



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: September 25, 2023

COUNCIL DISTRICT: 3

SUBJECT: FILE NOS. PDA16-027-03 & ER23-124. PLANNED DEVELOPMENT PERMIT AMENDMENT AND DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY TO ALLOW THE OFF-SALE OF ALCOHOL (TYPE 20 ABC LICENSE) AT AN EXISTING APPROXIMATELY 3,814-SQUARE-FOOT RETAIL STORE ON AN APPROXIMATELY 0.69-GROSS-ACRE SITE, LOCATED AT THE NORTHWESTERLY CORNER OF OAKLAND ROAD AND HORNING STREET (657 HORNING STREET)

RECOMMENDATION

The Planning Commission voted 11-0-0 to recommend that the City Council take the following action:

1. Consider the exemption in accordance with the California Environmental Quality Act (CEA) Guidelines Section 15301(a) for Existing Facilities; and
2. Adopt a resolution approving, subject to conditions, a Planned Development Permit Amendment and Determination of Public Convenience or Necessity to allow the off-sale of alcohol (Type 20 – Beer & Wine Only) at an existing approximately 3,814-square-foot tenant space (ExtraMile) on an approximately 0.69-gross-acre site.

SUMMARY AND OUTCOME

If the City Council approves the actions listed above as recommended by the Planning Commission, the applicant would be able to sell beer and wine for off-site consumption in conjunction with a Type 20 ABC license at an existing approximately 3,814-square-foot retail store (ExtraMile) on an approximately 0.69-gross-acre site located at the northwesterly corner of Oakland Road and Horning Street (657 Horning Street).

BACKGROUND

On September 13, 2023, the Planning Commission held a Public Hearing to consider the CEQA exemption, Planned Development Permit Amendment, and Determination of Public Convenience or Necessity. The project remained on the consent calendar portion of the hearing agenda as there was no public discussion requested by staff, the Commissioners, or members of the public. Commissioner Oliverio made a motion to approve the recommendation. Commissioner Tordillos seconded the motion. The motion passed with an 11-0-0 vote. The Planning Commission recommended that the City Council consider the exemption in accordance with CEQA and adopt a Resolution approving a Planned Development Permit Amendment and Determination of Public Convenience or Necessity.

ANALYSIS

Analyses of the proposed CEQA determination, Planned Development Permit Amendment, and Determination of Public Convenience or Necessity, including conformance with the Envision San José 2040 General Plan, San José Municipal Code, and City Council Policies, are contained in the attached staff report.

EVALUATION AND FOLLOW-UP

The City Council is the final decision-making body for this project. Following a decision by the City Council, no additional evaluation would be conducted. The City Council has the option to approve, deny, or defer the project to a later City Council meeting. If denied, the project as described above would not be able to proceed. If approved, the applicant would be allowed to sell beer and wine for off-site consumption in conjunction with a Type 20 ABC license at an existing approximately 3,814-square-foot retail store (ExtraMile) on an approximately 0.69-gross-acre site located at 657 Horning Street.

COORDINATION

The preparation of this memorandum has been coordinated with the City Attorney's Office.

PUBLIC OUTREACH

This memorandum is posted on the City's Council Agenda website for the October 17, 2023 City Council meeting.

Additionally, staff followed [Council Policy 6-30: Public Outreach Policy](#) in order to inform the public of the proposed project. On-site signs have been posted on the project frontages since

August 10, 2023. 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. Additionally, a notice of the public hearing was posted in a newspaper of record (San José Post Record) on August 21, 2023. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

COMMISSION RECOMMENDATION AND INPUT

As discussed in the Background section above, the Planning Commission approved the recommendation (11-0-0) as a consent calendar item at its September 13, 2023 hearing, with no project discussion by staff, the Commission, or members of the public.

CEQA

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

Class 1 Categorical Exemption 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 project does not involve any structural modifications or expansion to the footprint of the existing retail building.

The project would allow off-sale alcohol within an existing convenience store's interior space and include interior modifications to allow for the display of alcoholic beverages. The retail use of off-sale alcoholic beverages will be conducted inside the building. Based on the discussion and findings in the sections above, the project would not significantly affect the environment. Therefore, the project is categorically exempt pursuant to CEQA Section 15301(a) for Existing Facilities.

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/
CHRISTOPHER BURTON, Secretary
Planning Commission

For questions, please contact Deputy Director for Planning, Robert Manford, at (408) 535-7900.

Attachment: Planning Commission Staff Report



Memorandum

TO: PLANNING COMMISSION
SUBJECT: File Nos. PDA16-027-03 & ER23-124

FROM: Christopher Burton
DATE: September 13, 2023

COUNCIL DISTRICT: 3

Type of Permit	Planned Development Permit Amendment and Determination of Public Convenience or Necessity
Proposed Land Use	Alcohol, off-sale (beer and wine only)
New Residential Units	N/A
New Square Footage	N/A
Additional Policy Review Items	Determination of Public Convenience or Necessity
Demolition	N/A
Tree Removals	N/A
Project Planner	Cameron Gee
CEQA Clearance	Exemption per CEQA Guidelines Section 15301(a) for Existing Facilities
CEQA Planner	Cameron Gee

RECOMMENDATION

Staff recommends that the Planning Commission recommend that City Council:

1. Consider the exemption in accordance with the California Environmental Quality Act (CEA) Guidelines Section 15301(a) for Existing Facilities; and
2. Adopt a Resolution approving, subject to conditions, a Planned Development Permit Amendment and Determination of Public Convenience or Necessity to allow the off-sale of alcohol (Type 20 – Beer & Wine Only) at an existing approximately 3,814-square-foot tenant space (ExtraMile) on an approximately 0.69-gross-acre site.

