



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: January 31, 2018

COUNCIL DISTRICT: 1

**SUBJECT: FILE NO. CP17-025: CONDITIONAL USE PERMIT TO ALLOW THE OFF-SALE AND ON-SALE OF ALCOHOL FOR INSTRUCTIONAL TASTING AND SAMPLES IN AN EXISTING 25,668-SQUARE FOOT COMMERCIAL TENANT SPACE (TOTAL WINE & MORE)
FILE NO. ABC17-005: DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY FOR THE OFF-SALE OF ALCOHOL IN CONJUNCTION WITH A COMMERCIAL USE, ON A 10.5 GROSS ACRE SITE, ON THAT CERTAIN REAL PROPERTY SITUATED IN THE CG COMMERCIAL GENERAL ZONING DISTRICT, LOCATED ON THE SOUTH SIDE OF STEVENS CREEK BOULEVARD, APPROXIMATELY 210 FEET EASTERLY OF LAWRENCE EXPRESSWAY (5170 STEVENS CREEK BOULEVARD)**

RECOMMENDATION

The Planning Commission voted 6-0-1 (Abelite absent) to recommend that the City Council adopt a resolution approving the proposed Conditional Use Permit and Determination of Public Convenience or Necessity for the property located on the south side of Stevens Creek Boulevard, approximately 210 feet easterly of Lawrence Expressway.

OUTCOME

If City Council approves the Conditional Use Permit and Determination of Public Convenience or Necessity for the subject site, the applicant would be able to operate a retail establishment with the off-sale of a full-range of alcoholic beverages and an incidental public drinking establishment (tasting of beer, wine, and spirits) in a 25,668-square foot commercial tenant space.

BACKGROUND

On January 24, 2018, the Planning Commission considered the proposed Conditional Use Permit and Determination of Public Convenience or Necessity. This item remained on the Planning Commission's Consent Calendar. No members of the public requested to speak on this item, and there was no discussion by the Commissioners.

The motion to recommend that the City Council adopt a resolution approving the Conditional Use Permit and Determination of Public Convenience or Necessity for the subject property was approved by 6-0-1 (Abelita absent).

ANALYSIS

Analysis of the issues regarding the proposed Conditional Use Permit and Determination of Public Convenience or Necessity, including General Plan conformance and proposed resolution, are contained in the attached Planning Commission Staff Report. Additionally, staff has attached a comment letter from Natacha Epley (Safeway Inc.), which was missing from the attachments to the Planning Commission Staff Report. The letter discusses a private lease matter between Safeway and the property owner. The content of the letter does not modify the required findings in the resolutions and staff report.

EVALUATION AND FOLLOW UP

If the Conditional Use Permit and Determination of Public Convenience or Necessity are approved, the applicant would be able to operate a retail establishment with the off-sale of a full-range of alcoholic beverages and an incidental public drinking establishment (tasting of beer, wine, and spirits) in a 25,668-square foot commercial tenant space.

PUBLIC OUTREACH/INTEREST

Staff followed Council Policy 6-30: Public Outreach Policy to inform the public of the project. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. This staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

COORDINATION

This project was coordinated with the City Attorney's Office.

HONORABLE MAYOR AND CITY COUNCIL

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CEQA

Under the provisions of Section 15301 for Existing Facilities of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) the project is found to be exempt from the environmental review requirements of Title 21 of the San Jose Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

/s/

ROSALYNN HUGHEY, SECRETARY
Planning Commission

For questions please contact Steve McHarris, Planning Official, at 408-535-7819.

Attachments: Planning Commission Staff Report

Comment Letter from Albertsons Companies (Safeway, Inc.)



PLANNING COMMISSION STAFF REPORT

File Nos.	CP17-025 & ABC17-005
Applicant:	California Fine Wines & Spirits, LLC
Location	5170 Stevens Creek Boulevard
Existing Zoning	CG Commercial General
Historic Resource	No
Annexation Date:	May 18, 1955 (Moreland No. 3)
CEQA:	Exempt per CEQA Guidelines Section 15301 for Existing Facilities

APPLICATION SUMMARY:

1. **Conditional Use Permit (CP17-025)** to allow off-sale of alcohol and on-sale of alcohol for instructional tasting and samples (Total Wine & More) in an existing 25,668-square foot commercial tenant space on a 10.5-gross acre site.
2. **Determination of Public Convenience or Necessity (ABC17-005)** for off-sale of alcohol in conjunction with a commercial use on a 10.5 gross acre site.

RECOMMENDATION:

Staff recommends that the Planning Commission recommend that the City Council **approve** the proposed Conditional Use Permit and Determination of Public Convenience or Necessity based upon the facts and findings in this staff report and the attached draft Resolution.

PROJECT DATA

GENERAL PLAN CONSISTENCY	
General Plan Designation	Urban Village <input checked="" type="checkbox"/> Consistent <input type="checkbox"/> Inconsistent
Consistent Policies	LU-5.1; LU-5.7; CS-3.4; and FS 4.4

SURROUNDING USES			
	General Plan Land Use	Zoning	Existing Use
North	City of Santa Clara Jurisdiction	City of Santa Clara Jurisdiction	Neighborhood shopping center with a bank, small retail shops and restaurants, and a mixed use building with ground floor retail and with second story multi-residential units above.

South	Highway	Highway	State Highway Route 280
East	Mixed Use Commercial and Residential Neighborhood	CN Commercial Neighborhood and R-1-8 Single-Family Residence	Single-family detached residences and vacant commercial space
West	Urban Village Commercial and Highway	CG Commercial General and Highway	Technology and financial services; State Highway Route 280

PROJECT DESCRIPTION

On June 27, 2017, the applicant, on behalf of Total Wine and More, applied for a Conditional Use Permit (File No. CP17-025) and a Determination of Public Convenience or Necessity (File No. ABC17-005) to allow off-sale of a full-range of alcoholic beverages and an incidental public drinking establishment for instructional tasting of beer, wine, and spirits in a 25,668-square foot commercial tenant space in the CG General Commercial Zoning District on 10.5-gross acre site.

The proposed project would exceed the number of authorized Alcoholic Beverage Control (ABC) licenses. Eight on-sale ABC licenses and three off-sale ABC licenses have been authorized for Census Tract 5062.03. There are currently nine on-sale and five off-sale ABC licenses, creating an unduly concentration of one on-sale and two off-sale ABC licenses.

The proposed project requires State Alcoholic Beverage Control License Types 21, 42, and 86. A Type 21 License allows for the off-sale of beer, wine, and distilled spirits for consumption off the premises where items are sold. A Type 86 License allows instructional tastings with the provision of samples, while the Type 42 allows trained employees of the local retailer to provide the samples to patrons. Minors are not allowed to enter the tasting area under either of these licenses. Floor plans for the proposed project clearly delineate the locations of on-site tasting areas, which are the three smaller areas in red (see Figure 1).

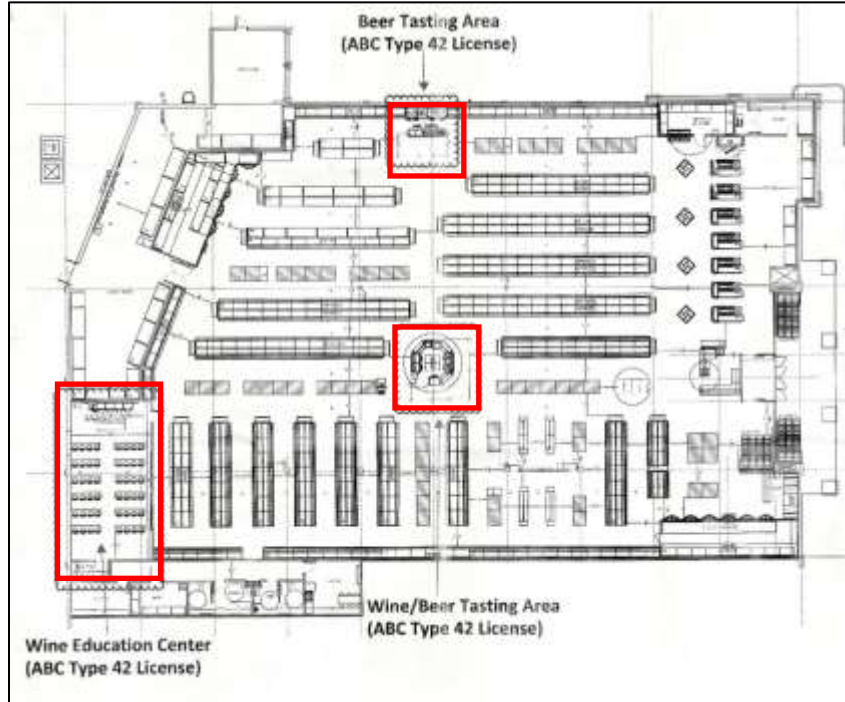


Figure 1: Floor Plan

Location

The project site is located on the south side of Stevens Creek Boulevard, approximately 210 feet easterly of Lawrence Expressway (see Figure 2).



Figure 2: Aerial Site Location

The project site is located within the approximately 10.5-gross acre Villa Shopping Center. The

proposed use would occupy approximately half of the previous Sports Authority tenant space within the existing shopping center highlighted in red (see Figure 2). Cost Plus World Market has recently filed a Conditional Use Permit application (File No. CP17-033) for off-sale of alcohol that would be ancillary to their main retail establishment of various home décor and goods. Cost Plus Word Market would occupy the remaining half of the existing tenant space and the application is currently under review.

Existing uses surrounding the site include a neighborhood shopping center with various retail shops and restaurants on the ground floor and multi-family residences on the second story to the north, a vacant commercial space and single-family residences to the east, technology and financial services to the west, and State Highway Route 280 to the south.

ANALYSIS

The proposed Conditional Use Permit and Determination of Public Convenience or Necessity are analyzed with respect to conformance with: 1) Envision San José 2040 General Plan; 2) Zoning Ordinance; 3) Determination of Public Convenience or Necessity; and 4) California Environmental Quality Act (CEQA).

Envision San José 2040 General Plan Conformance

The proposed project site is located within the Stevens Creek Urban Village that was approved on August 8, 2017, and has an Envision San Jose 2040 General Plan Land Use/Transportation Diagram designation of Urban Village (see Figure 3). This designation is intended for a wide range of commercial uses, including retail and sales of services, professional and general offices, and institutional uses.



Figure 3: General Plan Designation

The project conforms to the following key General Plan policies:

1. Neighborhood Serving Commercial Policy LU-5.1: In order to create complete communities,

promote new commercial uses and revitalize existing commercial areas in locations that provide safe and convenient multi-modal access to a full range of goods and services.

