



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

TO: CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION

FROM: Kimberly Brandt, Community Development Director  
Brenda Wisneski, Deputy Community Development Director

SUBJECT: Report of actions taken by the Zoning Administrator and/or Planning Division staff for the week ending November 15, 2013

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**ZONING ADMINISTRATOR ACTIONS  
November 14, 2013**

- Item 1: Brockman Lot Merger LM2013-004 (PA2013-188)  
2100 Mesa Drive  
Action: Approved by Resolution No. ZA2013-071 Council District 3
- Item 2: 713 Poppy Tentative Parcel Map No. NP2013-021 (PA2013-189)  
713 Poppy Avenue  
Action: Approved by Resolution No. ZA2013-072 Council District 6
- Item 3: 518 Jasmine Tentative Parcel Map No. NP2013-022 (PA2013-190)  
518 Jasmine Avenue  
Action: Approved by Resolution No. ZA2013-073 Council District 6
- Item 4: 519 Larkspur Avenue Tentative Parcel Map No. NP2013-023 (PA2013-191)  
519 Larkspur Avenue  
Action: Approved by Resolution No. ZA2013-074 Council District 6
- Item 5: 616 Heliotrope Avenue Tentative Parcel Map No. NP2013-024 (PA2013-192)  
616 Heliotrope Avenue  
Action: Approved by Resolution No. ZA2013-075 Council District 6
- Item 6: Marigold Avenue Tentative Parcel Map No. NP2013-027 (PA2013-209)  
606 Marigold Avenue  
Action: Approved by Resolution No. ZA2013-076 Council District 6

Item 7: Newport Coffee Company Minor Use Permit No. UP2013-020 (PA2013-202)  
104 McFadden Place

Action: Approved by Resolution No. ZA2013-077 Council District 1

**COMMUNITY DEVELOPMENT DIRECTOR  
OR PLANNING DIVISION STAFF ACTIONS**

Item 1: Limited Term Permit (Seasonal) No. XP2013-006 (PA2013-223)  
2121 Westcliff Drive

Action: Approved Council District 3

**APPEAL PERIOD:** An appeal may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered unless a different period of time is specified by the Municipal Code (e.g., Title 19 allows ten (10) day appeal period for tentative parcel and tract maps, lot line adjustments, or lot mergers). For additional information on filing an appeal, contact the Planning Division at 949 644-3200.

## RESOLUTION NO. ZA2013-071

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING LOT MERGER LM2013-004 AND A WAIVER OF THE PARCEL MAP REQUIREMENT FOR A LOT MERGER LOCATED AT 2100 MESA DRIVE (PA2013-188)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by James C. "Buzz" Person, Jr. on behalf of the property owner, with respect to property located at 2100 Mesa Drive, and legally described as, Portions of Lots 118 through 121, Tract No. 706, and portions of Mesa Drive and Birch Street Adjoining, as shown on a map recorded in Book 21, Page 25 of Miscellaneous Maps, Records of Orange County, California, requesting approval of a lot merger.
2. The applicant proposes a lot merger application and a request to waive the parcel map requirement for four portions of properties, under common ownership, located in the Santa Ana Heights Specific Plan area. The merger would combine portions of Lots 118 through 121 of Tract 706 into a single parcel.
3. The subject property is located within the Santa Ana Heights Specific Plan (SP-7) and the General Plan Land Use Element category is Single-Unit Residential Detached (RS-D).
4. The subject property is located within the coastal zone and is designated as Single-Unit Residential Detached (0.0 - 5.9 DU/AC) (RSD-A).
5. A public hearing was held on November 14, 2013, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting 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 meeting.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt pursuant to the State CEQA (California Environmental Quality Act) Guidelines under Class 5 (Minor Alterations in Land Use Limitations).
2. Class 5 consists of minor alterations in land use limitations in areas with an average slope of less than 20 percent, which do not result in any changes in land use or density.

### SECTION 3. REQUIRED FINDINGS.

In accordance with Section 19.68.030 and 19.08.030 of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

*A. Approval of the merger will not, under the circumstances of this particular case, be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the City, and further that the proposed lot merger is consistent with the legislative intent of this title.*

Facts in Support of Finding:

- A-1. The lot merger to combine four portions of existing legal lots by removing the interior lot lines between them will not result in the creation of additional lots.
- A-2. The project is in an area with an average slope of less than 20 percent.
- A-3. The lot merger is consistent with the purpose and intent of Title 19 (Subdivisions). The proposed merger and allowed future development will be compatible with surrounding land uses and will preserve the public health, safety, and general welfare of the City.
- A-4. The future development on the proposed lot will be subject to the Zoning Code development standards.

Finding:

*B. The lots to be merged are under common fee ownership at the time of the merger.*

Facts in Support of Finding:

- B-1. The four portions of lots to be merged are under common fee ownership as indicated by the title reports provided by the applicant.

Finding:

*C. The lots as merged will be consistent or will be more closely compatible with the applicable zoning regulations and will be consistent with other regulations relating to the subject property including, but not limited to, the General Plan and any applicable Coastal Plan or Specific Plan.*

Facts in Support of Finding:

- C-1. The new parcel will remain within the Residential Equestrian (REQ) subarea of the Santa Ana Heights Specific Plan (SP-7) Zoning District, consistent with the surrounding area. The REQ subarea of the SP-7 Zoning District is intended to provide for the development and maintenance of a single-family residential neighborhood in conjunction with limited equestrian uses.
- C-2. The new 2.218-acre parcel will comply with the Specific Plan requirements for building site area which requires a minimum area of 2 acres within the REQ subarea for lots south of Mesa Drive.
- C-3. The Land Use Element of the General Plan designates the subject site as Single-Unit Residential Detached (RS-D), which applies to a range of single-family residential dwelling units. The resulting parcel will be developed with a single-family dwelling unit once the Lot Merger has been recorded.
- C-4. The Coastal Land Use Plan designates the subject site as Single-Unit Residential Detached (0.0 - 5.9 DU/AC) (RSD-A). Approval of the Lot Merger will maintain a density within the appropriate range prescribed by this designation.

Finding:

- D. Neither the lots as merged nor adjoining parcels will be deprived of legal access as a result of the merger.*

Facts in Support of Finding:

- D-1. The lot portions as merged will not be deprived of legal access as the merged parcel will abut a street consistent with existing conditions.
- D-2. As conditioned, no adjoining lots will be deprived of legal access as a result of the merger. A 30-foot-wide easement for road and public utility purposes exists along the easterly property line to provide vehicular access for the properties located south of the subject project site. Vehicular access to and from the subject site and adjacent properties would remain via the public street (Mesa Drive) and existing easements.

Finding:

- E. The lots as merged will be consistent with the pattern of development nearby and will not result in a lot width, depth or orientation, or development site that is incompatible with nearby lots*

Facts in Support of Finding:

- E-1. Lot widths in the area on the southerly side of Mesa Drive vary from approximately 40 feet to 300 feet; likewise lot sizes vary from approximately 83,000 square feet to

almost 160,000 square feet. The subject lot portions, as merged, will result in a 212-foot-wide, 96,616-square-foot lot which falls within the development pattern of the area.

- E-2. Although the lot orientation is not in character with the lots in the vicinity, all future development will be subject to the site development standards prescribed by the REQ subarea of the SP-7 Zoning District within the Zoning Code and will ensure a development patter compatible with the nearby lots.

**SECTION 4. DECISION.**

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

1. The Zoning Administrator of the City of Newport Beach hereby approves Lot Merger No. LM 2013-004, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective 10 days after the adoption of this Resolution unless within such time an appeal is filed with the Director of Community Development in accordance with the provisions of Title 19 Subdivisions, of the Newport Beach Municipal Code.

**PASSED, APPROVED AND ADOPTED THIS 14<sup>TH</sup> DAY OF NOVEMBER, 2013.**



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Brenda Wisneski, AICP, Zoning Administrator

**EXHIBIT "A"****CONDITIONS OF APPROVAL**

1. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
2. 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.
3. Prior to the issuance of any building permits, recordation of the lot merger documents with the County Recorder shall be required.
4. Prior to release for recordation, Lot Merger No. LM2013-004 exhibits shall be revised to include a 30-foot-wide easement for road, public utilities, and access purposes. Said easement shall be maintained in a condition that allows adequate access to 2148 Mesa Drive.
5. Lot Merger No. LM2013-004 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 of the Newport Beach Municipal Code, unless an extension is otherwise granted.
6. 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 Brockman Lot Merger including, but not limited to, the Lot Merger No. LM2013-004. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

## RESOLUTION NO. ZA2013-072

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, APPROVING TENTATIVE PARCEL MAP NO. NP2013-021 FOR A PARCEL MAP FOR TWO-UNIT CONDOMINIUM PURPOSES LOCATED AT 713 POPPY AVENUE (PA2013-189).**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by MPH Homes Too, LLC, with respect to property located at 713 Poppy Avenue, and legally described as Lot 11 except the southwesterly ½ and Lot 13, Block 743, Corona del Mar in the City of Newport Beach, County of Orange, State of California, requesting approval of a Tentative Parcel Map.
2. The applicant requests a tentative parcel map for two-unit condominium purposes. No exceptions to Title 19 (Subdivision Code) development standards are proposed with this application. The code required two-car parking per unit will be provided. The property was developed with a single-family dwelling that has been demolished and a new duplex is currently under construction.
3. The subject property is located within the Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Element category is Two-Unit Residential (RT).
4. A public hearing was held on November 14, 2013, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting 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 meeting.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. The project has been reviewed, and it qualifies for a categorical exemption pursuant to Section 15315 of the California Environmental Quality Act under Class 15 (Minor Land Divisions) of the Implementing Guidelines of the California Environmental Quality Act.
2. The Class 15 exemption allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels are available, the parcel was not involved in a division of a larger parcel within the previous two years, and the parcel does not have an average slope greater than 20 percent. The proposed parcel map is for condominium purposes and is consistent with all of the requirements of the Class 15 exemption.



