



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 28, 2023.

ZONING ADMINISTRATOR ACTIONS APRIL 27, 2023

Item 1: Fowlkes Residence Coastal Development Permit (PA2022-0311)
Site Address: 2722 Bay Shore Drive

Action: Approved by Resolution No. ZA2023-026 Council District 2

Item 2: Hawkes Residence Coastal Development Permit (PA2022-0309)
Site Address: 1007 Mariners Drive

Action: Approved by Resolution No. ZA2023-027 Council District 3

Item 3: Jacob Residence Coastal Development Permit (PA2022-0262)
Site Address: 213 and 215 East Edgewater Avenue

Action: Continued to May 11, 2023, Zoning Administrator Meeting Council District 1

Item 4: Forgues Residence Coastal Development Permit (PA2022-057)
Site Address: 101 Shorecliff Road

Action: Approved by Resolution No. ZA2023-028 Council District 6

Item 5: Gelato Del Mar Minor Use Permit (PA2023-0035)
Site Address: 3500 East Coast Highway, Suite 130

Action: Approved by Resolution No. ZA2023-029 Council District 6

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. ZA2023-026

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING A COASTAL DEVELOPMENT PERMIT TO DEMOLISH AN EXISTING SINGLE-UNIT RESIDENCE AND CONSTRUCT A NEW TWO (2)-STORY SINGLE-UNIT RESIDENCE AND ATTACHED THREE (3)-CAR GARAGE LOCATED AT 2722 BAY SHORE DRIVE (PA2022-0311)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Pat Austin, on behalf of Cynthia Childs Architect, concerning property located at 2722 Bay Shore Drive, requesting approval of a coastal development permit.
2. The lot at 2722 Bay Shore Drive is legally described as Lot 7 in Tract 01014.
3. The applicant proposes the demolition of an existing single-unit dwelling and the construction of a new two (2)-story, 3,998-square-foot, single-unit residence including a 632-square-foot-three (3)-car garage. Project implementation includes repairing, reinforcing, and raising the existing bulkhead. The project complies with all applicable development standards and no deviations are requested. The project includes hardscape, walls, landscaping, and drainage facilities.
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-B (Single Unit Residential Detached) – (6.0 – 9.9 DU/AC) and it is located within the R-1 (Single-Unit Residential) Coastal Zoning District.
6. A public hearing was held on April 27, 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 in urbanized areas. The proposed project consists of the demolition of one (1)- single-family-residence and the construction of a new 3,998-square-foot, single-family residence including a 632-square-foot attached 3-car-garage.
3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

SECTION 3. REQUIRED FINDINGS.

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 5,780 square feet and the proposed floor area is 3,998 square feet.
 - b. The proposed development provides the minimum required setbacks, which are 10 feet along the harbor side, 4 feet along each side property line, and 0 feet along Bayshore Drive.
 - c. The highest guardrail is less than 24 feet from the established grade (12.04 feet NAVD88) and the highest ridge is no more than 29 feet from the established grade, which complies with the maximum height requirements.
 - d. The project includes garage parking for a total of three (3) vehicles, exceeding the minimum two (2)-car garage parking requirement for single-family residences with less than 4,000 square feet of habitable floor area.
2. The neighborhood is predominantly developed with two (2)-story, single-family residences. The proposed design, bulk, and scale of the development 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 February 4, 2023, for the project. The current maximum bay water

elevation is 7.7 feet NAVD88 (North American Vertical Datum of 1988 (NAVD88) and may exceed the existing 8.90 feet NAVD88 top of bulkhead elevation during high tide or storm events. 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 NAVD88 (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 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 has been conditioned to raise the bulkhead to an elevation of 10.9 feet (NAVD 88). PMA Consulting, Inc. has confirmed the bulkhead can be raised up to 14.4 feet NAVD88 if needed and in compliance with the updated guidelines.
5. Once the existing seawall/bulkhead is repaired, 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 be deployed across the openings to protect and prevent flooding to the structure. The report concludes that the proposed project will be safe from flooding hazards for the next 75 years with the reinforced, capped, and raised bulkhead. Therefore, the project has been conditioned to raise/cap the bulkhead up to 10.9 feet (NAVD 88).
6. The finished floor elevation of the proposed single-family residence is 13.03 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 finished floor for the anticipated 75-year life of the structure.
7. Pursuant to Newport Beach Municipal Code (NBMC) Section 21.30.030(C)(3)(i)(iv) – (Natural Landform and Shoreline Protection - Development Standards), 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).
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 - Waterfront Development). This requirement is included as a condition of approval that will need to be satisfied before the issuance of building permits, respectively.
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. Pursuant 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 preliminary Water Quality and Hydrology Plan (WQHP) is required. A preliminary WQMP has been prepared for the project by Thomas M. Ruiz dated, December 8, 2022. The WQHP 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 WQHP before building permit issuance.
12. 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.
13. The project site is not located adjacent to a coastal viewpoint as identified in the Coastal Land Use Plan. The nearest designated coastal viewpoint is at Lower Castaways Park, approximately 1,000 feet to the north of the project site. The residence is within the general viewshed from the park when looking toward the Pacific Ocean. The project is also within the general viewshed of a coastal view road, West Coast Highway, while passing over the Newport Bay Bridge when looking at the harbor and beyond. The two (2)-story residence however is sited within a fully developed neighborhood and surrounded by other single-family residences. The project has been designed to comply with height limitations and any public view of the home is highly likely to be obscured by the adjacent residences.
14. As a waterfront property, the east elevation of the new residence will be visible from the harbor. The proposed home is set back 29 feet to the first floor and 26 feet to the second floor from the property line along the water where the zoning code only requires a 10-foot setback. This results in the project providing additional open volume (approximately 200 square feet more than the minimum Code requirement), leaves the lot more open along the water and reduces the visual appearance of a building mass so close to the waterfront. The proposed two (2)-story design of the residence is consistent with the existing neighborhood pattern of development, complies with all applicable development

