



## CITY OF NEWPORT BEACH COMMUNITY DEVELOPMENT DEPARTMENT PLANNING DIVISION ACTION REPORT

TO: CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION  
FROM: Seimone Jurjis, Community Development Director  
SUBJECT: Report of actions taken by the Zoning Administrator, and/or Planning Division staff for the week ending May 27, 2022.

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### ZONING ADMINISTRATOR ACTIONS MAY 26, 2022

- Item 1: Gray Residence Coastal Development Permit No. CD2022-008 (PA2022-020)  
Site Address: 415 North Star Lane  
Action: Approved by Resolution No. ZA2022-037 Council District 3
- Item 2: Mitchell Residence Coastal Development Permit No. CD2022-010 (PA2022-027)  
Site Address: 2631 Waverly Drive  
Action: Approved by Resolution No. ZA2022-038 Council District 2
- Item 3: MAAT Investments, LLC Residence Coastal Development Permit No. CD2021-054 (PA2021-214)  
Site Address: 62 Linda Isle  
Action: Approved by Resolution No. ZA2022-039 Council District 5
- Item 4: Newport Harbor Lutheran Church Classrooms Site Development Review No. SD2022-002 and Coastal Development Permit No. CD2022-025 (PA2022-070)  
Site Address: 798 Dover Drive  
Action: Approved by Resolution No. ZA2022-040 Council District 3

### COMMUNITY DEVELOPMENT DIRECTOR OR PLANNING DIVISION STAFF ACTIONS (Non-Hearing Items)

- Item 1: Pavilions Temporary Refrigerated Trailers Limited Term Permit No. XP2022-005 (PA2022-075)  
Site Address: 3100 Balboa Boulevard  
Action: Approved Council District 1

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. ZA2022-037

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2022-008 FOR ADDITIONS TO AN EXISTING SINGLE-FAMILY RESIDENCE LOCATED AT 415 NORTH STAR LANE (PA2022-020)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Gordon and Kristen Gray (“Applicants”), with respect to property located at 415 North Star Lane, requesting approval of a coastal development permit (“CDP”).
2. The property is legally described as Lot 113 of Tract 4224, in the City of Newport Beach, County of Orange, State of California.
3. The Applicant proposes to construct a 990-square-foot second story addition, add an elevator, and convert 190 square-feet of garage to living area within an existing single-family residence with an attached 2-car garage and a detached 2-car garage. A CDP is required for the project since the proposed addition exceeds 10 percent of the existing floor area. No site improvements or bulkhead repair are proposed as part of the scope of work. The project complies with all applicable development standards, including height, setbacks and parking, and no deviations are requested.
4. The subject property is designated RS-D (Single Unit Residential Detached) by the General Plan Land Use Element and is located within the R-1-6,000 (Single-Unit Residential) Zoning District.
5. 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 the property is located within the R-1-6,000 (Single-Unit Residential) Coastal Zone District.
6. A public hearing was held on May 26, 2022, 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 15301, Division 6, Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (“CEQA”) under Class 1 (Existing Facilities), because it has no potential to have a significant effect on the environment.

2. Class 1 exemption includes additions of less than 50 percent to existing structures. The proposed project consists of a 990-square-foot second story addition and the conversion of 190 square-feet of garage to living area. Net additions to the existing structure are approximately 35 percent. Therefore, the project complies with the scope identified under the Class 1 exemption.

### SECTION 3. REQUIRED FINDINGS.

In accordance with Newport Beach Municipal Code (“NBMC”) Section 21.52.015 (Coastal Development Permits, Findings and Decision), 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, setbacks, height, and on-site parking.
  - A. The proposed development will provide the minimum required setbacks, which are ten (10) feet along the front property line abutting Newport Bay, six (6) feet along the rear property line, and six (6) feet along each side property lines.
  - B. The highest guardrail is no more than 24 feet high, and the highest roof ridge is no more than 29 feet in height, measured from the established grade level of 10.8 feet based on the North American Vertical Datum of 1988 (“NAVD88”), which complies with the maximum height limitation.
  - C. The project includes enclosed garage parking for four (4) vehicles, which exceeds the minimum 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 two (2)-story, single-family residences. The proposed design, bulk, and scale of the development will be consistent with the existing neighborhood pattern of development and expected future development.
3. A Coastal Hazards Report and Sea Level Rise Analysis was prepared Geo Soils, Inc. dated November 5, 2021, for the project. The current maximum bay water elevation is 7.7 North American Vertical Datum of 1988 (NAVD88) and is not expected to exceed the existing 10.9 feet (NAVD88) top of bulkhead elevation during high tide or storm events. The report analyzes future sea level rise scenarios assuming a 3-foot increase in the maximum water level over the next 75 years (i.e., the life of the structure). Therefore, the sea level is estimated to reach approximately 10.7 feet (NAVD88) - (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).

4. 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 bulkhead structure permitted within the years 2021 through 2025 must have a minimum bulkhead elevation of 10.9 feet (NAVD88) with a design for adaptability elevation of 14.4 feet (NAVD88). The project has been conditioned to raise the bulkhead to an elevation of 10.9 feet (NAVD88). Geo Soils, Inc. has confirmed the bulkhead design can be raised up to 14.4 feet (NAVD88) if needed and in compliance with the updated guidelines.
5. The existing seawall/bulkhead does not need to be repaired/replaced per the report's recommendations, flooding, wave runup, and erosion will not significantly impact this property over the proposed 75-year economic life of the development. The report concludes that the proposed project will be safe from flooding hazards for the next 75 years with the existing bulkhead.
6. The finished floor elevation of the first floor of the existing living area is 11.56 feet (NAVD88), which exceeds the minimum 9.0-foot (NAVD88) elevation standard for new structures and exceeds the minimum requirements for sea level rise (10.9 feet NAVD 88) for the anticipated 75-year life of the structure.
7. Pursuant to NBMC Section 21.30.030(C)(3)(d)(i)(iv) – (Development Standards - Protective Structures), 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
8. 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) – (Waterfront Development - Development Standards). This requirement is included as a condition of approval that will need to be satisfied prior to the issuance of building permits, respectively.
9. The property is located in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance.
10. The property is located adjacent to 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.

11. The project design addresses water quality with a construction erosion control plan that outlines temporary Best Management Practices (BMPs) to be implemented during construction to minimize erosion and sedimentation, and to minimize pollution of runoff derived by construction chemicals and materials. No water quality impacts to coastal waters are anticipated based upon the location and elevation of the property.
12. 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.
13. The property is not located near designated public viewpoints or coastal view roads and will not impact public coastal views. The project site is not located adjacent to a coastal view road, public viewpoint, public park or beach, or public accessway, as identified in the Coastal Land Use Plan. Furthermore, an investigation of the project site and surrounding area did not identify any other public view opportunities. The project site may be located within the viewshed of distant public viewing areas, however the project is located on a coastal lot and will replace an existing single-family home with a new single-family home that complies with all applicable Local Coastal Program 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; however, the project will not affect the public's ability to gain access to use and/or view the coast and nearby recreational facilities. The existing residential development neither provides nor inhibits public coastal access. Implementation Plan Section 21.30A.040 (Determination of Public Access/Recreation Impacts) requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project involves additions to an existing single-family residence. Therefore, the project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities.

