



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Rosalynn Hughey

SUBJECT: SEE BELOW

DATE: June 14, 2019

COUNCIL DISTRICT: 2

SUBJECT: FILE NO. PDA78-011-02: PLANNED DEVELOPMENT PERMIT AMENDMENT AND DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY TO ALLOW THE OFF-SALE OF ALCOHOL (FULL RANGE OF ALCOHOLIC BEVERAGES) IN AN EXISTING 24,056-SQUARE FOOT TENANT SPACE IN CONJUNCTION WITH A GROCERY STORE (GROCERY OUTLET) ON AN APPROXIMATELY 0.81-GROSS ACRE SITE LOCATED ON THE NORTHEAST CORNER OF SANTA TERESA BOULEVARD AND BERNAL ROAD (7076 SANTA TERESA BOULEVARD)

RECOMMENDATION

The Planning Commission voted 4-0-2 (Commissioners Griswold and Ballard absent) to recommend that the City Council take the following actions:

1. Consider the Categorical Exemption in accordance with CEQA; and
2. Adopt a resolution approving the Planned Development Permit Amendment, subject to conditions and the granting of a Determination of Public Convenience or Necessity for the off-sale of alcohol (full range of alcoholic beverages) at an existing 24,056-square foot tenant space in conjunction with a grocery store on an approximately 0.81-gross acre site.

OUTCOME

If the City Council adopts the resolution, the applicant would be able to operate a retail establishment with the off-sale of alcohol (full range of alcoholic beverages) at an existing 24,056-square foot tenant spaces in conjunction with a grocery store.

BACKGROUND

On June 12, 2019, the Planning Commission considered the proposed Planned Development Permit Amendment and Determination of Public Convenience or Necessity. The item was moved from the Planning Commission's Consent Calendar to the public hearing portion of the agenda.

Public Hearing

Staff provided an overview of the proposed project and its conformance with the General Plan Land Use Designation and the policies of the General Plan.

The applicant's representative, Katy Shardt, stated the off-sale of alcohol would augment the full range of goods to be provided at the proposed grocery store.

A representative of the adjacent liquor store, Navjot Singh, stated his concern that there is not enough demand in the areas for two liquor stores.

Commissioner Oliverio stated the benefit of full-service grocery stores and the desire of the City to not have grocery store service deserts in its neighborhoods. He made a motion to approve the staff recommendation to the City Council, which is to make the required findings for the significant and overriding public benefit of the proposed use and approve the adoption of the resolution for the Planned Development Permit Amendment and Determination of Public Convenience or Necessity for the proposed project. Commissioner Yesney seconded the motion.

The Planning Commission voted 4-0-2 (Commissioners Griswold and Ballard absent) to approve the motion.

ANALYSIS

A complete analysis of the issues regarding the project are contained in the attached Planning Commission Staff Report.

EVALUATION AND FOLLOW-UP

If the City Council approves the Planned Development Permit Amendment and Determination of Public Convenience or Necessity, the applicant would be able to operate a retail establishment with the off-sale of alcohol (full range of alcoholic beverages) at a 24,056-square foot tenant space in conjunction with a full service grocery store.

PUBLIC OUTREACH

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. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

COORDINATION

Preparation of this memorandum was coordinated with the City Attorney's Office.

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, 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. 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 off-sale of alcohol would be incidental to a future grocery store located in an existing structure that had operated as a full-service grocery store, similar to the project's use. The project requires no expansion of the building. Therefore, a CEQA exemption can be issued under Section 15301.

/s/
ROSALYNN HUGHEY, SECRETARY
Planning Commission

For questions please contact Planning Official, Robert Manford, at (408) 793-7900.

Attachment: Planning Commission Staff Report



Memorandum

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Type of Permit	Conditional Use Permit and Determination of Public Convenience or Necessity
Demolition	N/A
Proposed Land Uses	Off-sale of alcohol at a grocery store
New Residential Units	N/A
New Square Footage	N/A
Additional Policy Review Items	N/A
Tree Removals	N/A
Project Planner	Cassandra van der Zweep
CEQA Clearance	Exempt per CEQA Guidelines Section 15301 Existing Facilities
CEQA Planner	Cassandra van der Zweep

RECOMMENDATION

Staff recommends that the Planning Commission recommend that the City Council:

1. Consider the Categorical Exemption in accordance with CEQA; and
2. Adopt a resolution approving the Planned Development Permit Amendment, subject to conditions and the granting of a Determination of Public Convenience or Necessity for the off-sale of alcohol (full range of alcoholic beverages) at an existing 24,056-square foot tenant space in conjunction with a grocery store on an approximately 0.81-gross acre site.

PROPERTY INFORMATION

Location	7076 Santa Teresa Boulevard
Assessor Parcel No.	706-28-019
General Plan	Neighborhood Community Commercial
Growth Area	Santa Teresa Boulevard/ Bernal Road Urban Village (C37)
Zoning	R-1-8 (PD) Planned Development Zoning District (File No. PDC66-035)
Historic Resource	N/A
Annexation Date	04/12/1965 (Tulare Hill No 1)
Council District	2
Acreage	0.81
Proposed Density	N/A

PROJECT BACKGROUND

As shown on the attached [vicinity map](#), the project site is located on the northeast corner of Santa Teresa Boulevard and Bernal Road. The project site includes a 24,056 -square foot vacant tenant space located within the existing approximately 170,950-square foot Santa Teresa Marketplace shopping center. Nob Hill Foods grocery store previously occupied the tenant space and held an Alcoholic Beverage Control (ABC) Type 21 liquor license. The Nob Hill Foods grocery store closed in 2015. The Santa Teresa Marketplace shopping center has a mix of retail and commercial uses including restaurants, coffee shops, retail stores, a gym, liquor store, professional offices, children’s day care, and a veterinary clinic. Vehicular access to the shopping center is provided through four driveways along Bernal Road, three driveways along Santa Teresa Boulevard, and two driveways along Chantilly Lane. A 445-stall surface parking lot is used by all tenant spaces within the shopping center. Santa Clara Valley Transportation (VTA) bus stops are located along the project site perimeter on Santa Teresa Boulevard and Bernal Road.

The project site is surrounded by the shopping center uses along the west, east and south. There is an existing church located north, approximately 114 feet from the project site and multifamily residential located northeast of the site. The project site is located 85 feet from the nearest residential lot, northeast of the site. Residences are also located south of the site, across Santa Teresa Boulevard.

The project is located within the Santa Teresa Boulevard/Bernal Road Urban Village, a Horizon 3 urban village that currently does not have an approved urban village plan. Projects that propose commercial uses may proceed ahead of the timeline for the approval of an urban village plan.

SURROUNDING USES			
	General Plan	Zoning District	Existing Use
North	Mixed Use Neighborhood	A(PD) PDC81-083	Multifamily residences and church
South	Neighborhood/Community Commercial	R-1-8(PD)PDC66-035	Shopping Center businesses and parking lot
East	Neighborhood/Community Commercial	R-1-8(PD)PDC66-035	Shopping center businesses
West	Neighborhood/Community Commercial	R-1-8(PD)PDC66-035	Shopping center businesses

The applicant, Katy Schardt representing Grocery Outlet, submitted the Planned Development Amendment and Determination of Public Convenience or Necessity on February 14, 2019 to allow the off-sale of alcohol (full range of alcohol) at an existing 24,056-square foot vacant tenant space. The off-sale of alcohol would consist of an approximately 789-square foot portion of the grocery store’s sales area, which equates to approximately 4.9% of the total sales area of the grocery store.

A State Alcoholic Beverage Control (ABC) Type 21 License is required for the sale of beer, wine, and distilled spirits for consumption off the premises. A Determination of Public Convenience or Necessity is needed because the proposed use would result in the over-concentration of the off-sale licenses in the project’s census tract 5120.34. The census tract allows up to one off-sale license; currently the census tract is over-concentrated with two off-sale licenses. The two off-sale licenses include the nearby liquor store and the previous grocery store tenant (Nob Hill Foods). Although the Nob Hill Foods grocery store has not operated since 2015, it has not transferred nor relocated the license; therefore, the license is still considered active and a Determination of Public Convenience or Necessity is required.

The Planned Development Permit Amendment is required to allow the off-sale of alcohol use in conjunction with the proposed grocery store use in the 24,056-square foot Grocery Outlet that would operate at this location. Pursuant to Table 20-260 in [Section 20.100.220](#) of the San José Municipal Code, the Planning Director is generally the decision-maker for Planned Development Permits or Amendments. However, this Planned Development Permit Amendment requires Planning Commission review and recommendation because the subject site is located within a census tract that is considered over-concentrated with licenses for the off-sale of alcohol (i.e., the average number of off-sale licenses for the census tract is higher than the county average). For projects located in over-concentrated census tracts, findings by the Planning Commission and the City Council are required to issue the Determination of Public Convenience or Necessity. The project site is within 150 feet of residences and within 500 feet of a children's day care center. Therefore, the Planning Commission cannot make all the required findings per [Section 6.84.030.B](#), and the City Council would need to make the final determination for the proposed use. Additional analysis and details are discussed below in the findings analysis.

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. Municipal Code
3. California Environmental Quality Act (CEQA)

[Envision San José 2040 General Plan](#) Conformance

Land Use Designation

As shown in the attached [General Plan map](#), the proposed project site has an Envision San José 2040 General Plan land use designation of Neighborhood/Community Commercial. This designation is intended for neighborhood serving retail, services, and commercial developments. Commercial uses in this designation should provide services and amenities for the nearby community. Additionally, the subject project is located in the Santa Teresa Boulevard/ Bernal Road urban village boundary. The Envision San José 2040 General Plan identifies this area as a Horizon Three Urban Village and a designated growth area. The General Plan policies allow commercial projects to develop ahead of an adopted Urban Village Plan. The policies encourage commercial uses that are consistent with the existing commercial land use designation and designs that incorporate pedestrian-focused elements into the projects.

General Plan Policies

The project conforms to the following key General Plan policies:

1. [Commercial Lands Goal LU-4](#): Establish commercial uses that maximize revenue to the City and provide employment for its residents in order to achieve fiscal sustainability and our desired jobs per employed resident ratio.
2. [Commercial Policy LU-4.2](#): In order to attract shoppers from throughout the region, encourage distinctive regional-serving commercial uses on sites near the City's borders. Give preference to locations having good access to freeways and major arterials or near multimodal transit stations.
3. [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

Analysis: Grocery Outlet is a full-service grocery store that would offer a wide variety of grocery products including produce, dairy products, frozen foods, vitamins, health and beauty items, houseware. The Grocery Outlet grocery store would occupy a large vacant tenant space in the shopping center that previously operated as a full-service grocery store. Allowing the use would facilitate the activation of the commercial tenant space and would provide an employment use on the site. The project is anticipated to provide up to 40 jobs. The grocery store would complement the existing commercial uses in the shopping center, such as the restaurants, coffee shops, a proposed gym, thrift store, by providing another neighborhood-serving retail business. The project location is easily accessible from Bernal Road and Santa Teresa Boulevard, two major thoroughfares. Highway 85 is approximately one mile from the project site. The building entrance is also within 500 feet of VTA bus line 68.

4. Commercial Policy LU-5.10: In the review of new locations for the off-sale of alcohol, give preference to establishments that offer a full range of food choices including fresh fruit, vegetables, and meat.

Analysis: The full-service grocery store would provide a wide range of groceries that serve the daily necessities of the nearby community. The grocery store would occupy a tenant space recently vacated by another grocery store. The off-sale of alcohol would allow the grocery store to increase its convenience for the community and would economically benefit the shopping center. The off-sale of alcohol use would offer patrons of the store a variety of beer, wine, and distilled liquor options. The percentage of the store's sales floor area dedicated to the off-sale of alcohol would be 4.9% (789-square foot portion of the store's 15,853-square foot sales area) of the total sales area.

Zoning Ordinance Conformance

Land Uses

This site is in the R-1-8(PD) Planned Development Zoning District (File No. PDC66-035). The existing commercial shopping center use, established through Planned Development Permit File No. PD73-052, conforms to Development Standards set forth in the Planned Development Zoning. The PD Zoning's Development Standards permit general commercial uses, including a grocery store.

Per [Section 20.100.930](#), the initial decision making body for a Planned Development Permit Amendment is the Director of Planning. However, since the State Department of Alcohol and Beverage Control (ABC) requires a Determination of Public Convenience or Necessity (PCN) for the over-concentrated site, the PCN determination is made by the Planning Commission per [Section 6.84.030.B](#) of the San José Municipal Code. As a result, the Planned Development Permit Amendment and PCN are considered concurrently by the Planning Commission. If the Planning Commission's decision is appealed, or the Planning Commission is unable to make all the required findings related to the PCN, the concurrent applications would then be reviewed at by the City Council, per [Section 6.84.030.C](#).

