



CITY OF NEWPORT BEACH COMMUNITY DEVELOPMENT DEPARTMENT PLANNING DIVISION ACTION REPORT

TO: CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION
FROM: Seimone Jurjjs, Community Development Director
SUBJECT: Report of actions taken by the Zoning Administrator, and/or Planning Division staff for the week ending March 29, 2019.

ZONING ADMINISTRATOR ACTIONS MARCH 28, 2019

- Item 1: Sushi li Minor Use Permit No. UP2018-026 (PA2018-273)
Site Address: 100 West Coast Highway, Suite 202
Action: Approved by Resolution No. ZA2019-030 Council District 3
- Item 2: The 944 Via Lido Nord Residence Coastal Development Permit No. CD2018-111 (PA2018-279)
Site Address: 944 Via Lido Nord
Action: Removed from Calendar Council District 1
- Item 3: Dube Duplex Alteration Coastal Development Permit No. CD2018-031 (PA2018-072)
Site Address: 909 East Balboa Boulevard, Units A and B
Action: Approved by Resolution No. ZA2019-031 Council District 1
- Item 4: Beljak Residence Coastal Development Permit No. CD2019-002 (PA2019-005)
Site Address: 1713 East Bay Avenue
Action: Approved by Resolution No. ZA2019-032 Council District 1

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

CC

Wendy Joe, Civilian Investigator, NBPD
Sgt. Brad Miller, NBPD

RESOLUTION NO. ZA2019-030

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2018-026 FOR A NEW EATING AND DRINKING ESTABLISHMENT WITH A TYPE 47 ALCOHOLIC BEVERAGE CONTROL (ABC) LICENSE LOCATED AT 100 WEST COAST HIGHWAY, SUITE 202 (PA2018-273)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Sushi li/ Ryugi LLC with respect to property located at 100 West Coast Highway, Suite 202 and legally described as PCL 1, Parcel Map 2010-133 requesting approval of a minor use permit.
2. The applicant proposes a minor use permit to allow an eating and drinking establishment (restaurant) within an existing commercial building. The restaurant would comprise of approximately 1,611 square feet with approximately 540 square feet of net public area (NPA). The restaurant would include a Type 47 (On-Sale General – Eating Place) Alcoholic Beverage Control (ABC) license. No late hours (after 11:00 p.m.) are proposed.
3. The subject property is designated General Commercial (CG) by the General Plan Land Use Element and is located within the Commercial General (CG) Zoning District.
4. The subject property is not located within the coastal zone.
5. A public hearing was held on March 28, 2019 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 hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Class 1 exemption includes the ongoing use of existing buildings where there is negligible or no expansion of use. The proposed project involves the construction of a restaurant within an existing commercial tenant space planned for such use.
3. A Mitigated Negative Declaration (SCH No. 2011041038) was prepared for the development of the shopping center in accordance with the implementing guidelines of CEQA and approved by the City Council on August 9, 2011.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.48.030 (Alcohol Sales) of the Newport Beach Municipal Code (NBMC), the following findings and facts in support of such findings are set forth:

Finding:

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

Facts in Support of Finding:

In finding that the proposed use is consistent with Section 20.48.030 of the Zoning Code, the following criteria must be considered:

- i. *The crime rate in the reporting district and adjacent reporting districts as compared to other areas in the City.*
1. The subject property is located in Reporting District (RD) 26. The Police Department is required to report offenses of Part One Crimes combined with all arrests for other crimes, both felonies and misdemeanors (except traffic citations) to ABC. Part One Crimes are the eight most serious crimes defined by the FBI Uniform Crime Report – criminal homicide, rape, robbery, aggravated assault, burglary, larceny-theft, auto theft, and arson. The crime rate in RD 26 is higher than adjacent RD 25 and the City overall. The area is found to have undue concentration, as it has 54 percent over the citywide average crime count. The highest volume crime is “burglary/theft from auto” and the highest volume arrest is “drug related offenses.”
 2. The Police Department has reviewed the proposal, provided operating conditions of approval, and has no objection to the addition of the ABC license for a new restaurant. The operation of the establishment includes the approved floor plan with the closing hour of 10:00 p.m.
- ii. *The numbers of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.*
1. The total number of alcohol-related calls for service, crimes, or arrests in RD 26 is higher than Reporting District (RD) 28, but lower than adjacent RDs 25 and 41. RD 28 is expected to be lower which a greater number of residential properties compared to commercial properties. The Police Department has reviewed the proposal and has no objection.
 2. According to the latest data set from 2017, eight calls for service were reported for the subject site representing less than 4 percent of all calls for service in RD 26. The highest volume crimes are not related to alcohol.