### SECTION 3. REQUIRED FINDINGS.

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

#### Finding

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

#### Facts in Support of Finding

1. The proposed Parcel Map is for two-unit condominium purposes. An existing single-family dwelling was demolished and is being replaced with a new duplex. The proposed subdivision and improvements are consistent with the density of the R-2 Zoning District and the current General Plan Land Use Designation "Two-Unit Residential".
2. The project has been conditioned to require public improvements including the reconstruction of existing broken or otherwise damaged sidewalks, curbs, and gutters, along Poppy Avenue consistent with the Subdivision Code (Title 19).

#### Finding

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

#### Facts in Support of Finding

1. The lot is regular in shape, has a slope of less than 20 percent, and is suitable for two-unit development.
2. Access to the property is provided by Poppy Avenue and the public alley.

#### Finding

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

Facts in Support of Finding

1. This project has been reviewed, and it has been determined that it is categorically exempt from the requirements of the California Environmental Quality Act under Class 15 (Minor Land Divisions) which allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels are available, the parcel was not involved in a division of a larger parcel within the previous two years, and the parcel does not have an average slope greater than 20 percent. The proposed parcel map is for condominium purposes and is consistent with all of the requirements of the Class 15 exemption.

Finding

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

Facts in Support of Finding

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

Finding

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

Facts in Support of Finding

1. The design of the development will not conflict with any easements acquired by the public at large for access through or use of property within the proposed development as there are no public easements that are located on the property.

Finding

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

Facts in Support of Finding

1. The property is not subject to the Williamson Act since the subject property is not designated as an agricultural preserve and is less than 100 acres.

Finding

- G. *That, in the case of a “land project” as defined in Section 11000.5 of the California Business and Professions Code: (a) there is an adopted specific plan for the area to be included within the land project; and (b) the decision-making body finds that the proposed land project is consistent with the specific plan for the area.*

Facts in Support of Finding

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

Finding

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

Facts in Support of Finding

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

Finding

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

Facts in Support of Finding

1. The residential density on the site will increase by one unit to two units, consistent with the R-2 Zoning District designation. Therefore, the parcel map for condominium purposes will not affect the City in meeting its regional housing need.

Finding

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

Facts in Support of Finding

1. Wastewater discharge into the existing sewer system has been designed to comply with the Regional Water Quality Control Board (RWQCB) requirements.

Finding

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

Facts in Support of Finding

1. The subject property is not located within the Coastal Zone.

SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby approves Parcel Map No. NP2013-021, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. Tentative Parcel Map applications do not become effective until 10 days following the date of action. Prior to the effective date, the applicant or any interested party may appeal the decision of the Zoning Administrator to the Planning Commission by submitting a written appeal application to the Community Development Director. For additional information on filing an appeal, contact the Planning Division at (949) 644-3200.

**PASSED, APPROVED, AND ADOPTED THIS 14TH DAY OF NOVEMBER, 2013.**

By:



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Brenda Wisneski, AICP, Zoning Administrator

**EXHIBIT "A"**

## CONDITIONS OF APPROVAL

1. A parcel map shall be recorded. The Map shall be prepared on the California coordinate system (NAD88). Prior to recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of said map in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. **The Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.**
4. Prior to recordation of the parcel map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. Monuments (one inch iron pipe with tag) shall be set On Each Lot Corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
5. All improvements shall be constructed as required by Ordinance and the Public Works Department.
6. Prior to recordation of the parcel map, reconstruct the existing broken and/or otherwise damaged concrete sidewalk panels, curb and gutter along the Poppy Avenue frontage.
7. Prior to recordation of the parcel map, reconstruct the existing broken and/or otherwise damaged concrete alley adjacent to the project site.
8. All above ground improvements shall stay a minimum 5-foot clear of the alley setback.
9. Poppy Avenue is part of the City's Moratorium List. Work performed on said roadways will require additional surfacing requirements. See City Standard 105-L-F.
10. All existing private, non-standard improvements within the public right-of-way and/or extensions of private, non-standard improvements into the public right-of-way fronting the development site shall be removed.
11. Prior to recordation of the parcel map, install new sod or low groundcovers of the type approved by the City throughout the Poppy Avenue parkway fronting the development site.
12. Each unit shall be served by its individual water meter and sewer lateral and cleanout. Each water meter and sewer cleanout shall be installed with a traffic-grade box and cover. Water meter and the sewer cleanout shall be located within the public right-of-way.

13. An encroachment permit is required for all work activities within the public right-of-way.
14. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L and Municipal Code 20.30.130.
15. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.
16. All on-site drainage shall comply with the latest City Water Quality requirements.
17. All unused water services to be abandoned shall be capped at the main (corporation stop) and all unused sewer laterals to be abandoned shall be capped at property line.
18. Prior to recordation of the Parcel Map, a park dedication fee for one dwelling unit shall be paid in accordance with Chapter 19.52.070 of the Newport Beach Municipal Code and pursuant City Council Resolution No. 2007-30.
19. Subsequent to recordation of the Parcel Map, the applicant shall apply for a building permit for a description change of the subject project development from "duplex" to "condominium." **The development will not be condominiums until this permit is finalized.** The building permit for the new construction shall not be finalized until after recordation of the Parcel Map.
20. 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 713 Poppy Parcel Map including, but not limited to, Parcel Map No. NP2013-021 (PA2013-189). 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.
21. This Parcel Map shall expire if the map has not been recorded within 24 months of the date of approval, unless an extension is granted by the Community Development Director in accordance with the provisions of Section 19.16 of the Newport Beach Municipal Code.

## RESOLUTION NO. ZA2013-073

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, APPROVING TENTATIVE PARCEL MAP NO. NP2013-022 FOR A PARCEL MAP FOR TWO-UNIT CONDOMINIUM PURPOSES LOCATED AT 518 JASMINE AVENUE (PA2013-190).**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by CDM Associates, LLC, with respect to property located at 518 Jasmine Avenue, and legally described as Lot 20, Block 537, Corona del Mar in the City of Newport Beach, County of Orange, State of California, requesting approval of a Tentative Parcel Map.
2. The applicant requests a tentative parcel map for two-unit condominium purposes. No exceptions to Title 19 (Subdivision Code) development standards are proposed with this application. The code required two-car parking per unit will be provided. The property was developed with a duplex that has been demolished and a new duplex is currently under construction.
3. The subject property is located within the Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Element category is Two-Unit Residential (RT).
4. A public hearing was held on November 14, 2013, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting 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 meeting.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. The project has been reviewed, and it qualifies for a categorical exemption pursuant to Section 15315 of the California Environmental Quality Act under Class 15 (Minor Land Divisions) of the Implementing Guidelines of the California Environmental Quality Act.
2. The Class 15 exemption allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels are available, the parcel was not involved in a division of a larger parcel within the previous two years, and the parcel does not have an average slope greater than 20 percent. The proposed parcel map is for condominium purposes and is consistent with all of the requirements of the Class 15 exemption.



### SECTION 3. REQUIRED FINDINGS.

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

#### Finding

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

#### Facts in Support of Finding

1. The proposed Parcel Map is for two-unit condominium purposes. An existing single-family dwelling was demolished and is being replaced with a new duplex. The proposed subdivision and improvements are consistent with the density of the R-2 Zoning District and the current General Plan Land Use Designation "Two-Unit Residential".
2. The project has been conditioned to require public improvements including the reconstruction of existing broken or otherwise damaged sidewalks, curbs, and gutters, along Jasmine Avenue consistent with the Subdivision Code (Title 19).

#### Finding

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

#### Facts in Support of Finding

1. The lot is regular in shape, has a slope of less than 20 percent, and is suitable for two-unit development.
2. Access to the property is provided from Jasmine Avenue and the public alley.