Parking

The shopping center requires one parking space per 225 square feet of floor area. The 24,056-square foot grocery store would require 91 parking spaces. The shopping center has a total of 445 parking spaces of which 91 parking spaces are allocated to the project's tenant space in an existing covenant of easment. Seven bicycle spaces are allocated to the tenant space, consistent with San José Municipal Code [Section 20.90.060](#).

Additional Development Standards

The project would occupy an existing tenant space within the Santa Teresa Marketplace shopping center. Development requirements for buildings on this site, such as landscaping and building locations were previously approved under Planned Development Permit (File No. PD73-052 and PD78-011), and were found to be in conformance with the General Development Plan of the Planned Development Zoning District (File No. PDC66-035).

Noise

Pursuant to [Section 20.40.600](#) of the San José Municipal Code, 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 project would occupy an existing tenant space in a developed shopping center. The nearest residential property line is approximately 85 feet from the rear of the building and would require an approximately 1,060-foot walking path from the front of the building. The existing loading dock for the tenant space and the other shopping center's tenant spaces is located behind the building. The loading space would be utilized during the site's hours of operation (6 a.m. through midnight, daily), refrigerated deliveries would be 2 to 3 times per week in the morning to mid-afternoon and other deliveries (of dry goods, produces, beverages) would be expected to occur 1 to 3 times per week in the morning to mid-afternoon. The loading hours are consistent with Section 20.40.500 which prohibits activities between the hours of 12:00 midnight and 6:00 a.m. within 150 feet of any residential zoned property. The previous tenant did not have any noise complaints on record with the city and noise levels are not expected to exceed the previous tenant levels as a result of the project. There is no construction or outdoor use with this permit and the existing tenant space would continue to be used as a retail space.

Given that the operations of the use occur predominantly inside the existing building, the project would not operate during late night hours, and loading dock activities would be consistent with the loading activities of the other existing tenants, the project is not anticipated to exceed the maximum noise levels at a residential and non-residential property line.

Findings

In order for this application to be approved, the Planning Commission must be able to articulate facts to affirm all required findings for: (A) Planned Development Permit Amendment; (B) Conditional Use Permit; (C) Off-sale of alcohol; and, (D) Determination of Public Necessity or Convenience.

Required Findings for Planned Development Permit Amendment

1. The Planned Development Permit Amendment, as issued, furthers the policies of the General Plan. The Planned Development Permit Amendment, as issued, conforms in all respects to the Planned Development Zoning of the property. The planned development permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency.

*Analysis: The project is consistent with the Neighborhood/Community Commercial General Plan designation. The project would complement the existing commercial center and provide neighborhood-serving retail that would serve the surrounding residents. The project would occupy an existing commercial tenant space. Development requirements for the existing tenant space and building on-site, were previously approved under Planned Development Permit (File No. PD73-052 and PD78-011) and were found to be in conformance with the existing approved General Development Plan of the Planned Development Zoning District (File No. PDC66-035). Therefore, this finding **can be made**.*

2. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses onsite are appropriate, compatible and aesthetically harmonious.

*Analysis: The proposed project would be located within an existing tenant space that is compatible with the existing mix of uses, masses, and scale of the buildings on the subject site. Therefore, this finding **can be made**.*

3. The environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.

*Analysis: Under the provisions of 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project was 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. The proposed use would be located within an existing tenant space and would involve no physical changes on-site. Therefore, this finding **can be made**.*

4. Amendments may be granted at the discretion of the director, planning commission on appeal, or city council as appropriate upon a finding that the amendment does not negate any findings required by [Section 20.100.940](#).

*Analysis: As described above, the proposed amendment would be consistent with the General Plan and Planned Development Zoning District as the use would be occupy a tenant space with a previously similar use. The project proposed amendment would be compatible with the surrounding area and would not have an unacceptable negative effect on adjacent properties. Therefore, this finding **can be made**.*

Required Findings for 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 indicated in a Police Department Memorandum, dated March 15, 2019, (See Exhibit H), the proposed use is located in the San José Beat Yellow Four and census tract 5120.34. The reported crime statistics are not over the 20% crime index and therefore the census tract is not considered a high crime area. The Police are neutral to this proposal. The proposed daily hours of operation for the Grocery Outlet are from 7:00 a.m. to 11:00 p.m. daily (as stated in the project's operations plan, see Exhibit G); these hours are within the by-right allowances under the Municipal Code. The use would operate as a retail business and would not allow on-site consumption of alcohol. Therefore, this finding **can be made**.*

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: As discussed above, the project would occupy an existing building within the Santa Teresa Marketplace shopping center. The tenant space's loading space is located at the rear of the building along with the other commercial tenant's loading spaces. All other existing development features, including setbacks, loading facilities, landscaping, and parking, etc., are sufficient for the proposed use and comply with the requirements of the previously approved Planned Development Permit for this site (PD73-052 and PD78-011). This finding **can be made**.*

3. 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 from four driveways along Bernal Road, three driveways along Santa Teresa Boulevard, and two driveways along Chantilly Lane. Bernal Road and Santa Teresa Boulevard, are major arterial streets. The shopping center is located approximately one mile from Highway 85. The site is also within 500 feet of VTA bus route No. 68. This finding **can be made**.*

Required Findings for the 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:

- For such use at a location closer than 500 feet from any other use involving the off-sale of alcoholic beverages, situated 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: There are two off-sale of alcoholic beverage licenses within a 500-foot radius of the project, a stand-alone liquor store and the previous tenant, Nob Hill Foods. (See Alcohol Radius Map, Exhibit D). Nob Hill Foods is no longer operating in the tenant space, however, the census tract remains over-concentrated and the license valid since the license has not been transferred or transferred to a different census tract. In total there are two uses with the off-sale of alcoholic beverages within a 1,000-foot radius of this site. Therefore, this finding **can be made**.*

- 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:
 - Adversely affect the peace, health, safety, morals, or welfare of persons residing or working in the surrounding area; or
 - Impair the utility or value of property of other persons located in the vicinity of the area; or
 - Be detrimental to public health, safety or general welfare.

*Analysis: As described above, the location of the off-sale of alcoholic beverages, while within 500 feet of two other uses involving the off-sale of alcoholic beverages the use would not result in a total of four or more establishments that provide alcoholic beverages for off-site consumption within a 1,000-foot radius from the project site. Therefore, 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 use is within 500 feet of the Genius Kids day care center and within 150 feet of the nearest residential uses. However, the path of travel from the front door of the Grocery Outlet store to the nearest residential property would be approximately 1,000 feet and approximately 700 feet of the Genius Kids day care, currently under construction. Additionally, the residential property is separated from the proposed site by a block wall without pedestrian openings and a landscaping buffer. The grocery store is located within a commercial shopping center and is oriented towards Santa Teresa Boulevard, away from the nearest residential properties to the north and the day care located within the same shopping center but oriented towards the east. There is only one public entrance for the Grocery Outlet which is monitored by security cameras and an alarm system.

*Grocery Outlet does not function like a bar or nightclub, but rather a retail store within no on-site consumption of alcohol and hours of operation between 7:00 a.m. to 11:00 p.m., daily. 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. 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 a census tract where the ratio of the existing retail off-sale licenses to the population in the census tract exceeds the ratio in the County as a whole (see Exhibit D). 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 for the determination of public convenience and necessity is based on the required findings identified in Title 6 of the San José Municipal Code.

Chapter 6.84 of Title 6 identifies the process and findings related specifically to the off-sale of alcohol and specifies that a PCN can be issued only after making all of the findings specified below (see San José Municipal Code [Section 6.84.030](#)):

1. The proposed use is not located within a Strong 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:

- 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 is not within a SNI. 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 use would not result in more than four off-sale establishments in a 1,000-foot radius. 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: Although the entrance of the tenant space is approximately 1000 feet from the nearest residence and 700 feet from the day care, the use is within 500 feet of a day care center and 150 feet of a residence. Therefore, this finding **cannot be made**.*

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

Analysis: Alcoholic beverage sales would not represent a majority of the proposed use. As a condition of the permit, the proposed off-sale would only occupy approximately 4.9% of the total sales area (789-square foot portion of the store's 15,853-square foot sales area). Therefore, this finding can 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. 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: The off-premises sale of alcoholic beverages would enhance the service of the grocery store use and contribute to the vitality of the existing shopping center. The grocery store would operate within allowed hours and would not significantly impact public health or safety. 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

*Analysis: The census tract has a population comparable to the surrounding census tracts and allows one off-sale license. There are two off-sale of alcoholic beverage licenses within the census tract, the adjacent liquor store and the previous tenant, Nob Hill Foods. (See Alcohol Radius Map, Exhibit D). Although Nob Hill Foods is no longer operating in the tenant space, the census tract remains over-concentrated and the license valid since the license has not been cancelled or transferred to a different census tract. The project's off-sale (Type 21) license would be the third off-sale license in the over-concentrated census tract. **This finding cannot be made**.*

- 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 project is a full-service grocery store which would provide a unique and large selection of fresh produces, groceries, wine, and beer. The off-site sale of beer, wine, and distilled liquor would be allowed only within 5% of the grocery store's sales area and it would enhance the shopping convenience for patrons and residents. **This finding can be made.***

Given the above-stated analysis, all but the following findings for PCN cannot be made for the proposed off-sale of alcohol:

- The project is within 500 feet of a day care and 150 feet of a residence and
- Over-concentration within the census tract.

Based on all of the foregoing, the City Council would need to find that a significant and overriding public benefit or benefits would be provided by the proposed use. The off-sale of alcohol meets the General Plan goals and policies of (i) providing a walkable location for grocery stores that offer a broad array of goods to the community; (ii) jobs, employment, and economic development by activating a vacant tenant space within an existing shopping center; (iii) giving preference to off-sale of alcohol to stores that also provide fruits, vegetables, and healthy products; and (iv) implementation of conditions to ensure the off-sale of alcohol will not be detrimental to the community or to public health and safety.

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.


CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act, this project is 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 (CEQA). Section 15301(a) (Existing Facilities) categorical exemption applies to 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 the existing or former use. The off-sale of alcohol would be incidental to a future grocery store located in an existing structure that had operated as a full-service grocery store, similar to the project's use. The project requires no expansion of the building.

PUBLIC OUTREACH

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.

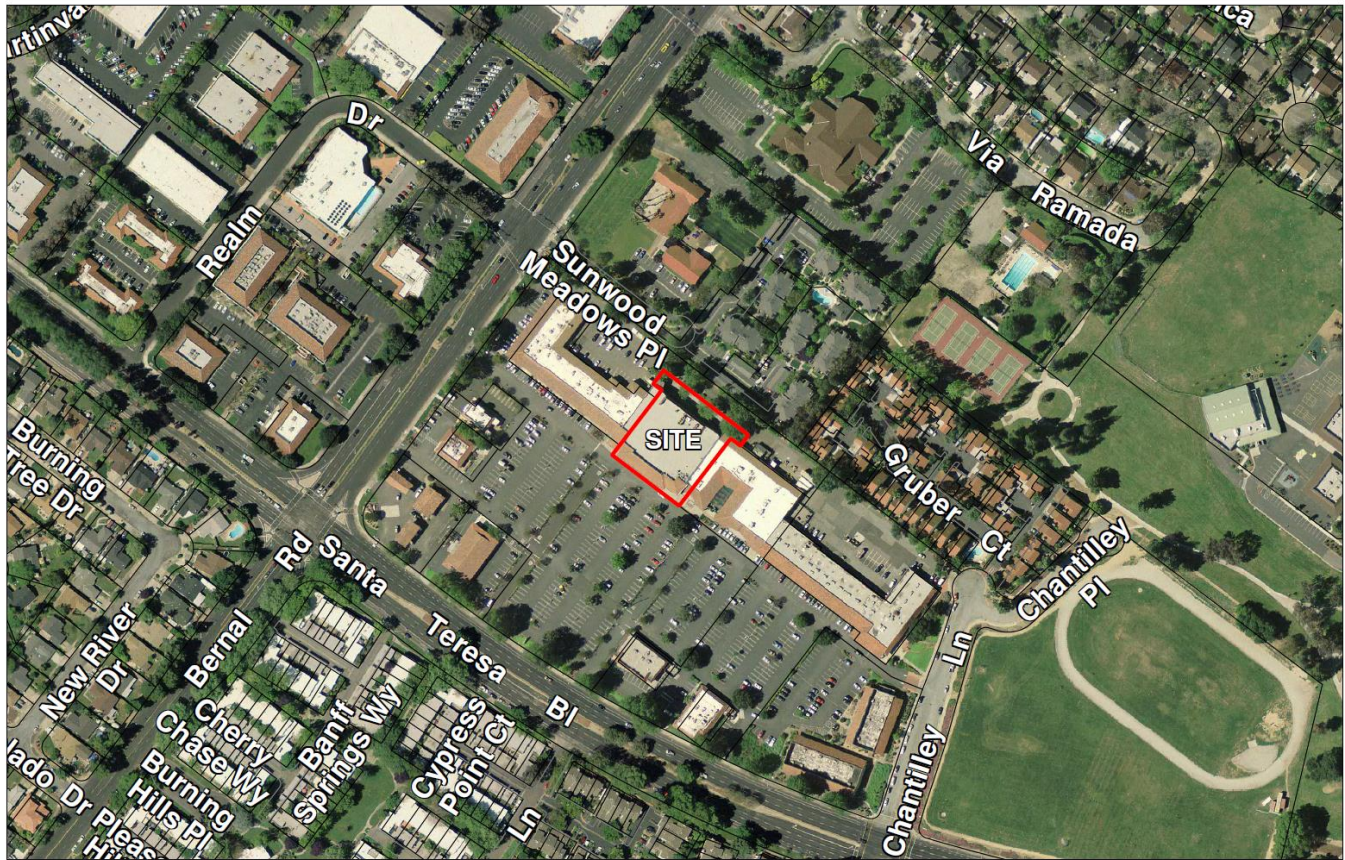
Project Manager: Cassandra van der Zweep