2. The project is designed and sited so as not block or impede existing public access opportunities and occurs within the confines of private property. Existing coastal access conditions will not be affected by the project. Vertical and lateral coastal access is currently provided and will continue to be provided by North Star Beach, immediately across the street to the north of the subject property.

**SECTION 4. DECISION.**

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

1. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2022-008, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
2. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 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 26<sup>TH</sup> DAY OF MAY, 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. CD2022-008 shall expire unless exercised within 24 months from the date of approval as specified in NBMC Section 21.54.060 (Time Limits and Extensions), unless an extension is otherwise granted.
4. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
5. 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.
6. 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.
7. 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.
8. 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.
9. *The existing seawall shall be maintained with a minimum top of wall elevation of 10.9 feet with adaptability up to 14.4 feet (NAVD88 datum) in accordance with the recommendations provided in the Coastal Hazards Report and Sea Level Rise Analysis prepared by Geo Soils, Inc. dated November 5, 2021.*
10. 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.

11. *Prior to the issuance of a building permit, the property owner shall submit a notarized signed letter acknowledging all hazards present at the site, assuming the risk of injury or damage from such hazards, unconditionally waiving any claims of damage against the City from such hazards, and to indemnify and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of development. This letter shall be scanned into the plan set prior to building permit issuance.*
12. This approval does not authorize any new or existing improvements (including landscaping) on California Coastal Permit Jurisdiction, State tidelands, public beaches, or the public right-of-way. Any improvements located on tidelands, submerged lands, and/or lands that may be subject to the public trust shall require a coastal development permit (CDP) approved by the California Coastal Commission (Coastal Commission). Prior to the issuance of building permits, the applicant shall provide a copy of said coastal development permit or CDP waiver or documentation from the Coastal Commission that subject improvements are not subject to the permit requirements of the Coastal Act and/or not located within the permit jurisdiction of the Coastal Commission.
13. 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, wetland or their buffers.
14. 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.
15. 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.
16. 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.
17. 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.



18. 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 **Gray Residence including, but not limited to, Coastal Development Permit No. CD2022-008 (PA2022-020)**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Applicant, City, and/or the parties initiating or bringing such proceeding. The Applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages, which City incurs in enforcing the indemnification provisions set forth in this condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

### **Public Works Department**

19. All improvements shall be constructed as required by Ordinance and the Public Works Department.
20. An encroachment permit is required for all work activities within the public right-of-way.
21. The damaged driveway approach shall be reconstructed per City Standard STD#162.
22. A new 36-inch box street tree shall be installed along the North Star Lane frontage.
23. All non-standard hardscape including pavers and rock within the North Star Lane frontage shall be removed and turf or drought tolerant landscaping installed.
24. The existing driveway shall be plugged per City Standard STD# 165.
25. A new sewer clean out shall be installed on the existing sewer lateral per City Standard STD# 406.
26. All improvements shall comply with the City's sight distance requirement. See City Standard STD# 110.

### **Building Division**

27. Prior to issuance of a building permit, the approved Construction Pollution Prevention Plan (CPPP) shall be submitted with the Building Permit plans. Implementation shall be in compliance with the approved CPPP, and any changes could require separate review and approval by the Building Division.
28. A drainage plan will be required due to new roof structure over second floor addition. Any other new or replaced impervious surface areas must be included in determining

the required means of collecting site water runoff for percolation into site soils before discharging to city storm drain system.

## RESOLUTION NO. ZA2022-038

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2022-010 TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND CONSTRUCT A NEW TWO (2)-STORY, SINGLE-FAMILY RESIDENCE WITH AN ATTACHED THREE (3)-CAR GARAGE AT 2631 WAVERLY DRIVE (PA2022-027)**

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”), on behalf of Tom and Kelly Mitchell (“Owner”), with respect to property located at 2631 Waverly Drive, requesting approval of a coastal development permit (“CDP”).
2. The property is legally described as Lot 48 of Tract 1014, in the City of Newport Beach, County of Orange, State of California.
3. The Applicant proposes to demolish an existing single-family residence and construct a new, two (2)-story 4,147-square-foot, single-family residence and attached 636-square-foot, three (3)-car garage. The project includes additional appurtenances such as site walls, fences, patios, 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 designated RS-D (Single Unit Residential Detached) by the General Plan Land Use Element and is located within the R-1 (Single-Unit Residential) Zoning District.
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RSD-B (Single Unit Residential Detached – 6.0 - 9.9 DU/AC) and the property is located within the R-1 (Single-Unit Residential) Coastal Zone District.
6. A public hearing was held on May 26, 2022, 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 demolition and construction of limited numbers of new, small facilities or structures including a single-family residence in a residential zone. The proposed project consists of the demolition of an existing single-family residence and the construction of a new 4,147-square-foot, single-family residence with an attached 636-square-foot garage in the R-1 Zoning District and is consistent with this exemption.

### SECTION 3. REQUIRED FINDINGS.

In accordance with Newport Beach Municipal Code (“NBMC”) Section 21.52.015 (Coastal Development Permits, Findings and Decision), 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 (LCP).*

#### 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 total proposed floor area, including the residence and enclosed parking, is 4,147 square feet, which complies with the maximum allowable floor area limit of 7,494 square feet.
  - B. The proposed development will provide the minimum required setbacks, which are ten (10) feet along the front property line abutting Waverly Drive, ten (10) feet along the rear property line, and four (4) feet along each side property line.
  - C. The highest guardrail is no more than 24 feet, and the highest roof ridge is no more than 29 feet, measured from the established grade level of 13.68 feet based on the North American Vertical Datum of 1988 (“NAVD88”), which complies with the maximum height limitation.
  - D. The project includes enclosed garage parking for three (3) vehicles, which complies with the minimum parking requirement for single-family residences with more than 4,000 square feet of habitable floor area.
2. The neighborhood is predominantly developed with one (1)- and two (2)-story, single-family residences. The proposed design, bulk, and scale of the development will be consistent with the existing neighborhood pattern of development and expected future development.

3. The project site is located approximately 485 feet from the mean high tide line and is separated from the water by Bay Shore Drive and a row of existing residential development. The finished first floor elevation of the proposed residence is 13.9 feet (NAVD88), which exceeds the minimum required 9.00-foot (NAVD88) elevation standard.
4. 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.
5. The project design addresses water quality with a construction erosion control plan that outlines temporary Best Management Practices (BMPs) to be implemented during construction to minimize erosion and sedimentation, and to minimize pollution of runoff derived by construction chemicals and materials. No water quality impacts to coastal waters are anticipated based upon the location and elevation of the property.
6. The property is not located on the shoreline nor is it located within 100 feet of coastal waters. The project design addresses water quality with a construction erosion control plan and a post construction drainage system that includes drainage and percolation features designed to retain dry weather and minor rain event run-off on-site. Any water not retained on-site is directed to the City's storm drain system.
7. New landscaping will be verified for compliance with NBMC Section 21.30.075 (Landscaping). Condition of Approval No. 8 is included to require drought-tolerant, and prohibits invasive, species. Prior to issuance of the building permits, the final landscape plans will be reviewed to verify invasive species are not planted.
8. The project site is not located adjacent to a coastal view road, public viewpoint, public park, or beach, or public accessway, as identified in the Coastal Land Use Plan. Furthermore, an investigation of the project site and surrounding area did not identify any other public view opportunities. The project site may be located within the viewshed of distant public viewing areas, however the project is located on a coastal lot and will replace an existing single-family home with a new single-family home that complies with all applicable Local Coastal Program 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.*

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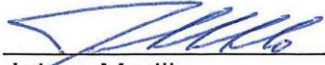
Facts in Support of Finding:

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 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 Shore Drive, a private street. The shoreline is on the south side and east side of the community and consists of bulkheads and two (2) small sandy beaches.
2. 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 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.
3. The residential lot does not currently provide nor does it inhibit public coastal access. Vertical and lateral access to the bay front is available adjacent to the Bay Shores community at the Balboa Bay Club, immediately north of the Bayshores community.

