

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE DENYING A PERMIT APPEAL AND APPROVING A CONDITIONAL USE PERMIT AND SITE DEVELOPMENT PERMIT, SUBJECT TO CONDITIONS, TO ALLOW THE DEMOLITION OF AN EXISTING 1,276-SQUARE FOOT GAS STATION MINIMART WITH INCIDENTAL SERVICE AND VEHICLE REPAIR AND THE CONSTRUCTION OF A NEW 5,754-SQUARE FOOT CONVENIENCE STORE (WITH NO CARWASH), EXTENDED EARLY MORNING USE FOR THE GAS STATION AND CONVENIENCE STORE ONLY (ONE HOUR EXTENSION BETWEEN 5:00 A.M. AND 6:00 A.M.), AND A TEMPORARY USE TRAILER, ON A 0.81-GROSS-ACRE SITE LOCATED AT THE SOUTHEASTERLY CORNER OF SOUTH BASCOM AVENUE AND WOODARD ROAD (3702 SOUTH BASCOM AVENUE)

FILE NO. CP16-035

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on July 18, 2016, an application (File No. CP16-035) was filed by the applicant, Andarys Enterprise, Inc., with the City of San José for a Conditional Use Permit and Site Development Permit to allow the demolition of an existing 1,276-square foot gas station convenience store with incidental service and vehicle repair, and the construction of a new 5,754-square foot convenience store and fully automated car wash, and early morning use for the gas station and convenience store only (one hour extension between 5:00 a.m. and 6:00 a.m.), a temporary use trailer, and an exceedance of the Zoning Ordinance noise performance standards by two decibels on a 0.81-gross acre site, on that certain real property situated in the CN Commercial Neighborhood Zoning District and located at the southeasterly corner of South Bascom Avenue and Woodard Road (3702 South Bascom Avenue, San José, which real property is sometimes referred to herein as the “subject property”); and

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

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a hearing on said application on August 9, 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 approved the requested Conditional Use Permit and Site Development Permit; and

WHEREAS, on August 16, 2017, a timely appeal of the Planning Commission's approval of the Conditional Use Permit and Site Development Permit was filed by appellant Kathleen Flynn; and

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

WHEREAS, the City Council conducted an administrative appeal hearing on October 24, 2017, took public comment and continued the administrative appeal hearing to November 28, 2017 with direction that additional noise study should be conducted to evaluate existing noise levels at the project site;

WHEREAS, the City Council conducted the continued administrative appeal hearing on December 12, 2017, took additional public comment, and discussed the proposed project including the two updated noise studies conducted on behalf of the project applicant and appellant, and continued the administrative appeal hearing to December 19, 2017 with direction to Planning staff to come back with a draft Resolution approving the proposed Conditional Use Permit and Site Development Permit and remove the proposed carwash from the project scope; and

WHEREAS, at said hearing on December 19, 2017, 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, "Bascom ANDoil Replacement and Car Wash Addition" dated June 27, 2017, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein, provided any reference to the carwash shall be removed from said plan and is not incorporated herein; and

WHEREAS, said administrative appeal hearings before the City Council on December 12, 2017 and December 19, 2017, were 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 evidence presented at the Public Hearing, the City Council finds that the following are the relevant facts and findings regarding this proposed project:

- 1. Site Description and Surrounding Uses.** The subject 0.81 gross-acre site is located at the southeast corner of the intersection of South Bascom Avenue and Woodard Road and is currently occupied by a 1,276-square foot gas service station building that includes a small convenience store with incidental repair services, four fuel pumps and canopy, and a trash enclosure. The service station was constructed in 1963 and the fuel canopy was constructed in 1970. The property is bounded by multifamily residential to the north across Woodard Road, a liquor store and strip mall to the south, multifamily residential properties to the east, and a commercial strip mall to the west across South Bascom Road, located in the City of Campbell. The site also includes a 25-foot private ingress/egress access easement at the rear of the site extending from Woodard Road to the adjacent commercial properties south of the project site.
- 2. Project Description.** On July 18, 2016, a Conditional Use Permit and Site Development Permit application was filed to allow the demolition of an existing 1,276-square foot gas station convenience store with incidental service and vehicle repair, and the construction of a new 5,754-square foot convenience store and fully automated car wash, and early morning use for the gas station and convenience store only (one hour extension between 5:00 a.m. and 6:00 a.m.), a temporary use trailer, and an exceedance of the Zoning Ordinance noise performance standards by two decibels on a 0.81 gross-acre site. There was no change to the location of the existing fuel pumps proposed. The existing canopy and canopy signage were replaced under separate permits (File No. AD16-398 and File No. AD16-900) prior to submittal of this application.

The proposed project design originally included a two-story building with a 2,834-square foot convenience store and an 1,840-square foot fully-automated car wash with stacking for up to five cars on the ground floor, and 1,080 square feet of private office space on the second floor, and a relocated trash enclosure. Approximately 40 feet (fits roughly two vehicles) is provided at each fuel dispenser on each side to allow for adequate vehicle stacking at the gas dispensers. The drive-through car wash is designed such that the vehicles entering and exiting the car wash tunnel will have a minimum five car stacking space and will not obstruct on-site circulation.

On December 12, 2017, the City Council considered the appeal and proposed project and moved to continue the administrative appeal hearing to December 19, 2017 with direction to Planning Staff to remove the proposed carwash from the project.

The project, as approved by the City Council, includes all of the following:

- Removal of the proposed carwash and relocation of the six parking spaces, trash enclosure, electrical room and transformer to the rear of the convenience store. A six-foot landscape bed will be located along the rear wall of the proposed convenience store and office building and will include plantings of five 15-gallon fern podocarpus (*Podocarpus gracilior*), appropriate ground cover and two-inches of mulch.
 - The existing driveway on Woodard Road located at the northwest corner of the site will be closed.
 - The redeveloped site will have access from two existing driveways on South Bascom Avenue, one of which shares a private ingress/egress access easement with the parcel to the south of the project site, and one existing driveway on Woodard Road, located at the northeast corner to the site.
 - The existing 25-foot private ingress/egress access easement at the rear of the site will be maintained so as to provide access to the rear of the two properties directly to the south of the project site.
 - A total of 21 parking stalls, including one Americans with Disabilities Act (ADA) accessible space and eight fueling bay spaces, and two bicycle parking spaces are proposed. A total of 1 employee will be onsite during operating hours.
 - The proposed hours of operation for the gas station and convenience store are from 5:00 a.m. to 12:00 a.m.
 - A seven-foot masonry sound wall will be installed along the eastern property boundary to buffer the gas station operations from the adjacent residential neighborhood.
3. **General Plan Conformance.** The subject property is designated Neighborhood/Community Commercial on the Envision San José 2040 General Plan Land Use/Transportation Diagram. Properties with this designation support a broad range of commercial activity, including commercial uses that serve the communities in the neighboring area. Neighborhood/Community Commercial uses typically have a strong connection to and provide services and amenities for the nearby community and should be designed to promote that connection. The proposed service station, and general retail sales are consistent with the Neighborhood/Community Commercial land use designation in that the commercial service and retail uses are supported uses within this designation. Furthermore, the gas station has served this neighborhood since 1963 and will be expanded to include enhanced auto services and food sales to customers.