standards, and has no unique features that would result in adverse impacts to public views. The proposed project should not impact coastal views.

Finding:

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

Fact in Support of Finding:

1. The project site is located between the nearest public road and the sea or shoreline. Implementation Plan Section 21.30A.040 requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project 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. The project site is located in the private community of Bay Shores. Developed in 1941, Bay Shores is a 258-lot single-family gated community located on the Lido Channel southwest of Coast Highway and Newport Bay Bridge. The 39-unit Anchorage Apartment complex is also located within the community. The community is accessible from Coast Highway via Bay Shores Drive, a private street. The shoreline is on the south and east sides of the community and consists of bulkheads and two small sandy beaches.
3. The residential lot does not currently provide, nor does it inhibit public coastal access. The nearest public vertical access to the harbor is available adjacent to the Bay Shores Community, at the Balboa Bay Club, approximately 1,800 feet to the west from the subject property. Public access points to the shore can be found along Coast Highway and Castaways Park.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act under Section 15303 under Class 3 (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 Coastal Development Permit (PA2022-0311), 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 27TH DAY OF APRIL 2023.



Benjamin M. Zieba, 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 permits, the existing seawall shall be reinforced and capped to 10.90 feet (NAVD 88) and capable to be raised up to 14.4 feet (NAVD 88), in compliance with the City of Newport Beach Waterfront Project Guidelines and Standards, Harbor Design Criteria Commercial & Residential Facilities*
3. *The existing seawall shall be reinforced by the recommendations provided in the Coastal Hazards Report and Sea Level Rise Analysis prepared by PMA Consulting, Inc. February 4, 2023.*
4. 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.
5. *Before 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 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.*
6. This approval does not authorize any new or existing improvements (including landscaping) on California Coastal Permit Jurisdiction, State tidelands, public beaches, or the public right-of-way. Any improvements located on tidelands, submerged lands, and/or lands that may be subject to the public trust shall require a coastal development permit (CDP) approved by the California Coastal Commission (Coastal Commission). Before the issuance of building permits, the applicant shall provide a copy of said coastal development permit or CDP waiver or documentation from the Coastal Commission that subject improvements are not subject to the permit requirements of the Coastal Act and/or not located within the permit jurisdiction of the Coastal Commission.

7. 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.
8. This Coastal Development Permit does not authorize any development seaward of the private property.
9. The applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of native birds 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.
10. 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.
11. The discharge of any hazardous materials into storm sewer systems or receiving waters shall be prohibited. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. A designated fueling and vehicle maintenance area with appropriate berms and protection to prevent spillage shall be provided as far away from storm drain systems or receiving waters as possible.
12. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stockpiles and construction materials shall be covered, enclosed on all sites, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway.
13. Trash and debris shall be disposed 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.

14. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
15. The project is subject to all applicable City ordinances, policies, and standards unless specifically waived or modified by the conditions of approval.
16. The applicant shall comply with all federal, state, and local laws. A material violation of any of those laws in connection with the use may be caused by the revocation of this Coastal Development Permit.
17. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained 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.
18. *Before 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. *Before 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. *Before issuance of a building permit, a copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans.*
21. *Before 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.*
22. *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 CPPP and WQHP/WQMP and any changes could require separate review and approval by the Building Division.*
23. *Before the issuance of building permits, the applicant shall submit a final landscape and irrigation plan. These plans shall incorporate drought-tolerant plantings, non-invasive plant species, and water-efficient irrigation design. The plans shall be approved by the Planning Division.*
24. All landscape materials and irrigation systems shall be maintained 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.

