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DATE: February 2, 2011

TO: Honorable Mayor and Members of the City Council

FROM: Development Services Department/Planning Division

SUBJECT: **ADOPTION OF A RESOLUTION AFFIRMING PLANNING COMMISSION RESOLUTION NO. 2010-P32 THAT REVOKED DEVELOPMENT PLAN (D-19-03) AND CONDITIONAL USE PERMIT (C-29-03) AS PREVIOUSLY APPROVED BY RESOLUTIONS (NO. 2004-P22 AND NO. 2007-P46) ON PROPERTY LOCATED AT 1660 OCEANSIDE BOULEVARD DUE TO NON-COMPLIANCE WITH CONDITIONS OF APPROVAL – THE OCEANSIDER – APPELLANT: EDWIN D. HAUSMANN, ATTORNEY FOR FIRST CREDIT BANK**

**SYNOPSIS**

The item under consideration is an appeal filed by Mr. Edwin D. Hausmann, Attorney (“Appellant”) on behalf of the Lender/Owner First Credit Bank, of Planning Commission Resolution No. 2010-P32 which revoked Development Plan (D-19-03) and Conditional Use Permit (C-29-03), as previously approved by Resolutions (No. 2004-P22 and No. 2007-P46) for failure to perform as required by the subject permits and resolutions of approval. Pursuant to OZO 4605(c), the City Council shall only consider the issues that were raised in the appeal. Appellant did not challenge the underlying grounds for the Planning Commissions’ revocation set forth in Resolution No. 2010-P32. Appellant’s stated grounds for appeal are: *As lender/owner if this property, we respectfully request reinstatement of Development plan (D-19-3) and Conditional Use Permit (C-29-03) and allow us to work city staff to come up with a temporary solution to address the safety concerns, while we are working with city and Caltrans to obtain the necessary permits to construct the proposed median, and come into compliance with conditions 28 and 29 of planning commission’s resolution 2004-P22 and 2007-P46.*

More precisely, neither the original applicant on the project nor the Appellant have satisfied Condition 28 of Planning Commission Resolution No. 2004-P22, which required the installation of a raised median on Oceanside Boulevard along the project frontage to prohibit left turns from the project site, and Condition 29 that required the installation of a left-turn pocket, 180 feet in length with a 120-foot transition, for eastbound Oceanside Boulevard beginning at the Interstate 5 on/off ramp, as more fully set forth therein.

Staff has reviewed the issues raised by the Appellant and believes that the concerns have not been thoroughly addressed and a good faith effort to install temporary candlestick delineators while Caltrans permits are in process has not been done since filing of the appeal. The continued lack of response by all parties involved shows lack of concern for public safety. It is staff's recommendation that the City Council adopt the attached resolution denying the appeal and affirming the Planning Commission's action to revoke Development Plan (D-19-03) and Conditional Use Permit (C-29-03).

## **BACKGROUND**

The public hearing and deliberations by the Planning Commission on the proposed revocation were held on November 8, 2010. The Commission revoked Development Plan (D-19-03) and Conditional Use Permit (C-29-03), as previously approved by Planning Commission Resolutions (No. 2004-P22 and No. 2007-P46) by a 5-to-1 vote, 1 absent. A copy of the November 8, 2010 Staff Report is included with this Report.

The original applicants on the project were Joe and Barbara Warsoff. The property was subsequently transferred to Ocean Tex, Inc. First Credit Bank, the lender, has initiated foreclosure proceedings against the property in Superior Court Case No. 37-2010-59234-CU-OR-NC.

**History:** On May 24, 2004, pursuant to a duly noticed public hearing, the Oceanside Planning Commission adopted Resolution No. 2004-P22, which approved Development Plan D-19-03 and Conditional Use Permit C-29-03. Resolution No. 2004-P22 approved plans for the changes to an existing fueling station, including but not limited to the addition of a 3,456-square-foot mini-mart, subject to certain fees, dedications, reservations, exactions and conditions of approval. Condition 28 of Resolution No. 2004-P22 required the installation of a raised median on Oceanside Boulevard along the project frontage to prohibit left turns from the project site, and Condition 29 required the installation of a left-turn pocket, 180 feet in length with a 120-foot transition, for eastbound Oceanside Boulevard beginning at the Interstate 5 on/off ramp, as more fully set forth therein. Condition 20 requires the Applicant (Joseph and Barbara Warsoff) to obtain all necessary permits from any agency having jurisdiction over the project. Condition 47 limited the approval to a two-year term unless a time extension is approved by the Planning Commission.

The Applicant did not protest any fees, dedications, reservations, exactions or conditions of approval of Resolution No. 2004-P22, including Conditions 28 and 29, within the time and manner allowed to do so under the Government Code.

On March 16, 2005, there was duly recorded with the County Recorder's Office a Declaration of "Covenants, Conditions, & Restrictions on Real Property Known as "The Oceansider" declaring that the conditions of Resolution No. 2004-P22 are binding on all subsequent owners of the property.

On April 24, 2006, the Applicant applied for a time extension of the original Planning Commission action which adopted Resolution 2004-P22.

On September 24, 2007, pursuant to a duly noticed public hearing, the Oceanside Planning Commission adopted Resolution No. 2007-P46, which approved a time extension for Development Plan D-19-03 and Conditional Use Permit C-29-03. Resolution No. 2007-P46 continued the conditions of approval set forth in Resolution No. 2004-P22, except where expressly superseded, and provided that median improvements shall be constructed prior to the issuance of certificates of occupancy, unless otherwise approved by the City Engineer. Conditions 28 and 29 remained in full force and effect.

The Applicant did not protest any fees, dedications, reservations, exactions or conditions of approval of Resolution No. 2007-P46, including Conditions 28 and 29, within the time and manner allowed to do so under the Government Code.

On October 10, 2007, the Applicant submitted to the City plans for the median construction in accordance with Conditions 28 and 29. The City approved these plans on March 12, 2008.

Shortly thereafter, Applicant's Engineer submitted these approved plans to Caltrans, since a Caltrans Encroachment Permit was required.

In March 2008, Mr. Warsoff met with City Engineering staff and requested that installation of median improvements be postponed until trenching work associated with a CIP project (Emergency Outfall Repair) was completed, and that Applicant be issued certificates of occupancy prior to the completion of the median improvements.

On December 11, 2008, Engineering Division staff initialed a Utility Release, prior to the installation of the raised median, based on Applicant's representation that Applicant would begin construction of the median within six months of occupancy. Applicant thereafter began operating the service station and mini-market at the property.

On September 29, 2009, the CIP project was filed with the county.

On January 4, 2010, Mr. Warsoff informed Caltrans that he would not perform the median improvements.

In February 2010, Mr. Warsoff informed City staff members that he would not construct the median improvements. From February to June, staff had a series of meetings and telephone conversations with Mr. Warsoff to discuss the median improvement requirements and other issues regarding the project. Mr. Warsoff continued to refuse to install the median improvements pursuant to the Resolutions.

On June 9, 2010, City staff sent Applicant a formal notice of the need to meet or resolve all the conditions of approval of the Conditional Use Permit and Development Plan, and requested a formal response from Applicant within thirty (30) days. Mr. Warsoff has failed to respond to the letter, and was further informed that he is bound to comply with the recorded Declaration of Covenants, Conditions and Restrictions, and that his lack of response would require City staff to initiate revocation of his Development Plan and Conditional Use Permit.

On June 17, 2010, Applicant communicated to City staff via e-mail that Applicant intended to seek Planning Commission approval to remove Conditions 28 and 29.

On June 24, 2010, City staff notified Applicant that Applicant had until July 8, 2010, to submit the necessary application and fees to request Planning Commission approval to remove Conditions 28 and 29, or the City would institute revocation proceedings of the Development Plan D-19-03 and Conditional Use Permit C-29-03.

Mr. Warsoff did not respond to the timeline identified by staff to prevent revocation proceedings and has not satisfied the terms and conditions of approval of Development Plan D-19-03 and Conditional Use Permit C-29-03; therefore, resulting in the terms and conditions being violated due to a failure to implement Conditions of Approval Nos. 28 and 29 of Resolution No. 2004-P22.

On October 25, 2010, The Planning Commission at the request of staff and Mr. Warsoff moved to continue the subject item to the meeting of November 8, 2010. The continuance was requested in order for staff to work on crafting and finalizing a written agreement that would essentially allow the business to continue operating while permits for all off-site improvements were being processed by Caltrans. On October 25, 2010, Mr. Warsoff submitted a letter agreeing to the continuance and attesting that he would work diligently toward finalizing an abatement agreement.

On October 28, 2010, Mr. Warsoff contacted the City via phone and stated that after consulting with his attorney, he would not be moving forward with an abatement agreement as previously agreed upon and attested to in the letter dated October 25, 2010.

The public hearing and deliberations by the Planning Commission on the proposed revocation were held on November 8, 2010. The Commission took action to revoke Development Plan (D-19-03), Conditional Use Permit (C-29-03), as previously approved by Resolutions (No. 2004-P22 and No. 2007-P46) by a 5-to-1 vote, 1 absent.

On November 15, 2010, Appellant filed the instant appeal.

On November 17, 2010, City Staff held a meeting with the Appellant and a representative from First Credit Bank regarding the revocation issue associated with the failure to implement Condition 28 of Resolution No. 2004-P22 requiring the installation of a raised median on Oceanside Boulevard along the project frontage to prohibit left turns from the project site, and Condition 29 requiring the installation of a left-turn pocket, 180 feet in length with a 120-foot transition, for eastbound Oceanside Boulevard beginning at the Interstate 5 on/off ramp. Appellant represented to staff that First Credit Bank had instituted foreclosure proceedings against the property in Superior Court Case No. 37-2010-59234-CU-OR-NC, and that a receiver had been appointed by the court. The Appellant verbally agreed to process and implement a temporary solution referred to as a candlestick median, and to work diligently to install the permanent raised median and left turn pocket.

On January 4, 2001, the City Attorney's Office sent a letter to the Applicant regarding Applicant's failure to move forward in implementing the temporary candlestick median or the permanent median. No response was received from the Applicant. However, immediate submittals of the temporary candlestick cones improvement plans, and final raised median improvement plans have yet to be received by staff.

As of today's date, the permits that granted Development Plan D-19-03 and Conditional Use Permit C-29-03 are being exercised contrary to the terms and conditions of the approval because the applicant has failed to implement the Development Plan and Permit per the Conditions of approval.

**Project Description:** The subject site is fully developed and operating with a 3,456-square-foot service station/mini-mart on an approximately .52-acre parcel located on the northeast corner of the intersection of Vine Street and Oceanside Boulevard.

The surrounding area consists of commercial uses located north and east of the site. Cavalier Mobile Home Park is located south of the site and residential uses are located west of the site.

The site slopes slightly down in a southwesterly direction (Vine Street) with a grade differential of approximately three feet between the high and low points of the site.

The underlying land use designation for the subject site is Special Commercial and the zoning is CS-HO (Special Commercial Highway Oriented). The larger neighborhood area encompassing the project site is the Townsite Neighborhood.

## **ANALYSIS**

On November 15, 2010, an appeal was filed by Mr. Edwin D. Hausmann, Attorney on behalf of the lender/owner of the property First Credit Bank.

On November 15, 2010, the Appellant requested that Development Plan (D-19-03) and Conditional Use Permit (C-29-03) be reinstated while the Bank/Lender work on obtaining all necessary permits to effect the required raised median and turn-pockets conditioned as part of the project's approval. The Appellant agreed to provide temporary solutions to address the safety concerns while the required permits were in process with Caltrans and the City of Oceanside.

As of today's date, the appellant has not acted in good faith to provide temporary safety measures associated with the offsite improvements as verbally committed back on November 15, 2010, in a meeting with staff and has ceased communications with the City regarding the improvements. Staff cannot support yet another time delay, and recommends that the City Council take action to uphold the Planning Commission's decision to revoke Development Plan (D-19-03), Conditional Use Permit (C-29-03), and associated Resolutions (No. 2004-P22 and No. 2007-P46) based upon the findings of fact contained within Planning Commission Resolution No. 2010-P32.

## **FISCAL IMPACT**

The non-implementation of the required safety measure that would prevent illegal turning maneuvers into and off of the subject project site could create a potential Risk Management concern.

## **COMMISSION OR COMMITTEE REPORT**

The Planning Commission reviewed the outstanding conditions of approval that prompted Revocation proceedings of Development Plan (D-19-03), Conditional Use Permit (C-29-03), and associated Resolutions (No. 2004-P22 and No. 2007-P46) on November 8, 2010. Public hearing notices were mailed to business and residential property owners and occupants within a 1,500-foot radius of the proposed project site. Only the original Applicants, Mr. and Mrs. Joe Warsoff, were in attendance at the public hearing, and asked that the Planning Commission not revoke the project's entitlements. No members of the public spoke in opposition to, or in favor of, the revocation of said entitlements.

The Commission after due consideration by motion took action to revoke Development Plan (D-19-03) and Conditional Use Permit (C-29-03), by a 5-to-1 vote, 1 absent.

## **CITY ATTORNEY'S ANALYSIS**

The City Council is authorized to hold a public hearing in this matter. The City Attorney's Office has reviewed the proposed resolution and approved it as to form.

In accordance with section 4605 of the Zoning Ordinance, At an appeal hearing, the Council shall consider only the same application, plans, and related project materials that were the subject of the original decision and only the issues(s) raised by the appeal or the call for review. Compliance with this provision shall be verified prior to or during the hearing by the Planning Director.

At the hearing, the Council shall review the record of the decision and hear testimony of the appellant, the applicant, and any other interested party.

After the hearing, the Council shall affirm, modify, or reverse the original decision. When a decision is modified or reversed, the Council shall state the specific reasons for the modification or reversal. Decisions on appeals for review shall be rendered by adoption of a resolution. The Planning Director shall mail notice of a Planning Commission decision and the City Clerk shall mail notice of a City Council decision. Such notice shall be mailed within seven (7) working days after the date of the decision to the applicant, the appellant, and any other party requesting such notice.

## ENVIRONMENTAL DETERMINATION

A Revocation does not constitute a project under CEQA; therefore, this action does not require CEQA review.

## RECOMMENDATION

Staff recommends that the City Council affirm the Planning Commission's action to revoke Development Plan (D-19-03) and Conditional Use Permit (C-29-03), as previously approved by Planning Commission Resolutions (No. 2004-P22 and No. 2007-P46). Staff makes this recommendation because the terms or conditions of approval of the permit have been violated through lack of implementation and the Appellant's demonstrated lack of compliance with satisfying specific conditions of approval. To date, the Appellant remains non-compliant with the subject approvals.

Staff recommends that the City Council adopt a Resolution denying the appeal and affirm the Planning Commission's decision.

PREPARED BY:



Richard Greenbauer  
Senior Planner

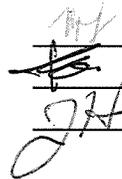
SUBMITTED BY:



Peter A. Weiss  
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager  
George Buell, Development Services Director  
Jerry Hittleman, City Planner



Attachments:

1. Plans
2. Appeal Filed by Mr. Edwin D. Hausmann dated November 15, 2010
3. City Council Resolution
4. Planning Commission Resolution No. 2010-P32
5. Staff Report dated November 8, 2010
6. Letter to Applicant dated September 10, 2010
7. Planning Commission Resolution No. 2004-P22
8. Planning Commission Resolution No. 2007-P46
9. Declaration of Covenants recorded at the San Diego Records Office via document number 2005-0214848 date March 16, 2005
10. Letter to Applicant dated June 9 & June 24, 2010
11. Email from Applicant dated June 17, 2010
12. Letter from Applicant dated October 25, 2010
13. Letter to Appellant dated January 4, 2011.





**STRIPING AND SIGNING GENERAL NOTES**

1. INSTALLATION OF ALL STRIPING, SIGNS AND PAVEMENT MARKERS SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR.
2. ALL STRIPING AND SIGNING SHALL CONFORM TO THE MOST RECENTLY ADOPTED EDITIONS OF THE FOLLOWING:
  - A. CALIFORNIA MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (CMUTCD), 2003 EDITION, FILED DECEMBER 31, 2006, UNDER DOCUMENT NO. ACD210048, FILED DECEMBER 31, 2006, UNDER DOCUMENT NO. ACD210048, FILED DECEMBER 31, 2006, UNDER DOCUMENT NO. ACD210048, FILED DECEMBER 31, 2006.
  - B. STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION, 2006 EDITION, AND CITY OF SAN DIEGO SUPPLEMENT, DOCUMENT NO. ACD210062, FILED DECEMBER 31, 2006.
3. ALL SIGNING AND STRIPING IS SUBJECT TO THE APPROVAL OF THE CITY ENGINEER PRIOR TO INSTALLATION AND/OR REMOVAL.
4. WORKING PAVEMENT SHALL REMOVE ALL CONFLICTING STRIPING, PAVEMENT MARKERS AND SIGNS. ALL STRIPING AND SIGNING SHALL BE PAINTED OR THERMOPLASTIC. ANY DEBRIS SHALL BE PROMPTLY REMOVED BY THE CONTRACTOR. SEAL. ANY DEBRIS SHALL BE PROMPTLY REMOVED BY THE CONTRACTOR.
5. SIGN POSTS SHALL BE INSTALLED WITH SQUARE PERFORATED STEEL TUBING WITH A BREWMANWAY BASE PER CITY OF SAN DIEGO STANDARD DRAWING 44-4.
6. ALL RAISED MEDIUM NOSES SHALL BE PAINTED YELLOW.
7. ALL SIGNS SHOWN ON THE STRIPING AND SIGNING PLANS SHALL BE NEW UNLESS OTHERWISE NOTED. EXISTING SIGNS SPECIFICALLY INDICATED TO BE RELOCATED OR TO REMAIN.
8. STRIPED CROSSWALKS SHALL HAVE AN INSIDE DIMENSION OF 10 FEET UNLESS INDICATED OTHERWISE.
9. ALL UNIT LINES/STOP LINES, CROSSWALK LINES, PAVEMENT LEGENDS, AND MARKERS (EXCEPT BIKE LANES) SHALL BE THERMOPLASTIC.
10. THE CONTRACTOR SHALL OBTAIN THE CITY TRAFFIC ENGINEER'S APPROVAL OF THE (S) WORKING DAYS PRIOR TO AND UPON COMPLETION OF STRIPING AND SIGNING.

