

**CALIFORNIA COASTAL COMMISSION**

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Staff: ALB-LB  
Staff Report: January 19, 2006  
Hearing Date: February 8-10, 2006  
Commission Action:

**W4a****STAFF REPORT: CONSENT CALENDAR**

**APPLICATION NUMBER:** 5-05-333

**APPLICANT:** William J. Cagney Trust

**AGENT:** Cyndi A. Ybarra

**PROJECT LOCATION:** 3001 Newport Blvd., Newport Beach, County of Orange

**PROJECT DESCRIPTION:** Construction of a new 2-story, 26-foot high, 4,258 square foot retail/office building with 17 parking spaces on a vacant lot. Minimal grading for site preparation is proposed.

**LOCAL APPROVALS RECEIVED:** City of Newport Beach Approval-in-Concept No. 1060-2005 dated April 18, 2005.

**SUMMARY OF STAFF RECOMMENDATION:**

The applicant is proposing to construct a mixed-commercial use development in the Cannery Village/McFadden Square area of Newport Beach. The development will provide 17 parking spaces on-site and a retail use on the ground floor and office uses on the second floor. The site is currently vacant. The major issues of the staff report include parking, land use, and water quality.

Staff recommends the Commission **APPROVE** the proposed development with four (4) special conditions requiring 1) acknowledgement of land use restrictions through a future improvements condition; 2) conformance with construction best management practices, 3) conformance with a final Grading and Drainage plan (including landscaping controls); and 4) recordation of a deed restriction against the property, referencing all of the Special Conditions contained in this staff report.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of Newport Beach only has a certified Land Use Plan and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

**SUBSTANTIVE FILE DOCUMENTS:** City of Newport Beach Certified Land Use Plan (LUP), Coastal Development Permits: 5-93-189 (Unocal Corporation); 5-05-168 (Brigandi); 5-04-482 (Capannelli), 5-03-299 (29<sup>th</sup> Street Partners), 5-02-093 (Cannery Lofts), and 5-00-056 (Weeda).

**LIST OF EXHIBITS:**

1. Location Map
2. Assessor's Parcel Map
3. Project Plans

**STAFF RECOMMENDATION:**

**MOTION:** *I move that the Commission approve the coastal development permit applications included on the consent calendar in accordance with the staff recommendations.*

**STAFF RECOMMENDATION TO ADOPT CONSENT CALENDAR:**

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

**RESOLUTION:**

**I. APPROVAL WITH CONDITIONS**

The Commission hereby **APPROVES** a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

**II. STANDARD CONDITIONS**

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### III. **SPECIAL CONDITIONS:**

1. Future Development

This permit is only for the development described in Coastal Development Permit No. 5-05-333. Pursuant to Title 14 California Code of Regulations section 13253(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(b) shall not apply to the development governed by Coastal Development Permit No. 5-05-333. Accordingly, any future improvements to the retail/office building authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources section 30610(d) and Title 14 California Code of Regulations sections 13252(a)-(b), shall require an amendment to Permit No. 5-05-333 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

2. Construction Best Management Practices

The permittee shall comply with the following construction-related requirements:

- (a) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of construction-related materials, and to contain sediment or contaminants associated with construction activity, shall be implemented prior to the on-set of such activity;
- (b) No construction materials, debris, or waste shall be placed or stored where it may enter a storm drain or be subject to tidal erosion and dispersion;
- (c) Construction debris and sediment shall be properly contained and secured on site with BMPs, to prevent the unintended transport of sediment and other debris into coastal waters by wind, rain or tracking. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;
- (d) Construction debris and sediment shall be removed from construction areas as necessary to prevent the accumulation of sediment and other debris which may be discharged into coastal waters. All debris and trash shall be disposed of in the proper trash and recycling receptacles at the end of each construction day;
- (e) The discharge of any hazardous materials into any receiving waters shall be prohibited;
- (f) A pre-construction meeting should be held for all personnel to review procedural and BMP/GHP guidelines;
- (g) All BMPs shall be maintained in a functional condition throughout the duration of the project.
- (h) Debris shall be disposed at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.

