



## 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 25, 2022.

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### ZONING ADMINISTRATOR ACTIONS MARCH 24, 2022

- Item 1: Golden Rabbit Restaurant Minor Use Permit No. UP2021-044 (PA2021-254)  
Site Address: 217 Marine Avenue, Suite B  
Action: Approved by Resolution No. ZA2022-017 Council District 5
- Item 2: DeYoung Residence Coastal Development Permit No. CD2021-061 (PA2021-231)  
Site Address: 2762 Bay Shore Drive  
Action: Approved by Resolution No. ZA2022-018 Council District 3
- Item 3: Armour Residence Coastal Development Permit No. CD2022-002 (PA2022-001)  
Site Address: 729 Via Lido Soud  
Action: Approved by Resolution No. ZA2022-019 Council District 1
- Item 4: Kamps Residence Coastal Development Permit No. CD2022-006 (PA2022-006)  
Site Address: 1802 and 1802 ½ West Ocean Front  
Action: Approved by Resolution No. ZA2022-020 Council District 1
- Item 5: Longman Residence Coastal Development Permit No. CD2021-082 (PA2021-307)  
Site Address: 2571 Vista Drive  
Action: Approved by Resolution No. ZA2022-021 Council District 3
- Item 6: Root Residence Coastal Development Permit No. CD2022-004 (PA2022-009)  
Site Address: 2661 Crestview Drive  
Action: Approved by Resolution No. ZA2022-022 Council District 3

**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. ZA2022-017

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA APPROVING MINOR USE PERMIT NO. UP2021-044 FOR A FOR A NEW TAKE OUT-SERVICE LIMITED RESTAURANT LOCATED AT 217 MARINE AVENUE, UNIT B (PA2021-254)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Mysa Tran (Applicant), with respect to property located at 217 Marine Avenue, Unit B, and legally described as Lot 20, Block 12, Section 4, of the Balboa Island Tract, requesting approval of a minor use permit.
2. The Applicant proposes to operate a new take-out service, limited eating and drinking establishment (boba shop). The use would occupy an approximately 563-square-foot suite within an existing commercial building. The Applicant is not proposing to provide any seating, alcohol service, or late hours (after 11:00 p.m.).
3. The subject property is located within the Mixed-Use Water (MU-W2) Zoning District and the General Plan Land Use Element category is Mixed-Use Water 2 (MU-W2).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Mixed-Use Water Related (MU-W) and it is located within the MU-W2 (Mixed-Use Water) Coastal Zone District. The proposed boba shop does not result in an increase in the parking rate and therefore is not considered an intensification of use that would require a coastal development permit.
5. A public hearing was held on March 24, 2022, online via Zoom. 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 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 Class 1 exemption includes minor alterations to existing structures involving negligible or no expansion of use. The proposed project involves alterations to the interior floor plan of an existing commercial space with no expansion in floor area.

#### SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The General Plan designates the site MU-W2 (Mixed-Use Water 2). This designation applies to properties in which marine-related uses may be intermixed with general commercial, visitor-serving commercial, and residential dwelling units on the upper floors. The proposed establishment is a commercial use intended to serve nearby residents, the surrounding community, and visitors to the City of Newport Beach. Therefore, it is consistent with the MU-W2 designation.
2. Small eating and drinking establishments exist in the mixed-use building and the proposed take-out service establishment would be complementary to the surrounding commercial and residential uses.
3. The subject property is not part of 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. The property is located in the Mixed-Use Water (MU-W2) Zoning District. The proposed establishment, which includes customer ordering area, a point of sales area, a kitchen and prep area, a storage room, and no onsite seating is a permitted use subject to the approval of a minor use permit pursuant to NBMC Section 20.22.020 (Mixed-Use Zoning Districts Land Uses and Permit Requirements).
2. The subject property was developed in 1948 with a two (2)-story building. The building has three (3) tenant suites and provides three (3) parking spaces in the rear of the building, accessed from the alley. A restaurant operates in the suite adjacent to the proposed project and a dentist office operates in the suite above. The existing uses have been in operation since the 1970s and 1940s, respectively, and prior to current zoning code parking requirements. The building is considered legal nonconforming for parking.
3. NBMC Section 20.38.060 (Nonconforming Parking) allows a change of use on sites with nonconforming parking. It specifies that an existing use may be changed to a new use allowed in that zoning district without providing additional parking, provided no intensification or enlargement (e.g., increase in floor area, or lot area) occurs and the

new use requires a parking rate of no more than one (1) space per two hundred fifty (250) square feet of gross building area.

4. The parking requirement for a take-out service limited, eating, and drinking establishment is one (1) space per 250 square feet, and no intensification or enlargement is proposed. Therefore, no additional parking is required.
5. The proposed establishment will comply with zoning code standards for eating and drinking establishments, including those specific to the take-out service limited use classification, which includes a maximum of six (6) seats, no alcohol service, and no late hours. Conditions of Approval numbers 6, 5, and 4 ensure that the business shall operate per the aforementioned characteristics or may be required to obtain a new use permit.
6. While the applicant is not proposing any seating as part of this project, Condition of Approval no. 6 has been written to allow the applicant the flexibility off adding up to six (6) seats without amending this use permit, consistent with the definition of a take-out service, limited eating and drinking establishment given in NBMC section 20.70.020 (Definitions). The addition of seating at a later date however shall be subject to the review of the Building Division and the requirements of the California Building Code, including but not limited to providing a public restroom and an accessible path.

