



PLANNING COMMISSION AGENDA REPORT

11.1

MEETING DATE: JULY 24, 2006

ITEM NUMBER:

SUBJECT: PLANNING APPLICATION PA-06-34
3067 BRISTOL STREET

DATE: JULY 13, 2006

FOR FURTHER INFORMATION CONTACT: WENDY SHIH, ASSOCIATE PLANNER (714) 754-5136

PROJECT DESCRIPTION

The applicant is requesting approval to amend a previously approved conditional use permit (PA-99-49) allowing concurrent sales of beer and wine with gasoline, to allow sales of beer and wine in single containers and to allow exterior advertisement of alcoholic beverages.

APPLICANT

Greg Fick of Tait and Associates, Inc. is representing the property owner, Conoco Phillips.

RECOMMENDATION

Deny by adoption of Planning Commission resolution.



WENDY SHIH
Associate Planner



R. MICHAEL ROBINSON, AICP
Asst. Development Services Director

BACKGROUND

The subject site is located on the northwest corner of Paularino Avenue and Bristol Street. On March 13, 2000, Planning Commission approved Conditional Use Permit PA-99-49 to convert service bays of the gasoline station to a convenience store but denied the concurrent sales of beer and wine with gasoline. The applicant appealed the decision to deny alcohol sales and on April 17, 2006, City Council approved the application including concurrent sales of beer and wine with gasoline. Conditions 17 and 18 were included to prohibit sale of single servings of alcohol and condition number 20 prohibits exterior advertisement for alcoholic beverages.

The applicant is requesting to amend Conditional Use Permit PA-99-49 to delete conditions 17, 18, and 20, which would allow concurrent sales of beer and wine in single serving containers at the gas station, as well as to allow exterior advertisement of alcoholic beverages.

DISCUSSION

These three conditions of approval are routinely applied whenever sales of alcoholic beverages are proposed at a mini-market or convenience store – whether or not combined with sales of gasoline. The intent of the standard conditions of approval is to minimize potential impacts on other properties in the vicinity and to protect the health, safety and general welfare of the public. It is staff's opinion that single servings of beer and wine tend to be purchased for immediate consumption. Allowing single servings of alcohol to be sold at a gas station would seem to encourage illegal drinking and driving. It could also encourage immediate consumption of alcohol and loitering on- or off-site on adjoining properties. It is staff's opinion that allowing exterior advertising of beer and wine would further encourage the sales of alcoholic beverages, potentially encouraging customers to come to the site merely to buy alcoholic beverages rather than purchasing in conjunction with other products.

The Police Department has no objections to the applicant's request; however, the property is located within an area of undue concentration, where crime exceeds 20 percent of the City-wide average crime rate, and the ratio of the number of ABC licenses to population within the census tract exceeds the countywide ratio (4 allowed; 10 existing). Although approval of the request would not increase the number of off-sale ABC licenses in the area, it is staff's opinion that allowing concurrent sales of beer and wine in single servings with gasoline and exterior advertising of alcoholic beverages would negatively affect what is already an area of undue concentration of off-sale licenses. Approval of the request could encourage illegal drinking and driving, possibly impacting the health, safety and welfare of the public.

The applicant indicates that there are many other convenience stores in Costa Mesa that sell single servings of alcohol and have exterior advertisement of alcoholic beverages. These convenience stores were likely established before the development and operational standards for convenience stores, which include conditions prohibiting single

servings of alcohol and exterior advertising, were adopted by City Council in 1997. These standard conditions were formally recognized in 2002 under Ordinance 01-30 amending the Zoning Code relating to liquor stores, convenience stores, and mini-markets. The standards are applied to ensure compliance with the necessary findings for approval of a conditional use permit for liquor stores, convenience stores, or mini-markets. Since 1997, the only application for alcohol sales that was allowed single servings (exterior advertising prohibited) was for the re-establishment of a liquor store at 1525 Mesa Verde Drive East, Suite 129. The Planning Commission approved the liquor store with all applicable standard conditions. The applicant appealed their decision to City Council requesting deletion of the condition which prohibited sales of single servings of alcohol. City Council ultimately approved the deletion of that condition based on the fact that the liquor store is located within a shopping center near the golf course, and single servings of alcohol sales serve a convenience for the golfers and residents in the vicinity.