South Bascom Avenue is designated as a City Connector Street in the Envision San José 2040 General Plan. City Connector Streets prioritize automobiles, bicycles, pedestrians and trucks equally and typically have four to six traffic lanes that

accommodate moderate to high volumes of traffic. Pedestrians are accommodated with existing sidewalks and the South Bascom Avenue corridor is served by the Santa Clara Valley Transportation Authority (VTA) bus routes 49 and 61. South Bascom Avenue does not have bike lanes; however, VTA has plans to transform this right-of-way to accommodate multimodal traffic under its Complete Streets Program. The site's location adjacent to a City Connector Street and proximity to residential properties will provide convenient access to pedestrians, bicyclists, and motorists, alike.

The proposal is consistent with the following General Plan goals and policies with respect to commercial uses:

Land Use Policy LU-4.1 - Commercial: Retain existing commercial lands to provide jobs, goods, services, entertainment, and other amenities for San José's workers, residents, and visitors.

Analysis: Approval of the Conditional Use Permit and Site Development Permit would allow further intensification of the commercial area along South Bascom Avenue. The existing gas station and fuel pumps and the proposed convenience store would continue to serve the residences, businesses, and visitors in the surrounding neighborhood and consolidate services and amenities in one location. Redevelopment of the site will enhance the economic vitality of the site and retain jobs in the area.

Land Use Policy LU-5.1 - Neighborhood Serving Commercial: In order to create complete communities, promote new commercial uses and revitalize existing commercial areas in locations that provide safe and convenient multi-modal access to a full range of goods and services.

Analysis: The existing service station is surrounded by a mix of commercial, office, and residential uses. The expansion and revitalization of the gas station site to include enhanced retail services would allow one-stop shopping and reduced vehicle miles traveled. The site will provide retail products at a corner site in a neighborhood with both pedestrian and vehicular traffic.

4. Zoning Ordinance Compliance.

This site is zoned CN Commercial Neighborhood which conforms to the site's Envision San José 2040 General Plan Land Use/Transportation Diagram land use designation of Neighborhood/Community Commercial. Under the Zoning Ordinance Section 20.40.100, gas station uses require a Conditional Use Permit in the CN Commercial Neighborhood Zoning District. Additionally, Section 20.40.500 requires a Conditional Use Permit for any use that proposes to be open between the hours of 12:00 midnight and 6:00 a.m. (24-hour use) in any commercial district. This Conditional Use Permit also covers demolition of the existing minimart and service station building. As discussed above, replacement of the fueling canopy and canopy signage was addressed under separate permits (File No. AD16-398 and File No. AD16-900).

An exceedance of the noise performance standards per San José Municipal Code Section 20.40.600 can be satisfied through a Special Use Permit. Pursuant to Municipal Code Section 20.100.140, whenever applications for the same site have been filed for one or more development permits or approvals required by this title, such development permit or approvals may be reviewed and acted on in a unified process. The unified process shall use the procedures required for the highest level permit or approval, in this case the Conditional Use Permit. The hearing body shall make the findings, if any, applicable to each permit or approval. Therefore, the Conditional Use Permit and Special Use Permit will proceed concurrently under the procedures required for a Conditional Use Permit and the Special Use Permit is a part of the Conditional Use Permit, since both are use permits and have the same findings required under Zoning Ordinance.

- a. **Setbacks.** Pursuant to Section 20.40.200 of the Zoning Ordinance, development in the CN Zoning District is subject to the following development standards:

Commercial Neighborhood (CN) Development Standards		
Setbacks	Required (feet)	Proposed (feet)
Front	10	52.2
Side, corner	12.5	15.5
Side Interior	None	24.5
Rear	None	43.5

The project is consistent with these standards as the project meets the required front, side, and rear setbacks of the CN Zoning District, as outlined above.

- b. **Height.** Pursuant to Section 20.40.200 of the Zoning Ordinance, the CN Commercial Neighborhood Zoning District has a maximum height for buildings and structures of 50 feet. The proposed project has a height of 28.5 feet and meets this height requirement.
- c. **Parking.** Pursuant to Section 20.90.060 of the Zoning Ordinance, the proposed project (convenience store and gas station) would require the following vehicular parking:

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Vehicle Parking Requirements			
Use	Parking Space Ratio	Required Parking for Proposed Project	Total Spaces Required
Gas station	1 per employee, plus 1 per air and water pump service area, plus 1 space for information stop	1 employee= 1 space Air/water service = 1 space Information Stop= 1 space	3 spaces
Retail	1 per 200 square feet of floor area	For 3,329 net square feet (3,916 gross square feet x 0.85) of retail space	17 spaces
Total Required			20 spaces

The project is proposing a total of 21 parking stalls, including one ADA space and eight fuel pump spaces, which satisfy the above parking requirements.

- d. **Bicycle Parking:** Required bicycle parking is one space per 10 full-time employees for the gas station and 1 per 3,000 square feet of floor area, equaling two spaces total. The project proposes a minimum of two spaces.
- e. **Temporary Use Trailer.** A temporary use trailer can be permitted per San José Municipal Code Section 20.80.1700 to facilitate the continuation of a commercial, industrial or manufacturing business while a primary structure is undergoing alteration or restoration, and can be satisfied through a Special Use Permit. Similar to the noise discussion above, the required Special Use Permit can be processed under the unified process for the Conditional Use Permit. The trailer must be a minimum of 15 feet from the front property line and can be no larger than 2,000 square feet. The proposed temporary use trailer is located 20 feet from the front property line and is 160 square feet in size (20 feet by 8 feet), meeting these requirements.
- f. **General Plan Noise Compliance.** A noise study was prepared for the proposed project by Mei Wu Acoustics (dated December 20, 2016) which analyzed the potential impacts of the project on adjacent residential and commercial properties. 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 noise study uses a different name and acronym to describe the same measurement: Day-Night Level (Ldn) 24-hour noise descriptor. The A-weighted sound level or dBA is a scale that gives greater weight to the frequencies of sound to which the human ear is most sensitive. The General Plan Noise and Vibration Policy EC-1.2 states that the City considers significant noise impacts to occur if a project would:
 - i. Cause the DNL at noise sensitive receptors to increase by five dBA DNL or more where the noise levels would remain “Normally Acceptable”; or

- ii. 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.

The General Plan establishes that this project site is located within an Existing (2008) Vehicular Noise Contour for Major Roadways area which makes the existing ambient (existing) noise levels 70 dBA Ldn (the project site falls under the 75-70 dBA Ldn contour along the boundary with the residential area representing the beginning of the 70-65 dBA Ldn contour), exceeding the General Plan “Normally Acceptable” noise levels. In order to comply with Policy EC-1.2, the project cannot increase the noise at the adjacent residential property lines by three or more dBA DNL. The existing noise level at the adjacent residential property lines is 70 dBA Ldn and the project noise levels with the noise wall project design features incorporated will result in 70.5 dBA Ldn at the eastern residential property lines and 70.6 dBA Ldn at the western commercial property lines. The increase of noise is 0.5 and 0.6 dBA Ldn over the existing ambient noise level, in compliance with this General Plan Policy. The table below shows the noise levels with and without the project design feature barriers incorporated; the locations of the walls are discussed in the Zoning Ordinance Noise Compliance section below.

