RESOLUTION NO. ZA2021-076

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE
CITY OF NEWPORT BEACH APPROVING LOT MERGER NO. LM
2021-004, COASTAL DEVELOPMENT PERMIT NO. CD2021-033
AND STAFF APPROVAL NO. SA2021-008 TO DEMOLISH TWO
EXISTING SINGLE-FAMILY DWELLINGS, MERGE TWO LOTS
UNDER COMMON OWNERSHIP AND CONSTRUCT A NEW TWO
(2)-STORY SINGLE-FAMILY RESIDENCE AND ATTACHED
FOUR (4)-CAR GARAGE LOCATED AT 518 AND 520 VIA LIDO
NORD (PA2021-183)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Anne Fox, MIG, Inc., with respect to property located at 518
and 520 Via Lido Nord, requesting approval of a lot merger, coastal development permit
and staff approval for establishment of grade.

2. The property at 518 Via Lido Nord is legally described as Lot 500 in Tract 907 and the
property at 520 Via Lido Nord is legally described as Lot 501 and Lot 502 in Tract 907.

3. The applicant proposes a lot merger and coastal development permit to allow the
demolition of two (2) single-family residences at 518 Via Lido Nord (Lot 500) and 520 Via
Lido Nord (Lot 501 and Lot 502), the merger of two (2) lots under common ownership (Lot
500 and Lot 501) to create a single parcel, and the construction of a 6,091-square-foot,
two (2)-story, single-family residence including an attached 803-square-foot, four (4)-car
garage. The merged lot and new development will retain the address of 520 Via Lido Nord.
The remaining Lot 502 will be assigned the new address of 522 Via Lido Nord and will be
developed with an additional single-family dwelling under a separate coastal development
permit (PA2021-215). The project includes reinforcing and raising an existing bulkhead.
Additionally, a request for a staff approval is included for grade establishment within the
front yard area along the water on the existing 520 Via Lido Nord property (Lot 501 and
Lot 502).

4. The subject properties are designated RS-D (Single Unit Residential Detached) by the
General Plan Land Use Element and is located within the R-1 (Single-Unit Residential)
Zoning District.

5. The subject properties are 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.

6. Implementation of CD2021-033 and CD2021-056, as conditioned, will result in no net loss
of density.
7. A public hearing was scheduled on November 24, 2021 and continued to December 16, 2021. The public hearing was held 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 Sections 15315 and 15303, Division 6, Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Class 15 (Minor Land Divisions) and Class 3 (New Construction or Conversion of Small Structures), because it has no potential to have a significant effect on the environment.

2. 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. This exemption includes a minor lot merger not resulting in the creation of any new parcel and complies with the conditions specified above.

3. 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 two (2) single-family residences and the construction of a new 6,091-square-foot single-family dwelling with an attached 803-square-foot, four (4)-car garage. 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.

4. 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.

Lot Merger

In accordance with Sections 19.68.030(H) (Lot Mergers – Required Findings) of the NBMC, the following findings and facts in support of such findings are set forth:
Finding:

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

Facts in Support of Finding:

1. The proposed lot merger will combine two (2) lots under common ownership by removing the interior lot line between them. The merging of the two (2) lots will not result in the creation of additional parcels.

2. The project is in an area with an average slope of less than 20 percent.

3. The lot merger is consistent with the purpose and intent of NBMC Title 19 (Subdivisions).

Finding:

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

Fact in Support of Finding:

1. The two (2) lots to be merged are under common fee ownership and are conditioned to remain under common fee ownership prior to recordation of the lot merger.

Finding:

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

Facts in Support of Finding:

1. The merged lots will retain the R-1 (Single-Unit Residential) zoning designation, consistent with the surrounding area. The R-1 Zoning District is intended to provide for a maximum of one (1) residential dwelling unit located on a single legal lot.