2. Neighborhood Serving Commercial LU-5.7: Encourage retail, restaurant, and other active uses as ground-floor occupants in identified growth areas and other locations with high concentrations of development.
3. Stevens Creek Urban Village Circulation and Streetscape Policy CS-3.4: Encourage local businesses and developers to provide amenities such as bicycle parking, water bottle refilling stations, showers, and repair stations at developments within the Stevens Creek Urban Village.
4. Promote Fiscally Beneficial Land Use Policy FS-4.4: Identify, designate and maintain an adequate number of suitable sites for a full range of commercial opportunities, including large-scale commercial centers and neighborhood-scale shopping opportunities, to serve the resident and visitor consumer population fully and to increase sales tax revenue in San José.

Analysis: Total Wine and More is a unique, commercial retailer which provides a wide selection of local beer and wines, liquor, and distinctive specialty spirits. Total Wine and More offers instructional tasting and classes to its patrons, enhancing the overall consumer experience. The promotion of this new commercial use would contribute to the revitalization of this area by eliminating vacant tenant space and increasing the range of goods and services to the community. Existing uses within the neighborhood shopping center include a grocery store, bank, variety of retail clothing and electronic stores, dental office, and a cluster of public eating establishments. The proposed use will complement and enhance these existing uses.

The proposed location is within the growth area of the Stevens Creek Urban Village and is expected to concentrate higher densities of commercial and residential development. This growth area requires a full range of retail and commercial services that are easily accessible by pedestrian, bicycle, and transit services. In addition to being within close proximity to the on-and-off ramp of Highway 280, the building entrance is within 700 feet of Valley Transportation Authority (VTA) bus lines 23 and 323. The existing shopping center does not have any bicycle parking onsite; however, the new proposed use would adhere to Urban Village policies by installing the first bicycle parking in the area and is proposed along the building frontage next to the front entrance of the tenant space.

The proposed use differentiates itself from neighborhood-serving retail, such as a pharmacy or big-box retailer, in that it provides unique products and educational opportunities not available at other retailers. Condition #5 in the attached Resolution limits the operations allowed under this Permit to retail operations of a specialty off-sale of alcohol retailers like Total Wine and More and Beverages and More. This Condition precludes other off-sale retailers like convenience stores or neighborhood-serving retailers since their business plans typically do not include obtaining a Type 21 license in conjunction with a Type 42 or 86 in a 25,668-square foot tenant space.

Zoning Ordinance Conformance

This site is in CG Commercial General Zoning District and operates as a neighborhood shopping center which conforms to the Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Urban Village (see Figure 4). Under the Municipal Code, retail uses are permitted. The sale of alcoholic beverages, including both off-sale and on-sale) requires a Conditional Use Permit.

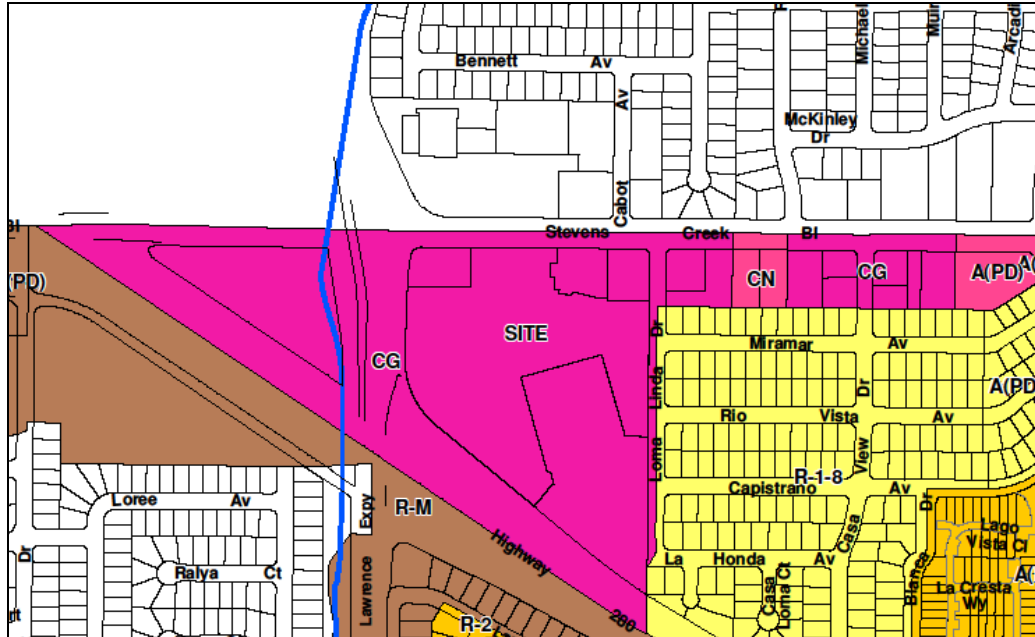


Figure 4: Zoning Designation

Parking

Per Section 20.90.060 of the Zoning Ordinance, the required parking ratio for a Neighborhood Shopping Center is one parking space per 225 sq. ft. of floor area. Bicycle parking required has a ratio of 1 per 3,000 square feet of floor area at publicly accessible entrances and motorcycle parking is required at one motorcycle space per 20 code required auto parking spaces. For Villa Shopping Center, this equates to a total of 881 vehicle parking spaces, eight bicycle parking spaces, and five motorcycle parking spaces. As the entire site currently provides 891 parking spaces (10 excess spaces), and the proposed project would occupy an existing tenant space within the larger shopping center, no additional vehicle parking is required. The proposed project will provide five motorcycle spaces and eight bicycle parking spaces to accommodate the requirement for the subject project.

Setbacks and Height

The proposed project will occupy an existing building within the Villa Shopping Center. The CG Commercial General Zoning District has a front setback of 15 feet, side setback of 12.5 feet, and a rear setback of zero feet. The maximum height allowed in this district is 50 feet. The existing building conforms to the setback and heights of the CG Commercial General Zoning District.

Noise

Per Section 20.40.600 of the Zoning Ordinance, the maximum noise level at the property line of a residential use is 55 decibels. The maximum noise level at the property line of a commercial use and other non-residential uses is 60 decibels. The proposed project would occupy an existing tenant space in a developed shopping center. The nearest residential property is approximately 700 feet from the front entrance. The loading dock for the tenant space is located on the opposite side of the building from the residential properties and is only utilized during normal hours of operations (8:00 a.m. to 11:00 p.m. on Monday to Saturday and 8:00 a.m. to 9:00 p.m. on Sundays). The proposed project is not expected to exceed the maximum noise levels at a residential and non-residential property line.

Conditional Use Permit

In order to make the Conditional Use Permit findings and recommend approval to the Planning Commission, staff must determine that:

1. The proposed use at the location requested will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and

Analysis: As stated in the Police Department Memorandum dated September 12, 2017, the proposed use is located within an area of low crime. Therefore, the Police are neutral on this proposal. Proposed daily hours of operation from 8:00 a.m. to 11:00 p.m. on Monday through Saturday and 8:00 a.m. to 9:00 p.m. on Sundays are within the hours specified in the Municipal Code that do not require any additional approvals or findings. The use will operate as a retail business and is not considered a bar even though alcohol will be consumed on-site in limited quantities per specific ABC license types. On-site alcohol consumption will be limited to tasting and instructional classes.

The project conforms to the intent of the City Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars in that the applicant has submitted a detailed Operations Management Plan, which describes in-store security, extensive employee training to prevent under-age drinking or inappropriate behavior, and management of tasting areas and classrooms. The use is also located approximately 700 feet from the nearest residential uses. As stated below in the findings for Off-Sale of Alcohol, the standard for the distance from the nearest residential property is at least 150 feet. Based on the above analysis, the proposed use at the location will not adversely affect public health, safety, and general welfare, or impair the value of the property or properties within the vicinity of the site.

2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding area; and

Analysis: The proposed project would occupy an existing building within the Villa Shopping Center, and does not include any exterior modifications. All development features, including setbacks, loading facilities, landscaping, and vehicle parking, etc., are sufficient for the proposed use. The proposed project will provide five motorcycle spaces and eight bicycle

parking spaces as required by Chapter 20.90 of the Zoning Ordinance. As the existing development conforms to the required development standards of the CG Commercial General Zoning District, and proposes minimum exterior modifications, the subject site is adequate to accommodate the proposed project.

3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
 - b. By other public or private service facilities as are required.

Analysis: Access to the subject site is provided from a major public street, Stevens Creek Boulevard, and Loma Linda Drive. In addition, the Villa Shopping Center is located adjacent to I-280. The site is also located approximately 700 feet from VTA bus routes No. 23 and 323.

Required Findings for Off-Sale of Alcohol

A Conditional Use Permit may be issued pursuant to the applicable provisions of the Zoning Ordinance (Section 20.80.900) for the off-sale of any alcoholic beverages only if the decision-making body first makes the following three findings, if applicable, to the off-sale of alcoholic beverages:

1. For such use at a location closer than 500 feet from any other use involving the off-sale of alcoholic beverages, situate either within or outside the City, that the proposed location of the off-sale of alcoholic beverages use would not result in a total of more than four establishments that provide alcoholic beverages for off-site consumption within a one-thousand 1,000-foot radius from the proposed location.

Analysis: Within the Villa Shopping Center, one full-service grocery store (Safeway) has a license for off-sale of alcoholic beverages. There are no other uses with alcohol sales within a 1,000-foot radius of the site, and this site will be the second off-sale of alcoholic beverages location within 1,000 feet. As mentioned above, a Cost Plus retail store has recently filed a Conditional Use Permit (File No. CP17-033) application for off-sale of alcohol to occupy the remaining half of the tenant space and which is currently under review. Since the Cost Plus application is still under review, this proposed use should not be considered in this finding; however, the proposed Total Wine & More would need to be considered for when Cost Plus is heard at the Planning Commission on a later date. Therefore, this finding can be made.

2. For such use at a location closer than 500 feet from any other use involving the off-sale of alcoholic beverages, situate either within or outside the City, where the proposed location of the off-sale of alcoholic beverages use would result in a total of more than four establishments that provide alcoholic beverages for off-site consumption within a 1,000-foot radius from the proposed location, that the resulting excess concentration of such uses will not:
 - a. Adversely affect the peace, health, safety, morals, or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the area; or

c. Be detrimental to public health, safety or general welfare.

Analysis: This use is a specialty retail store which does not function like a bar or nightclub, but rather a retail store with hours of operation between 8:00 a.m. to 11:00 p.m from Monday through Saturday and 8:00 a.m. to 9:00 p.m. on Sundays. As discussed previously, the Police Department memorandum states that the use is located within an area of low crime, and the Police are neutral to this proposal. The project conforms to the intent of City Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars as discussed previously. Based upon these facts, the project conforms to this requirement and this finding can be made.