Receiver	Distance to Property Line [ft]	Noise Level at Receiver no Barriers [dBA]	Noise Level at Receiver with Barriers [dBA]	L _{dn} at Receiver with Barriers [dBA L _{dn}]	Existing Noise Level [dBA L _{dn}]
Residential (1)	60	62	55	70.5	70.0
Residential (2)	50	57	52	70.5	
Residential (3)	50	69	57	70.6	
Commercial (4)	70	65	53	70.5	

In response to the direction given at the October 24, 2017 City Council meeting, two additional noise reports have been completed for the project. The reports include an updated noise report prepared by the applicant’s consultant and a second noise study prepared for the appellant. These additional studies are summarized below.

Applicant’s Updated Noise Report with On-Site Ambient Noise Measurements

At the administrative hearing on October 24, 2017, the City Council was concerned with reliance on the assumed General Plan’s noise level for the project site without actual noise measurement to verify the noise level at the project site. In response to Council direction from the hearing on October 24, 2017, Mei Wu Acoustics (MWA, the project applicant’s noise consultant), prepared an updated noise report dated December 4, 2017. Council requested a noise report with measurements of existing on-site ambient noise levels and reevaluation of project noise impacts

based on measured levels instead of the estimated noise levels used in the original December 2016 noise report. MWA measured on-site ambient noise from Saturday, October 28 to Tuesday, October 31, 2017, and found ambient noise levels on the site range from 62.6 to 67.8 dBA DNL. Ambient noise ranges from 67.8 dBA DNL at the northern property line adjacent to Woodard Road to 62.6 to 62.9 dBA DNL at the residential property line to the east of the site adjacent to first and second residential buildings on Starview Drive at a height of 15 feet.

MWA then reevaluated the noise impacts of the project based on the City's performance standards in Section 20.40.600(B) of the Municipal Code and Envision San Jose 2040 General Plan Policies EC-1.1, EC-1.2 and EC-1.3, which state the following:

- Zoning Code Section 20.40.600(B): The sound pressure level generated by any use or combination of uses on a property shall not exceed the decibel levels indicated in Table 20-105 at any property line, except upon issuance and in compliance with a Conditional Use Permit as provided in Chapter 20.100.

Table 20-105 Noise Standards	
Land Use	Maximum Noise Level in Decibels at the Property Line (dBA)
Commercial use adjacent to a property used of zoned for residential purposes	55
Commercial use adjacent to a property used or zoned for commercial or other non-residential purposes	60

- General Plan Policy EC-1.1 provides land use compatibility guidelines for environmental noise based on exterior noise levels. Development of commercial projects is considered normally acceptable where the daytime average noise level (DNL) is below 70 dBA DNL.
- General Plan Policy EC-1.2 requires that project-generated noise not increase the existing day-night average noise level (DNL) by more than 5 dBA where the level would remain normally acceptable, or 3 dBA where the level would fall into the conditionally acceptable category.
- General Plan Policy EC-1.3 requires that project-generated noise levels be less than 55 dBA DNL at adjacent residential property lines.

Based on the updated noise measurement, the updated noise study proposed additional project design to reduce the project noise level to meet the Zoning Code

and General Plan requirements. The updated noise study recommends the following changes to the project design:

- 1) The addition of a vinyl sound barrier at the exit of the car wash.
- 2) The selection of an unspecified, quieter car wash dryer system with noise levels equivalent to 79 dBA at 20 feet from the car wash exit instead of a Ryko-3 Fan Slimline Dryer assumed in the December 20, 2016 noise report.
- 3) An increase in the height of the sound wall at the trash enclosure from 8 feet to 12 feet.

Based on these changes to the project design, MWA found that the project would comply with the performance standards in the Municipal Code and policies in the Envision San Jose 2040 General Plan. Specifically:

- San Jose Municipal Code: Noise generated by the project would be 55 dBA or less at the nearest residential property line.
- General Plan Policy EC-1.2: MWA found operation of the car wash would increase ambient noise levels by 0.1 dBA DNL, which is less than the threshold of significance of an increase of 3 dBA DNL in areas with ambient noise levels in the “Conditionally Acceptable” category according to Table EC-1 of the General Plan.
- General Plan Policy EC-1.3: MWA found that project-generated noise would not exceed 55 dBA DNL at any adjacent residential property line. Operational noise would range from 49.9 to 52.6 dBA DNL at the eastern property line adjacent to the residences on Starview Drive assuming the addition of the vinyl noise barrier at the car wash exit, the use of the quieter dryer, and the increased height for the noise barrier around the trash enclosure.

Appellant’s Updated Noise Report from Illingworth & Rodkin, Inc.

On November 27, 2017, the Appellant submitted an updated noise report prepared by Illingworth & Rodkin, Inc. (IR) dated November 20, 2017. IR measured long-term ambient noise on the site from Thursday, November 9 to Monday, November 13, 2017 at two locations: the eastern property line of the project adjacent to the first and second residences on Skyview Drive (roughly the same location as MWA), and at the second story of the second residence on Starview Drive overlooking the project site. IR found ambient noise at the eastern property line is 65 to 67 dBA DNL and 61 to 63 dBA DNL at the second story of the second residence on Starview Drive.

IR then conducted separate analysis of carwash noise for consistency with the City’s Municipal Code and Envision San Jose 2040 General Plan Policies EC-1.2 and EC-1.3, but did not evaluate the changes to the project assumed in the

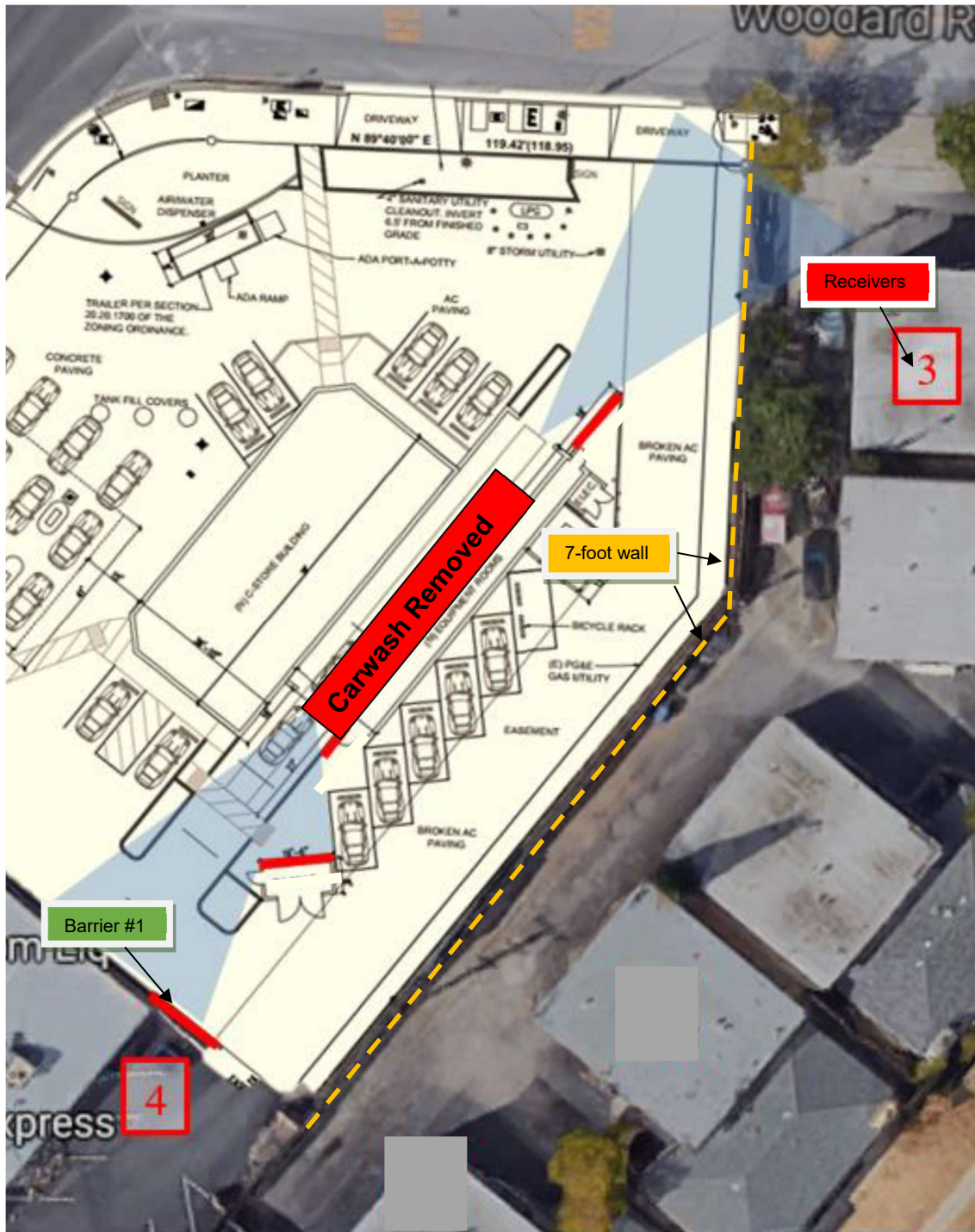
updated December 2017 MWA report described above. Using their own ambient noise measurements, IR evaluated three carwash dryer types: the Ryko-3 Slimline dryer evaluated in the original MWA noise report from December 2016, a quieter dryer system (AeroDry Systems), and a louder dryer system (Mark VII AquaDri F-40). The analysis included the same project design as the December 2016 MWA report and made the following findings:

