

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A CONDITIONAL USE PERMIT TO ALLOW THE DEMOLITION OF AN EXISTING BUILDING AND FUELING DISPENSERS, AND THE CONSTRUCTION OF A 3,750 SQUARE FOOT CONVENIENCE STORE, AUTO RETAIL FUELING DISPENSERS, CANOPIES, AND CARD LOCK FUELING DISPENSERS, INTERIM FUELING DISPENSERS, AND 24-HOUR USE, AND GRANTING A DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY TO ALLOW THE OFF-SALE OF ALCOHOL OF BEER AND WINE (ABC TYPE 20 LICENSE) ON THE 1.54 GROSS ACRE SITE LOCATED AT THE NORTHEAST CORNER OF COMMERCIAL STREET AND OAKLAND ROAD (1202 OAKLAND ROAD)

**FILE NOS. CP17-015 and ABC17-007**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on September 21, 2016, March 20, 2017 and May 8, 2017 the following concurrent applications (File Nos. CP17-015 and ABC17-007) were filed by the applicant, John Hicks, with the City of San José for a Conditional Use Permit and Site Development Permit to allow the demolition of an existing building and fueling dispensers, and the construction of a 3,750 square foot convenience store, auto retail fueling dispensers, canopies, and card lock fueling dispensers with the off-sale of beer and wine, interim fueling dispensers and 24-hour use; and a Determination of Public Convenience or Necessity (“PCN”) to allow the off-sale of beer and wine (ABC Type 20 license) on a 1.54-gross acre site, on that certain real property situated in the CIC Combined Industrial/Commercial Zoning District and located on the northeast corner of Commercial Street and Oakland Road (1202 Oakland Road, 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 and depicted 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 applications on November 15, 2017, 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**, the recommendation of the Planning Commission and the Director of Planning, Building, and Code Enforcement to the City Council was denial of the application for the General Plan amendment because the requested change in the land use designation for the Subject Property from its current Heavy Industrial (HI) designation would be inconsistent with the Council's land use goals and policies expressed in the General Plan; and

**WHEREAS**, pursuant to Title 18 of the San José Municipal Code, public notice was given that on December 12, 2017 at 6:00 p.m. in the Council Chambers at City Hall, 200 East Santa Clara Street, San José, California, the Council would hold a public hearing where interested persons could appear, be heard, and present their views with respect to the proposed General Plan Amendment (Exhibit "A"); and

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

**WHEREAS**, the City Council considered this project at the December 12, 2017 public hearing and directed staff to prepare draft documents approving the General Plan Amendment, Conforming Rezoning, and Conditional Use Permit, and prepare a full analysis of the proposed Conditional Use Permit for the gas station with off-sale of beer and wine and 24-hour use; 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 applications, 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 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 "Rotten Robbie #67, 1202 Oakland Road, San José, California 95112," last revised January 10, 2018, 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 development 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;

**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 site is located on the northeast corner of Commercial Street and Oakland Road (1202 Oakland Road), within the General Plan East Gish Employment Growth Area, and the US-101/Oakland/Mabury Transportation Development Policy area. The site currently has an existing non-conforming gas/diesel fuel station with four fuel dispensers and an associated 1,300-square foot building, as well as two light industrial buildings that house a 9,700-square foot truck service and repair shop, and an 1,800-square foot auto glass and upholstery business. Access to the site is from three driveways along Oakland Road and two driveways along Commercial Street. The existing gas station facility operates 24 hours, 7 days a week.

Surrounding uses include a long-term residential trailer park to the north (Trailer Tel RV Park), industrial uses to the east, and commercial and industrial uses to the south across Commercial Street and to the west across Oakland Road.

2. **Project Description.** The proposed project would remove the existing building and fueling dispensers, and construct a 3,750-square foot convenience store with the off-sale of alcohol (beer and wine, approximately 381 square feet), a gas station with 12 auto retail fueling dispensers, interim fueling dispensers, canopies, and 12 card lock fueling dispensers, and 24-hour uses on an approximately 1.54-gross acre site. A 7-foot tall masonry sound wall will be constructed along the northern boundary of the site adjacent to the Trailer Tel RV Park.

The proposed project would have two employees and be conditioned to include an outdoor security surveillance system to deter loitering and vagrancy. The proposed project would remove the existing underground storage tanks and replace them with four underground storage tanks ranging from 8,000 to 20,000 gallons in size. The site would be accessible from Oakland Road or Commercial Street from two driveways.

3. **General Plan Conformance.**

The project has a General Plan designation of Combined Industrial Commercial. This designation allows a significant amount of flexibility for the development of a varied mixture of compatible commercial and industrial uses. The proposed service station with off-sale of beer and wine and 24-hour use would help achieve the commercial development goals of this designation by providing a convenience store within walking distance of existing residences to the north of the property. The use would also be consistent with the following General Plan policies:

- a. Neighborhood Serving 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 proposed convenience store would offer fresh fruit and convenience items like pre-packaged sandwiches, salads, and canned goods, meeting the intent of this policy.*

b. Noise and Vibration EC-1.1 Locate new development in areas where noise levels are appropriate for the proposed uses. Consider federal, state and City noise standards and guidelines as a part of new development review. Applicable standards and guidelines for land uses in San José include:

- i. EC-1.2 Minimize the noise impacts of new development on land uses sensitive to increased noise levels (Categories 1, 2, 3 and 6) by limiting noise generation and by requiring use of noise attenuation measures such as acoustical enclosures and sound barriers, where feasible. The City considers significant noise impacts to occur if a project would:
  - Cause the DNL at noise sensitive receptors to increase by five dBA DNL or more where the noise levels would remain “Normally Acceptable”; or
  - Cause the DNL at noise sensitive receptors to increase by three dBA DNL or more where noise levels would equal or exceed the “Normally Acceptable” level.
- ii. EC-1.3 Mitigate noise generation of new nonresidential land uses to 55 dBA DNL at the property line when located adjacent to existing or planned noise sensitive residential and public/quasi-public land uses.

*Analysis: A noise study was prepared for the project by J.C. Brennan and Associates (dated September 3, 2017) which analyzed the potential impacts of the project on adjacent residential and commercial properties and included a noise barrier analysis. Noise standards established in the General Plan serve as the City's noise thresholds for determining significant impacts under CEQA. The results of the noise study were evaluated against the Noise Element of the City of San José General Plan, which utilizes the Day Night Average (DNL). The DNL is a measurement of noise over time and compared to existing conditions. The General Plan guideline for acceptable exterior noise level limits noise to 70 dBA for industrial-commercial land uses, and further limits noise to 55 dBA, measured at the property line, if the land use is adjacent to noise sensitive uses such as residential uses, hospitals, or senior housing. Analysis from the noise study indicates that the exterior noise would be approximately 63 dB DNL at the distance of 50 feet from the center of the gas pump area. Based upon the distance to the nearest residential use (Trailer Tel RV Park) from the center of the gas pump area (approximately 97 feet), the predicted noise level associated with the gas station operations and parking lot is approximately 57 dBA DNL/Leq. In addition, as part of the project, a 7-foot tall masonry sound wall would be constructed to the northern property line, separating the proposed project and the RV park. This would further reduce the*

*operation noise from the proposed project to approximate 51 dBA DNL. Therefore, the project would comply with noise thresholds in Policy EC-1.2 and would not conflict with Policy EC-1.3.*

- iii. EC-1.7 Require construction operations within San José to use best available noise suppression devices and techniques and limit construction hours near residential uses per the City's Municipal Code. The City considers significant construction noise impacts to occur if a project located within 500 feet of residential uses or 200 feet of commercial or office uses would:

Involve substantial noise generating activities (such as building demolition, grading, excavation, pile driving, use of impact equipment, or building framing) continuing for more than 12 months.

