CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

CITY COUNCIL STAFF REPORT

File No.	GP16-011/C17-008/CP17-015
Applicant	John Hicks
Location	1202 Oakland Road
Existing General Plan Land Use Designation	Heavy Industrial
Proposed General Plan Land Use Designation	Combined Industrial/Commercial
Existing Zoning Districts	HI Heavy Industrial
Proposed Zoning Districts	CIC Combined Industrial/Commercial
Council District	3
Historic Resource	No
Annexation Date:	June 11, 1957 (Orchard No. 17-A)
CEQA:	Mitigated Negative Declaration for the Rotten Robbie #67 Gas Station Project

APPLICATION SUMMARY:

File No. GP16-011: General Plan Amendment to change the Land Use/Transportation Diagram land use designation from Heavy Industrial to Combined Industrial/Commercial on an approximately 1.54-gross acre site.

File No. C17-008: Conforming Rezoning from the HI Heavy Industrial Zoning District to the CIC Combined Industrial/Commercial Zoning District on an approximately 1.54-gross acre site.

File No. CP17-015: Conditional Use Permit to demolish an existing building and fueling dispensers, and construct a 3,750-square foot convenience store with the off-sale of beer and wine, a gas station with six auto retail fueling dispensers (12 pumps), canopies, and 12 cardlock fueling dispensers (24 pumps), and 24-hour uses on an approximately 1.54-gross acre site.

File No. ABC 17-007: Determination of Public Convenience or Necessity for the off-sale of beer and wine on an approximately 1.54-gross acre site.

BACKGROUND:

The City Council considered this project at the December 12, 2017 public hearing. At the hearing, the City Council directed staff to prepare draft documents approving the General Plan Amendment, Conforming Rezoning, and Conditional Use Permit, and prepare a full analysis of the proposed Conditional Use Permit for the gas station with off-sale of beer and wine and 24-hour use. A draft resolution is attached, adopting the Initial Study (IS) and Mitigated Negative Declaration (MND) for the project; approving the amendment to the General Plan land use designation; and approving the Conditional Use Permit and related Determination of Public Convenience or Necessity. A draft ordinance approving the rezoning of the subject site is also attached.

RECOMMENDATION:

Staff recommends that the City Council adopt a resolution to:

1. **Deny** the General Plan Amendment to change the Land Use/Transportation Diagram land use designation from Heavy Industrial to Combined Industrial/Commercial.
2. **Deny** the Conforming Rezoning from the HI Heavy Industrial Zoning District to the CIC Combined Industrial/Commercial Zoning District.
3. **Deny** the Conditional Use Permit for a 3,750-square foot convenience store with the off-sale of beer and wine, a gas station with cardlock fuel dispensers and 24-hour use.
4. **Deny** a determination of Public Convenience or Necessity.

Per City Councils direction, staff has included additional analysis for conformance with the General Plan, Municipal Code, City Council Policies and guidelines with findings and resolutions for approval, if City Council decides to approve the proposed project.

PROJECT DATA

General Plan		☒ **Consistent with proposed General Plan Amendment**	
SURROUNDING USES			
	General Plan Land Use	**Zoning**	**Existing Use**
North	Heavy Industrial	R-MH Mobilehome Park	Trailer Tel RV Park
South	Heavy Industrial	HI Heavy Industrial	Lumber store and wholesale company
East	Heavy Industrial	HI Heavy Industrial	Industrial condominiums
West	Heavy Industrial	HI Heavy Industrial	Motel and fast food restaurant

RELATED APPROVALS	
Date	**Action**
1995	City-initiated General Plan Amendment to the San José 2020 General Plan Land Use/Transportation Diagram to add a Mixed Industrial Overlay that included the subject site and surrounding area
2001	City-initiated General Plan Amendment to remove the Mixed Industrial Overlay on 427.5 acres (File No. GP01-04-05)
2003	Conditional Use Permit to allow the demolition of an existing gas station, an associated service building and vehicle repair building, and the construction of two fueling areas, a 1,212-square foot sales building, and other site improvements (File No. CP99-057)

PROJECT DESCRIPTION

Between September 2016 and May 2017, the applicant submitted the following applications related to the approximately 1.54-gross acre subject site located on the northeast corner of Commercial Street and Oakland Road:

- General Plan Amendment request to change the General Plan Land Use/Transportation Diagram land use designation from Heavy Industrial to Combined Industrial/Commercial (September 21, 2016);
- Conforming Rezoning from the HI Heavy Industrial Zoning District to the CIC Combined Industrial/Commercial Zoning District (March 20, 2017); and
- Conditional Use Permit to demolish the existing building and fueling dispensers, and construct a 3,750 square foot convenience store with the off-sale of beer and wine (381 square feet), a gas station with 12 auto retail fueling dispensers, canopies, and 12 cardlock fueling dispensers, interim fueling stations, and 24-hour uses on an approximately 1.54-gross acre site. (May 8, 2017).

Changing the General Plan land use designation to Combined Industrial/Commercial and the Zoning District to Combined Industrial/Commercial will allow commercial and retail uses on the site, in addition to limited industrial uses.

Site Location

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

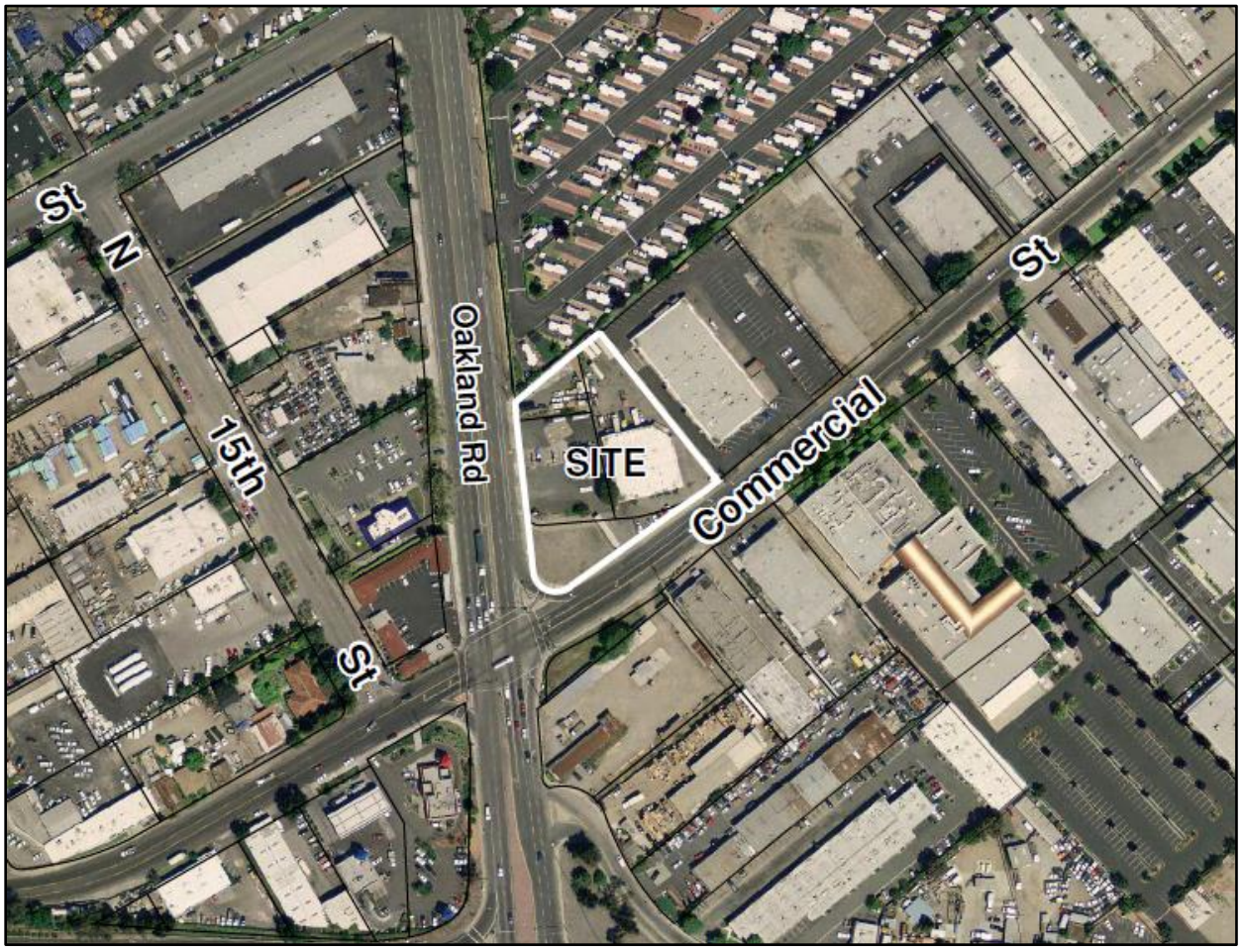


Figure 1: Site Location

ANALYSIS

The proposed project was analyzed for conformance with 1) the Envision San José 2040 General Plan; 2) the Zoning Ordinance; 3) City Council Policy 6-27: Evaluation of 24-hour Uses; 4) Commercial Design Guidelines; and 5) the California Environmental Quality Act (CEQA).

Envision San José 2040 General Plan Conformance

For the reasons outlined in the Planning Commission Staff Report attached, staff continues to recommend denial of the proposed General Plan Amendment and Conforming Rezoning. The proposals would allow the site to be developed with a proposed non-industrial use (gas station), thereby displacing the current industrial users on site (Bay Area Truck Services and Blair Auto Glass and Upholstery). It would also eliminate the potential for future light and heavy industrial uses on the site by converting lands with a Heavy Industrial General Plan land use designation. As stated above, the proposal would incentivize other property owners with Heavy Industrial and Light Industrial land use designations to convert their land to Combined Industrial/Commercial. The conversion of an industrial property to a commercial land use designation would increase the site's property value, making it more difficult for industrial businesses to compete with other users for available land. This would further erode the limited employment lands, specifically heavy industrial lands, within the city.



Figure 2: Existing General Plan Land Use Designation

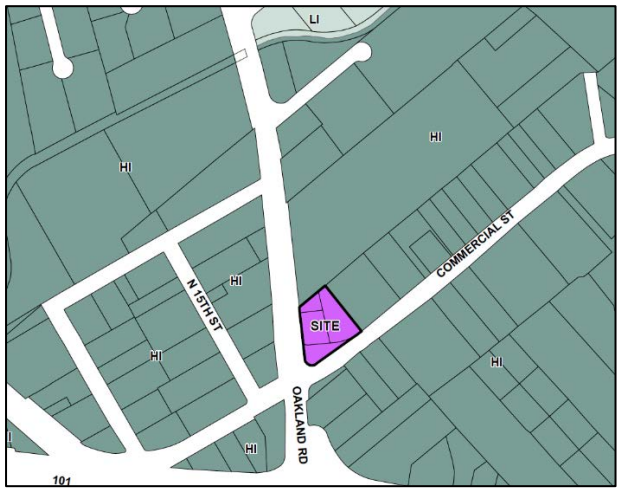


Figure 3: Proposed General Plan Land Use Designation

However, the City Council has directed staff to prepare draft documents approving the General Plan Amendment, Conforming Rezone and Conditional Use Permit, and to prepare a full analysis of the CUP. The proposed Conditional Use Permit is therefore analyzed herein for conformance with the proposed General Plan designation of Combined Industrial Commercial. This designation allows a significant amount of flexibility for the development of a varied mixture of compatible commercial and industrial uses. The proposed service station with off-sale of beer and wine and 24-hour use would help achieve the commercial development goals of this designation by providing a convenience store within walking distance of existing residences to the north of the property. The use would also be consistent with the following General Plan policy:

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

Analysis: The proposed convenience store would offer fresh fruit and convenience items like pre-packaged sandwiches, salads, and canned goods, meeting the intent of this policy.

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

Analysis: The General Plan guideline for acceptable exterior noise level limits noise to 70dBA for industrial-commercial land uses, and further limits noise to 55dBa, measured at the property line, if the land use is adjacent to noise sensitive uses. The expected decibel level of the proposed project would be below the 60 dBA, as shown on the attached noise report. As document in the attached noise report, the predicted noise levels associated with the gas station use is 63 dB DNL at a reference distance of 50 feet. Based upon the distance to the nearest residential use from the center of the gas pump area, 97 feet, the predicted noise levels associated with the gas

station operations and parking lot is 57 dB DNL. The barrier analysis was conducted to determine if the proposed 7-foot tall masonry wall would reduce noise levels to within the 55 dB DNL standard and the results indicated that the barrier would reduce overall noise levels to 51 dBA DNL, and would comply with the City of San José noise level standard.

EC-1.2: Minimize the noise impacts of new development on land uses sensitive to increased noise levels (Categories 1, 2, 3 and 6) by limiting noise generation and by requiring use of noise attenuation measures such as acoustical enclosures and sound barriers, where feasible. The City considers significant noise impacts to occur if a project would:

- Cause the DNL at noise sensitive receptors to increase by five dBA DNL or more where the noise levels would remain "Normally Acceptable"; or
- Cause the DNL at noise sensitive receptors to increase by three dBA DNL or more where noise levels would equal or exceed the "Normally Acceptable" level.

Analysis: As documented in the noise report and Initial study/Mitigated Negative Declaration, based on the estimate of traffic trips that would be generated from the proposed gas station and convenience store, the estimated increase from the overall project would be less than 1 dba DNL. The results also indicate that the exterior noise would be approximately 63 dB DNL at the distance of 50 feet from the center of the gas pump area. Based upon the distance to the nearest residential use (Trailer Tel RV Park) from the center of the gas pump area (approximately 97 feet), the predicted noise level associated with the gas station operations and parking lot is approximately 57 dBA DNL. Ss part of the project, a 7-foot tall masonry sound wall would be constructed to the northern property line, separating the proposed project and the RV park. This would further reduce the operation noise from the proposed project to approximate 51 dBa DNL. Therefore, the project would comply with noise thresholds in Policy.

EC-1.3: Mitigate noise generation of new nonresidential land uses to 55 dBA DNL at the property line when located adjacent to existing or planned noise sensitive residential and public/quasi-public land uses.

Analysis: As stated above the mitigated noise level of the proposed project would be below the 55 dBA DNL at the property line because of the 7-foot masonry soundwall.

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

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

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

Zoning Conformance

Land Use

The site currently is designated HI Heavy Industrial Zoning District. The proposed Conforming Rezoning would change the site's Zoning District from HI Heavy Industrial to CIC Combined Industrial/Commercial. Section 20.50.010 of the Zoning Ordinance states the CIC Zoning District is intended for commercial or industrial uses, or a compatible mixture of these uses, that support the goals of the Combined Industrial/Commercial General Plan land use designation. The CIC Zoning District allows a broad range of commercial uses with a local or regional market, including big box retail, and a narrow range of industrial uses (primarily industrial park in nature, but including some low-intensity light industrial uses.) Gas stations, late night uses and the off-sale of alcoholic beverages are conditionally-permitted uses in the CIC Zoning District, and retail is a permitted use in this district.

The existing HI Zoning for the site could not be changed to the CIC Zoning District without amending the General Plan designation to Combined Industrial/Commercial. If the proposed General Plan Amendment were approved, CIC would be the conforming zoning district for the site. Because staff is recommending the General Plan Amendment be denied, it is also recommending that the Conforming Rezoning request be denied. If the General Plan Amendment and the Conforming Rezoning request are approved, staff would recommend approval of the Conditional Use Permit, to allow the gas station with off-sale of beer and wine and the 24-hour use, as the proposed Conditional Use Permit would be consistent with the CIC Zoning District.

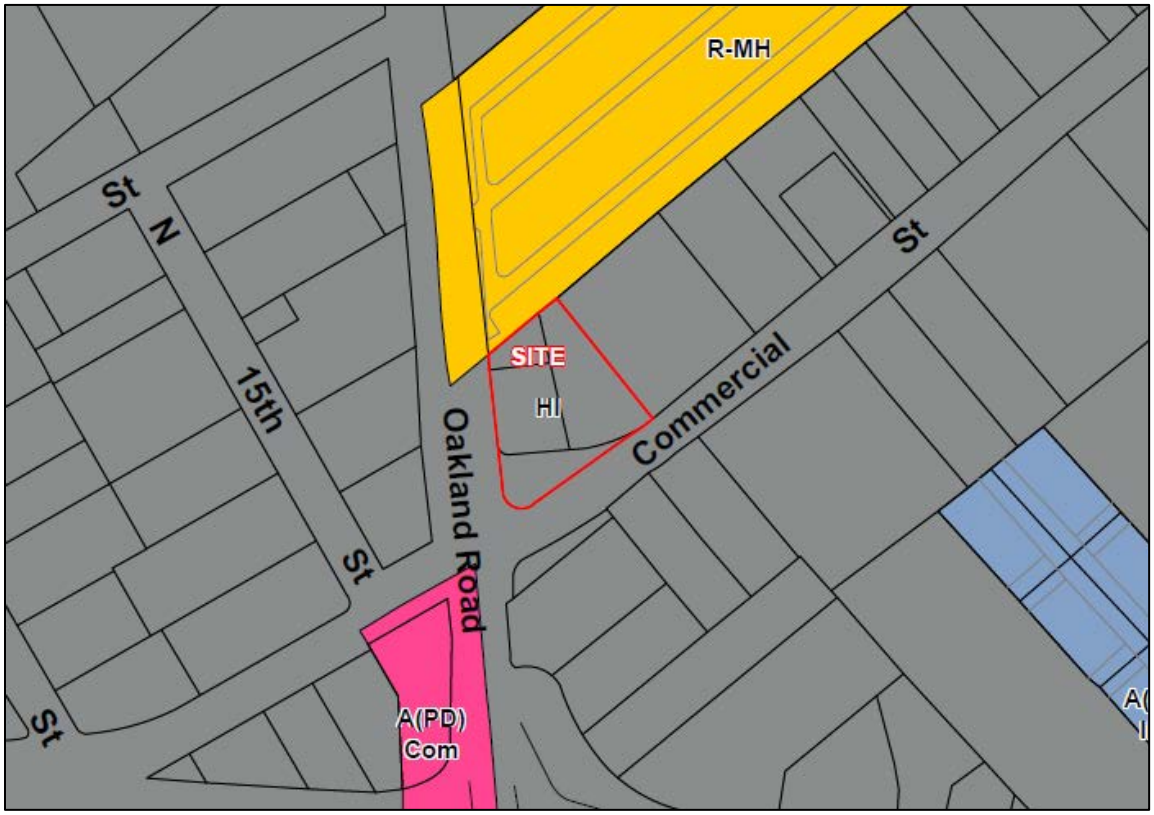


Figure 4. Existing HI Zoning District

Setbacks and Height

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

Parking

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

Noise

Section 20.50.300 of the Zoning Ordinance states that the sound pressure level generated by any use or combination of uses shall not exceed 55 decibels (dB), which differs from the General Plan, in that dB is a one maximum instantaneous event rather than noise measured over time and against an area, at the property line for any property used or zoned for residential purposes, without obtaining a Conditional Use Permit. According to the acoustical engineer for the project (email by J.C. Brennan and Associates, dated 1/22/17), the project would result in a maximum sound level of 61 decibels at the residential property line to the north (mobile home park), due to the inclusion of a seven-foot sound barrier wall along this property line. While this exceeds the 55 decibel standard, the existing maximum decibels measured at the mobilehome park ranged from 63 to 66, according to the engineer, therefore the maximum projected 61 decibels would be less than currently existing at the mobilehome park. Furthermore, this level is within the lower average range established by the General Plan of being "conditionally acceptable" for residential uses (up to 60 average decibels are "normally acceptable"). Noise from the project will therefore not negatively affect the residents of the mobilehome park.

Findings - Conditional Use Permit

The Conditional Use Permit findings pursuant to Section 20.100.720 of the San José Municipal Code:

1. 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: The Conditional Use Permit would be inconsistent with the current General Plan designation, however if City Council approves the General Plan Amendment to Combined Industrial/ Commercial the Conditional use permit would be consistent, as discussed in the General Plan Conformance section above, as well as Policy LU-5.10.

2. 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: The Conditional Use Permit would be inconsistent with the current Zoning District, however as discussed in the Zoning Conformance section, if City Council approves the proposed rezoning to the CIC Combined Industrial/Commercial Zoning District, the project would conform to the development standards of the district. Furthermore, the project would be consistent with the Off-Sale of Alcohol and Public Convenience and Necessity findings of the Municipal Code, as discussed herein.

3. The conditional use permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency; and

   Analysis: The proposed project is consistent with City Council Policy 6-27, Evaluation of 24-Hour Uses, as analyzed in the City Council Policy 6-27 section below.

4. The proposed use at the location requested will not:

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

   Analysis: The Initial Study prepared for the project concluded that project noise would not exceed the instantaneous and 24-hour average noise levels of the Zoning Ordinance and General Plan, respectively with regard to adjacent residential uses and includes a sound wall to mitigate any noise impacts. Any exterior lighting would be required to comply with the city's outdoor lighting requirements prohibiting light and glare from the use intruding upon the adjacent property.

   Further the proposed project was analyzed for potential public health impacts. The health risk assessment, dated September 18, 2017, found that operational and construction emissions would not be above the BAAQMD significant threshold and therefore would not create a significant impact. For these reasons, the project would not adversely affect the peace and welfare of persons residing or working in the surrounding area.

5. 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 property for the proposed convenience store and fuel station would have an adequate size and shape to accommodate the yards, walls, fences, and parking and loading facilities, landscaping and other development features, as documented on the proposed project plans. Further, Public Works has reviewed the project for on-site truck and vehicle circulation and deemed it acceptable.

6. The proposed site is adequately served:

   a. 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

b. By other public or private service facilities as are required.

Analysis: The subject site is adequately served by the adjacent public streets and can be directly accessed from Oakland Road. Further, Public Works has reviewed the project for on-site truck and vehicle circulation and deemed it acceptable.

7. 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 site includes an existing gas/diesel fuel station, a truck service and repair shop, and an auto glass and upholstery business, which would be replaced by a gas station and convenience store. The project would induce more vehicle traffic because of the renovation and proposed convenience store; however, the increase in traffic would not have an unacceptable negative impact on adjacent properties or nearby intersections, as analyzed in the Environmental Initial Study prepared for the project. The construction of the building and gas station would cause a temporary increase in noise to the adjacent mobile home park, but will be mitigated through the limited construction hours and other measures included in the Mitigation Monitoring and Reporting Program for the project. Given these counterbalancing factors, the project will not have an unacceptable negative environmental effect on adjacent property or properties.

Site Development Permit Findings

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

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

Analysis: The Site Development Permit is inconsistent with the current General Plan designation. If City Council approves the General Plan Amendment, it would be consistent with the amended General Plan designation of Combined Industrial/ Commercial, as discussed in the General Plan Conformance section above, as well as Policy LU-5.10.

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

Analysis: The Site Development Permit is inconsistent with the current Zoning District. However, as discussed in the Zoning Conformance section, the proposed project is permitted in the Combined Industrial/Commercial Zoning District and also meets the development standards of the district. If City Council approves the Rezoning the project would be consistent with the CIC Zoning District. Furthermore, the project would be consistent with the Off-Sale of Alcohol and Public Convenience and Necessity findings of the Municipal Code, as discussed herein.

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

Analysis: The proposed project is consistent with City Council Policy 6-27, Evaluation of 24-Hour Uses, as analyzed in the City Council Policy 6-27 section below.

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

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

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

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

6. 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 site includes an existing gas/diesel fuel station, a truck service and repair shop, and an auto glass and upholstery business, which would be replaced by a gas station and convenience store. The project would induce more vehicle traffic because of the renovation and proposed convenience store; however, the increase in traffic would not have an unacceptable negative impact on adjacent properties or nearby intersections, as analyzed in the Environmental Initial Study prepared for the project. The construction of the building and gas station would cause a temporary increase in noise to the adjacent mobile home park, but will be mitigated through the limited construction hours and other measures included in the Mitigation Monitoring and Reporting Program for the project. Given these counterbalancing factors, the project will not have an unacceptable negative environmental effect on adjacent property or properties.

7. 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, which will significantly upgrade the appearance of the existing site, which has minimal landscaping. Building mechanical systems will be screened by the proposed parapet roof for the building, and refuse containers will be stored within a block wall enclosure.