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

1. The restaurant is proposed within the Mariner's Pointe shopping center along West Coast Highway which is consistent with the General Plan designation, General Commercial. The shopping center consists of retail, service, medical, and eating and drinking establishment uses. The property is not located in close proximity to any day care centers, hospitals, park and recreation facilities, places of worship, schools, or similar uses that attract minors. The nature of the commercial area along Coast Highway is to provide goods and services, including eating and drinking establishments, designed to foster visitor and resident activity from travelers down Coast Highway and residents nearby. The nearest residential uses are behind the shopping center along Kings Road and across Coast Highway in the gated community of Bay Shores. Eating and drinking establishments with incidental alcohol service are common in the General Commercial area on Coast Highway and the proposed Alcoholic Beverage Control license type is not anticipated to alter the operational characteristics of the commercial center such that it becomes detrimental to the area. The project does not include any late hours that could potentially impact residential areas.

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

1. Currently there is one establishment that is allowed to sell alcohol (beer and wine) within the shopping center, Xanadu Café. The closest off-site establishment is Pizzeria Mozza at 800 West Coast Highway which is a full-service restaurant. There is no evidence suggesting this use has been detrimental to surrounding properties or the neighborhood.

v. Whether or not the proposed amendment will resolve any current objectionable conditions.

1. The project has been reviewed and conditioned to ensure that the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code is maintained and that a healthy environment for residents and businesses is preserved. The service of alcohol is intended for the convenience of customers dining at the establishment. Operational conditions of approval recommended by the Police Department relative to the sale of alcoholic beverages will ensure compatibility with the surrounding uses and minimize alcohol-related impacts.
2. The proposed hours of operation of the establishment will minimize the potential effects on land use. The establishment closes by 10:00 p.m., daily, which will ensure the use does not become a late night bar, tavern, or nightclub.
3. The establishment is located within an existing shopping center which is developed with other commercial uses. The addition of a new ABC license in conjunction with a new restaurant will not alter the existing or anticipated operations, but will complement the proposed food service and provide a convenience to customers.

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

Finding:

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

Facts in Support of Finding:

1. The General Plan designates the site as General Commercial (CG) which is intended to provide a variety of commercial uses including restaurants.
2. The proposed restaurant is located within the established commercial area along West Coast Highway, which provides goods and services to visitors and residents alike, consistent with the CG land use designation.
3. The subject property is not a part of a specific plan area.

Finding:

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

Facts in Support of Finding:

1. The site is located in Commercial General (CG) Zoning District which is intended to provide commercial uses. Eating and drinking establishments are allowed uses, subject to the approval of a use permit.
2. The subject commercial center, Mariner's Pointe, was constructed with a parking structure to accommodate a variety of commercial uses, including retail, medical, and restaurant uses. The parking structure accommodates 143 parking spaces on-site with approved valet operations pursuant to Mariner's Pointe Parking Operational Plan Version 8 (Sunset Parking, 2012).
3. Required parking for Mariner's Pointe was previously determined based on documentation and a number of assumptions, including: 1) the Shared Parking Analysis prepared by LSA Associates, Inc., dated July 22, 2011; 2) a limitation that the maximum Net Public Area (NPA) for restaurant uses be limited to 5,210 square feet; and 3) the proposed floor area for restaurant uses will be occupied by fine dining establishments with very low turnover with a parking demand of one space per 50 square feet of NPA. Pursuant to Condition No. 7 of City Council Resolution No. 2011-86, any changes to the assumed tenant mix or changes in the type of restaurant use that would increase parking demands may require the preparation of a new shared parking analysis approved by the Community Development Department to ensure adequate parking is provided on-site to support the peak parking demands.

