

CALIFORNIA COASTAL COMMISSION

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Staff: Ryan Todaro-LB
Staff Report: September 20, 2007
Hearing Date: October 10-12, 2007
Commission Action:

**STAFF REPORT: MATERIAL AMENDMENT**

APPLICATION NO.: 5-02-093-A2

APPLICANT: Cannery Lofts, L.P.

AGENT: Dave Neish

PROJECT LOCATION: 509 20th Street, Newport Beach (Orange County)

DESCRIPTION OF PROJECT ORIGINALLY APPROVED:

Construction of twenty-one (21) mixed-used, 32' high, 3-story structures and one (1) off-street parking lot and associated traffic and parking modifications, drainage/water quality improvements, hardscape and landscaping on four (4) waterfront lots along the Rhine Channel and eighteen (18) inland lots within a 1.44-acre area of Cannery Village. Approximately 1425 cubic yards of grading (1400 cy fill and 25 cy cut) was proposed for site preparation and drainage purposes. A 6' wide public walkway was proposed along the existing bulkhead of the waterfront lots. The project also involved a subdivision of one lot into seven lots, re-creating the previous subdivision pattern in the subject area.

DESCRIPTION OF AMENDMENT:

Demolition of an existing 6-space overflow parking lot and construction of a 32-foot high, three-story mixed use building, which includes an approximately 745 square-foot lower level commercial space, approximately 1,626 square feet of residential living space above and an attached 460 square-foot two-car garage.

SUMMARY OF STAFF RECOMMENDATION:

Commission staff recommends that the Commission approve the proposed amendment with six (6) special conditions addressing: 1) changes to the underlying permit's parking management plan; 2) parking management for the project site; 3) construction best management practices for the project site; 4) submittal of a final water quality management plan for the project site; 5) submittal of a revised landscaping plan for the project site; and 6) a deed restriction against the property, referencing all of the Special Conditions contained in this staff report.

SUBSTANTIVE FILE DOCUMENTS:

1. City of Newport Beach Certified Land Use Plan (LUP)
2. Cannery Village/McFadden Square Specific Plan
3. CDP Applications 5-02-096 (Cannery Lofts), 5-01-104 (Fluter), 5-00-056 (Weeda), and 5-02-093 (Cannery Lofts)
4. Cannery Lofts Detailed Parking Study Demand Analysis, prepared by IBI Group, dated February 2007

LOCAL APPROVALS RECEIVED:

City of Newport Beach Approval-In-Concept No. 2877-2004

EXHIBITS:

1. Vicinity Map
2. Assessor's Parcel Map
3. Site Plan/Elevations
4. CDP No. 5-02-093

PROCEDURAL NOTE:

The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change,
- 2) Objection is made to the Executive Director's determination of immateriality, or
- 3) The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

The amendment request involves demolition of an existing 6-space overflow parking lot required as a condition (Special Condition No. 2) of the underlying permit and construction of a 32-foot high, three-story mixed use building. The subject application is being forwarded to the Commission because the Executive Director has determined that the proposed amendment is a material change and affects conditions required for the purposes of protecting coastal resources or coastal access.

At the July 8, 2002 hearing for the underlying permit (CDP No. 5-02-093), the Commissioners decided to allow the applicant to come back to the Commission at a later date if the applicant could prove that the overflow parking lot required pursuant to Special Condition No. 2 was not needed. This overflow parking lot was required by the Commission to serve the patrons of the Cannery Lofts development and to mitigate the loss of on-street parking in the subject area.

Section 13166 of the Commission Regulations calls for the Executive Director to reject a permit amendment request if it would lessen or avoid the intended effect of a previously conditionally approved permit. However, Section 13166 allows the Executive Director to accept such amendments if "... the applicant presents newly discovered material information, which he could not, with reasonable diligence, have discovered and produced before the permit was granted."

The applicant first applied for an amendment to demolish this overflow parking lot and construct the mixed-use building on this site in December 2004. However, Commission staff rejected that amendment request because the parking surveys submitted failed to capture use/demand during the peak beach use season and because the surveys were conducted during a period that the parking control system was not operating consistent with permit requirements and therefore determined that the applicant could not justify elimination of this parking lot and the information submitted did not meet the standards in Section 13166 of the Commissions regulations regarding amendment requests. Commission staff requested that the applicant conduct a parking survey throughout the peak summer season and implement changes to the parking control system. The applicant complied with this request and submitted the current amendment request on March 27, 2007, which is the subject of this staff report.

Although the proposed amendment would lessen the intended effect of part of the requirements of Special Condition No. 2 of CDP No. 5-02-093 (i.e. that part which requires the parking lot), the Executive Director concluded that the applicant had submitted newly discovered material information that could not have been discovered and produced before the permit was granted. Therefore, the Executive Director accepted the amendment request.

STANDARD OF REVIEW:

Since the City of Newport Beach does not have a certified Local Coastal Program, the standard of review for this amendment is the Coastal Act. Since the City only has a Land Use Plan (LUP), the policies of the LUP are used only for guidance.

STAFF RECOMMENDATION:

Staff recommends that the Commission **APPROVE** the permit amendment application with special conditions.

MOTION:

I move that the Commission approve permit amendment CDP #5-02-093-A2 pursuant to the staff recommendation.

Staff recommends a **YES** vote. This will result in approval of the permit amendment as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION:

I. APPROVAL WITH CONDITIONS

The Commission hereby approves the coastal development permit amendment on the ground that the development as amended and subject to conditions, 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 amendment 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 amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended 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

Note: Except as modified herein, all special conditions (Conditions 1 through 6) from the underlying permit (5-02-093) shall remain in effect.

Special Conditions 8 through 12 below only apply to the current proposal (5-02-093-A2).

7. **Modify Special Condition No. 2, Parking Management Plan, in the following way. (changes indicated in ~~strike through~~ and underline)**

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval of the Executive Director, a revised plan for parking management and signage. The plan shall be prepared by a qualified professional and shall include the following:

- ~~1. The use of Lot 509 shall be limited to a parking only area to serve the patrons of the Cannery Lofts development and to mitigate the loss of on-street parking in the subject area. No development, other than parking and landscaping, shall be allowed. A minimum of six (6) parking spaces shall be provided in a non-tandem configuration. Signage shall be posted to inform motorists of the parking availability and applicable restrictions of that lot. The parking fee charged shall not be greater than that charged at nearby City public parking meters. Validation tokens may be used for the off-street lot parking spaces. Prior to any rate increase, the applicant shall notify the Executive Director of its proposal and a determination will be made if an amendment is required for the rate increase.~~

~~The applicant shall submit two (2) sets of revised project plans reflecting the deletion of the mixed-use structure at Lot 509 and the creation of the new off-street parking area.~~

- ~~21. Tandem parking areas at the remaining 21 lots— 500 through 508, inclusive, and 510 through 515, inclusive, 517, and 519 30th Street and 2906, 2908, 2910 and 2912 Lafayette Street shall be clearly marked (i.e. signed or stenciled) for identification of customer and employee parking. Employees shall park in the interior spaces. Garages shall be limited to the exclusive use of the residents of the upper units.~~

The revised project plans shall include, at a minimum, the following components: a sample of each sign and/or stencil and a site plan depicting the location of each sign and/or stencil. Signage shall be posted that specifies allowable use of each parking space (including day and time of availability) and applicable restrictions. The signs shall be clearly visible to motorists from the frontage street or alley.

~~B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of the first paragraph of subsection A (1) of this condition. The deed restriction shall include a legal description of the applicant's entire parcel that is the subject of this restriction. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens~~

~~that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.~~

- CB. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

8. Parking Management For 509 30th Street

- A. The parking at 509 30th Street shall comply with the project plans that were submitted on May 27, 2007 and shall be clearly marked (i.e. signed or stenciled) for identification of customer and employee parking. Employees shall park in the interior spaces. Garages shall be limited to the exclusive use of the residents of the upper units.
- B. Signage shall be posted that specifies allowable use of each parking space (including day and time of availability) and applicable restrictions. The signs shall be clearly visible to motorists from the frontage street or alley.

9. Construction Best Management Practices Plan for 509 30th Street

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicant shall submit for the review and approval of the Executive Director, a Construction Best Management Practices Plan for the construction project site, prepared by a licensed professional, and shall incorporate erosion, sediment, and chemical control Best Management Practices (BMPs) designed to minimize to the maximum extent practicable the adverse impacts associated with construction to receiving waters. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:
- a. No construction materials, debris, or waste shall be placed or stored where it may be subject to wave, wind, rain, or tidal erosion and dispersion.
- b. Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of construction.
- c. Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters.