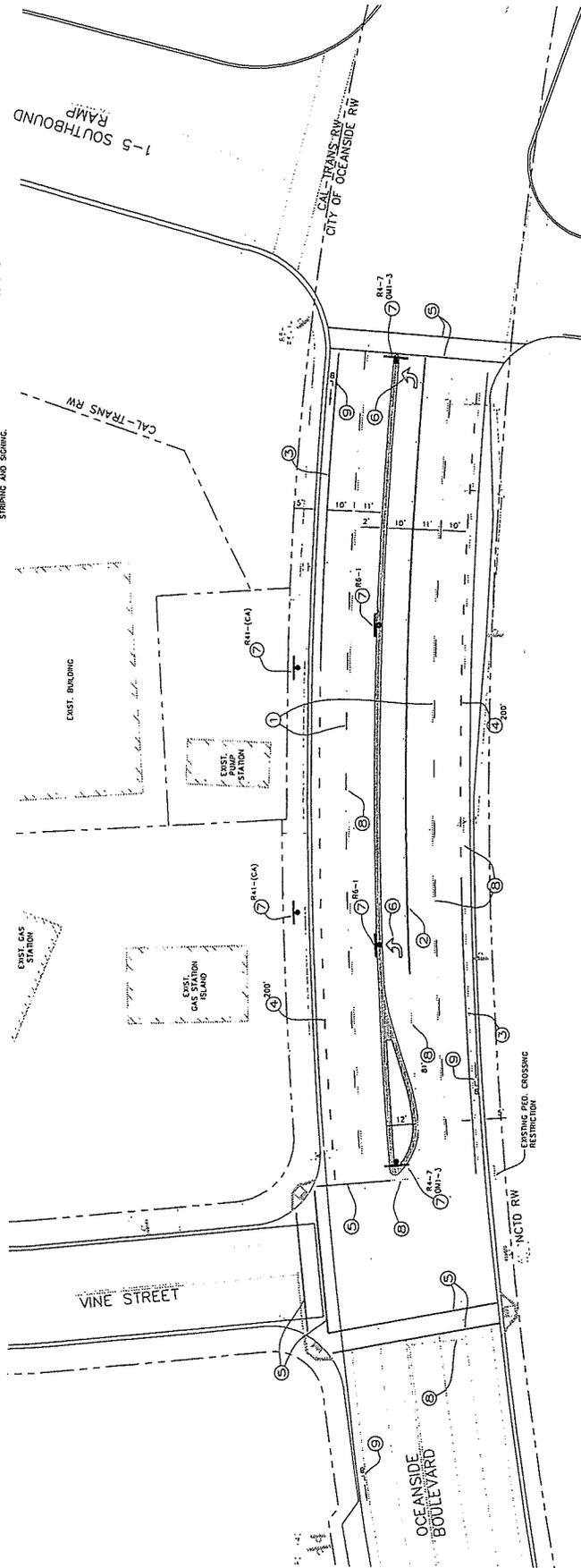
**LEGEND**

- R2-11(O) SPEED LIMIT 40 MPH
- R4-7 KEEP RIGHT
- R6-1 ONE-WAY
- R7-9 NO PARKING - BIKE LANE
- R41(GA) RIGHT TURN ONLY
- OM1-J SOLID YELLOW OBJECT MARKER
- OM4-3 SOLID RED OBJECT MARKER
- WT-7 THRU WAY ARROW
- CS CROSSING SIGN
- PS PROPOSED SIGN
- BL BIKELANE LEGEND

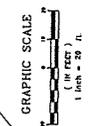
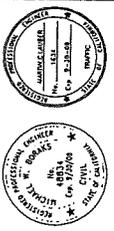
**CONSTRUCTION NOTES**

- 1 PAINT 4" SHIP WHITE - LANE LINE - STD. PLANS DETAIL 2.
- 2 PAINT 6" SOLID WHITE - CHANNELING LINE - STD. PLANS DETAIL 3B.
- 3 PAINT 6" SOLID WHITE - BIKE LANE LINE - STD. PLANS DETAIL 3B.
- 4 PAINT 6" SHIP WHITE - INTERSECTION BIKE LANE - STD. PLANS DETAIL 3A.
- 5 PAINT 12" SOLID WHITE - CROSSWALK AND UNIT LINE - STD. PLANS A24C - THERMOPLASTIC
- 6 APPLY TYPE IV TURN ARROW - STD. PLANS A24A - THERMOPLASTIC
- 7 INSTALL TRAFFIC SIGN AS DESIGNATED ON PLAN.
- 8 REMOVE EXISTING PAVEMENT STRIPING - GRIND OR SANDBLAST
- 9 BIKELANE LEGEND - THERMOPLASTIC

\*ALL SIGNS BEING PLACED OR WORK TAKING PLACE WITHIN THE CALIFORNIA ENCROACHMENT PERMIT #11-07-62-040.

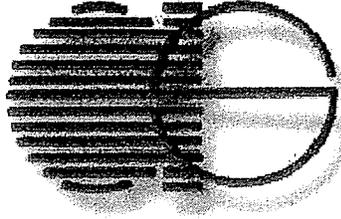


FILE NO. 0-19-03  
 SHEET 3 OF 4  
 PUBLIC WORKS DEPARTMENT  
 STREET IMPROVEMENT PLAN FOR  
 OCEANSIDE BOULEVARD  
 BETWEEN VINE STREET AND I-5 RAMP  
 APPROVED



DATE: 07/20/07  
 DESIGNED BY: R. G. BROWN  
 CHECKED BY: R. G. BROWN  
 CITY ENGINEER: R. G. BROWN  
 PLAN NUMBER: R-13923

Received by: CATHY J  
Via: MAIL  
Copy to: GEORGE BUELL City  
JERRY HITTLEMAN CLERK  
PC RESO # 2010-P32



RECEIVED  
NOV 17 2010  
OCEANSIDE CITY CLERK

## A & S Engineering, Inc.

Planning

Engineering

Construction Management

207 W. Alameda, Suite no. 203, Burbank, Ca. 91502 Ph. 818-842-3644, Fax. 818-842-3760

November 15, 2010

City of Oceanside  
City Clerk's office  
300 North Coast Hwy  
Oceanside, CA 92054

Attn: Honorable City Council

Re: 76 station  
1660 Oceanside Blvd.  
Oceanside, Ca.  
Development Plan (D-19-3)  
Conditional Use Permit (C-29-03)  
Appeal of planning commission's decision from November 8<sup>th</sup>, 2010

Dear Honorable City Council,

We hereby submit our appeal of the planning commission's decision on November 8<sup>th</sup> to revoke the above-mentioned Development plan and Conditional Use Permit.

As lender/owner of this property, we respectfully request reinstatement of Development plan (D-19-3) and Conditional Use Permit (C-29-03) and allow us to work city staff to come up with a temporary solution to address the safety concerns, while we are working with city and Caltrans to obtain the necessary permits to construct the proposed median, and come into compliance with conditions 28 and 29 of planning commission's resolution 2004-P22 and 2007-P46.

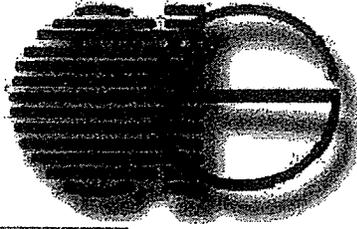
The current operator should have addressed this median issue, however for reasons beyond our control, the improvements were not constructed. We appreciate your understanding and review our of our appeal. Look forward to your approval of our request.

Sincerely,

FIRST CREDIT BANK

By

  
Edwin D. Hausmann, Attorney



RECEIVED

NOV 17 2010

OCEANSIDE CITY CLERK

A & S Engineering, Inc.

Planning

Engineering

Project Management

893 Patriot Dr., Unit "A", Moorpark, Ca. 93021 Ph. 805-531-9700, Fax. 805-531-9701

November 16<sup>th</sup>, 2010

To: Oceanside City Clerk  
300 North Coast Highway  
Oceanside, CA 92054-2859

Attn: City Clerk Office

Re: Independent/76 Station  
1616 Oceanside Blvd.  
Oceanside, CA  
Development Plan (D-19-3)  
Conditional Use Permit (C-29-03)  
Appeal of planning commission's decision from November 8<sup>th</sup>, 2010

Dear Sir/Madam,

Attached are the following as related to the appeal application for the above subject location:

1. Check #5012 for the amount of \$1,281.00
2. Signed appeal request letter

Regards,  
Yasmin Tabatabayi

# APPRICAL APPLICABLE



For FedEx Express® Shipments Only

From: Origin ID: BURA (818) 842-3644  
YASMIN TABATABAYI  
A & S ENGINEERING  
207 W ALAMEDA AVE STE 203  
BURBANK, CA 91502



SHIP TO: (760) 435-3000  
BILL SENDER  
CITY CLERK OFFICE  
OCEANSIDE CITY CLERK  
300 NORTH COAST HIGHWAY  
OCEANSIDE, CA 920542859

Ship Date: 16NOV10  
Act/Mgt: 1.0 LB MAN  
CAD: 730710/CAFE2453  
Account# S

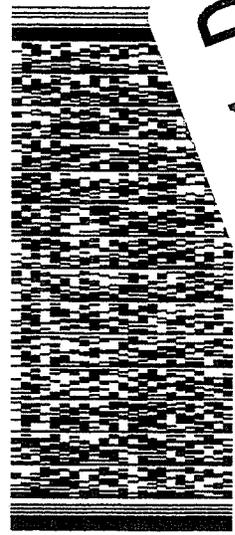
Delivery Address Bar Code



Ref # Ind: 1616 Oceanside, Oceanside  
Invoice #  
PO #  
Dept #

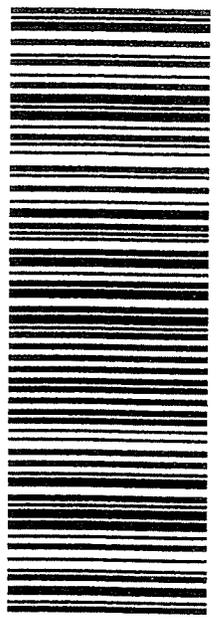
TRK# 4527 5812 3875  
0201

WED - 17NOV A2  
PRIORITY OVERNIGHT



QW CLDA

92054  
CA-US  
SAN



RT 2A7 1 D  
3875 1111

FZ

Insert  
airbill  
here

**RECEIPT**

DATE 11/17/10 <sup>PC</sup> RESO# 2010-P32

FROM Sunset Franchise \$ 1,281.00

One Thousand Two Hundred Eighty one DOLLARS  
450.404101.4426.0015

FOR RENT  
 FOR Appeal of Planning Comm  
Decision on 11/8/10

ACCT.		<input type="checkbox"/> CASH	FROM _____ TO _____
PAID	<u>1281.00</u>	<input checked="" type="checkbox"/> CHECK	
DUE	<u>—</u>	<input type="checkbox"/> MONEY ORDER	BY <u>CJ</u>



FORM 4161



1 and testimony by the appellant and all interested parties concerning the Planning Commission  
2 approval on the above identified revocation of Development Plan and Conditional Use Permit;

3 WHEREAS, based on such evidence, testimony and staff reports, this Council finds that  
4 the findings of fact articulated by the Planning Commission adequately address all zoning and  
5 planning issues with regard to this project and the Council accepts the findings of fact as set forth  
6 in Planning Commission Resolution No. 2010-P32; and

7 WHEREAS, the Resource Officer of the City of Oceanside has determined that pursuant  
8 to the California Environmental Quality Act of 1970 and the State Guidelines thereto as  
9 amended to date, a revocation does not constitute a project under CEQA; therefore, this action  
10 does not require CEQA reviews.

11 NOW, THEREFORE, the City Council of the City of Oceanside does resolve as follows:

12 1. The Appeal of the Planning Commission decision set forth in Planning  
13 Commission Resolution No. 2010-P32 of November 8, 2010, revoking Development Plan (D-  
14 19-03) and Conditional Use Permit (C-29 03), is denied;

15 2. The decision of the Planning Commission set forth in Planning Commission  
16 Resolution No. 2010-P32 of November 8, 2010, revoking Development Plan (D-19-03) and  
17 Conditional Use Permit (C-29-03), is affirmed; and

18 3. Pursuant to Oceanside Zoning Ordinance 4606 the decision by the City Council  
19 shall become final on the date of this decision. The time within which judicial review of this  
20 decision must be sought is governed by Code of Civil Procedure, Section 1094.6, which has  
21 been made applicable in the City of Oceanside by Oceanside City Code section 1.11. Any  
22 petition or other paper seeking judicial review must be filed in the appropriate court not later  
23 than the ninetieth day following the date on which this decision becomes final; however, if  
24 within ten (10) days after the decision becomes final a request is made for the record of the  
25 proceedings accompanied by the required deposit in an amount sufficient to cover the estimated  
26 cost of preparation of such record, the time within which such petition may be filed in court is  
27 extended to not later than the thirtieth day following the date on which the record is either  
28 personally delivered or mailed to the party, or his attorney of record, if he has one. A written

1 request for the preparation of the record of the proceedings shall be filed with the City Clerk,  
2 300 N. Coast Highway, Oceanside, California 92054.

3 PASSED and ADOPTED by the City Council of the City of Oceanside, California, this  
4 \_\_\_\_\_ day of \_\_\_\_\_, 2011, by the following vote:

5  
6 AYES:

7 NAYS:

8 ABSENT:

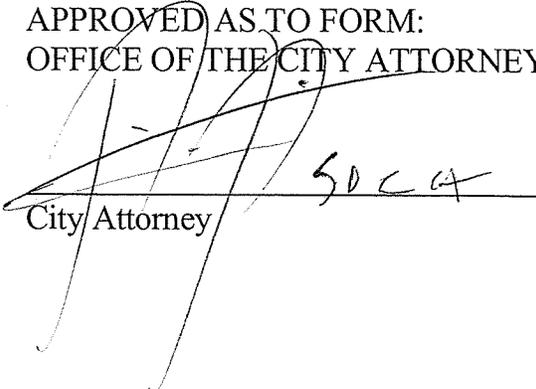
9 ABSTAIN:

10  
11 \_\_\_\_\_  
12 Mayor of the City of Oceanside

13 ATTEST:

14 APPROVED AS TO FORM:  
15 OFFICE OF THE CITY ATTORNEY

16 \_\_\_\_\_  
17 City Clerk

18  
19  
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27  
28  
  
\_\_\_\_\_  
City Attorney

26 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE DENYING AN APPEAL OF PLANNING  
27 COMMISSION RESOLUTION NO. 2010-P32 AND AFFIRMING THE REVOCATION OF DEVELOPMENT PLAN (D-  
28 19-03) AND CONDITIONAL USE PERMIT (C-29-03) AT 1660 OCEANSIDE BOULEVARD THAT WERE  
APPROVED BY RESOLUTIONS 2004-P22 AND 2007-P46

1 PLANNING COMMISSION  
2 RESOLUTION NO. 2010-P32

3 A RESOLUTION OF THE PLANNING COMMISSION OF THE  
4 CITY OF OCEANSIDE, CALIFORNIA REVOKING A  
5 DEVELOPMENT PLAN AND CONDITIONAL USE PERMIT  
6 THAT WERE ISSUED PURSUANT TO TWO RESOLUTIONS  
7 OF APPROVAL FOR A CERTAIN REAL PROPERTY IN THE  
8 CITY OF OCEANSIDE

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9 APPLICATION NO: D-19-03 and C-29-03  
10 APPLICANT: Joe and Barbara Warsoff  
11 LOCATION: 1660 Oceanside Blvd.

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12 THE PLANNING COMMISSION OF THE CITY OF OCEANSIDE, CALIFORNIA DOES  
13 RESOLVE AS FOLLOWS:

14 WHEREAS, there was a duly noticed and held Public Hearing by this Commission on  
15 August 23, 2010 setting a hearing date for the Revocation of the subject Development Plan,  
16 Conditional Use Permit, and Two Resolutions of Approval under the provisions of Article 4704 of  
17 the Zoning Ordinance of the City of Oceanside.

18 WHEREAS, the Planning Commission, after giving the required notice, did on the 25th  
19 day of October, 2010 conduct a duly advertised public hearing as prescribed by law to consider  
20 said action, and continued this item to November 8, 2010.

21 WHEREAS, the Planning Commission finds that the proposed Revocation action is not a  
22 project as defined by the California Environmental Quality Act and therefore is exempt from the  
23 requirements of environmental review pursuant to the provisions of the California Environmental  
24 Quality Act.

25 WHEREAS, studies and investigations made by this Commission and in its behalf reveal,  
and the Commission does hereby find, the following facts:

For the Revocation of the Development Plan, Conditional Use Permit, and Two Resolutions of  
Approval:

1. On May 24, 2004, pursuant to a duly noticed public hearing, the Oceanside Planning  
Commission adopted Resolution No. 2004-P22, which approved Development Plan D-19-  
03 and Conditional Use Permit C-29-03. Resolution No. 2004-P22 approved plans for the  
changes to an existing fueling station, including but not limited to the addition of a 3,456-

1 square foot mini-mart, subject to certain fees, dedications, reservations, exactions and  
2 conditions of approval. Condition No. 28 of Resolution 2004-P22 required the installation  
3 of a raised median on Oceanside Boulevard along the project frontage to prohibit left turns  
4 from the project site, and condition No. 29 required the installation of a left turn pocket,  
5 180 feet in length with a 120-foot transition, for eastbound Oceanside Boulevard beginning  
6 at the Interstate 5 on/off ramp, as more fully set forth therein. Condition No. 20 requires  
7 the Applicant (Joseph and Barbara Warsoff) to obtain all necessary permits from any  
8 agency having jurisdiction over the project. Condition 47 limited the approval to a two-year  
9 term unless a time extension is approved by the Planning Commission.

10 2. The Applicant did not protest any fees, dedications, reservations, exactions or conditions of  
11 approval of Resolution No. 2004-P22, including Conditions Nos. 28 and 29, within the  
12 time and manner allowed to do so under the Government Code.

13 3. On March 16, 2005, there was duly recorded with the County Recorder's Office a  
14 Declaration of "Covenants, Conditions, & Restrictions on Real Property Known as the  
15 Oceansider" that declaring that the conditions of Resolution No. 2004-P22 are binding on  
16 all subsequent owners of the property.

17 4. On April 24, 2006, the Applicant applied for a time extension of the original Planning  
18 Commission action which adopted Resolution 2004-P22.

19 5. On September 24, 2007, pursuant to a duly noticed public hearing, the Oceanside Planning  
20 Commission adopted Resolution No. 2007-P46, which approved a time extension for  
21 Development Plan D-19-03 and Conditional Use Permit C-29-03. Resolution No. 2007-  
22 P46 continued the conditions of approval set forth in Resolution No. 2004-P22, except  
23 where expressly superseded, and provided that median improvements shall be constructed  
24 prior to the issuance of certificates of occupancy, unless otherwise approved by the City  
25 Engineer. Conditions Nos. 28 and 29 remained in full force and effect.

26 6. The Applicant did not protest any fees, dedications, reservations, exactions or conditions of  
27 approval of Resolution No. 2007-P46, including Conditions Nos. 28 and 29, within the  
28 time and manner allowed to do so under the Government Code.

29 //////////////

30 //////////////

- 1 7. On October 10, 2007 the Applicant submitted to the City plans for the median construction  
2 in accordance with Conditions Nos. 28 and 29. The City approved these plans on March  
3 12, 2008.
- 4 8. Shortly thereafter, Applicant's Engineer submitted these approved plans to Caltrans, since  
5 a Caltrans encroachment permit was required.
- 6 9. In March 2008, Mr. Warsoff met with City Engineering staff and requested that installation  
7 of median improvements be postponed until trenching work associated with a CIP project  
8 (Emergency Outfall Repair) was completed, and that Applicant be issued certificates of  
9 occupancy prior to the completion of the median improvements.
- 10 10. On December 11, 2008, Engineering Division staff initialed a Utility Release, prior to the  
11 installation of the raised median, based on Applicant's representation that Applicant would  
12 begin construction of the Median within 6 months of occupancy. Applicant thereafter  
13 began operating the service station and mini-market at the property.
- 14 11. On September 29, 2009 the CIP project was filed with the county.
- 15 12. On January 4, 2010, Mr. Warsoff informed Caltrans that it he would not perform median  
16 improvements.
- 17 13. In February, 2010, Mr. Warsoff informed City staff members that he would not construct  
18 the median improvements.
- 19 14. On June 9, 2010 City Staff sent Applicant a formal notice of the need to meet or resolve all  
20 the conditions of approval of the Conditional Use Permit and Development Plan, and  
21 requested a formal response from Applicant within thirty (30) days.
- 22 15. On June 17, 2010, Applicant communicated to City staff via e-mail that Applicant  
23 intended to seek Planning Commission approval to remove Conditions nos. 28 and 29.
- 24 16. On June 24, 2010, City Staff notified Applicant that Applicant had until July 8, 2010, to  
25 submit the necessary application and fees to request Planning Commission approval to  
remove Conditions nos. 28 and 29, or the City would institute revocation proceedings of  
the Development Plan and CUP.
17. Applicant did not submit the necessary application and fees to request Planning  
Commission approval to modify these conditions of approval.

1 18. The Planning Commission finds that Conditions of Approval Nos. 28 and 29 of Resolution  
2 2004-P22, as extended by Resolution No. 2007-P46, have not been fulfilled.

3 19. The Planning Commission finds that the terms and conditions of approval of Development  
4 Plan D-19-03 and Conditional Use Permit C-29-03 have been violated due to a failure to  
5 implement Conditions of Approval Nos. 28 and 29 of Resolution 2004-P22.

6 20. The Planning Commission further finds that the permits granted by Development Plan D-  
7 19-03 and Conditional Use Permit C-29-03, are being exercised contrary to the terms and  
8 conditions of the approval because the Applicant has failed to implement the Development  
9 Plan and Use Permit pursuant to the Conditions of approval.

10 NOW, THEREFORE, BE IT RESOLVED that the Planning Commission does hereby  
11 revoke Development Plan (D-19-03), and Conditional Use Permit (C-29-03) as previously  
12 approved by Planning Commission Resolutions 2004-P22 and 2007-P46. Pursuant to Oceanside  
13 Zoning Ordinance §4603 and §4704, this resolution becomes final 10 days from the date of its  
14 adoption in the absence of the filing of an appeal or call for review.