8. Traffic access, pedestrian access and parking are adequate.

   Analysis: The subject site is adequately served by the adjacent public streets and can be directly accessed from Oakland Road. Further, Public Works has reviewed the project for on-site truck and vehicle circulation and deemed it acceptable. The project will be

accessible to pedestrians via the existing sidewalk along Oakland Road and Commercial Street.

Demolition Permit Evaluation Criteria

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

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

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

b. The failure to approve the permit would jeopardize public health, safety or welfare;

   Analysis: Not applicable.

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

   Analysis: As discussed in Site Development Permit Finding 3, the permit will facilitate a project that is compatible with the surrounding development.

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

   Analysis: Not applicable.

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

   Analysis: The building has been determined to have no historical significance; therefore, preservation of the building is not warranted.

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

   Analysis: The buildings is of an obsolete design and / or are intended for uses other than the proposed use. They cannot be feasibility rehabilitated or reused to meet the objectives of the project, which are to construct a modern convenience store.

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

   Analysis: Not applicable. Based on consideration of the above, the benefits of permitting the demolition outweigh the impacts of demolishing the existing structures.

Findings – Off-sale of Alcohol

As required by Section 20.80.900 of the Zoning Ordinance, a Conditional Use Permit may be issued for the off-sale of any alcoholic beverages only if the decision-making body first makes the following additional findings, where applicable:

1. For such use at a location closer than 500 feet from any other use involving the off-sale of alcoholic beverages, situated either within or outside the City, that the proposed location of the off-sale of alcoholic beverages use would not result in a total of more than four (4) establishments that provide alcoholic beverages for off-site consumption within a 1,000-foot radius from the proposed location.

   Analysis: There is no other use involving the off-sale of alcoholic beverages within either a 500-foot or a 1,000-foot radius of the proposed site. Therefore, this finding ***can be made.***

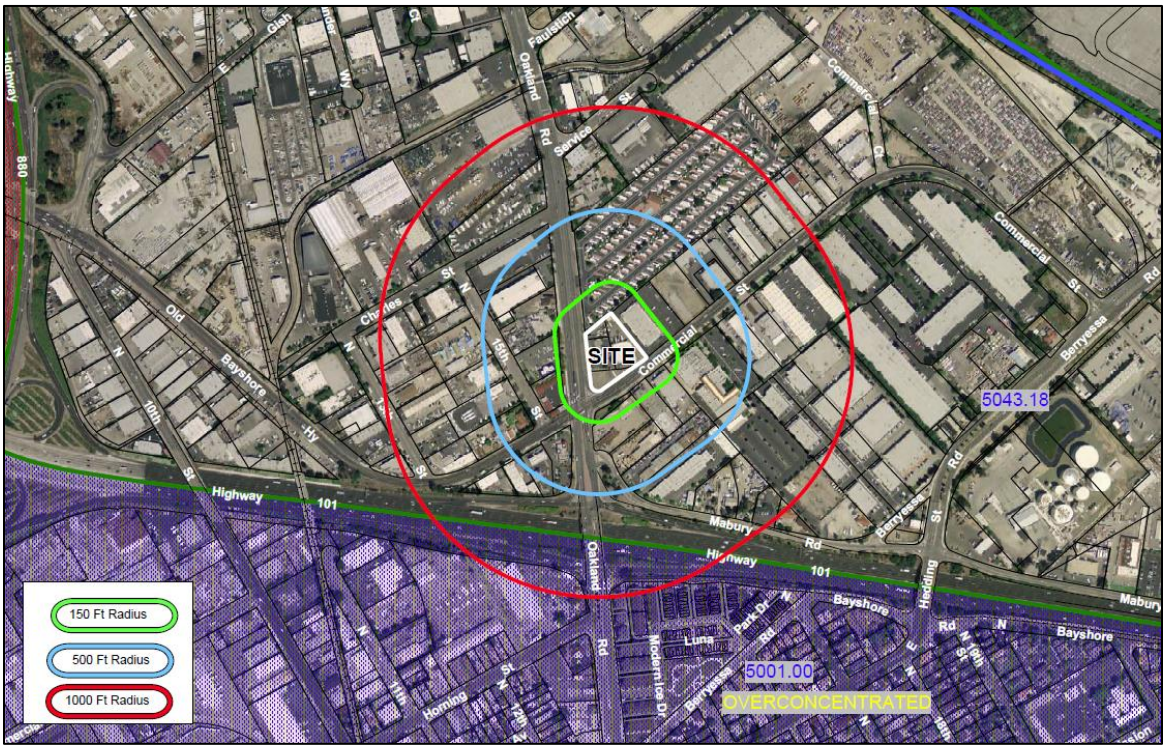


Figure 5. Aerial image showing no nearby off-sale alcohol establishments

2. For such use at a location closer than 500 feet from any other use involving the off-sale of alcoholic beverages, situated either within or outside the City, where the proposed location of the off-sale of alcoholic beverages use would result in a total of more than four establishments that provide alcoholic beverages for off-site consumption within a 1,000-foot radius from the proposed location, that the resulting excess concentration of such uses will not:

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

b. Impair the utility or value of property of other persons located in the vicinity of the area; or

c. Be detrimental to public health, safety or general welfare.

Analysis: As stated above, the proposed use will not result in more than four establishments that provide alcoholic beverages for off-site consumption within a 1,000-foot radius of the proposed location. As documented in their memorandum, dated January 18, 2018, the Police Department has expressed concern about the proposed project due to the over concentration of off-sale licenses. The Police Department is concerned with issues of public nuisances which include public intoxication, disorderly conduct, and vagrancy. The concerns of the Police Department have been addressed through conditions of approval included in the permit. Outdoor activities, aside from those associated with the gas station, are not proposed as part of this project and the project is conditioned to meet the policy requirements for lighting, cleaning and maintenance. The project will be further conditioned to provide signage for loitering and to include a surveillance system outside that maintains the recording for a minimum of thirty days. Further, the sale of alcohol is limited to the proposed 381-square feet, or 10 percent of gross square footage, and to only beer and wine. An amendment to the Conditional Use Permit would be required for any floor plan changes that would substantially change the nature of the business, which would allow for further review to address potential issues. Therefore, this finding ***can*** *be made.*

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

   The proposed site is not located closer than 500 feet from any child care center, social service agency, residential care facility, residential service facility, elementary school, secondary school, or college or university. The project building is within 150 feet from residentially zoned properties approximately 97 feet from the nearest residentially zoned property; however, the building is oriented towards Oakland Road with the side of the building facing the residential uses. Additionally, the residential neighborhood is separated by a landscape area and sound wall. The path of travel from the entrance of the convenience store is over 500 feet from the closest residential entrance and oriented toward Oakland Road. Therefore, this finding ***can*** *be made.*

Requirements for Determination of Public Convenience or Necessity

Under California Business and Professions Code Sections 23958 and 23958.4, the Department of Alcohol Beverage Control (ABC) must deny an application for a liquor license "if issuance of that license would tend to create a law enforcement problem, or if the issuance would result in or add to an undue concentration of liquor licenses in the area," unless the City determines that the public convenience or necessity would be served by the issuance of the license (Determination of Public Convenience or Necessity). An "undue concentration" is defined as follows:

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

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

Initial Findings

Chapter 6.84 of Title 6 of the San Jose Municipal Code identifies the process and findings related specifically to off-sale of alcohol and specifies that the Planning Commission may issue a PCN finding only after first making all of the findings specified below (see San Jose Municipal Code section 6.84.030). In this case, as the City Council is the decision-making body, and the Zoning Ordinance (Section 20.100.140) allows multiple permits to be reviewed under the procedures for the highest level permit. In this case, the Conditional Use Permit is the highest level permit, with the PCN finding being subordinate to the CUP. The City Council may there make the PCN findings, as specified in Chapter 6.89 of the Municipal Code. If not all of the findings can be made, the City Council may still issue the PCN finding, provided an overriding benefit is provided by the use (see Overriding Consideration Findings, further below.)

1. The proposed use is not located within a SNI or neighborhood revitalization area or other area designated by the city for targeted neighborhood enhancement services or programs, or located within an area in which the chief of police has determined based upon quantifiable information that the proposed use:
   a. Would be detrimental to the public health, safety, or welfare of persons located in the area; or
   b. Would increase the severity of existing law enforcement or public nuisance problems in the area; and

   Analysis: This proposed use is not in an SNI or neighborhood revitalization area or other area designated by the City for targeted neighborhood enhancement services or programs. As documented in their memorandum, dated January 18, 2018, the Police Department has expressed concern about the proposed project due to the over concentration of off-sale licenses. The Police Department is concerned with issues of public nuisances which include public intoxication, disorderly conduct, and vagrancy. The concerns of the Police Department have been addressed through conditions of approval included in the permit. Outdoor activities, aside from those associated with the gas station, are not proposed as part of this project and the project is conditioned to meet the policy requirements for lighting, cleaning and maintenance. The project will be

*further conditioned to provide signage for loitering and to include a surveillance system outside that maintains the recording for a minimum of thirty days. Further the off-sale of alcohol is limited to beer and wine and the proposed square footage of 381 square feet. An Amendment would be required for any floor plan changes that would drastically change the nature of the business, which would allow for further review to address potential issues. Therefore this finding **can** be made.*

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

   *Analysis: The proposed use would not result in more than four off-sale establishments in a 1,000-foot radius; therefore, this finding **can** be made.*

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

   *Analysis: The proposed use is not within 500 feet of a school, day care center, public park, social services agency, or residential care or service facility. As noted above in the Conditional Use Permit Findings, the proposed off-sale outlet is located within 150 feet of existing residences; therefore, this finding **cannot** be made.*

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

   *Analysis: Alcoholic beverage sales would not represent a majority of the proposed use and will be incidental to the convenience store;(381 square feet out of 3,750 square feet, approximately ten percent) therefore, this finding **can** be made.*

5. At least one of the following additional findings:

   a. The census tract in which the proposed outlet for the off-premises sale of alcoholic beverages is located is unusually configured and the proposed outlet would act as a convenience to an underserved portion of the community without presenting a significant adverse impact on public health or safety; or

      *This finding **can** be made. The off-premise sale of alcoholic beverages would be a part of a larger convenience store. The convenience store would serve the adjacent underserved population and provide fresh fruits, and convenient store items such as pre-packaged sandwiches, salads and canned goods at a convenient walking distance.*

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

      *This finding **can** be made. The off-premises sale of alcoholic beverage would enhance the service of the convenience store and contribute to the vitality of the existing commercial area. The convenience store would operate 24 hours and would not significantly impact public health or safety.*

   c. The census tract in which the proposed outlet is located has a low population density in relation to other census tracts in the city, and the proposed outlet would not

contribute to an over-concentration in the absolute numbers of outlets for the off-premises sale of alcoholic beverages in the area; or

*This finding **cannot** be made, as the proposed outlet is not located in a census tract that has a low population density in relation to other census tracts.*

d. The proposed off-premises sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.

*This finding **can** be made. This is a convenience store which provides a selection of fresh fruit, home goods, wine, and beer to the south San Jose and greater San Jose area. The off-site sale of beer and wine will enhance the convenience store and provide more convenience for patrons and residents.*

Public Benefit Finding

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

1. Makes a determination that not all the findings in Part A.5. (above) can be made; and

   Analysis: Finding 3 of Section 6.84.030 cannot be made, because the sale of alcoholic beverages will occur within 150 feet of a residentially zoned property.

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

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

   The significant benefit public benefit provided by the use is convenient retail access to the adjacent neighborhood. The nearest existing full-service grocery store (Sprouts Farmers Market) in the area is approximately 1.5 miles away. Therefore, the proposed off-sale use enhances access and convenience for the surrounding community, and is intended to be incidental and ancillary to the retail that provides fresh fruit and convenience items to the community, consistent with General Plan Neighborhood Serving Commercial Policy LU-5.10.

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

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

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

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

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

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

e. Restroom Facilities
The restroom facilities are provided and shall remain open and available for customers during hours of operation.

f. Noise
The Initial Study prepared for the project determined that noise levels resulting from the project would not exceed noise impact thresholds established in the General Plan for the adjacent residential uses to the north of the site, due to the proposed construction of a seven-foot high sound wall along the adjoining property line. Section 20.50.300 of the Zoning Ordinance states that the sound pressure level generated by any use or combination of uses shall not exceed 55 decibels at the property line for any property used or zoned for residential purposes, without obtaining a Conditional Use Permit. According to the acoustical engineer for the project (email by J.C. Brennan and Associates, dated 1/22/17), the project would result in a maximum sound level of 61 decibels at the residential property line to the north (mobile home park), due to the inclusion of a seven-foot sound barrier wall along this property line. While this exceeds the 55 decibel standard, the existing maximum decibels measured at the mobile home park ranged from 63 to 66, according to the engineer, therefore the maximum projected 61 decibels would be less than currently existing at the mobile home park.

g. Lighting
The lighting fixtures approved through this CUP are appropriately shielded to shine down per the City's lighting policy and provide adequate lighting levels to assure security and discourage loitering.

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

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

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

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

Design Guidelines

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

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

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

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

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

An Initial Study (IS) and Mitigated Negative Declaration (MND) were prepared by the Director of Planning, Building, and Code Enforcement for the subject General Plan Amendment, Conforming Rezoning, and Conditional Use Permit. The documents were circulated for public review between October 17, 2017 to November 6, 2017 and no comments were received from the public.

The final IS/MND states that the proposed project will not have a significant effect on the environment. The primary environmental issues addressed in the final Initial Study include potential impacts on the physical development of the site on: biological resources, hazards and hazardous materials, and noise. The MND includes mitigation measures that would reduce any potentially significant project impacts to a less-than-significant level. In addition to other environmental conditions, the mitigation measures would be included in the Condition Use Permit as permit conditions if it were to be approved and in a Mitigation Monitoring and Reporting Program. The entire IS/MND and other related environmental documents are available on the Planning web site at: http://www.sanjoseca.gov/index.aspx?NID=2165

PUBLIC HEARING NOTIFICATION

Staff followed Council Policy 6-30: Public Outreach Policy. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

Community Meeting

Approximately 25 community members attended a joint community meeting for File Nos. GP16-011, GP17-001, and GP17-002. Of the 25 attendees, only two community members expressed general interest in the proposed project. The community members were tenants of one of the existing industrial buildings (Bay Area Truck Services) on site and were concerned about when they would need to relocate if the proposed project were approved. They stated that if the site were redeveloped, the land owner would displace the business and their employees.

/s/
Rosalynn Hughey, Acting Director
Planning, Building and Code Enforcement

For questions please contact Planning Official, Steve McHarris, at (408) 535-7819.

Attachments:

A) Initial Study and Negative Declaration
B) Draft Resolutions for Approval and Denial
C) Draft Ordinance
D) Public Correspondence
E) Police Department Memorandum
F) Draft Mitigated Negative Declaration Resolution & Mitigation Monitoring and Reporting Program
G) Plans
H) Planning Commission Staff Report

GP16-011, C17-008, CP17-015

Attachment A:

Initial Study/Negative Declaration

Can be viewed online at:

http://www.sanjoseca.gov/index.aspx?NID=5715

RESOLUTION NO. _____

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

FILE NOS. CP17-015 and ABC17-007

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on September 21, 2016, March 20, 2017 and May 8, 2017 the following concurrent applications (File Nos. CP17-015 and ABC17-007) were filed by the applicant, John Hicks, with the City of San José for a Conditional Use Permit and Site Development Permit to allow the demolition of an existing building and fueling dispensers, and the construction of a 3,750 square foot convenience store, auto retail fueling dispensers, canopies, and card lock fueling dispensers with the off-sale of beer and wine, interim fueling dispensers and 24-hour use; and a Determination of Public Convenience or Necessity ("PCN") to allow the off-sale of beer and wine (ABC Type 20 license) on a 1.54-gross acre site, on that certain real property situated in the CIC Combined Industrial/Commercial Zoning District and located on the northeast corner of Commercial Street and Oakland Road (1202 Oakland Road, San José, which real property is sometimes referred to herein as the "subject property"); and

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

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a hearing on said applications on November 15, 2017, notice of which was duly given; and

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

WHEREAS, at said hearing the Planning Commission made a recommendation to the City Council respecting said matter based on the evidence and testimony; and

WHEREAS, the recommendation of the Planning Commission and the Director of Planning, Building, and Code Enforcement to the City Council was denial of the application for the General Plan amendment because the requested change in the land use designation for the Subject Property from its current Heavy Industrial (HI) designation would be inconsistent with the Council’s land use goals and policies expressed in the General Plan; and

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

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

WHEREAS, the City Council considered this project at the December 12, 2017 public hearing and directed staff to prepare draft documents approving the General Plan Amendment, Conforming Rezoning, and Conditional Use Permit, and prepare a full analysis of the proposed Conditional Use Permit for the gas station with off-sale of beer and wine and 24-hour use; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this City Council conducted a hearing on said applications, notice of which was duly given; and

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

WHEREAS, at said hearing this City Council received and considered the reports and recommendations of the City's Planning Commission and City's Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this City Council received in evidence a plan for the subject property entitled "Rotten Robbie #67, 1202 Oakland Road, San José, California 95112," last revised January 10, 2018, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

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

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

After considering all of the evidence presented at the Public Hearing, the City Council finds that the following are the relevant facts regarding this proposed project:

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

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

2. **Project Description.** The proposed project would remove the existing building and fueling dispensers, and construct a 3,750 square foot convenience store with the off-sale of alcohol (beer and wine, approximately 381 square feet), a gas station with 12 auto retail fueling dispensers, canopies, and 12 card lock fueling dispensers, and 24-hour uses on an approximately 1.54-gross acre site.

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

3. **General Plan Conformance**.

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

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

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Analysis: The proposed convenience store would offer fresh fruit and convenience items like pre-packaged sandwiches, salads, and canned goods, meeting the intent of this policy.

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

Analysis: The General Plan guideline for acceptable exterior noise level limits noise to 70dBA for industrial-commercial land uses, and further limits noise to 55dBa, measured at the property line, if the land use is adjacent to noise sensitive uses. The expected decibel level of the proposed project would be below the 60 dBA, as shown on the attached noise report. As documented in the Noise Study prepared for the project, the predicted noise levels associated with the gas station use is 63 dB DNL at a reference distance of 50 feet. Based upon the distance to the nearest residential use from the center of the gas pump area, 97 feet, the predicted noise levels associated with the gas station operations and parking lot is 57 dBA DNL. The barrier analysis was conducted to determine if the proposed 7-foot tall masonry wall would reduce noise levels to within the 55 dB DNL standard and the results indicated that the barrier would reduce overall noise levels to 51 dBA DNL. Therefore, the project would comply with the City of San José noise level standard.

c. EC-1.2 Minimize the noise impacts of new development on land uses sensitive to increased noise levels (Categories 1, 2, 3 and 6) by limiting noise generation and by requiring use of noise attenuation measures such as acoustical enclosures and sound barriers, where feasible. The City considers significant noise impacts to occur if a project would:

- Cause the DNL at noise sensitive receptors to increase by five dBA DNL or more where the noise levels would remain “Normally Acceptable”; or
- Cause the DNL at noise sensitive receptors to increase by three dBA DNL or more where noise levels would equal or exceed the “Normally Acceptable” level.

Analysis: As documented in the noise report, the proposed project would not result in an increase in the ambient noise level of the overall site. The predicted noise level adjacent to the site on Oakland Road is 73 dBA and adjacent to Commercial Street the noise level is 67 dBA. Based on the estimate of traffic trips that would be generated from the proposed gas station and convenience store, the estimated increase from the overall project would be less than 1 dBA DNL. In addition, calculation also indicate that the exterior noise would be approximately 63 dB DNL at the distance of 50 feet from the center of the gas pump area. Based upon the distance to the nearest residential use (Trailer Tel RV Park) from the center of the gas pump area (approximately 97 feet), the predicted noise level associated with the gas station

operations and parking lot is approximately 57 dBA DNL. As part of the project, a 7-foot tall masonry sound wall would be constructed to the northern property line, separating the proposed project and the RV park. This would further reduce the operation noise from the proposed project to approximate 51 dBa DNL. Therefore, the project would comply with noise thresholds in Policy EC-1.2 and would not conflict with Policy EC-1.3.

d. EC-1.3 Mitigate noise generation of new nonresidential land uses to 55 dBA DNL at the property line when located adjacent to existing or planned noise sensitive residential and public/quasi-public land uses.

Analysis: As stated above the mitigated noise level of the proposed project would be below the 55 dBA DNL at the property line with installation of the 7-foot masonry sound wall.

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

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

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

4. **Zoning Ordinance Compliance.**

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

Setbacks and Height. The proposed building conforms to the development regulations of the CIC Combined Industrial/ Commercial Zoning District. The front setback is 15 feet from the front property lines along Oakland Road and Commercial

Street, which require a 15 feet setback. Parking and circulation for passenger vehicles is 20 feet from the front property lines, which require a 20-foot setback. No rear and side setbacks are required. The proposed building is 21 feet, 6 inches in height which is below the maximum allowable 60-foot height requirement.

Noise. Section 20.50.300 of the Zoning Ordinance states that the sound pressure level generated by any use or combination of uses shall not exceed 55 decibels(dB), which differs from the General Plan in that dB is a one maximum instantaneous event rather than noise measured over time and against an area, at the property line for any property used or zoned for residential purposes, without obtaining a Conditional Use Permit. According to the acoustical engineer for the project (email by J.C. Brennan and Associates, dated 1/22/17), the project would result in a maximum sound level of 61 dB at the residential property line to the north (mobile home park), due to the inclusion of a seven-foot sound barrier wall along this property line. While this exceeds the 55 decibel standard, the existing maximum decibels measured at the mobile home park ranged from 63 to 66 dB, according to the engineer, therefore the maximum projected 61 dB would be less than currently existing at the mobile home park. Furthermore, this level is within the lower average range established by the General Plan of being "conditionally acceptable" for residential uses (up to 60 dBA DNL average decibels are "normally acceptable"). Noise from the project will therefore not negatively affect the residents of the mobile home park.

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

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

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

   a. Area Use Compatibility

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

b. Use Separation

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

c. Outdoor Activities

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

d. Police Issues

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

e. Restroom Facilities

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

f. Noise

A Noise Study was prepared for the project by J.C. Brennan and Associates in January 2017. Findings of the study found that noise levels resulting from implementation of the project would not exceed noise impact thresholds established in the General Plan for the adjacent residential uses to the north of the site, due to the proposed construction of a seven-foot high sound wall along the

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adjoining property line. Section 20.50.300 of the Zoning Ordinance states that the sound pressure level generated by any use or combination of uses shall not exceed 55 decibels at the property line for any property used or zoned for residential purposes, without obtaining a Conditional Use Permit. The Noise Study also found that the project would still result in a maximum sound level of 61 decibels at the residential property line to the north (mobile home park), even with the inclusion of a seven-foot sound barrier wall along this property line. While this exceeds the 55 decibel standard, the existing maximum decibels measured at the mobile home park ranged from 63 to 66, according to the engineer, therefore the maximum projected 61 decibels would be less than currently existing at the mobile home park.

g. Lighting

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

h. Cleaning and Maintenance

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

i. Site Improvements

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

j. Mitigation Management Plan

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

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

6. Commercial Design Guidelines

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

Building Design. The buildings on site are architecturally consistent and share the

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

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

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

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

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

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

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

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

Evaluation of 24-Hour Uses, as analyzed in the City Council Policy 6-27 section above.

b. The proposed use at the location requested will not:
   i. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
   ii. Impair the utility of value of the property of other persons located within the vicinity of the site; or
   iii. Be detrimental to public health, safety or general welfare.

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

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

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

d. The proposed site is adequately served:
   i. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
   ii. By other public or private service facilities as are required

Analysis: The subject site is adequately served by the adjacent public streets and

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can be directly accessed from Oakland Road. As stated above, the site is accessed on Oakland Road by two driveways and on Commercial Road by two driveways. Further as also stated above, the Director of Public Works has reviewed the project for on-site truck and vehicle circulation and deemed it acceptable.

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

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

9. Site Development Permit Findings

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

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

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

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

Analysis: As discussed in the Zoning Conformance section above, the proposed project is permitted in the Combined Industrial/Commercial Zoning District and

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also meets the development standards of this district. Furthermore, the project is consistent with the Off-Sale of Alcohol and Public Convenience and Necessity findings of the Municipal Code, as discussed herein. Therefore, the project conforms to the San José Municipal Code.