Approved by:  Deputy Director for Rosalynn Hughey, Planning Director

ATTACHMENTS:
Exhibit A: Vicinity Map
Exhibit B: General Plan Map
Exhibit C: Zoning Map
Exhibit D: Alcohol Radius Map
Exhibit E: Resolution
Exhibit F: Plan Set
Exhibit G: Operations Plan
Exhibit H: Police Memo

Owner:	Applicant:	Applicant's Representative:
ROIC California LLC 11250 El Camino Real, Suite 200 San Diego, CA 92868	Grocery Outlet Attn: Tannaz Haghayegh 5650 Hollis Street Emeryville, CA 94608	Compass Commercial Group Attn: Katy Schardt 3005 Douglas Boulevard Roseville, CA 95661

Exhibit A: Aerial of Site



File No: PDA78-011-02

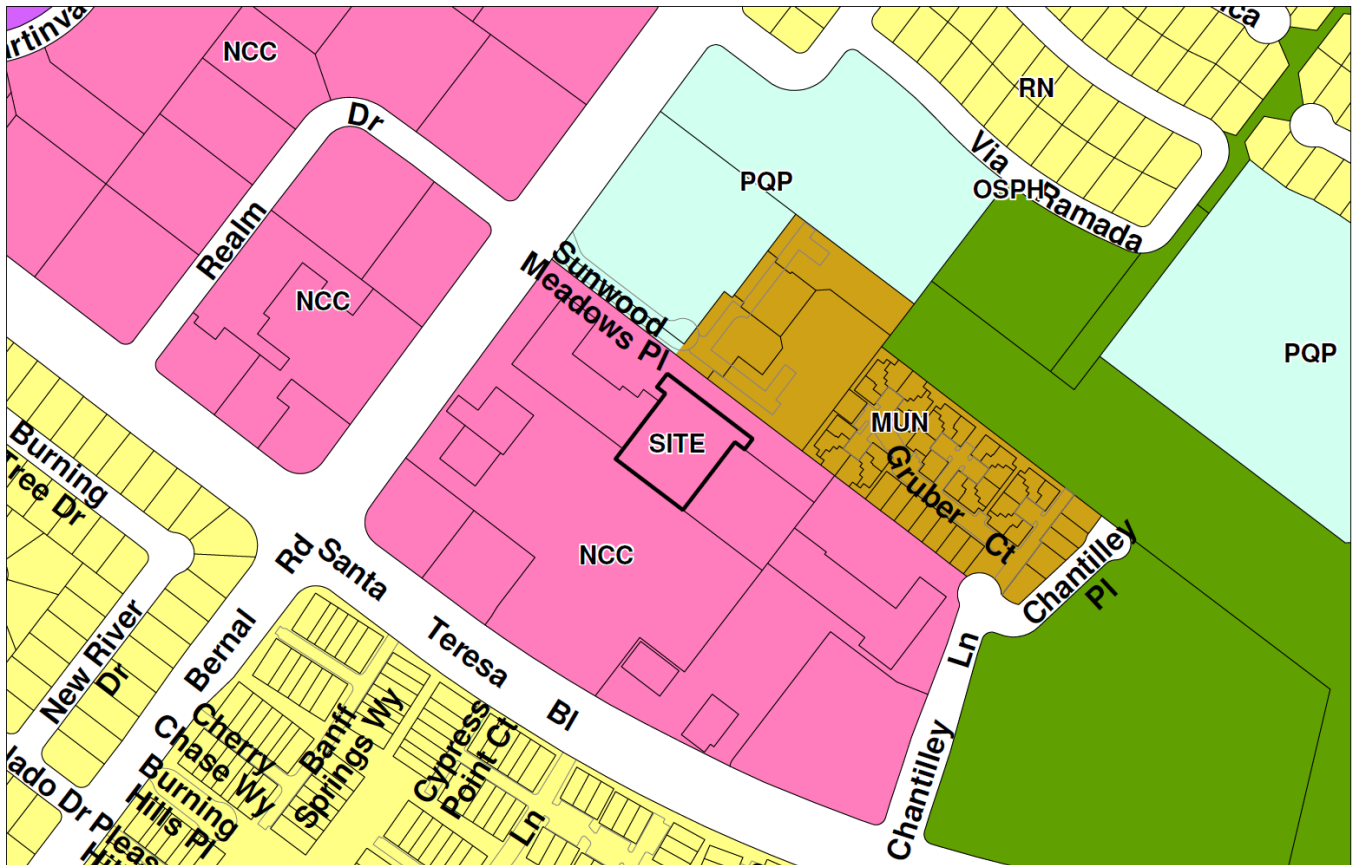
District: 2

AERIAL



Prepared by the Department of Planning,
Building and Code Enforcement
02/25/2019

Exhibit B: General Plan Map



File No: PDA78-011-02

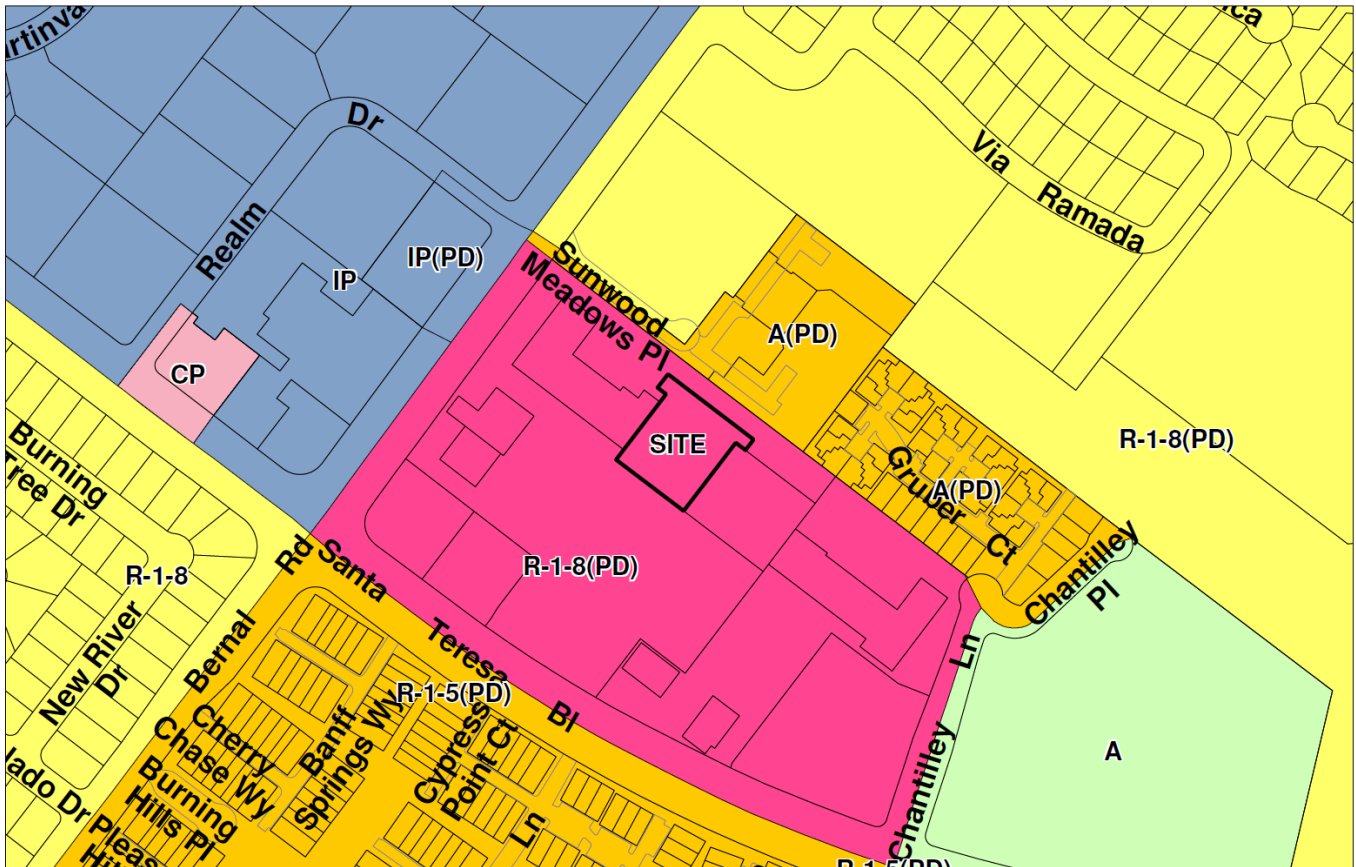
District: 2

GENERAL PLAN



Prepared by the Department of Planning,
Building and Code Enforcement
02/25/2019

Exhibit C: Zoning District Map



File No: PDA78-011-02

District: 2

ZONING



Prepared by the Department of Planning,
Building and Code Enforcement
02/25/2019

Exhibit D: Alcohol Radius Map



File No: PDA78-011-02

District: 2

NEARBY ALCOHOL OFF-SALES



Prepared by the Department of Planning,
Building and Code Enforcement
02/25/2019

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A PLANNED DEVELOPMENT PERMIT AMENDMENT AND THE GRANTING OF A DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY TO ALLOW THE OFF-SALE OF ALCOHOL (FULL RANGE OF ALCOHOLIC BEVERAGES) AT AN EXISTING 24,056-SQUARE FOOT TENANT SPACE IN CONJUNCTION WITH A GROCERY STORE ON AN APPROXIMATELY 0.81-GROSS ACRE SITE LOCATED ON THE NORTHEAST CORNER OF SANTA TERESA BOULEVARD AND BERNAL ROAD (7076 SANTA TERESA BOULEVARD)

FILE NO. PDA78-011-02

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on February 14, 2019, an application (File No. PDA78-011-02) was filed by the applicant, Katy Schardt representing Grocery Outlet, with the City of San José for a Planned Development Permit Amendment and Determination of Public Convenience or Necessity to allow the off-sale of alcohol (full range of alcoholic beverages) at an existing 24,056-square foot tenant space in conjunction with a grocery store on an approximately 0.81-gross acre site, on that certain real property situated in the R-1-8(PD) Planned Development Zoning District and located on the northeast corner of Santa Teresa Boulevard and Bernal Road (7076 Santa Teresa 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 June 12, 2019, 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, "Grocery Outlet," dated April 1, 2019, 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 regarding this proposed project:

1. **Site Description and Surrounding Uses.** The project site is located on the northeast corner of Santa Teresa Boulevard and Bernal Road. The project site includes a 24,056-square foot vacant tenant space located within the existing approximately 170,950-square foot Santa Teresa Marketplace shopping center. Nob Hill Foods grocery store previously occupied the tenant space and held an Alcoholic Beverage Control (ABC) Type 21 liquor license. The Nob Hill grocery store closed in 2015. The Santa Teresa Marketplace shopping center has a mix of retail and commercial uses including restaurants, coffee shops, retail stores, a gym, liquor store, professional offices, children's day care, and a veterinary clinic. Vehicular access to the shopping center is provided through four driveways along Bernal Road, three driveways along Santa Teresa Boulevard, and two driveways along Chantilly Lane. A 445-stsall surface parking lot is used by all tenants of the shopping center. Santa Clara Valley Transportation Authority (VTA) bus stops are located along the project site perimeter on Santa Teresa Boulevard and Bernal Road.