15 PASSED and ADOPTED Resolution No. 2010-P32 on November 8, 2010 by the  
16 following vote, to wit:

17 AYES: Neal, Troisi, Martinek, Rosales and Scrivener

18 NAYES: Bertheaud

19 ABSENT: Balma

20 ABSTAIN: None

21   
22 Robert Neal, Chairperson  
23 Oceanside Planning Commission

24 ATTEST:

25   
26 Jerry Hittleman, Secretary

27 I, JERRY HITTLEMAN, Secretary of the Oceanside Planning Commission, hereby certify that  
28 this is a true and correct copy of Resolution No. 2010-P32.

29 Dated: November 8, 2010

EXHIBIT "A"

## LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO AND IS DESCRIBED AS FOLLOWS:

THAT PORTION OF TRACT 101 OF SOUTH OCEANSIDE, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 622, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHEASTERLY LINE OF A 22,803 SQUARE FOOT PARCEL OF LAND AS SAID PARCEL IS DESCRIBED ON RECORD OF SURVEY MAP NO. 8847, FILED MARCH 20, 1967, IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, SAID POINT BEARING NORTH 53°26'54" WEST, 50.00 FEET FROM THE NORTHWESTERLY LINE OF THAT 80.00 FOOT RIGHT OF WAY DESCRIBED IN DEED TO THE CITY OF OCEANSIDE, UNDER PARCEL 1 RECORDED APRIL 6, 1955 IN BOOK 5595, PAGE 443 OF OFFICIAL RECORDS, AND BEING THE TRUE POINT OF BEGINNING; THENCE CONTINUING NORTH 53°26'54" WEST, 100.00 FEET; THENCE AT RIGHT ANGLES SOUTH, 36°33'06" WEST, 151.27 FEET TO THE NORTHEASTERLY LINE OF THE 60.00 FOOT RIGHT OF WAY AS DESCRIBED IN DEED TO THE CITY OF OCEANSIDE, RECORDED JULY 7, 1966 UNDER FILE NO. 110753 OF OFFICIAL RECORDS; BEING A POINT IN THE ARC OF A 170.00 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE ALONG SAID RIGHT OF WAY LINE SOUTHEASTERLY ALONG SAID CURVE, 47.37 FEET THROUGH AN ANGLE OF 15°57'57"; THENCE TANGENT TO SAID CURVE SOUTH 56°20'32" EAST, 83.65 FEET (RECORD SOUTH 56°23'03" EAST, 83.77 FEET) TO A TANGENT 20.00 FOOT RADIUS CURVE CONCAVE NORTHERLY; THENCE SOUTHEASTERLY AND EASTERLY ALONG SAID CURVE 30.98 FEET THROUGH AN ANGLE OF 88°44'54" TO A POINT IN THE ARC OF A 2040.08 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY IN SAID NORTHWESTERLY LINE OF THE 80.00 FOOT RIGHT OF WAY ABOVE DESCRIBED; THENCE NORTHEASTERLY ALONG SAID CURVE AND SAID NORTHWESTERLY LINE 130.71 FEET THROUGH AN ANGLE OF 3°40'16" TO A LINE WHICH BEARS SOUTH 53°26'54" EAST FROM THE TRUE POINT OF BEGINNING; THENCE NORTH 53°26'54" WEST, 50.00 FEET TO THE TRUE POINT OF BEGINNING.

# AGENDA NO. 5

*PLANNING COMMISSION*



*STAFF REPORT*

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DATE: November 8, 2010

TO: Chairperson and Members of the Planning Commission

FROM: Development Services Department/Planning Division

SUBJECT: **CONSIDERATION OF A REVOCATION OF DEVELOPMENT PLAN (D-19-03) AND CONDITIONAL USE PERMIT (C-29-03) AND ASSOCIATED RESOLUTIONS (2004-P22 AND 2007-P46) ON PROPERTY LOCATED AT 1660 OCEANSIDE BOULEVARD DUE TO NON-COMPLIANCE WITH CONDITIONS OF APPROVAL – THE OCEANSIDER – APPLICANT: JOE AND BARBARA WARSOFF**

## **RECOMMENDATION**

Staff recommends that the Planning Commission by motion:

- (1) Revoke Development Plan (D-19-03) and Conditional Use Permit (C-29-03); Planning Commission Resolution No. 2004-P22, and Planning Commission Resolution No. 2007-P46, and;
- (2) Adopt Planning Commission Resolution No. 2010-P32 with findings attached herein.

## **PROJECT BACKGROUND**

On May 24, 2004, pursuant to a duly noticed public hearing, the Oceanside Planning Commission adopted Resolution No. 2004-P22, which approved Development Plan D-19-03 and Conditional Use Permit C-29-03. Resolution No. 2004-P22 approved plans for the changes to an existing fueling station, including but not limited to the addition of a 3,456-square foot mini-mart, subject to certain fees, dedications, reservations, exactions and conditions of approval. Condition No. 28 of Resolution 2004-P22 required the installation of a raised median on Oceanside Boulevard along the project frontage to prohibit left turns from the project site, and condition No. 29 required the installation of a left turn pocket, 180 feet in length with a 120-foot transition, for eastbound Oceanside Boulevard beginning at the Interstate 5 on/off ramp, as more fully

set forth therein. Condition No. 20 requires the Applicant (Joseph and Barbara Warsoff) to obtain all necessary permits from any agency having jurisdiction over the project. Condition 47 limited the approval to a two-year term unless a time extension is approved by the Planning Commission.

The Applicant did not protest any fees, dedications, reservations, exactions or conditions of approval of Resolution No. 2004-P22, including Conditions Nos. 28 and 29, within the time and manner allowed to do so under the Government Code.

On March 16, 2005, there was duly recorded with the County Recorder's Office a Declaration of "Covenants, Conditions, & Restrictions on Real Property Known as the Oceanside" declaring that the conditions of Resolution No. 2004-P22 are binding on all subsequent owners of the property.

On April 24, 2006, the Applicant applied for a time extension of the original Planning Commission action which adopted Resolution 2004-P22.

On September 24, 2007, pursuant to a duly noticed public hearing, the Oceanside Planning Commission adopted Resolution No. 2007-P46, which approved a time extension for Development Plan D-19-03 and Conditional Use Permit C-29-03. Resolution No. 2007-P46 continued the conditions of approval set forth in Resolution No. 2004-P22, except where expressly superseded, and provided that median improvements shall be constructed prior to the issuance of certificates of occupancy, unless otherwise approved by the City Engineer. Conditions Nos. 28 and 29 remained in full force and effect.

The Applicant did not protest any fees, dedications, reservations, exactions or conditions of approval of Resolution No. 2007-P46, including Conditions Nos. 28 and 29, within the time and manner allowed to do so under the Government Code.

On October 10, 2007 the Applicant submitted to the City plans for the median construction in accordance with Conditions Nos. 28 and 29. The City approved these plans on March 12, 2008.

Shortly thereafter, Applicant's Engineer submitted these approved plans to Caltrans, since a Caltrans encroachment permit was required.

In March 2008, Mr. Warsoff met with City Engineering staff and requested that installation of median improvements be postponed until trenching work associated with a CIP project (Emergency Outfall Repair) was completed, and that applicant be issued certificates of occupancy prior to the completion of the median improvements.

On December 11, 2008, Engineering Division staff initialed a Utility Release, prior to the installation of the raised median, based on Applicant's representation that Applicant would begin construction of the Median within 6 months of occupancy. Applicant thereafter began operating the service station and mini-market at the property.

On September 29, 2009 the CIP project was filed with the county.

On January 4, 2010, Mr. Warsoff informed Caltrans that it he would not perform median improvements.

In February, 2010, Mr. Warsoff informed City staff members that he would not construct the median improvements. From February to June, staff had a series of meetings and telephone conversations with Mr. Warsoff to discuss the median improvement requirements and other issues regarding the project. Mr. Warsoff continued to refuse to install the median improvements pursuant to the Resolutions.

On June 9, 2010 City Staff sent Applicant a formal notice of the need to meet or resolve all the conditions of approval of the Conditional Use Permit and Development Plan, and requested a formal response from Applicant within thirty (30) days. Mr. Warsoff has failed to respond to the letter, and was further informed that he is bound to comply with the recorded declaration of covenants, conditions and restriction and that his lack of response would require City Staff to initiate revocation of his Development Plan and Conditional Use Permit.

On June 17, 2010, Applicant communicated to City staff via e-mail that Applicant intended to seek Planning Commission approval to remove Conditions nos. 28 and 29.

On June 24, 2010, City Staff notified Applicant that Applicant had until July 8, 2010, to submit the necessary application and fees to request Planning Commission approval to remove Conditions nos. 28 and 29, or the City would institute revocation proceedings of the Development Plan and CUP.

Mr. Warsoff did not respond to the timeline identified by staff to prevent revocation proceedings and has not satisfied the terms and conditions of approval of Development Plan D-19-03 and Conditional Use Permit C-29-03; therefore, resulting in the terms and conditions being violated due to a failure to implement Conditions of Approval Nos. 28 and 29 of Resolution 2004-P22.

On October 25, 2010, The Planning Commission at the request of staff and Mr. Warsoff moved to continue the subject item to the meeting of November 8, 2010. The continuance was requested in order for staff to work on crafting and finalizing a written

agreement that would essentially allow the business to continue operating while permits for all off-site improvements were being processed by Caltrans. Mr. Warsoff did on October 25, 2010, submit a letter agreeing to the continuance and attesting that he would work diligently toward finalizing an abatement agreement.

On October 28, 2010, Mr. Warsoff contacted the City via phone and stated that after consulting with his attorney, he would not be moving forward with an abatement agreement as previously agreed upon and attested too in the letter dated October 25, 2010.

As of today's date, the permits that granted Development Plan D-19-03 and Conditional Use Permit C-29-03, are being exercised contrary to the terms and conditions of the approval because the applicant has failed to implement the Development Plan and Permit per the Conditions of approval.

**Site Review:** The subject site is fully developed as a service station/mini-mart on an approximately .52-acre parcel located on the northeast corner of the intersection of Vine Street and Oceanside Boulevard.

The surrounding area consists of commercial uses located north and east of the site, Cavalier Mobile Home Park is located south of the site and residential uses are located west of the site.

The site slopes slightly down in a southwesterly direction (Vine Street) with a grade differential of approximately three feet between the high and low points of the site.

The underlying land use designation for the subject site is Special Commercial and the zoning is CS-HO (Special Commercial Highway Oriented). The larger neighborhood area encompassing the project site is the Townsite Neighborhood.

## **ANALYSIS**

Since the September 2007 time extension approval date, the applicant has had 36 months to implement the project including all off-site improvements required as part of the projects overall approval. Although the applicant has made significant progress in completing the project and was provided with a temporary occupancy permit to assist in funding the identified off-site improvements, the project implementation remains incomplete. Staff has been overly accommodating to the applicant throughout the process, and due to the potential public safety issues associated with the identified off-site improvements has no other recourse but to proceed with revocation of Development Plan (D-19-03) and Conditional Use Permit (C-29-03).

## **ENVIRONMENTAL DETERMINATION**

A Revocation does not constitute a project under CEQA; therefore, this action does not require CEQA review.

## **PUBLIC NOTIFICATION**

Legal notice was published in the North County Times on Friday October 15, 2010 and notices were sent to property owners of record, individuals and or organizations requesting notification, the applicant and other interested parties as per Zoning Code Section 4704 B. As of November 3, 2010, no communication from the general public supporting or opposing the Revocation has been received.

## **RECOMMENDATION**

Pursuant to Section 4108.E Revocation of the Zoning Ordinance, a use permit or variance that is exercised in violation of a condition of approval or a provision of the Zoning Ordinance may be revoked, as provided in Section 4704.

Pursuant to Section 4704.A Duties of the City Planner, upon determination by the City Planner that there are reasonable grounds for considering revocation or modification of a use permit or development approval a revocation hearing shall be set by the Planning Commission. On August 23, 2010, the Planning Commission considered this discussion item and moved to set a Revocation Hearing date on October 25, 2010.

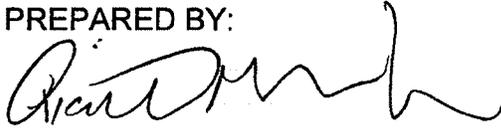
The City Planner recommends the Planning Commission revoke Development Plan (D-19-03) and Conditional Use Permit (C-29-03), and the associated Planning Commission Resolutions 2004-P22 and 2007-P46. The City Planner makes this recommendation, because the terms or conditions of approval of the permit have been violated through lack of implementation and the applicant's demonstrated lack of compliance with satisfying specific conditions of approval. To date, the applicant remains non-compliant with the subject approvals.

## **SUMMARY**

The proposed Revocation is duly warranted per the Zoning Ordinance and is a direct result of the applicants' failure to perform as required by the subject permits and Resolutions of Approval. As such, staff recommends that the Planning Commission revoke the project based on the findings and subject to the conditions contained in the attached Resolution. Staff recommends that the Planning Commission:

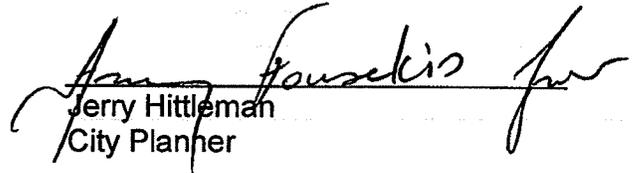
- Revoke Development Plan (D-19-03) and Conditional Use Permit (C-29-03); Planning Commission Resolution No. 2004-P22; and Planning Commission Resolution No. 2007-P46; and
- Adopt Planning Commission Resolution No. 2010-P32 with findings attached herein.

PREPARED BY:



Richard Greenbauer  
Senior Planner

SUBMITTED BY:



Jerry Hittleman  
City Planner

Attachments:

1. Plans
2. Planning Commission Resolution No. 2010-P32
3. Letter to Applicant dated September 10, 2010
4. Planning Commission Resolution No. 2004-P22
5. Planning Commission Resolution No. 2007-P46
6. Declaration of Covenants recorded at the San Diego Recorders Office via document number 2005-0214848 date March 16, 2005
7. Letter to Applicant dated June 9 & June 24, 2010
8. Email from Applicant dated June 17, 2010
9. Letter from Applicant dated October 25, 2010



# CITY OF OCEANSIDE

DEVELOPMENT SERVICES DEPARTMENT / PLANNING DIVISION

September 10, 2010

Joe and Barbara Warsoff  
4615 Sunburst Rd.  
Carlsbad, CA 92008

Re: Development Plan (D-19-03), Conditional Use Permit (C-29-03) Revocation  
(Union 76 "The Oceansider")

Dear Mr. and Mrs. Warsoff:

This letter is being sent to inform you that a hearing date for the revocation of Development Plan D-19-03 and Conditional Use Permit C-29-03, associated with Planning Commission resolutions 2004-P22 and 2007-P46 has been set for October 25, 2010 at 7:00 P.M. in the City Council Chambers located at 300 N. Coast Highway.

Pursuant to Section 4108.E Revocation of the Zoning Ordinance, a use permit or variance that is exercised in violation of a condition of approval or a provision of the Zoning Ordinance may be revoked, as provided in [Section 4704].

Pursuant to Section 4704.A Duties of the [City Planner], upon determination by the [City Planner] that there are reasonable grounds for considering revocation or modification of a use permit [or] variance a revocation hearing shall be set by the Planning Commission.

The Planning Commission set October 25, 2010 as a hearing date for the revocation of Development Plan (D-19-03) and Conditional Use Permit (C-29-03), and Planning Commission Resolution No. 2004-P22, and 2007-P46 (attached). Public notice of the hearing is required by Section 4704.B.

The Planning Commission has set this revocation hearing because the "Owners" Joseph and Barbara Warsoff did on March 16, 2005 at the San Diego Recorders Office have recorded via document number 2005-0214848 a Declaration of Covenants, Conditions, & Restrictions on Real Property known as the Oceansider identifying on-site and off-site improvements required to be made on the Property as a condition of any development of the property, and in accordance with Resolution 2004-P22, and the applicant's demonstrated lack of compliance with specific conditions of approval numbers 28 and 29 of said resolution.

Planning Commission Resolution No. 2004-P22 was approved by the Planning Commission on May 24, 2004 with specific requirements to be satisfied as part of the sites overall development. The following two conditions of approval have not been completed:

28. The project shall install a raised median on Oceanside Boulevard along the project frontage to prohibit left turns from the project site. The median shall be approximately 250 feet in length beginning at the intersection of Vine Street, and be of sufficient length to restrict left turns from the adjacent Best Western motel driveway east of the project site. The median shall be designed and constructed to the satisfaction of the Transportation Manager.

29. The project shall install a left turn pocket, 180 feet in length with a 120-foot transition, for eastbound Oceanside Boulevard beginning at the Interstate 5 on/off ramp. The turn pocket shall be designed to Caltrans design standards.

Planning Commission Resolution No. 2007-P46 was approved by the Planning Commission on September 24, 2007 granting a time extension for Development Plan (D-19-03) and Conditional Use Permit (C-29-03) and included condition of approval number two that emphasized median improvements shall be constructed prior to the issuance of certificate of occupancy, unless otherwise approved by the City Engineer, and to date has not been completed.

On June 2, 2010 City Staff contacted Mr. Warsoff via letter identifying the following timeline of actions taken to satisfy the required improvements, and the actions that have led to the lack of compliance necessary to satisfy the required conditions of approval:

Mr. Warsoff authorized Cornerstone Engineering to design and prepare an improvement plan for the raised median and the signage. Mr. Warsoff asked his Engineer to process the plans with the City of Oceanside and Caltrans. The Engineer of Work submitted the improvement plan number R-13923 to the Engineering Division on October 10, 2007. The improvement plan was reviewed by Engineering staff, and approved by the City Engineer on March 12, 2008. The plan was also submitted to Caltrans for review and approval. Mr. Warsoff decided to stop processing the plan with Caltrans, and never obtained the required permit necessary to conduct the required improvements.

City Engineering staff members, Marty Eslambolchi and Jim Knowlton met with Mr. Warsoff and his Engineer, Mr. Boraks in early March 2008 regarding the raised median construction. In the meeting Mr. Warsoff requested that staff grant him an occupancy permit prior to constructing the raised median; due to a lack of funds, and under the premise that he would acquire sufficient financial support within 6-months. However, to date, Mr. Warsoff has not fulfilled his obligation as discussed in that meeting and in compliance with the resolution of approval.

The City Engineer reiterated that Mr. Warsoff had not complied with Condition number 2 of the time extension resolution of approval that was approved by the Planning

Commission on September 24, 2009. Condition number 2 re-emphasized the requirement of the raised median improvement on Oceanside Boulevard along the project frontage.

The City Engineer gave Mr. Warsoff thirty days from the date of the letter to inform staff of his action plans and timetable for obtaining the required permit from Caltrans and commencement date of construction. Mr. Warsoff has failed to respond to the letter, and was further informed that he is bound to comply with the recorded declaration of covenants, conditions and restriction and that his lack of response would require City Staff to initiate revocation of his Development Plan and Conditional Use Permit.

If you have any questions, please do not hesitate to call me (760) 435-3519.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard Greenbauer', written in a cursive style.

Richard Greenbauer,  
Senior Planner

Cc: file

PLANNING COMMISSION  
RESOLUTION NO. 2004-P22

A RESOLUTION OF THE PLANNING COMMISSION OF THE  
CITY OF OCEANSIDE, CALIFORNIA APPROVING A  
DEVELOPMENT PLAN AND CONDITIONAL USE PERMIT ON  
CERTAIN REAL PROPERTY IN THE CITY OF OCEANSIDE

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APPLICATION NO: D-19-03 and C-29-03  
APPLICANT: Joe and Barbara Warsoff  
LOCATION: 1660 Oceanside Boulevard

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THE PLANNING COMMISSION OF THE CITY OF OCEANSIDE, CALIFORNIA DOES  
RESOLVE AS FOLLOWS:

WHEREAS, there was filed with this Commission a verified petition on the forms  
prescribed by the Commission requesting a Development Plan and Conditional Use Permit under  
the provisions of Articles 11, 41 and 43 of the Zoning Ordinance of the City of Oceanside to permit  
the following:

construction of a 3,456-square foot mini-mart;  
on certain real property described in the project description.