3. For such a use at a location closer than 500 feet from any child care center, public park, social service agency, residential care facility, residential service facility, elementary school, secondary school, college or university, or closer than 150 feet from any residentially zoned property, that the building in which the proposed use is to be located is situated and oriented in such a manner that would not adversely affect such residential, child care center, public park, social service agency, residential care facility, residential service facility and/or school use.

Analysis: The proposed use is not within 500 feet of a school, day care center, public park, social services agency, or residential care or service facility, and is more than 700 feet from the nearest residentially zoned property. Therefore, this finding can be made.

Requirements for Determination of Public Convenience or Necessity

Under California Business and Professions Code Sections 23958 and 23958.4, the Department of Alcohol Beverage Control (ABC) must deny an application for a liquor license “if issuance of that license would tend to create a law enforcement problem, or if the issuance would result in or add to an undue concentration of liquor licenses in the area,” unless the City determines that the public convenience or necessity would be served by the issuance of the license (Determination of Public Convenience or Necessity). An “undue concentration” is defined as follows:

1. The premises of the proposed license are located in an area that has 20 percent greater number of reported crimes than the average number of reported crimes for the City as a whole, or
2. The premises of the proposed license are located in a census tract where the ratio of existing retail off-sale licenses to population in the census tract exceeds the ratio in the County as a whole.

Analysis: The project site is located within Census Tract 5062.03, which has less than 20 percent of reported crimes and is considered lower than the average number of reported crimes for the City as a whole. However, the ratio of existing retail off-sale licenses to population in the census tract exceeds the ratio in the County as a whole. Therefore, for the ABC Department to be able to issue a license for this off-sale use, the City must grant a Determination of Public Convenience or Necessity. The analysis of the proposal is based on the required findings identified in Title 6 of the San José Municipal Code, and is described below.

Chapter 6.84 of Title 6 identifies the process and findings related specifically to the off-sale of alcohol and specifies that the Planning Commission may issue a PCN only after first making all of the findings specified below (see San Jose Municipal Code section 6.84.030):

1. The proposed use is not located within a SNI or neighborhood revitalization area or other area designated by the city for targeted neighborhood enhancement services or programs, or located within an area in which the chief of police has determined based upon quantifiable information that the proposed use:
 - a. Would be detrimental to the public health, safety, or welfare of persons located in the area; or
 - b. Would increase the severity of existing law enforcement or public nuisance problems in the area; and

*Analysis: The project site is not within an SNI or neighborhood revitalization area or other area designated by the City for targeted neighborhood enhancement services or programs. The Police Department determined this proposed project would not be detrimental to public health, safety, or welfare of persons located in the area, or increase the severity of existing law enforcement or public nuisance problems in the area. Therefore, this finding **can** be made.*

2. The proposed use would not lead to more than four uses with off-premises sale of alcoholic beverage within a one thousand-foot radius from the exterior of the building containing the proposed use; and

Analysis: The proposed use would result in less than four off-sale establishments in a 1,000-foot radius. Currently, the Safeway grocery store has an off-sale license and is located in the Villa Shopping Center. As noted above, the Cost Plus (File No. CP17-033) application for off-sale of alcohol to occupy the remaining half of the tenant space is still under review and is not considered for this project. However, Total Wine & More will be considered when Cost Plus is ready for public hearing. This would be the second off-sale establishment; therefore, this finding can be made.

3. The proposed use would not be located within 500 feet of a school, day care center, public park, social services agency, or residential care or service facility, or within one hundred fifty feet of a residence; and

Analysis: The proposed use is not within 500 feet of a school, day care center, public park, social services agency, or residential care or service facility, and is more than 700 feet from the nearest residence. Therefore, this finding can be made.

4. Alcoholic beverage sales would not represent a majority of the proposed use; and

*Analysis: Alcoholic beverage sales would represent a majority of the proposed use; therefore, this finding **cannot** be made.*

5. At least one of the following additional findings:

- a. The census tract in which the proposed outlet for the off-premises sale of alcoholic beverages is located is unusually configured and the proposed outlet would act as a convenience to an underserved portion of the community without presenting a significant adverse impact on public health or safety; or

Analysis: The census tract is not unusually configured and the location of an off-sale of alcohol retail establishment is not considered to be in an underserved portion of the local community. Therefore, this finding cannot be made.

- b. The proposed outlet for the off-premises sale of alcoholic beverages would enhance or facilitate the vitality of an existing commercial area without presenting a significant adverse impact on public health or safety; or

*Analysis: This is a specialty store which provides a unique and large selection of wine, beer, and spirits to the area. This is differentiated from a corner liquor store or bar in that the price point and patrons it attracts do not loiter or become intoxicated at the site. This use differentiates itself from retail, such as a pharmacy or large big box retailer, in that it provides unique products and educational opportunities not available at other establishments. Condition of Approval No. 5 limits the operations allowed under this Permit to retail operations of a specialty off-sale of alcohol retailers like Total Wine and More and Beverages and More. The Type 21 license authorizes the sale of beer, wine and distilled spirits for consumption off the premises where sold. The Type 42 license authorizes the sale of beer and wine for consumption on or off the premises where sold. The Type 86 license authorizes the tasting of alcoholic beverages as authorized to be sold from the off-sale premises, on a limited basis. This Condition precludes other off-sale retailers like convenience stores since their business plans typically do not provide additional amenities such as instructional tasting and on-site consumption in conjunction with their general Type 21 license. Therefore, this finding **can** be made.*

- c. The census tract in which the proposed outlet is located has a low population density in relation to other census tracts in the city, and the proposed outlet would not contribute to an over-concentration in the absolute numbers of outlets for the off-premises sale of alcoholic beverages in the area; or

- d. The proposed off-premises sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.

*Analysis: The proposed location is not in a low population density in relation to other census tracts in the city and does contribute to an over-concentration for off-sale alcoholic beverages that is not incidental to a larger retail use. Therefore, this finding **cannot** be made.*

If the Planning Commission cannot make one or more of the first four findings (items 1 through 4) listed above, then the Planning Commission is required by San Jose Municipal Code section 6.84.030.D to make a recommendation to the City Council as to whether the Council should make a determination for the proposed use.

Analysis: Given the above-stated analysis, the fourth finding for the PCN cannot be made for the proposed off-sale of alcohol because alcoholic beverage sales represent a majority of the proposed use. The primary function of the project is a retail store specializing in alcohol sales, but this specialty store provides a unique shopping experience to the residents in the newly established Stevens Creek Urban Village and the greater San José region. This is differentiated from a corner liquor store or bar in that the price point and patrons it attracts do not loiter or become intoxicated at the site, and the hours of operation within by right allowances and the security plan provide for a retail establishment appropriate for the shopping center. Condition of Approval No. 5 described below limits the operations allowed under this Permit to retail operations of a specialty off-sale of alcohol retailers like Total Wine and More. This Condition precludes other off-sale retailers like convenience stores since their business plans typically do not include obtaining a Type 21 license in conjunction with a Type 42 or 86 in a 25,668-square foot tenant space. This Condition precludes other off-sale retailers like convenience stores since their business plans typically do not include obtaining a Type 21 license in conjunction with a Type 42 or 86 in a 25,668-square foot tenant space.

Therefore, City Council approval is required for the proposed use. The Planning Commission must make a recommendation on the proposed use to the City Council and the City Council may issue a determination in connection with an application for a license from the California Department of Alcoholic Beverage Control for the off-premises sale of alcoholic beverages where it can make a determination that not all of the required findings set forth above can be made, and when the Council identifies and finds that a significant and overriding public benefit or benefits will be provided by the proposed use. The Council can identify and find that significant and overriding public benefit will be provided by the proposed use.

Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars

In making recommendations on projects that include the service of alcoholic beverages, staff evaluates each proposal on the basis of the City Council's adopted Guidelines for Evaluation of Nightclubs and Bars. These Guidelines identify project characteristics that are needed for approval and are intended to ensure that bars and nightclubs conform to City requirements and are compatible with their surrounding neighborhoods. These guidelines are primarily applicable to bars and nightclubs that are larger in scale and serve alcohol as the primary use of the site, but they are also used by staff in evaluating other projects that include the service of alcoholic beverages. With regard to Total Wine More, the classroom is approximately 1,000 square feet, which equals approximately 4% of the floor area. The two tasting areas on the main sales floor are very limited in size (approximately 200 square feet each) and can only accommodate four to five patrons at one time. These areas will be sectioned-off from the primary retail area, and no one under the age of 21 will be allowed to enter these areas.

This project is a specialty retail establishment for alcoholic beverages, and the tasting area and classroom are incidental to this use. The hours that patrons can come and taste and purchase alcohol are restricted to standard hours of operation allowed by right under the Code for any retail establishment. More specifically, the applicant is proposing Monday through Saturday 8:00 a.m. to 11:00 p.m. and Sunday from 8:00 a.m. to 9:00 p.m., well within the allowances of 6:00 a.m. to midnight under the Code. The larger issues such as land use compatibility, noise, and parking have all been analyzed via the zoning and general plan conformance review, the Conditional Use Permit findings, the Off-Sale findings, and the Determination of Public Convenience or Necessity findings. The analysis involved in making these findings confirms that this project meets the intent of this Council Policy and can be considered in conformance to the policy.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Under the provisions of Section 15301 for Existing Facilities of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San Jose Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.


Class 1 consists of 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 beyond that existing at the time of the lead agency's determination. The key consideration is whether the project involves negligible or no expansion of an existing use.

The proposed project would occupy a vacant tenant space in an existing neighborhood shopping center with over 100,000-square feet designated for typical commercial uses. The proposed project includes interior modifications to the structure and only minor exterior alterations to the site, such as installing bicycle and motorcycle parking. The proposed retail use of a specialty beverage store meets the vehicle parking requirements, the existing structure is consistent with the height, setback, and loading requirements of the CG Commercial General Zoning District, and will be conducted wholly inside the building during regular business hours. Therefore, a CEQA exemption can be issued under Section 15301.

PUBLIC HEARING NOTIFICATION

Staff followed Council Policy 6-30: Public Outreach Policy in order to inform the public of the proposed project. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. The staff report is also posted on the City’s website. Staff has been available to respond to questions from the public.