2. The Land Use Element of the General Plan designates both properties as RS-D (Single-Unit Residential Detached), which applies to single-family residential dwelling units. The Coastal Land Use Plan designates the properties as RSD-C (Single-Unit Residential Detached – 10.0 - 19.9 DU/AC) which provides for density ranges from 10.0-19.9 dwelling units per acre. The land use will remain the same and the merger is consistent with the land use designations of the General Plan and Coastal Land Use Plan.
3. The subject properties are not located within a specific plan area.

4. Newport Beach Municipal Code Title 21 21.18.030 (Residential Coastal Zoning Districts General Development Standards) establishes the minimum standards required for lot creation. The minimum lot width required and the minimum lot area required in the R-I zoning district is 50 feet and 5,000 square feet respectively. The underlying lots on the same block and throughout Lido Island are all substandard to these requirements with underlying lots having approximately 30-foot widths and 90-foot lengths. The existing 520 Via Lido Nord complies with these standards because it uses two (2) underlying legal lots. 518 Via Lido Nord is the standard Lido Island lot size with approximately 30-foot width and 90-foot length. The width of the merged lot will be approximately 60 feet and the lot area will be approximately 5,561 square feet. This width and area is consistent with the existing width and area of 520 Via Lido Nord and is also consistent with other merged lots within the same block and throughout Lido Island.

Finding:

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

Fact in Support of Finding:

1. Legal access for vehicular traffic is provided from Via Lido Nord and will remain unchanged. Pedestrian access will be provided from Via Lido Nord. The site does not currently provide access to any other properties. No adjoining parcels will be deprived of legal access as a result of the merger.

Finding:

E. The lots as merged will be consistent with the pattern of development nearby and will not result in a lot width, depth or orientation, or development site that is incompatible with nearby lots. In making this finding, the review authority may consider the following:

a. Whether the development of the merged lots could significantly deviate from the pattern of development of adjacent and/or adjoining lots in a manner that would result in an unreasonable detriment to the use and enjoyment of other properties.

b. Whether the merged lots would be consistent with the character or general orientation of adjacent and/or adjoining lots.

c. Whether the merged lots would be conforming or in greater conformity with the minimum lot width and area standards for the zoning district.

1. Lido Island has a unique shape along the waterfront which results in lots of various shapes and sizes. Properties within the 500 block of Via Lido Nord vary in size and width and, although the proposed lot merger will create a lot that is larger than the immediately adjoining lots, it will not create an excessively large lot in comparison to other existing...
lots on the Island. There are existing lots similar in size to the merged lot. Some examples include 544 Via Lido Nord (5,400 square feet), 524 Via Lido Nord (4,050 square feet), 521 Via Lido Nord (4,539 square feet), 618 Via Lido Nord (6,975 square feet), and 633 Via Lido Nord (5,016 square feet). Larger lots, such as 524 Via Lido Nord, 544 Via Lido Nord and 537 Via Lido Nord can be found within the same block as the site. Also, the existing 520 Via Lido Nord is the same size as the proposed 520 Via Lido Nord, just a shift of the lots. The majority of the comparable parcels are waterfront development or just across the street from the water, and this lot merger would be consistent with this pattern.

2. The width of the merged lots will be approximately 60 feet which is not excessive. The merged lot does not develop previously underdeveloped land, nor does it disrupt the character or livability of the neighborhood.

3. Orientation and access to the parcel would remain from Via Lido Nord. The resulting lot configuration will not change the existing pattern of development in the area.


Waiver of Parcel Map

In accordance with Section 19.08.30(A)(3) (Waiver of Parcel Map Requirement) of the NBMC, the Zoning Administrator may approve a waiver of the parcel map requirement in cases where no more than three (3) parcels are eliminated. The following finding and facts in support of such finding are set forth:

Finding:

F. The proposed division of land complies with requirements as to area, improvement and design, flood water drainage control, appropriate improved public roads and property access, sanitary disposal facilities, water supply availability, environmental protection, and other applicable requirements of this title, the Zoning Code, the General Plan, and any applicable Coastal Plan or Specific Plan.

