



## 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 March 12, 2021.

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### ZONING ADMINISTRATOR ACTIONS MARCH 11, 2021

- Item 1: ARC Bottle Shop Minor Use Permit No. UP2021-003 (PA2021-003)  
Site Address: 501 30th Street
- |   |                  |   |
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| Action: Approved by Resolution No. ZA2021-014 | Council District | 1 |
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- Item 2: Frieden Residence Site Alterations Coastal Development Permit No. CD2017-040 (PA2017-092)  
Site Address: 169 Shorecliff Road
- |   |                  |   |
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| Action: Approved by Resolution No. ZA2021-015 | Council District | 6 |
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- Item 3: Liu Residence Coastal Development Permit No. CD2020-151 (PA2020-355)  
Site Address: 2000 West Ocean Front
- |   |                  |   |
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| Action: Approved by Resolution No. ZA2021-016 | 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. ZA2021-014

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING MINOR USE PERMIT NO. UP2021-003 TO ESTABLISH AND OPERATE A BOUTIQUE RETAIL WINE SHOP WITH A TYPE 20 ALCOHOLIC BEVERAGE CONTROL (ABC) LICENSE (OFF-SALE BEER & WINE) WITH NO TASTING OR FOOD ON-SITE LOCATED AT 501 30<sup>TH</sup> STREET (PA2021-003)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by DSH Industries, LLC (Applicant), with respect to property located at 501 30<sup>th</sup> Street, and legally described as Lot No. 1 of Tract No. 16292, requesting approval of a minor use permit.
2. The Applicant proposes to occupy an existing ground-floor nonresidential tenant space of a mixed-use building (residential above) with a boutique retail wine shop. No improvements are proposed to the space beyond cosmetic upgrades and display cases. The wine shop would operate with a new Type 20 ABC License (Off-Sale Beer & Wine). The Applicant would like to operate from 10 a.m. to 9 p.m., daily. There will be no on-site tastings and no food served.
3. The subject property is designated Mixed-Use Horizontal (MU-H4) by the General Plan Land Use Element and is located within the Mixed-Use Cannery Village and 15<sup>th</sup> Street (MU-CV/15<sup>TH</sup> ST) Zoning District.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Mixed-Use Horizontal (MU-H) and it is located within the Mixed-Use Cannery Village and 15<sup>th</sup> Street (MU-CV/15<sup>TH</sup> ST) Coastal Zone District. The project is exempt from the requirements of a Coastal Development Permit (CDP) because there is no expansion in floor area and no additional parking is required; therefore, the proposed changes do not constitute any changes in land use that are anticipated to result in an intensification nor a deintensification of land use.
5. A public hearing was held online on March 11, 2021, 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 Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

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

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 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 proposal is to occupy an existing nonresidential tenant space with a new retail sales land use. There will be no significant improvements to the interior of the building and no expansion of floor area. Given there is no change to the amount of parking required, there is also no anticipated increase in intensity.

### SECTION 3. REQUIRED FINDINGS.

#### *Alcohol Sales*

In accordance with Section 20.48.030 (Alcohol Sales) of the Newport Beach Municipal Code (NBMC), the following findings and facts in support of the findings for a use permit are set forth:

#### Finding

- A. *The use is consistent with the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code.*

#### Facts in Support of Finding

In finding that the proposed use is consistent with Section 20.48.030 (Alcohol Sales) of NBMC, the following criteria must be considered:

- i. *The crime rate in the reporting district and adjacent reporting districts as compared to other areas in the City.*
  1. The crime rate in the subject reporting district (RD 15) as well as two (2) of the three (3) adjacent RDs (Reporting Districts) are over the City average. RD 15 contains the large commercial shopping center known as The Landing at 32<sup>nd</sup> Street and Balboa Boulevard and much of Via Lido and Balboa Boulevard. The purpose of the Zoning of these beach areas is to provide various commercial and retail uses to support the surrounding residential area, as well as the surrounding tourist destinations. Therefore, these beach areas with a higher concentration of commercial land uses tend to have a higher crime rate than adjacent RDs with more residential development.
  2. The Newport Beach Police Department (NBPD) reviewed the proposed project and has no objections given the limited operation and the conditions of approval contained in Exhibit "A."
- ii. *The numbers of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.*