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

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

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

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

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

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

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

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

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

Analysis: The project will include new landscaping around the perimeter and along the boundary with the mobilehome park, which will significantly upgrade the appearance of the existing site. Rooftop building mechanical systems will be screened by the proposed parapet roof, and refuse containers will be stored within a block wall enclosure.

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

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

10. Demolition Permit Evaluation Criteria

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

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

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

b. The failure to approve the permit would jeopardize public health, safety or welfare;

Analysis: Not applicable.

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

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

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

Analysis: Not applicable.

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

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

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

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

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

Analysis: Not applicable.

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

11. **Required Findings for Off-Sale of Alcohol.** A Conditional Use Permit may be issued pursuant to Section 20.80.900 of the Zoning Ordinance for the off-sale of any alcoholic beverages only if the decision-making body first makes the following three findings, if applicable, to the off-sale of alcoholic beverages:

a. For such use at a location closer than 500 feet from any other use involving the off-sale of alcoholic beverages, situated either within or outside the City, that the proposed location of the off-sale of alcoholic beverages use would not result in a total of more than four (4) establishments that provide alcoholic beverages for off-site consumption within a 1,000-foot radius from the proposed location.

*Analysis: There is no other use involving the off-sale of alcoholic beverages within either a 500-foot or a 1,000-foot radius of the proposed site. Therefore, this finding **can** be made.*

b. For such use at a location closer than 500 feet from any other use involving the off-sale of alcoholic beverages, situated either within or outside the City, where the proposed location of the off-sale of alcoholic beverages use would result in a total of more than four establishments that provide alcoholic beverages for off-site consumption within a 1,000-foot radius from the proposed location, that the resulting excess concentration of such uses will not:

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

ii. Impair the utility or value of property of other persons located in the vicinity

of the area; or

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

Analysis: As stated above, the proposed use will not result in more than four establishments that provide alcoholic beverages for off-site consumption within a 1,000-foot radius of the proposed location. As documented in their memorandum, dated January 18, 2018, the Police Department has expressed concern about the proposed project due to the over-concentration of off-sale licenses within the census tract. The Police Department is concerned with issues of public nuisances which include public intoxication, disorderly conduct and vagrancy. The concerns of the Police Department have been addressed through conditions of approval included in the permit. Outdoor activities are not proposed as part of this project and the project is conditioned to meet the policy requirements for lighting, cleaning and maintenance. The project will be further conditioned to provide signage for loitering and to include a surveillance system outside that maintains the recording for a minimum of thirty days. Further, the sale of alcohol is limited to the proposed 381-square feet, or 10 percent of gross square footage, and to only beer and wine. An amendment to the Conditional Use Permit would be required for any floor plan changes that would substantially change the nature of the business, which would allow for further review to address potential issues.

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

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

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

12. **Requirements for Determination of Public Convenience or Necessity** Under California Business and Professions Code Sections 23958 and 23958.4, the Department of Alcohol Beverage Control (ABC) must deny an application for a liquor

license "if issuance of that license would tend to create a law enforcement problem, or if the issuance would result in or add to an undue concentration of liquor licenses in the area," unless the City determines that the public convenience or necessity would be served by the issuance of the license (Determination of Public Convenience or Necessity). An "undue concentration" is defined as follows:

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

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

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

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

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

Analysis: This proposed use is not in an SNI or neighborhood revitalization area or other area designated by the City for targeted neighborhood enhancement services or programs. As documented in their memorandum, dated January 18, 2018, the Police Department has expressed concern about the proposed project due to the over concentration of off-sale licenses. The Police Department is concerned with issues of public nuisances which include public intoxication,

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

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

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

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

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

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

4. Alcoholic beverage sales would not represent a majority of the proposed use; and
   *Analysis: Alcoholic beverage sales would not represent a majority of the proposed use and will be incidental to the convenience store (381 square feet out of 3,750 square feet, approximately 10%); therefore, this finding **can** be made.*
5. At least one of the following additional findings:

   i. The census tract in which the proposed outlet for the off-premises sale of alcoholic beverages is located is unusually configured and the proposed outlet would act as a convenience to an underserved portion of the community without presenting a significant adverse impact on public health or safety; or

*The off-premise sale of alcoholic beverages would be a part of a larger convenience store. The convenience store would serve the adjacent underserved population and provide fresh fruits, and convenience store items such as pre-packaged sandwiches, salads and canned goods at a convenient walking distance for the residential area adjacent to the site. This finding **can** be made.*

ii. The proposed outlet for the off-premises sale of alcoholic beverages would enhance or facilitate the vitality of an existing commercial area without presenting a significant adverse impact on public health or safety; or
*The off-premises sale of alcoholic beverage would enhance the service of the convenience store and contribute to the vitality of the existing commercial area. The convenience store would operate 24 hours and alcohol sales would be regulated by the ABC license. Therefore, the project would not significantly impact public health or safety. This finding **can** be made.*

iii. The census tract in which the proposed outlet is located has a low population density in relation to other census tracts in the city, and the proposed outlet would not contribute to an over- concentration in the absolute numbers of outlets for the off-premises sale of alcoholic beverages in the area. *This finding **cannot** be made.*

iv. The proposed off-premises sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.

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

Public Benefit

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

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

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

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

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

The significant public benefit provided by the use is convenient retail access to the adjacent neighborhood. The nearest existing full-service grocery store (Sprouts Farmers Market) in the area is approximately 1.5 miles away. Therefore, the proposed off-sale use enhances access and convenience for the surrounding community, and is intended to be incidental and ancillary to the retail that provides fresh fruit and convenience items to the community, consistent with General Plan Neighborhood Serving Commercial Policy LU-5.10.

In accordance with the findings set forth above, a Conditional Use Permit and Determination of Public Convenience or Necessity to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby approved. The City Council expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit**. Per Section 20.100.290(B) of the San José Municipal Code, should the permittee fail to file a timely and valid appeal of this Conditional Use Permit and Site Development Permit within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the applicant:
   a. Acceptance of the Conditional Use Permit and Site Development Permit by the permittee; and
   b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 of the San José Municipal Code applicable to such Permit.

2. **Permit Expiration**. This Conditional Use Permit and Site Development Permit shall automatically expire two (2) years from and after the date of issuance hereof by the City Council, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit in accordance with Title 20 of the San José Municipal Code. The Permit Adjustment must be approved prior to the expiration of this Permit.
3. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the permittee for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
4. **Conformance to Plans.** The development of the site shall conform to the approved Conditional Use Permit plans entitled, ""Rotten Robbie 1202 Oakland Road, San José," dated January 10, 2018 on file with the Department of Planning, Building and Code Enforcement, as may be amended and approved by the Director of Planning, Building, and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24). The plans are referred to herein as the "approved plans" or the "Approved Plan Set."
5. **Certificate of Occupancy.** The permittee shall obtain a Certificate of Occupancy. Procurement of a Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this Permit and the permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
6. **Compliance with Local and State Laws.** The subject use shall be conducted in

full compliance with all local and state laws, regulations and required permits. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance.

7. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
8. **Use Authorization.** This Conditional Use Permit and Site Development Permit authorize the demolition of an existing buildings, and the construction of a new 3,750 square foot convenience store with the off-sale of beer and wine, a gas station with 6 auto retail fueling dispensers (12 pumps), canopies, and 12 card lock fueling dispensers. Hours of operation for the commercial use shall be allowed to operate between 24 hours.
9. **Off-Sale of Alcoholic Beverages.** This Permit authorizes the off-sale of alcoholic beverages at the proposed convenience store and successors of said tenant spaces whereby the subsequent tenant maintains a similar use as deemed by the Director of Planning
10. **Outdoor Storage.** No outdoor storage is allowed or permitted.
11. **Outdoor Security.** Outdoor security shall be provided by a surveillance system that maintains a recording for a minimum of thirty days.
12. **Service Station Requirements.** Service stations shall provide and maintain complementary compressed air, water, car window washing equipment, and men's and women's restrooms for the welfare and convenience of all customers and the public during all hours of operation.
13. **Nuisance**. This use shall be operated in a manner that does not create a public or private nuisance. Nor shall the use adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area or be detrimental to public health, safety or general welfare. Any such nuisance shall be abated immediately upon notice by the City.
14. **Refuse**. All trash areas shall be effectively screened from view and covered, and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping.
15. **Anti-Graffiti**. The permittee shall remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement.
16. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris.

17. **Outdoor Uses.** There shall be no outdoor uses except those explicitly approved herein.
18. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
19. **Colors and Materials.** All building colors and materials are to be as specified on the Approved Plan Set.
20. **Street Cleaning and Dust Control.** During construction, the permittee shall sweep and wash down the public streets each working day. In any on-site area visible to the public from the public right-of-way, the site shall be clean of debris, rubbish and trash at least once a week. The permittee shall implement effective dust control measures to prevent dust and other airborne matter from leaving the construction site.
21. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Interior construction that is not audible at the adjacent property lines is permitted on Saturday and Sunday between 9:00 a.m. and 6:00 p.m.
22. **Landscaping**. Planting and irrigation shall be provided by the permittee for all landscaped areas as indicated on the final Approved Plan Set. Landscaped areas shall be improved as per the final plans, maintained and watered and all dead plant material shall be removed and replaced by the property owner. Irrigation shall be installed in accordance with the State Model Water Efficient Landscape Ordinance Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
23. **Irrigation Standards.** The permittee shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that shall conform to the Zonal Irrigation Plan in the Approved Plan Set. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
24. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
25. **Recycling**. It is required that scrap construction and demolition debris be recycled instead of disposing of it in a landfill. An infrastructure exists within San José to accommodate such recycling efforts. Integrated Waste Management staff can provide assistance on how to recycle construction and demolition debris from the project, including information on where to conveniently recycle the material. Additional information may be found at http://www.sjrecycles.org/construction-

demolition/cddd.asp or by contacting the Commercial Solid Waste Program at (408) 535-8550.

26. **Lighting**. Light fixtures shall be designed and installed to minimize impacts on adjacent properties, while providing adequate lighting levels to assure security and discourage loitering in parking areas. Light levels of 1.5 or greater foot-candles average illumination at ground surface are encouraged. Twenty-four-hour uses shall install additional parking lot lighting in the "Designated Parking Area" and such lighting may be other than low pressure sodium unless otherwise permitted per the City Outdoor Lighting Policy, as amended.

27. **Police Issues.** The applicant shall maintain a liaison with the Police Department to effectively control crime, gang, drug and other police problems which may arise from the operation between 12:00 midnight and 6:00 a.m.

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

    a. **Demolition.** The permittee has the approval to demolition the existing building. The following controls shall be implemented during demolition:

        i. Watering shall be used to control dust generation during demolition of structures and break-up of pavement.

        ii. Cover all trucks hauling demolition debris from the site.

        iii. Use dust-proof chutes to load debris into trucks whenever feasible.

    b. **Construction**. The following controls shall be implemented at all construction sites:

        i. Water all active construction areas at least twice daily and more often during windy periods; active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with nontoxic stabilizers to control dust;

        ii. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard;

        iii. Pave, apply water three times daily, or apply (nontoxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites;

        iv. Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas at construction sites; water sweepers shall vacuum up excess water to avoid runoff related impacts to water quality;

        v. Sweep streets daily (with water sweepers) if visible soil material is

carried onto adjacent public streets;

vi. Apply nontoxic soil stabilizers to inactive construction areas;

vii. Enclose, cover, water twice daily, or apply nontoxic soil binders to exposed stockpiles (dirt, sand, etc.);

viii. Limit traffic speeds on unpaved roads to 15 mph;

ix. Install sandbags or other erosion control measures to prevent silt runoff to public roadways;

x. Replant vegetation in disturbed areas as quickly as possible;

xi. Install base rock at entryways for all exiting trucks, and wash off the tires or tracks of all trucks and equipment in designated areas before leaving the site;

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

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

    a. **Construction Plans.** This permit file number, CP17-015, shall be printed on all construction plans submitted to the Building Division.

    b. **Americans with Disabilities Act**. The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).

    c. **Construction Conformance.** A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to final inspection approval by the Building Department, permittee shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms to all applicable requirements of the subject Permit, including the plan sets. To prevent delays in the issuance of Building Permits, please notify Planning Division staff at least one week prior to the final Building Division inspection date.

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

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

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

or any storm drain inlet.

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

    a. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.

    b. **Transportation**: This project is subject to the City's US-101/Oakland/Mabury Transportation Development Policy. The US-101/Oakland/Mabury Transportation Development Policy requires new residential and commercial developments that generate vehicular trips at either of the Policy Interchanges to pay a Traffic Impact Fee (TIF) towards the upgrade of US-101/Oakland Interchange and construction of US-101/Mabury Interchange. The 2017 TIF is $36,847 for each project peak hour trip that travels through either the US-101/Oakland or US-101/Mabury Interchanges. This fee is subject to an annual escalation on January 1st per the Engineering News-Record Construction Cost Index for San Francisco. Based on 2017 rate and 52 trips, the project's TIF is approximately $1,916,044.

    c. **Grading/Geology**:

        i. A grading permit is required prior to the issuance of a Public Works Clearance.

        ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2013 California Plumbing Code or submit a stamped and signed alternate engineered design for Public Works discretionary approval and should be designed to convey a

10-year storm event.

iii. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.

iv. Because this project involves a land disturbance of one or more acres, the applicant is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.

v. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed, and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.

d. **Stormwater Runoff Pollution Control Measures**: This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.

i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 8-14.

ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.

e. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post- Construction Hydromodification Management Policy (Council Policy 8-14).

f. **Flood: Zone D**: The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone

D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for Zone D.

g. **Sewage Fees**: In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable prior to Public Works clearance.

h. **Undergrounding**: Commercial Street and Oakland Road are designated streets and are subject to the In-Lieu Undergrounding fee. The In-Lieu Undergrounding fee is a percentage of the intensification of the project and shall be paid to the City for all frontage adjacent to Commercial Street and Oakland Road prior to issuance of a Public Works Clearance. 100 percent of the base fee in place at the time of payment will be due. Currently, the 2018 base fee is $469 per linear foot of frontage and is subject to change every January 31st based on the Engineering News Record's City Average Cost Index for the previous year. The project will be required to pay the current rate in effect at the time the Public Works Clearance is issued (based on 2018 rate, the fee is approximately $278,586).

i. **Street Improvements**:

   i. Reconstruct handicap at the corner of Oakland Road and Commercial Street to City and ADA standard.

   ii. Remove closed driveways on Oakland Road and replace with City standard sidewalk.

   iii. Reconstruct and combine the two north most driveways on Oakland Road into (one) 32-foot wide driveway.

   iv. Proposed driveway width to be 32 feet.

   v. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.

   vi. Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.

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

k. **Electrical**:

   i. Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.

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ii. Locate and protect existing electrical conduit in driveway and/or sidewalk construction.

iii. Provide clearance for electrical equipment from driveways, and relocate driveway or electrolier. The minimum clearance from driveways is 10 feet in commercial areas and 5 feet in residential areas.

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

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

a. A violation of any conditions of the Conditional Use Permit or Site Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or

b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or

c. The use as presently conducted creates a nuisance.

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

APPROVED and issued this ___ day of _____ 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

DRAFT – Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE TO DENY THE APPLICATION FOR GENERAL PLAN AMENDMENT TO CHANGE THE GENERAL PLAN LAND USE DESIGNATION TO COMBINED INDUSTRIAL/COMMERCIAL, DENY THE APPLICATION TO CHANGE THE ZONING TO THE CIC COMBINED INDUSTRIAL/COMMERCIAL ZONING DISTRICT, AND DENY THE APPLICATION FOR A CONDITIONAL USE PERMIT TO AUTHORIZE THE DEMOLITION OF AN EXISTING BUILDING AND FUELING DISPENSERS, AND THE CONSTRUCTION OF A 3,750 SQUARE FOOT CONVENIENCE STORE, AUTO RETAIL FUELING DISPENSERS, CANOPIES, AND CARD LOCK FUELING DISPENSERS WITH THE OFF-SALE OF BEER AND WINE AND 24-HOUR USE ON THE 1.54 GROSS ACRE SITE LOCATED AT THE NORTHEAST CORNER OF COMMERCIAL STREET AND OAKLAND ROAD (1202 OAKLAND ROAD).

FILE NOS. GP16-011, C17-008, CP17-015, ABC17-007

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on September 21, 2016, March 20, 2017 and May 8, 2017 the following concurrent applications were filed by the applicant, John Hicks, with the City of San José for the 1.54 gross acre site on that certain real property located on the northeast corner of Commercial Street and Oakland Road (1202 Oakland Road, San José, which real property is sometimes referred to herein as the “Subject Property”):

1. General Plan Amendment to change the General Plan Land Use/Transportation Diagram land use designation from Heavy Industrial to Combined Industrial/Commercial (File No. GP16-011),
2. Conventional Rezoning from HI Heavy Industrial Zoning District to CIC Combined Industrial/Commercial Zoning District (File No. C17-008), and
3. Conditional Use Permit to allow the demolition of an existing building and fueling dispensers, and the construction of a 3,750 square foot convenience store, auto

retail fueling dispensers, canopies, and card lock fueling dispensers with the off-sale of beer and wine, and 24-hour use (File No. CP17-015) (all applications are hereinafter collectively referred to as the "Project"); and

4. Determination of Public Convenience or Necessity ("PCN") to allow the off-sale of beer and wine (ABC Type 20 license) (File No. ABC17-007).

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

WHEREAS, all of the Project applications are considered concurrently in accordance with Section 20.100.130 of the San Jose Municipal Code; and

WHEREAS, an Initial Study and Mitigated Negative Declaration for the Rotten Robbie #67 Project, including evaluation of the impacts of all applications submitted by the Applicant, has been prepared in accordance with the California Environmental Quality Act; and

WHEREAS, the Council is required by law to consider the applications for approval for this Project in the following order, and the approval of any of the latter items requires the approval of all of the actions before it:

1. Appropriate CEQA clearance,
2. General Plan amendment,
3. Zoning amendment, and
4. Conditional Use Permit;
5. Determination of Public Convenience and Necessity, 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 Project on November 15, 2017, notice of which was duly given; and

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

WHEREAS, at said hearing the Planning Commission made a recommendation to the City Council respecting said matter based on the evidence and testimony; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this City Council conducted a hearing on said Project, notice of which was duly given; and

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

WHEREAS, at said hearing this City Council received and considered the reports and recommendations of the City's Planning Commission; and

WHEREAS, at said hearing, this City Council received in evidence a plan for the subject property entitled "Rotten Robbie #67, 1202 Oakland Road, San José, California 95112," last revised September 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 development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

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

WHEREAS, the Council desires to deny the application for the General Plan amendment because the requested change in the land use designation for the Subject Property from its current Heavy Industrial designation would be inconsistent with the Council's land use goals and policies expressed in the General Plan; and

WHEREAS, as a result of the Council's denial of the application for General Plan Amendment, the applications for zoning amendment and conditional use permit are also denied because they are inconsistent with the current General Plan and cannot be approved absent the requested change in General Plan designation, which is denied.

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

1. The application for General Plan amendment to change the land use designation of the Subject Property from Heavy Industrial to Combined Industrial/Commercial, File No. GP16-011, is hereby denied.
2. The application to change the zoning district of the Subject Property from the HI Heavy Industrial Zoning District to the CIC Combined Industrial/Commercial Zoning District, File No. C17-008, is hereby denied because it is inconsistent with the current General Plan land use designation of Heavy Industrial.
3. The application for a conditional use permit to authorize the proposed commercial uses on the Subject Property, File No. CP17-015 and ABC17-007, is hereby denied because the Council does not make the finding of consistency with the General Plan and Zoning required by Chapter 20.100 of Title 20 of the San José Municipal Code for all of the reasons that follow:

a. The Subject Property is designated Heavy Industrial on the Envision San José 2040 General Plan Land Use/Transportation Diagram. The Project is inconsistent with this designation as it allows for a significant amount of sole commercial development of a varied mixture of uses. The General Plan includes many goals and policies related to the preservation and creation of industrial land within San José, including the prohibition on converting heavy and light industrial lands to non-industrial uses. While the proposed Combined Industrial/Commercial land use designation allows industrial uses, it also allows for development that is solely commercial and retail in nature. The Project applications include the Conditional Use Permit application for the use of the Subject Property for solely commercial uses. Thus, the proposed General Plan Amendment, Rezoning, and Conditional Use Permit applications are for the conversion of industrial land to non-industrial land which is inconsistent with the General Plan.

b. The Project is inconsistent with the following goals and policies of the General Plan:

- Industrial Preservation Goal LU–6: Preserve and protect industrial uses to sustain and develop the city's economy and fiscal sustainability.
- Industrial Preservation Policy LU–6.1: Prohibit conversion of lands designated for light and heavy industrial uses to non-industrial uses.
- Industrial Preservation Policy LU–6.4: Encourage the development of new industrial areas and the redevelopment of existing older or marginal industrial areas with new industrial uses, particularly in locations which facilitate efficient commute patterns.
- Industrial Preservation Policy LU-6.5: Maintain and create Light Industrial and Heavy Industrial designated sites that are at least one acre in size in order to facilitate viable industrial uses.

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- Industrial Preservation Policy LU-6.7: Encourage supportive and compatible commercial and office uses in industrial areas designated for those uses. In areas reserved for light and heavy industrial uses, only limited auxiliary and incidental commercial uses, such as small eating establishments, may be permitted when such uses are of a scale and design providing support only to the needs of businesses and their employees in the immediate industrial area.

- Industrial Preservation Policy LU–6.8: Reserve industrial areas for industrial and compatible support uses, while recognizing that industrial uses come in a variety of types and forms. Allow non-industrial uses which are only incidental to and totally compatible with primary industrial uses in exclusively industrial areas. Consider allowing supportive, non-industrial activities, such as retail sales of materials manufactured or stored on site.

c. The Subject Property is greater than one acre in size and is considered viable for industrial development. Conversion of the Subject Property to commercial uses as proposed in the Project applications would significantly decrease the possibility of industrial development on this site in the future. General Plan Policy LU-6.4 also states that the City should encourage the development of new industrial areas and the redevelopment of marginal industrial areas with new industrial uses. To be consistent with the General Plan, the City should promote the development of industrial uses on the Subject Property and not the expansion of commercial uses as requested in the Project applications including the conditional use permit application.

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DENIED this ___ day of _____ 2017, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

DRAFT

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SAN JOSE REZONING CERTAIN REAL PROPERTY OF APPROXIMATELY 1.54-GROSS ACRES SITUATED AT THE NORTHEAST CORNER OF COMMERCIAL STREET AND OAKLAND ROAD (1202 OAKLAND ROAD) FROM THE HI HEAVY INDUSTRIAL ZONING DISTRICT TO THE CIC COMBINED INDUSTRIAL/ COMMERCIAL ZONING DISTRICT

WHEREAS, all rezoning proceedings required under the provisions of Chapter 20.120 of Title 20 of the San José Municipal Code have been duly had and taken with respect to the real property hereinafter described; and

WHEREAS, a Mitigated Negative Declaration was prepared in conformance with the California Environmental Quality Act of 1970 ("CEQA"), as amended, for the subject rezoning to PQP Public/Quasi-Public Zoning District under Planning File Nos. GP16-011, C17-008, and CP17-015 (the "IS/MND"); and

WHEREAS, the City Council of the City of San José is the decision-making body for the proposed subject rezoning to the CIC Combined Industrial/Commercial Zoning District; and

WHEREAS, this Council of the City of San José has considered and approves the information contained in the IS/MND and Mitigation Monitoring and Reporting Program under separate Council resolution prior to taking any approval actions on this project.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. The recitals above are incorporated herein.

SECTION 2. All that real property hereinafter described in this section, hereinafter referred to as "subject property," is hereby rezoned as CIC Combined Industrial/Commercial Zoning District.

The subject property referred to in this section is all that real property situated in the County of Santa Clara, State of California, described in Exhibit "A" and depicted in Exhibit "B" attached hereto and incorporated herein by this reference.

SECTION 3. The district map of the City is hereby amended accordingly.

SECTION 4. The land development approval that is the subject of City File No. C17-008 is subject to the operation of Part 2.75 of Chapter 15.12 of Title 15 of the San José Municipal Code. The applicant for or recipient of such land use approval hereby acknowledges receipt of notice that the issuance of a building permit to implement such land development approval may be suspended, conditioned or denied where the City Manager has determined that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed by the California Regional Water Quality Control Board for the San Francisco Bay Region.