PROPERTY INFORMATION

Location	Northwesterly corner of Oakland Road and Horning Street (657 Horning Street)
Assessor Parcel No. (APN)	235-18-022
General Plan	Combined Industrial/Commercial
Growth Area	N/A
Zoning	CIC(PD) Planned Development (File No. PDC16-041)
Historic Resource	No
Annexation Date	January 2, 1942 (Orchard No. 2)

Council District	3
Acreage	0.69 gross acres
Proposed Density	N/A

PROJECT SETTING AND BACKGROUND

As shown on the attached Aerial Map (Exhibit A), the project site is located at the northwesterly corner of Oakland Road and Horning Street (657 Horning Street, APN 235-18-022). The 0.69-gross-acre site is currently developed with a fuel service station, an approximately 3,814-square-foot convenience store (ExtraMile), and a drive-through car wash. The site is located within the CIC(PD) Planned Development Zoning District (File No. PDC16-041).

The site is bounded by a ministorage facility and Highway 101 to the north, a vacant lot to the south, multifamily residences to the east across Oakland Road, and a ministorage facility and public eating establishment to the west. The site is accessed by one driveway along Horning Street to the south. The driveway provides access to the fuel service station, convenience store, drive-through car wash, and the adjacent public eating establishment and ministorage facility.

SURROUNDING USES			
	General Plan	Zoning District	Existing Use
North	Combined Industrial/ Commercial	CIC(PD) Planned Development (File No. PDC16-041)	Ministorage facility, Highway 101
South	Combined Industrial/ Commercial	CIC Combined Industrial/ Commercial	Vacant
East	Urban Residential	A(PD) Planned Development (File No. PDC05-014)	Multifamily residences
West	Combined Industrial/ Commercial	CIC(PD) Planned Development (File No. PDC16-041)	Ministorage facility, public eating establishment

On June 22, 2023, the applicant, Armando Gomez, representing the property owner James Rubnitz, applied for a Planned Development Permit Amendment to allow off-sale alcohol (beer and wine only) within the ExtraMile convenience store.

PROJECT DESCRIPTION

As shown on the attached Floor Plan (Exhibit B), off-sale of beer and wine would occur within the existing approximately 3,814-square-foot retail space. Approximately 243 square feet (6.4% of the gross floor area) would be dedicated to the sale of beer and wine. Off-sale alcohol sales would be incidental to the ExtraMile convenience store, which is a permitted use within the Planned Development Zoning District.

The proposed off-sale of alcohol requires State Alcoholic Beverage Control License Type 20, which allows for the off-sale of beer and wine only for consumption off the premises where sold. Alcohol sales would occur from 6:00 a.m. to 12:00 a.m. midnight, seven days a week, coinciding with ExtraMile’s hours of operation.

A Determination of Public Convenience or Necessity is required for the project as the project site is located

within an over-concentrated census tract (5001). The authorized number of allowed off-sale licenses in this census tract is four, and currently there are six active off-sale licenses. The site is not located within a police beat considered to be high-crime, defined as 20% above the city average. The attached Police Memorandum dated June 27, 2023 (Exhibit H) states that the Police Department is neutral to the off-sale of alcohol at this site. The addition of off-sale alcohol at this location would not create more than four off-sale establishments within a 1,000-foot radius of the project site. Within 1,000 feet of the project site, La Plaza Market is the only other off-sale establishment with an active license. In addition, the site is not located within 500 feet of a school, daycare center, public park, social services agency, or residential care or service facility. The site is also not located within 150 feet of a residence. However, the site is located within the 13th Street Strong Neighborhoods Initiative (SNI) area designated by the City for targeted neighborhood enhancement services or programs. Therefore, pursuant to [Chapter 6.84](#) of the Municipal Code, which governs Determinations of Public Convenience or Necessity for an Alcoholic Beverage Control License, the City Council shall be the final decision-maker for this off-sale alcohol proposal, considering a recommendation from the Planning Commission.

ANALYSIS

The proposed Planned Development Permit Amendment is analyzed with respect to conformance with:

1. Envision San José 2040 General Plan
2. San José Municipal Code
3. Permit Findings
4. California Environmental Quality Act (CEQA)
5. Public Outreach

Envision San José 2040 General Plan Land Use Conformance

General Plan Land Use Designation

As shown on the attached General Plan Land Use Designation Map (Exhibit C), the project site has an Envision San José 2040 General Plan Land Use/ Transportation Diagram designation of **Combined Industrial/Commercial**. Properties with this designation are intended for commercial, office, or industrial developments or a compatible mix of these uses. This designation occurs in areas where the existing development pattern exhibits a mix of commercial and industrial land uses or in areas on the boundary between commercial and industrial uses.

Analysis: The proposed off-sale of alcohol would not alter the existing commercial retail use at the project site. Therefore, the project would be consistent with the land use designation.

General Plan Policy Conformance

The proposed Planned Development Permit Amendment is **consistent** with the following Envision San José 2040 General Plan policies:

Land Use and Employment Policy IE-2.6: Promote retail development to the maximum extent feasible, consistent with other General Plan goals and policies, in order to generate City revenue, create jobs, improve customer convenience, and enhance neighborhood livability.

Neighborhood Serving Commercial Policy LU-5.1: In order to create complete communities, promote new

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

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 of IE-2.6, LU-5.1, LU-5.10: The site currently operates as a convenience store adjacent to a fuel service station. The current convenience store tenant, ExtraMile, offers grocery items including beverages, pre-packaged sandwiches and burritos, pastries, fresh fruit, and snacks. The off-sale of alcohol would produce an additional revenue-generating opportunity associated with the existing products being sold and combined commercial retail uses. The interior and exterior of the convenience store would be monitored at all times by security personnel and video surveillance cameras, as specified in the Operations Plan and conditioned in this Planned Development Permit Amendment. These security measures would ensure the safe operations and sales of beer and wine at the convenience store.

