

**CITY OF NEWPORT BEACH  
PLANNING DEPARTMENT ACTION REPORT**

TO: CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION  
FROM: David Lepo, Planning Director  
SUBJECT: Report of actions taken by the Zoning Administrator, Planning Director and/or Planning Department staff for the week ending July 2, 2009

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**ACTIONS TAKEN AT ZONING ADMINISTRATOR HEARING**

There was no Zoning Administrator Hearing this week

**ACTIONS TAKEN BY THE PLANNING DIRECTOR OR PLANNING DEPARTMENT STAFF**

Item 1: Omnipoint Communications on behalf of T-Mobile USA – Telecommunications Permit No. TP2009-001 (PA2009-054)  
5140 Birch Street

Telecommunication Permit approval to allow installation of 12 panel antennas and 1 GPS antenna on rooftop and behind new RF transparent screen wall of the existing building and 6 BTS cabinets, 2 BBU cabinets and associated equipment to be located within the first floor of existing building.

Approved – July 2, 2009

Council District 4

Item 2: Paradiso Charters, Inc. – Off-Site Parking Permit & No. OP2009-002 (PA2009-075)  
516 32<sup>nd</sup> Street

An off-site parking agreement for Paradiso Charters, Inc. to provide parking for employees and customers at 516 32nd Street. The charter will utilize one boat docked at 670 Lido Park Drive.

Approved – July 2, 2009

Council District 1

On behalf of David Lepo, Planning Director:



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Patrick J. Alferd, Planning Manager

**APPEAL:**

The applicant or any interested party may appeal the decision of the Planning Director, Zoning Administrator and department staff to the Planning Commission by a written request to the Planning Director within 14 days of the action date. A \$1,810.00 filing fee shall accompany any appeal filed. No building permits may be issued until the appeal period has expired.

Applies to Telecom Appeal:

The applicant or any interested party may appeal the decision of the Planning Director to the City Council by a written request to the City Council within 14 days of the action date. A \$1,550.00 filing fee shall accompany any appeal filed. The City Council's action on appeals shall be final.

c: David Lepo, Planning Director (*e-mail*)  
Sharon Wood, Assistant City Manager (*e-mail*)  
David Keely, Public Works Senior Civil Engineer (*e-mail*)  
Code Enforcement Division (*e-mail*)  
Lt. Tom Gazsi, NBPD (*e-mail*) if for a Telecom Permit



## **TELECOMMUNICATIONS PERMIT ACTION LETTER**

PLANNING DEPARTMENT  
3300 NEWPORT BOULEVARD  
NEWPORT BEACH, CA 92663  
(949) 644-3200 FAX (949) 644-3229

**Application No.**  
**(PA2009-054)**

**Telecommunications Permit No. TP2009-001**

**Applicant**

**Omnipoint Communications for T-Mobile USA**

**Site Address**

**5140 Birch Street**

**Legal Description**

**Parcel 1 of Parcel Map No. 79-720, in Book 142 of Parcel Maps, Pages 31-33**

On July 2, 2009, the Planning Director approved the following: Telecommunication Permit to allow installation of 12 panel antennas and 1 GPS antenna on rooftop and behind new RF transparent screen wall of the existing building and 6 BTS cabinets, 2 BBU cabinets and associated equipment to be located within the first floor of existing building. The property is located in the PC-15 (Koll Center) District. The approval is based on the following findings and subject to the following conditions.