Facts in Support of Finding:

1. Approval of the proposed lot merger would remove the existing interior lot lines and allow the property to be utilized as a single site. The proposed lot would comply with all design standards and improvements required for new subdivisions by Title 19, the Zoning Code, and General Plan.

2. The subject property is not subject to a specific plan. The property complies with the requirements of Title 21 LCP Implementation Plan, as detailed in the following section (Findings G and H).

3. The proposed lot merger combines two (2) contiguous lots under common ownership into a single parcel of land and does not result in the elimination of more than three (3) parcels.
4. The merged lot is within an urban environment and will be served by existing public utilities.

**Coastal Development Permit**

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

Finding:

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

Facts in Support of Finding:

1. The newly created parcel will comply with all development standards for the R-1 Coastal Zoning District. Facts in support of Finding C.1, C.2, and C.4 are incorporated here by reference.

2. 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 8,178 square feet and the proposed floor area is 6,091 square feet.
   b. The proposed development provides the minimum required setbacks, which are 10 feet along the front property line abutting the water, 4 feet along each side property line, and 4 feet along the street frontage property line on Via Lido Nord.
   c. The highest guardrail and roof is less than 24 feet from established grade of 12.77 feet North American Vertical Datum of 1988 (NAVD88), which complies with the maximum height requirements.
   d. The project includes garage parking for a total of four (4) vehicles complying with the minimum three (3)-car parking requirement for single-unit dwellings 4,000 square feet or greater.

3. The neighborhood is predominantly developed with two (2)-story, single-family residences. The proposed design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development consistent with applicable development standards.

4. A Coastal Hazards Report and Sea Level Rise Analysis was prepared by PMA Consulting, Inc. dated July 26, 2021, for the project. The current maximum bay water elevation is 7.7 NAVD88 (North American Vertical Datum of 1988 (NAVD88) and may exceed the existing 8.83 feet NAVD88 top of bulkhead elevation during high tide or storm events. The report analyzes future sea level rise scenarios assuming a 3-foot increase
in the maximum water level over the next 75 years (i.e. the life of the structure). Therefore, the sea level is estimated to reach approximately 10.7 feet NAVD88 (the likely range for sea level rise over 75-year design life of the structure based on low risk aversion estimates for sea level rise provided by the State of California, Sea Level Rise Guidance: 2018 Update).

5. On March 23, 2021, the City Council approved updated Waterfront Project Design Guidelines and Standards, Harbor Design Criteria Commercial & Residential Facilities. The guidelines require that any bulkhead structure permitted within the years 2021 through 2025 must have a minimum bulkhead elevation of 10.9 feet (NAVD 88) with a design for adaptability elevation of 14.4 feet (NAVD 88). The project has been conditioned to raise the bulkhead to an elevation of 12.30 feet (NAVD 88) per the proposed plans. PMA Consulting, Inc. has confirmed the bulkhead design can be raised up to 14.4 feet (NAVD 88) if needed and in compliance with the updated guidelines.

6. Once the existing seawall/bulkhead is reinforced and raised per the report’s recommendations, flooding, wave runup, and erosion will not significantly impact this property over the proposed 75-year economic life of the development. The report concludes that the proposed project will be safe from flooding hazards for the next 75 years with the reinforced and raised bulkhead. Therefore, the project has been conditioned to raise the bulkhead to the 12.30 feet (NAVD88) per the approved plans.

7. The finished floor elevation of the proposed single-family residence is 12.61 feet (NAVD88), which complies with the minimum 9.00-foot (NAVD88) elevation standard. The Coastal Hazards Report concludes that the bay water elevation will not exceed the proposed finished floor for the anticipated 75-year life of the structure.

8. 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.

9. The property is in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved 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.

10. Pursuant to Section 21.35.050 of the NBMC, due to the proximity of the development to the shoreline and the development containing more than 75 percent of impervious surface
area, a Water Quality and Management Plan (WQMP) is required. A preliminary WQMP has been prepared in July 27, 2021 for the project by Forkert Engineering & Surveying, Inc. The WQMP includes a polluted runoff and hydrologic site characterization, a sizing standard for BMPs, use of a Low Impact Development (LID) approach to retain the design storm runoff volume on site, and documentation of the expected effectiveness of the proposed BMPs.

