

Attachment No. PC 1

Draft Resolution

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RESOLUTION NO. PC2026-023

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA, WAIVING CITY COUNCIL POLICIES L-6 (ENCROACHMENTS IN PUBLIC RIGHTS-OF-WAY) AND L-2 (DRIVEWAY APPROACHES), AND APPROVING ENCROACHMENT PERMIT NO. N2026-0255 TO ALLOW RETENTION OF SPECIFIC UNPERMITTED IMPROVEMENTS FOR THE PROPERTY LOCATED AT 20462 BIRCH STREET (PA2026-0134)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Richard Moriarty ("Owner"), with respect to the property located at 20462 Birch Street, Newport Beach, California and legally described as Parcel 1 of Lot Merger No. LM 2022-022, consisting of Lot 122 of Tract 706, Santa Ana Heights Harbor View Addition, in the City of Newport Beach, County of Orange, State of California, as shown on a map recorded in Book 21, Page 25 of Miscellaneous Maps, in the Office of the County Recorder of Orange County ("Property"), requesting approval of an encroachment permit.
2. The Owner requests approval of Encroachment Permit No. N2026-0255, and waivers of City Council Policies L-6 (Encroachments in Public Rights-of-Way) and L-2 (Driveway Approaches) to retain the following non-compliant improvements which are reflected in Exhibit "A," which is attached hereto and incorporated herein by reference that encroach into the Birch Street and Mesa Drive public rights-of-way ("Project Encroachments"):
 - a. A 39-inch-high electrical pedestal encroaching approximately 3 feet into the Birch Street public right-of-way;
 - b. Three approximately 10-foot-high security camera posts encroaching between 5 feet, 9 inches and 5 feet, 1 inch into the Birch Street public right-of-way;
 - c. A 6-foot-high fence, pedestrian gate, motorized vehicular access gates and electrical utility boxes, utility risers, encroaching at varying depths within the Mesa Drive and Birch Street public rights-of-way;
 - d. A concrete pad serving the residence's private solid waste and recycling storage area encroaching 7 feet, 5 inches into the Birch Street public right-of-way;
 - e. A 6-foot-high vehicular access gate, intended to serve a future accessory dwelling unit ("ADU") encroaching 21 feet, 5 inches into the Birch Street public right-of-way;
 - f. Landscaping and boulders of various heights (under 5 feet) encroaching 4 feet, 2 inches into the Birch Street public right-of-way;
 - g. Landscape lighting encroaching approximately 2 feet into the Mesa Drive public right-of-way and 6 feet, 11 inches into the Birch Street public right-of-way;
 - h. Three 42-inch-high bollards encroaching within the Birch Street public right-of-way; and
 - i. Retention of an existing third driveway approach along Birch Street.

City Council Policy L-6 limits private improvements within the public right-of-way (e.g., walls and fences) to a maximum 1-foot encroachment and a maximum height of 36 inches (3 feet) without a waiver. City Council Policy L-2 generally limits a single residential parcel to no more than two driveway approaches without a waiver.

3. The requested approvals are not specifically provided within City Council Policy L-6 (Encroachments in Public Rights-of-Way). Thus, the Project Encroachments are prohibited under Section A (Private Encroachments that are Prohibited Without a Waiver and Approval) of said Policy. Due to this prohibition, the requested encroachments may only be approved upon the waiver of City Council Policy L-6 (Encroachments in Public Rights-of-Way) with approval of the encroachments permitted by the Planning Commission. Additionally, retention of the existing third driveway approach serving a single residential parcel is not consistent with City Council Policy L-2 (Driveway Approaches) absent of a waiver. Accordingly, the third driveway approach may only be retained upon waiver of Policy L-2 as approved by the Planning Commission.
4. The Property is not located within the coastal zone; therefore, a coastal development permit is not required.
5. A public hearing was held on August 6, 2026, in the City Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and City Council Policy L-6 (Encroachments in Public Rights-of-Way). 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. The Project Encroachments are categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment), Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, and California Code of Regulations, Title 14, Chapter 3 ("CEQA Guidelines") because the Project Encroachments consist of existing minor improvements (including electrical pedestal, security cameras/posts, fencing, concrete trash bin pad, third driveway approach, motorized sliding and swinging metal gates and equipment, swinging pedestrian gate, decorative boulders, bollards, low-voltage landscape lighting and landscaping), and has no potential to result in a direct or reasonably foreseeable indirect physical change in the environment. The existing improvements are consistent with structures allowed under this exemption.
2. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The location of the Project Encroachments do 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 City Council Policies L-6 (Encroachments in Public Rights-of-Way) and L-2 (Driveway Approaches), the following findings and facts in support of such findings are set forth:

