Approval No. 2 helps to ensure that no construction materials or activities will infringe upon the public walkway.

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. CD2020-099, 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 NBMC. 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 10TH DAY OF SEPTEMBER, 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. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
5. Prior to final building permit inspection, an agreement in a form approved by the City Attorney between the property owner and the City shall be executed and recorded waiving rights to the construction of future shoreline protection devices to address the threat of damage or destruction from waves, erosion, storm conditions, landslides, seismic activity, bluff retreat, sea level rise, or other natural hazards that may affect the property, or development of the property, today or in the future. The agreement shall be binding against the property owners and successors and assigns.
6. Prior to the issuance of a building permit, the property owner shall submit a notarized signed letter acknowledging all hazards present at the site, assuming the risk of injury or damage from such hazards, unconditionally waiving any claims of damage against the City from such hazards, and to indemnify and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of development. This letter shall be scanned into the plan set prior to building permit issuance.
7. 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:

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- 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. CD2020-099 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.
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 Mraz Residence Addition including, but not limited to, Coastal Development Permit No. CD2020-099 (PA2020-154). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages, which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

RESOLUTION NO. ZA2020-060

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING MINOR USE PERMIT NO. UP2019-043 AND COASTAL DEVELOPMENT PERMIT NO. CD2020-120 FOR A SMALL CELL WIRELESS FACILITY LOCATED WITHIN THE PUBLIC RIGHT-OF-WAY ON CITY STREETLIGHT NUMBER SLC0007, WITHIN A PARKWAY, SOUTH OF OCEAN BOULEVARD AT THE INTERSECTION OF CHANNEL ROAD AND OCEAN BOULEVARD(PA2019-150)

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 SLC0007, located within the public right-of-way on City streetlight number SLC0007, with the parkway south of Ocean Boulevard at the intersection of Channel Road and Ocean Boulevard.
2. The Applicant requests a minor use permit and coastal development permit to install small cell wireless facility on a City-owned streetlight pole. Project implementation will be fully contained within a parkway located south of Channel Road and Ocean Boulevard. The project 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 33 feet, 9 inches; and (3) Establishment of support equipment below grade.
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 telephonic public hearing was held online on September 10, 2020, 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 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 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. SLC0007 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 the subject request), yearly rent, and a license agreement.

2. The City of Newport Beach General Plan (“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 the small cell 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 visitors 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 to and accept future technologies, such as 5G, and will help meet local demand and sustain the livability of the area.
5. City streetlight Number SLC0007 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, which is hereby incorporated by reference.
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 could 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 33 feet, 9 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. The existing development surrounding the subject parkway on Channel Road is residential with the exception of West Jetty View Park to the east/southeast which is zoned for parks and recreation. The zoning designations are R-1 (Single-Unit Residential) and Parks and Recreation (PR) respectively. The height of the replacement streetlight with proposed equipment will not exceed the height limitation of 35 feet and is not anticipated to dominate the streetscape.
6. The streetlight SLC0007 is located within a parkway and separated from the adjacent residence by approximately seven feet of landscape and concrete public sidewalk. There are other City streetlights, street signs, and wayfinding signs common to City streetscapes adorning Channel Road. Unlike other streetscapes, this corridor on Channel Place is unique insofar as it contains one of the City's three tsunami sirens. Parkway on either side of Channel Road enjoy a series of mature palm trees that vary in height and species. On the project side of Channel Road, there are three parkways with a total of four mature palm trees averaging 45 feet tall. While the existing streetlight pole is slightly staggered, it follows the existing pattern of palm trees. In this way, the subject streetlight's location would serve to integrate the antenna shroud into the visual

context of the environment. For the reasons listed above, the proposed streetlight and associated equipment is anticipated to coordinate well into the existing streetscape.

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 Project 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. SLC0007 serves as a part of the City's existing streetlight inventory. The Applicant proposes to remove and replace SLC0007 with a new streetlight in the same location while maintaining the existing luminaire heights of 27 feet, 11 inches. The telecommunications equipment will be installed on top of the new streetlight pole resulting in an overall height of 33 feet, 9 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, which are hereby incorporated by reference.
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, which are hereby incorporated by reference.
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 to B.7, which are hereby incorporated by reference.
2. There are other City streetlights, street signs, and wayfinding signs common to City streetscapes along Channel Road. Unlike other streetscapes, this corridor on Channel Road is unique given that it contains one of the City's three tsunami sirens. Parkways on either side of Channel Road are landscaped with a series of mature palm trees that vary in height and species. On the project side of Channel Road, there are three parkways with a total of four mature palm trees averaging 45 feet in height. While the existing streetlight pole is slightly staggered, it follows the existing pattern of palm trees. In this way, the proposed project and associated equipment is anticipated to coordinate well into the existing streetscape and surrounding visual context of the environment.
3. Alternative sites studied that are located farther from the residential district and/or West Jetty View Park are not feasible to fulfill the coverage needs that installation at the proposed site provides.
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 33-foot, 9-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 Facts in Support of Finding C.2 and C.4.
2. Three (3) alternative existing streetlights neighboring the project were identified and investigated by the Applicant, but these sites were found not practicable.
3. AT&T studied City Streetlight No. SLC0005, SLC0006, SLC0008 as Alternative Site Nos. 1, 2, 3. These alternative sites are all located in West Jetty View Park. SLC0005 is located approximately 130 feet south of the proposed streetlight, SLC0006 is located approximately 55 feet southeast, and SLC0008 is approximately 110 feet northwest. Installation of the small cell in these locations would require major trenching within the public park lawn and landscape area, limiting public access during construction and maintenance activities. Because Alternative sites 1, 2, and 3 are directly within West Jetty Park, the wireless facility would also be in the direct viewshed of the identified protected public viewpoint, resulting in an adverse visual impact to coastal views. In this way, the alternative sites are not superior to the subject facility's location that places the facility inland and outside of the identified public coastal view and access areas.
4. The Applicant studied City Streetlight Nos. SLC0005, SLC0006, SLC0008 as Alternative Site No. 1, 2, 3. These alternative sites are all located in West Jetty View Park. SLC0005 is located approximately 130 feet south of the proposed streetlight, SLC0006 is located approximately 55 feet southeast, and SLC0008 is approximately 110 feet northwest. Installation of the small cell in these locations would require major trenching within the park lawn and landscape area. Alternative sites 1, 2, and 3 would be in the direct viewshed of the identified protected public viewpoint, resulting in an adverse visual impact to coastal views. It should be noted that City staff was not supportive of locating the proposed facility on these streetlights and agrees with the Applicant's conclusion that these are not viable sites. Staff's review of the subject area did not identify any additional alternative sites to be studied.