San José Municipal Code Conformance

Use Regulations

The project site is located within the **CIC(PD) Planned Development** Zoning District (File No. PDC16-041). This Planned Development Zoning District allows Permitted Conditional, and Special Uses of the CIC Combined Industrial/Commercial, LI Light Industrial, and CG Commercial General Zoning Districts of Title 20 of the San José Municipal Code, as may be amended. Conditional and Special Uses as identified in the CIC, LI, and CG Zoning Districts shall be subject to approval of a Planned Development Permit or Amendment.

As the off-sale of alcohol (beer and wine only) is a Conditional Use within the CIC and CG Zoning Districts, this Planned Development Permit Amendment would be the appropriate permit to allow the off-sale of alcohol at this site.

Development Standards

The off-sale of alcohol at this site is consistent with the development standards of the CIC(PD) Planned Development Zoning District File No. PDC16-041 as the project does not include modifications to the exterior of the convenience store. The table below outlines the development standards of the Zoning District, approved under File No. PDC16-041.

Planned Development Zoning District (File No. PDC16-041) Development Standards:

Development Standard	Requirement	Existing Convenience Store
Front setback (Horning Street)	15 feet minimum	Approximately 130 feet
Side and rear setback	5 feet minimum	Approximately 5 feet
Parcel size	30,000 square feet minimum	Approximately 30,101 square feet
building height	60 feet maximum with an additional 10 feet for architectural projections	Approximately 28 feet

As shown in the table above, the convenience store would remain consistent with the development

standards of the Zoning District.

Parking

Pursuant to the Planned Development Zoning District, vehicle parking shall be provided per Title 20 of the San José Municipal Code, [Chapter 20.90](#), as may be amended. The project does not increase or decrease the number of vehicle parking spaces on site. The construction of the convenience store, fuel service station, and ministorage facility required 56 vehicle parking spaces under Planned Development Permit File No. PD16-027. Fifty-six vehicle parking spaces were provided. This Planned Development Permit Amendment for off-sale alcohol does not trigger additional parking requirements over the primary uses on site.

Noise

Pursuant to the Planned Development Zoning District, projects shall comply with [Section 20.40.600](#) and [20.50.300](#) of the San José Municipal Code, as may be amended. As off-sale alcohol is considered a commercial use, the noise standards for commercial uses shall apply. Pursuant to [Section 20.40.600](#), the maximum allowed noise level is 55 decibels for commercial uses adjacent to residential properties and 60 decibels for commercial uses adjacent to commercial properties. All activity related to the off-sale of alcoholic beverages would take place indoors. Consumption of alcoholic beverages would not be permitted on the premises, as specified in the Operations Plan (Exhibit G). As construction for the project would consist solely of interior improvements, the project is consistent with the above noise standards.

Permit Findings

Planned Development Permit Amendment Findings

To make the Planned Development Permit Amendment findings pursuant to San José Municipal Code [Section 20.100.940](#), and recommend approval to the City Council, the Planning Commission must determine that:

1. The Planned Development Permit Amendment, as issued, is consistent with and furthers the policies of the General Plan; and

Analysis: The project is consistent with the General Plan land use designation of Combined Industrial/Commercial, which is intended for commercial, office, or industrial developments. The project would not alter the site's existing commercial uses. The project is consistent with General Plan policies regarding retail development. The off-sale alcohol at the existing ExtraMile convenience store would provide an additional revenue-generating opportunity for the convenience store, while providing a benefit to convenience store customers who may purchase beer and wine along with the other food items sold.

2. The Planned Development Permit Amendment, as issued, conforms in all respects to the Planned Development Zoning of the property; and

Analysis: The project conforms with the Use Regulations and Development Standards of the General Development Plan for the Planned Development Zoning District (File No. PDC16-041). As discussed in the San José Municipal Code Conformance section above, the project is consistent with all required setbacks, heights, parking, and noise requirements of the Planned Development Zoning District.

3. The Planned Development Permit Amendment, as approved, is consistent with applicable City Council Policies, or counterbalancing considerations justify the inconsistency; and

Analysis: [Council Policy 6-30: Public Outreach Policy](#) was implemented in order to inform the public of

the project. On-site signs have been posted on the project frontages since August 10, 2023. Staff received nine letters from neighboring residents and businesses, all in support of the off-sale alcohol proposal. These letters are compiled as Exhibit I. 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](#). Staff has also been available to respond to questions from the public.

4. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures, and other uses on-site are appropriate, compatible, and aesthetically harmonious; and

Analysis: The project would not alter the exterior of the existing ExtraMile convenience store. The convenience store would continue to be compatible with the associated fuel service station and drive-through car wash.

5. The environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, stormwater 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: The off-sale of alcohol within the ExtraMile convenience store would only result in interior modifications and tenant improvements for the storage of beer and wine. As a result, environmental impacts related to noise, vibration, dust, drainage, erosion, stormwater runoff, and odor would not occur. Therefore, the Project will not have an unacceptable negative effect on adjacent properties. The Project is categorically exempt from further environmental review pursuant to CEQA Section 15301(a) for Existing Facilities.