*Analysis: For such large or complex projects, a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting or notification of construction schedules, and designation of a noise disturbance coordinator who would respond to neighborhood complaints will be required to be in place prior to the start of construction and implemented during construction to reduce noise impacts on neighboring residents and other uses.*

#### 4. Zoning Ordinance Compliance.

Land use. The site was rezoned from HI Heavy Industrial Zoning District to CIC Combined Industrial/Commercial. Per Municipal Code Section 20.50.010, the CIC Zoning District is intended for commercial or industrial uses, or a compatible mixture of these uses, that support the goals of the Combined Industrial/Commercial land use designation. The CIC Zoning District allows for a broad range of commercial uses with a local or regional market, including big box retail, and a narrower range of industrial uses, primarily industrial park in nature, but including some low-intensity light industrial uses. Gas stations, late night uses and the off-sale of alcoholic beverages are conditionally-permitted uses in the CIC Zoning District, and retail is a permitted use in this district.

**Setbacks and Height.** The proposed building conforms to the development regulations of the CIC Combined Industrial/ Commercial Zoning District. The front setback is 15 feet from the front property lines along Oakland Road and Commercial Street, which require a 15 feet setback. Parking and circulation for passenger vehicles is 20 feet from the front property lines, which require a 20-foot setback. No rear and side setbacks are required. The proposed building is 21 feet, 6 inches in height which is below the maximum allowable 60-foot height requirement.

**Noise.** Section 20.50.300 of the Zoning Ordinance states that the sound pressure level generated by any use or combination of uses shall not exceed 55 decibels(dB), which differs from the General Plan in that dB is a single maximum instantaneous event rather than noise measured over time and against existing conditions, at the

property line for any property used or zoned for residential purposes, without obtaining a Conditional Use Permit. According to the acoustical engineer for the project (email by J.C. Brennan and Associates, dated 1/22/17), the project would result in a maximum sound level of 61 dB at the residential property line to the north (mobile home park), with installation of a seven-foot tall sound barrier wall along this property line. While this exceeds the 55 dB standard, the existing maximum dB measured at the mobile home park ranged from 63 to 66 dB, according to the engineer, therefore the maximum projected 61 dB would be less than currently existing at the mobile home park. Furthermore, this level is within the lower average range established by the General Plan of being “conditionally acceptable” for residential uses (up to 60 dBA DNL is “normally acceptable”).

**Parking.** Pursuant to Section 20.90.060 of the San José Municipal Code, the gas station and proposed convenience store require one parking space per employee, plus one parking space per air and water pump service area, plus one parking space for information stop, plus one parking space per 200 square feet of retail floor area. The total floor area of the proposed convenience store equal 3,686 square feet which requires 16 parking spaces. The gas station would have two employees, air and water pump services and information stop, and therefore 20 parking spaces are required. The gas station and convenience store will provide a total of 19 parking spaces including 12 fueling station spaces and 8 truck fueling stations. Therefore, the gas station and convenience store meet the parking requirement under the Zoning Ordinance.

5. **City Council Policy 6-27, Evaluation of 24-Hour Uses.** The proposed project is subject to City Council Policy 6-27 Evaluation of 24-Hour Uses in that it would operate between the hours of 12:00 midnight and 6:00 a.m.

This policy is intended to provide guidelines for the appropriate development of establishments that operate on a 24-hour basis in order to avoid potentially significant problems that relate to proximity to residential units, crime, litter, loitering, and noise. The general guidelines include area use compatibility, use separation, outdoor activity, police issues, restroom facilities, noise, lighting, cleaning and maintenance, site improvements and mitigation management plans to address the above issues.

- a. **Area Use Compatibility**

The proposed use is compatible with the surrounding area. Although a residential use is located adjacent to the proposed late night use the adjacent residential use is separated by a sound wall and additional landscaping. Further the path of travel from the entrance of the convenience store to the nearest residential use is more than 400 feet; therefore, the impacts of the 24-hour use would be minimal on the surrounding neighborhood.

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b. Use Separation

The recommended separation between incompatible uses is 300 feet. The path of travel from the entrance of the convenience store to the nearest residential use is more than 400 feet. The adjacent residential property line is separated by a sound wall and additional landscaping provides adequate distance to avoid potentially significant noise issues.

c. Outdoor Activities

Only outdoor activities associated with the gas station are permitted. Activities may include gas pumping, automobile arrivals/departures, air and water maintenance.

d. Police Issues

As documented in their memorandum, dated January 18, 2018, the Police Department has expressed concern about the proposed project due to the over concentration of off-sale licenses. The Police Department is concerned with issues of public nuisances which include public intoxication, disorderly conduct, and vagrancy. The concerns of the Police Department have been addressed through conditions of approval included in the permit. Outdoor activities, aside from those associated with the gas station, are not proposed as part of this project and the project is conditioned to meet the policy requirements for lighting, cleaning and maintenance. The project will be further conditioned to provide signage for loitering and to include an outside surveillance system that maintains the recording for a minimum of thirty days. Further the off-sale of alcohol is limited to beer and wine within the proposed square footage. An Amendment would be required for any floor plan changes that would drastically change the nature of the business, which would allow for further review to address potential issues.

e. Restroom Facilities

The restroom facilities are provided inside the convenience store and shall remain open and available for customers during hours of operation.

f. Noise

Findings of the Noise Study prepared by J.C. Brennan and Associates (September 3, 2017) found that noise levels resulting from implementation of the project would not exceed noise impact thresholds established in the General Plan for the adjacent residential uses to the north of the site, due to the proposed construction of a seven-foot high sound wall along the adjoining property line. Section 20.50.300 of the Zoning Ordinance states that the sound pressure level generated by any use or combination of uses shall not exceed 55 dB at the property line for any property used or zoned for residential purposes, without obtaining a Conditional Use Permit. The Noise Study also found that the project would still result in a maximum sound level of 61 dB at the residential property line to the



north (mobile home park), even with the inclusion of a seven-foot sound barrier wall along this property line.

g. Lighting

The lighting fixtures approved through the Conditional Use Permit are appropriately shielded to shine down per the City's lighting policy and provide adequate lighting levels to assure security and discourage loitering.

h. Cleaning and Maintenance

Standard cleaning and maintenance conditions are included requiring the site to be maintained free of litter, refuse and debris.

i. Site Improvements

Analysis: Staff has determined the physical condition of the subject site to be adequate for the purposed 24-hour use. Landscaping and a sound wall is included along the perimeter of the site. Further staff has conditioned signs to deter loitering and a security surveillance system to prevent crime and vagrancy during late night hours.

j. Mitigation Management Plan

The proposed convenience store is required to comply with their ABC license with regards to serving alcoholic beverages only to persons aged 21 years and older. The noise, lighting, and cleaning/maintenance issues discussed above have been addressed through conditions of approval and the operational nature of the business; therefore, a separate mitigation management plan is not deemed necessary.

The proposed project is consistent with this policy and meet the general guidelines for 24-hour use.

## 6. Commercial Design Guidelines

**Site organization.** The structures on site are designed to accommodate all anticipated circulation patterns are is limited to two driveway cuts per street. No outdoor storage is permitted with this application.

**Building Design.** The buildings on site are architecturally consistent and share the same cornice roof across multiple structures. The new buildings and canopy will be more attractive and aesthetically harmonious than the existing gas station. The retail building incorporates an attractive metal awning and the columns on the canopy use stone veneer to create a change in materials and a more attractive base.

**Special Requirements.** Public restrooms are made available to employees and customers during all hour of operation. There is adequate stacking and circulation for both vehicles and trucks on site.

The proposed project is consistent with the commercial design guidelines for service stations in that it promotes adequate circulation and includes substantial architecture that contributes to the street presence. Circulation is defined with landscaping and includes special requirements for restroom service.

7. **Environmental Review.** An Initial Study (IS) and Mitigated Negative Declaration (MND) was prepared by the Director of Planning, Building, and Code Enforcement for the subject General Plan Amendment, Conforming Rezoning, and Conditional Use Permit. The documents were circulated for public review between October 17, 2017 to November 6, 2017.