4. A parking demand of 1 space per 50 sf of NPA is appropriate for the proposed use based on several physical design and operational characteristics. For example, there are only two tables included on the floor plan and the remainder of the seats are at the sushi bar. There are only 21 seats provided in the restaurant overall, creating a public area that is not dense with seating. Further, the net public area includes areas such as the entry way, which does not allow for seating and dining. The project does not include any outdoor dining, which may be included with a project without providing additional parking in most cases. The project does not have opportunities for future outdoor dining. The project is conditioned to prohibit live entertainment and dancing. Hours of operation are limited to lunch and dinner, with no early or late hours. Lastly, the provided menu mainly consists of multiple course options, which is more typical in fine dining establishments.
5. The actual mix of tenant uses of the Mariner's Pointe project is different than the assumptions included in the 2011 Shared Parking Analysis. The amount of restaurant use within the building, including the proposed use, is substantially less than originally anticipated. Updated Shared Parking Analysis – Mariner's Pointe, dated March 15, 2019, has been prepared by the Community Development Department to evaluate the on-site parking supply versus the demand that will occur for parking throughout the day based on the current mix of uses and operational characteristics, including the proposed restaurant. Given the characteristics of the use, a parking demand of one space per 50 square feet of NPA remains appropriate for the proposed restaurant use based on the high quality nature of the establishment and very low turnover of customers expected.
6. The Updated Shared Parking Analysis indicates that the total parking required for all uses is 99 spaces, resulting in a surplus of 44 spaces. The analysis also indicates that because of the different peak hours of operation of the various mix of tenants, that the total parking required has two separate peaks: 1) one peak during the early afternoon with a total demand for 87 parking spaces at 1:00 p.m.; and 2) a second peak in the early evening with a total demand of 89 parking spaces at 5:00 p.m. Therefore, the commercial center provides adequate on-site parking to accommodate the proposed use and is anticipated to provide a surplus of 54 spaces based on the Updated Shared Parking Analysis.

Finding:

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

Facts in Support of Finding:

1. The addition of the ABC license in conjunction with a new eating and drinking place does not change the operating characteristics of the existing commercial center which was designed with the intention to include restaurant uses.
2. The project is conditioned to prohibit the restaurant from operating as a bar, tavern, or nightclub, thereby reducing potential impacts to the neighborhood. The proposed hours of operation are seven days a week from 11:00 a.m. to 10:00 p.m. and no late hours are requested. Additionally, conditions are included to prohibit amplified sound other than

background music and no live entertainment or dancing is allowed on the premises. Lastly, food service from the regular menu shall be made available to patrons until closing.

3. The project is conditioned to require pollution control units to filter and reduce potential odor impacts for neighboring residential uses along Kings Road. The project is also conditioned to require all rooftop equipment to be installed with silencer ducts to reduce noise levels to a level in compliance with NBMC Section 10.26 and be consistent with the original approvals for the building.
4. The restaurant will be complimentary to the other uses in the Mariner's Pointe shopping center, which includes retail stores, salons, a yoga studio, food services, and other commercial uses. It will contribute to making the shopping center a viable commercial node for the neighborhood and visitors.
5. The restaurant will provide a convenience for residents of the neighborhood and visitors to the area with adequate parking within the parking structure on-site.

Finding:

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

Facts in Support of Finding:

1. The existing restaurant (Xanadu Café) within the shopping center has proven to be physically suitable in terms of design, location, shape, and size to support the use. The physical characteristics of the site are not changing with the addition of a new restaurant use with alcohol service.
2. Adequate public and emergency vehicle access, public services, and utilities are provided for on-site.

Finding:

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

Facts in Support of Finding:

1. The project has been reviewed and includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks and areas surrounding the subject property and adjacent properties during business hours, if directly related to the patrons of the establishment.

2. The restaurant will service the neighborhood by providing dining services as a public convenience to the surrounding residential neighborhood as well as visitors, which is the intent of the CG land use designation. The service of alcohol will complement the principal use of the facility and provide an economic opportunity for the property owner to maintain a successful business in a way which best serves the community.
3. As conditioned, the owners, managers and employees selling alcohol are required to undergo and successfully complete a certified training program in responsible methods and skills for selling alcohol.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves UP2018-026 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 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 28TH DAY OF MARCH, 2019.