Required Findings for the Off-Sale of Alcohol

A Planned Development Permit Amendment may be issued pursuant to the applicable provisions of [Chapter 20.80, Part 11](#) for the off-sale of any alcoholic beverages only if the decision-making body first makes the following additional findings, where applicable:

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

*Analysis: Only one establishment (La Plaza Market) is located within 1,000 feet of the Project site. Therefore, this finding can be made. Therefore, this finding **can** be made.*

2. For such use at a location closer than five hundred 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 one-thousand-foot radius from the proposed location, that the resulting excess concentration of such uses will not:
 - a. Adversely affect the peace, health, safety, morals, or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the area; or
 - c. Be detrimental to public health, safety or general welfare.

*Analysis: As stated above in Section 8.a, only one establishment (La Plaza Market), is located within 1,000 feet of the Project site. Therefore, this finding can be made. Therefore, this finding **can** be made.*

3. For such use at a location closer than five hundred 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 one hundred fifty 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 site is not closer than 500 feet from any childcare center, public park, social service agency, residential care facility, residential service facility, elementary school, secondary school, college, or university. The nearest of these facilities is a public park (Luna Park) located approximately 570 feet to the southeast across Oakland Road, measured from the entrance of the convenience store.

*The project site is not closer than 150 feet from any residentially zoned property or residential use. The nearest residential uses are multifamily residences located approximately 230 feet to the east across Oakland Road, measured from the entrance of the convenience store. Therefore, this finding **can** be made.*

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, or PCN). An “undue concentration” is defined as follows:

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

Analysis: The project site is located within Census Tract 5001 and San José Police Beat V2. According to the Police Department Memorandum dated June 27, 2023 (Exhibit H), the reported crime statistics as defined by B&P Section 23958.4(c) are not over the 20 percent crime index. However, the ratio of existing retail off-sale licenses to population in the census tract exceeds the ratio in the County as a whole. As stated in the Police Department Memorandum, the number of off-sale locations allowed in this census tract is four. There are currently six off-sale establishments with an active license (Santo Market, Inc., J & F Liquor Store, Choice Liquors, El Sol Market, Valero Gas & Food, and La Plaza Market). Four establishments have an active Type 20 license and two establishments have an active Type 21 license. Five of the six establishments are located at the other end of the census tract, approximately 2,500 feet from ExtraMile. For the California Department of Alcoholic Beverage Control to be able to issue a license for this off-sale alcohol use, the City must grant a Determination of Public Convenience or Necessity. The analysis of the proposal is based on the required findings identified in [Title 6](#) of the San José Municipal Code and is described below.

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

1. The proposed use is not located within a Strong Neighborhoods Initiative or neighborhood revitalization area or other area designated by the city for targeted neighborhood enhancement services or programs, or located within an area in which the chief of police has determined based upon quantifiable information that the proposed use:

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

*Analysis: The Project site is located within the 13th Street Strong Neighborhood Initiative (SNI) area designated by the City for targeted neighborhood enhancement services or programs. The Police Department Memorandum states that the Police Department is neutral to the off-sale alcohol proposal at this location. The Operations Plan includes provisions for the removal of trash and graffiti, interior and exterior video surveillance cameras, and employee training for alcohol sales. The off-sale of alcohol would also be limited to the hours of 6:00 a.m. to 12:00 a.m. midnight, seven days a week, coinciding with ExtraMile's hours of operation. Therefore, the off-sale of alcohol would not be detrimental to public health, safety, or welfare of persons located in the area, or increase the severity of existing law enforcement or public nuisance problems in the area. However, because the subject site is located within an SNI area, this finding **cannot** be made.*

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

*Analysis: The off-sale of alcohol at this location would not lead to the grouping of more than four off-sale establishments within a 1,000-foot radius of the ExtraMile convenience store. The nearest off-sale establishment is La Plaza Market. La Plaza Market is the only other off-sale establishment within a 1,000-foot radius of the convenience store. Therefore, this finding **can** be made.*

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

*Analysis: The off-sale of alcohol at the ExtraMile convenience store is not located within 500 feet of a school, day care center, public park, social services agency, or residential care or service facility. The convenience store is not located within 150 feet of a residence. Therefore, this finding **can** be made.*

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

*Analysis: Approximately 243 square feet of the 3,814-square-foot ExtraMile convenience store (6.4% of the gross floor area) would be used for alcohol sales. This would not represent a majority of the existing convenience store use. 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 in shape. Therefore, this finding **cannot** be made.*

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

*Analysis: The off-sale of alcohol would occur within the existing ExtraMile convenience store. The convenience store provides the surrounding neighborhood with access to grocery items. The project would allow the convenience store to complement its current products with the sale of beer and wine for off-site consumption. The Police Department is neutral to the off-sale alcohol proposal at this location. The Operations Plan includes provisions for trash and graffiti removal, the installation of security cameras inside and outside of the convenience store, and employee training for alcohol sales. Therefore, off-sale of alcohol would not significantly impact public health or safety, and 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 off-sale of alcohol at the ExtraMile convenience store would contribute to an over-concentration in the number of off-sale establishments in the census tract area, as there are currently six active off-sale licenses. The census tract's population allows for four active off-sale licenses. Therefore, 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: Approximately 243 square feet of the 3,814-square-foot ExtraMile convenience store (6.4% of the gross floor area) would be used for alcohol sales. The remainder of the floor area would be dedicated to the sales of grocery items such as beverages, pre-packaged sandwiches and burritos, pastries, fresh fruit, and snacks. Therefore, this finding **can** be made.*

In the event the Planning Commission determines that it cannot make one or more of the required findings 1-4 listed above, the Planning Commission shall make a recommendation to the City Council as to whether the City Council should make a determination for the proposed use, pursuant to [Section 6.84.030.D](#).