GENERAL PLAN CONFORMITY

The subject site is designated General Commercial on the General Plan. The convenience store use is consistent with the land use designation, which allows a wide range of commercial uses which serve both local and regional needs. Approval of amendments to the conditions of approval will not affect the General Plan consistency of the use.

ALTERNATIVES

The Planning Commission may consider the following alternatives:

1. Deny the application for an amendment of PA-99-49, which would allow the applicant to continue to operate under the existing conditional use permit.
2. Approve the applicant's request for the amendments and make the necessary findings for approval.

CONCLUSION

It is staff's opinion that allowing single servings of beer and wine in conjunction with gasoline sales and exterior advertising of alcoholic beverages would be materially detrimental to the health, safety and general welfare of the public or properties in the vicinity because single servings tend to be purchased for immediate consumption and could encourage illegal activities and/or disturbances to other properties in the vicinity.

Attachments: Draft Planning Commission Resolution
 Exhibit "A" – Findings
 Exhibit "B" – Conditions of Approval
 Applicant's Project Description and Justification
 Location Maps
 Plans

cc: Deputy City Manager - Dev. Svs. Director

Sr. Deputy City Attorney
City Engineer
Fire Protection Analyst
Staff (4)
File (2)

Conoco Phillips
3611 Harbor Blvd.
Costa Mesa, CA 92626

Greg Fick
Tait and Associates, Inc.
701 N. Parkcenter Dr.
Santa Ana, CA 92705

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|--------------------|--------------|-----------------|
| File: 072406PA0634 | Date: 071106 | Time: 4:15 p.m. |
|--------------------|--------------|-----------------|

RESOLUTION NO. PC-06-

**A RESOLUTION OF THE PLANNING COMMISSION OF THE
CITY OF COSTA MESA DENYING PLANNING APPLICATION
PA-06-34**

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA HEREBY
RESOLVES AS FOLLOWS:

WHEREAS, an application was filed by Greg Fick of Tait and Associates, Inc. for Conoco Phillips, owner of real property located at 3067 Bristol Street, requesting to amend conditions of approval of an existing conditional use permit (PA-99-49) to allow concurrent sales of beer and wine (single servings) with gasoline and to allow exterior advertisement of alcoholic beverages, in the C1 zone; and

WHEREAS, a duly noticed public hearing was held by the Planning Commission on July 24, 2006.

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A," the Planning Commission hereby **DENIES** Planning Application PA-06-34 with respect to the property described above.

PASSED AND ADOPTED this 24th day of July, 2006.

Bill Perkins, Chair
Costa Mesa Planning Commission

EXHIBIT "A"

FINDINGS

- A. The information presented does not comply with Costa Mesa Municipal Code Section 13-29(g)(2) in that the proposed use is not compatible with developments in the same general area. Granting the conditional use permit amendment will be detrimental to the health, safety and general welfare of the public or other properties or improvements within the immediate vicinity. Specifically, allowing single servings of beer and wine to be sold in conjunction with gasoline sales and exterior advertising for alcoholic beverages could encourage illegal activities such as drinking and driving, and/or disturbances to other properties in the vicinity due to loitering because single servings of alcohol tend to be purchased for immediate consumption.
- B. The convenience store use is consistent with the general commercial General Plan land use designation, which allows commercial uses that serve both local and regional needs. Approval of the amendments to the conditional use permit will not affect the General Plan consistency of the use.
- C. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City environmental procedures, and has been found to be exempt from CEQA under Section 15301 for Existing Facilities.
- D. The project is exempt from Chapter XII, Article 3 Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.

EXHIBIT "B"

CONDITIONS OF APPROVAL (If application is approved)

- PIng. 1. Comply with all conditions of approval of PA-99-49 (attached) except numbers 17, 18, and 20 (deleted).
2. A copy of the conditions of approval for the conditional use permit must be kept on premises and presented to any authorized City official upon request. New business/property owners shall be notified of conditions of approval upon transfer of business or ownership of land.

