

August 11, 2017

Andarys Enterprise
3702 Bascom Avenue
San Jose, CA 95124

Dear Andarys Enterprise:

RE: **Conditional Use Permit, File No. CP16-035**, located on the **Southeasterly corner of South Bascom Avenue and Woodard Road.**

The enclosed is your copy of the Planning Commission's action on this Conditional Use Permit.

This permit may contain one or more conditions, such as revised plans, which must be met within a specific deadline. If conditions are not met the permit will automatically expire. Please read your permit carefully!

The Planning Commission's action taken on this permit or any of the conditions of this permit may be appealed by the applicant to the City Council by filing a Notice of Appeal and a \$2,232.00 fee. The appeal must be submitted in person and presented on the Notice of Appeal form available from this department on or before **5:00 p.m., August 21, 2017**. If you have any questions, please feel free to contact your Project Manager, Elia Sorice at (408) 535-7829 or by e-mail at elia.sorice@sanjoseca.gov.

Sincerely,



Steve McHarris
Deputy

cc: Andarys Enterprise, 3702 Bascom Avenue, San Jose, CA 95124

Enclosures

ES:jp

RESOLUTION NO. 17-025

A Resolution of the Planning Commission of the City of San José approving, subject to conditions, a Conditional Use Permit and Site Development Permit to allow the demolition of an existing 1,276 square foot gas station minimart with incidental service and repair and the construction of a new 5,754 square foot convenience store and fully automated car wash with 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.) 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 minimart with incidental service and repair, and the construction of a new 5,774-square foot convenience store and fully automated car wash with extended early morning use for the convenience store and gas station only (one hour extension between 5:00 a.m. and 6:00 a.m.) 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, this Planning Commission conducted a hearing on said application, 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 this Planning Commission received and considered the reports and recommendation of the City’s Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this Planning Commission received in evidence a plan for the subject property entitled, “Bascom AND oil 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; and

WHEREAS, said public hearing before the Planning Commission was conducted in all respects as required by the San José Municipal Code and the rules of this Planning Commission; and

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

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

After considering evidence presented at the public hearing, the Planning Commission 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 multi-family residential to the north across Woodard Road, a liquor store and strip mall to the south, multi-family 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 minimart with incidental service and repair for the construction of a new 5,754 square foot convenience store and car wash, and extended early morning use (5:00 a.m. to 6:00 a.m. for the gas station and convenience store only) on a 0.81 gross-acre site. There is no change to the location of the existing fuel pumps and 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 includes a two-story building with a 2,834 square foot convenience store and a 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 the minimum five car stacking space and will not obstruct on-site circulation.

The project also includes all of the following:

- 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. with operation of the car wash between the hours of 7:00 a.m. and 9:00 p.m.
 - A seven foot masonry sound wall will be installed along the eastern property boundary to adequately 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 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, general retail sales, and carwash are consistent with the Neighborhood/Community Commercial land use designation in that the commercial 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) 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 CUP 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 and car wash 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 a fully-automated car wash and 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 Envision San José 2040 General Plan Land Use/Transportation Diagram designation Neighborhood/Community Commercial. Under the Zoning Ordinance Section 20.40.100, gas stations and drive-through 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). Staff considered the previously approved canopy improvements during the review of the project.

- 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 | | |
|--|----------------|----------|
| | Required | Proposed |
| Minimum Lot Size | 6,000 sf | 31,855 |
| Setbacks | Required, Feet | Proposed |
| Front | 10 | 52.2 |
| Side, corner | 12.5 | 15.5 |
| Side Interior | None | 24.5 |
| Rear | None | 31.2 |

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 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, gas station with car wash) would require the following vehicular parking:

| Parking Requirements | | | |
|-----------------------|---|---|------------------|
| Use | Ratio | Required Parking for Proposed Project | Total 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 2,409 net square feet (2,834 gross square feet x 0.85) of retail space | 12 spaces |
| Office | 1 per 250 square feet of floor area | For 920 net square feet (1,082 gross square feet x 0.85) of office space | 4 spaces |
| Car Wash | No additional parking required when in conjunction with any use | None | 0 |
| Total Required | | | 19 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. **Noise Compliance.** A noise study was prepared by Mei Wu Acoustics (dated December 20, 2016 and attached hereto) which analyzed the potential impacts of the project on adjacent residential properties. 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 Level (Ldn) 24-hour noise descriptor, and against the City's Zoning Ordinance, which utilizes the instantaneous dBA noise descriptor.