*Analysis: Finding 1 for the issuance of a Determination of Public Convenience or Necessity **cannot** be made by the Planning Commission because the project site is located within an SNI area. Therefore, the Planning Commission shall make a recommendation to the City Council for the off-sale alcohol proposal.*

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 the city council does all of the following:

- a. Makes a determination that not all of the required findings set forth in Subsection B. (findings 1-4 and 5.a-d listed above) can be made; and

*Analysis: Finding 1 for the issuance of a Determination of Public Convenience or Necessity **cannot** be made by the Planning Commission because the project site is located within an SNI area. The Planning Commission **can** make findings 2, 3, 4, 5.b and 5.d.*

- b. Identifies and finds that a significant and overriding public benefit or benefits will be provided by the proposed use.

Analysis: While the Planning Commission cannot make all of the required findings for the Determination of Public Convenience or Necessity, the off-sale of alcohol within the ExtraMile convenience store would provide significant and overriding public benefits. The project site is located near the Highway 101 Oakland Road entrance and exit, making this location convenient for customers traveling along Highway 101 to access the convenience store and those who are stopping at the fuel service station. The off-sale of beer and wine would be incidental to the convenience store retail use, which currently offers pre-packaged sandwiches, burritos, pastries, fresh fruit, and snacks. The addition of beer and wine would reduce the number of additional trips customers would need to visit to fulfill their shopping needs and provide additional retail outlets.

Furthermore, the convenience store is not located within an area of high crime, as indicated in the Police Memorandum. While the project is located within an over-concentrated census tract, it would not result in grouping four or more off-sale establishments within a 1,000-foot radius of the site. The Operations Plan includes measures to install interior and exterior security cameras, clean trash and graffiti, and address loitering and noise. These measures aim to ensure that off-sale operations are conducted without disturbances to the surrounding neighborhood. Therefore, staff recommends that the City Council determine that the project would provide a significant and overriding public benefit and approve the Planned Development Permit Amendment for off-sale alcohol and Determination of Public Convenience or Necessity.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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

Class 1 Categorical Exemption 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 project does not involve any structural modifications or expansion to the footprint of the existing retail building.

The project would allow off-sale alcohol within an existing convenience store's interior space and include interior modifications to allow for the display of alcoholic beverages. The retail use of off-sale alcoholic beverages will be conducted wholly inside the building. Based on the discussion and findings in the sections above, the project would not significantly affect the environment. Therefore, the project is categorically exempt pursuant to CEQA Section 15301(a) for Existing Facilities.

PUBLIC OUTREACH

Staff followed [Council Policy 6-30: Public Outreach Policy](#) in order to inform the public of the proposed project. On-site signs have been posted on the project frontages since August 10, 2023. As of the date this

staff report was published, *staff received nine letters from neighboring residents and businesses, all in support of the off-sale alcohol proposal.* These letters are compiled as Exhibit I. 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 also been available to respond to questions from the public.

Project Manager: Cameron Gee

Approved by: /s/ Michael Brilliot, Deputy Director for Christopher Burton, Planning Director

ATTACHMENTS:	
Exhibit A:	Aerial Map
Exhibit B:	Floor Plan
Exhibit C:	General Plan Land Use Map
Exhibit D:	Zoning Map
Exhibit E:	Alcohol Radius Map
Exhibit F:	Plan Set
Exhibit G:	Operations Plan
Exhibit H:	Police Department Memorandum
Exhibit I:	Public Correspondence
Exhibit J:	Draft Resolution

Owner/Applicant:	Applicant’s Representative:
James Rubnitz 657 Horning Street San José, CA 95112	Armando Gomez Armando Gomez Consulting 1487 Yosemite Drive Milpitas, CA 95035

