



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, Hearing Officer, and/or Planning Division staff for the week ending February 17, 2023.

ZONING ADMINISTRATOR ACTIONS FEBRUARY 16, 2023

Item 1: SCF - 4440 VKA, LLC Condominium Conversion and Tentative Parcel Map (PA2022-0195)
Site Address: 4440 Von Karman Avenue

Action: Approved by Resolution No. ZA2023-006 Council District 3

Item 2: Gates Residence Coastal Development Permit (PA2022-0222)
Site Address: 748 Via Lido Nord

Action: Approved by Resolution No. ZA2023-007 Council District 1

Item 3: 2252 Mesa Drive, LLC Residence Coastal Development Permit (PA2022-0237)
Site Address: 2252 Mesa Drive

Action: Approved by Resolution No. ZA2023-008 Council District 3

HEARING OFFICER ACTIONS FEBRUARY 6, 2023

Item 1: Three-Year Construction Limit Extension (X2018-3347)
Site Address: 112 Kings Place

Action: Extension granted to 05/12/2023 with Conditions Council District 2

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 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. ZA2023-006

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING A CONDOMINIUM CONVERSION IN CONJUNCTION WITH A TENTATIVE PARCEL MAP FOR NONRESIDENTIAL CONDOMINIUMS LOCATED AT 4440 VON KARMAN AVENUE (PA2022-0195)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Shopoff Realty Investments, representing SCF - 4440 VKA, LLC, with respect to property located at 4440 Von Karman Avenue, legally described as Lot 5 in Tract No. 8762 requesting approval of a condominium conversion and tentative parcel map.
2. The applicant requests a condominium conversion and a tentative parcel map for nonresidential condominium purposes. The purpose of the Tentative Parcel Map is to create separate ownership units that will allow the sale of commercial space within an existing three (3)-story office building. The application includes a request to waive the requirement that each unit within the building maintain separate water meters, and water and sewer connections.
3. The subject property is designated Mixed-Use Horizontal (MU-H2) by the General Plan Land Use Element and is located within the Office Site B of the Koll Center Planned Community (PC-15) Zoning District.
4. The subject property is not located within the coastal zone.
5. A public hearing was held on February 16, 2023, online via Zoom. A notice of the time, place, and purpose of the hearing was given in accordance with the Newport Beach Municipal Code (NBMC). Evidence, both written and oral, was presented to and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under class 1 (Existing Facilities) and Section 15315 under Class 15 (Minor Land Divisions) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3 because it has no potential to have a significant effect on the environment.
2. The Class 1 exemption consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use. This

includes but is not limited to the subdivision of existing commercial buildings where no physical changes occur which are otherwise not exempt. The proposed project will convert an existing office building into nonresidential condominiums and will involve nonstructural renovations to the building's second and third-floor common area hallways and restrooms, but no expansion of use.

3. The Class 15 exemption consists of the division of property in urbanized areas zoned for residential, commercial, or industrial use into four (4) or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous 2 years, and the parcel does not have an average slope greater than 20 percent. The proposed project will convert an existing office building into nonresidential condominiums and will involve nonstructural renovations to the building's second and third-floor common area hallways and restrooms, but no expansion of use.

SECTION 3. REQUIRED FINDINGS.

Condominium Conversion

In accordance with Section 19.64.070 (Standards for Condominium Conversions) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

- A. *The number of off-street parking spaces that were required at the time of original construction shall be provided on the same property to be converted to condominium purposes, and the design and location of such parking shall be in conformance with the provisions of Chapter 20.40 (Off-Street Parking).*

Facts in Support of Finding:

1. The subject property is one (1) of eleven (11) footprint lots that make up a contiguous office site within the Koll Center Planned Community. The adjoining parking areas are designated for all required parking serving the contiguous office site.
2. At the time of original construction in 1975, the subject building was required to provide 188 parking spaces ($42,336 \text{ net square feet} / 225 = 188$) within the adjoining parking area. The original number required is provided in the adjoining parking area.
3. The PC-15 (Koll Center Planned Community) identifies a 260 dwelling unit limit for the housing overlay, for which the previously entitled Koll Center Residential project (PA2015-024) will develop these 260 condominium units. Future development housing projects would be required to replace or relocate any existing parking associated with 4440 Von Karman Avenue.

4. Based on a review of available records, the parking area appears to comply with all design standards with the provisions of Chapter 20.40. Access to the shared parking area is taken from Von Karman Avenue, Birch Street, MacArthur Boulevard, and Jamboree Road, and adequate and safe maneuvering aisles are provided within the parking area.

Finding:

- B. Each dwelling unit within a building shall have a separate sewer connection to the City sewer.*

Facts in Support of Finding:

1. The applicant requests to waive the requirement that each unit within the building maintains a separate sewer connection to the City sewer. Section 19.64.080 (Modification or Waiver of Conversion Standards) allows the decision-making body to waive the requirement for separate connections if it finds that the waiver will not be materially detrimental to the tenants of the property or surrounding properties, nor to public health or safety.
2. The applicant estimates the Condominium Conversion will result in seventeen (17) separate ownership units.
3. A waiver eliminates the need to excavate the right-of-way to provide each unit with new utility connections. It also eliminates the need to reconfigure the existing plumbing and utility connections, which would involve significant alterations to the site.
4. Waiving the requirement for separate sewer connections will not be materially detrimental to the tenants, nor to public health or safety because the building has demonstrated that existing connections can adequately accommodate the tenants utilizing the site.
5. The Utilities Department reviewed the request and will allow the waiver provided the property owner ensures common sewer connection use will not be detrimental to the tenants of the property or surrounding properties. The property owner will be required to form an Association responsible for the payment of water and sewer fees.

Finding:

- C. Each sewer lateral shall be retrofitted/fitted with a clean out at the property line.*

Fact in Support of Finding:

1. As conditioned, the existing sewer laterals shall be retrofitted/fitted with a clean out to comply with this requirement prior to the recordation of the Tentative Parcel Map.