The final IS/MND states that the proposed project will not have a significant effect on the environment. The primary environmental issues addressed in the final Initial Study include potential impacts on the physical development of the site on: biological resources, hazards and hazardous materials, and noise. The MND includes mitigation measures that would reduce the potentially significant project impacts from noise, hazardous materials and biological resources to a less-than-significant level. In addition to other environmental conditions, the mitigation measures are included in the Conditional Use Permit and in the Mitigation Monitoring and Reporting Program.

8. **Conditional Use Permit Findings.** The City Council concludes and finds, based on the analysis of the above facts in regards to the Conditional Use Permit and Determination of Public Convenience or Necessity, that:

- a. The conditional use permit, as approved:

- i. Is consistent with and will further the policies of the general plan, applicable specific plans and area development policies; and
- ii. Conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project; and
- iii. Is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency; and

*Analysis: As discussed above, the Conditional Use Permit would be consistent with the amended General Plan designation of Combined Industrial/Commercial and would be permitted in the CIC Combined Industrial/Commercial Zoning District. The proposed project is consistent with City Council Policy 6-27, Evaluation of 24-Hour Uses, as analyzed in the City Council Policy 6-27 section above.*

- b. 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 the property of other persons located within the vicinity of the site; or

- iii. Be detrimental to public health, safety or general welfare.

*Analysis: The Initial Study prepared for the project concluded that project noise would not exceed the instantaneous and 24-hour average noise levels of the Zoning Ordinance and General Plan, respectively with regard to adjacent residential uses and includes construction of a 7-foot, masonry sound wall located along the northern boundary near the residential uses reduce noise levels. The proposed sound wall is part of the project design. Any exterior lighting would be required to comply with the city's outdoor lighting requirements prohibiting light and glare from the use intruding upon the adjacent property. Further the proposed project was analyzed for potential public health impacts. The health risk assessment, dated September 18, 2017, found that operational and construction emissions would not be above the BAAQMD significant threshold and therefore would not create a significant impact. For these reasons, the project would not adversely affect the peace and welfare of persons residing or working in the surrounding area.*

- c. 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 areas;

*Analysis: The property for the proposed convenience store and fuel station would have an adequate size and shape to accommodate the yards, walls, fences, and parking and loading facilities, landscaping and other development features, as documented on the proposed project plans. Further, the Director of Public Works reviewed the project for on-site truck and vehicle circulation and found the proposed project to be acceptable.*

- d. 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: The subject site is adequately served by the adjacent public streets and can be directly accessed from Oakland Road. As stated above, the site is accessed on Oakland Road by two driveways and on Commercial Road by two driveways. Further as also stated above, the Director of Public Works has reviewed the project for on-site truck and vehicle circulation and deemed it acceptable.*

- e. 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 affect on adjacent property or properties.

*Analysis: The existing site includes a gas/diesel fuel station, a truck service and repair shop, and an auto glass and upholstery business, all of which would be replaced by a new gas station and convenience store with retail automobile fueling pumps and truck cardlock fueling pumps. The project would induce more vehicle traffic because of the renovation and proposed convenience store; however, with the impact fee payment, the increase in traffic would not have an unacceptable negative impact on adjacent properties or nearby intersections, as analyzed in the Initial Study prepared for the project and discussed above. The 2009 US-101/Oakland/Mabury Transportation Development Policy (TDP) outlines a number of intersection and other roadway improvements identified with the goal of reducing delay. This project will contribute to the program in order to reduce any impacts on the intersection. Outside of CEQA, the construction of the building and gas station would cause a temporary increase in noise to the adjacent mobile home park, but will be mitigated through the limited construction hours and other measures included in the Mitigation Monitoring and Reporting Program and this resolution for the project. Given these counterbalancing factors, the project will not have an unacceptable negative environmental effect on adjacent property or properties.*

#### **9. Site Development Permit Findings**

In order to make the Site Development Permit findings pursuant to San José Municipal Code Section 20.100.630, the Planning Commission must determine that:

- a. The Site Development Permit, as approved, is consistent with and will further the policies of the General plan and applicable specific plans and area development policies.

*Analysis: The Site Development Permit would be consistent with the amended General Plan designation of Combined Industrial/ Commercial, as discussed in the General Plan Conformance section above, as well as Policy LU-5.10.*

- b. The Site Development Permit, as approved, conforms with the Zoning Code and all other provisions of the San José Municipal Code applicable to the project.

*Analysis: As discussed in the Zoning Conformance section above, the proposed project is permitted in the Combined Industrial/Commercial Zoning District and also meets the development standards of this district. Furthermore, the project is consistent with the Off-Sale of Alcohol and Public Convenience and Necessity findings of the Municipal Code, as discussed herein. Therefore, the project conforms to the San José Municipal Code.*

- c. The Site Development Permit, as approved, is consistent with applicable City Council Policies, or counterbalancing considerations justify the inconsistency.

*Analysis: As discussed above, the proposed project is consistent with City Council Policy 6-27, Evaluation of 24-Hour Uses.*

- d. The interrelationship between the orientation, location, and elevation of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious.

*Analysis: The convenience store and fuel island canopy appropriately relate to each other in that the front of the store faces the fuel island canopy, facilitating efficient customer access between these two areas. The two structures are aesthetically harmonious in that they utilize similar colors and materials.*

- e. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood.

*Analysis: The building is oriented toward, and set back from the intersection of Oakland Road and Commercial Street, consistent with the street-facing building orientations and setbacks of the adjacent commercially- and industrially-developed properties. The maximum height of the buildings is 21 feet, 6 inches, which is compatible with the height of surrounding buildings, which range in height from 10 to 20 feet. The painted metal and stucco exterior of the building and canopy are compatible with the metal and plaster exteriors of the surrounding commercial and industrial development.*

- f. 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 affect on adjacent property or properties.

*Analysis: As discussed above, the project would induce more vehicle traffic because of the renovation and proposed convenience store; however, the increase in traffic would not have an unacceptable negative impact on adjacent properties or nearby intersections, as analyzed in the Initial Study prepared for the project. The construction of the building and gas station would cause a temporary increase in noise to the adjacent mobile home park, but will be mitigated through the limited construction hours and other measures included in the Mitigation Monitoring and Reporting Program for the project. Given these counterbalancing factors, the project will not have an unacceptable negative environmental effect on adjacent property or properties.*

- g. Landscaping, irrigation systems, walls, and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood.

*Analysis: The project will include new landscaping around the perimeter and along the boundary with the mobile home park, which will significantly upgrade the appearance of the existing site. Rooftop building mechanical systems will be*

*screened by the proposed parapet roof, and refuse containers will be stored within a block wall enclosure.*

- h. Traffic access, pedestrian access and parking are adequate.

*Analysis: The subject site is adequately served by the adjacent public streets and can be directly accessed from Oakland Road. Further as discussed above, the site provides adequate vehicle and truck circulation. The project will be accessible to pedestrians via the existing sidewalks along Oakland Road and Commercial Street.*

#### 10. Demolition Permit Evaluation Criteria

Under the provisions of Section 20.80.460 of the San José Municipal Code, prior to the issuance of any development permit, which allows for the demolition, removal or relocation of a building, the following shall be considered to determine whether the benefits of permitting the demolition, removal or relocation outweigh the impacts of the demolition, removal or relocation:

- a. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;

*Analysis: The existing buildings and site are in poor condition due to the obsolete design, degraded appearance and a lack of landscaping to provide visual relief. The demolition of the existing structures and construction of a new gas station, convenience store and site improvements would result in an enhanced and modernized facility.*

- b. The failure to approve the permit would jeopardize public health, safety or welfare;  
*Analysis: Not applicable.*

- c. The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood;

*Analysis: As discussed in the Site Development Permit section above, the permit will facilitate a project that is compatible with the surrounding development.*

- d. The approval of the permit should maintain the supply of existing housing stock in the City of San José;

*Analysis: Not applicable.*

- e. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;

*Analysis: As analyzed in the IS/MND, the building has been determined to have no historical significance; therefore, preservation of the building is not warranted.*

- f. Rehabilitation or reuse of the existing building would not be feasible; and

*Analysis: The buildings are of an obsolete design and/or are intended for auto truck repair and are unsuitable for a convenience store. They cannot be feasibly rehabilitated or reused to meet the objectives of the project, which are to construct a modern gas station and convenience store.*

- g. The demolition, removal or relocation of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.

