



CITY OF NEWPORT BEACH PLANNING COMMISSION STAFF REPORT

December 5, 2019
Agenda Item No. 3

SUBJECT: Malibu Farm Restaurant Expansion (PA2019-057)
▪ Minor Use Permit No. UP2019-022

SITE LOCATION: 3416, 3420, and 3424 Via Oporto

APPLICANT: Malibu Farm

OWNER: Lido Group Retail, LLC

PLANNER: Liz Westmoreland, Assistant Planner
949-644-3234, lwestmoreland@newportbeachca.gov

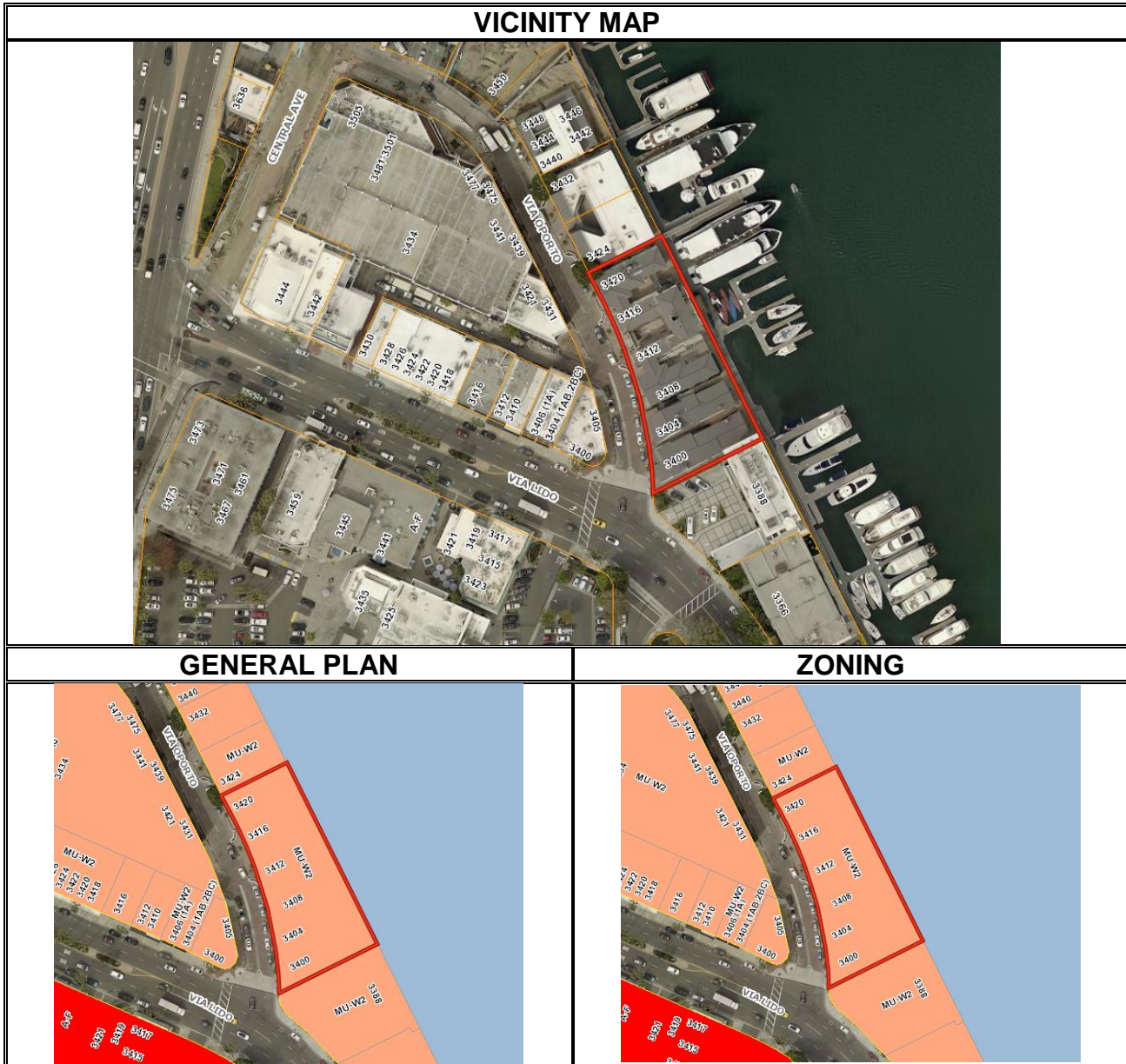
PROJECT SUMMARY

A minor use permit to expand an existing food service, eating and drinking establishment with a Type 47 (On-Sale General for Bona Fide Public Eating Place) Alcoholic Beverage Control (ABC) license. The existing restaurant is located at 3420 Via Oporto and includes indoor and outdoor dining areas. The restaurant also operates an existing 624-square-foot, take-out only ice cream and coffee shop located at 3416 Via Oporto. The proposed expansion would convert the existing Malibu Farm retail store at 3424 Via Oporto into additional restaurant space. In total, the restaurant would be 3,558 gross square feet of indoor space, 998 gross square feet of outdoor space, and have 2,722 square feet of net public area (NPA). No late hours (after 11 p.m.) are proposed.

RECOMMENDATION

- 1) Conduct a public hearing;
- 2) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, because it has no potential to have a significant effect on the environment; and
- 3) Adopt Resolution No. PC2019-038 approving Minor Use Permit No. UP2019-022 (Attachment No. PC 1) and rescinding Use Permit No UP2017-026.

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LOCATION	GENERAL PLAN	ZONING	CURRENT USE
ON-SITE	MU-W2 (Mixed-Use Water 2)	MU-W2 (Mixed-Use Water)	Malibu Farm restaurant and retail store
NORTH	MU-W2	MU-W2	Commercial uses, bookstore
SOUTH	MU-W2	MU-W2	Commercial uses, florist
EAST	MU-W1 (Mixed-Use Water 1)	MU-W1 (Mixed-Use Water)	Commercial uses
WEST	MU-W2	MU-W2	Commercial uses, retail

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INTRODUCTION

Project Setting

The existing restaurant and expansion area are located on the east side of Via Oporto within Lido Marina Village. Lido Marina Village is a commercial development that includes a mix of retail, service, office, and restaurant uses. The existing restaurant operates within the suite at 3420 Via Oporto, and the take-out service ice cream and coffee shop operates out of a separate suite at 3416 Via Oporto. The existing Malibu Farm retail store, which is proposed to be converted into additional restaurant dining area, is located at 3424 Via Oporto. Parking is provided in a nearby parking structure located at 3434 Via Lido.

Project Description

The proposed project is a minor use permit to expand an existing 3,037-square-foot (gross) food service, eating and drinking establishment with a Type 47 (On-Sale General) Alcoholic Beverage Control (ABC) license (beer, wine, and distilled spirits). The existing establishment includes 1,126 square feet of interior net public area with 64 seats, an 866-square-foot outdoor dining area with 37 seats, and a 624-square-foot take-out only ice cream shop. The proposed expansion would convert the existing Malibu Farm retail store at 3424 Via Oporto to create an indoor dining area with 32 seats and 598 square feet of net public area. The applicant is also requesting the approval of a secondary outdoor dining area in conjunction with the proposed restaurant expansion at this address. The additional outdoor dining would include 132 square feet of net public area and 8 seats. However, staff does not recommend approval of this component, as discussed in the Outdoor Dining section of this report.

Existing and proposed hours of operation are Monday through Thursday, 9 a.m. to 10 p.m. and Friday through Sunday, 9 a.m. to 11 p.m. The proposed operation is further described in the applicant's project description (Attachment No. PC 3) and shown in the submitted plans (Attachment No. PC 5). These proposed hours are consistent with existing operations. There are no late hours (after 11 p.m.), live entertainment, or dancing proposed as a part of this application.

Background

The existing restaurant space has been utilized for food service uses since 1979. On December 7, 2017, the Planning Commission authorized a minor use permit for the operation of the Malibu Farm Restaurant with a Type 47 (On-Sale General) Alcoholic Beverage Control (ABC) license. The approval also included a take-out service only ice cream/coffee shop. No late hours, dancing, or live entertainment were proposed or authorized.

On December 18, 2014, the Planning Commission approved Conditional Use Permit No. UP2014-014 (PA2014-002), authorizing a comprehensive Parking Management Program for Lido Marina Village. The Parking Management Program applies to approximately

112,029 square feet of commercial floor area under the common ownership of DJM Capital Partners, including several restaurants.

On January 23, 2018, the City Council approved an amended Conditional Use Permit (UP2017-019) authorizing changes to the Parking Management Plan including modifying the off-site parking shuttle, relocation of employee parking, parking pricing adjustments, valet plan changes, and the addition of valet parking at an additional off-site location (3700 Newport Boulevard) after 7:00 pm.

Retail uses in Lido Marina Village are almost completely occupied, with only one tenant space available for food service.