#### Finding

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

Facts in Support of Finding

1. This project has been reviewed, and it has been determined that it is categorically exempt from the requirements of the California Environmental Quality Act under Class 15 (Minor Land Divisions) which allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels are available, the parcel was not involved in a division of a larger parcel within the previous two years, and the parcel does not have an average slope greater than 20 percent. The proposed parcel map is for condominium purposes and is consistent with all of the requirements of the Class 15 exemption.

Finding

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

Facts in Support of Finding

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

Finding

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

Facts in Support of Finding

1. The design of the development will not conflict with any easements acquired by the public at large for access through or use of property within the proposed development as there are no public easements that are located on the property.

Finding

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

Facts in Support of Finding

1. The property is not subject to the Williamson Act since the subject property is not designated as an agricultural preserve and is less than 100 acres.

Finding

- G. *That, in the case of a “land project” as defined in Section 11000.5 of the California Business and Professions Code: (a) there is an adopted specific plan for the area to be included within the land project; and (b) the decision-making body finds that the proposed land project is consistent with the specific plan for the area.*

Facts in Support of Finding

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

Finding

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

Facts in Support of Finding

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

Finding

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

Facts in Support of Finding

1. The residential density on the site will remain at two units, consistent with the R-2 Zoning District designation. Therefore, the parcel map for condominium purposes will not affect the City in meeting its regional housing need.

Finding

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

Facts in Support of Finding

1. Wastewater discharge into the existing sewer system has been designed to comply with the Regional Water Quality Control Board (RWQCB) requirements.

Finding

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

Facts in Support of Finding

1. The subject property is not located within the Coastal Zone.

SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby approves Parcel Map No. NP2013-022, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. Tentative Parcel Map applications do not become effective until 10 days following the date of action. Prior to the effective date, the applicant or any interested party may appeal the decision of the Zoning Administrator to the Planning Commission by submitting a written appeal application to the Community Development Director. For

additional information on filing an appeal, contact the Planning Division at (949) 644-3200.

**PASSED, APPROVED, AND ADOPTED THIS 14TH DAY OF NOVEMBER, 2013.**

By:



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Brenda Wisneski, AICP, Zoning Administrator

**EXHIBIT "A"**

## CONDITIONS OF APPROVAL

1. A parcel map shall be recorded. The Map shall be prepared on the California coordinate system (NAD88). Prior to recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of said map in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. **The Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.**
2. Prior to recordation of the parcel map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. Monuments (one inch iron pipe with tag) shall be set On Each Lot Corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
3. All improvements shall be constructed as required by Ordinance and the Public Works Department.
4. Prior to recordation of the parcel map, reconstruct the existing broken and/or otherwise damaged concrete sidewalk panels, curb and gutter along the Jasmine Avenue frontage.
5. Prior to recordation of the parcel map, reconstruct the existing broken and/or otherwise damaged concrete alley adjacent to the project site.
6. All above ground improvements shall stay a minimum 5-foot clear of the alley setback.
7. Jasmine Avenue is part of the City's Moratorium List. Work performed on said roadways will require additional surfacing requirements. See City Standard 105-L-F.
8. All existing private, non-standard improvements within the public right-of-way and/or extensions of private, non-standard improvements into the public right-of-way fronting the development site shall be removed.
9. Prior to recordation of the parcel map, install new sod or low groundcovers of the type approved by the City throughout the Jasmine Avenue parkway fronting the development site.
10. Each unit shall be served by its individual water meter and sewer lateral and cleanout. Each water meter and sewer cleanout shall be installed with a traffic-grade box and

cover. Water meter and the sewer cleanout shall be located within the public right-of-way.

11. An encroachment permit is required for all work activities within the public right-of-way.
12. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L and Municipal Code 20.30.130.
13. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.
14. All on-site drainage shall comply with the latest City Water Quality requirements.
15. All unused water services to be abandoned shall be capped at the main (corporation stop) and all unused sewer laterals to be abandoned shall be capped at property line.
16. Subsequent to recordation of the Parcel Map, the applicant shall apply for a building permit for a description change of the subject project development from "duplex" to "condominium." **The development will not be condominiums until this permit is finalized.** The building permit for the new construction shall not be finalized until after recordation of the Parcel Map.
17. 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 518 Jasmine Parcel Map including, but not limited to, Parcel Map No. NP2013-022 (PA2013-190). 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.
18. This Parcel Map shall expire if the map has not been recorded within 24 months of the date of approval, unless an extension is granted by the Community Development Director in accordance with the provisions of Section 19.16 of the Newport Beach Municipal Code.

## RESOLUTION NO. ZA2013-074

### A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING TENTATIVE PARCEL MAP NO. NP2013-023 FOR A PARCEL MAP FOR TWO-UNIT CONDOMINIUM PURPOSES LOCATED AT 519 LARKSPUR AVENUE (PA2013-191)

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Eric Lipoff, Spurlark, LLC, with respect to property located at 519 Larkspur Avenue, and legally described as Lot 19, Block 537, Corona del Mar Tract requesting approval of a tentative parcel Map.
2. The applicant proposes a tentative parcel map for two-unit condominium purposes. No exceptions to Title 19 (Subdivision Code) development standards are proposed with this application. The tentative parcel map would allow each unit of the duplex, currently under construction, to be sold individually. The property was previously improved with a single-family residence.
3. The subject property is located within the Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Element category is Two-Unit Residential (RT).
4. The subject property is not located within the coastal zone
5. A public hearing was held on November 14, 2013 in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting 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 meeting.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under the requirements of the Guidelines for the California Environmental Quality Act under Class 15 (Minor Land Divisions).
2. Class 15 exempts the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous two years, and the parcel does not have an average slope greater than 20 percent. The proposed parcel map is for condominium purposes and is consistent with the requirements of the Class 15 exemption.



### SECTION 3. REQUIRED FINDINGS.

The Zoning Administrator determined in this case that the proposed parcel map is consistent with the legislative intent of Title 20 (Planning and Zoning) of the Municipal Code and is approved based on the following findings pursuant to Section 19.12.070 (Required Findings for Action on Tentative Maps) of the Municipal Code:

#### Finding

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

#### Facts in Support of Finding

- A1. The proposed Tentative Parcel Map is for two-unit condominium purposes. A single-family residence was demolished and is being replaced with a new duplex currently under construction. The proposed subdivision and improvements are consistent with the Two-Unit Residential (R-2) Zoning District and the Two-Unit Residential (RT) General Plan Land Use Designation.

#### Finding

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

#### Facts in Support of Finding

- B-1. The lot is regular in shape, has a slope of less than 20 percent, and is suitable for two-unit residential development.

#### Finding

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

#### Facts in Support of Finding

- C-1. The subject property is developed and located in a developed area. The lot, proposed improvements, and proposed Tentative Parcel Map application will not cause substantial environmental damage.

- C-2. This project has been reviewed, and it has been determined that it is categorically exempt from the requirements of the California Environmental Quality Act under Class 15 (Minor Land Divisions) which allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels are available, the parcel was not involved in a division of a larger parcel within the previous two years, and the parcel does not have an average slope greater than 20 percent. The proposed parcel map is for condominium purposes and is consistent with all of the requirements of the Class 15 exemption.

#### Finding

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

#### Facts in Support of Finding

- D-1. The proposed Tentative Parcel Map is for residential condominium purposes. All construction for the project will comply with all Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems. Public improvements will be required of the developer per Section 19.28.010 (General Improvement Requirements) of the Municipal Code and Section 66411 (Local agencies to regulate and control design of subdivisions) of the Subdivision Map Act. Furthermore, the proposed project will conform to all applicable City ordinances.

#### Finding

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

#### Facts in Support of Finding

- E-1. The design of the development will not conflict with any easements acquired by the public at large for access through or use of property within the proposed development as there are no public easements that are located on the property.

#### Finding

- F. *That, subject to the detailed provisions of Section 66474.4 of the Subdivision Map Act, if the land is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 (Williamson Act), the resulting parcels following a subdivision of the land would not be too small to sustain their agricultural use or the*

*subdivision will result in residential development incidental to the commercial agricultural use of the land.*

#### Facts in Support of Finding

F-1. The property is not subject to the Williamson Act. The subject property is not designated as an agricultural preserve and is less than 100 acres.

#### Finding

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

#### Facts in Support of Finding

G-1. The property is not a "land project" as defined in Section 11000.5 of the California Business and Professions Code.

G-2. The project is not located within a specific plan area.

#### Finding

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

#### Facts in Support of Finding

H-1. The proposed Tentative Parcel Map and improvements, including the new duplex, are subject to Title 24 of the California Building Code that requires new construction to meet minimum heating and cooling efficiency standards based on location and climate. The Newport Beach Building Division enforces Title 24 compliance through the plan check and inspection process.

#### Finding

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

Facts in Support of Finding

- I-1. The residential density allowed for the site will remain the same, which allows two units in the R-2 Zoning District. Therefore, the Tentative Parcel Map for condominium purposes will not affect the City in meeting its regional housing need.