*Analysis: Not applicable.*

Based on consideration of the above, the benefits of permitting the demolition outweigh the impacts of demolishing the existing structures.

**11. Required Findings for Off-Sale of Alcohol.** A Conditional Use Permit may be issued pursuant to Section 20.80.900 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 (4) establishments that provide alcoholic beverages for off-site consumption within a 1,000-foot radius from the proposed location.

*Analysis: There is no other use involving the off-sale of alcoholic beverages within either a 500-foot or a 1,000-foot radius of the proposed 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 stated above, the proposed use will not result in more than four establishments that provide alcoholic beverages for off-site consumption within a 1,000-foot radius of the proposed location. As documented in their memorandum, dated January 18, 2018, the Police Department has expressed concern about the proposed project due to the over-concentration of off-sale licenses within the*

*census tract. The Police Department is concerned with issues of public nuisances which include public intoxication, disorderly conduct and vagrancy. The concerns of the Police Department have been addressed through conditions of approval included in the permit. Outdoor activities are not proposed as part of this project and the project is conditioned to meet the policy requirements for lighting, cleaning and maintenance. The project will be further conditioned to provide signage for loitering and to include a surveillance system outside that maintains the recording for a minimum of thirty days. Further, the sale of alcohol is limited to the proposed 381-square feet, or 10 percent of gross square footage, and to only beer and wine. An amendment to the Conditional Use Permit would be required for any floor plan changes that would substantially change the nature of the business, which would allow for further review to address potential issues.*

*Therefore, this finding **can** be made.*

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

*Analysis: The proposed site is not located closer than 500 feet from any child care center, social service agency, residential care facility, residential service facility, elementary school, secondary school, or college or university. The project site is within 150 feet from residentially zoned properties; however, the building is oriented towards Oakland Road with the side of the building facing the residential uses and the entrance facing Oakland Road. Additionally, the residential neighborhood is separated by landscaping and a 7-foot masonry sound wall. The path of travel from the entrance of the convenience store is over 500 feet from the closest residential entrance and oriented toward Oakland Road. Therefore, this finding **can** be made.*

**12. 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: Per the Department of Alcoholic Beverage Control and Census data, the subject site is located within a census tract where the ratio of existing retail off-sale license to population exceeds the ratio in the County as a whole. The census tract allows for two off-sale ABC licenses and if approved there would be a total of three off-sale ABC licenses. However, the subject site is not in a high crime area as determined by the San José Police Department in its letter dated January 18, 2018. Due to the overconcentration in the project site's Census Tract, a Determination of Public Convenience or Necessity is required in order for ABC to be able to issue a license for this off-sale use.*

Chapter 6.84 of Title 6 of the San José Municipal Code identifies the process and findings related specifically to off-sale of alcohol and specifies that a PCN can only be issued 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 Neighborhoods 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: This proposed use is not in an SNI or neighborhood revitalization area or other area designated by the City for targeted neighborhood enhancement services or programs. As documented in their memorandum, dated January 18, 2018, the Police Department has expressed concern about the proposed project due to the over concentration of off-sale licenses. The Police Department is concerned with issues of public nuisances which include public intoxication, disorderly conduct, and vagrancy. The concerns of the Police Department have been addressed through conditions of approval included in the permit. Outdoor activities are not proposed as part of this project and the project is conditioned to meet the policy requirements for lighting, cleaning and maintenance. The project will be further conditioned to provide signage for loitering and to include a surveillance system outside that maintains the recording for a minimum of thirty days. Further the off-sale of alcohol is limited to beer and wine and the proposed square footage of 381 square feet. An amendment to the Conditional Use Permit would be required for any floor plan changes that would drastically change the*

*nature of the business, which would allow for further review to address potential issues. Therefore, this finding **can** be made.*

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

*Analysis: The proposed use would not result in more than four off-sale establishments in a 1,000-foot radius. Since the number of off-sale sites within a 1,000-foot radius is less than four this finding **can** be made.*

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

*Analysis: The proposed use is not within 500 feet of a school, day care center, public park, social services agency, or residential care or service facility. As noted above, the proposed off-sale outlet is located within 150 feet of existing residences, and therefore, this finding **cannot** be made. However, the building is oriented towards Oakland Road with the side of the building facing the residential uses and the entrance facing Oakland Road. Additionally, the residential neighborhood is separated by landscaping and a 7-foot masonry sound wall. The path of travel from the entrance of the convenience store is over 500 feet from the closest residential entrance and oriented toward Oakland Road.*

- 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 and will be incidental to the convenience store (381 square feet out of 3,750 square feet, approximately 10%); 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 off-premise sale of alcoholic beverages would be a part of a larger convenience store. The convenience store would serve the adjacent underserved population and provide fresh fruits, and convenience store items such as pre-packaged sandwiches, salads and canned goods at a convenient walking distance for the residential area adjacent to the site. This finding **can** 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 beverage would enhance the service of the convenience store and contribute to the vitality of the existing commercial area. The convenience store would operate 24 hours and alcohol sales would be regulated by the ABC license. Therefore, the project 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. *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.

*This is a convenience store which provides a selection of fresh fruit, convenience store items, wine and beer. The nearest existing full-service grocery store (Sprouts Farmers Market) in the area is approximately 1.5 miles away. The off-site sale of beer and wine will enhance the convenience store and provide more options for patrons and residents. This finding **can** be made.*

### 13. Public Benefit

As stated above, per Section 6.84.030.E, if not all of the findings above can be made, the City Council can grant the PCN finding if the City Council first:

1. Determine that not all these findings can be made; and

*Analysis: Finding 3 of San José Municipal Code Section 6.84.030 cannot be made, because the sale of alcoholic beverages will occur within 150 feet of a residence.*

2. Identify and find that a significant and overriding public benefit or benefits will be provided by the proposed use.

*Although Finding 3 cannot be made, the building is oriented towards Oakland Road with the side of the building facing the residential uses. Additionally, the residential neighborhood is separated by a landscape area and sound wall. The path of travel from the entrance of the convenience store is over 500 feet from the closest residential entrance and oriented toward Oakland Road; and access to the entrance to the grocery store is over 400 feet from the closest residential uses via automobile or walking. Therefore, the degree of use separation intended by the 150-foot distance requirement is still achieved.*

*The significant public benefit provided by the use is convenient retail access to the adjacent neighborhood. The nearest existing full-service grocery store (Sprouts Farmers Market) in the area is approximately 1.5 miles away. Therefore, the proposed*

*off-sale use enhances access and convenience for the surrounding community, and is intended to be incidental and ancillary to the retail that provides fresh fruit and convenience items to the community, consistent with General Plan Neighborhood Serving Commercial Policy LU-5.10.*

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

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

4. **Conformance to Plans.** The development of the site shall conform to the approved Conditional Use Permit plans entitled, “Rotten Robbie 1202 Oakland Road, San José,” dated January 10, 2018 on file with the Department of Planning, Building and Code Enforcement, as may be amended and approved by the Director of Planning, Building, and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24). The plans are referred to herein as the “approved plans” or the “Approved Plan Set.”
5. **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.
6. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws, regulations and required permits. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance.
7. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
8. **Use Authorization.** This Conditional Use Permit and Site Development Permit authorize the demolition of an existing buildings, and the construction of a new 3,750 square foot convenience store with the off-sale of beer and wine, a gas station with 6 auto retail fueling dispensers (12 pumps), canopies, and 12 card lock fueling dispensers. Hours of operation for the commercial use shall be allowed to operate between 24 hours.