Finding:

D. Each dwelling unit shall maintain a separate water meter and water meter connection.

Facts in Support of Finding:

1. The applicant requests to waive or modify the requirement that each unit within the building maintain separate water meter connections. Section 19.64.080 (Modification or Waiver of Conversion Standards) allows the decision-making body to waive the requirement for separate connections if it finds that the waiver will not be materially detrimental to the tenants of the property or surrounding properties, nor to public health or safety.
2. The applicant estimates the Condominium Conversion will result in seventeen (17) separate ownership units.
3. A waiver or modification eliminates the need to excavate the right-of-way to provide each unit with new utility connections. It also eliminates the need to reconfigure the existing plumbing and utility connections, which would involve significant alterations to the site.
4. Waiving or modifying the requirement for separate water connections is not anticipated not be materially detrimental to the tenants, nor to public health or safety because the building has demonstrated that existing connections can adequately accommodate the tenants utilizing the site.
5. The Utilities Department has reviewed the request and confirmed that the Irvine Ranch Water District (IRWD) provides water service. As conditioned, the applicant is required to obtain confirmation from the IRWD that the project complies with the IRWD's standards. The property owner will be required to form an association responsible for the payment of water and sewer fees.

Finding:

E. The electrical service connection shall comply with the requirements of Chapter 15.32 of the NBMC.

Fact in Support of Finding:

1. The electrical service connection for the existing office building complies with Chapter 15.32 (Underground Utilities) because all electrical service to the building is installed underground.

Finding:

F. The applicant for a condominium conversion shall request a special inspection from the Building Division for the purpose of identifying any building safety violations. The applicant

shall correct all identified safety violations prior to the approval of a final map for the condominium conversion.

Fact in Support of Finding:

1. A condominium conversion special inspection report was conducted to identify building safety violations on November 15, 2022. The inspection identified minor safety violations associated with existing handrail and guardrail safety that complied with the Building Code at the time of original construction; however, these features no longer comply with current Building Code requirements. Any minor safety violations identified in the condominium conversion inspection report will be required to be brought into conformance with current Building Codes.

Finding:

G. Permanent lot stakes and tags shall be installed at all lot corners by a licensed surveyor or civil engineer unless otherwise required by the City Engineer.

Fact in Support of Finding:

1. As conditioned, the project will comply with stake corners of the site prior to the recordation of the Tentative Parcel Map.

Finding:

H. For residential conversions, the project shall be consistent with the adopted goals and policies of the General Plan, particularly regarding the balance and dispersion of housing types within the City.

Fact in Support of Finding:

1. The project is not a residential conversion.

Finding:

I. The establishment, maintenance, or operation of the use or building applied for shall not, under the circumstances of the case, be detrimental to the health, safety, peace, comfort, and general welfare of the person residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the City.

Facts in Support of Finding:

1. The application of project conditions will ensure the health, safety, peace, comfort, and general welfare of persons residing or working in the neighborhood and the City.

2. The proposed conversion of an existing office building to condominiums occurs on a property within the MU-H2 Zoning District that allows for commercial office uses.
3. Minor safety violations identified during the special inspection will be required to be brought into conformance with current Building Codes if any additions or alterations are proposed for the existing building in the future which will ensure the building does not create a detriment to persons working at or around the subject property.

Tentative Parcel Map

The Zoning Administrator determined in this case that the Tentative Parcel Map is consistent with the legislative intent of Title 20 of the Newport Beach Municipal Code and is approved based on the following findings per Section 19.12.070 (Required Findings for Action on Tentative Maps) of Title 19:

Finding:

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

Facts in Support of Finding:

1. The Tentative Parcel Map is for nonresidential condominium purposes. The proposed subdivision of an existing commercial office building is consistent with provisions of the Subdivision Map Act and the MU-H2 (Mixed-Use Horizontal) General Plan land use designation, which provides for a horizontal intermixing of uses that may include commercial office uses.
2. The existing building occupied by professional office uses is consistent with the MU-H2 designation, and a tentative parcel map for condominiums does not change the use.
3. The project is not located within a specific plan area.

Finding:

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

Facts in Support of Finding:

1. The site is developed with a three (3)-story building consisting of office uses. Several other office buildings are located nearby.
2. The lot is physically suitable for commercial office density and development as the site is relatively flat and has demonstrated since its original construction that it can adequately accommodate office use.

3. The subject property is accessible from Von Karman Avenue, Birch Street, MacArthur Boulevard, and Jamboree Road, and is adequately served by existing utilities.

Finding:

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

Facts in Support of Finding:

1. The site was developed as a footprint lot in 1975 with a three (3)-story office building. The design of the subdivision remains generally the same today.
2. The property is in an urbanized area that does not contain any sensitive vegetation or habitat.
3. This project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15301 under Class 1 (Existing Facilities) and 15315 under Class 15 (Minor Land Divisions) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3 because it has no potential to have a significant effect on the environment.

Finding:

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

Facts in Support of Finding:

1. The Tentative Parcel Map is for nonresidential condominium purposes. With the exception of nonstructural renovations to the second and third-floor common area hallways and restrooms will not create any serious public health concerns.
2. Any future improvements proposed will comply with all Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems. Any public improvements required of the developer per Section 19.28.010 (General Improvement Requirements) of the Municipal Code and Section 66411 (Local agencies to regulate and control design of subdivisions) of the Subdivision Map Act shall comply with all ordinances of the City and all Conditions of Approval.

Finding:

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

Fact in Support of Finding:

1. The Tentative Parcel Map for the subdivision of the existing office building will not conflict with a 12-foot bicycle/pedestrian easement located at the westerly side of the property or any other easements that exist nearby.

Finding:

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

Facts in Support of Finding:

1. The property is not subject to the Williamson Act because the subject property is not designated as an agricultural preserve.
2. The site, developed for office use, lies in a sub-area B of PC-15 (Koll Center Planned Community) that permits office uses.