Finding

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

Facts in Support of Finding

- J-1. Wastewater discharge into the existing sewer system has been designed to comply with the Regional Water Quality Control Board (RWQCB) requirements.

Finding

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

Facts in Support of Finding

- K-1. The proposed property is not located within the Coastal Zone.

## SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby approves Tentative Parcel Map NP2013-023 subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective 10 days after the adoption of this Resolution unless within such time an appeal is filed with the Director of Community Development in accordance with the provisions of Title 19 Subdivisions, of the Newport Beach Municipal Code.

**PASSED, APPROVED AND ADOPTED THIS 14<sup>th</sup> DAY OF NOVEMBER, 2013.**



Brenda Wisneski, AICP, Zoning Administrator

**EXHIBIT "A"**

## CONDITIONS OF APPROVAL

1. A parcel map shall be recorded. The Map shall be prepared on the California coordinate system (NAD88). Prior to recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of said map in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. **The Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.**
2. Prior to recordation of the parcel map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. Monuments (one-inch iron pipe with tag) shall be set On Each Lot Corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
3. Prior to the recordation of the parcel map, park dedication fees for one additional dwelling unit shall be paid consistent with the fee amount in effect at the time of payment as established by the City of Newport Beach Municipal Code.
4. Prior to the recordation of the parcel map, fair-share fees for one additional dwelling unit shall be paid consistent with the fee amount in effect at the time of payment as established by the City of Newport Beach Municipal Code.
5. All improvements shall be constructed as required by Ordinance and the Public Works Department.
6. Prior to recordation of the parcel map, any existing broken and/or otherwise damaged concrete sidewalk panels, curb and gutter along the Larkspur Avenue frontage shall be reconstructed.
7. Prior to recordation of the parcel map, any existing broken and/or otherwise damaged concrete alley panels, along the alley frontage shall be reconstructed.
8. Prior to recordation of the parcel map, all existing overhead utilities shall be undergrounded.
9. No above ground improvements shall be located within the required five-foot alley setback.
10. Prior to recordation of the parcel map, all existing private, non-standard improvements within the public right-of-way and/or extensions of private, non-standard improvements into the public right-of-way fronting the development site shall be removed.
11. Each unit shall be served by its individual water meter and sewer lateral and cleanout. Each water meter and sewer cleanout shall be installed with a traffic-grade box and

cover. The water meter and sewer cleanout shall be located within the public right-of-way.

12. All abandoned utilities shall be abandoned per City Requirements.
13. An encroachment permit is required for all work activities within the public right-of-way.
14. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way may be required at the discretion of the Public Works Inspector.
15. All on-site drainage shall comply with the current City Water Quality requirements.
16. Prior to recordation of the parcel map, a new 36-inch box City street tree along the Larkspur Avenue frontage shall be installed.
17. Each dwelling unit shall be served with individual gas and electrical service connection and shall maintain separate meters for the utilities.
18. In compliance with the requirements of Chapter 9.04, Section 901.4.4, of the Newport Beach Municipal Code, approved street numbers or addresses shall be placed on all new and existing buildings in such a location that is plainly visible and legible from the street or road fronting the subject property. Said numbers shall be of non-combustible materials, shall contrast with the background, and shall be either internally or externally illuminated to be visible at night. Numbers shall be no less than four inches in height with a one-inch wide stroke. The Planning Division Plan Check designee shall verify the installation of the approved street number or addresses during the plan check process for the new or remodeled structure.
19. The building permit for the new construction shall not be finaled until after recordation of the Parcel Map. Subsequent to recordation of the Parcel Map, the applicant shall apply for a building permit for a description change of the subject project development from "duplex" to "condominium." The development will not be condominiums until this permit is finaled.
20. 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 519 Larkspur Avenue Tentative Parcel Map including, but not limited to, Parcel Map No. NP2013-023 (PA2013-191). 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 that 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.

21. This Parcel Map shall expire if the map has not been recorded within 24 months of the date of approval, unless an extension is granted by the Community Development Director in accordance with the provisions of Section 19.16 of the Newport Beach Municipal Code.

## RESOLUTION NO. ZA2013-075

### A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING TENTATIVE PARCEL MAP NO. NP2013-024 FOR A PARCEL MAP FOR TWO-UNIT CONDOMINIUM PURPOSES LOCATED AT 616 HELIOTROPE AVENUE (PA2013-192)

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Eric Lipoff, Spurlark, LLC, with respect to property located at 616 Heliotrope Avenue, and legally described as Lot 18, Block 635, Corona del Mar Tract requesting approval of a tentative parcel map.
2. The applicant proposes a tentative parcel map for two-unit condominium purposes. No exceptions to Title 19 (Subdivision Code) development standards are proposed with this application. The Tentative Parcel Map would allow each unit of the duplex, to be sold individually. The property is currently improved with a duplex that will be demolished and replaced with a two-unit condominium development.
3. The subject property is located within the Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Element category is Two-Unit Residential (RT).
4. The subject property is not located within the coastal zone
5. A public hearing was held on November 14, 2013 in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting 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 meeting.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under the requirements of the Guidelines for the California Environmental Quality Act under Class 15 (Minor Land Divisions).
2. Class 15 exempts the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous two years, and the parcel does not have an average slope greater than 20 percent. The proposed Tentative Parcel Map is for condominium purposes and is consistent with the requirements of the Class 15 exemption.

#### SECTION 3. REQUIRED FINDINGS.



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

#### Finding

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

#### Facts in Support of Finding

- A1. The proposed Tentative Parcel Map is for two-unit condominium purposes. An existing duplex will be demolished and replaced with a new duplex. The proposed subdivision and improvements are consistent with the Two-Unit Residential (R-2) Zoning District and the Two-Unit Residential (RT) General Plan Land Use Designation.

#### Finding

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

#### Facts in Support of Finding

- B-1. The lot is regular in shape, has a slope of less than 20 percent, and is suitable for two-unit residential development.

#### Finding

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

#### Facts in Support of Finding

- C-1. The subject property is developed and located in a developed area. The lot, proposed improvements, and proposed Tentative Parcel Map application will not cause substantial environmental damage.
- C-2. This project has been reviewed, and it has been determined that it is categorically exempt from the requirements of the California Environmental Quality Act under Class 15 (Minor Land Divisions) which allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or

exceptions are required, all services and access to the proposed parcels are available, the parcel was not involved in a division of a larger parcel within the previous two years, and the parcel does not have an average slope greater than 20 percent. The proposed Tentative Parcel Map is for condominium purposes and is consistent with all of the requirements of the Class 15 exemption.

#### Finding

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

#### Facts in Support of Finding

- D-1. The proposed Tentative Parcel Map is for residential condominium purposes. All construction for the project will comply with all Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems. Public improvements will be required of the developer per Section 19.28.010 (General Improvement Requirements) of the Municipal Code and Section 66411 (Local agencies to regulate and control design of subdivisions) of the Subdivision Map Act. Furthermore, the proposed project will conform to all applicable City ordinances.

#### Finding

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

#### Facts in Support of Finding

- E-1. The design of the development will not conflict with any easements acquired by the public at large for access through or use of property within the proposed development as there are no public easements that are located on the property.

#### Finding

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

Facts in Support of Finding

- F-1. The property is not subject to the Williamson Act. The subject property is not designated as an agricultural preserve and is less than 100 acres.

Finding

- G. *That, in the case of a “land project” as defined in Section 11000.5 of the California Business and Professions Code: (a) there is an adopted specific plan for the area to be included within the land project; and (b) the decision-making body finds that the proposed land project is consistent with the specific plan for the area.*

Facts in Support of Finding

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

Finding

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

Facts in Support of Finding

- H-1. The proposed Tentative Parcel Map and improvements, including the new duplex, are subject to Title 24 of the California Building Code that requires new construction to meet minimum heating and cooling efficiency standards based on location and climate. The Newport Beach Building Division enforces Title 24 compliance through the plan check and inspection process.

Finding

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

Facts in Support of Finding

- I-1. The residential density allowed for the site will remain the same, which allows two units in the R-2 Zoning District. Therefore, the tentative parcel map for condominium purposes will not affect the City in meeting its regional housing need.

Finding

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

Facts in Support of Finding

- J-1. Wastewater discharge into the existing sewer system has been designed to comply with the Regional Water Quality Control Board (RWQCB) requirements.

Finding

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

Facts in Support of Finding

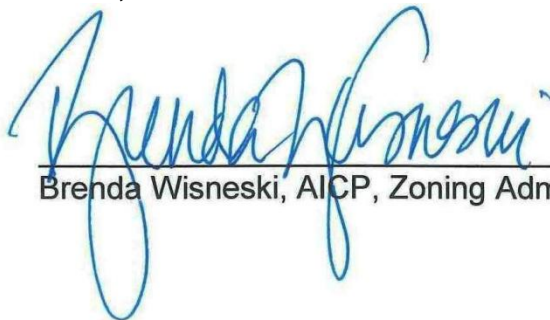
- K-1. The proposed property is not located within the Coastal Zone.

## SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby approves Tentative Parcel Map NP2013-024 subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective 10 days after the adoption of this Resolution unless within such time an appeal is filed with the Director of Community Development in accordance with the provisions of Title 19 Subdivisions, of the Newport Beach Municipal Code.

**PASSED, APPROVED AND ADOPTED THIS 14<sup>th</sup> DAY OF NOVEMBER, 2013.**



Brenda Wisneski, AICP, Zoning Administrator

**EXHIBIT "A"**

## CONDITIONS OF APPROVAL

1. A parcel map shall be recorded. The Map shall be prepared on the California coordinate system (NAD88). Prior to recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of said map in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. **The Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.**
2. Prior to recordation of the parcel map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. Monuments (one-inch iron pipe with tag) shall be set On Each Lot Corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
3. All improvements shall be constructed as required by Ordinance and the Public Works Department.
4. Prior to recordation of the parcel map, any existing broken and/or otherwise damaged concrete sidewalk panels, curb and gutter along the Heliotrope Avenue frontage shall be reconstructed.
5. Prior to recordation of the parcel map, any existing broken and/or otherwise damaged concrete alley panels, along the alley frontage shall be reconstructed.
6. Prior to recordation of the parcel map, all existing overhead utilities shall be undergrounded.
7. No above ground improvements shall be located within the required rear five-foot alley setback.
8. Prior to recordation of the parcel map, all existing private, non-standard improvements within the public right-of-way and/or extensions of private, non-standard improvements into the public right-of-way fronting the development site shall be removed.
9. Each unit shall be served by its individual water meter and sewer lateral and cleanout. Each water meter and sewer cleanout shall be installed with a traffic-grade box and cover. The water meter and sewer cleanout shall be located within the public right-of-way.
10. All abandoned utilities shall be abandoned per City Requirements.
11. An encroachment permit is required for all work activities within the public right-of-way.

12. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way may be required at the discretion of the Public Works Inspector.
13. All on-site drainage shall comply with the current City Water Quality requirements.
14. Prior to recordation of the parcel map, a new 36-inch box City street tree along the Heliotrope Avenue frontage shall be installed.
15. Each dwelling unit shall be served with individual gas and electrical service connection and shall maintain separate meters for the utilities.
16. In compliance with the requirements of Chapter 9.04, Section 901.4.4, of the Newport Beach Municipal Code, approved street numbers or addresses shall be placed on all new and existing buildings in such a location that is plainly visible and legible from the street or road fronting the subject property. Said numbers shall be of non-combustible materials, shall contrast with the background, and shall be either internally or externally illuminated to be visible at night. Numbers shall be no less than four inches in height with a one-inch wide stroke. The Planning Division Plan Check designee shall verify the installation of the approved street number or addresses during the plan check process for the new or remodeled structure.
17. The building permit for the new construction shall not be finalized until after recordation of the Parcel Map. Subsequent to recordation of the Parcel Map, the applicant shall apply for a building permit for a description change of the subject project development from "duplex" to "condominium." The development will not be condominiums until this permit is finalized.
18. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of 616 Heliotrope Avenue Parcel Map including, but not limited to, Parcel Map No. NP2013-024 (PA2013-192). 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.
19. This Parcel Map shall expire if the map has not been recorded within 24 months of the date of approval, unless an extension is granted by the Community Development Director in accordance with the provisions of Section 19.16 of the Newport Beach Municipal Code.

## RESOLUTION NO. ZA2013-076

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING TENTATIVE PARCEL MAP NO. NP2013-027 FOR A PARCEL MAP FOR TWO-UNIT CONDOMINIUM PURPOSES LOCATED AT 606 MARIGOLD AVENUE (PA2013-209)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Newport CDM 1, LLC, with respect to property located at 606 Marigold Avenue, and legally described as Lot 8, Block 640 of Corona del Mar Tract, County of Orange, State of California, as per map recorded in Book 3, Pages 41 and 42 of Miscellaneous Maps, in the office of the County Recorder of said County, requesting approval of a tentative parcel map.
2. The applicant proposes a tentative parcel map for two-unit condominium purposes. No waivers to the Title 19 (Subdivision Code) development standards are proposed. A two-unit duplex was demolished on the property and will be replaced with a new two-unit duplex.
3. The subject property is located within the Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Element category is Two-Unit Residential (RT).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on November 14, 2013, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting 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 meeting.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt pursuant to the State CEQA (California Environmental Quality Act) Guidelines under Class 15 (Minor Land Divisions).
2. The Class 15 exemption allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels are available, the parcel was not involved in a division of a larger parcel within the previous two years, and the parcel does not have an average slope greater than 20 percent. The proposed parcel

map is for condominium purposes and is consistent with all of the requirements of the Class 15 exemption.

### SECTION 3. REQUIRED FINDINGS.

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

#### Finding:

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

#### Facts in Support of Finding:

- A-1. The proposed parcel map is for two-unit residential condominium purposes. A two-unit duplex was demolished and will be replaced with a new two-unit duplex (approximately 3,345 square feet). The proposed subdivision and improvements are consistent with the Two-Unit Residential (R-2) Zoning District and the Two-Unit Residential (RT) General Plan Land Use Designation, which allows a maximum of two residential units on a single lot.
- A-2. The project is not located within a specific plan.
- A-3. The project has been conditioned to require public improvements, including the reconstruction of existing broken or otherwise damaged sidewalks, curbs, and gutters along the Marigold Avenue frontage consistent with Subdivision Code (Title 19).

#### Finding:

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

#### Facts in Support of Finding:

- B-1. The lot is physically suitable for two-unit density and development as the site is relatively flat and has demonstrated it is able to adequately accommodate for the residential use.
- B-2. The subject property is accessible from Marigold Avenue and the alley at the rear is adequately served by existing utilities.



Finding:

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

Facts in Support of Finding:

- C-1. The site was previously developed with a two-unit duplex and the applicant will construct a new two-unit duplex.
- C-2. The property is located in an urbanized area that does not contain any sensitive vegetation or habitat.
- C-3. The project is categorically exempt under Section 15315 (Article 19 of Chapter 3), of the California Environmental Quality Act (CEQA) Guidelines – Class 15 (Minor Land Alterations).

Finding:

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

Facts in Support of Finding:

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

Finding:

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

*authority is hereby granted to the City Council to determine that the public at large has acquired easements for access through or use of property within a subdivision.*

Facts in Support of Finding:

- E-1. There are no existing easements acquired by the public at large for access through, or use of the property. Therefore the parcel map will not conflict with easements acquired by the public at large, for access through, or use of property within the proposed development.

Finding:

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

Facts in Support of Finding:

- F-1. The property is not subject to the Williamson Act because the subject property is not designated as an agricultural preserve and is less than 100 acres in area.
- F-2. The site, developed for residential use, lies in a zone that permits such a use.

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

- I-1. The two-unit residential condominium project is consistent with the R-2 Zoning District which allows two residential units on the property. Therefore, the Parcel Map for condominium purposes will not affect the City in meeting its regional housing need.

Finding:

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

Facts in Support of Finding:

- J-1. The new two-unit duplex will be designed so that wastewater discharge into the existing sewer system complies with the Regional Water Quality Control Board (RWQCB) requirements.

Finding:

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

Facts in Support of Finding:

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

SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby approves Tentative Parcel Map No. NP2013-027, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective 10 days after the adoption of this Resolution unless within such time an appeal is filed with the Director of Community Development in accordance with the provisions of Title 19 Subdivisions, of the Newport Beach Municipal Code.

**PASSED, APPROVED AND ADOPTED THIS 14<sup>TH</sup> DAY OF NOVEMBER, 2013.**



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Brenda Wisneski, AICP, Zoning Administrator

**EXHIBIT "A"**

## CONDITIONS OF APPROVAL

1. The Parcel Map shall be recorded. The Map shall be prepared on the California coordinate system (NAD88). Prior to recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of said map in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. **The map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.**
2. Prior to recordation of the Parcel Map, the surveyor/engineer preparing the Map shall tie the boundary of the Map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. Monuments (one inch iron pipe with tag) shall be set on each lot corner, unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
3. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
4. The applicant shall reconstruct the existing broken and/or otherwise damaged concrete sidewalk panels, curb and gutter along the Marigold Avenue frontage.
5. The applicant shall reconstruct the existing broken and/or otherwise damaged alley adjacent to the project site.
6. The 5-foot rear alley setback shall remain clear of any above ground improvements.
7. Marigold Avenue is part of the City's Moratorium List. Work performed on said roadways will require additional surfacing requirements pursuant to City Standard 10-L-F.
8. All existing private, non-standard improvements within the public right-of-way and/or extensions of private, non-standard improvements into the public right-of-way fronting the development site shall be removed.
9. The applicant shall install new sod or low groundcovers of the type approved by the City throughout the Marigold Avenue parkway fronting the development site.
10. Each unit shall be served by its individual water meter and sewer lateral and cleanout. Each water meter and sewer cleanout shall be installed with a traffic grade box and cover. The water meter and sewer cleanout shall be located within the public-right-of way.

