RESOLUTION NO. PC2021-007


THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed on April 6, 2018 by Jeffery and Michele Bethel and Stephen and Shelly Ridge (“Applicant”), with respect to property located at 365 Via Lido Soud Units 1, 2, 3, and 4 and legally described as Lot 923 and the southeasterly 10 feet of Lot 922 and half of Lot 924, (“Property”) requesting approval of a tentative parcel map and a coastal development permit.

2. The Applicant requested a tentative parcel map and coastal development permit to subdivide the property into two (2) separate parcels. The coastal development permit (CDP) application also included the demolition of an existing four (4)-unit residential structure and waiver of the minimum lot width and area standard associated with the proposed subdivision (“Project”). No new construction was proposed as a part of the Project.

3. On July 18, 2019, the Community Development Director approved Staff Approval No. SA2019-004 (PA2019-085) finding the future demolition of four (4) units within one (1) structure compliant with Title 20 (Planning and Zoning), Chapter 20.34 (Conversion or Demolition of Affordable Housing) of the Newport Beach Municipal Code (“NBMC”), Title 21 (Local Coastal Program Implementation Plan), Chapter 21.34 (Conversion or Demolition of Affordable Housing) of the NBMC, and the Mello Act (Government Code Section 65590). The Staff Approval did not authorize the physical demolition of the existing structure, but instead established that a future project would not result in a conversion of residential to nonresidential uses, and none of the units are and/or were occupied by low- and moderate-income families or persons.

4. A public hearing was held on September 26, 2019 in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the hearing was given in accordance with California Government Code Section 54950 et seq. (“Ralph M. Brown Act”), Chapter 20.62 and Chapter 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing. The Zoning Administrator
approved the project which included the demolition of the existing residence and the subdivision of the lot. The project reviewed and approved by the Zoning Administrator did not include proposed residences.

5. Subsequent to the approval, the project entered a 14-calendar day City appeal period, which concluded on October 10, 2019 without any appeals filed. Subsequently, the project entered a 10-business day California Coastal Commission (CCC) appeal period. On October 30, 2019, an appeal was filed by CCC. On December 12, 2019, CCC found substantial issue with the project during the appeal review, citing that the project is a subdivision of a shoreline lot in a hazardous area into two (2) lots, which further requires a variance to waive minimum lot size and width standards inconsistent with the City’s Local Coastal Program and public access policies of the California Coastal Act of 1976, Public Resources Code Section 30000 et seq. (“Coastal Act”). CCC also had concerns with the methodology utilized in the coastal hazards report, and wanted to see additional support for the required findings to deviate from Title 21 (Local Coastal Program Implementation Plan) development standards.

6. As a result of the appeal by CCC, the Applicant worked with CCC staff and provided plans for two (2) new residential structures, as well as an updated coastal hazards report. On December 15, 2020, CCC directed the Applicant to apply for a CDP amendment with the City of Newport Beach (“City”) that incorporated into the revised Project the proposed two (2) single-unit residences, each which included a junior accessory dwelling unit (“revised Project”). Pursuant to Newport Beach Municipal Code (NBMC) Section 21.64.035, the Community Development Director has transmitted the appeal and the modified project to the Planning Commission as the local appellate body. If the Planning Commission modifies or reverses the decision of the Zoning Administrator, the Coastal Commission would be required to file a new appeal if the decision of the Planning Commission warranted an appeal.

7. The Property is located within the Multi-Unit Residential (RM) Zoning District and the General Plan Land Use Element category is Multiple-Unit Residential (RM).

8. The Property is located within the coastal zone and has a Coastal Land Use Designation of Multiple Unit Residential (RM-E) and a Coastal Zoning District of Multi-Unit Residential (RM).

9. A telephonic public hearing was held by the Planning Commission on March 4, 2021, in the Council Chambers at 100 Civic Center Drive, Newport Beach, California, due to the Declaration of a State Emergency and Proclamation of Local Emergency related to COVID-19. A notice of time, place and purpose of the hearing was given in accordance with Government Code Section 54950 et seq. (“Ralph M. Brown Act”) and Chapters 20.62 and 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing.
SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This revised Project has been determined to be categorically exempt from the State CEQA (California Environmental Quality Act) Guidelines pursuant to Section 15301 under Class 1 (Existing Facilities) and Section 15303 under Class 3 (New Construction or Conversion of Small Structures).