9. **Off-Sale of Alcoholic Beverages.** This Permit authorizes the off-sale of alcoholic beverages at the proposed convenience store and successors of said tenant spaces whereby the subsequent tenant maintains a similar use as deemed by the Director of Planning.
10. **Outdoor Storage.** No outdoor storage is allowed or permitted.
11. **Outdoor Security.** Outdoor security shall be provided by a surveillance system that maintains a recording for a minimum of thirty days.
12. **Service Station Requirements.** Service stations shall provide and maintain complementary compressed air, water, car window washing equipment, and men's and women's restrooms for the welfare and convenience of all customers and the public during all hours of operation.
13. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Nor shall the use adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area or be detrimental to public health, safety or general welfare. Any such nuisance shall be abated immediately upon notice by the City.
14. **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.
15. **Anti-Graffiti.** The permittee shall remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement.
16. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris.
17. **Outdoor Uses.** There shall be no outdoor uses except those explicitly approved herein.
18. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
19. **Colors and Materials.** All building colors and materials are to be as specified on the Approved Plan Set.
20. **Street Cleaning and Dust Control.** During construction, the permittee shall sweep and wash down the public streets each working day. In any on-site area visible to the public from the public right-of-way, the site shall be clean of debris, rubbish and trash at least once a week. The permittee shall implement effective dust control measures to prevent dust and other airborne matter from leaving the construction site.
21. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of

any residential unit. Interior construction that is not audible at the adjacent property lines is permitted on Saturday and Sunday between 9:00 a.m. and 6:00 p.m.

22. **Landscaping.** Planting and irrigation shall be provided by the permittee for all landscaped areas as indicated on the final Approved Plan Set. Landscaped areas shall be improved as per the final plans, maintained and watered and all dead plant material shall be removed and replaced by the property owner. Irrigation shall be installed in accordance with the State Model Water Efficient Landscape Ordinance Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
23. **Irrigation Standards.** The permittee shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that shall conform to the Zonal Irrigation Plan in the Approved Plan Set. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
24. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
25. **Recycling.** It is required that scrap construction and demolition debris be recycled instead of disposing of it in a landfill. An infrastructure exists within San José to accommodate such recycling efforts. Integrated Waste Management staff can provide assistance on how to recycle construction and demolition debris from the project, including information on where to conveniently recycle the material. Additional information may be found at <http://www.sjrecycles.org/construction-demolition/cddd.asp> or by contacting the Commercial Solid Waste Program at (408) 535-8550.
26. **Lighting.** Light fixtures shall be designed and installed to minimize impacts on adjacent properties, while providing adequate lighting levels to assure security and discourage loitering in parking areas. Light levels of 1.5 or greater foot-candles average illumination at ground surface are encouraged. Twenty-four-hour uses shall install additional parking lot lighting in the "Designated Parking Area" and such lighting may be other than low pressure sodium unless otherwise permitted per the City Outdoor Lighting Policy, as amended.
27. **Police Issues.** The applicant shall maintain a liaison with the Police Department to effectively control crime, gang, drug and other police problems which may arise from the operation between 12:00 midnight and 6:00 a.m.

28. **Air Quality.** Consistent with guidance from the Bay Area Air Quality Management District (BAAQMD), the following measures shall be required of construction contracts and specifications for the project.

- a. **Demolition.** The permittee has the approval to demolish the existing building. The following controls shall be implemented during demolition:
  - i. Watering shall be used to control dust generation during demolition of structures and break-up of pavement.
  - ii. Cover all trucks hauling demolition debris from the site.
  - iii. Use dust-proof chutes to load debris into trucks whenever feasible.
- b. **Construction.** The following controls shall be implemented at all construction sites:
  - i. Water all active construction areas at least twice daily and more often during windy periods; active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with nontoxic stabilizers to control dust;
  - ii. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard;
  - iii. Pave, apply water three times daily, or apply (nontoxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites;
  - iv. Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas at construction sites; water sweepers shall vacuum up excess water to avoid runoff related impacts to water quality;
  - v. Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets;
  - vi. Apply nontoxic soil stabilizers to inactive construction areas;
  - vii. Enclose, cover, water twice daily, or apply nontoxic soil binders to exposed stockpiles (dirt, sand, etc.);
  - viii. Limit traffic speeds on unpaved roads to 15 mph;
  - ix. Install sandbags or other erosion control measures to prevent silt runoff to public roadways;
  - x. Replant vegetation in disturbed areas as quickly as possible;
  - xi. Install base rock at entryways for all exiting trucks, and wash off the tires or tracks of all trucks and equipment in designated areas before leaving the site;



- xii. Suspend excavation and grading activity when winds (instantaneous gusts) exceed 25 mph.

**29. Building Clearance for Issuing Permits.** Prior to the issuance of any Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:

- a. **Construction Plans.** This permit file number, CP17-015, 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. **Construction Conformance.** A project construction 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 final inspection approval by the Building Department, permittee shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms to all applicable requirements of the subject Permit, including the plan sets. To prevent delays in the issuance of Building Permits, please notify Planning Division staff at least one week prior to the final Building Division inspection date.

**30. Fire Department Requirements.** The project shall conform to the requirements of the Fire Department at the building plan review stage to the satisfaction of the Chief Building Official and the Fire Chief.

**31. Storm Water Stenciling.** All drain inlets shall be labeled "No Dumping-Flows to Bay." Please contact the City of San José, Department of Public Works, at (408) 277-5161 to obtain free stencils.

**32. Protection of Storm Drains.** No hazardous materials, paint, rinse water, or construction sediments or debris shall be allowed to enter the public right-of-way or any storm drain inlet.

**33. Public Work.** Public Works Clearance for Building Permit(s) or Map Approval: Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the permittee will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: <http://www.sanjoseca.gov/index.aspx?nid=2246>.

- a. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered

plans, bonds, insurance, a completion deposit, and engineering and inspection fees.

- b. **Transportation:** This project is subject to the City's US-101/Oakland/Mabury Transportation Development Policy. The US-101/Oakland/Mabury Transportation Development Policy requires new residential and commercial developments that generate vehicular trips at either of the Policy Interchanges to pay a Traffic Impact Fee (TIF) towards the upgrade of US-101/Oakland Interchange and construction of US-101/Mabury Interchange. The 2018 TIF is \$36,847 for each project peak hour trip that travels through either the US-101/Oakland or US-101/Mabury Interchanges. This fee is subject to an annual escalation on January 1st per the Engineering News-Record Construction Cost Index for San Francisco. Based on 2018 rates and 52 trips, the project's TIF is approximately \$1,916,044.
- c. **Grading/Geology:**
  - i. A grading permit is required prior to the issuance of a Public Works Clearance.
  - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2013 California Plumbing Code or submit a stamped and signed alternate engineered design for Public Works discretionary approval and should be designed to convey a 10-year storm event.
  - iii. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
  - iv. Because this project involves a land disturbance of one or more acres, the applicant is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.