### **FINDINGS**

1. This project qualifies for an exemption from environmental review pursuant to Section 15303 (Class 3 New Construction or Conversion of Small Structures) of the Implementing Guidelines of the California Environmental Quality Act (CEQA). Class 3 exempts the installation of small new equipment and facilities in small structures. The proposed equipment will be small structures that are mounted on existing structures.
2. The telecommunications facility as proposed meets the intent of Chapter 15.70 of the Newport Beach Municipal Code (NBMC), while ensuring public safety, reducing the visual effects of telecom equipment on public streetscapes, protecting scenic ocean and coastal views, and otherwise mitigating the impacts of such facilities based on the following:
  - The proposed telecom facility will not be detrimental to public health or safety because it is required to comply with the applicable rules, regulations and standards of the Federal Communications Commission and the California Public Utilities Commission.
  - The telecom facility is located on the roof of an existing building, and any future proposed facility to be located within 1,000 feet of the existing facility shall be required to co-locate on the same site to limit the adverse visual effects of proliferation of facilities in the City.

- Due to the location or design of the facility, there is no impact to public views.
3. The telecommunications facility as proposed conforms to the technology, height, location and design standards based on the following:
- The telecom facility approved under this permit utilizes the most efficient available technology in order to minimize the number of facility components and reduce the visual impact.
  - The telecom facility approved by the permit does not exceed the maximum building height limit of High-rise 375 feet, as specified in the Zoning Code.
  - The antennas and cabinets for the telecom facility approved by this permit will be roof-mounted and will be screened from public view in a manner consistent with the architectural style, color and materials of the building to avoid adverse impacts to views from land or buildings at higher elevations.
  - The support equipment for the telecom facility will be roof-mounted and will be screened from public view in a manner consistent with the architectural style, color and materials of the building. The roof-mounted equipment will comply with the height limit applicable to the building in PC-15 Zoning District.

### **CONDITIONS**

1. The development shall be in substantial conformance with the approved plot plan, antenna and equipment plans, and elevations, except as noted in the following conditions.
2. A total of twelve panel antennas and one GPS antenna may be roof-mounted behind new RF transparent screen wall of the existing building and 6 BTS cabinets, 2 BBU cabinets and associated equipment may be located within the first floor of existing building.
3. The antennas shall be screened from public view. All screen walls shall be painted and textured to match the existing building. In the event that the replacement screen walls are taller than the existing screen walls, vertical and lateral loads shall be investigated and mitigated.
4. Disabled access path of travel to the building entrance shall comply with the 2007 California Building Code.
5. Anything not specifically approved by this Telecom Permit is not permitted and must be addressed in a separate and subsequent Telecom Permit review.

6. The telecom facility approved by this permit shall comply with all applicable rules, regulations and standards of the Federal Communications Commission (FCC) and the California Public Utilities Commission (CPUC).
7. Any future facilities proposed by other carriers to be located within 1,000 feet from the subject property shall be approved to co-locate at the same site by the property owner or authorized agent, unless otherwise approved by the Planning Director.
8. The telecom facility shall comply with all regulations and requirements of the Uniform Building Code, Uniform Fire Code, Uniform Mechanical Code and National Electrical Code. All required permits shall be obtained prior to commencement of the construction.
9. Prior to the issuance of any building, mechanical and/or electrical permits, architectural drawings and structural design plans shall be submitted to the City of Newport Beach for review and approval by the applicable departments. A copy of this approval letter shall be incorporated into the drawings approved for the issuance of permits.
10. Appropriate information warning signs or plates shall be posted at the access locations and each transmitting antenna. In addition, contact information (e.g. a telephone number) shall be provided on the warning signs or plates to arrange for access to the roof top area. The location of the information warning signs or plates shall be depicted on the plans submitted for construction permits.
11. No advertising signage or identifying logos shall be displayed on the telecom facility except for small identification, address, warning and similar information plates. A detail of the information plates depicting the language on the plate shall be included in the plans submitted for issuance of building permits.
12. The facility shall transmit at a frequency range of 1970 to 1979.6 MHz, and shall receive at a frequency range of 2145 to 2155 MHz. Any change or alteration to the frequency range shall require the prior review and approval of the Planning Director.
13. Prior to the issuance of any permits to install the facility, the applicant shall meet in good faith to coordinate the use of frequencies and equipment with the Communications Division of the Orange County Sheriff-Coroner Department to minimize, to the greatest extent possible, any interference with the public Safety 800 MHz Countywide Coordinated Communications System (CCCS). Similar consideration shall be given to any other existing or proposed wireless communications facility that may be located on the subject property. The applicant shall provide the Planning Department with documentation from the OCSCD that the meeting has taken place.