11. Proposed landscaping complies with Section 21.30.075 (Landscaping) of the NBMC. 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.

12. The project site is not located adjacent to a coastal view road, public access way, or Coastal Viewpoint as identified in the Coastal Land Use Plan. The nearest coastal viewpoint is across the bay at Kings Road Park. As currently developed, the existing property and other residences along the bay and Via Lido Nord are located within the view shed of the park and bay. However, the proposed single-family residence complies with all applicable Local Coastal Program (LCP) development standards and maintains a building envelope consistent with the existing neighborhood pattern of development. Additionally, the project does not contain any unique features that could degrade the visual quality of the coastal zone.

13. The project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts to existing public views. The front of the residence, which is visible from the bay, provides additional setbacks for the first floor and the living areas on the second floor where the required setback is 10 feet. The proposed residence includes two (2) stories and reaches a maximum height of 24 feet, where three (3) stories and a maximum height of 29 feet is allowed per the NBMC. Lastly, the design includes modulation of volume throughout the structure and low front site walls that prevent the appearance of the site being walled off from the bay. Therefore, the project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts to existing public views.

14. The project replaces an existing single-family residence located on standard residential 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 (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.

Finding:

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

1. The project site is located between the nearest public road and the sea or shoreline. Implementation Plan Section 21.30A.040 (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 standard residential 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 (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.

2. Vertical and lateral access to the bay and beach is available 280 feet northwest of the property at the terminus of Via Koron, where there is access to the beach along the bay. Additional vertical access points to the water are located at the terminus of Via Orvieto. The project does not include any features that would obstruct access along these routes.

Staff Approval for Grade Establishment

In accordance with Section 20.30.050 (C) – (Grade Establishment) and 21.30.050 (C) – ( Harbor and Bay Regulations) 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.

Finding:

1. 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 Applicant is redeveloping the property with a new single-unit residence; however, the grades along the front setback area (waterfront) include depressed areas that are not representative of the prevailing grades on the two (2) adjoining properties. This grade differential creates design constraints and unfairly restricts the heights of accessory structures below those of the neighboring properties.

2. The subject property is currently developed with a planter within the front yard along the waterfront with an elevation of approximately 8.7 feet (NAVD88). This planter elevation
is approximately 4 feet lower than the immediately adjacent properties on both sides and, therefore, not appropriate for the purposes of measuring height of the accessory structures.

Finding:

J. 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.

Fact in Support of Finding:

1. Allowing a higher grade of 12.71 feet (NAVD88), which is an average elevation between the adjacent property’s front yards along the waterfront, would provide the property with a grade elevation that is compatible with those of the neighboring properties and equitable for the purposes of measuring heights of accessory structures within the front setback.

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 (CEQA) pursuant to Section 15315 under Class 15 (Minor Land Divisions) and Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment. The exceptions to the Class 3 exemption do not apply.

2. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2021-033, Lot Merger No. LM2021-004 and Staff Approval No. SA2021-008 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 19 Subdivisions) and Title 21 Local Coastal Program (LCP) Implementation Plan, of the Newport Beach Municipal Code. Final action taken by the City on the Coastal Development Permit 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 16TH DAY OF DECEMBER, 2021.

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 recordation of the lot merger, the two (2) lots shall be held entirely under one (1) common fee ownership.

3. Prior to recordation of the lot merger, the two (2) single-family dwellings located at 518 Via Lido Nord and 520 Via Lido Nord shall be permitted and finaled for demolition permits.

4. Prior to the final of building permits, the pier and slip that straddles the property line between 520 Via Lido Nord and 522 Via Lido Nord shall be reconfigured and permitted to comply with Municipal Code Section 17.35.020.A.7. and 17.35.020.B.1.

5. The lot merger shall be submitted to the Public Works Department for final map review and approval. All applicable fees shall be paid.

