



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 April 14, 2023.

ZONING ADMINISTRATOR ACTIONS APRIL 13, 2023

Item 1: Wolverton Residential Condominiums Tentative Parcel Map (PA2022-0308)
Site Address: 602 and 602 ½ Iris Avenue

Action: Approved by Resolution No. ZA2023-022 Council District 6

Item 2: Cabraloff Residence Coastal Development Permit (PA2022-0278)
Site Address: 504 38th Street

Action: Approved by Resolution No. ZA2023-023 Council District 1

Item 3: Smith Residence Coastal Development Permit (PA2022-0306)
Site Address: 2286 Channel Road

Action: Approved by Resolution No. ZA2023-024 Council District 1

Item 4: Blk Dot Coffee Minor Use Permit (PA2022-0259)
Site Address: 1314 Bison Avenue, Unit E

Action: Approved by Resolution No. ZA2023-025 Council District 3

APPEAL PERIOD: An appeal or call for review may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered unless a different period 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. ZA2023-022

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING A TENTATIVE PARCEL MAP FOR TWO (2)-UNIT RESIDENTIAL CONDOMINIUM PURPOSES LOCATED AT 602 AND 602 ½ IRIS AVENUE (PA2022-0308)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Ron Miedema of RDM Surveying (Applicant), with respect to property located at 602 and 602 ½ Iris Avenue, and legally described as Lot 4 of Block 636, of the Corona del Mar Tract requesting approval of a tentative parcel map for condominium purposes.
2. The Applicant requests a tentative parcel map for two (2)-unit residential condominium purposes. A duplex has been demolished and a new duplex is under construction. The tentative parcel map would allow each unit to be sold individually. No waivers of Newport Beach Municipal Code (NBMC) Title 19 (Subdivisions) are proposed.
3. The subject property is located within the Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Category is Two Unit Residential (RT).
4. The subject property is not located within the coastal zone; therefore, a coastal development permit is not required.
5. A public hearing was held on April 13, 2023, 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 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 15 Exemption allows 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 are available, the parcel was not involved in a division of a larger parcel within the previous two (2) years, and the parcel does not have an average slope greater than 20 percent. The project meets all identified criteria; therefore, it is eligible for the Class 15 Exemption.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

A. 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 two (2)-unit residential condominium purposes. The project site was previously developed with a duplex and has been cleared of existing improvements. A new duplex is under construction. The proposed subdivision and improvements are consistent with the density of the R-2 Zoning District and the current RT General Plan Land Use category.
2. The subject property is not located within a specific plan area.

Finding:

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

Facts in Support of Finding:

1. The lot is physically suitable for a duplex because it is regular in shape and size. An existing duplex has been demolished and a new duplex is under construction.
2. The subject property is accessible from both Iris Avenue and the alley in the rear.
3. The site is adequately served by existing utilities, as it was previously developed with a duplex and there is no increase in density.

Finding:

C. 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 property is located within an existing residential neighborhood that does not contain any sensitive vegetation or habitat on-site.
2. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15315 under Class 15 (Minor Land Divisions) of the CEQA Guidelines. Section 2 of this Resolution is hereby incorporated by reference.

Finding:

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

Fact in Support of Finding:

1. The Tentative Parcel Map is for condominium purposes. All improvements associated with the project will comply with all Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems. Public improvements will be required of the developer per NBMC Section 19.28.010 (General Improvement Requirements) and Section 66411 (Local agencies to regulate and control design of subdivisions) of the Subdivision Map Act. All ordinances of the City and all Conditions of Approval will be complied with.

Finding:

E. 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 for 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 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.

Facts in Support of Finding:

1. The Public Works Department has reviewed the proposed Tentative Parcel Map and determined that the design of the development will not conflict with easements acquired by the public at large, for access through, or use of property within the proposed development because no public easements are located on the property.
2. There are no existing easements either through or adjacent to the property.

Finding:

F. 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 and is less than 100 acres in area.
2. The site, developed for residential use, lies in the R-2 Zoning District, which is intended for and permits residential uses.

Finding:

G. 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. California Business and Professions Code Section 11000.5 has been repealed by the Legislature. However, this project site is not considered a “land project” as previously defined in Section 11000.5 of the California Business and Professions Code because the project site does not contain 50 or more parcels of land.
2. The project is not located within a specific plan area.