5. 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.

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 C.4 is incorporated by reference.
2. The Applicant's analysis concluded that a more preferred location as defined by NBMC Subsections 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. NBMC Chapter 21.49.040(B) (Telecom Facility Preferences and Prohibited Locations) allows new telecom facilities located on the sea and first public road paralleling the sea when said facilities are on an existing facility.
2. See Fact in Support of Finding I.2.
3. The subject location is between the first public roadway paralleling the sea and the sea and is adjacent to the viewshed of a public viewpoint at West Jetty View Park, as identified on the Coastal Land Use Plan Map 4-3 (Coastal Views). Site evaluation revealed that the proposed project is consistent with the surrounding development context and will not affect the existing views afforded from West Jetty View Park. The

project scope involves the removal and replacement of an existing City streetlight in the same location with the same luminaire height and it complies with all applicable development standards. West Jetty Park is approximately 40 to 50 feet in width and improved with public benches and landscaping that orients and frames views toward the Newport Bay and not over the subject site.

4. Consistent with Local Coastal Plan (LCP) Policies 4.4.1-1, 4.4.1-7, and 4.4.4-1, design elements of the project help to minimize impacts to coastal resources and protect the visual quality of the coastal zone. Within the surrounding residential context, the replacement streetlight is consistent with the size, shape, style, and design of the existing pole and other poles in the vicinity. The proposed replacement streetlight and antenna structure will comply with the maximum allowable height limit of 35 feet from existing finished grade. The location of the existing streetlight pole would not change and, aside from the approximately 6-foot height extension for the antenna shroud and minimum required signage, there are no other detectable changes to the visual environment.
5. See Fact in Support of Finding F.2.
6. The proposed replacement streetlight and antenna structure will comply with the maximum allowable height limit of 35 feet from existing finished grade.
7. There will be no changes or obstructions to the pedestrian right-of-way and access on Channel Road 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.

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. SLC0007 is located between the nearest public road and the sea or shoreline. The project site is within an parkway on Channel Road. All equipment will be either concealed within the replacement pole or vaulted below grade. Vertical access to the beach is provided by way of street-ends in the area, including Channel Road. Lateral access along the beach provided on the beach itself and along the Oceanfront Boardwalk. The equipment will be below grade and will not impact any public way.
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. UP2019-043 and Coastal Development Permit No. CD2020-120, 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 located within the appeal area of the coastal zone; therefore, final action by the City may be appealed to the California Coastal Commission.

PASSED, APPROVED, AND ADOPTED THIS 10TH DAY OF SEPTEMBER, 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. No construction activity, including staging and/or storage, shall not occur within West Jetty View Park. To the greatest extent feasible, construction activities shall not block the public sidewalk or access immediately adjacent to SLC0007.
7. 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.
8. All accessory support equipment of this facility shall be installed underground.
9. All electrical and antenna wiring shall be fully encased within the reconstructed streetlight pole.
10. 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.
11. Anything not specifically approved by this permit is not permitted and must be addressed in a separate and subsequent review.
12. 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 33 feet, 9 inches (33' 9") in height from existing grade

(maximum elevation of 46.45 feet based on the North American Vertical Datum of 1988 [NAVD88]).

13. Prior to building permit issuance, all contractors and subcontractors shall have a valid City of Newport Beach business license.
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.
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 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.
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.

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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 Sections 20.49.050 and 21.49.050.
 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 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.

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30. Minor Use Permit No. UP2019-043 and Costal Development Permit No. CD2020-120 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.
 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 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.
 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 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.
 35. 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.
 36. 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 SLC0007, including, but not limited to, Minor Use Permit No. UP2019-043 and Coastal Development Permit No. CD2020-120 (PA2019-150). 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

37. Prior to the issuance of a building permit, an encroachment permit shall be required.
38. 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.