Noise standards established in the General Plan serve as the City's noise thresholds for determining significant impacts under CEQA. Specifically, the report used the definition provided by the General Plan Goal EC-1.2 that noise impact of new land developments on residential land uses is considered significant if the proposed project would cause the day-night average noise level (Ldn) at noise sensitive receptors to increase by three (3) dBA Ldn or more where noise levels would equal or exceed the "Normally Acceptable" level.

Pursuant to Section 20.40.600 of the Zoning Ordinance, uses of the CN 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 Conditional Use Permit. 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. Per Section 20.40.600.B.2 of the Zoning Ordinance, these thresholds can exceed the decibel levels required upon issuance of a use permit.

Per the 2040 General Plan, 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. This means that noise levels at the site due to existing sources (traffic) are already in excess of the Zoning Ordinance performance standards, as described above.

The following noise levels were predicted at the eastern property boundary of the project:

| 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 | |

The above table shows that the noise levels at the nearest residential property boundary will be above the levels allowed by the Zoning Ordinance, but that they will not significantly increase the existing day-night average noise levels (L_{dn}). The project will implement the following noise reduction measures to minimize the noise impact of the new development:

- An 18-foot long, 10-foot high sound barrier will be constructed at the exit of the car wash which will block noise at the eastern property line for the northernmost residences.
- A trash enclosure will be constructed to conceal the dumpster onsite. This enclosure will be 8-feet tall and made of concrete masonry units (CMU). The enclosure will be 16'-6" in length and positioned such that it will block noise for the residential properties to the southeast.
- An 11-foot long, 10-foot high barrier will be constructed at the entrance of the car wash which blocks noise at the eastern property line for residential buildings located to the south of the site.

Taking into consideration the noise barriers that would be built at the entrance and exit of the car wash, the noise study determined that the most that the L_{dn} would increase at the project site is 0.6 dBA L_{dn}. This increase is less than the 3 dBA L_{dn} increase specified in the San Jose General Plan Goal EC-1.2.

Since the completion of the noise study, staff has requested the incorporation of a 7-foot high masonry wall at the eastern property boundary to further mitigate noise generated by on-site activities and increase security and separation between adjacent residential properties.

With implementation of all measures specified above, the noise impact of the proposed project would be less than significant.

- f. **Transportation.** A Public Works Department Memorandum (dated December 16, 2016 and attached) stated the department completed an in-house traffic analysis 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 reduce the level of service for the existing South Bascom Avenue and Woodard Avenue intersection. It was estimated that the proposed project would generate 33 net new Peak Hour Trips (PHT). 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. Since

the grade of this intersection would not change and delays would only increase by 0.2, there will be no negative traffic impacts associated with the proposed project. Furthermore, pursuant to Council Policy 6-10, sufficient space is provided for car wash stacking.

5. **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, car wash building, 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. The architecture of the convenience store, car wash, 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. The drive-through car wash is designed such that the vehicles entering and exiting the car wash tunnel will have the minimum five car stacking space and will not obstruct on-site circulation. In addition to serving as noise mitigation measures for the residential properties that directly abut the property to the east, a sound barrier and CMU trash enclosure at the car wash entrance and a sound barrier at the car wash exit will block the line of sight of the proposed car wash from these residences.
6. **Council Policy 6-10: Criteria for the Review of Drive-Through Uses:** City Council Policy 6-10 entitled "Criteria for the Review of Drive-Through Uses" was adopted by the City Council in 1990 to provide guidelines for the development of establishments with drive-through facilities to help assure compatibility with surrounding land uses and avoid potential problems associated with such operations.
 - a. **Traffic:** Consistent with the Council Policy and the Public Works Department memorandum dated December 16, 2016, as discussed above, the primary ingress to the proposed drive-through car wash is from South Bascom Avenue, a six-lane City Connector Street. The site layout is designed to ensure that overflow stacking does not affect the ingress and egress of the site and impede the traffic on South Bascom Avenue and Woodard Avenue. The existing driveway on Woodard Road, located at the northwest corner of the site, will be closed, improving pedestrian circulation on and around the site. The proposed convenience store with drive-through car wash significantly upgrades the subject site by allowing improved circulation and access by vehicles and pedestrians.
 - b. **Noise:** As noted above under Zoning Ordinance Compliance, the proposed use includes measures to comply with noise requirements of the General Plan and this policy.
 - c. **Hours of Operation:** The drive-through car wash will operate from 7:00 a.m. to 9:00 p.m., with no late night use, consistent with this policy.