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PASSED FOR PUBLICATION of title this _____ day of _____, 2018 by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

Vacca, Kimberly

From: Tesi Leasing Inc noelpinto <batssj@sbcglobal.net>
Sent: Wednesday, August 09, 2017 10:34 AM
To: Vacca, Kimberly
Subject: Bay Area Truck Services

Dear Kimberly,

Per our conversation, it will be a tremendous hardship for our company, and it's employees/customers and vendors to loose our current location. We have been her since the 80's and have worked hard to establish our customer base. The reasons it would be a hardship for us to relocate are as follows:

1. Our location is perfect because the big trucks/trailers are able to pull off the nearby freeways (101, 880, 680) and pull into our lot with ease. This is a must because they cannot maneuver in tight areas and need a convenient way to get to us. If we were to move there's a good chance we would loose most of our customers. It is very difficult to find a convenient and affordable location in San Jose. Without our large customers there's a good chance we would have to go out of business. This would mean the lose of jobs for 7 of our employees plus the many vendors/contractors/customers who count on us.

2. Our labor rate has always been the lowest in the business. This makes it possible for our low income customers to operate profitably in the area. If we were to go out of business there's a good chance many of our customers would not be able to find affordable maintenance for their vehicles and would therefore create a hardship for them.

3. We do not have a lot of employee turnover and provide well paying jobs for people who would otherwise have to relocate. Most of our employees have families and small children who are established in their homes and school districts. Finding work, that pays well, would more than likely mean they would have to relocate and would cause a hardship for them.

In short, our company provides well paying jobs for it's employees, supports many local vendors and provides affordable service for low income commercial truck/trailer companies. Having to move would create a tremendous chain of hardship for all involved. For these reasons we feel there is no good reason to force us to relocate.

Please let us know your thoughts.

Sincerely,

Paul Rivard
Manager

BATS / TESI Leasing, Inc.
757 Commercial Street
San Jose CA, 95112
Phone # 408-453-5560
Fax # 408-453-5563

HICKS

September 20, 2016

Mr. Jared Hart
Supervising Planner, City of San Jose
200 E. Santa Clara St., 3rd Floor
San Jose, CA 95113

RE: Rotten Robbie, 1202 Oakland Rd., San Jose File No. PRE16-081

Dear Jared,

This cover letter is intended to describe the reasoning and justifications for applying to amend the General Plan for this site from HI to CIC. Presently there exists an auto fueling facility, RV & truck repair shop and commercial glass business. Robinson Oil is proposing to rezone the site and construct an auto/truck fueling facility, C-store and car wash.

Various companies have been selling retail gasoline at this site for many years and Robinson Oil intends to do so for many more years. The current problem is that the site is old and run down, and we are simply looking for ways to upgrade the site to modernize the facilities, enhance the property and provide needed services to the area.

We certainly understand the hard work and effort that goes into General Plan development, and the importance of the plan in evaluating proposed future development in the City. However, we feel that in identifying areas of future land use, a fairly broad brushstroke swath is applied, which sometimes overlooks smaller, "islands" of existing parcels & uses, which in this case doesn't quite fit into the future plan designation. This site is a perfect example in that it has been a gas station since the mid-'60's, and will continue to offer fuel sales in the future. Also, it is far too small in size (1.5 acres) to warrant viable heavy industrial investment development.

The following are key points in support of our proposed amendment:

1. Commercial/industrial areas need truck fueling. This neighborhood specifically, and San Jose in general, has few places for diesel trucks to fuel. The proposed upgrade provides needed services.
2. The site was originally built in 1965 as a Shell Service Station.
3. The site continues to sell fuel to commercial vehicles, and will continue to operate "as is" unless allowed to upgrade.
4. This site is adjacent to a large mobile home complex.
5. Directly across Oakland Rd. are fast food properties and other retail uses.
6. The site is far too small to justify heavy industrial development investment.
7. This new Rotten Robbie facility would generate significant sales tax revenue for the City.

PROJECT MANAGEMENT
O. Box 1676 J: 707.333.5080 johngloria@sbcglobal.net
anta Rosa, CA 95402 G: 707.228.6522 Fax: 707.545.3548

In closing, we are simply looking for ways to upgrade the site and need help from the City to do so. We feel strongly that our proposed project would result in a huge improvement to the site and neighborhood in terms of aesthetics, jobs, tax revenues and retail offerings that are needed in this area.

Regards,

GJ Project Management
3766 Darlington Ct.
Santa Rosa, CA 95404

Rotten Robbie

Robinson Oil Corporation (ROC) owns and operates the independent, private brand Rotten Robbie chain of gasoline stations and convenience stores. The company has 34 Rotten Robbie stores from Salinas to Clear Lake. ROC is a fourth generation family business headquartered in Santa Clara. ROC was founded circa 1938. In 1948, one of the Rotten Robbie founders, Herb Richards, was the first to sell self-service gasoline in Northern California at a station in San Jose. The Rotten Robbie name was first used at a gasoline station in 1973. Since the company did not have a large advertising budget, the "Rotten Robbie" moniker was a fun (and inexpensive) way to have a name customers would remember and (hopefully) associate with the company's competitive fuel prices and well run stores.

Since the 1980's, the convenience retail – fuel and store – channel of the retail industry has developed significantly into larger stores and a much broader offering of products. Besides the staples of candy, snacks, soda, tobacco and beer; new stores have more prepared foods, healthy products, fresh products, as well as a more diverse array of refreshment products.

All the retail channels have evolved. The lines have blurred between channel offerings.

1. Big boxes sell supermarket items, prepared foods, have pharmacies, and sell gasoline.
2. Pharmacies sell supermarket/convenience store items including alcohol and tobacco.
3. Supermarkets have pharmacies, try to be convenience with 8 items or less aisles, sell alcohol and gasoline, and have bank branches.
4. Trader Joe's – Part convenience store, part supermarket, part big box.
5. Everyone sells coffee – Starbucks, McDonalds, etc.

In general, the Bay Area convenience retail channel has not developed. There are many 1960's vintage facilities still in operation. Where there are convenience stores, the offerings are generally limited. There are a number of reasons for this, for example, the high cost of land and development, but the major impediment was or is local ordinances. For example, until recently, San Jose would not allow fuel and groceries to be sold at the same business. This obviously quashes the development of new convenience retail businesses.

ROC is updating our older Rotten Robbies and developing new, larger, more attractive sites with a wider array of product offerings. We are improving and growing in the Bay Area and Northern California. We have a multi-year initiative to Enhance the Rotten Robbie Brand. It has not been fast, easy or inexpensive, but we are committed.

Rotten Robbie

Keys to Success (or not)

There are a number of key criteria that are necessary for a successful Rotten Robbie. Without these, it does not make financial sense for a multi-million dollar investment. They are as follows:

1. Good location, strong traffic count. In all retail businesses, location is important, but the reality is that people do not (as a general rule) go out of their way to buy fuel. They get it on the way someplace, for example, on the way home, to work, to school, to the market, etc.
2. Good ingress and egress for customers and for supplier fuel and store trucks.
3. Large 3,000 plus square foot convenience store that is designed well. A store large enough to stock a wide variety to fulfill shopper needs and wants. It is also important that it be laid out well. There is no space to waste.
4. Lots of front parking. Without adequate front parking, the store will never be a destination on its own. It will be dependent only on fuel customers.
5. Large fueling presence. Three to four islands with two dispensers per island. This provides the capabilities to compete with the strongest fuel retailers.
6. Beer/wine off premise license. Beer is important because it is a Top 5 sales category in a convenience store. But it is even more important because it is a destination product. Consumers normal do not buy beer on impulse. Beer brings shoppers to the store, and they buy other products. If you do not sell beer, you lose that sale, plus the other products the consumer would purchase. Frequently, that consumer never becomes your customer.
   Beer frequently can be a thorny issue with the city or the community. It has been our experience that it is never a problem or an issue afterwards. In other words, when we sell it in our stores, we do not have problems. Customers and the community see that it fits with the rest of the store categories. And we sell it responsibly.
7. 24 Hour operation. Most of our stores do not operate 24 hours per day. But in certain location it is important.
8. Minimal or no building property setback. This is generally an issue with legacy or smaller properties. To utilize smaller properties effectively to allow for parking and vehicle flow, efficient use of the property is important.

With the high cost of land and development, especially in California, it is critical to have all of the above to move forward on a significant investment.

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: Robert Rivera
Planning Department

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

SUBJECT: Rotten Robbie Gas Station
1202 Oakland Road

DATE: January 18, 2018

Approved Date

I have received your request for input regarding Rotten Robbie Gas Station located at 1202 Oakland Road, San Jose, Ca. 95112. Rotten Robbies is seeking an off-sale beer and wine Alcohol Beverage Control (ABC) license.

Per Business and Professions (B&P) Code Section 23958, the State of California Department of Alcohol Beverage Control shall deny an ABC Application for an ABC License if the issuance of that license would tend to create a law enforcement problem or if it would result in or add to an undue concentration of ABC Licenses, as described in B&P Sections 23958.4 (a)(1) and 23958.4(a)(3). A location can be unduly concentrated because of its criminal statistics and/or it's proximity to other ABC Licenses.

Rotten Robbies is located in San Jose Police Beat Robert Four. The reported crime statistics as defined by B&P Section 23958.4(c) **are not** over the 20% crime index thus the location **is not** considered unduly concentrated per B&P Section 23958.4 (a)(1).

Police Beat Crime Statistics

Beat	Index Crimes	Arrests	Total	20% Above Average
R4 (2016)	340	110	450	No
City Average	319	122	441	

ABC records indicate Rotten Robbies is in census tract 5043.18. Pursuant to B&P Section 23958.4 (a)(3) … the ratio of on-sale retail licenses and off-sale retail licenses to population in census tract 5043.18 **would** exceed the ratio of on-sale retail licenses and off-sale retail licenses to population in the county in which the applicant premises are located.

Authorized and Current ABC Licenses in Census Tract 5043.18

Census Tract	Authorized ABC Licenses		Current ABC Licenses		Unduly Concentrated	
	On - Sale	Off - Sale	On – Sale	Off – Sale	On - Sale	Off – Sale
5043.18	7	2	10	2	Yes	Even

A records check of calls for service and self-initiated activity revealed a high number of vagrancy calls in that area.

The San Jose Police Department is neutral to the issuance of the off-sale license as long as the location is prohibited from selling single cans or bottles of beer 40 ounces and under. If the location is not prohibited from selling single cans or bottles of beer 40 ounces and under, then the San Jose Police Department is opposed to this application.

The San Jose Police Department would suggest several security requirements if this application were to be approved. Rotten Robbie should be required to have no loitering signs outside the building. There should be sufficient lighting around the building to deter loitering and other illegal activity. Last, Rotten Robbie should be required to have a surveillance system outside and maintain the recordings for thirty days to record suspicious activity and any crimes that occur.

Please feel free to contact me at 277-4322 if you have any questions.

Sgt. Rick Galea #3495
San Jose Police Department
Special Investigations/Vice

ERRATA
Rotten Robbie #67 Project

File No.	GP16-011, C17-008, CP17-015
Location	1202 Oakland Road, San Jose, CA
Council District	3

BACKGROUND

An Initial Study (IS) and Mitigated Negative Declaration (MND) were prepared by the Director of Planning, Building, and Code Enforcement for the subject General Plan Amendment, Conforming Rezoning, and Conditional Use Permit. The documents were circulated for public review between October 17, 2017 to November 6, 2017 and no comments were received from the public.

Since the public review of the IS/MND, there are changes that has been made to the IS/MND. The following errata to the IS/MND is made to correct and clarify the changes.

PURPOSE OF ERRATA

The California Environmental Quality Act (CEQA) Guidelines, Section 15073.5, requires that a lead agency recirculate a negative declaration "when the document must be substantially revised." A "substantial revision" includes: (1) identification of a new, avoidable significant effect requiring mitigation measures or project revisions, and/or (2) determination that proposed mitigation measures or project revisions will not reduce potential effects to less than significance and new measures and revisions must be required.

State CEQA Guidelines specify situations in which recirculation of a negative declaration is not required. This includes, but is not limited to, situations in which "new information is added to the negative declaration which merely clarifies, amplifies, or makes insignificant modifications to the negative declaration." As noted below, revisions to the proposed project would not change the extent of the project analyzed in the Initial Study/Mitigated Negative Declaration (IS/MND). Changes to the negative declaration would therefore merely clarify the project being analyzed, and modifications would be insignificant. Recirculation of the negative declaration is therefore not required in accordance with Section 15073.5(c).

TEXT REVISIONS

Since the circulation of the IS/MND, the project description has changed to include the additional upgrade of the existing gas station pumps, with no expansion of use or increase in number of pumps, for an interim use prior to the implementation of the full Conditional Use Permit.

The change to the text in the IS/MND includes:

3.2 Proposed Development

The project is for a General Plan Land Use / Transportation Diagram Amendment from Heavy Industrial to Combined Industrial Commercial, a conforming Rezoning from Heavy Industrial (HI) to Combined Industrial/Commercial (CIC) zoning district, and Conditional Use Permit to allow the demolition of existing

structures on site and construction of an approximately 3,750 square foot one-story convenience store, a 3,432 square foot canopy over the auto fueling area, and a 4,813 square foot canopy over the cardlock fueling dispensers . The project proposes six fuel stations for auto dispensers (12 pumps) and 12 fuel stations for cardlock fueling dispensers (24 pumps). The proposed cardlock fueling dispensers are restricted to diesel and would be accessed for specific businesses. Other improvements include parking lot upgrades, landscape upgrades, and the installation of a covered trash enclosure. Additionally, the off-sale of alcohol and 24-hour operation is proposed as part of the project.

In the interim period and prior to implementation of the project, the applicant proposes to upgrade the existing gas stations, with no increase to the number of pumps or capacity of the use.

The proposed change to include in the upgrade of the existing gas station in the interim period, prior to the full demolition of all structures and building on sites and construction for the convenience store and new gas station, the project would be subject to the same conditions and mitigation measures as part of the Condition Use Permit, as applicable.

This change does not present new information or change the analysis or findings of the IS/MND. The proposed change identified above would only clarify the implementation timing of the required mitigation measure and would not result in any new significant environmental effects or a substantial increase in the severity of previously identified significant effects. The new information is not significant and recirculation is not required. In conformance with Section 15074 of the CEQA Guidelines, the MND, technical appendices and reports, together with the Errata and the information contained in this document are intended to serve as documents that will inform the decision-makers and the public of environmental effects of this project.

Rosalynn Hughey, Interim Director
Planning, Building and Code Enforcement

Date: January 23, 2018

Deputy

MITIGATION MONITORING AND REPORTING PROGRAM

Rotten Robbie #67 Gas Station

File Numbers: GP16-011, C17-008, CP17-015

October 2017

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

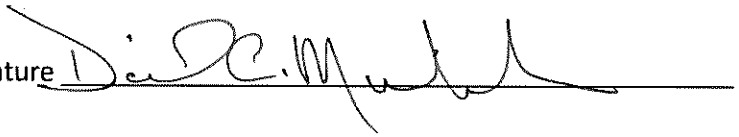
PREFACE

Section 21081.6 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program whenever it approves a project for which measures have been required to mitigate or avoid significant effects on the environment. The purpose of the monitoring and reporting program is to ensure compliance with the mitigation measures during project implementation.

The Initial Study/Mitigated Negative Declaration prepared for the Rotten Robbie #67 Gas Station Project concluded that the implementation of the project could result in significant effects on the environment and mitigation measures were incorporated into the proposed project or are required as a condition of project approval. This Mitigation Monitoring and Reporting Program addresses those measures in terms of how and when they will be implemented.

This document does *not* discuss those subjects for which the Initial Study/Mitigated Negative Declaration concluded that the impacts from implementation of the project would be less than significant.

I, David Mordick, the applicant, on the behalf of Robinson Oil Corp., hereby agree to fully implement the Mitigation Measures described below which have been developed in conjunction with the preparation of an Initial Study/Mitigated Negative Declaration for my proposed project. I understand that these mitigation measures or substantially similar measures will be adopted as conditions of approval with my development permit request to avoid or significantly reduce potential environmental impacts to a less than significant level, where feasible.

Project Applicant's Signature 

Date 11/13/17

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
BIOLOGICAL RESOURCES					
Impact BIO-1: Construction of the project could result in impacts to nesting migratory birds.					
MM BIO-1: The project applicant shall schedule demolition and construction activities to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st, inclusive. If it is not possible to schedule demolition and construction between September 1st and January 31st (inclusive) to avoid the nesting season, pre-construction surveys for nesting raptors and other migratory nesting birds shall be conducted by a qualified ornithologist to identify active nests that may be disturbed during project implementation on-site and within 250 feet of the site. Projects that commence demolition and/or construction activities between February	Avoidance of construction activities during nesting seasons If avoidance of construction activities during nesting seasons is not feasible, a pre-construction nesting bird survey shall be conducted by a qualified ornithologist and construction-free buffer zones shall be designated	Prior to issuance of any grading, demolition, and/or building permits.	Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement, CDFW.	Confirm that demolition and construction activities are scheduled outside of the nesting season. Review the preconstruction survey report indicating the results of the survey and any	Prior to issuance of any grading, demolition, and/or building permits.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
1st and April 30th, shall conduct a pre-construction survey for nesting birds no more than 14 days prior to initiation of construction, demolition activities, or tree removal. Between May 1st and August 31st, the pre-construction survey shall be conducted no more than 30 days prior to initiation of construction, demolition, or tree removal activities. If an active nest is found in or close enough to the project area to be disturbed by construction activities, a qualified ornithologist, in consultation with the California Department of Fish and Wildlife (CDFW), shall determine the extent of a construction-free buffer zone (typically 250 feet for raptors and 100 feet for other birds) around the nest, to ensure that raptor or migratory bird nests would not be disturbed during ground disturbing activities. The construction-free buffer zones shall be maintained until after the nesting season has ended and/or the ornithologist has determined that the nest is no longer active.	around any discovered nest. Following completion of the preconstruction survey, the project applicant shall submit a report prepared by a qualified ornithologist to document the results of the survey and any designated construction-free buffer zones.			designated buffer-zones.	

MITIGATIONS	**MONITORING AND REPORTING PROGRAM**				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		**Documentation of Compliance [Lead Agency Responsibility]**		
	Method of Compliance Or Mitigation Action	**Timing of Compliance**	**Oversight Responsibility**	**Actions/Reports**	**Monitoring Timing or Schedule**
The ornithologist shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Supervising Environmental Planner of the City of San José Department of Planning, Building and Code Enforcement prior to any demolition, grading and/or building permit.					
HAZARDS AND HAZARDOUS MATERIALS					
Impact HAZ-1: Hazardous materials contamination on the site, if discovered in soil, could pose a risk to construction workers and others on or around the project site during excavation and grading, subsurface utility installation, maintenance, or landscaping.					
MM HAZ-1.1: Prior to the issuance of any grading permits, the project applicant shall collect shallow soil samples. The samples shall be analyzed for organochlorine pesticides (OCPs) and pesticide based metals (arsenic and lead). The soil sampling report indicating the results of the sampling shall be submitted to the City of San José Department of Planning, Building and Code Enforcement, and the Environmental Services Department (ESD) for approval. If results of the soil samples are over the screening levels, the applicant shall include conditions and procedure for clean-up as part of HAZ-1.2.	Applicant shall collect shallow soil samples.	Prior to the issuance of any grading permits.	Supervising Environmental Planner of the Department of Planning, Building, and Code Enforcement and Environmental Services Specialist of the Environmental Services Department	Review the results/report of the shallow samples.	Prior to the issuance of any grading permits.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
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	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
MM HAZ-1.2: Separate from the results found in MM HAZ-1.1, prior to the issuance of a demolition or grading permit, a Site Management Plan (SMP) shall be prepared by a qualified hazardous materials consultant to establish management practices for handling contaminated soil or other materials encountered during construction activities. Appropriate soil testing, characterization, storage, transportation, and disposal procedures shall be specified in the SMP. The sampling results shall be compared to appropriate risk-based screening levels in the SMP. The SMP shall identify potential health, safety, and environmental exposure considerations associated with redevelopment activities and shall identify appropriate mitigation measures. The SMP shall be submitted to the Santa Clara County Department of Environmental Health (or equivalent agency) for review and approval. A copy of the approved SMP shall be submitted to the Supervising Environmental Planner of the City of San José Department of Planning, Building, and	Preparation of the SMP and implementation of the SMP measures.	Prior to issuance of any grading permit; during construction.	Santa Clara County Department of Environmental Health or equivalent agency. Supervising Environmental Planner of the Department of Planning, Building, and Code Enforcement and Environmental Services Specialist of the Environmental Services Department	Review and approve of the SMP	Prior to issuance of any grading permits.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
Code Enforcement and Municipal Compliance Officer of the City of San José Environmental Services Department for approval prior to the issuance of any grading permits. The SMP shall include, but is not limited to, the following: • A detailed discussion of the site background; • Proper mitigation as needed for demolition of existing structures; • Management of stockpiles, including sampling, disposal, and dust and runoff control including implementation of a stormwater pollution prevention program; • Management of underground structures encountered, including utilities and/or underground storage tanks; • Procedures to follow if evidence of an unknown historic release of hazardous materials (e.g., underground storage tanks, polychlorinated biphenyls [PCBs], asbestos containing materials, lead-based paint, etc.) is discovered during excavation or demolition activities.					

MITIGATIONS	**MONITORING AND REPORTING PROGRAM**				
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	Method of Compliance Or Mitigation Action	**Timing of Compliance**	**Oversight Responsibility**	**Actions/Reports**	**Monitoring Timing or Schedule**
• Removal of underground storage tanks (USTs) requirements and guidelines. • Installation of new underground storage tanks (USTs) requirements and guidelines. • A health and safety plan (HSP) for each contractor working at the site that addresses the safety and health hazards of each site operation phase, including the requirements and procedures for employee protection. The HSP shall outline proper soil handling procedures and health and safety requirements to minimize work and public exposure to hazardous materials during construction.					
NOISE AND VIBRATION					
Impact NOI-1: Construction noise and vibration generated by the proposed project could impact nearby sensitive receptors.					
MM NOI-1.1: Construction Noise and Vibration Plan: The project applicant shall develop and implement a construction noise and vibration logistics plan (Plan) that will be in effect during all phases of construction on the project site. The Plan shall be included as part of the contractors	Submit a Construction Noise and Vibration Plan	Prior to the issuance of any demolition, grading, or building permit.	Supervising Environmental Planner of the Department of Planning, Building,	Review the Construction Noise and Vibration Plan	Prior to the issuance of any demolition, grading, or building permit.

MITIGATIONS	**MONITORING AND REPORTING PROGRAM**				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		**Documentation of Compliance [Lead Agency Responsibility]**		
	Method of Compliance Or Mitigation Action	**Timing of Compliance**	**Oversight Responsibility**	**Actions/Reports**	**Monitoring Timing or Schedule**
for construction workers and applicable supervisors. All measures shall be printed on all approved construction documents, contracts, and/or project plans. The applicant shall submit a copy of all approved plans, construction documents, contracts, and/or project plans to the Supervising Environmental Planner prior to the issuance of any demolition, grading, or building permits. The Plan shall include, but is not limited to, the following: • A list of all potential equipment (including specs) that will be used during all earthmoving activities. • A schedule of all earthmoving activities. • Responsibilities of personnel on the site. • Outreach strategies to inform nearby residences of construction hours and phase. • Best management practices to reduce construction noise such as, but is not limited to, the following: o Construct solid plywood fences around construction sites			and Code Enforcement		

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
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	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
adjacent to operational businesses, residences, or noise-sensitive land uses. o Utilize "quiet" models of air compressors and other stationary noise sources where technology exists. o Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment. o Locate all stationary noise-generating equipment, such as air compressors and portable power generators, as far away as possible from adjoining noise-sensitive land uses. o Prohibit all unnecessary idling of internal combustion engines. o Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing,					

MITIGATIONS	**MONITORING AND REPORTING PROGRAM**				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		**Documentation of Compliance [Lead Agency Responsibility]**		
	Method of Compliance Or Mitigation Action	**Timing of Compliance**	**Oversight Responsibility**	**Actions/Reports**	**Monitoring Timing or Schedule**
and provide a written schedule of "noisy" construction activities to the adjacent land uses and nearby residences. • The name and contact information (i.e. telephone number and email address) of the disturbance coordinator, who would be responsible for responding to complaints about construction noise, shall be posted at the construction site and included in the notice sent to neighboring noise-sensitive land uses regarding the construction schedule.					
MM NOI-1.2: Construction Equipment: The project applicant shall ensure that the following measures are printed on all approved construction documents, contracts, and/or project plans: • The contractor shall alert heavy equipment operators to the proximity of the adjacent structures so they can exercise care. • The contractor shall retain a qualified firm to complete a pre- and post-	Print all measures on construction documents, contracts, and/or project plans for review.	Prior to the issuance of any demolition, grading, or building permit.	Supervising Environmental Planner of the Department of Planning, Building, and Code Enforcement	Review construction documents, contracts, and/or project plans prior to the issuance of any demolition, grading, or building permits.	Prior to the issuance of any demolition, grading, or building permit.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
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construction cosmetic crack survey of the buildings adjacent to the southern boundary and shall repair any cosmetic cracking. • Limit the use of heavy vibration-generating construction equipment within 30 feet of the northern and southern site boundaries.					