- d. All mechanized machinery shall be removed from the beach at the end of the working day. No storage of mechanized equipment is allowed on the beach.
 - e. No disturbance or use of areas below the mean high tide line is permitted for the construction of the proposed development.
 - f. Erosion control/sedimentation Best Management Practices (BMPs) shall be used to control dust and sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into the storm drain system and Newport Harbor.
 - g. All construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.
 - h. If the debris disposal site is located within the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place.
- B. Best Management Practices (BMPs) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the on-set of such activity. Implemented BMPs shall be maintained in a functional condition throughout the duration of the project. Such measures shall be used during construction:
- a. The applicant shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. It shall be located as far away from the receiving waters and storm drain inlets as possible.
 - b. The applicant shall develop and implement spill prevention and control measures.
 - c. The applicant shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than 50 feet away from a storm drain, open ditch or surface water.
 - d. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.

- e. Temporary sediment basins (including debris basins, desilting basins or silt traps), temporary drains and swales, sand bag barriers, wind barriers such as solid board fence, snow fences, or hay bales, and silt fencing.
 - f. Stabilize any stockpiled fill with geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes, and close and stabilize open trenches as soon as possible.
 - g. Prior to final inspection of the proposed project the applicant shall ensure that no gasoline, lubricant, or other petroleum-based product was deposited on the sandy beach or any beach facility. If such residues are discovered in the beach area the residues and all contaminated sand shall be properly removed and disposed in an appropriate facility.
 - h. These erosion control measures shall be required on the project site prior to or concurrent with the initial construction operations and maintained throughout the development process to minimize erosion and sedimentation from the runoff waters during construction. The above requirements found in this Special Condition, as well as the requirements found in Special Condition #10, shall be attached to all final construction plans.
- C. The permittee shall undertake development in accordance with the plans and construction schedule approved by the Executive Director pursuant to this condition. Any proposed changes to the approved plans or construction schedule shall be reported to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.

10. Water Quality Management Plan for 509 30th Street

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicant shall submit for the review and approval of the Executive Director, a Water Quality Management Plan (WQMP), including supporting calculations, written descriptions, and appropriate plans for the post-construction project site. The plan shall include, but is not limited to, the following requirements:

1. Water Quality Goals

- a. The WQMP shall be prepared by a licensed water quality professional and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to minimize, to the maximum extent practicable, the pollutant load of storm water and nuisance flow leaving the developed site.

- b. The plan shall be in substantial conformance with the “Runoff and Water Quality Management Plan for Cannery Lofts,” which includes project proposals for “turfblock fields” on each lot, storm drain inserts, swale systems in the center of the roads, and oil, grit, and debris separator technology.
- c. The WQMP shall indicate how it shall minimize to the maximum extent practicable or eliminate the contribution of 303(d)-listed and TMDL-listed pollutants for Lower Newport Bay.
- d. As proposed, impervious surfaces shall be minimized to the maximum extent practicable.

2. Structural Treatment Best Management Practices (BMPs)

- a. Post-construction structural BMPs (or suites of BMPs) should be designed to treat, infiltrate or filter the amount of storm water runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs.
- b. Runoff from all parking areas, roads, and driveways shall be collected and directed through a system of appropriate structural and/or non-structural BMPs. The filter elements shall be designed to minimize to the maximum extent practicable vehicular contaminants (oil, grease, automotive fluids, heavy metals), sediments, and floatables and particulate debris.

3. Source Control BMPs

- a. The applicant shall regularly sweep all parking areas and walkways in order to prevent dispersal of pollutants that might collect on those surfaces.
- b. All rooftop drainage shall be directed to vegetated or other permeable areas.
- c. All detergents and cleaning components used on site, outdoors, or where it has the potential to be dispersed by water shall comply with the following criteria: detergents shall be phosphate-free, biodegradable, and non-toxic to marine wildlife; amounts used shall be minimized to the maximum extent practicable; no fluids containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates, or lye shall be used.

- d. Spraying down or washing down impervious surfaces, including but not limited to parking areas, sidewalks, rooftops, or driveways, is prohibited unless the water used is directed through the sanitary sewer system or an appropriate structural BMP designed to reduce pollutants to the maximum extent practicable.
- e. Educational materials including, but not limited to, such topics as 1) water quality impairments of Lower Newport Bay and the Rhine Channel, 2) good housekeeping practices for residential, commercial, and boating water quality issues, and 3) structural and non-structural BMPs used on-site shall be distributed to future owners and/or tenants.

4. Inspection and Maintenance of BMPs

- a. All structural BMPs shall be operated, monitored, and maintained for the life of the project and at a minimum, all structural BMPs shall be inspected, cleaned-out, and where necessary, repaired, at the following minimum frequencies: (1) prior to October 15th each year; (2) after every major storm, and (3) at least twice during the dry season (between April 15 and October 15).
- b. Debris and other pollutants removed from structural BMP(s) during clean-out shall be contained and disposed of in a proper manner.
- c. The applicant shall submit a signed agreement verifying the party or entity responsible for maintenance of structural and non-structural BMPs for the life of the project. If the property or responsibility is transferred, conditions in the sales or lease agreement or any other sufficient document shall require the recipient to assume responsibility for the maintenance procedures certified in this permit.

5. It is the applicant's responsibility to maintain the drainage system and the associated structures and BMPs according to manufacturer's specification.

- B. The permittee shall undertake development in accordance with the approved final plan and schedule and other requirements. Any proposed changes to these requirements shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

11. **Revised Landscaping Plan**

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicant shall submit, in a form and content acceptable to

the Executive Director, two (2) sets of a revised landscaping plan prepared by an appropriately licensed professional which demonstrates the following:

- (1) The plan shall demonstrate that:
 - a. 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 utilized on the property. 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. Any existing landscaping within the limits of the proposed project that doesn't meet the above requirements in this paragraph and those requirements listed in subsection b below shall be removed;
 - b. With the exception of plants used in drainage swales, all plants employed on the site shall be drought tolerant, (low water use) plants identified by U. C. Davis and the Water Resources Board;
 - c. All planting will be completed within 60 days after completion of construction;
 - d. All vegetation shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscaping plan.
 - (2) The plan shall include, at a minimum, the following components:
 - a. A map showing the type, size, and location of all plant materials that will be on the developed site, the temporary irrigation system, topography of the developed site, and all other landscape features;
 - b. A schedule for installation of plants.
- B. The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

12. Deed Restriction

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner(s) have executed and recorded against the parcel(s) governed by this permit amendment a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit amendment, 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 amended, 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 amendment. 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, as amended, or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property. This deed restriction shall supersede the deed restriction with the instrument number 20020859962 that was recorded on 10/4/02 and the deed restriction with the instrument number 20020905151 that was recorded on 10/18/02.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares as follows:

A. Project Location, Description and Background

The project site is located in the Cannery Village area of the City of Newport Beach, County of Orange (Exhibit #1) on the north side of 30th Street, between Villa Way on the west and Lafayette Avenue on the east. The Cannery Village area is located between 32nd Street and 26th Street on the Balboa Peninsula. It is a mixed-use area with commercial, industrial, and residential uses. The City of Newport Beach has designated the Cannery Village area for a mixture of retail and commercial uses. In this district, residential development is allowed on the upper floors in conjunction with ground floor commercial usage. The 2,760 square-foot lot is currently developed with an off-street overflow parking lot, which the Commission required as part of Coastal Development Permit 5-02-093.

The applicant is proposing to demolish an existing 6-space overflow parking lot and construct a 32-foot high, three-story mixed use building, which includes an approximately 745 square-foot lower level commercial space and approximately 1,626 square feet of residential living space above (Exhibit #3). The lot is designated General Commercial C (GC-C) in the certified Land Use Plan (LUP). As such, the owner of the new structure will be required to operate commercial activities consistent with the City's land use requirements and the certified LUP.

Parking for the structure will be provided on site. The residential unit will have a 460 square-foot two-car garage. Employee and visitor parking for the commercial development will be provided in a tandem configuration, totaling four additional parking spots. Vehicular access to the parking areas will be provided via the driveway at the front of the building and through driveway and garage access from the alley running along the rear of the structure.