The applicant recognizes that the frequencies used by the cellular facility located at the subject property are extremely close to the frequencies used by the City of Newport Beach for public safety. This proximity will require extraordinary "comprehensive advanced planning and frequency coordination" engineering measures to prevent interference, especially in the choice of frequencies and radio ancillary hardware. This is encouraged in the "Best Practices Guide" published by the Association of Public-safety Communications Officials-International, Inc. (APCO), and as endorsed by the Federal Communications Commission (FCC).

14. The applicant shall not prevent the City of Newport Beach from having adequate spectrum capacity on the City's 800 MHz radio frequencies at any time.
15. Prior to activation of the facility, the applicant shall submit to a post-installation test to confirm that "advanced planning and frequency coordination" of the facility was successful in not interfering with the City's Public Safety radio equipment. This test will be conducted by the Communications Division of the Orange County Sheriff-Coroner Department or a Division-approved contractor at the expense of the applicant. This post-installation testing process shall be repeated for every proposed frequency addition and/or change to confirm the intent of the "frequency planning" process has been met.
16. Prior to activation of the facility, the applicant shall submit a letter to the Planning Director prepared by the Orange County Sheriff-Coroner Department indicating that the OCSD has reviewed the results of the post-installation test and that the facility will not cause interference with the City's Public Safety radio equipment.
17. Within 30 days after installation of the telecom facility, a radio frequency (RF) compliance and radiation report prepared by a qualified RF engineer acceptable to the City shall be submitted in order to demonstrate that the facility is operating at the approved frequency and complies with FCC standards for radiation. If the report shows that the facility does not so comply, the use of the facility shall be suspended until the facility is modified to comply and a new report has been submitted confirming such compliance.
18. Prior to issuance of building permits, a deposit of \$1,000 shall be paid to the City of Newport Beach. This deposit is required by the Planning Department to ensure preparation and submittal of the RF Compliance and Radiation Report, referenced in the above Condition. The deposit will be used to defray any and all fees associated with review of the report by an independent technical consultant, pursuant to Section 15.70.070 B-10 of the Telecom Ordinance. Any unused deposit fees will be refunded to the applicant upon determination of compliance with the approved frequency and FCC standards.
19. The applicant shall provide a "single point of contact" in its Engineering and Maintenance Departments that is monitored 24 hours per day to insure continuity on all interference issues, and to which interference problems may be reported.

The name, telephone number, fax number and e-mail address of that person shall be provided to the Planning Department and Newport Beach Police Department's Support Services Commander prior to activation of the facility.

20. Should interference with the City's Public Safety radio equipment occur, use of the facility shall be suspended until the radio frequency is corrected and verification of the compliance is reported.
21. The applicant shall insure that lessee or other user(s) shall comply with the terms and conditions of this permit, and shall be responsible for the failure of any lessee or other users under the control of the applicant to comply.
22. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the applicant, current property owner or leasing agent.
23. The telecom facility approved by the permit shall comply with any easements, covenants, conditions or restrictions on the underlying real property upon which the facility is located.
24. The telecom facility shall not be lighted except as deemed necessary by the Newport Beach Police Department for security lighting. The night lighting shall be at the lowest intensity necessary for that purpose and such lighting shall be shielded so that direct rays do not shine on nearby properties. Prior to the final of building permits, the applicant shall schedule an evening inspection by the Code Enforcement Division to confirm compliance with this condition.
25. The operator of the telecom facility shall maintain the facility in a manner consistent with the original approval of the facility.
26. The City reserves the right and jurisdiction to review and modify any telecom permit approved pursuant to Chapter 15.70 of the Newport Beach Municipal Code, including the conditions of approval, based on changed circumstances. The operator shall notify the Planning Department of any proposal to change the height or size of the facility; increase the size, shape or number of antennas; change the facility's color or materials or location on the site; or increase the signal output above the maximum permissible exposure (MPE) limits imposed by the radio frequency emissions guidelines of the FCC. Any changed circumstance shall require the operator to apply for a modification of the original telecom permit and obtain the modified telecom permit prior to implementing any change.
27. This telecom permit may be modified or revoked by the City Council should they determine that the facility or operator has violated any law regulating the telecom facility or has failed to comply with the requirements of Chapter 15.70 of the NBMC, or this telecom permit.

