



CITY OF NEWPORT BEACH COMMUNITY DEVELOPMENT DEPARTMENT PLANNING DIVISION ACTION REPORT

TO: CITY COUNCIL, CITY MANAGER, AND PLANNING COMMISSION
FROM: Seimone Jurjis, Assistant City Manager/Community Development Director
SUBJECT: Report of actions taken by the Zoning Administrator, and/or Community Development Director for the week ending October 13, 2023.

ZONING ADMINISTRATOR PUBLIC HEARING ACTIONS OCTOBER 12, 2023

Item 1: Roger's Gardens Gallery Minor Use Permit (PA2023-0048)
Site Address: 2301 San Joaquin Hills Road

Action: Approved by Resolution No. ZA2023-061 Council District 6

Item 2: The NOW Massage Minor Use Permit (PA2023-0114)
Site Address: 2600 East Coast Highway, Suite 120

Action: Approved by Resolution No. ZA2023-062 Council District 6

Item 3: Haronian Residence Coastal Development Permit (PA2023-0051)
Site Address: 413 Via Lido Soud, Unit A-C

Action: Approved by Resolution No. ZA2023-063 Council District 1

COMMUNITY DEVELOPMENT DIRECTOR OR ZONING ADMINISTRATOR ACTIONS (Non-Hearing Items)

Item 1: Park Newport Bluff Stabilization Project Staff Approval (PA2023-0161)
Site Address: 5000 Park Newport Drive

Action: Approved Council District 4

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.

Wendy Joe, Civilian Investigator, NBPD (*Telecom - Massage – ABC License*)
Mark Short, Police Sergeant, NBPD (*Massage – ABC License*)

RESOLUTION NO. ZA2023-061

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING A MINOR USE PERMIT TO ALLOW THE ADDITION OF A TYPE 20 (OFF-SALE BEER & WINE) AND TYPE 86 (INSTRUCTIONAL TASTING) ALCOHOLIC BEVERAGE CONTROL (ABC) LICENSE TO AN EXISTING RETAIL SHOP AT 2301 SAN JOAQUIN HILLS ROAD (PA2023-0048)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Gavin Herbert Jr., of Roger's Gardens, with respect to property located at 2301 San Joaquin Hills Road, and legally described as Parcel 1 of Parcel Map 79-718, requesting approval of a Minor Use Permit.
2. The applicant requests a minor use permit to add a Type 20 (Off-Sale Beer & Wine) and a Type 86 (Instructional Tasting) Alcoholic Beverage Control (ABC) license to an existing retail shop ("The Gallery") at an existing plant nursery known as Roger's Gardens. The ABC licenses would allow the Applicant to sell beer and wine for off-site consumption and offer tastings of beer and wine. There are no late hours (after 11:00 p.m.) proposed for the retail shop. No construction is proposed as both the retail sales and tastings will take place within existing facilities. In addition to the existing nursery and retail shop, the project site is also developed with a restaurant known as the Farmhouse. The Farmhouse is permitted to operate under Minor Use Permit No. UP2014-049 and carries its own established Type 47 (On-Sale General) ABC license, which regulates alcohol sales and consumption within the perimeter of the restaurant. The restaurant is operated separately, and no changes are proposed to the existing restaurant, nor UP2014-049.
3. The subject property is designated General Commercial (CG) by the General Plan Land Use Element and is located within the Commercial General (CG) Zoning District.
4. The subject property is not located within the coastal zone.
5. A public hearing was held on October 12, 2023, online via Zoom. A notice of the time, place, and purpose of the hearing was given in accordance with the Newport Beach Municipal Code (NBMC). Evidence, both written and oral, was presented to and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) under Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3 because it has no potential to have a significant effect on the environment.

2. Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use. The proposed minor use permit would allow the existing retail shop to sell beer and wine. The occasional product tasting will be offered to customers that may otherwise be patronizing the business and is not considered an intensification of use.

SECTION 3. REQUIRED FINDINGS.

Alcohol Sales

In accordance with Section 20.48.030 (Alcohol Sales) of the NBMC, the Zoning Administrator shall consider the following findings prior to the approval of a new or amended alcohol sales establishment:

Finding

- A. *The use is consistent with the purpose and intent of NBMC Section 20.48.030 (Alcohol Sales).*

Facts in Support of Finding

In finding that the project is consistent with Section 20.48.030 (Alcohol Sales) of the NBMC, the following criteria must be considered:

- a) *The crime rate in the reporting district and adjacent reporting districts as compared to other areas in the City.*
 - a. The subject property is in an area the Newport Beach Police Department (NBPD) designates as Reporting District (RD) 47. RD 47 is bounded to the north by San Joaquin Hills Road, to the east by Marguerite Avenue, to the south by 5th Avenue and to the west by MacArthur Boulevard. Surrounding RD's include RD 53 to the north, RD 48 to the east, RD 44 to the south, and RD 39 to the west. RD 47 is primarily residential in use however, at the intersection of San Miguel Drive and San Joaquin Hills Road, there are commercial uses including the Harbor View Shopping Center and the subject property.
 - b. The NBPD is required to report offenses of Part One Crimes combined with all arrests for other crimes, both felonies, and misdemeanors (except traffic citations) to the California Department of Alcoholic Beverage Control (ABC). Part One Crimes are the eight most serious crimes defined by the FBI Uniform Crime Report: criminal homicide, rape, robbery, aggravated assault, burglary, larceny-theft, auto theft, and arson. RD 47 is not considered or reported to ABC as a higher crime area, as compared to other RDs within the City. The RD 47 Part One Crime count for 2022 is 89, which is twelve (12) percent under the citywide average of 101 crimes per RD.
 - c. The NBPD has reviewed the project and has no objection to the new Type 20 and 86 ABC licenses, subject to appropriate conditions of approval which have been incorporated into

Exhibit “A” of this Resolution. These conditions include provisions such as the requirement that all owners, managers, and employees selling alcoholic beverages shall undergo and complete a certified training program in responsible methods and skills for selling alcoholic beverages, a prohibition of the store from operating as a bar, tavern, cocktail lounge or nightclub, and the requirement that any substantial operational change require a subsequent review.

b) *The number of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.*

a. In 2022, RD 47 had a higher percentage of alcohol-related crimes than neighboring RD 53 but had a lower percentage of alcohol related crime than both neighboring RD 39 and RD 44. The higher number of alcohol-related crimes in the subject RD compared to RD 53 is expected given that RD 53 is mostly residential, along with two schools, and lacks a substantial concentration of commercial uses. RD 39, which includes Fashion Island, and RD 44, which includes the commercial corridor of Corona del Mar, had alcohol-related crimes 562 percent higher and 279 percent higher, respectively, than the Citywide average. Therefore, RD 47 does not exhibit a higher number of alcohol related calls for services, crimes, or arrests than two of the three adjacent RDs.

c) *The proximity of the establishment to residential zoning districts, day care centers, hospitals, park and recreation facilities, places of worship, schools, other similar uses, and any uses that attract minors.*

a. The project site is located within 200 feet of both Civic Center Park and the Baywood Apartment complex, approximately 360 feet from St. Mark Presbyterian Church and pre-school, and 1,000 feet from Lincoln Elementary school. While minors are expected to be present in the area, the retail shop intends to sell wine by the bottle to complement their gourmet food and gift basket offerings. The instructional tastings are limited to individuals at least 21 years of age. Neither activity includes characteristics that are anticipated to attract minors.

d) *The proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption.*

a. In addition to the nurse and retail shop, the project site is developed with a restaurant known as the Farmhouse. The Farmhouse holds a Type 47 (On-Sale General) ABC license. The Farmhouse operates pursuant to Minor Use Permit No. UP2014-049 and has conditions of approval regulating the on-site consumption of alcohol within the restaurant.

b. In the adjacent Harbor View Shopping Center, Fresh Brothers holds a Type 41 (On-Sale Beer and Wine – Eating Place). Rite Aid holds a Type 20 (Off-Sale Beer and Wine) ABC License and Gelson’s Supermarket holds several licenses, including a Type 21 (Off-Sale General), Type 41 (On-Sale Beer and Wine – Eating Place), Type 42 (On-Sale Beer and Wine – Public Premises), Type 58 (Caterer Permit), and a Type 86 (Instructional Tasting License).

- c. Both Fashion Island and the commercial corridor of Corona del Mar have a considerable number of on-sale and off-sale ABC licenses. They are not however within the immediate vicinity of the project site. Fashion Island is the closer commercial area and is approximately 1,500 feet away from the project site.

Minor Use Permit

In accordance with Section 20.52.020(F) (Findings and Decision) of the NBMC, the following findings and facts in support of such findings for a use permit are set forth:

Facts in Support of Finding:

1. The Land Use Element of the General Plan categorizes the project site as General Commercial (CG). The CG category is intended to provide for a wide variety of commercial activities oriented primarily to serve citywide or regional needs. Alcohol sales within an existing retail shop is a use consistent with the intent of the CG category and would expand the existing offerings at Roger's Gardens. The instructional tastings are accessory to the retail sale of alcohol.
2. General Plan Land Use Policy LU 5.2.2 (Buffering Residential Areas) requires that commercial uses adjoining residential neighborhoods be designed to be compatible and minimize impacts. While Roger's Gardens adjoins the Harbor Pointe residential neighborhood to the southwest, the retail shop is separated from the neighborhood by over 100 feet of parking lot and a masonry wall. There is also a landscape buffer on the residential side of the wall that provides additional buffer to the commercial use.
3. The subject property is not located within a Specific Plan area.

Finding:

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

Facts in Support of Finding:

1. The project site is zoned Commercial General (CG). The CG district is intended to implement the CG General Plan land use category by providing for areas appropriate for a wide variety of commercial activities oriented primarily to serve Citywide or regional needs.
2. Table 2-4, Section 20.20.020 (Commercial Zoning Districts Land Uses and Permit Requirements) specifies that retail uses with off-sale alcohol are allowed in the CG District subject to the approval of a MUP.
3. The 6.47-acre site is currently developed with Roger's Gardens. The site contains a plant nursery with a combination of outdoor and indoor display and areas, a retail shop, and a restaurant. Roger's Gardens has been in business at this location for more than

50 years and provides services to the local and regional community. The subject property currently provides 201 parking spaces for all on-site uses, where 171 parking spaces are required. While the addition of alcohol sales and limited educational tastings is not likely to increase demand for parking, there is a surplus of parking available that will adequately serve customers.

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 vicinity is diverse with a mix of residential, commercial, public facilities, and private institutional uses. The Roger's Garden site experiences considerable visitor traffic both by vehicles and pedestrians and is busy and vibrant. The retail shop will likely serve patrons already visiting the site and the addition of alcohol sales and tastings is not anticipated to generate noticeable change in traffic or congestion.
2. The nearest retail store, Rite Aid, with an off-sale ABC license is located across San Joaquin Hills Road, approximately 200 feet to the east of the subject property. There is also a Gelson's supermarket in the same shopping center as the Rite Aid. The alcohol sales proposed for the retail shop are very limited compared to both Rite Aid and Gelson's as the beer and wine is intended to be paired with gift baskets. The primary function of the retail shop will still be to provide a selection of both indoor and outdoor furniture, home décor, gourmet food, women's accessories, and housewares.
3. The instructional tastings will be conducted in an area of the retail shop that displays art available for purchase. While the project does introduce minimal on-site consumption of alcohol with the Type 86 license, the Type 86 license is heavily conditioned by ABC. Limits include the amount of alcohol that can be sampled per person per day, the location where the alcohol may be sampled, and the prohibition of charging a fee for an instructional tasting. The project is conditioned to restrict on-site tasting to a maximum of 6 times per month, which will ensure that the proposed tastings remain an ancillary use to the retail shop. The limits placed on the Type 86 license by ABC should help prevent any potential negative impacts on surrounding uses.

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.*

Fact in Support of Finding:

The project site was reviewed for public and emergency vehicle access, public services, and utilities as part of the approval of Minor Use Permit No. UP2014-049. The

site was deemed adequate at that time and there have been no subsequent additions or intensification of use at the site. Further, no construction is proposed at the site to accommodate the new ABC License types. The addition of alcohol sales and instructional tasting within an existing retail shop will not negatively affect emergency access or have a noticeable impact on the site.

Finding:

- E. *Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City or 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 addition of alcohol sales and instructional tastings in an existing retail shop should have few-to-no noticeable changes to the overall operation of the Roger's Gardens site. Customers who purchase beer and wine or participate in the instructional tastings are likely to already be onsite.
2. Fact 1 in Support of Finding C incorporated by reference.

Finding:

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

Facts in Support of Finding:

1. The project has been reviewed and includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks, and areas surrounding the subject property and adjacent properties related to the sale of alcohol and related tastings.
2. The Police Department has reviewed the project and has no objection to the operation as described by the applicant. The Police Department believes that with the conditions of approval, the proposed project will not have a negative impact on the community and police services.
3. Compliance with the NBMC standards related to noise, lighting, and signage will help ensure that the proposed use will be compatible with the surrounding area.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3 because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves the Minor Use Permit, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 20 Planning and Zoning, of the NBMC.

PASSED, APPROVED, AND ADOPTED THIS 12TH DAY OF OCTOBER 2023.



Benjamin M. Zueba, AICP, Zoning Administrator

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

1. The sale of beer and wine and the location of instructional tastings shall be in substantial conformance with the approved site plan and floor plan stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The project is subject to all applicable City ordinances, policies, and standards unless specifically waived or modified by the conditions of approval.
3. The applicant shall comply with all federal, state, and local laws. A material violation of any of those laws in connection with the use may be caused the revocation of this Use Permit.
4. *All proposed signs shall be in conformance with the approved Comprehensive Sign Program for the project site and provisions of Chapter 20.42 (Signs) of the Newport Beach Municipal Code.*
5. *This Use Permit shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 (Time Limits and Extensions) of the NBMC unless an extension is otherwise granted.*
6. This MUP may be modified or revoked by Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
7. *The hours of operation for the retail shop shall not extend beyond 11 p.m.*
8. *The Applicant is allowed up to six (6) instructional tastings per month.*
9. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require subsequent review by the Planning Division and potential amendment of this MUP.
10. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, in the opinion of the Director of Community Development, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
11. 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

12. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or leasing agent.
13. No outside paging system shall be utilized in conjunction with this establishment.
14. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes.
15. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-of-way.
16. The exterior of the business shall be always maintained free of litter and graffiti. The owner or operator shall provide for daily removal of trash, litter debris, and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
17. The applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters if deemed necessary by the Planning Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).
18. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 7:00 a.m. on weekdays and Saturdays and between the hours of 10:00 p.m. and 9:00 a.m. on Sundays and Federal holidays unless otherwise approved by the Director of Community Development and may require an amendment to this Use Permit.
19. Storage outside of the building in the front or at the rear of the property shall be prohibited, except for the required trash container enclosure.

20. A Special Events Permit is required for any event or promotional activity outside the normal operating characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the NBMC to require such permits.
21. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 Planning and Zoning of the Newport Beach Municipal Code.
22. To the fullest extent permitted by law, the applicant shall indemnify, defend and hold harmless the City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs, and expenses (including without limitation, attorney's fees, disbursements, and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of **The Gallery at Roger's Gardens** including, but not limited to, **PA2023-0048**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorney's fees, and other expenses incurred in connection with such claim, action, causes of action, suit, or proceeding whether incurred by the applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all the City's costs, attorneys' fees, and damages that which City incurs in enforcing the indemnification provisions 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.