Source: Rotten Robbie #67 Project Initial Study/Mitigated Negative Declaration, October 2017.

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE ADOPTING THE ROTTEN ROBBIE #67 GAS STATION PROJECT MITIGATED NEGATIVE DECLARATION, FOR WHICH AN INITIAL STUDY WAS PREPARED, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED, AND ADOPTING A RELATED MITIGATION MONITORING AND REPORTING PROGRAM

File Nos. GP16-011, C17-008, and CP17-015

WHEREAS, prior to the adoption of this Resolution, the Planning Director of the City of San José prepared an Initial Study and approved for circulation a Mitigated Negative Declaration for the Rotten Robbie #67 Gas Station Project under Planning File Nos. GP16-011, C17-008, and CP17-015 (the "Initial Study/Mitigated Negative Declaration"), all in accordance with the requirements of the California Environmental Quality Act of 1970, together with state and local guidelines implementing said Act, all as amended to date (collectively "CEQA"); and

WHEREAS, the Rotten Robbie #67 Gas Station Project (the "Project") analyzed under the Initial Study/Mitigated Negative Declaration consists of 1) a General Plan Amendment request to change the Land Use/Transportation Diagram land use designation from Heavy Industrial to Combined Industrial/Commercial, 2) a conforming Rezoning from Heavy Industrial (HI) to Combined Industrial/Commercial (CIC), and 3) a Conditional Use Permit to allow the demolition of existing structures on site and construction of an approximately 3,750 square foot one-story convenience store, six fuel stations for automobile dispensers (12 pumps), 12 fuel stations for cardlock fueling dispensers (24 pumps), a 3,432 square foot canopy over the automobile fueling area, and a 4,813 square foot canopy over the cardlock fueling area on an approximate 1.54 gross acre site located at 1202 Oakland Road, which is situated on the northeast corner

DRAFT – Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

of Commercial Street and Oakland Road (Assessor's Parcel Number 241-11-014, -020, -021, -022), San José, California; and

WHEREAS, the Initial Study/Mitigated Negative Declaration concluded that implementation of the Project could result in certain significant effects on the environment and identified mitigation measures that would reduce each of those significant effects to a less-than-significant level; and

WHEREAS, in connection with the approval of a project involving the preparation of an initial study/mitigated negative declaration that identifies one or more significant environmental effects, CEQA requires the decision-making body of the lead agency to incorporate feasible mitigation measures that would reduce those significant environmental effects to a less-than-significant level; and

WHEREAS, whenever a lead agency approves a project requiring the implementation of measures to mitigate or avoid significant effects on the environment, CEQA also requires a lead agency to adopt a mitigation monitoring and reporting program to ensure compliance with the mitigation measures during project implementation, and such a mitigation monitoring and reporting program has been prepared for the Project for consideration by the decision-maker of the City of San José as lead agency for the Project (the "Mitigation Monitoring and Reporting Program"); and

WHEREAS, the City of San José is the lead agency on the Project, and the City Council is the decision-making body for the proposed approval to undertake the Project; and

WHEREAS, the City Council has reviewed and considered the Initial Study/Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program for the Project and intends to take actions on the Project in compliance with CEQA and state and local guidelines implementing CEQA; and

DRAFT – Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

WHEREAS, the Initial Study/Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program for the Project are on file in the Office of the Director of Planning, located at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, are available for inspection by any interested person at that location and are, by this reference, incorporated into this Resolution as if fully set forth herein;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE:

THAT THE CITY COUNCIL does hereby make the following findings: (1) it has independently reviewed and analyzed the Initial Study/Mitigated Negative Declaration and other information in the record and has considered the information contained therein, prior to acting upon or approving the Project, (2) the Initial Study/Mitigated Negative Declaration prepared for the Project has been completed in compliance with CEQA and is consistent with state and local guidelines implementing CEQA, and (3) the Initial Study/ Mitigated Negative Declaration represents the independent judgment and analysis of the City of San José, as lead agency for the Project. The City Council designates the Director of Planning at the Director's Office at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, as the custodian of documents and records of proceedings on which this decision is based.

THAT THE CITY COUNCIL does hereby find that based upon the entire record of proceedings before it and all information received that there is no substantial evidence that the Project will have a significant effect on the environment and does hereby adopt the Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program prepared for the Project (Planning File Nos. GP16-011, C17-008, CP17-015). The Mitigation Monitoring and Reporting Program for the Project is attached hereto as Exhibit "A" and fully incorporated herein. The Initial Study/Mitigated Negative

DRAFT – Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

Declaration and Mitigation Monitoring and Reporting Program are: (1) on file in the Office of the Director of Planning, located at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113 and (2) available for inspection by any interested person.

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

AYES:

NOES:

ABSENT:

DISQUALIFIED:

_____
SAM LICCARDO
Mayor

ATTEST:

_____
TONI J. TABER, CMC
City Clerk

DRAFT

DRAFT – Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

Rotten Robbie
#67

1202 OAKLAND ROAD
SAN JOSE, CALIFORNIA 95112

PROJECT DATA

PROJECT DESCRIPTION:

THE PROJECT CONSISTS OF REMOVAL OF EXISTING BUILDINGS AND FUELING DISPENSERS. PROPOSED REDEVELOPMENT INCLUDES CONSTRUCTION OF A CONVENIENCE STORE, AUTO RETAIL FUELING DISPENSERS, CARDLOCK FUELING DISPENSERS AND CANOPY STRUCTURE OVER THE FUEL DISPENSERS. OTHER IMPROVEMENTS INCLUDE PARKING LOT AND LANDSCAPE UPGRADES, AND INSTALLATION OF A COVERED TRASH ENCLOSURE. ADDITIONALLY, THE OFF-SALE OF ALCOHOL IS PROPOSED, AND 24 HOUR OPERATION.

GOVERNING JURISDICTION: CITY OF SAN JOSE

USE PERMIT: ..

APN: 241-11-014 / 020 / 021 / 022

LOT SIZE: 67,144 S.F.

ZONE: CIC - COMBINED INDUSTRIAL / COMMERCIAL

ZONE CHANGE: ..

OCCUPANCY:
C-STORE: M
CANOPY: M

CONSTRUCTION TYPE:
C-STORE: V-B
CANOPY: II-B

FIRE SPRINKLERS:
C-STORE: NO
CANOPY: NO

ALLOWABLE FLOOR AREA: 8,000 sq. ft.
GROSS TOTAL: 3,750 sq. ft.
3,750 sq. ft. < 8,000 sq. ft.

BUILDING HEIGHT:
HEIGHT PROPOSED: C-STORE: 21'-6" CANOPY: 19'-6"

BUILDING AREA:
C-STORE: 3,750 SQ. FT.
CANOPY (AUTO): 3,432 SQ. FT.
CANOPY (CARDLOCK): 4,830 SQ. FT.

PARKING REQUIREMENTS:
(3,686 S.F. / 200 = 19 STALLS; (1) AIR/WATER; (1) INFORMATION; (2) EMPLOYEE) = 23
PARKING: REQUIRED = 23 SPACES
PARKING: PROVIDED = 19 SPACES (PLUS FUELING SPACES)

REGULATORY AGENCIES/UTILITY COMPANIES

BUILDING DEPARTMENT: CITY OF SAN JOSE BUILDING DEPARTMENT
TOWER 1ST FLOOR
200 EAST SANTA CLARA STREET
SAN JOSE, CA 95113
TEL: (408) 535-3555

PLANNING DEPARTMENT: CITY OF SAN JOSE PLANNING DIVISION
200 E. SANTA CLARA STREET
TOWER, 3RD FLOOR
SAN JOSE, CA 95113
TEL: (408) 535-3555

PUBLIC WORKS DEPARTMENT: CITY OF SAN JOSE PUBLIC WORKS DEPARTMENT
200 EAST SANTA CLARA STREET
TOWER 5TH FLOOR
SAN JOSE, CA 95113
TEL: (408) 535-8300

FIRE DISTRICT: SAN JOSE FIRE PREVENTION DEPARTMENT
200 E. SANTA CLARA STREET
SAN JOSE, CA 95113
TEL: (408) 535-7692

HEALTH PERMIT: SANTA CLARA COUNTY DEPT. OF ENVIRONMENTAL HEALTH
1555 BERGER DRIVE, BLDG. #2, 3RD FLOOR, SAN JOSE, CA 95112
TEL: (408) 918-3400

ELECTRICAL SERVICE: P. G. & E.
308 STOCKTON AVENUE
SAN JOSE, CA 95126
TEL: (408) 299-1053

WATER SERVICE: SAN JOSE WATER CO.
ENGINEERING DEPT.
1265 S. BASCOM AVENUE
SAN JOSE, CA 95128
TEL: (408) 279-7800 EXT. 5839

SEWER SERVICE: CITY OF SAN JOSE PUBLIC WORKS DEPARTMENT
200 E. SANTA CLARA STREET
3RD FLOOR
SAN JOSE, CA 95113
TEL: (408) 535-6819

PROJECT DIRECTORY

APPLICANT: ROBINSON OIL
955 MARTIN AVENUE
SANTA CLARA, CALIFORNIA 95050
CONTACT: DAVE MORDICK
TEL: (408) 327-4300

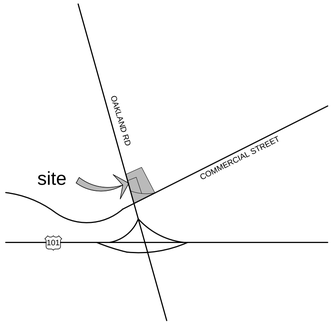
AGENT: HICKS PROJECT MANAGEMENT
CONTACT: JOHN HICKS
PO BOX 1676
SANTA ROSA, CALIFORNIA 95402
TEL: (707) 333-5080

ENGINEER: LHB & ASSOCIATES
867 PACIFIC STREET, SUITE 120
SAN LUIS OBISPO, CALIFORNIA 93401
CONTACT: ROBERT "JR" BEARD
TEL: (805) 540-5240
FAX: (805) 540-5241

INDEX OF DRAWINGS

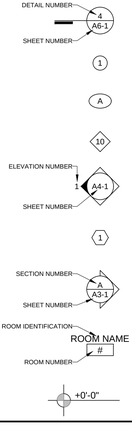
T-1	TITLE SHEET
C-1	SITE PLAN
C-2	CONCEPTUAL STORMWATER/GRADING PLAN
C-3	CONCEPTUAL STORMWATER CONTROL PLAN
C-4	DEMOLITION SITE PLAN
C-5	LIGHTING PLAN
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A-4	CANOPY EXTERIOR ELEVATIONS
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PH-1	SITE AND NEIGHBORHOOD PHOTOS

VICINITY MAP



NORTH
SCALE: N.T.S.

SYMBOL LEGEND



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REVISIONS

SUBMITTAL DATES
OWNER: 09/27/2017
REG. AGENCIES --
O.T.B.: --

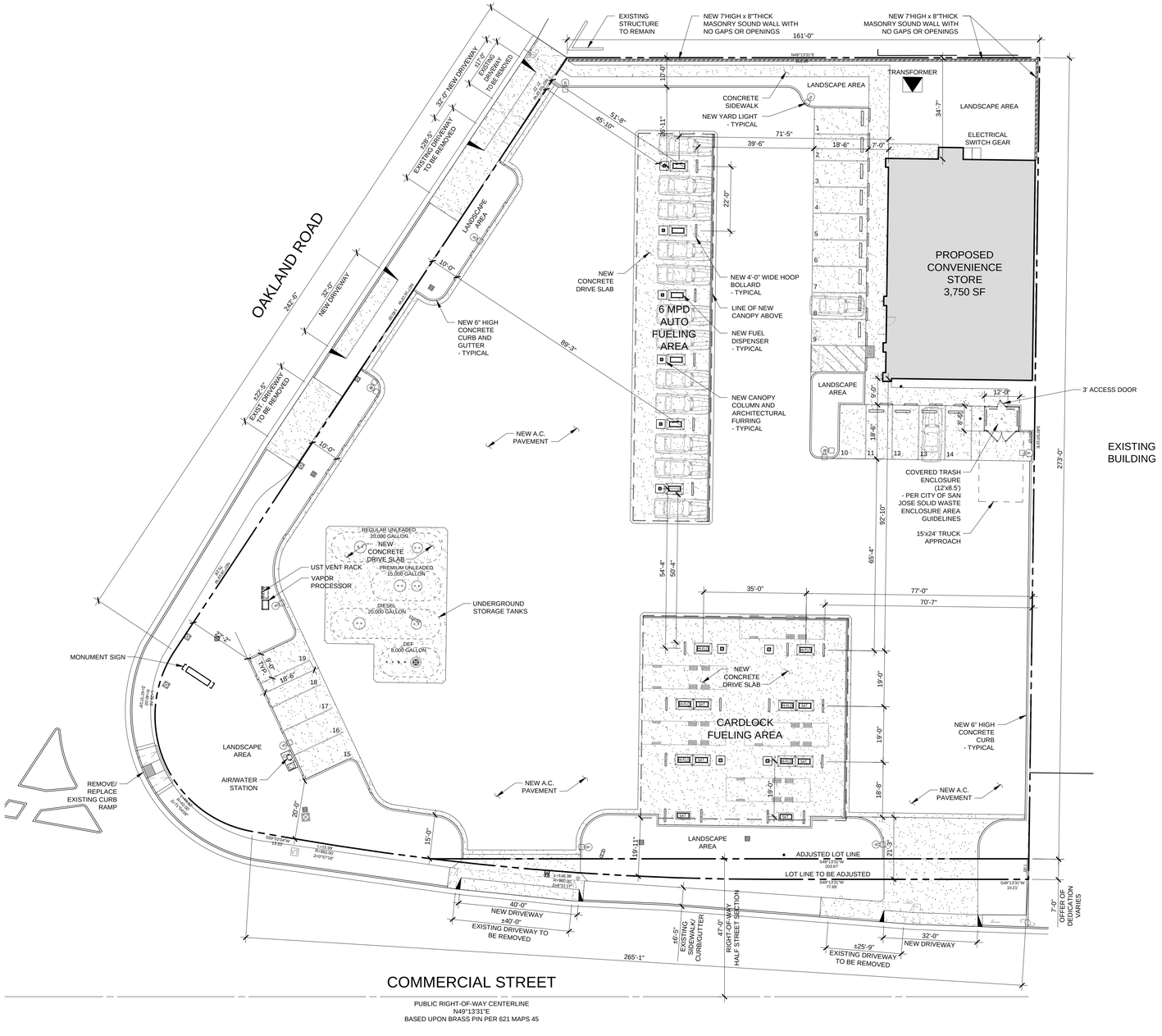
PROJECT NO. 09-30-67
DRAWN BY: JRB
CHECKED BY: JRB

ROTTEN ROBBIE #67
SAN JOSE, CALIFORNIA
1202 OAKLAND ROAD
SAN JOSE, CALIFORNIA 95112

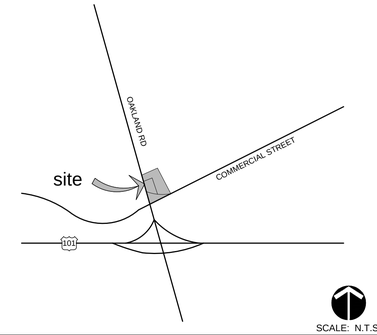
SHEET TITLE
TITLE SHEET

SHEET NO.
T-1

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LOCATION MAP



SCALE: N.T.S.

SITE STATISTICS

A.P.N.: APN: 241-11-014 / 020 / 021 / 022

LOT SIZE: 67,144 S.F. OR 1.54 ACRES

BUILDING GROSS AREA: 3,686 S.F.
(3,686 S.F. / 200 = 19 STALLS; (1) AIRWATER; (1) INFORMATION; (2) EMPLOYEE) = 23
PARKING: REQUIRED = 23 SPACES
PARKING: PROVIDED = 19 SPACES (PLUS FUELING SPACES)

SITE COVERAGE:
CONVENIENCE STORE: 5.6%
CANOPY: 11.7%
HARDSCAPE: 67.3%
LANDSCAPE: 15.4%

NOTE:
TOPOGRAPHIC INFORMATION SHOWN PROVIDED BY SLOOTEN CONSULTING, INC. DATED FEBRUARY 2014.

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SHEET TITLE

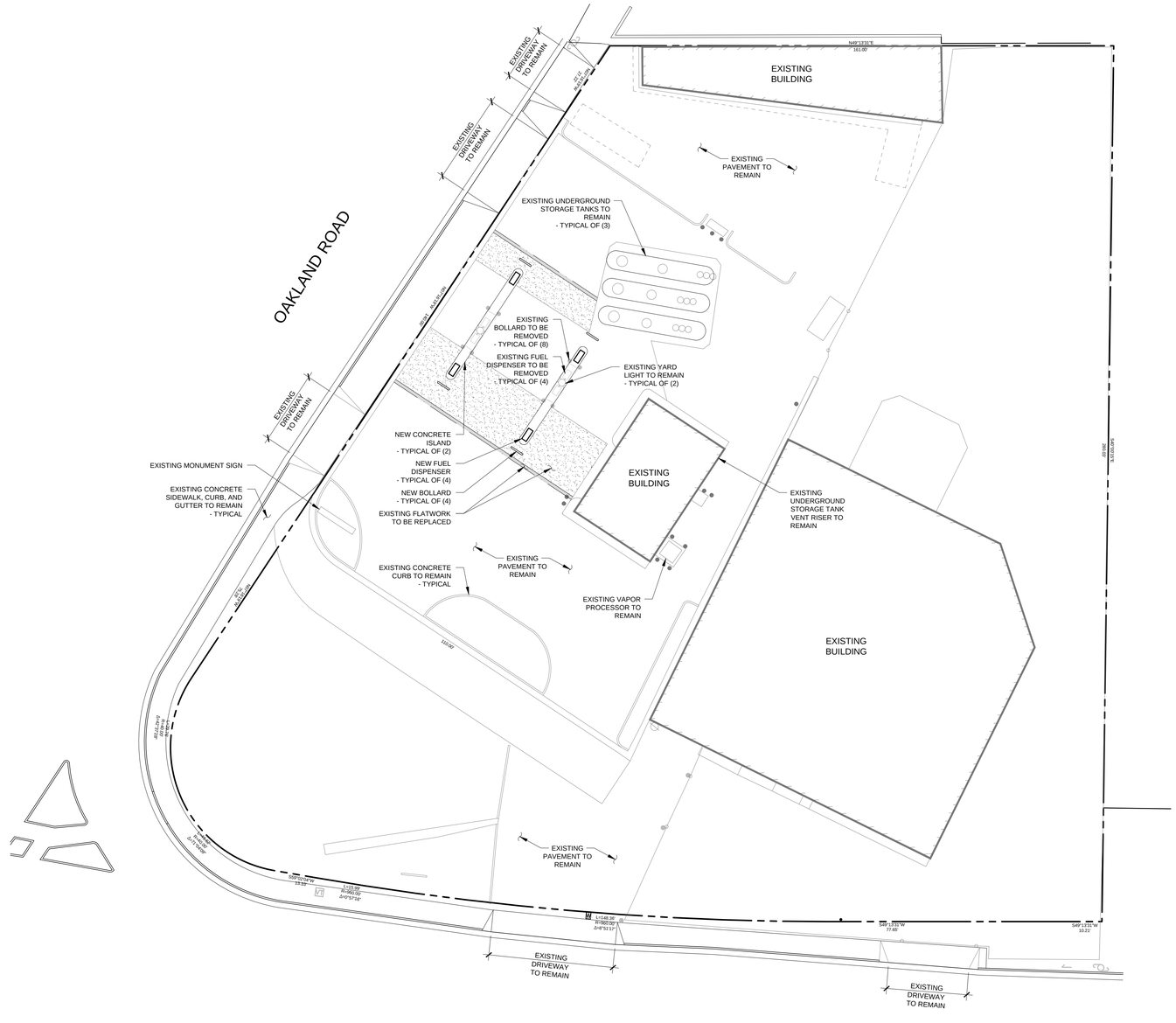
SITE PLAN

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C-1

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NOTE:
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SCALE: 1"=20'
20 0 20 40

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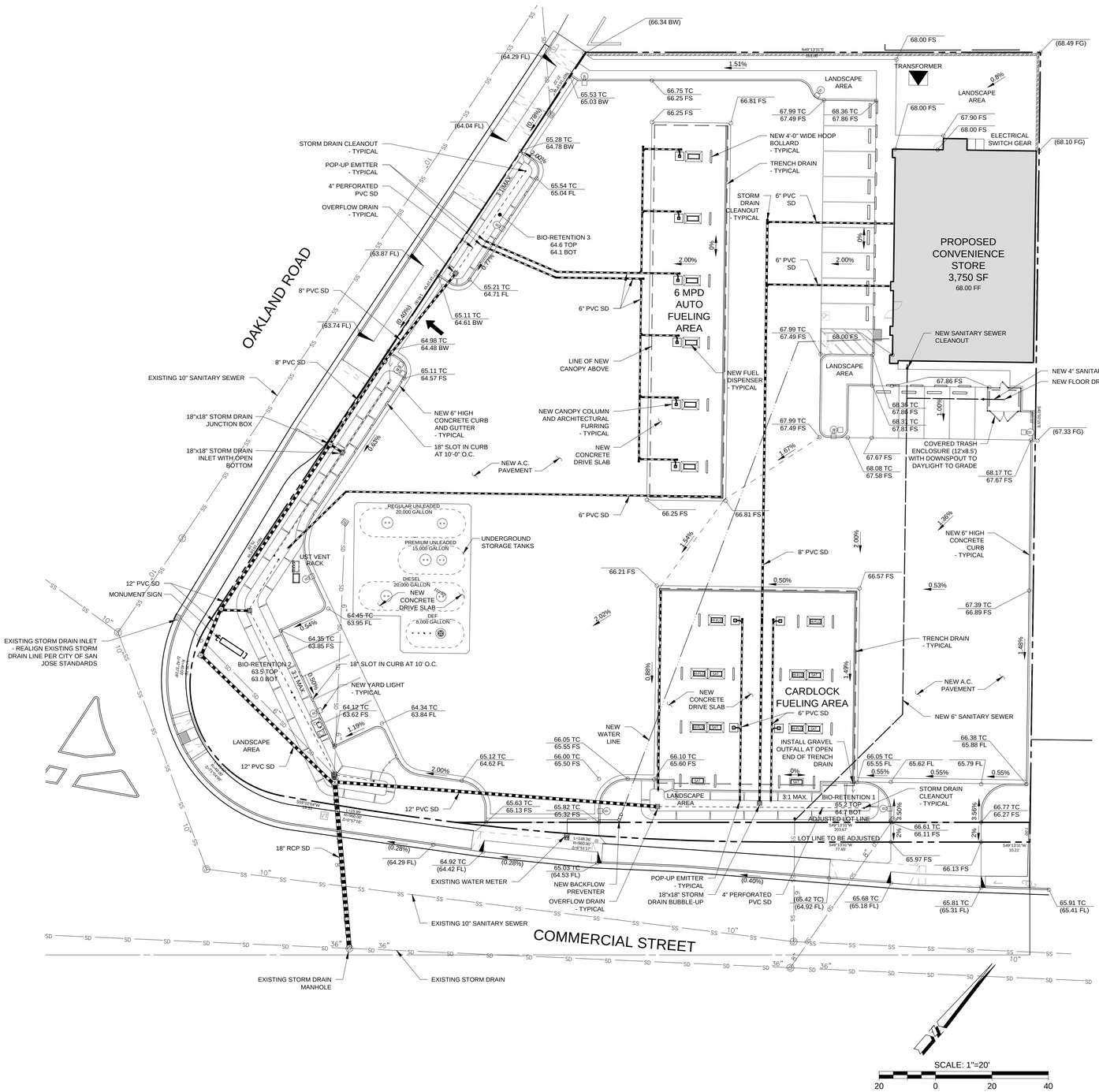
SHEET TITLE

INTERIM
SITE PLAN

SHEET NO.