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. The proposed establishment can be accessed by either motorists, pedestrians, or cyclists from Marine Avenue or through the alley in the rear.
2. Marine Avenue is developed with a mix of uses including retail, office, and eating and drinking establishments. The proposed establishment is compatible with the existing and allowed uses.
3. Condition of Approval no. 4 limits the allowed hours of operation from 9 a.m. to 9 p.m., daily, which will minimize the potential for disturbances to the residential uses to the rear of the property.
4. A trash enclosure is not currently provided on-site. Instead, all waste and recycling are taken to the dumpster behind the building. Condition of Approval No. 21 requires the operator maintain the trash area such that odors are controlled appropriately. Should the existing trash area be determined by the City in the future to be inadequate, the Applicant will be required to increase the frequency of pickups.

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. The project site is located on Marine Avenue which is located at the entrance of Balboa Island and has heavy vehicular traffic and pedestrian activity. The proposed boba shop will not result in increased vehicular and pedestrian activity.
2. The Fire Department reviewed the project and site to ensure adequate public and emergency vehicle access is provided.
3. Any proposed site and tenant improvements must comply with the zoning code and all Building, Public Works, and Fire Codes for permits to be issued.

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 project has been reviewed and includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks and areas surrounding the subject property and adjacent properties during business hours, if directly related to the patrons of the establishment.
2. The proposed take-out service, limited, eating, and drinking establishment will add additional take-out options to the neighborhood and provide an economic opportunity for the property owner to update the tenant space and provide additional services to residents and visitors.
3. The Applicant is required to obtain Health Department approval prior to opening for business and comply with the California Building Code to ensure the safety and welfare of customers and employees within the establishment.
4. The proposed use includes limited hours, no alcohol service is proposed, and there is no increased parking demand. Based upon the Zoning Code requirements, the proposed use will not result in a detriment to the surrounding community.

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. UP2021-044 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 Newport Beach Municipal Code.

**PASSED, APPROVED, AND ADOPTED THIS 24<sup>TH</sup> DAY OF MARCH, 2022.**



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Jaime Murillo  
Zoning Administrator

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

*(Project-specific conditions are in italics)*

**Planning Division**

1. The development shall be in substantial conformance with the approved site plan and floor plans 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 Minor Use Permit.
4. *The hours of operation for the establishment shall be limited to 9 a.m. through 9 p.m., daily.*
5. *There shall be no sales and/or service of alcohol permitted unless a new use permit is approved.*
6. *No seating is included as part of the proposed project. Should the applicant decide to add incidental seating at a later date, the maximum number of seats allowed shall be six (6). The addition of any seating shall be subject to the review of the Building Division and the requirements of the California Building Code including but not limited to providing a public restroom and accessible path.*
7. *No outdoor seating is permitted unless an amendment to this Minor Use Permit or a Limited Term Permit is acquired.*
8. *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 Newport Beach Municipal Code.*
9. This Minor Use Permit No. UP2021-044 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 (Time Limits and Extensions) of the NBMC, unless an extension is otherwise granted.
10. This Minor Use Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.

11. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require subsequent review by the Planning Division and an amendment to this Minor Use Permit or the processing of a new Minor Use Permit may be required.
12. A copy of the Resolution, including conditions of approval Exhibit “A” shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
13. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, if in the opinion of the Director of Community Development, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
14. Prior to the issuance of a building permit, the Applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
15. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

Location	Between the hours of 7:00AM and 10:00PM		Between the hours of 10:00PM and 7:00AM	
	Interior	Exterior	Interior	Exterior
Residential Property	45dBA	55dBA	40dBA	50dBA
Residential Property located within 100 feet of a commercial property	45dBA	60dBA	45dBA	50dBA
Mixed Use Property	45dBA	60dBA	45dBA	50dBA
Commercial Property	N/A	65dBA	N/A	60dBA

16. 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.
17. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday. Noise-generating construction activities are not allowed on Saturdays, Sundays, or Holidays.
18. No outside paging system shall be utilized in conjunction with this establishment.



19. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-of-way.
20. 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.
21. The Applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).
22. All trash dumpsters and/or receptacles shall have a solid cover or lid. The lid shall remain closed when the dumpster is not in use. r
23. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 7:00 a.m. on weekdays and Saturdays and between the hours of 10:00 p.m. and 9:00 a.m. on Sundays and Federal holidays, unless otherwise approved by the Director of Community Development, and may require an amendment to this Minor Use Permit.
24. 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.
25. 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 Newport Beach Municipal Code to require such permits.
26. 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 Newport Beach Municipal Code.
27. 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 **Golden Rabbit Restaurant including, but not limited to, Minor Use Permit No. UP2021-044 (PA2021-254)**. 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**

28. The Applicant is required to install a new sewer cleanout on the existing sewer lateral per City Standard STD#406

**Building Division**

29. The Applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements.
30. Approval from the Orange County Health Department is required prior to the issuance of a building permit.

