RESOLUTION NO. ZA2022-044

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2022-009 AND STAFF APPROVAL NO. SA2022-004 FOR A GRADE DETERMINATION TO CONSTRUCT A NEW BULKHEAD LOCATED AT 925 VIA LIDO SOUD (PA2022-025)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Sinclair Associates Architects, Inc., with respect to property located at 925 Via Lido Soud, requesting approval of a coastal development permit and grade establishment at the lot legally described as Lot 319 of Tract No. 907. The subject site fronts Newport Harbor. The majority of harbor fronting properties are bulkheaded, however, the subject site is not.

2. The applicant requests a Coastal Development Permit to construct a new bulkhead within private property along the U.S. Bulkhead line at 925 Via Lido Soud, where there are currently no shoreline protective devices to protect existing development on the property and adjacent development. The proposed bulkhead coping would reach 8.75 feet North American Vertical Datum of 1988 (NAVD88) with a stem wall up to 13.5 feet (NAVD88) to match the height of adjacent bulkheads on either side. All work will be performed from the landside of the U.S. Bulkhead Line and all construction would occur from private property (i.e., the landside). The project also includes a grade determination to establish grade for the purposes of measuring height. The proposed grade determination would allow the subject property to construct improvements at a height consistent with the two (2) adjacent properties.

3. The subject property is 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.

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. The proposed project is located within the City of Newport Beach Permit Jurisdiction pursuant to the Post LCP Certification Permit and Appeal Jurisdiction Map (“Map”) and is within the Appeal Area of the California Coastal Commission. Pursuant to the Map, the California Coastal Commission retains jurisdiction within tidelands, submerged lands, and lands that are subject to the public trust or were subject to the public trust at any time. The proposed project is adjacent to, but not located within tidelands or lands that are subject to the public trust or were subject to the public trust at any time. The proposed bulkhead is contained entirely within private property and all construction would be conducted without the use of mechanized equipment on the water or sand. Additionally, the project is located...
outside of submerged lands, which is defined as the lands that lie below the line of mean low tide (from California Code of Regulations Section 13577). Therefore, the project is under the permit jurisdiction of the City of Newport Beach.

6. A public hearing was held on June 30, 2022, 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, Division 6, Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Class 3 (New Construction or Conversion of Small Structures), because it has no potential to have a significant effect on the environment.

2. Class 3 exempts the construction and location of limited numbers of new, small facilities or structures such as accessory (appurtenant structures) such as garages, patios, swimming pools, and fences. The proposed bulkhead is an accessory structure to the primary use of the property as a single-family residence.

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. Coastal Land Use Plan Policies within Chapter 2 and Chapter 3 including 2.8.3-6, 2.8.3-5, 2.8.6-5, 2.8.6-6, 2.8.6-8, 3.1.4-7, and 3.1.4-8 are implemented through NBMC Section 21.30.030 (Natural Landform and Shoreline Protection). The project complies with NBMC Section 21.30.030 based on the following facts:

   a. The purpose of NBMC Section 21.30.030 (A) (Purpose) provides regulations for the protection of natural landforms and shoreline features. The intent includes
maintaining a system of harbor bulkheads that are essential to the continued operation of Newport Harbor and to protect public access, public views, and scenic qualities of the coastal zone.

b. In compliance with Subsection(C)(3)(a)(i), the property developed with a single-family residence and garage is not subject to recorded waivers of future protection, as the existing development was issued a Coastal Development Waiver by California Coastal Commission in 1996 (W-5-95-282), which does not include conditions.

c. Subsection(C)(3)(a)(ii) requires that the construction of protective structures must be necessary to protect existing development from natural hazards and be located entirely within private property and not within State tidelands. For the purposes of this section, existing development is defined as a principal structure (e.g. residential dwelling, required garage, etc.). The proposed bulkhead is intended to protect the existing single-family residence and garage on-site as well as existing surrounding development including 921 and 929 Via Lido Soud. The proposed bulkhead is also needed to protect the pre-Coastal Act pattern of development on Lido Isle where existing infrastructure and development is reliant on bulkheads for protection from coastal hazards including future sea level rise. A Coastal Hazards Analysis and Engineering Assessment of Need for New Bulkhead Report was prepared for the project by Geosoils, Inc. dated March 11, 2022. The report included a summary of the damage observed to the residential structures at and adjacent to the subject site. The report concludes that without a bulkhead at 925 Via Lido Soud (subject property), foundation displacement will eventually damage the structures to the point of foundation failure. Therefore, the proposed bulkhead is necessary to protect existing development from natural hazards.

d. Subsection(C)(3)(b) limits the enlargement and expansion of land areas related to the establishment of shoreline protective structures and prohibits the creation of new useable land areas. All of the land on the subject property is considered usable. As shown on the topographical survey prepared for the property, elevations within the front yard setback (along the water) vary from 10.38 to 12.45 feet (NAVD88), which is typical for new development in the coastal areas of the City. Any future design of a structure using fill would not create new useable land areas.