The proposed structure will be three-stories with a total size of 2371 square feet (residential and commercial square footage combined, not including the attached two-car garage). The proposed structure will reach a maximum height of 32', which is lower than the maximum allowable 35 foot height limit identified in the certified LUP, but does exceed the City's 26' height limit identified in their zoning code (which is not certified by the Commission). The development will incorporate the "cannery theme" design recommendations provided in the City's Cannery Village Specific Plan. Although the Specific Plan is not a part of the certified LUP, the City applied the design recommendations in approving the project currently before the Commission. The architectural theme identified in the Specific Plan includes *"the use of nautical and marine elements, the use of corrugated metal building materials and the attractive expression of mechanical equipment."*

On July 8, 2002, the Commission approved Coastal Development Permit 5-02-093 for construction of twenty-one (21) mixed-used, 32' high, 3-story structures and one (1) six-space off-street parking lot and associated traffic and parking modifications, drainage/water quality improvements, hardscape and landscaping on four (4) waterfront lots along the Rhine Channel and eighteen (18) inland lots within a 1.44-acre area of Cannery Village. Approximately 1425 cubic yards of grading (1400 cy fill and 25 cy cut) was proposed for site preparation and drainage purposes. A 6' wide public walkway was proposed along the existing bulkhead of the waterfront lots. The project also involved a subdivision of one lot into seven lots, re-creating the previous subdivision pattern in the subject area. The approved development was constructed.

On May 7, 2002, the Commission approved Coastal Development Permit 5-02-096 for demolition of all existing buildings and associated parking lots within the subject area, including 1 office building, 2 residences, 1 former bar, 2 warehouses, 1 industrial building and 2 boat storage yards on 16 lots. Approximately 25,785 square feet of gross floor area and 62,696 square feet of paved areas were approved to be demolished. No grading or new construction was proposed. All construction debris was approved to be disposed of at a landfill outside the coastal zone.

In May 2000, the Commission approved Coastal Development Permit 5-00-056 for construction of a new 5107 square foot, 33' high, 3-story mixed-use structure with 10 parking spaces on a vacant lot at 427 and 429 30th Street and 3009 Villa Way, in the same project vicinity as the currently proposed project. CDP 5-00-056 was issued and the building constructed.

B. Land Use

Section 30222 of the Coastal Act states,

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

The City of Newport Beach Land Use Plan (LUP) was certified on May 19, 1982. At the October 2005 Coastal Commission Hearing, since approval of the underlying coastal permit, the certified LUP was updated. The LUP update changed the land use designation at the subject site from Retail and Service Commercial to General Commercial. Since the City has an LUP and not a fully certified LCP, the policies of the LUP are used only as guidance. The Newport Beach LUP includes policies that relate to development at the subject site. The "General Commercial" section beginning on page 2-2 describes allowable land uses within the "General Commercial C" areas as follows:

General Commercial (CG) *The CG designation is intended to provide for a wide range of commercial activities oriented primarily to serve citywide or regional needs.*

General Commercial C (CG-C) *Development intensity ranges from a floor area to land area ratio of 0.50 to 1.00.*

The "Planning Study Areas" section beginning on page 2-5 states, in pertinent part:

Planning Study Area 2 (Cannery Village)

Cannery Village is a mixed-use area on the bay side of Newport Boulevard between 32nd Street and 26th Street on the Balboa Peninsula. The area consists of commercial, industrial, and residential uses, including many of the marine industrial businesses serving the Newport Harbor area. The Cannery Village area is intended to serve as an active pedestrian oriented specialty retail area with a wide range of visitor serving, neighborhood commercial, and marine related uses permitted.

The General Commercial C area bounded by 32nd Street, 29th Street, Villa Way, and Newport Boulevard are intended to provide a specialty retail core by encouraging mutually supportive businesses, establishing a continuity of shopping and pedestrian orientation, and a high level of pedestrian interest, comfort and amenity. The General Commercial C area surrounding the specialty retail core is intended to provide a transition between the specialty retail core and the Recreational and Marine Commercial areas along the bayfront. This area is intended to provide a wide range of uses and services accommodating residents and visitors, and the boating industry. Retail sales, personal and professional uses that offer direct services to the public, and marine-related light industrial uses are permitted.

In all commercial areas, with the exception of the Neighborhood Commercial area, residential uses are permitted on the second floor or above where the

ground floor is occupied by commercial use. The maximum floor area to land area ratio for commercial-residential development is 1.25.

Both the Coastal Act and the City's certified LUP contain policies which encourage commercial development that will serve the general public and enhance public opportunities for coastal recreation. Section 30222 of the Coastal Act requires visitor-serving commercial recreational facilities to have priority over private residential, general industrial, or general commercial development on private land suitable for such development.

The applicant proposes to construct a new mixed-use structure on an inland lot, which is designated General Commercial C (GC-C). The City's LUP allows residential development to be sited above permitted uses on the ground floor in the General Commercial designated areas. Locating the commercial development on the first floor is consistent with the Coastal Act since it places higher priority use on the more easily accessible lower floor and the lower priority use on the upper floors.

The City's local approval of the currently proposed project specifies allowable uses on the ground floor of the structure and finds the project consistent with the requirements of the LUP, Specific Plan and zoning code. In addition, Special Condition No. 1 from the underlying permit (CDP No. 5-02-093) requires compliance with the land use restrictions imposed through the certified LUP. This project complies with that condition, which still applies to this site. Therefore, the Commission finds the proposed project complies with the land use requirements of the certified LUP and is consistent with Section 30222 of the Coastal Act.

C. Parking

Section 30252 of the Coastal Act states in pertinent part:

The location and amount of new development should maintain and enhance public access to the coast by...(4) providing adequate parking facilities or providing substitute means of serving the development with public transportation...

Policy 2.9.3-3 of the LUP states:

Require that all proposed development maintain and enhance public access to the coast by providing adequate parking pursuant to the off-street parking regulations of the Zoning Code in effect as of October 13, 2005.

One of the strongest legislative mandates of the Coastal Act is the preservation of coastal access. Section 30210 of the Coastal Act requires the provision of maximum public access. Section 30252 of the Coastal Act requires that new development maintain and enhance public access to the coast by providing adequate parking or alternative means of transportation. When new development does not provide adequate on-site parking and there are inadequate alternative means of reaching the area (such as public transportation), users of that development are forced to occupy public parking that could

be used by visitors to the coast. A lack of public parking and public transportation will discourage visitors from coming to the beach and other visitor-serving activities in the coastal zone. A parking deficiency will therefore have an adverse impact on public access. Until adequate public transportation is provided, all private development must, as a consequence, provide adequate on-site parking to minimize adverse impacts on public access.

The project site is on the Balboa Peninsula, which is a major tourist area in the City of Newport Beach. Furthermore, the project is located in the Cannery Village/McFadden Square Specific Plan area, which has been designated for a mixture of retail and commercial uses to promote marine and visitor serving commercial types of development. The project site lies east of Newport Boulevard, which is a major arterial route for public access to the coastal opportunities located on the Balboa Peninsula, and is approximately 2000 feet from the ocean and 500 feet from the West Lido Channel. The Cannery Village area is not typically used for parking by beach visitors due to its distance from the sandy beach. However, on peak summer days, the public parking lot and metered parking are used to accommodate overflow.

As mentioned previously, the applicant is proposing to demolish an existing 6-space overflow parking lot and construct a mixed use building with two types of land uses on-site, commercial and residential. The commercial component would consist of General Commercial C (GC-C) in the Cannery Village. As discussed previously, this area is intended to provide a specialty retail core by encouraging mutually supportive businesses, establishing a continuity of shopping and pedestrian orientation, and a high level of pedestrian interest, comfort and amenity. The General Commercial C area surrounding the specialty retail core is intended to provide a transition between the specialty retail core and the Recreational and Marine Commercial areas along the bayfront. This area is intended to provide a wide range of uses and services accommodating residents and visitors, and the boating industry. Retail sales, personal and professional uses that offer direct services to the public, and marine-related light industrial uses are permitted. As proposed, the second and third story residential development is permitted in conjunction with ground floor commercial uses. Based on the criteria the Commission generally applies, uses that provide direct service to the public, but which would not be permitted because they would establish a more intensive use of the site, therefore requiring additional parking, include restaurants and doctor's offices.

The existing parking lot was required by the Commission pursuant to Special Condition 2 of the underlying permit, 5-02-093. At the time of approval in 2002, the Commission required the subject site to be set aside as 'overflow' parking to support the proposed commercial uses. Such overflow parking was found to be necessary because the unusual on-site tandem parking configuration for the commercial uses was expected to be a deterrent and that patrons of the commercial uses would likely use public street parking instead of the on-site tandem parking, which would have adverse impacts on public access due to consumption of street parking that is used to support beach access. However, at the time, the Commission recognized the applicant's argument that appropriate management of the on-site spaces could address the deterrence issue, but only future study of actual conditions once the project was constructed and fully operational would reveal whether impacts were occurring.