## RESOLUTION NO. ZA2022-018

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2021-061 TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND CONSTRUCT A NEW TWO (2)-STORY SINGLE-FAMILY RESIDENCE WITH AN ATTACHED TWO (2)-CAR GARAGE LOCATED AT 2762 BAY SHORE DRIVE (PA2021-231)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Brandon Architects (Applicant), with respect to property located at 2762 Bay Shore Drive, and legally described as Lot 3 of Tract no. 1014, requesting approval of a coastal development permit (CDP).
2. The Applicant proposes the demolition of an existing single-family residence and the construction of a new two (2)-story, 3,553-square-foot single-family residence with an attached 478-square-foot two (2)-car garage. The project also includes the installation of landscaping, hardscaping, drainage, site walls, and patio improvements. No work is proposed to the existing bulkhead, which protects the site against coastal hazards. The design complies with all applicable development standards and no deviations are requested. All improvements authorized by this CDP will be located on private property.
3. The subject property is categorized 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.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RSD-B (Single Unit Residential Detached) – (6.0 – 9.9 DU/AC) and it is located within the R-1 (Single-Unit Residential) Coastal Zone District.
5. A public hearing was held on March 24, 2022, online via Zoom. 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 in a zone which permits residential uses. The proposed project consists of the demolition of an existing single-family residence and the construction of a new two (2)-story, 3,553-square-foot single-family residence with an attached 478-square-foot two (2)-car garage in the R-1 zoning district.
3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

### SECTION 3. REQUIRED FINDINGS.

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

#### Finding:

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

#### Facts in Support of Finding:

1. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
  - a. The maximum floor area limitation is 5,784 square feet and the proposed floor area is 4,031 square feet.
  - b. The proposed development provides the minimum required setbacks, which are 10 feet along harbor side, 4 feet along each side property line, and 0 feet along Bayshore Drive.
  - c. The highest ridge is no more than 29 feet from established grade (12.52 feet North American Vertical Datum of 1988 [NAVD 88]), which complies with the maximum height requirements. There are no flat-roof elements in the design.
  - d. The project includes garage parking for a total of two (2) vehicles, complying with the minimum two (2)-car garage parking requirement for single-family residences with less than 4,000 square feet of habitable floor area.
2. The neighborhood is predominantly developed with two (2)- story single-family residences. The proposed design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development.
3. A Coastal Hazards Report and Sea Level Rise Analysis was prepared for the project by Geosoils, Inc. dated November 9, 2021. The report states that the current maximum bay

water elevation is 7.7 feet (NAVD 88). The report analyzes future sea level rise scenarios assuming a 3-foot increase in the maximum water level over the next 75 years. The bay water level is estimated to reach approximately 10.7 feet (NAVD 88) in the year 2096 (the likely range for sea level rise over 75-year design life of the structure based on low risk aversion estimates for sea level rise provided by the State of California, Sea Level Rise Guidance: 2018 Update). On March 23, 2021, the City Council approved updated Waterfront Project Design Guidelines and Standards, Harbor Design Criteria Commercial & Residential Facilities. The guidelines require that any structure permitted within the years 2021 through 2025 must have a minimum bulkhead elevation of 10.9 feet (NAVD 88) with a design for adaptability elevation of 14.4 feet (NAVD 88). The proposed bulkhead design maintains a minimum top of wall elevation above 10.9 feet (NAVD 88) with future design adaptability of up to 14.4 feet (NAVD 88).

4. The project site is protected by an existing bulkhead with a top of coping elevation that varies from 12.20 feet (NAVD 88) to 12.25 feet (NAVD 88). A bulkhead conditions report was prepared by Geosoils, Inc. on November 9, 2021. The report concludes that the bulkhead is in good condition and no repair or replacement of the bulkhead is anticipated within the next 75 years. Condition of Approval no. 2 requires the bulkhead remain at a minimum elevation of 10.90 feet (NAVD 88) with a design adaptability of elevation of 14.4 feet (NAVD 88).
5. The top of slab for the first floor of the residence is proposed at an elevation of 12.80 feet (NAVD 88), which complies with the minimum 9.00 feet (NAVD 88) elevation standard.
6. 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). This requirement is included as a condition of approval that will need to be satisfied prior to final building permit inspection, respectively
7. 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). This requirement is included as a condition of approval that will need to be satisfied prior to the issuance of building permits, respectively.
8. The property is located in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance.
9. The property abuts coastal waters. A Construction Erosion Control Plan was provided to implement temporary Best Management Practices (BMPs) during construction to minimize

erosion and sedimentation and to minimize pollution of runoff and coastal waters derived by construction chemicals and materials. The project design also addresses water quality through the inclusion of a post-construction drainage system that includes drainage and percolation features designed to retain dry weather and minor rain event runoff on-site. Any water not retained on-site is directed to the City's storm drain system.

10. Pursuant to Section 21.35.050 of the NBMC, due to the proximity of the development to the shoreline and the development containing more than 75 percent of impervious surface area, a Water Quality and Hydrology Plan (WQHP) is required. A preliminary WQHP has been prepared for the project by Forkert Engineering & Surveying Inc., dated November 11, 2021. The WQHP includes a polluted runoff and hydrologic site characterization, a sizing standard for BMPs, use of an LID approach to retain the design storm runoff volume on site, and documentation of the expected effectiveness of the proposed BMPs.
11. Proposed landscaping complies with Implementation Plan Section 21.30.075. A condition of approval is included that requires drought-tolerant species. Prior to issuance of building permits, the final landscape plans will be reviewed to verify invasive species are not planted.
12. The project site is not located adjacent to a coastal viewpoint as identified in the Coastal Land Use Plan. The nearest designated coastal viewpoint is at Lower Castaways Park, approximately 1,000 feet to the north of the project site. The residence is within the general viewshed from the park when looking toward the Pacific Ocean. The project is also within the general viewshed of a coastal view road, West Coast Highway, while passing over the Newport Bay Bridge when and looking at the harbor and beyond. The two (2)-story residence however is sited within a fully developed neighborhood and surrounded by other single-family residences. The project has been designed to comply with height limitations and any public view of the home is highly likely to be obscured by the adjacent residences.
13. As a waterfront property, the east elevation of the new residence will be visible from the harbor. The proposed home is set back 29 feet from the bulkhead, where the zoning code only requires a 10-foot setback, which results in the project providing additional open volume (approximately 1,000 sq. ft. more open volume than required per code). This design leaves the lot more open along the water and reduces the visual appearance of a building mass so close to the waterfront. Proposed fencing for pool protection along the waterfront edge of the property utilizes wrought iron and avoids the appearance of being walled off from the water. The proposed two (2)-story design of the residence is consistent with the existing neighborhood pattern of development, complies with all applicable development standards, and has no unique features that would result in adverse impacts to public views. The proposed project should not impact coastal views.