1. Due to the high concentration of commercial land uses, the calls for service and number of arrests are greater than adjacent RDs. Additionally, this is the beach area that is considered one (1) of the most significant tourist areas of the City.
  2. The NBPD reviewed the proposed project and has no objections given the limited operation and the conditions of approval contained in Exhibit "A."
- iii. The proximity of the establishment to residential zoning districts, day care centers, hospitals, park and recreation facilities, places of worship, schools, other similar uses, and any uses that attract minors.*

The tenant space is located on the ground floor of a mixed-use building with residential above. The surrounding area is mixed-use with residential and various commercial services including offices, personal services, retail, and eating and drinking establishments of a similar nature. The residential uses are intermixed amongst these uses, mostly on second floors. The neighborhood is intended and designed for a mixing of residential and commercial uses. The nearest park, Lido Park, is approximately 600 feet northeast of the site. There is one (1) church more than 500 feet north. Other sensitive land uses above are not located within close proximity of the subject building.

- iv. The proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption.*

1. Several other establishments along 32<sup>nd</sup> Street, Balboa Boulevard and Via Lido currently have active ABC Licenses, most of which are bona fide eating and drinking establishments and are not defined as bars, lounges or nightclubs by the NBMC. Approximately 200 feet west on the same block is ARC Butcher & Baker. Approximately 350 feet across 30<sup>th</sup> Street on the south corner of 30<sup>th</sup> Street and Newport Boulevard is Helmsman Ale House (formerly Newport Brewing Company). On the opposite corner is Porro Vita Juice store. North of Porro Vita along Newport Boulevard is Mama Ds. Across Newport Boulevard is Malarky's Irish Pub (the only bar in the vicinity). North of Malarky's is The Landing Shopping Center with Chipotle, Gina's Pizza, and Chihuahua Cervezeria.
  2. The proposed project is a unique operation that is conditioned to close at 9 p.m. with no allowance for food service or tastings on-site. There are appropriate conditions in place to prevent the retail establishment from operating as a restaurant, bar, or lounge. The proximity to food service establishments does not appear to create foreseeable concern.
- v. Whether or not the proposed amendment will resolve any current objectionable conditions*

There are no current objectionable conditions at this location.

### *Minor Use Permit*

In accordance with Section 20.52.020(F) (Findings and Decision) of the NBMC, the following findings and facts in support of the findings for a minor use permit are set forth:

#### Finding

*B. The use is consistent with the General Plan and any applicable specific plan;*

#### Facts in Support of Finding

1. The General Plan designates the site as Mixed Use Horizontal (MU-H4), which applies to areas where it is the intent to establish a cohesively developed district or neighborhood containing multi-unit residential dwelling units with clusters of mixed-use and/or commercial structures on interior lots of Cannery Village and 15th Street on Balboa Peninsula. The proposed use will occupy the ground-floor nonresidential tenant space of an existing mixed-use building that has a residential unit above.
2. The proposed use is consistent with the MU-H4 designation, as it is intended to provide a service not only to visitors, but also to residents within the immediate neighborhood and surrounding area.
3. Several mixed-use structures including office, personal service, and eating and drinking establishment uses exist nearby and are complementary to the surrounding commercial and residential uses.
4. The subject property is not part of a specific plan area.

#### Finding

*C. 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. The property is located in the Mixed-Use Cannery Village and 15th Street (MU-CV/15TH ST) Zoning District. The proposed boutique retail wine shop is considered an off-sale alcohol sales land use, which is allowed subject to the approval of a minor use permit (MUP) pursuant to Section 20.22.020 (Mixed-Use Zoning Districts Land Uses and Permit Requirements) of the NBMC.
1. Given the previous use of the nonresidential tenant space was retail sales/office, there is no change to the parking requirement and no additional parking is required.
2. All criteria outlined by Section 20.48.030 of the NBMC have been considered and are analyzed in the preceding section of this Resolution.

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Finding

- D. *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. The operation of the use will be restricted to the hours between 10 a.m. and 9 p.m., daily. These hours are consistent with the business hours of other uses in the commercial area and is limited to exist in harmony with the residential uses nearby.
2. The existing ground-floor nonresidential tenant space is located within an existing two (2)-story mixed-use building accessible from 30th Street and the alley at the rear, which provides convenient access to motorists, pedestrians, and bicyclists.
3. The surrounding area contains various, retail, business office and visitor-serving commercial uses including restaurants and take-out eating establishments. The proposed use will be compatible with and complementary to the existing and permitted uses within the area.
4. The operational conditions of approval relative to the sale of alcoholic beverages will help ensure compatibility with the surrounding uses and minimize alcohol-related impacts. The project has been conditioned to ensure that the business remains an off-sale alcohol land use and that it does not become a restaurant, bar or tavern.