- San Jose Municipal Code: Noise generated by all three dryer types would exceed 55 dBA at the eastern residential property line.
- General Plan Policy EC-1.2: IW found the Ryko-3 Slimline dryer would result in an increase in ambient noise between 2 to 3 dBA DNL at the eastern residential property line adjacent to the first residence on Skyview Drive when evaluating the ambient noise and a day by day basis, but would only result in an increase of 2 dBA DNL if ambient noise levels of the entire Thursday – Monday monitoring period are accounted for. The quieter AeroDry dryer would only result in an increase 1 dBA DNL at this location, while the louder Mark VII dryer would result in an increase of 3 to 4 dBA DNL.
- General Plan Policy EC-1.3: IW found the Ryko-3 Slimline dryer would exceed the 55 dBA DNL threshold at the second story of the first and second residences on Starview Drive by 1 – 6 dBA DNL, but the quieter AeroDry dryer would not exceed 55 dBA DNL at any of the residences along Starview Drive.

Based on the foregoing, the City Council finds there is significant concerns with the noise impacts of the proposed carwash on surrounding uses. First, both updated noise studies confirmed that the project will create noise impacts exceeding the General Plan and Zoning Code requirements. Second, there is insufficient evidence in the administrative record to support the conclusion that additional mitigation or changes in the project design will allow the proposed carwash to meet the General Plan or Zoning Code noise requirements. Last, the proposed carwash is within twenty-five (25) feet of the current residential uses and will create a negative impact to the surrounding uses. Therefore, the City Council does not support the proposed carwash as part of the project.

- g. **Zoning Ordinance Noise Compliance.** The City's Zoning Ordinance utilizes the instantaneous decibels (dBA) noise descriptor. Pursuant to Section 20.40.600 of the Zoning Ordinance, uses of the CN Commercial Neighborhood Zoning District that are adjacent to a property used or zoned for residential purposes shall not exceed 55 dBA at the property line except with the approval of a Special Use Permit per Section 20.40.600.B.2 of the Zoning Ordinance. Uses of the CN Zoning District that are adjacent to a property used or zoned for commercial purposes shall not exceed 60 dBA at the property line. The table above shows the noise

levels at the property lines and the graphic image below shows the location of the project design feature barriers. The project design features are explained below.



- i. A trash enclosure will be constructed to conceal the trash bins onsite. This enclosure will be 8 feet tall and made of concrete masonry units (CMU). The enclosure will be 16 feet, 6 inches in length.
 - ii. An existing 6-foot tall concrete masonry unit (CMU) wall is between the adjacent commercial property and the subject site. The wall is included in the noise report as Barrier #1 and reduces the noise at the property line to 53 dBA, below the required 60 dBA noise performance standards.
 - iii. In addition to the one noise barrier above, a 247-foot long, 7-foot high masonry wall shall be installed along the eastern property boundary, extending from the site's property line near Woodard Road to its southern property line, to reduce noise levels and to increase security and separation between the project site and adjacent residential properties. This wall was not considered as a project design feature under the noise study, but was integrated into the project to replace the existing wooden fence. Its construction is not being used to meet the noise requirements of the General Plan, CEQA, or the Zoning Ordinance.
5. **Transportation.** A Public Works Department Memorandum (dated December 16, 2016) stated the department completed an in-house traffic analysis (TIA) for the project and concluded that the project is in conformance with the City's Transportation Level of Service (LOS) Policy (Council Policy 5-3) and will not worsen the level of service for the existing South Bascom Avenue and Woodard Road intersection. It was estimated that the proposed project would generate 33 net new Peak Hour Trips (PHT). A significant LOS impact occurs when the TIA demonstrates that the proposed development would either: (1) cause the level of service at an intersection to fall below LOS D, or (2) contribute the equivalent of 1 % or more to existing traffic congestion at an intersection already operating at LOS E or F. Council Policy 5-3 states that adding 1 % or more to an already congested intersection is a substantial increase in congestion and constitutes a significant impact. The City performed a LOS analysis at the South Bascom Avenue and Woodard Road intersection which indicated that the existing LOS/delay of B-18.5 would increase to B-18.7 with project traffic (a 0.2 increase). Since the grade of this intersection would not change from "B" and delays would only increase by 0.2, there would be no significant traffic impacts associated with the proposed project.

In coordination with and at the request of City staff, TJKM Transportation Consultants prepared a traffic report after the October 24, 2017 Council meeting to evaluate the impacts of the proposed project and the effects of the project on the adjacent Farnham School operations during the morning peak hour. The report concluded the project did not have a significant traffic impact at the intersection of Bascom Avenue and Woodard Road per the City's Level of Service Policy, Council Policy 5-3.

The report also concluded the proposed project expansion would not have any effect on school operations. However, school operations were evaluated during the morning drop off, and the report documented several items. City staff will be coordinating with other departments and the Council office to develop options to address the school traffic operations.