6. Prior to the issuance of building permits for construction across the existing interior lot lines, recordation of the lot merger documents with the County Recorder shall be required.

7. The grade for the purposes of measuring height of accessory structures within the 10-foot front yard setback along the waterfront, authorized by this determination shall be based on the grade of 12.71 feet (NAVD88).

8. Prior to final of building permits, the existing seawall shall be reinforced and capped to 12.30 feet (NAVD 88) and capable to be raised up to 14.4 feet (NAVD 88), in compliance with the City of Newport Beach Waterfront Project Guidelines and Standards, Harbor Design Criteria Commercial and Residential Facilities in accordance with the recommendations provided in the Coastal Hazards Report and Bulkhead Conditions Report prepared by PMA Consulting, Inc., dated July 26, 2021.

9. 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 including the repair and maintenance, enhancement, reinforcement, or any other activity affecting the bulkhead, that results in any encroachment seaward of the authorized footprint of the bulkhead or other shoreline protective device. The agreement shall be binding against the property owners and successors and assigns.

10. Prior to the final building permit inspection for the dwelling at 520 Via Lido Nord, building permits for the new dwelling at 522 Via Lido Nord (CD2021-056) shall be issued and construction commenced to ensure no net loss of housing units through project implementation.
11. **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.**

12. This approval does not authorize any new or existing improvements (including landscaping) on California Coastal Permit Jurisdiction, State tidelands, public beaches, or the public right-of-way. Any improvements located on tidelands, submerged lands, and/or lands that may be subject to the public trust shall require a coastal development permit (CDP) approved by the California Coastal Commission (Coastal Commission). Prior to the issuance of building permits, the applicant shall provide a copy of said coastal development permit or CDP waiver or documentation from the Coastal Commission that subject improvements are not subject to the permit requirements of the Coastal Act and/or not located within the permit jurisdiction of the Coastal Commission.

13. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter sensitive habitat, receiving waters, or a storm drain or result in impacts to environmentally sensitive habitat areas, streams, the beach, wetlands or their buffers. No demolition or construction materials shall be stored on public property.

14. **This Coastal Development Permit does not authorize any development seaward of the private property.**

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.

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

22. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Coastal Development Permit.

23. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if it is determined that the proposed uses or conditions under which it is being operated or maintained are detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.

24. 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.

25. 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.
26. **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.

27. **Prior to issuance of a building permit**, the applicant shall submit a final landscape and irrigation plan. These plans shall incorporate drought tolerant plantings, non-invasive plant species and water efficient irrigation design. The plans shall be approved by the Planning Division.

28. **Prior to issuance of building permits**, the final WQHP/WQMP shall be reviewed and approved by the Building Division. Implementation shall be in compliance with the approved CPPP and WQHP/WQMP and any changes could require separate review and approval by the Building Division.

29. **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.

30. 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.

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

32. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 – (Community Noise Control) and other applicable noise control requirements of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

<table>
<thead>
<tr>
<th>Location</th>
<th>Between the hours of 7:00AM and 10:00PM</th>
<th>Between the hours of 10:00PM and 7:00AM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential Property</td>
<td>Interior 55dBA</td>
<td>Interior 50dBA</td>
</tr>
<tr>
<td>Residential Property located within 100 feet of a commercial property</td>
<td>45dBA</td>
<td>45dBA</td>
</tr>
<tr>
<td>Mixed Use Property</td>
<td>45dBA</td>
<td>45dBA</td>
</tr>
<tr>
<td>Commercial Property</td>
<td>N/A 65dBA</td>
<td>N/A 60dBA</td>
</tr>
</tbody>
</table>
33. Prior to the issuance of building permits, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.

34. 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.

35. This Coastal Development Permit No. CD2021-033 and Lot Merger No. LM2021-004 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.

36. 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 Inter-Pro Property Corporation Residence including, but not limited to, Coastal Development Permit No. CD2021-033, Lot Merger No. LM2021-004 and Staff Approval No. SA2021-008 (PA2021-183). 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.