Finding:

H. 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. The Tentative Parcel Map and any future improvements are subject to Title 24 of the California Building Code that requires new construction meet minimum heating and cooling efficiency standards depending on location and climate. The City’s Building Division enforces Title 24 compliance through the plan check and inspection process.

Finding:

- I. 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 proposed duplex is consistent with the R-2 Zoning District, which allows up to two (2) residential units on the property. Therefore, the Tentative Parcel Map for residential condominium purposes will not affect the City in meeting its regional housing needs.

Finding:

- J. 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. The project wastewater is designed to discharge into the existing sewer system and complies with the Regional Water Quality Control Board (RWQCB) requirements.

Finding:

- K. For subdivisions lying partly or wholly within the Coastal Zone, that the subdivision conforms with the certified Local Coastal Program and, where applicable, with public access and recreation policies of Chapter 3 of the Coastal Act.*

Fact in Support of Finding:

1. The subject property is not 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 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 the Tentative Parcel Map (PA2022-0308), 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 NBMC Title 19 Subdivisions.

PASSED, APPROVED, AND ADOPTED THIS 13TH DAY OF APRIL, 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. After the recordation of the Parcel Map and prior to building permit final, the Applicant shall apply for a building permit for a description change of the subject project development from "duplex" to "condominium." The development will not be condominiums until this description change permit is final.
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 Tentative Parcel map.
4. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 19 Subdivisions of the NBMC.
5. 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 **Wolverton Residential Condominiums including, but not limited to Tentative Parcel Map (PA2022-0308)**. 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

6. Prior to the issuance of final building permits, a Parcel Map shall be recorded. The Map shall be prepared on the California Coordinate System (North American Datum of 1983, NAD83). Before 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, Sub-article 18. The Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.
7. Prior to 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 (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 construction project.
8. All improvements shall be constructed as required by Ordinance and the Public Works Department.
9. An encroachment permit shall be required for all work activities within the public right-of-way.
10. Reconstruct the existing broken and/or otherwise damaged concrete curb and gutter along the Iris Avenue frontage and alley panels along the alley frontage per City Standard.
11. Install a 4-foot-wide minimum sidewalk along the Iris Avenue project frontage.
12. Remove all private encroachments within the Iris Avenue project frontage.
13. Each unit shall be served by its individual water service/meter and sewer lateral/cleanout. Each water meter and sewer cleanout shall be installed with a traffic-grade box and cover.
14. All existing overhead utilities shall be undergrounded.
15. Install new sod or low groundcovers of the type approved by the City throughout the Iris Avenue parkway fronting the development site.
16. Install a new 36-inch box street tree along the Iris Avenue parkway.
17. All improvements shall comply with the City's sight distance requirement. See City Standard 110.

18. In case of damage done to public improvements surrounding the development site by private construction, additional reconstruction within the public right-of-way shall be required at the discretion of the Public Works Inspector.

Fire

19. A National Fire Protection Association (NFPA) 13D sprinkler system is required throughout the development, with a separate water meter for each unit.
20. The development requires standard application of Section 907.2.11.2 of the 2022 California Fire Code.

RESOLUTION NO. ZA2023-023

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING A COASTAL DEVELOPMENT PERMIT TO DEMOLISH AN EXISTING SINGLE-UNIT DWELLING AND CONSTRUCT A NEW THREE (3)-STORY SINGLE-UNIT DWELLING AND ATTACHED TWO (2)-CAR GARAGE LOCATED AT 504 38TH STREET (PA2022-0278)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Craig Hampton on behalf of the owner Albert Cabraloff with respect to property located at 504 38th Street, and legally described as Lot 3 of Block 537 of the Canal Section Tract, requesting approval of a Coastal Development Permit.
2. The Applicant requests a coastal development permit (CDP) to allow the demolition of an existing single-unit dwelling and construction of a new 3,127-square-foot, three (3)-story, single-unit dwelling with an attached 471-square-foot, two (2)-car garage. The project includes landscape, hardscape, drainage, and accessory structures all within the confines of the property. The project complies with all development standards and no deviations are requested. All improvements authorized by this CDP will be located on private property.
3. The subject property is bisected by the coastal permit jurisdiction boundary, resulting in a portion of the front patio accessory improvements, bulkhead improvements, and new dock within California Coastal Commission's permit jurisdiction. This Coastal Development Permit is intended to cover portions of the project within the City's permit authority as designated in the Local Coastal Program (Title 21 of the Newport Beach Municipal Code).
4. The subject property is categorized RT (Two Unit Residential) by the General Plan Land Use Element and is located within the R-2 (Two-Unit Residential) Zoning District.
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RT-D (Two Unit Residential – 20.0 – 29.9 DU/AC) and it is located within the R-2 (Two-Unit Residential) Coastal Zoning District.
6. A public hearing was held on April 13, 2023, 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 and construction of up to three (3) single-unit dwellings in urbanized areas. The proposed project consists of the demolition of an existing single-unit dwelling and construction of a new 3,127-square-foot, three (3)-story, single-unit dwelling with an attached 471-square-foot, two (2)-car garage.
3. There are no known exceptions listed in CEQA Guidelines Section 15300.2 that would invalidate the use of these exemption. 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 Newport Beach Municipal Code (NBMC), the following findings and facts in support of such findings are set forth:

Finding:

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

Facts in Support of Finding:

1. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
 - a. The maximum floor area limitation is 3,696 square feet and the proposed floor area is 3,598 square feet.
 - b. The proposed development provides the minimum required setbacks, which are 3 feet along the front property line abutting 38th Street, 3 feet along each side property line, and 20 feet along the other front property line abutting the water.
 - c. The highest flat roof/guardrail is below 24 feet from established grade and the highest ridge is no more than 29 feet from established grade. The proposed development complies with all height requirements.
 - d. The proposed development provides a two (2)-car garage, meeting the minimum two (2)-car garage requirement for a single-unit dwelling with less than 4,000 square feet of habitable floor area.

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- e. The proposed development complies with the minimum 9.0-foot North American Vertical Datum of 1988 (NAVD 88) top of slab elevation requirement for interior living areas of new structures.
 2. The property currently consists of one legal lot developed with a single-unit dwelling. The neighborhood is predominantly developed with one (1) and two (2)- story, single-unit and two-unit dwellings with scattered three (3) story newly developed, single-unit dwellings. The proposed design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development.
 3. The development fronts the Rialto Channel and is protected by an existing bulkhead. A Bulkhead Conditions Report was prepared by PMA Consulting, Inc. dated October 31, 2022, for the project. The report concluded that the existing bulkhead is in very poor condition and should be replaced. 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 replaced in accordance with the report, no repair or replacement of the bulkhead is anticipated within the next 75 years. The project is conditioned to require the construction of a new or sufficiently reinforced bulkhead on the Property prior to final inspection of the new single-unit residence.
 4. A Coastal Hazards Report and Sea Level Rise Analysis was prepared by PMA Consulting, Inc. dated October 31, 2022, for the project. The current maximum bay water elevation is 7.7 feet (NAVD 88) and may exceed the current top of bulkhead elevation of 6.24 feet (NAVD 88) 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). Therefore, the sea level is estimated to reach approximately 10.9 feet (NAVD 88) - (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.
 5. 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 (NAVD 88). The project has been conditioned to raise the bulkhead to an elevation of 10.9 feet (NAVD 88) per the proposed plans. PMA Consulting, Inc. has confirmed the new bulkhead, as designed, can be raised up to 14.4 feet (NAVD88) if needed and in compliance with the updated guidelines.
 6. The finished floor elevation of the proposed single-unit dwelling is 9.00 feet (NAVD 88), which complies with the minimum 9.00-foot (NAVD 88) elevation standard for new structures. The project has been conditioned to waterproof the perimeter of the dwelling to protect against flooding up to an elevation of 10.9 feet (NAVD 88). Flood shields (sandbags and other barriers) can be deployed across the openings to protect and prevent flooding to the structure.
 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 a building permit. 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. The property owner will 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 Newport Beach Municipal Code (NBMC) Section 21.30.015(D)(3)(c) – (Waterfront - Development Standards). The Acknowledgement of Coastal Hazards is included as a condition of approval that will need to be recorded prior to the issuance of building permits.
9. 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 Waiver of Future Protection is included as a condition of approval that will need to be recorded prior to final building inspection.
10. The property is located adjacent to coastal waters. Pursuant to Section 21.35.030 (Construction Pollution Prevention Plan) of the NBMC, a Construction Pollution Prevention Plan (CPPP) is required 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. A CPPP has been provided and construction plans and activities will be required to adhere to the CPPP.
11. 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 WQHP/WQMP was prepared by Forkert Engineering & Surveying, Inc. dated February 3, 2023, for the project. The WQHP/WQMP 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.
12. 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 runoff and minor rain event runoff on-site. Any water not retained onsite is directed to the City's storm drain system.
13. Proposed landscaping complies with Implementation Plan Section 21.30.075. 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.

