



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

TO: CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION  
FROM: Seimone Jurjis, Community Development Director  
SUBJECT: Report of actions taken by the Zoning Administrator, and/or Planning Division staff for the week ending October 15, 2021.

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### ZONING ADMINISTRATOR ACTIONS OCTOBER 14, 2021

- Item 1: Afshar Residential Condominiums Tentative Parcel Map No. NP2021-010 and Coastal Development Permit No. CD2021-031 (PA2021-153)  
Site Address: 508 and 508 ½ Acacia Avenue  
Action: Approved by Resolution No. ZA2021-053 Council District 6
- Item 2: West Residence Coastal Development Permit No. CD2021-035 (PA2021-169)  
Site Address: 2731 Bay Shore Drive  
Action: Approved by Resolution No. ZA2021-054 Council District 3
- Item 3: 514 Acacia, LLC Residential Condominiums Tentative Parcel Map No. NP2021-012 and Coastal Development Permit No. CD2021-034 (PA2021-171)  
Site Address: 514 and 514 ½ Acacia Avenue  
Action: Approved by Resolution No. ZA2021-055 Council District 6
- Item 4: Cefalia Residence Coastal Development Permit No. CD2021-017 (PA2021-087)  
Site Address: 1740 East Ocean Front  
Action: Approved by Resolution No. ZA2021-056 Council District 1
- Item 5: Annual Review of the Hoag Memorial Hospital Presbyterian Development Agreement No. 5 (PA2009-064)  
Site Address: 1 Hoag Drive  
Action: The Zoning Administrator found that Hoag Memorial Hospital Presbyterian is in good faith compliance with the terms of the Development Agreement. Council District 2
- Item 6: Wild Strawberry Café Minor Use Permit No. UP2021-026 (PA2021-135)  
Site Address: 240 Newport Center Drive, Suite 100  
Action: Approved by Resolution No. ZA2021-057 Council District 5

**COMMUNITY DEVELOPMENT DIRECTOR  
OR PLANNING DIVISION STAFF ACTIONS**  
(Non-Hearing Items)

- Item 1: Sage Hill Outdoor Sports Court Staff Approval No. SA2021-004 (PA2021-090)  
Site Address: 20402 Newport Coast Drive
- Action: Approved Council District 7
- Item 2: Goldberg Grade Determination Staff Approval No. SA2021-007 (PA2021-157)  
Site Address: 233 Santa Ana Avenue
- Action: Approved Council District 2
- Item 3: Hyatt Regency Limited Term Permit No. XP2021-004 (PA2021-179)  
Site Address: 1107 Jamboree Road
- Action: Approved Council District 4

**APPEAL PERIOD:** An appeal or call for review may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered unless a different period 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. ZA2021-053

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING TENTATIVE PARCEL MAP NO. NP2021-010 AND COASTAL DEVELOPMENT PERMIT NO. CD2021-031 FOR TWO (2)-UNIT CONDOMINIUM PURPOSES LOCATED AT 508 AND 508 ½ ACACIA AVENUE (PA2021-153)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Watson Legal Group, APC (Applicant), with respect to property located at 508 and 508 ½ Acacia Avenue, and legally described as Lot 10, Block 529 Corona del Mar Tract, requesting approval of a tentative parcel map and coastal development permit for condominium purposes.
2. The applicant requests a tentative parcel map and coastal development permit for a two (2)-unit condominium. A duplex has been demolished and a new duplex is currently under construction. No waivers of Newport Beach Municipal Code (NBMC) Title 19 (Subdivisions) are proposed. The tentative parcel map would allow each unit to be sold individually.
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 located within the coastal zone. The Coastal Land Use Plan category is RT-D (Two-Unit Residential) (20.0-29.9 DU/AC) and it is located within the R-2 (Two-Unit Residential) Coastal Zone District.
5. A public hearing was held on October 14, 2021, online via Zoom. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code (NBMC). Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

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

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15315 under Class 15 (Minor Land Divisions) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Class 15 exemption allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four (4) or fewer parcels when the division is in conformance with the General Plan and Zoning, no variances or exceptions are required, all services and access to the proposed parcels are available. The parcel was not involved

in a division of a larger parcel within the previous two (2) years, and the parcel does not have an average slope greater than 20 percent. The Tentative Parcel Map is for condominium purposes and is consistent with all requirements of the Class 15 exemption.

### SECTION 3. REQUIRED FINDINGS.

#### *Tentative Parcel Map*

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

#### Finding:

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

#### Facts in Support of Finding:

1. The Tentative Parcel Map is for a two (2)-unit residential condominium. A duplex has been demolished and a new duplex is currently under construction. The proposed subdivision and improvements are consistent with the density of the R-2 Zoning District and the RT General Plan Land Use Designation.
2. The subject property is not located within a specific plan area.
3. The project has been conditioned to require public improvements, including the reconstruction of sidewalks, curbs, and gutters along the Acacia Avenue frontage and any damaged concrete alley panels consistent with NBMC 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 physically suitable for a two (2)-unit residential development because it is regular in shape. An existing duplex has been demolished and a new duplex is currently under construction.
2. The subject property is accessible from the alley and is adequately served by all 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:

1. A duplex has been demolished and a new duplex is currently under construction.
2. The property is located in an urbanized area that does not contain any sensitive vegetation or habitat.
3. The project is categorically exempt under Section 15315 (Article 19 of Chapter 3) of the 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.*

Fact in Support of Finding:

1. The Tentative 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 NBMC Section 19.28.010 (General Improvement Requirements) and Section 66411 (Local Agencies to Regulate and Control Design of Subdivisions) of the Subdivision Map Act. All ordinances of the City and all Conditions of Approval will be complied with.

Finding:

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

Fact in Support of Finding:

1. The design of the development will not conflict with easements acquired by the public at large, for access through, or use of property within the proposed development, because there are no public access easements 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 because the subject property is not designated as an agricultural preserve and is less than 100 acres in area.
2. The property was previously developed with a residential use and is located in a Zoning District that permits residential uses.

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Fact in Support of Finding:

1. The Tentative Parcel Map and any future improvements are subject to Title 24 of the California Code of Regulations (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.*

Fact in Support of Finding:

1. The two (2)-unit dwelling that is under construction is consistent with the intended uses of the R-2 Zoning District, which allows two (2) residential units on the property. 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.*

Fact in Support of Finding:

1. The new two (2)-unit dwelling is 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.*

Fact in Support of Finding:

1. The subject property is located within the Coastal Zone. A coastal development permit is requested in conjunction with the proposed tentative parcel map application. The project complies with the certified Local Coastal Program (LCP) and public access and recreation policies of Chapter Three of the Coastal Act. The Facts in Support of Findings L and M for the *Coastal Development Permit* (below) are hereby incorporated by reference.

### *Coastal Development Permit*

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:

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

#### Facts in Support of Finding:

1. The Tentative Parcel Map is for a two (2)-unit residential condominium. A duplex has been demolished and a new duplex is under construction. The duplex conforms to all applicable development standards, including floor area limit, setbacks, height, and off-street parking. The proposed subdivision and improvements are consistent with the density of the R-2 Coastal Zoning District.
2. The property is located in an area known for the potential of seismic activity. All projects are required to comply with the California Building Code and Building Division standards and policies.
3. The Tentative Parcel Map is for a property that is over 1,000 feet from the harbor and is not near any natural landforms or environmentally sensitive areas.

#### Finding:

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

#### Facts in Support of Finding:

1. The project site is not located between the nearest public road and the sea or shoreline. Implementation Plan Section 21.30A.040 (Determination of Public Access/Recreation Impacts) requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project is a tentative parcel map for two (2)-unit condominium purposes. The project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities. Furthermore, the project is designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.
2. Approval of the parcel map will not affect public recreation, access or views.

SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15315 under Class 15 (Minor Land Divisions) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves Tentative Parcel Map No. NP2021-010 and Coastal Development Permit No. CD2021-031, subject to the conditions set forth in Exhibit "A," which is attached here to and incorporated by reference.
3. The approval of Tentative Parcel Map No. NP2021-010 and of Coastal Development Permit No. CD2021-031 shall become final and effective 14 days following the date the Resolution is 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. The project site is not located within the appeal area of the coastal zone; therefore, final action by the City may not be appealed to the California Coastal Commission.

**PASSED, APPROVED, AND ADOPTED THIS 14<sup>th</sup> DAY OF OCTOBER, 2021.**



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Jaime Murillo  
Zoning Administrator

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

1. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
2. Subsequent to the 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 final.
3. The building permit for the new construction shall not be final until after recordation of the parcel map.
4. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 19 (Subdivisions) of the Newport Beach Municipal Code.
5. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Afshar Residential Condominiums including, but not limited to, Tentative Parcel Map No. NP2021-010 and Coastal Development Permit No. CD2021-031 (PA2021-153). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages, which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

**Public Works Department**

6. A parcel map shall be recorded. The Map shall be prepared on the California coordinate system (NAD83). 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 Sections 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.**

7. Prior to recordation of the parcel map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. Monuments (1-inch iron pipe with tag) shall be set On Each Lot Corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
8. All improvements shall be constructed as required by Ordinance and the Public Works Department.
9. The curb, gutter and sidewalk along the Acacia Avenue frontage and all damaged alley panels along the alley frontage, shall be reconstructed per City Standard.
10. The existing street tree along the Acacia Avenue frontage shall be protected in place.
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.
12. All existing overhead utilities shall be undergrounded.
13. No above ground improvements are permitted within the 5-foot rear alley setback area.
14. The existing hardscape within the Acacia Avenue parkway frontage shall be removed and new sod or low ground covers of the type approved by the City shall be installed throughout the Acacia Avenue parkway fronting the development site.
15. An encroachment permit is required for all work activities within the public right-of-way.
16. All improvements shall comply with the City's sight distance requirements. See City Standard 110-L.
17. All on-site drainage shall comply with the latest City Water Quality requirements.
18. 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.

### **Building Division**

19. Independent utility services shall be provided for each unit.
20. Independent fire risers shall be required for each unit.
21. Construction shall comply with the California Code of Regulations.

**Fire Department**

22. Fire sprinkler systems are required for each individual unit and no combined systems shall be allowed.

## RESOLUTION NO. ZA2021-054

### A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2021-035 TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND CONSTRUCT A NEW TWO (2)-STORY SINGLE-FAMILY RESIDENCE AND ATTACHED TWO (2)-CAR GARAGE LOCATED AT 2731 BAY SHORE DRIVE (PA2021-169)

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Craig S. Hampton, Inc., with respect to property located at 2731 Bay Shore Drive, requesting approval of a coastal development permit.
2. The lot at 2731 Bay Shore Drive is legally described as Lot 19 in Tract 01014.
3. The applicant proposes coastal development permit to allow the demolition of an existing single-family residence and the construction of a new two (2)-story, approximately 4,272-square-foot, residence including an attached, 530-square-foot, two (2)-car garage. The project also includes additional appurtenances such as site walls, fences, patios, spa, drainage devices, and landscaping. The design complies with all applicable development standards, including height, setbacks, and floor area limit, and no deviations are requested.
4. The subject property is designated Single Unit Residential Detached (RS-D) by the General Plan Land Use Element and is located within the Single-Unit Residential (R-1) Zoning District.
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Single Unit Residential Detached (RSD-B) – (6.0 – 9.9 DU/AC) and it is located within the Single-Unit Residential (R-1) Coastal Zone District.
6. A public hearing was held on October 14, 2021, online via Zoom. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code (NBMC). Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

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

1. This project is categorically exempt pursuant to Title 14 of the California Code of Regulations Section 15303, 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. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a

significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

2. Class 3 exempts the demolition of up to three (3) single-family residences and additions of up to 10,000 square feet to existing structures. The proposed project consists of the demolition of one (1) single-family residence and the construction of a new approximately 4,272-square-foot, single-family residence, including an attached 530-square-foot, two (2)-car garage.
3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

### SECTION 3. REQUIRED FINDINGS.

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

#### Finding:

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

#### Facts in Support of Finding:

1. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
  - a. The maximum floor area limitation is 5,440 square feet and the proposed floor area is 4,272 square feet.
  - b. The proposed development provides the minimum required setbacks, which are 10 feet along the front property line abutting Bay Shore Drive, 3 feet along the sides and 10 feet along the rear property line abutting the alley.
  - c. The highest guardrail is less than 24 feet from established grade (13.03 feet NAVD88) and the highest ridge is no more than 29 feet from established grade, which comply with the maximum height requirements.
  - d. The project includes garage parking for a total of two (2) vehicles, complying with the minimum two (2)-car garage parking requirement for single-family residences with less than 4,000 square feet of habitable floor area.

2. The neighborhood is predominantly developed with one (1)- and (2)-story, single-family residences. The proposed design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development.
3. The development is located on a property one block and street inland and approximately 160 feet from the bay in a developed area. The project site is separated from the bay (the nearest body of water) by one row of residences and Bay Shore Drive. The finished floor elevation of the first floor of the proposed structure is 13.97 feet based on the North American Vertical Datum of 1988 (NAVD88), which complies with the minimum 9.0-foot (NAVD88) elevation standard for new structures. The identified distances from the coastal hazard areas coupled with the 13.97-foot NAVD88 finish floor elevation will help to ensure the project is reasonably safe for the economic life of the structure.
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 property is located within 500 feet of coastal waters. A Construction Erosion Control Plan was provided to implement temporary Best Management Practices (BMPs) during construction to minimize erosion and sedimentation and to minimize pollution of runoff and coastal waters derived by construction chemicals and materials. The project design also addresses water quality through the inclusion of a post-construction drainage system that includes drainage and percolation features designed to retain dry weather and minor rain event runoff on-site. Any water not retained on-site is directed to the City's storm drain system.
6. Proposed landscaping complies with Implementation Plan Section 21.30.075 (Landscaping). A condition of approval is included that requires drought-tolerant species. Prior to issuance of building permits, the final landscape plans will be reviewed to verify invasive species are not planted
7. The project site is not located adjacent to a coastal view road, public access way, or coastal viewpoint as identified in the Coastal Land Use Plan. The nearest coastal viewpoint is at Lower Castaways Park, approximately 1,500 feet northeast, and the project cannot be seen from this vantage point.

Finding:

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

Facts in Support of Finding:

1. The project site is located between the nearest public road and the sea or shoreline in the private community of Bayshores. Developed in 1941, Bayshores is a 258-lot single-family gated community located on the Lido Channel southwest of the Coast Highway and Newport Bay Bridge. The 39-unit Anchorage Apartment complex is also located adjacent the community. The community is accessible from Coast Highway via Bay Shores Drive, a private street. The shoreline is on the south and east sides of the community and consists of bulkheads and two (2) small sandy beaches. Public access points to the shore can be found along Coast Highway and Castaways Park.
2. The residential lot does not currently provide nor does it inhibit public coastal access. Vertical and lateral access to the bay front is available approximately 200 feet south of the property at a Bay Shores community beach. Additionally, the Bay Shores community at the Balboa Bay Club is approximately 1,000 feet from the subject property. Public access points to the shore can be found along Coast Highway and Castaways Park.
3. Coastal Land Use Plan Policy 3.1.5-3 requires public access consistent with public access policies for any new development in private/gated communities causing or contributing to adverse public access impacts. Implementation Plan Section 21.30A.040 (Determination of Public Access/Recreation Impacts) requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project replaces an existing single-family residence located on a coastal lot with a new single-family residence. Therefore, the project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities. Furthermore, the project is designed and sited so as not to block or impede existing public access opportunities.

SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby finds this Project exempt from the California Environmental Quality Act pursuant to Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

2. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2021-035, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 (Appeal to the Coastal Commission) of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

**PASSED, APPROVED, AND ADOPTED THIS 14<sup>TH</sup> DAY OF OCTOBER, 2021.**



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Jaime Murillo  
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. The Applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of Native Birds pursuant to MBTA:
  - A. The construction area shall be inspected for active nests. If birds are observed flying from a nest or sitting on a nest, it can be assumed that the nest is active. Construction activity within 300 feet of an active nest shall be delayed until the nest is no longer active. Continue to observe the nest until the chicks have left the nest and activity is no longer observed. When the nest is no longer active, construction activity can continue in the nest area.
  - B. It is a violation of state and federal law to kill or harm a native bird. To ensure compliance, consider hiring a biologist to assist with the survey for nesting birds, and to determine when it is safe to commence construction activities. If an active nest is found, one (1) or two (2) short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.
3. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) shall be implemented prior to and throughout the duration of construction activity as designated in the Construction Erosion Control Plan.
4. 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 run-off. 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.
5. 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.
6. 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.
7. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.

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 Coastal Development Permit.
10. 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.
11. 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.
12. 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.
13. Prior to issuance of a building permit, a copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans
14. Prior to issuance of a building permit, 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.
15. 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.
16. 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.
17. 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.
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. 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.
20. This Coastal Development Permit No. CD2021-035 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.
21. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of The West Residence including, but not limited to, Coastal Development Permit No. CD2021-035 (PA2021-169). 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. ZA2021-055

### A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING TENTATIVE PARCEL MAP NO. NP2021-012 AND COASTAL DEVELOPMENT PERMIT NO. CD2021-034 FOR TWO (2)-UNIT CONDOMINIUM PURPOSES LOCATED AT 514 AND 514 ½ ACACIA AVENUE (PA2021-171)

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Nicholson Companies (Applicant), with respect to property located at 514 and 514 ½ Acacia Avenue, and legally described as the northeasterly 13 feet of Lot 14 and all of Lots 16 and 18, Block 529, of the Corona Del Mar Tract, requesting approval of a tentative parcel map and coastal development permit.
2. The Applicant requests a tentative parcel map for two (2)-unit condominium purposes. A duplex has been demolished and a new duplex is currently under construction pursuant to Zoning and Building Code requirements. The Tentative Parcel Map will allow each unit to be sold individually. No waivers of Title 19 (Subdivisions) are proposed. A coastal development permit (CDP) is also required because this property is in the Coastal Zone.
3. The subject property is categorized RT (Two Unit Residential) by the General Plan Land Use Element and are located within the R-2 (Two-Unit Residential) Zoning District.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RT-D (Two Unit Residential) (20.0 - 29.9 DU/AC) and the Coastal Zoning designation is R-2 (Two-Unit Residential).
5. A public hearing was held on October 14, 2021, online via Zoom. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code (NBMC). Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

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

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15315 under Class 15 (Minor Land Divisions) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Class 15 exemption allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four (4) or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels are available, the parcel was not involved in a division of a larger parcel within the previous two (2) years, and the

parcel does not have an average slope greater than 20 percent. Therefore, the proposed Tentative Parcel Map is eligible for the Class 15 exemption.