Finding

- E. *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; and*

Facts in Support of Finding

1. The proposed use will occupy an existing nonresidential tenant space, which has existed for nearly 20 years. There will be no material changes to the floor plan or alterations to the site that would compromise its suitability.
2. There are three (3) tandem parking spaces on-site, including two (2) for employees and one for a visitor to the tenant space. In addition, there is a fourth (4<sup>th</sup>) accessible space that is accessed from 30<sup>th</sup> Street. As conditioned, no more than two (2) employees will be on-site at any given time.
3. Original site plan approvals for the tenant space included a review to ensure adequate public and emergency vehicle access, and that public services, and utilities are provided. Any tenant improvement plans will be reviewed for compliance with applicable building and fire codes.



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 Minor Use Permit No. UP2021-003, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 20 Planning and Zoning, of the NBMC.

**PASSED, APPROVED, AND ADOPTED THIS 11<sup>TH</sup> DAY OF MARCH, 2021.**



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Jaime Murillo  
Zoning Administrator



**EXHIBIT “A”****CONDITIONS OF APPROVAL**

*(Project-specific conditions are in italics)*

**Planning Division**

1. The development and operation shall be in substantial conformance with the approved floor plan and project description attached to the staff report 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 Minor Use Permit (MUP).
4. All proposed signs shall be in conformance with the approved Comprehensive Sign Program for the project site and provisions of Chapter 20.42 (Signs) of the NBMC.
5. This MUP 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.
6. *The hours of operation shall be limited to between 10 a.m. and 9 p.m., daily.*
7. *There shall be no on-site tasting allowed at any time and food service of any kind is prohibited, including the on-site consumption of pre-packaged food items.*
8. *There shall be no more than two (2) employees on-site at any given time. All employees shall park in the spaces designated as “Employee Parking” on the approved site plan. The two spaces designated as “Visitor Parking” on the approved site plan shall always remain unobstructed and available to patrons.*
9. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require subsequent review and may require an amendment to this MUP or the processing of a new MUP.
10. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.

11. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
12. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10 p.m. and 8 a.m. on weekdays and Saturdays and between the hours of 10 p.m. and 9 a.m. on Sundays and Federal holidays, unless otherwise approved by the Director of Community Development, and may require an amendment to this MUP.
13. Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
14. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the NBMC to require such permits.
15. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 Planning and Zoning of the NBMC.
16. 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 ARC Bottle Shop including, but not limited to, Minor Use Permit No. UP2021-003 (PA2021-003). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Applicant, City, and/or the parties initiating or bringing such proceeding. The Applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

### **Building Division**

17. *Should the Applicant make any improvements to the tenant space that would require the issuance of a building permit, said building permit plans shall demonstrate compliance with the California Building Code (CBC) Chapter 11B with respect to accessibility.*

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**Police Department**

18. The Alcoholic Beverage Control License shall be limited to a Type 20 (Off-Sale Beer & Wine). Any substantial change in the ABC license type shall require subsequent review and a potential amendment of the MUP.
19. This approval does not permit the establishment to operate as a food service eating and drinking establishment, bar, tavern, cocktail lounge or nightclub, as defined in the NBMC.
20. The consumption of alcoholic beverage at this location is prohibited.
21. The Applicant shall install and maintain a security recording system with a 30-day retention and shall make those recordings available to the NBPD upon request.
22. All owners, managers, and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages within 60 days of hire. This training must be updated every three (3) years regardless of certificate expiration date. The certified training program must meet the standards of the certifying/licensing body designated by the State of California. The establishment shall comply with the requirements of this section within 60 days of approval. Records of each owner's manager and employee's successful completion of the require certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.