The project site is surrounded by the shopping center uses along the west, east and south. There is an existing church located north, approximately 114 feet from the project site and multifamily residential located northeast of the site. The project site is located 85 feet from the nearest residential lot, northeast of the site. Residences are also located south of the site, across Santa Teresa Boulevard.

The project is located within the Santa Teresa Boulevard/Bernal Road Urban Village, a Horizon 3 urban village that currently does not have an approved urban village plan. Projects that propose commercial uses may proceed ahead of the timeline for the approval of an urban village plan.

2. **Project Description.** The project includes a Planned Development Amendment and Determination of Public Convenience or Necessity to allow the off-sale of alcohol (full range of alcohol) at an existing 24,056-square foot vacant tenant space in the R-1-8(PD) Planned Development Zoning District on a 0.81-gross acre site. The off-sale of alcohol would consist of an approximately 789-square foot portion of the grocery store's sales area, which equates to approximately 4.9% of the total sales area.

A State Alcoholic Beverage Control (ABC) Type 21 License is required for the sale of beer, wine, and distilled spirits for consumption off the premises. A Determination of Public Convenience or Necessity is needed because the proposed use would result in

the over-concentration of the off-sale licenses in the project's census tract 5120.34. The census tract allows up to one off-sale license; currently the census tract is over-concentrated with two off-sale licenses. The two off-sale licenses include the nearby liquor store and the previous grocery store tenant (Nob Hill). Although the Nob Hill grocery store has not operated since 2015, it has not transferred nor relocated the license; therefore, the license is still considered active and a Determination of Public Convenience or Necessity is required.

The Planned Development Permit Amendment is required to allow the off-sale of alcohol use in conjunction with the proposed grocery store use in the 24,056-square foot Grocery Outlet that would operate at this location.

3. **General Plan Conformance.** The project site has an Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Neighborhood/Community Commercial. This designation is intended for neighborhood serving retail, services, and commercial developments. Commercial uses in this designation should provide services and amenities for the nearby community. Additionally, the subject project is located in the East Capitol Express/Silver Creek Road Urban Village boundary. The Envision San José 2040 General Plan identifies this area as a Horizon Three Urban Village and a designated growth area. The General Plan policies allow commercial projects to develop ahead of an adopted Urban Village Plan. The policies encourage commercial uses that are consistent with the existing commercial land use designation and designs that incorporate pedestrian-focused elements into the project.

The project conforms to the following key General Plan policies:

- a. Commercial Lands Goal LU-4: Establish commercial uses that maximize revenue to the City and provide employment for its residents in order to achieve fiscal sustainability and our desired jobs per employed resident ratio.
- b. Commercial Policy LU-4.2: In order to attract shoppers from throughout the region, encourage distinctive regional-serving commercial uses on sites near the City's borders. Give preference to locations having good access to freeways and major arterials or near multimodal transit stations.
- c. 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

Analysis: Grocery Outlet is a full-service grocery store that would offer a wide variety of grocery products including produce, dairy products, frozen foods, vitamins, health and beauty items, houseware. The Grocery Outlet grocery store would occupy a large vacant tenant space in the shopping center that previously operated as a full-service grocery store. Allowing the use would facilitate the activation of the commercial tenant space and would provide an employment use on the site. The project is anticipated to provide up to 40 jobs. The grocery store would complement the existing commercial uses in the shopping center, such as the restaurants, coffee

shops, a proposed gym, and thrift store, by providing another neighborhood-serving retail business. The project location is easily accessible from Bernal Road and Santa Teresa Boulevard, two major thoroughfares. Highway 85 is approximately one mile from the project site. The building entrance is also within 500 feet of VTA bus line 68.

- d. Commercial Policy LU-5.10: In the review of new locations for the off-sale of alcohol, give preference to establishments that offer a full range of food choices including fresh fruit, vegetables, and meat.

Analysis: The full-service grocery store would provide a wide range of groceries that serve the daily necessities of the nearby community. The grocery store would occupy a tenant space recently vacated by another grocery store. The off-sale of alcohol would allow the grocery store to increase its convenience for the community and would economically benefit the shopping center. The off-sale of alcohol use would offer patrons of the store a variety of beer, wine, and distilled liquor options. The percentage of the store's sales floor area dedicated to the off-sale of alcohol would be 4.9% (789-square foot portion of the store's 15,853-square foot sales area) of the total sales area.

4. **Zoning Ordinance Compliance.** This site is in the R-1-8(PD) Planned Development Zoning District (File No. PDC66-035). The existing commercial shopping center use, established through Planned Development File No. PD73-052 conforms to Development Standards set forth in the Planned Development Zoning. The PD Zoning's Development Standards permit general commercial uses, including a grocery store.

Parking

The shopping center requires one parking space per 225 square feet of floor area. The 24,056-square foot grocery store would require 91 parking spaces. The shopping center has a total of 445 parking spaces of which 91 parking spaces are allocated to the project's tenant space in an existing covenant of easement. Seven bicycle spaces are allocated to the tenant space, consistent with San Jose Municipal Code Section 20.90.060.

Additional Development Standards

The project would occupy an existing tenant space within the Santa Teresa Marketplace shopping center. Development requirements for buildings on this site, such as landscaping and building locations were previously approved under Planned Development Permit (File No. PD73-052 and PD78-011), and were found to be in conformance with the General Development Plan of the Planned Development Zoning District (File No. PDC66-035).

Noise

Pursuant to Section 20.40.600 of the San José Municipal Code, 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 project would occupy an existing tenant space in a developed shopping center. The nearest residential property line is approximately 85 feet from the rear of the building and would require an approximately 1,060-foot walking path from the front of the building. The existing loading dock for the tenant space and the other shopping center's tenant spaces is located behind the building. The loading space would be utilized during the site's hours of operations (6 a.m. through midnight, daily), refrigerated deliveries would be 2 to 3 times per week in the morning to mid-afternoon and other deliveries (of dry goods, produces, beverages) would be expected to occur 1 to 3 times per week in the morning to mid-afternoon. The loading hours are consistent with Section 20.40.500 which prohibits activities between the hours of 12:00 midnight and 6:00 a.m. within 150 feet of any residential zoned property. The previous tenant did not have any noise complaints on record with the city and noise levels are not expected to exceed the previous tenant levels as a result of the project. There is no construction or outdoor use with this permit and the existing tenant space would continue to be used as a retail space.

Given that the operations of the use occur predominantly inside the existing building, the project would not operate during late night hours, and loading dock activities would be consistent with the loading activities of the other existing tenants, the project is not anticipated to exceed the maximum noise levels at a residential and non-residential property line.

5. **Environmental Review.** Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act, this project is 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 (CEQA). Section 15301(a) (Existing Facilities) categorical exemption applies to 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 the existing or former use. The off-sale of alcohol would be incidental to a future grocery store located in an existing structure that had operated as a full-service grocery store, similar to the project's use. The project requires no expansion of the building.
6. **Conditional Use Permit Findings.** The City Council concludes and finds, based on the analysis of the above facts in regard to the Planned Development 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; or

- ii. 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 indicated in a Police Department Memorandum, dated March 15, 2019, the use is located in the San José Beat Yellow Four and census tract 5120.34. The reported crime statistics are not over the 20% crime index and therefore the census tract is not considered a high crime area. The Police are neutral to this proposal. The daily hours of operation for the Grocery Outlet are from 7:00 a.m. to 11:00 p.m. daily (as stated in the project's operations plan; these hours are within the by-right allowances under the Municipal Code. The use would operate as a retail business and would not allow on-site consumption of alcohol. Therefore, this finding **can** be made.*

- 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: As discussed above, the project would occupy an existing building within the Santa Teresa Marketplace shopping center. The tenant space's loading space is located at the rear of the building along with the other commercial tenant's loading spaces. All other existing development features, including setbacks, loading facilities, landscaping, and parking, etc., are sufficient for the proposed use and comply with the requirements of the previously approved Planned Development Permit for this site (PD73-052 and PD78-011). This finding **can** be made.*

- c. The proposed site is adequately served:
 - i. 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
 - ii. By other public or private service facilities as are required.

*Analysis: Access to the subject site is from four driveways along Bernal Road, three driveways along Santa Teresa Boulevard, and two driveways along Chantilly Lane; Bernal Road and Santa Teresa Boulevard are major arterial streets. The shopping center is located approximately one mile from Highway 85. The site is also within 500 feet of VTA bus route No. 68. This finding **can** be made.*

- 7. 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, situated 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 1,000-foot radius from the proposed location.

*Analysis: There are two off-sale of alcoholic beverage licenses within a 500-foot radius of the project: a stand-alone liquor store and the previous tenant, Nob Hill Foods. Nob Hill Foods is no longer operating in the tenant space; however, the census tract remains over-concentrated and the license valid since the license has not been transferred to a different census tract. In total there are two uses with the off-sale of alcoholic beverages within a 1,000-foot radius of this site. 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, situated 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: As described above, the location of the off-sale of alcoholic beverages, while within 500 feet of two other uses involving the off-sale of alcoholic beverages the use would not result in a total of four or more establishments that provide alcoholic beverages for off-site consumption within a 1,000-foot radius from the project site. Therefore, 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 project use is within 500 feet of the Genius Kids day care center and within 150 feet of the nearest residential uses. However, the path of travel from the front door of the Grocery Outlet store to the nearest residential property would be

approximately 1,000 feet and approximately 700 feet of the Genius Kids day care, currently under construction. Additionally, the residential property is separated from the proposed site by a block wall without pedestrian openings and a landscaping buffer. The grocery store is located within a commercial shopping center and is oriented towards Santa Teresa Boulevard, away from the nearest residential properties to the north and the day care located within the same shopping center but oriented towards the east. There is only one public entrance for the Grocery Outlet which is monitored by security cameras and an alarm system.

*Grocery Outlet does not function like a bar or nightclub, but rather a retail store with no onsite consumption of alcohol and hours of operation between 7:00 a.m. to 11:00 p.m., daily. 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. Nonetheless, this finding **can** be.*

8. 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 a census tract where the ratio of the existing retail off-sale licenses to the 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 for the determination of public convenience and necessity is based on the required findings identified in Title 6 of the San José Municipal Code.

Chapter 6.84 of Title 6 identifies the process and findings related specifically to the off-sale of alcohol and specifies that a PCN can 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 Strong 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 is not within a SNI. 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 use would not result in more than four off-sale establishments in a 1,000-foot radius. 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: Although the entrance of the tenant space is approximately 1000 feet from the nearest residence and 700 feet from the day care, the use is within 500 feet of a day care center and 150 feet of a residence. Therefore, this finding **cannot** be made.*

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

*Analysis: Alcoholic beverage sales would not represent a majority of the proposed use. As a condition of the permit, the proposed off-sale would only occupy approximately 4.9% of the total sales area (789-square foot portion of the store's 15,853-square foot sales area). Therefore, this finding **can** 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. 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: The off-premises sale of alcoholic beverages would enhance the service of the grocery store use and contribute to the vitality of the existing

*shopping center. The grocery store would operate within allowed hours and would not significantly impact public health or safety. 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

*Analysis: The census tract has a population comparable to the surrounding census tracts and allows one off-sale license. There are two off-sale of alcoholic beverage licenses within the census tract, the adjacent liquor store and the previous tenant, Nob Hill Foods. Although Nob Hill Foods grocery store is no longer operating in the tenant space, the census tract remains over-concentrated and the license valid since the license has not been cancelled or transferred to a different census tract. The project's off-sale (Type 21) license would be the third off-sale license in the over-concentrated census tract. This finding **cannot** be made.*

- 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 project is a full-service grocery store which would provide a unique and large selection of fresh produces, groceries, wine, and beer. The off-site sale of beer, wine, and distilled liquor would be allowed only within 5% of the grocery store's sales area and it would enhance the shopping convenience for patrons and residents. This finding **can** be made.*

Given the above-stated analysis, all but the following findings for PCN cannot be made for the proposed off-sale of alcohol:

- The project is within 500 feet of a day care and 150 feet of a residence; and
- Over-concentration within the census tract.