WHEREAS, the Planning Commission, after giving the required notice, did on the 24<sup>th</sup> day  
of May, 2004 conduct a duly advertised public hearing as prescribed by law to consider said  
application.

WHEREAS, pursuant to the California Environmental Quality Act of 1970, and State  
Guidelines thereto; this project is not subject to CEQA per Article 19 Section 15301 and therefore  
the project is exempt from CEQA;

WHEREAS, there is hereby imposed on the subject development project certain fees,  
dedications, reservations and other exactions pursuant to state law and city ordinance;

WHEREAS, pursuant to Gov't Code §66020(d)(1), NOTICE IS HEREBY GIVEN that the  
project is subject to certain fees, dedications, reservations and other exactions as provided below:

	<u>Description</u>	<u>Authority for Imposition</u>	<u>Current Estimate Fee or Calculation Formula</u>
1			
2			
3	Drainage Fee	Ordinance No. 85-23 Resolution No. 89-231	\$9,575 per acre
4			
5	Public Facility Fee	Ordinance No. 91-09 Resolution No. R91-39	\$441 per thousand square feet
6			
7	School Facilities Mitigation Fee	Ordinance No. 91-34	\$.34 per square foot
8			
9	Traffic Signal Fee	Ordinance No. 87-19	\$7.80 per vehicle trip
10	Thoroughfare Fee (For commercial and industrial please note the .75 per cent discount)	Ordinance No. 83-01	\$177 per vehicle trip (based on SANDAG trip generation table available from staff and from SANDAG)
11			
12			
13	Water System Buy-in Fees	Oceanside City Code §37.56.1 Resolution No. 87-96 Ordinance No. 02-OR-332-1	Fee based on meter size Typical is \$17,908 for a 2" meter
14			
15			
16	Wastewater System Buy-in fees	Oceanside City Code § 29.11.1 Resolution No. 87-97 Ordinance No. 02-OR-333-1	Based on meter size Typical is \$21,923 for a 2" meter
17			
18			
19	San Diego County Water Authority Capacity Fees	SDCWA Ordinance No. 2000-3	Based on meter size. Typical is \$10,421 for a 2" meter.
20			

21 WHEREAS, the current fees referenced above are merely fee amount estimates of the  
 22 impact fees that would be required if due and payable under currently applicable ordinances and  
 23 resolutions, presume the accuracy of relevant project information provided by the applicant, and are  
 24 not necessarily the fee amount that will be owing when such fee becomes due and payable;

25 WHEREAS, unless otherwise provided by this resolution, all impact fees shall be calculated  
 26 and collected at the time and in the manner provided in Chapter 32B of the Oceanside City Code  
 27 and the City expressly reserves the right to amend the fees and fee calculations consistent with  
 28 applicable law;

1 WHEREAS, the City expressly reserves the right to establish, modify or adjust any fee,  
2 dedication, reservation or other exaction to the extent permitted and as authorized by law;

3 WHEREAS, pursuant to Gov't Code §66020(d)(1), NOTICE IS FURTHER GIVEN that  
4 the 90-day period to protest the imposition of any fee, dedication, reservation, or other exaction  
5 described in this resolution begins on the effective date of this resolution and any such protest must  
6 be in a manner that complies with Section 66020;

7 WHEREAS, pursuant to Oceanside Zoning Ordinance §4603, this resolution becomes  
8 effective 10 days from its adoption in the absence of the filing of an appeal or call for review;

9 WHEREAS, studies and investigations made by this Commission and in its behalf reveal  
10 the following facts:

11 FINDINGS:

12 For the Development Plan:

- 13 1. The site plan and physical design of the project is consistent with the Zoning Ordinance  
14 and the underlying Special Commercial Highway Oriented (CS-HO) zone by providing a  
15 new 3,456-square foot mini-mart.
- 16 2. The Development Plan conforms to the General Plan of the City.
- 17 3. The project site can be adequately served by existing public facilities, services and  
18 utilities.
- 19 4. The project, as proposed, is compatible with the existing and potential development on  
20 adjoining commercial properties or in the surrounding neighborhood.
- 21 5. The site plan and physical design of the project is consistent with the policies contained  
22 within Section 1.24 of the Land Use Element of the General Plan.

23 For the Conditional Use Permit for the Mini-mart:

- 24 1. The location of the mini-mart, within the CS-HO commercial zone is in accord with the  
25 objectives of the Zoning Ordinance and the purposes of the district in which the site is  
26 located.
- 27 2. The proposed use will not be detrimental to properties or improvements in the vicinity or  
28 to the general welfare of the City.

1 3. The mini-mart is conditioned and is required to comply with all provisions of the Zoning  
2 Ordinance. The proposed use is subject to specific operational conditions that will cause  
3 the use to operate compatibly with the surrounding land uses.

4 NOW, THEREFORE, BE IT RESOLVED that the Planning Commission does hereby  
5 approve Development Plan (D-19-03), Conditional Use Permit (C-29-03) subject to the following  
6 conditions:

7 **Building:**

- 8 1. Applicable Building Codes and Ordinances shall be based on the date of submittal for  
9 Building Department plan check.
- 10 2. The granting of approval under this action shall in no way relieve the applicant/project from  
11 compliance with all State and local building codes.
- 12 3. Site development, parking, access into buildings and building interiors shall comply with  
13 Part 2, Title 24, C.C.R. (Disabled Access – Non-residential buildings - D.S.A.).
- 14 4. All electrical, communication, CATV, etc. service lines, within the exterior lines of the  
15 property shall be underground (City Code Sec. 6.30).
- 16 5. The building plans for this project are required by State law to be prepared by a licensed  
17 architect or engineer and must be in compliance with this requirement prior to submittal  
18 for building plan review.
- 19 6. All outdoor lighting shall meet Chapter 39 of the City Code (Light Pollution Ordinance) and  
20 shall be shielded appropriately. Where color rendition is important high-pressure sodium,  
21 metal halide or other such lights may be utilized and shall be shown on final building and  
22 electrical plans.
- 23 7. The developer shall monitor, supervise and control all building construction and supportive  
24 activities so as to prevent these activities from causing a public nuisance, including, but not  
25 limited to, strict adherence to the following:
- 26 a) Building construction work hours shall be limited to between 7 a.m. and 6 p.m.  
27 Monday through Friday, and on Saturday from 7 a.m. to 6 p.m. for work that is not  
28 inherently noise-producing. Examples of work not permitted on Saturday are

1 concrete and grout pours, roof nailing and activities of similar noise-producing  
2 nature. No work shall be permitted on Sundays and Federal Holidays (New Year's  
3 Day, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving Day, Christmas Day) except  
4 as allowed for emergency work under the provisions of the Oceanside City Code  
5 Chapter 38 (Noise Ordinance).

- 6 b) The construction site shall be kept reasonably free of construction debris as  
7 specified in Section 13.17 of the Oceanside City Code. Storage of debris in  
8 approved solid waste containers shall be considered compliance with this  
9 requirement. Small amounts of construction debris may be stored on site in a neat,  
10 safe manner for short periods of time pending disposal.

11 **Engineering:**

- 12 8. An erosion control plan and precise grading and private improvement plan shall be  
13 prepared, reviewed, secured and approved prior to the issuance of any building permits.  
14 The plan shall reflect all new and existing pavement, flatwork, landscaped areas, special  
15 surfaces, curbs, gutters, medians, striping, signage, and footprints of all structures, walls,  
16 drainage devices and utility services. Parking lot striping shall be shown on all Precise  
17 Grading and Private Improvement Plans.
- 18 9. All right-of-way alignments, street dedications, exact geometrics and widths shall be  
19 dedicated and improved as required by the City Engineer.
- 20 10. Design and construction of all improvements shall be in accordance with standard plans,  
21 specifications of the City of Oceanside and subject to approval by the City Engineer.
- 22 11. Prior to issuance of a building permit all improvement requirements shall be covered by a  
23 development agreement and secured with sufficient improvement securities or bonds  
24 guaranteeing performance and payment for labor and materials, setting of monuments,  
25 and warranty against defective materials and workmanship.
- 26 12. Prior to issuance of a building permit a phasing plan for the construction of public and  
27 private improvements including landscaping, shall be approved by the City Engineer.
- 28 13. The approval of the project shall not mean that closure, vacation, or abandonment of any  
public street, right-of-way, easement, or facility is granted or guaranteed to the developer.

1 The developer is responsible for applying for all closures, vacations, and abandonments  
2 as necessary. The application(s) shall be reviewed and approved or rejected by the City  
3 under separate process(es) per codes, ordinances, and policies in effect at the time of the  
4 application.

5 14. Where proposed off-site improvements, including but not limited to slopes, public utility  
6 facilities, and drainage facilities, are to be constructed, the applicant shall, at his own  
7 expense, obtain all necessary easements or other interests in real property and shall dedicate  
8 the same to the City as required. The applicant shall provide documentary proof  
9 satisfactory to the City that such easements or other interest in real property have been  
10 obtained prior to issuance of any grading, building or improvement permit for the  
11 development. Additionally, the City, may at its sole discretion, require that the applicant  
12 obtain at his sole expense a title policy insuring the necessary title for the easement or other  
13 interest in real property to have vested with the City of Oceanside or the applicant, as  
14 applicable.

15 15. The developer shall monitor, supervise and control all construction and construction-  
16 supportive activities, so as to prevent these activities from causing a public nuisance,  
17 including but not limited to, insuring strict adherence to the following:

- 18 a) Dirt, debris and other construction material shall not be deposited on any public  
19 street or within the City's storm water conveyance system.
- 20 b) All grading and related site preparation and construction activities shall be limited  
21 to the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday. No earthmoving  
22 or grading operation shall be conducted on Saturdays, Sundays or legal holidays  
23 unless written permission is granted by the City Engineer with specific limitations  
24 to the working hours and types of permitted operations. All on-site construction  
25 staging areas shall be as far as possible (minimum 100 feet) from any existing  
26 residential development. Because construction noise may still be intrusive in the  
27 evening or on holidays, the City of Oceanside Noise Ordinance also prohibits "any  
28 disturbing excessive, or offensive noise which causes discomfort or annoyance to  
reasonable persons of normal sensitivity."

- 1           c)     The construction site shall accommodate the parking of all motor vehicles used by  
2                   persons working at or providing deliveries to the site.
- 3 16.     All traffic signal contributions, highway thoroughfare fees, park fees, reimbursements,  
4           and other applicable charges, fees and deposits shall be paid prior to the issuing of any  
5           building permits, in accordance with City Ordinances and policies. The developer shall  
6           also be required to join into, contribute, or participate in any improvement, lighting, or  
7           other special district affecting or affected by this project. Approval of the project shall  
8           constitute the developer's approval of such payments, and his agreement to pay for any  
9           other similar assessments or charges in effect when any increment is submitted for final  
10          map or building permit approval, and to join, contribute, and/or participate in such  
11          districts.
- 12 17.     Pavement sections for all streets, alleys, driveways and parking areas shall be based upon  
13           approved soil tests and traffic indices. The pavement design is to be prepared by the  
14           developer's soil engineer and must be approved by the City Engineer, prior to paving.
- 15 18.     Any existing broken pavement, concrete curb, gutter or sidewalk or any damaged during  
16           construction of the project, shall be repaired or replaced as directed by the City Engineer.
- 17 19.     Grading and drainage facilities shall be designed and installed to adequately accommodate  
18           the local storm water runoff and shall be in accordance with the City's Engineers Manual  
19           and as directed by the City Engineer.
- 20 20.     The applicant shall obtain any necessary permits and clearances from all public agencies  
21           having jurisdiction over the project due to its type, size, or location, including but not  
22           limited to the U. S. Army Corps of Engineers, California Department of Fish and Game, U.  
23           S. Fish and Wildlife Service and/or San Diego Regional Water Quality Control Board  
24           (including NPDES), San Diego County Health Department, prior to the issuance of grading  
25           permits.
- 26 21.     Prior to any grading of any part of the tract or project, a comprehensive soils and geologic  
27           investigation shall be conducted of the soils, slopes, and formations in the project. All  
28           necessary measures shall be taken and implemented to assure slope stability, erosion

1 control, and soil integrity. No grading shall occur until a detailed grading plan, to be  
2 prepared in accordance with the Grading Ordinance and Zoning Ordinance, is approved by  
3 the City Engineer.

4 22. This project shall provide year-round erosion control including measures for the site  
5 required for the phasing of grading. Prior to the issuance of grading permit, an erosion  
6 control plan, designed for all proposed stages of construction, shall be reviewed, secured by  
7 the applicant with cash securities and approved by the City Engineer.

8 23. Landscaping plans, including plans for the construction of walls, fences or other structures  
9 at or near intersections, must conform to intersection sight distance requirements.  
10 Landscape and irrigation plans for disturbed areas must be submitted to the City Engineer  
11 prior to the issuance of a preliminary grading permit and approved by the City Engineer  
12 prior to the issuance of building permits. Frontage and median landscaping shall be  
13 installed prior to the issuance of any building permits. Project fences, sound or privacy  
14 walls and monument entry walls/signs shall be designed, reviewed and constructed by the  
15 landscape plans and shown for location only on grading plans. Plantable, segmental walls  
16 shall be designed, reviewed and constructed by the grading plans and landscaped/irrigated  
17 through project landscape plans. All plans must be approved by the City Engineer and a  
18 pre-construction meeting held, prior to the start of any improvements.

19 24. The drainage design on the development plan is conceptual only. The final design shall be  
20 based upon a hydrologic/hydraulic study to be approved by the City Engineer during final  
21 engineering. All drainage picked up in an underground system shall remain underground  
22 until it is discharged into an approved channel, or as otherwise approved by the City  
23 Engineer. All public storm drains shall be shown on City standard plan and profile sheets.  
24 All storm drain easements shall be dedicated where required. The applicant shall be  
25 responsible for obtaining any off-site easements for storm drainage facilities.

26 25. Sediment, silt, grease, trash, debris, and/or pollutants shall be collected on-site and disposed  
27 of in accordance with all state and federal requirements, prior to stormwater discharge either  
28 off-site or into the City drainage system.

29 26. The development shall comply with all applicable regulations established by the United  
States Environmental Protection Agency (USEPA) as set forth in the National Pollutant

1 Discharge Elimination System (N.P.D.E.S.) permit requirements for urban runoff and  
2 storm water discharge and any regulations adopted by the City pursuant to the N.P.D.E.S.  
3 regulations or requirements. Further, the applicant may be required to file a Notice of  
4 Intent with the State Water Resources Control Board to obtain coverage under the  
5 N.P.D.E.S. General Permit for Storm Water Discharges Associated with Construction  
6 Activity and may be required to implement a Storm Water Pollution Prevention Plan  
7 (SWPPP) concurrent with the commencement of grading activities. SWPPP's include  
8 both construction and post construction pollution prevention and pollution control  
9 measures and identify funding mechanisms for post construction control measures. The  
10 developer shall comply with all the provisions of the Clean Water Program during and  
11 after all phases of the development process, including but not limited to: mass grading,  
12 rough grading, construction of street and landscaping improvements, and construction of  
13 dwelling units. The applicant shall design the Project's storm drains and other drainage  
14 facilities to include Best Management Practices to minimize non-point source pollution,  
satisfactory to the City Engineer.

15 27. Upon acceptance of any fee waiver or reduction by the Developer, the entire project will  
16 be subject to prevailing wage requirements as specified by Labor Code section  
17 1720(b)(4). The Developer/Subdivider/Project Proponent/Applicant shall agree to execute  
18 a form acknowledging the prevailing wage requirements prior to the granting of any fee  
19 reductions or waivers.

20 28. The project shall install a raised median on Oceanside Boulevard along the project  
21 frontage to prohibit left turns from the project site. The median shall be approximately  
22 250 feet in length beginning at the intersection of Vine Street, and be of sufficient length  
23 to restrict left turns from the adjacent Best Western motel driveway east of the project  
24 site. The median shall be designed and constructed to the satisfaction of the  
Transportation Manager.

25 29. The project shall install a left turn pocket, 180 feet in length with a 120-foot transition,  
26 for eastbound Oceanside Boulevard beginning at the Interstate 5 on/off ramp. The turn  
27 pocket shall be designed to Caltrans design standards.

28 30. "Right Turn Only" signs shall be installed on both driveway approaches from the project  
site onto Oceanside Boulevard.

- 1 31. The existing southerly driveway from the project site onto Vine Street shall be removed.
- 2 32. Sufficient storage space on the project site shall be allowed for truck circulation,  
3 deliveries and parking.
- 4 33. Crosswalks shall be installed on all approaches to the Oceanside Boulevard/Vine Street  
5 intersection. The existing traffic signal at this intersection shall be modified to allow  
6 pedestrian access for the east leg, and the existing "No Ped Crossing" signs on the  
7 eastside of the intersection shall be removed.
- 8 34. Five-foot sidewalk (not including 6" top of curb) shall be installed on the north side of  
9 Oceanside Boulevard and the east side of Vine Street for the full length of the project.  
10 The sidewalk shall be ADA compliant and be contiguous to the curb.
- 11 35. ADA compliant pedestrian access shall be provided at all project driveways and the  
12 intersection of Oceanside Boulevard and Vine Street.
- 13 36. Sight distance requirements at all driveway and street intersections shall conform to the  
14 intersection corner sight distance criteria as provided by the California Department of  
15 Transportation Highway Design Manual.
- 16 37. A traffic control plan shall be prepared according to the City traffic control guidelines and  
17 be submitted to and approved by the Transportation Manager prior to the start of work  
18 within open City rights-of-way. Traffic control during construction of streets that have  
19 been opened to public traffic shall be in accordance with construction signing, marking  
20 and other protection as required by the Caltrans Traffic Manual and City Traffic Control  
21 Guidelines.
- 22 38. Traffic control during construction adjacent to or within all public streets must meet  
23 Caltrans standards and City Traffic Control Guidelines. Traffic control plans shall be in  
24 effect from 8:00 a.m. to 3:30 p.m. unless approved otherwise.
- 25 39. A haul route shall be obtained at least 7 days prior to the start of hauling operations and  
26 must be approved by the Transportation Manager. Hauling operations shall be 8:00 a.m. to  
27 3:30 p.m. unless approved otherwise.
- 28 40. Street lights shall be installed on Oceanside Boulevard and Vine Street along the frontage of  
the project. The system shall be designed to provide uniform lighting, and be secured prior  
to the recordation of map or building permit issuance, if a map is not recorded. The  
subdivider shall pay all applicable fees, energy charges, and/or assessments associated with

1 City-owned (LS-2 rate schedule) streetlights and shall also agree to the formulation of, or  
2 the annexation to, any appropriate street lighting district.

3 41. The applicant shall pay all applicable traffic signal and thoroughfare fees.

4 **Fire:**

5 42. Plans shall be submitted to the Fire Prevention Bureau for plan check review and approval  
6 prior to the issuance of building permits.

7 43. Fire extinguishers are required and shall be included on the plans submitted for plan check.

8 44. Buildings shall meet Oceanside Fire Departments current adopted codes at the time of  
9 building permits.

10 45. In accordance with the Uniform Fire Code Sec. 901.4.4, approved addresses, for  
11 commercial shall be placed on the structure in such a position as to be plainly visible and  
12 legible from the street or roadway fronting the property. Numbers shall contrast with their  
13 background.

14 46. Commercial Buildings require 6-inch high address numbers.

15 **Planning:**

16 47. This Development Plan and Conditional Use Permit shall expire on May 24, 2006, unless  
17 the Planning Commission grants a time extension.

18 48. This Development Plan and Conditional Use Permit approves only the construction of a  
19 3,456-square foot mini-mart as shown on the plans and exhibits presented to the Planning  
20 Commission for review and approval. No deviation from these approved plans and exhibits  
21 shall occur without Planning Department approval. Substantial deviations shall require a  
22 revision to the Development Plan and Conditional Use Permit or a new Development Plan  
23 and Conditional Use Permit.

24 49. The applicant, permittee or any successor-in-interest shall defend, indemnify and hold  
25 harmless the City of Oceanside, its agents, officers or employees from any claim, action or  
26 proceeding against the City, its agents, officers, or employees to attack, set aside, void or  
27 annul an approval of the City, concerning Development Plan D-19-03 and Conditional Use  
28 Permit C-29-03. The City will promptly notify the applicant of any such claim, action or  
proceeding against the City and will cooperate fully in the defense. If the City fails to  
promptly notify the applicant of any such claim action or proceeding or fails to cooperate  
fully in the defense, the applicant shall not, thereafter, be responsible to defend,  
indemnify or hold harmless the City.