Finding:

- A. *The proposed private improvements are not a detriment to the health, safety, and welfare of the public.*

Facts in Support of Finding:

1. The Birch Street and Mesa Drive public rights-of-way are approximately 10 feet from the face of curb to the property line. This width provides room for public use and maintenance within the public right-of-way and reduces the likelihood that the retained improvements would adversely affect public health, safety, or welfare.
2. The Project Encroachments do not diminish the rights of the public, present and future, along the Birch Street and Mesa Drive public rights-of-way. There are no sidewalks on Birch Street adjacent to the Project Site, nor does the City currently have a plan to install sidewalks on this street. Based on the Public Works Department's review of the existing conditions, the existing encroachments do not interfere with traffic visibility for vehicles traveling along Birch Street and Mesa Drive.
3. Approval would require the Owner to enter into an Encroachment Agreement to allow the improvements. Any liability associated with the private improvements would be transferred to the Owner. Additionally, if the need for public improvements arises in the future, the Owner shall remove all encroachments at no cost to the City.

Finding:

- B. *The individual circumstances applicable to this application and the proposed encroachment are consistent with the public interest.*

Facts in Support of Finding:

1. The Project Encroachments are complementary to the neighborhood and does not interfere with traffic visibility on either Birch Street or Mesa Drive. The improvements, which include fences, gates, landscaping, and utilities, are consistent with other properties along Mesa Drive which are improved with taller fences, walls, and landscaping. The Property is the only residence on the southeastern side of Birch Street, as it is a deep lot that occupies the entirety of the short street. Therefore, it is visually consistent with Birch Street and Mesa Drive.

2. Retention of the existing improvements is consistent with the public interest because the improvements do not impede public use of the public right-of-way and do not create a traffic safety hazard.
3. There are no known existing City utilities within the encroachment area within the Birch Street and Mesa Drive public rights-of-way.

In accordance with City Council Policy L-2 (Driveway Approaches), the following findings and facts in support of such findings are set forth:

Finding:

- C. *Waiver of City Council Policy L-2 to retain the third driveway approach is not detrimental to public safety and is consistent with the public interest.*

Facts in Support of Finding:

1. The third driveway approach is located along the cul-de-sac frontage on Birch Street, which has relatively low volume of traffic and lower vehicle speeds. The location of this driveway minimizes the potential for conflicts between vehicles and pedestrians, as there are no crosswalks nor intersection of streets that interfere with the driveways.
2. The Project Encroachments do not require relocation of public facilities or infrastructure and preserves the City's ability to maintain or improve the public right-of-way in the future.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach finds the Project Encroachments categorically exempt from CEQA pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment), and Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines because the existing improvements have no potential to result in direct or indirect physical change to the environment.
2. The Planning Commission of the City of Newport Beach hereby waives City Council Policies L-6 (Encroachments in Public Rights-of-Way) and L-2 (Driveway Approaches) and approves Encroachment Permit No. N2026-0255 to allow the Project Encroachments set forth in Exhibit "A", subject to the conditions set forth in Exhibit "B," both of which are attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution is adopted unless within such time an appeal or call for review is filed with the City Clerk in accordance with the provisions of Title 20 (Planning and Zoning), of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 6th DAY OF AUGUST 2026