6. City Council Policy 6-27: Evaluation of 24-Hour Uses:

On November 30, 1984, the City Council approved an amendment to the Zoning Ordinance that required all commercial uses operating between the hours of 12:00 midnight and 6:00 a.m. to be subject to a Conditional Use Permit. This ordinance change was established to ensure compatibility of late night and early morning uses with surrounding land uses. The policy acknowledges that while there is a general public need for some late-night services, there are potentially significant problems with such uses including proximity to residential uses and noise. This policy is intended to provide guidelines for the appropriate development of establishments that operate during these late-night hours, while avoiding the problems associated with such operations. To do that, the policy evaluates each using applicable guidelines outlined below:

- a. Area Use Compatibility: The proposed convenience store would replace an existing convenience store and vehicle repair station that is operated in conjunction with the gasoline service station. While the current convenience store and gasoline service station do not have late night hours (between midnight and 6:00 a.m.), the one-hour extension between 5:00 a.m. and 6:00 a.m. for the convenience store and gas station would provide a convenience to people with late night or early morning work shifts and would not be detrimental to nearby residential uses as access to the store faces Bascom and would minimize disturbance to the residents. The San José Police Department issued a Police Memorandum (dated June 9, 2017) that was neutral to the early morning use request.
- b. Use Separation: Generally, 24-hour uses should not be located within 300 feet (measured from the building entrance and “Designated Parking Area” and/or “Outdoor Use Area” to the nearest residential property line) from any property that is residentially zoned, planned, or in use. The nearest residential property is located within 300 feet of the proposed 24-hour use; however, a two-story convenience store, office, and 7-foot tall masonry wall create a visual and noise buffer between the residential properties to the east of the site. The residential uses to the north of the site are also within 300 feet of the proposed use but are separated by Woodard Road.
- c. Outdoor Activities: Outdoor activity would be limited to the pump stations which are located closest to South Bascom Avenue away from residential properties. There would be no amplified sound at the site.

- d. Noise: As noted above under General Plan Noise Compliance and Zoning Ordinance Noise Compliance sections, the proposed use includes project design features to comply with noise requirements of the General Plan, CEQA, and the Zoning Ordinance. The proposed hours of operation for the gas station and convenience store are from 5:00 a.m. to 12:00 a.m., of which operations from 5:00 a.m. to 6:00 a.m. would be a late-night use and require a conditional use permit. There will be no amplified noise allowed outside the buildings.
- e. Lighting: The proposed lighting fixtures are appropriately shielded to comply with the City's Outdoor Lighting on Private Development Council Policy 4-3 and a photometric plan indicated that illumination levels at the north and east property lines would not exceed 0.1 fc. Policy 6-27 does not have specific illumination level requirements; however, the measured 0.1 fc at the property line complies with the lighting requirements of Council Policy 6-10 for drive-thru uses.
- f. Cleaning and Maintenance: Consistent with the Policy, the project applicant shall comply with the approved Mitigation Management Plan/Operations Plan which includes trash and graffiti removal, site security and safety measures, loitering and panhandling restrictions, and mandatory employee training.

Policy 6-27 also includes specific guidelines for gasoline service stations. Gasoline service stations are a type of outdoor retail operation which have difficulty meeting all of the requirements listed in the General Guidelines. Specifically, there is generally a reduced frequency of use; the outside customer areas are intensely lighted, much more so than parking lot areas; there are very few, if any, parking spaces for prolonged stays on-site; service is rendered quickly at the fueling stations, customers are discouraged from loitering and blocking service areas; and very little in terms of uses are available on-site which may result in litter problems. For this reason, alternative means must be considered to meet the intent of the guidelines without unduly restricting service station uses because the sale of gasoline may be necessary for the safe transport of people during the late night and early morning hours.

- Gasoline service stations shall not provide automotive repair service between the hours of 10:00 p.m. and 7:00 a.m.
- Restroom facilities shall remain open and available during business hours. Conditions to assure surveillance and security will be required as part of the Conditional Use Permit.

The parking areas shall be well lit and loitering shall not be tolerated as outlined in the approved Mitigation Management Plan/Operations Plan. Furthermore, this project does not include automotive repair. The restroom facilities will be located inside the proposed convenience store and be available and open during business hours, which will provide security and safety of the patrons maintained in accordance with the aforementioned Plan.

7. **Commercial Design Guidelines Conformance.** The City's Commercial Design Guidelines establish design objectives for service stations related to site organization and building design. Per the Commercial Design Guidelines, all structures on the site including kiosks, gas pump columns, etc., should be architecturally consistent with the main structure. Furthermore, buildings should be compatible with the character of the existing neighborhood, by complimenting the building forms, architectural styles, and landscape patterns of neighboring development. The structures to the north and west of the subject site are two-story multifamily residential. Consistent with the Guidelines, the proposed architecture of the gas station reflects these surrounding uses through compatible massing and building height, and a pitched roof form. The proposed architecture and materials are of high quality and will complement the overall aesthetics of the neighborhood through the use of a similar roof form, stucco, and stone veneer. As discussed above, the fueling canopy and canopy signage was replaced under a separate permit (File no. AD16-398 and File no. AD16-900) prior to submittal of the Conditional Use Permit application. The architecture of the convenience store and trash enclosure build upon the materials and colors of the canopy. Pursuant to the suggestions in the Guidelines, approximately 40 feet (fits roughly two vehicles) is provided at each dispenser on each side to allow for adequate vehicle stacking at the gas dispensers.
8. **Environmental Review.** Under the provisions of Section 15302 (Replacement or Reconstruction) and 15332 (In-fill Development Projects) of the State Guidelines for Implementation of the California Environmental Quality Act, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

15302. Replacement or Reconstruction

The proposed project consists of demolition of an existing gas station service building and reconstruction of a convenience store. The proposed project fits the Class 2 category for replacement or reconstruction of existing structure and facilities where the new structure would be located on the same site as the structure replaced and would have substantially the same purpose and capacity as the structure replaced.

15332. In-fill Development Projects

- a. *The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.*

As discussed in detail above, the project site is designated as Neighborhood/Community Commercial in the City's General Plan. This designation allows commercial uses that serve communities such as neighborhood serving retail and services. The site currently houses a gas station and vehicle repair service bays. The convenience store proposed under this project provides a neighborhood

serving retail and service function, and thus conforms to the Neighborhood/Community Commercial land use designation.

The site is zoned CN Commercial Neighborhood, which requires a Conditional Use Permit for the gas station to ensure that the proposed project would conform to the General Regulations and the Performance Standards required for this zoning district. Residential properties are located adjacent to the east and south of the project site. The proposed project will include project design features such as noise barriers to ensure compliance with the applicable General Plan designation, policies, and Zoning Ordinance district and regulations, and limit impacts to neighboring residences (discussed in detail above).

- b. *The proposed development occurs within City limits on a project site of no more than five acres substantially surrounded by urban uses.*

The project site is located on a 0.81-gross acre site within City limits. The site is a corner lot with South Bascom Avenue to the west and Woodard Road to the north. Residential areas are located adjacent to the site on the east, and commercial uses are located to the south. The opposite side of South Bascom Avenue is in an unincorporated area of the County that is also densely developed with commercial and residential uses.

- c. *The project site has no value as habitat for endangered, rare, or threatened species.*

Los Gatos Creek is approximately 2,000 feet northwest of the project site. The area between the creek and the site is densely developed. The project site is classified as urban-suburban land cover within the Santa Clara Valley Habitat Conservation Plan area, and does not identify habitat for endangered, rare, or threatened species.

- d. *Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.*

Traffic: See Discussion on Traffic above.

Noise: See Discussion on Noise above.