- 25. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday,. Noise-generating construction activities are not allowed on Saturdays, Sundays, or Holidays.
- 26. 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

- 27. 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.
- 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 the current property owner or agent.
- 29. This Coastal Development Permit (PA2022-0311) 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.
- 30. 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 **Fowlkes Residence including but not limited to, Coastal Development Permit (PA2022-0311)**. 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. ZA2023-027

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING A COASTAL DEVELOPMENT PERMIT TO DEMOLISH AN EXISTING SINGLE-UNIT DWELLING AND CONSTRUCT A NEW SINGLE-STORY, SINGLE-UNIT DWELLING WITH A BASEMENT AND ATTACHED THREE (3)-CAR GARAGE LOCATED AT 1007 MARINERS DRIVE (PA2022-0309)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by William Guidero, concerning property located at 1007 Mariners Drive and legally described as Lot 55 of Tract No. 4224, requesting approval of a coastal development permit.
2. The applicant proposes the demolition of an existing single-unit dwelling and construction of a new 5,557 square-foot one (1)-story single-unit dwelling with a 2,139 square-foot basement and 851 square-foot three (3)-car garage. The project also includes covered porches, a detached 526 square-foot cabana with a kitchen, bar, and bathroom, a pool, landscaping, hardscaping, and site walls. The subject property is within the Bluff Overlay (Upper Newport Bay Bluffs) District (Bluff Overlay) and is subject to marine erosion. The project complies with all applicable development standards including the Bluff Overlay and no deviations are required.
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-1-6000 (Single-Unit Residential) 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 – 0.0 – 5.9 DU/AC) and it is located within the R-1-6000 (Single-Unit Residential) Coastal Zoning District.
5. A public hearing was held on April 27, 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, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Class 3 (New Construction or Conversion of Small Structures), California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.

2. Class 3 exempts the demolition and construction of up to three (3) single-family dwellings in urbanized areas. The proposed project consists of the demolition of one (1) single-family residence and the construction of a new 5,557 square-foot one (1)-story single-unit dwelling with a 2,139 square-foot basement and 851 square-foot three (3)-car garage.
3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 21.52.015(F) (Coastal Development Permits, Findings and Decision) of the 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, parking, and Bluff Overlay standards.
 - a. Site coverage is limited to 60 percent (10,195 square-feet) of the 16,993 square-foot lot area. The proposed site coverage is approximately 51 percent (8,654 square-feet), including roof overhangs.
 - b. The proposed development provides the minimum required setbacks, which are 20-feet along the front (bluff) property line, 6-feet along each side property line and 6-feet along the rear property line on Mariners Drive.
 - c. The highest roof ridge is approximately 18 feet, 2 inches from established grade (54.19 feet based on the North American Vertical Datum of 1988 [NAVD88]), which is significantly less than the 29-foot maximum height limitation for a sloped roof.
 - d. The project includes garage parking for a total of three (3) vehicles, complying with the minimum three (3)-car garage parking requirement for single-unit residences with more than 4,000 square feet of habitable floor area.
 - e. Pursuant to the Bluff Overlay Map B-9D - Upper Newport Bay Bluffs, the property is located on a bluff subject to marine erosion. Consistent with the Bluff Overlay standards, the proposed principal dwelling and major accessory structures (including

swimming pool) are located within Development Area "A" and setback, at a minimum, of 25 feet from the bluff edge. Minor accessory structures not exceeding 12 feet in height are proposed within Development Area B and setback, at a minimum, of 10 feet back from bluff edge. No development is allowed nor proposed within Development Area C. Additionally, Condition of Approval No. 4 requires the removal of any existing improvements located within Development Area "C" that are not explicitly allowed per NBMC Section 21.30.030(C)(3) (21.28.040 Bluff (B) Overlay District).

2. The neighborhood is predominantly developed with one (1)-story, single-unit residences. The proposed single-story design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development and expected future development.
3. The finished floor elevation of the proposed single-unit dwelling is 55-feet (NAVD 88), which complies with the minimum 9.00-foot (NAVD 88) elevation standard for new structures.
4. A Geotechnical Investigation, dated June 14, 2022, was prepared by EGA Consultants for the project and found that the proposed improvements at the site are feasible from a geotechnical standpoint. Based on the findings of the geotechnical investigation, the proposed construction is not expected to impact the stability and safety of the subject site or surrounding properties. The report concludes that as the project site is located adjacent to a descending bluff slope, proper drainage design is of critical importance to the stability of the slope and shall be designed by a Licensed Civil Engineer.
5. 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 California Building Code (CBC) before building permit issuance.
6. Pursuant to Section 21.30B.020 -Initial Site Resource Survey, a biological assessment was completed on February 13, 2023, by Hamilton Biological Inc. The report found that the property is completely developed and does not support any natural plant communities. Additionally, no listed or otherwise sensitive species were observed during the field visit. The assessment also found that the Northern Harrier is expected to fly over the site occasionally and the Yellow Warbler is expected to pass through the property regularly during migration, although no suitable nesting habitat was found on site. Recommendations were made to avoid impacts to actively nesting birds and Condition No. 6 is included to ensure compliance with the recommendation of the report including a pre-construction survey conducted by a biologist for the presence of nesting birds.
 - a. The report confirms that the subject property does not include areas that are considered environmentally sensitive habitat areas (ESHA) pursuant to Section 21.30B.030- Environmentally Sensitive Habitat Areas of the NBMC. However, there is a mapped Environmental Study Area (ESA) down slope of