Patrick J. Alford, Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

(Project-specific conditions are in italics)

Planning Division Conditions

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. *Hours of operation shall be limited to the following: 11:00 a.m. to 10:00 p.m., seven days a week. No late hours (after 11:00 p.m.) are permitted.*
3. *Kitchen exhaust fans shall be installed and maintained in accordance with the Uniform Mechanical Code.*
4. *The exhaust systems for the food use shall be installed with pollution control units to filter and control odors and shall be located entirely within the structure, except for a required vent that may be located on the roof in a location approved by the Planning Division.*
5. *The operator shall provide a washout area within the tenant space.*
6. *No amplified sound, other than background music, is allowed. Any background music shall not be audible from outside of the building.*
7. *All new or replacement rooftop equipment associated with the restaurant use shall be installed with silencer ducts to reduce noise levels to a level in compliance with NBMC Section 10.26 (Community Noise Control).*
8. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
9. 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 Use Permit.
10. All proposed signs shall be in conformance with the approved Comprehensive Sign Program for the project site and provisions of Chapter 20.42 (Signs) of the Newport Beach Municipal Code.
11. *Use Permit No. UP2018-026 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.91.050 of the Newport Beach Municipal Code, unless an extension is otherwise granted.*
12. This Use Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is

detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.

13. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Use Permit or the processing of a new Use Permit.
14. A copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
15. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
16. 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.
17. Construction activities associated with the tenant improvements 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.
18. No outside paging system shall be utilized in conjunction with this establishment.
19. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes.
20. 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.
21. 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).
22. *All deliveries for the restaurant shall occur on-site. Delivery vehicles idling or parking on public property is prohibited.*

23. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 7:00 a.m. on weekdays and Saturdays and between the hours of 10:00 p.m. and 9:00 a.m. on Sundays and Federal holidays, unless otherwise approved by the Director of Community Development, and may require an amendment to this Use Permit.
24. 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.
25. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
26. 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.
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 Sushi li Minor Use Permit including, but not limited to, Minor Use Permit No. UP2018-026 (PA2018-273). 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.

Police Department Conditions

28. The approval is for an existing eating and drinking establishment with on-sale alcoholic beverage service. The type of alcoholic beverage license issued by the California Board of Alcoholic Beverage Control shall be a Type 47 (On-Sale General – Eating Place) license in conjunction with the restaurant as the principal use of the facility.
29. The applicant shall comply with all federal, state, and local laws, and all conditions of the Alcoholic Beverage Control License. Material violation of those laws or conditions in connection with the use may be cause for revocation of the use permit.

30. All owners, managers, and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages within 60 days of hire. This training must be updated every three years regardless of certificate expiration date. The certified program must meet the standards of the certifying/licensing body designated by the State of California. The establishment shall comply with the requirements of this section within 60 days of approval. Records of each owner's, manager's, and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.
31. Food service from the regular menu shall be made available to patrons until closing.
32. "VIP" passes or other passes to enter the establishment, as well as door charges, cover charges, or any other form of admission charge, including minimum drink requirement or the sale of drinks is prohibited (excluding charges for prix fixe meals).
33. Approval does not permit the premises to operate as a bar, tavern, cocktail lounge, or nightclub as defined by the Newport Beach Municipal Code.
34. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
35. No games or contests requiring or involving the consumption of alcoholic beverages shall be allowed.
36. There shall be no reduced price alcoholic beverage promotions after 9:00 p.m.
37. The sale of alcoholic beverages for consumption off the premises is prohibited.
38. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records, which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. These records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department on demand.
39. There shall be exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.
40. There shall be no live entertainment or dancing allowed on the premises.
41. The removal or relocation of tables, chairs, stools, or other furniture to accommodate an area for standing or dancing shall be prohibited.
42. Any event or activity staged by an outside promoter or entity, where the applicant, operator, owner or his/her employees or representatives share in any profits, or pay any percentage or commission to a promoter or any other person is prohibited.

43. There shall be no on-site radio, television, video, film, or other electronic media broadcasts, including recordings to be broadcasted at a later time, which include the service of alcoholic beverages, without first obtaining an approved Special Event Permit issued by the City of Newport Beach.
44. 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, and debris from the premises and on all abutting sidewalks within 20 feet of the premises. Graffiti shall be removed within 48 hours of written notice from the City.
45. Strict adherence to maximum occupancy limits is required.
46. The applicant shall maintain a security recording system with a 30-day retention and make those recordings available to police upon request.
47. The operator of the restaurant facility shall be responsible for the control of noise generated by the subject facility. 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.

Fire Department Conditions

48. Where carbon dioxide storage tanks, cylinders, piping and equipment are located indoors, rooms or areas containing carbon dioxide storage tanks, cylinders, piping and fitting, and other areas where a leak of carbon dioxide can collect shall be provided with either ventilation in accordance with California Fire Code (CFC) Section 5307.5 or an emergency alarm system in accordance with CFC Section 5307.5.2.
49. A Type I hood shall be installed at or above all commercial cooking appliances used for commercial purposes that produce grease vapors (CFC Section 609.2).
50. Each required commercial kitchen exhaust hood and duct system required by CFC Section 609 that has a Type I hood shall be protected with an approved automatic fire-extinguishing system installed in accordance with CFC Section 904.2.2.