2. Class 1 exempts the demolition of single-family, duplex, and multifamily structures where no more than six (6) units are demolished. In this case, the revised Project involves the demolition of a four (4)-unit multi-family structure.

3. Class 3 exempts the construction of single-family residences, duplexes, and apartments designed for not more than six (6) dwelling units. In this case, the subdivision would result in two (2) parcels which each contain a single-unit residence and a junior accessory dwelling unit.

4. The exceptions to these categorical exemptions under Section 15300.2 are not applicable. The revised 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. FINDINGS.

Tentative Parcel Map for Subdivision

In accordance with Section 19.12.070 (Required Findings for Action on Tentative Maps (66412.3, 66473 et seq.)) of the NBMC, the following findings and facts in support of such findings are set forth:

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 the purpose of subdividing an existing parcel into two (2) separate parcels. The existing structure is two (2) stories and consists of four (4) units with an attached six (6)-car garage. The subdivision and improvements are consistent with the density of the RM Zoning District and the current General Plan Land Use Designation (Multiple-Unit Residential), as it creates two (2) lots with a maximum of four (4) units between both lots. The revised Project includes four (4) total residential units on two (2) lots.
2. The Property is not located within a specific plan area.

3. The revised Project has been conditioned to require public improvements, including the reconstruction of sidewalks, curbs, and gutters along the Via Lido Soud frontage, consistent with 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 existing configuration of the lot has a maximum density of five (5) units, as restricted by the General Plan and Zoning Code (6,300 sq. ft. lot / 1,200 sq. ft. minimum site area per unit = 5.25 or 5 units). The subdivision would create two (2) separate 3,150-square-foot parcels. Each parcel would have a maximum density of two (2) units (3,150 sq. ft. / 1,200 sq. ft. minimum site area = 2.6 or 2 units), resulting in a total of four (4) units allowable on two (2) lots.

2. Each lot is physically suitable for up to two (2) units of development because they are regular in shape.

3. Each lot would be accessible from Via Lido Soud and would be adequately served by existing utilities.

4. The Property is located near the Newport Bay, but is separated from the water by a public boardwalk and small intertidal beach. A coastal hazards report, prepared by GeoSoils, Inc. on December 17, 2020, concludes that the reconfigured parcels will be developed safe from hazards, which includes shoreline movement, waves and wave runup, and flooding with future sea level rise, for a minimum of 75 years. The single-unit residences and junior accessory dwelling units have a finished floor elevation of 12.8 feet North American Vertical Datum of 1988 (NAVD88) and have adaptation measures to protect the structures from flooding up to 14.4 feet NAVD88. There are no shoreline protective devices serving the subject property, and new shoreline protective devices are not necessary to protect future development on the resultant parcels.

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 four (4)-unit structure will be demolished and the existing parcel will be subdivided into two (2) separate parcels. Development is limited to two (2) units on each lot. A single-unit residence and junior accessory dwelling unit are proposed on each lot, resulting in four (4) total dwelling units between the two (2) lots.

2. The Property is located in an urbanized area that does not contain any sensitive vegetation or habitat.

3. The revised Project is categorically exempt under Section 15301 (Article 19 of Chapter 3), of the California Environmental Quality Act (CEQA) Guidelines – Class 1 (Existing Facilities) and Section 15303 - Class 3 (New Construction or Conversion of Small Structures).

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 the purpose of subdividing an existing lot into two (2) distinct parcels. All improvements associated with the revised 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 pursuant to Section 19.28.010 (General Improvement Requirements) of the NBMC 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. There is an existing 4-foot utility easement in favor of the City of Newport Beach located directly behind the right-of-way of Via Lido Soud. The subdivision will not conflict with easements acquired by the public at large, for access through, or use of property within the development. Finding:

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

Facts in Support of Finding:

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 is developed for 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.