Since 2002 the project has been constructed and is fully operational and the applicant has been monitoring on-site and on-street parking. A parking study prepared by IBI Group,

dated February 2007 was submitted. The report documents the results of a parking survey and demand analysis conducted for this project over a 101-day period between May 26, 2006 and September 4, 2006, to capture the peak summer season beginning the day before the Memorial Day Holiday weekend and ending the day after the Labor Day Holiday weekend as requested by Commission staff. The survey included all unenclosed off-street parking spaces in the Cannery Lofts development and on-street parking spaces adjacent to the project on Villa Way, 30th Street, and Lafayette Avenue.

There are 77 off-street parking spaces provided on the Cannery Lofts site for commercial use. 22 on-street parking spaces located directly adjacent to the Cannery Lofts development on 30th Street, Lafayette Avenue and Villa Way were also surveyed. The data collected show that sufficient off-street parking is provided to meet demand generated by the Cannery Lofts development without reliance on the 6-space parking lot required by Special Condition 2 of the underlying permit.

The parking study had the following conclusions:

- The Cannery Lofts development provides sufficient off-street parking to meet demand of employee and visitor parking during the peak summer season. The highest recorded utilization of off-street parking was 22%.
- Sufficient on-street parking supply is available to meet observed parking demand. On-street parking utilization was observed to be 50% or less during 97% of the survey time periods.
- The interior tandem off-street parking spaces are utilized by employees and visitors to Cannery Lofts. These parking spaces make a significant contribution to the overall supply of off-street parking.
- The off-street overflow parking lot required by the CCC experiences little or no utilization even during peak parking demand time periods.
- The observed utilization of off-street and on-street parking in the vicinity of the Cannery Lofts development illustrates that sufficient parking supply is provided, and that the six spaces in the overflow lot are not needed to meet demand.
- The proposed project (final live/work loft) will be constructed with 6 off-street parking spaces, resulting in no net loss of parking for the development.
- The data presented in this parking study show that public on-street parking is consistently available during the peak summer months on the streets surrounding the Cannery Lofts development, and that the project as designed has sufficiently mitigated the loss of on-street parking that occurred when the Cannery Lofts project was developed.
- This is the third parking demand survey completed for the Cannery Lofts development in the past two years. Each of the three surveys has shown that sufficient off-street and on-street parking capacity is available to meet summer peak season parking demand. The results of the studies also show that parking demand has been consistent on a year-over-year basis and that the development is now mature, with an established parking demand pattern.

Therefore, the applicant has presented newly discovered material information, which could not have been produced before the permit was granted. That information demonstrates that on-site parking, managed consistent with the parking management requirements of the underlying permit, is sufficient to meet the demands of the commercial development without significant impacts upon public use of on-street parking spaces which support beach access. Thus, the existing 6-space parking lot is not necessary to address public access impacts. Therefore, the Commission applies Special Condition 7, which modifies Special Condition 2 of the underlying permit to eliminate the requirement that the subject site be maintained for parking to support the commercial development. The parking management requirements of Special Condition 2 remain in effect.

The proposed project would demolish the existing 6-space parking lot that was intended as overflow parking to support commercial uses on the other 21 lots within the Cannery Lofts development, with a three-story mixed use building, which includes an approximately 745 square-foot lower level commercial space and approximately 1,626 square feet of residential living space above. Thus, the proposal is an intensification of use of the site which creates a new parking demand that was previously absent. Accordingly, the applicant is required to supply adequate parking on-site to support the proposed development.

A total of 6 off-street parking spaces are proposed to serve the mixed-use development (4 for commercial and 2 for residential). The applicant has applied the City's parking standards for the currently proposed project. The proposed parking is consistent with the parking standards/requirements of the certified LUP, which requires 1 parking space per 250 square feet of commercial space ($745/250 = 2.98$). The applicant is proposing to provide 4 parking spaces.

The Commission has routinely imposed the standard of two (2) parking spaces per residential unit. The project includes 2 spaces. The parking provided is consistent with the Commission's regularly used parking standard for residential development.

Though the parking proposed by the applicant is numerically adequate, there is a concern regarding the feasibility of the parking arrangement. The proposed parking management system relies on tandem parking spaces for the commercial uses, which makes ingress and egress more difficult than a standard non-tandem arrangement. (Residential parking is provided in a separate garage.) For example, the proposed visitor parking spaces provided on the alley and on 30th Street will block the ability of the vehicles to exit or enter the employee space and the visitor/employee space provided within the interior parking area. Consequently, employees and potential customers may be hesitant to pull forward to the more interior parking space for fear of getting "trapped." Additionally, the interior spaces do not accommodate disabled parking, as they are narrower than the outer spaces.

To guarantee that adequate and useable parking as proposed by the applicant is consistent with Section 30252 of the Coastal Act, the Commission finds it necessary to impose Special Condition No. 8. Special Condition No. 8 requires parking at the project site (509 30th Street) to comply with the project plans that were submitted on March 27, 2007. This Special Condition requires that tandem parking spaces are clearly marked for identification of customer and employee parking, with employees parking in the interior spaces and the garages being limited to the exclusive use of the residents of the upper units. Only as conditioned does the Commission find that the proposed development is consistent with Development and Public Access sections of the Coastal Act.

D. Scenic and Visual Resources

Section 30251 of the Coastal Act states, in relevant part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...

Policy 4.4.1-1 of the LUP states:

Protect and, where feasible, enhance the scenic and visual qualities of the coastal zone, including public views to and along the ocean, bay, and harbor and to coastal bluffs and other scenic coastal areas.

Policy 4.4.1-2 of the LUP states:

Design and site new development, including landscaping, so as to minimize impacts to public coastal views.

The project will result in the construction of a new three-story, mixed-use structure within the Cannery Village neighborhood. The height of the structure will exceed the City's 26-foot standard height limit by 7 feet. The structure will reach a height of approximately 33' with mechanical equipment. The City allows for a height increase up to 35 feet if certain criteria are met. The project was granted a use permit to allow the height exception because the design includes setbacks, open terraces, open balconies and parking breezeways. The City found that these features counterbalanced the height increase. Therefore, the project was found to meet the requirements for a height exception when approved at the local level. The LUP does contain a 35-foot height restrictions with which the project is consistent. However, the LUP is not yet the standard of review, but does provide guidance. As such, the Commission's review of the proposed building heights is based on consistency with Section 30251 of the Coastal Act.

The height of the new structure will be the same as the surrounding 21 structures that were approved by the Commission under CDP 5-02-093. The Cannery Restaurant, which is located approximately 200 feet east of the project is approximately 40' high. In addition, the Commission approved construction of a 33' high mixed-use structure at 427 and 429 30th Street and 3009 Villa Way pursuant to CDP 5-00-056.

The building mass of the proposed structure has been designed to offset the undesirable effects typically associated with taller structures. Variations in the articulations of the structure and incorporation of terraces will reduce the building mass. In addition, the roofline will be lower along 30th Street than along the rear alleys. The Commission finds the height of the proposed structures will not create an adverse impact on scenic

resources in the subject area. The proposed project will not obstruct views to the Rhine Channel.

The Cannery Village is a mixed-use area on the bay side of Newport Boulevard between 32nd Street and 26th Street on the Balboa Peninsula. The area consists of commercial, industrial and residential uses. The existing structures in this area range from one-story to three-story and the architectural styles vary from building to building. Consequently, the character of the area is eclectic and cannot be described as having a cohesive, uniform style. However, the proposed project will match the surrounding 21 structures that were approved by the Commission under CDP 5-02-093. As such, the proposed project is consistent with the diverse character of the surrounding area.

The Cannery Village/McFadden Square Specific Plan has a recommended architectural theme that is *“reminiscent of the previous use of the area, and can provide a continuity throughout the area while preserving the variety and individuality of uses that gives the area its charm.”* The cannery theme includes the use of nautical and marine elements, the use of corrugated metal building materials and the attractive expression of mechanical equipment. The City has found that the project conforms to the architectural theme of a cannery area with its design and use of encouraged materials.

The Commission recognizes that issues of design are largely subjective. The Commission does not generally question design decisions which are local in nature. In addition, regardless of any issues of conformity with advisory, non-binding guidelines contained in the Cannery Lofts Specific Plan, the project plans are consistent with the general community character, as well as with the development standards and policies of the certified LUP. The Commission therefore finds that the design is visually compatible with the character of surrounding areas, as required by Coastal Act Section 30251.

For the reasons discussed in this section, the Commission finds the proposed project to be consistent with Section 30251 of the Coastal Act because (1) there is no adverse impact on scenic resources, (2) coastal views are maintained, and (3) the development is compatible with community character.