Project Manager: Stefanie Farmer

Approved by:  , Planning Official for Rosalynn Hughey,
Interim Planning Director

Date: 11/12/10

Attachments:
Exhibit A: Draft Resolution
Exhibit B: Reduced Plan Set
Exhibit C: Police Department Memo
Exhibit D: Operations Management Plan

Owner:	Applicant:
Stevens Creek, Inc c/o Hart Advisors, Inc One Mill Pond Lane Simsbury, Connecticut, 06070	Phil Armstrong California Fine Wine & Spirits, LLC c/o Steve Rawlings 6600 Rockledge Drive, Suite 150 Bethesda, Maryland, 20817

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A CONDITIONAL USE PERMIT TO ALLOW THE OFF-SALE ALCOHOL AND ON-SALE OF ALCOHOL FOR INSTRUCTIONAL TESTING AND SAMPLES (TOTAL WINE & MORE) IN AN EXISTING 25,668-SQUARE FOOT COMMERCIAL TENANT SPACE AND GRANTING THE DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY FOR OFF-SALE OF ALCOHOL FOR A PROPOSED RETAIL USE ON AN APPROXIMATELY 10.5-GROSS ACRE SITE, LOCATED ON THE SOUTH SIDE OF STEVENS CREEK BOULEVARD, APPROXIMATELY 210 FEET EASTERLY OF LAWRENCE EXPRESSWAY (5170 STEVENS CREEK BOULEVARD)

FILE NOS. CP17-025 and ABC17-005

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on June 9, 2016, an application (File Nos. CP17-025 and ABC17-005) was filed by the applicant, Phil Armstrong of California Fine Wine & Spirits, LLC, on behalf of Total Wine and More, with the City of San José for a Conditional Use Permit to allow the off-sale of alcohol and on-sale of alcohol for instructional testing and samples in an existing 25,688-square foot commercial tenant space (Total Wine & More) and granting the Determination of Public Convenience or Necessity for off-sale of alcohol for a proposed retail use, on an approximately 10.5-gross acre site, on that certain real property situated in the CG Commercial General Zoning District and located on the south side of Stevens Creek Boulevard, approximately 210 feet easterly of Lawrence Expressway (5170 Stevens Creek Boulevard, San José, which real property is sometimes referred to herein as the “subject property”); and

WHEREAS, the subject property is all that real property more particularly described in Exhibit “A,” entitled “Legal Description,” which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a hearing on said application on January 24, 2018, notice of which was duly given; and

WHEREAS, at said hearing, the Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing, the Planning Commission made a recommendation to the City Council respecting said matter based on the evidence and testimony; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this City Council conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this City Council gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this City Council received and considered the reports and recommendations of the City's Planning Commission and the City's Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this City Council received in evidence a plan for the subject property entitled, "Total Wine & More," dated June 27, 2017, last updated October 16, 2017, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said public hearing before the City Council was conducted in all respects as

required by the San José Municipal Code and the rules of this City Council; and

WHEREAS, this City Council has heard and considered the testimony presented to it at the public hearing, and has further considered written materials submitted on behalf of the project applicant, City staff, and other interested parties;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

After considering all of the evidence presented at the Public Hearing, the City Council finds that the following are the relevant facts and findings regarding this proposed project:

1. **Site Description and Surrounding Uses.** The project site is located on the south side of Stevens Creek Boulevard, approximately 210 feet easterly of Lawrence Expressway. The project site is located within the approximately 10.5-gross acre Villa Shopping Center. Current tenants in the Villa Shopping Center include a full-service Safeway grocery store, banking, small retail and eating establishments, and a vacant 42,453 square foot retail tenant space formerly occupied by a sporting goods store (Sports Authority). The tenant space can be accessed from two locations along Stevens Creek Boulevard and two locations from Loma Linda Drive. The tenant spaces within the Villa Shopping Center are situated along the property line and the majority of the 891 parking spaces are provided within the middle of the parcel. Land uses surrounding the site include a neighborhood shopping center with various retail and restaurants and multi-family residences on the second story of a Bed, Bath & Beyond retail store to the north, a vacant commercial space and single-family residences to the east, financial and technology commercial services to the west, and Interstate 280 to the south.
2. **Project Description.** This project is a Conditional Use Permit to allow off-sale alcohol and on-sale of alcohol for instructional testing and samples (Total Wine & More) in an existing 25,668-square foot commercial tenant space and a Determination of Public Convenience or Necessity for off-sale of alcohol for a proposed retail use, on 10.5-gross acre site. No expansion of the building will occur. As described above, the tenant space can be accessed from two locations along Stevens Creek Boulevard and two locations from Loma Linda Drive. As noted in the Operations Management Plan, store hours of operations are from 8:00 a.m to 11:00 p.m. on Monday to Saturday and 8:00 a.m. to 9:00 p.m. on Sundays. Average number of employees per shift is typically from 10 to

15 employees.

The proposed project would occupy approximately half of the previous Sports Authority tenant space within the existing shopping center. For the other half of the existing tenant space, a Cost Plus retail store has recently filed a Conditional Use Permit (File No. CP17-033) application for off-sale of alcohol to occupy the remaining half of the tenant space and which is currently under review.

3. **General Plan Conformance.** The proposed project site is located within the Stevens Creek Urban Village that was approved on August 8, 2017 and has an Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Urban Village, which is intended for a wide range of commercial uses, including retail and sales of services, professional and general offices, and institutional uses.

The project conforms to the following key General Plan policies:

- a. Neighborhood Serving Commercial Policy LU-5.1: In order to create complete communities, promote new commercial uses and revitalize existing commercial areas in locations that provide safe and convenient multi-modal access to a full range of goods and services.
- b. Neighborhood Serving Commercial LU-5.7: Encourage retail, restaurant, and other active uses as ground-floor occupants in identified growth areas and other locations with high concentrations of development.
- c. Promote Fiscally Beneficial Land Use Policy FS-4.4: Identify, designate and maintain an adequate number of suitable sites for a full range of commercial opportunities, including large-scale commercial centers and neighborhood-scale shopping opportunities, to serve the resident and visitor consumer population fully and to increase sales tax revenue in San José.
- d. Stevens Creek Urban Village Circulation and Streetscape Policy CS-3.4: Encourage local businesses and developers to provide amenities such as bicycle parking, water bottle refilling stations, showers, and repair stations at developments within the Stevens Creek Urban Village.

Analysis: Total Wine and More is a unique, commercial retailer which provides a wide selection of local beer and wines, liquor, and distinctive specialty spirits. Total Wine and More offers instructional tasting and classes to its patrons, enhancing the overall consumer experience. The promotion of this new commercial use would contribute to the revitalization of this area by eliminating vacant tenant space and increasing the range of

goods and services to the community. Existing uses within the neighborhood shopping center include a grocery store, bank, variety of retail clothing and electronic stores, dental office, and a cluster of public eating establishments. The proposed use will complement and enhance these existing uses.

The proposed location is within the growth area of the Stevens Creek Urban Village and is expected to concentrate higher densities of commercial and residential development. This growth area requires a full range of retail and commercial services that are easily accessible by pedestrian, bicycle, and transit services. In addition to being within close proximity to the on-and-off ramps of I-280, the building entrance is within 700 feet of Valley Transportation Authority (VTA) bus lines 23 and 323. The existing shopping center does not have any bicycle parking onsite; however, the new proposed use would adhere to Urban Village policies by installing the first bicycle parking spaces along the building frontage next to the front entrance of the tenant space.

The proposed use differentiates itself from neighborhood-serving retail, such as a pharmacy or big-box retailer, in that it provides unique products and educational opportunities not available at other retailers.

4. **Zoning Ordinance Compliance.** This site is zoned CG Commercial General for a neighborhood shopping center which conforms to the Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Urban Village. Under Section 20.40.100 of the San José Municipal Code, retail uses are permitted. The sale of alcoholic beverages, including both off-sale and on-sale, requires a Conditional Use Permit.
 - a. **Setbacks and Height.** The proposed project will occupy an existing building within the Villa Shopping Center. The CG Commercial General Zoning District has a front setback of 15 feet, side setback of 12.5 feet, and a rear setback of zero feet. The maximum height allowed in this district is 50 feet. The existing building conforms to the setback and heights of the CG Commercial General Zoning District.
 - b. **Parking.** Per Section 20.90.060 of the Zoning Ordinance, the required parking ratio for a Neighborhood Shopping Center is one parking space per 225 square feet of floor area. Bicycle parking has a ratio of 1 space per 3,000 square feet of floor area at publicly accessible entrances and motorcycle parking is required at one motorcycle space per 20 code required automobile parking spaces. For the Villa Shopping Center, which is approximately 199,061 square feet, this equates to a total of 881 vehicle parking spaces, eight bicycle parking spaces, and five

motorcycle parking spaces. As the entire site currently provides 891 parking spaces (10 excess spaces), and the proposed project would occupy an existing tenant space within the larger shopping center, no additional vehicle parking is required. The proposed project will provide five motorcycle spaces and eight bicycle parking spaces to accommodate the requirement for the subject project.

- c. **Noise.** Per Section 20.40.600 of the Zoning Ordinance, the maximum noise level at the property line of a residential use is 55 decibels. The maximum noise level at the property line of a commercial use and other non-residential uses is 60 decibels. The proposed project would occupy an existing tenant space in a developed shopping center. The nearest residential property is approximately 700 feet from the front entrance. The loading dock for the tenant space is located on the opposite side of the building from the residential properties and is only utilized during normal hours of operations (8:00 a.m. to 11:00 p.m. on Monday to Saturday and 8:00 a.m to 9:00 p.m. on Sundays). The proposed project is not expected to exceed the maximum noise levels at a residential and non-residential property line.

5. **Environmental Review.** Under the provisions of Section 15301 for Existing Facilities of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

Class 1 consists of 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 beyond that existing at the time of the lead agency's determination. The key consideration is whether the project involves negligible or no expansion of an existing use.

The proposed project would occupy a vacant tenant space (approximately 25,668 square feet) in an existing neighborhood shopping center with over 100,000-square feet designated for typical commercial uses. The proposed project includes interior modifications to the structure and only minor exterior alterations to the site, such as installing bicycle and motorcycle parking; there would be no expansion of the building footprint or use. The proposed retail use of a specialty beverage store meets the vehicle parking requirements, the existing structure is consistent with the height, setback, and loading requirements of the CG Commercial General Zoning District, and will be conducted wholly inside the building during regular business hours. Proposed business hours are from 8:00 a.m to 11:00 p.m on Monday to Saturday and 8:00 a.m. to 9:00 p.m on Sundays. Therefore, a CEQA exemption can be issued under Section 15301.