14. The project site is not located adjacent to a coastal view road, but is located near a designated Coastal Viewpoint as identified in the Coastal Land Use Plan. The nearest viewpoint is located at Newport Island Park approximately 450 feet to the west and is not substantially visible from the site due to intervening structures. The third story of the proposed structure may be slightly visible from the park. Additionally, the site is located adjacent to the Rialto Channel, which is accessible to the public and provides opportunities to view residences and the channels around Newport Island. However, the proposed single-unit dwelling complies with all applicable Local Coastal Program (LCP) development standards including height and setbacks, and maintains a building envelope consistent with the existing neighborhood pattern of development. The project complies with all third-floor standards of the NBMC which limit the size and location of the third floor. Additionally, the project does not contain any unique features that could degrade the visual quality of the coastal zone.

Finding:

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

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-unit dwelling located on a standard R-2 lot with a new single-unit dwelling. Therefore, the project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities. Furthermore, the project is designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.
2. Vertical access to the Rialto Channel is available approximately 300 feet east of the site along Channel Place and approximately 70 feet west of the site along Finley Avenue where there are access points. Lateral access is limited on Newport Island, with the exception of Newport Island Park located approximately 450 feet from the site. Additional access within the water is available adjacent to the site along the Rialto Channel. 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) 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 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 (PA2022-0278), subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code (NBMC). Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 (Appeal to the Coastal Commission) of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

PASSED, APPROVED, AND ADOPTED THIS 13TH DAY OF APRIL, 2023.



Benjamin M. Zieba, 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. This Coastal Development Permit does not authorize any development bayward of the private property.
4. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
5. Coastal Development Permit No. PA2022-0278 shall expire unless exercised within 24 months from the date of approval as specified in Section 21.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code (NBMC), unless an extension is otherwise granted.
6. *Prior to final inspection of the building permit for the principal structure, 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 dock.*
7. *Prior to submittal to California Coastal Commission, an Approval-In-Concept (AIC) shall be required from the Planning Division and Public Works Department for the new bulkhead.*
8. *Prior to final inspection of the building permit for the principal structure, the existing seawall shall be replaced to a height of 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.*
9. 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. The letter shall be scanned into the plan set prior to building permit issuance.

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 to address the threat of damage or destruction from waves, erosion, storm conditions, landslides, seismic activity, bluff retreat, sea level rise, or other natural hazards that may affect the property, or development of the property, today or in the future. The agreement shall be binding against the property owners and successors and assigns.
11. Prior to issuance of a building permit, the final WQHP/WQMP shall be reviewed and approved by the Building Division. Implementation shall comply with the approved WQHP/WQMP and any changes could require separate review and approval by the Building Division.
12. Prior to the issuance of a building permit, the applicant shall submit a final construction erosion control plan. The plan shall be subject to the review and approval by the Building Division.
13. Prior to the issuance of a building permit, the applicant shall submit a final drainage and grading plan. The plan shall be subject to the review and approval by the Building Division.
14. Prior to the 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.
15. 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.
16. 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.
17. 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.
18. 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.
19. 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.
20. 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.

21. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing, and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
22. Construction activities shall comply with Section 10.28.040 of the 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 Saturdays, Sundays or holidays.
23. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the 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

24. The applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of Native Birds pursuant to MBTA:
 - A. The construction area shall be inspected for active nests. If birds are observed flying from a nest or sitting on a nest, it can be assumed that the nest is active. Construction activity within 300 feet of an active nest shall be delayed until the nest is no longer active. Continue to observe the nest until the chicks have left the nest and activity is no longer observed. When the nest is no longer active, construction activity can continue in the nest area.
 - B. It is a violation of state and federal law to kill or harm a native bird. To ensure compliance, consider hiring a biologist to assist with the survey for nesting birds, and to determine when it is safe to commence construction activities. If an active nest is

found, one (1) or two (2) short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.

25. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
26. 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.
27. 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.
28. 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.
29. 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 **Cabraloff Residence including, but not limited to, Coastal Development Permit (PA2022-0278)**. 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

30. Prior to submittal to California Coastal Commission, an Approval-In-Concept (AIC) shall be required from the Public Works Department for any new dock and/or deck improvements.

Building Division

31. The plans shall be prepared by licensed design professional in the State of CA for three (3)-story structure.
32. The plans shall comply with Special Flood Hazard Area requirements. The lowest floor elevations shall be above the minimum Design Flood Elevation (DFE) for flood zone AE8.

RESOLUTION NO. ZA2023-024

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING A COASTAL DEVELOPMENT PERMIT TO DEMOLISH AN EXISTING SINGLE-UNIT DWELLING AND CONSTRUCT A NEW THREE (3)-STORY SINGLE-UNIT DWELLING AND ATTACHED TWO (2)-CAR GARAGE LOCATED AT 2286 CHANNEL ROAD (PA2022-0306)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Craig Hampton on behalf of the owners, Edward and Debra Smith with respect to property located at 2286 Channel Road, and legally described as Lot 4 of Tract 518, requesting approval of a Coastal Development Permit.
2. The Applicant requests a coastal development permit (CDP) to allow the construction of a new 4,220-square-foot, three (3)-story, single-unit dwelling with an attached 588-square foot three (3)-car garage. The project includes landscape, hardscape, drainage, and accessory structures all within the confines of the property. The project complies with all development standards and no deviations are requested. All improvements authorized by this CDP will be located on private property. This CDP (PA2022-0306) will supersede a previously approved CDP (PA2020-323) that authorized demolition of the existing single-family residence and construction of new single-family residence. Demolition of the existing single-unit dwelling was completed under the prior CDP and the lot is currently vacant.
3. The project includes additional improvements that are subject to separate review by the California Coastal Commission. The existing bulkhead is located beyond the front property line, therefore a portion of the front deck and bulkhead are located within the California Coastal Commission's permit jurisdiction. This Coastal Development Permit is intended to cover portions of the project within the City's permit authority as designated in the Local Coastal Program (Title 21 of the Newport Beach Municipal Code).
4. 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.
5. 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 Zoning District.
6. A public hearing was held on April 13, 2023, 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 and construction of up to three (3) single-unit dwellings in urbanized areas. The proposed project consists of the demolition of an existing single-unit dwelling and construction of a new 4,220-square-foot, three (3)-story, single-unit dwelling with an attached 588-square foot three (3)-car garage.
3. There are no known exceptions listed in CEQA Guidelines Section 15300.2 that would invalidate the use of these exemption. 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 Newport Beach Municipal Code (NBMC), the following findings and facts in support of such findings are set forth:

Finding:

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

Facts in Support of Finding:

1. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
 - a. The maximum floor area limitation is 5,220 square feet and the proposed floor area is 4,808 square feet.
 - b. The proposed development provides the minimum required setbacks, which are 0 feet along the front property line abutting Channel Road, 3 feet along each side property line, and 10 feet along the other front property line abutting the water.
 - c. The highest flat roof/guardrail is below 24 feet from established grade and the highest ridge is no more than 29 feet from established grade. The proposed development complies with all height requirements.

- d. The proposed development provides a three (3)-car garage, meeting the minimum three (3)-car garage requirement for a single-unit dwelling with more than 4,000 square feet of habitable floor area.
 - e. The proposed development complies with the minimum 9.0-foot North American Vertical Datum of 1988 (NAVD 88) top of slab elevation requirement for interior living areas of new structures.
2. The property currently consists of one vacant legal lot. The previous single-unit dwelling on the Property was demolished under the previously approved CDP (PA2020-323). The prior CDP will be superseded should this resolution be approved.
 3. The neighborhood is predominantly developed with two (2)- and three (3)-story, single-unit dwellings. The proposed design, bulk, and scale of the proposed three (3)-story development is consistent with the existing neighborhood pattern of development.
 4. The development fronts the Newport Bay and is protected by an existing bulkhead. A Bulkhead Conditions Report was prepared by William Simpson and Associates, Inc. dated October 31, 2022, for the project. The report concluded that while the bulkhead is in good condition with minor, repairable cracks, it should be reinforced through the installation of new tiebacks. Once the bulkhead is reinforced in accordance with the report, no repair or replacement of the bulkhead is anticipated within the next 75 years.
 5. A Coastal Hazards Report and Sea Level Rise Analysis was prepared by William Simpson and Associates, Inc. dated October 31, 2022, for the project. The current maximum bay water elevation is 7.7 feet (NAVD 88) and may exceed the current top of bulkhead elevation of 10.58 feet (NAVD 88) 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). Therefore, the sea level is estimated to reach approximately 10.9 feet (NAVD 88) - (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).
 6. 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 (NAVD 88). The project has been conditioned to raise the bulkhead to an elevation of 10.9 feet (NAVD 88) in compliance with the proposed plans. William Simpson and Associates, Inc. has confirmed the bulkhead design can be raised up to 14.4 feet (NAVD88) if needed and in compliance with the updated guidelines.
 7. The finished floor elevation of the proposed single-unit dwelling is 10.95 feet (NAVD 88), which complies with the minimum 9.00-foot (NAVD 88) elevation standard for new structures.