## RESOLUTION NO. ZA2021-015

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2017-040 ALLOWING REMOVAL, RESTORATION AND MAINTENANCE OF EXISTING ACCESSORY STRUCTURES, HARDSCAPING AND LANDSCAPING, AND GRANTING RELIEF FROM THE DEVELOPMENT STANDARDS OF THE LOCAL COASTAL PROGRAM IMPLEMENTATION PLAN AT 169 SHORECLIFF ROAD (PA2017-092)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by EBTA Architects, Inc. (Applicant), with respect to property located at 169 Shorecliff Road, and legally described as Lot 106, Tract 1116 requesting approval of a coastal development permit.
2. The Applicant proposes to remove, restore and maintain existing accessory structures, hardscaping and landscaping on an oceanfront bluff property (Project). The request was prompted by a notice from the California Coastal Commission advising that the existing improvements require a coastal development permit.
3. The subject property is located within the R-1-6000 (Single-Unit Residential) Zoning District and the General Plan Land Use Element category is RS-D (Single Unit Residential Detached).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RSD-A (Single Unit Residential Detached –0.0 - 5.9 DU/AC) and the Coastal Zoning District is R-1-6000 (Single-Unit Residential).
5. A public hearing was held online on March 11, 2021, 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 Newport Beach Municipal Code (NBMC). Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

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

1. This Project is categorically exempt from the California Environmental Quality Act (“CEQA”) 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. Class 1 exempts the permitting, maintenance or minor alteration of existing private structures. The proposed project includes the removal, restoration and maintenance of existing accessory structures, hardscaping and landscaping on an oceanfront bluff property.

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### SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The subject property is zoned R-1-6000. It is currently developed with a single-family residence and accessory site improvements. The proposed project is not affecting the existing single-family residential structure. All work is proposed within the site area on private property between the residence and the ocean.
2. The project includes the removal of several unauthorized improvements and the removal of invasive plant species. These previously altered areas will be restored with native plantings and will enhance the natural visual quality of the bluff, as can be seen from the Pacific Ocean and distant viewsheds.
3. Approval of the project will result in a property that is more conforming to the Bluff Development Overlay requirements and will abate all violations, as identified by the California Coastal Commission. Development Area C will be mostly restored to appear as a natural coastal bluff. Development outside of Area B will be removed and relocated into the appropriate location for compliance.
4. The proposed scope of work conforms to all applicable policies of the Coastal Land Use Plan (CLUP) related to coastal hazards, including but not limited to:
  - a. Policy 2.8.1-2 Design and site new development to avoid hazardous areas and minimize risks to life and property from coastal and other hazards.
  - b. Policy 2.8.1-4 Require new development to assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The proposed project will remove unauthorized improvements from more sensitive areas while providing a restored, natively landscaped bluff in several previously altered areas.

5. Adjoining properties also have improvements adjacent to the same bluff areas. The proposed project will not appear out of character for existing and expected development in the neighborhood.

6. New landscaping will be verified for compliance with NBMC Section 21.30.075 (Landscaping). A condition of approval is included to require drought-tolerant, and prohibits invasive, species. Prior to issuance of the building permits, the final landscape plans will be reviewed to verify invasive species are not planted.
7. The property is located within an area identified as hazardous due to erosion factors or coastal hazards. The project will be required to comply with the California Building Code (CBC) and Building Division standards and policies.
8. As conditioned, 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 Section 21.30.015(D)(3)(c) – (Waterfront Development - Development Standards) of the NBMC prior to the issuance of building permits for construction.
9. The property is not located adjacent to a coastal view road or coastal viewpoint identified by Local Coastal Program maps. The project site may be located within the viewshed of distant public viewing areas; however, the project is limited to on-grade and low-profile accessory improvements and complies with all applicable Local Coastal Program (LCP) development standards. Therefore, the project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts to public views. The restoration work within Area C will improve the natural quality of the bluff.

Finding:

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

Facts in Support of Finding:

1. The project site is located between the nearest public road and the sea or shoreline. Implementation Plan Section 21.30A.040 requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project is limited to the removal, restoration and maintenance of existing improvements on a developed site and does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities.
2. Section 21.30A.040 (Determination of Public Access/Recreation Impacts) of the NBMC 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 the removal, restoration and maintenance of existing accessory structures, hardscaping and landscaping within the confines of private property located in the Coastal Zone. 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. Public coastal access is provided west of the project site at Corona del Mar State Beach and Little

Corona Beach and to the east of the project site at Crystal Cove State Park, as well as along the coastline.