Finding:

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

Facts in Support of Finding:

1. The property is not a "land project" as defined in Section 11000.5 of the California Business and Professions Code.
2. The project is not located within a specific plan area.

Finding:

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

Fact in Support of Finding:

1. Any future improvements are subject to Title 24 of the California Building Code which requires new construction to meet minimum heating and cooling efficiency standards depending on location and climate. The Newport Beach Building Division enforces Title 24 compliance through the plan check and inspection process.

Finding:

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

Fact in Support of Finding:

1. The 0.74-acre site is listed as a housing opportunity site (Site 50) in the adopted 2021-2029 Housing Element. Within the Airport Area, the Housing Element includes a total of 172 acres of opportunity sites but assumed only 30 percent or 51.6 acres would redevelopment during the planning period. The redevelopment percentage equates to 2,577 residential units planned for the area. The subject condominium conversion and associated tentative parcel map for nonresidential purposes remains consistent with the assumption of the Housing Element that not all opportunity sites are needed to meet the city housing needs.

Finding:

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

Fact in Support of Finding:

1. As conditioned, wastewater discharge into the existing sewer system shall comply with the Regional Water Quality Control Board (RWQCB) requirements.

Finding:

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

Fact in Support of Finding:

1. The project is not located within the Coastal Zone.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15301 under class 1 (Existing Facilities) and Section 15315 under Class 15 (Minor Land Divisions) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3 because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves PA2022-0195, 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 10 days after the adoption of this Resolution unless within such time an appeal or call for review is filed with the Director of Community Development in accordance with the provisions of Title 19 Subdivisions, of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 16th DAY OF FEBRUARY 2023.



Benjamin M. Zueba, AICP, Zoning Administrator

EXHIBIT "A"**CONDITIONS OF APPROVAL****Planning Division**

1. The project is subject to all applicable City ordinances, policies, and standards unless specifically waived or modified by the conditions of approval.
2. The Condominium Conversion and Tentative Parcel Map shall expire if the Map has not been recorded within 24 months of the date of approval unless an extension is granted by the Community Development Director in accordance with the provisions of Section 19.16 (Tentative Map Expiration and Extension) of the Newport Beach Municipal Code.
3. To the fullest extent permitted by law, the applicant shall indemnify, defend and hold harmless the City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any 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 **SCF - 4440 VKA, LLC, including, but not limited to, Condominium Conversion and Tentative Parcel Map (PA2022-0195)**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorney's fees, and other expenses incurred in connection with such claim, action, causes of action, suit, or proceeding whether incurred by the applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all the City's costs, attorneys' fees, and damages that 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

4. The Parcel Map shall be recorded. The Parcel Map shall be prepared on the California coordinate system (NAD88). Prior to the recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of the said map in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. **The Parcel Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.**
5. Prior to the recordation of the Parcel Map, the surveyor/engineer preparing the Map shall tie the boundary of the Map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. Monuments (one [1]-inch iron pipe with tag) shall be set on each lot corner unless

otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of the construction project.

6. Each existing sewer lateral shall be retrofitted/fitted with a clean-out at the property line.
7. Prior to the recordation of the Parcel Map, an Association shall be established, responsible for the payment of water and sewer fees. Any delay in payments and any issues with the existing master meters will directly affect all units because they do not have their services. Any clogs and back-ups of the shared sewer lateral lines will directly affect all units served by that line.
8. All on-site drainage shall comply with the latest City Water Quality requirements.

Building Division

9. Prior to the recordation of the Parcel Map, the Applicant shall correct all minor safety violations identified in the Condominium Conversion Inspection Report.

Utilities Department

10. Prior to submitting the tentative parcel map for Public Works Department review, the applicant shall provide evidence that the Irvine Ranch Water District (IRWD) has reviewed the condominium conversion and has confirmed it complies with IRWD water standards.

RESOLUTION NO. ZA2023-007

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, APPROVING A COASTAL DEVELOPMENT PERMIT TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND CONSTRUCT A NEW TWO (2)-STORY SINGLE-FAMILY RESIDENCE AND ATTACHED TWO (2)-CAR GARAGE LOCATED AT 748 VIA LIDO NORD (PA2022-0222)