8. 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 a building permit. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance.
9. The property owner will 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 Newport Beach Municipal Code (NBMC) Section 21.30.015(D)(3)(c) – (Waterfront - Development Standards). The Acknowledgement of Coastal Hazards is included as a condition of approval that will need to be recorded prior to the issuance of building permits.
10. 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 Waiver of Future Protection is included as a condition of approval that will need to be recorded prior to final building inspection.
11. The property is located adjacent to coastal waters. Pursuant to Section 21.35.030 (Construction Pollution Prevention Plan) of the NBMC, a Construction Pollution Prevention Plan (CPPP) is required 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. A CPPP has been provided and construction plans and activities will be required to adhere to the CPPP.
12. 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 WQHP/WQMP was prepared by JT Consulting Engineer dated June 8, 2021 and revised on January 19, 2023, for the project. The WQHP/WQMP 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.
13. 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 runoff and minor rain event runoff on-site. Any water not retained onsite is directed to the City's storm drain system.
14. Proposed landscaping complies with Implementation Plan Section 21.30.075. 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.

15. The project site is not located adjacent to a coastal view road, but is located near a designated Coastal Viewpoint as identified in the Coastal Land Use Plan. The nearest viewpoint is located at West Jetty View Park, which is located approximately 150 feet to the south of the project site. Views from West Jetty View Park are primarily toward the water to the east and south of the project site and there are three other intervening residential structures and palm trees that obscure views of the Property. The project may be located within the viewshed of other distant public viewing areas; however, the proposed single-unit dwelling complies with all applicable Local Coastal Program (LCP) development standards and maintains a building envelope consistent with the existing neighborhood pattern of development. Therefore, the project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts to public views.

Finding:

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

Facts in Support of Finding:

1. The project site is located between the nearest public road and the sea or shoreline. 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-unit dwelling located on a standard R-1 lot with a new single-unit dwelling. Therefore, the project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities. Furthermore, the project is designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.
2. Vertical and Lateral access to the Newport Bay and Beach is available near the site along Ocean Boulevard at West Jetty View Park and East Balboa Boulevard at a public beach where there are access points. West Jetty Park is the start of a wide sandy beach that provides lateral access down the coast of the Newport Beach Peninsula. 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) 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 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 (PA2022-0306), subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code (NBMC). Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 (Appeal to the Coastal Commission) of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.
4. This resolution supersedes Coastal Development Permit No. PA2020-323 which upon vesting of the rights authorized by this application shall become null and void.

PASSED, APPROVED, AND ADOPTED THIS 13TH DAY OF APRIL, 2023.



Benjamin M. Zieba, 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. This Coastal Development Permit does not authorize any development bayward of the private property.
4. Coastal Development Permit No. PA2022-0306 shall expire unless exercised within 24 months from the date of approval as specified in Section 21.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code (NBMC), unless an extension is otherwise granted.
5. *Prior to final inspection of the building permit for the principal structure, the Applicant shall obtain approval from the California Coastal Commission for any improvements or construction bayward or seaward of the property.*
6. *Prior to submittal to California Coastal Commission, an Approval-In-Concept (AIC) shall be required from the Planning Division and Public Works Department for the deck and bulkhead improvements.*
7. *Prior to final inspection of the building permit for the principal structure, the existing seawall shall be reinforced to a height of 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.*
8. 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. The letter shall be scanned into the plan set prior to building permit issuance.
9. Prior to final building permit inspection, an agreement in a form approved by the City Attorney between the property owner and the City shall be executed and recorded waiving rights to the construction of future shoreline protection devices to address the threat of

damage or destruction from waves, erosion, storm conditions, landslides, seismic activity, bluff retreat, sea level rise, or other natural hazards that may affect the property, or development of the property, today or in the future. The agreement shall be binding against the property owners and successors and assigns.