Based on all of the foregoing, the City Council finds that a significant and overriding public benefit or benefits would be provided by the use. The off-sale of alcohol meets the General Plan goals and policies of (i) providing a walkable location for grocery stores that offer a broad array of goods to the community; (ii) jobs, employment, and economic development by activating a vacant tenant space within an existing shopping center; (iii) giving preference to off-sale of alcohol to stores that also provide fruits, vegetables, and healthy products; and (iv) implementation of conditions to ensure the off-sale of alcohol will not be detrimental to the community or to public health and safety.

In accordance with the findings set forth above, this Planned Development Permit Amendment and Determination of Public Convenience or Necessity to use the subject property for said purpose specified above and subject to each and all of the conditions

hereinafter set forth is hereby **approved**. The City Council expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

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 Planned Development Permit Amendment and Determination of Public Convenience or Necessity 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 Planned Development Permit Amendment 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 Amendment or other approval and the provisions of Title 20 of the San José Municipal Code applicable to such Permit Amendment.
2. **Permit Expiration.** This Planned Development Permit Amendment 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 Amendment. The date of issuance is the date this Permit Amendment is approved by the City Council. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit Amendment in accordance with Title 20 of the San José Municipal Code. The Permit Adjustment must be approved prior to the expiration of this Permit Amendment.
3. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit 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; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager is necessary to remain

within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.

4. **Conformance to Plans.** The development of the site shall conform to the approved Planned Development Permit Amendment plans entitled, "Grocery Outlet," dated April 1, 2019, on file with the Department of Planning, Building and Code Enforcement, as may be amended subject to City's approval, and to the San José Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the "approved plans" or the "Approved Plan Set."
5. **Use Authorization.** This Planned Development Permit Amendment and Determination of Public Convenience or Necessity authorizes the off-sale of alcohol (full range of alcohol, Type 21 ABC license) in an existing approximately 24,056-square foot commercial tenant space in conjunction with a grocery store on an approximately 0.81-gross acre site.
6. **Off-sale of Alcohol.** This Planned Development Permit Amendment authorizes the off-sale of alcohol (full range of alcohol, Type 21 ABC license) at the grocery store and successors of said tenant space whereby the subsequent tenant maintains a similar use as deemed by the Director of Planning.
7. **Hours.** This facility shall be limited to operation between the hours of 6:00 a.m. to 12:00 midnight, unless a Conditional Use Permit or Planned Development Permit, as applicable, is approved by the City for other hours of operation
8. **Conformance to Other Permits.** Unless specifically modified with this Permit, this project shall conform to all the requirements of previous permit(s) including PD73-052 and PD78-011.
9. **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.
10. **Alcoholic Beverage Control.** The off-sale of alcoholic beverages shall only be allowed in strict conformance with the requirements of the Department of Alcohol Beverage Control (ABC). The permittee shall maintain full compliance and in good standing with the Department of ABC.

11. **Limitations on Area of Alcohol Sales.** The sale of alcohol for off-site consumption allowed by this Permit shall be limited and incidental to the primary use of a full-service grocery store. "Full service grocery store" as used herein means a retail establishment that provides a full and wide complement of fresh produce, grains, dairy goods, and baked products, together with other food and household merchandise for general public consumption. The area in which alcoholic beverages are displayed or otherwise offered for sale shall not exceed 5% percent of the total floor area of the retail area that is open and accessible to the general public (i.e., excluding backroom storage and office spaces). Alcohol product displays shall not be placed outside the retail tenant space.
12. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local, state and federal 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 Planned Development Permit Amendment shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined below.
13. **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 Amendment incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
14. **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.
15. **Loading Activity Hours.** All loading activities shall be limited to the hours of 6:00 a.m. through 12:00 midnight.
16. **Generators.** This Planned Development Permit Amendment 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.
17. **Window Glazing.** Unless otherwise indicated on the approved plan, all windows shall consist of a transparent glass.
18. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance shall be abated immediately upon notice by the City.
19. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set. The outdoor sale of goods may be permitted, in accordance with San José Municipal Code Section 20.40.520.

20. **Anti-Graffiti.** During construction, the permittee shall remove all graffiti from buildings, walls, and other surfaces within 48 hours of defacement. Upon project completion and/or transfer of ownership, the property owner, and/or Maintenance District shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
21. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. All publicly used areas shall be maintained free of litter, trash, cigarette butts and garbage.
22. **Loitering.** Loitering shall not be allowed in the public right-of-way adjacent to the subject site.
23. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping.
24. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
25. **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 numbers PDA78-011-02 shall be printed on all construction plans submitted to the Building Division.
 - b. *Americans with Disabilities Act.* The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
 - c. *Emergency Address Card.* The permittee 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.
26. **Revocation, Suspension, Modification.** This Planned Development Permit Amendment 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 Planned Development Permit Amendment 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 _____, 2019, 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.



GROCERY OUTLET
7076 SANTA TERESA BOULEVARD, SAN JOSE

REQUEST FOR PLANNED DEVELOPMENT PERMIT FOR
THE OFF-SALE OF ALCOHOL (BEER, WINE, AND SPIRITS) AT A GROCERY STORE

REQUEST FOR PUBLIC CONVENIENCE OR NECESSITY

PRIOR DEVELOPMENT PERMIT:

PDC66-035 REZONING TO ALLOW COMMERCIAL SHOPPING CENTER

PD73-052 PERMIT TO ALLOW CONSTRUCTION OF 170,950 SF SHOPPING CENTER

PDA78-011-01 PERMIT TO ALLOW CONSTRUCTION OF A NEW MULTI TENANT DRIVE THRU BUILDING (UNDER REVIEW)

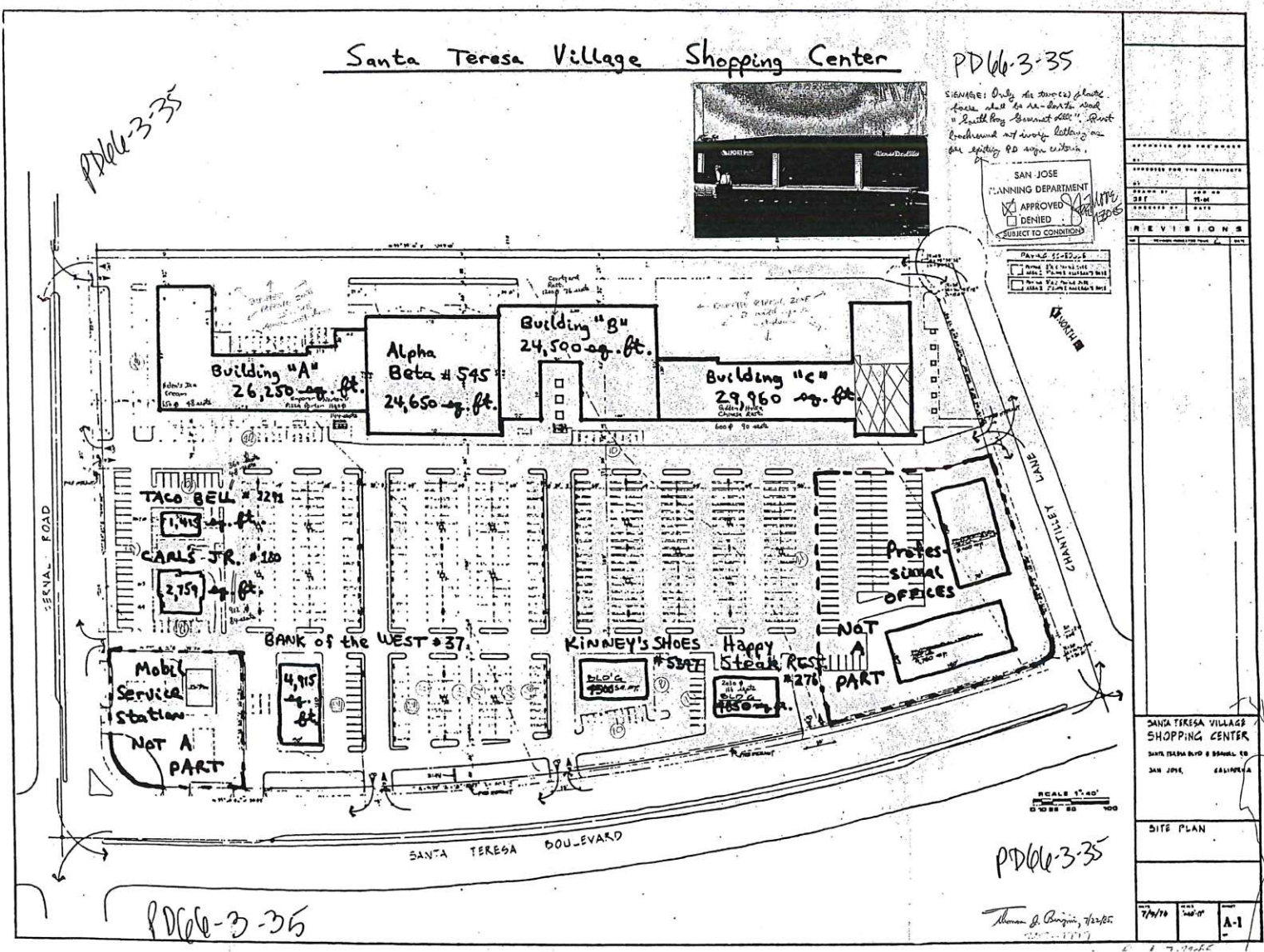
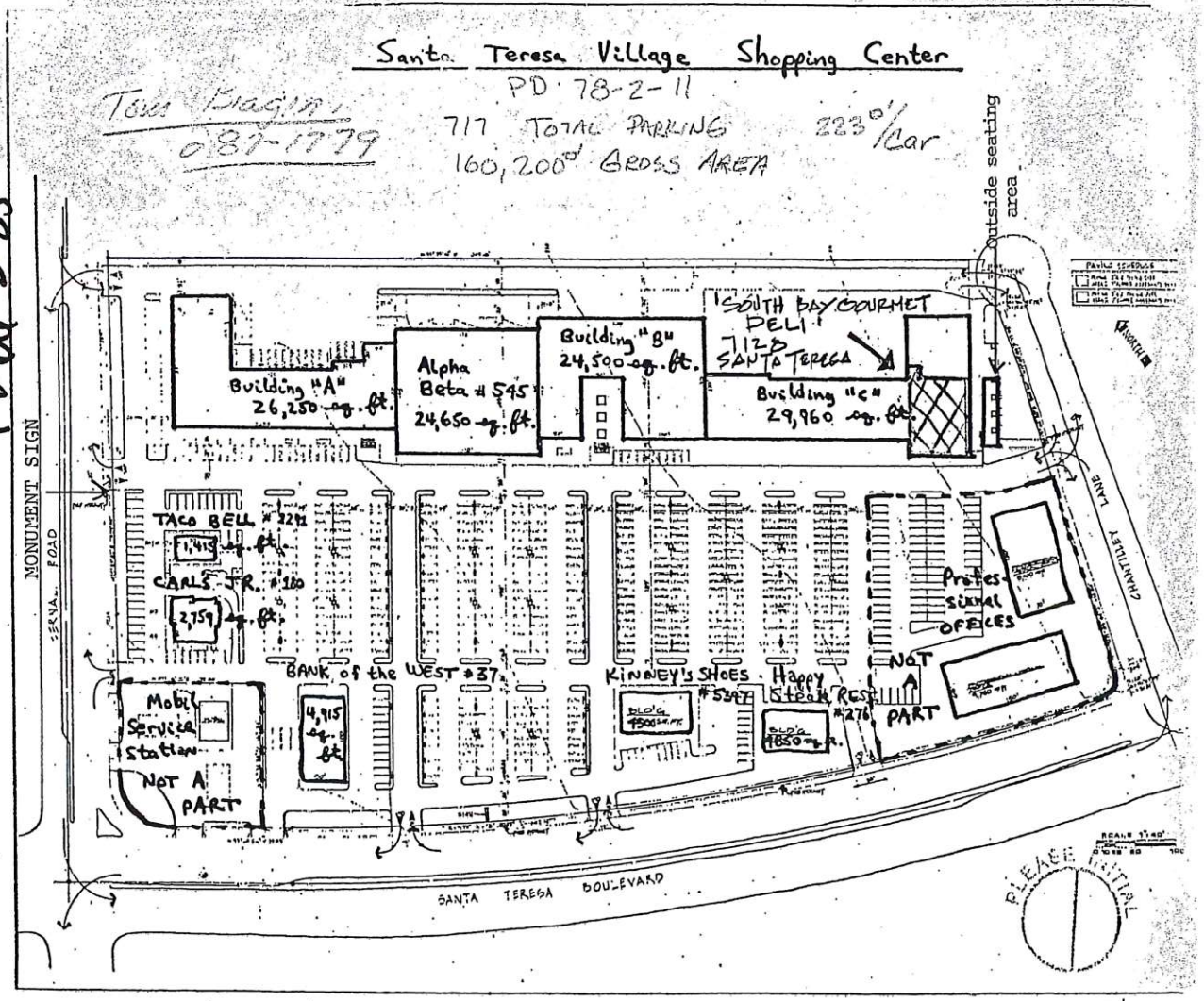
PDA81-031-01 PERMIT TO CHANGE HOURS OF OPERATION FOR EXISTING FITNESS CENTER (UNDER REVIEW)

