

Planning and Development Department  
Land Use Planning Division

# A D M I N I S T R A T I V E U S E P E R M I T

CITY OF BERKELEY ZONING ORDINANCE  
Berkeley Municipal Code, Title 23

**AUP #12-20000105**

Property Address:

**2324 FIFTH STREET**

Permittee Name:

**AUSTENE HALL**

Use and/or Construction Permitted: to construct a 950 square foot quick service restaurant with incidental retail sales within an existing 1,573 square foot coffee roasting facility pursuant to:

- Section 23E.84.030 to establish a quick service restaurant; and
- Section 23E.84.030 to establish incidental retail sales of goods manufactured

FINDINGS, CONDITIONS AND APPROVED PLANS ATTACHED

Following the expiration of the mandatory appeal period set forth in Section 23B.28.040 of the Berkeley Municipal Code, with no timely appeal being filed, the Administrative Use Permit described herein has been duly granted by the Zoning Officer on February 6, 2013.

Attest: Terry Blount  
Terry Blount, AICP, Principal Planner  
For Debbie Sanderson, Zoning Officer

February 6, 2013  
Effective Date

# ATTACHMENT 1

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## FINDINGS AND CONDITIONS

JANUARY 16, 2013

### 2324 Fifth Street

#### Administrative Use Permit #12-20000105

**To construct a 950 square foot quick service restaurant with incidental retail sales within an existing 1,573 square foot coffee roasting facility.**

#### CEQA FINDINGS

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1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15303 of the CEQA Guidelines (“New Construction or Conversions of Existing Facilities”). Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project will not affect any historical resource.

#### FINDINGS FOR APPROVAL

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2. As required by Section 23B.28.050.A of the Zoning Ordinance, the project, under the circumstances of this particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:
  - The use is consistent with the purposes of the Mixed Use Residential District and the policies of the West Berkeley Area Plan in that the creation of a quick service restaurant with incidental retail within a coffee roasting facility will provide services and instruction in the art of coffee roasting. This use will draw from the nearby residences and contribute to the eclectic mix of uses typical of the district.
  - The quick service restaurant and incidental retail is compatible with the surrounding uses as it provides instruction on the methods of coffee roasting in an area that has a mix of residential, industrial, and commercial uses. This type of use will help provide a transitional area between more intense manufacturing uses to the west, and residential and mixed uses to the east.

- No exterior changes are proposed as part of this project, therefore the building will retain its compatibility with the surrounding buildings. Any future exterior changes will be subject to Design Review to ensure compatibility.
3. Pursuant to Berkeley Municipal Code Section 23E.84.090.B, the Zoning Officer finds that:
- The use is consistent with the purposes of the Mixed Use Residential District and the policies of the West Berkeley Area Plan in the creation of a quick service restaurant with incidental retail within the coffee roasting facility will provide services and instruction in the art of coffee roasting. This use will draw from the nearby residences and contribute to the eclectic mix of uses typical of the district.
  - The quick service restaurant and incidental retail is compatible with the surrounding uses as it provides instruction on the methods of coffee roasting in an area that has a mix of residential, industrial, and commercial uses. The incidental retail will consist of goods manufactured on site, and will be subject to conditions #25-28 to ensure that the retail element remains incidental to the manufacturing use.
  - The quick service restaurant will not be likely, under reasonably foreseeable circumstances, to either induce or contribute to a cumulative change of use in buildings away from residential, live/work, light industrial, or arts and crafts uses because the food service is an integral part of the existing manufacturing use on the site and will provide instruction on that use. The use encourages the further development and an appreciation of the industry.
4. Pursuant to Berkeley Municipal Code Section 23E.84.090.F, the Zoning Officer finds that the establishment of the food service use, given its size relative to the coffee roasting facility and location adjacent to the roasting and storage rooms, will not have a significant detrimental impact on the industrial or residential character of the area. Additionally, a substantial portion of the goods will be manufactured on site.

## **STANDARD CONDITIONS**

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The following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

### **1. Conditions Shall be Printed on Plans**

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions'. *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

### **2. Applicant Responsible for Compliance with Conditions**

The applicant shall ensure compliance with all of the following conditions, including submittal to the project planner of required approval signatures at the times specified. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Use Permit.

### **3. Uses Approved Deemed to Exclude Other Uses (Section 23B.56.010)**

- A. This Permit authorizes only those uses and activities actually proposed in the application, and excludes other uses and activities.
- B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.