10. Prior to issuance of a building permit, 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.
11. Prior to the issuance of a building permit, the applicant shall submit a final construction erosion control plan. The plan shall be subject to the review and approval by the Building Division.
12. Prior to the issuance of a building permit, the applicant shall submit a final drainage and grading plan. The plan shall be subject to the review and approval by the Building Division.
13. Prior to the issuance of a building permit, a copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans.
14. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
15. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
16. 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.
17. 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.
18. 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.
19. 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.

- 20. 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.
- 21. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing, and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
- 22. Construction activities shall comply with Section 10.28.040 of the 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 Saturdays, Sundays or holidays.
- 23. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the 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

- 24. The applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of Native Birds pursuant to MBTA:
 - A. The construction area shall be inspected for active nests. If birds are observed flying from a nest or sitting on a nest, it can be assumed that the nest is active. Construction activity within 300 feet of an active nest shall be delayed until the nest is no longer active. Continue to observe the nest until the chicks have left the nest and activity is no longer observed. When the nest is no longer active, construction activity can continue in the nest area.
 - B. It is a violation of state and federal law to kill or harm a native bird. To ensure compliance, consider hiring a biologist to assist with the survey for nesting birds, and

to determine when it is safe to commence construction activities. If an active nest is found, one (1) or two (2) short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.

25. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
26. 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.
27. 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.
28. 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.
29. 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 **Smith Residence including, but not limited to, Coastal Development Permit (PA2022-0306)**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Building Division

30. Project plans shall be prepared by licensed design professional in the State of CA for a three (3)-story structure.
31. Project plans shall comply with Special Flood Hazard Area requirements. The lowest floor elevations shall be above the minimum Design Flood Elevation (DFE) for flood zone AE8.

RESOLUTION NO. ZA2023-025

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA APPROVING A MINOR USE PERMIT FOR A COFFEE SHOP LOCATED AT 1314 BISON AVENUE, UNIT E (PA2022-0259)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Tai Tran, owner of Blk Dot Coffee concerning property located at 1314 Bison Unit E, and legally described as Parcel 1 in Parcel Map 326-48 requesting approval of a minor use permit.
2. The applicant requests a minor use permit to operate a coffee shop (fast food eating and drinking establishment) within an existing retail space in The Bluffs Shopping Center. The interior of the existing 1,541 square foot tenant space would be improved with a storage and wash area, prep area, service area with counter, and a dining area. Parking is provided onsite within the shopping center parking area. No late hours (after 11 p.m.) or alcohol sales are proposed as part of this application.
3. The subject property is designated General Commercial (CG) by the General Plan Land Use Element and is located within the Bonita Canyon Planned Community (PC-50) Zoning District.
4. The subject property is not located within the coastal zone.
5. A public hearing was held on April 13, 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 has been determined to be categorically exempt pursuant to Title 14 of the California Code of Regulations (Section 15301, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act) under Class 1 (Existing Facilities) of the Guidelines for CEQA.
2. The existing commercial space was previously occupied by a bakery retail use under a Class 1 (Existing Facilities) within the existing shopping center. The proposed coffee shop includes interior tenant improvements. Overall, the change of use is a negligible intensification within the existing shopping center.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The General Plan designates the site as General Commercial (CG) which is intended to provide for a wide variety of commercial activities oriented primarily to serve citywide or regional needs.
2. The proposed eating and drinking establishment is located within the Bluffs Shopping Center and serves those working, residing, or visiting the surrounding neighborhood, consistent with the CG land use designation.
3. The subject property is not a part of a specific plan area.