Building Division Conditions

51. Prior to the issuance of building permits, Health Department Approval shall be obtained.
52. The applicant shall provide a grease interceptor if deemed necessary by the Building Division.

RESOLUTION NO. ZA2019-031

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2018-031 TO ALTER AND EXPAND AN EXISTING DUPLEX THAT IS NONCONFORMING DUE TO NUMBER OF PARKING SPACES LOCATED AT 909 EAST BALBOA BOULEVARD (PA2018-072)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Barry Walker (“Applicant”) on behalf of Bryan and Michelle Dube (“Property Owners”), with respect to property located at 909 East Balboa Boulevard, requesting approval of a coastal development permit.
2. The lot at 909 East Balboa Boulevard is legally described as Lot 4 in Block 14 of the Balboa Tract.
3. The Applicant proposes to remodel and expand an existing 2,273-square-foot duplex with an attached 508-square-foot two-car garage. The existing development provides only one parking space per unit where two per unit are required; therefore, it is considered legal nonconforming and is only allowed up to a 10-percent addition of the existing gross floor area (278 square feet). The Applicant proposes to add approximately 267 square feet and a rooftop deck. There will be limited site work and no new landscaping. No deviations from development standards are requested.
4. The subject property is designated Two-Unit Residential (RT) by the General Plan Land Use Element and is located within the Two-Unit Residential (R-2) Zoning District.
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Two-Unit Residential – (20.0 – 29.9 DU/AC) (RT-D) and it is located within the Two-Unit Residential (R-2) Coastal Zone District.
6. A public hearing was held on March 28, 2019, 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 hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is categorically exempt pursuant to Title 14 of the California Code of Regulations Section 15301, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Class 1 (Existing Facilities), because it has no potential to have a significant effect on the environment.

2. Class 1 exempts additions of up to 50 percent of the floor area of structures before the addition, or 2,500 square feet, whichever is less. The proposed project is a 267square-foot addition to an existing 2,781square-foot duplex, which is an addition of less than 10 percent of the existing floor area.
3. The project is an addition to an existing duplex and does not increase the number of units.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
 - a. The maximum floor area limitation is 3,561 square feet and the proposed floor area including the 267 square-foot addition is 3,039 square feet.
 - b. The proposed development provides the minimum required setbacks, which are 9 feet along the front property line abutting East Balboa Boulevard, 3 feet along each side property line and 0 feet along the rear property line abutting the alley.
 - c. The highest guardrail is less than 24 feet from established grade based on the plans, which complies with the maximum height requirements.
 - d. The existing duplex is legal nonconforming due to number of off-street parking spaces. It provides two garage spaces where the current requirement is two covered and two enclosed (i.e., four parking spaces total). Newport Beach Municipal Code Section 21.38.060(A)(1)(b) allows additions up to 10 percent of the existing gross floor area when a development does not maintain the required number of parking spaces. In this case, an addition would be limited to 278 square feet and the proposed addition is 267 square feet.
2. The neighborhood is predominantly developed with two- and three-story, single- and two-family residences. The proposed design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development and expected future development consistent with applicable development standards.
3. The property is an inland lot that is separated from the ocean by an alley, residential development, and Peninsula Park. It is elevated at approximately 10 feet based on the North American Vertical Datum of 1988 (NAVD88).

4. The property is located in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance.
5. With exception of the reconstructed garage, alterations to the existing development would occur primarily on the upper levels and minimal site work is proposed. There is no proposed change in grade or drainage, nor increase in impermeable surface area onsite. In addition, the development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post-construction activities on the marine environment. These design features include, but are not limited to, one or more of the following: the appropriate management of equipment and construction materials, reducing runoff with permeable surfaces, and the use of post-construction best management practices to minimize the project's adverse impact on coastal water.
6. The project design addresses water quality during construction with a construction erosion control plan. All new construction resulting from the project will tie into an existing post-construction drainage system that includes features designed to retain dry weather and minor rain event runoff on-site. Any water not retained on-site is directed to the City's storm drain system.
7. The property is located near designated Public Viewpoints or Coastal View Roads, but will not impact public coastal views, as discussed in the Facts in Support of Finding B below.