Police Department

23. *The ABC License shall be limited to a Type 86 (Instructional Tasting) and a Type 20 (Off-Sale Beer and Wine). Any substantial change to the ABC license type shall require subsequent review and potential amendment of the MUP.*
24. *The Applicant shall abide by all requirements and conditions of the Alcoholic Beverage License. Material violation of any of those laws or conditions in connection with the use is a violation and may be cause for revocation of the MUP.*
25. *All owners, managers and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible beverage service within 60 days of hire. The certified program must meet the standards of the State of California. Records of each owner's and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.*
26. *Approval does not permit the premises to operate as a bar, tavern, cocktail lounge, or nightclub as defined by the NBMC.*

27. *No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under control of the licensee.*
28. *No games or contests requiring or involving the consumption of alcoholic beverages shall be allowed.*

RESOLUTION NO. ZA2023-062

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA APPROVING A MINOR USE PERMIT FOR A MASSAGE ESTABLISHMENT LOCATED AT 2600 EAST COAST HIGHWAY, SUITE 120 (PA2023-0114)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Stacey Wellnitz of Commercial Architecture on behalf of The NOW Massage, with respect to property located at 2600 East Coast Highway, Suite 120, and legally described as Parcel 1 of Parcel Map No. 84-722 requesting approval of a minor use permit.
2. The applicant requests a minor use permit to allow the operation of a massage establishment within an existing tenant space. The project involves the occupancy of an approximately 2,000 square-foot commercial suite with eight (8) individual massage rooms, a transition room, a lobby, and reception area. The project also includes an office, break room, and storage closet for employee use. The proposed business would operate daily, and no late hours are proposed (after 11:00 pm). The proposed hours of operation are between 9:00 a.m. and 9:00 p.m., daily. Included is a request to modify the parking rate for massage and to waive location restrictions associated with massage establishments.
3. The subject property is designated Corridor Commercial (CC) by the General Plan Land Use Element and is located within the Commercial Corridor (CC) Zoning District.
4. The subject property is not located within the coastal zone.
5. A public hearing was held on October 12, 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 to existing structures involving negligible or no expansion of use. The project includes tenant improvements to an existing office suite to convert it to a massage establishment. No additions are proposed.

SECTION 3. REQUIRED FINDINGS.

Minor Use Permit

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

Finding:

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

Facts in Support of Finding:

1. The project site designated CC (Corridor Commercial) in the Land Use Element of the General Plan that 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.
2. Land Use Policy LU 2.1 (Resident-Serving Land Uses) of the Land Use Element of the General Plan is intended to accommodate uses that support the needs of Newport Beach's residents including housing, retail, services, employment, recreation, education, culture, entertainment, civic engagement, and social and spiritual activity that are in balance with community natural resources and open spaces.
3. The proposed massage establishment is consistent with the land uses permitted within this land use designation. The proposed use will provide an additional service to the nearby residents and visitors to the City in an otherwise vacant tenant space.
4. The subject property is not part of a specific plan area.

Finding:

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

Facts in Support of Finding:

1. The subject property is located in the CC (Commercial Corridor) Zoning District which is intended to provide for areas appropriate for a range of neighborhood-serving retail and service uses along street frontages that are located and designed to foster pedestrian activity.
2. While the tenant space in the existing commercial building is adjacent to residential neighborhoods, the tenant space is oriented towards East Coast Highway. The properties fronting East Coast Highway are also in the CC (Commercial Corridor) Zoning District and provide a range of commercial uses to serve nearby residential

neighborhoods.

3. The adjacent tenant space (Sugarfish Restaurant) operates under an existing Conditional Use Permit (approved January 5, 2023), that included a parking management plan and parking waiver for 19 required off-street parking spaces. A parking study was prepared by Trames Solutions, Inc. on November 18, 2022, to support the request. The parking study established a parking demand for the property including Sugarfish Restaurant and the other vacant suites. Suite 120, which is the subject tenant space for the proposed massage establishment, is a vacant suite that was evaluated using a parking rate of 1 per 250 square-feet of gross floor area or a total demand of eight (8) parking spaces.
4. Pursuant to Table 3-10 of Section 20.40.040 (Off-Street Parking Spaces Required) of the NBMC, the City may establish the parking requirements for a massage establishment through the use permit process. Although eight (8) massage rooms are provided, the project has been conditioned to limit operations to no more than five (5) massage technicians onsite and/or performing massage services at any given time. Typical visitor characteristics of a massage establishment may see appointments for group visits that would service multiple customers who could potentially carpool, which is predicted to help lighten parking demand. In addition, the location is within the Corona del Mar commercial corridor along East Coast Highway, which is considered a captive market where visitors to the area may park once and visit multiple businesses or attractions. Based on the characteristics of the location and the proposed condition limiting massage technicians, a rate of one (1) parking space for every 250 square feet is appropriate for this use and results in a demand of approximately eight (8) parking spaces. This is further consistent with the previously approved parking waiver.
5. The proposed massage establishment is consistent with the legislative intent of Section 20.48.120 (Massage Establishments and Services) and Chapter 5.50 (Massage Establishments) of the NBMC. These sections provide standards for the establishment, location, and operation of massage establishments operated as an independent use. The intent is to promote the operation of legitimate massage services and to prevent problems of blight and deterioration that may accompany and result from large numbers of massage establishments.

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 massage establishment is located within an approximately 2,000 square-foot tenant space within an existing commercial building. The proposed use will consist of eight (8) individual massage rooms, a transition room, a lobby, and reception area. The use also includes an office, break room, and storage closet for employee use; all of which are included in the existing tenant space.

2. The proposed hours of operations are between 9:00 a.m. and 9:00 p.m., daily. The surrounding uses consist of office, retail, restaurants, and personal services. The proposed hours of operation are compatible with the surrounding uses and the project does not propose late hours (past 11:00 p.m.) which will minimize any disturbances to residences near the property.
3. The existing commercial building is oriented towards East Coast Highway and facing away from the adjacent residential neighborhoods. The nearest residential dwelling is approximately 55 feet from the subject property and is separated by a surface parking lot, an entrance to a subterranean parking lot, and an alleyway.

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; and*

Facts in Support of Finding:

1. The site is located on East Coast Highway and Dahlia Avenue within an existing multi-tenant commercial building. The parking lot is located at the rear of the property and accessed by the alleyway from Dahlia Avenue.
2. The property is improved with a total of 84 parking spaces, 76 of which are within an underground parking structure and eight (8) of which are surface-level open parking spaces. The proposed use will require eight (8) parking spaces and Fact 4 in support of Finding B is incorporated herein by reference.
3. The Life Safety Division (Fire Department) has reviewed the project to ensure adequate public and emergency vehicle access is provided and does not have any concerns with the proposed use.

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 use has been conditioned with typical daytime and evening hours of operation that will minimize any detriment to the surrounding area.
2. The proposed massage establishment will provide additional services to the residents in the surrounding area and visitors to the City.

3. The proposal has been reviewed by the Building, Public Works, Fire, and Police Departments and recommended conditions of approvals have been included to limit any effects to the City of persons visiting or working in the surrounding neighborhood.
4. The NBPD has reviewed the project and has no objections to this project as proposed. Condition of Approval No. 27 has been included to ensure the applicant obtains an Operator's Permit from the NBPD in compliance with Chapter 5.50 (Massage Establishments) of the NBMC.

Location

In accordance with Section 20.48.120(B) (Massage Establishments and Services – Waiver of Location Restrictions) of the Newport Beach Municipal Code (NBMC), the following findings and facts in support of such findings are set forth:

Finding:

- F. *The proposed use will not be contrary to the public interest or injurious to nearby properties, and that the spirit and intent of this section will be observed;*

Facts in Support of Finding:

1. The intent of this section is to promote the operation of legitimate massage services and the prevent problems of blight and deterioration, which accompany and are brought about by large number of massage establishments and the misuse of massage therapy as a front for prostitution and other illegal activities.
2. Although the proposed massage use is located within 500 feet of another property that has a massage establishment, it is located in a separate development and is sufficiently separated from other massage services. The closest tenant space offering massage services is located at 2744 East Coast Highway and the tenant space itself is approximately 520 feet from the proposed massage establishment.
3. There will be no late hours of operation, as the project is conditioned to operate between 9:00 a.m. and 9:00 p.m.
4. A condition of approval is included to ensure the applicant will obtain an Operator's Permit from the Newport Beach Police Department (NBPD) in compliance with Chapter 5.50 (Massage Establishments) of the NBMC prior to operation of the business.

Finding:

- G. *The proposed use will not enlarge or encourage the development of an urban blight area; and*

Facts in Support of Finding:

1. The proposed use is located in a single tenant space within a managed, multi-tenant commercial building, which will prevent problems and discourage the development of urban blight. The subject property is not located within a blighted area, is well maintained, and is intended to provide a service that supports the surrounding residents and visitors to Newport Beach.

Finding:

- H. The proposed use will not adversely affect a religious institution, school, park, or playground;*

Facts in Support of Finding:

1. The proposed massage establishment is located within 500 feet of a park (Old School Park). Therefore, the applicant requests to waive location restrictions pertaining to Section 20.48.120 (Massage Establishments and Services) of the NBMC.
2. Old School Park is a small park that is approximately 13,200 square-feet with an adjacent parking area that is a designated public open space area for the nearby residential neighborhood of the Corona del Mar Homes (PC29) Zoning District and is developed with walkways, benches, and open area. No structures, public restrooms, or playgrounds are constructed in this park which reduces the amount of time visitors would typically spend at this park. The proposed establishment would operate during typical daytime hours and is not anticipated to encourage the development of an urban blight area.
3. There are no religious institutions, schools, or playgrounds within 500 feet of the subject property.
4. The Police Department has reviewed the request for a waiver of location restrictions and has no concerns regarding the proposed massage operation.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.

2. The Zoning Administrator of the City of Newport Beach hereby approves the Minor Use Permit (PA2023-0114), subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 12TH DAY OF OCTOBER, 2023.



Benjamin M. Zdeba, AICP, Zoning Administrator

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

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Minor Use Permit.
4. *The hours of operation shall be between 9 a.m. and 9 p.m., daily.*
5. *There shall be no more than five (5) massage technicians onsite and/or performing massage services at any given time.*
6. All proposed signs shall be in conformance with the approved Comprehensive Sign Program for the project site and provisions of Chapter 20.42 (Signs) of the Newport Beach Municipal Code.
7. *This Minor Use Permit, as part of PA2023-0114, shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code, unless an extension is otherwise granted.*
8. This Minor Use Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
9. 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.
10. 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.

11. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
12. 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

13. 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.
14. Construction activities shall comply with Section 10.28.040 (Construction Activity – Noise Regulations) of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday. Noise-generating construction activities are not allowed on Saturdays, Sundays or Holidays.
15. No outside paging system shall be utilized in conjunction with this establishment.
16. 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.
17. The applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).
18. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 7:00 a.m. on weekdays and Saturdays and between the hours of 10:00 p.m. and 9:00 a.m. on Sundays and Federal holidays, unless otherwise approved by the Director of Community Development, and may require an amendment to this Use Permit.

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 Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
21. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 Planning and Zoning of the Newport Beach Municipal Code.
22. To the fullest extent permitted by law, 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 NOW Massage Boutique including, but not limited to, Minor Use Permit (PA2023-0114)**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Building Division

23. 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.

Police Department

24. Strict adherence to Newport Beach Municipal Code Chapter 5.50 (Massage Establishments) shall be upheld.
25. Prior to operation, the applicant business shall apply for and obtain an Operator's Permit from the Chief of Police and keep said permit in good standing.

26. All employees of the applicant business who conduct massage services on the premises must be certified by the California Massage Therapy Council (CAMTC) (physicians, physical therapists, and chiropractors exempt).
27. As outlined in Newport Beach Municipal Code Section 5.50.030 (Requirements of Operation), the business shall maintain requirements of operation, and submit to inspections by officers of the Police Department.

Code Enforcement

28. All windows (except treatment room windows) shall remain visible and transparent in nature. Window signage shall comply with the City of Newport Beach Municipal Code.
29. The names of employees shall be posted upon entry and contact information and list of state certifications shall be provided upon request. A current list of employees shall be kept on-site and maintained at all times.
30. The owner, operator, or responsible manager's contact information for the massage establishment shall be provided to the City of Newport Beach Code Enforcement Division.

RESOLUTION NO. ZA2023-063

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING A COASTAL DEVELOPMENT PERMIT TO DEMOLISH AN EXISTING TRIPLEX AND CONSTRUCT A NEW TWO-STORY DUPLEX WITH A ROOF TOP DECK, AN ATTACHED FOUR-CAR GARAGE, AND AN ACCESSORY DWELLING UNIT LOCATED AT 413 VIA LIDO SOUD, UNITS A-C (PA2023-0051)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed Stephen Wan of David R. Olson Architects on behalf of the property owner, Edwin Haronian, concerning property located at 413 Via Lido Soud, Units A-C, requesting approval of a coastal development permit.
2. The lot at 413 Via Lido Soud, Units A-C is legally described as Lot 473 of Tract No. 907.
3. The applicant proposes a Coastal Development Permit (CDP) to allow the demolition of an existing triplex and construct a new 3,463-square-foot, two-story, duplex with an open roof top deck, an attached 801-square-foot four-car garage, and a 228-square-foot Accessory Dwelling Unit (ADU). The project includes landscape, hardscape, and subsurface drainage improvements all within the confines of private property. The project complies with all development standards and no deviations from the municipal code are requested.
4. The subject property is designated RM (Multiple Residential) by the General Plan Land Use Element and is located within the RM (Multiple Residential) Zoning District.
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Multiple Unit Residential (RM-E), and it is located within the Multiple Residential (RM) Coastal Zone District.
6. A public hearing was held on October 12, 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 construction of apartments, duplexes and similar structures totaling up to six dwelling. The proposed project consists of the demolition of one triplex and the construction of a new 3,463-square-foot, two-story, duplex with a roof top deck, an attached 801-square-foot four-car garage, and a 228-square-foot ADU and therefore qualifies within the criteria of this exemption.
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 (F) (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 5,117 square feet and the proposed floor area is 4,912 square feet.
 - b. The proposed development provides the minimum required setbacks, which are 4 feet along the front property line abutting Via Lido Soud, 0 feet along the front property line abutting the boardwalk, and 3 feet along each side property line.
 - c. The highest guardrail is less than 24 feet from the established grade (10.89 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 four (4) vehicles in two (2)-car garages, complying with the minimum four (4)-car parking requirement for duplexes. The project includes an internal ADU (within the footprint of the proposed multi-unit dwelling) that is exempt from parking requirements.
2. The neighborhood is predominantly developed with one- - and two- -story, single-family residences, duplexes, and triplexes. The proposed design, bulk, and scale of the development are consistent with the existing neighborhood pattern of development.

3. 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). PMA Consulting, Inc. has concluded that the project shall be conditioned to construct on-site block walls to an elevation of 10.9 feet (NAVD 88) with adaptability up to 14.4 feet NAVD88 should bay water elevation rise and reach the Finished Floor Elevation of 10.59 feet (NAVD 88).
4. Once a seawall/bulkhead is constructed 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. The report concludes that the proposed project will be safe from flooding hazards for the next 75 years.
5. The finished floor elevation of the proposed duplex and ADU is 10.59 feet (NAVD 88), which complies with the minimum 9.00-foot (NAVD 88) elevation standard for new structures. A waterproofing curb is also proposed to be constructed around the perimeter of the dwelling that would protect against flooding up to an elevation of 10.9 feet (NAVD 88). Flood shields (sandbags and other barriers) can be deployed across the openings to protect and prevent flooding to the structure.
6. A Coastal Hazards Report and Sea Level Rise Analysis were prepared by PMA Consulting, Inc., dated February 8, 2023, for the project. The report concludes that the proposed project is reasonably safe from shoreline erosion due to the lack of waves or wakes that can erode sand from the beach. The report also concludes that the project will be reasonably safe from future sea level rise assuming an increase up to 10.7 feet NAVD 88 (the likely range for sea level rise over the 75-year design life of the structure based on low-risk aversion estimates for sea level rise provided by the State of California, Sea Level Rise Guidance: 2018 Update).
7. Pursuant to NBMC Section 21.30.030(C)(3)(i)(iv) (Natural Landform and Shoreline Protection), the property owner will be required to enter into an agreement with the City waiving any potential right to protection to address situations in the future in which the development is threatened with damage or destruction by coastal hazards (e.g., waves, erosion, and sea level rise). The property owner will also be required to acknowledge any hazards present at the site and unconditionally waive any claim to damage or liability against the decision authority, consistent with NBMC Section 21.30.015(D)(3)(c) (General Site Planning and Development Standards). Both requirements are included as conditions of approval that will need to be satisfied prior to the issuance of building permits for construction.
8. The property is in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved 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.