C-1.1

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SEWER PIPE SIZING

EXISTING DEVELOPMENT:

DESCRIPTION	QTY.	DFU
LAVATORY	4	1.0
MOP SINK	3	3.0
WATER CLOSET	4	4.0
TOTAL:		29.0

NEW DEVELOPMENT:

DESCRIPTION	QTY.	DFU
LAVATORY	3	1.0
3-COMP. SINK	1	3.0
MOP SINK	1	3.0
WATER CLOSET	3	4.0
URINAL	1	2.0
FLOOR SINK	5	1.0
TOTAL:		28.0

28.0 DFU < 29.0; THEREFORE, NO IMPACT TO EXISTING SEWER.

NOTES:

1. TOPOGRAPHIC INFORMATION SHOWN PROVIDED BY SLOOTEN CONSULTING, INC. DATED FEBRUARY 2014.
2. BEST MANAGEMENT PRACTICES (BMP'S) SOURCE CONTROL MEASURES:
   SC-11 SPILL PREVENTION, CONTROL AND CLEANUP;
   SC-20 VEHICLE AND EQUIPMENT FUELING;
   SC-42 BUILDING REPAIR AND CONSTRUCTION;
   SC-43 PARKING/STORAGE AREA MAINTENANCE.
3. INSPECTION AND MAINTENANCE INFORMATION ON THE POST-CONSTRUCTION TREATMENT CONTROL MEASURES SHALL BE PROVIDED TO PUBLIC WORKS PRIOR TO BUILDING PERMIT ISSUANCE.
4. BASED UPON A GROUNDWATER MONITORING REPORT PREPARED BY BLUE ROCK ENVIRONMENTAL, INC., DATED FEBRUARY 23, 2012, THE FOLLOWING WAS DOCUMENTED:
   1. GROUNDWATER DEPTH IS APPROXIMATELY 20 FEET BELOW GROUND SURFACE;
   2. SOILS FROM A 30 FOOT BORING ARE MOSTLY CLAY (CL/CH) WITH SOME CLAYEY SAND (SC) INTERBEDS.

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1202 OAKLAND ROAD
SAN JOSE, CALIFORNIA 95112

SHEET TITLE

CONCEPTUAL STORMWATER/ GRADING PLAN

SHEET NO.

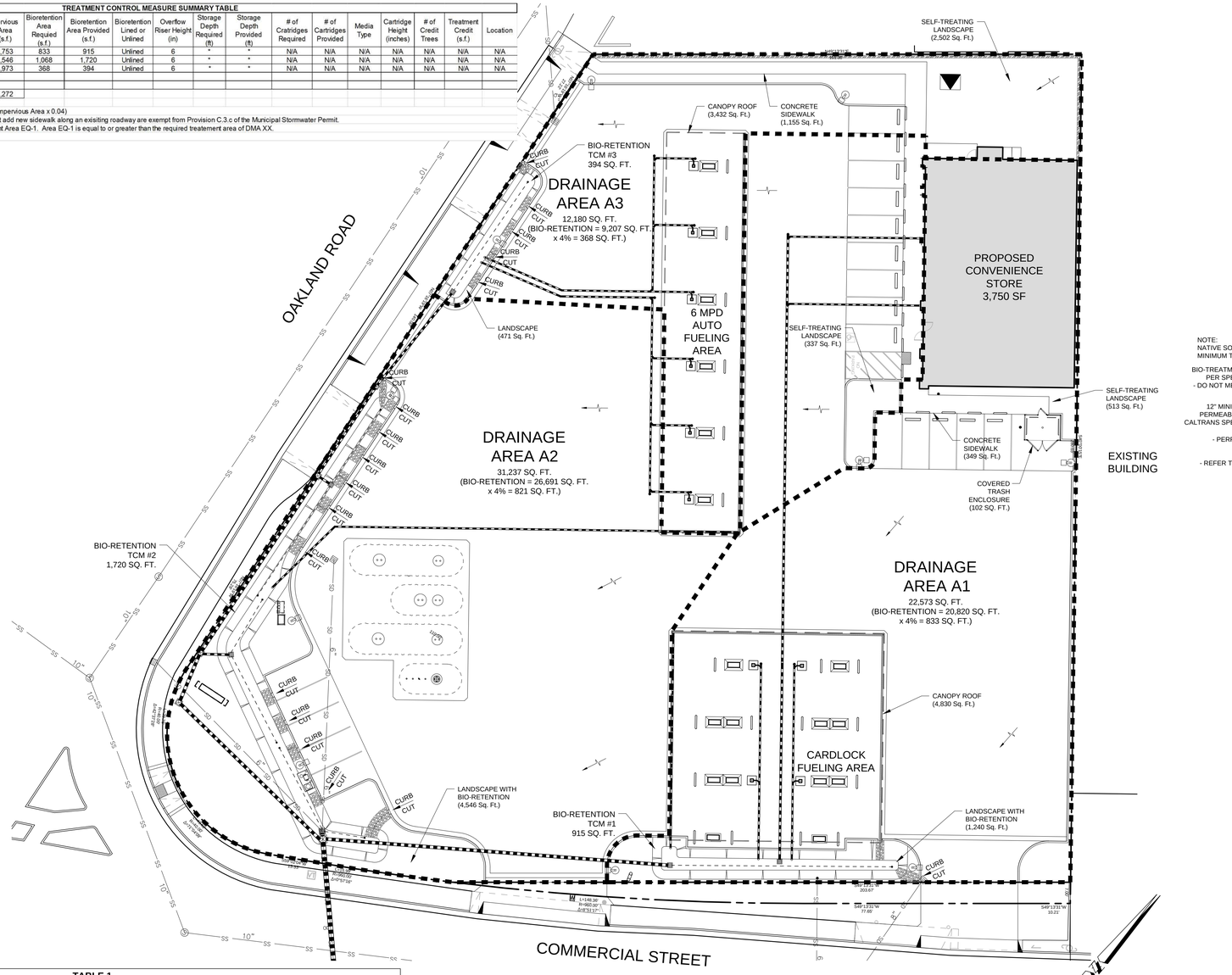
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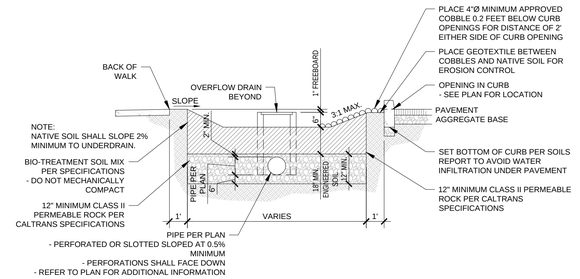
TREATMENT CONTROL MEASURE SUMMARY TABLE

Area	TCM #	Treatment Type	Drainage Area (s.f.)	Impervious Area (s.f.)	Pervious Area (s.f.)	Bioretention Area Requied (s.f.)	Bioretention Area Provided (s.f.)	Bioretention Lined or Unlined	Overflow Riser Height (in)	Storage Depth Required (ft)	Storage Depth Provided (ft)	# of Cartridges Required	# of Cartridges Provided	Media Type	Cartridge Height (inches)	# of Credit Trees	Treatment Credit (s.f.)	Location
1	1	Bio-Retention	22,573	20,820	1,753	833	915	Unlined	6	"	"	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2	2	Bio-Retention	31,237	26,691	4,546	1,068	1,720	Unlined	6	"	"	N/A	N/A	N/A	N/A	N/A	N/A	N/A
3	3	Bio-Retention	12,180	9,207	2,973	368	394	Unlined	6	"	"	N/A	N/A	N/A	N/A	N/A	N/A	N/A
XX		Untreated***																
EQ-1***																		
		Totals:	65,990	56,718	9,272													

*Sizing for Bioretention Area Required calculated using the 4% Method (Impervious Area x 0.04)
**Per Chapter 2.3 of the C3 Stormwater Handbook Roadway projects that add new sidewalk along an exisiting roadway are exempt from Provision C.3.c of the Municipal Stormwater Permit.
***DMA XX is not being treated but will be treated by Equivalent Treatment Area EQ-1. Area EQ-1 is equal to or greater than the required treatement area of DMA XX.
EQ-1 is not required to be treated as it is [insert reason here]



PERVIOUS AND IMPERVIOUS SURFACES COMPARISON TABLE			
PROJECT PHASE NUMBER: (N/A, 1 , 2, 3, etc.)			-
TOTAL SITE (ACRES):	1.54	TOTAL AREA OF SITE DISTURBED (ACRES):	1.54
	EXISTING CONDITION OF SITE AREA DISTURBED (SQUARE FEET)	PROPOSED CONDITION OF SITE AREA DISTURBED (SQUARE FEET)	
IMPERVIOUS SURFACES		REPLACED	NEW
ROOF AREA(S)	12,708	12,708	0
PARKING	45,836	44,277	0
SIDEWALKS, PATIOS, PATHS, etc.	237	237	1,267
STREETS (PUBLIC)	0	0	0
STREETS (PRIVATE)	0	0	0
TOTAL IMPERVIOUS SURFACES:	58,781	57,222	1,267
PERVIOUS SURFACES			
LANDSCAPED AREAS	8,363	7,096	1,559
PERVIOUS PAVING	0	0	0
OTHER PERVIOUS SURFACES	0	0	0
TOTAL PERVIOUS SURFACES:	8,363	7,096	1,559
TOTAL PROPOSED REPLACED + NEW IMPERVIOUS SURFACES:			65,535
TOTAL PROPOSED REPLACED + NEW PERVIOUS SURFACES:			65,827



BIO-RETENTION 1, 2, 3 - SECTION

SCALE: N.T.S.

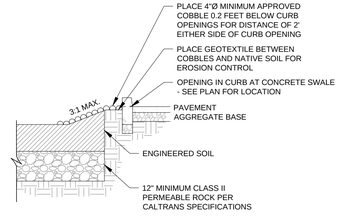
NOTES:
1. "ENGINEERED SOIL" MUST MAINTAIN A MINIMUM PERCOLATION RATE OF 5" PER HOUR THROUGHOUT THE LIFE OF THE FACILITY AND MUST BE SUITABLE FOR MAINTAINING PLANT LIFE WITH A MINIMUM OF FERTILIZER USE.
2. SOIL MIX MUST BE SUBMITTED TO MUNICIPALITY FOR APPROVAL.
3. NO FILTER FABRIC SHALL BE USED. REFER TO SOILS REPORT PREPARED BY KORBMACHER ENGINEERING, INC., DATED MAY 11, 2012 FOR ADDITIONAL INFORMATION.
4. 3" MAXIMUM MULCH IF SPECIFIED IN LANDSCAPE PLANS.
5. SURFACE AREA OF THE BIO-RETENTION SOIL SHALL EQUAL 4% OF THE AREA OF THE SITE THAT DRAINS TO TREATMENT MEASURE, UNLESS SIZING CALCULATIONS ARE SUBMITTED DEMONSTRATING THAT PROVISION C.3 REQUIREMENTS ARE MET USING A SMALLER SURFACE AREA.
6. PROJECT WILL NOT LOCATE OVERFLOW STRUCTURES DIRECTLY IN LINE WITH OR NEXT TO STORMWATER INLETS INTO BIO-RETENTION AREAS.

POST CONSTRUCTION STORM WATER MANAGEMENT NOTES:

1. POST-CONSTRUCTION CONTINUOUS SITE MAINTENANCE IS REQUIRED TO REDUCE THE AMOUNT OF POLLUTANTS THAT REACH THE BIO-RETENTION AREAS.
2. DRY SWEEP THE FUELING AREA ROUTINELY. ALSO, SWEEP OR VACUUM THE PARKING LOT AT LEAST ONCE EVERY MONTH.
3. PREPARE A SPILL CLEAN UP PLAN IN CONFORMANCE WITH THE CITY'S REQUIREMENTS. REMOVE OIL AND OTHER SPILLS USING ABSORBENT MATERIAL AS SOON AS SUCH SPILLAGE OCCURS AND DISPOSE OF APPROPRIATELY.
4. LIMIT USE OF FERTILIZERS IN LANDSCAPED AREA TO THE ABSOLUTE MINIMUM.
5. KEEP TRASH ENCLOSURES COVERED AT ALL TIMES.
6. MAINTAIN LANDSCAPED AREA REGULARLY. CHECK FOR WATER PONDING AND ADJUST GRADING AS NEEDED TO MAKE THE RUNOFF FLOW TO BIO-RETENTION AREAS.
7. STENCIL ALL ON-SITE STORM DRAIN INLETS IN CONFORMANCE WITH THE CITY'S REQUIREMENTS.
8. RESPONSIBLE PARTY FOR O&M IS DAVID MORDICK C/O ROBINSON OIL CORPORATION.

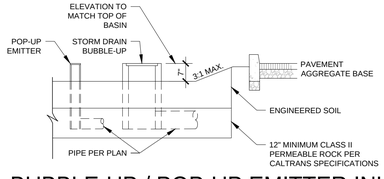
TABLE 1
ROUTINE MAINTENANCE ACTIVITIES FOR BIORETENTION AREAS

NO.	MAINTENANCE TASK	FREQUENCY OF TASK
1	REMOVE OBSTRUCTIONS, WEEDS, DEBRIS AND TRASH FROM BIORETENTION AREA AND ITS INLETS AND OUTLETS; AND DISPOSE OF PROPERLY.	QUARTERLY, OR AS NEEDED AFTER STORM EVENTS
2	INSPECT BIORETENTION AREA FOR STANDING WATER. IF STANDING WATER DOES NOT DRAIN WITHIN 2-3 DAYS, TILL AND REPLACE THE SURFACE BIOTREATMENT SOIL WITH THE APPROVED SOIL MIX AND REPLANT.	QUARTERLY, OR AS NEEDED AFTER STORM EVENTS
3	CHECK UNDERDRAINS FOR CLOGGING. USE THE CLEANOUT RISER TO CLEAN ANY CLOGGED UNDERDRAINS.	QUARTERLY, OR AS NEEDED AFTER STORM EVENTS
4	MAINTAIN THE IRRIGATION SYSTEM AND ENSURE THAT PLANTS ARE RECEIVING THE CORRECT AMOUNT OF WATER (IF APPLICABLE).	QUARTERLY
5	ENSURE THAT THE VEGETATION IS HEALTHY AND DENSE ENOUGH TO PROVIDE FILTERING AND PROTECT SOILS FROM EROSION. PRUNE AND WEED THE BIORETENTION AREA. REMOVE AND/OR REPLACE ANY DEAD PLANTS.	ANNUALLY, BEFORE THE WET SEASON BEGINS
6	USE COMPOST AND OTHER NATURAL SOIL AMENDMENTS AND FERTILIZERS INSTEAD OF SYNTHETIC FERTILIZERS, ESPECIALLY IF THE SYSTEM USES AN UNDERDRAIN.	ANNUALLY, BEFORE THE WET SEASON BEGINS
7	CHECK THAT MULCH IS AT APPROPRIATE DEPTH (2 - 3 INCHES PER SOIL SPECIFICATIONS) AND REPLENISH AS NECESSARY BEFORE WET SEASON BEGINS. IT IS RECOMMENDED THAT 2" – 3" OF ARBOR MULCH BE REAPPLIED EVERY YEAR.	ANNUALLY, BEFORE THE WET SEASON BEGINS
8	INSPECT THE ENERGY DISSIPATION AT THE INLET TO ENSURE IT IS FUNCTIONING ADEQUATELY, AND THAT THERE IS NO SCOUR OF THE SURFACE MULCH. REMOVE ACCUMULATED SEDIMENT.	ANNUALLY, BEFORE THE WET SEASON BEGINS
9	INSPECT OVERFLOW PIPE TO ENSURE THAT IT CAN SAFELY CONVEY EXCESS FLOWS TO A STORM DRAIN. REPAIR OR REPLACE DAMAGED PIPING.	ANNUALLY, BEFORE THE WET SEASON BEGINS
10	REPLACE BIOTREATMENT SOIL AND MULCH, IF NEEDED. CHECK FOR STANDING WATER, STRUCTURAL FAILURE AND CLOGGED OVERFLOWS. REMOVE TRASH AND DEBRIS. REPLACE DEAD PLANTS.	
11	INSPECT BIORETENTION AREA USING THE ATTACHED INSPECTION CHECKLIST.	ANNUALLY, BEFORE THE WET SEASON



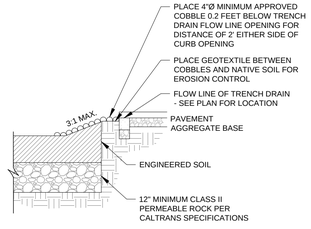
SWALE INLET

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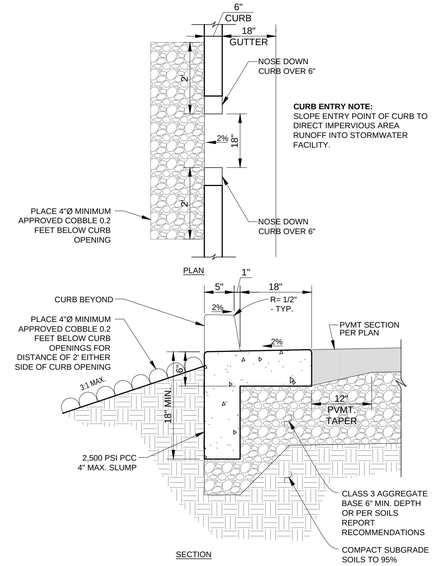
BUBBLE-UP / POP-UP EMITTER INLET

SCALE: N.T.S.



TRENCH DRAIN INLET

SCALE: N.T.S.



CURB CUT INLET

SCALE: N.T.S.

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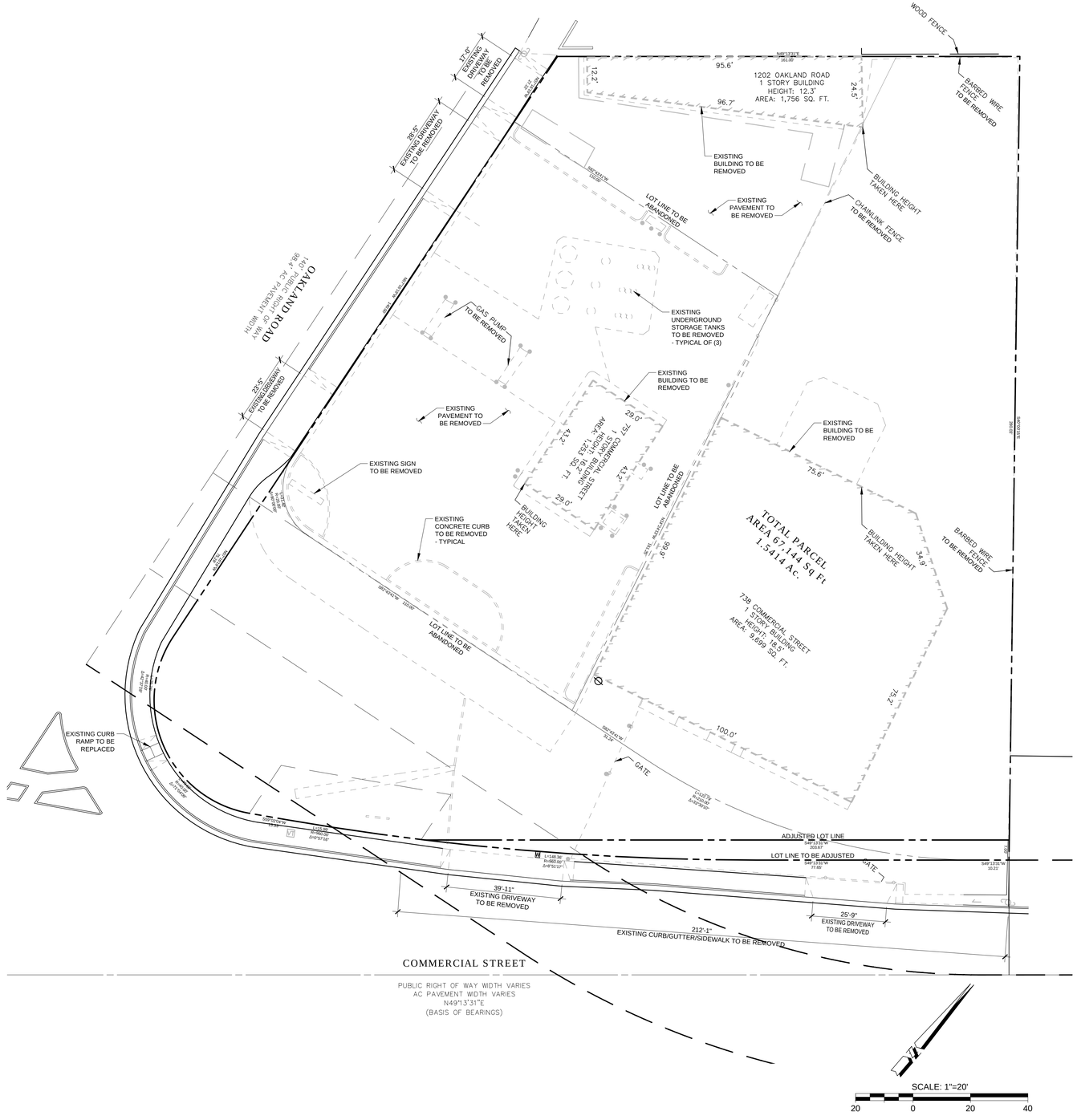
SHEET TITLE

CONCEPTUAL STORMWATER CONTROL PLAN

SHEET NO.

C-3

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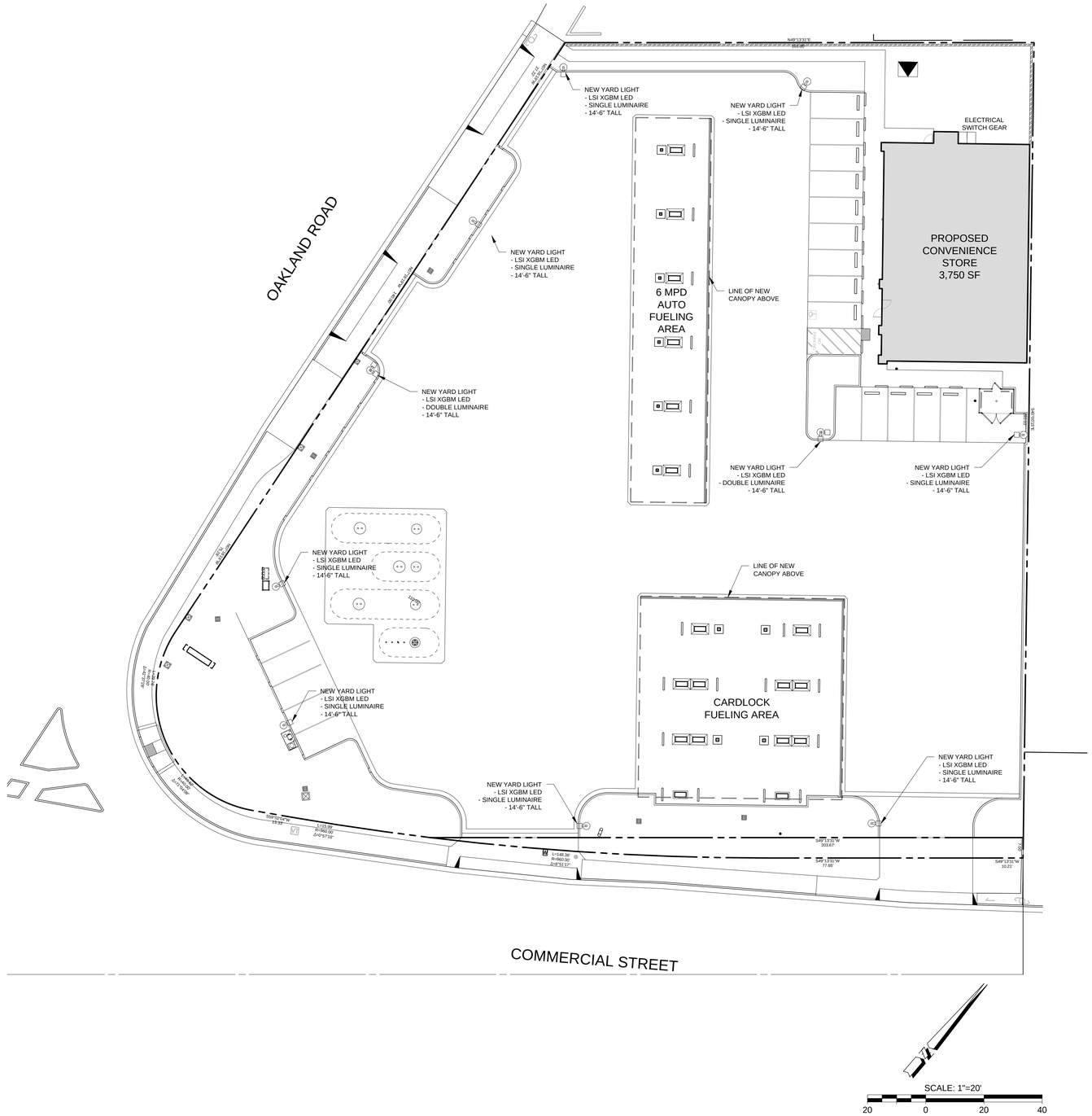
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DEMOLITION SITE PLAN

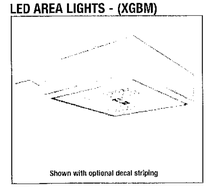
SHEET NO.