**SECTION 4. DECISION.****NOW, THEREFORE, BE IT RESOLVED:**

1. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2022-010, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
2. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 (Appeal to the Coastal Commission) of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

**PASSED, APPROVED, AND ADOPTED THIS 26<sup>TH</sup> DAY OF MAY, 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. CD2022-010 shall expire unless exercised within 24 months from the date of approval as specified in NBMC Section 21.54.060 (Time Limits and Extensions), unless an extension is otherwise granted.
4. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
5. 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.
6. 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.
7. 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.
8. Prior to the 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.
9. 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.



10. 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.
11. 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, wetland or their buffers.
12. 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.
13. 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.
14. 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.
15. 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.
16. To the fullest extent permitted by law, Applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the **Mitchell Residence including, but not limited to, Coastal Development Permit No. CD2022-010 (PA2022-027)**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Applicant, City, and/or the parties initiating or bringing such proceeding. The Applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages, which City incurs in enforcing the indemnification provisions set forth in this condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

### **Public Works Department**

17. All improvements shall be constructed as required by Ordinance and the Public Works Department.

18. An encroachment permit is required for all work activities within the public right-of-way/easement area.
19. Prior to issuance of a final building permit, the applicant shall install a new sewer clean out on the existing sewer lateral per City Standard STD# 406.
20. Prior to issuance of a building permit, the proposed property line wall shall be located entirely outside of the limits of the existing utility easement.
21. Prior to issuance of a building permit, the door swing of the proposed gate shall be modified so that it does not swing into the limits of the existing utility easement.
22. No encroachments, including but not limited to the building foundation, will be permitted within the limits of the existing utility easement.

### **Fire Department**

23. Fire sprinklers shall be required for this project.

### **Building Division**

24. 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 Pollution Prevention Plan (CPPP).
25. Prior to issuance of a building permit, the approved CPPP shall be submitted with the Building Permit plans. Implementation shall be in compliance with the approved CPPP, and any changes could require separate review and approval by the Building Division.
26. 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.
27. 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.
28. 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.
29. 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. ZA2022-039

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2021-054 TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND CONSTRUCT A NEW TWO (2)-STORY SINGLE-FAMILY RESIDENCE AND AN ATTACHED THREE (3)-CAR GARAGE LOCATED AT 62 LINDA ISLE (PA2021-214)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by JF Carlson Architects, Inc. (Applicant), with respect to property located at 62 Linda Isle and legally described as Lot 62 of Tract 4003, requesting approval of a coastal development permit (CDP).
2. The Applicant proposed to demolish an existing single-family residence and construct a new two-story 6,937-square-foot residence with attached 649-square-foot, three-car garage. The project also includes the construction of landscaping, hardscaping, drainage, site walls, and a reinforced bulkhead cap for protection 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 May 26, 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 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 6,937-square-foot single-family residence with an attached 649-square-foot, three-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(F) (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 10,754 square feet and the proposed floor area is 7,586 square feet.
  - b. The proposed development provides the minimum required setbacks, which are 10 feet along the property line abutting the Newport Bay, 4 feet along each side property line and 25 feet along the property line abutting the Linda Isle private drive.
  - c. The highest guardrail is less than 24 feet from established grade (9.80 feet based on the North American Vertical Datum of 1988 [NAVD 88]) and the highest ridge is no more than 29 feet from established grade, which comply with the maximum height requirements.
  - d. The project includes garage parking for a total of three (3) vehicles, complying with the minimum three (3)-car garage parking requirement for single-family residences with more than 4,000 square feet of habitable floor area.
  - e. The design of any improvements bayward of the property shall conform with NBMC Section 21.30C.050 (Harbor Development Regulations). Said improvements will be reviewed for compliance separately through an Approval In Concept (AIC) application and will require approval from the California Coastal Commission per Condition of Approval No. 3.
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 consistent with applicable development standards.

3. The development fronts the Newport Bay and is protected by an existing bulkhead. A bulkhead conditions report was prepared by PMA Consulting, Inc, on October 6, 2021. The reports concluded that the bulkhead is in good condition with minor, repairable, cracks. The existing cantilevered deck will need to be demolished and the bulkhead will need to be reinforced through the installation of new tiebacks and new deadmen. The installation of the tiebacks and deadmen will occur after the demolition of the existing home is complete and prior to the construction of the new home. Once the bulkhead is reinforced in accordance with the enclosed drawings, no repair or replacement of the bulkhead is anticipated within the next 75 years.
4. A Coastal Hazards Report and Sea Level Rise Analysis was prepared for the project by PMA Consulting, Inc., dated October 6, 2021. The current maximum bay water elevation is 7.7 feet (NAVD88) and may exceed the existing bulkhead during high tide or storm events. The report analyzes future sea level rise scenarios assuming a 3.2-foot increase in the maximum water level over the next 75 years (i.e., the life of the structure). The sea level is estimated to reach approximately 10.9 feet (NAVD88) - (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). Once the existing bulkhead is reinforced and capped per the report's recommendations, flooding, wave runup, and erosion will not significantly impact this property over the proposed 75-year economic life of the development. The bulkhead has been designed for adaptability to be raised up to 14.40 feet (NAVD88). As such, no waterproof flashing or curb has been required.
5. The finish floor elevation of the proposed single-family residence is set at 11.00 feet (NAVD88), which complies with the minimum 9.00-foot (NAVD88) elevation standard.
6. Pursuant to NBMC Section 21.30.030(C)(3)(i)(iv) (Natural Landform and Shoreline Protection), the property owner will be required to enter into an agreement with the City waiving any potential right to protection to address situations in the future in which the development is threatened with damage or destruction by coastal hazards (e.g., waves, erosion, and sea level rise). The property owner will also be required to acknowledge any hazards present at the site and unconditionally waive any claim to damage or liability against the decision authority, consistent with NBMC Section 21.30.015(D)(3)(c) (General Site Planning and Development Standards). Both requirements are included as conditions of approval that will need to be satisfied prior to the issuance of building permits for construction (Condition Nos. 5 and 6).
7. 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.