Fact 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 subdivision would create two (2) distinct parcels with the potential of up to two (2) units on each parcel. A single-family residence or a duplex would be consistent with the RM Zoning District and with existing development in the community. Therefore, the Tentative Parcel Map 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 subdivision would divide a parcel into two (2) individual parcels and would not create waste that would result in a violation of the existing requirements prescribed by the Regional Water Quality Control Board.

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 Property is within the Coastal Zone and the subdivision conforms with the certified Local Coastal Program and the public access and recreation policies of Chapter Three of the Coastal Act. The facts in support of findings R and S below are hereby incorporated by reference.

Deviation from Design Standards

Pursuant to Section 19.24.050(A) (Lot Design, Lot Size), of the NBMC, new subdivisions must meet the applicable zoning district regulations of Title 20 (Planning and Zoning) of the NBMC.
Deviation from the design standards set forth in Title 19 (Subdivisions) may be approved subject to specific findings in Section 19.24.130(C) (Deviation from Design Standards, Required Finding to Allow Deviation) of the NBMC. The subdivision would create lots which do not meet the lot width standards required by Title 20 (Planning and Zoning) for new subdivisions within the RM Zoning District, which requires new subdivision interior lots to be 50 feet wide and have a lot area of 5,000 square feet. The subdivided lots will be 35 feet wide and 3,150 square feet in area. The required findings to deviate from the standards and facts in support of those findings are as follows:

Finding:

L. The requested deviations will create a land plan or development design equal or superior to that under the baseline design standards in this Chapter [19].

Facts in Support of Finding:

1. The lots are comparable in width, length, and area with the majority of the original subdivision in which a majority of lots had widths between 30 and 40 feet and depths of 90 feet. Since the original subdivision was created, some lots in the vicinity have been re-subdivided but a majority of the lots remain between 30 and 40 feet in width. The 35-foot-wide lots are consistent with Footnote 2 of Table 2-3 of Title 20 (Planning and Zoning).

2. The subdivision would create lot sizes not less than the original underlying lots on the same block face (351 through 463 Via Lido Soud) in the same zoning district. The subdivision would divide the existing 70-foot-wide, 6,300-square-foot RM parcel into two (2) 35-foot-wide, 3,150-square-foot RM parcels, which are compatible with the pattern of the surrounding subdivision.

3. The existing lot orientation with vehicular access from Via Lido Soud are maintained.

Finding:

M. The deviations will not negatively impact the carrying capacity of the local vehicular circulation network.

Facts in Support of Finding:

1. The subdivision would not negatively impact the carrying capacity of the local vehicular circulation network. Although the subdivision would create one (1) additional lot compared to the original subdivision, the potential number of units would decrease. As currently configured, the existing 70-foot-wide lot has the development potential of five (5) residential units. The subdivision would create two (2) lots, each with a development potential of two (2) units for a total of four (4) units.

2. No improvements or changes are proposed that would cause additional capacity to the roadways.
Finding:

N. The deviations will not negatively impact pedestrian circulation.

Facts in Support of Finding:

1. The subdivision will not reduce, encroach or change the size or location of the Via Lido Soud sidewalk.

2. The subdivision will not eliminate or impede pedestrian circulation as the necessary improvements are conditioned in accordance with applicable Public Works design standards and permitting.

Finding:

O. The resulting subdivision will be compatible with the pattern of surrounding subdivisions.

Facts in Support of Finding:

1. The Property is located in a block that is designated RM by the General Plan and Zoning Code. The subdivision would divide an existing RM lot into two (2) RM lots.

2. The Property is 70 feet wide and 6,300 square feet in area, which is the largest lot within the same block face in the same zoning district. The subdivision would result in two (2) 35-foot-wide, 3,150-square-foot lots which are more compatible with the surrounding lots than the existing configuration.

Finding:

P. The resulting subdivision design and improvements will be consistent with the General Plan and any applicable specific plan, and will conform to the Subdivision Map Act and all other provisions of this Subdivision Code.