DISCUSSION

General Plan/Coastal Land Use Plan/Zoning Code

The Land Use Element of the General Plan, Coastal Land Use Plan (CLUP), and Zoning Code designate the properties within Lido Marina Village as Mixed-Use Water and Mixed-Use Water 2 (MU-W2 and MU-W per CLUP). Permitted uses include commercial development on or near the bay in a manner that will encourage the continuation of coastal-dependent and coastal-related uses, maintain the marine theme and character, encourage mutually supportive businesses, encourage visitor-serving and recreational uses, and encourage physical and visual access to the bay on waterfront commercial and industrial building sites on or near the bay. The project would allow for continued use of the existing restaurant and expansion of the dining area into the adjacent retail store, while maintaining the character of the district. A restaurant with no late hours is consistent with the land use designation and zoning district with the approval of a minor use permit.

Parking

Conditional Use Permit No. UP2014-014 established square footage limitations on eating and drinking uses within Lido Marina Village to ensure the adequacy of parking resources. The proposed expansion of the restaurant¹ in conjunction with all the existing restaurant uses will total 15,848 square feet of net public area (NPA), in compliance with the maximum allowable 15,964 square feet allocated for eating and drinking establishments (combined indoor and outdoor NPA). Therefore, approximately 116 square feet of NPA remains unused. Conditional Use Permit No. UP2017-019 authorized changes to the Parking Management Plan (and superseded the prior UP), including additional off-site patron parking and changes to the off-site employee parking shuttle service. The approved Parking Management Plan requires off-site parking with shuttle service during

¹Although staff's recommendation is to remove the secondary outdoor patio, this calculation includes the secondary outdoor patio to be conservative. If the secondary patio is removed from the plans, then an additional 132 square feet of net public area would remain available for other tenant spaces to use for food service.

peak occupancy periods from 4:00 p.m. through 10:00 p.m., Friday and Saturday, and during other periods that generate parking demands where occupancy within the parking structure is expected to exceed 85 percent. Off-site valet service is also available for customers at 3700 Newport Boulevard after 7:00 p.m. Therefore, sufficient parking is provided with the implementation of the Parking Management Plan approved with UP2014-014 and amended under UP2017-019, provided restaurant uses do not exceed the NPA limitation.

Outdoor Dining

The existing outdoor dining patio hours (Monday through Thursday, 9 a.m. to 10 p.m., and Friday through Sunday, 9 a.m. to 11 p.m.) are compatible with the goals established for Lido Marina Village. Land Use Goal 6.9 (Lido Village) of the General Plan emphasizes the need for *“a pedestrian-oriented village environment that reflects its waterfront location, providing a mix of uses that serves visitors and local residents.”* The existing outdoor dining patios have provided an additional amenity for coastal visitors to enjoy the harbor frontage. The existing patio is 866 square feet with 37 seats. The 6-foot pedestrian easement along the harbor frontage will remain unobstructed.

The applicant is also proposing a secondary outdoor dining patio adjacent to the new suite (3424 Via Oporto). Conditional Use Permit No. UP2017-019 discussed in the Parking section of this report included conditions related to the public boardwalk along the water. Pursuant to Condition of Approval No. 19: *“Adequate public access along the entire waterfront (3400-3450 Via Lido) shall be provided and maintained consistent with the Coastal Land Use Plan policies. The walkway shall be a minimum of six (6) feet in width but preferably ten (10) feet wide or more.”*

Staff conducted site visits and determined that the installation of another outdoor dining patio in this area could impede public access along the boardwalk. As shown in Attachment No. PC 4 (Photographs), the existing patio combined with the dock railing create a “bottleneck” or “pinch point” that appears to block off the boardwalk. It is important that pedestrian walkways include areas that are wider than 6 feet to accommodate strollers and mobility equipment, and to allow pedestrians to pass each other more freely. The existing restaurant has an 866-square-foot outdoor dining patio to serve guests, which is comparable in size with other restaurant uses in Lido Marina Village. While expanded outdoor dining along the waterfront is typically encouraged, staff feels that the public’s walkway shouldn’t be pinched. Therefore, staff has included a condition of approval in the draft resolution to remove the proposed secondary outdoor dining area from the plans and to maintain a 10-foot clear walkway in front of the 3424 Via Oporto portion of the expanded restaurant.

Alcohol Sales Finding

The applicant has requested to expand the existing alcohol service (Type 47 ABC license) to the new suite at 3424 Via Oporto.

In accordance with Section 20.48.030 (Alcohol Sales) of the Newport Beach Municipal Code, the Planning Commission must find that:

- 1. The use is consistent with the purpose and intent of Subsection 20.48.030 (Alcohol Sales) of the Municipal Code.*

The purpose and intent of Subsection 20.48.030 (Alcohol Sales) of the Zoning Code is to maintain a healthy environment for residents and businesses by establishing a set of consistent standards for the safe operation of alcohol establishments. The project has been reviewed and conditioned to ensure that the purpose and intent of this section is maintained and that a healthy environment for residents and businesses is preserved. Alcohol service will be provided for the convenience of customers of the restaurant.

The Police Department has prepared an Alcohol Related Statistics report for the project site (Attachment No. PC 5). The data from the Alcohol Related Statistics Report is incorporated into the factors for consideration in the Resolution for Approval (Attachment No. PC 1). The existing restaurant has not been detrimental nor has it created a nuisance to the community. Operational conditions of approval recommended by the Police Department relative to the sale of alcoholic beverages will ensure compatibility with the surrounding uses and minimize alcohol-related impacts.

Minor Use Permit Findings

In accordance with Section 20.52.020 (Conditional Use Permits and Minor Use Permits), the Planning Commission must also make the following findings for approval of a minor use permit:

- 1. The use is consistent with the General Plan and any applicable Specific Plan;*
- 2. The use is allowed within the applicable zoning district and complies with all other applicable provisions of the Zoning Code and Municipal Code;*
- 3. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity;*
- 4. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities; and*

5. *Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

If the secondary outdoor dining area adjacent to 3424 Via Oporto is removed from the plans, staff believes sufficient facts exist in support of each finding. Staff also believes these findings can be supported should the Planning Commission choose to allow the requested patio expansion. The operation is defined as a food service use and is consistent with the purpose and intent of MU-W2 (Mixed-Use Water Related) General Plan land use designation and Zoning District. The MU-W2 designation applies to waterfront properties in which marine-related uses may be intermixed with general commercial, visitor-serving commercial and residential dwelling units on the upper floors. Food service uses are common in this area and are complementary to the surrounding commercial uses through compliance with the proposed conditions of approval.

Alternatives

1. The Planning Commission may suggest specific project modification or operational changes that are necessary to alleviate concerns. If the changes are substantial, the item should be continued to a future meeting to allow redesign of the project.
2. If the Planning Commission believes that there are insufficient facts to support the findings for approval, the Planning Commission should deny the application request (Attachment No. PC 2).

Environmental Review

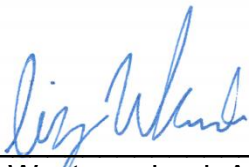
This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment. The Class 1 exemption includes the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use. The proposed project involves the interior alteration of an existing commercial building. Therefore, the project qualifies for a categorical exemption under Class 1.

Public Notice

Notice of this hearing was published in the Daily Pilot, mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicant and posted on the subject property at least 10 days before the scheduled meeting, consistent with the provisions of the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

Prepared by:

Submitted by:



Liz Westmoreland, Assistant Planner



Jim Campbell, Deputy Director

ATTACHMENTS

- PC 1 Draft Resolution with Findings and Conditions
- PC 2 Draft Resolution for Denial
- PC 3 Applicant's Project Description
- PC 4 Photographs
- PC 5 Police Department Memorandum
- PC 6 Project Plans

Attachment No. PC 1

Draft Resolution with Findings and
Conditions

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RESOLUTION NO. PC2019-038

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING MINOR USE PERMIT NO. UP2019-022 TO EXPAND AN EXISTING FOOD SERVICE, EATING AND DRINKING ESTABLISHMENT WITH A TYPE 47 (ON-SALE GENERAL FOR BONA FIDE PUBLIC EATING PLACE) ALCHOLIC BEVERAGE CONTROL (ABC) LICENSE AND OUTDOOR DINING WITH NO LATE HOURS LOCATED AT 3416, 3420, AND 3424 VIA OPORTO (PA2019-057)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Malibu Farm Lido ("Applicant"), with respect to property located at 3416, 3420, and 3424 Via Oporto, and legally described as Parcel 1 of Parcel Map 59-17 ("Property"), requesting approval of a minor use permit.
2. The Applicant seeks a minor use permit to expand an existing food service, eating and drinking establishment with a Type 47 (On-Sale General for Bona Fide Public Eating Place) Alcoholic Beverage Control ("ABC") license ("Project"). The existing restaurant is located at 3420 Via Oporto and includes indoor and outdoor areas. The restaurant also operates an existing 624-square-foot, take-out only ice cream and coffee shop located at 3416 Via Oporto. The proposed expansion would convert the existing Malibu Farm retail store at 3424 Via Oporto into additional restaurant space. In total, the restaurant will include 3,558 gross square feet of indoor space, 998 gross square feet of outdoor space, and 2,722 square feet of net public area (NPA). No late hours (after 11 p.m.) are proposed.
3. The Property is located within the Mixed Use Water Related (MU-W2) Zoning District and the General Plan Land Use Element category is Mixed Use Water Related (MU-W2).
4. The Property is located within the Coastal Zone. The Coastal Land Use Plan category is Mixed Use Water Related (MU-W) and it is located within the Mixed Use Water Related (MU-W2) Coastal Zoning District. The Project is exempt from coastal development permitting requirements because there is no increase in floor area or building height proposed. New restaurant uses and conversions (as well as the associated parking requirements) were authorized under Conditional Use Permit No. UP2017-019, which included a parking management plan for Lido Marina Village. Thus, there would be no intensification of use.
5. A public hearing was held on December 5, 2019 in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with the California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and Chapter 20.62 of the Newport Beach Municipal Code ("NBMC"). Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This Project is exempt from the California Environmental Quality Act (“CEQA”) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. Class 1 (Existing Facilities) exemption includes the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of public or private structure, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use. The Project involves the interior alteration of and existing commercial building and operation of a restaurant.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.48.030(C)(3) of the NBMC (Alcohol Sales, Permit Requirements) and Section 20.52.020(F) of the NBMC (Conditional Use Permits and Minor Use Permits, Findings and Decision), the following findings and facts in support of such findings are set forth:

Finding

- A. *The use is consistent with the purpose and intent of NBMC Section 20.48.030 (Alcohol Sales).*

Facts in Support of Finding

In finding that the Project is consistent with Section 20.48.030 of the NBMC, the following criteria must be considered:

- i. *The crime rate in the reporting district and adjacent reporting districts as compared to other areas in the City.*
 1. The Property is located in Reporting District 15 (RD 15). The Part One Crimes (Part One Crimes are the eight most serious crimes defined by the FBI Uniform Crime Report – homicide, rape, robbery, aggravated assault, burglary, larceny-theft, auto theft, and arson) crime rate in RD 15 was 706 crimes reported in 2018, which is higher than adjacent reporting districts RD 11, RD 13, and RD 16 and the Citywide average. The higher crime rate is largely due to the number of visitors to the Balboa Peninsula, the high concentration of restaurants, and the high ratio of non-residential to residential uses. While the area does have a high concentration of alcohol licenses, the findings can be made despite higher concentrations of crimes and Lido Marina Village was designed to accommodate restaurants. The service of alcoholic beverages would provide additional menu options for customers and would enhance the economic viability of the business.

2. The Police Department has reviewed the Project, provided operating conditions of approval, and has no objection to the expansion of the Type 47 alcoholic beverage license subject to appropriate conditions of approval. The operation of the establishment includes the approved floor plan and a closing hour of 11 p.m.

ii. The number of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.

1. The total number of alcohol-related calls for service, crimes, or arrests in RD 15 is higher than RD 11, RD 13 and 16. There were five (5) dispatch events for the Property in 2018. Only one (1) was clearly related to the business wherein guests refused to leave the establishment and management asked for police assistance. The Police Department has reviewed the Project and has no objection.

iii. The proximity of the establishment to residential zoning districts, day care centers, hospitals, park and recreation facilities, places of worship, schools, other similar uses, and any uses that attract minors.

1. The Property is located in a mixed-use district where residential development is permitted above the first floor. However, Lido Marina Village does not include any residential development and there are no current plans to add residential use to the shopping area.
2. The nearest place of recreation, the beach, is located approximately one half (0.5) mile to the west. The nearest church, St. James Episcopal Church, is located approximately 500 feet to the south of the Property along Via Lido, and substantially separated from the Property by commercial properties and the Lido Villas development. The nearest school, Newport Elementary School, is located approximately one (1) mile to the southeast along West Balboa Boulevard. The Property is not located in close proximity to a daycare center. The Project is otherwise surrounded by other commercial retail and office uses. The existing restaurant has been in operation for more than one (1) year and has not created nuisances to neighboring uses.
3. The Balboa Peninsula is generally characterized by a high number of visitors, in which commercial and residential zoning districts are located in close proximity to one another. This location in Lido Marina Village has greater distance from sensitive land uses than other commercial areas.
4. Eating and drinking establishments with alcohol service are common in Lido Marina Village and the expansion of the existing ABC license in conjunction with an early closing hour is not anticipated to alter the operational characteristics of the use such that it becomes detrimental to the area. The draft resolution includes conditions of approval to further minimize negative impacts to surrounding land uses and ensure that the use remains compatible with the surrounding community.

iv. The proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption.

1. The Lido Marina Village was designed to accommodate multiple restaurants and the expanded restaurant is expected to be located in close proximity to other food service establishments. This includes Nobu, a food service with late hours, outdoor dining, and a Type 47 (On Sale General) ABC license located at 3450 Via Oporto; Circle Hook, a food service with outdoor dining, a Type 41 (On Sale Beer and Wine) ABC license and no late hours located at 3432 Via Oporto; and Lido Bottle Works, a food service with late hours, outdoor dinner, a Type 41 ABC license, and a Type 20 (Off Sale Beer and Wine) ABC license. The RD 15 statistics indicate an overconcentration of ABC licenses within this statistical area.
2. The per capita ratio of one (1) license for every 64 residents is higher than the adjacent districts and the average ratio for Orange County. This is due to the higher concentration of commercial land uses, ABC licenses attributed to adjacent marina operations, lower number of residential properties, and high number of restaurants in Lido Marina Village, Cannery Village, and McFadden Square. While the license-to-resident ratio is higher than average, and the proposed expansion is located in close proximity to other establishments, the location in Lido Marina Village (an established commercial area), together with the proposed operational characteristics would make the service of alcoholic beverages acceptable. The Police Department does not anticipate any increase in crime or alcohol-related incidents with the approval of this application subject to the proposed conditions of approval.

v. Whether or not the proposed amendment will resolve any current objectionable conditions.

1. No objectionable conditions are presently occurring at the restaurant or retail site.
2. The Project has been reviewed and conditioned to help ensure that the purpose and intent of Section 20.48.030 (Alcohol Sales) of the NBMC is maintained and that a healthy environment for residents and businesses is preserved. The service of alcohol is intended for the convenience of customers dining at the establishment. Operational conditions of approval recommended by the Police Department relative to the sale of alcoholic beverages will ensure compatibility with the surrounding uses and minimize alcohol-related impacts.
3. The hours of operation of the establishment will minimize the potential effects on land use. The establishment closes by 10 p.m., Monday through Thursday; and by 11 p.m., Friday through Sunday; which will ensure the use does not become a late night bar, tavern, or nightclub.
4. The resolution includes conditions of approval to limit objectionable conditions related to noise and trash from the establishment. All employees serving alcohol will be required to complete a certified training program in responsible methods and skills for selling alcoholic beverages, as required by the State of California.

Finding

B. *The use is consistent with the General Plan and any applicable specific plan.*

Facts in Support of Finding

1. The Mixed-Use Water Related (MU-W2) General Plan and Coastal Land Use Plan land use designations apply to waterfront properties in which marine-related uses may be intermixed with general commercial, visitor-serving commercial, and residential dwelling units on the upper floors. Although the Property and surrounding development do not include residential uses, the Project is consistent with the visitor-serving land uses intended for the Mixed-Use Water Related (MU-W2) land use designation.
2. The Property is located within the Coastal Zone and is adjacent to the Bay and a public boardwalk. The Project complies with the Local Coastal Program Implementation Plan and prior approvals for the Property such as the Parking Management Plan (PA2017-035). The Project will continue to provide public access via a public walkway along the waterfront with a six (6)-foot minimum width along the bay. The existing outdoor dining patio is compatible with the goals established for Lido Marina Village. For example, Land Use Goal 6.9 (Lido Village) of the General Plan emphasizes the need for a “*pedestrian-oriented village environment that reflects its waterfront location, providing a mix of uses that serve visitors and local residents.*” The existing outdoor dining patio provides an amenity for coastal visitors to enjoy the bay frontage. However, the proposed outdoor dining expansion is not appropriate due to its location and associated visual and physical impacts to the public boardwalk. A condition of approval has been applied prohibiting expansion of the outdoor dining for the expanded restaurant area at 3424 Via Oporto. Under existing conditions, there is a railing that leads to the marina between the existing and proposed restaurant spaces. The railing impedes access between the suites and creates the appearance that the boardwalk terminates by creating a “pinch point” or “bottleneck.” Therefore, maintaining the 10-foot-width in some sections of the boardwalk is critical to allow both physical and visual relief, and most importantly allow people to pass each other at various points along the walkway.
3. The Circulation Element Goal 7.1 (Parking) of the General Plan is to ensure an adequate supply of convenient parking is available throughout the City. Analysis provided by the Lido Marina Village Parking Demand Analysis and in accordance with the approved Parking Management Program (Conditional Use Permit No. UP2014-014) demonstrates that an adequate supply of parking will be provided based upon the shared use of parking within Lido Marina Village. The Project complies with the assumptions identified in UP2014-014 for anticipated restaurant build-out of Lido Marina Village and no additional parking waivers are required.
4. The Property is not part of a specific plan area.