6. **Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars.** In making recommendations on projects that include the service of alcoholic beverages, staff evaluates each proposal on the basis of the City Council's adopted Guidelines for Evaluation of Nightclubs and Bars. These Guidelines identify project characteristics that are needed for approval and are intended to ensure that bars and nightclubs conform to City requirements and are compatible with their surrounding neighborhoods. These guidelines are primarily applicable to bars and nightclubs that are larger in scale and serve alcohol as the primary use of the site, but they are also used in evaluating other projects that include the service of alcoholic beverages. With regard to Total Wine and More, the classroom is approximately 1,000-square feet, which equals approximately 4% of the floor area. The two tasting areas on the main sales floor are approximately 200 square feet each and can only accommodate four to five patrons at one time. These areas will be sectioned-off from the main store, and no one under the age of 21 will be allowed to enter these areas.

This project is a specialty retail establishment for alcoholic beverages, and the tasting area and classroom are incidental to this use. The hours that patrons can come and taste and purchase alcohol are restricted to standard hours of operation under the Council Policy. More specifically, the applicant is proposing Monday through Saturday 8:00 a.m. to 11:00 p.m. and Sunday from 8:00 a.m. to 9:00 p.m. The Council Policy allows hours of operation from 6:00 a.m. to midnight. Issues such as land use compatibility, noise, and parking have all been analyzed via the zoning and general plan conformance review above, and the Conditional Use Permit findings, the Off-Sale findings, and the Determination of Public Convenience or Necessity findings described below. The analysis involved in making these findings confirms that this project meets the intent of this Council Policy and can be considered in conformance to the policy.

7. **Conditional Use Permit Findings.** The City Council concludes and finds, based on the analysis of the above facts in regards to the Conditional Use Permit and Determination of Public Convenience or Necessity, that:
- a. The proposed use at the location requested will not:
 - i. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area;
 - ii. or Impair the utility or value of property of other persons located in the vicinity of the site; or
 - iii. Be detrimental to public health, safety or general welfare; and

Analysis: As stated in the Police Department Memorandum dated September 12, 2017, the proposed use is located within an area of low crime. Therefore, the Police are neutral on this proposal. Proposed daily hours of operation from 8:00 a.m. to 11:00 p.m. on Monday through Saturday and 8:00 a.m to 9:00 p.m. on Sundays are within the hours specified in the Municipal Code that do not require any additional approvals or findings. The use will operate as a retail business and

is not considered a bar even though alcohol will be consumed on-site in limited quantities per specific ABC license types. On-site alcohol consumption will be limited to tasting and instructional classes.

The project conforms to the intent of the City Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars in that the applicant has submitted a detailed Operations Management Plan, which describes in-store security, extensive employee training to prevent under-age drinking or inappropriate behavior, and management of tasting areas and classrooms. The use is also located approximately 700 feet from the nearest residential uses. As stated below in the findings for Off-Sale of Alcohol, the standard for the distance from the nearest residential property is at least 150 feet. Based on the above analysis, the proposed use at the location will not adversely affect public health, safety, and general welfare, or impair the value of the property or properties within the vicinity of the site.

- b. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding area; and

Analysis: The proposed project would occupy an existing building within the Villa Shopping Center, and does not include any exterior modifications. All development features, including setbacks, loading facilities, landscaping, and vehicle parking, etc., are sufficient for the proposed use. The proposed project will provide five motorcycle spaces and eight bicycle parking spaces as required by Chapter 20.90 of the Zoning Ordinance. As the existing development conforms to the required development standards of the CG Commercial General Zoning District, and proposes minimum exterior modifications, the subject site is adequate to accommodate the proposed project.

- c. The proposed site is adequately served: By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and by other public or private service facilities as are required.

Analysis: Access to the subject site is provided from a major public street, Stevens Creek Boulevard, and Loma Linda Drive. In addition, the Villa Shopping Center is located adjacent to I-280. The site is also located approximately 700 feet from VTA bus routes No. 23 and 323.

8. **Required Findings for Off-Sale of Alcohol.** A Conditional Use Permit may be issued pursuant to the applicable provisions of the Zoning Ordinance for the off-sale of any alcoholic beverages only if the decision-making body first makes the following three findings, if applicable, to the off-sale of alcoholic beverages:

- a. For such use at a location closer than 500 feet from any other use involving the off-sale of alcoholic beverages, situate either within or outside the City, that the proposed location of the off-sale of alcoholic beverages use would not result in a total of more than four establishments that provide alcoholic beverages for off-site consumption within a one-thousand 1,000-foot radius from the proposed location.

*Analysis: Within the Villa Shopping Center, one full-service grocery store (Safeway) has a license for off-sale of alcoholic beverages. There are no other uses with alcohol sales within a 1,000-foot radius of the site, and this site will be the second off-sale of alcoholic beverages location within 1,000 feet. As mentioned above, a Cost Plus retail store has recently filed a Conditional Use Permit (File No. CP17-033) application for off-sale of alcohol to occupy the remaining half of the tenant space and which is currently under review. Since the Cost Plus application is still under review, this proposed use should not be considered in this finding, however the proposed Total Wine & More would need to be considered for when Cost Plus is heard at the Planning Commission on a later date. Therefore, this finding **can** be made.*

- b. For such use at a location closer than 500 feet from any other use involving the off-sale of alcoholic beverages, situate either within or outside the City, where the proposed location of the off-sale of alcoholic beverages use would result in a total of more than four establishments that provide alcoholic beverages for off-site consumption within a 1,000-foot radius from the proposed location, that the resulting excess concentration of such uses will not:
 - i. Adversely affect the peace, health, safety, morals, or welfare of persons residing or working in the surrounding area; or
 - ii. Impair the utility or value of property of other persons located in the vicinity of the area; or
 - iii. Be detrimental to public health, safety or general welfare.

*Analysis: This use is a specialty retail store which does not function like a bar or nightclub, but rather a retail store with hours of operation between 8:00 a.m. to 11:00 p.m from Monday through Saturday and 8:00 a.m. to 9:00 p.m. on Sundays. As discussed previously, the Police Department memorandum states that the use is located within an area of low crime, and the Police are neutral to this proposal. The project conforms to the intent of City Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars as discussed previously. Based upon these facts, the project conforms to this requirement and this finding **can** be made.*

- c. For such a use at a location closer than 500 feet from any child care center, public park, social service agency, residential care facility, residential service facility, elementary school, secondary school, college or university, or closer than

150 feet from any residentially zoned property, that the building in which the proposed use is to be located is situated and oriented in such a manner that would not adversely affect such residential, child care center, public park, social service agency, residential care facility, residential service facility and/or school use.

*Analysis: The proposed use is not within 500 feet of a school, day care center, public park, social services agency, or residential care or service facility, and is more than 700 feet from the nearest residentially zoned property. Therefore, this finding **can** be made.*

9. **Requirements for Determination of Public Convenience or Necessity.** Under California Business and Professions Code Sections 23958 and 23958.4, the Department of Alcohol Beverage Control (ABC) must deny an application for a liquor license “if issuance of that license would tend to create a law enforcement problem, or if the issuance would result in or add to an undue concentration of liquor licenses in the area,” unless the City determines that the public convenience or necessity would be served by the issuance of the license (Determination of Public Convenience or Necessity). An “undue concentration” is defined as follows:

- a. The premises of the proposed license are located in an area that has 20 percent greater number of reported crimes than the average number of reported crimes for the City as a whole, or
- b. The premises of the proposed license are located in a census tract where the ratio of existing retail off-sale licenses to population in the census tract exceeds the ratio in the County as a whole.

Analysis: The project site is located within Census Tract 5062.03, which has less than 20 percent of reported crimes and is considered lower than the average number of reported crimes for the City as a whole. However, the ratio of existing retail off-sale licenses to population in the census tract exceeds the ratio in the County as a whole. Therefore, for the ABC Department to be able to issue a license for this off-sale use, the City must grant a Determination of Public Convenience or Necessity. The analysis of the proposal is based on the required findings identified in Title 6 of the San José Municipal Code, and is described below.

Chapter 6.84 of Title 6 identifies the process and findings related specifically to the off-sale of alcohol and specifies that a Determination of Public Convenience or Necessity may be issued only after first making all of the findings specified below (see San José Municipal Code section 6.84.030):

- a. The proposed use is not located within a Strategic Neighborhood Initiative (SNI) or neighborhood revitalization area or other area designated by the City for targeted neighborhood enhancement services or programs, or located

within an area in which the chief of police has determined based upon quantifiable information that the proposed use:

- i. Would be detrimental to the public health, safety, or welfare of persons located in the area; or
- ii. Would increase the severity of existing law enforcement or public nuisance problems in the area; and

*Analysis: The project site is not within an SNI or neighborhood revitalization area or other area designated by the City for targeted neighborhood enhancement services or programs. The Police Department determined this proposed project would not be detrimental to public health, safety, or welfare of persons located in the area, or increase the severity of existing law enforcement or public nuisance problems in the area. Therefore, this finding **can** be made.*

- b. The proposed use would not lead to more than four uses with off-premises sale of alcoholic beverage within a one thousand-foot radius from the exterior of the building containing the proposed use; and

*Analysis: The proposed use would result in less than four off-sale establishments in a 1,000-foot radius. Currently, the Safeway grocery store has an off-sale license and is located in the Villa Shopping Center. As noted above, the Cost Plus (File No. CP17-033) application for off-sale of alcohol to occupy the remaining half of the tenant space is still under review and is not considered for this project. However, Total Wine & More will be considered when Cost Plus is ready for public hearing. This would be the second off-sale establishment; therefore, this finding **can** be made.*

- c. The proposed use would not be located within 500 feet of a school, day care center, public park, social services agency, or residential care or service facility, or within one hundred fifty feet of a residence; and

*Analysis: The proposed use is not within 500 feet of a school, day care center, public park, social services agency, or residential care or service facility, and is more than 700 feet from the nearest residence. Therefore, this finding **can** be made.*

- d. Alcoholic beverage sales would not represent a majority of the proposed use; and

*Analysis: Alcoholic beverage sales would represent a majority of the proposed use; therefore, this finding **cannot** be made.*

- e. At least one of the following additional findings:
 - i. The census tract in which the proposed outlet for the off-premises sale of alcoholic beverages is located is unusually configured and the proposed outlet would act as a convenience to an underserved portion of the

community without presenting a significant adverse impact on public health or safety; or

*Analysis: The census tract is not unusually configured and the location of an off-sale of alcohol retail establishment is not considered to be in an underserved portion of the local community. Therefore, this finding **cannot** be made.*

- ii. The proposed outlet for the off-premises sale of alcoholic beverages would enhance or facilitate the vitality of an existing commercial area without presenting a significant adverse impact on public health or safety; or

*Analysis: This is a specialty store which provides a unique and large selection of wine, beer, and spirits to the area. This is differentiated from a corner liquor store or bar in that the price point and patrons it attracts do not loiter or become intoxicated at the site. This use differentiates itself from retail, such as a pharmacy or large big box retailer, in that it provides unique products and educational opportunities not available at other establishments. Condition of Approval No. 5 limits the operations allowed under this Permit to retail operations of a specialty off-sale of alcohol retailers like Total Wine and More and Beverages and More. The Type 21 license authorizes the sale of beer, wine and distilled spirits for consumption off the premises where sold. The Type 42 license authorizes the sale of beer and wine for consumption on or off the premises where sold. The Type 86 license authorizes the tasting of alcoholic beverages as authorized to be sold from the off-sale premises, on a limited basis. This Condition precludes other off-sale retailers like convenience stores since their business plans typically do not provide additional amenities such as instructional tasting and on-site consumption in conjunction with their general Type 21 license. Therefore, this finding **can** be made.*

- iii. The census tract in which the proposed outlet is located has a low population density in relation to other census tracts in the city, and the proposed outlet would not contribute to an over-concentration in the absolute numbers of outlets for the off-premises sale of alcoholic beverages in the area; or

- iv. The proposed off-premises sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.