Facts in Support of Finding:

1. The resulting subdivision design results in two (2) parcels and two (2) residential units on each parcel, where the General Plan allows for two (2) units on each parcel. Therefore, the subdivision is consistent with the density of the RM 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 Via Lido Soud frontage, consistent with Title 19 (Subdivisions).
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Finding:

Q. The resulting subdivision design and improvements will not be materially detrimental to the residents or tenants of the proposed subdivision or surrounding properties, nor to public health or safety.

Fact in Support of Finding:

1. The subdivision to re-subdivide the existing parcel in a comparable manner to the underlying legal lots would allow two (2) units to be constructed on each lot in accordance with the General Plan. Approval does not introduce an incompatible land use, and the resulting subdivision design would not be detrimental to the residents as vehicular and pedestrian access would be maintained. Any development must be in accordance with the conditions of approval and the NBMC. The resulting lot widths are consistent with the lot widths of the original subdivision or the existing development pattern of the neighborhood.

Coastal Development Permit

In accordance with Section 21.52.015(F) (Coastal Development Permits, Findings and Decision) of Title 21 (Local Coastal Program Implementation Plan) of the NBMC, the following findings and facts in support of such findings are set forth:

Finding:

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

Facts in Support of Finding:

1. The Tentative Parcel Map is for the purposes of subdividing an existing lot into two (2) distinct parcels and meets all of the requirements of the Local Coastal Program, including 21.30.025 (Coastal Subdivisions) and Section 21.52.090 (Relief from Implementation Plan Development Standard) of the NBMC as it relates to lot widths and area.

2. The subdivision complies with 21.52.090(B)(2) (Relief from Implementation Plan Development Standards, Variances) of the NBMC, which allows for waiver or modification of certain standards of the Implementation Plan because of special circumstance including location. The required 50-foot lot width and 5,000-square-foot minimum lot area standards may be modified to less based on the lot widths and areas of the original subdivision, the majority of which are between 30 to 40 feet in width and from 2,700 to 4,500 square feet in area.

3. The subdivision complies with Coastal Land Use Plan Policy 2.8.1-3, which states that land divisions shall avoid hazardous areas and minimize risks to life and property from coastal and other hazards. The subdivision also complies with the Local Coastal Implementation Program Plan pursuant to Section 21.30.025 (Coastal Zone
Subdivisions) of the NBMC, which states that subdivisions within the Coastal Zone shall be designed to avoid current hazardous areas, as well as areas that may become hazardous due to future changes. Additionally, there shall be no division of land near the shoreline unless the new or reconfigured parcels can be developed safe from geologic and other hazards for a minimum of 75 years, and unless shoreline protective devices are prohibited to protect development on the resultant parcels.

4. The revised Project is located near the Newport Bay. However, a public boardwalk and small intertidal beach separates the Property from the water. A coastal hazards report, prepared by GeoSoils, Inc. on December 17, 2020, concludes that the reconfigured parcels will be developed safe from hazards, which includes shoreline movement, waves and wave runup, and flooding with future sea level rise, for a minimum of 75 years. The historical water elevation at the Newport Bay is 7.7 feet North American Vertical Datum of 1988 (NAVD 88). Based on the “medium-high risk aversion, high emissions” scenario, which is estimated to have a sea level rise (SLR) of 6.7 feet by the year 2100, the future extreme bay water level may reach as high as 14.4 feet NAVD 88 (7.7 feet NAVD 88 + 6.7 feet SLR) over the next 75 years (i.e. life of future development). The report states that there is a much lower possibility (0.5 percent) of the SLR meeting the 6.7-foot estimate. While the finished site grade is approximately 11.0 feet, the finished floor elevation for both structures is 12.8 feet NAVD 88, which makes them safe from flooding for SLR of 5.1 feet. Additionally, the revised Project includes conditions that require additional adaptation measures that waterproofs the structures up to 14.4 feet NAVD 88.