the property that is approximately 55 feet and 40 feet of Development Areas “A” and “B”, respectively where development is allowed. The ESA represents a potential ESHA, although the quality of the habitat is marginal due to invasion by non-native plants and there does not appear to be suitable habitat for the California gnatcatcher, a federally threatened species. The report states that the required ESHA buffer is 50-feet (Section 21.30B.030(D)(1)) of the NBMC), where the existing condition ranges from approximately 20 to 40 feet to Development Area “B”. However, given the existing pattern of development along the top of the bluff, the somewhat degraded condition of habitat and low likelihood of special-status wildlife species occurring adjacent to the property, the report concludes that a narrower ESHA buffer would be amply protective of the biological integrity of the ESHA.

- b. The report recommends that the existing non-native vegetation such as the invasive Algerian Ivy, should be removed and replaced with appropriate, locally native plants that are approved for fuel modification zones. Condition of Approval No. 8 requires removal and replacement of non-native plants.
 - c. The report concludes that through implementation of mitigation identified in the report, ESHA will not be significantly degraded or disrupted by the proposed development and that development will be compatible with the continuance of the resources. Mitigation is included as Conditions of Approval Nos. 6 and 8.
7. Under NBMC Section 21.30.030(C)(3)(i)(iv), 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, respectively.
 8. The property owner will also be required to acknowledge any hazards present at the site and unconditionally waive any claim to damage or liability against the decision authority, consistent with NBMC Section 21.30.015(D)(3)(c). This requirement is included as a condition of approval that will need to be satisfied before the issuance of building permits, respectively.
 9. Under Section 21.35.050 of the NBMC, due to the proximity of the development to the shoreline and the development containing more than 75 percent of impervious surface area, a Water Quality and Hydrology Plan (WQHP) is required. A WQMP has been prepared for the project by Thomas M. Ruiz of Forkert Engineering & Surveying, Inc. dated, January 23, 2023. The WQHP 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.
 10. The project design addresses water quality with a construction erosion control plan and a post construction drainage system that includes drainage and percolation features

designed to retain dry weather and minor rain event run-off on-site. Any water not retained on-site is directed to the City's storm drain system.

11. 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.
12. The project site is located approximately 150 feet south of a designated public viewpoint as identified in the Coastal Land Use Plan. The viewpoint sits at the end of the cul-de-sac of Mariners Drive and offers public views to the north, east, and southeast of the Upper Newport Bay. The project site is the second property to the south of the viewpoint and is situated within an existing neighborhood which obscures any historic views to the south of the Upper Newport Bay. The project will replace an existing single-family residence with a new single-family home. Furthermore, the residence has been designed to be single-story with 2,139-square-feet of the total 8,547 square feet of the dwelling located below grade within the basement level. The highest ridge of the single-story home is 18-feet, 2-inches above the established grade which is almost 11-feet lower than the allowable height of 29-feet for sloped roofs in the R-1-6000 coastal zoning district. The project's design ensures that the residence will be no more visible from the Upper Newport Bay than the surrounding neighborhood and will not degrade the visual quality of the Coastal Zone or result in significant adverse impacts to public views. Lastly, the site is located within a distant viewshed of the viewpoints located across from the Back Bay. The design of the project is sufficiently setback from the bluff edge and Condition of Approval No. 4 requires all existing development in Development Area C to be removed to bring the site into compliance.
13. The subterranean basement is designed entirely in Development Area A in conformance with Section 21.28.040(E). The basement is located within a relatively flat area of the site and approximately 50-feet from the bluff. The adjacent property at 1015 Mariners Drive is currently under construction with an approved design that includes a 4,140-square-foot first floor and a 1,755-square-foot basement.

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.*

Fact in Support of Finding:

1. The project site is located between the nearest public road and the sea or shoreline along the Upper Newport Bay Bluffs. 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 residence located on standard R-1-6000 lot with a new single-unit residence. Therefore, the project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities. Furthermore, the project

is designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.