C-4

G:\09-30 Robinson Oil\67 San Jose\2 Entitlements\Submittals\67 C-4.dwg 12/27/17 08:58 PM JR



LED AREA LIGHTS - (XGBM)



Shown with optional decal striping

DOE LIGHTING FACTS
Department of Energy has verified representative product test data and results in accordance with its Lighting Facts Program. Visit www.lightingfacts.com for specific catalog strings.

LIGHT OUTPUT - XGBM

		Lumens (Nominal)				Watts (Nominal)
		Type 3	Type 5	Type FT	Type FTA	
Cool (5000k)	LW	14089	13840	15020	16560	140
	SS	20159	18049	20700	23030	187
	HO	26750	25460	29070	31810	300
Neutral (4000k)	LW	11450	11290	12220	13470	136
	SS	16390	15170	17230	18750	188
	HO	22240	20650	23510	25410	288

LED CRIps are frequently updated therefore values may increase.

This product, or selected versions of this product, meet the standards listed below. Please consult factory for your specific requirements.

RoHS COMPLIANT · FC · CE · cULus LISTED wet location · ARRA buying standard · IP67 · DLC

Fixtures comply with ANSI C136.31-2010 American National Standard for Roadway Lighting Equipment - Luminaire Vibration 3G requirements.

US patent D574994 & 7,828,456 and MX patent 29631 and US & Int'l. patents pending

SMARTTEC™ THERMAL CONTROL - LSI drivers feature integral sensor which reduces drive current when ambient temperatures exceed rated temperature.

OCCUPANCY SENSING (IMS) – Optional integral passive infrared motion sensor activates switching of luminaire light levels. High level light is activated and increased to full bright in 1-2 seconds upon detection of motion. Low light level (30% maximum drive current) is activated when target zone is absent of motion activity for ~2 minutes and ramps down (10-15 seconds) to low level to allow eyes time to adjust. Sensor is located on the front of optical assembly and rotates with the optic. Sensor optic has a detection cone of approximately 45°. Examples of detection – occurs 30' out from a 30' mounting height pole; occurs 20' out from a 20' mounting height pole.

ENERGY SAVING CONTROL OPTIONS – DIM – 0-10 volt dimming enabled with controls by others. BLS – Bi-level switching responds to external line voltage signal from separate 120-277V controller or sensor (by others), with low light level decreased to 30% maximum drive current.

LEDS - Select high-brightness LEDs in Cool White (5000K) or Neutral White (4000K) color temperature, 70 CRI.

DISTRIBUTION/PERFORMANCE - Types 3, 5, FT and FTA available - field rotatable reflectors.

HOUSING - Square, die-formed aluminum. Fully enclosed weather-tight housing contains factory prewired drivers and field connections.

TOP-ACCESS COVER - Gasketed, tethered top-access cover provides ease of installation and allows for easy driver access. Four captive stainless-steel fasteners secure the top-access cover to the housing.

OPTICAL UNIT - Clear tempered optical grade flat glass lens sealed to aluminum housing creates an IP67 rated, sealed optical unit (includes pressure stabilizing breather). Optical unit can be easily field rotated in 90o increments. Directional arrow on optics allows alignment without the unit being energized.

MOUNTING - 2-1/2" x 5-3/8" x 12" extruded aluminum arm mounting bracket shipped standard. Use with 5" traditional drilling pattern, Round Pole Plate (RPP2) required for mounting to 3" - 5" round poles. (See Accessory Ordering Information chart.)

ELECTRICAL - Two-stage surge protection (including separate surge protection built into electronic driver) meets IEEE C62.41.2-2002, Location Category C. Available with universal voltage power supply 120-277VAC (UE - 50/60Hz input), and 347-480VAC.

DRIVERS - Available in Low Watt (LW), Super Saver (SS) and High Output (HO) drive currents (Drive currents are factory programmed). Components are fully encased in potting material for moisture resistance. Driver complies with FCC 47 CFR part 15 RFI/EMI standard.

OPERATING TEMPERATURE - -40°C to +50°C (-40°F to +122°F).

FINISH - Fixtures are finished with LSI's DuraGrip® polyester powder coat finishing process. The DuraGrip finish withstands extreme weather changes without cracking or peeling.

DECAL STRIPING - LSI offers optional color-coordinated decals in 9 standard colors to accent the fixture. Decals are guaranteed for five years against peeling, cracking, or fading.

WARRANTY - LSI LED fixtures carry a limited 5-year warranty.

PHOTOMETRICS - Please visit our web site at www.lsi-industries.com for detailed photometric data.

SHIPPING WEIGHT (IN CARTON) - Fixture - 44.5 lbs (20 kg) Arm - 5 lbs. (2kg) arm

LISTING - UL listed to U.S. and Canadian safety standards. Suitable for wet locations. For a list of the specific products in this series that are DLC listed, please consult the LED Lighting section of our website or the Design Lights website at www.designlights.org.

Project Name _____ Fixture Type _____
Catalog # _____
10/15/16
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LSI INDUSTRIES INC.

LED AREA LIGHTS - (XGBM)

LUMINAIRE ORDERING INFORMATION

TYPICAL ORDER EXAMPLE: **XGBM 5 LED HO CW UE WHT PCM**

Prefix	Distribution	Light Source	Drive Current	Color Temperature	Input Voltage	Finish	Optional Controls	Optional Sensor/Options
XGBM* – LED Greenfin*	FT – Forward Throw/ FTA – Forward Throw/ Asymmetric 3 – Type III 5 – Type V	LED	LW – Low Watt SS – Super Saver HO – High Output	CW – Cool White (5000K) NW – Neutral White (4000K)	UE – Universal Voltage (120-277) 347-480	BLK – Black BRZ – Bronze GPT – Graphite MSV – Metallic Silver PLP – Platinum Plus SVG – Satin Verde Green WHT – White **Optional Color Decals** 43 – Light Gold 23 – Chevron Metallic 05 – Black 94 – Blue Metallic 59 – Dark Green 51 – Dark Red 21 – Tomato Red 50 – White 700 – Arbor Silver Metallic	**Wireless Control System**[2,3] (blank) – None PCM – Watervia Control System PCMH – HorstSentria Pinnium Control System GCM – Gold Coast Control System GCMH – HorstSentria Gold Control System DIM – 0-10 volt dimming (required for wireless hubs) **Stand-Alone Control** (blank) – None DIM – 0-10 volt dimming[4] (from external signal) BLS – Bi-level Switching[5] (from external signal – required 120-277V controls system voltage)	**Sensor** IMS – Integral Motion Sensor[6] PCH120 – 120V Button-Type Photocell PCH208 – 208V Button-Type Photocell PCH240 – 240V Button-Type Photocell PCH277 – 277V Button-Type Photocell PCH347 – 347V Button-Type Photocell **Options** BRK – 8' Bracket (3 and 0180 only) TB – Terminal Block

LUMINAIRE EPA CHART[1] - XGBM

	5" Bracket	12" Bracket
Single	2.3	2.4
D180°	4.7	4.8
D90°	4.7	4.7
T90°	12" Bracket Required	7.2
TN120°		7.3
Q90°		6.8

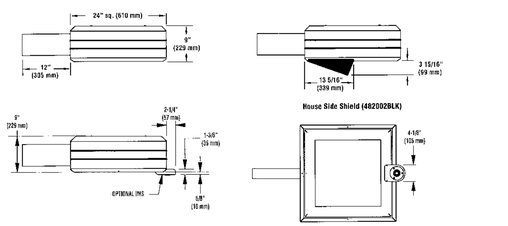
Note: House Side Shield adds to fixture EPA. Consult Factory.

ACCESSORY ORDERING INFORMATION[2] (Accessories are field installed)

Description	Order Number	Description	Order Number
XGBM-HSS, Houses Side Shield (Black only)	482002BLK*	DTA208, 240 Double Fusing (CSRZ, 240V)	DTA208,240*
RPP2 – Round Pole Plate	1699149BLK	DYK480 Double Fusing (480V)	DYK480*
BKS-BSWMP-*CLR – Wall Mount Plate	1221152CLR	FKA47 Double Fusing (347V)	FKA47*
BKA-BO-RW-B-CLR – Radius Arm	1680192CLR	PMCS120 – 120V Pole-Mount Occupancy Sensor	5180302CR*
BKU-BO-5.1S-CLR – Upsweep Bracket for round or square pole	1441810CLR	PMCS208/240 – 208, 240V Pole-Mount Occupancy Sensor	5242302CR*
TK102 Single Fusing (120V)	FK102**	PMCS277 – 277V Pole-Mount Occupancy Sensor	5282002CR*
FK277 Single Fusing (277V)	FK277*	PMCS480 – 480V Pole-Mount Occupancy Sensor	5247402CR*

FOOTNOTES:
1- Use with 8" traditional drilling pattern.
2- For wireless controls information and accessories, see Controls section.
3- Requires a SiteManager and owner/dlr access. Not compatible with BLS or IMS option.
4- Not compatible with IMS or BLS option.
5- Not compatible with wireless controls system, DIM or IMS option.
6- Not compatible with wireless controls system, DIM or BLS option.
7- House Side Shields add to fixture EPA. Consult factory.
8- Fusing must be located in the hand hole of pole.
9- To be used with any of the PCM/GCM wireless controls systems in the fixture. Consult factory.

DIMENSIONS



Project Name _____ Fixture Type _____
Catalog # _____
10/19/16
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LSI INDUSTRIES INC.

LHB & Associates, Ltd.
architecture engineering
867 Pacific Street, Suite 120
San Luis Obispo, CA 93401
ph 805.540.5240
fax 805.540.5241
www.LHBassoc.com

CONSULTANTS

REVISIONS

SUBMITTAL DATES

OWNER:	09/27/2017
REG. AGENCIES	--
O.T.B.:	--

PROJECT NO.	09-30-67
DRAWN BY:	JRB
CHECKED BY:	JRB

ROTTEN ROBBIE #67
SAN JOSE, CALIFORNIA
1202 OAKLAND ROAD
SAN JOSE, CALIFORNIA 95112

SHEET TITLE
LIGHTING PLAN

SHEET NO.
C-5

G:\09-30 Robinson Oil\67 San Jose\2 Entitlements\Submittals\67 C-5.dwg 12/27/17 09:13 PM JR

LEGAL DESCRIPTION

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

PARCEL ONE:

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

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

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

PARCEL TWO:

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

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

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

PARCEL THREE:

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

PARCEL FOUR:

AN EASEMENT FOR THE PURPOSE OF INGRESS AND EGRESS AND FOR THE INSTALLATION AND MAINTENANCE OF PUBLIC UTILITIES OVER A STRIP OF LAND, 80.00 FEET IN WIDTH, THE CENTER LINE OF WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT A POINT ON THE EASTERLY LINE OF THE SAN JOSE–OAKLAND ROAD (100.00 FEET IN WIDTH) DISTANT THEREON SOUTH 7° 01' 30" EAST 213.98 FEET FROM THE NORTHWESTERLY CORNER OF THAT CERTAIN 37.752 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM FORTUNATO PIERACCI, ET AL, TO GEORGE WILSON, ET UX, DATED DECEMBER 22, 1956, RECORDED DECEMBER 31, 1956 IN BOOK 3696 OFFICIAL RECORDS, PAGE 253, SANTA CLARA COUNTY RECORDS; THENCE NORTH 82° 58' 30" EAST 181.24 FEET; THENCE EASTERLY ON A CURVE TO THE LEFT, WITH A RADIUS OF 250.00 FEET; THROUGH AN ANGLE OF 33° 30' 10", FOR AN ARC DISTANCE OF 146.18 FEET; THENCE NORTH 49° 28' 20" EAST AND PARALLEL WITH THE NORTHWESTERLY LINE OF SAID 37.752 ACRE TRACT 920.44 FEET TO THE TERMINUS OF SAID EASEMENT.
EXCEPTING THEREFROM ALL THAT PORTION LYING WITHIN THE PARCEL OF LAND CONVEYED TO SEBASTIAN NOLA AND FRANCES ANNA NOLA, AS TRUSTEES UNDER TRUST DATED NOVEMBER 30, 1982 FROM CITY OF SAN JOSE, A MUNICIPAL CORPORATION, BY DEED RECORDED JUNE 28, 1989, INSTRUMENT NO. 10161220, BOOK L001, PAGE 338, SANTA CLARA COUNTY, DESCRIBED AS FOLLOWS:

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

PARCEL FIVE:

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

PARCEL SIX:

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

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

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

PARCEL SUMMARY

TOTAL AREA:
67,144 SQ. FT.
1.5414 ACRES

PARKING SUMMARY

NO PARKING ON SUBJECT PROPERTY

BASIS OF BEARINGS

THE CENTERLINE OF COMMERCIAL STREET(N49°13'31"E) AS SHOWN ON THAT CERTAIN MAP FILED FOR RECORD ON NOVEMBER 30, 1990 IN BOOK 621 OF MAPS, PAGE 45, RECORDS OF SAN JOSE CITY WAS USED AS THE BASIS OF BEARINGS.

BENCHMARK

THE BENCHMARK USED FOR THIS SURVEY WAS IN THE CITY OF SAN JOSE BENCHMARK NO. 140, ELEV. = 63.68 (NAVD88)

NOTES CORRESPONDING TO SCHEDULE B

TITLE ITEMS PER SCHEDULE "B" OF THE PRELIMINARY TITLE REPORT ISSUED BY FIRST AMERICAN TITLE COMPANY ORDER NO. NCS–640988–SC DATED JANUARY 10, 2014 AT 7:30 A.M.

(7) AN EASEMENT FOR INGRESS AND EGRESS AND INSTALLATION AND MAINTENANCE OF PUBLIC UTILITIES AND INCIDENTAL PURPOSES, RECORDED JANUARY 29, 1958 AS BOOK 3994, PAGE 164 OF OFFICIAL RECORDS.
IN FAVOR OF: GERALD F. CAVANAUGH AND MARGUERITE C. CAVANAUGH
AFFECTS: AS DESCRIBED THEREIN
(PLOTTED, AFFECTS SUBJECT PROPERTY)

(8) AN EASEMENT FOR STORM DRAINAGE AND MAINTENANCE AND INCIDENTAL PURPOSES, RECORDED JUNE 28, 1989 AS INSTRUMENT NO. 10161220 OF OFFICIAL RECORDS.
IN FAVOR OF: CITY OF SAN JOSE
AFFECTS: AS DESCRIBED THEREIN
(PLOTTED, AFFECTS SUBJECT PROPERTY)

STATEMENT OF ENCROACHMENTS

* THIS IS A LISTING OF OBSERVED IMPROVEMENTS THAT CROSS PROPERTY LINES, STATEMENT OF OWNERSHIP OR POSSESSION IS NOT THE INTENT OF THIS LISTING.

(A) – BUILDING IS LOCATED ENTIRELY WITHIN THE 25' BSL

ZONING INFORMATION

THE ZONING INFORMATION WAS PROVIDED
BY THE CITY OF SAN JOSE
PLANNING DEPARTMENT
1500 WARBURTON AVENUE
SANTA CLARA, CA
95050
TEL: (408) 615–2200
HTTP: //WWW.SANTACLARA.GOV./

ZONE HI, HEAVY INDUSTRIAL
SETBACKS
FRONT 15'
SIDE 0'/ 25' FROM RESIDENTIAL
REAR 0'/ 25' FROM RESIDENTIAL
HEIGHT 50'
BULK/FAR/LOT COVERAGE
PARKING BY USE

*ZONING AND RESTRICTIONS SHOWN HEREON WERE OBTAINED BY A GENERAL REQUEST AT THE ABOVE NAMED DEPARTMENT. NO REPRESENTATION IS MADE FOR THE ACCURACY OR COMPLETENESS OF SAID THIRD PARTY INFORMATION. THIS FIRM IS NOT AN EXPERT IN THE INTERPRETATION OF COMPLEX ZONING ORDINANCES, COMPLIANCE IS BEYOND THE SCOPE OF THIS SURVEY. ANY USER OF SAID INFORMATION IS URGED TO CONTACT THE LOCAL AGENCY DIRECTLY.

SURVEYORS CERTIFICATION

TO:

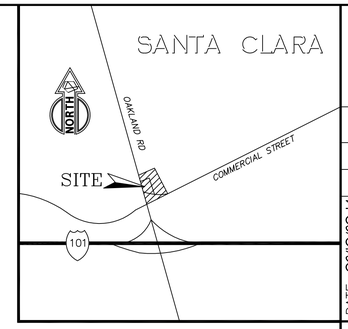
FIRST AMERICAN TITLE COMPANY & NOLA FAMILY LIMITED PARTNERSHIP, AS TO PARCELS ONE AND THREE; SEBASTIAN NOLA, SURVIVING TRUSTEE UNDER TRUST DATED NOVEMBER 30, 1982, AS TO PARCELS FIVE AND SIX.

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2011 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/ACSM LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS 2, 3, 4, 5, 6, 7A, 7B1, 7C, 8, 9, 10, 11A, 11(B), 13, 14, 16, 17, 18 OF TABLE A THEREOF. THE FIELD WORK WAS COMPLETED ON 02/20/2014

DIRK C. SLOOTEN
REGISTERED LAND SURVEYOR NO. LS5342
IN THE STATE OF CALIFORNIA
DATE OF PLAT OR MAP: 03/03/2014

SURVEY PERFORMED BY:
SLOOTEN CONSULTING, INC.
4740 NORTHGATE BLVD., SUITE 115
SACRAMENTO, CA 95834
(916)–641–7570

FLOOD NOTE:
By graphic plotting only, this property is in Zone(s) D of the Flood Insurance Rate Map, Community Panel No. 06085C0232H ,which bears an effective date of 05/18/2009 and is in a Special Flood Hazard Area. By telephone call dated 03/03/2014 to the National Flood Insurance Program (800–638–6620) we have learned this community does currently participate in the program. No field surveying was performed to determine this zone and an elevation certificate may be needed to verify this determination or apply for a variance from the Federal Emergency Management Agency.



VICINITY MAP
NOT TO SCALE

DATE:	02/10/20-14			
SCALE:	1"=20'			
DESIGNED:				
DRAWN:				
CHECKED:				
PROJ.ENGR.:				
FILE:	9861-01	No.	BY	DATE	REVISION
---	---	---	---	---	---

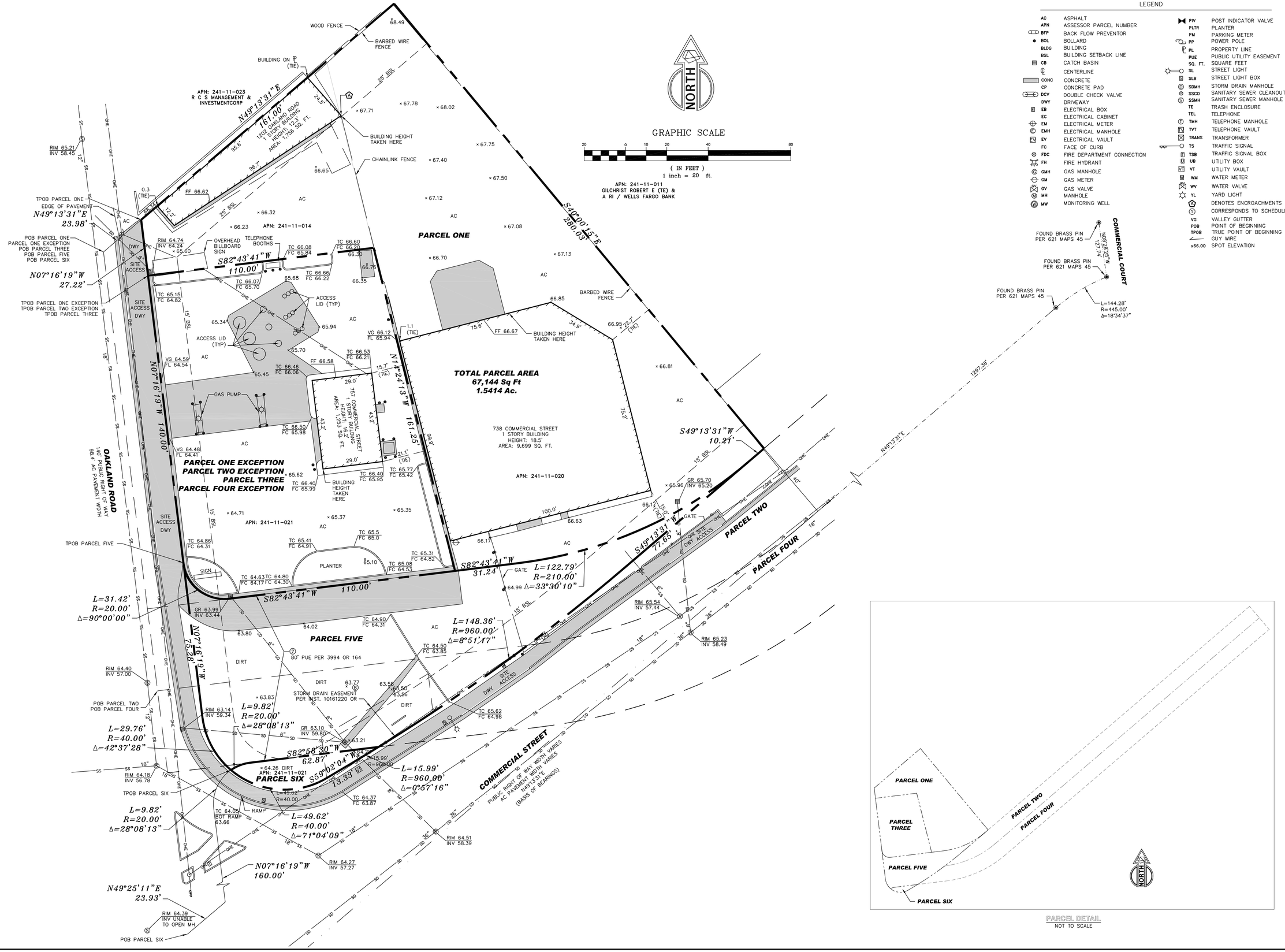
SLOOTEN CONSULTING INC.
SURVEYING & ENGINEERING
4740 NORTHGATE BL., SUITE 115
SACRAMENTO, CA 95834
(916)641–7570
(FAX)641–7572

ALTA/ACSM LAND TITLE SURVEY

757 COMMERCIAL STREET
SAN JOSE CALIFORNIA
SANTA CLARA

SHEET 1 OF 2 SHEETS
JOB No. 9861-01

THIS IS AN ORIGINAL UNPUBLISHED WORK AND MAY NOT BE DUPLICATED, PUBLISHED OR OTHERWISE USED WITHOUT WRITTEN CONSENT OF SLOOTEN CONSULTING, INC.