5. The single-unit residence and attached junior accessory dwelling unit (JADU) at 361 Via Lido Soud conforms to all applicable development standards, including setbacks, floor area, height, and parking.

   a. The single-unit residence and attached JADU complies with the required setbacks, which are 4 feet abutting Via Lido Soud and 3 feet along each side property line. There is no required setback abutting the public boardwalk.

   b. The JADU is 479 square feet in area, which complies with the maximum 500 square feet for a JADU. The proposed JADU is located on the second floor above the garage, and includes separate exterior access, a bedroom and a full kitchen.

   c. The maximum floor area limitation is 4,240 square feet, where the proposed residence has a total floor area of 4,062 square feet (including JADU).

   d. The highest ridge of the proposed residence is 24 feet from established grade. This complies with the maximum height requirement, which is 33 feet from established grade.

   e. The development provides an attached two (2)-car garage, meeting the minimum parking requirement for a single-unit residence under 4,000 square feet of habitable floor area. No additional parking is required for a JADU.
6. The single-unit residence and attached JADU at 365 Via Lido Soud conforms to all applicable development standards, including setbacks, height, and parking.

   a. The single-unit residence and attached JADU complies with the required setbacks, which are 4 feet abutting Via Lido Soud and 3 feet along each side property line. There is no required setback abutting the public boardwalk.

   b. The JADU is 494 square feet in area, which complies with the maximum 500 square feet for a JADU. The JADU is located on the second floor above the garage, and includes separate exterior access, a bedroom and a full kitchen.

   c. The maximum floor area limitation is 4,240 square feet, where the proposed residence has a total floor area of 4,110 square feet (including JADU).

   d. The highest ridge of the proposed residence is 24 feet from established grade. This complies with the maximum height requirement, which is 33 feet from established grade.

   e. The development provides an attached two (2)-car garage, meeting the minimum parking requirement for a single-unit residence under 4,000 square feet of habitable floor area. No additional parking is required for a JADU.

7. There are no shoreline protective devices serving the subject property, and new shoreline protective devices are not necessary to protect future development on the resultant parcels. A condition of approval is included waiving the rights to future shoreline protective devices.

8. 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 and Building Division standards and policies.

9. No natural or cultural resources are located on the Project site, which has been developed for many years. The demolition will remove the existing residence, landscaping, and hardscape improvements. Best management practices (BMP) will be required to ensure that the demolition will not result in water quality impacts due to construction debris or run-off entering the waters of Newport Bay or onto adjacent properties. Any construction of future residences will require separate coastal development permits.

10. The Project site is located near two (2) public viewpoints as identified by the Coastal Land Use Plan. One viewpoint, which is a public park, is located approximately 100 feet north of the subject lots. The second viewpoint, which is currently utilized as boat parking, is located approximately 50 feet south of the subject lots. Both viewpoints offer public views of the bay from Via Lido Soud. Additionally, there is a public boardwalk which connects these two (2) viewpoints, located between the subjected property and the bay. The revised Project is to demolish an existing four (4)-unit residence, subdivide the lot into two (2) parcels, and construct two (2) single-
unit residences with attached JADUs. The revised Project maintains building envelopes consistent with the existing neighborhood pattern of development. The revised Project is located on the landward side of the public boardwalk and does not disrupt views of the bay from the boardwalk. Furthermore, all improvements in the front setback area of the subject property is limited to 42 inches from existing grade. An investigation of the Project site and surrounding area did not identify any other public view opportunities. Therefore, the revised Project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts to public views.

11. The construction of two (2) separate single-unit residences requires each structure to comply with side setbacks. This creates a 6-foot distance between the proposed principal structures that may serve as additional view opportunities of the bay, which was not provided with the existing four (4)-unit residence.

Finding:

S. Conforms with the public access and public recreation policies of Chapter 3 of the Coastal Act if the project is 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. The residential lot does not currently provide nor inhibit public coastal access. NBMC 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 revised Project is a tentative parcel map for the purpose of subdividing an existing lot into two (2) distinct parcels and a coastal development permit for the demolition of the existing residence and construction of two (2) single-unit residences with two JADUs. The development will not remove any access to the bay.

2. The public boardwalk between the Property and the bay shall remain. The public will continue to have access to the bay through a public walkway which has multiple access points throughout Via Lido Soud.