1 50. All mechanical rooftop and ground equipment shall be screened from public view as  
2 required by the Zoning Ordinance. That is, on all four sides and top. The roof jacks,  
3 mechanical equipment, screen and vents shall be painted with non-reflective paint to match  
4 the roof. This information shall be shown on the building plans.

5 51. Landscape plans, meeting the criteria of the City's Landscape Guidelines and Water  
6 Conservation Ordinance No. 91-15, including the maintenance of such landscaping, shall be  
7 reviewed and approved by the City Engineer and Planning Director prior to the issuance of  
8 building permits. Landscaping shall not be installed until bonds have been posted, fees  
9 paid, and plans signed for final approval. The following special landscaping requirements  
shall be met:

10 a) Parkway tree plantings along arterial roads shall be a minimum of two-inch  
11 diameter trees so as to ensure a mature landscape theme is achieved in a reasonable  
12 amount of time.

13 b) Arterial street trees in parkways shall be planted at a minimum of 30 feet on center,  
14 each side of street, as a solitary planting. Approved root barriers shall be  
15 incorporated.

16 52. All landscaping, fences, walls, etc. on the site, in any adjoining public parkways shall be  
17 permanently maintained by the owner, his assigns or any successors-in-interest in the  
18 property. The maintenance program shall include normal care and irrigation of the  
19 landscaping; repair and replacement of plant materials; irrigation systems as necessary; and  
20 general cleanup of the landscaped and open areas, parking lots and walkways, walls, fences,  
21 etc. Failure to maintain landscaping shall result in the City taking all appropriate  
22 enforcement actions by all acceptable means including but not limited to citations and/or  
23 actual work with costs charged to or recorded against the owner. This condition shall be  
recorded with the covenant required by this Resolution.

24 53. A trash enclosure must be provided as required by Chapter 13 of the City Code and shall  
25 also include additional space for storage and collection of recyclable materials per City  
26 standards. Recycling is required by City Ordinance. The enclosure must be built in a flat,  
27 accessible location as determined by the City Engineer. The enclosure shall meet City  
28 standards including being constructed of concrete block, reinforced with rebar and filled

1 with cement. A concrete slab must be poured with a berm on the inside of the enclosure to  
2 prevent the bin(s) from striking the block walls. The slab must extend out of the enclosure  
3 for the bin(s) to roll out onto. Steel posts must be set in front of the enclosure with solid  
4 metal gates. All driveways and service access areas must be designed to sustain the weight  
5 of a 50,000-pound service vehicle. Trash enclosures and driveways and service access areas  
6 shall be shown on both the improvement and landscape plans submitted to the City  
7 Engineer. The specifications shall be reviewed and approved by the City Engineer. The  
8 City's waste disposal contractor is required to access private property to service the trash  
9 enclosures, a service agreement must be signed by the property owner and shall remain in  
10 effect for the life of the project. All trash enclosures shall be designed to provide user  
11 access without the use and opening of the service doors for the bins. Trash enclosures shall  
12 have design features such as materials and trim similar to that of the rest of the project. This  
13 design shall be shown on the landscape plans and shall be approved by the Planning  
14 Director.

14 54. A covenant or other recordable document approved by the City Attorney shall be prepared  
15 by the applicant and recorded prior to issuance of building permits. The covenant shall  
16 provide that the property is subject to this Resolution, and shall generally list the conditions  
17 of approval.

18 55. The project shall prepare a Management Plan. The Management Plan is subject to the  
19 review and approval of the Planning Director and the Police Chief prior to the occupancy of  
20 the project, and shall be recorded as CC&R's against the property. The Management Plan  
21 shall cover the following:

- 22 a) Security - The Management Plan, at a minimum, shall address onsite management,  
23 hours-of-operation and measures for providing appropriate security for the project  
24 site.
- 25 b) Maintenance - The Management Plan shall cover, but not be limited to anti-  
26 graffiti and site and exterior building, landscaping, parking lots, sidewalks,  
27 walkways and overall site maintenance measures and shall ensure that a high  
28 standard of maintenance at this site exists at all times. The maintenance portion  
of the management plan shall include a commitment for the sweeping and  
cleaning of parking lots, sidewalks and other concrete surfaces at sufficient  
intervals to maintain a "like new" appearance. Wastewater, sediment, trash or

1 other pollutants shall be collected on site and properly disposed of and shall not be  
2 discharged off the property or into the City's storm drain system.

3 c) Any graffiti within the center shall be removed by the center management or its  
4 designated representative within 24 hours of occurrence. Any new paint used to  
5 cover graffiti shall match the existing color scheme.

6 56. Prior to the issuance of building permits, compliance with the applicable provisions of the  
7 City's anti-graffiti (Ordinance No. 93-19/Section 20.25 of the City Code) shall be reviewed  
8 and approved by the Planning Department. These requirements, including the obligation to  
9 remove or cover with matching paint all graffiti within 24 hours, shall be noted on the  
10 Landscape Plan and shall be recorded in the form of a covenant affecting the subject  
11 property.

12 57. Prior to the transfer of ownership and/or operation of the site the owner shall provide a  
13 written copy of the applications, staff report and resolutions for the project to the new owner  
14 and/or operator. This notification's provision shall run with the life of the project and shall  
15 be recorded as a covenant on the property.

16 58. Failure to meet any conditions of approval for this development shall constitute a violation  
17 of the Conditional Use Permit and Development Plan.

18 59. Unless expressly waived, all current zoning standards and City ordinances and policies in  
19 effect at the time building permits are issued are required to be met by this project. The  
20 approval of this project constitutes the applicant's agreement with all statements in the  
21 Description and Justification, Management Plan and other materials and information  
22 submitted with this application, unless specifically waived by an adopted condition of  
23 approval.

24 60. This Conditional Use Permit shall be called for review by the Planning Commission if  
25 complaints are filed and verified as valid by the Code Enforcement Office concerning the  
26 violation of any of the approved conditions or assumptions made by the application.

27 61. The hours-of-operation are not limited, but shall be reviewed and may be limited by the  
28 Planning Commission when valid issues or complaints pertaining to the hours-of-operation  
arise.

62. Elevations, siding materials, colors, roofing materials and floor plans shall be  
substantially the same as those approved by the Planning Commission. These shall

1 be shown on plans submitted to the Building Department and Planning  
2 Department.

3 **Water Utilities:**

4 63. All public water and/or sewer facilities not located within the public right-of-way shall be  
5 provided with easements sized according to the City's Engineers Manual. Easements  
6 shall be constructed for an all weather access.

7 64. No trees or structures or building overhang shall be located within any water or  
8 wastewater utility easement.

9 65. The property owner shall maintain private water and wastewater utilities located on  
10 private property.

11 66. A separate irrigation meter is required and approved backflow prevention device is  
12 required.

13 67. Water services and sewer laterals constructed in existing right-of-way locations are to be  
14 constructed by approved and licensed contractors at developer's expense.

15 68. The developer shall be responsible for developing all water and sewer facilities necessary  
16 to develop the property. Any relocation of water and/or sewer lines is the responsibility  
17 of the developer and shall be done by an approved licensed contractor at the developer's  
18 expense.

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1 69. All water and wastewater construction shall conform to the most recent edition of the  
2 City's Engineers Manual, or as approved by the Water Utilities Director.

3 PASSED AND ADOPTED Resolution No. 2004-P22 on May 24, 2004 by the following  
4 vote, to wit:

5 AYES: Barrante, Chadwick, Schaffer, Parker, Nack and Neal

6 NAYS: None

7 ABSENT: Todd

8 ABSTAIN: None

9  
10   
11 \_\_\_\_\_  
George Barrante, Chairman  
Oceanside Planning Commission

12 ATTEST:

13   
14 \_\_\_\_\_  
Gerald S. Gilbert, Secretary

15  
16 I, GERALD S. GILBERT, Secretary of the Oceanside Planning Commission, hereby certify that  
17 this is a true and correct copy of Resolution No. 2004-P22.

18 Dated: May 24, 2004  
19  
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28

1 PLANNING COMMISSION  
2 RESOLUTION NO. 2007-P46

3 A RESOLUTION OF THE PLANNING COMMISSION OF THE  
4 CITY OF OCEANSIDE, CALIFORNIA APPROVING A TIME  
5 EXTENSION FOR A DEVELOPMENT PLAN AND  
6 CONDITIONAL USE PERMIT ON CERTAIN REAL PROPERTY  
IN THE CITY OF OCEANSIDE

---

7 APPLICATION NO: D-19-03 and C-29-03 Time Extension  
8 APPLICANT: Joe and Barbara Warsoff  
9 LOCATION: 1660 Oceanside Boulevard

---

10 THE PLANNING COMMISSION OF THE CITY OF OCEANSIDE, CALIFORNIA DOES  
11 RESOLVE AS FOLLOWS:

12 WHEREAS, there was filed with this Commission a verified petition on the forms  
13 prescribed by the Commission requesting a time extension to a Development Plan and Conditional  
14 Use Permit under the provisions of Articles 11, 41 and 43 of the Zoning Ordinance of the City of  
Oceanside to permit the following:

15 construction of a 3,456-square foot mini-mart;  
16 on certain real property described in the project description.

17 WHEREAS, the Planning Commission, after giving the required notice, did on the 24<sup>th</sup> day  
18 of September, 2007 conduct a duly advertised public hearing as prescribed by law to consider said  
application.

19 WHEREAS, pursuant to the California Environmental Quality Act of 1970, and State  
20 Guidelines thereto; this project is not subject to CEQA per Article 19 Section 15332 and therefore,  
21 the project is exempt from CEQA;

22 WHEREAS, there is hereby imposed on the subject development project certain fees,  
23 dedications, reservations and other exactions pursuant to state law and city ordinance;

24 WHEREAS, pursuant to Gov't Code §66020(d)(1), NOTICE IS HEREBY GIVEN that the  
25 project is subject to certain fees, dedications, reservations and other exactions as provided below:

26 ////////////////

27 ////////////////

28 ////////////////

/////////////////

1	<u>Description</u>	<u>Authority for Imposition</u>	<u>Current Estimate Fee or Calculation Formula</u>
2			
3	Parkland Dedication/Fee	Ordinance No. 91-10 Resolution No. 06-R0334-1	\$3,503 per unit
4			
5	Drainage Fee	Ordinance No. 85-23 Resolution No. 06-R0334-1	Depends on area (range is \$2,843-\$15,964 per acre)
6			
7	Public Facility Fee	Ordinance No. 91-09 Resolution No. 06-R0334-1	\$.713 per square foot or \$713 per thousand square feet for non-residential uses and \$2,072 per unit for residential
8			
9			
10	School Facilities Mitigation Fee	Ordinance No. 91-34	\$.42 per square foot non-residential for Oceanside (\$.42 for Vista and Fallbrook) \$2.63 per square foot residential (\$2.63 for Vista; \$2.63 for Fallbrook)
11			
12			
13			
14			
15	Traffic Signal Fee	Ordinance No. 87-19 Resolution No. 06-R0334-1	\$15.71 per vehicle trip
16			
17	Thoroughfare Fee (For commercial and industrial please note the .75 per cent discount)	Ordinance No. 83-01 Resolution No. 06-R0334-1	\$255 per vehicle trip (based on SANDAG trip generation table available from staff and from SANDAG)
18			
19			
20	Water System Buy-in Fees	Oceanside City Code §37.56.1 Resolution No. 87-96 Ordinance No. 05-OR 0611-1	Fee based on water meter size. Residential is typically \$3,746 per unit; Non-residential is \$19,967 for a 2" meter.
21			
22			
23	Wastewater System Buy-in fees	Oceanside City Code § 29.11.1 Resolution No. 87-97 Ordinance No. 05-OR 0610-1	Based on capacity or water meter size. Residential is typically \$4,587 per unit; Non-residential is \$24,444 for a 2" meter.
24			
25			
26			
27			
28			

1           WHEREAS, the current fees referenced above are merely fee amount estimates of the  
2 impact fees that would be required if due and payable under currently applicable ordinances and  
3 resolutions, presume the accuracy of relevant project information provided by the applicant, and are  
4 not necessarily the fee amount that will be owing when such fee becomes due and payable;

5           WHEREAS, unless otherwise provided by this resolution, all impact fees shall be calculated  
6 and collected at the time and in the manner provided in Chapter 32B of the Oceanside City Code  
7 and the City expressly reserves the right to amend the fees and fee calculations consistent with  
8 applicable law;

9           WHEREAS, the City expressly reserves the right to establish, modify or adjust any fee,  
10 dedication, reservation or other exaction to the extent permitted and as authorized by law;

11           WHEREAS, pursuant to Gov't Code §66020(d)(1), NOTICE IS FURTHER GIVEN that  
12 the 90-day period to protest the imposition of any fee, dedication, reservation, or other exaction  
13 described in this resolution begins on the effective date of this resolution and any such protest must  
14 be in a manner that complies with Section 66020;

15           WHEREAS, pursuant to Oceanside Zoning Ordinance §4603, this resolution becomes  
16 effective 10 days from its adoption in the absence of the filing of an appeal or call for review;

17           WHEREAS, studies and investigations made by this Commission and in its behalf reveal  
18 the following facts:

19 FINDINGS:

20 For the Time Extension of the Development Plan and Conditional Use Permit:

- 21 1. The project has been conditioned for payment of all applicable impact fees, and therefore  
22 will be paying its fair share toward needed public services.
- 23 2. All changes in City policy have been addressed through revised Conditions of Approval.  
24 Therefore, this Time Extension will not adversely affect the City's General Plan or any  
25 existing applicable City policy.
- 26 3. There have been no significant changes affecting the project site, or the surrounding areas.  
27 As such, extending the opportunity to implement this use would not adversely affect the  
28 General Plan designations and policies for the project area. Likewise, the prior approved  
conditions for the operation of the use will provide measures of land use compatibility  
within the area.

1 For the Development Plan:

- 2 1. The site plan and physical design of the project is consistent with the Zoning Ordinance  
3 and the underlying Special Commercial Highway Oriented (CS-HO) zone by providing a  
4 new 3,456-square foot mini-mart.
- 5 2. The Development Plan conforms to the General Plan of the City.
- 6 3. The project site can be adequately served by existing public facilities, services and  
7 utilities.
- 8 4. The project, as proposed, is compatible with the existing and potential development on  
9 adjoining commercial properties or in the surrounding neighborhood.
- 10 5. The site plan and physical design of the project is consistent with the policies contained  
11 within Section 1.24 of the Land Use Element of the General Plan.

11 For the Conditional Use Permit for the Mini-Mart:

- 12 1. The location of the mini-mart, within the CS-HO commercial zone is in accord with the  
13 objectives of the Zoning Ordinance and the purposes of the district in which the site is  
14 located.
- 15 2. The proposed use will not be detrimental to properties or improvements in the vicinity or  
16 to the general welfare of the City.
- 17 3. The mini-mart is conditioned and is required to comply with all provisions of the Zoning  
18 Ordinance. The proposed use is subject to specific operational conditions that will cause  
19 the use to operate compatibly with the surrounding land uses.

20 NOW, THEREFORE, BE IT RESOLVED that the Planning Commission does hereby  
21 approve the time extension for Development Plan (D-19-03), Conditional Use Permit (C-29-03).  
22 Planning Commission Resolution No. 2004-P22 shall continue to be effective with the approval of  
23 this time extension. The following conditions shall supersede where conflicts arise:

23 **Building:**

- 24 1. Projects submitted after January 1, 2008 will be plan checked and constructed under the  
25 newly adopted ICC codes.

26 **Engineering:**

- 27 2. Median improvements shall be constructed prior to the issuance of certificate of  
28 occupancy, unless otherwise approved by the City Engineer.

- 1 3. Prior to issuance of a building permit, a phasing plan for the construction of public and  
2 private improvements, including landscaping on-site and within the median, shall be  
3 approved by the City Engineer.
- 4 4. Where proposed off-site improvements, including but not limited to the median, slopes,  
5 public utility facilities, and drainage facilities, are to be constructed, the applicant shall, at  
6 his own expense, obtain all necessary easements or other interests in real property and shall  
7 dedicate the same to the City as required. The applicant shall provide documentary proof  
8 satisfactory to the City that such easements or other interest in real property have been  
9 obtained prior to issuance of any grading, building or improvement permit for the  
10 development. Additionally, the City, may at its sole discretion, require that the applicant  
11 obtain at his sole expense a title policy insuring the necessary title for the easement or other  
12 interest in real property to have vested with the City of Oceanside or the applicant, as  
13 applicable.
- 14 5. Landscaping plans, including plans for the construction of walls, fences or other structures at  
15 or near intersections, must conform to intersection sight distance requirements. Landscape  
16 and irrigation plans for disturbed areas must be submitted to the City Engineer prior to the  
17 issuance of a preliminary grading permit and approved by the City Engineer prior to the  
18 issuance of building permits. Frontage and median landscaping should be installed prior to  
19 the issuance of certificate of occupancy. Project fences, sound or privacy walls and  
20 monument entry walls/signs shall be designed, reviewed and constructed by the landscape  
21 plans and shown for location only on grading plans. Plantable, segmental walls shall be  
22 designed, reviewed and constructed by the grading plans and landscaped/irrigated through  
23 project landscape plans. All plans must be approved by the City Engineer at a pre-  
24 construction meeting held, prior to the start of any improvements.
- 25 6. The Project Proponent shall prepare and submit an Operations & Maintenance (O&M)  
26 Plan to the City Engineer with the first submittal of engineering plans. The O&M Plan  
27 shall be prepared by the applicant's Civil Engineer. It shall be directly based on the  
28 project's Storm Water Mitigation Plan (SWMP) previously approved by the project's  
approving authority (Planning Commission/City Council). The O&M Plan shall be  
approved by the City Engineer prior to approval of any plans by the Public Works

Department. At a minimum the O&M Plan shall include the designated responsible parties to manage the storm water BMP(s), employee's training program and duties, operating schedule, maintenance frequency, routine service schedule, specific maintenance activities, copies of resource agency permits, cost estimate for implementation of the O&M Plan and any other necessary elements.

7. The Project Proponent shall enter into a City-Standard Stormwater Facilities Maintenance Agreement with the City obliging the project proponent to maintain, repair and replace the Storm Water Best Management Practices (BMPs) identified in the project's approved Storm Water Mitigation Plan (SWMP), as detailed in the O&M Plan into perpetuity. The Agreement shall be approved by the City Attorney prior to issuance of any precise grading permit and shall be recorded at the County Recorder's Office prior to issuance of any building permit. Security in the form of cash (or certificate of deposit payable to the City) or an irrevocable, City-Standard Letter of Credit shall be required prior to issuance of a precise grading permit. The amount of the security shall be equal to 10 years of maintenance costs, as identified by the O&M Plan. The applicant's Civil Engineer shall prepare the O&M cost estimate. The O&M cost estimate shall be approved by the City Engineer prior to approval of any engineering plans for the project.

8. At a minimum, maintenance agreements shall require the staff training, inspection and maintenance of all BMPs on an annual basis. The project proponent shall complete and maintain O&M forms to document all maintenance activities. Parties responsible for the O&M plan shall retain records at the subject property for at least 5 years. These documents shall be made available to the City for inspection upon request at any time.

9. The Agreement shall include a copy of executed on-site and off-site access easements necessary for the operation and maintenance of BMPs that shall be binding on the land throughout the life of the project to the benefit of the party responsible for the O&M of BMPs, until such time that the stormwater BMP requiring access is replaced, satisfactory to the City Engineer. The Agreement shall also include a copy of the O&M Plan approved by the City Engineer.

10. The BMPs described in the project's approved Storm Water Mitigation Plan (SWMP) shall not be altered in any way, shape or form without formal approval by either an

1 Administrative Substantial Conformance issued by the Community Development  
2 Department/Planning Division or the project's final approving authority (Planning  
3 Commission/ City Council) at a public hearing. The determination of whatever action is  
4 required for changes to a project's approved SWMP shall be made by the Community  
5 Development Department/Planning Division.

- 6 11. Thermoplastic crosswalks shall be installed at the existing pedestrian crossings located on  
7 the east and north legs of the intersection of Oceanside Boulevard at Vine Street. These  
8 improvements shall be completed prior to issuance of certificate of occupancy and to the  
9 satisfaction of the City Engineer.