2. The project site does provide vertical or lateral access points to any bay or beach area including the Upper Newport Bay. The project site is on Mariners Drive that is accessed from Galaxy Drive which does not provide direct access to the Upper Newport Bay. The project does not include any features that would obstruct any access to the Upper Newport Bay or other public areas.
3. Fact 12 in support of Finding A is incorporated here by reference.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.
2. The Zoning Administrator of the City of Newport Beach hereby approves 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 27TH DAY OF APRIL, 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. *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.*
3. *Prior to 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.*
4. *Prior to issuance of building permits, any existing improvements (such as hardscape, fencing, etc.) within Development Area C shall be removed and revegetated with native plants to the extent feasible. No development is allowed within Development Area "C" of the Bluff Overlay.*
5. *Prior to issuance of building permits, project plans shall be updated to demonstrate the swimming pool includes double wall construction with subdrains between the walls and leak detection devices or an equivalent method approved by the Building Division.*
6. *The applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of native birds 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, the applicant shall hire 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.

C. Once vegetation removal is complete, the applicant shall submit a final report prepared by a qualified biological monitor to the Director of Community Development verifying that vegetation removal did not disrupt the nesting of any protected bird species.

7. *The final project plans shall incorporate and comply with the Recommendations of the Geotechnical Evaluation by EGA Consultants dated June 14, 2022.*
8. *At such time as directed by the City, State of California and/or the United States Fish and Wildlife (USFW) agency, the applicant shall agree to and cooperate with all applicable agencies for the removal of non-native species such as Algerian Ivy within the vicinity of the property and replacement with appropriate local native plants that are approved for fuel modification zones. The "vicinity" of the property shall be defined in this condition as the buffer area between the Development Area "B" on the subject property and the mapped ESA area, which ranges from approximately 20 to 40 feet. The owner shall only be responsible for the buffer area that is located within the prolongation of the side property lines.*
9. 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.
10. 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.
11. The discharge of any hazardous materials into storm sewer systems or receiving waters shall be prohibited. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. A designated fueling and vehicle maintenance area with appropriate berms and protection to prevent spillage shall be provided as far away from storm drain systems or receiving waters as possible.
12. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stockpiles and construction materials shall be covered, enclosed on all sites, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway.

13. Trash and debris shall be disposed 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.
14. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
15. The project is subject to all applicable City ordinances, policies, and standards unless specifically waived or modified by the conditions of approval.
16. The applicant shall comply with all federal, state, and local laws. A material violation of any of those laws in connection with the use may be caused by the revocation of this Coastal Development Permit.
17. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained 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.
18. *Prior to 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 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 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.*
21. *Prior to 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. The plans shall conform with NBMC Section 21.30.030(C)(3) (Natural Landform and Shoreline Protection), 21.28.040 (Bluff (B) Overlay District), and 21.30.075 (Landscaping).*
22. 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.
23. *Prior to issuance of building permits, the final WQHP/WQMP shall be reviewed and approved by the Building Division. The implementation shall comply with the approved*

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

- 24. 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 Sundays, or Holidays.
- 25. 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

- 26. Prior to issuance of building permits, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
- 27. 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.
- 28. 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.
- 29. 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 **Hawkes Residence including but not limited to, Coastal Development Permit (PA2022-0309)**. 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. ZA2023-028

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING A COASTAL DEVELOPMENT PERMIT TO CONSTRUCT A NEW DETACHED COVERED ACCESSORY STRUCTURE (CABANA) LOCATED AT 101 SHORECLIFF ROAD (PA2022-057)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Chris King with Chris King Construction on behalf of the owner Nicole Forgues with respect to property located at 101 Shorecliff Road, and legally described as Lot 121 of Tract 1116, requesting approval of a Coastal Development Permit.
2. The applicant requests a coastal development permit (CDP) to allow the removal of existing hardscape and construction of a new 203-square-foot, detached covered accessory structure (cabana), with associated hardscape, within area "B" of the Bluff Overlay District. A coastal development permit is required due to the project's proximity to the coastal bluff. No changes are proposed to the existing single-unit dwelling on the property. The project includes removal of an existing nonconforming brick hardscape area. The project complies with all development standards including the Bluff Overlay, height, setbacks, and lot coverage limits and no deviations are requested. All improvements authorized by this CDP will be located on private property.
3. The subject property is categorized RS-D (Single-Unit Residential Detached) by the General Plan Land Use Element and is located within the R-1-6000 (Single-Unit Residential) 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 – 0.0 – 5.9 DU/AC) and it is located within the R-1-6000 (Single-Unit Residential) Coastal Zoning District.
5. A public hearing was held April 27, 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 accessory structures including garages, carports, patios, swimming pools, and fences. The proposed project consists of the removal of existing hardscape and construction of a new 203-square-foot, detached covered accessory structure (cabana) with associated hardscape.
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 detached accessory structure complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
 - a. The proposed detached accessory structure does not add floor area to the existing single-unit dwelling. The new cabana would result in a negligible increase in lot coverage and the property remains consistent with the 60% maximum lot coverage limitation.
 - b. The proposed detached accessory structure provides the minimum required setbacks, which are 25 feet along the front property line abutting Shorecliff Road, 6 feet along each side property line and 6 feet along the rear property line.
 - c. The proposed detached accessory structure provides the minimum required setbacks established by the Bluff Overlay District, including the minimum 10-foot setback from the bluff edge for all accessory structures with no development seaward of that setback line.
 - d. The proposed detached accessory structure is approximately 9 feet 6 inches from established grade which is well below the 24 feet maximum height for flat roofs and complies with the 12-foot height limit from existing or finished grade for covered patio covers in compliance with NBMC section 21.28.040.C(2)(b).