### SECTION 3. REQUIRED FINDINGS.

#### ***Tentative Parcel Map***

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

#### Finding:

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

#### Facts in Support of Finding:

1. The Tentative Parcel Map is for two (2)-unit residential condominium purposes. The project site was previously developed with a duplex and has been cleared of existing improvements. A new duplex is under construction. The proposed subdivision and improvements are consistent with the density of the R-2 Zoning District and the current RT General Plan Land Use category.
2. The subject property is not located within a specific plan area.
3. The project is conditioned to require public improvements, including the reconstruction of sidewalks, curbs, and gutters along the Acacia Avenue frontage and alley as needed, as well as the undergrounding of utilities, consistent with the Title 19 (Subdivisions) of the NBMC.

#### Finding:

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

#### Facts in Support of Finding:

1. The lot is physically suitable for a duplex because it is relatively flat and rectangular. It was also previously developed with a duplex.
2. The subject property is accessible from both Acacia Avenue and the alley in the rear.
3. The site is adequately served by existing utilities, as the site was previously developed with a duplex that is being replaced resulting in no increase of density.

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Fact in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

1. The property is not subject to the Williamson Act because the subject property is not designated as an agricultural preserve and is less than 100 acres in area.
2. The site, developed for residential use, lies in the R-2 Zoning District, which is intended for and permits residential uses.

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Fact in Support of Finding:

1. The Tentative Parcel Map and any future improvements are subject to Title 24 of the California Building Code that requires new construction 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.*

Fact in Support of Finding:

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

Finding:

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

Fact in Support of Finding:

1. The residential building under construction has been designed to have wastewater discharge into the existing sewer system and complies with the Regional Water Quality Control Board (RWQCB) requirements.

Finding:

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

Fact in Support of Finding:

1. The subject property is within the Coastal Zone. All Facts in Support of Findings L and M are hereby incorporated by reference.

***Coastal Development Permit***

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

Finding:

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

Facts in Support of Finding:

1. The Tentative Parcel Map is for two (2)-unit residential condominium purposes. A new duplex is under construction. The new duplex conforms to all applicable development standards, including floor area limit, setbacks, height, and off-street parking. The proposed subdivision and improvements are consistent with the density of the R-2 Coastal Zoning District.
2. The property is in an area known for the potential of seismic activity. All projects are required to comply with the California Building Code and Building Division standards and policies.
3. The Tentative Parcel Map is for a property within a developed neighborhood that is over 1,000 feet from the mean high-water line and is not near any natural landforms or environmentally sensitive areas.

Finding:

*M. 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 approximately 1,100 feet northeast of Bayside Drive, which is considered the first public road paralleling the sea and is far removed from the coast. Additionally, the project allows each unit of a new duplex that replaced an existing duplex to be sold individually. 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. Due to the location and scope of the project, it can be concluded that approval of the parcel map will not affect public recreation, access or views.

**SECTION 4. DECISION.**

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

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15315 under Class 15 (Minor Land Divisions) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.

2. The Zoning Administrator of the City of Newport Beach hereby approves Tentative Parcel Map No. NP2021-012 and Coastal Development Permit No. CD2021-034 subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. The approval of Tentative Parcel Map No. NP2021-012 and of Coastal Development Permit No. CD2021-034 shall become final and effective 14 days following the date the Resolution is 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. The project site is not located within the appeal area of the coastal zone; therefore, final action by the City may not be appealed to the California Coastal Commission.

**PASSED, APPROVED, AND ADOPTED THIS 14<sup>TH</sup> DAY OF OCTOBER, 2021.**



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Jaime Murillo  
Zoning Administrator

## EXHIBIT "A"

### CONDITIONS OF APPROVAL

#### **Planning Division**

1. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
2. After the recordation of the Parcel Map and prior to building permit final, the Applicant shall apply for a building permit for a description change of the subject project development from "duplex" to "condominium." The development will not be condominiums until this description change permit is final.
3. The building permit for the new construction shall not receive final inspection until after recordation of the parcel map.
4. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Tentative Parcel Map.
5. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 19 Subdivisions of the NBMC.
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 514 Acacia, LLC Residential Condominiums including, but not limited to, Tentative Parcel Map No. NP2021-012 and Coastal Development Permit No. CD2021--034 (PA2021-171). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Applicant, City, and/or the parties initiating or bringing such proceeding. The Applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages, which City incurs in enforcing the indemnification provisions set forth in this condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

#### **Public Works Department**

7. A Parcel Map shall be recorded. The map shall be prepared on the California coordinate system (North American Datum of 1983, NAD83). 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 Sections 7-9-

330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivisions 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.**

8. Prior to recordation of the Parcel Map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual Subarticle 18. Monuments (1-inch iron pipe with tag) shall be set **on each lot corner** unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
9. All improvements shall be constructed as required by Ordinance and the Public Works Department.
10. All damaged sidewalk panels, curb, gutter, and street along the Acacia Avenue property frontage and any damaged concrete alley panels along the alley property frontage shall be reconstructed as determined by the Public Works Department.
11. The existing street tree along the Acacia Avenue frontage shall be protected in place.
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.
13. All existing overhead utilities shall be undergrounded.
14. No above ground improvements will be permitted within the 5-foot rear alley setback. Smooth transitions between neighboring properties shall be provided.
15. The Applicant shall remove the hardscape within the Acacia Avenue parkway frontage
16. The Applicant shall install new sod or low groundcovers of the type approved by the City throughout the Acacia Avenue parkway fronting the development site.
17. An encroachment permit shall be required for all work activities within the public right-of-way.
18. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L.
19. In case of damage done to public improvements surrounding the development site by private construction, additional reconstruction within the public right-of-way shall be required at the discretion of the Public Works Inspector.

### **Building Division**

20. Independent fire risers shall be required for each unit.

## RESOLUTION NO. ZA2021-056

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2021-017 TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND CONSTRUCT A NEW TWO (2)-STORY SINGLE-FAMILY RESIDENCE AND ATTACHED THREE (3)-CAR GARAGE LOCATED AT 1740 EAST OCEAN FRONT (PA2021-087)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by ROST Architects (Applicant), with respect to property located at 1740 East Ocean Front and legally described as the easterly one half of Lot 9 and a portion of Lot 10 in Tract No. 518, requesting approval of a coastal development permit.
2. The Applicant requests a Coastal Development Permit (CDP) to allow the demolition of an existing single-family residence and the construction of a new 4,198-square-foot, two (2)-story, single family residence with an attached 743-square-foot, three (3)-car garage. The project also includes the installation of landscaping, hardscaping, drainage, site walls, and patio improvements. All improvements authorized by this CDP will be located on private property. The design complies with all applicable development standards and no deviations are requested.
3. The subject property is categorized RS-D (Single Unit Residential Detached) by the General Plan Land Use Element and is located within the R-1 (Single-Unit Residential) Zoning District.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RSD-C (Single Unit Residential Detached) - (10.0 – 19.9 DU/AC) and it is located within the R-1 (Single-Unit Residential) Coastal Zone District.
5. A public hearing was held on October 14, 2021, online via Zoom. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code (NBMC). Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

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

1. This project is categorically exempt pursuant to Title 14 of the California Code of Regulations Section 15303, 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 demolition of up to three (3) single-family residences and additions of up to 10,000 square feet to existing structures. The proposed project consists of the demolition of one (1) single-family residence and the construction of a new 4,198-square-foot, two (2)-story single-family residence with an attached 743-square-foot, three (3)-car garage
3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

### SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
  - a. The maximum floor area limitation is 5,844 square feet and the proposed floor area is 4,941 square feet.
  - b. The proposed development provides the minimum required setbacks, which are 10 feet along the front property line abutting East Ocean Front, 4 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 existing grade and the highest ridge is no more than 29 feet from existing grade, which comply with the maximum height requirements.
  - d. The project includes garage parking for a total of three (3) vehicles, complying with the minimum three (3)-car garage parking requirement for single-family residences with more than 4,000 square feet of habitable floor area.
2. The neighborhood is predominantly developed with two (2)-story residences and an occasional three (3)-story, single-family residence. The proposed design, bulk, and scale of the development is consistent with applicable development standards of the zoning district and the expected future development of the neighborhood.

3. A Coastal Hazards Report and Sea Level Rise Analysis was prepared by GeoSoils, Inc., dated March 29, 2021 for the project. As an ocean front site, the report analyzes the coastal hazards of shoreline erosion, flooding, wave runup, and sea level rise. The report assumes an approximate 3.2-foot increase to bay water levels from sea level rise (based on low risk aversion estimates for sea level rise provided by the State of California, Sea Level Rise Guidance: 2018 Update) over the next 75 years (i.e., the life of the structure). The report concludes that given the wide nature of the beach, lack of long-term shoreline erosion, and a high finished first floor elevation, the proposed project is reasonably safe from coastal hazards and sea level rise. There is no anticipated need for a shore protection device over the life of the proposed development and there are no recommendations necessary for avoidance or minimization of coastal hazards.
4. The finished floor elevation of the proposed single-family residence is 17.58 feet (NAVD 88), which complies with the minimum 9.0-foot (NAVD 88) elevation standard for new structures. Impacts from sea level rise are not anticipated at this time for the 75-year economic life of the proposed improvements.
5. Pursuant to NBMC Section 21.30.030(C)(3)(i)(iv), the property owner will be required to enter into an agreement with the City waiving any potential right to protection to address situations in the future in which the development is threatened with damage or destruction by coastal hazards (e.g., waves, erosion, and sea level rise). The property owner will also be required to acknowledge any hazards present at the site and unconditionally waive any claim to damage or liability against the decision authority, consistent with NBMC Section 21.30.015(D)(3)(c). Both requirements are included as conditions of approval that will need to be satisfied prior to final building inspection, and prior to the issuance of building permits, respectively.
6. The property is in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance.
7. Pursuant to Section 21.35.030 (Construction Pollution Prevention Plan) of the NBMC, a Construction Erosion Control Plan was provided to implement temporary Best Management Practices (BMPs) during construction to minimize erosion and sedimentation and to minimize pollution of runoff and coastal waters derived by construction chemicals and materials. The project design also addresses water quality through the inclusion of a post-construction drainage system that includes drainage and percolation features designed to retain dry weather and minor rain event runoff on-site. Any water not retained on-site is directed to the City's storm drain system.
8. Pursuant to NBMC Section 21.35.050, due to the proximity of the development to the shoreline and the development containing more than 75 percent of impervious surface area, a Water Quality and Hydrology Plan (WQHP) is required. A preliminary WQHP has been prepared for the project by Core Civil Engineering, Inc. The WQHP 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.

9. Proposed landscaping complies with Implementation Plan Section 21.30.075. A condition of approval is included that requires drought-tolerant species. Prior to issuance of building permits, the final landscape plans will be reviewed to verify invasive species are not planted
10. The project site is not located adjacent to a coastal view road, public access way, or Coastal Viewpoint as identified in the Coastal Land Use Plan. The nearest designated coastal viewpoint is approximately 1,763 feet away from the project site, at the West Jetty View Park and the project site is not visible from this designated viewpoint. As a beachfront property, the front elevation of the new residence will be visible from the sand. The building design features large glass windows on both stories, glass guardrails, and uses modern lines and architectural treatments which provide visual interest for views from the beach. The project's compliance with height and setback development standards will prevent new impacts to views of the coast as the new residence will maintain a building envelope consistent with the existing neighborhood pattern of development.

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 or shoreline. Implementation Plan Section 21.30A.040 requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact, and be proportional to the impact. In this case, the project replaces an existing single-family residence located on standard R-1 lot with a new single-family residence. The project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities. Furthermore, the project is designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.
2. Vertical access to the coast is available on either side of the project site via the I and L Street ends. Lateral access is provided on the beach and through the East Ocean Front Alley. The project does not include any features that would obstruct access along these routes.
3. Unpermitted development (i.e. landscaping, hardscaping, pavers, walls, irrigation, etc.) exists seaward of the private property on a portion of the City's property (the public beach). The unpermitted development is the subject of an ongoing enforcement action by the California Coastal Commission. Condition of Approval No. 7 requires the property owner to agree to and cooperate with the City and California Coastal Commission for: 1) the

removal of any unpermitted development located seaward of the property and within the prolongation of the side property lines of the subject property, and 2) the restoration of the affected area consistent with a restoration plan approved by the City and Coastal Commission.

**SECTION 4. DECISION.**

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

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.
2. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2021-017, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code. 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.

**PASSED, APPROVED, AND ADOPTED THIS 14<sup>TH</sup> DAY OF OCTOBER, 2021.**



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Jaime Murillo  
Zoning Administrator

**EXHIBIT "A"**

## CONDITIONS OF APPROVAL

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. *Prior to final building permit inspection, an agreement in a form approved by the City Attorney between the property owner and the City shall be executed and recorded waiving rights to the construction of future shoreline protection devices to address the threat of damage or destruction from waves, erosion, storm conditions, landslides, seismic activity, bluff retreat, sea level rise, or other natural hazards that may affect the property, or development of the property, today or in the future. The agreement shall be binding against the property owners and successors and assigns.*
3. *Prior to 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. This letter shall be scanned into the plan set prior to building permit issuance.*
4. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter sensitive habitat, receiving waters, or a storm drain or result in impacts to environmentally sensitive habitat areas, streams, the beach, wetlands or their buffers. No demolition or construction materials shall be stored on public property.
5. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
6. This Coastal Development Permit does not authorize any development seaward of the private property.
7. *At such time as directed by the City or the California Coastal Commission, the Applicant shall agree to and cooperate with both agencies for: 1) the removal of any unpermitted development located seaward of the property and within the prolongation of the side property lines of the subject property, and 2) the restoration of the affected area consistent with a restoration plan approved by the City and Coastal Commission.*
8. 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.
- 9. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) shall be implemented prior to and throughout the duration of construction activity as designated in the Construction Erosion Control Plan.
  - 10. 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.
  - 11. 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.
  - 12. 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.
  - 13. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
  - 14. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
  - 15. 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.
  - 16. 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.

17. 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.
18. 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.
19. Prior to issuance of a building permit, a copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans.
20. Prior to issuance of a building permit, 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.
21. Prior to issuance of building permits, the final WQMP shall be reviewed and approved by the Building Division. Implementation shall be in compliance with the approved CPPP and WQMP and any changes could require separate review and approval by the Building Division.
22. 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.
23. 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.
24. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the NBMC. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

Location	Between the hours of 7:00AM and 10:00PM		Between the hours of 10:00PM and 7:00AM	
	Interior	Exterior	Interior	Exterior
Residential Property	45dBA	55dBA	40dBA	50dBA
Residential Property located within 100 feet of a commercial property	45dBA	60dBA	45dBA	50dBA
Mixed Use Property	45dBA	60dBA	45dBA	50dBA
Commercial Property	N/A	65dBA	N/A	60dBA

25. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday. Noise-generating construction activities are not allowed on Saturdays, Sundays or Holidays.
26. *The project shall comply with the construction site fencing and noticing requirements as provided in the Newport Beach Municipal Code Chapter 15.60*
27. 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.
28. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by the current property owner or agent.
29. This Coastal Development Permit No. CD2021-017 shall expire unless exercised within 24 months from the date of approval as specified in Section 21.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code, unless an extension is otherwise granted.
30. To the fullest extent permitted by law, 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 Cefalia Residence including, but not limited to, Coastal Development Permit No. CD2021-017 (PA2021-087). 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. ZA2021-057

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING MINOR USE PERMIT NO. UP2021-026 TO ADD A TYPE 41 ALCOHOLIC BEVERAGE CONTROL LICENSE (ON-SALE BEER AND WINE) TO AN EXISTING FOOD SERVICE EATING AND DRINKING ESTABLISHMENT LOCATED AT 240 NEWPORT CENTER DRIVE, SUITE 100 (PA2021-135)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Wild Strawberry Cafe (“Applicant”) with respect to property located at 240 Newport Center Drive, Suite 100, and legally described as Lot PCL 5 in Tract 0289, requesting approval of a minor use permit.
2. The applicant proposes to allow an existing food service, eating and drinking establishment (Wild Strawberry Cafe) to add a Type 41 (On-Sale Beer and Wine) Alcoholic Beverage Control (ABC) License. The request does not include any physical changes to the existing establishment. The hours of operation will remain 8:00 a.m. to 6:00 p.m., daily. The existing Minor Use Permit No. UP2003-051 (PA2003-295), Staff Approval No. SA2004-018, and Outdoor Dining Permit No. OD2004-002 (PA2004-220) shall remain in full force and effect.
3. The subject property is designated Regional Commercial Office (CO-R) by the General Plan Land Use Element and is located within the Office-Regional (OR) Zoning District.
4. A public hearing was held on October 14, 2021, online via zoom. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

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

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The existing establishment consists of 300 square feet of interior net public area, a 75-square-foot outdoor dining area, kitchen facilities, indoor storage and washing areas, a restroom, and a covered trash enclosure with gate. The application involves a request for an operational change (adding beer and wine alcohol sales) and does not involve any physical expansion to the existing food service use. Therefore, the project qualifies for a Class 1 exemption.

### 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 the findings for a use permit 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 (Alcohol Sales) 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 proposed establishment is located within Reporting District 39, wherein the number of crimes is higher than adjacent Reporting Districts and the City. RD 43, 44, and 47 have a lower number of crimes as they are primarily residential with few commercial uses. Due to the high concentration of commercial land uses in Fashion Island, the crime rate and shoplifting rate is greater than adjacent residential Reporting Districts; however, the Newport Beach Police Department (NBPD) does not consider the number significant given the type of development within this Reporting District.
- ii. The numbers of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.*
  1. Due to the high concentration of commercial land uses, the calls for service and number of arrests are greater than adjacent Reporting Districts. DUI, Public Intoxication, and liquor law violations make up 16 percent of arrests in this reporting district. In comparison, the figure for neighboring RD 47 is 23 percent, RD 43 is 51 percent, and RD 44 is 18 percent. The Police Department does not consider the rate high because of the concentration of restaurants and commercial uses at Fashion Island located to the north and the surrounding Newport Center area.
- 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 subject site does not abut sensitive land uses and is separated from other uses by parking lots, roadways, and other commercial uses. The site is located

approximately 1,300 feet to the nearest residential district (Granville Community), 4,000 feet to the nearest day care center (Del Mar Lincoln Child Development), 800 feet to the nearest park and recreation facility (Civic Center Park), 4,000 feet to the nearest place of religious assembly (Community Church Congregational), and 3,000 feet to the nearest school (Harbor View Elementary School). Due to the proximity from these establishments the proposed change of use does not appear to create foreseeable concern.