9. 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.
10. Under Municipal Code Section 21.35.050 (Water Quality and Hydrology Plan), due to the proximity of the development to the shoreline and the development containing more than 75 percent of impervious surface area, a preliminary Water Quality and Hydrology Plan (WQHP) is required. A preliminary WQMP has been prepared for the project by Core Civil Engineering, Inc. dated, February 7, 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. Construction plans will be reviewed for compliance with the approved WQHP before building permit issuance.
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 not located adjacent to a coastal view road, public access way, or Coastal Viewpoint as identified in the Coastal Land Use Plan. The nearest coastal viewpoint is on Marina Park and is not visible from the site. The proposed duplex and ADU complies with all applicable Local Coastal Program (LCP) development standards and maintains a building envelope consistent with the existing neighborhood pattern of development. Additionally, the project does not contain any unique features that could degrade the visual quality of the coastal zone.
13. The project proposes to demolish the existing triplex and construct a new duplex and ADU. As a result, the project complies with the Housing Crisis Act of 2019 and Senate Bill 8 (Skinner) because it does not result in the loss of residential density. The State Department of Housing and Community Development (HCD) has verified with the City in an email dated March 23, 2022, that an ADU is considered a housing unit under Government Code Section 66300 provisions to replace existing units. The property owner has certified that the units are not "protected" units under Section 66330 Subdivision (d)(2). The project is consistent with the General Plan, Local Coastal Program, and Zoning designations that allow the duplex and accessory dwelling unit land uses. Under the Coastal Land Use Plan Table 2.1.1-1, the Multiple Unit Residential (RM-E) category is intended for multi-family residential development. Section 21.18.020 of the Local Coastal Program Implementation Plan shows "Two-Unit Dwellings" and "Accessory Dwelling Units" as allowed uses in the RM Coastal Zoning District. Therefore, the project of a duplex and ADU to replace an existing triplex is consistent with the RM zoning and land use designations, does not result in a loss of residential density, and will not affect the City in meeting its regional housing needs.

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 not located adjacent to a coastal view road, public access way, or Coastal Viewpoint as identified in the Coastal Land Use Plan. The nearest coastal viewpoint is on Marina Park and is not visible from the site. The proposed duplex and ADU complies with all applicable Local Coastal Program (LCP) development standards and maintains a building envelope consistent with the existing neighborhood pattern of development. Additionally, the project does not contain any unique features that could degrade the visual quality of the coastal zone.
2. Vertical access to the bay and beach is available adjacent to the site along the existing boat yard as well as along Via Koron via the Lido Isle community park located approximately 550-feet away from the property. Lateral access is provided via the public boardwalk along the project's bayside frontage. The project does not include any features that would obstruct access along these routes.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act under Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3 because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit (PA2023-0051), 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 12TH DAY OF OCTOBER 2023.



Benjamin M. Zieba, AICP, Zoning Administrator

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

1. The development shall be in substantial conformance with the approved site plan, floor plans, and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. *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 the issuance of building permits, the property owner shall record a deed restriction with the County Recorder's Office, the form and content of which is satisfactory to the City Attorney, prohibiting the use of the accessory dwelling unit for short-term rentals (i.e., less than 30 days) and prohibiting the sale of the ADU separate from the principal dwelling. This deed restriction shall remain in effect so long as the accessory dwelling unit exists on the property.*
5. *Should future bay water elevations reach the Finished Floor Elevation of 10.59 feet (NAVD 88), on-site block walls shall be constructed to an elevation of 10.90 feet (NAVD 88) with capability to be raised up to 14.4 feet (NAVD 88), in compliance with the City of Newport Beach Waterfront Project Guidelines and Standards, Harbor Design Criteria Commercial & Residential Facilities.*
6. *Before issuance of building permits, a waterproofing curb or similar design feature shall be constructed around the proposed residence as an adaptive flood protection device up to a minimum of 10.9 feet (NAVD88). Flood shields (sandbags and other methods) can be deployed across the openings to protect and prevent flooding to the structure.*

7. 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.
8. 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.
9. This Coastal Development Permit does not authorize any development seaward of the private property.
10. 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.
11. 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.
12. The discharge of any hazardous materials into storm sewer systems or receiving waters shall be prohibited. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. A designated fueling and vehicle maintenance area with appropriate berms and protection to prevent spillage shall be provided as far away from storm drain systems or receiving waters as possible.

13. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. 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.
14. 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.
15. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
16. The project is subject to all applicable City ordinances, policies, and standards unless specifically waived or modified by the conditions of approval.
17. 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.
18. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained 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.
19. *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.*
20. *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.*
21. *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.*
22. *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.*
23. *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.*

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:

	Between the hours of 7:00 AM and 10:00 PM		Between the hours of 10:00 PM and 7:00 AM	
Location	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 (PA2023-0051) 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 **Haronian Residence including but not limited to, Coastal Development Permit (PA2023-0051)**. 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.

Public Works

31. No encroachments, including projections or footings, shall encroach into the four-foot utilities easement.

Fire Department

32. A three (3)-foot wide walkway shall be provided on at least one side of the lot from Via Lido Soud to the boardwalk and from all buildings on the property.
33. A NFPA 13R fire sprinkler system shall be installed.



COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION
100 Civic Center Drive, P.O. Box 1768, Newport Beach, CA 92658-8915
949-644-3200
www.newportbeachca.gov

COMMUNITY DEVELOPMENT DIRECTOR
ACTION LETTER

Subject: Park Newport Bluff Stabilization Project (PA2023-0161)
▪ Staff Approval for Substantial Conformance

Site Location: 5000 Park Newport Drive

Applicant: Pua Whitford, CAA Planning

Legal Description: Parcel 1 of Lot Line Adjustment No 94-01

On **October 13, 2023**, the Community Development Director approved the Staff Approval filed as PA2023-0161 allowing minor changes to an approved project and found said changes in substantial conformance with the Coastal Development Permit filed as PA2023-0034. This determination is based on the following information and analysis and is subject to the Conditions of Approval thereafter.

LAND USE AND ZONING

- **General Plan Land Use Plan Category:** RM (Multiple Residential)
- **Zoning District:** Planned Community 7- Park Newport (PC-7)
- **Coastal Land Use Plan Category:** RM-D (Multiple Unit Residential) - (20.0 -29.9 DU/AC)
- **Coastal Zoning District:** Planned Community 7 - Park Newport (PC-7)

I. BACKGROUND

There is an extensive history of slope failures at the subject property due to the location of the development (Park Newport Apartments) atop bluffs along Back Bay Drive. The most recent failure was a landslide in June of 2020. In response, the property owner retained licensed geotechnical engineering professionals to assess the risk of further slope failure and to assist with remediating the landslide area. Due to potential life safety and property risks, the owner received approval of emergency coastal development permits to temporarily install K-rail barriers along the toe of the slope adjacent to Back Bay Drive, anchored rockfall mesh at the head of the landslide area, and temporary tarps along selected portions of the property during the rainy season.

The owner submitted a coastal development permit (CDP) requesting permanent authorization of the work as well as future installation of soldier piles to protect existing principal structures. Although the project was approved by the Planning Commission in April 2022, the project was appealed by a neighboring property owner to the California Coastal Commission. After the appellant's concerns were resolved, the applicant consulted with the

California Coastal Commission to withdraw their application and apply for a new CDP with the City on February 7, 2023.

On May 4, 2023, the Planning Commission approved a CDP to allow the installation of soldier piles, anchored mesh, temporary tarps, and k-rails to help prevent potential rockfall from the sloped area adjacent to the Park Newport Apartments. The Planning Commission also approved an encroachment permit and a waiver of Council Policy L-6 to allow for private encroachments on public property. However, the Encroachment Permit and Waiver of Council Policy L-6 are unrelated to the proposed minor changes to the approved Coastal Development Permit because no changes are proposed to the encroachment areas on public property (i.e., the K-rails at bottom of the slope).

II. PROPOSED CHANGES

Since gaining approval of the CDP, the property owner began refining the design of the authorized improvements and retained Langan Engineering and Environmental Services, Inc. (Langan) to prepare an additional geotechnical investigation. Langan's findings are summarized in the report (Langan Report) dated August 17, 2023, and attached to this approval as Attachment No. CD 3. The Langan Report provides refined design parameters and recommends minor changes in the design and length of the soldier pile walls to ensure that the original intent of the approved CDP will be achieved. Consistent with the approved CDP, the proposed changes will occur below ground within the subject property. Figures 1 and 2 of the Langan Report illustrate the proposed changes compared to the approved CDP and are excerpted below.

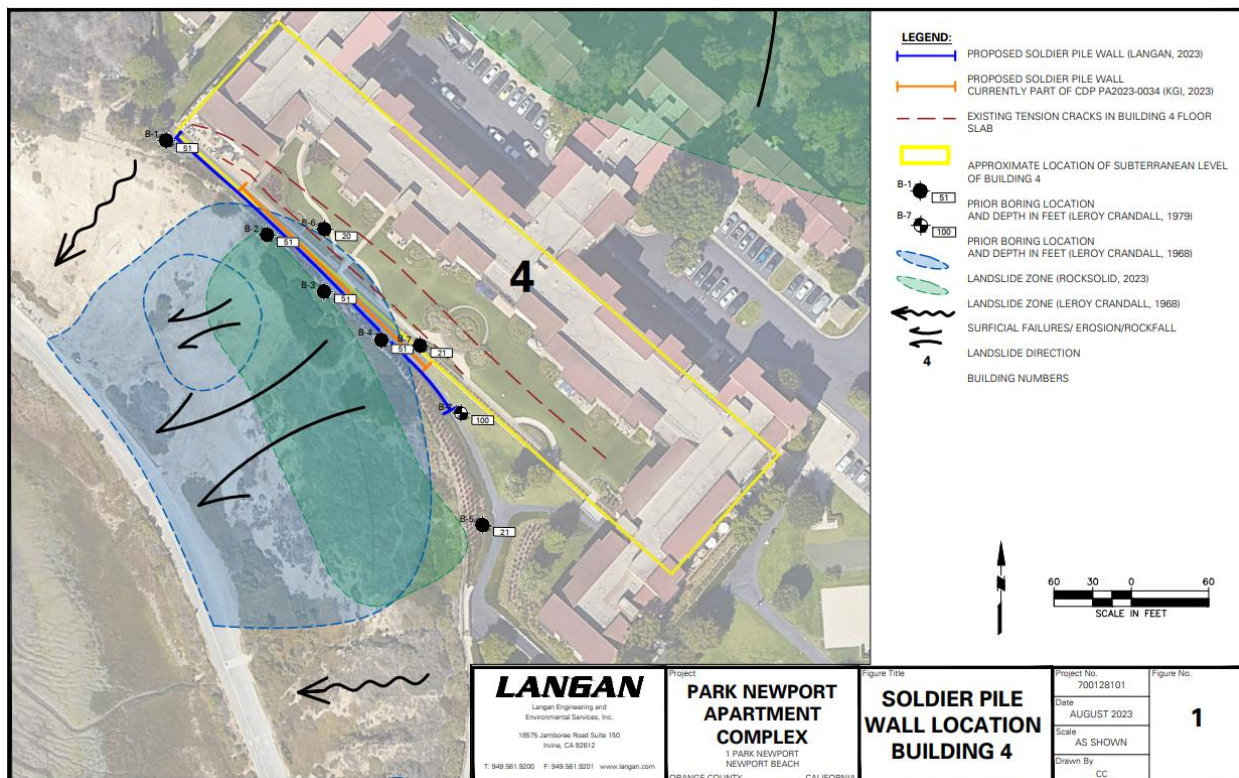


Figure 1 of the Langan Report, with the authorized work shown in orange and the proposed changes in blue.

Notably, the soldier pile wall near Building 4 is proposed to be approximately 300 feet long, whereas the original CDP contemplated a 200 foot-long-wall. The soldier pile wall would be realigned slightly but would not extend beyond the ornamental landscaping along the edge of the bluff.

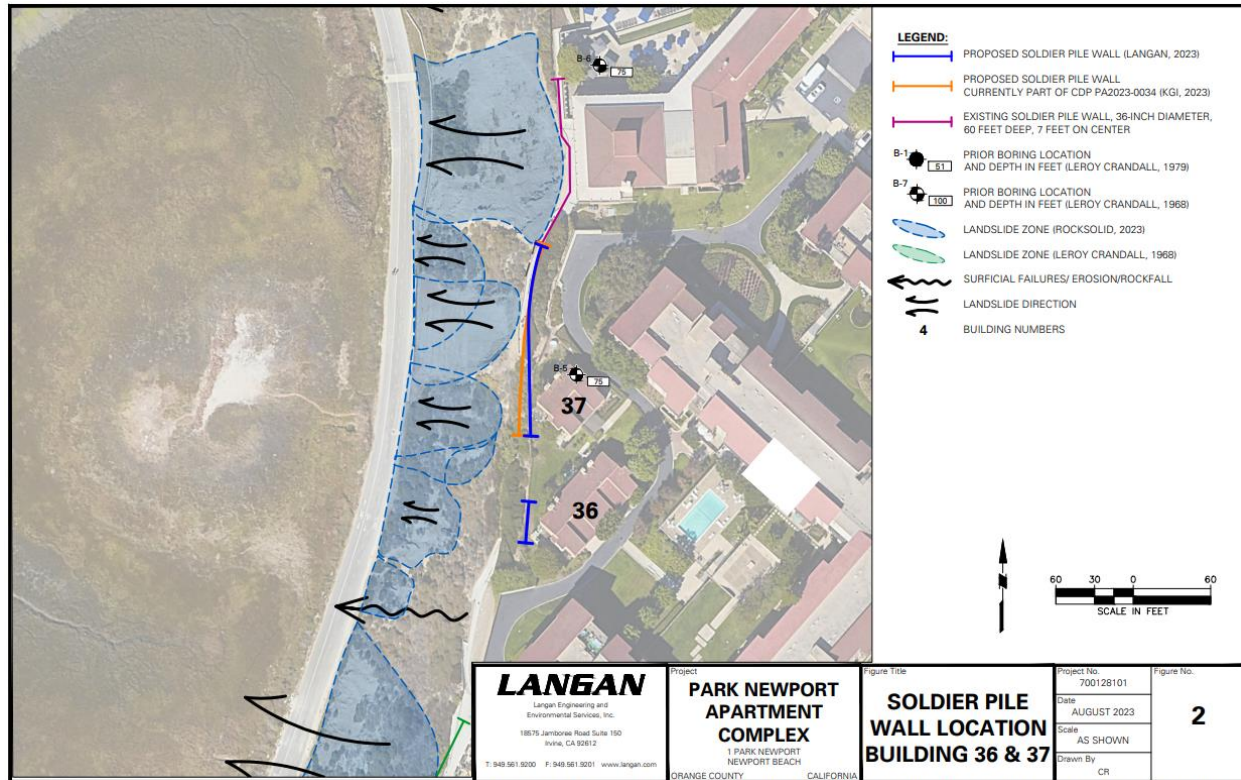


Figure 2 of the Langan Report, with the authorized work shown in orange and the proposed changes in blue.

The proposed soldier pile wall near Building 37 would be approximately 150 feet long, consistent with the original CDP. The Langan Report recommends an additional 30-foot-long soldier pile wall be installed near the adjacent Building 36. This small soldier pile wall would be located adjacent to the building, would not extend beyond the top of the bluff, and is necessary to protect the existing residential structures. It would further serve to provide additional lateral support due to the steep out-of-slope dipping condition at this location, which is a condition prone to sudden slippage.

A final geotechnical report with detailed design plans and recommendations will be submitted to the Building Division during building permit plan check, as required by the conditions of approval. No changes are proposed to the approved K-rails at the toe of the bluff, anchored mesh, or temporary tarps.