- e. The proposed detached accessory structure is not enclosed and would not impact the required parking of the existing single-unit dwelling.
2. The neighborhood is predominantly developed with two (2)- and three (3)-story, single-unit dwellings. The proposed design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development.
3. The development is located on a bluff fronting a sandy beach and the Pacific Ocean. The project site is not protected by a bulkhead. A Geotechnical and Geologic Investigation report prepared by Coast Geotechnical, Inc. on July 22, 2022, examined coastal hazards including slope stability, wave action, long-term bluff retreat and flooding and erosion. The report concluded that the proposed detached accessory structure will be reasonably safe from coastal hazards over the course of its design life and that no additional seawall, revetment, jetty, groin, retaining wall or other shoreline protective device will be needed to protect the development.
4. Pursuant to Section 21.30B.020 - Initial Site Resource Survey, a biological assessment was completed on December 5, 2018 and a supplemental memorandum was prepared October 11, 2022 by Environmental Science Associates. The reports found that the property has native vegetation on the bluff face and the remainder of the property is landscaped with ornamental plant species and hardscape. The site reconnaissance revealed that the project site does not provide suitable habitat for any special-status plant or wildlife species. The site supports lemonade berry scrub, which is considered a sensitive natural community, however the natural plant community is not proposed to be impacted by the cabana improvements.
 - a. Because the project site contains habitat that may be suitable for nesting birds, standard recommendations were made to avoid impacts to actively nesting birds and Condition No. 6 is included to ensure compliance with the recommendation of the report including a pre-construction survey conducted by a biologist for the presence of nesting birds.
 - b. The report confirms that the proposed location of the cabana does not include areas that are considered environmentally sensitive habitat areas (ESHA) pursuant to Section 21.30B.030- Environmentally Sensitive Habitat Areas of the NBMC. However, there is a mapped Environmental Study Area (ESA) down slope of the cabana on the subject property that generally follows the top of the bluff edge, where no development is allowed. The ESA represents a potential ESHA, however, the report states that the area does not have suitable habitat and soils to support special status plants or habitat to support special status wildlife such as the coastal California gnatcatcher.
 - c. The required ESHA buffer is 50-feet pursuant to Section 21.30B.030(D)(1)) of the NBMC, where the proposed buffer is approximately 20 feet to the cabana location. However, given the small footprint of the cabana which is only 203 square feet with no deepened footings, the low intensity of disturbance, and low likelihood of special-status wildlife species occurring on the property, a

narrower ESHA buffer would be sufficient to protect the biological integrity of the potential ESHA.

- d. The report concludes that the proposed detached cabana is set back sufficiently from the coastal bluff face to avoid impacts to the native biological resources present and the location is a minimum of 35 to 40 feet from the lemonade berry scrub, which is the most sensitive biological resource on the property. A condition of approval is included to ensure that construction and staging materials are stored within Development Area A, which is fully disturbed and only includes ornamental/developed landscape.
 - e. The report recommends that if any changes to landscaping are proposed, the existing non-native vegetation be removed and replaced with appropriate, locally native plants. Condition of Approval number 11 requires removal and replacement of non-native plants along the top of the bluff.
5. 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.
 6. Under NBMC Section 21.30.030(C)(3)(i)(iv), 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, respectively.
 7. The property owner will also be required to acknowledge any hazards present at the site and unconditionally waive any claim to damage or liability against the decision authority, consistent with NBMC Section 21.30.015(D)(3)(c). This requirement is included as a condition of approval that will need to be satisfied before the issuance of building permits, respectively.
 8. 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 on-site is directed to the City's storm drain system.
 9. The project site is located approximately 1,300 feet southeast of Inspiration Point, which is a designated public viewpoint in the Coastal Land Use Plan and offers public views of the Pacific Ocean and shoreline. The proposed detached accessory structure will not change the existing neighborhood pattern of development and will not affect the existing views from Inspiration Point. The project includes construction of a detached accessory structure on an existing property developed with a single-unit dwelling that complies with all