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 concerning property located at 748 Via Lido Nord requesting approval of a coastal development permit. The property is legally described as Lot 40 of Tract 907.
2. The applicant requests a coastal development permit to demolish an existing single-family residence and construct a new 3,716-square-foot, two (2)-story, single-family residence with a 556-square-foot two (2)-car garage. The project also includes a reinforced bulkhead with a cap for coastal hazard protection. All work will be performed from the landside of the U.S. Bulkhead Line and all construction will occur from private property (i.e., the landside). The project also 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; no deviations are requested.
3. 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.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RSD-C (Single Unit Residential Detached - (10.0 - 19.9 DU/AC)) and it is located within the R-1 (Single-Unit Residential) Coastal Zone District.
5. A public hearing was held on February 16, 2023, online via Zoom. A notice of the time, place, and purpose of the hearing was given by 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 3,716-square-foot single-family dwelling with an attached 556-square-foot two (2)-car garage. The exceptions to this categorical exemption under Section 15300.2 are not applicable.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
 - a. The maximum floor area limitation is 5,167 square feet and the proposed floor area is 4,272 square feet.
 - b. The proposed development provides the minimum required setbacks, which are 10 feet along the front property line abutting the waterfront, 3 feet along each side property line, and 4 feet along the street front property line.
 - c. The highest two (2)-story roofline is no more than 24 feet from the established grade level of 11.61 feet based on the North American Vertical Datum of 1988 ("NAVD 88"), which complies with the maximum height limitation.
 - d. The project includes enclosed garage parking for two (2) vehicles, which complies with the minimum 2-car parking requirement for single-family residences with less than 4,000 square feet of habitable floor area.
2. The neighborhood is predominantly developed with two (2)-story, single-family residences. The proposed design, bulk, and scale of the development are consistent with the existing neighborhood pattern of development.
3. A Coastal Hazards Report and Sea Level Rise Analysis was prepared by PMA Consulting, Inc. dated September 28, 2022, for the project. The current maximum bay water elevation is 7.7 NAVD 88 (North American Vertical Datum of 1988 (NAVD 88) The current top bulkhead elevation of 11.29 feet (NAVD 88). The report analyzes future sea level rise scenarios assuming a 3.05-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 10.75 feet NAVD 88 (the likely range for sea level rise over the 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 (NAVD 88) with a design for adaptability elevation of 14.4 feet (NAVD 88). The project will raise the bulkhead to an elevation of 12.47 feet (NAVD 88). PMA Consulting, Inc. has confirmed the bulkhead can be raised up to 14.4 feet NAVD 88 if needed and in compliance with the updated guidelines.
5. Once the existing seawall/bulkhead is reinforced and raised per the report's recommendations, flooding, wave run-up, and erosion will not significantly impact this property over the proposed 75-year economic life of the development. Flood shields (sandbags and other barriers) can also be deployed across the openings to protect and prevent flooding to the structure during extreme high tide or storm events. The report concludes that the proposed project will be safe from flooding hazards for the next 75 years with the proposed reinforced/raised bulkhead.
6. The finished floor elevation of the proposed single-family residence is 12.47 feet (NAVD 88), which complies with the minimum 9.00-foot (NAVD 88) elevation standard. The Coastal Hazard Report concludes that the bay water elevation (currently 7.7 feet NAVD 88) will not exceed the proposed raised bulkhead elevation of 12.47 feet (NAVD 88) for the anticipated 75-year life of the structure.
7. Under NBMC Section 21.30.030(C)(3)(i)(iv) – (Natural Landform and Shoreline Protection - Protective Structures), the property owner will be required to agree 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 before the final building permit inspection.
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) – (General Site Planning and Development Standards). This requirement is included as a condition of approval that will need to be satisfied before the issuance of building permits.
9. 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 before 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 before 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 from 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. Under Municipal Code Section 21.35.050 (Water Quality and Hydrology Plan), due to the proximity of the development to the shoreline and the development containing more than 75 percent of impervious surface area, a Water Quality and Management Plan (WQMP) is required. A preliminary WQMP has been prepared for the project by CivilScapes Engineering, Inc., dated September 29, 2022. The WQMP includes a polluted runoff and hydrologic site characterization, a sizing standard for BMPs, the use of a 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 WQMP before building permit issuance.
12. The project site is not located adjacent to a coastal view road, public access way, or Coastal Viewpoint as identified in the Coastal Land Use Plan. The nearest coastal viewpoint is John Wayne Park, approximately 0.5 miles northwest of the project site. As currently developed, the existing property and other residences along Via Lido Nord are visible from the channel and within the view shed of the park. However, the proposed single-family residence complies with all applicable Local Coastal Program (LCP) development standards and maintains a building envelope consistent with the existing neighborhood pattern of development. Additionally, the project does not contain any unique features that could degrade the visual quality of the coastal zone.
13. The waterfront and street side of the proposed residence, which are visible from the channel and Via Lido Nord, contain substantial architectural treatment and visual interest, in keeping with the design guidelines of the Zoning Code. The new structure would comply with the required setbacks and the design includes modulation of volume throughout the structure, an increased front setback beyond what is required by code, and glass railings that prevent the appearance of the site from being walled off from the surrounding area. Therefore, the project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts on existing 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. Implementation Plan Section 21.30A.040 (Determination of Public Access/Recreation Impacts) requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project replaces an existing single-family residence located on a standard R-1 lot with a new single-family residence. Therefore, the project does not involve a change in

land use, density, or intensity that will result in increased demand for public access and recreation opportunities. Furthermore, the project is designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.

2. Vertical and lateral access to the bay exists throughout Lido Isle, with the closest vertical access point located at 398 Via Lido Nord approximately 800 yards north where there is access to the water and a grassy area for the public. The project does not include any features that would obstruct access along these routes.

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) because it has no potential to have a significant effect on the environment and the exceptions to the Class 3 exemption do not apply.
2. The Zoning Administrator of the City of Newport Beach hereby approves the Coastal Development Permit, subject to the conditions outlined in Exhibit "A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director by the provisions of Title 21 Local Coastal Program (LCP) 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 16TH DAY OF FEBRUARY 2023.



Benjamin M. Zueba, AICP, 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. *Before the final building permit inspection, the existing seawall shall be reinforced and capped to an elevation of 12.47 feet (NAVD 88) with the capability to be raised up to 14.4 feet (NAVD 88), in compliance with the City of Newport Beach Waterfront Project Guidelines and Standards, Harbor Design Criteria Commercial & Residential Facilities*
3. *Before the final building permit inspection, an agreement in a form approved by the City Attorney between the property owner and the City shall be executed and recorded waiving rights to the construction of future shoreline protection devices including the repair and maintenance, enhancement, reinforcement, or any other activity affecting the bulkhead, that results in any encroachment seaward of the authorized footprint of the bulkhead or other shoreline protective device. The agreement shall be binding against the property owners and successors and assigns.*
4. *Before issuance of building permits, 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 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 development. This letter shall be scanned into the plan set before building permit issuance.*
5. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter the sensitive habitat, receiving waters, or storm drains or result in impacts to environmentally sensitive habitat areas, streams, the beach, wetlands or their buffers. No demolition or construction materials shall be stored on public property.
6. This Coastal Development Permit does not authorize any development seaward of the private property.
7. The applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of native birds under MBTA:

- A. The construction area shall be inspected for active nests. If birds are observed flying from a nest or sitting on a nest, it can be assumed that the nest is active. Construction activity within 300 feet of an active nest shall be delayed until the nest is no longer active. Continue to observe the nest until the chicks have left the nest and activity is no longer observed. When the nest is no longer active, construction activity can continue in the nest area.
 - B. It is a violation of state and federal law to kill or harm a native bird. To ensure compliance, consider hiring a biologist to assist with the survey for nesting birds, and to determine when it is safe to commence construction activities. If an active nest is found, one (1) or two (2) short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.
- 8. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) shall be implemented before and throughout the duration of construction activity as designated in the Construction Erosion Control Plan.
 - 9. The discharge of any hazardous materials into storm sewer systems or receiving waters shall be prohibited. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. A designated fueling and vehicle maintenance area with appropriate berms and protection to prevent spillage shall be provided as far away from storm drain systems or receiving waters as possible.
 - 10. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stockpiles and construction materials shall be covered, enclosed on all sites, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway.
 - 11. Trash and debris shall be disposed of in proper trash and recycling receptacles at the end of each construction day. Solid waste, including excess concrete, shall be disposed of in adequate disposal facilities at a legal disposal site or recycled at a recycling facility.
 - 12. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
 - 13. The project is subject to all applicable City ordinances, policies, and standards unless specifically waived or modified by the conditions of approval.
 - 14. The applicant shall comply with all federal, state, and local laws. A material violation of any of those laws in connection with the use may be caused by the revocation of this Coastal Development Permit.
 - 15. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained are detrimental to the public health, and welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained to constitute a public nuisance.

16. *Before issuance of building permits, the applicant shall submit a final construction erosion control plan. The plan shall be subject to review and approval by the Building Division.*
17. *Before issuance of building permits, the applicant shall submit a final drainage and grading plan. The plan shall be subject to review and approval by the Building Division.*
18. Before issuance of building permits, a copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans.
19. *Before issuance of building permits, the final WQHP/WQMP shall be reviewed and approved by the Building Division. The implementation shall comply with the approved WQHP/WQMP and any changes could require separate review and approval by the Building Division.*
20. 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.
21. Construction activities shall comply with Section 10.28.040 (Construction Activity—Noise Regulations) of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday. Noise-generating construction activities are not allowed on Saturdays, Sundays, or Holidays.
22. Before the issuance of building permits, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
23. 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.
24. This Coastal Development Permit shall expire unless exercised within 24 months from the date of approval as specified in Section 21.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code unless an extension is otherwise granted.
25. To the fullest extent permitted by law, the applicant shall indemnify, defend and hold harmless the City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any 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 **Gates Residence, including, but not limited to the Coastal Development Permit (PA2022-0222)**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorney's fees, and

other expenses incurred in connection with such claim, action, causes of action, suit, or proceeding whether incurred by the applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all the City's costs, attorneys' fees, and damages, which the City incurs in enforcing the indemnification provisions outlined in this condition. The applicant shall pay to the City upon demand any amount owed to the City under the indemnification requirements prescribed in this condition.

RESOLUTION NO. ZA2023-008

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, APPROVING A COASTAL DEVELOPMENT PERMIT TO DEMOLISH AN EXISTING OFFICE AND GUEST UNIT WITH AN ATTACHED GARAGE AND TO CONVERT THE LOWER LEVEL OF AN EXISTING TWO (2)-STORY SINGLE-FAMILY RESIDENCE TO AN ACCESSORY DWELLING UNIT LOCATED AT 2252 MESA DRIVE (PA2022-0237)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Phil Edmondson of Pacific Coast Architects, concerning property located at 2252 Mesa Drive, requesting approval of a coastal development permit. The property is legally described as Parcel 1 of Parcel Map No. 906 as recorded in Book 9 Page 17 of Parcel Maps, at the County of Orange, California.
2. The applicant requests a coastal development permit to allow the demotion of an existing 2,011-square-foot office and guest unit with an attached 1,750-square-foot garage and to convert the lower level of an existing two (2)-story single-family residence to a 1,151-square-foot attached accessory dwelling unit (ADU). The project complies with all applicable development standards and no deviations are requested. The project includes landscaping where the existing office, guest unit, and garage are to be demolished..
3. The subject property is designated RS-D (Single Unit Residential Detached) by the General Plan Land Use Element and is located within the SP-7 (Santa Ana Heights Specific Plan, Residential Equestrian sub-area) Zoning District.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RSD-A (Single Unit Residential Detached) and it is located within the SP-7 (Santa Ana Heights Specific Plan) Coastal Zone District.
5. A public hearing was held on February 16, 2023, online via Zoom. A notice of the time, place, and purpose of the hearing was given by 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, 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 an office and guest unit with an attached 1,750-square-foot garage and the conversion of the lower level of an existing two (2)-story single-family residence to a 1,151-square-foot attached accessory dwelling unit.
3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
 - a. The proposed development provides the minimum required setbacks, which are 20 feet along the front property line abutting Mesa Drive, 5 feet along each side property line, and 25 feet along the rear property line. The proposed project will demolish an existing office and guest unit with a garage and convert the lower level of an existing single-family residence to an accessory dwelling unit. No increase in square footage is proposed as part of this project.
 - b. The highest ridge of the existing single-family residence is 22 feet, 2 inches which complies with the maximum height requirement of 35 feet from the established grade. No increase in height is proposed as part of this project.
 - c. The project includes garage parking for a total of five (5) vehicles, complying with the minimum two (2)-car garage parking requirement for single-family residences and one (1)-car garage parking requirement for accessory dwelling units.
2. The neighborhood is predominantly developed with two (2)- and three (3)-story, single-family residences. The proposed design, bulk, and scale of the development are consistent with the existing neighborhood pattern of development.