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: _____
David Salene, Chair

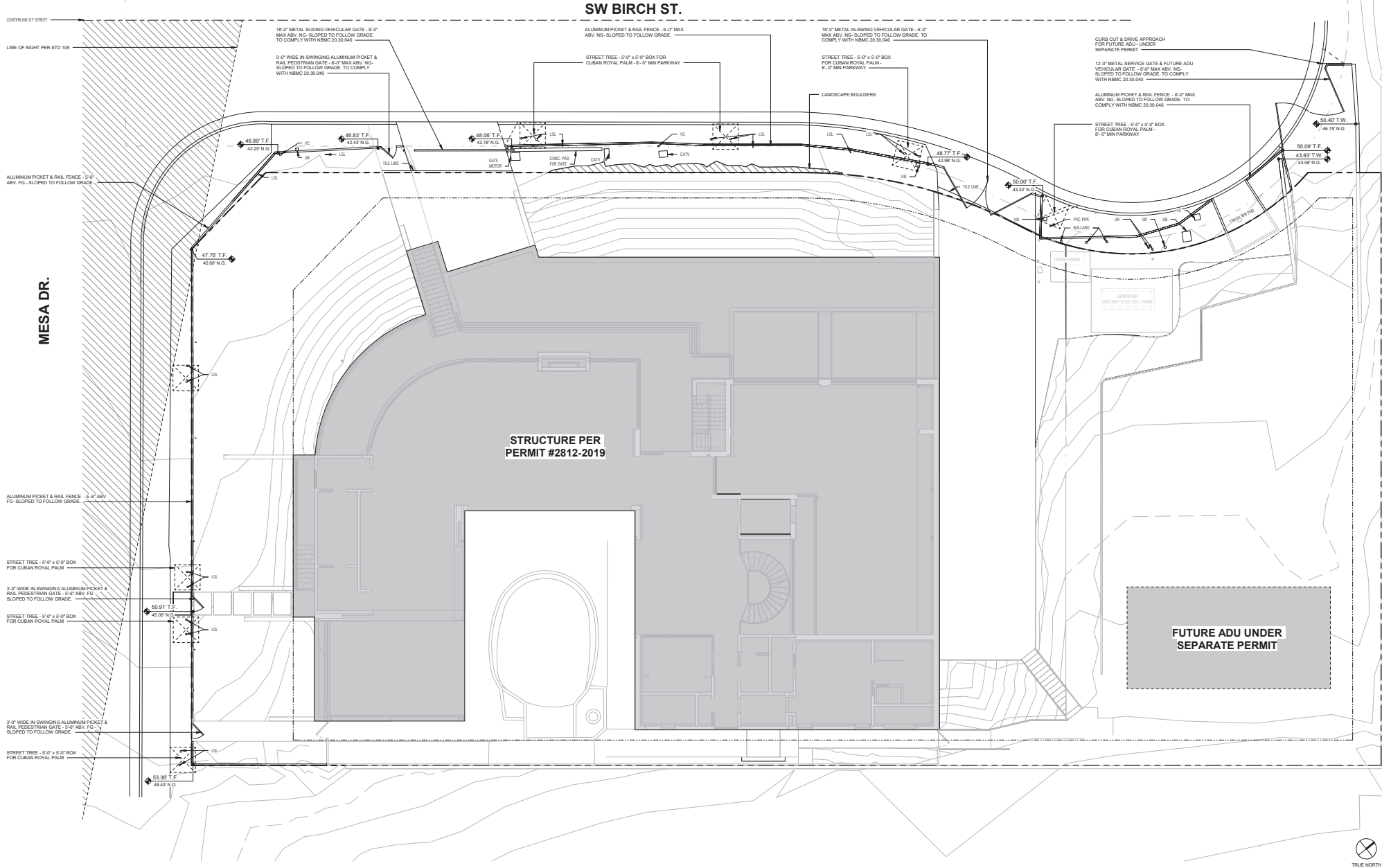
BY: _____
Greg Reed, Secretary

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EXHIBIT A

SITE PLAN AND TOPOGRAPHY PLAN

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- ABBREVIATIONS LEGEND:**
- BFP BACK FLOW PREVENTER
 - CATV CABLE TV BOX
 - EVT ELECTRICAL VAULT
 - FS FINISHED SURFACE
 - GR GAS RISER
 - GV GAS VALVE
 - ICV IRRIGATION CONTROL VALVE
 - LSL LANDSCAPING LIGHT
 - NG NATURAL GROUND GRADE
 - SDMH STORM DRAIN MAN HOLE
 - SL STREET LIGHT
 - SLPB STREET LIGHT PULL BOX
 - TEK TELEPHONE BOX
 - TR TOP OF RAIL
 - TW TOP OF WALL
 - UB UTILITY BOX
 - UR UTILITY RISER
 - VC VIDEO CAMERA
 - WM WATER METER

C.N.B. NOTES:

1. ISSUANCE OF A BUILDING PERMIT BY THE CITY OF NEWPORT BEACH DOES NOT RELIEVE APPLICANTS OF THE LEGAL REQUIREMENTS TO OBSERVE COVENANTS, CONDITIONS AND RESTRICTIONS WHICH MAY BE RECORDED AGAINST THE PROPERTY OR TO OBTAIN PLANS YOU SHOULD CONTACT YOUR COMMUNITY ASSOCIATIONS PRIOR TO COMMENCEMENT OF ANY CONSTRUCTION AUTHORIZED BY THIS PERMIT.
2. PRIOR TO PERFORMING ANY WORK IN THE CITY RIGHT-OF-WAY AN ENCROACHMENT PERMIT MUST BE OBTAINED FROM THE PUBLIC WORKS DEPARTMENT.
3. A CAL-OSHA PERMIT IS REQUIRED FOR EXCAVATIONS DEEPER THAN 5' AND FOR SHORING AND UNDERPINNING.

LANDSCAPE NOTES:

1. ENCROACHMENT PERMIT REQD. FOR ANY WORK PROPOSED IN THE PUBLIC R.O.W.
2. IF APPLICABLE, REF. PRELIMINARY LANDSCAPE PLAN FOR ALL HARDSCAPE & PLANTING AREAS WITH RESPECTIVE HEIGHTS AND MATERIALS.

ENCROACHMENT PERMIT NOTE:

1. A PUBLIC WORKS DEPARTMENT ENCROACHMENT PERMIT INSPECTION IS REQUIRED BEFORE THE BUILDING DEPARTMENT PERMIT FINAL CAN BE ISSUED. AT THE TIME OF PUBLIC WORKS DEPARTMENT INSPECTION, IF ANY OF THE EXISTING PUBLIC IMPROVEMENTS SURROUNDING THE SITE IS DAMAGED, NEW CONCRETE SIDEWALK, CURB AND GUTTER, AND ALLEY/STREET PAVEMENT WILL BE REQUIRED. ADDITIONALLY, IF EXISTING UTILITIES INFRASTRUCTURE ARE DEEMED SUBSTANDARD, A NEW 1-INCH WATER SERVICE, WATER METER BOX, SEWER LATERAL AND/OR CLEANOUT WITH BOX AND LID WILL BE REQUIRED. 100% OF THE COST SHALL BE BORNE BY THE PROPERTY OWNER (MUNICIPAL CODES 14.24.020 AND 14.08.020). SAID DETERMINATION AND THE EXTENT OF THE REPAIR WORK SHALL BE MADE AT THE DISCRETION OF THE PUBLIC WORKS INSPECTOR. CONTRACTOR IS RESPONSIBLE TO MAINTAIN THE PUBLIC RIGHT OF WAY AT ALL TIMES DURING THE CONSTRUCTION PROJECT. A STOP WORK NOTICE MAY BE ISSUED FOR ANY DAMAGE OR UNMAINTAINED PORTION OF THE PUBLIC RIGHT OF WAY.

PROJECT NAME
MORIARTY RESIDENCE

STATUS
PERMIT

BRANDON ARCHITECTS
151 Kaimosi Drive, Suite E-1 | Costa Mesa, CA 92626
714.734.4363 | www.brandonarchitects.com

OWNER INFORMATION:
RICHARD MORIARTY
2128 MESA DRIVE,
NEWPORT BEACH, CA
92660

MORIARTY RESIDENCE
20462 BIRCH STREET, NEWPORT BEACH,
CA 92660

PROJECT ARCHITECT:
TYLER WILSON

DOCUMENT VALID UPON

ORIGINAL SIGNATURE

PLANNING COMMISSION SITE
PLAN EXHIBIT

REVISIONS
NO. REVISION DATE

JOB NO.
201825

DATE
06/23/26

SHEET NO.
PC-0.0

LEGEND

- BFP — BACK FLOW PREVENTER
CATV — CABLE TV BOX
FS — FINISHED SURFACE
GR — GAS RISER
ICV — IRRIGATION CONTROL VALVE
LSL — LANDSCAPING LIGHT
NG — NATURAL GROUND
TBX — TELEPHONE BOX
TF — TOP OF FENCE
TP — TOP OF CAMERA POLE
TR — TOP OF ROCK
TW — TOP OF WALL
UB — UTILITY BOX
UR — UTILITY RISER
TRNF. — TRANSFORMER PAD
GEN. — GENERATOR PAD
□-□-□ — WROUGHT IRON FENCE (WIF)
- ROCKS