- v. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed, and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.
- d. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.
  - i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 8-14.
  - ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
- e. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
- f. **Flood: Zone D:** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for Zone D.
- g. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable prior to Public Works clearance.
- h. **Undergrounding:** Commercial Street and Oakland Road are designated streets and are subject to the In-Lieu Undergrounding fee. The In-Lieu Undergrounding fee is a percentage of the intensification of the project and shall be paid to the City for all frontage adjacent to Commercial Street and Oakland Road prior to issuance of a Public Works Clearance. 100 percent of the base fee in place at the time of payment will be due. Currently, the 2018 base fee is \$469 per linear foot of frontage and is subject to change

every January 31st based on the Engineering News Record's City Average Cost Index for the previous year. The project will be required to pay the current rate in effect at the time the Public Works Clearance is issued (based on 2018 rate, the fee is approximately \$278,586).

i. **Street Improvements:**

- i. Reconstruct handicap at the corner of Oakland Road and Commercial Street to City and ADA standard.
- ii. Remove closed driveways on Oakland Road and replace with City standard sidewalk.
- iii. Reconstruct and combine the two north most driveways on Oakland Road into (one) 32-foot wide driveway.
- iv. Proposed driveway width to be 32 feet.
- v. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
- vi. Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.

j. **Easement:** As part of the City's area wide development plan, the intersection of Oakland Road and Commercial Street will be improved. Because Commercial Street will be widened, an irrevocable offer of dedication will be required.

k. **Electrical:**

- i. Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
- ii. Locate and protect existing electrical conduit in driveway and/or sidewalk construction.
- iii. Provide clearance for electrical equipment from driveways, and relocate driveway or electrolier. The minimum clearance from driveways is 10 feet in commercial areas and 5 feet in residential areas.

l. **Street Trees:** The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in in cut-outs at the back of curb.

Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.

**34. Revocation, Suspension, Modification.** This Conditional Use Permit and Site Development Permit may be revoked, suspended or modified by the Planning Commission, or the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Conditional Use Permit or Site Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

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

APPROVED and issued this \_\_\_ day of \_\_\_\_\_ 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk

LEGAL DESCRIPTION

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

PARCEL ONE:

BEGINNING AT AN IRON PIPE SET ON THE EASTERLY LINE OF THE SAN JOSE-OAKLAND ROAD, STATE HIGHWAY (100.00 FEET IN WIDTH), AT THE NORTHWESTERLY CORNER OF THAT CERTAIN 37.752 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM FORTUNATO PIERACCI, ET AL, TO GEORGE WILSON, ET UX, DATED DECEMBER 22, 1956, RECORDED DECEMBER 31, 1956 IN BOOK 3696 OFFICIAL RECORDS, PAGE 253, SANTA CLARA COUNTY RECORDS; THENCE NORTH 49° 28' 20" EAST ALONG A NORTHWESTERLY LINE OF SAID 37.752 ACRE TRACT 23.98 FEET TO A POINT ON A LINE WHICH IS PARALLEL WITH AND DISTANT EASTERLY 70.00 FEET AT RIGHT ANGLES FROM THE CENTER LINE OF SAID SAN JOSE OAKLAND ROAD, SAID LAST MENTIONED POINT BEING THE TRUE POINT OF BEGINNING OF THE PARCEL OF LAND TO BE DESCRIBED; THENCE FROM SAID TRUE POINT OF BEGINNING NORTH 49° 28' 20" EAST ALONG SAID NORTHWESTERLY LINE OF THE 37.752 ACRE TRACT 161.00 FEET; THENCE SOUTH 39° 45' 26" EAST 280.03 FEET TO A POINT ON THE NORTHWESTERLY LINE OF A PROPOSED STREET (80.00 FEET IN WIDTH); THENCE SOUTH 49° 28' 20" WEST ALONG SAID LAST NAMED LINE 10.21 FEET; THENCE CONTINUING ALONG SAID NORTHWESTERLY LINE OF SAID PROPOSED STREET (80.00 FEET IN WIDTH), SOUTHWESTERLY ON THE ARC OF A CURVE TO THE RIGHT, TANGENT TO THE PRECEDING COURSE, WITH A RADIUS OF 210.00 FEET, THROUGH A CENTRAL ANGLE OF 33° 30' 10", FOR AN ARC DISTANCE OF 122.79 FEET; THENCE CONTINUING ALONG SAID NORTHWESTERLY LINE OF SAID PROPOSED STREET SOUTH 82° 58' 30" WEST 141.24 FEET; THENCE WESTERLY ALONG THE ARC OF A CURVE TO THE RIGHT, TANGENT TO THE PRECEDING COURSE, WITH A RADIUS OF 20.00 FEET, THROUGH A CENTRAL ANGLE OF 90° 00', FOR AN ARC DISTANCE OF 31.42 FEET TO A POINT ON A LINE WHICH IS PARALLEL WITH AND DISTANT EASTERLY 70.00 FEET AT RIGHT ANGLES FROM SAID CENTER LINE OF SAN JOSE-OAKLAND ROAD; THENCE NORTH 7° 01' 30" WEST ALONG SAID LAST NAMED PARALLEL LINE 167.22 FEET TO THE TRUE POINT OF BEGINNING.

BEING A PORTION OF 500 ACRE LOT 18, SAN JOSE PUEBLO LANDS OF THE CITY OF SAN JOSE.  
EXCEPTING THEREFROM ALL THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT AN IRON PIPE SET IN THE EASTERLY LINE OF THE SAN JOSE-OAKLAND ROAD, STATE HIGHWAY (100.00 FEET IN WIDTH), AT THE NORTHWESTERLY CORNER OF THAT CERTAIN 37.752 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM FORTUNATO PIERACCI, ET AL, TO GEORGE WILSON, ET UX, DATED DECEMBER 22, 1956, RECORDED DECEMBER 31, 1956 IN BOOK 3696 OFFICIAL RECORDS, PAGE 253, SANTA CLARA COUNTY RECORDS; THENCE FROM SAID POINT OF BEGINNING NORTH 49° 28' 20" EAST ALONG A NORTHWESTERLY LINE OF SAID 37.752 ACRE TRACT FOR A DISTANCE OF 23.98 FEET TO A POINT ON A LINE WHICH IS PARALLEL WITH AND DISTANT EASTERLY 70.00 FEET AT RIGHT ANGLES FROM THE CENTER LINE OF SAID SAN JOSE-OAKLAND ROAD; THENCE SOUTH 7° 01' 30" EAST ALONG SAID PARALLEL LINE FOR A DISTANCE OF 27.22 FEET AND THE TRUE POINT OF BEGINNING OF THE TRACT OF LAND TO BE DESCRIBED; THENCE FROM SAID TRUE POINT OF BEGINNING SOUTH 7° 01' 30" EAST ALONG SAID PARALLEL LINE FOR A DISTANCE OF 140.00 FEET; THENCE EASTERLY ALONG AN ARC OF A CURVE TO THE LEFT, TANGENT TO THE PRECEDING COURSE, WITH A RADIUS OF 20.00 FEET, THROUGH A CENTRAL ANGLE OF 90° 00', FOR AN ARC DISTANCE OF 31.42 FEET TO A POINT ON THE NORTHWESTERLY LINE OF A PROPOSED STREET (80.00 FEET IN WIDTH); THENCE NORTH 82° 58' 30" EAST ALONG SAID LAST MENTIONED LINE FOR A DISTANCE OF 110.00 FEET; THENCE NORTH 14° 09' 24" WEST 161.248 FEET TO A POINT WHICH BEARS NORTH 82° 58' 30" EAST 110.00 FEET FROM THE SAID TRUE POINT OF BEGINNING; THENCE SOUTH 82° 58' 30" WEST 110.00 FEET TO THE

TRUE POINT OF BEGINNING.