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

1. Muldoon's Irish Pub is located at 202 Newport Center Drive to the north of the project site at the intersection of Anacapa and Newport Center Drive. Muldoon's is authorized to operate until 2:00 a.m. and provides live entertainment, dancing, and Type 47 (On Sale General) and Type 68 (Portable Bar) alcohol licenses. Off-sale alcohol sales are located in the vicinity at Whole Foods, at 461 Newport Center Drive, within Fashion Island. Additionally, there are many comparable restaurant establishments with the Fashion Island Shopping Center. These include other pad restaurant tenants such as Red-O and Fig & Olive. The Type 41 (On-Sale Beer and Wine) alcohol license requested is similar as those obtained for said establishments and there is no evidence suggesting these uses have been detrimental to the neighborhood.
2. The per capita ratio of on-sale alcohol license is one (1) license for every 15 residents and is higher than the adjacent districts and the average ratio for Orange County. The Police Department does not anticipate any increase in crime or alcohol-related incidents with the approval of this application subject to the proposed conditions of approval.
3. Due to the type and operation of the restaurant which is conditioned to close at 6:00 p.m. with limited net public areas, and the incorporation of additional conditions to prevent the restaurant from operating as a bar or lounge, the proximity to other establishments does not appear to create foreseeable concern.

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

1. The existing commercial building has been occupied by a food service, eating, and drinking establishment since 2004. The site has an existing non-compliant outdoor patio area that is over the allowable 75 square feet in area. Staff has worked with the applicant to ensure that the existing non-compliant outdoor patio area shall comply with the originally approved Outdoor Dining Permit No. OD2004-002 (PA2004-220) by October 8, 2021.
2. The Project has been reviewed and conditioned to help ensure that the purpose and intent of Section 20.48.030 (Alcohol Sales) of the NBMC 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. All employees serving alcohol will be required to complete a certified training program in responsible methods and skills for selling alcoholic beverages, as required by the State of California.

3. Offering alcohol service will complement the food service and provide a convenience to customers. The Police Department has no objections to the operation given the proposed hours of operation, license type, and location of the use. The resolution includes conditions of approval to limit objectionable conditions related to noise and trash from the establishment.

### Minor Use Permit

In accordance with Section 20.52.020.F (Findings and Decision) of the Newport Beach Municipal Code, the following findings, and facts in support of the findings for a minor use permit 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 Regional Commercial Office (CO-R), which applies to areas where it is the intent to provide for corporate, administrative, and professional offices that serve local and regional markets, with accessory limited financial, retail, service, and entertainment uses.
2. The proposed alcohol services are consistent with the CO-R designation as it is related to the existing commercial food service use intended to serve nearby residents, the surrounding community, and visitors to the City of Newport Beach.
3. The subject property is not 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,*

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Facts in Support of Finding

1. The subject property is located in the Office Regional Commercial (OR) Zoning District and as designated Regional Commercial Office (CO-R) within the Land Use Element of the General Plan. These categories are intended to provide for corporate, administrative, and professional offices that serve local and regional markets, with accessory limited financial, retail, service, and entertainment uses. The proposed full service, eating and drinking establishment with alcohol service and no late hours requires a new minor use permit pursuant to Table 2-5 of Newport Beach Municipal Code Section 20.20.020 (Commercial Zoning Districts Land Uses and Permit Requirements) and pursuant to Code Section 20.54.070 C. (Changes to an Approved Project).
2. The existing food service establishment operates under existing Use Permit No. UP2003-051 (PA2003-295). Conditions from the existing use permit will remain with the new use permit and the net public areas and hours of operation will remain unchanged.
3. As conditioned, the proposed project will comply with Zoning Code standards for eating and drinking establishments.

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 existing establishment consists of 300 square feet of interior net public area, a 75-square-foot outdoor dining area, kitchen facilities, indoor storage and washing areas, a restroom, and a covered trash enclosure with gate. No physical changes are proposed.
2. The hours operation of the existing food service will remain restricted to the hours between 8:00 a.m. and 6:00 p.m., daily. These hours are consistent with the business hours of other uses in the area.
3. The surrounding area contains various, retail and visitor serving commercial uses including restaurants with alcohol service. Adding the alcohol service to the existing food service is compatible with the existing and permitted uses within the area.
4. The operational conditions of approval relative to the sale of alcoholic beverages will help ensure compatibility with the surrounding uses and minimize alcohol-related impacts. The project has been conditioned to ensure that the business remains a restaurant and does not become a bar or tavern. Additionally, dancing or live entertainment is not permitted.

5. The existing common enclosed trash storage area located approximately 140 feet to the north is adequate to accommodate the proposed food service use and is conveniently located where materials can be deposited and collected and does not impede with parking.

#### 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; and*

#### Facts in Support of Finding

1. The existing food service establishment provides adequate public and emergency vehicle access, public services, and utilities.
2. The site is accessible from both Civic Center Drive to the south and a Anacapa Drive to the west.

#### Finding

- F. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, and 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 limited hours reduce impacts to surrounding land uses and sufficient parking is available for the existing food service establishment. 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 outdoor dining patio has been conditioned to provide stanchion and rope barriers to define the alcohol service area.
3. The food service, eating and drinking establishment serves the surrounding community in a commercial area designed for such uses. The additional service of alcohol is provided as a public convenience and is not uncommon in establishments of this type. Additionally, the service of alcohol will provide an economic opportunity for the property owner to maintain a successful business that is compatible with the surrounding community.

4. All owners, managers, and employees selling or serving alcohol will be required to complete a Responsible Beverage Service Certification Program.

SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2021-026 (PA2021-135), subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference. The existing Minor Use Permit No. UP2003-051 (PA2003-295), Staff Approval No. SA2004-018, and Outdoor Dining Permit No. OD2004-002 (PA2004-220) shall remain in full force and effect.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

**PASSED, APPROVED, AND ADOPTED THIS 14<sup>th</sup> DAY OF OCTOBER, 2021.**



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Jaime Murillo  
Zoning Administrator

**EXHIBIT "A"**

## CONDITIONS OF APPROVAL

**Planning Division**

1. The development shall be in substantial conformance with the approved site plan and floor plan stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. *The existing non-compliant outdoor patio area shall comply with the originally approved Outdoor Dining Permit No. OD2004-002 (PA2004-220) by October 8, 2021.*
4. The applicant shall comply with all federal, state, and local laws, and all conditions of the Alcoholic Beverage License. Material violation of any of those laws or conditions in connection with the use is a violation and may be cause for revocation of the use permit.
5. This Minor Use Permit may be modified or revoked by the Zoning Administrator if it is 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.
6. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Minor Use Permit or the processing of a new minor use permit.
7. 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.
8. *Fences, walls, or similar barriers shall serve to define the outdoor dining area, shall meet the minimum requirements required by the Alcoholic Beverage Control License, and shall not constitute a permanent all-weather enclosure. The barrier shall match the approved use permit plan, shall be in-line with the existing outdoor dining area and shall not obstruct the adjacent public walkway.*
9. All proposed signs shall be in conformance with any approved Comprehensive Sign Program for the project site and provisions of Chapter 20.42 of the Newport Beach Municipal Code.
10. All lighting shall conform with the standards of NBMC Section 20.30.070 (Outdoor Lighting). The Community Development Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.

11. 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.

### **Police Department**

12. *The Alcoholic Beverage Control License shall be limited to a Type 41 (On-Sale Beer and Wine). Any substantial change in the ABC license type shall require subsequent review and potential amendment of the Use Permit.*
13. *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.*
14. *Approval does not permit the premises to operate as a bar, tavern, cocktail lounge or nightclub as defined by the Newport Beach Municipal Code.*
15. *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.*
16. *No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.*
17. *There shall be no live entertainment or dancing allowed on the premises.*
18. *Food service from the regular menu shall be made available to patrons until closing.*
19. *Petitioner shall not share any profits or pay any percentage or commission to a promoter or any other person based upon monies collected as a door charge, cover charge, or any other form of admission charge, including minimum drink orders or the sale of drinks.*
20. *Any event or activity staged by an outside promoter or entity, where the applicant, operator, owner or his employees or representatives share in any profits or pay any percentage or commission to a promoter or any other person based upon money*

*collected as a door charge, cover charge or any other form of admission charge is prohibited.*

21. *“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 order of the sale of drinks is prohibited (excluding charges for prix fixe meals).*
22. *Strict adherence to maximum occupancy limits is required.*
23. *The applicant shall maintain a security recording system with a 30-day retention and make those recording available to police upon request.*
24. *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.*
25. *There shall be no 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.*
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 Wild Strawberry Cafe** including, but not limited to, **Minor Use Permit No. UP2021-026 (PA2021-135)**. 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.

**CONDITIONS FROM PREVIOUS APPROVALS FOR REFERENCE**

Use Permit No. UP2003-051 (PA2003-295)

1. The project shall be in substantial conformance with the approved plot plan, floor plan, and elevations, except as noted in the conditions of approval. *(No longer applicable, refer to Condition No. 1).*
2. Hours of operation shall be limited between 7:00 a.m. and 6:00 p.m. daily. Any increase in the hours of operation shall be subject to the approval by the Planning Director. Any request for operating hours between 6:00 p.m. and 7:00 a.m. shall require approval by the Planning Commission.
3. The “net public area” shall be limited to a maximum of 1,000 square feet (exclusive of display, aisle and condiment table areas), except as otherwise required by the Building Department to satisfy handicap access requirements may allow modest deviations from that requirement. *(Replaced by Condition No. 2 of OD2004-002).*
4. The operator of the food service establishment shall be responsible for the control of noise generated by the subject facility. The noise generated by the proposed use shall comply with the provisions of Chapter 10.26 of the Newport Beach Municipal Code. That is. The sound shall be limited to no more than depicted below for the specified time periods:

	Between the hours of 7:00 a.m. and 10:00 p.m.;	Between the hours of 7:00 a.m. and 10:00 p.m.;
Measured at the property line of commercial zoned property:	65 dBA	60 dBA
Measured at the property line of residentially zoned property:	60 dBA	50 dBA

5. No outside paging system shall be utilized in conjunction with this food service establishment.
6. Exclusive customer seating and/or stand-up counter space shall be prohibited outside of the subject eating and drinking establishment (outdoor dining or seating outside of the facility is prohibited, unless an accessory outdoor dining permit is first approved). Any increase of seating and/or stand-up counter space for more than 17 patrons shall require the approval of an amendment to this use permit *(Replaced by Condition No. 1 of SA2004-018).*
7. Trash receptacles for patrons shall be conveniently located both inside and outside of the proposed facility, however, not located on or within any public property or right-of-way.
8. The applicant shall maintain the trash dumpsters or receptacles so as to control odors that may include the provision of fully self-contained dumpsters or may include periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Department.

9. 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.
10. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m., unless otherwise approved by an amendment to this use permit.
11. The operator of the food service use shall be responsible for the clean-up of all on-site and off-site trash, garbage and litter generated by the use.
12. The area outside of the food establishment, including the public sidewalks, walkways or common walkways, shall be maintained in a clean and orderly manner in accordance with the practical program for the control of litter, spills and stains on site and on adjacent properties.
13. If this business is sold or otherwise comes under different ownership, the current business owner/property owner/leasing company shall notify the future owners/assignees of the conditions of this approval.
14. The facility shall comply with the provisions of Chapter 14.30 of the Newport Beach Municipal Code for commercial kitchen grease disposal. Grease interceptors shall be installed on all fixtures in the restaurant where grease may be introduced into the drainage systems, unless otherwise approved by the Building Department and the Public Works Department. A grease interceptor or other grease collection device shall be installed to the satisfaction of the Building Department.
15. The applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors, which may include the provision of fully self-contained dumpsters or may include periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Department. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).
16. 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 Uniform Building Code including any local amendments. The construction plans must meet all applicable State Disabilities Access requirements. Adequate access and exiting must be approved by the Building Department, and approval from the Orange County Health Department is required prior to permit issuance.

Staff Approval No. SA2004-018 (PA2004-220)

1. The existing Condition of Approval No. 6 is revised to read as follows:
  6. "Exclusive customer seating and/or stand-up counter space shall be prohibited outside of the subject eating and drinking establishment (outdoor dining or seating outside of the facility is prohibited, unless an accessory outdoor dining permit is first approved.) Any

increase of seating and/or stand-up counter space for more than 8 patrons ~~17 patrons~~ shall require the approval of an amendment to this use permit.

2. The Planning Director or the Planning Commission may add to or modify conditions of approval to this use permit or revoke this permit upon a determination that the operation, which is the subject of this approval causes injury, or is detrimental to the health, safety, peace, morals, comfort, or general welfare of the community.

#### Outdoor Dining Permit No. OD2004-002 (PA2004-220)

1. Development shall be in substantial conformance with the approved plot plan and floor plan, except as noted in the following conditions. *(No longer applicable)*
2. The accessory outdoor dining shall be used in conjunction with the related adjacent food establishment and shall be limited to Cafe Express, with 75 sq. ft. maximum (gross area), as proposed (25 percent of the indoor net public area of 300 sq. ft.), unless a use permit is first approved by the Planning Commission. The area is calculated at 25 square feet for each table with three accompanying seats for a maximum of three tables and nine seats, total.
3. The area outside of the food establishment, including the public and common area sidewalks, shall be maintained in a clean and orderly manner. Public sidewalks may be subject to periodic steam cleaning as required by the Planning Department.
4. The facility shall be designed to meet exiting and fire protection requirements as specified by the Uniform Building Code and shall be subject to review and approval by the Building Department.
5. The project shall comply with State Disabled Access requirements.
6. The seating adjacent to the food use facility shall be limited to the area as delineated on the approved site plan only. The approved outdoor dining area shall be located on a solid surface in accordance with the approved floor plan or seating plan. The outdoor dining use shall be limited to nine seats grouped around three tables.
7. The operator of the restaurant facility shall be responsible for the control of noise generated by the subject facility. The use of outside loudspeakers, paging system or sound system shall be prohibited in the outdoor dining area. The noise generated by the proposed use shall comply with the provisions of Chapter 10.26 of the Newport Beach Municipal Code. Chapter 10.26 provides, in part, that the sound shall be limited to no more than depicted below for the specified time periods:

	Between the hours of 7:00 a.m. and 10:00 p.m.;		Between the hours of 7:00 a.m. and 10:00 p.m.;	
	<u>interior</u>	<u>exterior</u>	<u>interior</u>	<u>exterior</u>
Measured at the property line of commercial zoned property:	N/A	65 dBA	N/A	60 dBA
Measured at the property line of residentially zoned property:	N/A	60 dBA	N/A	50 dBA
Residential property:	45 dBA	55 dBA	40 dBA	50 dBA

8. The applicant shall retain a qualified engineer specializing in noise/acoustics to monitor the sound generated by the outdoor dining activity to ensure compliance with these conditions, if required by the Planning Director in response to noise complaints.
9. The use of area heaters shall be approved by the Building Department and the Fire Department prior to installation or use. The use of propane heaters and the storage of propane containers on the premises is prohibited, unless otherwise approved by the Fire Department.
10. Should this business 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 owner or the leasing company.
11. The Planning Department may add to or modify conditions of approval to this outdoor dining permit or revoke this approval upon a finding of failure to comply with the conditions set forth in Chapter 20.82 of the Municipal Code or other applicable conditions and regulations governing the food establishment. The Planning Director or the Planning Commission may also revoke this permit upon a determination that the operation, which is the subject of this approval, causes injury, or is detrimental to the health, safety, peace, morals, comfort, or general welfare of the community.
12. The hours of operation of the outdoor dining area are limited to between 7:00 a.m. and 6:00 p.m. daily. Any increase in the hours of operation shall be subject to the approval by the Planning Director. Any request for operating hours between 6:00 p.m. and 7:00 a.m. shall require approval by the Planning Commission.
13. Alcoholic beverage service shall be prohibited in the outdoor dining areas, unless approval is obtained from the Planning Commission in conjunction with an amendment to the use permit and this application. *(no longer applicable)*



COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING DIVISION  
100 Civic Center Drive, P.O. Box 1768, Newport Beach, CA 92658-8915  
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**COMMUNITY DEVELOPMENT DIRECTOR**  
**ACTION LETTER**

**Subject:** Sage Hill School Outdoor Sports Court (PA2021-090)  
▪ Staff Approval No. SA2021-004

**Site Location:** 20402 Newport Coast Drive

**Applicant:** Sage Hill School

**Legal Description:** Parcel 1 of Parcel Map No. 97-200, being a subdivision of portions of Blocks 98 and 128 of Irvine's Subdivision filed in Book 1, Page 88, of Miscellaneous Record Maps in the Office of the County Recorder or the County of Orange, State of California

On **October 15, 2021**, the Community Development Director approved Staff Approval No. SA2021-004 allowing an existing temporary outdoor sports court to be made permanent at Sage Hill School. This approval is based on the following findings and subject to the following conditions.

**LAND USE AND ZONING**

- **Zone:** PI (Private Institutions)
- **General Plan:** PI (Private Institutions)

**SUMMARY**

The Applicant requests a review of substantial conformance to permanently allow an existing temporary outdoor sports court in the school's parking lot. The sports court measures 7,660 square feet in area and will be used as an outside practice space for student basketball and volleyball teams. The outdoor sports court was initially established by Emergency Temporary Use Permit No. UP2020-153 (PA2020-263), which expires on December 31, 2021. Retention of the sports court will permanently remove 42 parking spaces, but adequate on-site parking and circulation will remain to serve the school's needs. The Applicant's request does not change the total square footage or operational characteristics approved for the school. No additional on-site improvements are proposed.

**I. BACKGROUND**

The County of Orange Planning Commission approved Use Permit No. PA97-0173 on November 3, 1998, to establish a private high school.

On November 21, 2007, the City of Newport Beach approved Staff Approval No. SA2007-017 (PA2007-224), finding the project phasing and development plan in substantial conformance with County Use Permit No. PA97-0173, allowing for the construction of a new Arts Center.

On August 27, 2013, the City of Newport Beach issued building permits for the construction of a new 12,900-square-foot Science Center in accordance with the phasing and development plan authorized under Staff Approval No. SA2007-017 (PA2007-224).