LEGAL DESCRIPTION

REAL PROPERTY SITUATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:
LOT 122 OF TRACT NO. 706, SANTA ANA HEIGHTS HARBOR VIEW ADDITION, AS SHOWN ON A MAP THEREOF RECORDED IN BOOK 21, PAGE 25 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

EXCEPT THAT PORTION OF SAID LOT 122 DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTERLINE OF MESA DRIVE WITH THE CENTERLINE OF BIRCH STREET, AS SAID CENTERLINES ARE SHOWN ON RECORD OF SURVEY 92-1098 FILED IN BOOK 138 PAGES 28 THROUGH 32 OF RECORDS OF SURVEYS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE N40°37'46"E, 150.31 FEET ALONG LAST SAID CENTERLINE; THENCE S49°22'14"E, 30.00 FEET TO A POINT ON THE NORTHWESTERLY LINE OF SAID LOT; SAID POINT BEING THE TRUE POINT OF BEGINNING, SAID POINT ALSO BEING ON A NON-TANGENT CURVE, CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 92.00 FEET, A RADIAL LINE OF SAID CURVE TO SAID POINT BEARS N49°22'14"W, THENCE LEAVING SAID NORTHWESTERLY LINE, NORTHWESTERLY 44.74 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 27°51'51" TO THE BEGINNING OF A REVERSE CURVE, CONCAVE WESTERLY AND HAVING A RADIUS OF 46.00 FEET; THENCE NORTHEASTERLY, NORTHERLY, AND NORTHWESTERLY 61.95 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 77°09'31" TO SAID NORTHWESTERLY LINE THENCE; S40°37'46"W, 99.37 FEET ALONG SAID NORTHWESTERLY LINE TO THE TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THAT PORTION OF SAID LOT 122, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY CORNER OF SAID LOT 122; THENCE N40°37'46"E, 14.62 FEET ALONG THE NORTHWESTERLY LINE OF SAID LOT; THENCE S5°13'14"E, 20.99 FEET TO THE SOUTHWESTERLY LINE OF SAID LOT; THENCE N49°22'19"W, 15.06 FEET ALONG SAID SOUTHWESTERLY LINE TO THE POINT OF BEGINNING.

BASIS OF BEARINGS

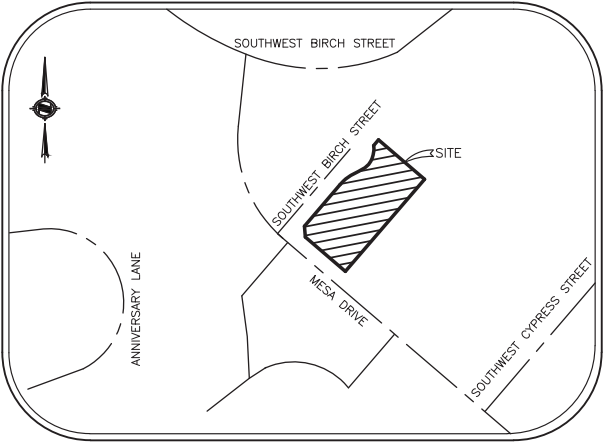
THE BEARINGS SHOWN HEREON ARE BASED ON THE CENTERLINE OF MESA DRIVE, BEING N49°22'19"W PER P.M.B. 393/44-47, RECORDS ON FILE IN THE OFFICE OF THE ORANGE COUNTY SURVEYOR.

BENCHMARK INFORMATION

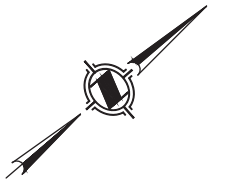
BENCHMARK NO: CM-21-71

DESCRIBED BY OCS 2001 - FOUND 3 3/4" OCS ALUMINUM BENCHMARK DISK STAMPED "CM-21-71", SET IN THE TOP OF A 4 IN. BY 4 IN. CONCRETE POST. MONUMENT IS LOCATED IN THE SOUTHERLY CORNER OF THE INTERSECTION OF MESA DRIVE AND CYPRESS, 21 FT. WESTERLY OF THE CENTERLINE OF MESA DRIVE AND 27 FT. SOUTHERLY OF THE CENTERLINE OF CYPRESS, 3 FT. SOUTHERLY OF POWER POLE #1788402E AND IN LINE WITH GUY WIRES. MONUMENT IS SET 0.2 FT. BELOW TOP OF CURB.