SHEET INDEX

TITLE SHEET	1
LAND USE DEVELOPMENT - 1	2
LAND USE DEVELOPMENT - 2	3
LAND USE DEVELOPMENT - 3	4
SITE PLAN	5
FLOOR PLAN	6
PROPOSED ELEVATIONS	7
EXISTING ELEVATIONS	8

TITLE SHEET
REVISED ON 4/1/19

EXHIBIT A-1 PDW-3-35



San Jose Planning Department
 APPROVED
 DENIED
 SUBJECT TO CONDITIONS

NO.	DATE	REVISIONS

SANTA TERESA VILLAGE SHOPPING CENTER
 SANTA TERESA BLVD & SAN JUAN ST
 SAN JOSE, CALIFORNIA

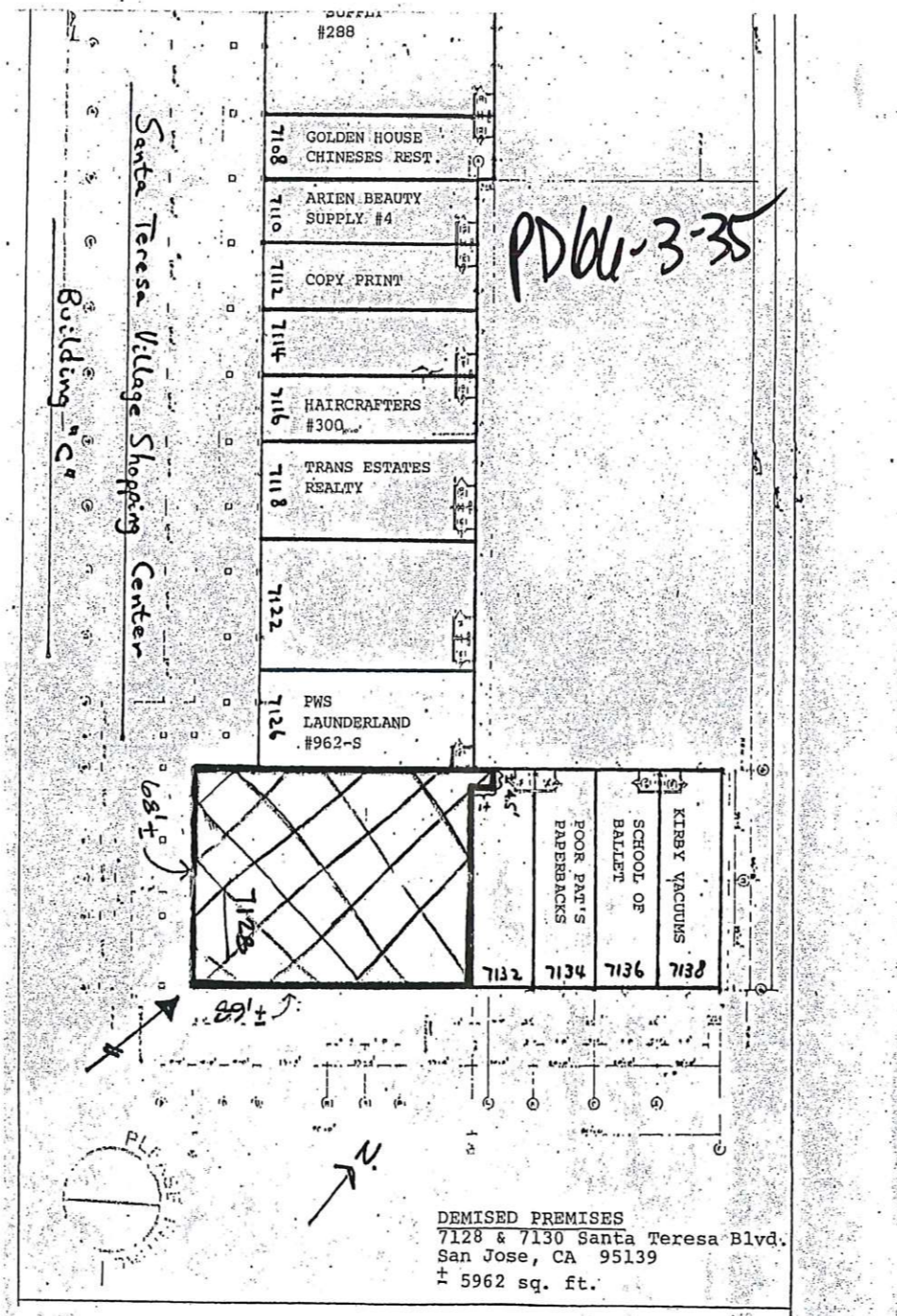
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7/7/78 11:40 AM A-1

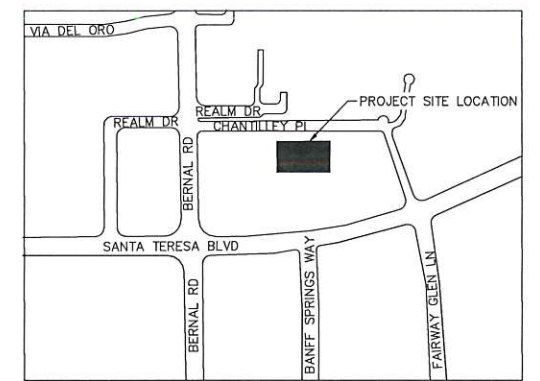
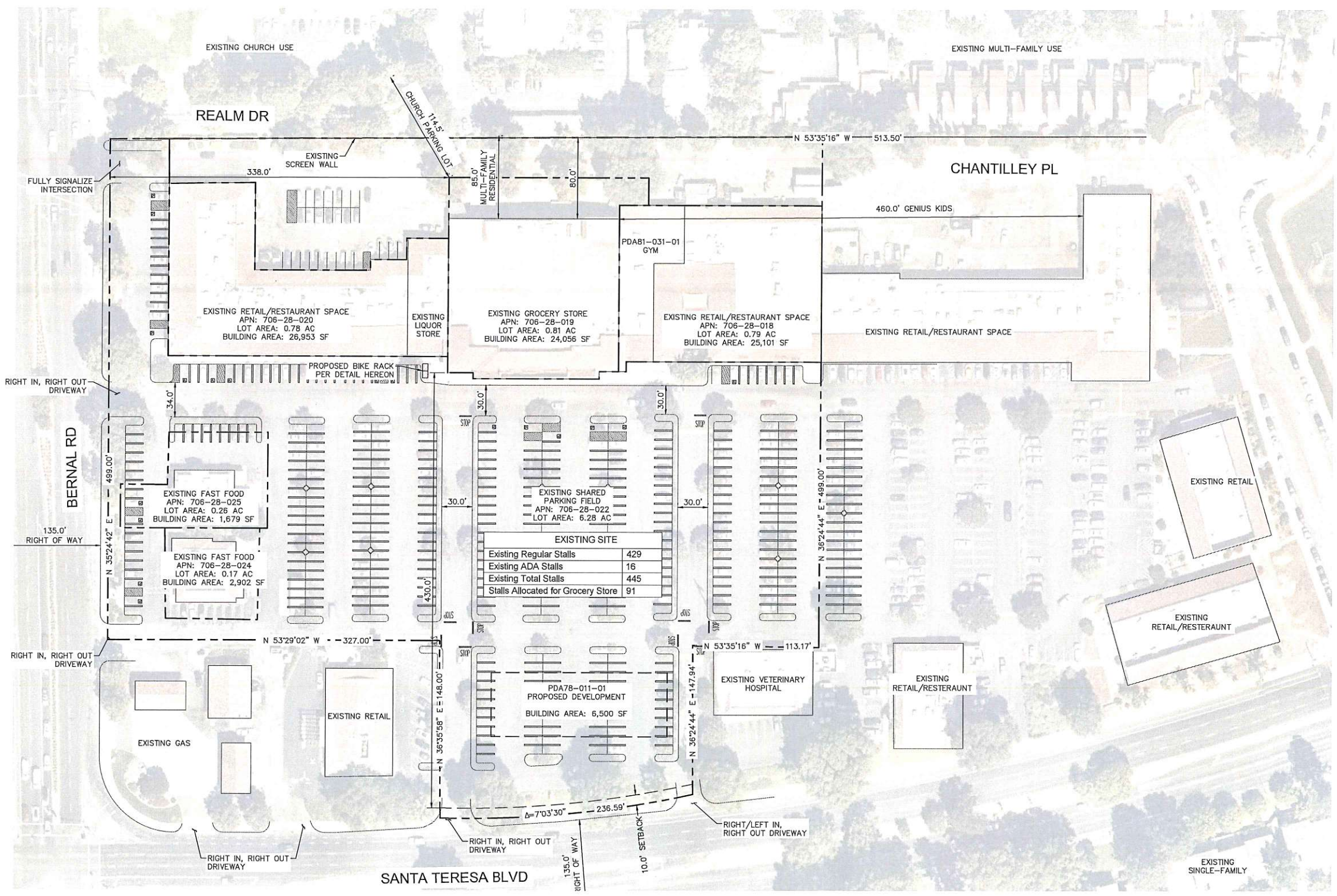


0 TO 12	PEDESTRIAN CORRIDOR (PUBLIC)	0 TO 10%	0	0	0
9 TO 11	OPEN SPACE (PUBLIC)	0 TO 10%	0	0	0
15 TO 18	OPEN SPACE (PUBLIC)	0 TO 10%	0	0	0
9 TO 12	MIXED SINGLE AND MULTIPLE FAMILY UNITS	25 TO 40%	5 TO 9	45 TO 108	158 TO 478
8 TO 10	PUBLIC SCHOOL SITE	TO BE DETERMINED BY AORGAS HILL UNIFIED SCHOOL DISTRICT	0	0	0
8 TO 10	PUBLIC SCHOOL SITE		0	0	0
8 TO 10	PUBLIC SCHOOL SITE		0	0	0
2 TO 3	RECREATION CENTER (PRIVATE)	20 TO 40%	0	0	0
2 TO 3	RECREATION CENTER (PRIVATE)	20 TO 40%	0	0	0
0 TO 1	PORTION OF COUNTY GOLF COURSE (PUBLIC)	0 TO 10%	0	0	0
57 TO 69	MIXED SINGLE AND MULTIPLE FAMILY UNITS	25 TO 40%	7 TO 9	399 TO 621	199 TO 2174
11 TO 14	PARK (PUBLIC)	TO BE DETERMINED BY CITY OF SAN JOSE	0	0	0
15 TO 16	GARDEN APARTMENTS		25 TO 40%	10 TO 15	150 TO 240
16 TO 19	GENERAL COMMERCIAL (C-2 USES)	15 TO 30%	0	0	0
12 TO 15	GARDEN APARTMENTS	25 TO 40%	10 TO 15	120 TO 225	360 TO 675
TOTAL ANNEXED AREA			6242 ACRES		
TOTAL DWELLING UNITS			2760 TO 2880		
TOTAL ESTIMATED POPULATION			8800 TO 14,700		

POPULATION ESTIMATED BASED UPON AN ESTIMATED



GENERAL LAND USE DEVELOPMENT - 3
1966 LAND USE PLAN AND PD66-3-35
REVISED ON 4/1/19



VICINITY MAP
SCALE: 1" = 50'

LEGEND

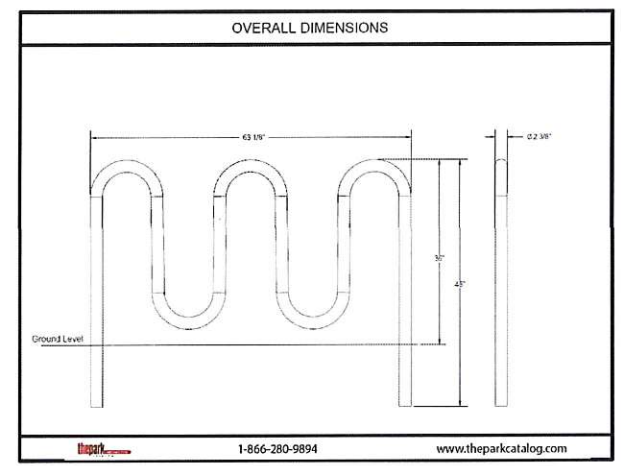
- PROPERTY BOUNDARY LINE
- - - PROPERTY SETBACK

LEGAL DESCRIPTION

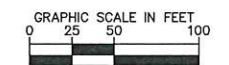
REAL PROPERTY IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL ONE:
PARCELS I AND II AS SHOWN ON THE PARCEL MAP RECORDED JANUARY 17, 1977 IN BOOK 386 OF MAPS, AT PAGE 52, SANTA CLARA COUNTY RECORDS.