E. Water Quality

Section 30230 of the Coastal Act states, in pertinent part:

Marine resources shall be maintained, enhanced, and where feasible, restored.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging

waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30232 of the Coastal Act states, in pertinent part:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials.

Newport Harbor (Lower Newport Bay) is included on the Federal Clean Water Act 303(d) list of "impaired" water bodies. The designation as "impaired" means the quality of the water body cannot support the beneficial uses for which the water body has been designated – in this case secondary contact recreation and aquatic uses. The listing is made by the California Regional Water Quality Control Board, Santa Ana Region (RWQCB), and the State Water Resources Control Board (SWRCB), and confirmed by the U.S. Environmental Protection Agency. Furthermore, the RWQCB has targeted the Newport Bay watershed, which would include the Upper Newport Bay, for increased scrutiny as a higher priority watershed under its Watershed Management Initiative. Consequently, projects which could have an adverse impact on water quality should be examined to assure that potential impacts are minimized.

As discussed previously, the applicant is proposing to carry out development activities approximately 300 feet west of the Rhine Channel, an arm of the Newport Harbor. As such, the proposed project has the potential to affect water quality both during construction and after construction.

Storage or placement of construction materials, debris, or waste in a location subject to wave erosion and dispersion or which may be discharged into coastal waters via runoff carried by the storm water system would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. In addition, the use of machinery in coastal waters not designed for such use may result in the release of lubricants or oils that are toxic to marine life. Sediment discharged to coastal waters may cause turbidity which can shade and reduce the productivity of eelgrass beds and foraging avian and marine species' ability to see food in the water column. In order to avoid adverse construction-related impacts upon marine resources, Special Condition No. 9 outlines construction-related requirements to provide for the safe storage of demolition materials and the safe disposal of construction debris. The condition ensures that debris will not be allowed to enter the Rhine Channel or Newport Harbor.

After construction of the proposed development, water from the project site lot will flow into the City of Newport Beach's storm drain system and will ultimately drain to the Pacific Ocean. Recent beach closures occurring throughout Orange County, including those in Huntington Beach and Laguna Beach, have been attributed to polluted urban runoff discharging into the ocean through outfalls. As illustrated by these beach closures, polluted runoff negatively affects both marine resources and the public's ability to access coastal resources.

In order to minimize adverse impacts to water quality, the applicant has incorporated protective measures into the project design through a "Runoff and Water Quality Management Plan for Cannery Lofts." These measures include street sweeping, catch basin inspection and cleaning, runoff minimizing landscape design and onsite runoff collection and filtration systems.

Although the Runoff and Water Quality Management Plan submitted by the applicant contains measures to minimize adverse impacts to water quality, specific detail and sizing information has not been provided. Additional post-construction information is required. As such, the Commission imposes Special Condition 10, which requires submittal of a Water Quality Management Plan (WQMP) that includes supporting calculations, written descriptions, and appropriate plans for the post-construction project site.

Other sources of polluted runoff can include dry weather runoff resulting from excessive irrigation, which sometimes occurs from installation of landscaping with a high-water demand. Plants with a high-water demand are typically not well-suited to the Mediterranean climate of southern California, and therefore often require intense fertilization and application of pesticides/herbicides as a maintenance regime, in addition to regular irrigation. Thus, this type of landscaping can add pollutants to both dry weather and stormwater runoff. Therefore, the use of drought tolerant plants or low-maintenance landscaping is a preferred alternative.

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>. The applicant has submitted a landscaping plan. Commission staff reviewed the submitted landscaping plan for drought tolerant vegetation and determined that *Pittosporum eugenioides*, *Pittosporum crassifolium*, *Platanus acerifolia*, *Bambusa oldhamii*, *Dietes bicolor*, *Rhaphiolepis indica*, *Trachelospermum jasminoides*, *Ophiopogon japonicus*, *Pachysandra terminalis*, and *Festuca ovina glauca* are not drought tolerant.

Invasive plants can invade a riparian area and displace native plants, impeding restoration and preservation efforts. 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) in their publications. Commission staff reviewed the submitted landscaping plan and determined that the plan does not contain invasive species.

Therefore the Commission has imposed Special Condition No. 11, requiring the applicant to submit a revised landscaping plan for the review and approval of the Executive Director. The plan requires the applicant to plant non-invasive, drought tolerant vegetation on the site. Non-invasive, drought tolerant plants are used because they require little to no watering once they are established (1-3 years), they have deep root systems that tend to stabilize the soil, and are spreading plants that tend to minimize erosion impacts of rain and water run-off.

As conditioned, the Commission finds that the proposed development conforms with Sections 30230, 30231 and 30232 of the Coastal Act.

F. Public Access and Recreation

Section 30210 states, in pertinent part:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Parking to serve the subject site is available at the ground floor with four tandem spaces and an attached two-car garage. As such, the project provides adequate parking to serve the new mixed-use development. 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 Commission finds that the proposed development, as conditioned, is consistent with Section 30210 of the Coastal Act.

G. Deed Restriction

To comply with a Special Condition No. 2 from the underlying permit (CDP No. 5-02-093), the applicant was required to record a deed restriction against the property at 509 30th Street. This deed restriction was required to ensure that adequate parking to serve the development was provided in perpetuity and also required the applicant to submit new project plans reflecting the deletion of a proposed mixed-use structure at 509 30th Street and the creation of the overflow parking lot. Through this amendment, the applicant is proposing removal of this deed restriction to allow for the demolition of the overflow parking lot and construction of a mixed-use building. Therefore, the Commission is recommending Special Condition 12, which requires a new deed restriction to replace the deed restriction that the Commission required with the underlying permit.

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, as amended, the Commission imposes Special Condition No. 12, requiring that the property owner to record a deed restriction against the property, referencing all of the Special Conditions of this permit, as amended, and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land.

H. Local Coastal Program

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government

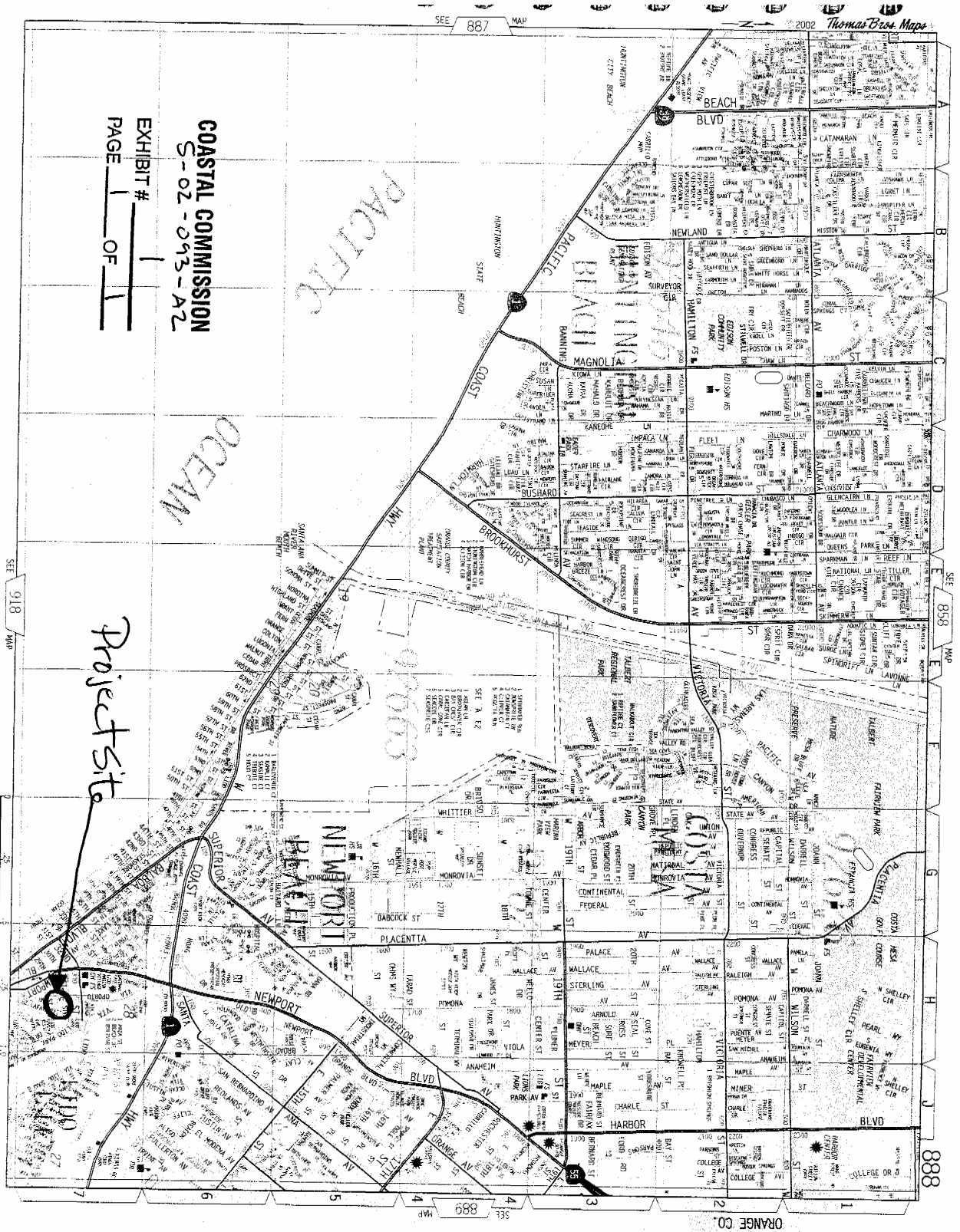
having jurisdiction to prepare a Local Coastal Program that conforms with the Chapter 3 policies of the Coastal Act.