Finding:

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

Fact in Support of Finding:

1. The project site is located between the nearest public road and the sea or shoreline; however, the project will not affect the public's ability to gain access to use and/or view the coast and nearby recreational facilities. The existing residential development neither provides nor inhibits public coastal access. Implementation Plan Section 21.30A.040 (Determination of Public Access/Recreation Impacts) requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project is the alteration and expansion of an existing duplex. Therefore, the project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities.

2. Although the existing and proposed development is nonconforming due to number of parking spaces provided, the nature of the improvements is not anticipated to place additional demand on coastal access and/or resources.
3. The existing development does not to block or impede existing public access opportunities and occurs within the confines of private property. Existing coastal access conditions will not be affected with the alteration and expansion. Coastal access is currently provided and will continue to be provided by street ends throughout the Balboa Peninsula with access to the beach and water.
4. While the project site is not located adjacent to a coastal view road, it is located within approximately 115 feet of Peninsula Park. Peninsula Park is a public viewpoint as identified in the Coastal Land Use Plan but separated by a row of two-story residences and East Ocean Front Alley. As a result, the proposed project will have no effect on views from the park.
5. The project site may also be located within the viewshed of distant public viewing areas; however, the project will alter and expand an existing duplex that complies with all applicable Local Coastal Program (LCP) development standards. It will also maintain a building envelope consistent with the existing and anticipated neighborhood pattern of development. Therefore, the project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts to public views.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2018-031, 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 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

PASSED, APPROVED, AND ADOPTED THIS 28TH DAY OF MARCH, 2019.



Patrick J. Alford, Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations, stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
3. Coastal Development Permit No. CD2018-031 shall expire unless exercised within 24 months from the date of approval as specified in Section 21.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code, unless an extension is otherwise granted
4. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
5. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this coastal development permit.
6. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
7. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
8. This Coastal Development Permit does not authorize any development seaward of the private property.
9. Best Management Practices and Good Housekeeping Practices shall be implemented prior to and throughout the duration of construction activity as designated in the Construction Pollution Prevention Plan.
10. Prior to issuance of the building permits, a copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans.
11. Prior to issuance of building permits, the Applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the coastal development permit file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural

sheets only and shall be reduced in size to 11 inches by 17 inches. The plans shall accurately depict the elements approved by this coastal development permit.

12. Prior to issuance of building permits, the Applicant shall submit a final construction erosion control plan. The plan shall be subject to review and approval by the Building Division.
13. Prior to issuance of building permits, the Applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
14. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter sensitive habitat, receiving waters, or a storm drain or result in impacts to environmentally sensitive habitat areas, streams, wetland or their buffers.
15. The discharge of any hazardous materials into storm sewer systems or receiving waters shall be prohibited. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. A designated fueling and vehicle maintenance area with appropriate berms and protection to prevent spillage shall be provided as far away from storm drain systems or receiving waters as possible.
16. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stockpiles and construction materials shall be covered, enclosed on all sites, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway.
17. Trash and debris shall be disposed in proper trash and recycling receptacles at the end of each construction day. Solid waste, including excess concrete, shall be disposed in adequate disposal facilities at a legal disposal site or recycled at a recycling facility.
18. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by the current property owner or agent.
19. The Applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of native birds pursuant to MBTA:
 - A. The construction area shall be inspected for active nests. If birds are observed flying from a nest or sitting on a nest, it can be assumed that the nest is active. Construction activity within 300 feet of an active nest shall be delayed until the nest is no longer active. Continue to observe the nest until the chicks have left the nest and activity is no longer observed. When the nest is no longer active, construction activity can continue in the nest area.

- B. It is a violation of state and federal law to kill or harm a native bird. To ensure compliance, consider hiring a biologist to assist with the survey for nesting birds, and to determine when it is safe to commence construction activities. If an active nest is found, one or two short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.
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 Dube Duplex Alteration, Coastal Development Permit No. CD2018-031 (PA2018-072) 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. ZA2019-032