- d. Urban Design: The proposed project will be visually attractive and compatible in terms of mass, scale, and building colors and materials with the adjacent commercial and residential development. The drive-through car wash will be located behind the convenience store and will be less visible from the street.
- e. Lighting: The new lighting fixtures are appropriately shielded to shine down per the City's Outdoor Lighting on Private Development Council Policy 4-3 and per Section 20.120.200 (Lighting) of the Zoning Ordinance. Pursuant to the City's drive-through policy, the maximum foot-candles at the residential property line for drive-through projects should not exceed 0.1 fc. The photometric plan prepared for the project indicates that illumination levels at the north and east property lines do not exceed 0.1 fc which is consistent with this policy.
- f. Location: The Council Drive-through Policy states that drive-through uses shall be located 200 feet or more from immediately adjacent or directly opposite residential uses. Pursuant to this policy, self-service car washes which are proposed in conjunction with existing gasoline service stations may be exempted from location criteria, provided the traffic criteria of the policy is satisfied. As discussed above, a traffic analysis concluded that the project is in conformance with the City's Transportation Level of Service Policy (Council Policy 5-3) and will not reduce the level of service for the existing South Bascom Avenue and Woodard Avenue intersection. The proposed drive through is located 25 feet from the eastern property boundary and is further separated by a 7-foot masonry wall.

Based on the above analysis, the proposed car wash use would be consistent with the intent of the Drive-Through Council Policy and will improve the function and appearance of the site. Although the drive-through use is within 200 feet of a residential use, sufficient measures in regards to site design and sound attenuation walls would limit impact to the adjacent parcels, as discussed above.

7. **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 and car wash would replace an existing convenience store and 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. would provide a convenience to people with late night or early morning work shifts and would not be detrimental to nearby residential uses. The San Jose Police Department issued a Police Memorandum (dated June 9, 2017 and attached) 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 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, car wash, and 7-foot tall masonry wall create a noise mitigating and visual 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. The policy also states that buildings with drive-through facilities shall be located with a minimum separation of 500 feet from any other structure containing a drive-through facility. There are no drive-through uses in the immediate vicinity of the site.
- 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 Zoning Ordinance Compliance, the proposed use includes measures to comply with noise requirements of the General Plan. The proposed hours of operation for the car wash are 7 a.m. to 9:00 p.m. which are consistent with this policy.
- 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 the drive-through policy 6-10.
- 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 stay on-site; service is rendered quickly at the fueling stations, customers are discouraged from loitering and blocking service areas; and very little is available on-site which may result in litter problems. For this reason, it is appropriate to look at alternative means 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.
- Gasoline service stations shall not provide car wash service between the hours of 10:00 p.m. and 7:00 a.m.
- Restroom facilities shall remain open and available during business hours. Measures to assure surveillance and security will be required

The parking areas will be well lit and loitering will not be tolerated as outlined in the Mitigation Management Plan/Operations Plan. Furthermore, this project does not include automotive repair and the car wash would not operate between the hours of 9:00 p.m. and 7:00 a.m. The restroom facilities, to be located inside the proposed convenience store, would be available and open during business hours and security and safety of the patrons maintained in accordance with the aforementioned Plan.

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 and a mechanical car wash in the same location. The proposed convenience store and car wash are complementary uses for a gas station. Therefore, 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 a service station. The convenience store and car wash proposed under this project provides a neighborhood serving retail and services function, and thus conforms to the Neighborhood/Community Commercial land use designation.

The site is zoned CN, Neighborhood Commercial. Residential properties are located adjacent to the east and south of the project site. Therefore, a conditional use permit is required to ensure that the proposed project would conform to the General Regulations and the Performance Standards required for this zoning district. The proposed project will include project components such as noise barriers to ensure compliance with the applicable general plan designation, policies, and zoning code designation and regulations, and limit impacts to neighboring residences.

- 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 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 lots 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 City 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: Vehicular access to the site would be provided by three existing driveways: one full access driveway and one limited access driveway on South Bascom Avenue and one full access driveway on Woodard Road. The proposed project is estimated to generate 33 net new PM peak hour trips. The City performed a level of service (LOS) analysis at the South Bascom Avenue and Woodard Road intersection. The analysis indicated that the existing LOS/delay of B-18.5 would increase to B-18.7 with project traffic. This increase would not have a significant impact on the intersection. Thus, the proposed project meets the City's Council Policy 5-3. The traffic impact of the proposed project would be less than significant.