11. An encroachment permit is required for all work activities within the public right-of-way.
12. All improvements shall comply with the City's sight distance requirement pursuant to City Standard 110-L and Municipal Code Section 20.30.130.
13. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way may be required at the discretion of the Public Works Inspector.
14. All on-site drainage shall comply with the latest City Water Quality requirements.
15. All unused water services to be abandoned shall be capped at the main (corporation stop) and all unused sewer laterals to be abandoned shall be capped at the property line.
16. The applicant shall plant a 36-inch box Russett Magnolia street tree along the Marigold Avenue frontage pursuant to Municipal Code Chapter 13. A different tree species may be acceptable at the discretion of the Public Works Department.
17. Prior to the recordation of the Parcel Map, the applicant shall apply for a building permit for description change of the subject project development from "duplex" to "condominium." **The development will not be condominiums until this permit is finalized.** The building permit for the new construction shall not be finalized until after recordation of the parcel map.
18. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Marigold Avenue Parcel Map including, but not limited to, the NP2013-027 (PA2013-209). 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.
19. 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.

## RESOLUTION NO. ZA2013-077

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2013-020 FOR A TAKE-OUT SERVICE, LIMITED EATING AND DRINKING ESTABLISHMENT USE (NEWPORT COFFEE COMPANY) LOCATED AT 104 MCFADDEN PLACE (PA2013-202)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Alex Farman, with respect to property located at 104 McFadden Avenue, and legally described as Lot 7 of Block 20, of First Addition to Newport Beach, recorded in Book 3, Page 27 of Misc. Maps records of Orange County, California requesting approval of a minor use permit.
2. The applicant proposes to convert an existing retail use to a new take-out service, limited eating and drinking establishment. The existing 625-square-foot tenant space will include a kitchen, coffee bar area, restroom, and a customer seating area with a maximum of six seats. No late hours (after 11:00 p.m.) or alcohol sales are proposed.
3. The subject property is located within the Mixed-Use Water Related (MU-W2) Zoning District and the General Plan Land Use Element category is Mixed-Use Water Related (MU-W2).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Mixed Use Water Related (MU-W).
5. A public hearing was held on November 14, 2013, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting 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 meeting.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt pursuant to the State CEQA (California Environmental Quality Act) Guidelines under Class 1 – (Existing Facilities).
2. This exemption authorizes minor alterations to existing structures involving negligible or no expansion of use. The proposed project involves alterations to the interior floor plan of an existing commercial space and related parking lot with no expansion in use.

#### SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.020 of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

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

Facts in Support of Finding:

- A-1. The General Plan land use designation for the site is MU-W2 (Mixed-Use Water-Related), which applies to properties on or near the waterfront in which marine-related uses may be intermixed with general commercial, visitor-serving commercial and residential dwelling units on the upper floors.
- A-2. The proposed take-out service, limited use is consistent with the MU-W2 land use designation as it is intended to provide a service to visitors and residents within the immediate area.
- A-3. Eating and drinking establishments are common in the vicinity along McFadden Place and are complimentary to the surrounding commercial and residential uses.
- A-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:

- B-1. The site is located within the Mixed-Use Water Related (MU-W2) Zoning District of the Newport Beach Zoning Code. This district applies to properties on or near the waterfront in which marine-related uses may be intermixed with general commercial, visitor-serving commercial and residential dwelling units on the upper floors. The proposed take-out service, limited use is consistent with the land uses permitted within this zoning district, and the conditions of approval will ensure that the use is compatible with the adjacent residential areas.
- B-2. Pursuant to Section 20.22.020 (Table 2-9 Allowed Uses and Permit Requirements), the proposed take-out service, limited use requires approval of a minor use permit when located within 500 feet of a residential zoning district.
- B-3. Pursuant to Section 20.38.060 (Nonconforming Parking), a nonconforming use in a nonresidential zoning district may be changed to a new use allowed in that zoning district without providing additional parking, provided no intensification or enlargement (e.g., increase in floor area, or lot area) occurs. Take-out service, limited uses have a required parking ratio of one space per 250 square feet of gross floor area.
- B-4. The proposed project complies with the requirements of Section 20.38.060 (Nonconforming Parking) because the square footage of the existing suite will not be increased and the take-out service, limited use requires the same number of parking spaces required as the currently vacant retail space (625 s.f./250=25 parking spaces).



- B-5 Pursuant to Municipal Code Section 20.40.110, one space will be eliminated in order to comply with Americans with Disability Act (ADA) handicapped parking requirements associated with tenant improvements.
- B-6. As conditioned, the proposed project will comply with Zoning Code standards for eating and drinking 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:

- C-1. The proposed take-out service, limited use is appropriate given the site is located adjacent to McFadden square and the Newport Pier which provides convenient access to motorists, pedestrians, and bicyclists visiting the area.
- C-2. The proposed take-out service, limited use will be complementary to the other uses in the surrounding area, which includes various business office, retail, and visitor serving commercial uses including eating and drinking establishments. The proposed use is compatible with the existing and permitted uses within the area.
- C-3. The proposed establishment is located close to the boardwalk and Newport Pier, will provide a service for residents of the neighborhood and visitors to the area, and will not require the provision of additional parking spaces on-site due to the limited seating capacity. Furthermore, its close proximity to the boardwalk is anticipated to yield walking and biking customers.

Finding:

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

Facts in Support of Finding:

- D-1. The proposed project will be located within an existing commercial space of a mixed-use building and will primarily involve improvements to the interior space. Exterior changes to the site include improvements to the existing trash enclosure, screening of the proposed mechanical equipment, and landscaping planters along both sides of the driveway entrance as required by conditions of approval.
- D-2. Adequate public and emergency vehicle access, public services, and utilities are provided on-site and are accessed from McFadden Place, Court Avenue, and West Ocean Front.
- D-3. The tenant improvements to the project site will comply with all Building, Public Works, and Fire Codes. All ordinances of the City and all conditions of approval will be complied with.

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:

- E-1. The project has been reviewed and this approval includes conditions to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks, and areas surrounding the subject property and adjacent properties during business hours, if directly related to the patrons of the establishment.
- E-2. The restrictions on seating prevent adverse traffic impacts for the surrounding residential and commercial uses.
- E-3. The applicant is required to obtain Health Department approval prior to opening for business, and comply with the California Building Code to ensure the safety and welfare of customers and employees within the establishment.

## SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2013-020, subject to the conditions set forth in Exhibit A, which are attached hereto and incorporated by reference.
2. This action shall become final and effective 14 days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 (Planning and Zoning), of the Newport Beach Municipal Code.

**PASSED, APPROVED AND ADOPTED THIS 14<sup>TH</sup> DAY OF NOVEMBER, 2013**

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Brenda Wisneski, AICP, Zoning Administrator

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

1. The development shall be in substantial conformance with the approved site plan, and floor plans stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. This Minor Use Permit may be modified or revoked by the Zoning Administrator if determined that the proposed use 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.
3. Any change in operational characteristics, hours of operation, expansion in area, or other modification to the approved plans, may require an amendment to this Minor Use Permit or the processing of a new use permit.
4. Minor Use Permit No. UP2013-020 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 Zoning Code, unless an extension is otherwise granted.
5. Should this business be sold or otherwise come under different ownership, any future owners or assignees shall be notified in writing of the conditions of this approval by the current owner or leasing company.
6. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
7. 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.
8. A copy of this Resolution shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
9. Live entertainment and dancing shall be prohibited as a part of the regular business operation.
10. The sale of alcoholic beverages shall be prohibited.
11. The maximum number of seats allowed within the eating and drinking establishment shall be six (6). No outdoor seating is permitted unless an amendment to this Minor Use Permit is approved.
12. The hours of operation shall be limited to between 6:00 a.m. and 11:00 p.m, daily.
13. No outside paging system shall be utilized in conjunction with this establishment.