BIKE RACK DETAIL



INSTALL BIKE RACK PER MANUFACTURERS RECOMMENDATIONS.
BIKE RACK HOLDS A CAPACITY OF 7.



SCALE: 1" = 50'
WHEN PRINTED AT FULL
SIZE 24"X36"

GROCERY OUTLET - SITE PLAN
7076 SANTA TERESA BLVD, SAN JOSE, CA
REVISED ON 4/1/19



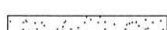

SHEET 5

Kimley»Horn

© 2019 KIMLEY-HORN AND ASSOCIATES, INC.
765 THE CITY DRIVE, SUITE 200, ORANGE, CA 92868
PHONE: 714-939-1030 FAX: 714-938-9488

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LEGEND

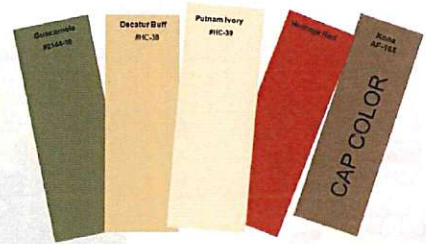
-  CULTURED STONE
-  PAINTED SMOOTH-FACE CONCRETE MASONRY UNITS
-  STUCCO SYSTEM
-  STANDING SEAM METAL ROOF; COLOR MATCH

FINISH KEYNOTES

P5	GUACAMOLE
P6	DECATUR BUFF
P7	PLUTANIUM IVORY
P8	KONA
P9	HERITAGE RED

EXTERIOR COLORS

Benjamin Moore Paints



GROCERY OUTLET
Paragon Market
 18900 BROOKHURST STREET
 FOUNTAIN VALLEY, CA

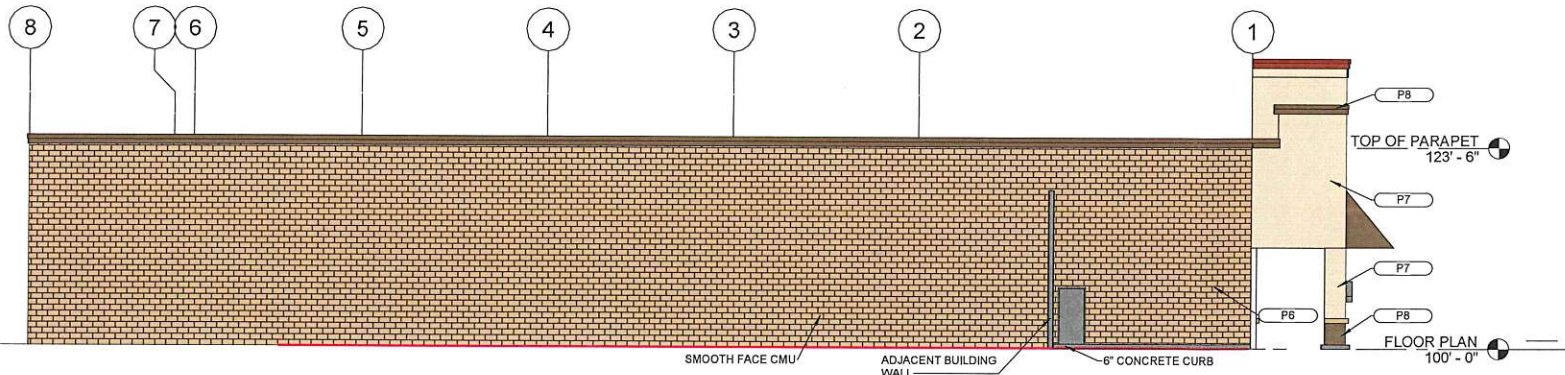
NO.	DATE	DESCRIPTION

PDA78-011-02
 Sheet 6

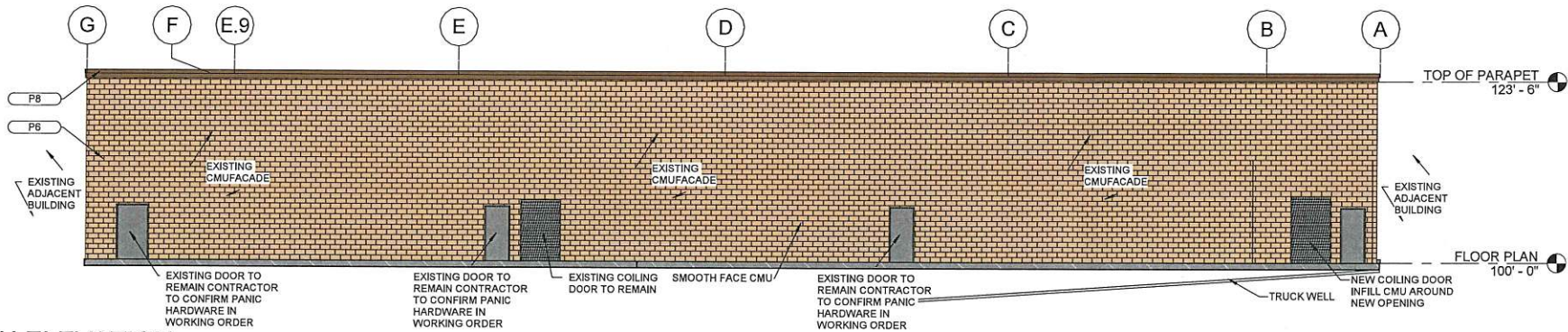
DATE: 03/29/19
 DRAWN BY: JMM
 CHECKED BY:
 JOB # 62930149

SHEET TITLE
EXTERIOR ELEVATIONS

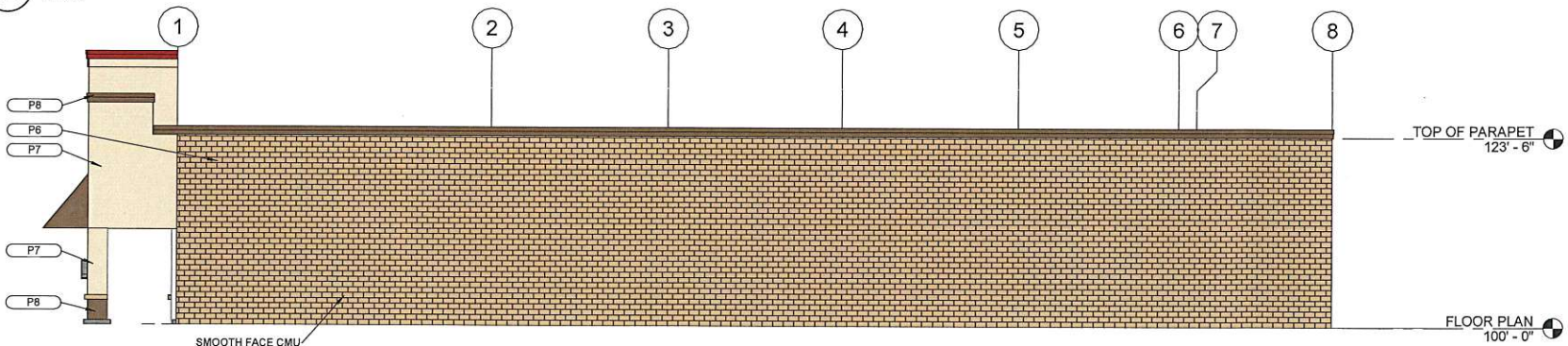
1
 BRR Original printed on recycled paper



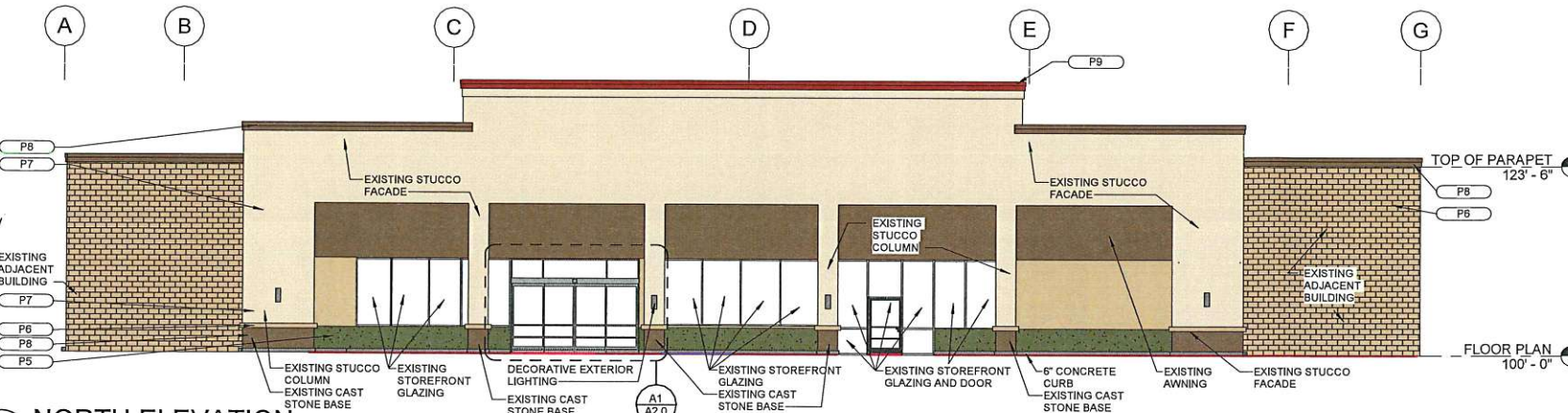
D5 EAST ELEVATION
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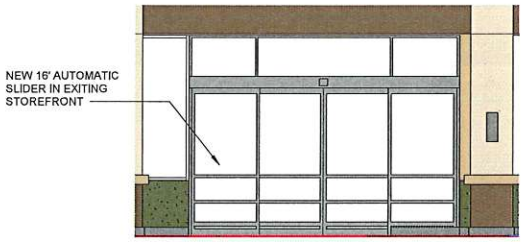
C5 SOUTH ELEVATION
 1" = 10'-0"



B5 WEST ELEVATION
 1" = 10'-0"



A5 NORTH ELEVATION
 1" = 10'-0"



A1 NORTH ELEVATION - ENTRANCE
 1:60

4/3/2019 4:11:55 PM

SAN JOSE, CA - SANTA TERESA -
 FINAL FIXTURE PLAN - 04/03/19
 VERSION 8
 BUILDING AREAS (GROSS):
 SHELL FLOOR AREA
 TOTAL = 24,589 SF

LEASABLE FLOOR AREA
 SALES = 15,853 SF
 B.O.H. = 8,203 SF
 = 24,056 SF -
 97% OF GROSS

MERCHANDISING (NET) = 15,724 SF
 STOCK (NET) = 4,897 SF
 ALCOHOL SALES = 789 SF



ARCHITECT OF RECORD:
 JAMES A. HALEY
 BRR ARCHITECTURE, INC
 5700 ANTIPOCH PLAZA, SUITE 300
 MERRIAM, KS 66204
 www.brrarch.com TEL: 415-782-410
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LEGEND

SYMBOL	DESCRIPTION
	BRASS BELL (AT CHECKSTAND #1)
	ECO BAG GRIDS (3 PER PLAN)
	ABS BROOM HOLDERS (4 PER PLAN AT CLEANER AISLE)
	APPAREL RACKS (PROMOTIONAL EVENTS)
BUMP	BUMP OUT SECTIONS (12 @ HBC - PER PLAN)
	SECURITY CAMERA (SINGLE DIRECTION)
	SECURITY CAMERA (360 DEGREE)