applicable development standards, including the Bluff Overlay standards that require a 10-foot setback from the bluff edge for accessory structures and 25-foot setback from the bluff edge for primary structures (i.e. dwellings). Inspiration Point is improved with public benches and landscaping that orients and frames views toward the ocean and not directly toward the subject site. Additionally, the new cabana would be setback approximately 115 feet from the rear property line near the beach and is designed as open construction, reducing the bulk and scale of the proposed structure. Also, the intersection of Poppy Avenue and Ocean Boulevard is improved with public benches and although not designated as a public view point, this area could be classified as a public view road which the same view analysis from inspiration point would still apply. 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 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 includes construction of a detached accessory structure located on a R-1-6000 lot with an existing 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 proposed detached accessory structure is designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.
2. Vertical access to the beach and ocean is available via Glen Drive, across Buck Gully from the subject property. Lateral access is available along the beach to the south of the property. Vertical access to the beach is also available to members of the Shorecliff's community through a private pedestrian gate and footpath which crosses the subject property. The project does not include any features that would obstruct access along these existing 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.

2. The Zoning Administrator of the City of Newport Beach hereby approves the Coastal Development Permit (PA2022-057), 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 27TH 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. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new Coastal Development Permit.
3. Coastal Development Permit No. PA2022-057 shall expire unless exercised within 24 months from the date of approval as specified in Section 21.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code (NBMC), unless an extension is otherwise granted.
4. Prior to 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.
5. Prior to final building permit inspection, an agreement in a form approved by the City Attorney between the property owner and the City shall be executed and recorded waiving rights to the construction of future shoreline protection devices to address the threat of damage or destruction from waves, erosion, storm conditions, landslides, seismic activity, bluff retreat, sea level rise, or other natural hazards that may affect the property, or development of the property, today or in the future. The agreement shall be binding against the property owners and successors and assigns.
6. Prior to the issuance of a building permit, the applicant shall submit a final construction erosion control plan. The plan shall be subject to the review and approval by the Building Division.
7. 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.
8. 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.
9. Prior to the issuance of building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.

10. *The final project plans shall incorporate and comply with the recommendations of the Geotechnical and Geologic Investigation report prepared by Coast Geotechnical, Inc. dated July 22, 2022.*
11. Prior to final building permit inspection, the owner shall provide a letter from a qualified biologist that certifies that all non-native plants have been removed within Area “B” of the Bluff Overlay (as indicated on the approved plans) and landward of the bluff edge in accordance with the recommendations of the Biological Reports dated December 5, 2018 and October 11, 2022. The letter from the biologist shall also confirm that all areas of non-native plant removal have been replanted (to the extent feasible) with native plants. No existing native plants, including the lemonade berry scrub shall be removed during removal of existing non-native vegetation.
12. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
13. *No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter sensitive habitat, receiving waters, or a storm drain or result in impacts to environmentally sensitive habitat areas, streams, the beach, wetlands or their buffers. All construction staging and storage of materials shall occur within Area “A” of the Bluff overlay (as indicated on the approved plans).*
14. The discharge of any hazardous materials into storm sewer systems or receiving waters shall be prohibited. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. A designated fueling and vehicle maintenance area with appropriate berms and protection to prevent spillage shall be provided as far away from storm drain systems or receiving waters as possible.
15. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. 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.
16. Trash and debris shall be disposed in proper trash and recycling receptacles at the end of each construction day. Solid waste, including excess concrete, shall be disposed in adequate disposal facilities at a legal disposal site or recycled at a recycling facility.
17. 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.
18. 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.

19. 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

20. 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, a qualified biologist shall assist with a pre-construction survey for nesting birds, and 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.

21. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
22. 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.
23. 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.

24. 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.
25. 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 **Forgues Residence including, but not limited to, Coastal Development Permit (PA2022-057)**. 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

26. Prior to issuance of a building permit, a Soils Report shall be provided to the Building Division for construction on a slope subject to landslide.
27. Prior to issuance of a building permit, the cabana footing shall be set back from face of slope in accordance with California Building Code Section 1808.