Coastal Development Permit – Relief from Implementation Plan Development Standards

In accordance with NBMC Section 21.52.090 (Relief from Implementation Plan Development Standards), the waiver to development standards of the Implementation Plan is supported by the following findings and facts supporting those findings:

Finding:

T. The Planning Commission has considered the following:
i. *Whether or not the development is consistent with the certified Local Coastal Program to the maximum extent feasible; and*

ii. *Whether or not there are feasible alternatives that would provide greater consistency with the certified Local Coastal Program and/or that are more protective of coastal resources.*

Facts in Support of Finding:

1. An alternative to the revised Project is for the existing four (4)-unit residential structure to remain in place. The existing lot is 70 feet wide and 6,300 square feet in area, whereas surrounding lots on the same block face vary between 30 and 40 feet wide, and between 2,700 and 4,500 square feet in area.

2. The existing structure does not offer any modulation or openings that provide views to the bay from Via Lido Soud. If the lot remains without the subdivision, a new residential structure could be similarly constructed without modulations and openings. If the lot is subdivided, both 35-foot-wide lots would require 3-foot side yard setbacks which would create a visual opening to the bay as well as reduce the overall mass compared to the existing structure.

3. The subdivision results in less floor area that can be achieved than if the subject parcel remained in its existing configuration. The subdivision would create two (2) lots with maximum floor areas of 4,364.5 square feet each, totaling 8,729 square feet total (4,364.5 x 2 = 8,729). If the subject parcel remained in its existing configuration, a total floor area of 8,849 square feet can be constructed.

4. There are no coastal resources to protect on the property.

Finding:

U. The granting of the variance is necessary due to special circumstances applicable to the property, including location, shape, size, surroundings, topography, and/or other physical features, the strict application of the development standards otherwise applicable to the property denies the property owner privileges enjoyed by other property owners in the vicinity and in the same coastal zoning district.

Facts in Support of Finding:

1. The Property is located in the RM block of Tract 907. Within this block, the original subdivision consisted of 23 lots, a majority of which ranged from 30 to 40 feet in width. The parcels were reconfigured over time and this block currently contains 24 lots, a majority of which range from 30 to 70 feet in width. The subject property is 70 feet wide and has an underlying configuration of Lot 923 (40 feet wide), the southeasterly 10 feet of Lot 922, and the northwesterly 20 feet of Lot 924.

2. The revised Project is to subdivide an existing 70-foot-wide, 6,300-square-foot parcel
into two (2) 35-foot-wide, 3,150-square-foot parcels, whereas Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the NBMC require a minimum lot width of 50 feet and minimum lot area of 5,000 square feet for newly created interior lots. Title 20 (Planning and Zoning) of the NBMC includes a provision which allows for a parcel to be subdivided to a minimum lot size not less than the original underlying lots on the same block face in the same zoning district.

3. Title 21 (Local Coastal Program Implementation Plan) of the NBMC does not contain the same provision as Title 20 (Planning and Zoning) that allows lots to be subdivided to a lot size not less than the original underlying lots on the same block face in the same coastal zoning district.

4. The existing 70-foot-wide lot is surrounded by two (2) 30-foot-wide lots on both sides. The proposed lot widths of 35 feet are consistent with the 30- to 40-foot lot widths contained on the original block face within the same zoning district. The existing lot is 6,300 square feet in area. The subdivision would create two (2) 3,150-square-foot lots, where surrounding lots on the same block face range from 2,700 to 4,500 square feet. Strict application of Title 21 (Local Coastal Program Implementation Plan) of the NBMC would deny the property owners privileges enjoyed by surrounding property owners and allow for the development of two (2) 35-foot-wide lots which is more consistent with original underlying subdivision pattern of the block.

Finding:

V. The variance complies with the findings required to approval a coastal development permit in NBMC Section 21.52.015(F).

Fact in Support of Finding:

1. Facts in Support of Findings R and S above are hereby incorporated by reference.

Finding:

W. The variance will not result in development that blocks or significantly impedes public access to and along the sea or shoreline and to coastal parks, trails, or coastal bluffs.