GENERAL MERCH	HBC PERIMETER
BASE DECKS 28"	BASE DECKS 24"
SHELVES 24"	SHELVES 24"
SAHARA COLOR	SAHARA COLOR

SEASONAL	CANDY PERIMETER
BASE DECKS 28"	BASE DECKS 24"
SHELVES 24"	SHELVES 24"
SAHARA COLOR	SAHARA COLOR

INT. SIGNAGE:	WINE PERIMETER
USE 4'-0" PACKAGE (LIGHTING @ 14'-0")	BASE DECKS 24" SHELVES 24" BLACK COLOR

HOLDING BOXES
FREEZER: 405 SF DAIRY: 685 SF MEAT: 202 SF

GROCERY OUTLET
 Bargain Market
 18900 BROOKHURST STREET
 FOUNTAIN VALLEY, CA

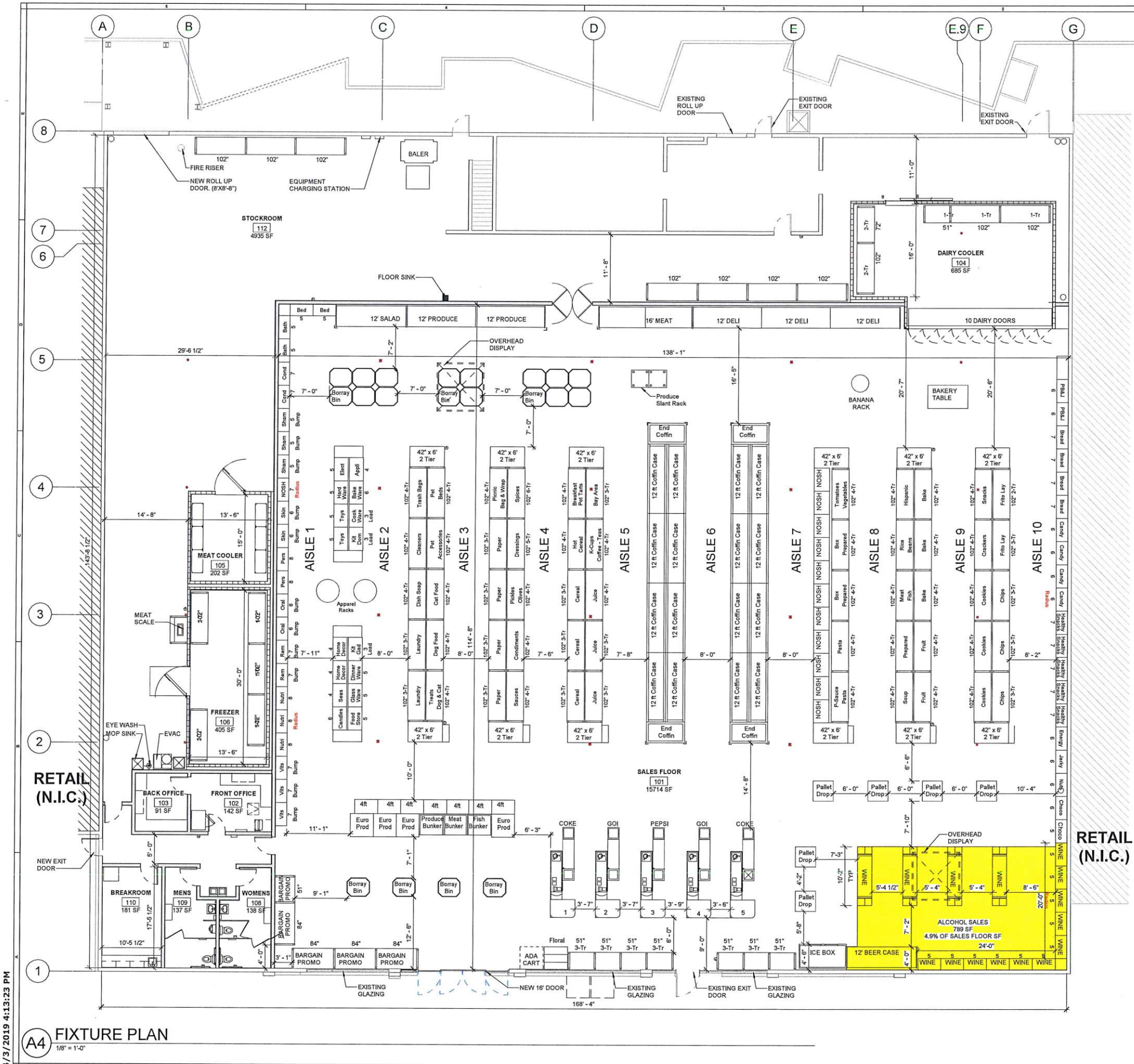
NO.	DATE	DESCRIPTION
1	10/25/18	Fixture Plan
2	10/25/18	Fixture Plan
3	10/25/18	Fixture Plan
4	10/25/18	Fixture Plan
5	11/07/18	Fixture Plan
6	11/09/18	Fixture Plan
7	04/03/19	Final Fixture Plan
8	04/03/19	Final Fixture Plan

PDA78-011-02
 Sheet 7

DATE: 03/29/19
 DRAWN BY: JMM
 CHECKED BY:
 JOB # 62930149

SHEET TITLE
FIXTURE PLAN
 SHEET NO.

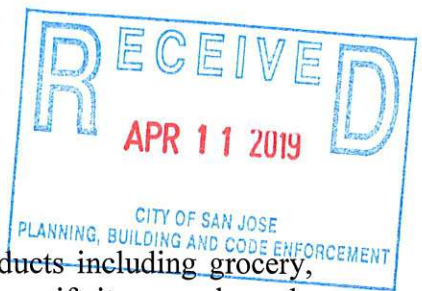
BRR Original printed on recycled paper



4/3/2019 4:13:23 PM
A4 FIXTURE PLAN
 1/8" = 1'-0"



**Operation Statement for Planned Development Permit Amendment and
Justification for Public Convenience or Necessity
7076 Santa Teresa Blvd
San Jose, CA**



Grocery Outlet Background

Grocery Outlet offers fantastic bargains and deals on a variety of products including grocery, frozen foods, deli items, vitamins, health and beauty items, housewares, gift items and much, much more. Brand names for less is the name of the game and smart shoppers get incredible savings over regular store prices every day when they shop Grocery Outlet. Grocery Outlet gets products by searching the nation's major manufacturers for amazing one-time buys resulting from excess production, packaging/design changes, and special promotions. Grocery Outlet's assortment of product changes frequently because of the nature of the one-time buys.

Grocery Outlet owns over 260 stores in California with off sale (type 20 and 21) alcohol licenses. Operators and their employees of all locations are careful to make sure the store is always clean, neat and free from debris. Grocery Outlet has had no significant issues raised by local law enforcement agencies with respect to alcoholic products or public disturbances. Grocery Outlet has a history of service to the California community and will continue to operate in a conscientious and thoughtful way with sensitivity to any possible detriment to adjacent residents and businesses. Grocery Outlet is fully aware of the unique responsibilities of operating a store associated with alcoholic beverage sales.

The store will be open no earlier than 7:00AM and no later than 11:00PM 7 days a week. Grocery Outlet expects the store will be staffed with approximately 35-40 total employees. Approximately 11 to 12 employees will be on-site per shift. Deliveries to the store will occur throughout the week. The refrigerated loads will be delivered 2-3 times per week in the morning to mid-afternoon. Other deliveries (dry goods; produce; beverages) typically occur 1-3 times per week for each category during the morning to mid-afternoon. Deliveries will be made to the loading area located at the rear of the store.

Training

The store will be operated in strict compliance with the state's Alcohol Beverage Control Act, together with any conditions of the license that may be issued by ABC. Operator's managers, supervisors and employees that are engaged in the sale or supervision of the sale of alcoholic beverages shall complete training programs in accordance with ABC rules and regulations and the City of San Jose requirements. Training programs shall meet the standards of the California Coordinating Council on Responsible Beverage Service (CCC/RBS) or other certifying/licensing body designated by the State of California.

Operator's register clerks will be trained in proper alcoholic beverage sales rules, including use of point of sale required identification age verification. All of the clerks will have read and signed the Alcoholic Beverage Control's Clerk's Affidavit. These affidavits will be kept on file by the store operator.

Security

Grocery Outlet will install a minimum 16 camera system which has a view of all parts of the store, especially the alcoholic beverage display area and sales check stands. The video system will have a 30-day retrieval function which can track previous days' activity. Monitors are kept in a locked room at the store and available to managers, key personnel and law enforcement if necessary.

Operational Procedures

The store operator will monitor the parking areas and sidewalks to keep these areas free from litter and debris. Trash receptacles will be provided near the store entrance and will be emptied daily. Graffiti to the exterior building shall be removed expeditiously.

Signs will be posted at the store as required by ABC and City of San Jose.

ABC Application

Grocery Outlet recently submitted its application to the Department of Alcoholic Beverage Control for a type 21 (beer, wine, spirits) off-sale license. The ABC file number is 604800.

The Grocery Outlet square footage is approximately 24,589 for the total premises. The sales floor area is approximately 15,853 square feet. The alcoholic beverage display area is approximately 789 square feet, or 4.9% of the sales floor area. The alcoholic beverage display area is highlighted in yellow on the floor plan included with the resubmittal.

Findings for Determination of Public Convenience or Necessity

Grocery Outlet stores are "destination stores". The alcohol sales are an incidental part of the total grocery store business. Alcoholic beverages are sold in conjunction with the full array of

grocery store products. Customers desire the convenience of being able to purchase alcoholic beverages together with the full assortment of Grocery Outlet's unique, value priced items. This convenience is imperative to Grocery Outlet's ability to serve and attract customers.

1. The use is essential or desirable to the public convenience and public welfare. The proposed availability of alcoholic beverages together with everyday products such as fruits, vegetables, milk, juice, eggs, bread, cereal, coffee, soup and pasta as well as consumer products such as pet food, toothpaste, detergent and paper towels allows customers to have readily available products in one location where they would otherwise be obliged to travel to several locations to purchase these items.
2. Granting the permit will not be materially detrimental to the public welfare and to other property in vicinity. The sale of alcoholic beverages is accessory to and in conjunction with the sale of typical grocery items. The convenience of a wide variety of groceries and consumer products in one location promotes the general welfare. Grocery Outlet is replacing a grocery store that has been operating at this location since 1990. Nob Hill Foods will be surrendering the type 21 license issued at this address and will ultimately transfer the license to another location outside of the census tract.
3. The use conforms to good zoning practices and development standards. The store is located in a commercial zone on a major thoroughfare and is consistent with good community development practices and standards.



Memorandum

TO: Cassandra Van Der Zweep
Planning Department

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

SUBJECT: Grocery Outlet
7076 Santa Teresa Boulevard

DATE: March 15, 2019

Approved

Date

I have received your request for input regarding The Grocery Outlet located at 7076 Santa Teresa Boulevard, San Jose (PDA78-011-02). The Grocery Outlet is seeking an ABC off sale liquor license.

Per Business and Professions (B&P) Code Section 23958, the State of California Department of Alcohol Beverage Control shall deny an ABC Application for an ABC License if the issuance of that license would tend to create a law enforcement problem or if it would result in or add to an undue concentration of ABC Licenses, as described in B&P Sections 23958.4 (a)(1) and 23958.4 (a)(3). A location can be unduly concentrated because of its criminal statistics and/or its proximity to other ABC Licenses. ABC can issue the license per B&P Sections 23958.4 (b)(1), and 23958.4 (b)(2) if the local governing body determines that the public convenience or necessity would be served. The City of San Jose Planning Department or the Planning Commission are the delegated authorities to grant these exceptions.

The Grocery Outlet is located in San Jose Police Beat Yellow Four. 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
Y4 (2018)	282	112	394	No
City Average	335	151	486	

Department of Alcohol Beverage Control (ABC) records indicate The Grocery Outlet is in census tract 5120.34. Pursuant to B&P Section 23958.4 (a)(3) ... the ratio of off-sale retail licenses to population in census tract 5120.34 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 5120.34

Census Track	Authorized ABC Licenses		Current ABC Licenses		Unduly Concentrated	
	On - Sale	Off - Sale	On - Sale	Off – Sale	On - Sale	Off – Sale
5120.34	4	1	8	2	Yes	Yes

The San Jose Police Department is neutral to the issuance of this 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