III. FINDINGS

Per Section 21.54.070 (Changes to an Approved Coastal Development Permit) of the Newport Beach Municipal Code (NBMC), the Community Development Director (Director) may authorize minor changes to an approved site plan, architecture, or the nature of the approved use, without a public hearing, where the Director first finds that the changes:

Finding:

A. *Are consistent with all applicable provisions of this Implementation Plan.*

Facts in Support of Finding:

1. The project is located within the Planned Community 7 – Park Newport Zoning District and Coastal Zoning District, which allows for residential uses. The proposed minor change to the soldier pile walls would not impact the existing or proposed use of the site as a residential apartment complex.
2. Section 21.30.030(C)(3)(ii) (Protective Structures) of the NBMC allows construction of protective structures when designed to mitigate adverse impacts on local shoreline sand supply and existing structures that are “*Threatened by natural hazards, provided that the protective structures are limited to the minimum required to protect the existing structure and located on private land, not State lands.*” The Park Newport Apartments on the property were constructed in 1969, which predates the Coastal Act of 1976 and are considered existing structures located on private land. The proposed minor change is consistent with this provision. The approved Resolution (PC2023-021) is attached as Attachment No. CD 2 and details the facts pertaining to the threat of hazards at the site. The proposed minor change does not change the basis of those facts.
3. The Langan Report states that the additional 30-foot-long soldier pile wall proposed at Building 36 is necessary to protect the existing residential structures and provide lateral support due to the steep out-of-slope dipping condition that is prone to sudden slippage. This additional soldier pile wall will serve to further protect the existing residential structure from documented natural hazards.
4. Section 21.30.030(C)(3)(d) (Protective Structures) of the NBMC requires that protective devices, such as the proposed soldier piles, be designed and sited to:
 - (1) be as far landward as possible and within private property;
 - (2) eliminate or mitigate adverse impacts to coastal resources;
 - (3) minimize alteration of natural processes;
 - (4) provide for public access to State tidelands and recreational areas;
 - and (5) minimize visual impacts and maximize the enjoyment of the natural shoreline environment.
 - a. The proposed minor change includes slight realignment of the approved soldier pile walls, extensions of the walls, and one additional 30-foot-long wall near Building 36. The proposed soldier pile walls are still located as far landward as possible within the property. The proposed landslide mitigation would help prevent future adverse impacts to coastal access through landslides and rockfalls onto the Back Bay trail below.
 - b. Several alternatives to address the geologic conditions and future mitigation efforts were evaluated in prior geotechnical reports and the prior report’s conclusions remain relevant. The prior report referenced in Resolution

PC2023-021 analyzed alternatives to the soldier piles such as re-grading the slopes to a stable slope ratio and a mechanical solution of installing tiebacks and grade beams. However, the report concluded that the soldier pile solution is the least environmentally damaging alternative because it would result in the least amount of disturbance to the coastal bluff and biological resources. It would also not be visible on the bluff face and would still achieve the minimum factor of safety for the residential structures. The report indicates that the soldier piles would not be visible for approximately 50 to 150 years, and only if the slope has eroded, retreated, or failed to the locations of the piles. The proposed minor change would not impact the conclusions of the prior alternatives analysis.

5. Section 21.30.100(E)(8) (Landform Alteration) of the NBMC requires that development be sited and designed to minimize removal of vegetation and the alteration of rock outcroppings and other natural landforms. The proposed minor changes would be consistent with the original CDP and would result in similar, minimal vegetation removal and the soldier piles would still remain landward of the bluff face.
6. The proposed soldier piles would be located below grade; therefore, no impacts to public views are anticipated as part of the minor changes.
7. The proposed minor changes are remaining consistent with the findings of approval for the previously approved CDP and the conditions of approval set forth by Resolution No. PC2023-021.

Finding:

- B. *Do not involve a feature of the project that was a basis for subject of findings or exemptions in a negative declaration or Environmental Impact Report for the project.*

Fact in Support of Finding:

1. The approved project was found to be categorically exempt from the requirements of CEQA pursuant to Section 15301 under Class 1 (Existing Facilities) and Section 15303 under Class 3 (New Construction or Conversion of Small Structures). The Class 1 exemption includes the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use. The Class 3 exemption includes the construction of new small facilities or structures such as utility improvements and residential accessory structures. The proposed minor changes do not involve a feature of the project that was a basis for the referenced exemptions and will not compromise the original categorical exemptions under the California Environmental Quality Act (CEQA) Guidelines.

Finding:

- C. *Do not involve a feature of the project that was specifically addressed or was the subject of a condition(s) of approval for the project or that was a specific consideration by the applicable review authority in the project approval.*

Facts in Support of Finding:

1. The proposed minor changes do not involve a feature that was specifically addressed in the public hearing, resolution, or staff report prepared for the previous action reviewed under PA2023-0034.
2. The soldier pile walls are an approved component of the project, and the conditions of approval did not detail the allowed length or size of the soldier pile walls. Only conceptual plans were evaluated as part of the project, and the detailed design plans will be reviewed as part of the Building Permit process.
3. The project does not include any physical changes that would conflict with the existing CDP conditions of approval, as the plans are substantially conforming with the original CDP plans. Building permits are required for any construction at the project site and plans must comply with all conditions of approval of the Resolution No. PC2023-021.
4. The proposed minor changes have been reviewed by relevant departments including the Building Division. No additional conditions were required.

Finding:

- D. *Do not result in an expansion or change in operational characteristics of the use.*

Fact in Support of Finding:

1. The project site is located within the Park Newport Planned Community (PC-7). The proposed minor changes comply with all applicable residential development standards and would not result in an expansion or change in operational characteristics of the residential use of the site. The increased length of the proposed soldier pile walls will protect the existing residential use but would not change the operational characteristics or expand the use.

Finding:

- E. *Do not alter the facts in support of the findings required by Section 21.52.015 (F) and any other application section of this Implementation Plan.*

Fact in Support of Finding:

1. As detailed under Finding A, the project would remain consistent with the Implementation Plan and the proposed minor changes to the soldier pile walls will not alter the facts in support of Findings for Resolution No. PC2023-021. The length and specific location of the soldier pile walls were not limited through specific facts in the approved CDP. The minor changes proposed represent the minimum necessary basis of design for the project to be implemented in a manner that upholds the spirit and intent of the original approval.

IV. CONDITIONS OF APPROVAL

All previous findings and conditions of approval of the Coastal Development Permit filed as PA2023-0034 shall remain in full force and effect, as included as Exhibit "A" to Resolution No. PC2023-021 and provided in Attachment No. CD 2. The following conditions are specific to this determination:

1. All applicable conditions of approval for Coastal Development Permit filed under PA2023-0034 shall remain in effect.
2. The development shall be in substantial conformance with Figures 1 and 2 of the attached Langan Memorandum dated August 17, 2023 (Attachment No. CD 3).
3. This approval does not relieve the applicant of compliance with other City or State requirements. A building permit shall be required for any improvements.
4. 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 Park Newport Bluff Stabilization Project including, but not limited to, the Staff Approval filed under PA2023-0161. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

APPEAL PERIOD: An appeal or call for review may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the

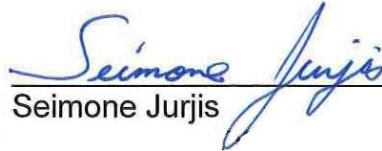
action or decision was rendered. For additional information on filing an appeal, contact the Planning Division at 949 644-3200.

Prepared by:

Approved by:



Liz Westmoreland, Senior Planner



Seimone Jurjis

Assistant City Manager

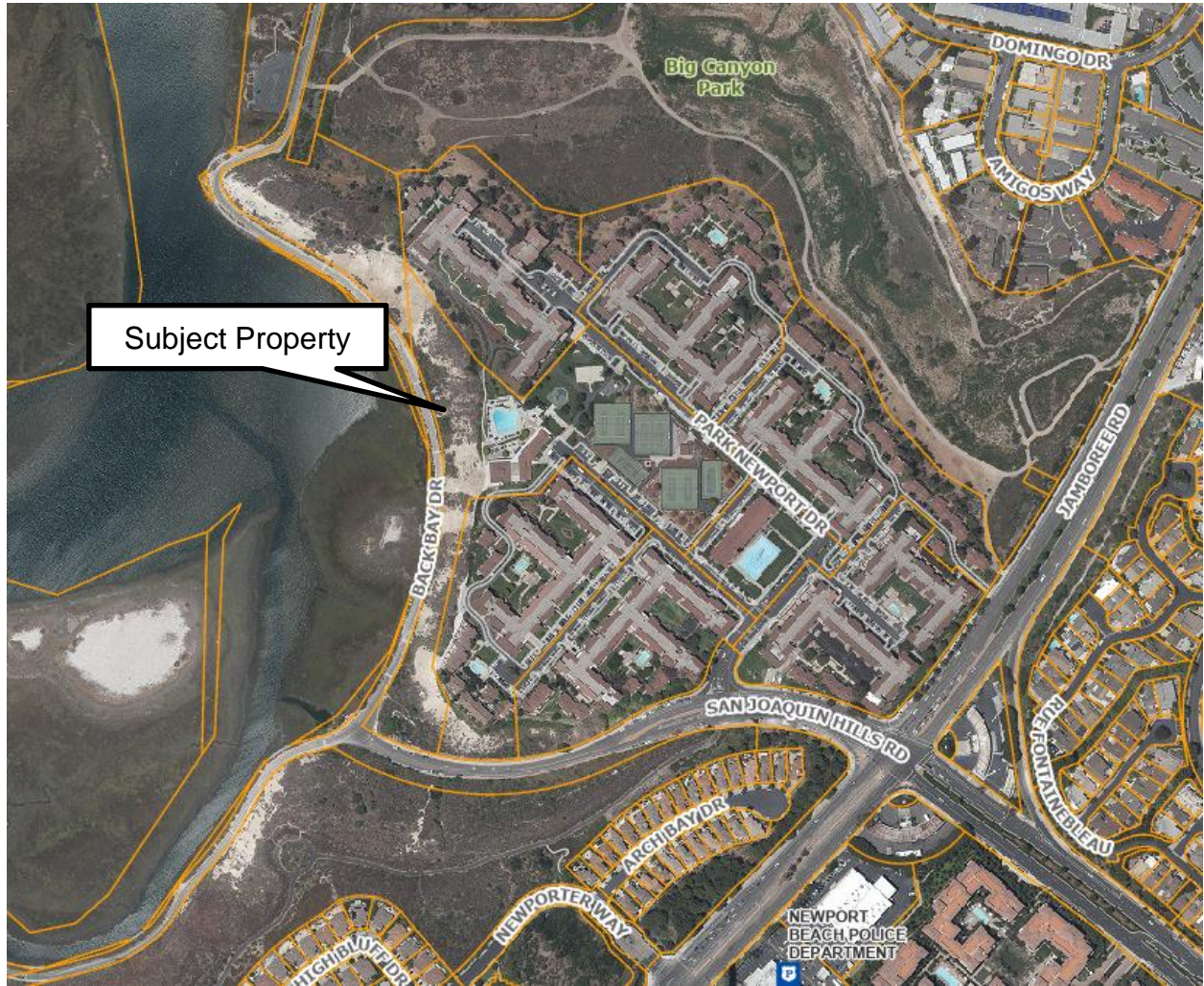
BMZ/law

- Attachments: CD 1 Vicinity Map
CD 2 Resolution No. PC2023-021
CD 3 Langan Memorandum (August 17, 2023)

Attachment No. CD 1

Vicinity Map

VICINITY MAP



Staff Approval (PA2023-0161)
Park Newport Bluff Stabilization Project

5000 Park Newport

Attachment No. CD 2

Resolution No. PC2023-021

RESOLUTION NO. PC2023-021

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING A COASTAL DEVELOPMENT PERMIT TO ALLOW LANDSLIDE AND ROCK FALL MITIGATION AND A WAIVER OF CITY COUNCIL POLICY L-6 FOR A MULTI-UNIT APARTMENT COMPLEX LOCATED AT 5000 PARK NEWPORT DRIVE (PA2023-0034)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Park Newport Land LTD, a California limited partnership (“Owner”), with respect to property located at 5000 Park Newport Drive, and legally described as Parcel 1 of Lot Line Adjustment No 94-01 recorded as Document # 94-0092253 in the office of the County Recorder of Orange County (“Property”), requesting approval of an encroachment permit and coastal development permit (“CDP”).
2. A landslide occurred at the Property on June 26, 2020, which resulted in the temporary closure of Back Bay Drive to vehicular traffic.
3. The Owner retained Hetherington Engineering, Inc. a professionally licensed engineering and geology firm (“Hetherington”), to assess the risk of further slope failure and assist with remediating the landslide area. On January 6, 2021, Hetherington issued a geotechnical opinion letter that concluded there is an imminent risk of future rockfalls at the Property due to a steeply inclined scarp along the upper portion of the landslide area. The letter recommended installation of an anchored rockfall mesh at the head of the scarp of the landslide area and k-rail barrier along the toe of the slope as soon as possible.
4. On January 20, 2021, the Owner submitted a request for an emergency CDP to install the measures identified in the Hetherington recommendation. Emergency CDP No. CD2021-001 was subsequently approved by the Community Development Director on January 22, 2021.
5. Consistent with the Conditions of Approval for CD2021-001 and CD2021-066, the Owner submitted a request for a CDP on April 22, 2021, to permanently authorize the work completed under the two emergency CDPs. The CDP request included additional landslide mitigation consisting of the installation of soldier piles to protect two existing multi-unit residential structures based on the recommendation from Hetherington dated March 29, 2021.
6. On October 21, 2021, Hetherington issued a third geotechnical opinion letter that concluded there was an imminent risk of future landslides during significant rain events and recommended the immediate installation of temporary tarps along selected portions of the Property for the duration of the rainy season.

7. Also on October 21, 2021, the Owner submitted a second emergency CDP request to install temporary tarps consistent with Hetherington's recommendation. Emergency CDP No. CD2021-066 was approved by the Community Development Director on October 26, 2021. The previously submitted application for a CDP was updated to include a request for seasonal tarping every year during the rainy season.
8. The Property is bordered by public property along the Newport Beach Back Bay, including the Back Bay Drive public trail. The Owner requested approval to retain the existing non-compliant improvements within the public right-of-way, consisting of three sections of temporary k-rail that encroach up to 12 feet, 8 inches into the 40-foot-wide public right-of-way at the Property. The Back Bay Drive parkway within the public right-of-way varies in width from approximately eight feet to fifteen feet from edge of pavement to the subject property line. City Council Policy L-6 ("Policy L-6") limits encroachments to a one foot projection into the right-of-way or less than 36 inches in height.
9. The requested encroachments were not specifically provided for within Policy L-6. Thus, the encroachment is prohibited under Section A (Private encroachments that are prohibited without a waiver and approval) of said Policy. Due to this prohibition, the requested encroachment could only be approved upon the waiver of Policy L-6 and approval of an encroachment permit by the Planning Commission.
10. A duly noticed public hearing was held on April 21, 2022, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with the California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and Chapter 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing.
11. At the conclusion of the public hearing, the Planning Commission unanimously approved the Project (7-0) in its entirety. No appeals were filed locally with the City of Newport Beach.
12. On May 11, 2022, Juliette and Todd Worthe ("Appellants") filed a timely appeal of the Project with the California Coastal Commission ("CCC").
13. On July 13, 2022, the CCC found substantial issue with the City's approval. The CCC determined that the City's conclusion that the development is consistent with the provisions of the LCP was not adequately supported by documents in the record file or the City's findings. The Appellants' concerns related only to aesthetic impacts to the bluff from the placement of tarps during the rainy season (October to April).
14. On October 11, 2022, Rock Solid Geotechnical issued a temporary tarp placement letter that concluded there is an imminent risk of impacts to Back Bay Drive and the public if the tarps are not installed prior to significant rainfall.
15. On October 14, 2022, the Owner requested an emergency CDP for seasonal tarping recommended by Rock Solid Geotechnical. The CCC supported the Owner's request and on October 14, 2022, the Community Development Department Director approved the

Emergency CDP filed as PA2022-0233. The tarps were installed on the bluff shortly thereafter to be removed at the end of the rainy season.