EXHIBIT "B"
(Sales of alcoholic beverages permitted)

CONDITIONS OF APPROVAL

- Plng. 1. The conditional use permit herein approved shall be valid until revoked, but shall expire upon discontinuance of the activity authorized hereby for a period of 180 days or more. The conditional use permit may be referred to the Planning Commission for modification or revocation at any time if the conditions of approval have not been complied with, if the use is being operated in violation of applicable laws or ordinances, or if, in the opinion of the development services director or his designee, any of the findings upon which the approval was based are no longer applicable
2. All new construction shall be architecturally compatible with regard to building materials, style, colors, etc. with the existing structure. Plans submitted for plan check shall indicate how this will be accomplished.
3. The conditions of approval and ordinance or code provisions of planning application PA-99-49 shall be blueprinted on the face of the site plan.
4. The applicant shall contact the Planning Division to arrange for a "special requirements" inspection of the site prior to the release of occupancy. This inspection is to confirm that the conditions of approval and code requirements have been satisfied.
5. Applicant shall post signs inside and outside the premises prohibiting the on-site consumption of alcoholic beverages and loitering.
6. Applicant shall post signs inside and outside the premises in compliance with the City of Costa Mesa Municipal Code notifying the public with regard to the prohibition of open containers of alcohol beverages.
7. Every 2 hours, from 4:00 p.m. to closing, the applicant shall patrol the area over which the applicant has control in an effort to prevent the loitering of persons about the premises. The applicant shall make reasonable efforts to prevent loitering during other hours the business is open.
8. Applicant shall secure the premises with appropriate security lighting and employee scrutiny of adjacent areas under which applicant has control, to prevent trash, graffiti and littering. Any lighting under the control of applicant shall be directed in such a manner so as not to unreasonably interfere with the quiet enjoyment of nearby residences. Applicant shall further provide adequate lighting above the entrance to the premises sufficient in

intensity to make visible the identity and actions of all persons entering and leaving the premises.

9. Exterior public telephones shall be equipped to prohibit incoming calls.
10. Except as permitted by the City of Costa Mesa Municipal Code for temporary window signs, windows shall not be blocked or obscured.
11. The applicant shall maintain free of litter all areas of the premises under which applicant has control.
12. Any graffiti painted or marked upon the premises shall be removed or painted over within 48 hours of being applied.
13. Prior to alcohol sales at this location, the applicant shall purchase and transfer an existing Alcoholic Beverage Control license from a location within the City limits of Costa Mesa.
14. Alcoholic beverage sales shall be limited to only beer and wine.
15. No wine shall be sold with an alcoholic content of greater than 15% by volume except for "dinner wines" which have been aged 2 years or more and maintained in corked bottles.
16. Wine shall not be sold in bottles or containers smaller than 750 milliliters.
- ~~17. No sale of beer in single cans or bottles (any size) shall be permitted. This restriction is not intended to prohibit the sale of such beverages in kegs or other types of containers, with a volume of 2 or more gallons, which are clearly designed to dispense multiple servings.~~
- ~~18. Beer, malt beverages, wine coolers or pre-mixed distilled spirit cocktails (if allowed by the license) packed in 16 ounce containers or smaller, may not be sold as single containers, but must be sold in manufacturer pre-packaged multi-unit quantities.~~
19. Beer or wine shall not be displayed or sold from an ice tub or any other type of portable refrigerated unit.
- ~~20. Exterior advertising shall comply with the City's sign regulations, and exterior advertisements shall be prohibited which indicate the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible from the exterior at the closest public street or sidewalk, shall constitute a violation of this condition.~~
- Police 21. A list of security recommendations has been provided by the Police Department for the applicant's consideration.
- Eng. 22. Maintain the public right-of-way in a "wet-down" condition to prevent excessive dust and promptly remove any spillage from the public right-of-way by sweeping or sprinkling.
- Trans. 23. Close the easterly drive approach on Paularino Avenue with full height curb and gutter per City standard and construct raised curb planter on-site in the setback area.