The City of Newport Beach Land Use Plan (LUP) was certified on May 19, 1982. At the October 2005 Coastal Commission Hearing, the certified LUP was updated. Since the City only has a LUP, the policies of the LUP are used only as guidance.

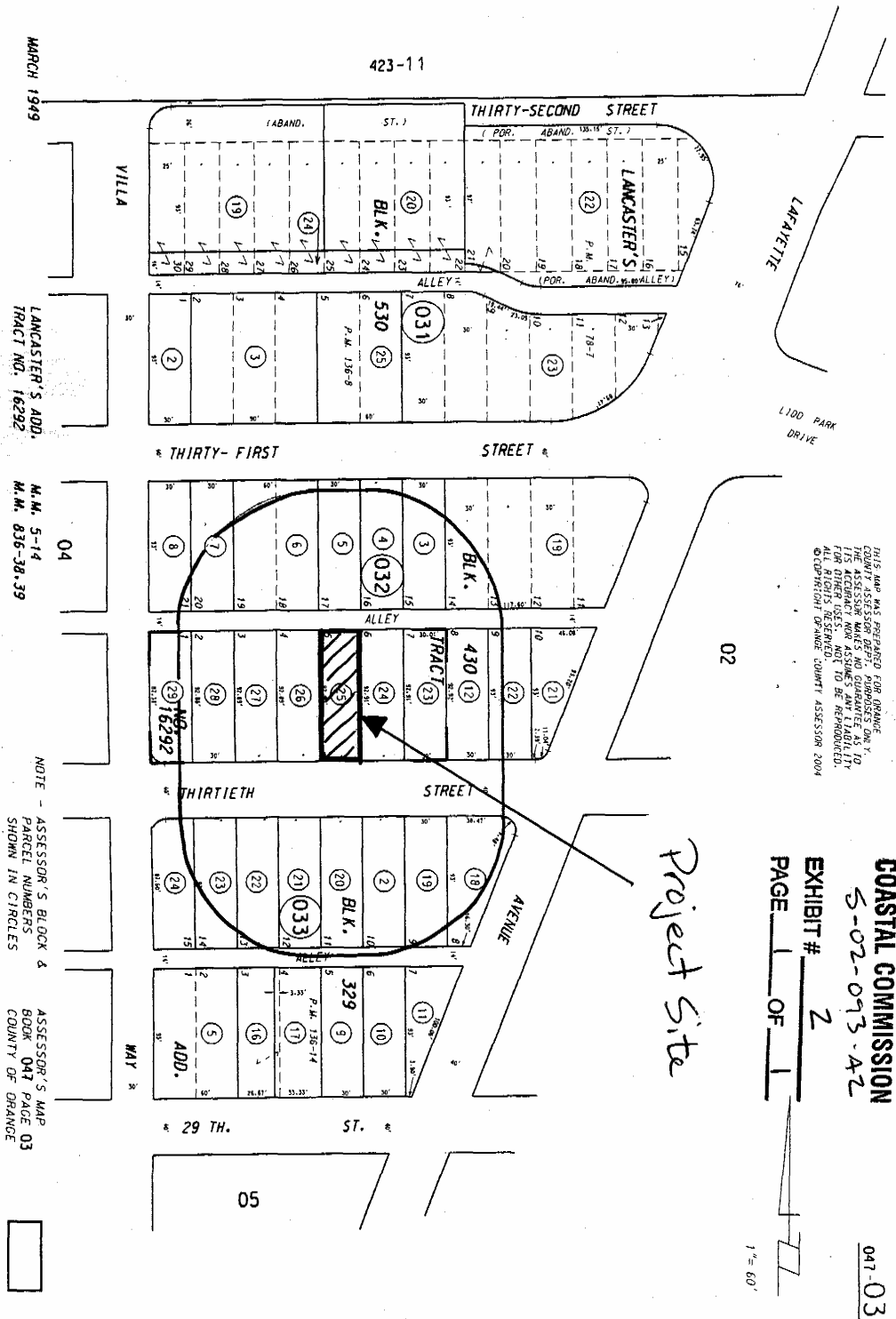
The project as conditioned is consistent with the Chapter 3 policies of the Coastal Act and with the certified Land Use Plan for the area. The proposed development will not prejudice the City's ability to prepare a Local Coastal Program for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

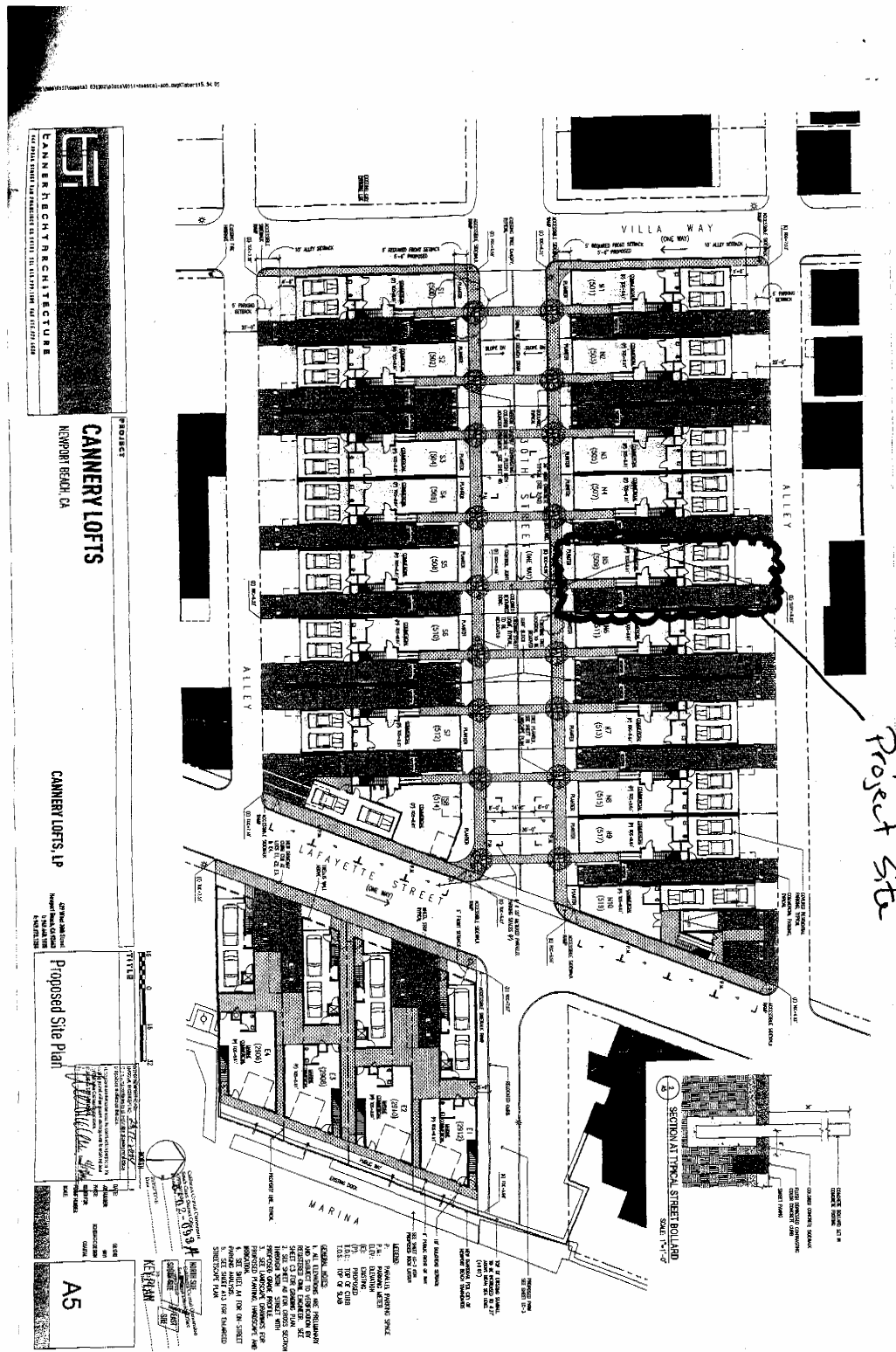
I. California Environmental Quality Act (CEQA)

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.