8. As the property is adjacent to coastal waters, a Construction Pollution Prevention Plan (CPPP) 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.
9. Pursuant to NBMC 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 75 percent of impervious surface area, a preliminary Water Quality and Hydrology Plan (WQHP) is required. The preliminary Hydrology Report was prepared by Core Civil Engineering, dated August 5, 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. Construction plans will be reviewed for compliance with the approved WQHP prior to building permit issuance.
10. Proposed landscaping complies with NBMC Section 21.30.075 (Landscaping). Condition of Approval No. 23 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.
11. The closest Public Viewpoint, as designated by the Coastal Land Use Plan (CLUP), is located approximately 700 feet to the northeast of the property near the intersection of Bayside Drive and Harbor Island Drive. Additionally, the proposed residence is located over 1,000 feet to the south of Coast Highway and to the west of Bayside Drive, which are both CLUP-designated Coastal View Roads. Given the distance of the proposed development from the Public Viewpoint and Coastal View Roads, the intervening blocks of existing residential development, and the project's compliance with all development standards, the project will not be visible in the aforementioned locations.
12. As a bayfront property, the west elevation of the new development will be visible from the water. The design complies with all required setbacks which minimizes the appearance of building bulk and the design uses architectural treatments which will enhance views from the water.

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. Linda Isle is a private, 107-lot, single-family residential community on a fabricated island created in 1933 and the existing home on-site was developed in 1969. The community predates the California Coastal Act and does not provide public access to the bay or shore. A gated bridge connects the island to the mainland at Bayside Drive. While Bayside Drive is the first public road paralleling the sea and the project site is located between Bayside Drive and the Harbor, the project will not affect the public's ability to gain access to, use, and/or view the coast and nearby recreational facilities.
2. 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 standard R-1 lot with a new single-family residence. 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.

## 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. CD2021-054, 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 the Resolution is adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 (Local Coastal Implementation Plan) of the NBMC. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

**PASSED, APPROVED, AND ADOPTED THIS 26<sup>TH</sup> DAY OF MAY, 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. Prior to final building permit inspection, the existing seawall shall be reinforced and capped to 10.90 feet (NAVD88) and capable to be raised up to 14.4 feet (NAVD88), in compliance with the City of Newport Beach Waterfront Project Guidelines and Standards, Harbor Design Criteria Commercial & Residential Facilities.
3. This CDP does not authorize any development bayward of the private property.
4. Prior to final of building permit inspection for the dwelling, the Applicant shall obtain approval from the California Coastal Commission for any improvements or construction bayward of the property, including, but not limited to, demolition of the cantilevered deck.
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 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.
6. Prior to the issuance of a building permit, the property owner shall submit a notarized signed letter acknowledging all hazards present at the site, assuming the risk of injury or damage from such hazards, unconditionally waiving any claims of damage against the City from such hazards, and to indemnify and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of development. This letter shall be scanned into the plan set prior to building permit issuance.
7. 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.
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. The Applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of native birds pursuant to MBTA:
  - A. The construction area shall be inspected for active nests. If birds are observed flying from a nest or sitting on a nest, it can be assumed that the nest is active. Construction activity within 300 feet of an active nest shall be delayed until the nest is no longer active. Continue to observe the nest until the chicks have left the nest and activity is no longer observed. When the nest is no longer active, construction activity can continue in the nest area.
  - B. It is a violation of state and federal law to kill or harm a native bird. To ensure compliance, consider hiring a biologist to assist with the survey for nesting birds, and to determine when it is safe to commence construction activities. If an active nest is found, one or two short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.
10. 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.
11. 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.
12. 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.
13. 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.
14. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
15. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
16. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Coastal Development Permit.

17. This CDP may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
18. 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.
19. 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.
20. 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.
21. 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.
22. Prior to issuance of building permits, the final WQHP/WQMP shall be reviewed and approved by the Building Division. Implementation shall comply with the approved CPPP and 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 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.
24. 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.
25. 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.
26. 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.

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27. This Coastal Development Permit No. CD2021-054 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.
28. 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 **MAAT Investments, LLC Residence including, but not limited to, Coastal Development Permit No. CD2021-054 (PA2021-214)**. 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. ZA2022-040

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING MINOR SITE DEVELOPMENT REVIEW NO. SD2022-002 AND COASTAL DEVELOPMENT PERMIT NO. CD2022-025 TO ALLOW THE PERMANENT INSTALLATION OF THREE (3) EXISTING MODULAR CLASSROOMS LOCATED AT 798 DOVER DRIVE (PA2022-070)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Newport Harbor Lutheran Church (Applicant), with respect to property located at 798 Dover Drive, and legally described as Parcel 1 of Resubdivision No. 1038 requesting approval of a minor site development review and coastal development permit.
2. The Applicant proposes to make three (3) existing 880-square-foot prefabricated, modular preschool classrooms permanent. The authorization for the classrooms was granted for a limited duration under limited Term Permit No. XP2011-003 (PA2011-100), consistent with Development Agreement (DA) No. 10, and is set to expire July 23, 2022.
3. The subject property is categorized PI (Private Institutions) by the General Plan Land Use Element and is located within the PC2 (Newport Harbor Lutheran Church) Zoning District.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is PI-A (Private Institutions – 0.0 - 0.30 FAR) and it is located within the PC2 (Newport Harbor Lutheran Church) Coastal Zone District.
5. A public hearing was held on May 26, 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 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.
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 permanent installation of three (3) existing 880-square-foot prefabricated, modular preschool classrooms that were allowed on a temporary basis. 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.

#### **Site Development Review**

In accordance with Section 20.52.080(F) (Site Development Reviews) of the Newport Beach Municipal Code, The review authority may approve or conditionally approve a site development review application, only after first finding that the proposed development is:

#### Finding:

*A. Allowed within the subject zoning district;*

#### Facts in Support of Finding:

1. Newport Harbor Lutheran Church will continue to principally operate as a religious institution with accessory classrooms that serve preschoolers. The existing three (3) modular classrooms were approved on a temporary basis but are now proposed to be made a permanent installation. School classrooms are a typical accessory use to a religious institution and is permitted within the PC2 (Newport Harbor Lutheran Church) Planned Community Development Plan for the subject property.
2. Pursuant to Development Agreement (DA) Number 10, adopted by City Council Ordinance 97-22, Newport Harbor Lutheran Church maintains the vested right to install buildings in the lawn area behind the sanctuary, the side lawn west of the sanctuary and/or the preschool yard. No planning applications have been submitted and no building construction has been completed since the last DA review in 2019. The term of the DA is for a period of 25 years and is set to expire July 23, 2022.
3. Sufficient parking will continue to be available to serve all uses on-site. The religious institution will continue to operate outside the hours of classroom instruction. The classrooms are existing and allowing them on a permanent basis will not intensify nor increase the parking requirement for the institutional facility as it is accessory to the principal use of a religious institution. There is no proposed increase in employees or student enrollment as a result of making the temporary classrooms permanent. Weekday parking demand will not increase. Accordingly, the use will be accommodated by the 163 parking spaces provided on-site in the adjoining surface lot.
4. The proposed classroom use is accessory to the religious institution which is consistent with all applicable provisions of the PI (Private Institutions) Land Use Designation of the General Plan for the subject site. Pursuant to Section IV.B of the PC-2 (Newport

Harbor Lutheran Church) Planned Community Development Plan, classrooms are a permitted structure and use, subject to the approval of a Site Plan Review. A coastal development permit is also required as more than 10-percent of the existing permanent floor area would be added.