On June 22, 2015, the Community Development Director approved Staff Approval No. SA2015-006 (PA2015-072) to authorize the construction of a new tennis complex and aquatics center in substantial conformance with County Use Permit No. PA97-0173. Additionally, the school changed operations from a high school with grades 9 through 12 to grades kindergarten through 12. Existing student capacity of 600 students was maintained, but faculty/staff increased from 75 to 99.

On November 9, 2017, Community Development Director approved Staff Approval No. SA2017-010 (PA2017-206) to authorize a 1,434-square-foot addition to the existing school library resulting in a floor area of 15,606 square feet. The project also included new lighting, finishes and structural and utility upgrades.

On September 16, 2020, the Community Development Director approved Emergency Temporary Use Permit No. UP2020-153 (PA2020-263) for a temporary outdoor sports court within the parking lot of the existing private school. The sports court was built to comply with State COVID-19 guidelines for conducting youth organized sports practices, which were limited to outside activity only with physical distancing.

## **II. PROJECT DESCRIPTION**

The Applicant now requests a review of substantial conformance to permanently allow the outdoor sports court. The proposed outdoor sports court measures a total of 7,660 square feet and is located in the northwest corner of the large parking lot. A complete project description, exhibits, and justification from the Applicant are provided as Attachment No. CD 2. Students enter and exit the sports court from the west side via the existing sidewalk, which eliminates any interaction with vehicle traffic. A water-filled k-rail system will be installed on the north, east, and south sides of the sports court to form a vehicle barricade for the protection of the students. The protection on the west side is provided by an existing wall. The k-rail system is an integral part of the sports court and will remain as installed. Located directly behind the k-rail system is an 8-foot-high steel chain-link fence. The attached photos (Attachment No. CD 2) provide a ground level view of the as-built k-rail system. The sports court consists of a power game, high performance, modular surface made up of 12' x 12' x  $\frac{3}{4}$ " squares. The surface is lined to accommodate both basketball and volleyball activity. Also included are two removable, powder-coated aluminum, multi-sport net poles and a net adjustment system. An aluminum ramp edge was installed around the perimeter of the court. The sports court and amenities are shown on the attached Project Plans (Attachment No. CD 3). No additional on-site improvements are proposed.

### **III. FINDINGS AND FACTS**

Pursuant to Section 20.54.070 (Changes to an Approved Project) of the Newport Beach Municipal Code (NBMC), the Community Development Director may authorize minor changes to an approved site plan, architecture, or the nature of the approved use, without a public hearing, and waive the requirement for a new use permit application. This staff approval is based on the following findings and facts in support of the findings. In this case, the Director determined the proposed changes:

#### Finding:

A. *Are consistent with all applicable provisions of this Zoning Code.*

#### Facts in Support of Finding:

1. Sage Hill School will continue to be utilized as a school facility serving grades Kindergarten through 12. The outdoor sports court is a typical accessory use an educational institution and is permitted within the PI (Private Institutions) Zoning District designated for the subject property.
2. The sports court is unenclosed and does not increase the total square footage or number of students approved for the project. The proposed changes are consistent with the applicable conditions of approval of the original County Use Permit (No. PA97-0173) and subsequent Staff Approval Nos. SA2007-017 (PA2007-224), SA2015-006 (PA2015-072), SA2017-010 (PA2017-206).
3. Sufficient parking will continue to be available to serve all uses on-site. The Code requires 199 parking spaces on-site to accommodate any combination of high school, elementary, and middle school students. The outdoor sports court would reduce parking by 42 spaces, but over 407 parking spaces remain useable to serve the site.

#### Finding:

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

#### Facts in Support of Finding:

1. No additional students or classrooms are proposed with the outdoor sports court. The sports court will provide for existing students and activities and will not result in increased daily trips to the site.

2. The proposed sports court will replace an existing improved parking area and does not involve grading of any previously undisturbed land. The use of amplified sound within the outdoor sports court area would be prohibited.
3. There is no substantial evidence that the proposed outdoor sports court will have any significant adverse impacts upon the environment. The sports court was not a basis for or subject of findings or exemptions in the Negative Declaration under County Use Permit No. PA97-0173. Applicable Mitigation Measures of Negative Declaration PA97-0173 will continue to mitigate or eliminate impacts of the school use or reduce them to levels of insignificance.

Finding:

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

Facts in Support of Finding:

1. The proposed changes do not negatively impact a feature that was specifically addressed in staff reports or minutes prepared for County Use Permit No. PA97-0173. The school is approved as a Kindergarten through 12<sup>th</sup> Grade educational institution. The sports court does not substantially change the operation of the use, traffic, or parking for the site as was originally authorized under the original County Use Permit (No. PA97-0173) and subsequent Staff Approval Nos. SA2007-017 (PA2007-224), SA2015-006 (PA2015-072), SA2017-010 (PA2017-206).
2. The proposed outdoor sports court does not result in any additional impacts beyond those analyzed prior to original project approval.
3. No conflict exists between the project and identified Natural Community Conservation Planning (NCCP) area. Development of the court is on an existing developed parking lot and adheres to the mitigation measures and conditions of approval of the approved school.
4. Off-street parking will be maintained as established in the County of Orange Zoning Code. Sufficient parking will be provided at a rate of one (1) parking space per six (6) students and one (1) per faculty for the high school (Grades 9 through 12) and at a rate of two (2) parking spaces per classroom for grades Kindergarten through 8. The project reduces the parking supply for the school but still exceeds the required parking of 185 to 199 spaces for any combination of students grades kindergarten through 8 and grades 9 through 12. As a result, sufficient parking will continue to be available for the uses.

Finding:

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

Facts in Support of Finding:

1. The total student enrollment will remain the same with a 600-student maximum. Number of staff and faculty will also remain at the existing 99-member maximum.
2. The addition of the outdoor sports court will not result in a change in the operational characteristics of the school but will instead provide additional amenities to complement the existing facilities. The outdoor sports court is a typical athletic facility found at schools.

**IV. DETERMINATION**

The Community Development Director determined that the proposed outdoor sports court is consistent with the plans approved by the Orange County Planning Commission in conjunction with the review and approval of County Use Permit No. PA97-0173 and Staff Approval Nos. SA2007-017 (PA2007-224), SA2015-006 (PA2015-072), SA2017-010 (PA2017-206).

**V. CONDITIONS**

1. The development shall be in substantial conformance with the approved site plan, floor plans, materials board, and building elevations stamped and dated with the date of this approval (except as modified by these conditions of approval).
2. The outdoor sports court shall not exceed 7,660 square feet.
3. The use of amplified sound within the outdoor sports court area shall be prohibited.
4. This approval shall expire unless exercised within twenty-four (24) months from the date of approval as specified in Section 20.54.060 (Time Limits and Extensions) of the NBMC, unless an extension is otherwise granted.
5. The Applicant is required to obtain a building permit from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements.
6. The Applicant shall comply with all project design features, mitigation measures, and standard conditions contained within the approved Mitigation Monitoring Reporting Program (MMRP) of MND SCH No. 98091102 as approved by the County of Orange in Planning Application No. PA97-0173 for the project.
7. Student enrollment shall not exceed 600 students.
8. Any modification to the parking lot and/or number of parking spaces shall be reviewed and approved by the Planning Division.

9. 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.
10. Water leaving the project site due to over-irrigation of landscape shall be minimized. If an incident such as this is reported, a representative from the Code and Water Quality Enforcement Division shall visit the location, investigate, inform and notice the responsible party, and, as appropriate, cite the responsible party and/or shut off the irrigation water.
11. Water should not be used to clean paved surfaces such as sidewalks, driveways, parking areas, etc. except to alleviate immediate safety or sanitation hazards.
12. All parking area and exterior light fixtures shall be full cut-off fixtures.
13. All building exits shall remain free and clear of any obstacles that would impede exiting from a building or suite and accessing the nearest public right-of-way.
14. The school is located in a "Very High Fire Hazard Severity Zone" (VHFHSZ), which requires specific noncombustible construction per California Building Code Chapter 7A (Materials and Construction Methods for Exterior Wildfire Exposure).
15. The Applicant shall install k-rails along the edges of the adjacent parking stalls and drive aisles. The k-rails shall not encroach into the required dimensions of the parking stalls or drive aisles.
16. All exiting paths shall be a minimum 36 inches free and clear. All public walks and sidewalks shall be a minimum 48 inches free and clear.
17. All dead-end drive aisles shall have a dedicated turnaround area and 5-foot minimum drive aisle extension.
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 **Sage Hill School Outdoor Sports Court** including, but not limited to, **Staff Approval No. SA2021-004 (PA2021-090)**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Applicant, City, and/or the parties

initiating or bringing such proceeding. The Applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

**APPEAL PERIOD:** An appeal may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered. For additional information on filing an appeal, contact the Planning Division at 949-644-3200.

On behalf of Seimone Jurjis, P.E., C.B.O., Community Development Director

By:

A handwritten signature in blue ink that reads "Patrick Achis". The signature is written in a cursive style and is positioned above a horizontal line.

Patrick Achis  
Assistant Planner

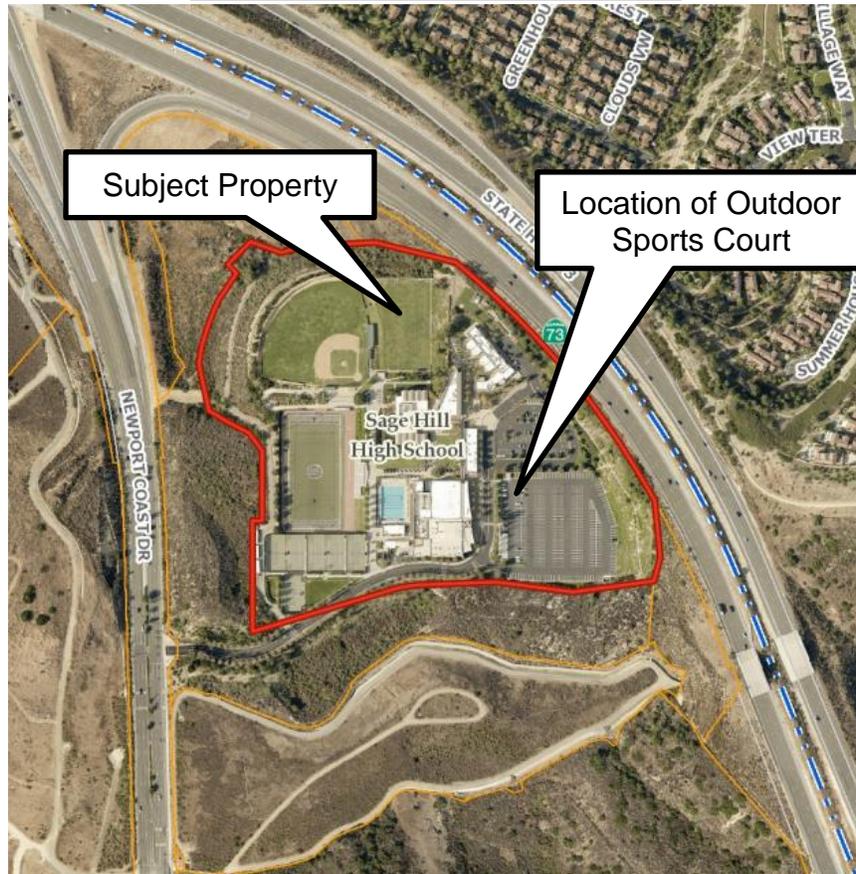
BMZ/pda

Attachments: CD 1 Vicinity Map  
CD 2 Applicant's Project Description and Justification  
CD 3 Project Plans

# **Attachment No. CD 1**

Vicinity Map

# VICINITY MAP



Staff Approval No. SA2021-004  
PA2021-090

**20402 Newport Coast Drive**

# **Attachment No. CD 2**

Applicant's Project Description and Justification



# CAA PLANNING

April 15, 2021

Mr. Jim Campbell  
Deputy Community Development Director  
City of Newport Beach  
100 Civic Center Drive  
Newport Beach, CA 92660

Subject: Sage Hill Sport Court – Staff Approval  
Sage Hill High School  
20402 Newport Coast Drive  
Newport Beach, CA 92657

Dear Mr. Campbell:

On behalf of Sage Hill High School (Sage), CAA Planning, Inc. (CAA) submits the enclosed application for staff approval to allow the existing temporary sport court in the school parking lot under Emergency Use Permit ETUP2020-153 to operate on a permanent basis.

## **Project**

The sport court was built to comply with State COVID-19 guidelines for conducting youth organized sports practices, which were limited to outside activity with physical distancing only. The sport court is located on campus in a corner of the school's main parking lot within the existing surface parking spaces and is used as an outside practice space for several teams, including the basketball and volleyball teams. Sage desires to make this a permanent facility on the campus. The sport court is located in the northwest corner of the large parking lot as shown on the attached Aerial. Students enter and exit the sport court from the west side via the existing sidewalk, which eliminates any interaction with vehicle traffic. A water-filled k-rail system was installed on the north, east, and south sides of the sport court to form a vehicle barricade for the protection of the students. The protection on the west side is provided by an existing wall. The k-rail system is an integral part of the sport court and will remain as installed. Located directly behind the k-rail system is an 8-foot-high steel chain-link fence. The attached Photos 1-4 provide a ground level view of the as-built k-rail system.

The sport court was built in accordance with ETUP2020-153. The sport court consists of a power game, high performance modular surface made up of 12 x 12 x ¾" squares. The surface is lined to accommodate both basketball and volleyball activity. Also included are two removable, powder coated aluminum, multi-sport net poles and a net adjustment system. An aluminum ramp edge was installed around the perimeter of the court. The sport court and amenities are shown on the attached Exhibit 1. The school's parking requirement is based on the number of classrooms and the grade levels of the classrooms. Based on current enrollment, the school is required to provide between 185 and 199 parking spaces, and 449 spaces are provided. The sport court has reduced the number of parking spaces by 42, resulting in 407 compliant spaces provided, which leaves between 222 and 208 parking spaces. The sport court reduced the number of parking spaces by 42, which are shown on the attached Exhibit



Mr. Jim Campbell  
April 15, 2021  
Page 2 of 3

2. Originally approved under the ETUP at 5,275 square feet, the as-built area is 5,281 square feet based with a width of 56'7" and a length of 93'4". The dimensions are shown the attached Exhibit 3.

No additional on-site improvements are proposed for the sport court change in use from temporary to permanent. The Emergency Temporary Use Permit Findings (Findings) for ETUP2020-138 will remain in place until Emergency Ordinance No. 2020-005 is terminated or repealed. At that time, the following Findings for the sport court, which apply to the school's Use Permit No. PA97-0173, will remain in place.

*Finding 1. (ETUP Finding 5) – The proposed operation does not constitute an increase in the overall occupant load beyond what the existing Use Permit and/or Certificate of Occupancy allow.*

The sport court does not increase the number of students attending the school.

*Finding 2. (ETUP Finding 6) – An adequate supply of parking is available to serve the subject institution.*

There are 449 parking spaces (spaces) available on the school property. The sport court eliminated 40 spaces, reducing the total available to 409 spaces. The parking requirement for the school is between 185 and 199 spaces, resulting in a surplus of between 250 and 264 spaces.

*Finding 3. (ETUP Finding 7) – The proposed operation does not extend any hours of operation beyond those currently permitted by Use Permit No. PA97-0173.*

The sport court activities will continue to operate within the approved hours of operation approved under Use Permit No. PA97-0173 and subsequent amendments.

*Finding 4. (ETUP Finding 9) – The proposed operation is conditioned to be accessible to all persons, including those with disabilities, in accordance with the Americans with Disabilities Act (ADA).*

The sport court activities will continue to provide accessibility with ADA.

## **Action Required**

Under Part 5, Chapter 20.54, Section 20.54.070 of the Newport Beach Zoning Code, the Director may authorize minor changes to an approved site plan, architecture, or the nature of the approved use, without a public hearing, where the Director first finds that the changes:

*a. Are consistent with all applicable provisions of this Zoning Code, and*

The sport court will remain consistent with all applicable provisions of the Zoning Code approved under Use Permit No. PA97-0173 and subsequent amendments, or under ETUP2020-153. The sport court does not increase the number of students attending the school, provides an adequate supply of parking, operates within the approved hours of operation approved under Use Permit No. PA97-0173 and subsequent amendments, and is ADA compliant.



Mr. Jim Campbell  
April 15, 2021  
Page 3 of 3

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

The sport court was not a basis for or subject of findings or exemptions in a negative declaration or Environmental Impact Report under Use Permit No. PA97-0173. The sport court was implemented during the COVID-19 pandemic, which began in the year 2020, over 23 years after Use Permit No. PA97-0173 was approved.

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

The sport court did not involve a feature of the project that was specifically addressed or was the subject of a condition(s) of approval for the project or that was a specific consideration by the applicable review authority in the project approval for Use Permit No. PA97-0173 and subsequent amendments. The sport court was born out of necessity to provide outdoor activities for the student body due to the COVID-19 pandemic.

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

The sport court did not result in an expansion or change in operational characteristics of the use. Outdoor sports venues are an approved use on school campuses, and the sport court was implemented on existing school property in the school parking lot without reducing the number of required parking spaces.

CAA believes that the Director can approve the change in use of the school property from temporary to permanent through a Staff Approval. Please do not hesitate to contact me at (949) 581-2888 if you have any questions or concerns.

Sincerely,  
CAA PLANNING, INC.