PARCEL TWO:

AN EASEMENT FOR THE PURPOSE OF INGRESS AND EGRESS AND FOR THE INSTALLATION AND MAINTENANCE OF PUBLIC UTILITIES OVER A STRIP OF LAND, 80.00 FEET IN WIDTH, THE CENTER LINE OF WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
BEGINNING AT A POINT ON THE EASTERLY LINE OF THE SAN JOSE-OAKLAND ROAD (100.00 FEET IN WIDTH) DISTANT THEREON SOUTH 7° 01' 30" EAST 213.98 FEET FROM THE NORTHWESTERLY CORNER OF THAT CERTAIN 37.752 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM FORTUNATO PIERACCI, ET AL, TO GEORGE WILSON, ET UX, DATED DECEMBER 22, 1956, RECORDED DECEMBER 31, 1956 IN BOOK 3696 OFFICIAL RECORDS, PAGE 253, SANTA CLARA COUNTY RECORDS; THENCE NORTH 82° 58' 30" EAST 181.24 FEET; THENCE EASTERLY ON A CURVE TO THE LEFT, WITH A RADIUS OF 250.00 FEET; THROUGH AN ANGLE OF 33° 30' 10", FOR AN ARC DISTANCE OF 146.18 FEET; THENCE NORTH 49° 28' 20" EAST AND PARALLEL WITH THE NORTHWESTERLY LINE OF SAID 37.752 ACRE TRACT 920.44 FEET TO THE TERMINUS OF SAID EASEMENT.

EXCEPTING THEREFROM ALL THAT PORTION LYING WITH IN THE PARCEL OF LAND CONVEYED TO SEBASTIAN NOLA AND FRANCES ANNA NOLA, AS TRUSTEES UNDER TRUST DATED NOVEMBER 30, 1982 FROM CITY OF SAN JOSE, A MUNICIPAL CORPORATION, BY DEED RECORDED JUNE 28, 1989, INSTRUMENT NO. 10161220, BOOK L001, PAGE 338, SANTA CLARA COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT AN IRON PIPE SET IN THE EASTERLY LINE OF THE SAN JOSE-OAKLAND ROAD, STATE HIGHWAY (100.00 FEET IN WIDTH), AT THE NORTHWESTERLY CORNER OF THAT CERTAIN 37.752 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM FORTUNATO PIERACCI, ET AL, TO GEORGE WILSON, ET UX, DATED DECEMBER 22, 1956, RECORDED DECEMBER 31, 1956 IN BOOK 3696 OFFICIAL RECORDS, PAGE 253, SANTA CLARA COUNTY RECORDS; THENCE FROM SAID POINT OF BEGINNING NORTH 49° 28' 20" EAST ALONG A NORTHWESTERLY LINE OF SAID 37.752 ACRE TRACT FOR A DISTANCE OF 23.98 FEET TO A POINT ON A LINE WHICH IS PARALLEL WITH AND DISTANT EASTERLY 70.00 FEET AT RIGHT ANGLES FROM THE CENTER LINE OF SAID SAN JOSE-OAKLAND ROAD; THENCE SOUTH 7° 01' 30" EAST ALONG SAID PARALLEL LINE FOR A DISTANCE OF 27.22 FEET AND THE TRUE POINT OF BEGINNING OF THE TRACT OF LAND TO BE DESCRIBED; THENCE FROM SAID TRUE POINT OF BEGINNING SOUTH 7° 01' 30" EAST ALONG SAID PARALLEL LINE FOR A DISTANCE OF 140.00 FEET; THENCE EASTERLY ALONG AN ARC OF A CURVE TO THE LEFT, TANGENT TO THE PRECEDING COURSE, WITH A RADIUS OF 20.00 FEET, THROUGH A CENTRAL ANGLE OF 90° 00', FOR AN ARC DISTANCE OF 31.42 FEET TO A POINT IN THE NORTHWESTERLY LINE OF A PROPOSED STREET (80.00 FEET IN WIDTH); THENCE NORTH 82° 58' 30" EAST ALONG SAID LAST MENTIONED LINE FOR A DISTANCE OF 110.00 FEET; THENCE NORTH 14° 09' 24" WEST 161.248 FEET TO A POINT WHICH BEARS NORTH 82° 58' 30" EAST 110.00 FEET FROM THE SAID TRUE POINT OF BEGINNING; THENCE SOUTH 82° 58' 30" WEST 110.00 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL THREE:

BEGINNING AT AN IRON PIPE SET IN THE EASTERLY LINE OF THE SAN JOSE-OAKLAND ROAD, STATE HIGHWAY (100.00 FEET IN WIDTH), AT THE NORTHWESTERLY CORNER OF THAT CERTAIN 37.752 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM FORTUNATO PIERACCI, ET AL, TO GEORGE WILSON, ET UX, DATED DECEMBER 22, 1956, RECORDED DECEMBER 31, 1956 IN BOOK 3696 OFFICIAL RECORDS, PAGE 253, SANTA CLARA COUNTY RECORDS; THENCE FROM SAID POINT OF BEGINNING NORTH 49° 28' 20" EAST ALONG A

NORTHWESTERLY LINE OF SAID 37.752 ACRE TRACT FOR A DISTANCE OF 23.98 FEET TO A POINT ON A LINE WHICH IS PARALLEL WITH AND DISTANT EASTERLY 70.00 FEET AT RIGHT ANGLES FROM THE CENTER LINE OF SAID SAN JOSE-OAKLAND ROAD; THENCE SOUTH 7° 01' 30" EAST ALONG SAID PARALLEL LINE FOR A DISTANCE OF 27.22 FEET AND THE TRUE POINT OF BEGINNING OF THE TRACT OF LAND TO BE DESCRIBED; THENCE FROM SAID TRUE POINT OF BEGINNING SOUTH 7° 01' 30" EAST ALONG SAID PARALLEL LINE FOR A DISTANCE OF 140.00 FEET; THENCE EASTERLY ALONG AN ARC OF A CURVE TO THE LEFT, TANGENT TO THE PRECEDING COURSE, WITH A RADIUS OF 20.00 FEET, THROUGH A CENTRAL ANGLE OF 90° 00', FOR AN ARC DISTANCE OF 31.42 FEET TO A POINT IN THE NORTHWESTERLY LINE OF A PROPOSED STREET (80.00 FEET IN WIDTH); THENCE NORTH 82° 58' 30" EAST ALONG SAID LAST MENTIONED LINE FOR A DISTANCE OF 110.00 FEET; THENCE NORTH 14° 09' 24" WEST 161.248 FEET TO A POINT WHICH BEARS NORTH 82° 58' 30" EAST 110.00 FEET FROM THE SAID TRUE POINT OF BEGINNING; THENCE SOUTH 82° 58' 30" WEST 110.00 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL FOUR:

AN EASEMENT FOR THE PURPOSE OF INGRESS AND EGRESS AND FOR THE INSTALLATION AND MAINTENANCE OF PUBLIC UTILITIES OVER A STRIP OF LAND, 80.00 FEET IN WIDTH, THE CENTER LINE OF WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY LINE OF THE SAN JOSE-OAKLAND ROAD (100.00 FEET IN WIDTH) DISTANT THEREON SOUTH 7° 01' 30" EAST 213.98 FEET FROM THE NORTHWESTERLY CORNER OF THAT CERTAIN 37.752 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM FORTUNATO PIERACCI, ET AL, TO GEORGE WILSON, ET UX, DATED DECEMBER 22, 1956, RECORDED DECEMBER 31, 1956 IN BOOK 3696 OFFICIAL RECORDS, PAGE 253, SANTA CLARA COUNTY RECORDS; THENCE NORTH 82° 58' 30" EAST 181.24 FEET; THENCE EASTERLY ON A CURVE TO THE LEFT, WITH A RADIUS OF 250.00 FEET; THROUGH AN ANGLE OF 33° 30' 10", FOR AN ARC DISTANCE OF 146.18 FEET; THENCE NORTH 49° 28' 20" EAST AND PARALLEL WITH THE NORTHWESTERLY LINE OF SAID 37.752 ACRE TRACT 920.44 FEET TO THE TERMINUS OF SAID EASEMENT.