3. The accessory dwelling unit provides sleeping, sanitation, and food preparation facilities with independent exterior access to comprise a separate dwelling unit as defined by Chapters 20.70 and 21.70 (Definitions) of the Zoning Code and Coastal Land Use Plan. The demolition of the existing guest house and the conversion of the existing basement level for a new accessory dwelling unit will result in no net change to the number of on-site dwelling units in accordance with the requirements of SB330.
4. The property is in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved before 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 before building permit issuance.
5. Under Municipal Code Section 21.35.050 (Water Quality and Hydrology Plan), due to the proximity of the development to environmentally sensitive receiving waters and the development containing more than 2,500 square feet of impervious surface area, a preliminary Water Quality Management Plan (WQMP) has been prepared by Toal Engineering, Inc. on October 18, 2022. A priority WQMP will be required for submittal before building permit issuance. The WQMP includes a polluted runoff and hydrologic site characterization, a sizing standard for BMPs, the use of a LID approach to retain the design storm runoff volume on-site, and documentation of the expected effectiveness of the proposed BMPs.
6. Proposed landscaping complies with Implementation Plan Section 21.30.075 (Landscaping). A condition of approval is included that requires drought-tolerant species. Before the issuance of building permits, the final landscape plans will be reviewed to verify invasive species are not planted.
7. The project site is not located adjacent to a coastal view road, public access way, or Coastal Viewpoint as identified in the Coastal Land Use Plan. The nearest coastal viewpoint is on Bayview Park and is not visible from the site. The proposed accessory dwelling unit complies with all applicable Local Coastal Program (LCP) development standards and maintains a building envelope consistent with the existing neighborhood pattern of development. Additionally, the project does not contain any unique features that could degrade the visual quality of the coastal zone.
8. The project proposes to demolish the existing detached guest unit that is one of two existing dwellings on-site to construct an attached accessory dwelling unit (ADU). As a result, the project complies with the Housing Crisis Act of 2019 and Senate Bill 8 (Skinner) because it does not result in the loss of residential density. The State Department of Housing and Community Development (HCD) has verified with the City in an email dated March 23, 2022, that an ADU is considered a housing unit under Government Code Section 66300 provisions to replace existing units. The property owner has certified that the units are not "protected" units under Section 66330 Subdivision (d)(2). The project is consistent with the General Plan, Local Coastal Program, and Zoning designations that allow the single-family and accessory dwelling unit land uses. Under the Coastal

Land Use Plan Table 2.1.1-1, the Single Unit Residential Detached (RSD-A) category is intended for single-family residential development. Section 21.90.060 of the Local Coastal Program Implementation Plan for the Santa Ana Heights Specific Plan, Residential Equestrian District shows “Single-family detached dwellings” and “Accessory Dwelling Units” as allowed uses in the SP-7 Coastal Zoning District. Therefore, the project of an accessory dwelling unit to replace an existing guest unit is consistent with the SP-7 zoning and land use designations and does not result in a loss of residential density.

9. The project will replace one (1) guest unit with one (1) ADU on the property. Therefore, the project will not affect the City in meeting its regional housing needs and is not considered a reduction of density under SB330.

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 in Santa Ana Heights between the nearest public road and the Newport Back Bay waterway. Implementation Plan Section 21.30A.040 requires that the provision of public access bear a reasonable relationship between the requirement and the project’s impact and be proportional to the impact. In this case, the project will demolish an existing office and guest unit with a garage and convert the lower level of an existing single-family residence to an accessory dwelling unit. No new square footage is proposed as part of this project. Therefore, the project does not involve a change in land use or intensity that will result in increased demand for public access and recreation opportunities. Furthermore, the project is designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.
2. Vertical and lateral access to Upper Newport Bay is available adjacent to the site along Bayview Trail which is accessible from Mesa Drive. Access to Bayview Trail is located approximately 645 feet west of the property and approximately 1,280 feet east of the property. The proposals of this project are within private property and do not include any features that would obstruct access to these routes.

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 under 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. The Zoning Administrator of the City of Newport Beach hereby approves the Coastal Development Permit, subject to the conditions outlined in Exhibit "A," which is attached hereto and incorporated by reference.

3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director by the provisions of Title 21 Local Coastal Program (LCP) 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 16TH DAY OF FEBRUARY 2023.



Benjamin M. Zueba, AICP, 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. The project is subject to all applicable City ordinances, policies, and standards unless specifically waived or modified by the conditions of approval.
4. The applicant shall comply with all federal, state, and local laws. A material violation of any of those laws in connection with the use may be caused by the revocation of this Coastal Development Permit.
5. 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 are detrimental to the public health, and welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained to constitute a public nuisance.
6. *Prior to issuance of building permits, a Fair Share Fee for one (1) additional residential unit shall be paid in accordance with the fee effective at the time of payment*
7. *Prior to the issuance of building permits, the property owner shall record a deed restriction with the County Recorder's Office, the form and content of which is satisfactory to the City Attorney, prohibiting the use of the accessory dwelling unit for short-term rentals (i.e., less than 30 days) and prohibiting the sale of the ADU separate from the principal dwelling. This deed restriction shall remain in effect so long as the accessory dwelling unit exists on the property.*
8. *Prior to the issuance of building permits, a copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans.*
9. *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.*
10. All landscape materials and irrigation systems shall be maintained by 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.

11. Construction activities shall comply with Section 10.28.040 (Construction Activity—Noise Regulations) of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday, and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.
12. 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 under 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.
13. Before the issuance of the building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
14. 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.
15. This Coastal Development Permit shall expire unless exercised within 24 months from the date of approval as specified in Section 21.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code unless an extension is otherwise granted.
16. To the fullest extent permitted by law, the applicant shall indemnify, defend and hold harmless the City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any 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 **2252 Mesa Drive, LLC Residence, including but not limited to, Coastal Development Permit (PA2022-0237)**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorney's fees, and other expenses incurred in connection with such claim, action, causes of action, suit, or proceeding whether incurred by the applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all the City's costs, attorneys' fees, and damages, which the City incurs in enforcing the indemnification provisions outlined in this condition. The applicant shall pay to the City upon demand any amount owed to the City under the indemnification requirements prescribed in this condition.