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2019-002 FOR A NEW SINGLE-FAMILY RESIDENCE LOCATED AT 1713 EAST BAY AVENUE (PA2019-005)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Brandon Architects, Inc., with respect to property located at 1713 East Bay Avenue, and legally described as Lot 7 of Block 26, requesting approval of a Coastal Development Permit.
2. The applicant proposes the demolition of an existing single-family residence and the construction of a new 3,282-square-foot single-family residence with a 495-square-foot attached garage. The project includes reinforcing and raising the height of the existing bulkhead. No work will be conducted bayward of the existing property. The proposed development also includes additional appurtenances such as walls, fences, patios, hardscape, drainage devices, and landscaping.
3. The subject property is located within the Single-Unit Residential (R-1) Zoning District 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. The Coastal Land Use Plan category is Single Unit Residential Detached (RSD-B) and the Coastal Zoning District is Single-Unit Residential (R-1).
5. A public hearing was held on March 28, 2019, 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 hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is categorically exempt pursuant to Title 14 of the California Code of Regulations (Section 15315, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Class 3 (New Construction or Conversion of Small Structures), because it has no potential to have a significant effect on the environment.
2. Class 3 exempts the construction of limited numbers of new, small structures, including one single-family residence. The proposed project is a new single-family residence located in the R-1 Coastal Zoning District.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
 - a. The maximum floor area limitation is 3,901 square feet and the proposed floor area is 3,777 square feet.
 - b. The proposed development complies with the required setbacks, which are 25 feet along the property line abutting the bay, 5 feet along the property line abutting East Bay Avenue, and 3 feet along each side property line.
 - c. The highest guardrail/parapet is below 24 feet from established grade and the highest ridge is 29 feet from established grade. The proposed development complies with all height requirements.
 - d. The proposed development provides a two-car garage, meeting the minimum garage requirement for a single-family residence.
 - e. The proposed development exceeds the minimum 9.0 feet (NAVD88) top of slab elevation requirement for interior living areas of new structures.
2. The neighborhood is predominantly developed with two- and three-story single-family residences. The proposed design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development and expected future development.
3. The project site is protected by an existing cast-in-place concrete bulkhead. The applicant is proposing to cast new concrete coping and construct a new concrete stem wall with the top of the bulkhead elevation at 10.6 feet (NAVD88). A Bulkhead Conditions Report was prepared by Geosoils, Inc. on March 13, 2019, and concluded that the existing concrete bulkhead was in good condition. The existing bulkhead is proposed to be reinforced to support a concrete deck. Specifically, the applicant is proposing to cast a new concrete deadman and install new tiebacks. The Bulkhead Conditions Report concluded that the reinforced bulkhead will protect the proposed development.
4. The finish floor elevation of the proposed dwelling is 9.11 feet NAVD 88, which complies with the minimum 9.0 feet NAVD88 elevation standard. Continuous waterproofing shall be extended around the perimeter of the dwelling that would protect against flooding up to an elevation of 10.6 feet (NAVD88). Flood shields (sandbags and other methods) can

be deployed across the openings to prevent flooding to the structure. A Coastal Hazard Report prepared by Geosoils, Inc. on March 13, 2019, concludes that the highest high tide elevation (currently 7.7 feet NAVD88) will not exceed the proposed exterior curb of 10.6 feet NAVD88 using the low-risk aversion projected sea level rise (2.9-foot increase) over the 75-year design life of the structure based on estimates for sea level rise provided by the State of California Sea-Level Rise Guidance 2018.

5. Pursuant to Municipal Code Section 21.35.050, due to the proximity of the development to the shoreline and the development containing more than 2,500 square feet of impervious surface area, a Water Quality Management Plan (WQMP) is required. A WQMP prepared by CivilScapes Engineering, Inc., dated February 27, 2019, has been submitted and will be reviewed by the City's Engineer Geologist. The WQMP includes a polluted runoff and hydrologic site characterization, a sizing standard for BMPs, use of an LID approach to retain the design storm runoff volume on site, and documentation of the expected effectiveness of the proposed BMPs.
4. The property is located in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance.
5. The project site is not located adjacent to a coastal view road, public viewpoint, public park or beach, or public accessway, as identified in the Coastal Land Use Plan. However, the adjacent street end of J Street includes a public bench for the public to enjoy views of the bay. The existing gangway and dock located directly adjacent to the subject property has no proposed changes and therefore will not impact the public view from the street end of J Street. Furthermore, all improvements in the front setback area of the subject property is limited to 42-inches from existing grade. An investigation of the project site and surrounding area did not identify any other public view opportunities. The project may be located within the viewshed of distant public viewing areas. However, the project will replace an existing single-family home with a new single-family residence that complies with all applicable LCP development standards and maintains a building envelope consistent with the existing neighborhood pattern of development. Therefore, the project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts to public views.