Shawna Schaffner  
Chief Executive Officer

Attachments: Aerial  
Exhibits 1-3  
Photos 1-4

c: Jill Livermore, Chief Financial Officer



Aerial



As-Built North Side of Sport Court



As-Built East Side of Sport Court



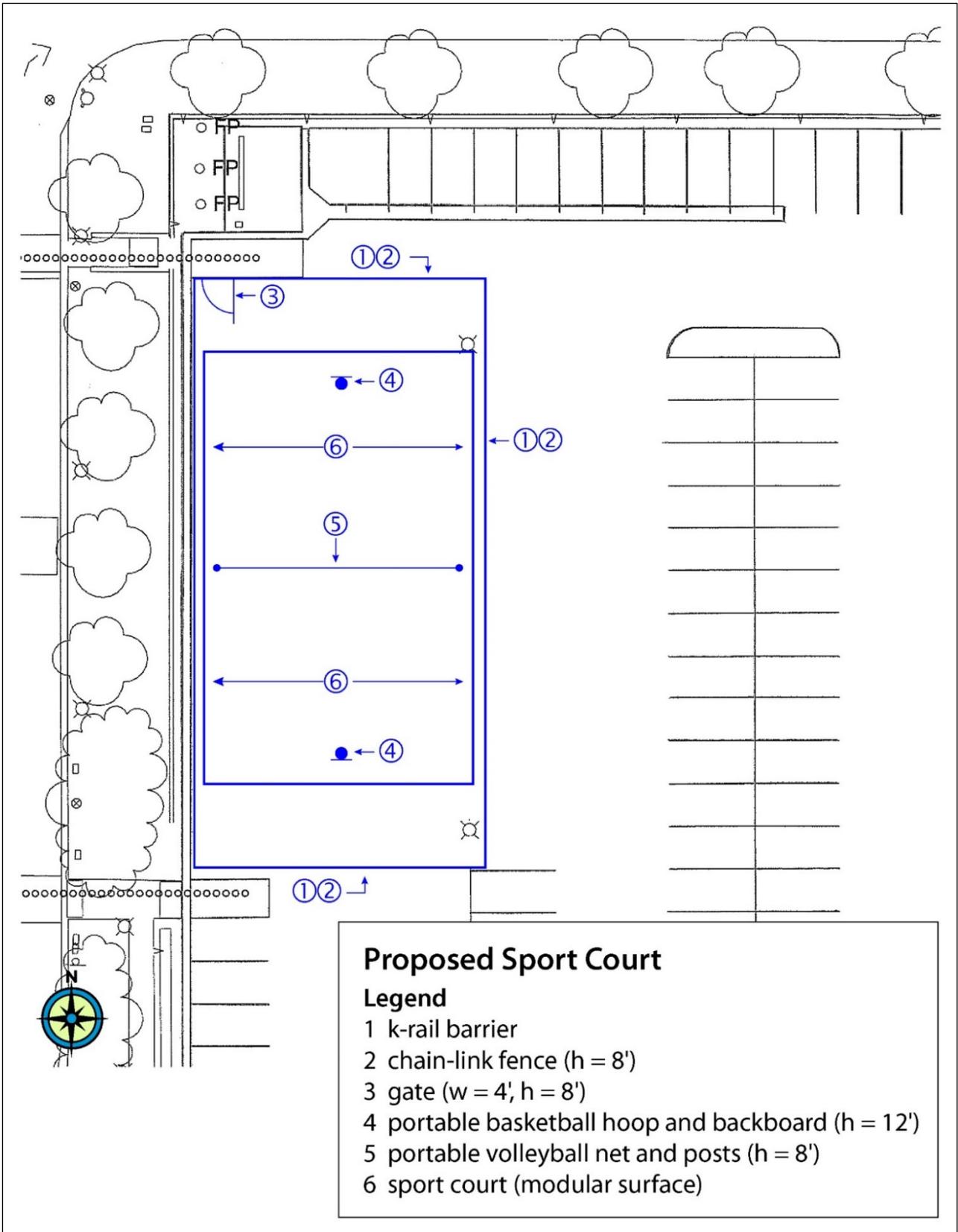
As-Built South Side of Sport Court



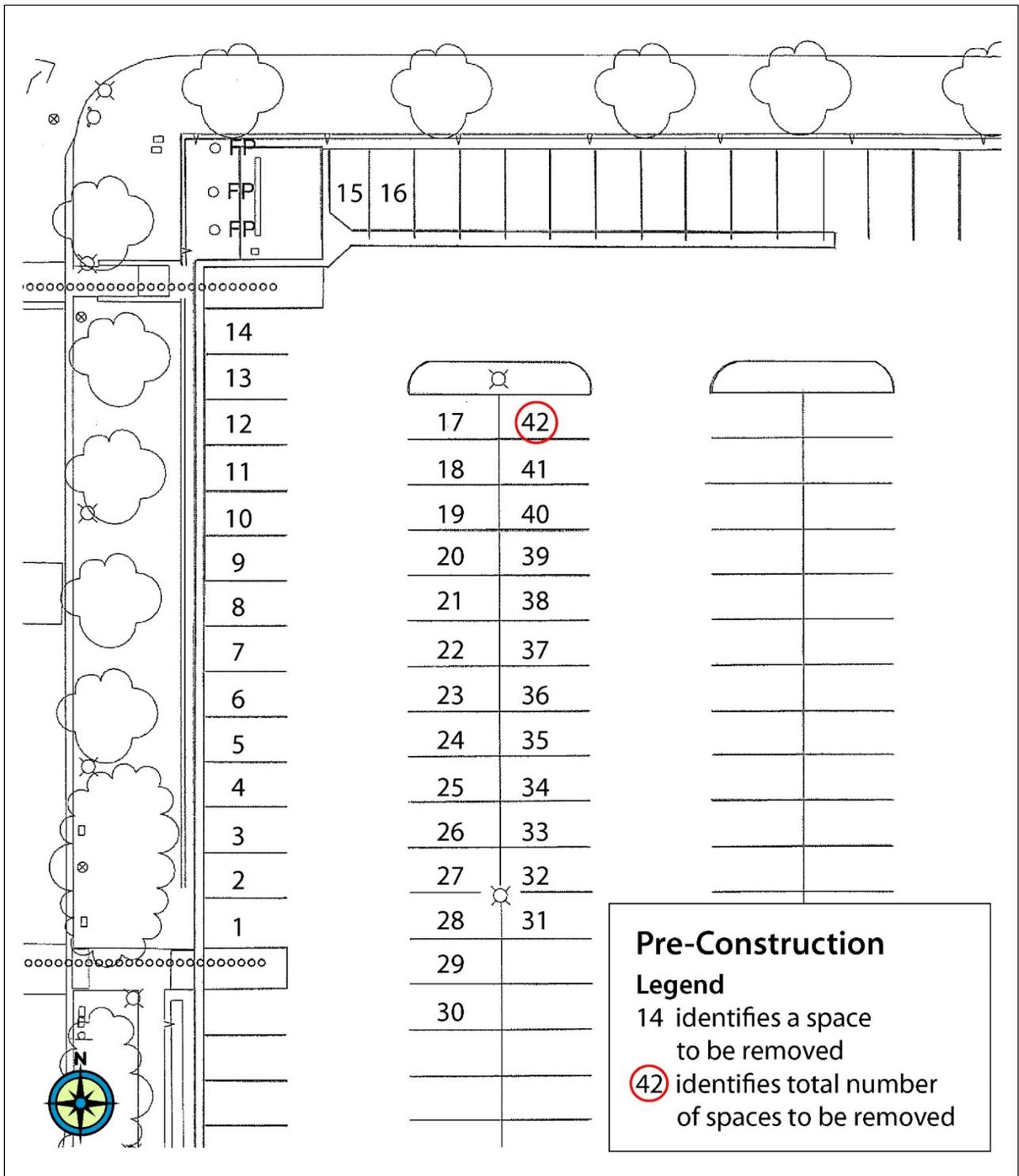
As-Built West Side of Sport Court

# **Attachment No. CD 3**

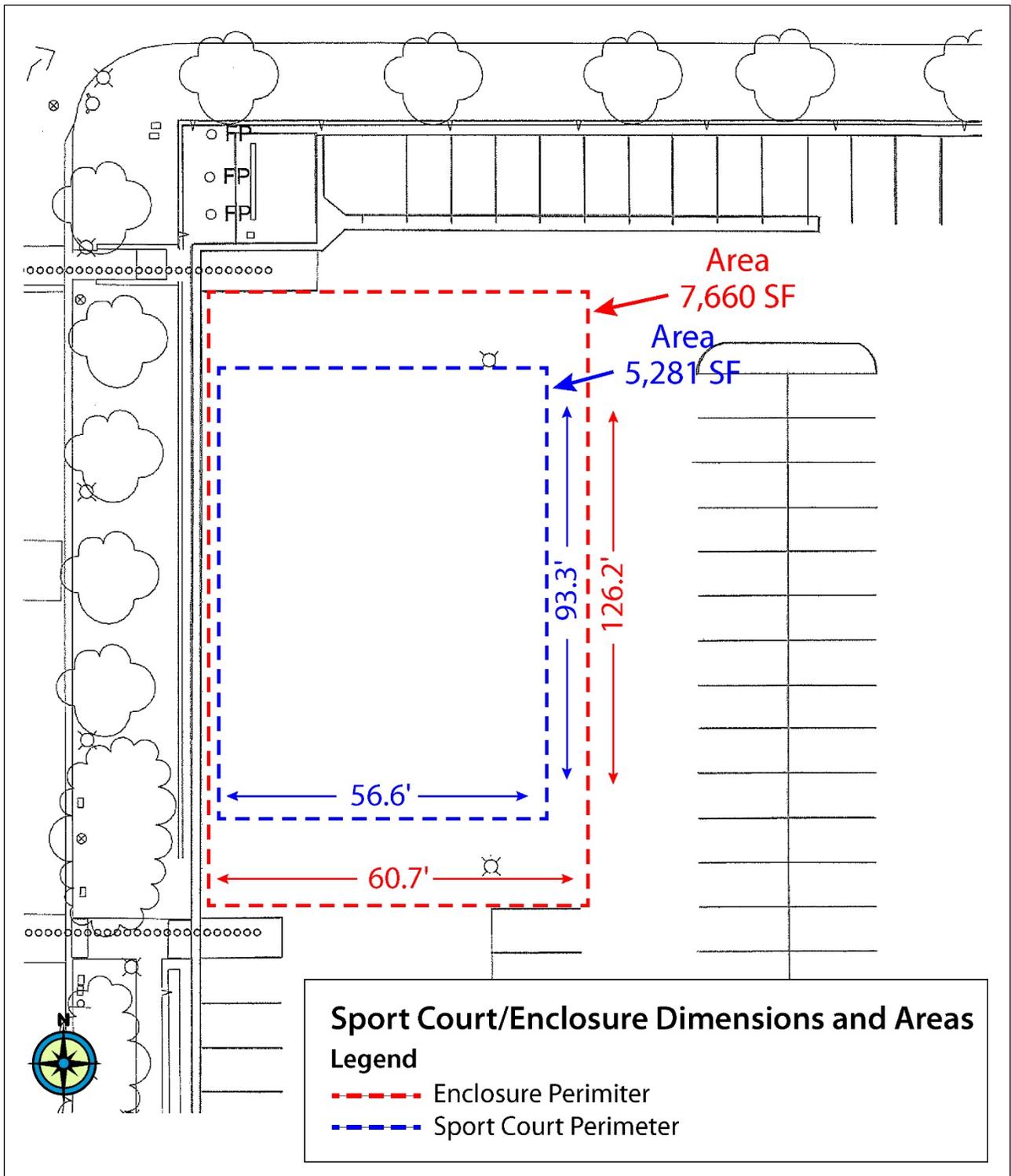
Project Plans



**Exhibit 1**



**Exhibit 2**



**Exhibit 3**



COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING DIVISION  
100 Civic Center Drive, P.O. Box 1768, Newport Beach, CA 92658-8915  
949-644-3200  
[www.newportbeachca.gov](http://www.newportbeachca.gov)

**COMMUNITY DEVELOPMENT DIRECTOR**  
**ACTION LETTER**

**Subject:** Goldberg Grade Determination (PA2021-157)  
▪ Staff Approval No. SA2021-007

**Site Location** 233 Santa Ana Avenue

**Applicant** Hannouche Architects

**Legal Description** Lot 56 of Tract 444

On **October 15, 2021**, the Community Development Director approved the establishment of an alternate established grade of 70.75 feet North American Vertical Datum of 1988 (NAVD88) for the purpose of measuring the height of the principal structure. The alternate grade is based on the topography of the subject property and the adjoining properties (Attachment No. CD 3).

**LAND USE AND ZONING**

- **General Plan Land Use Plan Category:** RS-D (Single-Unit Residential, Detached)
- **Zoning District:** R-1 (Single-Unit Residential)

***Newport Beach Municipal Code Section 20.30.050(C) Grade Establishment - Establishment of Grade by Director***

*If the Director finds that the existing grade on the subject lot has been previously altered (e.g., contains retaining structures, property line walls, planters, or excavation/fill), or other conditions are present to the degree that the existing grade is not representative of the prevailing grades on adjoining lots and/or the general area and, therefore, is not appropriate for the purpose of establishing the grade of the subject lot, the Director may establish the grade that is reasonable and comparable with the grades of adjoining lots and that will not be detrimental or injurious to property and improvements on adjoining lots.*

The Community Development Director's Staff Approval is based on the following findings and conditions.

**Finding:**

- A. *The existing grade on the subject lot has been previously altered (e.g., contains retaining structures, property line walls, planters, or excavation/fill), or other conditions are present to the degree that the existing grade is not representative*

*of the prevailing grades on adjoining lots and/or the general area and, therefore, is not appropriate for the purpose of establishing the grade of the subject lot.*

Facts in Support of Finding:

1. The subject property is relatively flat except for the southwesterly corner abutting Santa Ana Avenue, which has an elevation of approximately 65 feet NAVD88. However, the southwesterly corner is surrounded by higher elevations on three sides. The southwesterly side of the property has an elevation of 70.64 feet to NAVD88, and is supported by a retaining wall. Likewise, the neighboring building corner at 233 Santa Ana Avenue has an elevation of 69.52 feet NAVD88 and is supported by a retaining wall. Finally, a series of three retaining walls on the subject property raises the elevation of the pad from approximately 65 to 70.32 feet NAVD88.
2. The lower pad on the southwesterly corner is not representative of the prevailing grade on the two adjoining properties, which are higher. The southwesterly corner of the subject property was previously graded with a “cut” to create a driveway below the pad elevation of the property’s primary structure (residence) and better align the driveway grade with Santa Ana Avenue. Using the 65-foot elevation at the southwesterly corner creates design constraints and unfairly restricts the height of the principal structure.

Finding:

- B. The grade is reasonable and comparable with the grades of adjoining lots and will not be detrimental or injurious to property and improvements on adjoining lots.*

Facts in Support of Finding:

1. Allowing a higher grade of 70.75 feet NAVD88 would provide the property with a grade elevation that is compatible with those of the neighboring properties and equitable for the purposes of measuring the principal structure.
2. The proposed grade point of the southwesterly corner (see Point #3 of the attached Site Plan) is 70.08 feet NAVD88, which is interpolated from the existing grade elevation of the subject property’s building corner and the existing grade elevation of 233 Santa Ana Avenue. The proposed grade point, averaged with the three remaining corners of a four-sided polygon around the proposed structure, results in an established grade of 70.75 feet NAVD88.

**CONDITIONS**

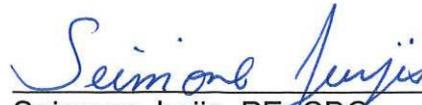
1. The grade for the purposes of measuring height of the principal structure authorized by this determination shall be based on existing grade prior to construction or alternate grade of 70.75 feet NAVD88, whichever is greater.
2. A copy of this action letter, including the findings and conditions, shall be copied onto the building plans.
3. 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 Goldberg Grade Determination including, but not limited to, the Staff Approval No. SA2021-007 (PA2021-157). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

**APPEAL PERIOD:** An appeal or call for review may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered. For additional information on filing an appeal, contact the Planning Division at 949-644-3200.

By:



David S. Lee  
Associate Planner



Seimone Jurjis, PE/CBO  
Community Development Director

MS/dl

Attachments: CD 1 Vicinity Map  
CD 2 Site Photos  
CD 3 Project Plans

# **Attachment No. CD 1**

Vicinity Map

# VICINITY MAP

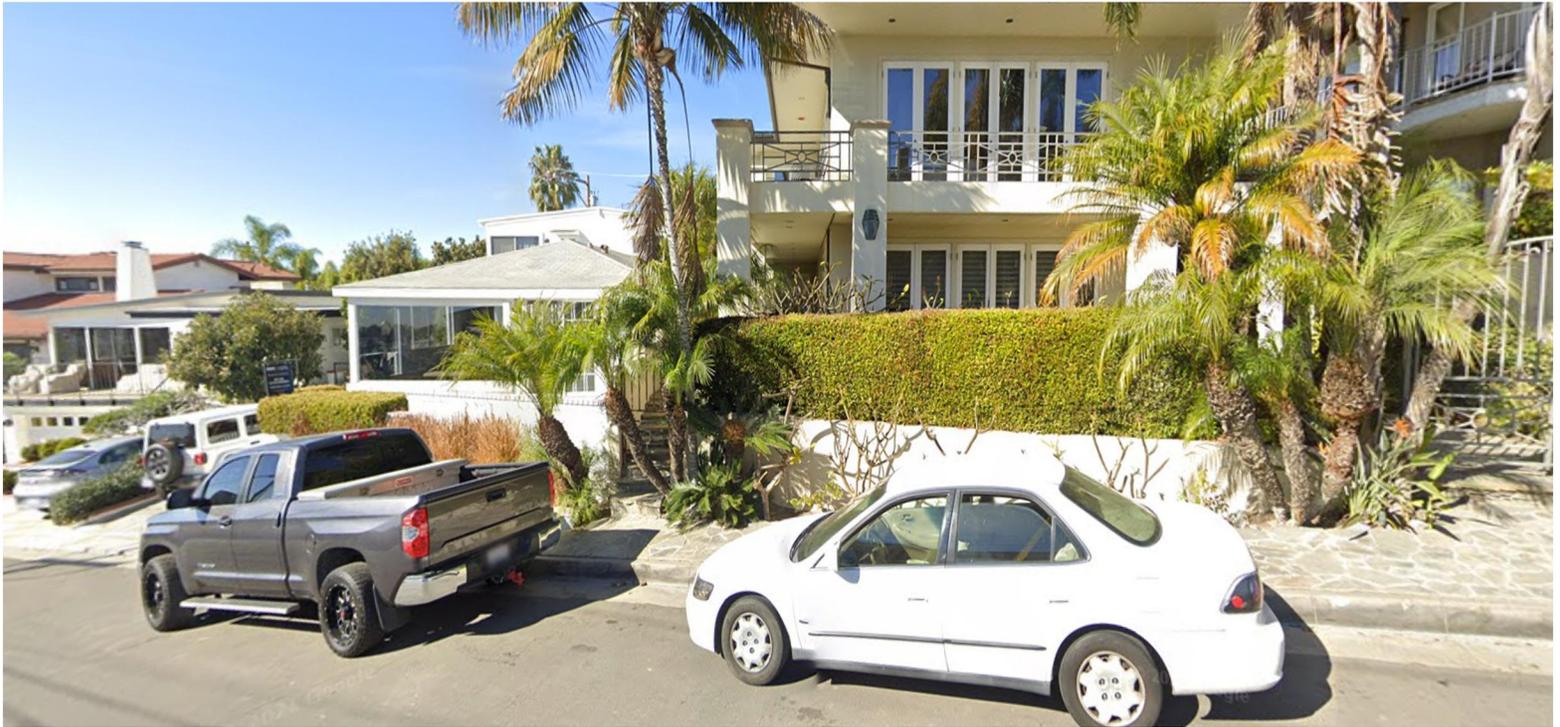


Staff Approval No. SA2021-007  
PA2021-157

**233 Santa Ana Avenue**

# **Attachment No. CD 2**

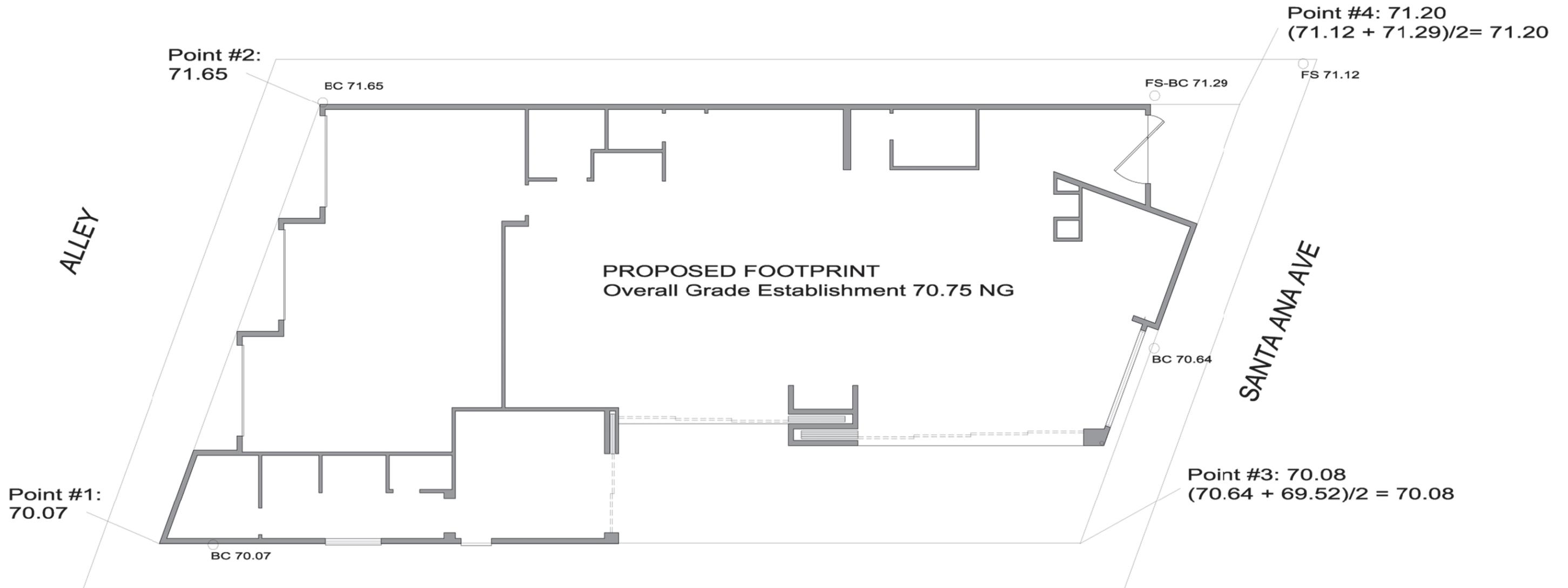
Site Photos



**FRONT PHOTOGRAPHS  
233 SANTA ANA AVE**

# **Attachment No. CD 3**

Project Plans



**SITE PLAN**

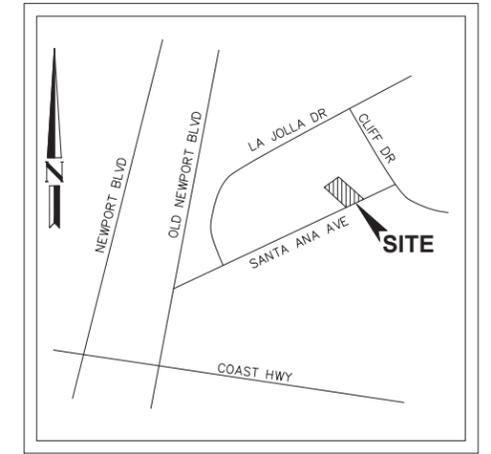
**GOLDBERG RESIDENCE**

NEWPORT BEACH

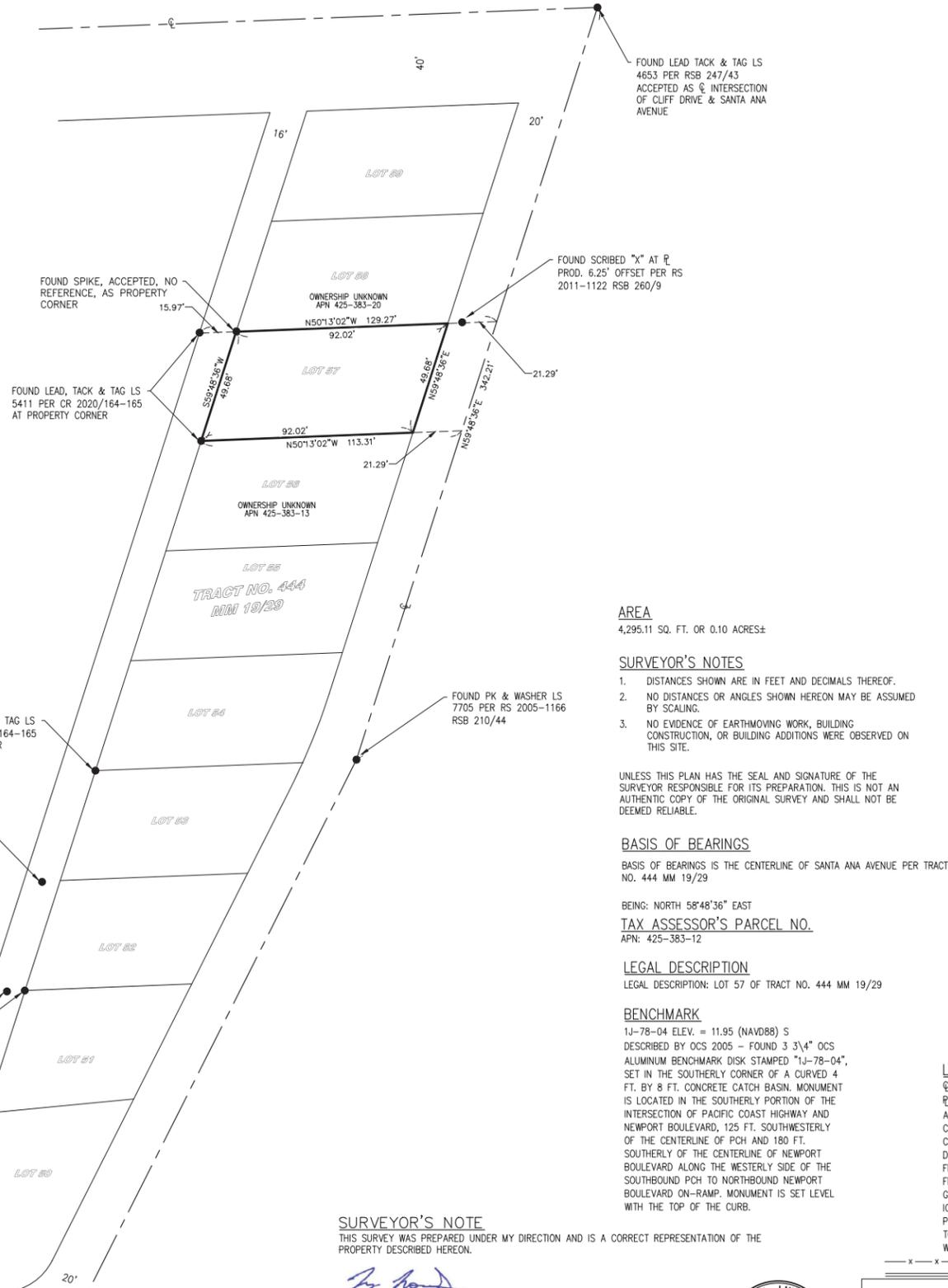
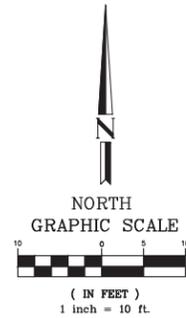


# BOUNDARY/TOPOGRAPHIC MAP

233 SANTA ANA AVENUE, CITY OF NEWPORT BEACH  
COUNTY OF ORANGE, STATE OF CALIFORNIA



VICINITY MAP  
NTS



**AREA**  
4,295.11 SQ. FT. OR 0.10 ACRES±

**SURVEYOR'S NOTES**

- DISTANCES SHOWN ARE IN FEET AND DECIMALS THEREOF.
- NO DISTANCES OR ANGLES SHOWN HEREON MAY BE ASSUMED BY SCALING.
- NO EVIDENCE OF EARTHMOVING WORK, BUILDING CONSTRUCTION, OR BUILDING ADDITIONS WERE OBSERVED ON THIS SITE.

UNLESS THIS PLAN HAS THE SEAL AND SIGNATURE OF THE SURVEYOR RESPONSIBLE FOR ITS PREPARATION, THIS IS NOT AN AUTHENTIC COPY OF THE ORIGINAL SURVEY AND SHALL NOT BE DEEMED RELIABLE.

**BASIS OF BEARINGS**

BASIS OF BEARINGS IS THE CENTERLINE OF SANTA ANA AVENUE PER TRACT NO. 444 MM 19/29

BEING: NORTH 58°48'36" EAST  
**TAX ASSESSOR'S PARCEL NO.**  
APN: 425-383-12

**LEGAL DESCRIPTION**

LEGAL DESCRIPTION: LOT 57 OF TRACT NO. 444 MM 19/29

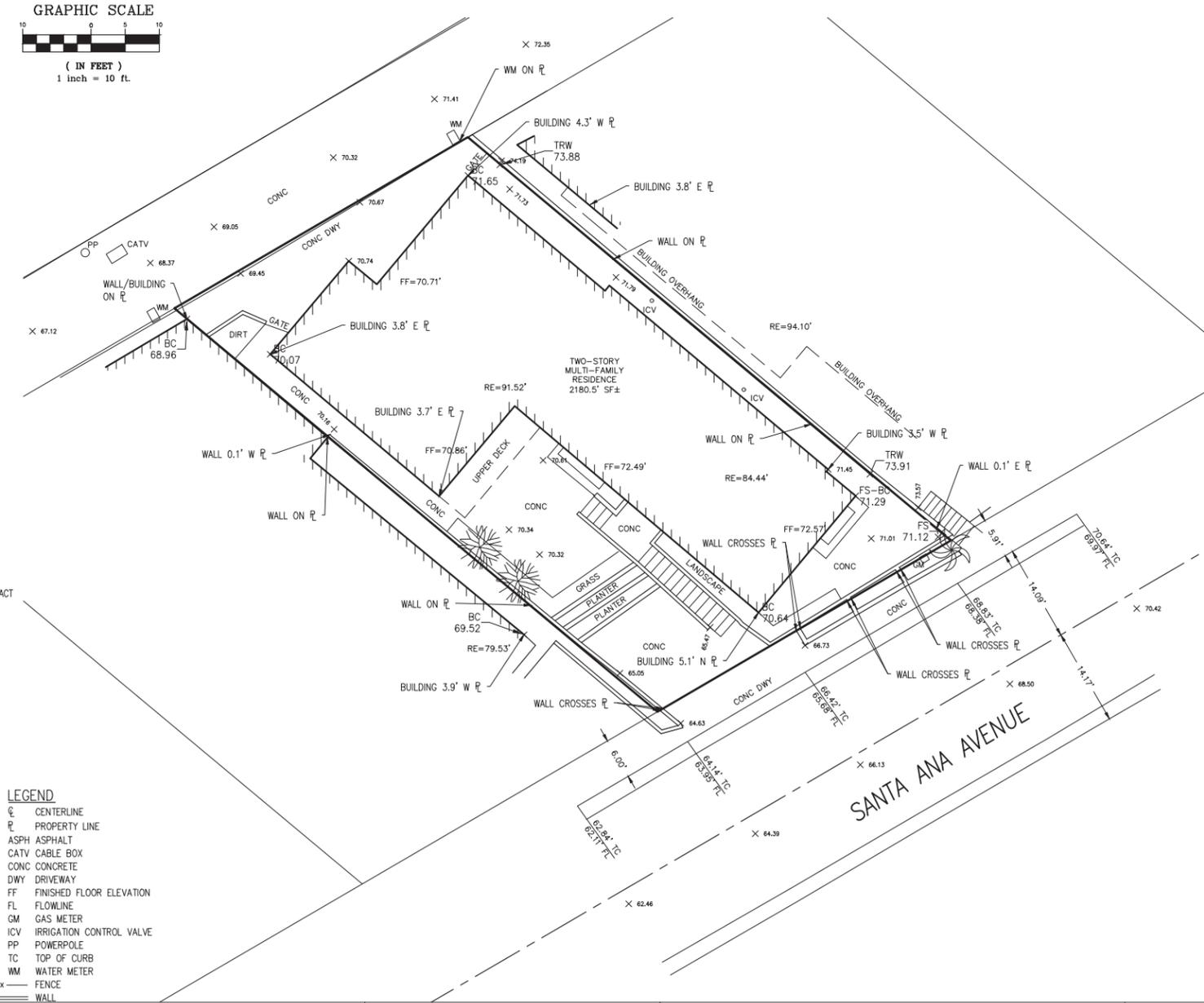
**BENCHMARK**

1J-78-04 ELEV. = 11.95 (NAVD88) S DESCRIBED BY OCS 2005 - FOUND 3 3/4" OCS ALUMINUM BENCHMARK DISK STAMPED "1J-78-04", SET IN THE SOUTHERLY CORNER OF A CURVED 4 FT. BY 8 FT. CONCRETE CATCH BASIN. MONUMENT IS LOCATED IN THE SOUTHERLY PORTION OF THE INTERSECTION OF PACIFIC COAST HIGHWAY AND NEWPORT BOULEVARD, 125 FT. SOUTHWESTERLY OF THE CENTERLINE OF PCH AND 180 FT. SOUTHERLY OF THE CENTERLINE OF NEWPORT BOULEVARD ALONG THE WESTERLY SIDE OF THE SOUTHBOUND PCH TO NORTHBOUND NEWPORT BOULEVARD ON-RAMP. MONUMENT IS SET LEVEL WITH THE TOP OF THE CURB.

**SURVEYOR'S NOTE**  
THIS SURVEY WAS PREPARED UNDER MY DIRECTION AND IS A CORRECT REPRESENTATION OF THE PROPERTY DESCRIBED HEREON.

*Ty E. Thomas*  
TY E. THOMAS  
P.L.S. 9309 EXP. 9/30/2022

DATE 11-24-2020



**LEGEND**

- CL CENTERLINE
- PL PROPERTY LINE
- ASPH ASPHALT
- CATV CABLE BOX
- CONC CONCRETE
- DWY DRIVEWAY
- FF FINISHED FLOOR ELEVATION
- FL FLOWLINE
- GM GAS METER
- ICV IRRIGATION CONTROL VALVE
- PP POWERPOLE
- TC TOP OF CURB
- WM WATER METER
- FENCE FENCE
- WALL WALL

REVISIONS		
REV	DATE	DESCRIPTION

PREPARED BY:  
**MFKessler**  
ONE VENTURE,  
SUITE 130  
IRVINE, CA 92618  
(949) 339-5330  
MFKESSLER.COM

**BOUNDARY/TOPOGRAPHIC MAP**  
PROJECT NO. **229-005**  
233 SANTA ANA AVENUE  
NEWPORT BEACH, CALIFORNIA  
SHEET 1 OF 1



COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING DIVISION  
100 Civic Center Drive, P.O. Box 1768, Newport Beach, CA 92658-8915  
949-644-3200  
[www.newportbeachca.gov](http://www.newportbeachca.gov)

## **ZONING ADMINISTRATOR ACTION LETTER**

**Subject:** Hyatt Regency (PA2021-179)  
▪ Limited Term Permit No. XP2021-004

**Site Location** 1107 Jamboree Road

**Applicant** Hyatt Regency Newport Beach

**Legal Description** Block 55, A Tract, Irvine Subdivision

On **October 15, 2021**, the Zoning Administrator approved Limited Term Permit No. XP2021-004. This approval is based on the following findings and subject to the following conditions.

### **LAND USE AND ZONING**

- **General Plan Land Use Plan Category:** CV (Visitor Serving Commercial)
- **Zoning District:** CV (Commercial Visitor-Serving)
- **Coastal Land Use Plan Category:** CV-B (Visitor Serving Commercial)
- **Coastal Zoning District:** CV (Commercial Visitor-Serving)

### **I. SUMMARY OF PROPOSED OPERATION**

A Limited Term Permit to extend Emergency Temporary Use Permit No. UP2020-078 (Attachment No. ZA 2) to allow expanded event dining in four separate common areas on-site for less than 90 days from January 1, 2021, through March 31, 2021. The use of amplified sound in the common areas is also requested. Any outdoor amplified sound shall cease by 9 p.m. Sundays through Thursdays, and by 10p.m. on Fridays and Saturdays. The four common areas and their proposed occupancy is as follows:

1. Amphitheater – 300 seats
2. Garden Patio – 114 seats
3. Oasis Court – 348 seats
4. Plaza Arbor – 396 seats

The applicant has provided a detailed written description of their operations, provided as Attachment No. ZA 3.

### **II. CALIFORNIA COASTAL COMMISSION**

The Property is located in the coastal zone and the proposed improvements do not require a coastal development permit in accordance with Newport Beach Municipal Code (NBMC) Section 21.52.035(C)(2) (Projects Exempt from Coastal Development Permit Requirements). This section exempts minor improvements on property located in proximity to the sea unless the improvements constitute; 1) an increase of ten (10) percent or more of the internal floor area of an existing structure or a lesser improvement that has previously been undertaken pursuant to California Public Resources Code Section 30610(a), 2) the construction of an additional story or loft or increase in existing structure's height by more than ten (10) percent, 3) the construction, placement or establishment of any significant nonattached structure such as a garage, fence, shoreline protective works or docks.