Finding:

*C. The Zoning Administrator has considered the following:*

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

Facts in Support of Finding:

1. The property has steep bluffs with preexisting private stair access to the beach area below. The requested deviation to maintain safety railing within Area C adjacent to a sheer drop off area is necessary for safety purposes.
2. With the exception of the variance to maintain safety railing within Area C, the proposed project complies and is consistent with the certified LCP.
3. The proposed guard rail will have no detrimental effect on coastal resources that the development standards are intended to protect. Section 21.52.090(B)(1) (Relief from Implementation Plan Development Standards) of the NBMC specifically allows a waiver of development standards through approval of a coastal development for projects that will not have an adverse effect on coastal resources.

Finding:

*D. The granting of the variance is necessary due to special circumstances applicable to the property, including location, shape, size, surroundings, topography, and/or other physical features, the strict application of the development standards otherwise applicable to the property denies the property owner privileges enjoyed by other property owners in the vicinity and in the same coastal zoning district.*

Facts in Support of Finding:

1. The project site contains steep bluff areas characterized by sheer drop offs to the rocky beach area below. The requested guardrail facilitates use and enjoyment of the property in a safe manner without causing detrimental effects on coastal resources that the development standards are intended to protect. The guardrail is necessary to provide a measure of safety for residents. The safety guardrail has an open and transparent design and alternatives to including this project feature are not available.
2. All Facts in Support of Findings A and B above are hereby incorporated by reference.

Finding:

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

Fact in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

1. The project will not affect the public's ability to gain access to use and/or view the coast and nearby recreational facilities. The property is located south of Coast Highway. Public coastal access is provided west of the project site at Corona del Mar State Beach and Little Corona Beach and to the east of the project site at Crystal Cove State Park, as well as along the coastline.
2. All Facts in Support of Finding B are hereby incorporated by reference.

Finding:

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

Fact in Support of Finding:

Fact in Support of Finding A (7) is hereby incorporated by reference.

Finding:

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

Fact in Support of Finding:

The project will not negatively impact any coastal resources, which the bluff setback is intended to protect. Several unauthorized improvements will be removed, and the affected areas will be restored as a bluff with native plants. Invasive plant species will also be removed from the site, which will ultimately benefit, improve and protect coastal resources on-site and beyond.



Finding:

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

Facts in Support of Finding:

1. Approval of the CDP and associated deviation will not be contrary to the applicable policies of the City's Coastal Land Use Plan intended to protect coastal resources. The proposed project includes substantial rehabilitation of previously affected bluff areas and will help to ensure coastal resources are protected and enhanced on the property.
2. The granting of the coastal development permit to allow a guardrail for safety purposes in Development Area C is consistent with NBMC Section 21.52.090 (Relief from Implementation Plan Development Standards), which provides for relief from development standards for projects that will have no detrimental effect on environmental or visual coastal resources. The guardrail is necessary to provide a measure of safety for residents. It has an open design and alternatives to including this project feature are not available.

## 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 CEQA 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. CD2017-040, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 (Appeal to the Coastal Commission) 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 11<sup>TH</sup> DAY OF MARCH, 2021.**

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Jaime Murillo  
Zoning Administrator

**EXHIBIT "A"**

## CONDITIONS OF APPROVAL

1. The development shall be in substantial conformance with the approved site plan and landscaping plans stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. Revisions to the approved plans shall require separate review by the Planning Division and may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
3. Prior to the issuance of a building permit, the property owner shall provide 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, judgements, 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. The letter shall be scanned into the plan set prior to building permit issuance.
4. Prior to the final inspection of the building permit, 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.
5. 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.
6. The Applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of Native Birds pursuant to MBTA:
  - A. The construction area shall be inspected for active nests. If birds are observed flying from a nest or sitting on a nest, it can be assumed that the nest is active. Construction

activity within 300 feet of an active nest shall be delayed until the nest is no longer active. Continue to observe the nest until the chicks have left the nest and activity is no longer observed. When the nest is no longer active, construction activity can continue in the nest area.