e. Subsection(C)(3)(c) promotes the use of non-structural methods to protect structures, when feasible. Within the Newport Beach harbor, non-structural methods are not employed to protect the residential islands. Non-structural methods in this area are not feasible and cannot be carried out successfully, which is demonstrated by the universal use of bulkheads to maintain a system of harbor bulkheads.

f. Subsection (C)(3)(d) contains several provisions related to the design and siting of protective structures such as bulkheads. The proposed bulkhead is located as far landward as possible to align with the neighboring bulkheads and fill a gap in
the system of bulkheads. The bulkhead would not impact coastal resources (refer to Finding 2) nor access to recreational areas or State tidelands. There are no tidelands adjacent to the site and only a small area of sand off-site that does not connect with any recreational areas in the vicinity. The bulkhead would not impact alteration of natural shoreline process, other than reducing the amount of erosion of soils on private property during high tide events. The bulkhead would reach an elevation of 13.5 feet (NAVD88) which is in line with adjacent bulkheads, reducing any visual impacts. Lastly, the bulkhead is a standard 8 inches wide consistent with the footprint of bulkheads in the City.

2. The harbor has been physically altered for more than 100 years to assure the public purpose of maintaining a navigable harbor and protecting the shoreline from erosion. The proposed bulkhead would link the existing bulkheads at 921 and 929 Via Lido Sound. The proposed bulkhead would fill in a gap in an otherwise continuous bulkhead system that surrounds most of Lido Isle that is not subject to a recorded waiver at this time.

3. The proposed bulkhead is not located within wetlands as defined in NBMC Section 21.70 (Definitions). Wetlands require the presence of at least one (1) characteristic of either (i) land that supports hydrophytes, (ii) undrained hydric soil, or (iii) non-soil substrate covered by water part of the year. The sand soil that surrounds Lido Isle and descends into Newport Harbor is sand that is covered and uncovered by the tides but supports no plants, does not exhibit undrained hydric soil, and is not a non-soil substrate. Thus, the subject location does not contain wetlands.

4. The neighborhood is predominantly developed with residential uses that are protected by existing bulkheads. The proposed design of the bulkhead is consistent with the existing neighborhood pattern of development along the bay.

5. A Coastal Hazards Analysis and Engineering Assessment of Need for New Bulkhead Report was prepared by Geosoils, Inc. dated March 11, 2022, for the project. The report describes the property’s shoreline as an intertidal beach. During a very low tide event some wet sand is exposed. The shoreline is generally at the bulkhead line as extended form the adjacent properties. As sea level rises, the shoreline will remain at the bulkhead. The current maximum bay water elevation is 7.7 (NAVD88). The report analyzes future sea level rise scenarios assuming a 3.2-foot increase in the maximum water level (year 2100) over the next 75 years (i.e. the life of the structure). Therefore, the sea level is estimated to reach approximately 10.9 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). Without the proposed bulkhead, the rising sea levels will continue to distress the existing and neighboring properties and ultimately public facilities such as roads and utilities. Refer to Fact 1(b) above.

6. 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 (NAVD88) with a design for adaptability elevation of 14.4 feet (NAVD88). The bulkhead is proposed at an
elevation of 13.5 feet (NAVD88) and is designed to be able to accommodate an elevation of 14.4 feet (NAVD88) if needed in the future.

7. 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). This requirement is included as a condition of approval that will need to be satisfied prior to final building permit inspection, respectively.

8. The property owner will also be required to acknowledge any hazards present at the site and unconditionally waive any claim to damage or liability against the decision authority, consistent with NBMC Section 21.30.015(D)(3)(c) – (General Site Planning and Development Standards - Waterfront Development). This requirement is included as a condition of approval that will need to be satisfied prior to the issuance of building permits, respectively.

9. The proposed project is requesting a grade determination to establish grade for the front yard for the purpose of measuring new structures. With approval of the grade determination under Findings C and D, the proposed bulkhead would comply with all development standards such as maximum height of accessory structures (NBMC Section 21.30.040 Fences, Hedges, Walls, and Retaining Walls).

10. 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.

11. The property is located adjacent to coastal waters. A Construction Erosion Control Plan was provided to implement temporary Best Management Practices (BMPs) during construction to minimize erosion and sedimentation and to minimize pollution of runoff and coastal waters derived 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.

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 in Marina Park and is not visible from the site. The site is located on the bay, which provides views to boaters of Lido Isle. As currently developed, the existing property and other residences along Via Lido Soud are located within the view shed of the Bay. However, the proposed bulkhead complies with all applicable Local Coastal Program (LCP) development standards and maintains a profile consistent with the existing neighborhood pattern of development along the Bay that predominately consists of
bulkheaded properties. The subject property and adjacent properties also include residential piers which partially obstruct views of the system of bulkheads as viewed from the water. Additionally, the project does not contain any unique features that could degrade the visual quality of the coastal zone.

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. 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 includes the construction of a new bulkhead to fill a gap in the existing system of bulkheads. 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 within private property and outside of public tidelands so as not to block or impede existing public access opportunities.