Building Division

17. *Prior to the issuance of building permits, one (1)-hour fire-rated wall and sound block level of STC 50 sound separation shall be provided between the existing single-family residence and proposed accessory dwelling unit.*
18. *Prior to the issuance of building permits, the applicant shall submit a final construction erosion control plan. The plan shall be subject to 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 review and approval by the Building Division.*
20. *Prior to the issuance of building permits, the final WQMP shall be reviewed and approved by the Building Division. The implementation shall comply with the approved WQMP and any changes could require separate review and approval by the Building Division.*
21. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter the sensitive habitat, receiving waters, or storm drains 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.
22. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) shall be implemented before and throughout the duration of construction activity as designated in the Construction Erosion Control Plan.
23. 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.
24. 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.

25. Trash and debris shall be disposed of in proper trash and recycling receptacles at the end of each construction day. Solid waste, including excess concrete, shall be disposed of in adequate disposal facilities at a legal disposal site or recycled at a recycling facility.

Fire Department

26. A three (3)-foot wide walkway shall be provided on at least one side of the lot from Mesa Drive to the rear of the property and from all buildings on the property.

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BEFORE THE
ADMINISTRATIVE HEARING OFFICER
FOR THE
CITY OF NEWPORT BEACH, CALIFORNIA

IN RE

112 KINGS PLACE
APPLICATION FOR PERMIT
EXTENSION (N.B.M.C. 15.02.095)

**FINDINGS OF FACT AND STATEMENT
OF DECISION OF THE
ADMINISTRATIVE HEARING OFFICER**

Hearing Officer: Steven P. Graham
Date: January 26, 2023
Time: 2:30 p.m.

INTRODUCTION

1. This matter involves a request for a second extension of time to complete construction for work under building permits issued for 112 Kings Place (“Subject Property”) in the City of Newport Beach under Section 105.3.4 of the Newport Beach Administrative Code (a locally amended version of the California Building Code) as codified at Newport Beach Municipal Code (“NBMC”) Section 15.02.095. Steven Pacifico Graham (“Hearing Officer”), sitting as the Hearing Officer under NBMC Section 15.02.95 heard this matter on January 26, 2023 at 2:30 p.m. (the “Hearing”). The Hearing Officer is a licensed attorney in the State of California and serves as Hearing Officer under contract with the City of Newport Beach (“City”). Pursuant to NBMC Section 15.02.095 the Hearing Officer shall hear and decide whether this second application for extension shall be granted, conditionally granted, or denied.
2. City is a charter city and municipal corporation existing under the laws of the State of California. The City was represented at the Hearing by Tonee Thai, Chief Building Official (“City Representative”). Also in attendance for the City were Chris Sanchez, Principal Building Inspector, and Chad Shelton, Building Inspector II, who did not provide testimony or argument.

- 1 3. Anthony Ferro (“Applicant”) appeared in support of the application for an extension of time.
2 Mr. Ferro is the contractor working on the project at the Subject Property and made this
3 application on behalf of Joseph Del Signore (“Owner”) owner of the Subject Property, who was
4 in attendance.
- 5 4. Marshall and Jayne Lally (the “Lallys”), owners and residents of 108 Kings Place were in
6 attendance at the hearing. The Lallys are the Owner’s next door neighbors.
- 7 5. Jim Mosher, a member of the public, was in attendance.
- 8 6. The following Findings of Fact, Conclusions of Law, and Decision and Order are based on the
9 evidence presented during the Hearing.
- 10 7. The Hearing Officer considered the testimony of all witnesses at the Hearing and all documents
11 made part of the administrative record. The mere fact that a witness’s testimony or document
12 may not be specifically referred to below does not and shall not be construed to mean that said
13 testimony or document was not considered.
- 14 8. Pursuant to the Administrative Hearing Rules and Procedures of the City of Newport Beach, the
15 Hearing was digitally recorded.
- 16 9. At the beginning of the hearing, and without objection, the Hearing Officer took the 210 pages
17 of staff report from the City Representative and 5 pages of application from the Applicant into
18 evidence as the administrative record of the Hearing, attached hereto as Exhibit A and
19 incorporated within this Hearing Order.

20 **ISSUES**

- 21 8. Pursuant to Section 15.02.095 of the NBMC, the issue to be determined by the Hearing Officer
22 is whether to grant, or conditionally grant, up to a one hundred and eighty (180) calendar day
23 extension, based on a finding that either special circumstances warrant an extension of time or
24 the failure to meet the time limit was caused by circumstances beyond the property owner’s,
25 applicant’s or their contractor’s control.

26 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

- 27 9. This matter is before the Hearing Officer consistent with Section 15.02.095 of the NBMC.
28

1 10. The City of Newport Beach adopted the 2019 California Building Code by reference under
2 Ordinance No. 2019-17 as the Newport Beach Administrative Code, codified at Newport Beach
3 Municipal Code Section 15.02.010, which reads in part, “The City Council adopts and
4 incorporates by reference, as though set forth in full in this section, Chapter 1, Division II of the
5 2019 Edition of the California Building Code as published by the International Code Council.”

6 11. The City of Newport Beach adopted certain additions, amendments, and deletions to the 2019
7 California Building Code, pursuant to its authority under California Health and Safety Code
8 Section 17958.5.

9 12. One such addition is the addition of Sections 105.3.3, 105.3.4, and 105.3.5 to the California
10 Building Code, codified at Newport Beach Municipal Code Section 15.02.095.

11 13. Section 105.3.3, reads,

12 “For any one-unit or two-unit dwelling for which a tentative and
13 final tract map is not required, the maximum allowable time to
14 complete construction for any work that requires a building permit
15 including, but not limited to, any construction, reconstruction,
16 rehabilitation, renovation, addition(s), modification(s),
17 improvement(s), or alteration(s), shall be limited to three (3) years,
18 unless an extension is granted in accordance with Section 105.3.4.