Air Quality: The Bay Area Air Quality Management District (BAAQMD), in their 2010 California Environmental Quality Act Air Quality Guidelines (2011 Update), established operational GHG screening criteria for GHG emissions based on land use type and project size using default emission assumptions in the URBEMIS GHG emission model. Projects smaller than the applicable screening criteria for the subject land use would not exceed the 1,100 metric tons of carbon dioxide equivalent per year (CO₂e/yr) GHG threshold of significance, and therefore, would be considered to have a less than significant impact for GHG emissions.

The proposed project would construct a new building which includes a 2,834-square foot convenience store with a 1,082 square-foot owner office on the second

floor. The BAAQMD operational screening threshold for criteria pollutants related to a convenience store with gas pumps is 4,000 square feet. The convenience store and owner office results in a total of 3,916 square feet, which is below this threshold. As this project is smaller than the screening level, the proposed project would not result in a significant impact from GHG emissions.

Consistent with the City's General Plan policies MS-10.1 and MS-13.2, the proposed project would be developed in conformance with all basic BAAQMD Best Management Practices (BMPs) and dust control measures during all phases of construction on the project site to reduce dust-fall emissions. The air quality impact of the proposed project would be less than significant.

Water Quality: The Department of Public Works has determined that the proposed project must comply with the City's Post-Construction Urban Runoff Management Policy (Council 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. These measures are included in the Stormwater Control Plan for the proposed project. Adherence to these measures would ensure that the proposed project conforms to City Policy. Therefore, the water quality impact of the proposed project would be less than significant.

- e. *The site can be adequately served by all required utilities and public services.*

The proposed project is located in an urbanized area with adequate sewer, water, and electric power service. No new utilities would be needed to serve the proposed project. The demand for fire and police protection would not change from existing levels.

9. **Building Demolition.** The proposed project includes the demolition of the existing 1,276 square foot minimart and incidental repair building. This structure was constructed in 1963 (Building Permit dated May 9, 1963), with the fuel canopy subsequently constructed in 1970 (Building Permit dated June 8, 1970). The site has continued to operate as a gas station since. This structure is not listed on the City's Historic Resources Inventory.

10. **Conditional Use Permit Findings.** Chapter 20.100 of Title 20 of the San José Municipal Code establishes required findings for issuance of a Conditional Use Permit, which findings are made for the Project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and other Permit Findings discussed above, and subject to the conditions set forth in this Permit. The City Council finds:

- a. The Conditional Use Permit, as approved, is consistent with and will further the policies of the general plan, applicable specific plans and area development policies; and

Analysis: As described in detail above, the proposed project is consistent with the site's General Plan land use designation and policies in that it proposes a neighborhood serving use that creates a more complete neighborhood. Enhanced retail services provide one-stop shopping which would minimize vehicle trips. The project is also in conformance with the noise standards of San José General Plan Goal EC-1.2 as described above.

- b. The Conditional Use Permit, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project; and

Analysis: As described in detail above, the proposed project is consistent with the provisions of the Zoning Ordinance in that the project frontages are consistent with required setbacks, maximum allowed height, and vehicular and bicycle parking requirements, as discussed above. The temporary use trailer meets the requirements of Section 20.80.1700 including meeting the setback and size requirements.

- c. The Conditional Use Permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency; and

Analysis: As described in detail above and in the staff memorandum, the proposed project meets the requirements of the San José Commercial Design Guidelines. As described above, the Public Works Department concluded that the project is in conformance with the City's Transportation Level of Service Policy (Council Policy 5-3) and will not worsen the level of service for the existing South Bascom Avenue and Woodard Road intersection. The proposed project conforms to City Council Policy 6-27: Evaluation of 24-Hour Uses in regards to compatibility, noise, lighting, and maintenance, however, the project does not meet use separation requirements which state that 24-hour uses should not be located within 300 feet from any property residentially zoned, planned, or used. To address this inconsistency, the project proposes to construct a two-story convenience store with owner office, and a 7-foot tall masonry wall along the eastern property boundary to create a buffer between the residential properties to the east of the site. The residential uses to the north of the site are separated from the project site by Woodard Road. Furthermore, the request for early morning operation would result in a one-hour extension between the hours of 5:00 a.m. and 6:00 a.m. for the gas station and convenience store. All lighting fixtures are appropriately shielded pursuant to City Council Policy 4-3: Outdoor Lighting on Private Developments, and will not have adverse effect on adjacent residential properties.

- d. The proposed use at the location requested will not:

- i. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area;

- ii. or Impair the utility or value of property of other persons located in the vicinity of the site; or
- iii. Be detrimental to public health, safety or general welfare; and

Analysis: As described in detail above, the proposed use is located in an area with a mix of commercial and residential uses. Due to the variety of current uses in the area, the proposed gas station convenience store would add to the range of commercial uses consistent with the Neighborhood/Community Commercial General Plan land use designation and Commercial Zoning Districts.

As noted above in the General Plan Noise discussion, the proposed carwash resulted in increased noise levels. The City Council considered the entire administrative record and determined that the proposed carwash proximity to the existing residential neighborhood would result in increased noise levels and that the proposed project design features would not enhance the project in a manner that compatible with the neighborhood. Therefore, the carwash is not approved as part of this Conditional Use Permit and Site Development Permit.

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

Analysis: The project site is 0.81-gross acre and has been used as a gas station since 1963. The proposal will replace the existing gas station minimart and incidental repair services with a modern and more easily accessible facility. This structure is not included on the City's Historic Resources Inventory. Fueling bays provide 40 feet for vehicle stacking and are in conformance with Section 16.D.6 of the City's Commercial Design Guidelines. The proposed site plan includes the elimination of an existing driveway on Woodard Road closest to South Bascom Avenue which will increase vehicle and pedestrian safety at this intersection and provide for better traffic circulation on the site. The project site is of adequate size and shape to meet the parking requirements of Title 20 and provide significant landscaping upgrades to the site, including fully landscaped setback areas. The site can also accommodate the installation of a 7-foot tall masonry wall along the eastern property boundary between the project site and the adjacent multifamily residential units to provide a buffer between the uses. During construction, the site can also accommodate the temporary use trailer which is located near the corner of Woodard and Bascom.

- f. 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 South Bascom Avenue and Woodard Road, which are six-lane and two-lane roads, respectively. Bascom Avenue is also identified by the City's Department of Transportation as a connector street. Valley Transportation Authority bus stops for Routes 49 and 61 are located within 300 feet of the project site along Bascom Avenue. The site is within a developed area that is currently served by all necessary private and public facilities.

- g. 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, 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 affect on adjacent property or properties, as discussed under Environmental Review. The proposed project is exempt per CEQA section 15302 (Replacement or Reconstruction) and 15332 (In-fill Development Projects) as the proposed project is consistent with the General Plan designation; the project occurs within city limits and is no more than five acres and substantially surrounded by urban uses; the project site has no value as habitat for endangered, rare or threatened species; the approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and the site is adequately served by all required utilities and public services.

11. Site Development Permit Findings. Chapter 20.100 of Title 20 of the San José Municipal Code establishes required findings for issuance of a Site Development Permit.

- 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: See discussion above related to General Plan conformance incorporated fully herein by this reference.

- 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: See discussion above related to zoning conformance incorporated fully herein by this reference.

- c. The site development permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency.

Analysis: See discussion above related to Council Policies incorporated fully herein by this reference.

- d. The interrelationship between the orientation, location, and elevations 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 convenience store and trash enclosure structures are aesthetically harmonious in that they utilize similar colors and materials used in the previously approved fuel canopy upgrades (File No. AD16-398).