Exhibit A: Aerial Map

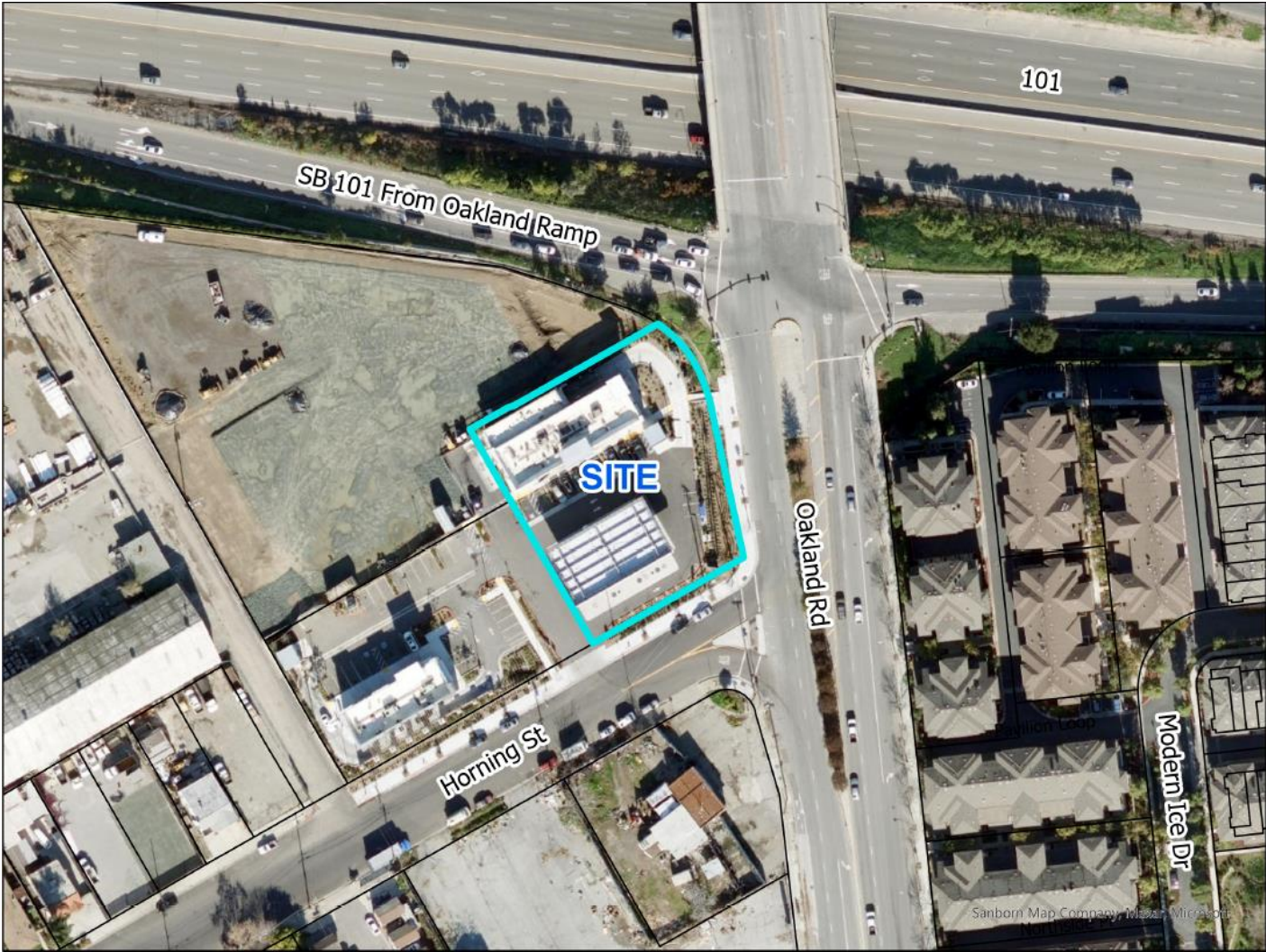


Exhibit B: Floor Plan

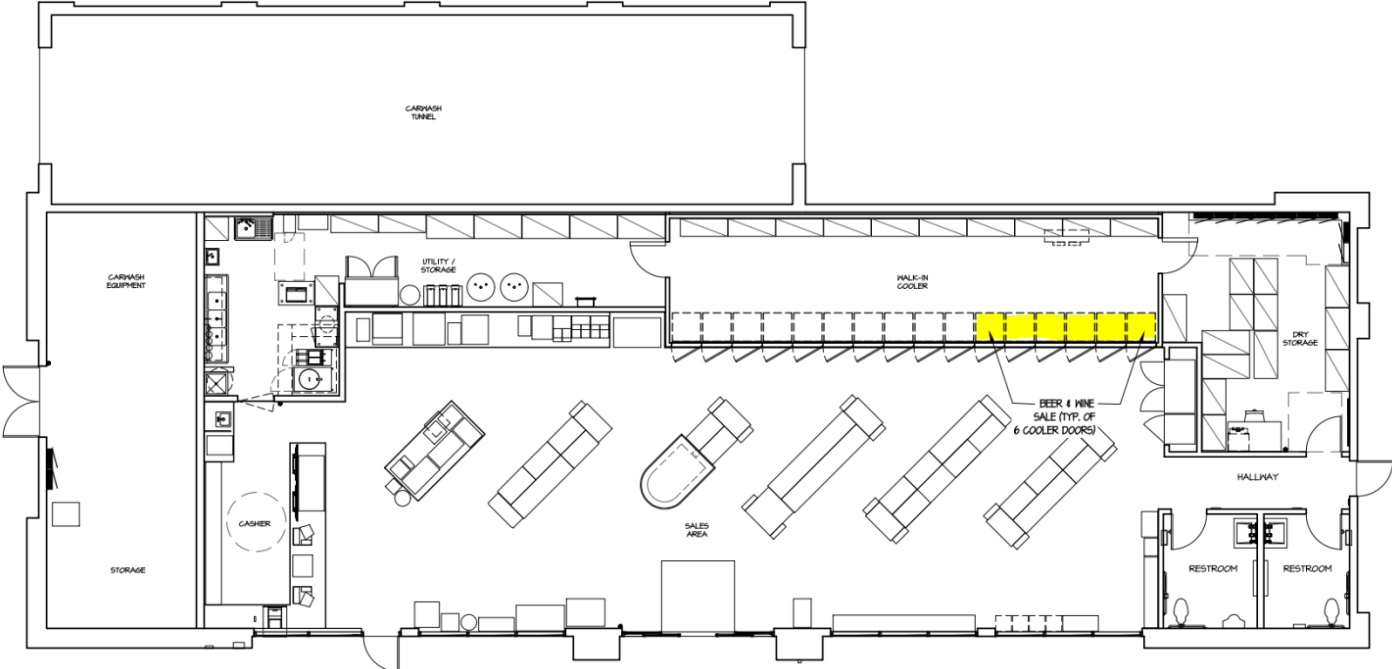


Exhibit C: General Plan Land Use Map

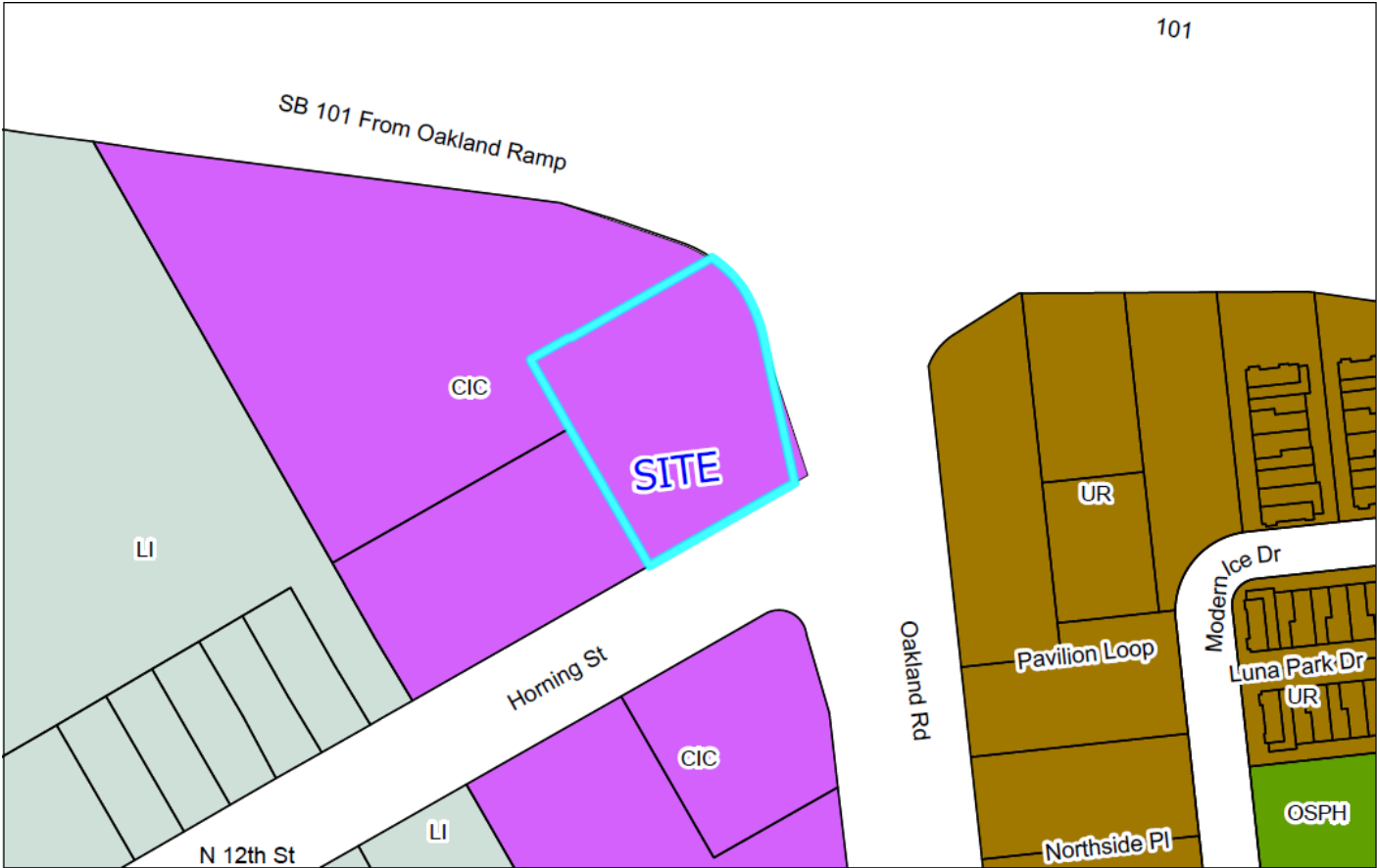