19
20 For building permits issued on or after June 1, 2019, the time limit
21 to complete construction shall begin on the date of issuance of the
22 first or original building permit. For building permits issued prior to
23 June 1, 2019, the time limit to complete construction shall be three
24 (3) years from June 1, 2019.

25
26 Final inspection and approval of the construction work by the City
27 shall mark the date of construction completion for purposes of
28

1 Section 15.02.095. Time limits set forth herein shall not be extended
2 by issuance of a subsequent building permit(s) for the same project.”

3 14. Permit No. X2018-3347 was issued on April 1, 2019 and was set to expire under NBMC Section
4 15.02.095 on June 1, 2022. The Applicant sought and received an extension of Permit No.
5 X2018-3347 to December 31, 2022 from the Building Official.

6 15. On December 21, 2022, Applicant filed this Application for Three Year Construction Time
7 Limit Extension seeking a second extension of Permit No. X2018-3347 for “3 months.”

8 16. The Subject Property has been under construction in one form or another for almost 15 years.
9 The original permit (No. X2007-3157) for the project was issued on March 11, 2008. That
10 permit, and subsequent permits, have all expired. The Owner reported that the original
11 construction from 2008 was ended by a fire at the Subject Property. A second attempt was
12 reported by the Owner to have begun in 2014, but ended in 2016 or 2017 when it became
13 apparent that the project had not been properly engineered. The current attempt began with the
14 issuance of permits in April 2019 and has not concluded for over three years.

15 17. The Applicant testified that the project is very close to completion, with a few items still being
16 ordered (namely a lighting control and tiles). The work remaining includes, but is not limited to,
17 receiving and installing the lighting control, finalizing permit for the HVAC system, installation
18 of toilets, receiving and installing tile, installation of stairs (fabrication began months ago),
19 painting the “man cave” and awaiting final inspection of the pool.

20 18. The Applicant testified that he was brought onto the project in 2022 after the previous contractor
21 had been terminated by the Owner for failure to complete the project on time. The Applicant
22 indicated that while ordinarily a project should not have taken this long (estimating 14 months
23 as a more reasonable timeframe), the effects of the COVID-19 pandemic resulted in significant
24 labor and material shortages for the entire industry. The administrative record includes
25 correspondence from KMK Development Inc. outlining the challenges caused by the pandemic.

26 19. The Applicant indicated that four (4) months should be sufficient time to complete the project.

27 20. The neighbors of the adjoining property, the Lallys, were in attendance and expressed frustration
28 with the continued delays for the project, having essentially lived next to a construction site for

1 15 years. Ultimately the Lallys expressed the extension if it meant the project would be
2 completed.

3 21. The City Representative testified that if the extension is not granted, all work must cease, and
4 the City would be prohibited from issuing a replacement building permit under NBMC
5 15.02.095, which provides “Final inspection and approval of the construction work by the City
6 shall mark the date of construction completion for purposes of Section 15.02.095. Time limits
7 set forth herein shall not be extended by issuance of a subsequent building permit(s) for the same
8 project.” Essentially, unless successfully challenged in the superior court, the City
9 Representative stated that the Owner would be forced to demolish the building and start over.

10 22. Section 105.3.4, subsection 2 and 3 provide that if a project is not completed within the
11 timeframe authorized by the Building Official, the property owner or their authorized agent may
12 seek further extension from the City’s Hearing Officer for a second and third extension. The
13 second and third extension shall not exceed 180 days each and shall be based on relevant
14 evidence of whether (i) special circumstances warrant an extension of time; (ii) the failure to
15 meet the time limit was caused by circumstances beyond the property owner’s, applicant’s or
16 their contractor’s control; and (iii) any approval should contain conditions to ensure timely
17 completion of the project in a manner that limits impacts on surrounding property owners. The
18 Hearing Officer may grant or conditionally grant an extension if finds special circumstances
19 warrant an extension of time or the failure to meet the time limit was caused by circumstances
20 beyond the property owner’s, applicant’s or their contractor’s control.

21 **DECISION AND ORDER**

22 23. The Applicant has presented sufficient evidence to establish that “the failure to meet the time
23 limit was caused by circumstances beyond the property owner’s, applicant’s, or their
24 contractor’s control.” None of the listed individuals could have foreseen the significant delays
25 caused by labor and material shortages caused by the COVID-19 pandemic and the listed
26 individuals certainly were not the cause of those delays.

27
28


1 24. The Hearing Officer is authorized to provide an extension of up to 180 days, however, the
2 Applicant sought a “three month” extension. Based on the testimony at the hearing, three months
3 is a reasonable extension.

4 25. The second application for an extension is hereby granted to 5:00 p.m. on May 12, 2023 subject
5 to the following condition(s):

6 A. The Applicant shall submit to the Hearing Officer a progress report by 5:00 p.m. on
7 February 28, 2023, March 31, 2023, and April 28, 2023 detailing the progress made towards
8 completion of the project, including explanations for any delays. The report shall include an
9 estimated completion date for each remaining task and the overall project. The progress
10 report shall be reviewed and approved by the Owner prior to submission. The progress report
11 to the Hearing Officer may be submitted by email to sgraham@colehuber.com with a copy
12 to the Building Official. **Failure to submit the progress reports by the dates and times**
13 **described above shall result in the immediate expiration of the building permit.**

14 26. Under NBMC Section 15.02.095 this decision is final and not appealable to any City body. Any
15 person aggrieved by an administrative decision of a Hearing Officer may obtain review of the
16 administrative decision by filing a petition for review with the Orange County Superior Court
17 in accordance with the timelines and provisions as set forth in California Government Code
18 Section 53069.4. There may be other time limits which also affect your ability to seek judicial
19 review.

20 Dated: February 6, 2023

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Administrative Hearing Officer