16. On February 7, 2023, the Owner consulted with the CCC to withdraw their application with the CCC and applied for a new CDP with the City. As part of this new application submittal, the Owner modified the request to reduce the visual impact of the seasonal tarps through use of clear tarps with burlap. Other modifications to the prior CDP request include installation of smaller piles (i.e., "micropiles") and tieback anchors recommended by Rock Solid Geotechnical in their report dated January 25, 2023 ("Project"). The Project remains largely the same as the original project approved by the Planning Commission on April 21, 2022.
17. The Property is designated by the General Plan Land Use Element as RM (Multiple Residential) and is in the Planned Community 7-Park Newport Zoning District.
18. The Property is in the Coastal Zone. The Coastal Land Use Plan designation is RM-D (Multiple Unit Residential) - (20.0 -29.9 DU/AC) and it is located within the Planned Community 7 -Park Newport (PC-7) Coastal Zoning District.
19. A public hearing was held on May 4, 2023, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with the Ralph M. Brown Act and Chapter 21.62 (Public Hearings) of the NBMC, and Council Policy L-6 (Encroachments in Public Rights-of-Way). Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

This Project is categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15269 (c) (the activity is necessary to prevent or mitigate an emergency), Section 15301 under Class 1 (Existing Facilities), and 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. Section 15269 allows specific actions necessary to prevent or mitigate an emergency. The Project is necessary to mitigate and reduce the immediate risks associated with rock, soil, or other debris from falling on to Back Bay Drive during a potential rain event. The Class 1 exemption includes the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use. The Class 3 exemption includes the construction of new small facilities or structures such as utility improvements and residential accessory structures. There are no known exceptions listed in CEQA Guidelines Section 15300.2 that would invalidate the use of these exemptions because the project is not located near a scenic highway, hazardous waste site, or historic resource and there are no other unusual circumstances or cumulative impacts related to the project.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The Project complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking. The Project includes retaining the existing steel mesh on the bluff face, the use of seasonal tarping, and the installation of micropiles (i.e., small soldier piles), which are underground structures. Minor grading and drainage are proposed along the top of the bluff to ensure that water drains away from the bluff face. None of the Project features would impact parking, height, setbacks, or floor area of the existing residential structures on site.
2. Section 21.52.025 (Emergency Coastal Development Permits) of the NBMC, allows for the issuance of emergency coastal development permits where, “[I]n the event of a verified emergency, temporary permits to proceed with remedial measures may be authorized by the Director until such time as a full coastal development permit shall be filed.”
 - a. Based upon the January 6, 2021, and October 21, 2021, geotechnical opinion letters issued by Hetherington which concluded there is an imminent risk of future landslides without immediate mitigation, the Community Development Director verified that an emergency existed and authorized immediate action via emergency CDP Nos. CD2021-001 and CD2021-066 to prevent/mitigate loss or damage to life, health, property and essential public services.
 - b. Based upon the October 11, 2022 temporary tarp placement letter prepared by Rock Solid Geotechnical, which concluded that there is an imminent risk of impacts to Back Bay Drive and the public if the tarps are not installed prior to significant rainfall, the Community Development Director verified that an emergency existed and authorized immediate action via emergency coastal development permit PA2022-0233 to prevent/mitigate loss or damage to life, health, property and essential services.
3. The emergency work was conducted to stabilize the surface as mitigation for the purposes of maintaining public safety and to prevent future closure of Back Bay Drive due to fallen debris. This will ensure continuity of public access to the public parking lot located on Back Bay Drive.
4. Section 21.30.030(C)(3)(ii) (Protective Structures) of the NBMC allows construction of protective structures when designed to mitigate adverse impacts on local shoreline sand supply and existing structures that are “*Threatened by natural hazards, provided*

that the protective structures are limited to the minimum required to protect the existing structure and located on private land, not State lands.”

- a. The Park Newport Apartments on the Property were constructed in 1969, which predates the Coastal Act of 1976 and are considered existing structures located on private land.
 - b. Based upon a history of six recorded landslides on the Property dating back to 1978 and existing slope conditions that are described by Hetherington as “grossly and surficially unstable from an engineering geologic and geotechnical engineering perspective,” two existing multi-unit residential structures (Building 4 & Unit 4830/Clubhouse) are threatened by landslide and require further mitigation in the form of soldier pile installation, in combination with the use of temporary tarping at select locations along the slope during the rainy season.
 - c. A Geotechnical Summary of Proposed Landslide Mitigation was prepared by Rock Solid Geotechnical, dated January 25, 2023, to reevaluate Hetherington’s proposed solutions to protect the existing residential structures at the subject property. The report states that, due to the height, steep slope ratio, existing landslides, locally adverse geologic structure, and poor-quality bedrock exposed on the coastal bluff, the slope is considered grossly and surficially unstable from an engineering geologic and geotechnical engineering perspective. The report recommends mitigation in the form of extending the clubhouse soldier piles to the south and installing micropiles (small soldier piles) and tiebacks southeast of Building 4, which is substantially consistent with the Hetherington reports.
5. Section 21.30.030(C)(3)(d) (Protective Structures) of the NBMC requires that protective devices, such as the proposed micropiles, be designed and sited to: (1) be as far landward as possible and within private property; (2) eliminate or mitigate adverse impacts to coastal resources; (3) minimize alteration of natural processes; (4) provide for public access to State tidelands and recreational areas; and (5) minimize visual impacts and maximize the enjoyment of the natural shoreline environment.
- a. The proposed micropiles are located as far landward as possible within the Property. The landslide and rockfall mitigation measures would prevent future adverse impacts to coastal access through landslides and rockfalls onto the Back Bay trail. Lastly, as conditioned, the seasonal tarping would minimize visual impacts and retain the aesthetic qualities of the bluff by using tarps that blend into the landscape.
 - b. Several alternatives to address the geologic conditions and future mitigation efforts were evaluated by Hetherington in a report dated April 21, 2022. The report analyzes alternatives to the soldier piles such as re-grading the slopes to a stable slope ratio and a mechanical solution of installing tiebacks and grade beams. However, the report concludes that the soldier pile solution is

the least environmentally damaging alternative because it would result in the least amount of disturbance to the coastal bluff and biological resources. It would further not be visible on the bluff face and would still achieve the minimum factor of safety for the residential structures. The report indicates that the soldier piles would not be visible for approximately 50 to 150 years, and only if the slope has eroded, retreated, or failed to the locations of the piles.

- c. An additional alternative was evaluated in a memorandum prepared by Kane Geotech Inc., dated April 5, 2023. The memorandum evaluated retrofitting piles underneath the existing structures (i.e., underpinning) and low impact solutions such as soil nails with high strength steel mesh and erosion control matting. However, the report concluded that the retrofitting of piles was deemed to be overly complex, incur a high risk of damaging the existing structures, risked public safety, and would be cost inefficient compared with other stabilization measures. The soil nails and steel mesh and erosion control matting were unviable due to property limits and construction restrictions on the slope. Therefore, both Hetherington and Kane Geotech Inc. have indicated that the proposed soldier or micropiles are the least damaging environmental alternative that would provide protection to the existing residential structures.

6. The location on the Property is a coastal bluff that is identified as an Environmentally Sensitive Habitat Area (“ESHA”). Section 21.30B.060(A) (Mitigation and Monitoring) of the NBMC requires mitigation and monitoring programs including restoration and management programs in conjunction with coastal development permits in ESHA areas.

- a. The Property is located within the Orange County Central Coastal Natural Communities Conservation Plan (“NCCP”). Therefore, in accordance with the NCCP Construction Measures requirements, surveys were conducted on-site prior to installation of the metal mesh. A technical memorandum was prepared by Glen Lukos Associates (“Glen Lukos”) dated February 17, 2021, to document the findings of a pre-construction survey for the federally-listed coastal California gnatcatcher and coastal cactus wren. The survey concluded that the project area subject to repairs contained no coastal sage scrub or cactus wren habitat and no coastal California gnatcatchers or cactus wren were detected. Nonetheless, a pre-construction survey was recommended for future construction on the site.
- b. A second technical memorandum was prepared by Glen Lukos, dated April 19, 2021, to evaluate potential impacts related to the proposed soldier pile construction. Based on Glen Lukos’ review, the project would not impact native habitats. Nonetheless, to comply with the NCCP Construction Minimization Measures, pre-construction surveys were recommended to ensure protection of the California Gnatcatcher and coastal cactus wren. Condition of Approval 10 is included to require the recommended pre-construction surveys.

-
- c. Impacts from the proposed seasonal tarping were evaluated by Glen Lukos in a technical memorandum dated August 26, 2022. The report concluded that the areas of tarping are steep, lack topsoil, and are highly erosive. The tarping locations are unvegetated with small exceptions that, as conditioned, would be cut out from the tarps during installation. The tarps would be installed and removed each rainy season in a manner that does not encroach into adjacent native vegetation. The report also concludes that the slope areas receiving seasonal protection from installation of the tarps are not expected to support vegetation in the absence of the tarps and the slope protection does not appear to pose an adverse effect on vegetation on the steep barren slopes. Condition of Approval 9 is included to require that the tarps be installed and removed in compliance with the recommendations of the August 26, 2022 report.
7. Section 21.30.100(E)(8) (Landform Alteration) of the NBMC requires that development be sited and design to minimize removal of vegetation and the alteration of rock outcroppings and other natural landforms.
- a. The technical memoranda prepared by Glen Lukos Associates indicate that there is limited vegetation within the Project area due to the steep slope and erosion on the bluff face. The proposed seasonal tarping is required to install cut outs in the material to allow any small areas of remaining vegetation to grow. Additionally, the project includes revegetating areas of the slope with a native seed mix to encourage new vegetation growth.
- b. The Project includes the minimum mitigation necessary to stabilize the bluff. The bluff face would be altered temporarily during the seasonal tarping, which would not permanently impact the landform. The tarps have been conditioned to blend into the existing bluff face landform. The proposed micropiles are proposed in two locations that are directly adjacent to Building 4 and the Building 37 (Clubhouse)/Unit 4830. The micropiles are located as far landward as possible and according to Heatherington, would not be visible for at least 50 to 150 years should the bluff continue to erode. Lastly, the existing metal mesh system is necessary to protect the public on the Back Bay trail below from falling rocks and boulders. The metal mesh consists of approximately 3,000 square feet, which is a very small portion of the approximately 311,300-square-foot bluff face within the Property. The metal mesh allows the bluff face below to be visible through the holes in the mesh, offsetting the visual impact of the mesh.
8. The Property is in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (“CBC”) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance.

9. The Project site is located adjacent to and immediately east of Back Bay Drive, which is a designated public view road in the Coastal Land Use Plan and offers public views of Upper Newport Bay. Site evaluation revealed that the proposed landslide/rockfall mitigation improvements will not affect the existing views afforded from Back Bay Drive as the Project improvements are located landward of Upper Newport Bay. In addition, tarping of the slope has been limited through conditions of approval to only allow minimum times of the year when heavy rains are likely to occur and pose the greatest risk of landslide/slope failure. 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.

10. Local Coastal Program Policy 4.4.1-1 requires new development to protect coastal views along the ocean, bay, harbor, coastal bluffs and other coastal resources. The proposed tarps and sandbags are the least visually and physically intrusive alternative that would provide protection to the bluff while also not permanently altering the bluff.
 - a. The tarps are conditioned to be a clear visqueen (or similar plastic) material with burlap or jute covering to blend with the natural color of the bluff. Based on the provided visual impact analysis, the existing bluff scarps are evident from close and distant vantage points and the proposed tarping would cover the existing scarp footprints. The Project is also conditioned to restrict the anchoring sandbags to natural brown or tan colors as well (Condition of Approval 5).

 - b. Proposed tarping would be limited to the areas shown in the approved plans, which includes three areas along the approximately 1,300-linear foot bluff face (133,300 square feet) within subject property. The proposed square footage of the tarps would be limited to approximately 28,500 square feet.

 - c. The seasonal tarping component of this coastal development permit is valid for 10 years maximum from the effective date of this approval, so that new alternatives can be evaluated in the future based on current conditions and technologies that may be available.

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 not located between the nearest public road and the sea or shoreline. Section 21.30A.040 (Determination of Public Access/Recreation Impacts) of the NBMC 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 mitigates future landslide risk and protects Back Bay Drive, which serves as a popular public recreation amenity through its use as a cycling, walking and jogging route. 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. The existing k-rails to be maintained are located on public property but would not impact use of the existing Back Bay trail because the k-rails are located along the edge of the trail. Furthermore, the Project is designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.

In accordance with City Council Policy L-6 (Encroachments in the Public Rights-of-Way), the following findings and facts in support of such findings are set forth:

Finding:

C. The existing private improvements will not be a detriment to the health, safety and welfare of the public.

Facts in Support of Finding:

1. The Project does not hinder the present or future use of the public right-of-way, including sidewalks, and there are no existing City utilities located within the encroachment area.
2. The Back Bay Drive parkway within the public right-of-way varies in width from approximately 8 feet to 15 feet wide of the overall 40-foot right-of-way width. The requested encroachments project up to 12-feet 8-inches into the parkway.
3. The Project does not diminish the rights of the public along the Back Bay Drive right-of-way. There are no sidewalks along Back Bay Drive adjacent to the Project and the City does not currently have plans to install sidewalks.
4. The Back Bay Drive parkway generally slopes upward toward private property. The top of slope is approximately 86 feet above the road surface of Back Bay Drive.
5. Approval would require the Owner to enter into an Encroachment Agreement to allow the existing improvements as requested, and any liability associated with the existing private improvements would be transferred to the Owner. Additionally, if the need for public improvements should arise in the future, Owner shall agree to remove all encroachments at no cost to the City.

Finding:

D. The individual circumstances applicable to this application and the existing encroachment are consistent with the public interest.

Facts in Support of Finding:

1. The k-rail is necessary to minimize slope debris onto the roadway to maintain access along Back Bay Drive. The k-rail along Section 2 was installed in 2021 as part of Coastal Development Permit No. CD2021-001 for emergency slope repair and future slope stabilization measures. It is unclear when Section 1 and Section 3 were installed.

2. The maximum height of proposed structures in the right-of-way will not exceed 36 inches in height above the adjacent pavement surface. Public views along the Back Bay Drive will remain unobstructed.
3. There are no existing City utilities within the encroachment area.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby finds this Project is categorically exempt from the California Environmental Quality Act (“CEQA”) pursuant to Section 15301 and Section 15303 under Class 1 (Existing Facilities) and 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. There are no known exceptions listed in CEQA Guidelines Section 15300.2 that would invalidate the use of these exemptions because the project is not located near a scenic highway, hazardous waste site, or historic resource and there are no other unusual circumstances or cumulative impacts related to the project.
2. The Planning Commission of the City of Newport Beach hereby approves the CDP filed as PA2023-0034, 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 Implementation Plan, of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 of the City’s certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

PASSED, APPROVED, AND ADOPTED THIS 4TH DAY OF MAY, 2023.

AYES: Barto, Ellmore, Harris, Klaustermeier, Langford, Lowrey, and Rosene

NOES: None

ABSTAIN: None

ABSENT: None

BY: 
Curtis Ellmore, Chair

BY: 
Sarah Klaustermeier, Secretary

EXHIBIT “A”

CONDITIONS OF APPROVAL

Planning Division

1. The development shall be in substantial conformance with the approved site plan stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The Project is subject to all applicable City ordinances, policies, and standards unless specifically waived or modified by the conditions of approval.
3. The Owner, or future owner, shall comply with all federal, state, and local laws. A material violation of any of those laws in connection with the use may be caused the revocation of this CDP.
4. *Protective devices authorized under this Coastal Development Permit shall be removed to the maximum extent feasible, when the existing structures requiring protection are no longer present or if there is a major remodel negating the protection, whichever comes first.*
5. *Tarps shall be clear in color with burlap or jute materials on top of the entire extent of the tarp to blend in with the bluff face. Similar colored material (tan or buff) shall be used for the sandbags that secure the tarps. The use of bright contrasting colors such as orange, yellow, or black shall be prohibited. After installation of temporary tarping during the rainy season, the Planning Division shall conduct a site investigation of the tarps to confirm compliance with the allowed color and design of the tarps.*
6. *Temporary tarping shall be limited to the months of October to the end of April to coincide with Southern California’s rainy season, unless it is determined that the rainy season has shifted to a different timeframe.*
7. *All temporary tarping authorized by this permit shall be limited to a 10-year period that shall commence upon the effective date of this approval once all appeal periods have expired.*
8. *All temporary tarping shall be limited to the approximate locations on the approved plans.*
9. *All temporary tarping shall be installed and removed in a manner that avoids native vegetation. The tarps shall be installed to the edge of any vegetation or allow for “cut outs” where local patches of vegetation are avoided and protected in place.*
10. *Prior to the commencement of grading operations or other activities involving disturbances to coastal sage scrub (including installation of seasonal tarping), a survey shall be conducted to locate gnatcatchers and cactus wrens within 100 feet of the outer*

extent of projected soil disturbance activities, and the locations of any such species shall be clearly marked and identified on the construction/grading plans.