14. The applicant shall take reasonable steps to ensure that noise created by music and or video in the interior of the establishment does not impact surrounding residential land uses.
15. A landscape planter shall be provided on both sides of the driveway entrance. Landscaping shall be limited to ground cover or similar planting not to exceed 24" in height.
16. The proposed roof-mounted mechanical equipment shall be screened so as not to be visible in any direction (360 degrees) from a public right-of-way or adjacent residential property, as may be seen from a point six feet above ground level. Screening shall be compatible with the architectural style, materials, and color of the building upon which the equipment is located, subject to the review and approval of the Planning Division.
17. 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.
18. All trash shall be stored within the building or within the existing 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 solid roof for weather protection and screening purposes, unless otherwise approved by the Planning Division.
19. 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).
20. 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.
21. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m., daily, unless otherwise approved by the Director of Community Development, and may require an amendment to this Minor Use Permit.
22. 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.
23. All proposed signs shall conform to Title 20, Chapter 20.42 (Sign Standards) of the Newport Beach Municipal Code regulations or any sign program applicable to the property.
24. 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 Sessions Sandwiches Minor Use Permit including, but not limited to, the UP2013-020 (PA2013-202). 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 and Fire Department Conditions

25. The applicant is required to obtain all applicable permits from the City Building and Fire Departments. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The facility shall be designed to meet exiting and fire protection requirements as specified by the California Building Code and shall be subject to review and approval by the Building Division.
26. The construction plans must meet all applicable State Disabilities Access requirements.
27. Approval from the Orange County Health Department is required prior to the issuance of a building permit.
28. All exits shall remain free of obstructions and available for ingress and egress at all times.
29. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.

#### Revenue Division Conditions

30. A valid business license from the City of Newport Beach with a sellers permit shall be required prior to start of business. Any contractors/subcontractors doing work at the subject site shall be required to obtain a valid business license from the City of Newport Beach prior to the commencement of any work on the subject site.

#### Public Works Department Conditions

31. All improvements shall be constructed as required by Ordinance and the Public Works Department.
32. An encroachment permit is required for all work activities within the public right-of-way.

33. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way may be required at the discretion of the Public Works Inspector.
34. All on-site drainage shall comply with the latest City Water Quality requirements.



## COMMUNITY DEVELOPMENT DEPARTMENT

### PLANNING DIVISION

100 Civic Center Drive, P.O. Box 1768, Newport Beach, CA 92658-8915

(949) 644-3200 Fax: (949) 644-3229

[www.newportbeachca.gov](http://www.newportbeachca.gov)

## **ZONING ADMINISTRATOR ACTION LETTER**

**Application No.** Limited Term Permit – Seasonal No. XP2013-006  
(PA2013-223)

**Applicant** Lauren Mitchell

**Site Address** 2121 Westcliff Drive  
Trees by the Sea Christmas Tree Lot

**Legal Description** Parcel 1 of Lot Line Adjustment No. LA2003-041

On **November 14, 2013**, the Zoning Administrator approved the following: A Limited Term Permit application for a Christmas tree sales lot (Seasonal Sales) on a portion of a parking lot and inside a vacant tenant building within a commercial center. The property is located in the Commercial General (CG) Zoning District. The Zoning Administrator's approval is based on the following findings and subject to the following conditions.

### **FINDINGS**

#### **Finding:**

A. *This project has been reviewed, and it has been determined that it is categorically exempt from the requirements of the California Environmental Quality Act under Class 4 (Sec. 15304 Minor Alterations to Land);*

#### **Facts in Support of Finding:**

1. Class 4 exempts minor temporary uses of land having negligible or no permanent effects on the environment, including carnivals, sales of Christmas trees, etc.

#### **Finding:**

B. *The operation of the requested limited duration use at the location proposed and within the time period specified would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the requested limited duration use;*

Facts in Support of Finding:

1. The operation of the temporary Christmas tree sales lot has been reviewed and conditioned to preclude any detriment and to uphold the general welfare of the area.
2. All temporary structures and operational activities will take place on private property within an existing commercial building and directly in front of said building on a portion of the parking area.

Finding:

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

Facts in Support of Finding:

1. The subject lot is approximately 2.5 acres in area and is developed with three commercial buildings. The applicant proposes to occupy one of the buildings, formerly occupied by a grocery store, in conjunction with an outdoor display area.
2. The proposed location is adequate in size to accommodate the proposed tree display area, storage container, sales booth, sawhorse area, and tree storage area.
3. All temporary structures and improvements will be erected on private property.

Finding:

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

Facts in Support of Finding:

1. Access to the parking area for the site will occur by way of the existing driveways from Sherington Place, Westcliff Drive, and Irvine Avenue.

Finding:

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



Facts in Support of Finding:

1. The Christmas tree sales lot is not anticipated to generate an excess of vehicular traffic.
2. The proposed Christmas tree sales use is retail in nature and is considered a comparable operation to the previous grocery store use; therefore, it is adequately served by the existing parking area onsite.
3. Since the grocery store use is not in operation, the temporary use of two parking spaces adjacent to the tenant building will not negatively impact parking for the adjoining businesses.

Finding:

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

Facts in Support of Finding:

1. The Christmas tree sales lot is conditioned such that it will comply with all applicable provisions of the General Plan, Municipal Code, and other City regulations.
2. The subject lot is not located within a specific plan.

**CONDITIONS**

1. The limited duration use shall not commence operation prior to November 28, 2013 and shall conclude by December 26, 2013.
2. All temporary structures shall be anchored and a building permit shall be secured for those structures as required by the Building Division.
3. Inspection of all temporary structures is required by a Building Division Inspector. Permittee shall comply with all lawful orders and requirements of the Building Inspector. Inspection approval is required before the canopy can be entered by the public.
4. The limited duration use shall only operate between the hours of 9:00 a.m. and 9:00 p.m., daily.
5. The operator of the limited duration use shall be responsible for the control of noise generated by the subject facility including, but not limited to, noise generated by patrons and equipment. 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. If noise generation does not comply with the

aforementioned provisions, the Community Development Director may require remediation measures which may include relocation of equipment.

6. Lighting shall be in compliance with applicable standards of the Zoning Code. Exterior on-site lighting shall be shielded and confined within site boundaries. No direct rays or glare are permitted to shine onto public streets or adjacent sites or create a public nuisance. “Walpak” type fixtures are not permitted. If in the opinion of the Community Development Director, existing illumination creates an unacceptable negative impact on surrounding land uses or sensitive habitat areas he or she may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated. An electrical permit shall be secured for lighting as required by the Building Division.
7. All electrical shall be in good working order and shall be protected from pedestrian traffic.
8. Accommodations for ADA accessibility shall be provided.
11. The site driveway access shall have adequate sight distance pursuant to City Standard STD-110-L.
12. The applicant shall ensure patron vehicles do not impact traffic flow on any public right-of-way or within the commercial center parking area.
13. The site shall be cleaned of debris, litter, or any other evidence of the limited duration use upon completion or removal of the use, and shall continue to be used in compliance with this Zoning Code. The site shall be adequately cleaned and inspected by Code Enforcement by midnight on December 31, 2013. Failure to do so will result in a forfeiture of a portion or the entirety of the \$500 deposit.
14. A valid business license with a sellers permit shall be secured prior to commencement of the limited duration use.
15. All signs shall be in compliance with Chapter 20.42 (Sign Standards) of the Newport Beach Municipal Code and the site is limited to two (2) temporary banner signs not to exceed 75 square feet each.
16. Signage shall be placed in a manner such that they do not impact views of drivers entering and exiting the site.
17. All proposed temporary structures and any site contents shall be located within the private property lines.
18. The applicant shall provide a minimum of two (2) 2A-10BC fire extinguishers to be mounted in a visible, unobstructed location at a height of three to five feet. Additional fire extinguishers may be necessary to provide additional coverage in

certain areas or where access to an extinguisher from any point exceeds a 75-foot travel distance.

19. All flocking material shall be flame retardant.
20. Combustible ground covering greater than two inches in depth shall not be permitted unless approved by the Fire Department. Straw and other combustible ground covering shall be maintained in a damp or moist condition and/or be treated with an approved fire-retardant chemical.
21. Open flames such as, but not limited to, torches, candles, warming devices and other devices using a flame capable of igniting combustible materials shall not be used in or adjacent to tents or canopies. Open flames shall also not be used near or on combustible decorations or materials such as, but not limited to weeds, straw, hay and the like unless previously approved by the Fire Department.
22. Smoking shall not be permitted in tents or canopies or in adjacent areas where hay, straw, sawdust, Christmas trees, or other combustible materials are being used, displayed, or stored. "NO-SMOKING" signs shall be conspicuously posted throughout the lot and in the tent or canopy as well as all points of entry in such a manner that they are visible to all patrons who enter the premises.
23. All weeds, combustible vegetation, trash and combustible storage shall be removed from areas adjacent to and within 30 feet of tents and canopies.
24. The applicant shall contact the Fire Department and obtain necessary permitting if a tent or canopy is proposed on the lot. All tents or canopies shall be consistent with Fire Department Guideline A.03 – Tents and Temporary Membrane Structures.
25. Trees shall not be stored within the commercial tenant building.
26. The approval of the requested limited term permit is contingent upon compliance with applicable provisions of the Municipal Code and the successful granting of all required permits from any other department or governing agency.
27. 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 Trees by the Sea Christmas Tree Lot including, but not limited to, the XP2013-006 (PA2013-223). 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:** Limited Term Permit applications do not become effective until 14 days following the date of action. Prior to the effective date the applicant or any interested party may appeal the decision of the Zoning Administrator to the Planning Commission by submitting a written appeal application to the Community Development Director. For additional information on filing an appeal, contact the Planning Division at 949-644-3200.