*Analysis: The proposed location is not in a low population density in relation to other census tracts in the city and does contribute to an over-concentration for off-sale alcoholic beverages that is not incidental to a larger retail use. Therefore, this finding **cannot** be made.*

Given the above-stated analysis, the fourth finding for the PCN cannot be made for the proposed off-sale of alcohol because alcoholic beverage sales represent a majority of the proposed use. The primary function of the project is a retail store specializing in alcohol sales, but this specialty store provides a unique shopping experience to the residents in the newly established Stevens Creek Urban Village and the greater San José region. This is differentiated from a corner liquor store or bar in that the price point and patrons it attracts do not loiter or become intoxicated at the site, and the hours of operation within by right allowances and the security plan provide for a retail establishment appropriate for the shopping center. Condition of Approval No. 5 described below limits the operations allowed under this Permit to retail operations of a specialty off-sale of alcohol retailers like Total Wine and More. This Condition precludes other off-sale retailers like convenience stores since their business plans typically do not include obtaining a Type 21 license in conjunction with a Type 42 or 86 in a 25,668-square foot tenant space.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the permittee fail to file a timely and valid appeal of this Conditional Use Permit within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the permittee:
 - a. Acceptance of the Conditional Use Permit by the permittee; and
 - b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 of the San José Municipal Code applicable to such Permit.
2. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of issuance hereof by the City Council, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit in accordance with Title 20 of the San José Municipal Code. The Permit Adjustment must be approved prior to the expiration of this Permit.
3. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José Santa Clara Regional Wastewater Facility represented by approved land uses in the area

served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.

4. **Conformance to Plans.** The development of the site shall conform to the approved Conditional Use Permit plans entitled, "Total Wine & More," dated June 27, 2017, last updated October 16, 2017, on file with the Department of Planning, Building and Code Enforcement, as may be amended and approved by the Director of Planning, Building, and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24). The plans are referred to herein as the "approved plans" or the "Approved Plan Set."
5. **Use Authorization.** This Conditional Use Permit and Determination of Public Convenience or Necessity authorizes the off-sale of a full-range of alcoholic beverages and an incidental public drinking establishment (tasting of beer, wine, and spirits) in a 25,668-square foot commercial tenant space. Specifically, the retail establishment allowed under this permit can sell alcohol for off-site consumption and operate an incidental drinking establishment only in conjunction with a retailer holding a Type 42 or 86 Alcoholic Beverages Control license. The hours of operation allowed are between 6:00 a.m. and midnight, daily.
6. **Alcohol Service and Sale.** Alcohol service and sale shall be conducted in full compliance with the issued ABC licenses.
7. **Certificate of Occupancy.** The permittee shall obtain a Certificate of Occupancy. Procurement of a Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this Permit and the permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
8. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws, regulations and required permits. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined below.
9. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.

10. **Building and Property Maintenance.** The property owner or operator shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.
11. **Generators.** This Permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
12. **Window Glazing.** Unless otherwise indicated on the approved plan, all windows shall consist of a transparent glass.
13. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
14. **Outdoor Uses.** There shall be no outdoor uses approved through issuance of this Permit.
15. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Nor shall the use adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area or be detrimental to public health, safety or general welfare. Any such nuisance shall be abated immediately upon notice by the City.
16. **Anti-Graffiti.** The operator shall remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement.
17. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris:
 - a. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall include daily damp washing of all exterior walls and sidewalks along the project's frontage.
 - b. The operator of the proposed use shall clean the public right-of-way immediately adjacent to the subject site before 8:00 a.m. each day.
 - c. Mechanical equipment used for outside maintenance, including blowers and street sweepers may not be used between 10:00 p.m. and 6:00 a.m. daily.
18. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
19. **Landscaping.** Planting and irrigation shall be provided, as indicated, on the Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material shall be removed and replaced by the property owner. Irrigation shall be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient landscape Standards for New and Rehabilitated Landscaping. Any phasing of the project resulting in undeveloped areas for more than

six months shall be temporarily landscaped in order to provide dust and erosion control. This temporary landscaping shall consist of mulch and drought-resistant plants and ground cover.

20. **Irrigation Standards.** The applicant shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that shall conform to the Zonal Irrigation Plan in the Approved Plan Set. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
21. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
22. **Building Division Clearance for Issuing Permits.** Prior to the issuance of a Building permit, the following requirements shall be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This Permit file number, CP17-025 and ABC17-005 shall be printed on all construction plans submitted to the Building Division.
 - b. *Americans with Disabilities Act.* The applicant shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
 - c. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
 - d. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any Building Permit issuance, Building Permit plans shall conform to the approved Planning development permits and applicable conditions.
23. **Revocation, Suspension, Modification.** This Conditional Use Permit and Determination of Public Convenience or Necessity may be revoked, suspended or modified by the City Council at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit and Determination of Public Convenience or Necessity was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

In accordance with the findings set forth above, a permit to use the subject property for said purpose specified above is hereby approved.

APPROVED and issued this ____ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

NOTICE TO PARTIES

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.

Title Sheet
Total Wine & More
5170 Stevens Creek Blvd., San Jose, CA
(Stevens Creek Shopping Center)
Project Case Numbers: CP17-025/ABC 17-005
Date Submitted: June 27, 2017

Table of Contents:

- 1 – Title Sheet
- 2 – Site Plan
- 3 – Build/Site Photos
- 4 – Conceptual Floor Plan

Project Description:

Finding of public convenience or necessity and permit to sell beer, wine and spirits for offsite consumption (ABC Type 21) and operate 3 separate tasting/education areas (ABC Type 42 License) within one of the nation's largest specialty retailers. In addition, an ABC Type 86 license is requested to instructional tasting by manufacturers and distributors.

Total Wine and More is unique in that it offers one of the largest assortments of wine and specialty spirits in the world. In addition, Total Wine and More offers consumers education about products at 3 separate tasting/education areas located within the store. The first location is a separate room that is set up as a classroom with seating for 30 – 40 people. Classes held in the room are formal sessions that have set times typically in the evenings during the weekdays and afternoons on the weekends. Classes do not go past 10 p.m.

There are two other tasting areas located in the sales area of the store. These areas are typically utilized for only a few hours each week.

Background:

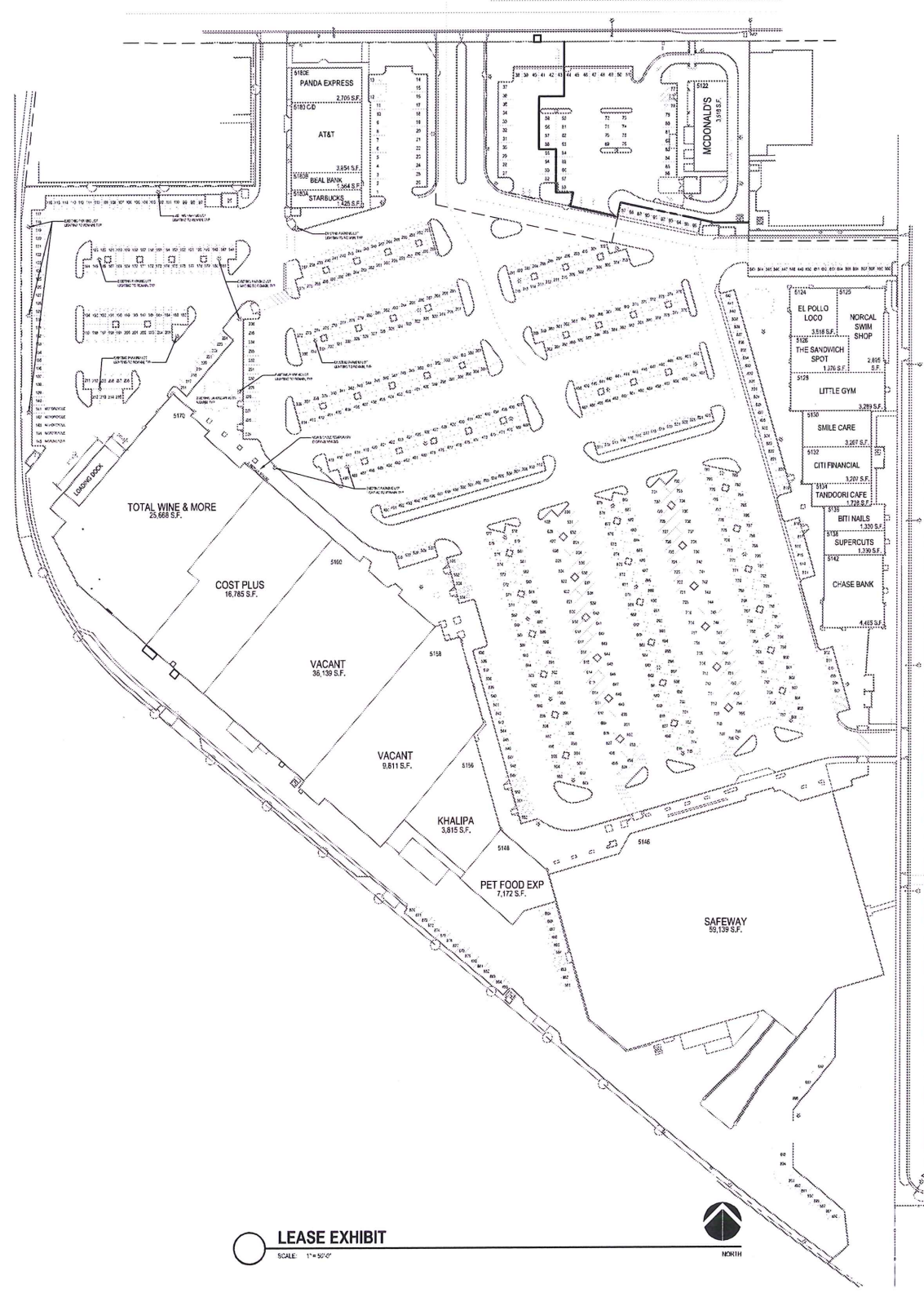
Total Wine and More intends to open in the Stevens Creek Shopping Center. The space was previously occupied by Sports Authority and Total will and More will occupy approximately 25,668 square feet. This location will be the second in Total Wine and More in San Jose.