28. Any operator who intends to abandon or discontinue use of a telecom facility must notify the Planning Director by certified mail no less than 30 days prior to such action. The operator or property owner shall have 90 days from the date of abandonment or discontinuance to reactivate use of the facility, transfer the rights to use the facility to another operator, or remove the telecom facility and restore the site.
29. If any of the existing public improvements surrounding the site is damaged by the private work, new concrete sidewalk, curb and gutter, alley/street pavement, and other public improvements shall be required by the City at the time of private construction completion. Said determination and the extent of the repair work shall be made at the discretion of the Public Works Inspector.
30. T-Mobile shall protect all City landscape, tree, and irrigation in place. If any damage should occur, the contractor will be required to repair as directed by the General Services Department and guarantee work for a minimum of one (1) year.
31. The structural calculations shall be revised to meet the 2007 California Building Code.
32. The topographic survey shall be update to show all existing public and private easements on the subject property.
33. The storage of all project related equipment shall be on-site and minimize impact the public right-of-way.
34. A Temporary Street Closure Permit and/or Encroachment Permit shall be required for all work activities within the public right-of-way.

**APPEAL PERIOD**

The applicant or any interested party may appeal the decision of the Planning Director to the City Council within 14 days of the action date. The City Council's action on appeals shall be final. A \$1,550.00 filing fee shall accompany any appeal filed. For additional information on filing an appeal, contact the City Clerk at 949 644-3005.