EXCEPTING THEREFROM ALL THAT PORTION LYING WITHIN THE PARCEL OF LAND CONVEYED TO SEBASTIAN NOLA AND FRANCES ANNA NOLA, AS TRUSTEES UNDER TRUST DATED NOVEMBER 30, 1982 FROM CITY OF SAN JOSE, A MUNICIPAL CORPORATION, BY DEED RECORDED JUNE 28, 1989, INSTRUMENT NO. 10161220, BOOK L001, PAGE 338, SANTA CLARA COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT AN IRON PIPE SET IN THE EASTERLY LINE OF THE SAN JOSE-OAKLAND ROAD, STATE HIGHWAY (100.00 FEET IN WIDTH), AT THE NORTHWESTERLY CORNER OF THAT CERTAIN 37.752 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM FORTUNATO PIERACCI, ET AL, TO GEORGE WILSON, ET UX, DATED DECEMBER 22, 1956, RECORDED DECEMBER 31, 1956 IN BOOK 3696 OFFICIAL RECORDS, PAGE 253, SANTA CLARA COUNTY RECORDS; THENCE FROM SAID POINT OF BEGINNING NORTH 49° 28' 20" EAST ALONG A NORTHWESTERLY LINE OF SAID 37.752 ACRE TRACT FOR A DISTANCE OF 23.98 FEET TO A POINT ON A LINE WHICH IS PARALLEL WITH AND DISTANT EASTERLY 70.00 FEET AT RIGHT ANGLES FROM THE CENTER LINE OF SAID SAN JOSE-OAKLAND ROAD; THENCE SOUTH 7° 01' 30" EAST ALONG SAID PARALLEL LINE FOR A DISTANCE OF 27.22 FEET AND THE TRUE POINT OF BEGINNING OF THE TRACT OF LAND TO BE DESCRIBED; THENCE FROM SAID TRUE POINT OF BEGINNING SOUTH 7° 01' 30" EAST ALONG SAID PARALLEL LINE FOR A DISTANCE OF 140.00 FEET; THENCE EASTERLY ALONG AN ARC OF A CURVE TO THE LEFT, TANGENT TO THE PRECEDING COURSE, WITH A RADIUS OF 20.00 FEET, THROUGH A CENTRAL ANGLE OF 90° 00', FOR AN ARC DISTANCE OF 31.42 FEET TO A POINT ON THE NORTHWESTERLY LINE OF A PROPOSED STREET (80.00 FEET IN WIDTH); THENCE NORTH 82° 58' 30" EAST ALONG SAID



EXHIBIT "A"  
(File Nos. C17-008; CP17-015)

LAST MENTIONED LINE FOR A DISTANCE OF 110.00 FEET; THENCE NORTH 14° 09' 24" WEST 161.248 FEET TO A POINT WHICH BEARS NORTH 82° 58' 30" EAST 110.00 FEET FROM THE SAID TRUE POINT OF BEGINNING; THENCE SOUTH 82° 58' 30" WEST 110.00 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL FIVE:

BEGINNING AT AN IRON PIPE SET ON THE EASTERLY LINE OF OAKLAND ROAD, FORMERLY SAN JOSE-OAKLAND ROAD, AT THE NORTHWESTERLY CORNER OF THAT CERTAIN 37.752 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM FORTUNATO PIERACCI, ET AL, TO GEORGE WILSON, ET UX, DATED DECEMBER 22, 1956, RECORDED DECEMBER 31, 1956 IN BOOK 3696 OF OFFICIAL RECORDS, PAGE 253, SANTA CLARA COUNTY RECORDS; THENCE NORTH 49° 13' 31" EAST (DEED BEARING NORTH 49° 28' 20" EAST) 23.98 FEET; THENCE SOUTH 7° 16' 19" EAST (DEED BEARING NORTH 7° 01' 30" WEST) 167.22 FEET TO THE TRUE POINT OF BEGINNING; ALONG THE NORTHERLY LINE OF COMMERCIAL STREET WHICH IS TO BE VACATED HERewith THE FOLLOWING COURSES; THENCE ALONG A TANGENT CURVE TO THE LEFT WITH A RADIUS OF 20.00 FEET THROUGH A CENTRAL ANGLE OF 90° 00' 00" AND AN ARC LENGTH OF 31.42 FEET; THENCE NORTH 82° 43' 41" EAST (DEED BEARING NORTH 82° 58' 30" EAST) 141.24 FEET; THENCE ALONG A TANGENT CURVE TO THE LEFT WITH A RADIUS OF 210.00 FEET THROUGH A CENTRAL ANGLE OF 33° 30' 10" AND AN ARC LENGTH OF 122.79 FEET; THENCE ALONG THE NEW NORTHERLY LINE OF COMMERCIAL STREET THE FOLLOWING COURSES SOUTH 49° 13' 31" WEST 77.65 FEET; THENCE ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 960.00 FEET THROUGH A CENTRAL ANGLE OF 8° 51' 17" AND AN ARC LENGTH OF 148.36 FEET; THENCE ALONG THE SOUTHERLY LINE OF COMMERCIAL STREET VACATED HERewith SOUTH 82° 43' 41" WEST 62.87 FEET; THENCE ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 20.00 FEET THROUGH A CENTRAL ANGLE OF 28° 09' 18" AND AN ARC LENGTH OF 9.83 FEET; THENCE ALONG A CURVE TO THE RIGHT FROM A TANGENT LINE BEARING NORTH 49° 53' 38" WEST WITH A RADIUS OF 40.00 FEET THROUGH A CENTRAL ANGLE OF 42° 37' 19" AND AN ARC LENGTH OF 29.75 FEET; THENCE NORTH 7° 16' 19" WEST (DEED BEARING NORTH 7° 01' 30" WEST) 75.28 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL SIX:

BEGINNING AT AN IRON PIPE SET ON THE EASTERLY LINE OF OAKLAND ROAD FORMERLY SAN JOSE-OAKLAND ROAD, AT THE SOUTHWESTERLY CORNER OF THAT CERTAIN 37.752 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM FORTUNATO PIERACCI, ET AL, TO GEORGE WILSON, ET UX, DATED DECEMBER 22, 1956, RECORDED DECEMBER 31, 1956 IN BOOK 3696 OF OFFICIAL RECORDS, PAGE 253, SANTA CLARA COUNTY RECORDS; THENCE NORTH 49° 25' 11" EAST (DEED BEARING NORTH 49° 40' 00" EAST) 23.93 FEET; THENCE NORTH 7° 16' 19" WEST (DEED BEARING NORTH 7° 01' 30" WEST) 160.00 FEET; THENCE ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 20.00 FEET THROUGH A CENTRAL ANGLE OF 61° 50' 42" AN ARC LENGTH OF 21.59 FEET TO A POINT ON A CURVE HAVING A RADIAL BEARING OF NORTH 35° 25' 37" WEST TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG THE AFOREMENTIONED CURVE WITH A RADIUS OF 20.00 FEET THROUGH A CENTRAL ANGLE OF 28° 09' 18" AND AN ARC LENGTH OF 9.83 FEET; THENCE NORTH 82° 43' 41" EAST (DEED BEARING NORTH 82° 58' 30" EAST) 62.87 FEET; THENCE SOUTHWESTERLY ALONG A CURVE TO THE RIGHT FROM A TANGENT LINE THAT BEARS SOUTH 58° 04' 48" WEST WITH A RADIUS OF 960.00 FEET THROUGH A CENTRAL ANGLE OF 0° 57' 16" AND AN ARC LENGTH OF 15.99 FEET; THENCE SOUTH 59° 02' 04" WEST 13.33 FEET; THENCE ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 40.00 FEET THROUGH A CENTRAL ANGLE OF 71° 04' 18" AN ARC LENGTH OF 49.62 FEET TO THE TRUE POINT OF BEGINNING.

**EXHIBIT "A"**  
**(File Nos. C17-008; CP17-015)**

APN: 241-11-014 AND 241-11-020 (AFFECTS PARCEL ONE)  
241-11-021(AFFECTS PARCEL THREE) AND  
241-11-022(AFFECTS PARCELS FIVE AND SIX)

ARB NO'S: 243-13-136, 243-13-137, 243-13-78 AND 243-13-153