The proposed expanded event areas are for a limited duration and involve no physical improvements to the space and are considered insignificant nonattached structures (tables and chairs). The location of these improvements does not pose a conflict to coastal resources, coastal access, or other adverse environmental effects. Therefore, the proposed improvements within the existing common areas are exempt from the requirement for a coastal development permit.

### **III. CEQA DETERMINATION**

The proposed operation is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3. The Class 1 exemption includes the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use. The project includes authorizing the use of existing hotel event areas for a limited duration that will not be physically expanded, are within the parameters noted for this exemption, and will not have a significant effect on the environment. There are no known exceptions listed in CEQA Guidelines Section 15300.2 that would invalidate the use of these exemptions.

### **IV. LIMITED TERM PERMIT REQUIRED FINDINGS**

In accordance with Newport Beach Municipal Code (NBMC) Section 20.52.040 (Limited Term Permits), the following findings and facts in support of such findings are set forth:

- A. *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 applicant has requested a limited term permit for ninety (90) days or less, starting on January 1, 2022, and ending on March 31, 2022. Therefore, the proposed operation will not create any long-term impacts on the surrounding community.

2. The permitted use shall adhere to applicable State of California and Orange County Health Care Agency guidelines for the safe operation of the use. It is the responsibility of the permittee to implement and follow industry-specific guidance of the State of California and the Orange County Health Care Agency guidelines
3. The proposed operation has been reviewed by and is acceptable to the Building Division, Fire & Life Safety Division, Code Enforcement Division and Public Works Department. Conditions of Approval are included to help ensure this operation is not detrimental;
4. The use of amplified sound was previously approved through 10 p.m., daily, as part of Emergency Use Permit No. UP2020-078. There were no known Code Enforcement complaints pertaining to the use of amplified sound at the subject lot for the duration that the Emergency Use Permit was in effect.

*B. 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 hotel has operated in a similar fashion for the duration of the current emergency temporary use permit (authorized in 2020). The lot is approximately 25.7 acres in size. Based upon the site plan, there is adequate area to accommodate the limited duration use, as the applicant is requesting outdoor events take place in existing outdoor gathering areas, with no physical improvements made elsewhere on the property.
2. The site is bounded by Jamboree Road the west, Back Bay Drive to the east, undeveloped land to the north and Back Bay Drive to the south. The adjacent rights-of-way (Jamboree Road and Back Bay Drive) separates the lot from nearby residential properties within the PC21 (Sea Island Apartments) and PC39 (Bayview Landing) Zoning Districts.
3. All four proposed locations will not necessarily be used simultaneously, based on the needs of the applicant.
4. There have been no code enforcement complaints to date regarding the use of the Emergency Temporary Permit. Should a complaint be filed, the applicant intends to respond accordingly based on City rules and regulations.

*C. 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. The subject lot has three direct driveway approaches, two taken from Back Bay Drive and one taken from Jamboree Road. Ample parking areas to serve the hotel and its guests for events are provided in the surface lots surrounding the hotel.

2. The hotel typically utilizes the venues for outdoor events; therefore, the limited duration use is not expected to generate significantly more parking demand and traffic than is typical for the use of the outdoor event spaces in question.

*D. Adequate temporary parking to accommodate vehicular traffic to be generated by the limited duration use would be available either onsite or at alternate locations acceptable to the Zoning Administrator;*

Facts in Support of Finding:

1. The subject lot contains 912 parking spaces, with 785 spaces dedicated to guest rooms and banquet facilities. The limited duration use is not expected to generate significantly more parking demand than the typical use of the venues in question.

2. Fact C2 is incorporated by reference.

*E. 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 General Plan land use designation for this site is Visitor Serving Commercial (CV). The CV designation is intended to provide for accommodations, goods, and services intended to primarily serve visitors to the City of Newport Beach. The proposed use is complementary to the existing hotel and special event use, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the CV designation.

2. The site is located in the Commercial Visitor-Serving (CV) Zoning District. The CV Zoning District is intended to provide for areas appropriate for accommodations, goods, and services intended to serve primarily visitors to the City. The proposed use is complementary to the existing hotel and special event use, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the CV designation. The CV zoning district allows temporary uses as specified within the Zoning Code and the proposed limited duration use is consistent with this designation.

3. The site is not located within a specific plan area.

**V. 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. The approval of this Limited Term Permit shall be effective from January 1, 2022, to March 31, 2022. The applicant shall be required to cease all permitted operations and remove any temporary improvements made to the outdoor spaces as part of this Limited Term Permit on or before March 31, 2022.

3. *The expanded event dining patios shall not exceed 114 seats for the Garden Patio, 348 seats for the Oasis Court, 300 seats for the Amphitheater and 396 seats for the Plaza Arbor.*
4. *The hours of operation for the expanded event patios (as part of this Limited Term Permit) shall not extend beyond 10 p.m.*
5. *The use of amplified sound within the event dining areas shall be permitted until 9 p.m., Sunday through Thursday, and until 10p.m., Fridays and Saturdays.*
6. *The applicant shall install and maintain a physical barrier between any area used and adjacent common pedestrian walkways in accordance with the requirements of the State Department of Alcoholic Beverage Control.*
7. The applicant shall obtain and maintain authorization from the State Department of Alcoholic Beverage Control (ABC) for all areas where the sale, service or consumption of alcohol is under the control of the applicant. The establishment shall abide by all applicable regulations of the State Department of Alcoholic Beverage Control.
8. The sale of alcohol "to go" to patrons that dine within the event dining areas shall be prohibited.
9. The establishment shall abide by all applicable Orange County Health Care Agency requirements.
10. The permittee shall provide adequate trash receptacles within the permitted outdoor space and the operator shall provide for periodic and appropriate removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.

### Building

11. Exit paths shall be clear of unobstructed at all time.
12. Doors and gates serving these areas shall be equipped with panic hardware.
13. *Accessible routes, including under canopy(ies) and other overhead improvements must maintain a minimum clear height of 80 inches.*
14. Any areas used for temporary commercial or institutional use shall be accessible to disabled persons.
  - a. An accessible path to all functional areas shall be provided.
  - b. Access to restrooms shall be provided at all times.
  - c. Accessible parking stalls shall not be used for seating areas when on-site parking is provided.
  - d. Detectable warnings are required when pedestrian paths cross or are adjacent to a vehicular way where no physical barrier are provided to separate the two.

15. Accessible seating at tables or counters shall provide knee clearance of at least 27 inches high, 30 inches wide, and 19 inches deep.
16. The tops of dining surfaces and work surfaces shall be 28 inches to 34 inches above the finish floor.
17. All exiting paths shall be a minimum 36 inches free and clear. All public walks and sidewalks shall be a minimum 48 inches free and clear.

#### Fire

18. All Fire Department devices (fire hydrants, fire department connections, water valves, etc.) shall have a three-foot clearance in all directions.
19. Fire Department devices shall not be covered, blocked or otherwise hidden from plain view.
20. All building exits shall remain free and clear of any obstacles that would impede exiting from a building or suite and accessing the nearest public right-of-way.

#### Public Works

21. There shall be a minimum of five feet of space around all overhead facilities, such as poles, and 15 feet of space around all underground facilities, such as vault lids, manholes, vent pipes, pad-mounted transformers, etc.
22. Seating or structures below overhead conductors and/or under the 'drip line' shall be prohibited.
23. Public eating/dining at tables shall not be situated on top of energized vault lids, energized underground structures, or next to vent pipes, etc.
24. Expanded outdoor dining areas shall adhere to the SCE clearance decal examples provided in Attachment No. ZA 4.

#### Miscellaneous

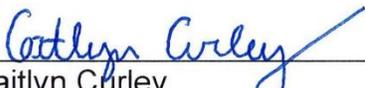
25. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
26. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
27. This Limited Term Permit be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.

28. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Limited Term Permit.
29. 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.
30. 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 this Limited Term Permit No. XP2021-004 (PA2021-179) for Hyatt Regency Newport Beach. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

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

Prepared by:

Approved by:

  
Caitlyn Curley  
Planning Technician

  
Jaime Murillo  
Zoning Administrator

MKN/cc

- Attachments:
- ZA 1 Vicinity Map
  - ZA 2 Emergency Temporary Use Permit No. UP2020-078
  - ZA 3 Applicant's Written Description
  - ZA 4 SCE Clearance Decals
  - ZA 5 Site Plan Layout

# **Attachment No. ZA 1**

Vicinity Map

# VICINITY MAP



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Limited Term Permit No. XP2021-004  
(PA2021-179)

**1107 Jamboree Road**

# **Attachment No. ZA 2**

Emergency Temporary Use Permit No.  
UP2020-078



**COMMUNITY DEVELOPMENT DEPARTMENT**  
**PLANNING DIVISION**  
100 Civic Center Drive, P.O. Box 1768, Newport Beach, CA 92658-8915  
949-644-3200  
[www.newportbeachca.gov](http://www.newportbeachca.gov)

**COMMUNITY DEVELOPMENT DIRECTOR EMERGENCY  
TEMPORARY USE PERMIT ACTION**

**Subject:** **Hyatt Regency NB ETUP and ECDP (PA2020-161)**  
▪ Emergency Temporary Use Permit No. UP2020-078  
▪ Emergency Coastal Development Permit No. CD2020-083

**Site Location** **1107 Jamboree Road**

**Applicant** **Hyatt Regency Newport Beach**

**Property Owner** **WRC Newport, LLC, a Delaware limited liability company**

On **July 15, 2020**, the Community Development Director approved Emergency Temporary Use Permit No. UP2020-078 and Emergency Coastal Development Permit No. CD2020-083. This approval is based on the following findings and subject to the following conditions.

**I. SUMMARY OF PROPOSED OPERATION**

An emergency temporary use permit and emergency coastal development permit to allow socially distanced dining events in four separate common areas on-site:

1. Amphitheater-140 seats
2. Garden Patio-56 seats
3. Oasis Court-96 seats
4. Plaza Arbor-140 seats

Event operations shall abide by the Governor's Orders and the COVID-19 Industry Guidance: Hotels, Lodging, and Short-Term Rentals provided by the California Department of Public Health and Department of Industrial Health.

**II. CEQA DETERMINATION**

The proposed operation is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15269 (c) (the activity is necessary to prevent or mitigate an emergency), Section 15301 Class 1 (Existing Facilities), and Section 15303 Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3. Section 15269 allows specific actions necessary to prevent or mitigate an emergency. The Class 1 exemption includes the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use. The project includes authorizing the

use of existing hotel event areas that will not be physically expanded, are within the parameters noted for these exemptions, and will not have a significant effect on the environment. There are no known exceptions listed in CEQA Guidelines Section 15300.2 that would invalidate the use of these exemptions.

### **III. EMERGENCY TEMPORARY USE PERMIT FINDINGS**

In this case, the Community Development Director has found that the temporary use would not create a hazard to the health, safety, or welfare of the community for the following reasons:

1. The operation authorized by this Emergency Temporary Use Permit and Emergency Coastal Development Permit is temporary and only valid during the emergency order established by Emergency Ordinance No. 2020-005.
2. The project, based upon the applicant's project description, approved site plan, and implementation of all conditions of approval, will be operated safely thereby helping reduce the spread of COVID-19. The proposed operation is necessary to provide adequate space to allow for appropriate social distancing.
3. The permitted use shall adhere to applicable State of California and Orange County Health Care Agency guidelines for the safe operation of the use. It is the responsibility of the permittee to implement and follow industry-specific guidance of the State of California and the Orange County Health Care Agency guidelines.
4. The proposed operation has been reviewed by and is acceptable to the Building Division, Fire & Life Safety Division, and the Public Works Department. Conditions of Approval are included to help ensure this operation is not detrimental;
5. The proposed operation does not constitute an increase in the overall occupant load beyond what the existing Use Permit and/or Certificate of Occupancy allow;
6. An adequate supply of parking is available to serve the subject business and surrounding uses.
7. The proposed operation does not extend any hours of operation beyond those currently permitted by Use Permit No. UP2001-131 (PA2001-180) (amplified sound shall cease at 10:00 p.m., daily).
8. The permitted use must be operated in compliance with applicable State Department of Alcoholic Beverage Control (ABC) requirements.
9. The overall plan will appropriate delineation of outdoor use spaces with temporary physical barriers or markers as required by the State Department of Alcoholic Beverage Control (ABC).

10. The proposed operation is conditioned to be accessible to all persons, including those with disabilities, in accordance with the Americans with Disabilities Act (ADA).

### **EMERGENCY COASTAL DEVELOPMENT PERMIT FINDINGS**

1. The COVID-19 global pandemic has created a National, State and Local emergency that is more fully described in Emergency Ordinance No. 2020-005. The COVID-19 outbreak is an emergency pursuant to Newport Beach Municipal Code (NBMC) Section 21.52.025 because immediate action is necessary to allow commercial business and institutional uses to re-open consistent with State and local public health guidelines designed to reduce the spread of COVID-19. If immediate action is not taken to properly regulate the re-opening of commercial business and institutional uses, the spread of COVID-19 will likely be more severe thereby exacerbating the existing public health emergency.
2. Development authorized is temporary and will only be in place during the described emergency consistent with Emergency Ordinance No. 2020-005. All development authorized by this permit must be removed after the state of emergency is lifted.
3. Development authorized by this permit is not located in any environmentally sensitive habitat area and public access to the coast will not be blocked. Coastal access is increased by allowing commercial establishments to re-open allowing public to once again visit the coastal areas.
4. Development authorized is not located in an area in which the California Coastal Commission retains direct permit review authority.

### **IV. CONDITIONS OF APPROVAL**

1. Only that specifically described above and depicted in the attached site plan is authorized, subject to the conditions set forth below. Any additional changes require separate review and may necessitate separate authorization from the Director. The event dining areas shall be in substantial conformance with the site plan and seating layouts provided in Attachment No. CD 4.
2. As long as this Emergency Temporary Use Permit is in effect, all NBMC provisions and any restrictions set forth in an applicable discretionary permit regulating uses, nonconforming uses, development standards, parking and permit procedures that regulate the use and development of private or public property operations are suspended only to the extent that these provisions or restrictions set forth in a discretionary permit conflict with the terms of this Emergency Temporary Use Permit.
3. *The expanded event dining patios shall not exceed 56 seats for the Garden Patio, 96 seats for the Oasis Court, and 140 seats for the Amphitheater and Plaza Arbor.*
4. *The hours of operation for the expanded event patios (as part of this Emergency Temporary Use Permit) shall not extend beyond 10:00 p.m.*

5. *The use of amplified sound within the event dining areas shall be permitted until 9:00 p.m., Sunday through Thursday, and until 10:00 p.m., Fridays and Saturdays.*
6. All dining tables shall be separated from other dining tables and/or waiting areas by a minimum distance of seven (7) feet to ensure proper social distancing is maintained.
7. *The applicant shall install and maintain a physical barrier between any area used and adjacent common pedestrian walkways in accordance with the requirements of the State Department of Alcoholic Beverage Control.*
8. The applicant shall obtain and maintain authorization from the State Department of Alcoholic Beverage Control (ABC) for all areas where the sale, service or consumption of alcohol is under the control of the applicant. The establishment shall abide by all applicable regulations of the State Department of Alcoholic Beverage Control.
9. The sale of alcohol "to go" to patrons that dine within the event dining areas shall be prohibited.
10. The establishment shall abide by all applicable Orange County Health Care Agency requirements.
11. *Establishments that provide food service, shall abide by the COVID-19 Industry Guidance: Hotels, Lodging, and Short Term Rentals provided by the California Department of Public Health and Department of Industrial Health.*
12. The permittee shall provide adequate trash receptacles within the permitted patio shall and the operator shall provide for periodic and appropriate removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.

### Building

13. *Accessible routes, including under canopy(ies) and other overhead improvements must maintain a minimum clear height of 80 inches.*
14. Any areas used for temporary commercial or institutional use shall be accessible to disabled persons.
  - a. An accessible path to all functional areas shall be provided.
  - b. Access to restrooms shall be provided at all times.
  - c. Accessible parking stalls shall not be used for seating areas when on-site parking is provided.
  - d. Detectable warnings are required when pedestrian paths cross or are adjacent to a vehicular way where no physical barrier are provided to separate the two.

15. Accessible seating at tables or counters shall provide knee clearance of at least 27 inches high, 30 inches wide, and 19 inches deep.
16. The tops of dining surfaces and work surfaces shall be 28 inches to 34 inches above the finish floor.
17. All exiting paths shall be a minimum 36 inches free and clear. All public walks and sidewalks shall be a minimum 48 inches free and clear.

#### Fire

18. All Fire Department devices (fire hydrants, fire department connections, water valves, etc.) shall have a three-foot clearance in all directions.
19. Fire Department devices shall not be covered, blocked or otherwise hidden from plain view.
20. All building exits shall remain free and clear of any obstacles that would impede exiting from a building or suite and accessing the nearest public right-of-way.

#### Public Works

21. There shall be a minimum of 5 feet of space around all overhead facilities, such as poles, and 15 feet of space around all underground facilities, such as vault lids, manholes, vent pipes, pad-mounted transformers, etc.
22. Seating or structures below overhead conductors and/or under the 'drip line' shall be prohibited.
23. Public eating/dining at tables shall not be situated on top of energized vault lids, energized underground structures, or next to vent pipes, etc.
24. Expanded outdoor dining areas shall adhere to the SCE clearance decal examples provided in Attachment No. CD 3.
25. The Community Development Director or designee may inspect the modified area at any time during normal business hours.
26. The Community Development Director may immediately revoke this permit if the Director determines that there has been a violation of any condition of approval. Any revocation of an Emergency Temporary Use permit shall be deemed effective upon the posting of a notice of revocation at the site of the business granted the emergency temporary permit.
27. The Community Development Director may modify this Emergency Temporary Use Permit. The Director shall notify the applicant of any proposed modification and a

decision to modify this permit shall be deemed effective upon the posting of a notice of modification at the site of the business granted the emergency temporary use permit

28. This temporary authorization shall expire fourteen (14) days after the emergency order established by Emergency Ordinance No. 2020-005 is terminated or repealed, or 60 days from the date of authorization, whichever is sooner. The Director may extend this approval for an additional 60 days for good cause.
29. Upon termination or repeal of Emergency Ordinance No. 2020-005, the Applicant shall immediately work to remove the temporary improvements in a timely manner and shall restore the expanded area back to its original use and improvements.
30. 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 this Emergency Temporary Use Permit and Coastal Development Permit for Hyatt Regency Newport Beach. 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.