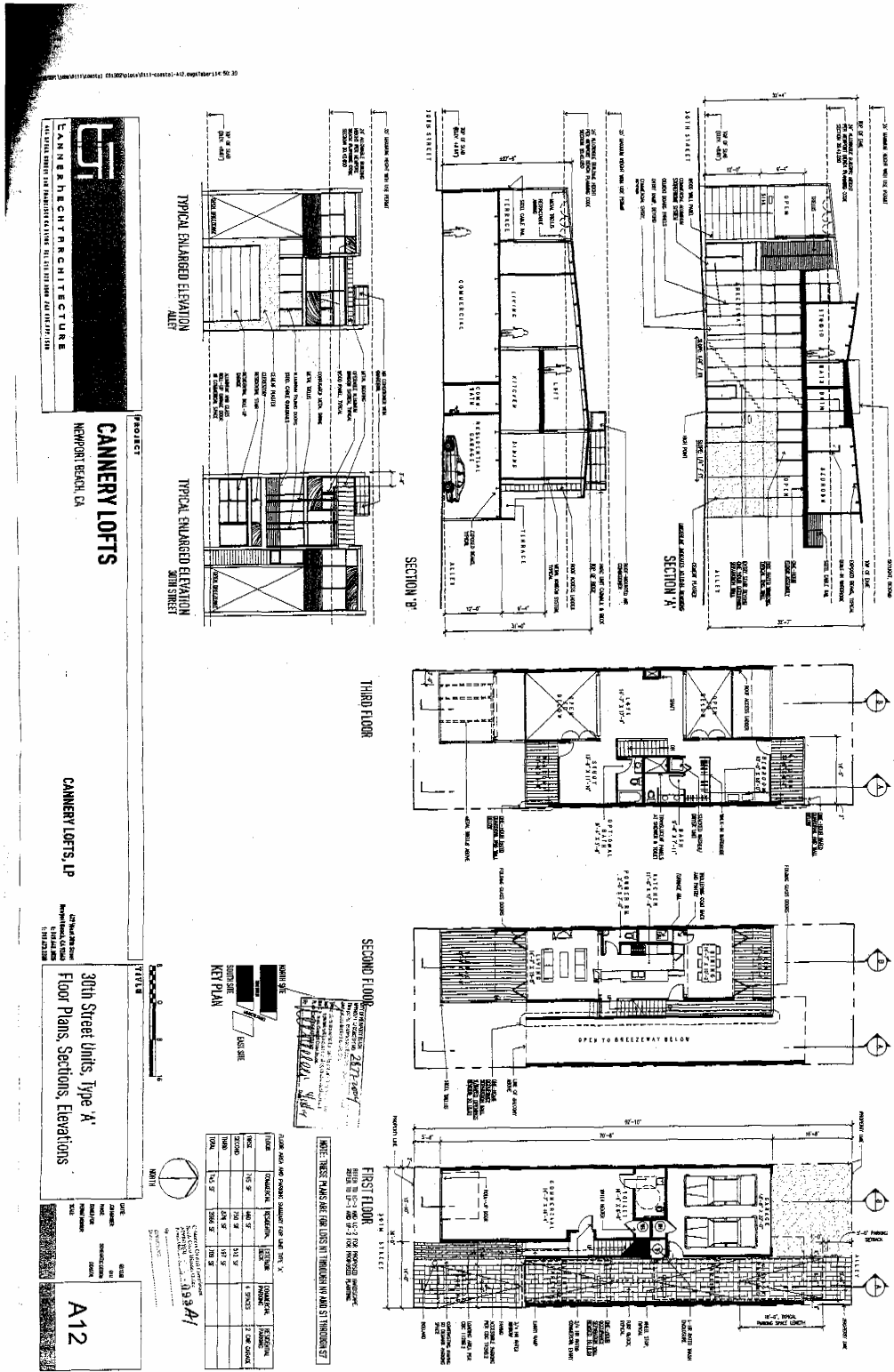


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COASTAL COMMISSION
S-02-093-A2
EXHIBIT # 3
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CANNERY LOFTS
NEWPORT BEACH, CA

CANNERY LOFTS, LP

30th Street Units, Type 'A'
Floor Plans, Sections, Elevations

A12

STATE OF CALIFORNIA - THE RESOURCES AGENCY

GRAY DAVIS, Governor

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



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Date: October 24, 2002
Permit No: 5-02-093

COASTAL COMMISSION
5-02-093-A2

COASTAL DEVELOPMENT PERMIT

EXHIBIT # 4
PAGE 1 OF 10

On July 8, 2002, the California Coastal Commission granted to **Cannery Lofts, L.P.**, Attn: Kevin Weeda Coastal Development Permit **5-02-093**, subject to the attached Standard and Special Conditions, for development consisting of: **construction of 22 mixed used structures (4 bayfront lots and 18 inland lots) and associated improvements within 1.44 acre area of Cannery Village.** More specifically described in the application file in the Commission offices.

The development is within the coastal zone in Orange County at **500-519 30th Street, 2192, 2910, 2908, & 2906 Lafayette Ave, Newport Beach.**

Issued on behalf of the California Coastal Commission on October 24, 2002.

PETER DOUGLAS
Executive Director

By: 
Title: Coastal Program Analyst

ACKNOWLEDGMENT

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part, that: "A public entity is not liable for injury caused by the issuance . . . of any permit . . ." applies to the issuance of this permit.

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 CAL. ADMIN. CODE SECTION 13158(a).

Date

Signature of Permittee

Please sign and return one copy of this form to the Commission office at the above address.

COASTAL DEVELOPMENT PERMIT **COASTAL COMMISSION**

No. 5-02-093

5-02-093-A2

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EXHIBIT # 41

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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 on which the Commission voted on the application. 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.

SPECIAL CONDITIONS:

1. **Future Development**
 - A. This permit is only for the development described in Coastal Development Permit No. 5-02-093. Land uses for the lots subject to this permit must conform to those set forth in the Newport Beach certified LUP and any future amendments, the currently applicable provisions of which are listed below:
 1. **Recreational and Marine Commercial**

Uses permitted are as follows:

 - I. Permitted uses: highest priority uses, not requiring a use permit.
 - A. Incentive uses: uses that, when they occupy at least 40% of the site, may be combined with uses under II.C.
 1. Boat haul-out facilities
 2. Commercial fishing facilities
 3. Sport fishing establishments and fishing docks
 4. Marinas
 5. Marine construction
 6. Boat rentals and charters

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7. Retail marine sales
8. Marine service businesses
9. Dry boat storage

EXHIBIT # 4

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B. Other permitted uses:

1. Marine-related offices where services are offered to the general public
2. Visitor-serving retail

II. Uses which require a Use Permit:

A. Incentive uses: uses that, when they occupy at least 40% of the site, may be combined with uses under II.C.

1. Manufacturing of marine uses
2. New boat construction
3. Marine service stations and gas docks
4. Yacht clubs

B. Other uses:

1. Social clubs
2. Commercial recreation
3. Drive-in facilities
4. Hotels and Motels
5. Restaurants

C. Uses which must be in conjunction with an incentive use occupying at least 40% of the site

1. General retail and service commercial uses
2. Professional and business offices
3. Light manufacturing

2. Retail and Service Commercial

Uses allowed include retail sales, offices which provide goods or services to the general public, hotels and motels, restaurants, commercial recreation, and senior citizen housing facilities. Office uses which do not provide services directly to the public shall be prohibited on the ground floor, but may be permitted on the second level or above where the ground level is occupied by a primary use.