9 **Planning:**

- 10 12. This Development Plan (D-19-03) and Conditional Use Permit (C-29-03) expires shall be  
11 extended 24 months from the original expiration date of May 24, 2006.
- 12 13. All of the conditions of Planning Commission Resolution No. 2004-P22 shall continue to  
13 apply for 24 months from the original expiration date of May 24, 2006, except those  
14 conditions listed here, which shall supersede.
- 15 14. A covenant or other recordable document approved by the City Attorney shall be prepared  
16 by the applicant and recorded prior to issuance of building permits. The covenant shall  
17 provide that the property is subject to this resolution, and shall generally list the conditions  
18 of approval.
- 19 15. Landscape plans, meeting the criteria of the City's Landscape Guidelines and Water  
20 Conservation Ordinance No. 91-15, including the maintenance of such landscaping, shall be  
21 reviewed and approved by the City Engineer prior to the issuance of building permits.  
22 Landscaping shall not be installed until bonds have been posted, fees paid, and plans signed  
23 for final approval. The following special landscaping requirements shall be met:
- 24 a) Parkway tree plantings along arterial roads shall be a minimum of two-inch diameter  
25 trees so as to ensure a mature landscape theme is achieved in a reasonable amount of  
26 time.
  - 27 b) Arterial street trees in parkways shall be planted at a minimum of 30 feet on center,  
28 each side of street, as a solitary planting. Approved root barriers shall be  
incorporated.

- c) All landscaping, fences, walls, etc. on the site, in the median, in the public right-of-way, and in any adjoining public parkways shall be permanently maintained by the owner, his assigns or any successors-in-interest in the property. The maintenance program shall include normal care and irrigation of the landscaping; repair and replacement of plant materials; irrigation systems as necessary; and general cleanup of the landscaped and open areas, parking lots and walkways, walls, fences, etc. Failure to maintain landscaping shall result in the City taking all appropriate enforcement actions by all acceptable means including but not limited to citations and/or actual work with costs charged to or recorded against the owner. This condition shall be recorded with the covenant required by this resolution.
- d) There shall be an assessment/evaluation of existing gas and electric lines prior to placement of palms and tree grates on Oceanside Boulevard; trees shall be relocated as necessary.
- e) The landscape plans for this project shall take into consideration any future landscape plans for Oceanside Boulevard east of Interstate 5 and west of El Camino Real.

16. The project shall prepare a Management Plan. The Management Plan is subject to the review and approval of the City Planner and the Police Chief prior to the occupancy of the project, and shall be recorded as CC&R's against the property. The Management Plan shall cover the following:

- a) Security - The Management Plan, at a minimum, shall address on-site management, hours-of-operation and measures for providing appropriate security for the project site.
- b) Maintenance - The Management Plan shall cover, but not be limited to anti-graffiti and site and exterior building, landscaping, parking lots, sidewalks, walkways, median, and overall site maintenance measures and shall ensure that a high standard of maintenance at this site exists at all times. The maintenance portion of the management plan shall include a commitment for the sweeping and cleaning of parking lots, sidewalks and other concrete surfaces at sufficient

1 intervals to maintain a "like new" appearance. Wastewater, sediment, trash or  
2 other pollutants shall be collected on-site and properly disposed of and shall not  
3 be discharged off the property or into the City's storm drain system.

4 c) Any graffiti within the center shall be removed by the center management or its  
5 designated representative within 24 hours of occurrence. Any new paint used to  
6 cover graffiti shall match the existing color scheme.

7 d) Failure to meet any conditions of approval for this development shall constitute a  
8 violation of the time extension for the Conditional Use Permit and Development  
9 Plan.

10 17. No coin operated amusement devices shall be maintained on license premises.

11 18. At any time the premise causes policing problems, the Police Department may recommend  
12 the licensee to furnish security personnel during the times identified by the Police  
13 Department. If after such recommendation the licensee does not take steps to control  
14 policing problems, the Police Department may require the licensee to furnish security  
15 personnel during times identified by the Police Department.

16 19. The premises shall be maintained primarily as a convenience store and the annual sales of  
17 alcoholic beverages shall not exceed 25 percent of the quarterly annual sale of all other  
18 products.

19 20. No more than 25 percent of total shelf space may be devoted to the display and sale of  
20 alcoholic beverages.

21 **Water Utilities:**

22 21. All public water and/or sewer facilities not located within the public right-of-way shall be  
23 provided with easements sized according to the Water, Sewer, and Reclaimed Water  
24 Design and Construction Manual. Easements shall be constructed for all weather access.

25 22. A separate irrigation meter and approved backflow prevention device is required and shall  
26 be displayed on the plans

27 23. All Water and Wastewater construction shall conform to the most recent edition of the  
28 Water, Sewer, and Reclaimed Water Design and Construction Manual or as approved by the  
Water Utilities Director.

1 24. All lots with a finish pad elevation located below the elevation of the next upstream  
2 manhole cover of the public sewer shall be protected from backflow of sewage by installing  
3 and maintaining an approved type backwater valve, per the Uniform Plumbing Code  
4 (U.P.C.).

5 25. A Grease, Oil, and Sand Interceptor, described by the Uniform Plumbing Code, relating to  
6 restaurants, shall be installed in each building sewer in an appropriate location and shall be  
7 maintained by the property owner. The location shall be called out on the approved  
8 Building Plans.

9 26. Water and Wastewater Buy-in fees and the San Diego County Water Authority Fees are to  
10 be paid to the City and collected by the Water Utilities Department at the time of Building  
11 Permit issuance.

12 PASSED AND ADOPTED Resolution No. 2007-P46 on September 24, 2007 by the following  
13 vote, to wit:

14 AYES: Martinek, Parker, Horton, Neal, Troisi and Bertheaud

15 NAYS: None

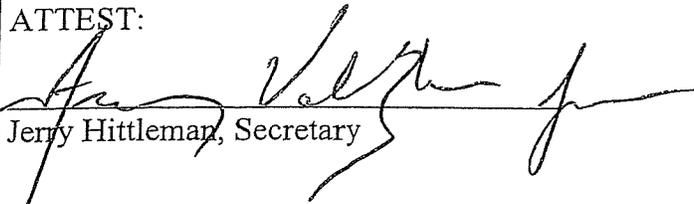
16 ABSENT: Balma

17 ABSTAIN: None

18 

19 \_\_\_\_\_  
20 Dennis Martinek, Chairman  
21 Oceanside Planning Commission

22 ATTEST:

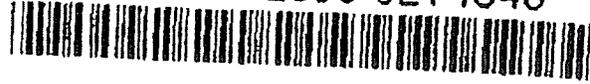
23   
24 Jerry Hittleman, Secretary

25 I, JERRY HITTLEMAN, Secretary of the Oceanside Planning Commission, hereby certify that  
26 this is a true and correct copy of Resolution No. 2007-P46.

27 Dated: September 24, 2007

2005-0214848

DOC # 2005-0214848



MAR 16, 2005 10:43 AM

OFFICIAL RECORDS  
SAN DIEGO COUNTY RECORDER'S OFFICE  
GREGORY J. SMITH, COUNTY RECORDER  
FEES: 79.00  
PAGES: 23



8196

FB  
23P  
1C-3P

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

CITY CLERK  
CITY OF OCEANSIDE  
300 North Coast Highway  
Oceanside, CA 92054

*This space for recording use only*

**DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS  
ON REAL PROPERTY KNOWN AS THE OCEANSIDER**

WHEREAS, Joseph Warsoff and Barbara Warsoff, hereinafter referred to as the "OWNERS" of approximately 0.52 acres of real property generally located in the 1600 block of Oceanside Boulevard in Oceanside, which such real property is more particularly described in the Property Description attached as Exhibit "A" and incorporated herein by reference, and hereinafter referred to as the "PROPERTY";

WHEREAS, Conditions 52, 54, 56, and 57 of Resolution No. 2004-P22 require that a covenant be recorded by the property owners to reflect the restrictions and on-site and off-site improvements required to be made on the PROPERTY prior to and as the condition of any development of the property, in accordance with the resolution (Resolution No. 2004-P22 is attached as Exhibit "B" and incorporated herein by reference, and hereinafter referred to as the "RESOLUTION");

WHEREAS, Condition 55 of the Resolution requires an approved Management Plan to be recorded as a covenant against the PROPERTY (the Management Plan is attached as Exhibit "C" and incorporated herein by reference, and hereinafter referred to as the "MANAGEMENT PLAN;")

WHEREAS, the OWNERS intend to restrict the PROPERTY in accordance with the conditions of the RESOLUTION and MANAGEMENT PLAN, as required by the Planning Commission;

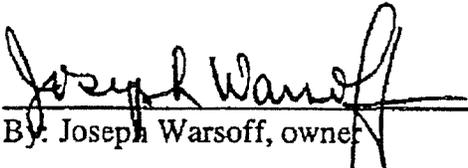
NOW, THEREFORE, the OWNERS declare that said real property shall be held, transferred, encumbered, used, sold, conveyed, leased and occupied subject to the covenants, conditions and restrictions set forth in this Declaration of Covenants, Conditions and Restrictions (hereinafter the "DECLARATION") expressly and exclusively for the use and benefit of the PROPERTY and each and every person and entity who now, or in the future, owns any portion of the PROPERTY. This DECLARATION shall constitute covenants running with the land and shall be binding on and for the benefit of OWNERS, their successors and assigns, and all subsequent owners of the PROPERTY, together with their grantees, successors, heirs, executors, administrators, devisees and assigns.

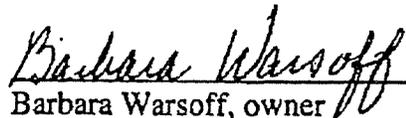
**OWNERS HEREBY DECLARE AND COVENANT AS FOLLOWS:**

1. Compliance with each and every condition of approval as set forth in the RESOLUTION shall be required and satisfied as a condition of any grading, improvement or development of the PROPERTY. The RESOLUTION sets forth specific requirements for on-site and off-site improvements, grading, payment of fees, site development, building and use standards.
2. Compliance with the MANAGEMENT PLAN shall also be required.
3. No provision of this DECLARATION is intended to, nor shall it be deemed to, modify, waive, delete or amend any condition or provision of the RESOLUTION or the MANAGEMENT PLAN. Each and every condition of the RESOLUTION and MANAGEMENT PLAN are expressly incorporated into this DECLARATION and made a part hereof, and shall constitute covenants running with the land.
4. The City shall have the right, but not the obligation, to enforce the provisions of this DECLARATION. In the event it becomes necessary for the City to institute legal action to enforce any provision of this DECLARATION, the City shall be entitled to recover from the OWNERS, their assigns or any successors in interest in the PROPERTY, reasonable attorneys' fees and costs incurred by the City in such action.
5. This DECLARATION shall constitute covenants running with the land and shall be binding on and for the benefit of OWNERS, their transferees, successors and assigns, and any other present or future interest holders or estate holders or any portion or all of the PROPERTY.
5. This DECLARATION shall not be modified, removed or released without the express written consent of the City of Oceanside.

**IN WITNESS WHEREOF, Joseph Warsoff and Barbara Warsoff execute this Declaration this 10th day of March, 2005.**

OWNERS:

  
By: Joseph Warsoff, owner

  
Barbara Warsoff, owner

APPROVED AS TO FORM:

  
CITY ATTORNEY

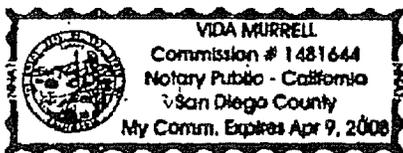
**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
County of San Diego } ss.

On 3/10/05 before me, Vida Murrell notary  
(Date) (Name and Title of Officer (e.g., Judge, Doctor, Notary Public))

personally appeared Barbara Warsoff and Joseph Warsoff  
(Name(s) of Signer(s))

- personally known to me
- proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Vida Murrell  
Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: Declarations of Covenants, Conditions & Restrictions  
on real property known as the Oceansider 2  
Document Date: 3/10/05 Number of Pages: 2

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer**

Signer's Name: Barbara Warsoff and Joseph Warsoff

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_



*Exhibit B*

8200

PLANNING COMMISSION  
RESOLUTION NO. 2004-P22

A RESOLUTION OF THE PLANNING COMMISSION OF THE  
CITY OF OCEANSIDE, CALIFORNIA APPROVING A  
DEVELOPMENT PLAN AND CONDITIONAL USE PERMIT ON  
CERTAIN REAL PROPERTY IN THE CITY OF OCEANSIDE

---

APPLICATION NO: D-19-03 and C-29-03  
APPLICANT: Joe and Barbara Warsoff  
LOCATION: 1660 Oceanside Boulevard

---

THE PLANNING COMMISSION OF THE CITY OF OCEANSIDE, CALIFORNIA DOES  
RESOLVE AS FOLLOWS:

WHEREAS, there was filed with this Commission a verified petition on the forms prescribed by the Commission requesting a Development Plan and Conditional Use Permit under the provisions of Articles 11, 41 and 43 of the Zoning Ordinance of the City of Oceanside to permit the following:

construction of a 3,456-square foot mini-mart;  
on certain real property described in the project description.

WHEREAS, the Planning Commission, after giving the required notice, did on the 24<sup>th</sup> day of May, 2004 conduct a duly advertised public hearing as prescribed by law to consider said application.

WHEREAS, pursuant to the California Environmental Quality Act of 1970, and State Guidelines thereto; this project is not subject to CEQA per Article 19 Section 15301 and therefore the project is exempt from CEQA;

WHEREAS, there is hereby imposed on the subject development project certain fees, dedications, reservations and other exactions pursuant to state law and city ordinance;

WHEREAS, pursuant to Gov't Code §66020(d)(1), NOTICE IS HEREBY GIVEN that the project is subject to certain fees, dedications, reservations and other exactions as provided below:

1	<u>Description</u>	<u>Authority for Imposition</u>	<u>Current Estimate Fee or Calculation Formula</u>
2			
3	Drainage Fee	Ordinance No. 85-23 Resolution No. 89-231	\$9,575 per acre
4			
5	Public Facility Fee	Ordinance No. 91-09 Resolution No. R91-39	\$441 per thousand square feet
6			
7	School Facilities Mitigation Fee	Ordinance No. 91-34	\$.34 per square foot
8			
9	Traffic Signal Fee	Ordinance No. 87-19	\$7.80 per vehicle trip
10			
11	Thoroughfare Fee (For commercial and industrial please note the .75 per cent discount)	Ordinance No. 83-01	\$177 per vehicle trip (based on SANDAG trip generation table available from staff and from SANDAG)
12			
13	Water System Buy-in Fees	Oceanside City Code §37.56.1 Resolution No. 87-96 Ordinance No. 02-OR-332-1	Fee based on meter size Typical is \$17,908 for a 2" meter
14			
15			
16	Wastewater System Buy-in fees	Oceanside City Code § 29.11.1 Resolution No. 87-97 Ordinance No. 02-OR-333-1	Based on meter size Typical is \$21,923 for a 2" meter
17			
18			
19	San Diego County Water Authority Capacity Fees	SDCWA Ordinance No. 2000-3	Based on meter size. Typical is \$10,421 for a 2" meter.
20			

21 WHEREAS, the current fees referenced above are merely fee amount estimates of the  
22 impact fees that would be required if due and payable under currently applicable ordinances and  
23 resolutions, presume the accuracy of relevant project information provided by the applicant, and are  
24 not necessarily the fee amount that will be owing when such fee becomes due and payable;

25 WHEREAS, unless otherwise provided by this resolution, all impact fees shall be calculated  
26 and collected at the time and in the manner provided in Chapter 32B of the Oceanside City Code  
27 and the City expressly reserves the right to amend the fees and fee calculations consistent with  
28 applicable law;

1 WHEREAS, the City expressly reserves the right to establish, modify or adjust any fee,  
2 dedication, reservation or other exaction to the extent permitted and as authorized by law;

3 WHEREAS, pursuant to Gov't Code §66020(d)(1), NOTICE IS FURTHER GIVEN that  
4 the 90-day period to protest the imposition of any fee, dedication, reservation, or other exaction  
5 described in this resolution begins on the effective date of this resolution and any such protest must  
6 be in a manner that complies with Section 66020;

7 WHEREAS, pursuant to Oceanside Zoning Ordinance §4603, this resolution becomes  
8 effective 10 days from its adoption in the absence of the filing of an appeal or call for review;

9 WHEREAS, studies and investigations made by this Commission and in its behalf reveal  
10 the following facts:

11 FINDINGS:

12 For the Development Plan:

- 13 1. The site plan and physical design of the project is consistent with the Zoning Ordinance  
14 and the underlying Special Commercial Highway Oriented (CS-HO) zone by providing a  
15 new 3,456-square foot mini-mart.
- 16 2. The Development Plan conforms to the General Plan of the City.
- 17 3. The project site can be adequately served by existing public facilities, services and  
18 utilities.
- 19 4. The project, as proposed, is compatible with the existing and potential development on  
20 adjoining commercial properties or in the surrounding neighborhood.
- 21 5. The site plan and physical design of the project is consistent with the policies contained  
22 within Section 1.24 of the Land Use Element of the General Plan.

23 For the Conditional Use Permit for the Mini-mart:

- 24 1. The location of the mini-mart, within the CS-HO commercial zone is in accord with the  
25 objectives of the Zoning Ordinance and the purposes of the district in which the site is  
26 located.
- 27 2. The proposed use will not be detrimental to properties or improvements in the vicinity or  
28 to the general welfare of the City.

1 3. The mini-mart is conditioned and is required to comply with all provisions of the Zoning  
2 Ordinance. The proposed use is subject to specific operational conditions that will cause  
3 the use to operate compatibly with the surrounding land uses.

4 NOW, THEREFORE, BE IT RESOLVED that the Planning Commission does hereby  
5 approve Development Plan (D-19-03), Conditional Use Permit (C-29-03) subject to the following  
6 conditions:

7 **Building:**

- 8 1. Applicable Building Codes and Ordinances shall be based on the date of submittal for  
9 Building Department plan check.
- 10 2. The granting of approval under this action shall in no way relieve the applicant/project from  
11 compliance with all State and local building codes.
- 12 3. Site development, parking, access into buildings and building interiors shall comply with  
13 Part 2, Title 24, C.C.R. (Disabled Access – Non-residential buildings - D.S.A.).
- 14 4. All electrical, communication, CATV, etc. service lines, within the exterior lines of the  
15 property shall be underground (City Code Sec. 6.30).
- 16 5. The building plans for this project are required by State law to be prepared by a licensed  
17 architect or engineer and must be in compliance with this requirement prior to submittal  
18 for building plan review.
- 19 6. All outdoor lighting shall meet Chapter 39 of the City Code (Light Pollution Ordinance) and  
20 shall be shielded appropriately. Where color rendition is important high-pressure sodium,  
21 metal halide or other such lights may be utilized and shall be shown on final building and  
22 electrical plans.
- 23 7. The developer shall monitor, supervise and control all building construction and supportive  
24 activities so as to prevent these activities from causing a public nuisance, including, but not  
25 limited to, strict adherence to the following:
  - 26 a) Building construction work hours shall be limited to between 7 a.m. and 6 p.m.  
27 Monday through Friday, and on Saturday from 7 a.m. to 6 p.m. for work that is not  
28 inherently noise-producing. Examples of work not permitted on Saturday are

1 concrete and grout pours, roof nailing and activities of similar noise-producing  
2 nature. No work shall be permitted on Sundays and Federal Holidays (New Year's  
3 Day, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving Day, Christmas Day) except  
4 as allowed for emergency work under the provisions of the Oceanside City Code  
5 Chapter 38 (Noise Ordinance).

- 6 b) The construction site shall be kept reasonably free of construction debris as  
7 specified in Section 13.17 of the Oceanside City Code. Storage of debris in  
8 approved solid waste containers shall be considered compliance with this  
9 requirement. Small amounts of construction debris may be stored on site in a neat,  
10 safe manner for short periods of time pending disposal.