- B. It is a violation of state and federal law to kill or harm a native bird. To ensure compliance, consider hiring a biologist to assist with the survey for nesting birds, and to determine when it is safe to commence construction activities. If an active nest is found, one (1) or two (2) short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.
7. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) shall be implemented prior to and throughout the duration of construction activity as designated in the Construction Erosion Control Plan.
  8. The discharge of any hazardous materials into storm sewer systems or receiving waters shall be prohibited. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. A designated fueling and vehicle maintenance area with appropriate berms and protection to prevent spillage shall be provided as far away from storm drain systems or receiving waters as possible.
  9. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stockpiles and construction materials shall be covered, enclosed on all sites, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway.
  10. Trash and debris shall be disposed in proper trash and recycling receptacles at the end of each construction day. Solid waste, including excess concrete, shall be disposed in adequate disposal facilities at a legal disposal site or recycled at a recycling facility.
  11. Prior to the issuance of building permits, the applicant shall submit a final landscape and irrigation plan. These plans shall incorporate drought tolerant plantings, non-invasive plant species and water efficient irrigation design. The plans shall be approved by the Planning Division.
  12. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing, and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
  13. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.

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14. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Coastal Development Permit.
  15. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
  16. Prior to 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.
  17. 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.
  18. 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.
  19. Coastal Development Permit No. CD2017-040 shall expire unless exercised within 24 months from the date of approval as specified in Section 21.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code, unless an extension is otherwise granted.
  20. 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 Frieden Residence Site Alterations including, but not limited to Coastal Development Permit No. CD2017-040 (PA2017-092). 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.

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Additional Conditions of Approval from Hearing

21. The applicant is required to obtain all applicable permits from the City's Building Division. The construction plans must comply with the most recent, City-adopted version of the California Building Code.
22. The applicant shall engage a Geotechnical Engineer to assist with preparation of plans to ensure bluff stability. The Geotechnical Engineer shall provide proof of soils and hillside stability to the satisfaction of the City's Building Official. Construction plans shall incorporate design recommendations and/or mitigations identified.
23. Construction activities shall comply with Section 10.28.040 of the NBMC, 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.
24. Prior to issuance of building permits, a final Construction Pollution Prevention Plan (CPPP) and Water Quality Management Plan (WQMP) shall be reviewed and approved by the Building Division. Implementation shall be in compliance with the approved CPPP and WQMP and any changes could require separate review and approval by the Building Division.
25. The applicant shall employ the following best available control measures ("BACMs") to reduce construction-related air quality impacts:

Dust Control

- Water all active construction areas at least twice daily.
- Cover all haul trucks or maintain at least two feet of freeboard.
- Pave or apply water four times daily to all unpaved parking or staging areas.
- Sweep or wash any site access points within two hours of any visible dirt deposits on any public roadway.
- Cover or water twice daily any on-site stockpiles of debris, dirt or other dusty material.
- Suspend all operations on any unpaved surface if winds exceed 25 mph.

Emissions

- Require 90-day low-NOx tune-ups for off road equipment.
- Limit allowable idling to 30 minutes for trucks and heavy equipment

Off-Site Impacts

- Encourage car pooling for construction workers.
- Limit lane closures to off-peak travel periods.
- Park construction vehicles off traveled roadways.
- Wet down or cover dirt hauled off-site.
- Sweep access points daily.
- Encourage receipt of materials during non-peak traffic hours.
- Sandbag construction sites for erosion control.

Fill Placement

- The number and type of equipment for dirt pushing will be limited on any day to ensure that SCAQMD significance thresholds are not exceeded.
- Maintain and utilize a continuous water application system during earth placement and compaction to achieve a 10 percent soil moisture content in the top six-inch surface layer, subject to review/discretion of the geotechnical engineer.

## RESOLUTION NO. ZA2021-016

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2020-151 FOR THE DEMOLITION OF AN EXISTING SINGLE-FAMILY RESIDENCE AND THE CONSTRUCTION OF A NEW 2,626-SQUARE-FOOT, SINGLE-FAMILY RESIDENCE WITH A 385-SQUARE-FOOT ATTACHED GARAGE LOCATED AT 2000 WEST OCEAN FRONT (PA2020-355)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by William Guidero, with respect to property located at 2000 West Ocean Front, and legally described as Lot 1 of Block 20 of Map of First Addition to Newport Beach, requesting approval of a Coastal Development Permit.
2. The applicant proposes the demolition of an existing single-family residence and the construction of a new 2,626-square-foot, single-family residence with a 385-square-foot attached garage. The proposed development also includes additional appurtenances such as walls, fences, patios, hardscape, drainage devices, and landscaping.
3. The subject property is located within the Multiple Residential (RM) Zoning District and the General Plan Land Use Element category is Multiple Residential (RM). The RM Zoning District permits single-unit residential dwellings.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Multiple Unit Residential (RM-E) (30.0 – 39.9 DU/AC) and the Coastal Zoning District is Multiple Residential (RM).
5. A public hearing was held online on March 11, 2021, 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 Newport Beach Municipal Code (NBMC). Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