### **4. Modification of Permits (Section 23B.56.020)**

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Zoning Officer, except that the Zoning Officer may approve changes that do not expand, intensify, or substantially change the use or building.

### **5. Plans and Representations Become Conditions (Section 23B.56.030)**

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

### **6. Subject to All Applicable Laws and Regulations (Section 23B.56.040)**

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.

**7. Exercised Permit for Use Survives Vacancy of Property (Section 23B.56.080)**

Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8, below.

**8. Exercise and Lapse of Permits (Section 23B.56.100)**

- A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
- B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
- C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has: (1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

**9. Indemnification Agreement**

The applicant shall hold the City of Berkeley and its officers harmless in the event of any legal action related to the granting of this Permit, shall cooperate with the City in defense of such action, and shall indemnify the City for any award of damages or attorneys fees that may result.

**ADDITIONAL CONDITIONS IMPOSED BY THE ZONING OFFICER**

Pursuant to BMC 23B.28.050.D, the Zoning Officer attaches the following additional conditions to this Permit:

**Prior to Submittal of Any Building Permit:**

- 10.** The applicant shall provide the project planner with the name and telephone number of the individual empowered to manage construction noise from the project. The individual's name, telephone number, and responsibility for noise management shall be posted at the project site for the duration of construction in a location easily visible to the public. The individual shall record all noise complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis. **Individual Responsible for Noise Management:**

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

- 11.** The applicant and all persons associated with the project are hereby notified that a Transportation Management Permit (TMP) would be required under any of the following circumstances:

- Alterations, closures, or blockages to sidewalks or pedestrian paths

- Alterations, closures, or blockages to vehicle travel lanes (including bicycle lanes)
- Storage of building materials, dumpsters, debris anywhere in the public ROW
- Provision of exclusive contractor parking on-street
- Significant truck activity.

Contact the Permit Service Center (PSC) at 2120 Milvia Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Public Works Traffic Engineering (981-6400) reviews all submitted TMP requests.

The TMP may include designation of a specific truck haul route. Meter heads (if in the construction area) shall be removed only by City staff. Contact the site inspector 72 hours in advance of required removal so arrangements can be made.

**Prior to Issuance of Any Building Permit:**

12. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.

**During Construction:**

13. Construction activity shall be limited to between the hours of 8:00 a.m. and 6:00 p.m. on Monday through Friday, and between 9:00 a.m. and noon on Saturday. No construction-related activity shall occur on Sunday or on any Federal Holiday.
14. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.
15. Subject to approval of the Public Works Department, the applicant shall repair any damage to public streets and/or sidewalks by construction vehicles traveling to or from the project site.
16. All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter in thickness and secured to the ground.
17. All active construction areas shall be watered at least twice daily, and all piles of debris, soil, sand or other loose materials shall be watered or covered.
18. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.
19. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.

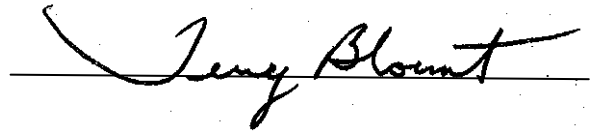
20. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way.
21. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
22. Any construction during the wet season shall require submittal of a soils report with appropriate measures to minimize erosion and landslides, and the developer shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.

**Prior to Issuance of Occupancy Permit or Final Inspection:**

23. All construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.
24. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated **NOVEMBER 7, 2012**.

**At All Times (Operation):**

25. Incidental Retail Sales shall meet the following:
  - a. Signs for Incidental Retail Sales use shall be of such a size and character as to clearly indicate that the retail use is not the Primary Use of the site;
  - b. Retail Sales floor area shall not exceed 10% of total Gross Floor Area; and
  - c. No outdoor sales or food service is allowed.
26. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
27. This permit is subject to review, imposition of additional conditions, or revocation if factual complaint is received by the Zoning Officer that the maintenance or operation of this establishment is violating any of these or other required conditions or is detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the neighborhood or is detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.
28. Noise and exterior lighting shall be controlled so as to prevent verified complaints from the surrounding neighborhood. This shall include noise created by employees working on the premises before or after patrons arrive.