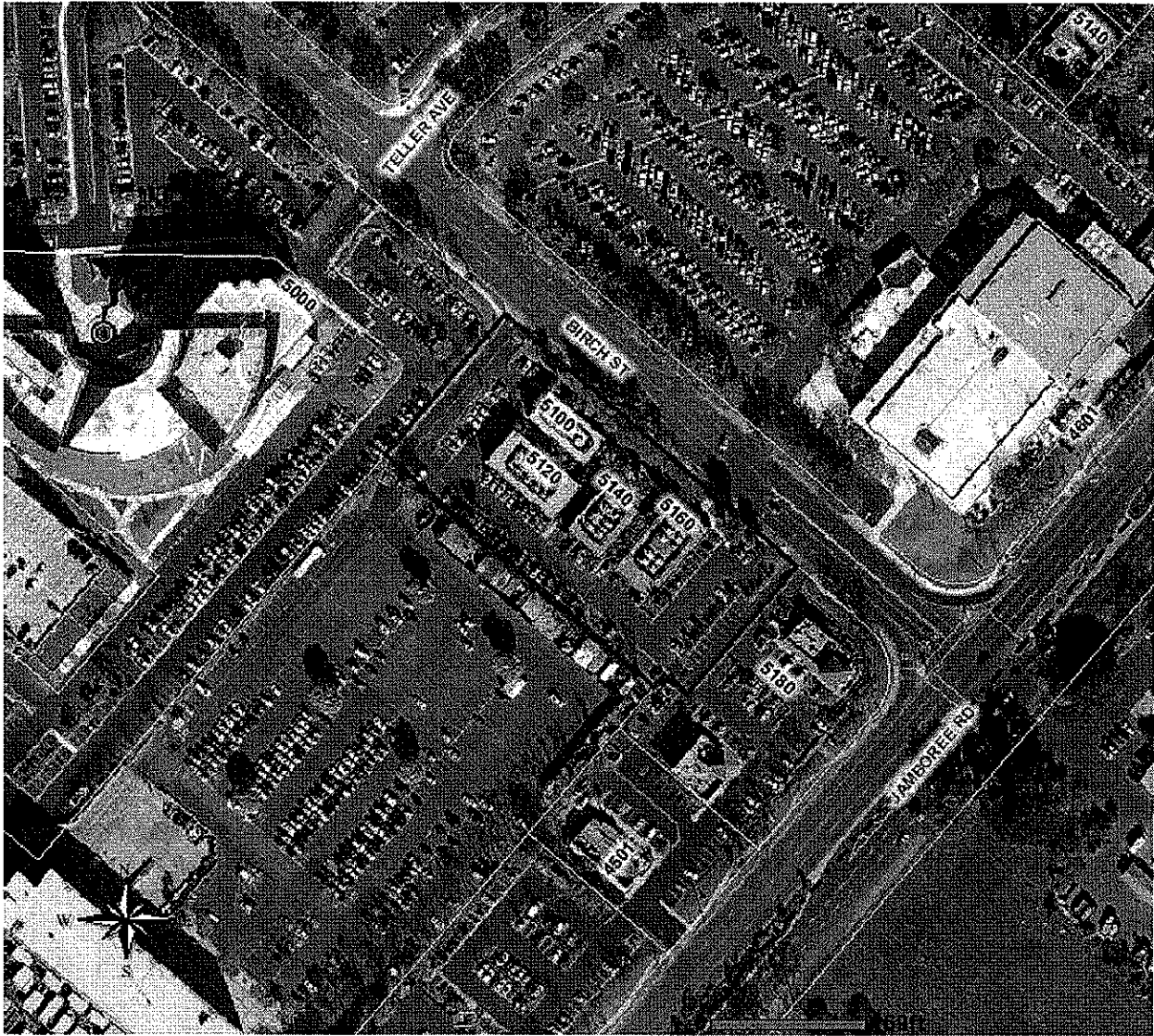
On behalf of David Lepo, Planning Director

By:   
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Rosalinh Ung, Associate Planner

Attachment: Vicinity Map



# VICINITY MAP



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Telecommunications Permit No. TP2009-001  
PA2009-054

**5140 Birch Street**



**Off-Site Parking Agreement No. OP2009-002**

**PA2009-075**

PLANNING DEPARTMENT  
3300 NEWPORT BOULEVARD  
NEWPORT BEACH, CA 92663  
(949) 644-3200 FAX (949) 644-3229

**MEMORANDUM**

July 2, 2009

**TO:** Shannon Levin, Harbor Resources Department  
**FROM:** Chris Savan, Planning Technician  
(949) 644-3253, csavan@city.newport-beach.ca.us  
**SUBJECT:** Marine Activities Permit for Paradiso Charters Inc.  
Off-Site Parking Request at 516 32<sup>nd</sup> Street

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On July 2, 2009, the Planning Director approved the application request for OP2009-002 for off-site parking associated with a Marine Activities Permit Application.

**Project File No.:** PA2009-075

**Activity No.:** OP2009-002

**Location of Parking:** 516 32<sup>nd</sup> Street

**Applicant:** Paradiso Charters Inc.

**Zone:** Cannery Village/McFadden Square  
Specific Plan (SP-6)

**General Plan:** Mixed-Use Horizontal  
(MU-H4)

Pursuant to the requirements of Section 17.10.050 of the Municipal Code, the Harbor Resources Director referred an application to the Planning Director to verify compliance with all applicable Zoning Code regulations. Section 20.66.080 of the Municipal Code allows the Planning Director to approve temporary off-site parking for uses requiring marine activities permits provided that the following findings are made:

**Finding:** Such lot is so located as to be useful in connection with the proposed use or uses on the site or sites.

**Facts in support of finding:** Paradiso Charters Inc. operates a boat for private charters that is docked at 670 Lido Park Drive, Slip #4. Paradiso Charters Inc. is requesting off-site parking at 516 32<sup>nd</sup> St for its employees and customers. The proposed parking lot is less than 1,000 feet from where the boat is docked, which is typically less than a five minute walk. This distance is short enough to be useful in connection with the proposed use.