2. The public currently does not have access through the property to the water and the proposed bulkhead would not interfere with any established or planned public access routes. The bulkhead would become part of the system of bulkheads that is essential to the operation of Newport Harbor. Access to the water exists throughout Lido Isle and the closest vertical access point located along Via Lido Nord approximately 500 feet north where there is access to the water and a grassy area for the public. The project does not include any features that would obstruct access along these routes. The property is not suitable for aquaculture and is zoned for residential uses including single-family development that currently exists on the site.

3. There is an existing glass fence that was likely inadvertently constructed within public property and would be removed as part of the proposed project.

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. In this
case, the proposed bulkhead requires a coastal development permit, and the Zoning Administrator will review the grade determination findings for purposes of measuring height for improvements on the site.

Finding:

C. 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 constructing a new bulkhead along the front (bay) property line; 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. The two (2) adjacent properties are previously altered with bulkheads. This grade differential creates design constraints and unfairly restricts the heights of accessory structures below those of the neighboring properties. The surrounding properties have front yard elevations on the water of approximately 13.26 feet (NAVD88) at 929 Via Lido Soud and 13.74 to 13.92 feet (NAVD88) at 921 Via Lido Soud. An established grade of 13.5 feet (NAVD88) would be consistent with surrounding properties.

2. The building pad area is generally level and similar to adjacent properties, however, unlike adjacent properties the front of subject site gradually slopes to the water. The subject property is currently developed with a fence and a few stairs within the front yard setback along the waterfront. The existing residence along Via Lido Soud is at a similar grade elevation as the neighboring properties, approximately 13.42 to 14.16 feet (NAVD88). Near the patio of the single-family residence, the grade is approximately 13.95 and gradually slopes to as low as 9.21 feet along the waterfront property line near the wood steps leading to the pier.

3. Both adjacent properties also have bulkheads that meet the minimum elevation standards of 10.9 feet (NAVD88) pursuant to the City of Newport Beach Waterfront Project Guidelines and Standards, Harbor Design Criteria Commercial & Residential Facilities. 921 Via Lido Soud has an existing bulkhead that reaches a height of 13.5 feet (NAVD88) and 929 Via Lido Soud has a bulkhead that is 13.38 feet (NAVD88) with additional wall height reaching 16.66. The proposed bulkhead would provide adequate protection for existing development and allow for comparable measurement of height for improvements.

Finding:

D. 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 13.5 feet (NAVD88), which is an average elevation between the adjacent property’s front yards along the waterfront (13.26 feet and 13.74 feet (NAVD88), respectively), 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 and other features.

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.

2. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2022-009 and Staff Approval No. SA2022-004, 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 Program (LCP) Implementation Plan, of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 (Appeal to the Coastal Commission) of the City’s certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

PASSED, APPROVED, AND ADOPTED THIS 30TH DAY OF JUNE, 2022.

Jaime Murillo
Zoning Administrator
EXHIBIT “A”

CONDITIONS OF APPROVAL

Planning

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 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.

3. Prior to the issuance of building permits, the bulkhead shall be designed and engineered for the top of stem wall at 13.5 feet (NAVD88) and engineered to be adaptable to an elevation of 14.4 feet (NAVD88).

4. Improvements landward of the face of the bulkhead on the subject property shall be measured from established grade at 13.5 feet (NAVD88).

5. 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).

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

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

8. Prior to the issuance of final building permits, the existing glass fence on public property shall be removed. 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 (i.e. existing glass fence) 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.

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 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.**

11. **All construction activities shall occur within private property and the use of mechanized equipment is prohibited within the Bay and public property.**

12. 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.

13. **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.**

14. 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.
15. 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.

16. 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.

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

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

19. 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.

20. 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.

21. 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.

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

<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 45dBA</td>
<td>Exterior 55dBA</td>
</tr>
<tr>
<td>Residential Property located within 100 feet of a commercial property</td>
<td>Interior 45dBA</td>
<td>Exterior 60dBA</td>
</tr>
<tr>
<td>Mixed Use Property</td>
<td>Interior 45dBA</td>
<td>Exterior 60dBA</td>
</tr>
<tr>
<td>Commercial Property</td>
<td>N/A</td>
<td>65dBA</td>
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23. Prior to the issuance of building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.

24. Should the property be sold or otherwise come under different ownership, any future
owners or assignees shall be notified of the conditions of this approval by the current property owner or agent.

25. This Coastal Development Permit No. CD2022-009 and Staff Approval No. SA2022-004 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 and Section 21.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code, unless an extension is otherwise granted.

26. 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 925 Via Lido Soud, LLC Bulkhead including, but not limited to, Coastal Development Permit No. CD2022-009 and Staff Approval No. SA2022-004 (PA2022-025). 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.

Grading

27. 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.

28. 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.

29. Prior to the issuance of building permits, temporary shoring or temporary excavation details shall be provided with adequate temporary excavation stability. Temporary shoring may be required for dead-men excavation.

Building

30. Prior to the issuance of building permits, a geotechnical report shall be submitted to the building division for the new seawall/bulkhead structure.

31. The new bulkhead/seawall shall be designed and constructed in accordance with the “City of Newport Beach Waterfront Project Guidelines and Standards – Harbor Design Criteria Commercial & recreational Facilities”.

10-05-2021