24. Reconstruct the westerly drive approach on Paularino to a 35 to 50 foot maximum width with commercial wide flare and modify raised curb planters to suit.
25. The site operator and employees will be required to attend, participate, and successfully complete training program which will include and is not limited to training segments on safety, accident prevention, robbery deterrence, personal safety responsible tobacco retailing, loitering deterrence, effective alcohol management, facility maintenance and litter control. All facility personnel will be required to participate in quarterly reviews.
26. No sale of beer and wine shall be made from a drive-in window.
27. A sign shall be posted in the window to identify that the cash register contains \$50.00 or less in cash and the drop safe is not accessible to the employee.
28. The public restroom shall be available for public use while the food mart is open for business.
29. The food mart shall be equipped with a security camera that is capable of receiving an image on film or tape that can be made a permanent record and that can be enlarged through projection or other means. Cameras will be maintained in proper working order at all times.
30. All improvements on the property shall be continuously maintained, including repairs to structures and replacement of dead or diseased plant material.
31. Signs and curb painting shall be utilized on-site to encourage parking in designated parking areas.
32. During business hours, police department personnel shall be given full access to the store's office and communication facilities for the purpose of conducting police business.
33. Applicant shall surrender the alcoholic beverage control license for the Circle K at Sunflower Avenue and Fairview Road. Approval of an alcoholic beverage control license for this use shall be limited to a premises-to-premises transfer from another location within the same census tract.



May 31, 2006

To Whom It May Concern:

The existing 76 Service Station and Circle K convenience store located at 3067 Bristol Street has filed an application to amend the existing Conditional Use Permit CUP PA-99-49. The amendment to the existing CUP is specifically addressing Conditions 17, 18, and 20. The existing CUP was approved in 1999.

Conditions 17 and 18 prohibit the sale of single cans or bottles of alcohol (hereafter referred to as singles).

Condition 17 states: *No sale of beer in single cans or bottles (any size) shall be permitted. This restriction is not intended to prohibit the sale of such beverages in kegs or other types of containers, with a volume of 2 or more gallons, which are clearly designed to dispense multiple servings.*

Condition number 18 states: *Beer, malt beverages, wine coolers or pre-mixed distilled spirit cocktails (if allowed by the license) packed in 16-ounce containers or smaller, may not be sold as single containers, but must be sold in manufacturer pre-packaged multi-unit quantities.*

Currently this store offers its customers a wide variety of beer and wine alcoholic beverages. With the approval to amend the CUP, one of the cooler doors will be reconfigured for single sales. This is typical for most of the ConocoPhillips operated convenience stores. Single sales will consist of beer, wine, malt liquor and fortified beverages ranging in size from 16 ounces to 40 ounces.

This request to amend the existing CUP has been prompted by the numerous customer requests to sell singles. ConocoPhillips has always taken pride with their ability to respond to their customer's needs. Many customers have indicated that it would be much more favorable and convenient for them to purchase singles rather than being forced to purchase alcohol in multi-unit quantities. With an approval of the Amendment to the CUP, customers would avoid making an extra stop to pick up singles at a different location. In addition, 11 out of the 11 other convenience stores that we visited in Costa Mesa sold singles in their store.

Attached is a report created by the California Department of Alcoholic Beverage Control. Since the Circle K opened in February 2001, the store has had an unblemished history with no reported violations. ConocoPhillips has worked very hard to establish their great relationship with the Community and will continue to maintain this relationship in the future.