Total Wine and More is a national specialty retailer with over 130 locations in 18 states. There are presently 19 stores open in CA including:

Brea
Elk Grove
Folsom
Fremont
Fresno
Huntington Beach
Laguna Hills
Long Beach
Mountain View
Northridge
Palm Desert
Pleasant Hill
Rancho Cucamonga
Redondo Beach
Roseville
Sacramento
San Ramon
Thousand Oaks
Tustin

Others stores planned Northern California:

Daly City
Pleasanton
San Mateo



PARKING TABLE (SEE TABLE 20-190)
 NEIGHBORHOOD SHOPPING CENTER
 1 PER 225 SQ FT OF FLOOR AREA

25,688 SF	TOTAL WINE & MORE
16,785 SF	COST PLUS
36,139 SF	5160 - VACANT
9,811 SF	5158 - VACANT
3,815 SF	KHALIPA
7,172 SF	PET FOOD EXPRESS
59,139 SF	SAFEWAY
4,465 SF	CHASE BANK
1,330 SF	SUPERCUTS
1,330 SF	BITI NAILS
1,728 SF	TANDOORI CAFE
3,207 SF	CITI FINANCIAL
3,207 SF	SMILE CARE
3,289 SF	LITTLE GYM
1,376 SF	THE SANDWICH SPOT
2,895 SF	NORTICAL SWIM SHOP
3,518 SF	EL POLLO LOCO
3,518 SF	MCDONALD'S
2,706 SF	PANDA EXPRESS
3,954 SF	AT&T
1,564 SF	BEAL BANK
1,425 SF	STARBUCKS
198,061 SF	TOTAL

198,061 / 225 = 881 PARKING SPACES REQUIRED
 891 VEHICULAR PARKING SPACES PROVIDED
 5 MOTORCYCLE PARKING SPACES PROVIDED
 8 BICYCLE SPACES PROVIDED

EXISTING PARKING LOT LIGHTING TO REMAIN, TYP

EXISTING LANDSCAPING TO REMAIN, TYP

APPLICANT INFORMATION:
 CALIFORNIA FINE WINE & SPIRITS, LLC
 DBA TOTAL WINE & MORE
 6600 ROCKLEDGE DRIVE, SUITE 150
 BETHESDA, MD 20817

PROPERTY OWNER INFORMATION:
 CPT STEVENS CREEK CENTRAL LLC
 2 SEAPORT LANE
 BOSTON, MA 02210-2021

APPLICANT REPRESENTATIVE INFORMATION:
 STEVE RAWLINGS
 ALCOHOLIC BEVERAGE SPECIALISTS
 26023 JEFFERSON AVE., SUITE B
 MURRIETA, CA 92562
 (951) 667-5152

ASSESSOR'S PARCEL NUMBER: 296-23-012

SITE ACREAGE: 10.5 ACRES

PROJECT ADDRESS: 5170 STEVENS CREEK BLVD., SAN JOSE, CA

LEASE EXHIBIT
 SCALE: 1" = 50'



REFERENCE SITE PLAN
STEVENS CREEK SHOPPING CENTER
 Stevens Creek Boulevard
 San Jose, CA 95051