11. This approval does not authorize any new or existing improvements (including landscaping) on California Coastal Commission Permit Jurisdiction, State tidelands, or public beaches. Any improvements located on tidelands, submerged lands, and/or lands that may be subject to the public trust shall require a CDP approved by the CCC.
12. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter sensitive habitat, receiving waters, or a storm drain or result in impacts to environmentally sensitive habitat areas, streams, the beach, wetlands or their buffers. No demolition or construction materials shall be stored on public property.
13. The Owner is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of native birds pursuant to MBTA:
 - A. The construction area shall be inspected for active nests. If birds are observed flying from a nest or sitting on a nest, it can be assumed that the nest is active. Construction activity within 300 feet of an active nest shall be delayed until the nest is no longer active. Continue to observe the nest until the chicks have left the nest and activity is no longer observed. When the nest is no longer active, construction activity can continue in the nest area.
 - B. It is a violation of state and federal law to kill or harm a native bird. To ensure compliance, consider hiring a biologist to assist with the survey for nesting birds, and to determine when it is safe to commence construction activities. If an active nest is found, one or two short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.
14. This CDP may be modified or revoked by the Planning Commission should they determine that the proposed uses or conditions under which it is being operated or maintained are detrimental to the public health, welfare, or materially injurious to property or improvements in the vicinity or if the property is operated or maintained to constitute a public nuisance.
15. Any substantial change or other modification to the approved plans, shall require subsequent review by the Planning Division and, depending on the scope of the change, may require an amendment to this CDP or the processing of a new CDP.
16. A copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans before issuance of the building permits.

17. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
18. Prior to issuance of a building permit, a construction erosion control plan shall be provided. 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.
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 NBMC. 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 AM and 10 PM		Between the hours of 10 PM and 7 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

20. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or leasing agent.
21. Construction activities shall comply with Section 10.28.040 of the NBMC, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7 a.m. and 6:30 p.m., Monday through Friday, and 8 a.m. and 6 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.
22. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 21 (Local Coastal Program Implementation Plan) of the NBMC.
23. 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 Park Newport Landslide and Rock Fall Mitigation Project including, but not limited to PA2023-0034. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorney's fees, and

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

Building Division

24. The Owner 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 as applicable.
25. Prior to the issuance of a building permit, the applicant shall submit a Soils and Geology Report to the Building Division for review. The contents of soils and geology report shall include but are not limited to static slope stability analysis, seismic slope stability analysis, lateral earth pressure analysis, minimum field exploration, laboratory testing, and design recommendations. The report shall comply with City Policy "Geotechnical Investigation" document.
26. Prior to the issuance of a building permit for the soldier piles, the project plans or reports shall indicate that the soldier piles and tieback anchors account for seismic and creep loads.
27. Prior to the issuance of a building permit, grading and drainage plans shall be provided to demonstrate that surface sheet flow will not go over the top of the bluff. The plans shall indicate any drainage control measures that are required to divert stormwater from draining over the slope.

Public Works Department

28. The Owner shall obtain an "After the Fact" Encroachment Permit to allow three sections of k-rail that encroach up to 12 feet 8-inches into the Back Bay Drive public right-of-way with a waiver of City Council Policy L-6, Section A (Private Encroachments that are Prohibited Without a Waiver and Approval).
29. The Owner shall enter an encroachment agreement within one (1) calendar year upon receipt of approval, otherwise this approval shall automatically expire.
30. This Encroachment Permit allows three sections of K-rail that encroach up to 12 feet 8-inches into the Back Bay Drive public right-of-way with a waiver of City Council Policy L-6, Section A.

31. Crash cushions shall be installed at the beginning of each k-rail section. The design shall be reviewed and approved by the Public Works Department prior to fabrication and installation.
32. The Owner shall immediately remove any slope debris from the roadway surface.
33. At least monthly, the Owner shall inspect the Project site and shall promptly remove debris behind and around the k-rail.
34. If the need for public improvements arises in the future, the Owner shall remove all encroachments at no cost to the City.

Attachment No. CD 3

Langan Memorandum (August 17, 2023)

18575 Jamboree Road, Suite 150 Irvine, CA 92612 T: 949.561.9200 F: 949.561.9201

To: Don Bragg and Lisa Congdon, The Prado Group

CC: Kari Heavenrich and Brian Howe, Rockpoint

From: Christopher J. Zadoorian

Date: August 17, 2023

Re: Basis of Design and Associated Updates to Previously Approved Soldier Piles and Landslide Mitigation Measures
Previous City of Newport Beach Approval CDP PA 2023-0034
Park Newport Apartment Complex
1 Park Newport
Newport Beach, California
Langan Project No.: 700128101

Langan Engineering and Environmental Services Inc. (LANGAN) is pleased to submit this memo summarizing our basis of design for installation of the soldier piles needed to protect existing, principal residential structures at the Park Newport Apartment Complex located on 1 Park Newport in Newport Beach, California.

The site is located at the northwest corner of Jamboree Road and San Joaquin Hills Road and is bound on the north by Big Canyon Nature Park and on the west by Upper Newport Bay (aka Back Bay) and Back Bay Drive as shown on Figure 1. The site is situated on a coastal bluff that includes descending slopes up to approximately 90 feet in height with gradients commonly ranging from approximately ½:1 to 1½:1 (horizontal:vertical) and in some cases near vertical.

The site was developed between 1969 and 1972 and includes large footprint apartment buildings and small footprint townhomes as shown on Figure 2. Since construction, several episodes of mitigation have been implemented to address slope failures primarily along the west and northwest descending slopes.

We are currently performing a design-level geotechnical evaluation and will issue the results of our investigation in a report. In the interim, this memorandum summarizes recommended alignment of the soldier piles and conceptual design parameters.

Soldier pile have previously been proposed and approved by the City of Newport Beach (CDP PA 2023-0034) along the westerly sides of Buildings 4 and 37. The mitigation structures described herein are substantially the same kind of soldier pile structures as summarized in and authorized by the previously approved CDP, but with nominal changes made to the precise locations and lengths of the installation. The intent of the soldier piles to protect the existing residential structures and account for applicable geotechnical and structural (including seismic) loads.

To aid in our evaluation, you furnished us with reports of geotechnical investigation for our review prepared by several firms including LeRoy Crandall & Associates (LCA, 1968, 1969 and

MEMO

1979), Hetherington Engineering, Inc. (HEI, 2021) and Rock Solid (2022 and 2023). Pertinent borings from the prior investigations are presented in the attachment for reference.

Building 4

Building 4 is a four-level building that includes three above-grade apartment levels and one partial subterranean parking level as shown on Figure 1. The foundation elements of Building 4 are present within the subterranean level and these elements provide critical axial and lateral support for the residential dwellings located in this building.

Based on our review of as-built plans, the building is supported on shallow caissons that range from approximately six to 19 feet deep.

Mapped landslides, zones of rockfall and/or other portions of excessively steep slope are present along the westerly side of the building as summarized in the prior geotechnical reports. Several exploration borings were performed along the westerly side of Building 4 as shown on Figure 1. Based on our review of the prior boring data, a shear zone (zone of slippage) was logged in prior Borings 2 through 4 at depths ranging from 24 to 37 feet below the ground surface level in the borings (LCA, 1979).

Based on our review of the prior geotechnical reports, as-built foundation plans, existing conditions, and our independent site reconnaissance, it is our professional opinion that an approximately 300-foot-long soldier pile installation is required to provide adequate lateral support for the existing building. The proposed location of the mitigation structure is shown on Figure 1.

The rationale for the current recommended wall length is to provide support to the foundation elements of residential Building 4 within areas of observed distress and/or zones of slope instability.

The proposed soldier piles may consist of 24- to 36-inch diameter cast-in-drilled hole (CIDH) shaft soldier piles noting that permanent tie-back anchors may also be incorporated. We anticipate soldier piles will range on the order of 30 to 60 feet deep and tie-back anchors to extend approximately 50 to 75 feet at a typical inclination of approximately 20 degrees from the horizontal. Soldier piles and tie-back anchors will be located below ground.

Building 36 / 37

Building 36 and 37 are two-level townhomes established at approximately the existing ground surface level. Based on our review of as-built plans, the building is supported on shallow spread and continuous footings.

Mapped landslides and excessively steep slope are present along the westerly side of the building as summarized in the prior geotechnical reports. A temporary mitigation measure consisting of steel-link mesh was installed in response to a surficial landslide that occurred circa 2020.

MEMO

*Basis of Design and Associated Updates
to Previously Approved Soldier Piles
and Landslide Mitigation Measures
(City of Newport Beach CDP PA 2023)
Park Newport Apartment Complex
Langan Project No.: 700128101
August 17, 2023
Page 3 of 3*

Prior Boring 5 (LCA, 1968) does not indicate shear zones but does show relatively steep out of slope bedding planes that appear to be consistent with the 2020 landslide.

Based on our review of the prior geotechnical reports, as-built foundation plans, existing conditions, and our independent site reconnaissance, approximately 150 lineal feet of soldier pile are required to stabilize existing Building 37 and approximately 30 lineal feet of soldier piles are required to stabilize existing Building 36. The proposed locations of the soldier piles and related mitigations are shown on Figure 2.

The rationale for the recommended soldier piles is to protect the existing residential structures and provide lateral support needed due to the steep out-of-slope dipping condition (that is prone to sudden slippage) specifically at the westerly corner of Building 36.

Additionally, the westerly corner of existing Building 37 extends to within approximately 15 feet of the top (aka edge) of the slope and additional protection is required at this location as shown on Figure 2.

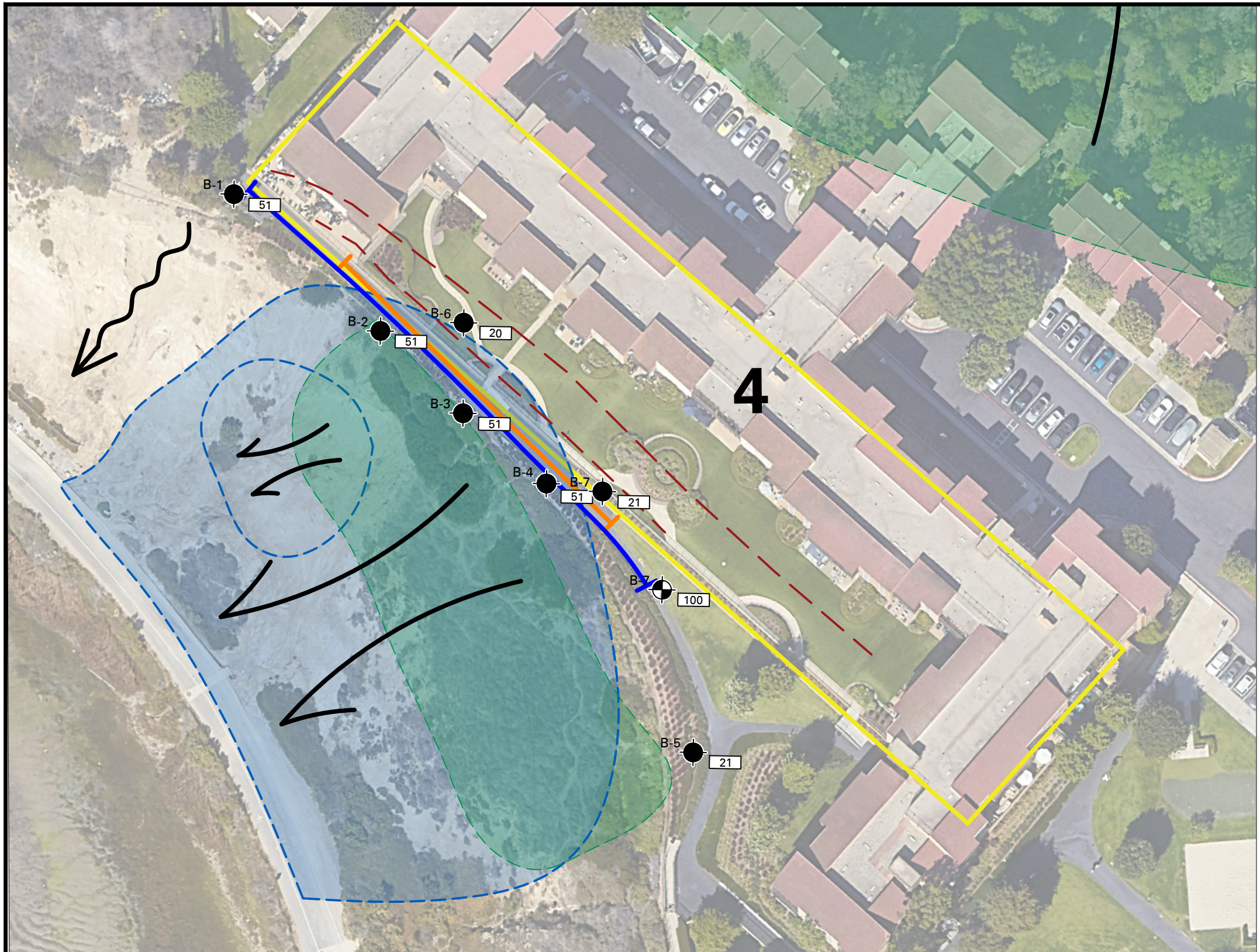
The proposed mitigation may consist of 24- to 36-inch diameter cast-in-drilled hole (CIDH) shaft soldier piles. We anticipate soldier piles will range on the order of 60 feet in depth. While tie-back anchors may increase stability, they may not be needed at this location and for the purposes of this basis of design memo have been omitted as access for tie-back anchor installation will be challenging. The protective structures described in this memo are intended to provide the minimum measures required to protect the existing principal residential dwellings.

Closing

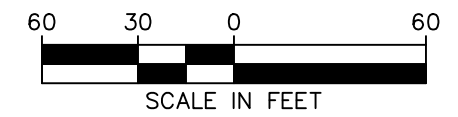
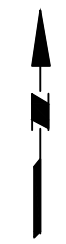
We appreciate the opportunity to provide professional services for you for this project. Please contact us with any questions or comments regarding the information presented herein.