Finding

- C. *The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.*

Facts in Support of Finding

1. The Mixed Use Water Related (MU-W2) Zoning District applies to waterfront properties in which marine-related uses may be intermixed with general commercial, visitor-serving commercial, and residential dwelling units on the upper floors. Eating and drinking establishments with alcohol and no late hours require the approval of a minor use permit within the Mixed-Use Water Related (MU-W2) Zoning District.
2. Section 20.48.090(F)(3)(b) (Eating and Drinking Establishments, Outdoor Dining) of the NBMC also requires that the review authority consider the relationship of outdoor dining to sensitive noise receptors. The outdoor dining area will close by 10 p.m. (Monday through Thursday) and 11 p.m. (Friday through Sunday) in order to minimize noise impacts to residents located across Newport Harbor.
3. The Project is consistent with the Lido Marina Village Parking Management Program authorized under Conditional Use Permit No. UP2014-014.
4. As conditioned, the Project will comply with NBMC standards for eating and drinking establishments.
5. The eating and drinking establishment is consistent with the Lido Marina Village Design Guidelines. The renovation of the existing tenant space will support local establishments within Lido Marina Village and improve the pedestrian streetscape.

Finding

- D. *The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.*

Facts in Support of Finding

1. The kitchen, main dining area, outdoor dining area, and ice cream/coffee shop are existing and would not be modified as part of the Project. The Project includes the conversion of the existing Malibu Farm retail store to an additional seating area, and no new kitchen facilities would be constructed. The expansion area would be intended for dining only, with a small back of house area for a potential cashier and beverage preparation area. Restrooms for the restaurant and take-out service suites will be shared. The existing infrastructure is adequate to accommodate the eating and drinking establishment and a detailed plumbing fixture analysis is required as a condition of approval. The existing location has proven to be compatible with other commercial uses in the area and serves as a key restaurant anchor within Lido Marina Village. The expanded suite is adjacent to the existing restaurant and would operate similarly. The eating and drinking establishment also serves as an important visitor-serving use that

benefits the area, which is in furtherance of the City's Coastal Land Use Plan and the Coastal Act codified in California Public Resources Code Section 30000 *et seq.*

2. The Property is located in a relatively dense commercial village area with multiple uses within a short distance of each other. Lido Marina Village is conducive to a significant amount of walk-in patrons. No on-site parking is available for the Property but adequate parking is provided in the Lido Marina Village parking structure and adjacent street as authorized under the approved Parking Management Program for Lido Marina Village (Conditional Use Permit No. UP2014-014).
3. The operational conditions of approval will promote compatibility with the surrounding uses. The floor plan provides tables and counter areas to accommodate seats and a dining atmosphere. There is no live entertainment or dance floor. The Applicant is required to maintain substantial conformance with the approved floor plan in conjunction with a Type 47 (On Sale General for Bona Fide Public Eating Place) ABC license so that the restaurant's primary use is an eating and drinking establishment and not a bar, lounge, or night club.
4. The Project is located within an existing commercial building that will not necessitate high levels of lighting or illumination. All outdoor lighting must conform to Section 20.30.070 (Outdoor Lighting) of the NBMC.

Finding

- E. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.*

Facts in Support of Finding

1. The Project is located within an existing commercial building. The design, size, location, and operating characteristics of the use are compatible with the surrounding Lido Marina Village development. The proposed restaurant is consistent with the surrounding restaurant, retail, and office uses in the development.
2. Adequate public and emergency vehicle access from Via Oporto and Central Avenue from Via Lido, public services, and utilities are provided for on-site.
3. The design of the tenant improvements will comply with all Building, Public Works, and Fire Codes, and will be approved by the Orange County Health Department.

Finding

- F. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding

1. The tenant improvements to the existing commercial building should have a positive impact on the area and may promote further revitalization of commercial properties located in Lido Marina Village. The eating and drinking establishment will serve the surrounding community.
2. The Project includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. Turning patio music off at 10 p.m. will ensure the restaurant will remain in compliance with Chapter 10.26 (Community Noise Control) of the NBMC.
3. The hours of operation reduce impacts to surrounding land uses, and sufficient parking is available in the area to accommodate the eating and drinking establishment. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance within the restaurant facility, adjacent properties, or surrounding public areas, sidewalks, or parking lots of the restaurant, during business hours, if directly related to the patrons of the establishment.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby finds the Project is categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Planning Commission of the City of Newport Beach hereby approves Minor Use Permit No. UP2019-022 subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.
4. This resolution supersedes Planning Commission Resolution No. 2072, which upon vesting of the rights authorized by this Minor Use Permit No. UP2017-026 shall become null and void.

PASSED, APPROVED, AND ADOPTED THIS 5TH DAY OF DECEMBER, 2019.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: _____
Peter Koetting, Chairman

BY: _____
Lee Lowrey, Secretary

EXHIBIT "A"**CONDITIONS OF APPROVAL****PLANNING DIVISION**

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. *The floor plans including the net public and gross square footage calculations shall be updated to remove the proposed outdoor dining for the new suite located at 3424 Via Oporto. No new outdoor dining areas are permitted for the use.*
3. *The six (6)-foot pedestrian easement shall remain open and clear of any obstructions. The public walkway in front of the Project (3424 Via Oporto) shall be maintained open and clear at 10 feet in width. No obstructions along this area are permitted.*
4. *The hours of operation for the restaurant (interior and exterior) shall be limited to Monday through Thursday, 9 a.m. to 10 p.m., and Friday through Sunday, 9 a.m. to 11 p.m.*
5. *The "net public area" shall not exceed 1,724 square feet for the interior of the subject restaurant facility.*
6. *The outdoor dining shall be used only in conjunction with the related adjacent establishment. The outdoor dining area shall be limited to 866 square feet in area. Only the existing outdoor dining areas adjacent to the 3420 Via Oporto building are allowed; no new encroachments into the boardwalk area are permitted.*
7. *The height of the boundary wall of the outdoor dining area shall be marked on the approved plans. Fences, walls, or similar boundaries shall serve only to define the outdoor dining area and not constitute a permanent all weather enclosure.*
8. *There shall be no dancing allowed on the premises.*
9. *Live entertainment shall not be permitted unless an amendment to this Use Permit is approved and the operator has obtained a live entertainment permit from the Revenue Division.*
10. *The installation of roof coverings shall not have the effect of creating a permanent enclosure of the outdoor dining area. The use of umbrellas for shade purposes shall be permitted. The use of any other type of overhead covering shall be subject to review and approval by the Community Development Director and may require an amendment to this Use Permit.*
11. *Full meal service shall be provided during all hours of operation.*

12. All exits shall remain free of obstructions and available for ingress and egress at all times.
13. A covered wash-out area for refuse containers and kitchen equipment, with minimum useable area dimensions of 36 inches wide, 36 inches deep and 72 inches high, shall be provided, and the area shall drain directly into the sewer system, unless otherwise approved by the Building Director and Public Works Director in conjunction with the approval of an alternate drainage plan.
14. Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
15. The Use Permit is for the operation of an Eating and Drinking Establishment or restaurant and does not authorize the use or operation of a bar, tavern, cocktail lounge, nightclub or commercial recreational entertainment venue.
16. The Project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
17. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
18. A copy of the Resolution including conditions of approval Exhibit "A," shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
19. All proposed signs shall be in conformance with the approved Comprehensive Sign Program for the project site and provisions of Chapter 20.42 (Signs) of the Newport Beach Municipal Code ("NBMC").
20. No temporary "sandwich" signs shall be permitted, either on-site or off-site, to advertise the restaurant facility. Temporary signs shall be prohibited in the public right-of-way unless otherwise approved by the Public Works Department in conjunction with the issuance of an encroachment permit or encroachment agreement.
21. *Minor Use Permit No. UP2019-022 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.91.050 of the NBMC, unless an extension is otherwise granted.*
22. This Use Permit may be modified or revoked by the Planning Commission should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
23. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Use Permit or the processing of a new Use Permit.

24. A copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
25. The Property shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, if in the opinion of the Director of Community Development, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
26. Prior to the issuance of a building permit, the Applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
27. The operator of the restaurant facility shall be responsible for the control of noise generated by the Project including, but not limited to, noise generated by patrons, food service operations, and mechanical equipment. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 of the NBMC and other applicable noise control requirements of the NBMC. Pre-recorded music may be played in the tenant space, provided exterior noise levels outlined below are not exceeded. The noise generated by the Project shall comply with the provisions of Chapter 10.26 of the NBMC. The maximum noise shall be limited to no more than depicted below for the specified time period unless the ambient noise level is higher:

Location	Between the hours of 7 a.m. and 10 p.m.		Between the hours of 10 p.m. and 7:00 a.m.	
	Interior	Exterior	Interior	Exterior
Residential Property	45dBA	55dBA	40dBA	50dBA
Residential Property located within 100 feet of a commercial property	45dBA	60dBA	45dBA	50dBA
Mixed Use Property	45dBA	60dBA	45dBA	50dBA
Commercial Property	N/A	65dBA	N/A	60dBA

28. Construction activities shall comply with Section 10.28.040 of the NBMC, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7 a.m. and 6:30 p.m., Monday through Friday, and 8 a.m. and 6 p.m. on Saturday. Noise-generating construction activities are not allowed on Saturdays, Sundays, or Holidays.
29. An outdoor sound system shall be permitted within the outdoor dining areas for music played at a background level. Music on the outdoor dining patios shall be turned off at 10 p.m. daily. Sound shall adhere to Chapter 10.26 of the NBMC.