ELEVATION: 66.007 FEET (NAVD88), YEAR LEVELED 1989



VICINITY MAP
NO SCALE

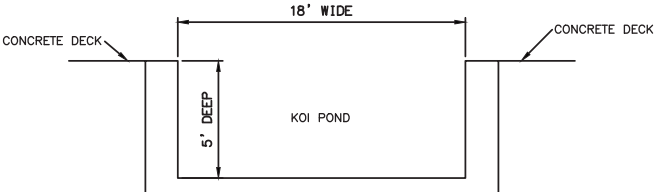


GRAPHIC SCALE

(IN FEET)
1 INCH = 16 FT.

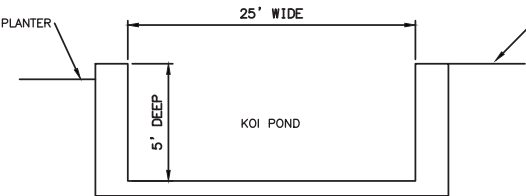
DETAIL 'A'

NO SCALE



CROSS SECTION "A"

NOT TO SCALE

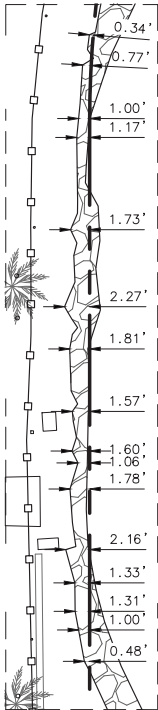


CROSS SECTION "B"

NOT TO SCALE

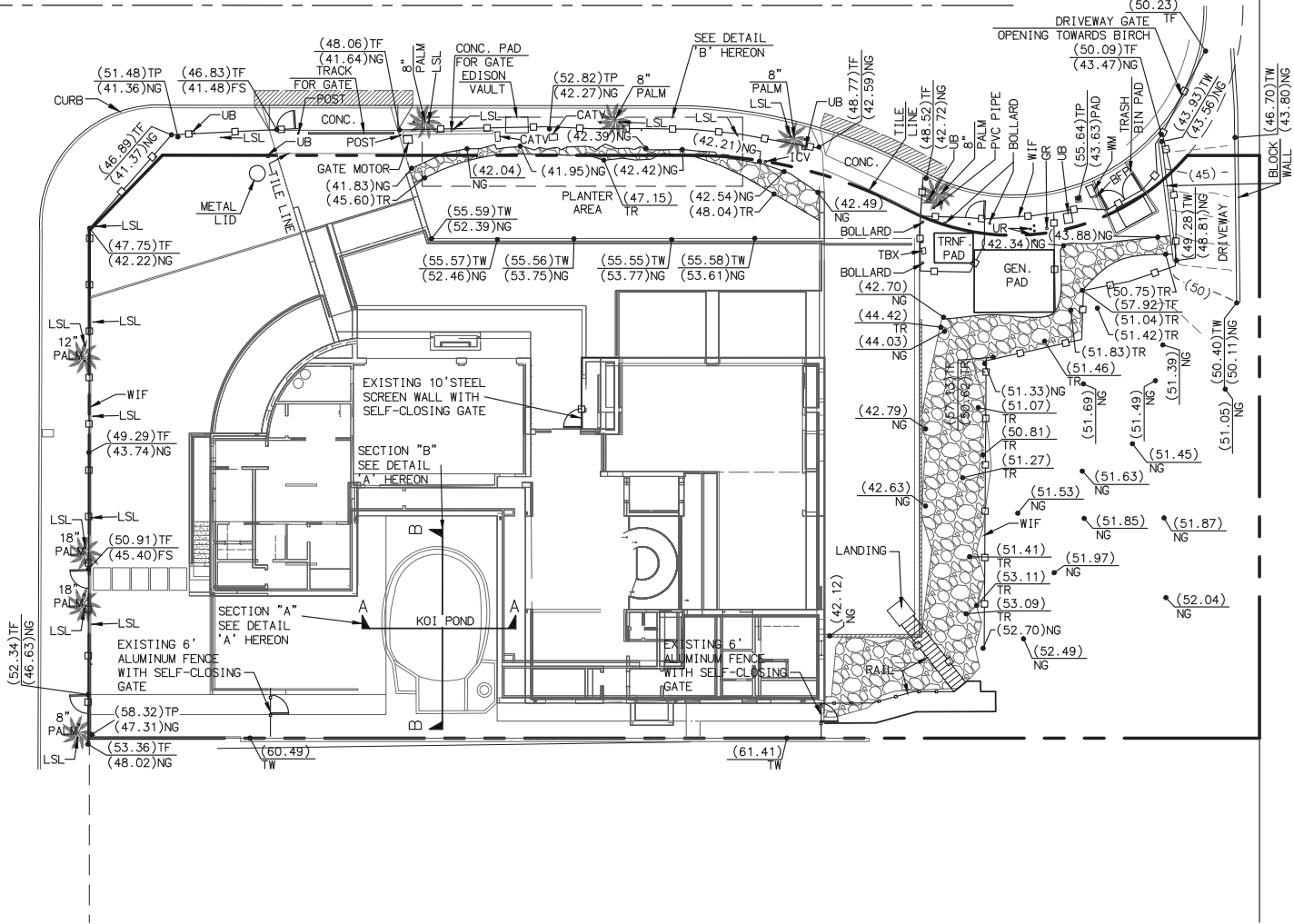
DETAIL 'B'