RESOLUTION NO. ZA2023-029

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING A MINOR USE PERMIT FOR A TAKE-OUT SERVICE, LIMITED EATING AND DRINKING ESTABLISHMENT LOCATED AT 3500 EAST COAST HIGHWAY, SUITE 130 (PA2023-0035)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Matthew Gummow, with respect to property located at 3500 East Coast Highway, Suite 130, and legally described as Lot 1, Block U, Tract 323, requesting approval of a Minor Use Permit.
2. The applicant requests a minor use permit to allow a gelato shop (take-out service, limited) into an existing 610-square-foot vacant commercial tenant space. There is no seating proposed. No late hours (after 11:00 p.m.) or alcohol sales are proposed as part of this application.
3. The subject property is located within the Commercial Corridor (CC) Zoning District and the General Plan Land Use Element category is Corridor Commercial (CC).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on April 27, 2023, online via Zoom. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Class 1 exemption authorizes minor alterations of existing structures involving negligible or no expansion of use. The proposed project involves alterations to the interior floor plan of an existing commercial space with no expansion in floor area.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The General Plan designates the site as Corridor Commercial (CC), which is intended to provide a range of neighborhood-serving retail and service uses along street frontages that are located and designed to foster pedestrian activity. The proposed project is designed to serve residents and visitors in the area.
2. The proposed take-out service, limited eating and drinking establishment would be complementary to the surrounding commercial and residential uses.
3. The subject property is not part of a specific plan area.

Finding:

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

Facts in Support of Finding:

1. A gelato shop (take out service, limited) is permitted with the approval of a minor use permit in the CC zoning district. A minor use permit is required due to its location within 500-feet of a residential zoning district. In this case, the closest residentially zoned property is located across the 14-foot-wide alley to the northeast on Narcissus Avenue.
2. The subject property is legal, nonconforming due to having no parking available on-site. NBMC Section 20.40.040 (Off-Street Parking Spaces) requires off-street parking at a rate of one space per 250 square feet of gross floor area for take-out, limited land uses. The proposed gelato shop is in a vacant tenant space that was previously occupied by an art gallery which has the same parking requirement. Therefore, no intensification or enlargement is proposed and no additional parking is required.
3. As conditioned, the proposed establishment will comply with Zoning Code standards for eating and drinking establishments, including those specific to the take-out service limited use classification, which includes a maximum of six (6) seats.

Finding:

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

Facts in Support of Finding:

1. The proposed establishment is compatible with the existing and allowed uses in the area, which consist of commercial and residential uses including retail sales, personal services, restaurants, offices, and residential uses. The subject property is located among other commercial uses along East Coast Highway with residential uses located behind the commercial uses.
2. The proposed project includes an interior remodel at the tenant space. The tenant space is 610-square-feet in gross floor area with 150-square-feet proposed as net public (customer serving) area. Adequate trash storage facilities for the commercial tenant are provided in an enclosed area, thereby preventing any odor or related issues for the nearby residential and commercial uses.
3. Parking at the subject property is legal nonconforming as there is no parking available on-site. The proposed gelato shop (take-out, limited) is replacing an art gallery which shares the same parking requirement; therefore, no additional parking is required.
4. As conditioned, the allowed hours of operation will be 10:00 a.m. to 9:00 p.m. daily, which will minimize any disturbance to residences near the property.

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 lot is 5,750-square-feet in area, rectangular in shape, and located in a commercial area. The site has street access along East Coast Highway and Narcissus Avenue, alley access at the rear of the lot, and pedestrian access from the front along East Coast Highway.
2. The Fire Department reviewed the project and site to ensure adequate public and emergency vehicle access is provided.
3. The Public Works Department, Building Division, and Fire Department have reviewed the application. The project is required to obtain all applicable permits from the City Building and Fire Departments and must comply with the most recent, City-adopted version of the California Building Code.

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

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 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 PA2023-0035, 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 is filed with the Community Development Director in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 27TH DAY OF APRIL 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 and floor plans stamped and dated with the date of this approval, except as modified by applicable conditions of approval.
2. This approval shall expire and become void unless exercised within twenty-four (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.
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. Material violation of any of those laws in connection with the use may be cause for revocation of this Minor Use Permit.
5. This Minor Use Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or is materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
6. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Minor Use Permit or the processing of a new Use Permit.
7. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. Approval from the Orange County Health Department is required prior to the issuance of a building permit.
8. A copy of the Resolution, including conditions of approval, Exhibit "A," shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
9. 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.
10. The hours of operation for the establishment shall be limited to 10:00 a.m. to 9:00 p.m., daily.

11. The sale, service, or consumption of alcohol shall not be permitted.
12. The maximum number of seats allowed shall be six (6). No outdoor seating is permitted.
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 (3) 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. 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).
16. 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.
17. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m., daily, unless otherwise approved by the Community Development Director, and may require an amendment to this Minor Use Permit.
18. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
19. Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
20. A Special Event Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permit.
21. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly

or indirectly) to City's approval of the **Gelato Del Mar Minor Use Permit including, but not limited to, PA2023-0035**. 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.