Enclosures: Figures 1 and 2
Appendix – Prior Pertinent Boring Logs

FIGURES



- LEGEND:**
- PROPOSED SOLDIER PILE WALL (LANGAN, 2023)
 - PROPOSED SOLDIER PILE WALL CURRENTLY PART OF CDP PA2023-0034 (KGI, 2023)
 - EXISTING TENSION CRACKS IN BUILDING 4 FLOOR SLAB
 - APPROXIMATE LOCATION OF SUBTERRANEAN LEVEL OF BUILDING 4
 - B-1 PRIOR BORING LOCATION AND DEPTH IN FEET (LEROY CRANDALL, 1979)
 - B-7 PRIOR BORING LOCATION AND DEPTH IN FEET (LEROY CRANDALL, 1968)
 - LANDSLIDE ZONE (ROCKSOLID, 2023)
 - LANDSLIDE ZONE (LEROY CRANDALL, 1968)
 - SURFICIAL FAILURES/ EROSION/ROCKFALL
 - LANDSLIDE DIRECTION
 - BUILDING NUMBERS



LANGAN

Langan Engineering and Environmental Services, Inc.
18575 Jamboree Road Suite 150
Irvine, CA 92612

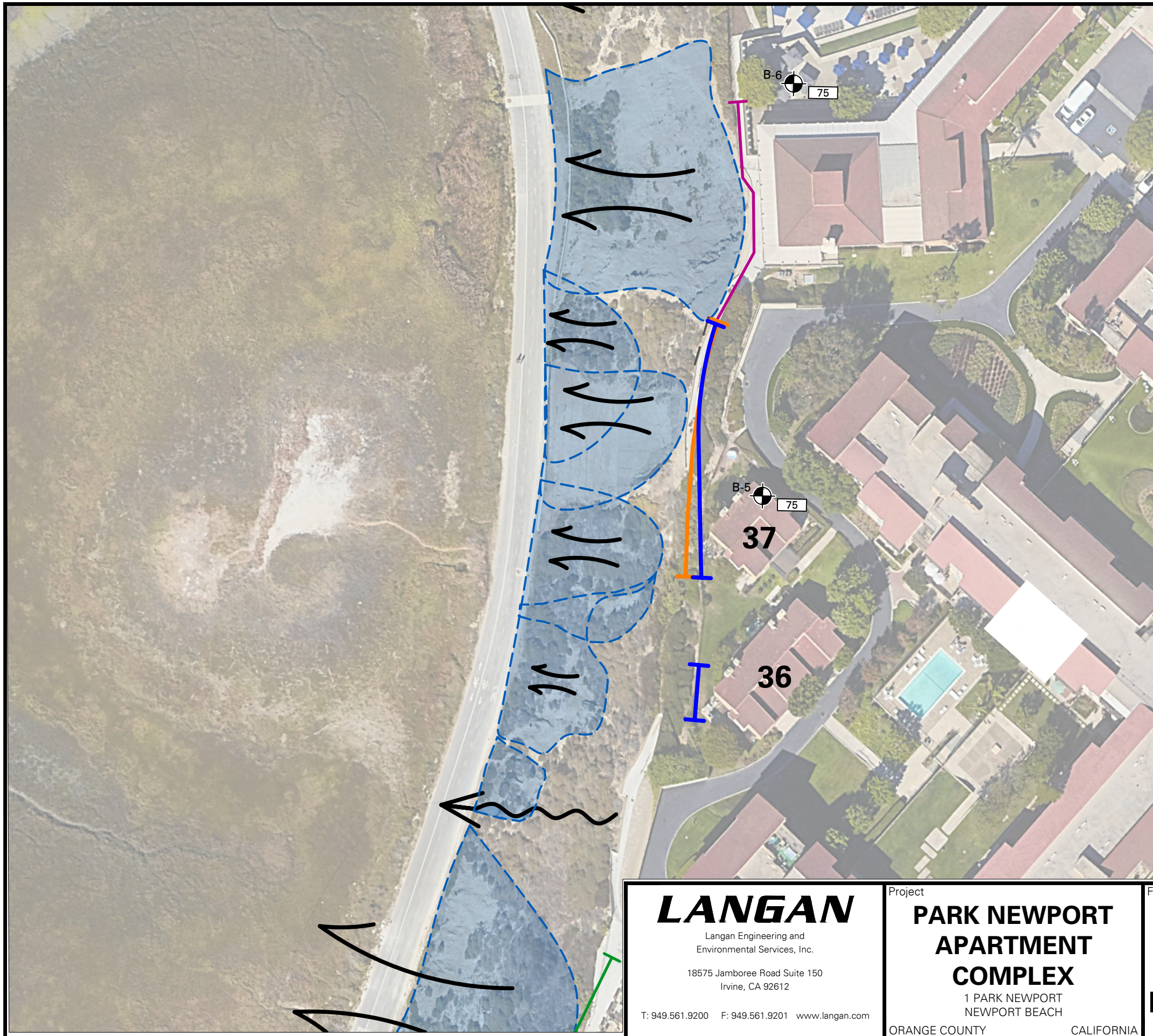
T: 949.561.9200 F: 949.561.9201 www.langan.com

Project
PARK NEWPORT APARTMENT COMPLEX
1 PARK NEWPORT NEWPORT BEACH
ORANGE COUNTY CALIFORNIA




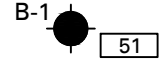
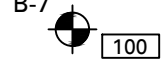





Figure Title
SOLDIER PILE WALL LOCATION BUILDING 4

Project No.
700128101
Date
AUGUST 2023
Scale
AS SHOWN
Drawn By
CC

Figure No.
1



LEGEND:

-  PROPOSED SOLDIER PILE WALL (LANGAN, 2023)
-  PROPOSED SOLDIER PILE WALL CURRENTLY PART OF CDP PA2023-0034 (KGI, 2023)
-  EXISTING SOLDIER PILE WALL, 36-INCH DIAMETER, 60 FEET DEEP, 7 FEET ON CENTER
-  B-1 PRIORITY BORING LOCATION AND DEPTH IN FEET (LEROY CRANDALL, 1979)
-  B-7 PRIORITY BORING LOCATION AND DEPTH IN FEET (LEROY CRANDALL, 1968)
-  LANDSLIDE ZONE (ROCKSOLID, 2023)
-  LANDSLIDE ZONE (LEROY CRANDALL, 1968)
-  SURFICIAL FAILURES/ EROSION/ROCKFALL
-  LANDSLIDE DIRECTION
-  BUILDING NUMBERS



<p>LANGAN Langan Engineering and Environmental Services, Inc. 18575 Jamboree Road Suite 150 Irvine, CA 92612 T: 949.561.9200 F: 949.561.9201 www.langan.com</p>	Project	Figure Title	Project No.	Figure No.
	PARK NEWPORT APARTMENT COMPLEX		700128101	2
	1 PARK NEWPORT NEWPORT BEACH		Date	
	ORANGE COUNTY CALIFORNIA		AUGUST 2023	
		SOLDIER PILE WALL LOCATION BUILDING 36 & 37	Scale	
			AS SHOWN	
			Drawn By	
			CR	

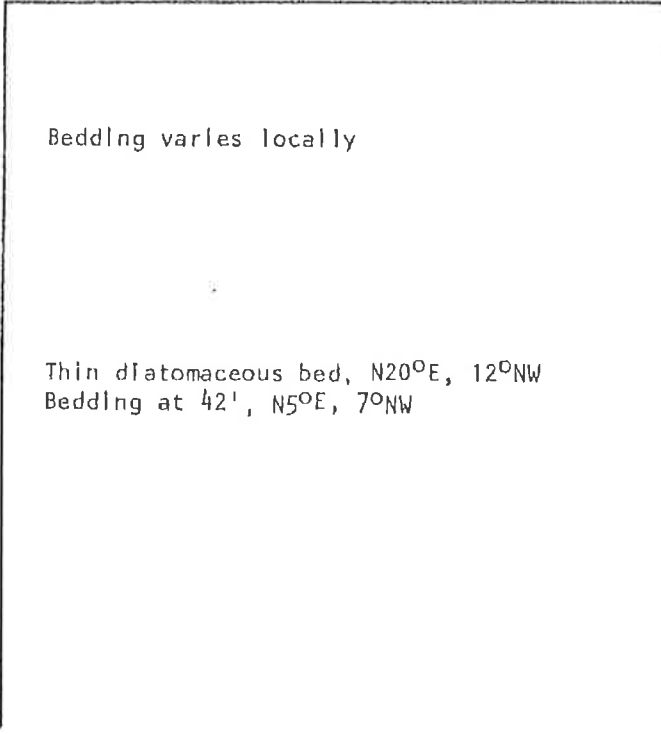
APPENDIX
Prior Pertinent Boring Logs

BORING I (CONTINUED)

DATE DRILLED: March 13, 1979
EQUIPMENT USED: 20"-Diameter Bucket

NOTE: THE LOG OF SUBSURFACE CONDITIONS SHOWN HEREON APPLIES ONLY AT THE SPECIFIC BORING LOCATION AND AT THE DATE INDICATED. IT IS NOT WARRANTED TO BE REPRESENTATIVE OF SUBSURFACE CONDITIONS AT OTHER LOCATIONS AND TIMES.

ELEVATION (ft.)	DEPTH (ft.)	"N" VALUE	STD. PEN. TEST MOISTURE (% of dry wt.)	DRY DENSITY (lbs./cu. ft.)	DRIVE ENERGY (ft.-kips/ft.)	SAMPLE LOC.
70						
	35					
65						
	40					4
60						
	45					
55						
	50					2
50						
	55					



NOTE: Water not encountered. No caving.

LOG OF BORING

LeROY CRANDALL AND ASSOCIATES

BORING 2

DATE DRILLED: March 14, 1979

EQUIPMENT USED: 20"-Diameter Bucket

ELEVATION 104 ±

NOTE: THE LOG OF SUBSURFACE CONDITIONS SHOWN HEREON APPLIES ONLY AT THE SPECIFIC BORING LOCATION AND AT THE DATE INDICATED. IT IS NOT WARRANTED TO BE REPRESENTATIVE OF SUBSURFACE CONDITIONS AT OTHER LOCATIONS AND TIMES.

ELEVATION (ft.)	DEPTH (ft.)	"N" VALUE	STD. PEN. TEST MOISTURE (% of dry wt.)	DRY DENSITY (lbs./cu. ft.)	DRIVE ENERGY (ft.-kips / ft.)	SAMPLE LOC.	DESCRIPTION
100	5	9.5	106	2		SM	6" Asphaltic Paving FILL - SILTY SAND - fine, brown
95	10	12.1	112	6		SM	PLEISTOCENE TERRACE DEPOSITS SILTY SAND - fine, brown
90	15			2			MIOCENE MONTEREY FORMATION SILTSTONE - bedded, locally well laminated, fractured, greyish-brown Bedding at 12', N62°W, 17°SW
85	20			6			Bedding at 18', N80°E, 7°SE Shear, N10°E, 28°SE Bedding warped
80	25						Bedding jumbled, disoriented
75	30						

(CONTINUED ON FOLLOWING PLATE)

LOG OF BORING

LeROY CRANDALL AND ASSOCIATES

BORING 2 (CONTINUED)

DATE DRILLED: March 14, 1979
 EQUIPMENT USED: 20"-Diameter Bucket

NOTE: THE LOG OF SUBSURFACE CONDITIONS SHOWN HEREON APPLIES ONLY AT THE SPECIFIC BORING LOCATION AND AT THE DATE INDICATED. IT IS NOT WARRANTED TO BE REPRESENTATIVE OF SUBSURFACE CONDITIONS AT OTHER LOCATIONS AND TIMES.

ELEVATION (ft.)	DEPTH (ft.)	"N" VALUE	STD. PEN. TEST MOISTURE % of dry wt.	DRY DENSITY (lb./cu. ft.)	DRIVE ENERGY (ft.-kips/ft.)	SAMPLE LOC.
70	35					
65	40	47.0	57	3		
60	45					
55	50			3		
50	55					

Approximate bedding at 33', N80°W, 28°SW

Warped olive-green Clay layer at 36.6',
 slicks, shears, N50°W, 21°-48°SW

Bedding at 39', N-S, 20°W

Bedding at 41.5', N10°W, 20°SW

Bedding more consistent and firmer below
 about 38'

NOTE: Water not encountered. No caving.

LOG OF BORING

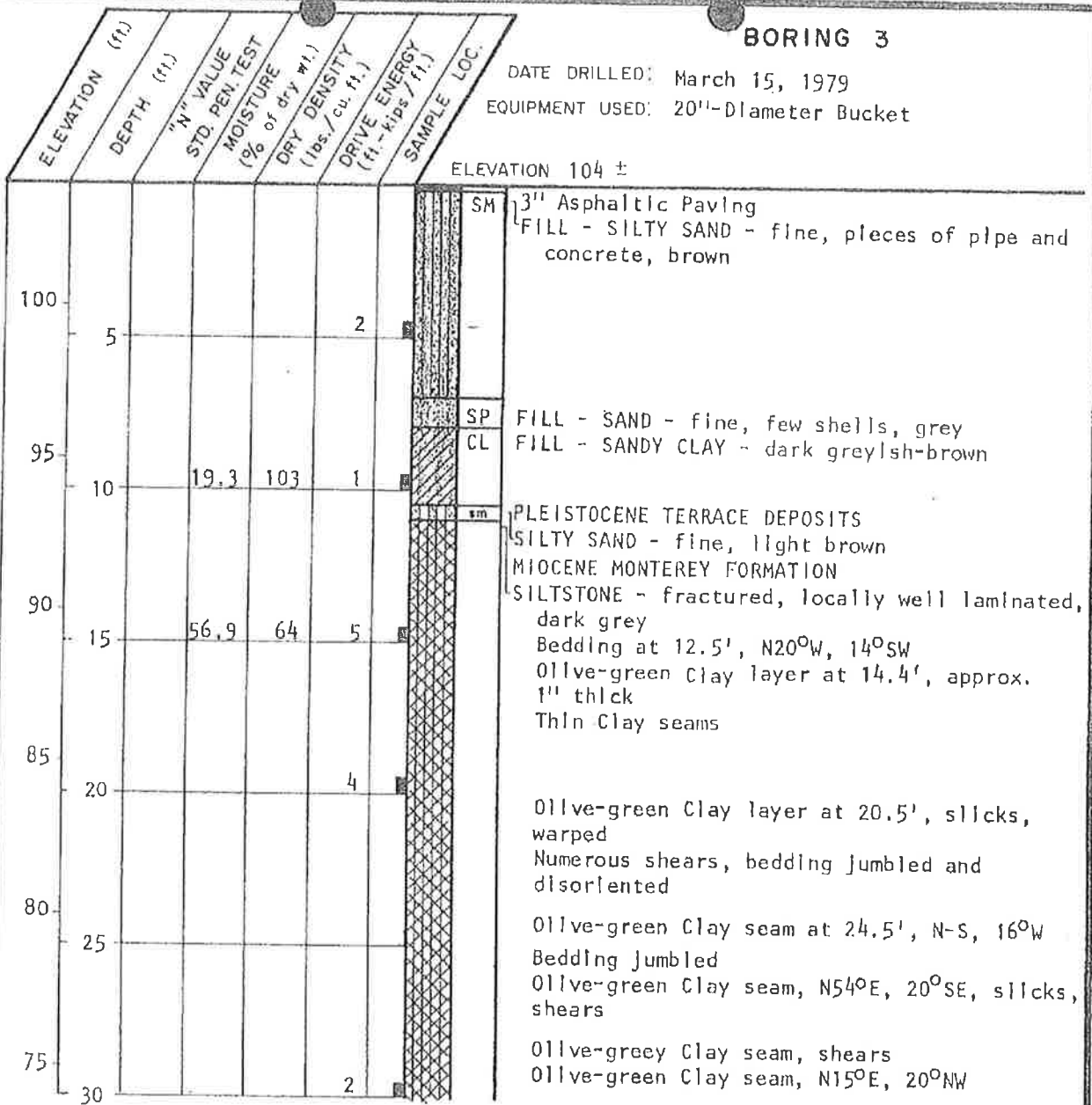
LeROY CRANDALL AND ASSOCIATES

BORING 3

DATE DRILLED: March 15, 1979
EQUIPMENT USED: 20"-Diameter Bucket

ELEVATION 104 ±

NOTE: THE LOG OF SUBSURFACE CONDITIONS SHOWN HEREON APPLIES ONLY AT THE SPECIFIC BORING LOCATION AND AT THE DATE INDICATED. IT IS NOT WARRANTED TO BE REPRESENTATIVE OF SUBSURFACE CONDITIONS AT OTHER LOCATIONS AND TIMES.



(CONTINUED ON FOLLOWING PLATE)

LOG OF BORING

LeROY CRANDALL AND ASSOCIATES

BORING 3 (CONTINUED)

DATE DRILLED: March 15, 1979
EQUIPMENT USED: 20"-Diameter Bucket

NOTE: THE LOG OF SUBSURFACE CONDITIONS SHOWN HEREON APPLIES ONLY AT THE SPECIFIC BORING LOCATION AND AT THE DATE INDICATED. IT IS NOT WARRANTED TO BE REPRESENTATIVE OF SUBSURFACE CONDITIONS AT OTHER LOCATIONS AND TIMES.

ELEVATION (ft.)	DEPTH (ft.)	"N" VALUE	STD. PEN. TEST MOISTURE (% of dry wt.)	DRY DENSITY (lbs./cu. ft.)	DRIVE ENERGY (ft.-kips / ft.)	SAMPLE LOC.
70	35					
65	40			12	*	
				16		
				12		
60	45					
55	50	62.3	48	4		
50	55					

Bedding more consistent and firmer below about 30'
Bedding at 32', N12°E, 22°NW

Harder cemented zone

Bedding at 40', N15°E, 16°NW

Brown and white

NOTE: Water not encountered. No caving.