Noise: To determine noise impacts to the adjacent residential properties from the addition of the mechanical car wash, the noise study prepared for the proposed project used the definition provided by the General Plan Goal EC-1.2 that noise impact of new land developments on residential land uses is considered significant if the proposed project would cause the day-night average noise level (Ldn) at noise sensitive receptors to increase by three (3) dBA Ldn or more where noise levels would equal or exceed the "Normally Acceptable" level.

The project site is located in the 70 dBA Ldn noise contour. This implies that noise levels at the site due to existing sources (such as traffic noise) are already in excess of the zoning code.

The applicant has incorporated the following measures into the project:

- Construction of an 11-foot long, 10-foot high barrier at the entrance of the car wash.
- Construction of an 18-foot long, 10-foot high barrier at the exit of the car wash.
- Construction of a 7-foot high masonry wall at the eastern property boundary to further mitigate noise generated by on-site activities and increase security and separation between adjacent residential properties.

Taking into consideration the noise barriers that would be built at the entrance and exit of the car wash, and the noise barrier along the eastern property boundary adjacent to the residential area, the noise study determined that the most that the Ldn would increase at the project site is 0.6 dBA Ldn. This increase is less than the 3 dBA Ldn increase specified in the San Jose General Plan Goal EC-1.2. With implementation of all measures specified in the noise study, the noise impact of the proposed project would be less than significant.

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, and a 1,858 square-foot mechanical car wash. 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. The screening criteria, however, does not include a category for a convenience store with gas pumps and a car wash. As this project is smaller than the screening level, the proposed project is considered to not have a significant impact to 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 shall be 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.

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 nor qualifies as a contributing structure.

A Statement of Exemption (dated January 17, 2017 and attached) for the Bascom ANDoIl Replacement and Car Wash Addition has been prepared for the project.

9. **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.

- 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 and in the staff memorandum, the proposed project is consistent with the General Plan designation and policies in that it proposes a neighborhood serving use that creates a more complete neighborhood. The proposed car wash is a neighborhood amenity that provides a service to the local community and visitors to the area, and enhanced retail services provides one-stop shopping which would minimize vehicle trips.

- 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 and in the staff memorandum, 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 project meets the required noise standards pursuant to Section 20.40.600 of the Zoning Ordinance with the proposed mitigation measures, as specified in the noise study and detailed above, which would comply with San Jose General Plan Goal EC-1.2. The noise impact of the proposed project would be less than significant.

- 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 Jose Commercial Design Guidelines. Furthermore, the proposed project conforms to City Council Policy 6-10: Criteria for the Review of Drive-Through Uses in regards to traffic, noise, hours of operation, design, and lighting. While the proposed car wash is located within 200 feet of residentially used, zoned, or General Planned properties, self-service car washes which are proposed in conjunction with existing gasoline service stations may be exempted from location criteria, provided the traffic criteria of the policy is satisfied. 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 reduce the level of service for the existing South Bascom Avenue and Woodard Avenue 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, 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. Counterbalancing justifications justify this inconsistency in that the proposed two-story convenience store, office, car wash, and 7-foot tall masonry wall create a buffer between the residential properties to the east of the site. The residential uses to the north of the site are separated 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. 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 and in the staff memorandum, 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 and car wash would add to the range of commercial uses consistent with the Neighborhood/Community Commercial General Plan land use designation and Commercial Zoning Districts. The noise analysis conducted for the project determined that the operation of the project would not result in a detrimental increase in noise because. Therefore, the proposed use will not adversely impact the surrounding residential neighborhood.

- 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 on the City's Historic resources Inventory nor qualifies as a contributing structure. Fueling bays provide 40 feet for vehicle stacking and are in conformance with Section 16.D.6 of the City's Commercial Design Guidelines. Furthermore, the automated car wash provides space for five car vehicle stacking, as required per the City Council Policy 6-10, Criteria for the Review of Drive-Through Uses. 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 multi-family residential units.

- 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 DOT as a connector street. VTA 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: The project is exempt from environmental review under CEQA exemption Sections 15302 Replacement of Reconstruction and 15332 In-fill Development Projects, as evaluated above. There are no other unacceptable negative effects on adjacent parcels outside of those items identified for the exemption.

10. Site Development Permit Findings. Chapter 20.100 of Title 20 of the San Jose 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, car wash 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, car wash and trash enclosure structures are aesthetically harmonious in that they utilize similar colors and materials as 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 Avenue and directly abutting the site to the east. The maximum height of the two-story building is 28.5 feet, which is taller than the surrounding two-story multifamily residences; however, the two-story portion of the convenience store is located away from the residential properties, thus reducing the perceived height and massing. 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: 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 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, landscape will be located at the entrance and exits of the car wash and along the proposed masonry wall at the rear of the site to minimize the visibility of these structures. Building mechanical systems and refuse containers will be stored within a block wall enclosure.