Finding:

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

Facts in Support of Finding:

1. The project site is located between the nearest public road and the sea in the private community of Bay Shores. Developed in 1941, Bay Shores is a 258-lot single-family gated community located on the Lido Channel southwest of Coast Highway and Newport Bay Bridge. The 39-unit Anchorage Apartment complex is also located within the community. The community is accessible from Coast Highway via Bay Shores Drive, a private street. The shoreline is on the south and east sides of the community and consists of bulkheads and two (2) small sandy beaches.
2. Implementation Plan Section 21.30A.040 requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project replaces an existing single-family residence located on standard R-1 lot with a new single-family residence. Therefore, the project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities. Furthermore, the project is designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.
3. The residential lot does not currently provide, nor does it inhibit public coastal access. The nearest public vertical access to the harbor is available adjacent to the Bay Shores Community, at the Balboa Bay Club, approximately 1,600 feet to the west from the subject property. Public access points to the shore can be found along Coast Highway and Castaways Park.

SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.
2. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2021-061, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.

3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

**PASSED, APPROVED, AND ADOPTED THIS 24<sup>TH</sup> DAY OF MARCH, 2022.**



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Jaime Murillo  
Zoning Administrator



**EXHIBIT "A"**

**CONDITIONS OF APPROVAL**

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. *The existing seawall shall maintain a minimum elevation of 10.90 feet (NAVD 88) with the capability of being raised up to 14.4 feet (NAVD 88), in compliance with the City of Newport Beach Waterfront Project Guidelines and Standards, Harbor Design Criteria Commercial & Residential Facilities*
3. *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 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.*
4. *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 the 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.*
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. This Coastal Development Permit does not authorize any development seaward of the private property.
7. The Applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of native birds pursuant to MBTA:

- A. The construction area shall be inspected for active nests. If birds are observed flying from a nest or sitting on a nest, it can be assumed that the nest is active. Construction activity within 300 feet of an active nest shall be delayed until the nest is no longer active. Continue to observe the nest until the chicks have left the nest and activity is no longer observed. When the nest is no longer active, construction activity can continue in the nest area.
  - B. It is a violation of state and federal law to kill or harm a native bird. To ensure compliance, consider hiring a biologist to assist with the survey for nesting birds, and to determine when it is safe to commence construction activities. If an active nest is found, one (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.
- 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. 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.
  - 11. Trash and debris shall be disposed in proper trash and recycling receptacles at the end of each construction day. Solid waste, including excess concrete, shall be disposed in adequate disposal facilities at a legal disposal site or recycled at a recycling facility.
  - 12. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
  - 13. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
  - 14. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Coastal Development Permit.
  - 15. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.

16. *Prior to the issuance of building permits, the Applicant shall submit a final construction erosion control plan. The plan shall be subject to the review and approval by the Building Division.*
17. *Prior to the issuance of building permits, the Applicant shall submit a final drainage and grading plan. The plan shall be subject to the review and approval by the Building Division.*
18. *Prior to issuance of a building permit, a copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans.*
19. *Prior to issuance of a building permit, the Applicant shall submit 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.*
20. *Prior to issuance of building permits, the final WQHP/WQMP shall be reviewed and approved by the Building Division. Implementation shall be in compliance with the approved CPPP and WQHP/WQMP and any changes could require separate review and approval by the Building Division.*
21. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing, and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
22. 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, and 8 a.m. and 6 p.m. on Saturday. Noise-generating construction activities are not allowed on Saturdays, Sundays or Holidays.
23. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the NBMC. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

Location	Between the hours of 7:00AM and 10:00PM		Between the hours of 10:00PM and 7:00AM	
	Interior	Exterior	Interior	Exterior
Residential Property	45dBA	55dBA	40dBA	50dBA
Residential Property located within	45dBA	60dBA	45dBA	50dBA

100 feet of a commercial property				
Mixed Use Property	45dBA	60dBA	45dBA	50dBA
Commercial Property	N/A	65dBA	N/A	60dBA

24. 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.
25. 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.
26. This Coastal Development Permit No. CD2021-061 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.
27. 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 **DeYoung Residence including, but not limited to, Coastal Development Permit No. CD2021-061 (PA2021-231)**. 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. ZA2022-019

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2022-002 FOR THE DEMOLITION OF AN EXISTING SINGLE-FAMILY RESIDENCE AND THE CONSTRUCTION OF A NEW TWO (2)-STORY, 2,765-SQUARE-FOOT, SINGLE-FAMILY RESIDENCE WITH A 474-SQUARE-FOOT ATTACHED TWO (2)-CAR GARAGE LOCATED AT 729 VIA LIDO SOUD (PA2022-001)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Carlton Graham, with respect to property located at 729 Via Lido Soud, and legally described as Lot 27 of Tract 907, 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 two (2)-story, 2,765-square-foot, single-family residence with a 474-square-foot attached garage. The proposed development also includes additional appurtenances such as walls, fences, patios, hardscape, drainage devices, and landscaping. The project includes raising the existing bulkhead to 13.35 feet NAVD88.
3. The subject property is located within the Single-Unit Residential (R-1) Zoning District and the General Plan Land Use Element category is Single Unit Residential Detached (RS-D). The R-1 Zoning District permits single-unit residential dwellings.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Single Unit Residential Detached (10.0 – 19.9 DU/AC) (RSD-C) and the Coastal Zoning District is Single-Unit Residential (R-1).
5. A public hearing was held on March 24, 2022, online via Zoom. 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 (1) single-family residence. The proposed project is a new single-family residence located in the R-1 Coastal Zoning District.