Tait & Associates, Inc.
Engineering • Architecture • Environmental

Condition number 20 states: *Exterior advertising shall comply with the city's sign regulations and exterior advertisements shall be prohibited which indicate the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible from the exterior at the closest public street or sidewalk shall constitute a violation of this condition.*

While visiting other convenience stores in Costa Mesa, we noticed that other stores had placed alcoholic advertisements and neon signs on interior windows that were clearly visible from sidewalks and streets. The Circle K store is approximately 124 feet from the public right of way of Bristol Street (Front). The canopy, fuel dispensers, and parked vehicles all block views to the window signs. In addition, the public right of way on Paularino Street is approximately 90 feet away from the windows of the Circle K. The view from Paularino Street is from a side angle and is also obstructed by vehicles parked in front of the store. An individual with normal vision would have to be in perfect position in order to read the advertisements from either street. ConocoPhillips is concerned with the safety of its employees, customers and local authorities. For this reason, ConocoPhillips would not place advertisements in windows that have a direct view of the cash register from Paularino Street or Bristol Street.

By allowing other convenience stores in Costa Mesa to sell singles and display advertisements containing alcohol, ConocoPhillips is operating at a major competitive disadvantage. ConocoPhillips looks forward to its continued relationship with the City and Community.

Thank you for your consideration,

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

Greg Fick
Tait & Associates, Inc.
Entitlement Coordinator



California
 Department of
 Alcoholic
 Beverage
 Control
*License Query
 System
 Summary
 as of
 5/23/2006*

| | |
|--|-----------------------|
| License Information | |
| License Number: 403489 | Status: ACTIVE |
| Primary Owner: KAYO OIL COMPANY | |
| ABC Office of Application: SANTA ANA | |
| Business Name | |
| Doing Business As: CIRCLE K 76 2705667 | |
| Business Address | |
| Address: 3067 S BRISTOL ST Census Tract: 0639.08 | |
| City: COSTA MESA County: ORANGE | |
| State: CA Zip Code: 92626 | |
| Licensee Information | |
| Licensee: KAYO OIL COMPANY | |
| Company Officer Information | |
| Officer: PEARCY RODD, PRESIDENT | |
| Officer: NARCISSE PAULA, SECRETARY/ASST SEC | |
| Officer: CORDRAY LINDA L, SECRETARY/ASST SEC | |
| Officer: TILLERY DAVID SCOTT, SECRETARY/ASST SEC | |