30. All mechanical equipment shall be screened from view of adjacent properties and adjacent public streets within the limits authorized by this permit, and shall be sound attenuated in accordance with Chapter 10.26 of the NBMC, Community Noise Control.
31. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes.
32. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-of-way.
33. The Applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).
34. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 7:00 a.m. on weekdays and Saturdays and between the hours of 10:00 p.m. and 9:00 a.m. on Sundays and Federal holidays, unless otherwise approved by the Director of Community Development, and may require an amendment to this Use Permit.
35. Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
36. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the NBMC to require such permits.
37. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 Planning and Zoning of the NBMC.
38. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of Malibu Farm Restaurant Expansion including, but not limited to, Minor Use Permit No. UP2019-022 (PA2019-057). This indemnification shall include, but not be

limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The Applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

FIRE DEPARTMENT

39. A hood fire suppression system will be required for cooking operations that produce grease-laden vapors.

BUILDING DIVISION

40. The Applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. Approval from the Orange County Health Department is required prior to the issuance of a building permit.
41. *Prior to building permit issuance, plans shall be updated to include details pertaining to an accessible path of travel to indoor and outdoor areas.*
42. *Prior to permit issuance, a complete plumbing fixture analysis shall be provided and approved by the Building Division.*

POLICE DEPARTMENT

43. *All customers must vacate the establishment 30 minutes after closing.*
44. *The approval is for an eating and drinking establishment with on-sale alcoholic beverage service. The type of alcoholic beverage license issued by the California Board of Alcoholic Beverage Control shall be Type 47 (On-Sale General for Bona Fide Public Eating Place) license, in conjunction with the restaurant as the principal use of the restaurant facility.*
45. All owners, managers, and employees must abide by all requirements and conditions of the Alcoholic Beverage License.
46. Approval does not permit the premises to operate as a bar, tavern, cocktail lounge or nightclub as defined by the NBMC.
47. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.

-
48. No games or contests requiring or involving the consumption of alcoholic beverages shall be allowed.
 49. There shall be no reduced price alcoholic beverage promotions after 9 p.m.
 50. No off-sales of alcohol shall be permitted.
 51. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the sale period. The licensee shall at all times maintain records, which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. These records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department on demand.
 52. There shall be no exterior advertising or signs of any kind of type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.
 53. "VIP" passes or other passes to enter the establishment, as well as door charges, cover charges, or any other form of admission charge, including minimum drink order of the sale of drinks is prohibited (excluding charges for prix fixe meals).
 54. Any event or activity staged by an outside promotor or entity, where Applicant, operator, owner or his employees or representatives share in any profits, or pay any percentage or commission to a promotor or any other person based upon money collected as a door charge, cover charge or any other form of admission charge is prohibited.
 55. There shall be no on-site radio, television, video, film, or other electronic media broadcasts, including recordings to be broadcasted at a later time, which include the service of alcoholic beverages, without first obtaining an approved Special Event Permit issued by the City of Newport Beach.
 56. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter, and debris from the premises and on all abutting sidewalks within 20 feet of the premises. Graffiti shall be removed within 48 hours of written notice from the City.
 57. All owners, managers and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages within 60 days of hire. This training shall be updated every 3 years regardless of certificate expiration date. The certified program must meet the standards of the certifying/licensing body designated by the State of California. The establishment shall comply with the requirements of this section within 60 days. Records of each owner's, manager's, and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.
 58. Strict adherence to maximum occupancy limits is required.

59. Applicant shall maintain a security recording system with a 30-day retention and make those recordings available to police upon request.
60. The Applicant shall comply with all federal, state, and local laws, and all conditions of the Alcoholic Beverage License. Material violation of any of those laws or conditions in connection with the use is a violation and may be cause for revocation of the Use Permit.

Attachment No. PC 2

Draft Resolution for Denial

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RESOLUTION NO. ####

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA, DENYING MINOR USE PERMIT NO. UP2019-022 FOR A FOOD SERVICE, EATING AND DRINKING ESTABLISHMENT WITH A TYPE 47 (ON-SALE GENERAL FOR BONA FIDE PUBLIC EATING PLACE) ALCOHOLIC BEVERAGE CONTROL (ABC) LICENSE AND OUTDOOR DINING WITH NO LATE HOURS LOCATED AT 3416 VIA OPORTO SUITE 104 AND 3420 VIA OPORTO SUITE 101, AND 3424 VIA OPORTO SUITE 103 (PA2019-057)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Malibu Farm Lido ("Applicant"), with respect to property located at 3416, 3420, and 3424 Via Oporto, and legally described as Parcel 1 of Parcel Map 59-17 ("Property"), requesting approval of a minor use permit.
2. The Applicant proposes a minor use permit to expand an existing food service, eating and drinking establishment with a Type 47 (On-Sale General for Bona Fide Public Eating Place) Alcoholic Beverage Control (ABC) license. The existing restaurant is located at 3420 Via Oporto and includes indoor and outdoor areas. The existing 624 square foot take-out only ice cream and coffee shop is located at 3416 Via Oporto. The proposed expansion would convert the existing Malibu Farm retail store at 3424 Via Oporto into additional restaurant space. In total, the restaurant will include 3,558 gross square feet of indoor space, 998 gross square feet of outdoor space, and 2,722 square feet of net public area (NPA). No late hours (after 11 p.m.) are proposed.
3. The Property is located within the Mixed Use Water Related (MU-W2) Zoning District and the General Plan Land Use Element category is Mixed Use Water Related (MU-W2).
4. The Property is located within the coastal zone. The Coastal Land Use Plan category is Mixed Use Water Related (MU-W) and it is located within the Mixed Use Water Related (MU-W2) Coastal Zoning District. The project is exempt from coastal development permitting requirements because there is no increase in floor area or building height proposed.
5. A public hearing was held on December 5, 2019 in the City Hall Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with the Newport Beach Municipal Code ("NBMC"). Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. Pursuant to Section 15270 of the California Environmental Quality Act (CEQA) Guidelines, projects which a public agency rejects or disapproves are not subject to CEQA review.

SECTION 3. REQUIRED FINDINGS.

The Planning Commission may approve a use permit for an alcohol sales establishment only after making each of the six required findings set forth in NBMC Section 20.52.020(F) (Conditional Use Permit and Minor Use Permits) and NBMC Section 20.48.030(C)(3) (Alcohol Sales). In this case, the Planning Commission was unable to make the required findings based upon the following:

1. The Planning Commission determined, in this case, that the expansion of the restaurant with alcohol service is inconsistent with the purpose and intent of NBMC Section 20.52.020 (Conditional Use Permits and Minor Use Permits) because the use is not compatible with allowed uses in the vicinity.
2. Applicant's request to expand existing restaurant operations may increase alcohol-related crimes and calls for service and negatively impact police-related response.
3. The proposed outdoor dining may impede public access along the boardwalk and conflict with the policies identified in the Coastal Land Use Plan.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby denies Minor Use Permit Application No. UP2019-022.
2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Newport Beach Municipal Code Title 20 Planning and Zoning.

PASSED, APPROVED AND ADOPTED THIS 5TH DAY OF DECEMBER, 2019.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: _____
Peter Koetting, Chairman

BY: _____
Lee Lowrey, Secretary

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Attachment No. PC 3

Applicant's Project Description

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RAND KRUSE

ARCHITECTURE AND INTERIORS

3404 Via Oporto Suite 201 Newport Beach California 92663 T: 949 500 9416

PROJECT DESCRIPTION FOR MALIBU FARM – LIDO MARINA Minor Use Permit Amendment

Project Address: 3424 Via Oporto, Suite 103, Newport Beach, CA 92663

The proposed project consists of Minor Use Permit Amendment expanding the existing Malibu Farm food service, eating and drinking establishment, previously approved under Minor Use Permit No. UP2017-026 (PA2017-190). The indoor dining and outdoor patio seating area will be expanded into the adjacent retail home store located at 3424 Via Oporto, Suite 103. No other changes are proposed under this Amendment. Please reference the Project Summary below.

Project Summary

Approved CUP Tabulations:

Previously approved Minor Use Permit No. UP2017-026 (PA2017-190)

Restaurant: 2,171 sq. ft. (indoor seating)
866 sq. ft. (outdoor seating)

Total: 3,037 sq.ft

Coffee/Ice Cream/Take-Out Component:

322 sq. ft.

Dedicated Restrooms:

308 sq. ft.

Proposed Minor Use Permit Amendment (Expanded Area):

Restaurant: 763 sq. ft. (indoor seating)
132 sq. ft. (outdoor seating)

Total: 895 sq.ft

Landscaping:

Refer to approved CUP UP2014-014 (PA2014-002)

No site work improvements under Malibu Farm's scope of work.