Fact in Support of Finding:

1. The Property does not currently provide access to the sea or shoreline, nor does it provide access to any coastal parks, trails, or coastal bluffs.

2. Vertical access to the Newport Bay is available for the public from multiple access points along Via Lido Soud. Lateral access is available in the form of a public boardwalk between the bay and the subject property. The Project does not result in development that will impede existing public access.
Finding:

X. The variance will not result in development that blocks or significantly impairs public views to and along the sea or shoreline or to coastal bluffs and other scenic coastal areas.

Fact in Support of Finding:

1. Facts 10 and 11 in support of Finding R above are hereby incorporated by reference.

Finding:

Y. The variance will not result in development that has an adverse effect, either individually or cumulatively, on coastal resources, including wetlands, sensitive habitat, vegetation or wildlife species.

Fact in Support of Finding:

1. There are no coastal resources on the Property nor are there any in the immediate area that could be affected by its redevelopment as the Property is separated from the bay by a public boardwalk.

Finding:

Z. The granting of the variance will not be contrary to, or in conflict with, the purpose of this Implementation Plan, nor to the applicable policies of the Local Coastal Program.

Fact in Support of Finding:

1. Facts in Support of Finding T above are hereby incorporated by reference.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. This Project has been determined to be categorically exempt pursuant to the State CEQA (California Environmental Quality Act) Guidelines under Section 15301 - Class 1 (Existing Facilities) and Section 15303 - Class 3 (New Construction or Conversion of Small Structures).

2. The Planning Commission of the City of Newport Beach hereby approves Tentative Parcel Map No. NP2019-008 and Coastal Development Permit No. CD2019-024, 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 NBMC. 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 NBMC 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 4TH DAY OF MARCH 2021.

AYES: Ellmore, Kleiman, Koetting, Lowrey, Rosene, and Weigand

NOES:

ABSTAIN:

ABSENT: Klaustermeier

BY: Erik Weigand, Chairman

BY: Lauren Kleiman, Secretary
EXHIBIT “A”
CONDITIONS OF APPROVAL

PLANNING

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

2. 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) and Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code.

3. Prior to map recordation, 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.

4. Prior to map recordation, 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.

5. Prior to issuance of the building permits, a copy of the Resolution, including conditions of approval Exhibit “A” shall be incorporated into the Building Division and field sets of plans.

6. All conditions of approval shall apply to both 361 and 365 Via Lido Soud.

7. All principal structures shall be waterproofed to a minimum height of 14.4 feet NAVD 88.

8. 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.
9. 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.

10. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.

11. 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.

12. 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 Demolition Plan.

13. 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.

14. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stockpiles and construction materials shall be covered, enclosed on all sides, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway.

15. 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.
16. The Project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.

17. 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.

18. 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.

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. 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 Bethel and Ridge Subdivision and Residences Appeal Amendment including, but not limited to, Tentative Parcel Map No. NP2019-008 and Coastal Development Permit No. CD2019-024 (PA2019-085). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys’ fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys’ fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

**BUILDING**

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

22. 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.
23. 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.

**PUBLIC WORKS**

24. 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 Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. The Map to be submitted to the City of Newport Beach shall comply with the City’s CADD Standards. Scanned images will not be accepted.

25. Prior to recordation of the parcel map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. Monuments (one inch iron pipe with tag) shall be set On Each Lot Corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.

26. All improvements shall be constructed as required by Ordinance and the Public Works Department.

27. An encroachment permit is required for all work activities within the public right-of-way.

28. Any existing broken and/or otherwise damaged curb and pavement along the Via Lido Soud frontage shall be reconstructed.

29. All existing overhead utilities shall be undergrounded.

30. An encroachment permit/agreement shall be obtained for any non-standard improvements within a 4-foot wide Public Utilities Easement along Via Lido Soud.

31. Each parcel shall be served by its individual water service/meter and sewer lateral/cleanout to be constructed per City Standards.

32. All improvements shall comply with the City’s sight distance requirement. See City Standard 110-L.

33. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.