**Finding:** Parking on such lot will not create undue traffic hazards in the surrounding area.

**Facts in support of finding:** The lot is an existing parking lot and the parking lot use will remain unchanged. Since the use of the lot is not changing, this off-site parking request will not create undue traffic hazards in the surrounding area.

**Finding:** Parking is permanently available, marked, and maintained for the use it is intended to serve.

**Facts in support of finding:** Paradiso Charters, Inc. is leasing 14 of the 36 parking spaces on the lot at 516 32<sup>nd</sup> Street from Battaglia, Inc. (Attachment 2). The subject lot is underutilized by Battaglia Inc., which uses a parking lot adjacent to the office building at 3366 Via Lido. Parking counts of the subject lot (Attachment 3) indicate that more than 14 spaces are available during peak parking demand. The lot and each parking space are marked for use as indicated by the numerals "3366" (the address of Battaglia Inc.).

Paradiso Charters, Inc. shall only operate during the hours that it is allowed use of the parking spaces. Per the lease agreement, Paradiso Charters, Inc. shall be allowed use of the parking spaces daily with the exception of Sundays from 7:00 a.m. to 1:30 p.m. for church use and four times during the year as requested by Battaglia, Inc. for company events. The owner or operator must notify the Planning Director of any change to or loss of parking availability at the subject site. Temporary use of the off-site parking spaces is permitted for a maximum of one year from the date of this memorandum.

**Conditions:**

1. Paradiso Charters, Inc shall only operate during the hours that it is allowed use of the parking spaces at 516 32<sup>nd</sup> St. Paradiso Charters, Inc shall not operate on Sundays from 7:00 a.m. to 1:30 p.m.
2. The owner of the parcel or the business operator must notify the Planning Director of any change to or loss of parking availability.
3. Temporary use of the off-site parking spaces is permitted for a maximum of one year from the date of this memorandum.

Environmental Review

This project qualifies for an exemption from environmental review pursuant to Section 15301 (Class 1 Existing Facilities) of the Implementing Guidelines of the California Environmental Quality Act (CEQA), which exempts the operation of existing facilities.

Public Notice

Notice of this application was mailed to property owners within 300 feet of the property, and posted at the site a minimum of ten days in advance of this decision, consistent with Section 20.66.080 of the Municipal Code.

Appeal

The decision of the Planning Director may be appealed to the Planning Commission within 14 days of the date of this memorandum, as provided in Chapter 20.95 of the Municipal Code.

Approved by:

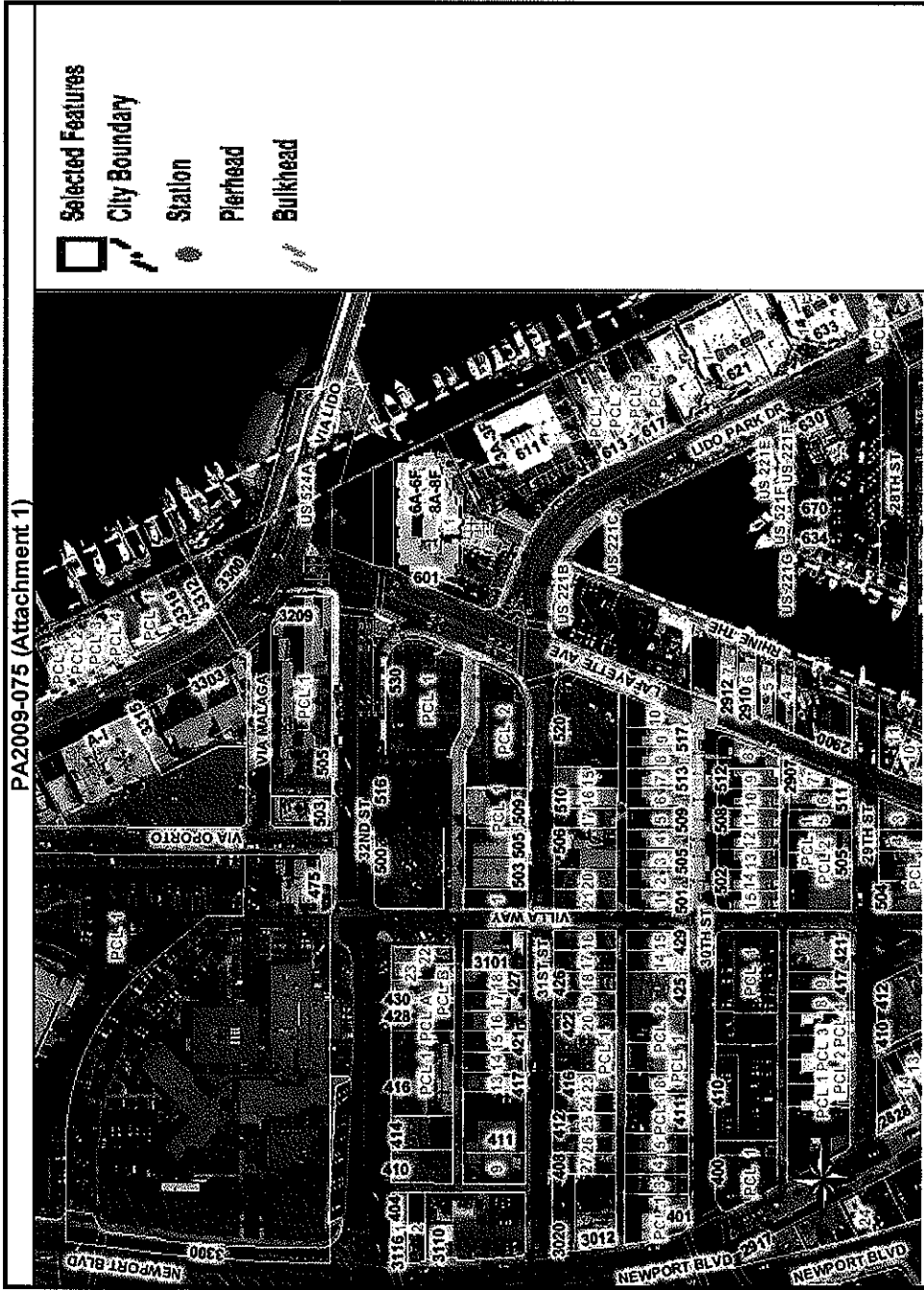
  
Chris Savan, Planning Technician

On behalf of David Lepo, Planning Director

cc: Richard Oates, Paradiso Chartes Inc., 9822 Blue Reef Dr, Huntington Beach, CA 92646

**ATTACHMENTS**

1. Vicinity Map
2. Battaglia Inc. Lease Agreement
3. Parking Counts



**PARKING COUNTS (May 19-21, 2009)  
500 & 516 32nd St**

	TUE, 5/19 @ 8 a.m.	TUE, 5/19 @ 10 a.m.	TUE, 5/19 @ 12 p.m.	TUE, 5/19 @ 2 p.m.	TUE, 5/19 @ 4 p.m.	THU, 5/21 @ 8 a.m.	THU, 5/21 @ 10 a.m.	THU, 5/21 @ 12 p.m.	THU, 5/21 @ 2 p.m.	THU, 5/21 @ 4 p.m.
500 32nd St										
Spaces Provided	35	35	35	35	35	35	35	35	35	35
Spaces occupied	0	14	17	11	10	1	11	14	16	16
Spaces available	35	21	18	24	25	34	24	21	19	19
516 32nd St										
Spaces Provided	36	36	36	36	36	36	36	36	36	36
Spaces occupied	1	9	11	10	6	4	10	12	12	7
Spaces available	35	27	25	26	30	32	26	24	24	29