Finding:

- B. In compliance with all of the applicable criteria identified in subsection (C)(2)(c) of this section*
- i. Compliance with this section, the General Plan, this Zoning Code, any applicable specific plan, and other applicable criteria and policies related to the use or structure;*
  - ii. The efficient arrangement of structures on the site and the harmonious relationship of the structures to one (1) another and to other adjacent developments; and whether the relationship is based on standards of good design;*
  - iii. The compatibility in terms of bulk, scale, and aesthetic treatment of structures on the site and adjacent developments and public areas;*
  - iv. The adequacy, efficiency, and safety of pedestrian and vehicular access, including drive aisles, driveways, and parking and loading spaces;*
  - v. The adequacy and efficiency of landscaping and open space areas and the use of water efficient plant and irrigation materials; and*
  - vi. The protection of significant views from public right(s)-of-way and compliance with Section 20.30.100 (Public View Protection).*

Facts in Support of Finding:

1. All Facts in Support of Finding A are hereby incorporated by reference.
2. The lawn area adjacent to the existing permanent buildings is adequate in size to accommodate the proposed modular classrooms without displacing any of the onsite parking spaces.
3. The location of the modular classrooms complies with setbacks development standards of the PC2 Development Plan. The modular classrooms are not visible from the public right-of-way and are at a lower grade elevation than the adjacent residential lots to the east and to the south. The classroom structures are existing at 12-feet tall and existing views over the site will be maintained. The Applicant proposes to add new architectural finishes to the classrooms and to install new water-efficient landscaping to further enhance the project's visual quality.
4. To help ensure compatibility with the neighboring residential uses, conditions of approval have been incorporated to limit hours of operation (Condition of approval No. 6), require classroom windows oriented toward residential uses to be always closed (Condition of approval No. 9), and designate drop off/pick up areas (Condition of approval No. 11) as to not interfere with the public right-of-way.

5. The subject lot has direct access from Castaways Lane and making the existing temporary classrooms permanent will not generate an intensification of traffic beyond that existing. The number of students and staff will not change as a result of making the temporary classrooms permanent, and no physical improvements are proposed, except for landscaping and new architectural finishes. The religious institution will not be operating simultaneously with the proposed limited duration use.
6. Provisions of NBMC Sections 20.30.100 (Public View Protection) and 21.30.100 (Scenic and Visual Quality Protection) do not apply because the project does not have the potential to obstruct public views from public viewpoints and corridors as identified on General Plan Figure NR 3 (Coastal Views) and Policy 4.4.1-6 and Map 4-3 of the Coastal Land Use Plan. The project provides access to protected public views but is over 300 feet away from the nearest viewpoint and separated by two (2) rows of single-family residences. The project is located landward, and public views do not orient toward the site.

Finding:

- C. Not detrimental to the harmonious and orderly growth of the City, nor endangers, jeopardizes, or otherwise constitutes a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed development.*

Facts in Support of Finding:

1. Allowing the existing classrooms permanently is not anticipated to result in any additional impacts beyond those analyzed prior to original approval for the temporary use.
2. The permanent use of the classrooms will not result in a change in the operational characteristics of the church but will instead provide additional amenities to complement the existing facilities. The classrooms are a typical facility found at churches.
3. The existing placement and construction of modular classrooms are installed to comply with all applicable regulations of the NBMC and the California Building Code.
4. The location of the modular classrooms is at a lower grade elevation than the adjacent residential lots to the east and to the south, and the existing views over the site will be maintained. The Applicant proposes to add new architectural finishes to the classrooms and install new landscaping to further enhance the project's visual quality.

**Coastal Development Permit**

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



Finding:

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

Facts in Support of Finding:

1. The project complies with applicable use allowances and development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
  - a. IP Table 21.26-3 allows “Schools, Public and Private” within the PC-2 Planned Community Coastal Zoning District, subject to adequate parking determined by the Director. The classrooms’ educational use would continue to serve the needs of preschool-aged children. Under the PC2 Text the existing 163 parking spaces on-site satisfy Zoning Code requirements for the permitted floor area of 40,000 square feet. The existing development has a gross floor area of 14,862 square feet and the proposed temporary classrooms to be made permanent total 2,640 square feet. This means only 17,502 square feet of the 40,000 square feet (around 44 percent) would be developed.
  - b. The project would permanently add 2,640 of gross floor area to the existing 14,862-square-foot church development, which does not exceed the 40,000 maximum floor area limits for the development under the PC2 Development Plan.
  - c. The project does not involve new infrastructure or physical improvements that would be subject to development standards including height limits, floor area limits, and setbacks. The classrooms have been previously improved and comply with height limits and required setbacks.
2. The project is complementary to the existing uses at the property and will provide for the continued operation of the on-site preschool. The project does not result in physical improvements that would add to the design, bulk, and scale of the Newport Harbor Lutheran Church development. Thus, the use and operation are consistent with the existing neighborhood pattern of development and expected future development.
3. Proposed landscaping complies with NBMC 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.
4. The closest Public Viewpoint, as designated by the Coastal Land Use Plan (CLUP), is located approximately 300 feet to the southeast of the property near at Castaways Park. Given the distance of the proposed development from the Public Viewpoint and Coastal View Roads, the intervening blocks of existing residential development, and the project’s compliance with all development standards, the project will not be visible in the aforementioned locations.

5. Sufficient parking will continue to be available to serve all uses on-site. This is because the classroom use is existing and would not intensify as part of the project and the multiple uses on-site do not utilize parking at the same time. Newport Harbor Lutheran Church allows an off-site charter business to use 75 to 85 on-site parking spaces of the 163-space site on weekdays (except Thursdays) and up to 120 parking spaces on Saturdays. However, the development floor area is well below the maximum allowed, and to date, the City has not received complaints related to parking issues at the subject property.

Finding:

- E. 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 is located between the nearest public road and the sea or shoreline; the project will not affect the public's ability to gain access to, use, and/or view the coast and nearby recreational facilities. The project provides access to protected public views but is over 300 feet away from the nearest viewpoint and separated by two (2) rows of single-family residences. The project is located landward, and public views do not orient toward the site.
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, would allow existing temporary modular classrooms to remain permanently. 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.
3. Fact 5 in Support of Finding D are hereby incorporated by reference.

SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 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 Minor Site Development Review No. SD2022-002 and Coastal Development Permit No. CD2022-025, 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 the Resolution is adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 (Local Coastal Implementation Plan) of the NBMC. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

**PASSED, APPROVED, AND ADOPTED THIS 26<sup>TH</sup> DAY OF MAY, 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. 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 Site Development Review or Coastal Development Permit.
4. On or before July 23, 2022, the Applicant shall obtain a building permit to recognize that the existing (3) temporary modular classrooms will be made permanent.
5. Prior to building permit final, the Planning Division shall perform a site inspection to verify existing conditions and installation of landscape match the approved plans.
6. Operation of the modular classrooms shall occur only between the hours of 7:00 a.m. and 9:00 p.m., to ensure compatibility with surrounding land uses.
7. No more than the three (3) 880-square-foot modular classrooms originally approved under Limited Term Permit No. XP2011-003 (PA2011-100) shall be allowed on a permanent basis.
8. Sufficient parking must be maintained to the satisfaction of the Planning Division at all times for the approved uses on-site.
9. The windows of the temporary modular classrooms that face toward the adjacent residential dwelling shall always remain closed.
10. The fence east of the existing sanctuary building shall be landscaped with climbing plantings such that the modular units are screened from Castaways Lane.
11. Student drop-off and pick-up shall occur as proposed within the southern portion of the westerly parking lot and shall not impact the public right-of-way, including Castaways Lane.
12. Prior to utilizing any portion of the parking lots for recess or recreational activities, a detailed plan shall be submitted for the review and approval by the Community Development Director.