Finding:

B. *The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code;*

Facts in Support of Finding:

1. The site is located in Commercial Sub-Area 5 of the Bonita Canyon Planned Community (PC 50) Zoning District which is intended to provide for up to 55,000 square feet of commercial uses. Fast food eating and drinking establishments are allowed uses subject to the approval of a use permit.
2. The previous use of the space was a retail bakery. Similar uses have operated within the shopping center, and include restaurant, fast food, retail, and personal service uses.
3. The existing on-site parking lot for the shopping center provides the required parking for the proposed use at one parking space per 100 square feet of gross floor area or 15.4 spaces. The prior bakery retail space required one parking space per 250 square feet of gross floor area. Converting the existing retail bakery to a coffee shop (fast food eating and drinking establishment) will use all but one (1) of the remaining surplus of parking for the shopping center created by the addition of five parking spaces in 2022.
4. The proposed tenant improvement plans are currently in the plan check process and will comply with all Building Code and Fire Code requirements.

Finding:

- C. *The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity;*

Facts in Support of Finding:

1. The existing Bluffs Shopping Center is adjacent to an open space area and MacArthur Boulevard and Bison Avenue. The nearest residential uses are over 400 feet from the subject property, across MacArthur Boulevard and Bison Avenue. The conditions of approval reflected in "Exhibit A" of this resolution ensure that potential conflicts with surrounding land uses are eliminated or minimized to the greatest extent possible.
2. Other fast-food eating and drinking establishments have operated at the shopping center since original construction in 2002 and have not proven detrimental to the area.
3. The proposed hours of operation from 6:30 a.m. to 7p.m. are consistent with the shopping center hours of operation.

Finding:

- D. *The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.*

Facts in Support of Finding:

1. The coffee shop is located within an existing shopping center with other food uses and has demonstrated that it is physically suitable in terms of design, location, shape, and size to support the use.
2. Access to the property is provided via driveways along Bison Avenue. Adequate public and emergency vehicle access, public services, and utilities are provided for onsite.

Finding:

- E. *Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding:

1. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks and areas surrounding the tenant space during business hours, if directly related to the patrons of the establishment.

2. The coffee shop will serve patrons of the shopping center, surrounding commercial buildings, and provide food and beverage services to the surrounding neighborhood.
3. The proposed coffee shop does not include late hours or alcohol which could have the potential to generate additional nuisances to the surrounding neighborhood.
4. There are no residential uses within the proximity of the establishment. The nearest residential uses are over 400 feet from the business and separated from the shopping center by Bison Avenue or MacArthur Boulevard.

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 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3 because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. PA2022-0259, 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 a call for review is filed with the Community Development Director by the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 13TH DAY OF APRIL, 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. 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. A material violation of any of those laws in connection with the use may be caused the revocation of this Use Permit.
4. *All proposed signs shall be in conformance with the approved Comprehensive Sign Program for the project site and provisions of Chapter 20.42 (Signs) of the Newport Beach Municipal Code.*
5. This Use Permit may be modified or revoked by the Zoning Administrator if determined should they determine that the proposed uses or conditions under which it is being operated or maintained are detrimental to the public health, 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. *The coffee shop will use all but one (1) remaining surplus parking space for the shopping center. Any future uses or expansions of existing uses shall be reviewed by the Planning Division and, if additional parking is required, may require the approval of a parking study with a conditional use permit to waive parking.*
7. *The hours of operation for the coffee shop shall be limited from 6:00 a.m. to 9:00 p.m., daily.*
8. A copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans before issuance of the building permits.
9. 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.
10. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified periods unless the ambient noise level is higher:

Location	Between the hours of 7:00 AM and 10:00 PM		Between the hours of 10:00 PM and 7:00 AM	
	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

11. 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 leasing agent.
12. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7a.m. and 6:30 p.m., Monday through Friday, and 8a.m. and 6p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays, or Holidays.
13. No outside paging system shall be utilized in conjunction with this establishment.
14. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes.
15. 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.
16. The exterior of the business shall be always maintained free of litter and graffiti. 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.
17. 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).
18. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10 p.m. and 7 a.m. on weekdays and Saturdays and between the hours of 10 p.m. and 9 a.m. on Sundays and federal holidays unless otherwise approved by the Director of Community Development and may require an amendment to this Use Permit.

19. Storage outside of the building in the front or at the rear of the property shall be prohibited, except for the required trash container enclosure.
20. A Special Events Permit is required for any event or promotional activity outside the normal operating characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of onsite media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
21. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 Planning and Zoning of the Newport Beach Municipal Code.
22. 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 **Blk Dot Coffee Minor Use Permit including, but not limited to, PA2022-0259**. 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 the 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 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

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