Finding:

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

Fact in Support of Finding:

1. The project site is located on the Balboa Peninsula between the nearest public road and the sea. Implementation Plan Section 21.30A.040 requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project replaces an existing duplex with a new single-family residence. Therefore, the project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities. Furthermore, the project is designed and sited so as not to block or impede existing public access opportunities.
2. Vertical access to the bay is available near the site on J Street and I Street.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2019-002, 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 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

PASSED, APPROVED, AND ADOPTED THIS 28TH DAY OF MARCH, 2019.



Patrick J. Alford, Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

1. The development shall be in substantial conformance with the approved site plan, floor plans, and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new Coastal Development Permit.
3. Coastal Development Permit No. CD2019-002 shall expire unless exercised within 24 months from the date of approval as specified in Section 21.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code, unless an extension is otherwise granted.
4. Prior to the issuance of a Certificate of Occupancy, an agreement in a form approved by the City Attorney between the property owner and the City shall be executed and recorded waiving rights to the construction of future shoreline protection devices including the repair and maintenance, enhancement, reinforcement, or any other activity affecting the bulkhead, that results in any encroachment seaward of the authorized footprint of the bulkhead or other shoreline protective device. The agreement shall be binding against the property owners and successors and assigns.
5. Prior to the issuance of a building permit, the property owner shall submit a notarized signed letter acknowledging all hazards present at the site, assuming the risk of injury or damage from such hazards, unconditionally waiving any claims of damage against the City from such hazards, and to indemnify and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of development.
6. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter sensitive habitat, receiving waters, or a storm drain or result in impacts to environmentally sensitive habitat areas, streams, the beach, wetlands or their buffers.
7. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
8. This Coastal Development Permit does not authorize any development seaward of the private property. Should the bulkhead require more extensive repair or replacement with construction equipment bayward of the private property, an additional Coastal Development Permit shall be obtained for the bulkhead from the Coastal Commission.

9. The discharge of any hazardous materials into storm sewer systems or receiving waters shall be prohibited. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. A designated fueling and vehicle maintenance area with appropriate berms and protection to prevent spillage shall be provided as far away from storm drain systems or receiving waters as possible.
10. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stock-piles and construction materials shall be covered, enclosed on all sites, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway.
11. Trash and debris shall be disposed in proper trash and recycling receptacles at the end of each construction day. Solid waste, including excess concrete, shall be disposed in adequate disposal facilities at a legal disposal site or recycled at a recycling facility.
12. Prior to issuance of building permits, the final WQHP/WQMP shall be reviewed and approved by the Building Division. Implementation shall be in compliance with the WQHP/WQMP and any changes could require separate review and approval by the Building Division.
13. Prior to the issuance of building permits, the applicant shall submit a final drainage and grading plan. The plan shall be subject to the review and approval by the Building Division.
14. Prior to the issuance of building permits, the applicant shall submit a final landscape and irrigation plan. These plans shall incorporate drought tolerant plantings, non-invasive plant species and water efficient irrigation design. The plans shall be approved by the Planning Division.
15. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing, and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
16. The applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of Native Birds pursuant to MBTA:
 - A. The construction area shall be inspected for active nests. If birds are observed flying from a nest or sitting on a nest, it can be assumed that the nest is active. Construction activity within 300 feet of an active nest shall be delayed until the nest is no longer active. Continue to observe the nest until the chicks have left the nest and activity is no

longer observed. When the nest is no longer active, construction activity can continue in the nest area.

B. It is a violation of state and federal law to kill or harm a native bird. To ensure compliance, consider hiring a biologist to assist with the survey for nesting birds, and to determine when it is safe to commence construction activities. If an active nest is found, one or two short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.

17. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
18. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Coastal Development Permit.
19. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
20. Prior to issuance of the building permits, a copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans.
21. Prior to issuance of building permits, the applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the Coastal Development file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11 inches by 17 inches. The plans shall accurately depict the elements approved by this Coastal Development Permit.
22. Prior to the issuance of building permits, the applicant shall submit a final construction erosion control plan. The plan shall be subject to the review and approval by the Building Division.
23. Prior to the issuance of building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
24. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner, or the leasing agent.
25. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including

without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of Beljak Residence Coastal Development Permit including, but not limited to, Coastal Development Permit No. CD2019-002 (PA2019-005). 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.