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

1. This project is categorically exempt pursuant to Title 14 of the California Code of Regulations Section 15303, Division 6, Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Class 3 (New Construction or Conversion of Small Structures), because it has no potential to have a significant effect on the environment.

2. Class 3 exempts the construction of limited numbers of new, small structures, including one single-family residence. The proposed project is a new single-family residence located in the RM Coastal Zoning District.

### SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
  - a. The maximum floor area limitation is 3,019 square feet and the proposed floor area is 3,011 square feet.
  - b. The proposed development complies with the required setbacks, which are 5 feet abutting the West Ocean Front, 10 feet along the property line abutting the residence at 2001 Court Avenue, and 3 feet along each side property line.
  - c. The highest guardrail/parapet is below 28 feet from established grade and the highest ridge is 33 feet from established grade. The proposed development complies with all height requirements.
  - d. The proposed development provides a two-car garage, meeting the minimum garage requirement for a single-family residence.
  - e. The proposed development complies with the minimum 9.0-foot North American Vertical Datum of 1988 (NAVD 88) top of slab elevation requirement for interior living areas of new structures.
2. The neighborhood is predominantly developed with two- and three-story single and multi-family residences. The proposed three-story structure's design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development and expected future development.
3. A Coastal Hazards Report was prepared by Geosoils, Inc. on November 17, 2020. The project site is separated from the water by a boardwalk/bike trail, as well as a wide sandy beach. The site is approximately 350 feet from the mean high tide line. The report concludes that the highest high tide elevation (currently 7.7 feet NAVD 88) will not exceed 10.65 feet (NAVD 88) using the low-risk aversion projected sea level rise (2.9-



foot increase) over the 75-year design life of the structure based on estimates for sea level rise provided by the State of California Sea-Level Rise Guidance 2018. The report states that the estimated sea level rise over the next 75 years, using the Medium-High Risk Aversion, is potentially 6 feet (13.7 feet NAVD 88). Additionally, the site has not historically been subject to any wave overtopping, nor is overtopping waters over the next 75 years expected to reach the subject site, even under extreme conditions. Based on the data provided, the study provides no recommendations necessary for shoreline protection devices and concludes that coastal hazards will not impact the property over the next 75 years, as the proposed project has minimal risk from flooding.

4. The finish floor elevation of the proposed dwelling is 13.25 feet (NAVD 88), which complies with the minimum 9.0-foot (NAVD 88) elevation standard.
5. Pursuant to Municipal Code Section 21.35.050 (Water Quality and Hydrology Plan), due to the proximity of the development to the shoreline and the development containing more than 2,500 square feet of impervious surface area, a Water Quality Management Plan (WQMP) is required. A WQMP prepared by Thomas M. Ruiz, Civil Engineer, dated December 8, 2020, has been submitted and will be reviewed by the City's Engineer Geologist. The WQMP includes a polluted runoff and hydrologic site characterization, a sizing standard for BMPs, use of a LID approach to retain the design storm runoff volume on site, and documentation of the expected effectiveness of the proposed BMPs.
6. The property is located in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and the CBC prior to building permit issuance.
7. The project site is not located adjacent to a coastal view road, public viewpoint, public park, beach, or public accessway, as identified in the Coastal Land Use Plan. The nearest public viewpoint is the Newport Pier, which is located over 1,000 feet away from the project site. The site is located on the landward side of the West Ocean Front public boardwalk and does not affect views of the ocean from the boardwalk. The project may be located within the viewshed of distant public viewing areas. However, the project will replace an existing single-family residence with a new single-family residence 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 with the public access and public recreation policies of Chapter 3 of the Coastal Act if the project is located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone.*

Facts in Support of Finding:

1. The project site is located on the Balboa Peninsula between the nearest public road and the sea. Implementation Plan Section 21.30A.040 (Determination of Public Access/Recreation Impacts) requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project replaces an existing single-family residence with a new single-family residence. Therefore, the project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities. Furthermore, the project is designed and sited so as not to block or impede existing public access opportunities.
2. The project site is located between 20<sup>th</sup> and 21<sup>st</sup> Street, which are identified by the Coastal Land Use Plan as vertical access locations. Additionally, the site is located adjacent to the West Ocean Front boardwalk, which is identified as lateral access to the beach. The project does not interfere with the existing nearby access to the beach.

SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2020-151, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
2. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 (Appeal to the Coastal Commission) 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 11<sup>TH</sup> DAY OF MARCH, 2021.**



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Jaime Murillo  
Zoning Administrator

**EXHIBIT "A"**

**CONDITIONS OF APPROVAL**

Planning Division

1. The development shall be in substantial conformance with the approved site plan, floor plans, and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new Coastal Development Permit.
3. Coastal Development Permit No. CD2020-151 shall expire unless exercised within 24 months from the date of approval as specified in Section 21.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code, unless an extension is otherwise granted.
4. Prior to the issuance of a Certificate of Occupancy, an agreement in a form approved by the City Attorney between the property owner and the City shall be executed and recorded waiving rights to the construction of future shoreline protection devices including the repair and maintenance, enhancement, reinforcement, or any other activity affecting the bulkhead, that results in any encroachment seaward of the authorized footprint of the bulkhead or other shoreline protective device. The agreement shall be binding against the property owners and successors and assigns.
5. Prior to the issuance of a building permit, the property owner shall submit a notarized signed letter acknowledging all hazards present at the site, assuming the risk of injury or damage from such hazards, unconditionally waiving any claims of damage against the City from such hazards, and to indemnify and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of development.
6. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter sensitive habitat, receiving waters, or a storm drain or result in impacts to environmentally sensitive habitat areas, streams, the beach, wetlands or their buffers.
7. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
8. All proposed accessory structures located within setback areas shall comply with applicable height limits consistent with Zoning Code Section 20.30.040 (Fences, Hedges, Walls, and Retaining Walls).

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. Prior to the issuance of building permits, the applicant shall submit a final landscape and irrigation plan. These plans shall incorporate drought tolerant plantings, non-invasive plant species and water efficient irrigation design. The plans shall be approved by the Planning Division.
13. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing, and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
14. 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.
15. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.

16. 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.
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 the issuance of building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
19. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner, or the leasing agent.
20. 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 Liu Residence including, but not limited to, Coastal Development Permit No. CD2020-151 (PA2020-355). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

#### Building Division

21. Prior to issuance of building permits, the final WQHP/WQMP shall be reviewed and approved by the Building Division. Implementation shall be in compliance with the WQHP/WQMP and any changes could require separate review and approval by the Building Division.
22. Prior to the issuance of building permits, the applicant shall submit a final drainage and grading plan. The plan shall be subject to the review and approval by the Building Division.
23. Prior to issuance of the building permits, a copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans.

24. Prior to the issuance of building permits, the applicant shall submit a final construction erosion control plan. The plan shall be subject to the review and approval by the Building Division.

Public Works Division

25. All improvements shall be constructed as required by Ordinance and the Public Works Department.
26. No above ground improvements are permitted within the 10-foot rear setback area.
27. There shall be a minimum 6-inches of rise from the existing flow line to the garage area closest to the alley.
28. Remove the existing wall that encroaches into the West Ocean Front walkway. Fill area with sidewalk consistent with City Standard STD-180-L. Concrete thickness shall match the existing Ocean Front Walkway.
29. Reconstruct all damaged sidewalk, curb and gutter along the 20<sup>th</sup> Street and West Ocean Front right of way.
30. Dedicate a 10-foot wide easement for sewer purposes to the City along the rear property line.
31. Dedicate a 10-foot wide private access easement to the adjacent residences for access to the private alley.
32. Abandon the existing sewer clean out per the direction of Public Works inspector and install a new sewer lateral and sewer clean out within the new sewer easement.
33. Abandon the existing driveway approach along the 20<sup>th</sup> Street frontage per City Standard STD-165-L.
34. Reconstruct a new alley approach per City Standard STD-142-L.
35. Relocate the existing gas meter to an area outside of the new sewer easement area and within private property.
36. An encroachment permit is required for all work activities within the public right-of-way.
37. 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.