11 **Engineering:**

- 12 8. An erosion control plan and precise grading and private improvement plan shall be  
13 prepared, reviewed, secured and approved prior to the issuance of any building permits.  
14 The plan shall reflect all new and existing pavement, flatwork, landscaped areas, special  
15 surfaces, curbs, gutters, medians, striping, signage, and footprints of all structures, walls,  
16 drainage devices and utility services. Parking lot striping shall be shown on all Precise  
17 Grading and Private Improvement Plans.
- 18 9. All right-of-way alignments, street dedications, exact geometrics and widths shall be  
19 dedicated and improved as required by the City Engineer.
- 20 10. Design and construction of all improvements shall be in accordance with standard plans,  
21 specifications of the City of Oceanside and subject to approval by the City Engineer.
- 22 11. Prior to issuance of a building permit all improvement requirements shall be covered by a  
23 development agreement and secured with sufficient improvement securities or bonds  
24 guaranteeing performance and payment for labor and materials, setting of monuments,  
25 and warranty against defective materials and workmanship.
- 26 12. Prior to issuance of a building permit a phasing plan for the construction of public and  
27 private improvements including landscaping, shall be approved by the City Engineer.
- 28 13. The approval of the project shall not mean that closure, vacation, or abandonment of any  
public street, right-of-way, easement, or facility is granted or guaranteed to the developer.

1 The developer is responsible for applying for all closures, vacations, and abandonments  
2 as necessary. The application(s) shall be reviewed and approved or rejected by the City  
3 under separate process(es) per codes, ordinances, and policies in effect at the time of the  
4 application.

5 14. Where proposed off-site improvements, including but not limited to slopes, public utility  
6 facilities, and drainage facilities, are to be constructed, the applicant shall, at his own  
7 expense, obtain all necessary easements or other interests in real property and shall dedicate  
8 the same to the City as required. The applicant shall provide documentary proof  
9 satisfactory to the City that such easements or other interest in real property have been  
10 obtained prior to issuance of any grading, building or improvement permit for the  
11 development. Additionally, the City, may at its sole discretion, require that the applicant  
12 obtain at his sole expense a title policy insuring the necessary title for the easement or other  
13 interest in real property to have vested with the City of Oceanside or the applicant, as  
14 applicable.

15 15. The developer shall monitor, supervise and control all construction and construction-  
16 supportive activities, so as to prevent these activities from causing a public nuisance,  
17 including but not limited to, insuring strict adherence to the following:

- 18 a) Dirt, debris and other construction material shall not be deposited on any public  
19 street or within the City's storm water conveyance system.
- 20 b) All grading and related site preparation and construction activities shall be limited  
21 to the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday. No earthmoving  
22 or grading operation shall be conducted on Saturdays, Sundays or legal holidays  
23 unless written permission is granted by the City Engineer with specific limitations  
24 to the working hours and types of permitted operations. All on-site construction  
25 staging areas shall be as far as possible (minimum 100 feet) from any existing  
26 residential development. Because construction noise may still be intrusive in the  
27 evening or on holidays, the City of Oceanside Noise Ordinance also prohibits "any  
28 disturbing excessive, or offensive noise which causes discomfort or annoyance to  
reasonable persons of normal sensitivity."

- 1 c) The construction site shall accommodate the parking of all motor vehicles used by  
2 persons working at or providing deliveries to the site.
- 3 16. All traffic signal contributions, highway thoroughfare fees, park fees, reimbursements,  
4 and other applicable charges, fees and deposits shall be paid prior to the issuing of any  
5 building permits, in accordance with City Ordinances and policies. The developer shall  
6 also be required to join into, contribute, or participate in any improvement, lighting, or  
7 other special district affecting or affected by this project. Approval of the project shall  
8 constitute the developer's approval of such payments, and his agreement to pay for any  
9 other similar assessments or charges in effect when any increment is submitted for final  
10 map or building permit approval, and to join, contribute, and/or participate in such  
11 districts.
- 12 17. Pavement sections for all streets, alleys, driveways and parking areas shall be based upon  
13 approved soil tests and traffic indices. The pavement design is to be prepared by the  
14 developer's soil engineer and must be approved by the City Engineer, prior to paving.
- 15 18. Any existing broken pavement, concrete curb, gutter or sidewalk or any damaged during  
16 construction of the project, shall be repaired or replaced as directed by the City Engineer.
- 17 19. Grading and drainage facilities shall be designed and installed to adequately accommodate  
18 the local storm water runoff and shall be in accordance with the City's Engineers Manual  
19 and as directed by the City Engineer.
- 20 20. The applicant shall obtain any necessary permits and clearances from all public agencies  
21 having jurisdiction over the project due to its type, size, or location, including but not  
22 limited to the U. S. Army Corps of Engineers, California Department of Fish and Game, U.  
23 S. Fish and Wildlife Service and/or San Diego Regional Water Quality Control Board  
24 (including NPDES), San Diego County Health Department, prior to the issuance of grading  
25 permits.
- 26 21. Prior to any grading of any part of the tract or project, a comprehensive soils and geologic  
27 investigation shall be conducted of the soils, slopes, and formations in the project. All  
28 necessary measures shall be taken and implemented to assure slope stability, erosion

1 control, and soil integrity. No grading shall occur until a detailed grading plan, to be  
2 prepared in accordance with the Grading Ordinance and Zoning Ordinance, is approved by  
3 the City Engineer.

4 22. This project shall provide year-round erosion control including measures for the site  
5 required for the phasing of grading. Prior to the issuance of grading permit, an erosion  
6 control plan, designed for all proposed stages of construction, shall be reviewed, secured by  
7 the applicant with cash securities and approved by the City Engineer.

8 23. Landscaping plans, including plans for the construction of walls, fences or other structures  
9 at or near intersections, must conform to intersection sight distance requirements.  
10 Landscape and irrigation plans for disturbed areas must be submitted to the City Engineer  
11 prior to the issuance of a preliminary grading permit and approved by the City Engineer  
12 prior to the issuance of building permits. Frontage and median landscaping shall be  
13 installed prior to the issuance of any building permits. Project fences, sound or privacy  
14 walls and monument entry walls/signs shall be designed, reviewed and constructed by the  
15 landscape plans and shown for location only on grading plans. Plantable, segmental walls  
16 shall be designed, reviewed and constructed by the grading plans and landscaped/irrigated  
17 through project landscape plans. All plans must be approved by the City Engineer and a  
18 pre-construction meeting held, prior to the start of any improvements.

19 24. The drainage design on the development plan is conceptual only. The final design shall be  
20 based upon a hydrologic/hydraulic study to be approved by the City Engineer during final  
21 engineering. All drainage picked up in an underground system shall remain underground  
22 until it is discharged into an approved channel, or as otherwise approved by the City  
23 Engineer. All public storm drains shall be shown on City standard plan and profile sheets.  
24 All storm drain easements shall be dedicated where required. The applicant shall be  
25 responsible for obtaining any off-site easements for storm drainage facilities.

26 25. Sediment, silt, grease, trash, debris, and/or pollutants shall be collected on-site and disposed  
27 of in accordance with all state and federal requirements, prior to stormwater discharge either  
28 off-site or into the City drainage system.

29 26. The development shall comply with all applicable regulations established by the United  
30 States Environmental Protection Agency (USEPA) as set forth in the National Pollutant

1 Discharge Elimination System (N.P.D.E.S.) permit requirements for urban runoff and  
2 storm water discharge and any regulations adopted by the City pursuant to the N.P.D.E.S.  
3 regulations or requirements. Further, the applicant may be required to file a Notice of  
4 Intent with the State Water Resources Control Board to obtain coverage under the  
5 N.P.D.E.S. General Permit for Storm Water Discharges Associated with Construction  
6 Activity and may be required to implement a Storm Water Pollution Prevention Plan  
7 (SWPPP) concurrent with the commencement of grading activities. SWPPP's include  
8 both construction and post construction pollution prevention and pollution control  
9 measures and identify funding mechanisms for post construction control measures. The  
10 developer shall comply with all the provisions of the Clean Water Program during and  
11 after all phases of the development process, including but not limited to: mass grading,  
12 rough grading, construction of street and landscaping improvements, and construction of  
13 dwelling units. The applicant shall design the Project's storm drains and other drainage  
14 facilities to include Best Management Practices to minimize non-point source pollution,  
satisfactory to the City Engineer.

15 27. Upon acceptance of any fee waiver or reduction by the Developer, the entire project will  
16 be subject to prevailing wage requirements as specified by Labor Code section  
17 1720(b)(4). The Developer/Subdivider/Project Proponent/Applicant shall agree to execute  
18 a form acknowledging the prevailing wage requirements prior to the granting of any fee  
reductions or waivers.

19 28. The project shall install a raised median on Oceanside Boulevard along the project  
20 frontage to prohibit left turns from the project site. The median shall be approximately  
21 250 feet in length beginning at the intersection of Vine Street, and be of sufficient length  
22 to restrict left turns from the adjacent Best Western motel driveway east of the project  
23 site. The median shall be designed and constructed to the satisfaction of the  
24 Transportation Manager.

25 29. The project shall install a left turn pocket, 180 feet in length with a 120-foot transition,  
26 for eastbound Oceanside Boulevard beginning at the Interstate 5 on/off ramp. The turn  
27 pocket shall be designed to Caltrans design standards.

28 30. "Right Turn Only" signs shall be installed on both driveway approaches from the project  
site onto Oceanside Boulevard.



- 1 31. The existing southerly driveway from the project site onto Vine Street shall be removed.
- 2 32. Sufficient storage space on the project site shall be allowed for truck circulation,  
3 deliveries and parking.
- 4 33. Crosswalks shall be installed on all approaches to the Oceanside Boulevard/Vine Street  
5 intersection. The existing traffic signal at this intersection shall be modified to allow  
6 pedestrian access for the east leg, and the existing "No Ped Crossing" signs on the  
7 eastside of the intersection shall be removed.
- 8 34. Five-foot sidewalk (not including 6" top of curb) shall be installed on the north side of  
9 Oceanside Boulevard and the east side of Vine Street for the full length of the project.  
10 The sidewalk shall be ADA compliant and be contiguous to the curb.
- 11 35. ADA compliant pedestrian access shall be provided at all project driveways and the  
12 intersection of Oceanside Boulevard and Vine Street.
- 13 36. Sight distance requirements at all driveway and street intersections shall conform to the  
14 intersection corner sight distance criteria as provided by the California Department of  
15 Transportation Highway Design Manual.
- 16 37. A traffic control plan shall be prepared according to the City traffic control guidelines and  
17 be submitted to and approved by the Transportation Manager prior to the start of work  
18 within open City rights-of-way. Traffic control during construction of streets that have  
19 been opened to public traffic shall be in accordance with construction signing, marking  
20 and other protection as required by the Caltrans Traffic Manual and City Traffic Control  
21 Guidelines.
- 22 38. Traffic control during construction adjacent to or within all public streets must meet  
23 Caltrans standards and City Traffic Control Guidelines. Traffic control plans shall be in  
24 effect from 8:00 a.m. to 3:30 p.m. unless approved otherwise.
- 25 39. A haul route shall be obtained at least 7 days prior to the start of hauling operations and  
26 must be approved by the Transportation Manager. Hauling operations shall be 8:00 a.m. to  
27 3:30 p.m. unless approved otherwise.
- 28 40. Street lights shall be installed on Oceanside Boulevard and Vine Street along the frontage of  
the project. The system shall be designed to provide uniform lighting, and be secured prior  
to the recordation of map or building permit issuance, if a map is not recorded. The  
subdivider shall pay all applicable fees, energy charges, and/or assessments associated with

1 City-owned (LS-2 rate schedule) streetlights and shall also agree to the formulation of, or  
2 the annexation to, any appropriate street lighting district.

3 41. The applicant shall pay all applicable traffic signal and thoroughfare fees.

4 **Fire:**

5 42. Plans shall be submitted to the Fire Prevention Bureau for plan check review and approval  
6 prior to the issuance of building permits.

7 43. Fire extinguishers are required and shall be included on the plans submitted for plan check.

8 44. Buildings shall meet Oceanside Fire Departments current adopted codes at the time of  
9 building permits.

10 45. In accordance with the Uniform Fire Code Sec. 901.4.4, approved addresses, for  
11 commercial shall be placed on the structure in such a position as to be plainly visible and  
12 legible from the street or roadway fronting the property. Numbers shall contrast with their  
13 background.

14 46. Commercial Buildings require 6-inch high address numbers.

15 **Planning:**

16 47. This Development Plan and Conditional Use Permit shall expire on May 24, 2006, unless  
17 the Planning Commission grants a time extension.

18 48. This Development Plan and Conditional Use Permit approves only the construction of a  
19 3,456-square foot mini-mart as shown on the plans and exhibits presented to the Planning  
20 Commission for review and approval. No deviation from these approved plans and exhibits  
21 shall occur without Planning Department approval. Substantial deviations shall require a  
22 revision to the Development Plan and Conditional Use Permit or a new Development Plan  
23 and Conditional Use Permit.

24 49. The applicant, permittee or any successor-in-interest shall defend, indemnify and hold  
25 harmless the City of Oceanside, its agents, officers or employees from any claim, action or  
26 proceeding against the City, its agents, officers, or employees to attack, set aside, void or  
27 annul an approval of the City, concerning Development Plan D-19-03 and Conditional Use  
28 Permit C-29-03. The City will promptly notify the applicant of any such claim, action or  
proceeding against the City and will cooperate fully in the defense. If the City fails to  
promptly notify the applicant of any such claim action or proceeding or fails to cooperate  
fully in the defense, the applicant shall not, thereafter, be responsible to defend,  
indemnify or hold harmless the City.

- 1 50. All mechanical rooftop and ground equipment shall be screened from public view as  
2 required by the Zoning Ordinance. That is, on all four sides and top. The roof jacks,  
3 mechanical equipment, screen and vents shall be painted with non-reflective paint to match  
4 the roof. This information shall be shown on the building plans.
- 5 51. Landscape plans, meeting the criteria of the City's Landscape Guidelines and Water  
6 Conservation Ordinance No. 91-15, including the maintenance of such landscaping, shall be  
7 reviewed and approved by the City Engineer and Planning Director prior to the issuance of  
8 building permits. Landscaping shall not be installed until bonds have been posted, fees  
9 paid, and plans signed for final approval. The following special landscaping requirements  
10 shall be met:
- 11 a) Parkway tree plantings along arterial roads shall be a minimum of two-inch  
12 diameter trees so as to ensure a mature landscape theme is achieved in a reasonable  
13 amount of time.
  - 14 b) Arterial street trees in parkways shall be planted at a minimum of 30 feet on center,  
15 each side of street, as a solitary planting. Approved root barriers shall be  
16 incorporated.
- 17 52. All landscaping, fences, walls, etc. on the site, in any adjoining public parkways shall be  
18 permanently maintained by the owner, his assigns or any successors-in-interest in the  
19 property. The maintenance program shall include normal care and irrigation of the  
20 landscaping; repair and replacement of plant materials; irrigation systems as necessary; and  
21 general cleanup of the landscaped and open areas, parking lots and walkways, walls, fences,  
22 etc. Failure to maintain landscaping shall result in the City taking all appropriate  
23 enforcement actions by all acceptable means including but not limited to citations and/or  
24 actual work with costs charged to or recorded against the owner. This condition shall be  
25 recorded with the covenant required by this Resolution.
- 26 53. A trash enclosure must be provided as required by Chapter 13 of the City Code and shall  
27 also include additional space for storage and collection of recyclable materials per City  
28 standards. Recycling is required by City Ordinance. The enclosure must be built in a flat,  
accessible location as determined by the City Engineer. The enclosure shall meet City  
standards including being constructed of concrete block, reinforced with rebar and filled

1 with cement. A concrete slab must be poured with a berm on the inside of the enclosure to  
2 prevent the bin(s) from striking the block walls. The slab must extend out of the enclosure  
3 for the bin(s) to roll out onto. Steel posts must be set in front of the enclosure with solid  
4 metal gates. All driveways and service access areas must be designed to sustain the weight  
5 of a 50,000-pound service vehicle. Trash enclosures and driveways and service access areas  
6 shall be shown on both the improvement and landscape plans submitted to the City  
7 Engineer. The specifications shall be reviewed and approved by the City Engineer. The  
8 City's waste disposal contractor is required to access private property to service the trash  
9 enclosures, a service agreement must be signed by the property owner and shall remain in  
10 effect for the life of the project. All trash enclosures shall be designed to provide user  
11 access without the use and opening of the service doors for the bins. Trash enclosures shall  
12 have design features such as materials and trim similar to that of the rest of the project. This  
13 design shall be shown on the landscape plans and shall be approved by the Planning  
14 Director.

14 54. A covenant or other recordable document approved by the City Attorney shall be prepared  
15 by the applicant and recorded prior to issuance of building permits. The covenant shall  
16 provide that the property is subject to this Resolution, and shall generally list the conditions  
17 of approval.

18 55. The project shall prepare a Management Plan. The Management Plan is subject to the  
19 review and approval of the Planning Director and the Police Chief prior to the occupancy of  
20 the project, and shall be recorded as CC&R's against the property. The Management Plan  
21 shall cover the following:

- 21 a) Security - The Management Plan, at a minimum, shall address onsite management,  
22 hours-of-operation and measures for providing appropriate security for the project  
23 site.
- 24 b) Maintenance - The Management Plan shall cover, but not be limited to anti-  
25 graffiti and site and exterior building, landscaping, parking lots, sidewalks,  
26 walkways and overall site maintenance measures and shall ensure that a high  
27 standard of maintenance at this site exists at all times. The maintenance portion  
28 of the management plan shall include a commitment for the sweeping and  
cleaning of parking lots, sidewalks and other concrete surfaces at sufficient  
intervals to maintain a "like new" appearance. Wastewater, sediment, trash or

1 other pollutants shall be collected on site and properly disposed of and shall not be  
2 discharged off the property or into the City's storm drain system.

- 3 c) Any graffiti within the center shall be removed by the center management or its  
4 designated representative within 24 hours of occurrence. Any new paint used to  
5 cover graffiti shall match the existing color scheme.

6 56. Prior to the issuance of building permits, compliance with the applicable provisions of the  
7 City's anti-graffiti (Ordinance No. 93-19/Section 20.25 of the City Code) shall be reviewed  
8 and approved by the Planning Department. These requirements, including the obligation to  
9 remove or cover with matching paint all graffiti within 24 hours, shall be noted on the  
10 Landscape Plan and shall be recorded in the form of a covenant affecting the subject  
11 property.

12 57. Prior to the transfer of ownership and/or operation of the site the owner shall provide a  
13 written copy of the applications, staff report and resolutions for the project to the new owner  
14 and/or operator. This notification's provision shall run with the life of the project and shall  
15 be recorded as a covenant on the property.

16 58. Failure to meet any conditions of approval for this development shall constitute a violation  
17 of the Conditional Use Permit and Development Plan.

18 59. Unless expressly waived, all current zoning standards and City ordinances and policies in  
19 effect at the time building permits are issued are required to be met by this project. The  
20 approval of this project constitutes the applicant's agreement with all statements in the  
21 Description and Justification, Management Plan and other materials and information  
22 submitted with this application, unless specifically waived by an adopted condition of  
23 approval.

24 60. This Conditional Use Permit shall be called for review by the Planning Commission if  
25 complaints are filed and verified as valid by the Code Enforcement Office concerning the  
26 violation of any of the approved conditions or assumptions made by the application.

27 61. The hours-of-operation are not limited, but shall be reviewed and may be limited by the  
28 Planning Commission when valid issues or complaints pertaining to the hours-of-operation  
29 arise.

30 62. Elevations, siding materials, colors, roofing materials and floor plans shall be  
31 substantially the same as those approved by the Planning Commission. These shall

1 be shown on plans submitted to the Building Department and Planning  
2 Department.

3 Water Utilities:

4 63. All public water and/or sewer facilities not located within the public right-of-way shall be  
5 provided with easements sized according to the City's Engineers Manual. Easements  
6 shall be constructed for an all weather access.

7 64. No trees or structures or building overhang shall be located within any water or  
8 wastewater utility easement.

9 65. The property owner shall maintain private water and wastewater utilities located on  
10 private property.

11 66. A separate irrigation meter is required and approved backflow prevention device is  
12 required.

13 67. Water services and sewer laterals constructed in existing right-of-way locations are to be  
14 constructed by approved and licensed contractors at developer's expense.

15 68. The developer shall be responsible for developing all water and sewer facilities necessary  
16 to develop the property. Any relocation of water and/or sewer lines is the responsibility  
17 of the developer and shall be done by an approved licensed contractor at the developer's  
18 expense.