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

Analysis: Access to the site is facilitated via existing driveways on South Bascom Avenue, one of which 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. A second 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 to on site for the gas station, convenience store, and private office use, as detailed in the Zoning Ordinance Compliance section of this report.

11. **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 and fully automated car wash. The existing structure was constructed in 1963 (Building Permit dated May 9, 1963), and has continued to operate as a gas station since. This structure is not listed on the City's Historic Resources Inventory. Construction of a new convenience store and car wash that 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 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 Planning Commission 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. **Acceptance of Permit.** Per Section 20.100.290(B), should the permittee fail to file a timely and valid appeal of this Conditional Use Permit and Site Development Permit within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Conditional Use Permit and Site Development Permit by the permittee; and
 - b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 of the San José Municipal Code applicable to such Permit.
2. **Permit Expiration.** This Conditional Use Permit and Site Development Permit shall automatically expire two years from and after the date of issuance hereof by the Planning Commission, 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 Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit in accordance with Title 20 of the San José Municipal Code. The Permit Adjustment must be approved prior to the expiration of this Permit.

3. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the permittee for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
4. **Conformance to Plans.** The development of the site shall conform to the approved Conditional Use Permit plans entitled, "Bascom ANDoil Replacement and Car Wash Addition" dated Received June 27, 2017, on file with the Department of Planning, Building and Code Enforcement, as may be amended and approved by the Director of Planning, Building, and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24). The plans are referred to herein as the "approved plans" or the "Approved Plan Set."
5. **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, relocated trash enclosure, and car. 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. The car wash hours shall be limited to 7:00 a.m to 9:00 p.m.
7. **Mitigation Management Plan.** Consistent with the City Council Policy 6-27, the permittee 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. 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 p.m.
8. **Design Condition.** Prior to issuance of any building permit, the Permittee shall obtain a Permit Adjustment approved by the Planning Department for the following design changes:
 - a. 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.
 - b. 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.

- c. The landscape planter adjacent to the automated car wash exit shall include two crape myrtles to minimize the appearance of the sound wall.
 - d. The landscape planters adjacent to South Bascom Avenue and Woodard Road shall include two crape myrtles in addition to any street trees required per the Department of Public Works.
 - e. 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.
9. **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.
10. **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.
11. **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.
12. **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.
13. **Window Glazing.** Unless otherwise indicated on the approved plan, all windows shall consist of a transparent glass.
14. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set. No outdoor storage is allowed in common areas.
15. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Nor shall the use adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area or be detrimental to public health, safety or general welfare. Any such nuisance shall be abated immediately upon notice by the City.
16. **Loitering Prohibited.** Loitering on the premises shall be prohibited.
17. **Anti-Graffiti.** The permittee shall remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement.
18. **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.

19. **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.
20. **Amplified Sound.** Amplified sound is not allowed between the hours of 10:00 p.m. and 7:00 a.m., daily.
21. **Outdoor Uses.** There shall be no outdoor uses except those explicitly approved herein (gas station fueling, air/water service station).
22. **Sign Approval.** No signs are approved with this Permit. All proposed signs shall be subject to approval by the Director of Planning.
23. **Colors and Materials.** All building colors and materials are to be as specified on the Approved Plan Set.
24. **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.
25. **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.
26. **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.
27. **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.
28. **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.
29. **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.

30. **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.
31. **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.
32. **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-foot 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 western most driveway on Woodard Road; replace with city standard curb, gutter, and sidewalk.
 - iii. Applicant 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.

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

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

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

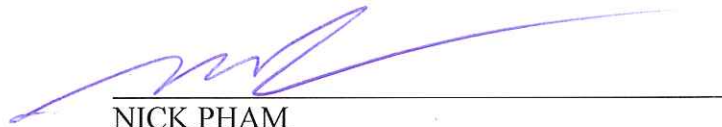
APPROVED and issued this **9th day of August, 2017**, by the following vote:

AYES: ALLEN, ABELITE, VORA, YESNEY

NOES: PHAM, BALLARD, BIT-BADAL


ABSENT: NONE

ABSTAIN: NONE



NICK PHAM
Chairperson

ATTEST:



ROSALYNN HUGHEY,
Interim Director of Planning, Building & Code Enforcement
Planning Commission Secretary

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.