3. Submittal of Final Grading and Drainage Plan

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, in a form and content acceptable to the Executive Director, two (2) sets of a final grading and drainage plan prepared by an appropriately licensed professional. The plan shall show runoff being directed to an underground desilting basin installed beneath the landscape area along 30<sup>th</sup> Street for infiltration and treatment, as proposed by the applicant. Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property.
- B. The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

4. Deed Restriction

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

#### **IV. FINDINGS AND DECLARATIONS:**

The Commission hereby finds and declares:

##### **A. PROJECT LOCATION, DESCRIPTION AND BACKGROUND**

###### Project Location

The subject site is an 8,517 square foot lot located at 3001 Newport Boulevard in the City of Newport Beach, Orange County (Exhibits 1 & 2). The site is designated Retail and Service Commercial (RSC) in the certified LUP. The site is located on an inland lot within the Cannery Village/McFadden Square area. The Cannery Village/McFadden Square area is located between 32<sup>nd</sup> Street and 26<sup>th</sup> Street on the Balboa Peninsula. The area is a mixed-use district with commercial, industrial, and residential uses. In this district, residential and office development is allowed on the upper floors in conjunction with ground floor commercial usage. The nearest public coastal access is available at the end of 30<sup>th</sup> Street, southwest of the project site.

###### Project Description

The project involves the construction of a new 2-story, 26-foot high, 4,258 square foot retail/office building with 17 parking spaces on a vacant lot, as shown in Exhibit 3. Minimal grading for site preparation is proposed. The ground floor will consist of a 930 square foot retail space, a 290 square foot lobby for the second floor office use, 17 covered parking spaces and 511 square feet of landscaped area. The upper floor will consist of 2,926 square feet of office space (1,856 square foot space and 1,070 square foot space) and a 112 square foot open corridor.

The ground floor commercial space is proposed to be used as general retail space, consistent with the RSC land use designation. Allowable commercial uses include, but may not be limited to: retail sales, offices which provide goods or services to the general public, hotels, motels, restaurants, commercial recreation, and senior citizen housing facilities. Professional and business offices not providing goods or services to the general public are allowed only on the second floor or above. The current proposal includes a small lobby on the first floor providing access to the second floor office spaces, consistent with the allowable land use.

The proposed retail and office spaces will be served by 17 shared off-street parking spaces accessible from Newport Boulevard. The proposed development provides parking that meets the Commission's regularly-used standard of one space for each 225 square feet of retail space and one space for each 250 square feet of office space. The parking provided also conforms to the recently certified parking standards in the LUP.

As proposed, the project provides a land use on the ground floor that is consistent with the RSC designation and provides parking that will satisfy the requirement for a general commercial use. It is necessary to restrict commercial uses on this site to those that can be served by on-site parking. Commercial uses with a higher parking demand, such as restaurants, cannot be accommodated. It is also necessary to ensure that the ground floor be occupied by a commercial use that provides goods or services directly to the public. As such, the use of the ground floor space is restricted to the proposed use of retail and service commercial and any changes in the type or intensity of use will require an amendment or new permit.

The applicant is proposing water quality improvements as part of the proposed project, including the direction of runoff to an underground desilting basin installed beneath the landscape area along 30<sup>th</sup> Street for infiltration and treatment. However, a final grading and drainage plan was not submitted that includes the proposed water quality improvements. This plan must be submitted prior to issuance of the permit. Any vegetated landscaped areas located on site shall only consist of native plants or non-native drought tolerant plants, which are non-invasive.

The placement of vegetation that is considered to be invasive which could supplant native vegetation should not be allowed. Invasive plants have the potential to overcome native plants and spread quickly. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org/>) and California Native Plant Society ([www.CNPS.org](http://www.CNPS.org)) in their publications.

Furthermore, any plants in the landscaping plan should be drought tolerant to minimize the use of water. The term drought tolerant is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.owue.water.ca.gov/landscape/pubs/pubs.cfm>.

#### Past Commission Action

On July 15, 1993, the Commission approved 5-93-189, which allowed demolition of an existing gasoline/service station, removal of underground storage tanks and active remediation of contaminated materials at the subject site. The permit was not subject to any special conditions. All remediation activities have been completed and the site is considered suitable for development.

### **B. DEVELOPMENT**

The development is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, the proposed project raises concerns that future development of the project site potentially may result in a development, which is not consistent with the Chapter 3 policies of the Coastal Act. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission finds that a future improvements special condition be imposed. As conditioned the development conforms with the Chapter 3 policies of the Coastal Act.

### **C. PUBLIC ACCESS**

The proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. Therefore, the development, as conditioned, conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

### **D. WATER QUALITY**

The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post-construction activities on the marine environment. These design features include, but are not limited to, the appropriate management of equipment and construction materials, reducing runoff through the use of permeable surfaces, the use of non-invasive drought tolerant vegetation to reduce and treat the runoff discharged from the site, and for the use of post-construction best management practices to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms with Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

**E. DEED RESTRICTION**

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes an additional condition requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, this permit ensures that any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development.

**F. LOCAL COASTAL PROGRAM**

Coastal Act section 30604(a) states that, prior to certification of a local coastal program (“LCP”), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. The Land Use Plan for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on January 9, 1990. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

**G. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.