### SECTION 3. REQUIRED FINDINGS.

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

#### Finding:

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

#### Facts in Support of Finding:

1. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
  - a. The maximum floor area limitation is 3,465 square feet and the proposed floor area is 3,239 square feet.
  - b. The proposed development complies with the required setbacks, which are 10 feet abutting the bay, 4 feet abutting Via Lido Soud, and 3 feet along each side property line.
  - c. The highest guardrail/parapet is below 24 feet from established grade and the highest ridge is 24 feet from established grade. The proposed development complies with all height requirements.
  - d. The proposed development provides a two (2)-car garage, complying with 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 (2)- and three (3)-story single-unit residences. The proposed two (2)-story structure's design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development and expected future development.
3. The finish floor elevation of the proposed dwelling is 13.68 feet (NAVD 88), which complies with the minimum 9.0-foot (NAVD 88) elevation standard.
4. A Coastal Hazards Report was prepared by PMA Consulting, Inc. on November 9, 2021. The project site is near the Newport Bay. However, a small intertidal beach separates the project from the water. The report concludes that the highest high tide elevation

(currently 7.7 feet NAVD 88) will not exceed 10.9 feet (NAVD 88) using the low-risk aversion projected sea level rise (3.2-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 project includes the raising of the existing bulkhead, which is currently at 7.90 feet (NAVD 88), to a total height of 13.35 feet (NAVD 88). In the case that additional protection is necessary, the proposed bulkhead is designed to be adaptable to 14.4 feet (NAVD 88). 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 concludes that coastal hazards will not impact the property over the next 75 years, as the proposed project has minimal risk from flooding.

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 Land Strategies, LLC, dated December 17, 2021, 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, or public accessway, as identified in the Coastal Land Use Plan. The project is located approximately 250 feet from the Via San Remo street end and approximately 315 feet from the Via Waziers street end, which are both identified as public beaches in the Coastal Land Use Plan. The project may be located within the viewshed of other distant public viewing areas. Site evaluation revealed that the proposed two (2)-story design is consistent with the existing neighborhood pattern of development and will not affect the existing views afforded from the Via San Remo and Via Waziers street ends. 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 Lido Isle 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 Via San Remo and Via Waziers, which are identified by the Coastal Land Use Plan as public beach access locations. 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 finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15303 under Class 3 (Conversion or Construction of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2022-002, 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 (NBMC). 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 24<sup>TH</sup> DAY OF MARCH, 2022.**



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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. *Prior to final of building permits, the existing seawall shall be reinforced and raised to 10.90 feet (NAVD88) minimum and capable to be raised up to 14.4 feet (NAVD 88), in compliance with the City of Newport Beach Waterfront Project Guidelines and Standards, Harbor Design Criteria Commercial & Residential Facilities.*
4. Coastal Development Permit No. CD2022-002 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 (NBMC), unless an extension is otherwise granted.
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.
7. 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.

8. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
9. 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).
10. 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.
11. 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.
12. 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.
13. 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.
14. 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.
15. 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.
16. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
  17. All principal structures shall be waterproofed to a minimum height of 14.4 feet NAVD 88.
  18. 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.
  19. 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.
  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 either the current business owner, property owner, or the leasing agent.
  22. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of **Armour Residence including, but not limited to, Coastal Development Permit No. CD2022-002 (PA2022-001)**. 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

23. Prior to issuance of building permits, the final WQHP/WQMP shall be reviewed and approved by the Building Division. Implementation shall be in compliance with the

WQHP/WQMP and any changes could require separate review and approval by the Building Division.

24. Prior to the issuance of building permits, the applicant shall submit a final drainage and grading plan. The plan shall be subject to the review and approval by the Building Division.
25. 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.
26. 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.
27. Prior to issuance of building permits, the applicant shall submit a soils report which include recommendations for construction on liquefiable soils. Additionally, the building foundation shall comply with the minimum requirements of the City of Newport Beach Building Code Policy CBC 1803.5.11-12.

## RESOLUTION NO. ZA2022-020

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2022-006 FOR THE DEMOLITION OF AN EXISTING DUPLEX AND THE CONSTRUCTION OF A NEW THREE (3)-STORY, 2,857-SQUARE-FOOT, SINGLE-FAMILY RESIDENCE WITH AN ATTACHED 793-SQUARE-FOOT ACCESSORY DWELLING UNIT AND A 630-SQUARE-FOOT ATTACHED TWO (2)-CAR GARAGE LOCATED AT 1802 AND 1802 ½ WEST OCEAN FRONT (PA2022-006)**