*Thin wall samples (Shelby)

LOG OF BORING

LeROY CRANDALL AND ASSOCIATES

BORING 4

DATE DRILLED: March 23, 1979
EQUIPMENT USED: 20"-Diameter Bucket

NOTE: THE LOG OF SUBSURFACE CONDITIONS SHOWN HEREON APPLIES ONLY AT THE SPECIFIC BORING LOCATION AND AT THE DATE INDICATED. IT IS NOT WARRANTED TO BE REPRESENTATIVE OF SUBSURFACE CONDITIONS AT OTHER LOCATIONS AND TIMES.

ELEVATION (ft.)	DEPTH (ft.)	"N" VALUE	STD. PEN. TEST	MOISTURE (% of dry wt.)	DRY DENSITY (lbs./cu. ft.)	DRIVE ENERGY (ft.-kips/ft.)	SAMPLE LOC.	ELEVATION 104 ±
100	5	12.3	104	2			SM	3" Asphaltic Paving FILL - SILTY SAND - fine, some Shale fragments mottled brown
95	10	14.5	102	6			SM	PLEISTOCENE TERRACE DEPOSITS SILTY SAND - fine, light brown MIOCENE MONTEREY FORMATION SILTSTONE - fractured, locally well laminated, greyish-brown
90	15	54.3	59	3				Olive-green Clay layer at 15.4', 1/8 to 1" thick, slicks approx. attitude N-S, 19°W Olive-green Clay seam at 17', N50°W, 25°SW Bedding jumbled, several thin Clay seams, shears
85	20			5				Olive-green Clay layer at 20.5', 1/4-1/2" thick, N20°W, 10°SW
80	25							Shear, N80°W, 40°SW Olive-green Clay at 24.7', slicks and shears N60-70°E, 9°NW Cemented layer Bedding more consistent and firmer below 26'
75	30							

(CONTINUED ON FOLLOWING PLATE)

LOG OF BORING

BORING 4 (CONTINUED)

DATE DRILLED: March 23, 1979

EQUIPMENT USED: 20"-Diameter Bucket

NOTE: THE LOG OF SUBSURFACE CONDITIONS SHOWN HEREON APPLIES ONLY AT THE SPECIFIC BORING LOCATION AND AT THE DATE INDICATED. IT IS NOT WARRANTED TO BE REPRESENTATIVE OF SUBSURFACE CONDITIONS AT OTHER LOCATIONS AND TIMES.

ELEVATION (ft.)	DEPTH (ft.)	"N" VALUE	STD. PEN. TEST	MOISTURE (% of dry wt.)	DRY DENSITY (lbs./cu. ft.)	DRIVE ENERGY (ft.-kips/ft.)	SAMPLE LOC.
70	35					7	
65	40	51.6	53	5			
60	45						
55	50					5	
50	55						

Olive-green Clay seam at 30.5', N10°W, 7°SW
Bedding at 31.5', N10-20°E, 6°NW

Bedding at 37', N12°E, 8°NW

Bedding at 41', N15°W, 7-16°SW
White streaks

NOTE: Water not encountered. No caving.

LOG OF BORING

LeROY CRANDALL AND ASSOCIATES

BORING 5

DATE DRILLED: March 29, 1979

EQUIPMENT USED: 20"-Diameter Bucket

NOTE: THE LOG OF SUBSURFACE CONDITIONS SHOWN HEREON APPLIES ONLY AT THE SPECIFIC BORING LOCATION AND AT THE DATE INDICATED. IT IS NOT WARRANTED TO BE REPRESENTATIVE OF SUBSURFACE CONDITIONS AT OTHER LOCATIONS AND TIMES.

ELEVATION (ft.)	DEPTH (ft.)	"N" VALUE	STD. PEN. TEST MOISTURE (% of dry wt.)	DRY DENSITY (lbs./cu. ft.)	DRIVE ENERGY (ft.-kips/ft.)	SAMPLE LOC.	
							ELEVATION 100 ±
							SM FILL - SILTY SAND - fine, some Clay, dark brown
							Piece of concrete (12" in size)
95	5	21.6	96	2			Chunks of concrete
							MIOCENE MONTEREY FORMATION
							SILTSTONE - fractured, locally well laminated, greyish-brown
90	10			6			Bedding jumbled, jointed
							Bedding at 12', N70°W, 10°S
85	15			6			Olive-green Clay
							Olive-green Clay
80	20						Olive-green Clay with slicks, N70-80°W, 5°S
75	25	68.3	55	3			

(CONTINUED ON FOLLOWING PLATE)

LOG OF BORING

LeROY CRANDALL AND ASSOCIATES

PLATE A-1.5a

BORING 5 (CONTINUED)

DATE DRILLED: March 29, 1979

EQUIPMENT USED: 20"-Diameter Bucket

NOTE: THE LOG OF SUBSURFACE CONDITIONS SHOWN HEREON APPLIES ONLY AT THE SPECIFIC BORING LOCATION AND AT THE DATE INDICATED. IT IS NOT WARRANTED TO BE REPRESENTATIVE OF SUBSURFACE CONDITIONS AT OTHER LOCATIONS AND TIMES.

ELEVATION (ft.)	DEPTH (ft.)	"N" VALUE	STD. PEN TEST MOISTURE (% of dry wt.)	DRY DENSITY (lbs./cu. ft.)	DRIVE ENERGY (ft.-kips / ft.)	SAMPLE LOC.
70	30					
65	35	79.0	52	3		
60	40			3		
45						

Olive-green Clay, slicks, N-S, 4°W

Clay beds to 1" thick, N80°W, 12°S
Bedding at 30.5', N75°W, 11°S

Few thin gypsum layers

Olive-green Clay, warped, sheared, slicks
Bedding at 37', N50-60°W, 15°SW

Olive-green Clay bed at 40.5', N75°W, 15°S,
no slicks

(HARD CEMENTED LAYER AT BOTTOM OF HOLE)

NOTE: Water not encountered. No caving.

LOG OF BORING

LeROY CRANDALL AND ASSOCIATES

PLATE A-1.5b

BORING 6

DATE DRILLED: March 30, 1979

EQUIPMENT USED: 20"-Diameter Bucket

NOTE: THE LOG OF SUBSURFACE CONDITIONS SHOWN HEREON APPLIES ONLY AT THE SPECIFIC BORING LOCATION AND AT THE DATE INDICATED. IT IS NOT WARRANTED TO BE REPRESENTATIVE OF SUBSURFACE CONDITIONS AT OTHER LOCATIONS AND TIMES.

ELEVATION (ft.)	DEPTH (ft.)	"N" VALUE	STD. PEN. TEST MOISTURE (% of dry wt.)	DRY DENSITY (lbs./cu ft.)	DRIVE ENERGY (ft.-kips/ft.)	SAMPLE LOC.
104 ±						SM 3½" Concrete Paving FILL - SILTY SAND - fine, mottled brown
100	5		6.1	97	9	
95	10		22.8	75	18	SM PLEISTOCENE TERRACE DEPOSITS SILTY SAND - fine, brown
90	15				12	MIOCENE MONTEREY FORMATION SILTSTONE - fractured, weathered, grey Bedding at 12', N80°E, 4°N Bedding at 13', N20°E, 5-10°NW Hard cemented layer Bedding at 15.2', N25°E, 12°NW
85	20	44.1	52	14		

NOTE: Water not encountered. No caving.

LOG OF BORING

LeROY CRANDALL AND ASSOCIATES

PLATE A-1.6

BORING 7

DATE DRILLED: April 17, 1978
 EQUIPMENT USED: 20"-Diameter Bucket

NOTE: THE LOG OF SUBSURFACE CONDITIONS SHOWN HEREON APPLIES ONLY AT THE SPECIFIC BORING LOCATION AND AT THE DATE INDICATED. IT IS NOT WARRANTED TO BE REPRESENTATIVE OF SUBSURFACE CONDITIONS AT OTHER LOCATIONS AND TIMES.

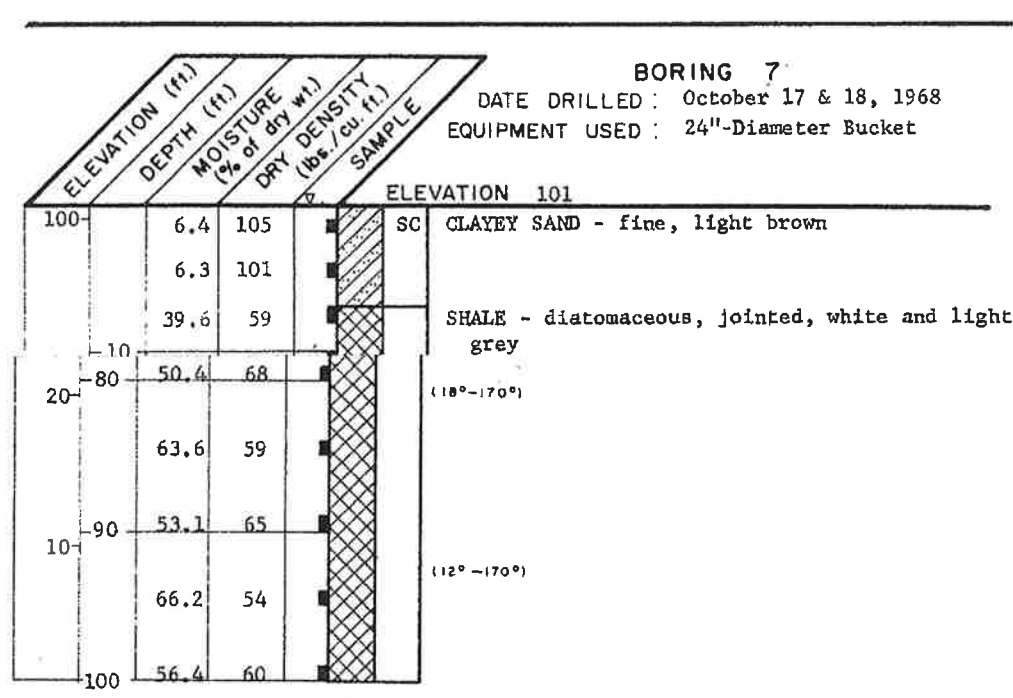
ELEVATION (ft.)	DEPTH (ft.)	"N" VALUE	STD. PEN. TEST MOISTURE (% of dry wt.)	DRY DENSITY (lbs./cu ft.)	DRIVE ENERGY (ft.-kips/ft.)	SAMPLE LOC.
104 ±						SM 5" Concrete Slab
	5		12.7	116	18	
						SM FILL - SILTY SAND - fine, mottled brown
						SM PLEISTOCENE TERRACE DEPOSITS
						SILTY SAND - fine, light brown
	10	58.9	50	20		MIOCENE MONTEREY FORMATION
						SILTSTONE - weathered, locally well laminated, greyish-brown
						Olive-greay Clay at 9.4', 0-1½" thick, warped, silcks, N65°E, 10°NW
						Bedding at 11', N75°E, 13-17°N
						Rock firmer below 11'
	15	55.8	51	17		Bedding at 11½', N70°E, 14°N
						Approximate bedding at 14', N80°E, 14°N
	20	56.7	51	15		
	25					

NOTE: Water not encountered. No caving.

LOG OF BORING

LeROY CRANDALL AND ASSOCIATES

JOB A-68249 DATE 11-19-68 E. O. E. S. E. CHKD.

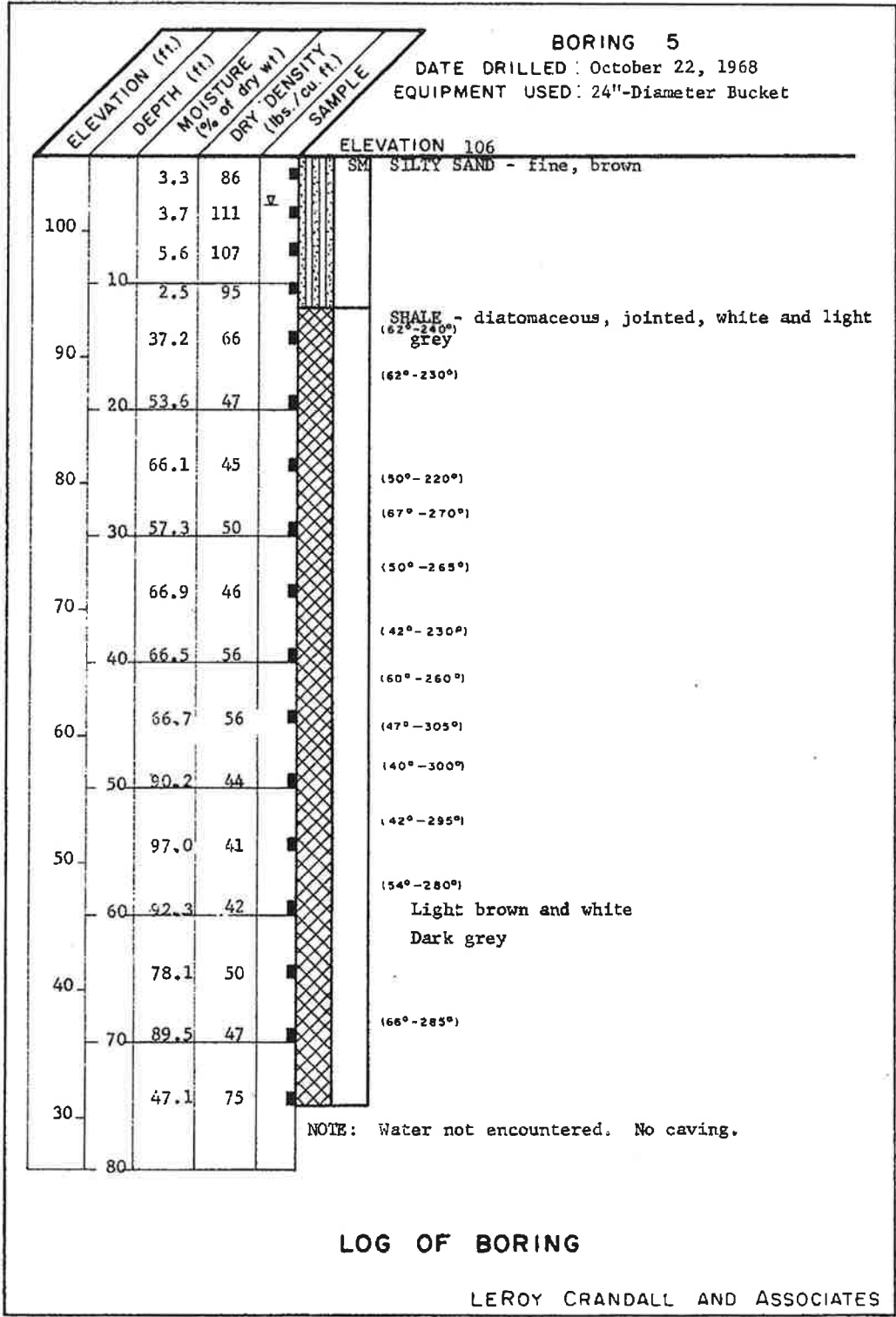


NOTE: Water not encountered. No caving.

LOG OF BORING

LEROY CRANDALL AND ASSOCIATES

JOB A-60349 DATE 11/1/68 BY JAC/MLC/END



JOB A. 68249 DATE 11-19-68 Wear O.E. CHKO.

ELEVATION (ft)	DEPTH (ft)	MOISTURE (% of dry wt)	DRY DENSITY (lb _s /cu ft)	SAMPLE	ELEVATION	DESCRIPTION
100	5.0	100		SM	103	SILTY SAND - fine, light brown
	7.1	104		SC		CLAYEY SAND - fine, brown (20°-335°)
	31.7	75				SHALE - diatomaceous, jointed, white and light grey (23°-350°)
90	41.6	64				(20°-350°)
80						

LOG OF BORING

LEROY CRANDALL AND ASSOCIATES