Exhibit D: Zoning Map

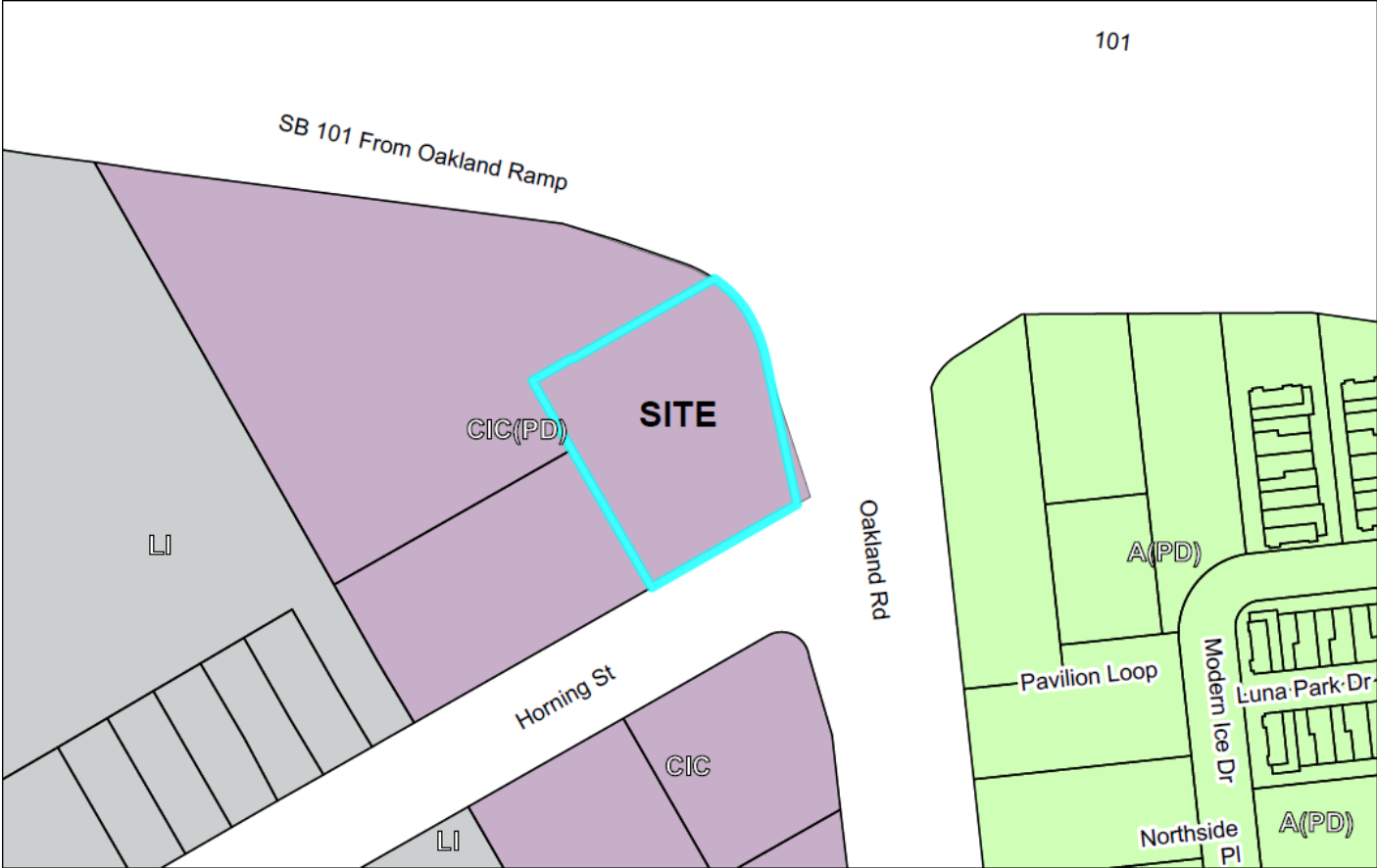
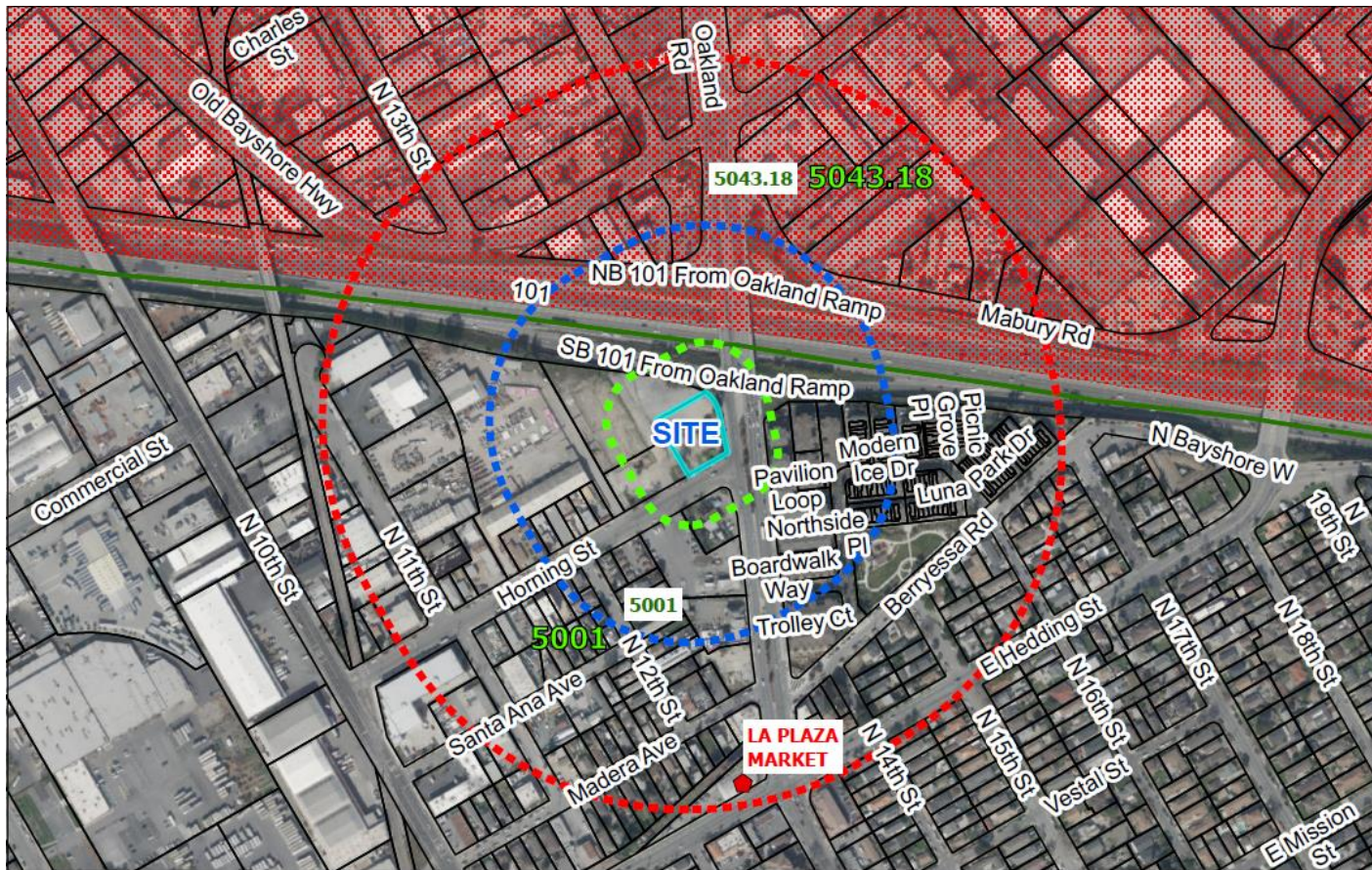


Exhibit E: Alcohol Radius Map



PDA16-027-03 & ER23-124

Links to Attachment F - J

Click on the title to view document.

Exhibit F: Plan Set
Exhibit G: Operations Plan
Exhibit H: Police Department Memorandum
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