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 1802 and 1802 ½ West Ocean Front, and legally described as Lot 2 of Block 18, requesting approval of a Coastal Development Permit.
2. The applicant proposes the demolition of an existing duplex and the construction of a new three (3)-story, 2,857-square-foot, single-family residence with an attached 793-square-foot accessory dwelling unit (ADU) and an attached 630-square-foot attached two (2)-car 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 (30.0 – 39.9 DU/AC) (RM-E) and the Coastal Zoning District is Multiple Residential (RM).
5. A public hearing was held on March 24, 2022, online via Zoom. 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 (1) 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 (NBMC), the following findings and facts in support of such findings are set forth:

#### Finding:

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

#### Facts in Support of Finding:

1. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
  - a. The maximum floor area limitation is 4,397 square feet and the proposed floor area is 4,280 square feet.
  - b. The proposed development complies with the required setbacks, which are 7 feet abutting the West Ocean Front and 3 feet along each side property line. There is no setback requirement abutting West Ocean Front Alley.
  - 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 (2)-car garage, complying with the minimum garage requirement for a single-family residence.
  - e. The maximum floor area for a one-bedroom ADU is 850 square feet and the proposed ADU is 793 square feet.
  - f. 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 project proposes to demolish the existing duplex on-site to construct a single-family residence and attached accessory dwelling unit (ADU). As a result, the project complies with the Housing Crisis Act of 2019 and Senate Bill 8 (Skinner) because it does not result in the loss of residential density. The State Department of Housing and Community Development (HCD) has verified with the City in an email dated March 23, 2022, that an ADU is considered a housing unit under Government Code Section 66300 provisions to replace existing units. The Property Owner has certified that the units are not "protected" units under Section 66330 Subdivision (d)(2). The project is consistent with the General

Plan, Local Coastal Program, and Zoning designations that allow the single-family and accessory dwelling unit land uses. Under Coastal Land Use Plan Table 2.1.1-1, the Multiple Unit Residential (RM) category is intended to provide primarily for multi-family residential development containing attached or detached dwelling units. IP Table 21.18-1 shows “Single-Unit Dwellings – Detached” and “Accessory Dwelling Units” as allowed uses in the RM Coastal Zoning District. Therefore, the project of a single-family residence and accessory dwelling unit to replace the existing duplex is consistent with the RM zoning and land use designations and does not result in a loss of residential density.

3. The neighborhood is predominantly developed with two (2)- and three (3)-story single- and multi-unit residences. The proposed two (2)-story structure’s design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development and expected future development.
4. The finish floor elevation of the proposed dwelling is 13.5 feet (NAVD88), which complies with the minimum 9.0-foot (NAVD88) elevation standard.
5. A Coastal Hazards Report was prepared by Geosoils, Inc. on December 29, 2021. The project site is separated from the ocean by the West Ocean Front boardwalk and a wide sandy beach (approximately 460 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 10.9 feet (NAVD 88) using the low-risk aversion projected sea level rise (3.2-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 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 concludes that coastal hazards will not impact the property over the next 75 years, as the proposed project has minimal risk from flooding.
6. 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 Ruiz, Civil Engineer, dated January 6, 2022, 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.
7. The property is located in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and the CBC prior to building permit issuance.



8. The project site is not located adjacent to a coastal view road, public viewpoint, public park, or public accessway, as identified in the Coastal Land Use Plan. The project is located adjacent to a public beach as designated by the Coastal Land Use Plan. The project may be located within the viewshed of other distant public viewing areas. Site evaluation revealed that the proposed three (3)-story design is consistent with the existing neighborhood pattern of development and will not affect the existing views afforded from the 18<sup>th</sup> and 19<sup>th</sup> Street street ends. The project will replace an existing duplex with a new single-family residence and attached ADU 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 duplex with a new single-family residence and attached ADU. 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 18<sup>th</sup> and 19<sup>th</sup> Street, which are identified by the Coastal Land Use Plan as public beach access locations. 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 finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15303 under Class 3 (Conversion or Construction of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.

2. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2022-006, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code (NBMC). 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 24<sup>TH</sup> DAY OF MARCH, 2022.**



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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. CD2022-006 shall expire unless exercised within 24 months from the date of approval as specified in Section 21.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code (NBMC), unless an extension is otherwise granted.
4. 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.
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 (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.

15. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
16. All principal structures shall be waterproofed to a minimum height of 14.4 feet NAVD 88.
17. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Coastal Development Permit.
18. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
19. Prior to the issuance of building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
20. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner, or the leasing agent.
21. 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 **Kamps Residence including, but not limited to, Coastal Development Permit No. CD2022-006 (PA2022-006)**. 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

22. 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.
23. 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.

24. 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.
25. 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.
26. Prior to issuance of building permits, the applicant shall submit a soils report which include recommendations for construction on liquefiable soils. Additionally, the building foundation shall comply with the minimum requirements of the City of Newport Beach Building Code Policy CBC 1803.5.11-12.

## RESOLUTION NO. ZA2022-021

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2021-082 TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND CONSTRUCT A NEW TWO (2)-STORY SINGLE-FAMILY RESIDENCE AND ATTACHED TWO (2)-CAR GARAGE LOCATED AT 2571 VISTA DRIVE (PA2021-307)**