- B. Except as provided in Public Resources Code Section 30610 and applicable regulations, any future development as defined in PRC section 30106, including but not limited to, a change in the density or intensity of land use shall require an amendment to Permit No. 5-02-093 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the applicable certified local government.**

COASTAL DEVELOPMENT PERMIT

No. 5-02-093
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EXHIBIT # 4
PAGE 4 OF 10

2. Parking Management Plan

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval of the Executive Director, a revised plan for parking management and signage. The plan shall be prepared by a qualified professional and shall include the following:

1. The use of Lot 509 shall be limited to a parking only area to serve the patrons of the Cannery Lofts development and to mitigate the loss of on-street parking in the subject area. No development, other than parking and landscaping, shall be allowed. A minimum of six (6) parking spaces shall be provided in a non-tandem configuration. Signage shall be posted to inform motorists of the parking availability and applicable restrictions of that lot. The parking fee charged shall not be greater than that charged at nearby City public parking meters. Validation tokens may be used for the off-street lot parking spaces. Prior to any rate increase, the applicant shall notify the Executive Director of its proposal and a determination will be made if an amendment is required for the rate increase.

The applicant shall submit two (2) sets of revised project plans reflecting the deletion of the mixed-use structure at Lot 509 and the creation of the new off-street parking area.

2. Tandem parking areas at the remaining 21 lots shall be clearly marked (i.e. signed or stenciled) for identification of customer and employee parking. Employees shall park in the interior spaces. Garages shall be limited to the exclusive use of the residents of the upper units.

The revised project plans shall include, at a minimum, the following components: a sample of each sign and/or stencil and a site plan depicting the location of each sign and/or stencil. Signage shall be posted that specifies allowable use of each parking space (including day and time of availability) and applicable restrictions. The signs shall be clearly visible to motorists from the frontage street or alley.

- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of the first paragraph of subsection A (1) of this condition. The deed restriction shall include a legal description of the applicant's entire parcel that is the subject of this restriction. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed

COASTAL DEVELOPMENT PERMIT

No. 5-02-093
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5-02-093-A2

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PAGE 5 OF 10

or changed without a Commission amendment to this coastal development permit.

- C. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Construction Best Management Practices Plan

- A **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and approval of the Executive Director, a Construction Best Management Practices Plan for the construction project site, prepared by a licensed professional, and shall incorporate erosion, sediment, and chemical control Best Management Practices (BMPs) designed to minimize to the maximum extent practicable the adverse impacts associated with construction to receiving waters. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:
- a. No construction materials, debris, or waste shall be placed or stored where it may be subject to wave, wind, rain, or tidal erosion and dispersion.
 - b. Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of construction.
 - c. Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters.
 - d. All mechanized machinery shall be removed from the beach at the end of the working day. No storage of mechanized equipment is allowed on the beach.
 - d. No disturbance or use of areas below the mean high tide line is permitted for the construction of the proposed development.
 - f. Erosion control/sedimentation Best Management Practices (BMPs) shall be used to control dust and sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into the storm drain system and Newport Harbor.

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- g. All construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.
 - h. If the debris disposal site is located within the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place.
- B. Best Management Practices (BMPs) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the on-set of such activity. Implemented BMPs shall be maintained in a functional condition throughout the duration of the project. Such measures shall be used during construction:
- a. The applicant shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. It shall be located as far away from the receiving waters and storm drain inlets as possible.
 - b. The applicant shall develop and implement spill prevention and control measures.
 - c. The applicant shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than 50 feet away from a storm drain, open ditch or surface water.
 - d. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.
 - e. Temporary sediment basins (including debris basins, desilting basins or silt traps), temporary drains and swales, sand bag barriers, wind barriers such as solid board fence, snow fences, or hay bales, and silt fencing.
 - f. Stabilize any stockpiled fill with geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes, and close and stabilize open trenches as soon as possible.
 - g. Prior to final inspection of the proposed project the applicant shall ensure that no gasoline, lubricant, or other petroleum-based product was deposited on the sandy beach or any beach facility. If such residues are

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discovered in the beach area the residues and all contaminated sand shall be properly removed and disposed in an appropriate facility.

- h. These erosion control measures shall be required on the project site prior to or concurrent with the initial construction operations and maintained throughout the development process to minimize erosion and sedimentation from the runoff waters during construction. The above requirements (Special Condition #3), as well as the below requirements found in Special Condition #4, shall be attached to all final construction plans.
 - C. The permittee shall undertake development in accordance with the plans and construction schedule approved by the Executive Director pursuant to this condition. Any proposed changes to the approved plans or construction schedule shall be reported to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.
- 4. Water Quality Management Plan
 - A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and approval of the Executive Director, a Water Quality Management Plan (WQMP), including supporting calculations, written descriptions, and appropriate plans for the post-construction project site. The plan shall include, but is not limited to, the following requirements:
 - 1. Water Quality Goals
 - a. The WQMP shall be prepared by a licensed water quality professional and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to minimize, to the maximum extent practicable, the pollutant load of storm water and nuisance flow leaving the developed site.
 - b. The plan shall be in substantial conformance with the "Runoff and Water Quality Management Plan for Cannery Lofts," which includes project proposals for "turfblock fields" on each lot, storm drain inserts, swale systems in the center of the roads, and oil, grit, and debris separator technology.
 - c. The WQMP shall indicate how it shall minimize to the maximum extent practicable or eliminate the contribution of 303(d)-listed and TMDL-listed pollutants for Lower Newport Bay.
 - d. As proposed, impervious surfaces shall be minimized to the maximum extent practicable.

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2. Structural Treatment Best Management Practices (BMPs)

- a. Post-construction structural BMPs (or suites of BMPs) should be designed to treat, infiltrate or filter the amount of storm water runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs.
- b. Runoff from all parking areas, roads, and driveways shall be collected and directed through a system of appropriate structural and/or non-structural BMPs. The filter elements shall be designed to minimize to the maximum extent practicable vehicular contaminants (oil, grease, automotive fluids, heavy metals), sediments, and floatables and particulate debris.

3. Source Control BMPs

- a. The applicant shall regularly sweep all parking areas and walkways in order to prevent dispersal of pollutants that might collect on those surfaces.
- b. All rooftop drainage shall be directed to vegetated or other permeable areas.
- c. All detergents and cleaning components used on site, outdoors, or where it has the potential to be dispersed by water shall comply with the following criteria: detergents shall be phosphate-free, biodegradable, and non-toxic to marine wildlife; amounts used shall be minimized to the maximum extent practicable; no fluids containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates, or lye shall be used.
- d. Spraying down or washing down impervious surfaces, including but not limited to parking areas, sidewalks, rooftops, or driveways, is prohibited unless the water used is directed through the sanitary sewer system or an appropriate structural BMP designed to reduce pollutants to the maximum extent practicable.
- e. Educational materials including, but not limited to, such topics as 1) water quality impairments of Lower Newport Bay and the Rhine Channel, 2) good housekeeping practices for residential, commercial, and boating water quality issues, and 3) structural and non-structural BMPs used on-site shall be distributed to future owners and/or tenants.

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4. Inspection and Maintenance of BMPs

- a. All structural BMPs shall be operated, monitored, and maintained for the life of the project and at a minimum, all structural BMPs shall be inspected, cleaned-out, and where necessary, repaired, at the following minimum frequencies: (1) prior to October 15th each year; (2) after every major storm, and (3) at least twice during the dry season (between April 15 and October 15).
- b. Debris and other pollutants removed from structural BMP(s) during clean-out shall be contained and disposed of in a proper manner.
- c. The applicant shall submit a signed agreement verifying the party or entity responsible for maintenance of structural and non-structural BMPs for the life of the project. If the property or responsibility is transferred, conditions in the sales or lease agreement or any other sufficient document shall require the recipient to assume responsibility for the maintenance procedures certified in this permit.

5. It is the applicant's responsibility to maintain the drainage system and the associated structures and BMPs according to manufacturer's specification.

- B. The permittee shall undertake development in accordance with the approved final plan and schedule and other requirements. Any proposed changes to these requirements shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

5. Preservation of View Corridors

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and approval of the Executive Director, revised elevation drawings for the Lafayette Street Units. Views of the Rhine Channel from Lafayette Avenue through view corridors shall be maximized. The drawings shall incorporate the following requirements:
 1. The trellis feature depicted on Sheet A8 of the project plans shall either be removed or, if maintained, shall not be less than 95 percent transparent,
 2. The courtyard security gate shall be constructed of a transparent material, and
 3. The garage doors for the non-residential parking area shall remain open during daytime business hours.

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- B. The permittee shall undertake development in accordance with the approved final plan and schedule and other requirements. Any proposed changes to these requirements shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

6. Public Improvements Signage Plan

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval of the Executive Director, a signage plan for the public improvements located at the 30th Street "mini-park" and the 6' wide public walkway along the Rhine Channel bulkhead, which welcomes the public to utilize the public improvements. The plan shall include, at a minimum, the following components: a sample of each sign and a site plan depicting the location of each sign. The signs shall be clearly visible to motorists from the frontage street (Lafayette).
- B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

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