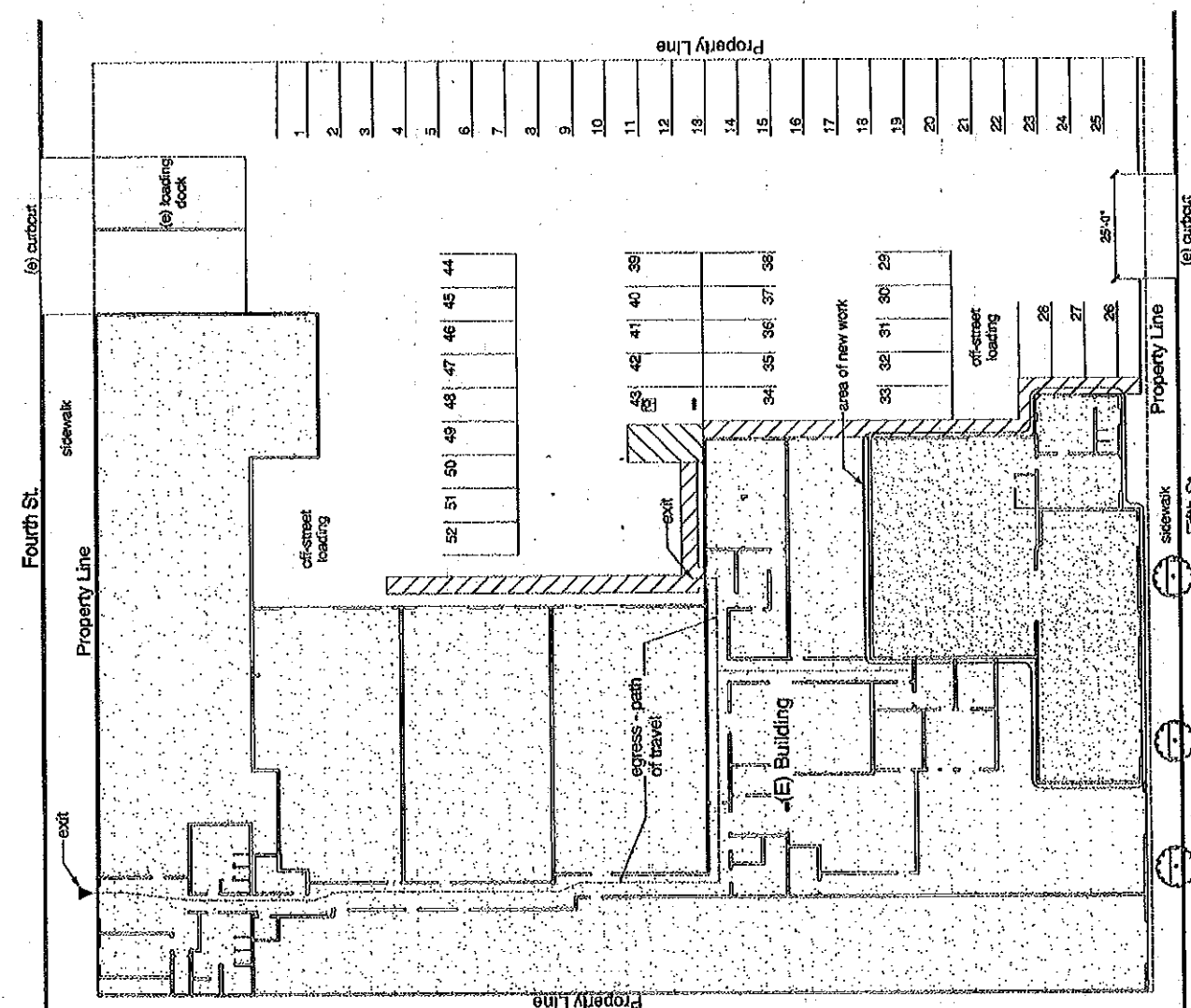


Terry Blount, Principal Planner for  
Debra Sanderson, Zoning Officer



Prepared by: Claudine Asbagh





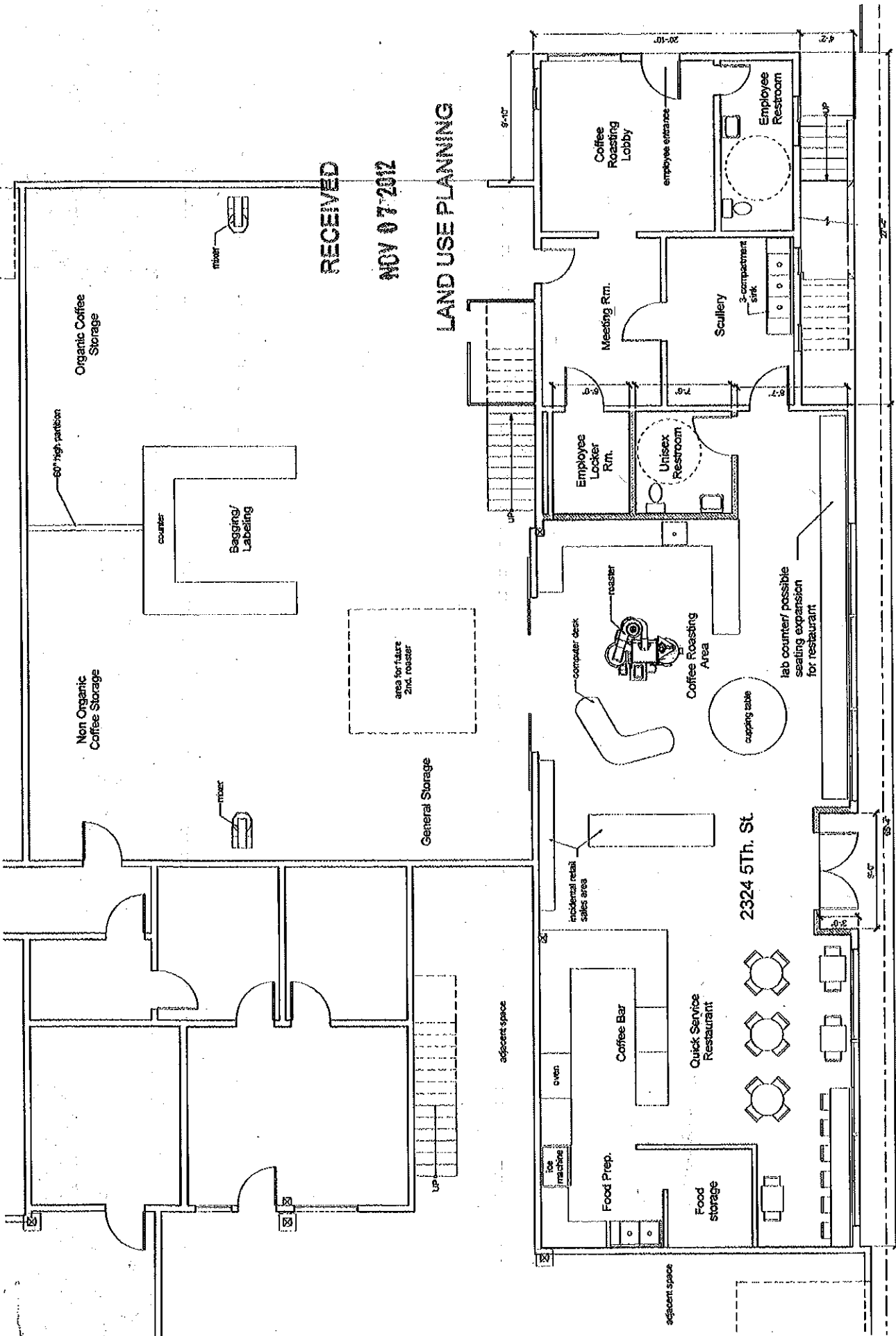
APPROVED PLAN  
 DATE 1-15-2013  
 PREPARED BY [Signature]  
 CHECKED BY [Signature]  
 DATE [Signature]  
 DATE [Signature]

RECEIVED  
 NOV 07 2012  
 LAND USE PLANNING

STUDIO  
**G+S**  
 ARCHITECTS  
 2223 Fifth Street  
 Berkeley, CA 94710  
 Ph: 510.848.7448  
 Fax: 510.848.7441

Site Plan  
 1" = 40'-0"