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 (Applicant), with respect to property located at 2571 Vista Drive, requesting approval of a coastal development permit.
2. The lot at 2571 Vista Drive is legally described as Lot 50 in Tract 1102.
3. The Applicant proposes a coastal development permit to allow the demolition of an existing single-family residence and the construction of a new three (3)-story, 3,442-square-foot, single-family residence with attached 656-square-foot, two (2)-car garage. The project also includes additional appurtenances such as site walls, fences, patios, spa, drainage devices, and landscaping. The design complies with all applicable development standards, including height, setbacks, and floor area limit, and no deviations are requested.
4. The subject property is categorized Single Unit Residential Detached (RS-D) by the General Plan Land Use Element and is located within the Single-Unit Residential (R-1) Zoning District.
5. The subject property is within the coastal zone. The Coastal Land Use Plan category is Single Unit Residential Detached (RSD-B) – (6.0 – 9.9 DU/AC) and it is located within the Single-Unit Residential (R-1) Coastal Zone District.
6. A public hearing was held on March 24, 2022, online via Zoom. 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. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of

hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

2. Class 3 exempts the demolition of up to three (3) single-family residences and additions of up to 10,000 square feet to existing structures. The proposed project consists of the demolition of one (1) single-family residence and the construction of a new approximately 3,442-square-foot, single-family residence, including an attached 656-square-foot two (2)-car garage.
3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

### SECTION 3. REQUIRED FINDINGS.

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

#### Finding:

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

#### Facts in Support of Finding:

1. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
  - a. The maximum floor area limitation is 5,808 square feet and the proposed floor area is 4,098 square feet.
  - b. The proposed development provides the minimum required setbacks, which are 10 feet along the front property line abutting Vista Drive, 3 feet along the sides and 10 feet along the rear property line abutting the alley.
  - c. The highest guardrail is less than 24 feet from established grade (12.72 feet NAVD88) and the highest ridge is no more than 29 feet from established grade, which comply with the maximum height requirements.
  - d. The project includes garage parking for a total of two (2) vehicles, complying with the minimum two (2)-car garage parking requirement for single-family residences with less than 4,000 square feet of habitable floor area.



2. The neighborhood is predominantly developed with one (1)- and (2)-story, single-family residences. The proposed design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development.
3. The development is located approximately 750 feet from the bay in a developed area. The project site is separated from the bay (the nearest body of water) by one (1) row of residences and Bay Shore Drive. The finished floor elevation of the first floor of the proposed structure is 13.25 feet based on the North American Vertical Datum of 1988 (NAVD88), which complies with the minimum 9.0-foot (NAVD88) elevation standard for new structures. The identified distances from the coastal hazard areas coupled with the 13.25-foot NAVD88 finish floor elevation will help to ensure the project is reasonably safe for the economic life of the structure.
4. The property is in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance.
5. The property is located within 750 feet of coastal waters. A Construction Erosion Control Plan was provided to implement temporary Best Management Practices (BMPs) during construction to minimize erosion and sedimentation and to minimize pollution of runoff and coastal waters derived by construction chemicals and materials. The project design also addresses water quality through the inclusion of a post-construction drainage system that includes drainage and percolation features designed to retain dry weather and minor rain event runoff on-site. Any water not retained on-site is directed to the City's storm drain system.
6. Proposed landscaping complies with Implementation Plan Section 21.30.075 (Landscaping). A condition of approval is included that requires drought-tolerant species. Prior to issuance of building permits, the final landscape plans will be reviewed to verify invasive species are not planted.
7. 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 coastal viewpoint is at Lower Castaways Park, approximately 1,200 feet northeast, and the project cannot be seen from this vantage point. Portions of Coast Highway are Coastal View Road segments; however, the segment of Coast Highway adjacent to the Bayshores Community is not an identified Coastal View Road. 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 between the nearest public road and the sea or shoreline in the private community of Bayshores. Developed in 1941, Bayshores is a 258-lot single-family gated community located on the Lido Channel southwest of the Coast Highway and Newport Bay Bridge. The 39-unit Anchorage Apartment complex is also located adjacent the community. The community is accessible from Coast Highway via Bay Shores Drive, a private street. The shoreline is on the south and east sides of the community and consists of bulkheads and two (2) small sandy beaches. Public access points to the shore can be found along Coast Highway and Castaways Park.
2. The residential lot does not currently provide nor does it inhibit public coastal access. Vertical and lateral access to the bay front is available approximately 750 feet east of the property at a Bay Shores community beach. Additionally, the Bay Shores community at the Balboa Bay Club is approximately 950 feet from the subject property. Public access points to the shore can be found along Coast Highway and Castaways Park.
3. Coastal Land Use Plan Policy 3.1.5-3 requires public access consistent with public access policies for any new development in private/gated communities causing or contributing to adverse public access impacts. 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 located on a coastal lot with a new single-family residence. Therefore, the project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities. Furthermore, the project is designed and sited so as not to block or impede existing public access opportunities.

SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby finds this Project exempt from the California Environmental Quality Act pursuant to Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

2. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2021-082, 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 24<sup>TH</sup> DAY OF MARCH, 2022.**



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Jaime Murillo  
Zoning Administrator

**EXHIBIT "A"**

**CONDITIONS OF APPROVAL**

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. 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.
3. 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.
4. 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 run-off. 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.
5. 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.
6. 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.
7. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.

8. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
9. 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.
10. 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.
11. 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.
12. 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.
13. 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
14. 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.
15. 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.
16. 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.
17. 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.
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. 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.
20. This Coastal Development Permit No. CD2021-082 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.
21. 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 **Longman Residence including, but not limited to, Coastal Development Permit No. CD2021-082 (PA2021-307)**. 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. ZA2022-022

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2022-004 TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND CONSTRUCT A NEW TWO (2)-STORY SINGLE-FAMILY RESIDENCE AND ATTACHED TWO (2)-CAR GARAGE LOCATED AT 2661 CRESTVIEW DRIVE (PA2022-009)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by David Root (Applicant), with respect to property located at 2661 Crestview Drive, requesting approval of a coastal development permit.
2. The lot at 2661 Crestview Drive is legally described as Lot 68 in Tract 1014.
3. A coastal development permit to allow the demolition of an existing single-family residence and the construction of a new two (2)-story, 3,564-square-foot single-family residence with attached 590-square-foot two (2)-car garage. The project includes additional appurtenances such as site walls, fences, patios, spa, drainage devices, and landscaping. The design complies with all applicable development standards, including height, setbacks, and floor area limit, and no deviations are requested.
4. The subject property is categorized Single Unit Residential Detached (RS-D) by the General Plan Land Use Element and is located within the Single-Unit Residential (R-1) Zoning District.
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Single Unit Residential Detached (RSD-B) – (6.0 – 9.9 DU/AC) and it is located within the Single-Unit Residential (R-1) Coastal Zone District.
6. A public hearing was held on March 24, 2022, online via Zoom. 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. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a

significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

2. Class 3 exempts the demolition of up to three (3) single-family residences and additions of up to 10,000 square feet to existing structures. The proposed project consists of the demolition of an existing single-family residence and the construction of a new two (2)-story, 3,564-square-foot single-family residence with attached 590-square-foot two (2)-car garage.
3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

### SECTION 3. REQUIRED FINDINGS.

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

#### Finding:

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

#### Facts in Support of Finding:

1. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
  - a. The maximum floor area limitation is 5,767 square feet and the proposed floor area is 4,184 square feet.
  - b. The proposed development provides the minimum required setbacks, which are 10 feet along the front property line abutting Crestview Drive, 3 feet along the sides and 10 feet along the rear property line abutting the alley.
  - c. The highest guardrail is less than 24 feet from established grade (13.10 feet NAVD88) and the highest ridge is no more than 29 feet from established grade, which comply with the maximum height requirements.
  - d. The project includes garage parking for a total of two (2) vehicles, complying with the minimum two (2)-car garage parking requirement for single-family residences with less than 4,000 square feet of habitable floor area.



2. The neighborhood is predominantly developed with one (1)- and (2)-story, single-family residences. The proposed design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development.
3. The development is located on a property one (1) block and street inland and approximately 460 feet from the bay in a developed area. The project site is separated from the bay (the nearest body of water) by one (1) row of residences and Bay Shore Drive. The finished floor elevation of the first floor of the proposed structure is 14.04 feet based on the North American Vertical Datum of 1988 (NAVD88), which complies with the minimum 9.0-foot (NAVD88) elevation standard for new structures. The identified distances from the coastal hazard areas coupled with the 14.04-foot NAVD88 finish floor elevation will help to ensure the project is reasonably safe for the economic life of the structure.
4. The property is in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance.
5. The property is located within 500 feet of coastal waters. A Construction Erosion Control Plan was provided to implement temporary Best Management Practices (BMPs) during construction to minimize erosion and sedimentation and to minimize pollution of runoff and coastal waters derived by construction chemicals and materials. The project design also addresses water quality through the inclusion of a post-construction drainage system that includes drainage and percolation features designed to retain dry weather and minor rain event runoff on-site. Any water not retained on-site is directed to the City's storm drain system.
6. Proposed landscaping complies with Implementation Plan Section 21.30.075 (Landscaping). A condition of approval is included that requires drought-tolerant species. Prior to issuance of building permits, the final landscape plans will be reviewed to verify invasive species are not planted.
7. 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 coastal viewpoint is at Lower Castaways Park, approximately 1,000 feet northeast, and the project cannot be seen from this vantage point. Portions of Coast Highway are Coastal View Road segments; however, the segment of Coast Highway adjacent to the subject property is not an identified Coastal View Road. 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 between the nearest public road and the sea or shoreline in the private community of Bayshores. Developed in 1941, Bayshores is a 258-lot single-family gated community located on the Lido Channel southwest of the Coast Highway and Newport Bay Bridge. The 39-unit Anchorage Apartment complex is also located adjacent the community. The community is accessible from Coast Highway via Bay Shores Drive, a private street. The shoreline is on the south and east sides of the community and consists of bulkheads and two (2) small sandy beaches. Public access points to the shore can be found along Coast Highway and Castaways Park.
2. The residential lot does not currently provide, nor does it inhibit public coastal access. Vertical and lateral access to the bay front is available approximately 1,000 feet southeast of the property at a Bay Shores community beach. Additionally, the Bay Shores community at the Balboa Bay Club is approximately 1,200 feet from the subject property. Public access points to the shore can be found along Coast Highway and Castaways Park.
3. Coastal Land Use Plan Policy 3.1.5-3 requires public access consistent with public access policies for any new development in private/gated communities causing or contributing to adverse public access impacts. 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 located on a coastal lot with a new single-family residence. Therefore, the project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities. Furthermore, the project is designed and sited so as not to block or impede existing public access opportunities.

SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby finds this Project exempt from the California Environmental Quality Act pursuant to Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not

- damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.
2. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2022-004, 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 24<sup>TH</sup> DAY OF MARCH, 2022.**



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Jaime Murillo  
Zoning Administrator

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

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. 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.
3. 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.
4. 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 run-off. 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.
5. 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.
6. 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.
7. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.

8. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
9. 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.
10. 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.
11. 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.
12. 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.
13. 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
14. 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.
15. 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.
16. 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.
17. 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.
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. 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.
20. This Coastal Development Permit No. CD2022-004 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.
21. 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 **Root Residence including, but not limited to, Coastal Development Permit No. CD2022-004 (PA2022-009)**. 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.