By:



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Brenda Wisneski, AICP, Zoning Administrator

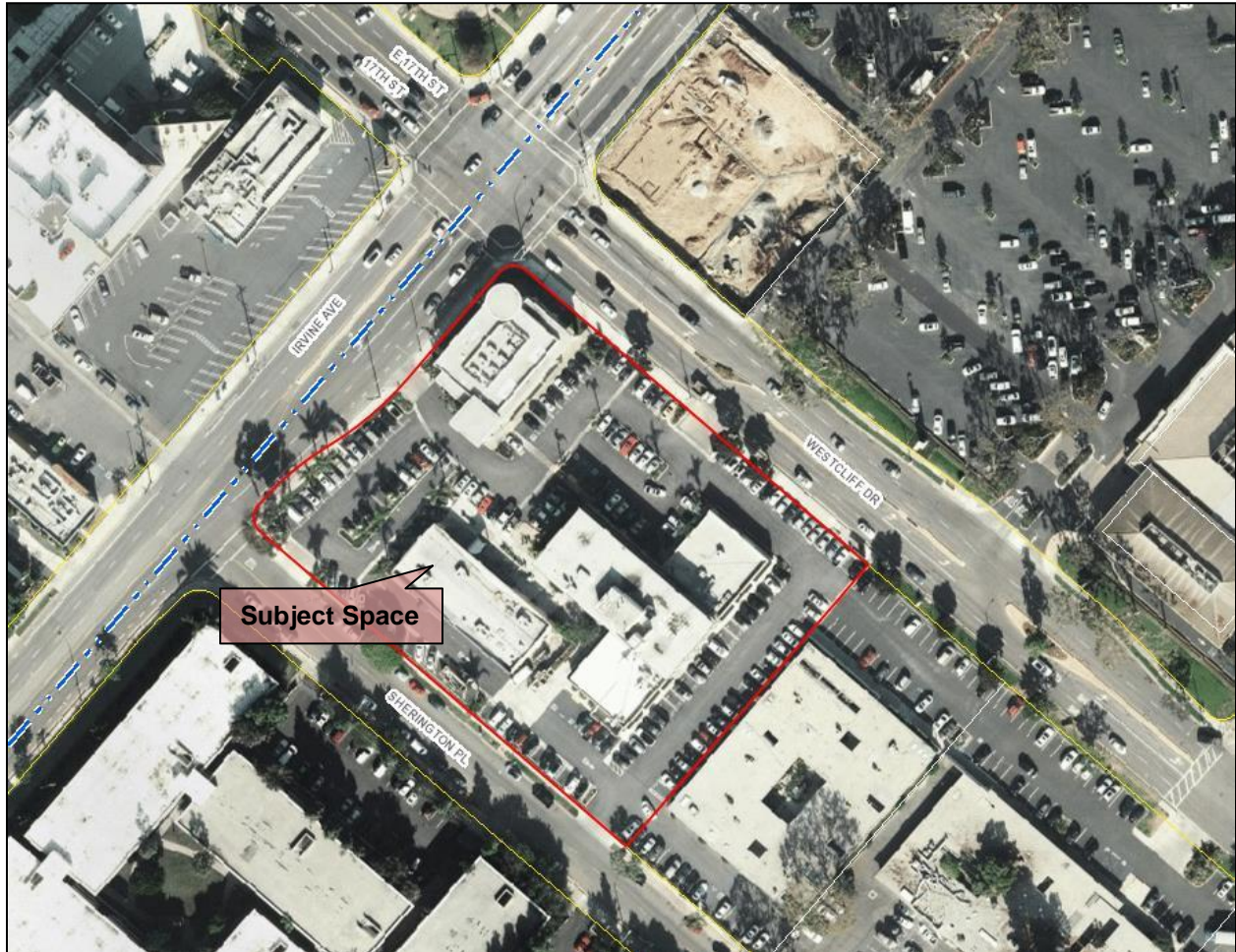
GR/bmz

Attachments:   ZA 1 Vicinity Map  
                      ZA 2 Site Plan

# **Attachment No. ZA 1**

Vicinity Map

# VICINITY MAP

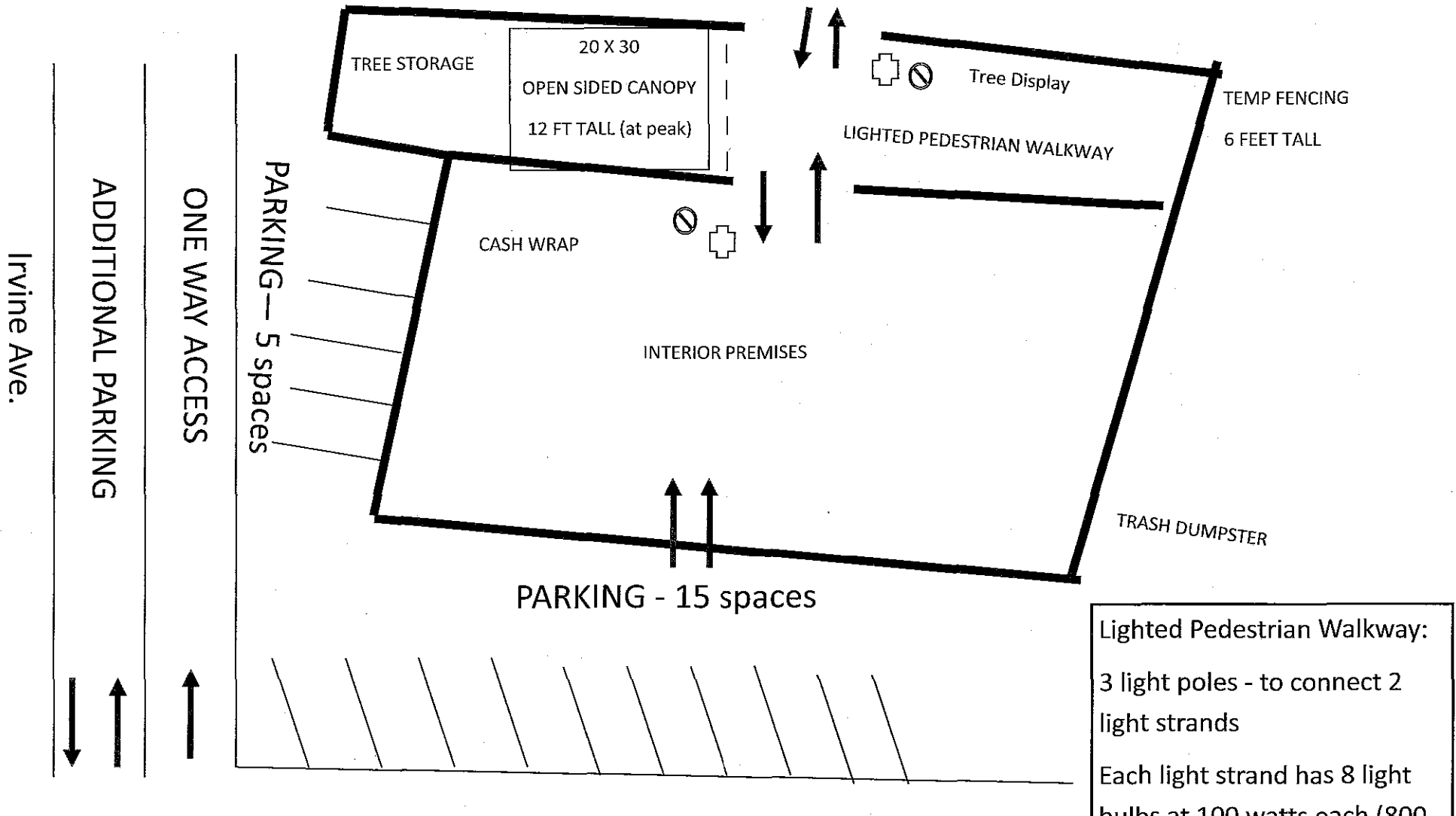


Limited Term Permit – Seasonal No. XP2013-006  
PA2013-223

**2121 Westcliff Drive**

# **Attachment No. ZA 2**

Site Plan



Lighted Pedestrian Walkway:  
 3 light poles - to connect 2  
 light strands  
 Each light strand has 8 light  
 bulbs at 100 watts each (800  
 total per strand)

Sherrington Pl.  
 TREES BY THE SEA  
 OPERATING HOURS—  
 Saturday & Sunday 9 AM - 9 PM  
 Mon-Fri 11 AM—9 PM

⊘ NO SMOKING SIGN  
 ⊕ FIRE EXTINGUISHER