Paving:

Refer to approved CUP UP2014-014 (PA2014-002)

No site work improvements under Malibu Farm's scope of work.

Parking:

RAND KRUSE

ARCHITECTURE AND INTERIORS

3404 Via Oporto Suite 201 Newport Beach California 92663 T: 949 500 9416

Refer to approved CUP UP2014-014 (PA2014-002)

No site work improvements under Malibu Farm's scope of work.

Operations, Food and Beverage

Hours of Operation:

Refer to approved CUP UP2017-026 (PA2017-190)

No changes proposed under Malibu Farm's Minor Use Permit Amendment

Food and Beverage Items:

Refer to approved CUP UP2017-026 (PA2017-190)

No changes proposed under Malibu Farm's Minor Use Permit Amendment

Alcohol License Type: 47

Food to Alcohol sales ratio: 70% Food and Non-Alcoholic Beverages / 30% Alcohol

Employees per shift: 15

Seating Capacity (see attached plans):

Approved CUP Tabulations:

Previously approved Minor Use Permit No. UP2017-026 (PA2017-190)

Restaurant: 65 (indoor seating)
43 (outdoor seating)

Total: 108

Proposed Minor Use Permit Amendment (Expanded Dining Area):

Restaurant: 32 (indoor seating)
8 (outdoor seating)

Total: 40

Net Public Area:

Approved CUP Tabulations:

Previously approved Minor Use Permit No. UP2017-026 (PA2017-190)

Restaurant: 1,130 sq. ft. (indoor seating)
866 sq. ft. (outdoor seating)

Proposed Minor Use Permit Amendment (Expanded Dining Area):

RAND KRUSE

ARCHITECTURE AND INTERIORS

3404 Via Oporto Suite 201 Newport Beach California 92663 T: 949 500 9416

Restaurant: 641 sq. ft. (indoor seating)
132 sq. ft. (outdoor seating)

Grease Interceptor: Below grade Trapzilla located in the exterior breezeway.
See Sheet A.1.0 indicating (E) below grade grease interceptor.

Trash Enclosure: Enclosed Trash located across Via Oporto.
See Sheet A.1.0 indicating (E) Trash Enclosure.

Entertainment

Refer to approved CUP UP2017-026 (PA2017-190)
No changes proposed under Malibu Farm's Minor Use Permit Amendment.

Sample Menu

Refer to approved CUP UP2017-026 (PA2017-190)
No changes proposed under Malibu Farm's Minor Use Permit Amendment.

Operations

The (E) existing Malibu Farm indoor dining and outdoor patio seating area, located at 3420 Via Oporto, will be expanded into the adjacent retail home store, located at 3424 Via Oporto, Suite 103. This operational strategy should reduce customer waiting time and long lines, improve table turnover, and increase overall customer satisfaction.

Customers will arrive at the (E) existing Malibu Farm indoor dining area and be directed by host. The proposed new indoor dining and outdoor patio seating area will feature a point-of-sale (POS) counter (see Sheet A.1.1) where customers can quickly order from the existing menu, customers will then be provided an order number. Food and beverages will be prepared in the (E) existing restaurant kitchen and transported to the proposed new indoor dining and outdoor patio via the enclosed alleyway between both (see Sheets A.1.0 and A.1.1). The back-of-house (BOH) area (see Sheet A.1.1) would be utilized for condiments, self-service water, iced tea, etc.

Restaurant tables can be combined to handle parties of any number of customers, as well as be used for larger parties and private event, which is not feasible in the main restaurant.

(updated 5/23/19)

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Attachment No. PC 4

Photographs

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Existing Malibu Farm patio shown to the left, with the dock railing in the center. The proposed suite is located beyond the dock railing.



View of dock railing along boardwalk. Malibu Farm retail store located to the left.



Malibu Farm retail store is located to the right with the existing Malibu Farm restaurant patio in the distance.

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Attachment No. PC 5

Police Department Memorandum

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**NEWPORT BEACH POLICE DEPARTMENT
DETECTIVE DIVISION**

MEMORANDUM

TO: Liz Westmoreland, Associate Planner
FROM: Wendy Joe, Police Civilian Investigator
DATE: May 27, 2019
SUBJECT: Malibu Farm
3424 Via Oporto
PA2019-57

At your request, the Police Department has reviewed the project application for the expansion project of Malibu Farm. The expansion includes additional outdoor and indoor dining. The existing Type 47 Alcoholic Beverage Control License would be expanded to the additional suite.

Statistical Data and Public Convenience or Necessity

Attached is a summary report compiled by Newport Beach Police Department (NBPD) Crime Analyst, Kristi Kondo, which provides detailed statistical information related to alcohol establishments and calls for service in and around the applicant's current place of business at 3240 Via Oporto.

Crime Statistics:

The Police Department divides the City into areas referred to as Reporting Districts. This allows the Police Department to compile statistical data, as well as better communicate officer locations while policing. The proposed applicant location is within Reporting District (RD) 15 which stretches from 20th Street to 37th Street along the Newport Beach Peninsula.

Per Business and Professions Code §23958.4, the Police Department is required to report offenses of criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny, theft, and motor vehicle theft (all Part 1 crimes), combined with all arrests for other crimes, both felonies and misdemeanors (except traffic citations) to ABC. These figures make up the "Crime Count" which is indicated on the attached statistical data form.

RD 15 is our highest crime area in Newport Beach with significant quality-of-life concerns for the residents, as well as the Police Department. This reporting district is reported to ABC as a high crime area as compared to other reporting districts in the City. The RD's Crime Count is 706, 408% over the City-wide crime count average of 134. Since this area has a 20% greater number of reported crimes than the average number of reported crimes as determined from all crime reporting districts within the City, the area is found to have undue concentration. In comparison, neighboring RD 13 (9th Street to 20th Street) is 94% above the City-wide average, RD 16 (37th Street to 54th Street) is 53% higher, and RD 11 (B Street to the Wedge) is 48% lower. Of 38 reporting districts in Newport Beach, we reported 12 to ABC as high crime areas.

The highest volume crime in this area is simple assault, which can usually be attributed to bar fights and assaults due to overconsumption of alcohol. The highest volume arrest in the area is Public Intoxication. DUI, Public Intoxication, and liquor law violations make up 39% of arrests in this reporting district. In comparison, the figure for neighboring RD 13 is 25%, RD 16 is 17%, and RD 11 is 37%.

Alcohol License Statistics:

The applicant premise is located within census tract 0635.00. This census tract has an approximate population of 5,726 residents with 90 active alcohol licenses and 74 licensed establishments. That is a per capita ratio of 1 license for every 64 residents. Per the Business and Professions code, we must compare this per capita ratio to Orange County's on-sale per capita ratio of 1 license for every 467 residents. Since the area's ratio exceeds the ratio of retail licenses to population in the county, the area is deemed to have an undue concentration of alcohol licenses.

This location meets the legal criteria for undue concentration as it relates to crime. (B&P §23958.4).

Dispatch Events:

There were 5 dispatch events for 3420 Via Oporto in 2018. Only 1 of those events were clearly related to the business wherein guests refused to leave the establishment and management asked for police assistance.

Discussion and Recommendations

The above crime and alcohol license statistics are provided for reference when considering an expansion to the applicant's licensed drinking area. The Police Department has no objections to this project as the business has not been a burden of police resources.

RECOMMENDED CONDITIONS OF APPROVAL

Should the project be approved, the Police Department requests the following.

We request condition 46 be updated to read:

- All owners, managers and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages within 60 days of hire. This training must be updated every 3 years regardless of certificate expiration date. The certified program must meet the standards of the ~~California Coordinating Council on Responsible Beverage Service or other~~ certifying/licensing body, ~~which the State may designate~~ by the State of California. The establishment shall comply with the requirements of this section within ~~60~~ 180 days of ~~the issuance of the certificate of occupancy.~~ Records of each owner's manager's and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.

The Police Department requires the following conditions be imposed:

- The applicant shall comply with all federal, state, and local laws, and all conditions of the Alcoholic Beverage License. Material violation of any of those laws or conditions in connection with the use is a violation and may be cause for revocation of the use permit.

If you have any questions as to the content of this memorandum, please contact Investigator Wendy Joe at (949)644-3705 or wjoe@nbpd.org.