13. The maximum number of students shall be limited to 200.
14. This approval was based on the particulars of the individual case and does not, in and of itself or in combination with other approvals in the vicinity or Citywide, constitute a precedent for future approvals or decisions.
15. The height of the modular classroom units shall not exceed 12 feet. In all cases, the height of vehicles, equipment, materials, structures, and modular classroom units shall not exceed 6 feet if within 10 feet of the property line wall or fence.
16. Minor Site Development Review No. SD2022-002 and Coastal Development Permit No. CD2022-025 (PA2022-070) shall expire unless exercised by the expiration date of Development Agreement No. 10 on July 23, 2022.
17. This Minor Site Development Review and Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
18. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this *Minor Site Development Review and Coastal Development Permit* or the processing of a new *Minor Site Development Review and Coastal Development Permit*.
19. 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.
20. Prior to the 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 PA2022-070 project 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 Minor Site Development Review and Coastal Development Permit and shall highlight the approved elements such that they are readily discernible from other elements of the plans.
21. Prior to the issuance of a building permit, the Applicant shall submit a landscape plan. *These plans shall incorporate drought tolerant plantings and water efficient irrigation practices, and the plans shall be approved by the Planning Division.*
22. 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.

- 23. 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.
- 24. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 (Community Noise Control) 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

- 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 either the current business owner, property owner or the leasing agent.
- 26. 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.
- 27. The exterior of the classrooms 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.
- 28. 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).
- 29. 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 Use Permit.

30. 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.
31. 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.
32. 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 **Newport Harbor Lutheran Church Classrooms including, but not limited to, Minor Site Development Review No.SD2022-002 and Coastal Development Permit No. CD2022-025 (PA2022-070)**. 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.



COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING DIVISION  
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## **ZONING ADMINISTRATOR ACTION LETTER**

**Subject:** Pavilions Temporary Refrigerated Trailers (PA2022-075)  
▪ Limited Term Permit No. XP2022-005

**Site Location** 3100 Balboa Boulevard

**Applicant** Pavilions Grocery Store

**Legal Description** Parcel 1, Block 371, Page 4

On **May 26, 2022**, the Zoning Administrator approved Limited Term Permit No. XP2022-005 to allow one 26-foot electric produce refrigeration trailer within the loading dock and one 40-foot electric ice trailer adjacent to the loading dock for an eight-day duration at the rear of the Pavilions Grocery Store within The Landing Shopping Center. The trailers' refrigeration units will operate only between the hours of 7:00 a.m. through 9:00 p.m., daily, to store ice and produce for the Independence Day holiday period (June 29, 2022 through July 7, 2022). The applicant will incorporate a noise reduction plan that includes sound barrier blankets on the backside of both trailers. The property is located in the CN (Commercial Neighborhood) Zoning District. This approval is based on the following findings and subject to the following conditions.

### **LAND USE AND ZONING**

- **General Plan Land Use Plan Category:** CN (Neighborhood Commercial)
- **Zoning District:** CN ( Commercial Neighborhood)
- **Coastal Land Use Plan Category:** CN (Neighborhood Commercial – 0.0 to 0.30 FAR)
- **Coastal Zoning District:** CN (Commercial Neighborhood)

### **I. FINDINGS**

#### **Finding:**

- A. *This project has been reviewed, and it has been determined that it is categorically exempt from the requirements of the California Environmental Quality Act under Class 11 (Accessory Structures);*

#### **Fact in Support of Finding:**

1. Class 11 exempts the placement of seasonal or temporary use of items such as lifeguard towers, mobile food units, portable restrooms, or similar items. The



proposed temporary trailers will be placed within the rear of the shopping center for a limited time period and will be ancillary to an existing commercial development.

Finding:

- B. *The operation of the limited duration use at the location proposed and within the time period specified 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 requested limited duration use;*

Facts in Support of Finding:

1. The limited term permit will allow two temporary electric refrigeration trailers to store ice and produce on-site for the Independence Day holiday as conditioned.
2. The operation of the electric refrigeration units is limited to the hours of 7:00 a.m. to 9:00 p.m., daily. The trailers are limited from June 29, 2022 through July 7, 2022, to reduce the impact of noise to surrounding residents.
3. Electric refrigeration trailers have been used at the subject property on holiday weekends during similar hours in the past and the use has not proven detrimental. Sound blankets are required to reduce noise impacts.
4. Conditions of approval require the location of the trailer within and adjacent to the loading dock area, which is approximately 100 feet from the nearest residence and will be partially screened by existing trees and landscaping along 30<sup>th</sup> Street. The generators will be oriented to face away from nearby residents.

Finding:

- C. *The subject lot is adequate in size and shape to accommodate the limited duration use without material detriment to the use and enjoyment of other properties located adjacent to and in the vicinity of the lot;*

Facts in Support of Finding:

1. The subject lot is approximately 3.75 acres in size. Based upon the site plan, there is adequate area to accommodate the proposed trailers and existing uses without impacting vehicle circulation. The ice trailer will be located adjacent to the loading dock and will occupy two required parking spaces for a limited duration (eight days).
2. The lot is bounded by Balboa Boulevard to the west, Newport Boulevard to the east, 32<sup>nd</sup> Street to the north, and 30<sup>th</sup> Street to the south. The adjacent right-of-way (30<sup>th</sup> Street) separates the lot from nearby residential properties within the R-2 (Two-Unit Residential) Zoning District. A public parking lot is located directly across 30<sup>th</sup> Street, adjacent to where the trailer will be parked.

Finding:

- D. The subject lot is adequately served by streets or highways having sufficient width and improvements to accommodate the kind and quantity of traffic that the limited duration use would or could reasonably be expected to generate;*

Facts in Support of Finding:

1. The subject lot has four direct driveway approaches taken from Newport Boulevard, 32<sup>nd</sup> Street, Balboa Boulevard, and 30<sup>th</sup> Street. The 40-foot ice trailer's location above the loading dock will not impede access or truck access to the loading dock at the rear of the grocery store. The ice trailer will occupy two required parking stalls for a limited period of time (eight days). The 26-foot produce trailer's location within the loading dock will still allow for deliveries within the other half of the loading dock during the eight-day period and will not impede any parking spaces. No traffic or site circulation issues are anticipated.
2. The produce trailer will be located within the loading dock and will not generate additional traffic or impede access.
3. The limited duration use is for two temporary electric refrigeration trailers for the grocery store to store ice and produce during the holiday weekends when significant demand is anticipated.