- 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 and site are oriented toward South Bascom Avenue, minimizing its commercial presence toward the multifamily residences across Woodard Road and directly abutting the site to the east. The maximum height of the two-story building is 28.5 feet, which is compatible with the commercial uses on Bascom Avenue and the building is over 40-feet from the adjacent two-story residential buildings. The painted stucco, metal, and stone veneer exterior of the building and canopy are compatible with the surrounding neighborhood aesthetic. Furthermore, the roof form is consistent with adjacent residential styles in addition to an existing two-story office building located at 3880 South Bascom Avenue.

- 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, 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 affect on adjacent property or properties, as discussed under Environmental Review. The proposed project is exempt per CEQA section 15302 (Replacement or Reconstruction) and 15332 (In-fill Development Projects) as the proposed project is consistent with the General Plan designation; the project occurs within city limits and is no more than five acres and substantially surrounded by urban uses; the project site has no value as habitat for endangered, rare or threatened species; the approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and the site is adequately served by all required utilities and public services.

- 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 along South Bascom Avenue and Woodard Road, which will significantly upgrade the appearance of the existing site. Furthermore, landscaping will be located along the proposed masonry wall at the rear of the site to minimize the visibility of these structures. Building mechanical systems and trash containers will be stored within a block wall enclosure.

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

Analysis: As discussed above, access to the site would be via three existing driveways, two of which are on South Bascom Avenue, with one located near the intersection of Woodard Road and one that shares an access agreement with the parcel to the south of the project site, and one existing driveway on Woodard Road, located at the northeast corner to the site that provides access along the eastern boundary of the site to the commercial uses south of the site. A second existing driveway on Woodard Road closest to the intersection (northwest corner of the site) would be closed to improve vehicle and pedestrian safety as well as improve traffic circulation on the site. Access to the project site from these roadways as well as traffic generated by the proposed uses have been reviewed by the Department of Transportation and determined to be adequate. There is ample pedestrian access to the site via surrounding public sidewalks, which are connected to pedestrian walkways on the property. The parking is sufficient on site for the gas station, convenience store, and private office use, as detailed in the Zoning Ordinance Compliance section of this report.

12. 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;
- b. The failure to approve the permit would jeopardize public health, safety or welfare;
- c. The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood;
- d. The approval of the permit should maintain the supply of existing housing stock in the City of San José;

- e. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;
- f. Rehabilitation or reuse of the existing building would not be feasible; and
- g. The demolition, removal or relocation of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.

The project includes the demolition of the existing 1,276 square foot minimart and incidental repair building and replacement with a new 5,754 square foot convenience store. The existing structure was constructed in 1963 (Building Permit dated May 9, 1963), and has continued to operate as a gas station since. As discussed above, this structure is not listed on the City's Historic Resources Inventory. Construction of a new convenience store will increase the aesthetic value of the site and furthers the intent of the General Plan Land Use/Transportation Diagram designation of Neighborhood/Community Commercial.

In accordance with the findings set forth above, a Conditional Use Permit and Site Development Permit 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**. This City Council expressly declares that it would not have approved 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. **Permit Expiration.** This Conditional Use Permit and Site Development Permit shall automatically expire two years from and after the date of issuance hereof by the City Council, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit in accordance with Title 20 of the San José Municipal Code. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **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.

3. **Conformance to Plans.** The development of the site shall conform to the approved Conditional Use Permit plans entitled, “Bascom ANDoil Replacement and Car Wash Addition” dated Received June 27, 2017, on file with the Department of Planning, Building and Code Enforcement, and as modified by the City Council on December 19, 2017. All references to any carwash shall be removed from the Approved Plan Set. Plans 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.”
4. **Conformance to Noise Study.** The project shall fully conform to all of the recommendations of the noise study conducted by Mei Wu Acoustics entitled “Bascom Valero Car Wash Noise Study MWA Project—15059’ dated December 4, 2017, as applicable.
5. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or 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 applicant'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. **Use Authorization.** This Conditional Use Permit and Site Development Permit authorize the demolition of an existing 1,276 square-foot service station minimart with incidental retail and vehicle service, and the construction of a new 5,774-square foot convenience store, office, and relocated trash enclosure. Hours of operation for the gas station and convenience store shall be limited to 5:00 a.m. to 12:00 a.m., which requires a late-night use to allow operation to begin at 5:00 a.m. No carwash is approved with this Permit.
7. **Mitigation Management Plan.** Consistent with the City Council Policy 6-27, the permittee shall fully comply with the approved Mitigation Management Plan/Operations Plan (Attachment E of this Resolution) which includes trash and graffiti removal, site security and safety measures, loitering and panhandling restrictions, and mandatory employee training. Failure to adhere to this plan shall result in revocation of early morning operation between the hours of 5:00 a.m. to 6:00 a.m.

8. **Permit Adjustment Required.** Prior to issuance of any building permit, the Permittee shall obtain a Major Permit Adjustment approved by the Planning Department for the following design changes:
- a. Removal of the proposed carwash and relocation of the six parking spaces, trash enclosure, electrical room and transformer to the rear of the convenience store. A six-foot landscape bed will be located along the rear wall of the proposed convenience store and office building and it will include plantings of five 15-gallon Fern Podocarpus (*Podocarpus gracillior*), appropriate ground cover and two-inches of mulch.
 - b. A 7-foot high masonry wall shall be installed along the east property boundary between the project site and adjacent residential properties, not six feet as indicated on the current plan set and the wall shall be reduced to 3 feet in height for the first 6 feet as measured from the Woodard Drive property line.
 - c. Add the existing 6-foot tall concrete masonry units (CMU) wall located between the adjacent commercial property and the subject site on the plan set. The wall is included in the noise report as Barrier #1.
 - d. Additional landscape planters shall be added along the masonry wall at east property boundary. Planters shall be 1 foot by 3 feet in size and spaced at 10-foot intervals.
 - e. The landscape planters adjacent to South Bascom Avenue and Woodard Road shall include two crape myrtle trees in addition to any street trees required per the Department of Public Works.
 - f. Stone veneer applied to base of building and at entries shall be designed to include a finish band to facilitate transition between stone and stucco.
 - g. Site sections shall be included demonstrating that the existing access easement maintains a minimum width of 24 feet clearance.
9. **Temporary Use Trailer.** The use of any temporary use trailer shall be in accordance with all of the following conditions:
- a. The use of the temporary use trailer may be permitted for up to one year, and renewed for one additional year at the discretion of the Director.
 - b. No more than one temporary use trailer per lot shall be permitted at any given time, except that in the case where temporary use trailers are being used to temporarily house on-site workers displaced from the primary structure due to temporary construction activities under the provisions of Section 20.80.1730B.3., additional temporary use trailers may be permitted as needed to temporarily house those displaced workers provided that each and all of the temporary use trailers do not conflict with applicable development standards including without limitation setback and parking requirements.