Wendy Joe
Police Civilian Investigator, Special Investigations Unit



Randy Parker
Detective Sergeant, Special Investigations Unit



NEWPORT BEACH POLICE DEPARTMENT

2018 CRIME AND ALCOHOL-RELATED STATISTICS

CHIEF JON T. LEWIS

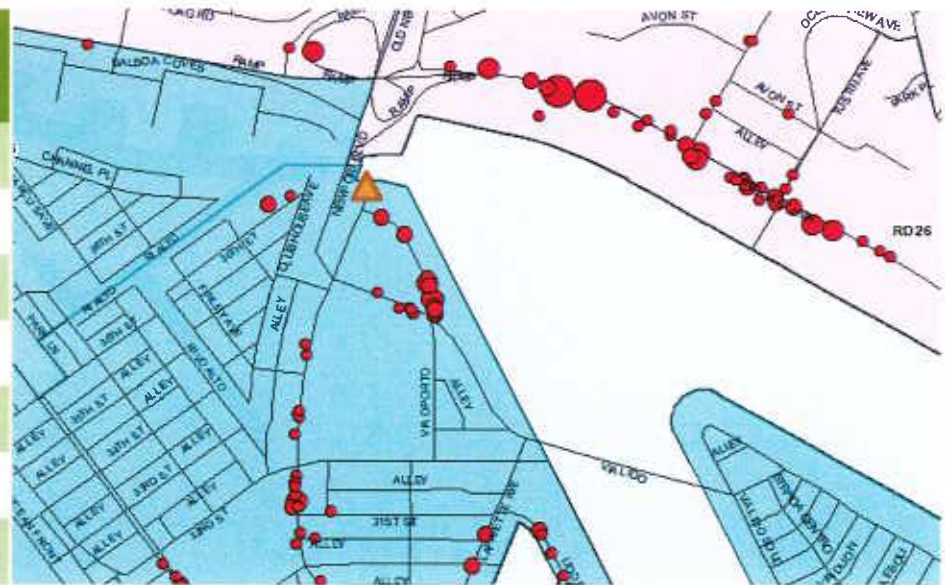
SUMMARY FOR MALIBU FARM AT 3416 VIA OPORTO #106 / 3420 VIA OPORTO #101 (RD15)

Subject:	Part I Crime	Diff From Avg	% Diff From Avg	Part I Arrests	Diff From Avg	% Diff From Avg	Part II Crime	Diff From Avg	% Diff From Avg	Part II Arrests	Diff From Avg	% Diff From Avg	Crime Count	Diff From Avg	% Diff From Avg
3416 VIA OPORTO #106 / 3420 VIA OPORTO #101	1	N/A	N/A	0	N/A	N/A	#REF!	N/A	N/A	1	N/A	N/A	2	N/A	N/A
Subject RD: RD15	159	+101	+176%	34	+29	+536%	550	+459	+505%	547	+466	+573%	706	+567	+408%
Adjacent RD: RD13	60	+2	+4%	6	+1	+12%	177	+86	+95%	210	+129	+158%	270	+131	+94%
Adjacent RD: RD16	49	-9	-15%	5	-0	-6%	140	+49	+54%	163	+82	+101%	212	+73	+53%
Adjacent RD: RD11	25	-33	-57%	4	-1	-25%	57	-34	-37%	47	-34	-42%	72	-67	-48%
Newport Beach	2,192	RD Average = 59		203	RD Average = 6		3,456	RD Average = 89		3,088	RD Average = 74		5,280	RD Average = 134	

Part I Crimes are the 8 most serious crimes as defined by the FBI Uniform Crime Report - Homicide, Rape, Robbery, Aggravated Assault, Burglary, Larceny, Auto Theft, and Arson. This report reflects City of Newport Beach data for 2017.

Per BP 23958.4, crime count is the sum of Part I Crime plus Part II Arrests.

Subject:	ABC Info			
	Population	Active Licenses	License Per Capita	Licensed Establishments
3416 VIA OPORTO #106 / 3420 VIA OPORTO #101	N/A	0	N/A	0
Subject Census Tract: 635	5,726	90	64	74
Adjacent Census Tract: 628	4,220	39	108	34
Adjacent Census Tract: 636.03	6,221	9	691	9
Adjacent Census Tract: 634	4,795	38	126	30
Newport Beach	85,186	451	189	389
Orange County	3,010,232	6,452	467	5,561



= Subject Location

5/27/2019

Number of Active ABC Licenses is the total of all types of retail licenses known to the NBPD as of 3/19/2018.
All Population figures taken from the 2010 US Census.

Attachment No. PC 6

Project Plans

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TOTAL ALL AREAS S.F. TABULATION

TOTAL GROSS INDOOR = 3,558 SQ. FT.
TOTAL GROSS OUTDOOR = 998 SQ. FT.
TOTAL NPA INDOOR = 1,724 SQ. FT.
TOTAL NPA OUTDOOR = 998 SQ. FT.

----- PROPERTY LINE

← ← (E) ACCESSIBLE PATH OF TRAVEL

SITE PLAN NOTES

CONSULTANT:

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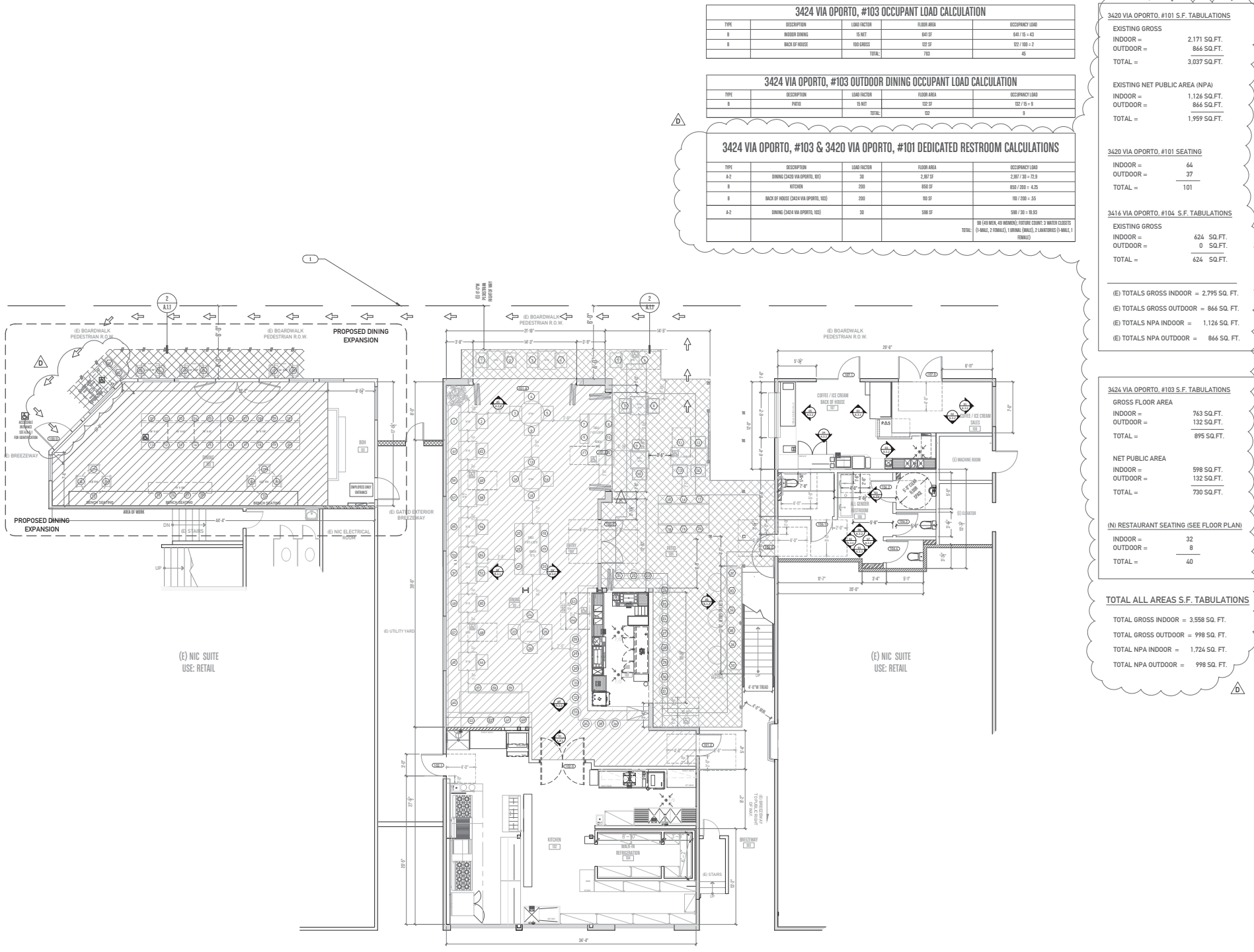
1	05-21-19
2	07-25-19
3	09-23-19

SHEET NAME:

EXISTING
RESTAURANT
AND NEW DINING

SHEET NUMBER: _____

A.1.0



3424 VIA OPORTO, #103 OCCUPANT LOAD CALCULATION				
TYPE	DESCRIPTION	LOAD FACTOR	FLOOR AREA	OCCUPANCY LOAD
B	INDOOR DINING	15 NET	641 SF	641 / 15 = 43
B	BACK OF HOUSE	100 GROSS	122 SF	122 / 100 = 2
	TOTAL		763	45

3424 VIA OPORTO, #103 OUTDOOR DINING OCCUPANT LOAD CALCULATION				
TYPE	DESCRIPTION	LOAD FACTOR	FLOOR AREA	OCCUPANCY LOAD
B	PATIO	15 NET	122 SF	122 / 15 = 8
	TOTAL		122	8

3424 VIA OPORTO, #103 & 3420 VIA OPORTO, #101 DEDICATED RESTROOM CALCULATIONS				
TYPE	DESCRIPTION	LOAD FACTOR	FLOOR AREA	OCCUPANCY LOAD
A-2	DINING (3424 VIA OPORTO, 103)	30	2,307 SF	2,307 / 30 = 77.9
B	KITCHEN	200	800 SF	800 / 200 = 4.0
B	BACK OF HOUSE (3424 VIA OPORTO, 103)	200	763 SF	763 / 200 = 3.8
A-2	DINING (3424 VIA OPORTO, 103)	30	500 SF	500 / 30 = 16.7
	TOTAL		3,869 SF	102.4

3420 VIA OPORTO, #101 S.F. TABULATIONS

EXISTING GROSS	
INDOOR =	2,171 SQ.FT.
OUTDOOR =	866 SQ.FT.
TOTAL =	3,037 SQ.FT.