## V. APPEAL

This decision may be appealed by the applicant/permittee to the City Manager by notifying the City Manager of the appeal within three (3) calendar days of the decision. The City Manager shall have authority to sustain, reverse or modify the decision of the Community Development Director and the City Manager's decision shall be final.

On behalf of Seimone Jurjjs, Community Development Director.



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Makana Nova  
Senior Planner

- Attachments: ~~CD 1 Filed Application~~
- ~~CD 2 Written Description~~
- ~~CD 3 SCE Project Decals~~
- ~~CD 4 Site Plan Layout~~

**Applicant and Permit Recipient Acknowledgement and Agreement**

I hereby acknowledge that I have received a copy of this permit and that I have read and understand the permit and all conditions. I hereby agree to operate the authorized use consistent with this permit including the project description, approved site plan diagram, findings, and conditions of approval. This is an approved and executed permit and it constitutes a contract between the City and Permittee for all purposes.

Lindsey Rodriguez

Director of Sales, Events & Marketing

Insert applicant name and title

DocuSigned by:

*Lindsey Rodriguez*

7/15/2020

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Signature

Date

# **Attachment No. ZA 3**

Applicant's Written Description

Permit Description:

Hyatt Regency Newport Beach is seeking approval for the use of existing outdoor event space to be utilized for catering events. Although the hotel typically utilizes these venues for such events, the hotel is seeking a Temporary Use permit to allow for amplified sound in these venues. The number of seats/tables and the expected number of people/patrons shall vary based on each event and the households attending. Any outdoor amplified sound shall cease by 9:00pm Sundays-Thursdays, and by 10:00pm Fridays and Saturdays, and shall comply with all City of Newport Beach ordinances.

Any food and/or beverage service shall follow all CA food and beverage service guidelines.

# **Attachment No. ZA 4**

SCE Clearance Decals

**SOUTHERN CALIFORNIA EDISON  
TRANSMISSION AND DISTRIBUTION BUSINESS UNIT**

**Approved Decals**

**June 8, 2020**

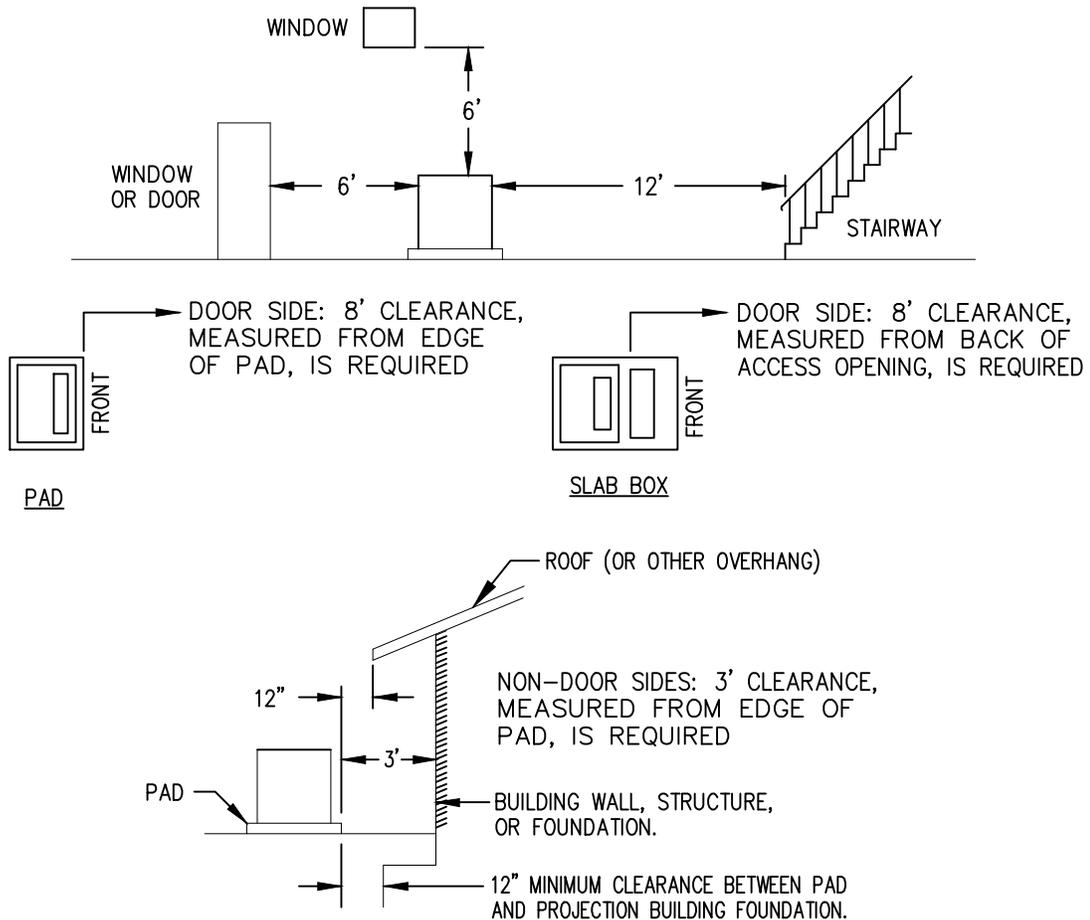
**UNDERGROUND SERVICE ALERT**  
**Contact USA**  
**Dial 811 or 800-422-4133**  
**[www.digalert.org/contact](http://www.digalert.org/contact)**

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For Underground Locating  
Two Working Days Before You Dig

D16: Rev. 05/28/20

## MINIMUM CLEARANCES FOR PADMOUNTED TRANSFORMERS SEE DDS-3, 3-40



**NOTES:**

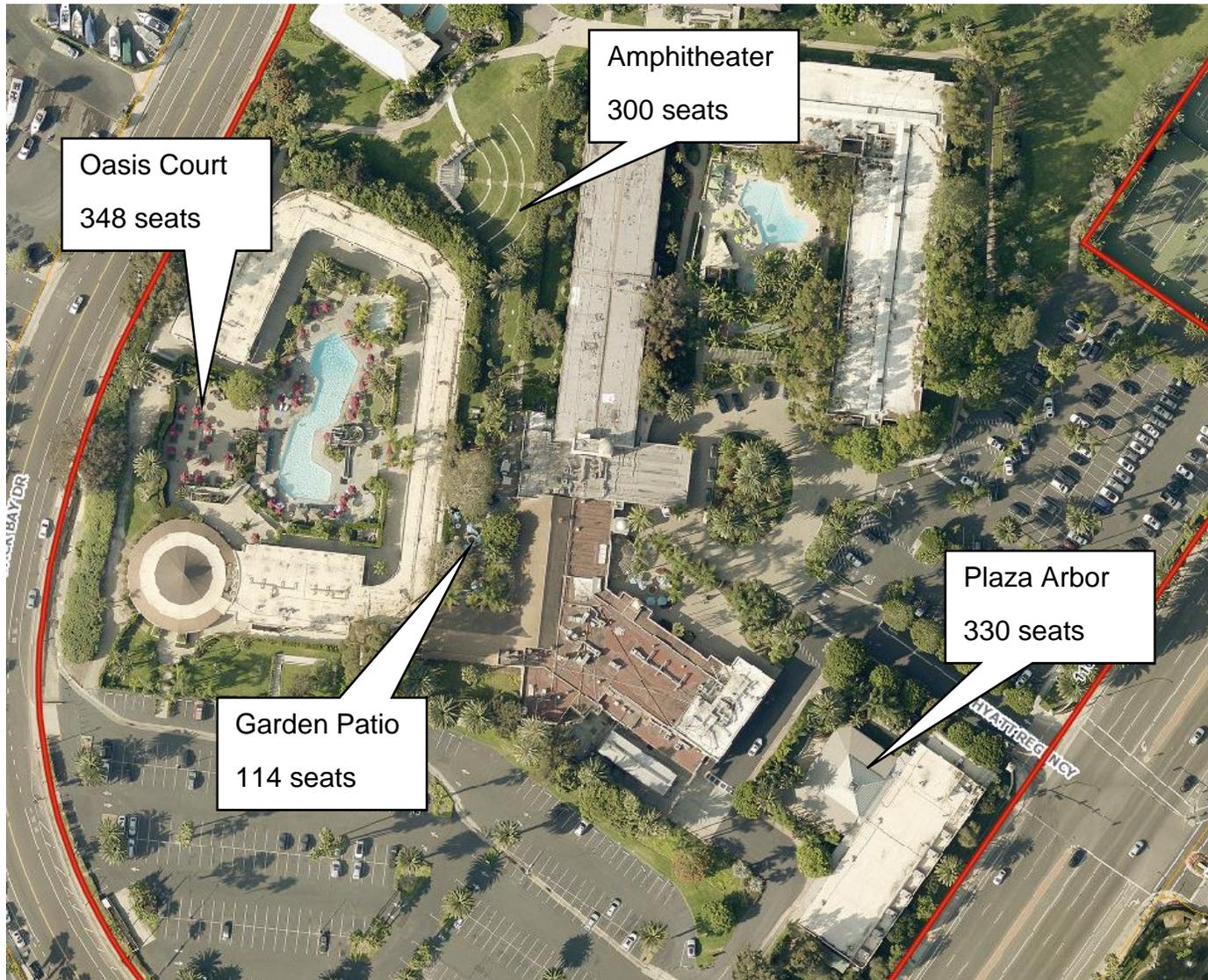
1. AN 8' MINIMUM CLEARANCE IS REQUIRED ON DOOR SIDE OF TRANSFORMER FOR OPERATION. THIS AREA MUST REMAIN CLEAR OF ALL OBSTRUCTIONS INCLUDING, BUT NOT LIMITED TO, SHRUBS, TREES, GATES, FENCES, WALLS, SIGNS AND POLES.
2. PAD-MOUNTED TRANSFORMERS SHALL NOT BE LOCATED IN FRONT OF DOORS, STAIRWAYS, BENEATH WINDOWS THAT CAN BE OPENED, OR WHERE THEY WILL OBSTRUCT THE VISION OF VEHICULAR TRAFFIC
3. PAD-MOUNTED TRANSFORMERS SHALL BE LOCATED AT LEAST THE MINIMUM DISTANCE AWAY FROM BUILDINGS OR OTHER STRUCTURES TO ENSURE ADEQUATE SPACE FOR OPERATING, TO MINIMIZE VIBRATION HUMS, AND TO MEET FIRE SAFETY REQUIREMENTS.
4. A CLEAR PASSAGEWAY OF 12 FEET MINIMUM SHALL BE AVAILABLE AT ALL TIMES, IMMEDIATELY ADJACENT TO ONE SIDE OF THE TRANSFORMER TO PROVIDE AN ACCESSIBLE ROADWAY FOR TRANSFORMER MAINTENANCE. THIS PASSAGEWAY SHALL BE DESIGNED TO MEET H-20 (20-TON) CONSTRUCTION.
5. TRANSFORMER STRUCTURES WILL NORMALLY BE INSTALLED ONLY IN NONTRAFFIC AREAS. TRANSFORMER PROTECTION IS REQUIRED WHEN COMPANY EQUIPMENT IS EXPOSED TO TRAFFIC. THIS PROTECTION MAY BE IN THE FORM OF BARRIERS, BARRICADES, OR CURB. A CURB MUST HAVE A MINIMUM HEIGHT OF 6 INCHES AND BE AT LEAST 6 INCHES THICK AND ITS FRONT FACE LOCATED 60 INCHES MINIMUM FROM THE EQUIPMENT FOUNDATION.

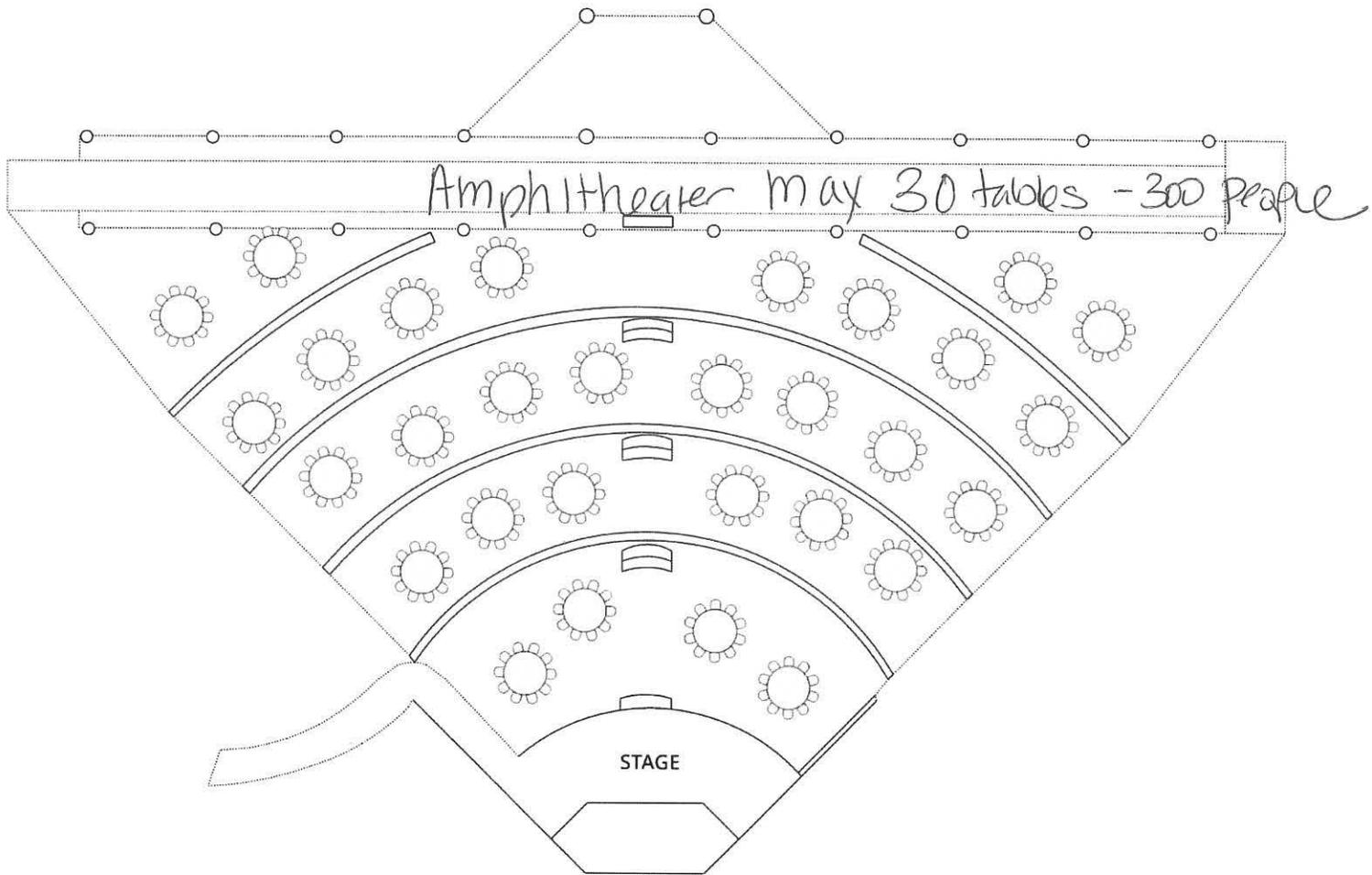
D54: Rev. 05/14/12

# **Attachment No. ZA 5**

Site Plan Layout

**Hyatt Regency Newport Beach LTP (PA2021-179): Site Plan**

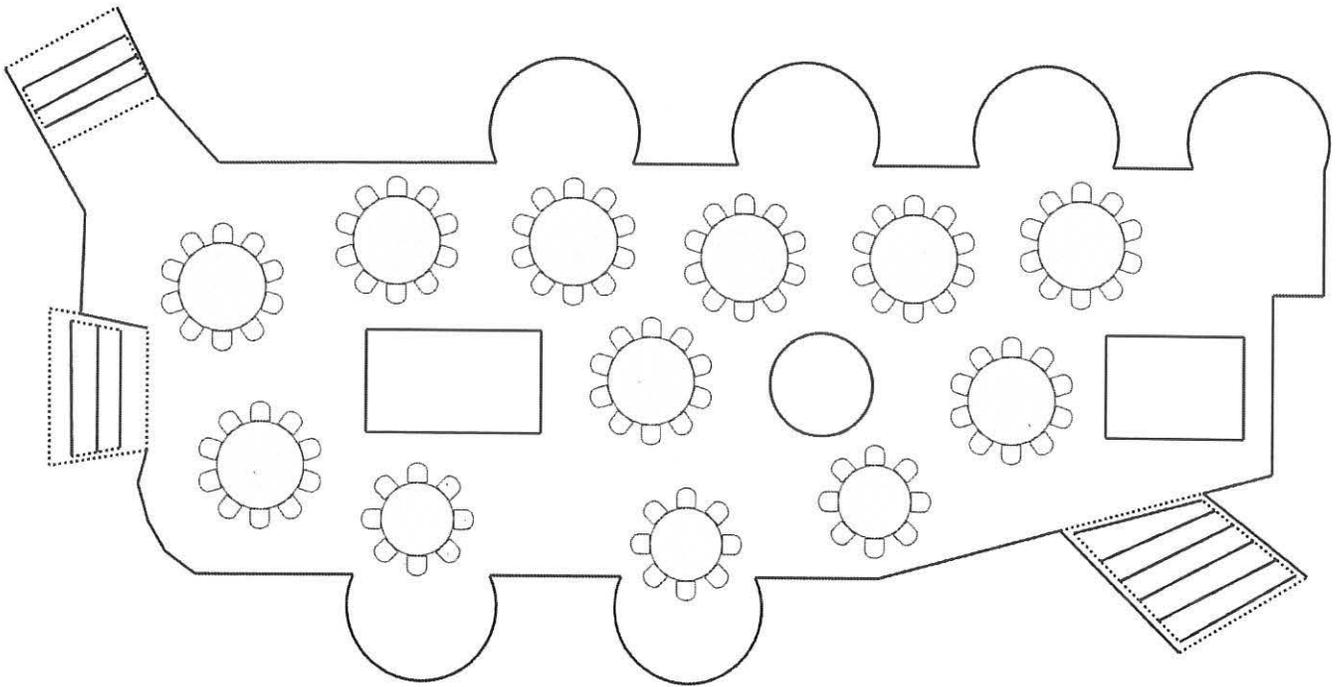




10 Feet



garden patio  
max 114 people



5 Feet