**CARBEN, LLC**  
 2324 Fifth St.  
 Berkeley, CA 94710  
 APN: 056-1945-003-01

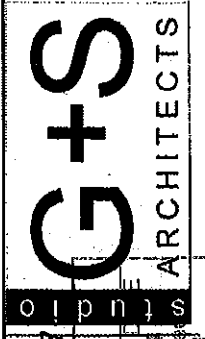


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LAND USE PLANNING

2223 Fifth Street  
Berkeley, CA 94710  
Ph: 510.848.7448  
Fax: 510.548.7441



**Proposed First Floor Plan**

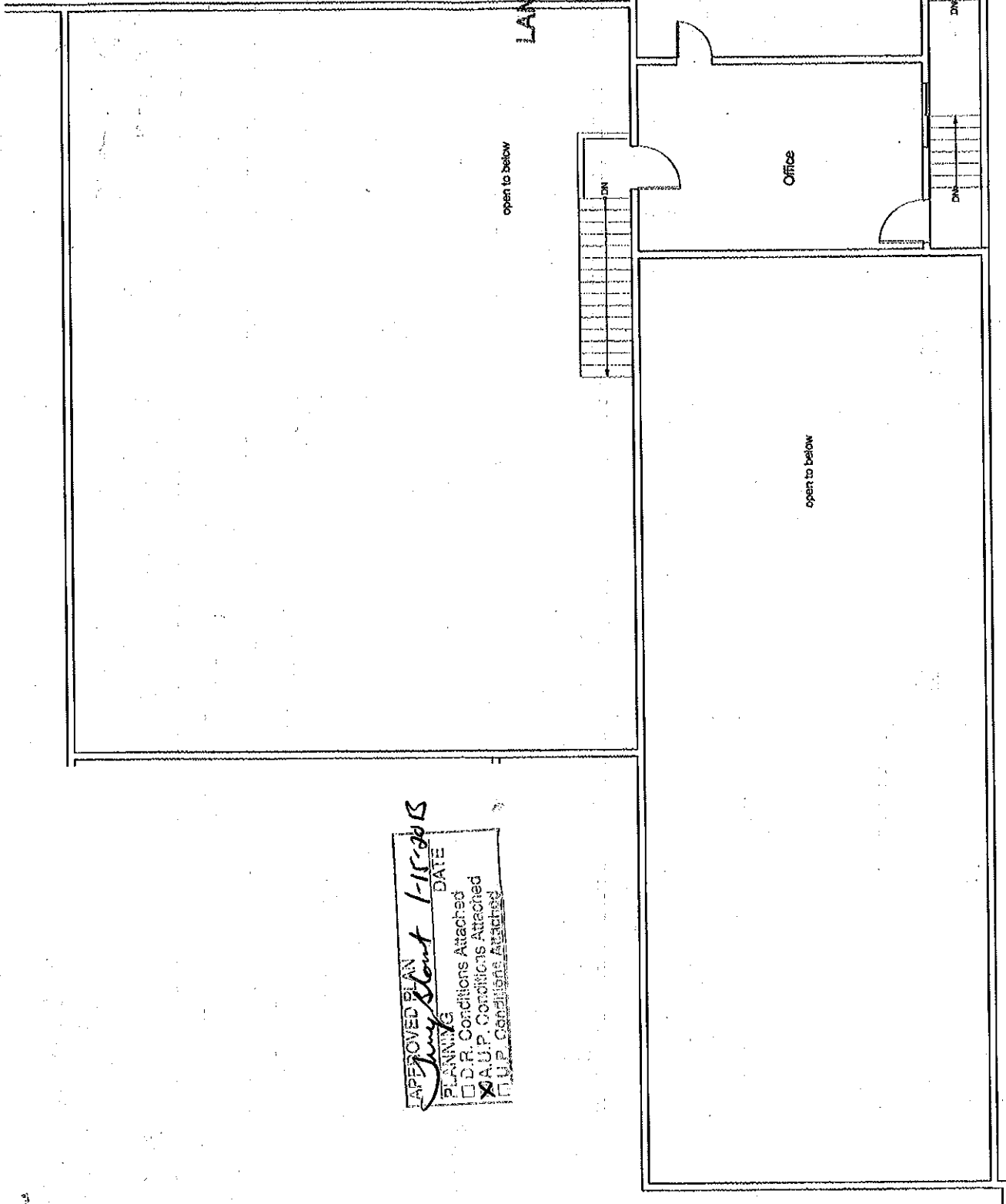
1" = 10'-0"

**CARBEN, LLC**  
2324 Fifth St.  
Berkeley, CA 94710  
APN: 056-1945-003-01

APPROVED PLAN  
1-15-2012  
*Jerry Stant*  
PLANNING  
 D.R. Conditions Attached  
 A.U.P. Conditions Attached  
 U.P. Conditions Attached

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NOV 07 2012

LAND USE PLANNING



APPROVED PLAN  
*Judy Belmont* 1-15-2012  
 DATE  
 PLANNING  
 D.R. Conditions Attached  
 A.U.P. Conditions Attached  
 P.U.P. Conditions Attached

2223 Fifth Street  
 Berkeley, CA 94710  
 Ph: 510.848.7448  
 Fax: 510.848.7441

**G+S**  
 ARCHITECTS  
 Studio

Proposed Second Floor Plan  
 1" = 10'-0"

**CARBEN, LLC**  
 2324 Fifth St.  
 Berkeley, CA 94710  
 APN: 056-1945-003-01