Counts taken by Chris Savan, Planning Technian, Planning Department, City of Newport Beach



**Lease Agreement**

**Effective Date:** May 1, 2009

**Lessor:** Battaglia Inc.  
3366 Via Lido  
Newport Beach, CA 92663

**Lessee:** Paradiso Charters Inc.  
670 Lido Park Dr.  
Newport Beach, California 92663

**Property Location:** Approximately 32 Spaces marked for Battaglia,  
located at 32<sup>nd</sup> Street, Newport Beach, California

**Term:** 6-Month Lease

**A. Scope of Usage**

1. 14 parking spaces- Daily
2. Allow Church Use Sundays from 7:00am - 1:30pm
3. Our Office Usage For a Corporate Party Four (4) Times Per Year (usually in March, July, September, and the middle of December) 30 Days prior notice will be given by Battaglia as to the actual date of usage.

**B. Fee**

1.

May 1	\$840
June 1	\$840
July 1	\$840
August 1	\$840
September 1	\$840
October 1	\$840
November 1	\$840
December 1	\$840
January 1	\$840
February 1	\$840
March 1	\$840
April 1	\$840



Mr. Robert Matthews  
April 9, 2009  
Page 2

- 2. Due on the first day of each month or the first business day thereafter if the first of the month falls on a weekend. If fee is not received on the 1<sup>st</sup>, our agreement would automatically terminate on the next day.

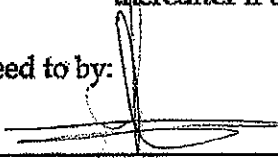
C. *Terms & Conditions*

- 1. A month to month rental cancelled by either party with a 30 day written notice.
- 2. Any portion of the agreement not valid if in conflict with any City rules, ordinances, permits, or other conditions the City may have jurisdiction or the terms of our lease.
- 3. No invoice will be provided by Battaglia Inc.
- 4. Lessor to have sole interpretation of the language of the lease.
- 5. Any Battaglia Inc. employees' cars (with the Battaglia parking tag) parked in the lot after normal working hours are allowed to park in the lot.
- 6. Since Battaglia shares the lot with another company, Battaglia Inc. is not responsible if those people are parked in Battaglia's marked spots during the usage period for Paradiso Charters Inc.
- 7. Paradiso Charters Inc agrees to indemnify, defend and hold Battaglia Inc. free and harmless from any and all claims, damages, costs, demands, expenses, attorney's fees, etc., arising out of Paradiso's or any of their invitees' use of the premises or any property damage caused.
- 8. Acceptable liability insurance with Battaglia Inc. named as additional insured on the policy.

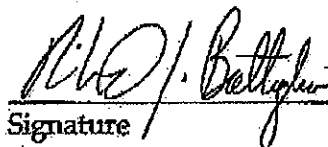
D. *Cancellation*

- 1. Thirty (30) days written notice by either party.
- 2. Automatic cancellation of the lease, if the lease payment is not received by the first of the calendar month or the first business day thereafter if the first of the month falls on a weekend.

Agreed to by:

  
 \_\_\_\_\_  
 Date 4/22/09

Signature  
 Robert Matthews  
 President  
 Paradiso Charters Inc.

  
 \_\_\_\_\_  
 Date 4/10/09

Signature  
 Battaglia Inc.  
 Chief Executive Officer  
 Richard J. Battaglia