- c. Temporary use trailers shall be located a minimum of 15 feet from the front property line.
 - d. No temporary use trailer shall be used in such a manner that circulation aisles are blocked.
 - e. The minimum number of required off-street parking spaces for the site shall be calculated according to the provisions of Chapter 20.90 based upon the cumulative square footage of temporary use trailers and any remaining useable space in the primary structure.
 - f. Not more than one sign shall be permitted per lot. Such sign shall be attached to the trailer and shall not exceed 6 square feet in area.
 - g. The hours of operation shall be the same as for the preexisting use in the primary structure.
 - h. Nothing herein excuses full compliance with the provisions of Section 20.150.020 of this title.
 - i. The temporary use trailer shall comply with all applicable building and fire safety standards.
 - j. All necessary city permits, in addition to those required by this part, shall be obtained prior to installation of the temporary use trailer.
 - k. The temporary use trailer shall be removed and the construction site shall be cleared of all debris upon completion of the retrofit, reconstruction or other work on the primary structure or upon revocation or expiration of the administrative or special use permit, whichever occurs first.
 - l. No certificate of occupancy, as provided for in Section 307 of the building code, shall be issued for the primary structure until after the temporary use trailer has been completely removed from the lot and all utilities have been disconnected from the temporary use trailer in a safe manner.
 - m. Revocation of any permit issued hereunder shall be in accordance with the provisions of this title which are applicable to the type of permit issued.
- 10. Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws, regulations and required permits. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined below.
- 11. 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.

12. **Building and Property Maintenance.** The permittee shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.
13. **Generators.** This Permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
14. **Window Glazing.** Unless otherwise indicated on the approved plan, all windows shall consist of a transparent glass.
15. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set. No outdoor storage is allowed in common areas.
16. **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.
17. **Loitering Prohibited.** Loitering on the premises shall be prohibited.
18. **Anti-Graffiti.** The permittee shall remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement.
19. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris:
 - a. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall include daily damp washing of all exterior walls and sidewalks along the project's frontage.
 - b. The permittee shall clean the public right-of-way immediately adjacent to the subject site before 8:00 a.m. each day.
 - c. Mechanical equipment used for outside maintenance, including blowers and street sweepers may not be used between 10:00 p.m. and 6:00 a.m. daily.
20. **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.
21. **Amplified Sound.** Amplified sound is not allowed.
22. **Outdoor Uses.** There shall be no outdoor uses except those explicitly approved herein (gas station fueling, air/water service station).
23. **Sign Approval.** No signs are approved with this Permit. All proposed signs shall be subject to approval by the Director of Planning.

24. **Colors and Materials.** All building colors and materials are to be as specified on the Approved Plan Set.
25. **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.
26. **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.
27. **Landscaping.** Planting and irrigation shall be provided, as indicated, on the Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material shall be removed and replaced by the property owner. Irrigation shall be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient landscape Standards for New and Rehabilitated Landscaping. Any phasing of the project resulting in undeveloped areas for more than six months shall be temporarily landscaped in order to provide dust and erosion control. This temporary landscaping shall consist of mulch and drought-resistant plants and ground cover.
28. **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.
29. **Lighting.** All proposed lighting shall conform to the City of San José's Outdoor Lighting Policy and be installed as indicated on the final Approved Plan Set.
30. **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.
31. **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.

32. Building Division Clearance for Issuing Permits. Prior to the issuance of any Building permit, the following requirements shall be met to the satisfaction of the Chief Building Official:

- a. *Construction Plans.* This Permit file number, CP16-035 shall be printed on all construction plans submitted to the Building Division.
- b. *Americans with Disabilities Act.* The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
- c. *Emergency Address Card.* The permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
- d. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any Building Permit issuance, Building Permit plans shall conform to the approved Planning development permits and applicable conditions.
- e. *Permit Adjustment.* Approval of a Permit Adjustment per Condition #8 of this Permit is required.

33. Public Works Clearance 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 permittee 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. **Minor Improvement Permit:** The public improvements conditioned as part of this permit require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. The Minor Improvement Permit includes privately engineered plans, insurance, surety deposit, and engineering and inspection fees.
- b. **Grading/Geology:**
 - i. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
 - 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. A soils report must be submitted to and accepted by the City prior to the issuance of a grading permit.
 - c. **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 for conformance with City Policy 6-29.
 - ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
 - d. **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).
 - e. **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.
 - f. **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 Department of Public Works clearance.
 - g. **Street Improvements:**
 - i. Remove and replace broken or uplifted curb, gutter, and sidewalk along project frontage.
 - ii. Remove the westernmost driveway on Woodard Road; replace with city standard curb, gutter, and sidewalk.
 - iii. Permittee shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.

h. 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.
- i. **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 cut outs behind the 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 City Council at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Conditional Use Permit 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.

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In accordance with the findings set forth above, the permit appeal is hereby denied and the permits to use the subject property for said purpose specified above is hereby **approved**.

ADOPTED this _____ day of _____, 2017, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

NOTICE TO PARTIES

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

ORDER NO. : 2202040043-RP

EXHIBIT A

The land referred to is situated in the County of Santa Clara, City of San Jose, State of California, and is described as follows:

PARCEL ONE:

Beginning at a found $\frac{3}{4}$ " iron pipe at the Northwest corner of Lot 1, as said Lot is shown on the Map entitled "Tract No. 3257", recorded July 25, 1962, in Book 150 of Maps, Page 15, Santa Clara County Records, said pipe lying in the Southerly line of Woodard Road; thence along the Westerly boundary of said Tract No. 3257, at right angles with Woodard Road, South $0^{\circ} 20' 00''$ East, 96.38 feet; thence continuing along the Northwesterly boundary of said Tract, South $36^{\circ} 13' 45''$ West, 150.57 feet to the Southerly corner of Parcel One described in Deed to Humble Oil & Refining Company, recorded June 21, 1968, in Book 8164, Page 197, Official Records; thence leaving said boundary of said Tract, at right angles, and along the Southwesterly line of lands of said Humble Oil & Refining Company, North $53^{\circ} 46' 15''$ West, 169.13 feet to a point in the Southeasterly line of South Bascom Avenue (formerly San Jose-Los Gatos Road) as said line was established by Deed from Sam S. Felice, et ux, to the City of San Jose, a municipal corporation, recorded October 18, 1961, in Book 5332, Page 685 of Official Records; thence along the Southeasterly line of Bascom Avenue North $36^{\circ} 13' 45''$ East, 125.00 feet to a tangent point of curvature; thence along a curve to the right through a central angle of $53^{\circ} 26' 15''$ having a radius of 40.00 feet, an arc distance of 37.31 feet to a found $\frac{3}{4}$ " iron pipe at a point of tangency on the Southerly line of Woodard Road; thence along the Southerly line of Woodard Road, North $89^{\circ} 40' 00''$ East, 118.95 feet to the point of beginning, being a portion of Parcel B and all of parcel C as shown in that certain Map entitled, "Record of Survey", recorded August 31, 1961, in Book 137 of Maps, Page 13, Santa Clara County Records, and also being a portion of the Southwest $\frac{1}{4}$ of Section 2, Township 8 South, Range 1 West, Mount Diablo Base and Meridian.

APN: 421-01-104

PARCEL TWO:

An easement for ingress and egress described as follows:

Beginning at the most Westerly corner of the above described Parcel One, lying in the Southeasterly line of South Bascom Avenue; thence leaving said Southeasterly line at right angles South $53^{\circ} 46' 15''$ East, 25.00 feet to a point in the Southwesterly line of said Parcel One; thence leaving said Southeasterly line South $81^{\circ} 13' 45''$ West, 35.36 feet to the Southeasterly line of South Bascom Avenue; thence along the said Southeasterly line North $36^{\circ} 13' 45''$ East, 25.00 feet to the point of beginning.