DATE 10/16/2017

PARKING ANALYSIS

174374

Total Wine & More
5170 Stevens Creek Blvd., San Jose, CA
Building/Site Photos



Aerial Photo Looking South



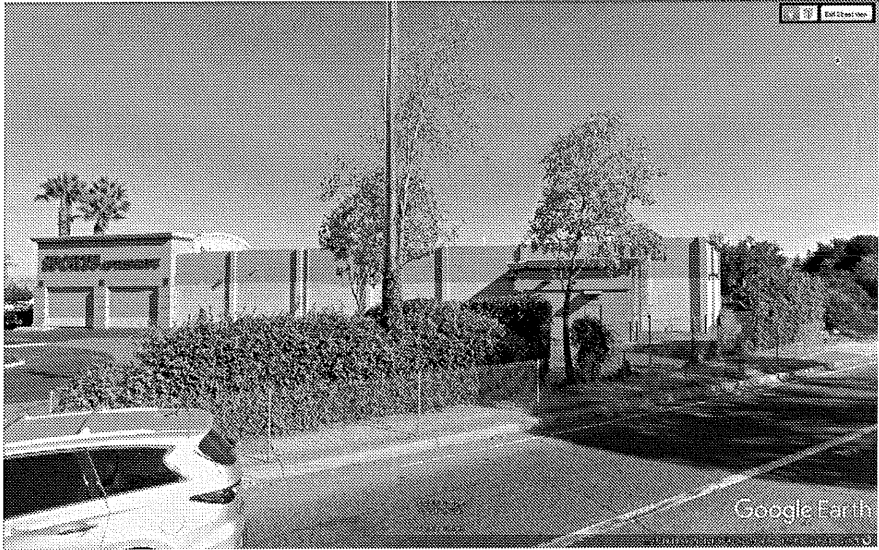
Aerial Photo Looking North



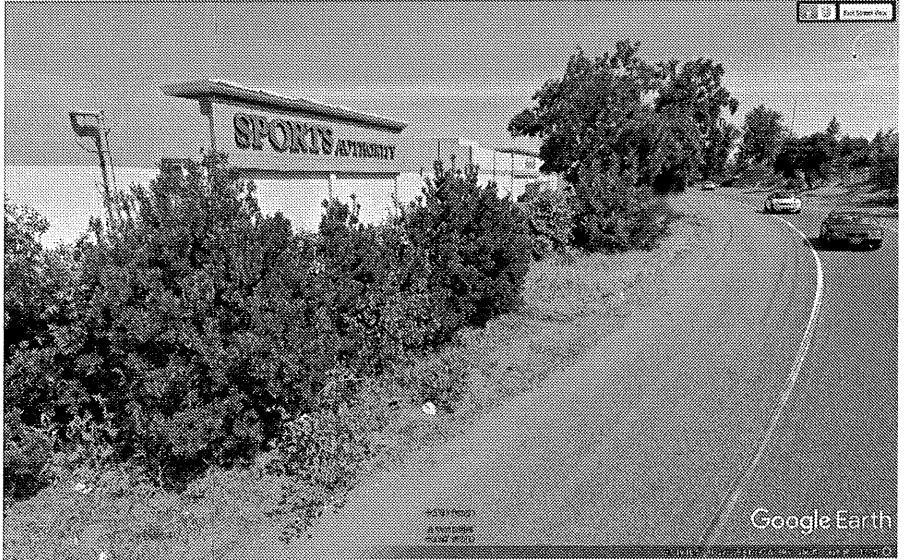
Store Front



Store Front Close



Store Site

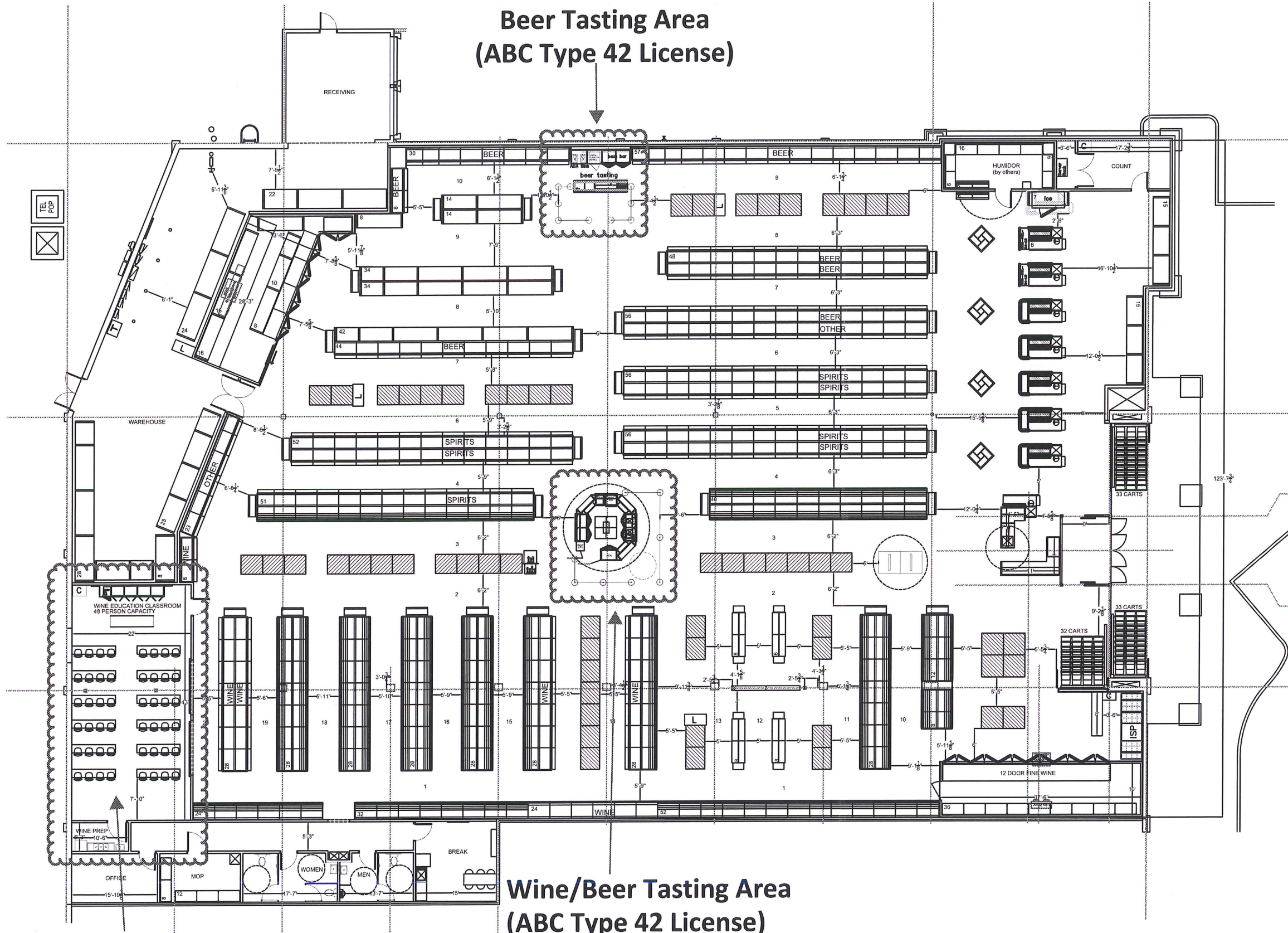


Rear of Store

Floor Plan

Total Wine and More

5170 Stevens Creek Blvd



24-Apr-17

Project Information/Legend					
Store No	11xx				
Center	Villa Shopping Center				
City	San Jose				
State	CA				
Product Merchandising	Unit	Target	Actual	+/-	target
Shelving					
Laydown Wine	LF	607	615	8	101%
Stand-Up: Wine	LF	145	144	-1	99%
Stand-Up: Spirits	LF	346	379	33	110%
Stand-Up: Beer	LF	292	291	-1	100%
Stand-Up: Other	LF	66	74	8	112%
Low Gift	LF	80	64	-16	80%
Pallet Rack	LF	132	146	14	111%
Shelving Subtotal	LF	1668	1713	45	103%
Platforms					
Wine	LF	100	132	32	132%
Spirits	LF	52	40	-12	77%
Beer	LF	36	36	0	100%
WOW Display	LF	16	12	-4	75%
Platform Subtotal	LF	204	220	16	108%
Grand Total	LF	1872	1933	61	103%
Case Capacity					
Floor Stacking SF	SF		842		
Case Capacity			4,158		
Retail Storage (above 7') SF	SF		4,293		
Case Capacity			21,198		
Warehouse Rack SF	SF		392		
Case Capacity			7,259		
Total Stock Capacity			32,615		
Glass Front Merchandising					
Fine Wine Cooler Doors	Units	12	12	0	100%
Beer Cooler Doors	Units	10	10	0	100%
Spirit Lock Cases	Units	6	6	0	100%
Humidor (shelving)	LF	28	28	0	100%
Space Planning					
# Registers	Units	8	8	0	100%
# Registers @ Customer Service	Units	1	1	0	100%
# Future Register Lanes	Units	1	1	0	100%
Wine Education - # of Seats	Units	40	48	8	120%
Building	SF		25,788		
Retail	SF		20,442		
Front Width	LF		123'-7 3/4"		
Wine Education	SF	820	969	149	118%
Count Room	SF	80	161	81	201%
Server Room	SF	32	35	3	109%
Beer Cooler	SF	520	442	-78	85%
Fine Wine Cooler	SF	180	380	200	211%
In Store Pick-Up Area	SF	300	116	-184	39%
Back - Receiving	SF	400	377	-23	94%
Back - Warehouse	SF	1,000	1,955	955	196%
Break Room	SF	180	224	44	124%
Wine Prep Area	SF	140	57	-83	41%
Mop Room	SF	120	143	23	119%
Men's Toilet	SF	110	125	15	114%
Women's Toilet	SF	110	162	52	147%
Office Space - Store	SF		152		
Additional Fixtures					
4-Ways (50ml Spirits Minis)	Units	2	2	0	100%
4-Ways (Food & Seasonal Beer)	Units	2	2	0	100%
Boar's Head Cooler/Merchandiser	Units	1	1	0	100%
Visi Coolers	Units	2	2	0	100%
Ice Chest	Units	1	1	0	100%
Equipment					
Computer Stations	Units	4	4	0	100%
iPads	Units	2	2	0	100%
# Large Carts	Units	100	98	-2	98%
Ladders	Units	5	5	0	100%

12.6
12.4

Wine Education Center
(ABC Type 42 License)

24 Apr 2017



Memorandum

TO: Stefanie Farmer
Planning Department

FROM: Sgt. Rick Galea #3495
San Jose Police Vice Unit

SUBJECT: Total Wine and More
5170 Stevens Creek Blvd

DATE: September 12, 2017

Approved

Date

I have received your request for input regarding Total Wine and More located at 5170 Stevens Creek Blvd, San Jose, Ca. 95129. Total Wine and More is seeking a Conditional Use Permit and an off sale Alcohol Beverage Control (ABC) license.

The location is in Police Beat Nora Two. The reported crime statistics as defined by B&P Section 23958.4(c) are not over the 20% crime index thus the location is not considered unduly concentrated per B&P Section 23958.4 (a)(1).

Police Beat Crime Statistics

Beat	Index Crimes	Arrests	Total	20% Above Average
N2 (2017)	252	46	298	No
City Average	319	146	529	

Department of Alcohol Beverage Control (ABC) records indicate Total Wind and More is in census tract 5062.03, Pursuant to B&P Section 23958.4 (a)(3) ... the ratio of off-sale retail licenses to population in census tract 5062.03 does exceed the ratio of off-sale retail licenses to population in the county in which the applicant premises are located.

Authorized and Current ABC Licenses in Census Tract 5062.03

Census Tract	Authorized ABC Licenses		Current ABC Licenses		Unduly Concentrated	
	On - Sale	Off - Sale	On - Sale	Off – Sale	On - Sale	Off – Sale
5062.03	8	3	9	5	1	2

The San Jose Police Department is neutral to the issuance of this Conditional Use Permit. Please feel free to contact me at 277-4322 if you have any questions.

Sgt. Rick Galea #3495
San Jose Police Department
Special Investigations/Vice

Total Wine and More
5170 Stevens Creek Blvd., San Jose, CA
Management Plan
6/13/17

Proposed Use: Finding of public convenience or necessity and permit to sell beer, wine and spirits for offsite consumption (ABC Type 21) and operate 3 separate beer and wine tasting/education areas (ABC Type 42 License) within one of the nation's largest specialty retailers. In addition, an ABC Type 86 license is requested to instructional tasting by manufacturers and distributors.

Total Wine and More is unique in that it offers one of the largest assortments of wine and specialty spirits in the world. With over 8,000 different wines in the corporate inventory, customers come to Total Wine to find wines that are virtually impossible to find at groceries or drug store chains.

Store Hours of Operation:

Monday – Saturday: 8:00 a.m. to 11:00 p.m.

Sundays: 8:00 a.m. to 9:00 p.m.

Security Measures:

Surveillance cameras are located throughout the sales area as well as storage area at the store. Video is stored for at least 30 days and Total Wine will cooperate with local law enforcement to make video available to assist with a criminal investigation.

Employee Training:

All employees go through a comprehensive corporate training program for alcohol sales. Training includes looking for signs of intoxication, proper identification checking, procedures for dealing with various situations as well as general behavior observance training.

On-Site Tastings/Wine Classes:

Total Wine and More is unique in that it offers consumer's education about products at 3 separate tasting/education areas located within the store. Classes are taught by leading industry experts as well as the extremely well trained staff.

The first location is a separate room that is set up as a classroom with seating for 20 – 30 people. Classes held in the room are formal sessions that have set times typically in the evenings during the weekdays and afternoons on the weekends. There are two other tasting areas located in the sales area of the store. These areas are typically utilized for only a few hours each week. Classes do not go past 10 p.m. Tastings are served in approximately 1 ounce sizes.

The other two tasting areas are located within the sales area. When tastings are offered, the area is sectioned off with a temporary barrier and a sign is posted stating only persons over the age of 21 may be inside the barrier. The areas can only accommodate 4 to 5

customers at a time. Customers are given tasting size portions of beer or wine. Beer tasting serving sizes are less than 2 ounces.

On-site tastings are conducted under Type 42 licenses that are very specific to the location and can't be expanded or relocated without modification of the use permit and ABC license. Tastings are only available a few hours each week.

Average number of employees per shift:

There are typically 10 – 15 employees working during each shift.



5918 Stoneridge Mall Road
Pleasanton, CA 94588-3229

SENT VIA E-MAIL & UPS OVERNIGHT MAIL

September 18, 2017

City of San Jose
200 E. Santa Clara St.
San José, CA 95113
Attn: Stefanie Farmer (stefanie.farmer@sanjoseca.gov)

Re: NOTICE OF OBJECTION; ABC17-005 & CP17-025;
5170 Stevens Creek Blvd, San Jose, California

Dear Ms. Farmer:

Safeway Inc. ("Safeway") is a tenant of certain premises located at 5146 Stevens Creek Blvd, San Jose, California ("Safeway's Store") pursuant to a Ground Lease dated April 1, 1994 ("Safeway's Lease"). Safeway's Store is located in a shopping center with other retail shop buildings (the "Shopping Center"). Safeway's Lease contains certain use exclusives and restrictions by other tenants in the Shopping Center. Safeway asserts that (i) the off-sale of alcohol, and (ii) instructional tasting by any tenant other than Safeway in the Shopping Center would be a violation of Safeway's Lease.

Safeway is aware that California Fine Wines & Spirits, LLC ("Total Wine") has sought applications with the City of San Jose to permit the off-sale of alcohol and instructional tastings from the retail building in the Shopping Center intended to be occupied by Total Wine. This letter is to provide notice to the City that Safeway objects to the applications referenced herein as they are in contract violation of Safeway's Lease and may impair the utility and value of the Safeway property.

A Notice of Breach was sent to the property owner, CPT Stevens Creek Central, LLC ("CPT"), in July 2017. Safeway is hopeful CPT will comply with its contractual obligations, however in the event the Breach continues Safeway is prepared to seek a judicial adjudication and/or any other legal remedies.

Working together to be the *favorite local supermarket*[™]



September 18, 2017
City of San Jose
Notice of Objection
Safeway Store #25-1465

Safeway has proudly served San Jose since 1927 and currently operates thirteen (13) grocery stores in the city. With over 1,400 employees, Safeway is also a large employer in the City of San Jose. As a grocery store, employer, and property owner, Safeway looks forward to more years of service in the City of San Jose. Please reach out to me at (925) 226-5921 or Natalie Mattei, Senior Real Estate Manager, at (925) 226-5754 if there are questions.

Sincerely,

Safeway Inc.

A handwritten signature in black ink, appearing to read "Natacha Epley", with a long horizontal flourish extending to the right.

Natacha Epley
Senior Counsel

cc: Michael Dingel, Senior Counsel – Litigation, Albertsons (via email)
Natalie Mattei, Senior Real Estate Manager, Albertsons (via email)
Richard Doyle, City Attorney – City of San Jose (via email and hard copy)
Johnny Phan, Senior Deputy City Attorney – City of San Jose (via email and hard copy)