NO SCALE



MESA DRIVE

SW BIRCH STREET



PAUL D. CRAFT, P.L.S. 8516
LICENSE RENEWAL DATE 12/31/26

DATE

NOTE: SECTION 8770.6 OF THE CALIFORNIA BUSINESS AND PROFESSIONS CODE STATES THAT THE USE OF THE WORD CERTIFY OR CERTIFICATION BY A LICENSED LAND SURVEYOR IN THE PRACTICE OF LAND SURVEYING OR THE PREPARATION OF MAPS, PLATS, REPORTS, DESCRIPTIONS OR OTHER SURVEYING DOCUMENTS ONLY CONSTITUTES AN EXPRESSION OF PROFESSIONAL OPINION REGARDING THOSE FACTS OR FINDINGS WHICH ARE THE SUBJECT OF THE CERTIFICATION AND DOES NOT CONSTITUTE A WARRANTY OR GUARANTEE, EITHER EXPRESSED OR IMPLIED.

PROJECT SURVEYOR

DATE 7/27/2026

SCALE 1" = 16'

DRAWN A. R. H.

CHECKED P. D. C.

PROJECT

TOPOGRAPHIC MAP

20462 SW BIRCH STREET

NEWPORT BEACH, CA 92660

(APN: 439-382-42)

SHEET NO.

1 OF 1

PROJECT NO. 19020

EXHIBIT B
CONDITIONS OF APPROVAL

PUBLIC WORKS

1. The Project Encroachments shall be in substantial conformance with the approved site plan stamped and dated with the date of this approval.
2. The Project Encroachments shall be subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The Owner 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 Encroachment Permit and any associated Encroachment Agreements.
4. The Owner shall enter into an Encroachment Agreement addressing all encroachments within the public right-of-way within one calendar year upon receipt of approval, otherwise this approval shall automatically expire.
5. This Encroachment Permit shall authorize the retention of the existing electrical pedestal, utility risers, security camera posts, fencing, concrete trash bin pad, third driveway approach, motorized metal gates and equipment, pedestrian gate, decorative boulders, landscaping, bollards, and landscape lighting within the Birch Street and Mesa Drive public rights-of-way, with waivers of City Council Policy L-6, Section A (Private Encroachments that are Prohibited Without a Waiver and Approval), and City Council Policy L-2 (Driveway Approaches) to allow retention of more than two driveway approaches serving a single residential parcel.
6. If the need for public improvements arises in the future, Owner shall remove all encroachments at no cost to the City.
7. To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless the 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 **Moriarty Residence Encroachments (PA2026-0134) including, but not limited to, Encroachment Permit No. N2026-0255**. 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 Owner, City, and/or the parties initiating or bringing such proceeding. The Owner 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 Owner shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

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