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1 69. All water and wastewater construction shall conform to the most recent edition of the  
2 City's Engineers Manual, or as approved by the Water Utilities Director.

3 PASSED AND ADOPTED Resolution No. 2004-P22 on May 24, 2004 by the following  
4 vote, to wit:

5 AYES: Barrante, Chadwick, Schaffer, Parker, Nack and Neal

6 NAYS: None

7 ABSENT: Todd

8 ABSTAIN: None

9  
10   
11 \_\_\_\_\_  
George Barrante, Chairman  
Oceanside Planning Commission

12 ATTEST:  
13   
14 \_\_\_\_\_  
15 Gerald S. Gilbert, Secretary

16 I, GERALD S. GILBERT, Secretary of the Oceanside Planning Commission, hereby certify that  
17 this is a true and correct copy of Resolution No. 2004-P22.

18 Dated: May 24, 2004  
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28

8216

EXHIBIT C

## **SITE MANAGEMENT PLAN**

UNION 76 "THE OCEANSIDER"  
1660 Oceanside Boulevard  
D-19-03, C-29-03

### **Intent and Scope**

This Management Plan is intended to provide a description of the operational characteristics of the Union 76 Station located on the northeast corner of Oceanside Boulevard and Vine Street intersection. This plan covers the operational characteristics of the Gas Pumps and the Food Mart.

### **Hours of Operation**

Food Mart and Fuel Sales operates 24 hours a day, seven days a week. Beer and Wine sales are restricted between the hours of 02:00 AM and 06:00 AM.

### **Employees**

The projected number of employees will remain as it currently exists; 2 employees. The exact number of employees may vary slightly from time to time.

### **Employee Parking**

Employee parking shall be directed to areas less proximate to the front entrance.

### **Security**

Security is provided 24-hours everyday. Twenty-four hour security cameras are installed and located to the extent necessary to address specific areas and problems as they occur. Signage prohibiting loitering is placed in conspicuous locations to further deter potential problems.

### **Lighting**

Since facility is open for 24 hours, lighting for decorative purposes, including facade and landscape lighting, shall remain on. Lighting for the business signs and security shall remain on during business hours. On-site lighting complies with the Oceanside Municipal Code.

### **Noise Abatement**

In the event that a particular use or activity becomes a nuisance, appropriate measures to control volume will be taken subject to review and approval by the Planning Director. Noise will not exceed limits determined by the Oceanside Municipal Code.

### **Storage and Display**

Although outdoor storage or display of merchandise or material, as well as parking lot sales, are not anticipated, they would be subject to the standards established in Oceanside's Zoning Ordinance, Section 3020, Outdoor Facilities.

## EXHIBIT C

UNION 76 "THE OCEANSIDER"  
1660 Oceanside Boulevard  
D-19-03, C-29-03  
PAGE 2 OF 2

**Signage**

Sign permits are required for all new signs and the refacing of existing permitted signs. All signs shall comply with Oceanside's Zoning Ordinance, Article 33. May 24, 2004, Staff Report for D-19-03, C-29-03 highlights that the existing monument sign and off-site pole sign shall remain; there will be no changes to the two signs.

**Access**

The site has been designed to enhance access and circulation on-site and off-site. The access driveway on Oceanside Boulevard is restricted to right-in right-out turning movements only.

**Deliveries**

All deliveries shall be limited to off-peak hours, between 9:00 to 11:00 AM and 1:00 to 4:00 PM.

**Landscaping and Site Maintenance**

Owner shall ensure that a high standard of maintenance at the site exists at all times. Maintenance of site and exterior building, landscaping, fences, walls and landscaping in the adjoining public parkways will all always be maintained and be the responsibility of the property owner. The maintenance program includes the following:

- Normal care and irrigation of the landscaping; repair and replacement of plant materials and irrigation systems as necessary.
- General cleanup, sweeping and cleanup of the landscaped and open areas, parking lot, walkways, walls and fences at sufficient intervals to maintain a "like new" appearance.
- Wastewater, sediment, trash and other pollutants shall be collected on-site and properly disposed of and shall not be discharged off the property or into the City's storm drain system.
- Parkway tree plantings along arterial roads shall be a minimum of two-inch diameter trees so as to ensure a mature landscape theme is achieved in a reasonable amount of time.
- Arterial street trees in parkways shall be planted at a minimum of 30 feet on center, each side of street, as a solitary planting. Approved root barriers shall be incorporated.



# CITY OF OCEANSIDE ENGINEERING

June 9, 2010

Mr. Joe Warsoff  
1660 Oceanside Boulevard  
Oceanside, CA 92054

Via Certified Mail

**Subject: The Oceansider (D-19-2003)**

Dear Mr. Warsoff,

The purpose of this letter is two-fold. First, it responds to issues raised in your e-mail of May 26, 2010. Second, it serves as formal notice of your need to meet or resolve all conditions of approval related to the Conditional Use Permit and Development Plan for your business, the Oceansider.

**Response to Issues in E-mail of May 26, 2010**

City staff has received the May 26, 2010, e-mail communication (Attachment 1). The following bulleted statements shall serve as a formal response to that correspondence.

- Issue: Staff Non-responsiveness

Response: On May 12, 2010, Mr. Marty Eslambolchi received an e-mail from you. On May 13, 2010, Mr. Eslambolchi placed a return telephone call to you and left a voice message (760-722-1304) with Oceansider staff; no return correspondence or e-mail was received by Mr. Eslambolchi. It appears that a subsequent e-mail was intended to be sent to Mr. Eslambolchi from you; however, the following incorrect address was used: melembolchi@ci.oceanside.ca.us. Thus, Mr. Eslambolchi did not receive that e-mail.

- Issue: Release of Security

Response: As discussed with you and your engineer, City staff has requested that final as-built drawings be submitted in order to proceed with grading and landscape security releases. It is anticipated that the release of applicable securities will occur in a timely fashion once an appropriate submittal is provided.

- Issue: Sign Permits for Canopy Signage

Response: Until all conditions of approval for the Development Plan/Conditional Use Permit (CUP) are fulfilled, the City will not issue any additional permits concerning non-life/safety matters. Please be advised that directional signage (i.e. a "No Left Turn") sign does not require a sign permit.

- Issue: Refusal to Compensate for Delay in Issuing Permit for Pole Sign Faces

Response: Should you continue to believe that you are entitled to compensation from the City on this matter, you are advised to seek legal counsel.

Mr. Joe Warsoff  
June 9, 2010  
Page 2 of 3

- Fulfillment of the "Right Turn Only" sign requirement stated in project condition #30, from Planning Commission Resolution No. 2004-P22, is your responsibility, not the City's. Again, no sign permit is needed for this type of signage.
- Issue: Alleged Threat by City Staff

Response: The alleged threats by City staff have been investigated and addressed the City's Human Resources Department, and it has been determined that there was no wrong- doing by staff.

**Notice to meet or resolve all conditions of approval related to the Conditional Use Permit and Development Plan for your business, the Oceansider**

In March 2008, Mr. Eslambolchi and Mr. Jim Knowlton met with you and Mr. Michael Boraks (Cornerstone Engineering) to discuss construction schedule for the project's required public right-of-way (ROW) safety improvements. During that meeting, you requested that City staff allow the project extra time to construct the ROW safety improvements. It was stated that this request was primarily based upon financial burden and an opportunity to operate the facility would accommodate cash flow; which in turn would assist with funding the construction activities. A verbal agreement that you would construct the improvements within the next six (6) months, as well as maintain the respective temporary traffic control devices during that time extension. City staff accepted the proposal as effort to reasonably assist you and accommodate a cohesive construction approach during the City's Emergency Land Outfall Replacement project. At the same meeting, it was also discussed and agreed upon that the Oceansider public improvements would be constructed prior to the final paving activities for the City project.

After several months had passed, it came time for the Oceansider project to commence with construction of the Oceanside Boulevard safety improvements. At that time, you informed staff that you had no intention to honor the previous arrangement. Staff informed you that the outstanding improvements were required of the project as a condition of approval; despite that, you stated that you would not construct the improvements. Finally, in February 2010 during a meeting at the Engineering counter in City Hall South, you unequivocally stated to me that you would not be constructing the outstanding ROW improvements.

Therefore, this letter shall also serve as formal notice that failure to fulfill all project conditions may result in the revocation of the project's current conditional use permit (C-29-2003). At this point in time, you have two options to address this matter:

**1. Amend Development Plan (D-19-2003)**

This option requires the submittal of an application to amend your approved Development Plan (D-19-2003). This action, if approved, would remove the right-of-way safety improvement requirements. The City Zoning Ordinance requires that this request be considered by the Planning Commission in a public hearing. An application for this is enclosed, and a fee of \$3,339 would be required. Be advised that, at this time and due to safety concerns, staff would not support this request. However, the Planning Commission may find differently. Please contact Jerry Hittleman at (760-435-3535) if additional information is needed.

Mr. Joe Warsoff  
June 9, 2010  
Page 3 of 3

2. **Construct the right-of-way safety improvements as identified within the existing Planning Commission Resolution (2004-P22)**

If reconsideration is given to construction of the agreed-upon improvements, please provide a schedule which thoroughly addresses the timing and completion of all outstanding public right-of-way safety improvements. This schedule shall establish a plan for timely project completion, and shall be submitted in writing to Mr. Marty Eslambolchi within thirty (30) calendar days from the receipt of this letter. If you are unable to submit a plan for timely project completion within (30) calendar days from the receipt of this letter, the City will consider granting additional time, provided that an Abatement Agreement is executed by July 30, 2010. You are strongly encouraged to immediately consult your engineer.

Please provide City staff a written response which clearly indicates the intended course of action on this matter. Failure to provide a written response within thirty days (30) shall indicate that there is no intent to pursue either of the above options. In that case, City staff will, unfortunately, be forced to commence with the CUP revocation process.

Finally, I am aware that a meeting with the Mayor has been requested. Development Services Director George Buell is making arrangements for the meeting. A City representative will contact you to schedule a time and date for the meeting.

Sincerely,



Scott O. Smith  
City Engineer

SOS: lv

Attachments:

(Attachment 1) Email communication  
Development Processing Guide-General Application Package  
Development Processing Guide-Appendix A

ATTACHMENT 1

**From:** Joe Warsoff [mailto:jwarsoff@gmail.com]  
**Sent:** Wednesday, May 26, 2010 2:24 PM  
**To:** Russ Cunningham  
**Cc:** meslembolchi@ci.oceanside.ca.us  
**Subject:** Fwd: THE OCEANSIDER GAS STATION

----- Forwarded message -----

**From:** Joe Warsoff <jwarsoff@gmail.com>  
**Date:** Wed, May 26, 2010 at 1:11 PM  
**Subject:** THE OCEANSIDER GAS STATION  
**To:** jwood@ci.oceanside.ca.us  
**Cc:** esanchez@ci.oceanside.ca.us, citystaff@ci.oceanside.ca.us

We are trying to set a meeting to finalize all disputes with the city and our station. As of now, we have sent 2 e-mails to Marty Eslembolchi with no response. It is our feeling that the city is withholding security bonds for completed work, refusing to issue sign permits, refusing to compensate us for wrong data not allowing new sign faces for 8 months (check with your legal dept), not getting us "Right Turn

Only" signs you say we need at our Oceanside Blvd exits (to cut the city's liability for accidents), etc.....

Before our opening in 12/2008, we were issued a CUP and now the city inspector (**Kieth Pirillo**) is verbally & **physically (in front of 2 city employees)** threatening to harm me & cancel this CUP. PLEASE INVESTIGATE THESE PROBLEMS AND LET ME KNOW THE RESULTS

Thank you  
Joe Warsoff  
cell# 760-720-4646



# CITY OF OCEANSIDE

## DEVELOPMENT SERVICES DEPARTMENT

June 24, 2010

Mr. Joe Warsoff  
1660 Oceanside Boulevard  
Oceanside, CA 92054

**Subject: The Oceansider (D-19-2003)**

Dear Mr. Warsoff,

This letter is in response to your e-mail correspondence of June 17, 2010.

I acknowledge you have chosen the first option provided in Scott Smith's June 9, 2010 letter to you. Under this option, you intend to seek Planning Commission approval to remove the requirement that you install a raised median in Oceanside Boulevard. Please note, in order to continue with this course, you must file your application and submit fees not later than July 8, 2010.

If you fail to submit the fee and application by that date, the City will assume you have no further interest in pursuing this option. Furthermore, if we do not receive the fee and application submittal by the July 8, 2010 deadline, as noted in Mr. Smith's previous letter, we will institute revocation proceedings before the Planning Commission. You will be notified of the date and time that this item will be heard and you will be given an opportunity, pursuant to Articles 41 and 47 of the Zoning Ordinance to present your case to the Planning Commission prior to a decision being made on the revocation.

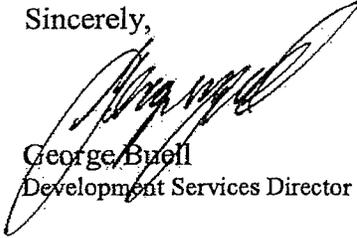
As you have been advised on numerous occasions, the statute of limitations to protest any of the conditions of approval for your project has long passed, and we will not entertain modifications of your project outside the formal modification process. Accordingly, staff would not recommend approval of a proposal to remove or modify the requirement to construct the median. Traffic Engineering staff does not view a cone-type "candlestick" median delineator to be a viable long-term solution. Your project was entitled three years ago and you have been enjoying the benefits of an operational gas station and mini mart since obtaining your occupancy permit on December 11, 2008. To date, you have not fulfilled your obligations under the Resolutions of Approval for your project.

I acknowledge your statement that you have purchased the "right turn" signs, and I will send appropriate staff to verify their installation. Please notify us as soon as they are installed so that we may confirm this.

Mr. Joe Warsoff  
June 9, 2010  
Page 2 of 2

All other matters raised in your letter are outside the purview of the Development Services Department, and no useful purpose will be served by continuing to discuss them in this venue. As Mr. Smith stated, if you continue to believe you are entitled to compensation from the City, you should seek your own legal counsel.

Sincerely,

A handwritten signature in black ink, appearing to read "George Buell", is written over the typed name and title.

George Buell  
Development Services Director

cc: Mayor Jim Wood  
Scott Smith, City Engineer  
Jerry Hittleman, City Planner  
Leslie Gallagher, Deputy City Attorney II

June 17, 2010

Att: Scott Smith

[ssmith@ci.oceanside.ca.us](mailto:ssmith@ci.oceanside.ca.us)

Copies to the following:

[gbuell@ci.oceanside.ca.us](mailto:gbuell@ci.oceanside.ca.us)

[jhittleman@ci.oceanside.ca.us](mailto:jhittleman@ci.oceanside.ca.us)

[meslambolchi@ci.oceanside.ca.us](mailto:meslambolchi@ci.oceanside.ca.us)

[jwood@ci.oceanside.ca.us](mailto:jwood@ci.oceanside.ca.us)

This letter (e-mail) is in response to your letter dated 6/9/2010.

Regarding any future work on the "median" on Oceanside Blvd., in front of the Oceansider station & convenience store, I would like to go before the planning commission to re-evaluate the need. Since the main reason for this median was to prevent accidents due to left turns, and as far as I know only 1 has occurred since 1990, I feel the median will cause more congestion and accidents if built. Also, a traffic study should be done to see the problems that will be caused by the "bubble" at the west end of the proposed median (especially during morning and evening rush hours). We have already purchased "Right Turn Only" signs for both exits on Oceanside Blvd and they will be installed this week. Secondly, if a "median" is still required, why cannot we use the cone type sticks that were in front of Boney's and the IHOP restaurant. These will not create the "bubble" at the west end, at Vine Street.

Now I have a proposed solution to all of the items mentioned in the letter of 6/9/2010. We would like to get reimbursed for our expenses and dollar losses due to the freeway pole sign "mistake". The total amount was about \$300,000. Also, we would like to get reimbursed for the extra costs (for plans, engineering, drawings, etc.) caused by the "mistake" made by Jim Knowlton and acknowledged by Marty Eslembolchi at a meeting with Cornerstone Engineering. This amount of extra expense was about \$40,000. Thirdly, there is the problem with Kieth Pirillo.

**Proposal:** If the City of Oceanside will consider a strip of cone type sticks in lieu of the median (which we will pay for, and the city will maintain), we would consider a payment of \$150,000 from the city and a signed apology from Keith Pirillo as complete settlement.

As per the last line of page 1 of the letter of 6/9/2010, we will have to seek legal counsel if this cannot be worked out. I sincerely do not want to do this.

OCT 25 2010  
Planning Department

Monday, October 25, 2010.

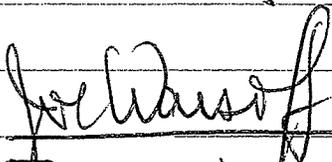
City of Oceanside Planning Commission  
Re: ITEM No. 4

To Whom It MAY concern:

I, JOE WARSOFF, 1660 Oceanside Blvd.  
agree to a two (2) week continuance. (CIP 29-0  
& D-19-03)

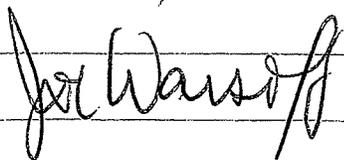
I, JOE WARSOFF, will diligently work  
toward FINALIZING THE ABATEMENT AGREEMENT  
WITH THE CITY OF OCEANSIDE BY this  
Thursday, October 28, 2010 at 5 P.M.  
IN CITY HALL, CITY OF OCEANSIDE.

Sincerely,



JOE WARSOFF

ALL PAPERS FROM THE CITY WILL BE PROVIDED  
WITH ENOUGH TIME TO BE REVIEWED BY AN ATTORNEY  
OF MY CHOOSING OR THE TWO WEEKS WILL NOT BE ENOUGH





# CITY OF OCEANSIDE

## OFFICE OF THE CITY ATTORNEY

JOHN P. MULLEN  
City Attorney  
(760) 435-3979

BARBARA L. HAMILTON  
Assistant City Attorney  
(760) 435-3986

TARQUIN PREZIOSI  
Senior Deputy City Attorney  
(760) 435-3977

ANNIE M. PERRIGO  
Deputy City Attorney  
(760) 435-3972

DEBORAH NASH  
Deputy City Attorney  
(760) 435-3991

January 4, 2011

HAUSMANN & GOLDSTONE PC  
Edwin D. Hausmann  
11601 Wilshire Boulevard, Suite 1680  
Los Angeles, CA 90025

VIA FACSIMILE (310) 694-5061  
and U.S. MAIL

Re: 1660 Oceanside Blvd.

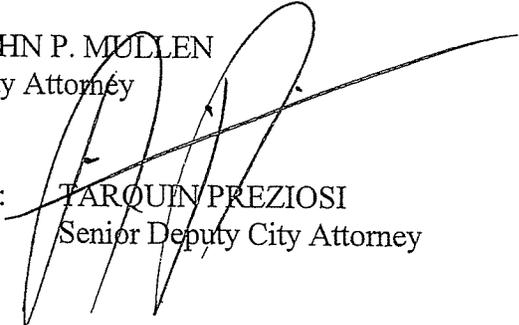
Dear Mr. Hausmann:

At our November 17, 2010 meeting, you stated your client's commitment to constructing the permanent raised median and complying with the conditions of approval. You stated that you seek to stay the Planning Commission's revocation of the Development Plan and Conditional Use Permit for the purposes complying with the various conditions of approval, including the raised median. You also stated that your client was prepared to install the temporary "candlestick" median forthwith, prior to installing the permanent raised median. A month and a half after our meeting, there are no "facts on the ground", such as the temporary candlestick median, evidencing your client's commitment to complying with the conditions of approval. Similarly, it does not appear that the necessary steps with CALTRANS have been initiated by your client to secure permits for constructing the raised median.

As you are aware, on February 2, 2011 the City Council will hear your client's appeal of the Planning Commission's revocation of the Development Plan and Conditional Use Permit. At this point, City staff will have little choice but to inform the Council of the lack of progress toward fulfilling the conditions of approval. Please advise me of your client's intentions in this matter.

Sincerely,

JOHN P. MULLEN  
City Attorney

By:   
TARQUIN PREZIOSI  
Senior Deputy City Attorney

TP/sh

cc: George Buell, Development Services Director

G:\Word Documents\PLANNING\Oceanside\Letter.Hausman.1-4-11.doc