3420 VIA OPORTO, #101 SEATING

INDOOR =	64
OUTDOOR =	37
TOTAL =	101

3416 VIA OPORTO, #104 S.F. TABULATIONS

EXISTING GROSS	
INDOOR =	624 SQ.FT.
OUTDOOR =	0 SQ.FT.
TOTAL =	624 SQ.FT.

(E) TOTALS GROSS INDOOR =	2,795 SQ. FT.
(E) TOTALS GROSS OUTDOOR =	866 SQ. FT.
(E) TOTALS NPA INDOOR =	1,126 SQ. FT.
(E) TOTALS NPA OUTDOOR =	866 SQ. FT.

3424 VIA OPORTO, #103 S.F. TABULATIONS

GROSS FLOOR AREA	
INDOOR =	763 SQ.FT.
OUTDOOR =	132 SQ.FT.
TOTAL =	895 SQ.FT.

NET PUBLIC AREA	
INDOOR =	598 SQ.FT.
OUTDOOR =	132 SQ.FT.
TOTAL =	730 SQ.FT.

(N) RESTAURANT SEATING (SEE FLOOR PLAN)	
INDOOR =	32
OUTDOOR =	8
TOTAL =	40

TOTAL ALL AREAS S.F. TABULATIONS

TOTAL GROSS INDOOR =	3,558 SQ. FT.
TOTAL GROSS OUTDOOR =	998 SQ. FT.
TOTAL NPA INDOOR =	1,724 SQ. FT.
TOTAL NPA OUTDOOR =	998 SQ. FT.

FLOOR PLAN LEGEND

- EXISTING BUILDING SHELL TO REMAIN, NEW INSULATION AND GYP. BOL. BY TENANT. INSULATION TO BE R-13 PER TITLE 24 PRESCRIPTIVE.
- (E) DEMISING WALL.
- DOOR NUMBER (SEE DOOR SCHEDULE SHEET A.5.6)
- EGRESS PATH OF TRAVEL (DISTANCE = 74')
- NEW EXIT SIGN, BATTERY BACKED. EDGE-LIT CLEAR ACRYLIC. BLADE TYPE. MFG: ULTRALUM, MODEL: E80-40. SEE ELECTRICAL DRAWINGS.
- NEW EMERGENCY LIGHT FIXTURES, BATTERY BACKED. LANDOLFO SPECIFICATION MFG: ZEP. MODEL: 1000 LED. 10W. 12M. SEE ELECTRICAL DRAWINGS.
- INTERIOR NET PUBLIC AREA
- EXTERIOR NET PUBLIC AREA
- (E) ACCESSIBLE PATH OF TRAVEL

FLOOR PLAN KEY NOTES

- (E) EDGE OF BOARDWALK RIGHT-OF-WAY.

FLOOR PLAN NOTES

- A. ALL FINISHED PARTITIONS SHALL BE PLUMB, STRAIGHT AND TRUE AND SHALL HAVE TAPED JOINTS, FLUSH AND SMOOTH.
- B. PROVIDE BACKING IN WALLS FOR WALL MOUNT FIXTURES AND CABINETS AS REQUIRED.
- C. CONTRACTOR TO SUBMIT SUBMITTALS OF ALL FINISHES, PLUMBING FIXTURES, ELECTRICAL COMPONENTS, DOOR HARDWARE AND LIGHT FIXTURES TO ARCHITECT FOR WRITTEN APPROVAL PRIOR TO ORDERING MATERIAL. IF SUBMITTALS ARE NOT SUBMITTED AND APPROVED IN WRITING THE CONTRACTOR WILL BE RESPONSIBLE FOR ALL COSTS ASSOCIATED WITH REPLACEMENT.
- D. SUBMIT CUT SHEET OR ACTUAL DOOR SAMPLE FOR APPROVAL PRIOR TO PURCHASE OR FABRICATION OF DOORS, HARDWARE SCHEDULE.
- E. MAXIMUM DOOR OPERATION PRESSURE FOR INTERIOR DOORS SHALL BE 5 LBS.
- F. DOOR HARDWARE SHALL BE PUSH-PULL OR OTHER TYPE WITH DOES NOT REQUIRE GRASPING AND TURNING.
- G. CONTRACTOR SHALL FURNISH AND INSTALL ALL DOORS, HARDWARE AND FRAMES REQUIRED FOR A COMPLETE AND PROPER INSTALLATION.
- H. ALL DOORS SHALL HAVE WALL OR FLOOR STOPS TO PREVENT DAMAGE TO DOOR, HARDWARE OR ADJACENT WALL SURFACES.
- I. CONTRACTOR TO VERIFY ALL KEY REQUIREMENTS WITH LANDLORD/OWNER AND SHALL COORDINATE BUILDING STANDARD CYLINDERS AND KEYWAYS AS REQUIRED.
- J. ALL DOORS SPECIFIED SHALL BE FINISHED ON BOTH FACES AND ON THE HINGED AND STRIKE EDGES, TOP AND BOTTOM EDGES UNFINISHED.
- K. ALL PARTITIONS ARE DIMENSIONED FINISH TO FINISH.
- L. EVERY REQUIRED EXIT CORRIDOR MUST BE OF A SIZE TO PERMIT THE INSTALLATION OF A 2'-0" BY 6'-0" DOOR MINIMUM. A MINIMUM CLEAR WIDTH OF 28" MUST BE PROVIDED. (2016 CBC 100B.1.1)
- M. CONTRACTOR/TENANT MUST COMPLY WITH (2016 CBC 1011.5, AND 1011.6) FOR EXIT SIGN GRAPHICS, ILLUMINATION, AND POWER SOURCE.
- N. CONTRACTOR TO PROVIDE EXIT SIGNS READILY VISIBLE TO CLEARLY INDICATE THE DIRECTION OF EGRESS TRAVEL. EXIT SIGNS SHALL BE PROPERLY ILLUMINATED. (2016 CBC 1011.5, 1011.6)
- O. CONTRACTOR TO FIELD VERIFY ALL SITE CONDITIONS AND DIMENSIONS.

OWNER:
LIDO GROUP RETAIL, LLC

PREPARED BY:

RAND KRUSE
ARCHITECTURE AND INTERIORS
3404 VIA OPORTO SUITE 201
NEWPORT BEACH, CA 92663
949.500.9416

PROJECT:

TENANT IMPROVEMENT OF
3424 VIA OPORTO, STE 103
NEWPORT BEACH, CA

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REVISIONS	
A	CUP
B	05-21-19
C	07-25-19
D	08-15-19
E	09-23-19

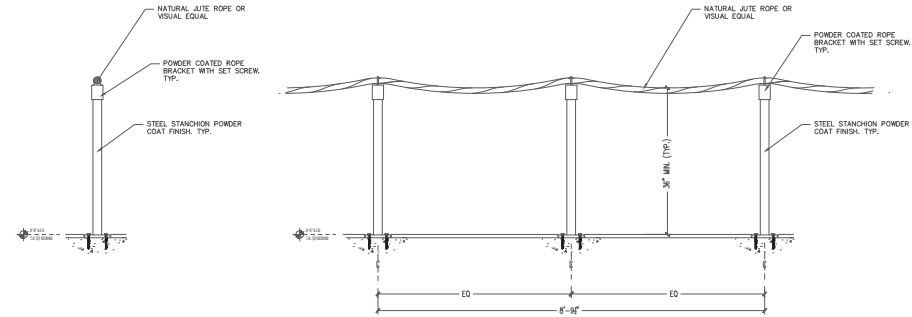
SHEET NAME:

FLOOR PLAN

SHEET NUMBER:

A.1.1

01 FLOOR PLAN
SCALE: 3/16" = 1'-0"



02 OUTDOOR DINING BARRIER
SCALE: NTS

OWNER:
LIDO GROUP RETAIL, LLC

PREPARED BY:

RAND KRUSE
ARCHITECTURE AND INTERIORS
3404 VIA OPORTO SUITE 201
NEWPORT BEACH, CA 92663
949.500.9416

PROJECT:

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REVISIONS	
A	CUP
B	05-21-19
C	07-25-19

SHEET NAME:

MASTER
RESTROOM PLAN

SHEET NUMBER:

MRP