Finding:

- E. Adequate temporary parking to accommodate vehicular traffic to be generated by the limited duration use would be available either on-site or at alternate locations acceptable to the Zoning Administrator; and*

Fact in Support of Finding:

1. The proposed limited duration use will not create additional parking demand since the two trailers will be utilized to store ice and produce for the grocery store. The two parking spaces that the ice trailer will occupy will not have a detrimental effect on parking demand within the shopping center since these spaces are typically underutilized due to their location at the rear loading dock area. The public will not have direct access to the temporary electric refrigeration trailers.

Finding:

- F. The limited duration use is consistent with all applicable provisions of the General Plan, any applicable specific plan, the Municipal Code, and other City regulations.*

Facts in Support of Finding:

1. The General Plan land use designation for this site is Neighborhood Commercial (CN). The CN designation is intended to provide for a range of retail and service uses developed in one or more distinct centers oriented to serve the needs of and maintain compatibility with residential uses in the immediate area. The proposed use is accessory to the existing retail use, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the CN designation.
2. The site is located in the Commercial Neighborhood (CN) Zoning District. The CN designation is intended to provide for a range of retail and service uses developed in one or more distinct centers oriented to serve the needs of and maintain compatibility with residential uses in the immediate area. The proposed trailers are ancillary to the existing retail use, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the CN designation. The CN zoning district allows temporary uses as specified within the Zoning Code and the proposed limited duration use is consistent with this designation.
3. The site is not located within a specific plan area.

**II. CONDITIONS**

*(Project-specific conditions are in italics)*

1. The development shall be in substantial conformance with the approved site plan except as noted in the following conditions.
2. Anything not specifically approved by this limited term permit is prohibited and must be addressed by a separate and subsequent review.
3. *The temporary electric refrigeration trailers shall be located within the rear loading dock and adjacent to the rear loading dock area as shown on the site plan (Attachment No. ZA 2). The generator on the ice trailer shall face away from the nearby residences and shall be oriented southeast toward 3011 Newport Boulevard.*
4. *The temporary electric refrigeration trailers shall be limited to the storage of ice and produce for the grocery store. Alcohol and other store merchandise shall not be stored within the temporary trailer.*
5. *The 40-foot temporary electric refrigeration trailer for ice is permitted on-site for an eight-day duration from June 29, 2022 through July 7, 2022. Storage of a trailer or trailers on-site other than the dates specified is prohibited.*
6. *The 26-foot temporary electric refrigeration trailer for produce is permitted on-site for an eight-day duration from June 29, 2022 through July 7, 2022. Storage of a trailer or trailers on-site other than the dates specified is prohibited.*

7. *Operation of the refrigeration units within the temporary trailers shall be limited to the hours of 7:00 a.m. to 9:00 p.m., daily. If the hours of operation are not adhered to, the applicant shall be subject to fines in accordance with Newport Beach Municipal Code (NBMC) Chapter 1.05.020 (Authority and Administrative Citation Fines). Fines may reflect the maximum amount, as authorized by the City Manager or his/her designee.*
8. *The refrigeration trailers shall comply with the noise standards of Chapter [10.26 \(Community Noise Control\)](#) of the City of Newport Beach Municipal Code. The maximum noise generated by the proposed use shall not exceed a noise level equal to the value of the noise standard plus 20 DBA for any period of time, as measured using A-weighted slow response. Sound barrier materials (blankets) shall be installed at all times to inhibit the noise. The Code Enforcement Officer may require additional sound testing and attenuation at his/her discretion to comply with the noise standards of the Municipal Code.*
9. *The applicant shall provide a 24-hour contact number for emergencies, complaints, or concerns to Code Enforcement and interested parties upon request during the time period the trailers are authorized.*
10. *The applicant shall identify an individual whose job it is to shut down the generator on or before 9:00 p.m. each evening. This person's name shall be provided to the City of Newport Beach Police Department Watch Commander via email each day that the generator is in operation.*
11. *The generators on each temporary electric refrigeration trailer shall be set back 20 feet from the rear property line along 30<sup>th</sup> Street and 5 feet from any adjacent structures.*
12. *The temporary trailers shall not restrict vehicle circulation, truck access to the loading dock, or the public right-of-way at the rear of the grocery store.*
13. *Access for emergency vehicles must be maintained around the temporary trailer within the parking area. A minimum clearance of 14 feet is required adjacent to the trailer. Twenty feet of clearance is required in all other areas of the required fire access roadway around Pavilions Grocery Store.*
14. *The trailers shall not block any firefighting equipment such as fire hydrants, standpipe connections, or fire department connections.*
15. *The refrigeration trailers must be registered by the Department of Motor Vehicles (DMV) to be exempt from requirements for building permits.*
16. *An electrical permit and proper grounding and bonding shall be required if power is used elsewhere than the generator on the trailers.*

17. The Limited Term Permit is for the operation of two temporary electric refrigeration trailers on-site for the hours and dates specified and does not authorize the use or operation of additional storage trailers on-site.
18. Should the temporary refrigeration trailers become a detriment to the public health, comfort, convenience, safety, and general welfare of the peace and quiet of the neighboring properties and their inhabitants, this permit may be revoked.
19. *To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the **Pavilions Temporary Refrigerated Trailers including, but not limited to, Limited Term Permit No. XP2022-005 (PA2022-075)**. 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.*

**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.

Prepared by:

Approved by:

  
Caitlyn Curley  
Planning Technician

  
Jaime Murillo  
Zoning Administrator

MKN/cnc

Attachments: ZA 1 Vicinity Map  
ZA 2 Site Plan

# **Attachment No. ZA 1**

Vicinity Map

# VICINITY MAP



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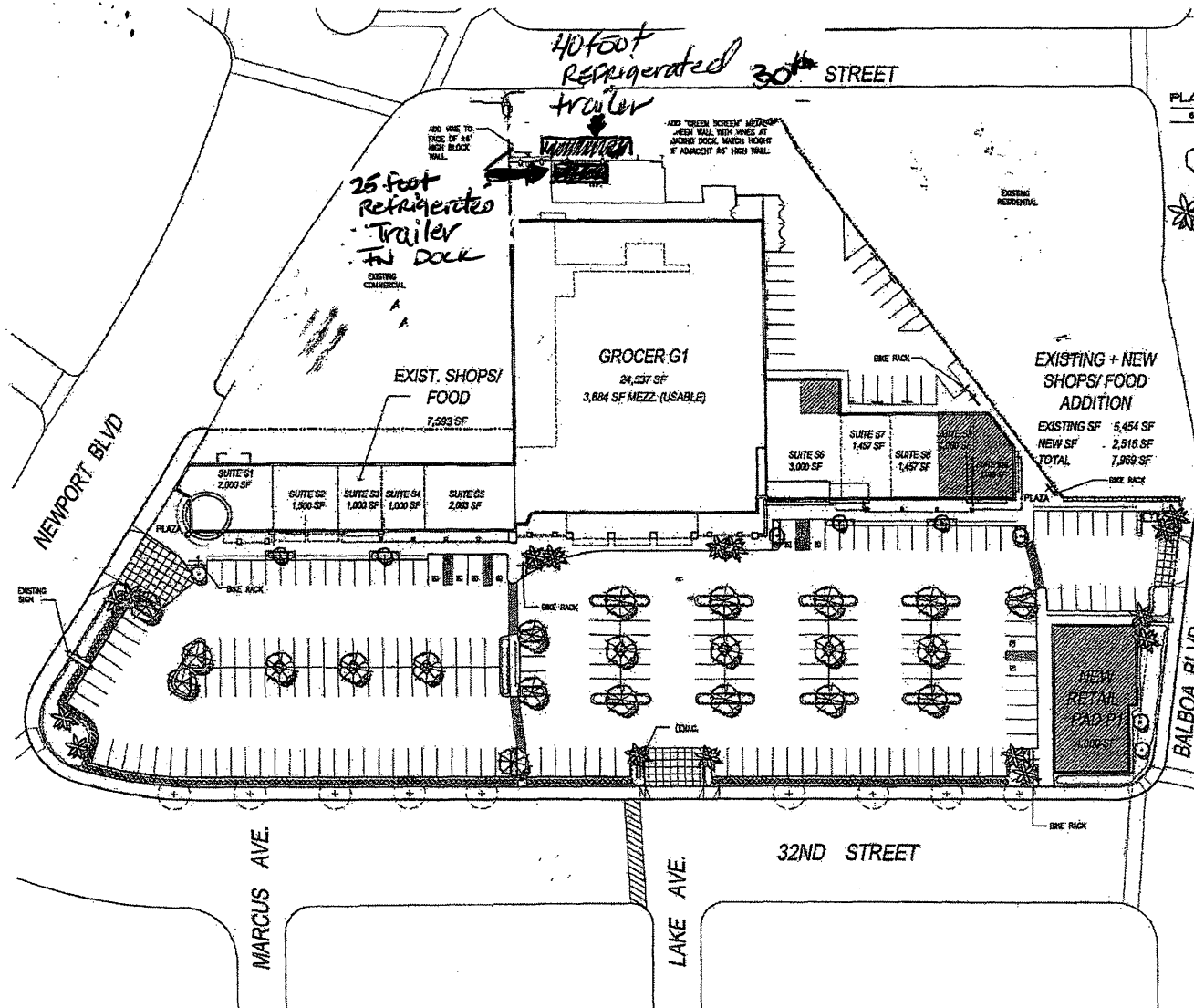
Limited Term Permit No. XP2022-005  
(PA2022-075)

**3100 Balboa Boulevard**

# **Attachment No. ZA 2**

Site Plan





**PLANTING LEGEND**

SYMBOL	BOTANICAL NAME	COMMON NAME	SIZE	REMARKS / SPECIES IN
<b>TREES</b>				
	ERICODIETEA JAPONICA	NON-FRUITING LOGJIAT	24" BOX	NATURAL DOUBLE STAKE
	PIRAO LINDERA	AFRICAN SUIAC	24" BOX	STANDARD DOUBLE STAKE
	WASHINGTONIA ROBUSTA	MEXICAN FAN PALM	30" HIN BRONZ TRUNK HEIGHT	L
	EXISTING STREET TREES	PROTECT IN PLACE		VERIFY IN FIELD
<b>SHRUBS AND GROUNDCOVERS</b>				
	LEUCOSTEMUM J. TERNANUM	TEXAS PRIVET	3 GAL / 5 GAL	3'-0" OC. H
	BOULDERVILLEA SPP.	BOULDERVILLEA	5 GAL	4'-0" OC. L
	CALLISTEMON 'LITTLE JOAN'	ORANGE BOTTLEBRUSH	5 GAL	3'-0" OC. L
	LANTANA 'SPREADER BUNNIE'	NCH	1 GAL	3'-0" OC. L
	ROSA FLORIBUNDA 'ICEBERG'	ICEBERG ROSE	5 GAL	36" OC. H
	NON PARVUS OFFICINALIS 'TROPIC'	NCH	1 GAL	34" OC. L
	PELLAEONIS P. PELTATIUM	IVY GERANIUM	4" POT	5" OC. H
	ANEOZANTHUS FLAVIDUS	RED KANGAROO PAW	5 GAL	2'-0" OC. H
	FERTUCA OVINA GULACA	BLUE FESCUE	4" POT	5" OC. L
	IMPERICALIS HYBRID	EVERGREEN DAYLILY	1 GAL	18" OC. H
	MARIELLA TENISONIA	MEXICAN FEATHERGRASS	1 GAL	12" OC. L
	PHACELIUM TEXANUM 'YELLOW SAFF'	YELLOW SAFF PLAX	8 GAL	3'-0" OC. L
	TRACHELOSPERMUM JAPONICIDES	STAR JASMINE	5 GAL	SPRAY ON WALL AND GREEN SCREEN

**NOTES:**

- ALL PLANT, SHRUB AND GROUNDCOVER AREAS TO BE TOP DRESSED WITH 3" LAYER OF FINE SAREDDO REDWOOD BARK FULCH. ALL SLOPE AREAS 2% OR GREATER TO BE TOP DRESSED WITH 4" LAYER OF FINE SAREDDO REDWOOD BARK FULCH. ALL TOP DRESSING TO BE INSTALLED TO TOP OF BALK.
- ALL STREET TREES AND ALL TREES WITHIN 5' OF HARDSCAPE ELEMENTS, SUCH AS CURBS, WALLS, BUILDINGS OR BALCO, SHALL BE PROVIDED WITH APPROVED ROOT BARRIER CONTROL DIVISION SUCH AS FIBREX HD LBS 90-2. AVAILABLE FROM: (949) 486-1868 OR WWW.DIVISIONS.COM. INSTALLATION TO BE PER MANUFACTURERS RECOMMENDATIONS AND SPECIFICATIONS AND BE A MINIMUM OF 18" LINEAL FEET.
- CONTRACTOR TO REPAIR OR REPLACE ANY EXISTING WORK DONE BY OTHERS, DAMAGED DUE TO CONSTRUCTION.
- A POST GRADING GEOTECHNOMIC SOIL ANALYSIS IS REQUIRED. CONTRACTOR TO ATTEND SOIL IN ACCORDANCE WITH SOIL REPORT RECOMMENDATIONS.
- CONTRACTOR TO VERIFY ALL UTILITIES AND EXISTING CONDITIONS IN FIELD PRIOR TO CONSTRUCTION.
- ALL PLANTING TO BE IRRIGATED WITH LOW VOLUME SPRAY HEADS OR DRIZZLERS CONNECTED AUTOMATIC IRRIGATION CONTROL TO VALVES AND TIED INTO A CENTRAL AUTOMATIC CONTROLLER.
- ALL PLANTING AND IRRIGATION TO COMPLY WITH CITY OF NEWPORT BEACH LANDSCAPE GUIDELINES.

**R. DALE HADFIELD**  
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LAGUNA HILLS, CALIFORNIA 92653  
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**NORTH**  
1" = 30' - 0"

2008-132 12-17-09

BALBOA CENTER NEWPORT BEACH, CA

PRELIMINARY PLANTING PLAN

**CATELLUS**  
A PROLOGIS COMPANY

**ARCHITECTS ORANGE**  
144 NORTH ORANGE ST., ORANGE, CALIFORNIA 92666 (714) 839-9888

PA2014-082 for XP2014-002  
3100 Balboa Boulevard  
Pavilions Grocery Store

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