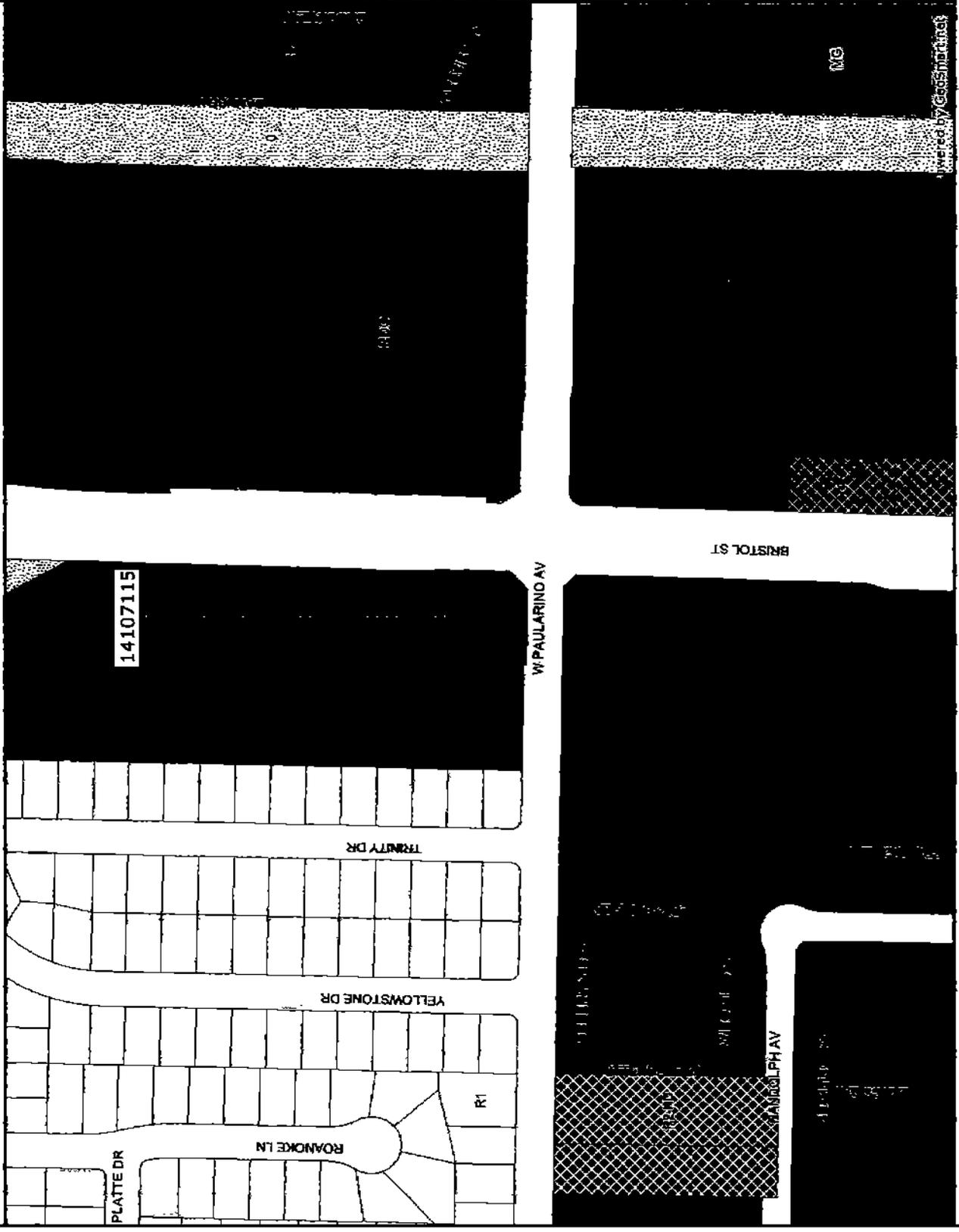
| |
|---|
| Officer: KWIATKOWSKI KIM K, SECRETARY/ASST SEC |
| Officer: MERSMAN CHERYL K, TREASURER |
| Officer: KRAMPF MICHAEL T, VICE PRESIDENT |
| Officer: SUMNER R A, VICE PRESIDENT |
| Officer: KRECKE KATHRYN ANNE, VICE PRESIDENT |
| Officer: SOULS THOMAS EDWIN, VICE PRESIDENT |
| Officer: SKOK WALLACE THOMAS, VICE PRESIDENT/SECRETARY |
| Officer: SHEETS JEFFREY WAYNE, VICE PRESIDENT/TREASURER |
| License Types |
| 1) License Type: 20 - OFF-SALE BEER AND WINE |
| License Type Status: ACTIVE |
| Status Date: 15-OCT-2003 Term: Month(s) |
| Original Issue Date: 15-OCT-2003 Expiration Date: 30-JUN-2006 |
| Master: Y Duplicate: 0 Fee Code: NA |
| License Type was Transferred On: From: 368894 |
| Current Disciplinary Action |
| . . . <i>No Active Disciplinary Action found</i> . . . |
| Disciplinary History |
| . . . <i>No Disciplinary History found</i> . . . |
| Hold Information |
| . . . <i>No Active Holds found</i> . . . |

--- End of Report ---

For a definition of codes, view our [glossary](#).

ZONING/LOCATION MAP

3067 Bristol Street



Legend

- Selected Features
 - Street Names
 - Parcel Lines
 - City Boundary
 - Zoning
- | | | | | | | | | | | | | | | | | | | | | |
|----|----|------|----|----|-----|-------|----|----|---|-----|-----|--------|--------|--------|---------|----|-------|-------|----|----|
| AP | C1 | C1-S | C2 | CL | IAR | IAR-S | MG | MP | P | PDC | PDI | PDR-HD | PDR-LD | PDR-MD | PDR-NCM | R1 | R2-HD | R2-MD | R3 | TC |
|----|----|------|----|----|-----|-------|----|----|---|-----|-----|--------|--------|--------|---------|----|-------|-------|----|----|
- Parcels