DATE: 02/10/20-14
SCALE: 1"=20'
DESIGNED:
DRAWN:
CHECKED:
PROJ.ENGR.:
FILE: 9861-01

No.	BY	DATE	REVISION

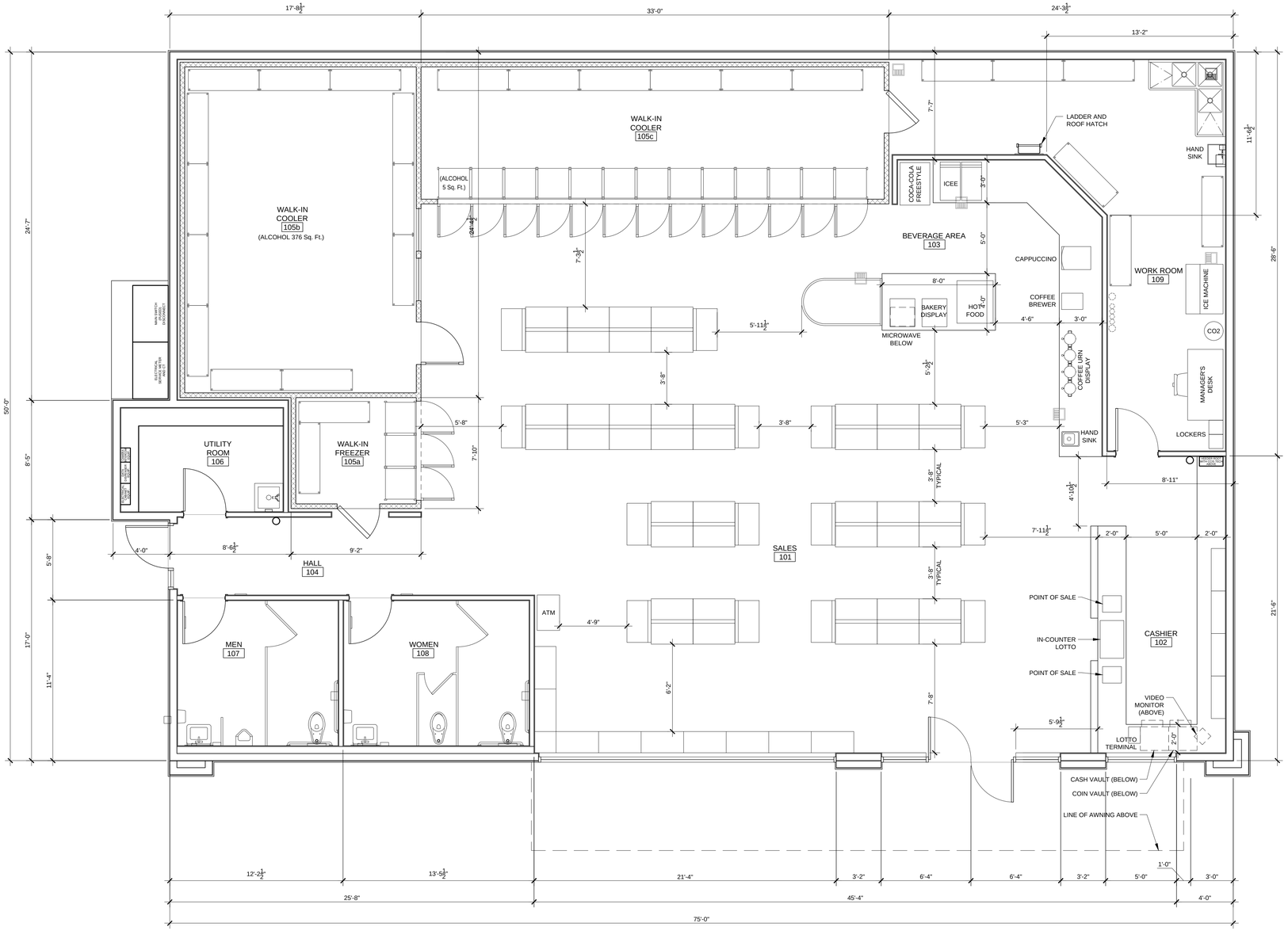
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(916)641-7570
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ALTA/ACSM LAND TITLE SURVEY

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SHEET 2 OF 2 SHEETS
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FLOOR PLAN

0 4' 8' 12'

SCALE: 1/4" = 1'-0" NORTH

architecture
engineering

LHB & Associates, Ltd.

867 Pacific Street, Suite 120
San Luis Obispo, CA 93401
ph 805.540.5240
fax 805.540.5241
www.LHBassoc.com

CONSULTANTS

REVISIONS

SUBMITTAL DATES

OWNER:	09/27/2017
REG. AGENCIES	--
O.T.B.:	--

PROJECT NO.	09-30-67
DRAWN BY:	JRB
CHECKED BY:	JRB

ROTTEN ROBBIE #67
SAN JOSE, CALIFORNIA

1202 OAKLAND ROAD
SAN JOSE, CALIFORNIA 95112

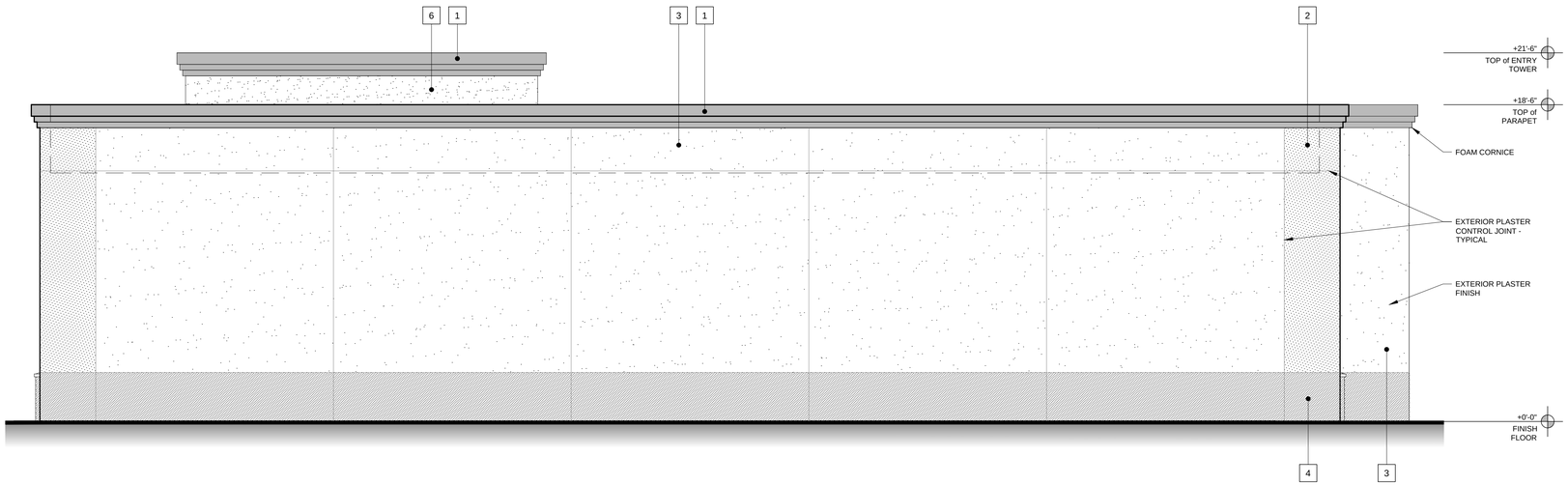
SHEET TITLE

FLOOR PLAN

SHEET NO.

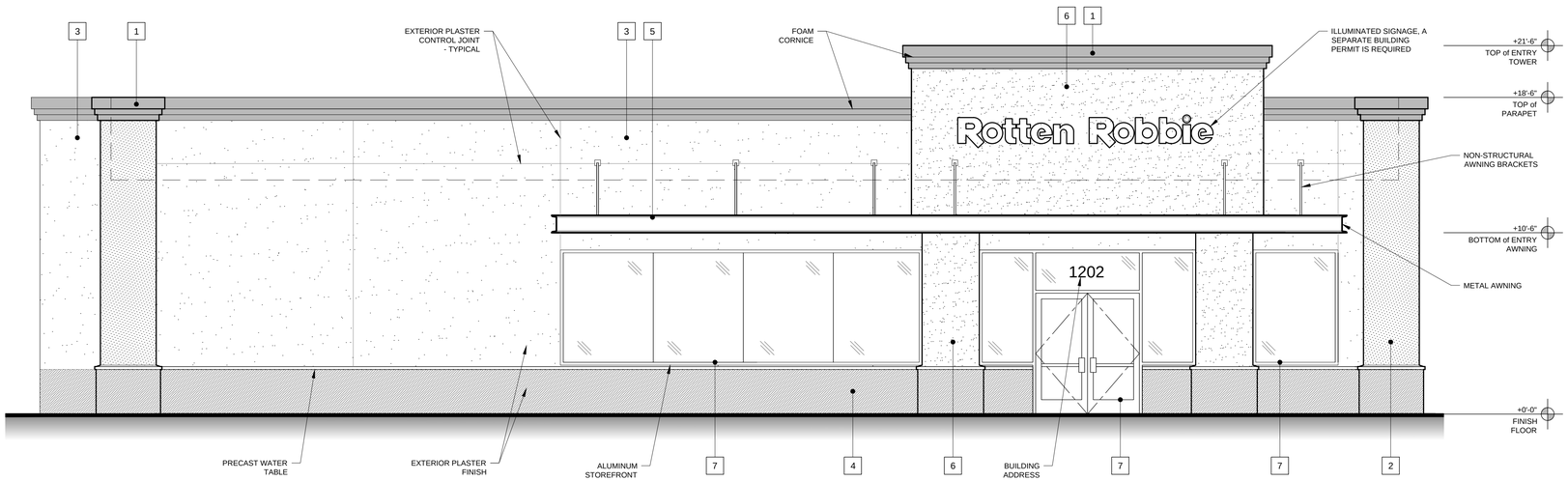
A-1

© '09-30 Robinson ONE7 San Jose\Entitlements\Submittals\07 A-1.dwg 9/27/17 12:12 PM JR



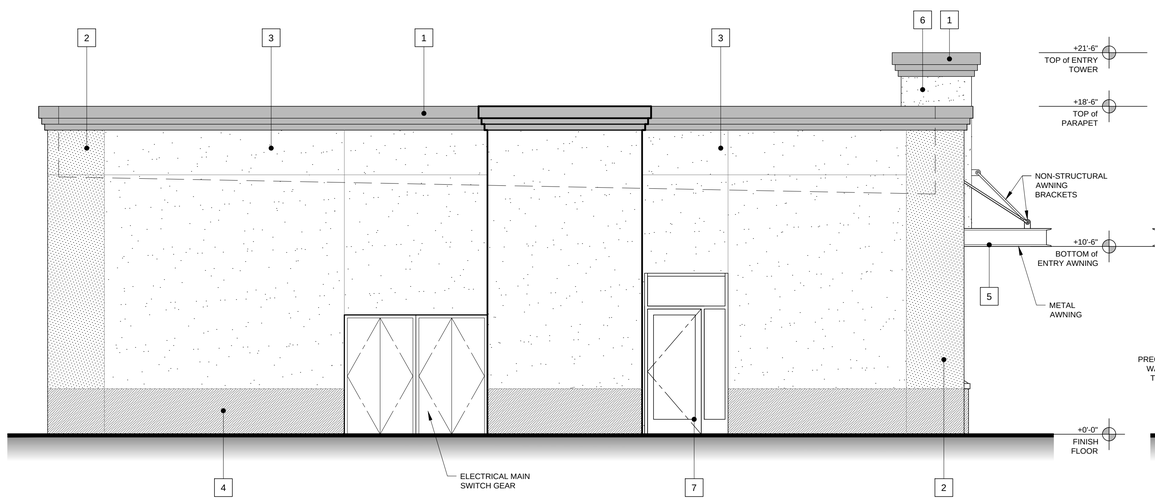
NORTHEAST ELEVATION

SCALE: 1/4"=1'-0"



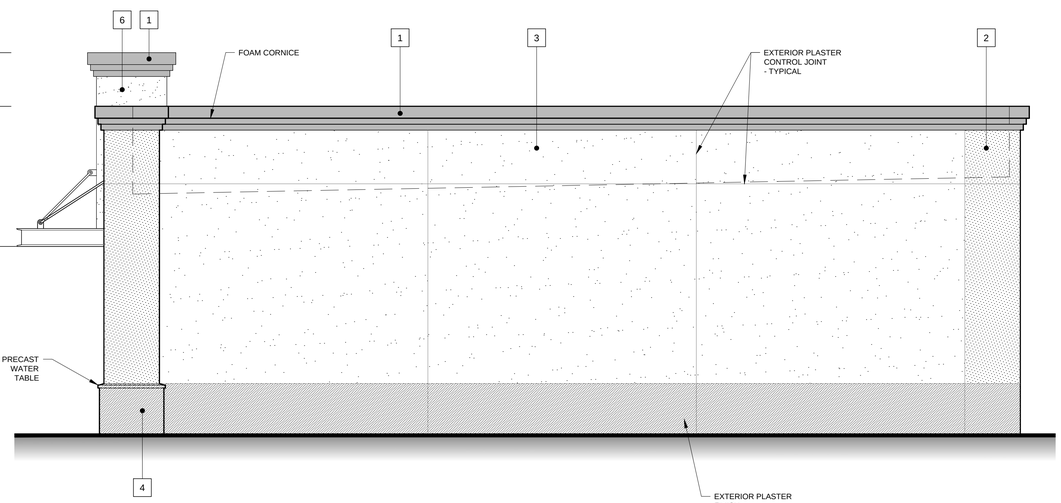
SOUTHWEST ELEVATION

SCALE: 1/4"=1'-0"



SOUTHEAST ELEVATION

SCALE: 1/4"=1'-0"



NORTHWEST ELEVATION

SCALE: 1/4"=1'-0"

COLOR SCHEME

No.		
1		SHERWIN WILLIAMS "AVENUE TAN" - SW7543.
2		SHERWIN WILLIAMS "PRICKLY PEAR" - SW2218.
3		SHERWIN WILLIAMS "BUFF" - SW2340.
4		SHERWIN WILLIAMS "OUTRIGGER" - SW2202.
5		ICI "COLORADO RUST" - 267.
6		SHERWIN WILLIAMS "MUSTARD FIELD" - SW2341.
7		ALUMINUM STOREFRONT - CLEAR ANODIZED ALUMINUM

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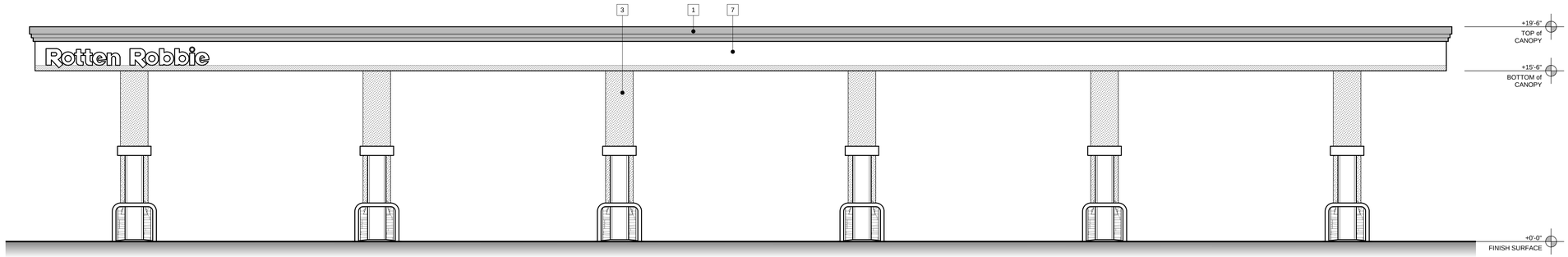
SHEET TITLE

C-STORE
EXTERIOR
ELEVATIONS

SHEET NO.

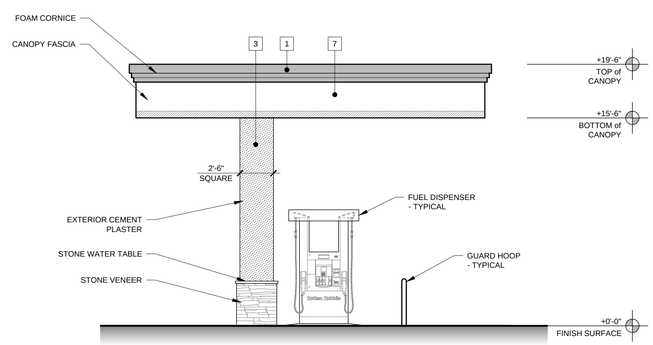
A-2

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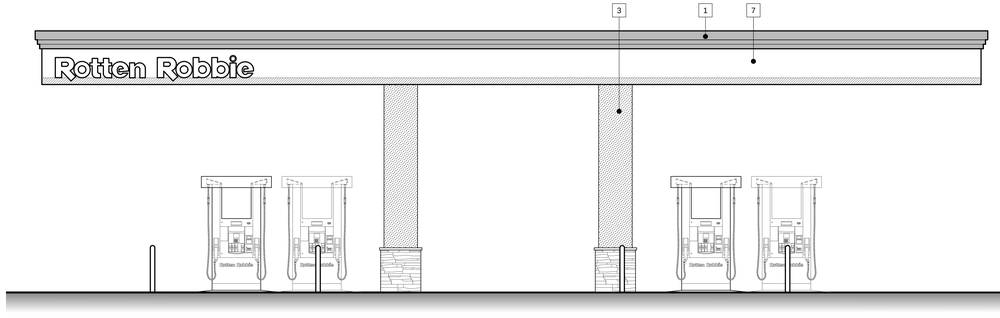
SOUTHWEST ELEVATION
(NORTHEAST ELEVATION SIMILAR)

SCALE: 3/16"=1'-0"



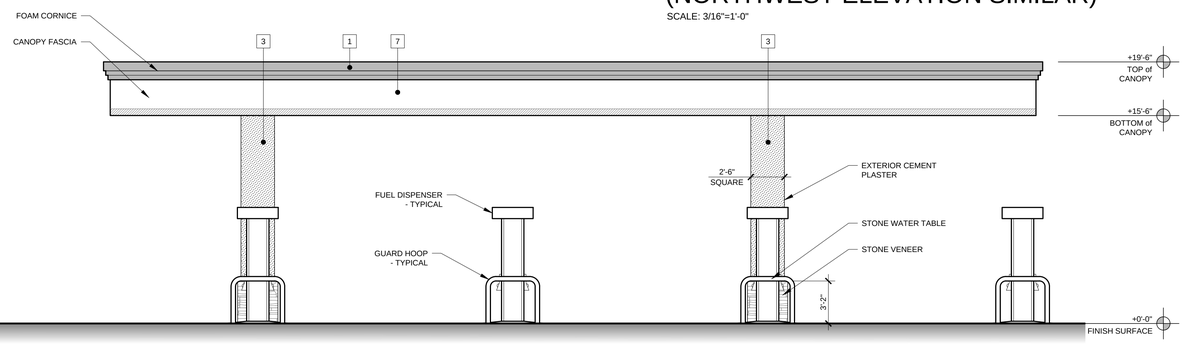
SOUTHEAST ELEVATION
(NORTHWEST ELEVATION SIMILAR)

SCALE: 3/16"=1'-0"



SOUTHEAST ELEVATION
(NORTHWEST ELEVATION SIMILAR)

SCALE: 3/16"=1'-0"



COLOR SCHEME

No.

1 SHERWIN WILLIAMS "AVENUE TAN" - SW7543.

2 SHERWIN WILLIAMS "PRICKLY PEAR" - SW2218.

3 SHERWIN WILLIAMS "BUFF" - SW2340.

4 SHERWIN WILLIAMS "OUTRIGGER" - SW2202.

5 ICI "COLORADO RUST" - 267.

6 SHERWIN WILLIAMS "MUSTARD FIELD" - SW2341.

7 METAL CANOPY FASCIA "DARK BLUE" WITH "RED" AND "WHITE" STRIPE

8 GUARD HOOP "WHITE"

APPLY SHERWIN-WILLIAMS ANTI GRAFFITI COATING TO CANOPY COLUMNS AND STONE VENEER WAINSCOT

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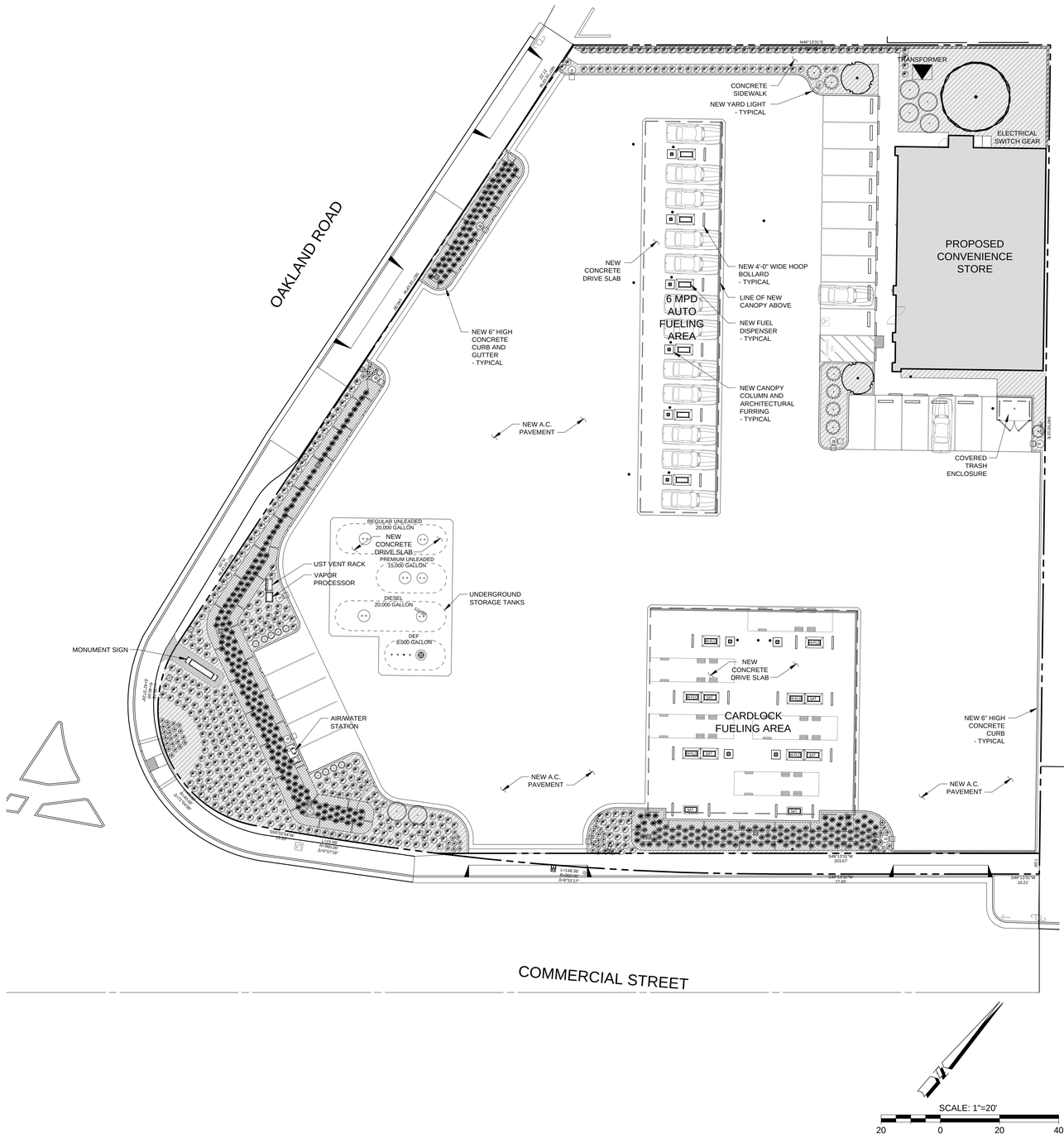
SHEET TITLE

CANOPY
EXTERIOR
ELEVATIONS

SHEET NO.

A-4

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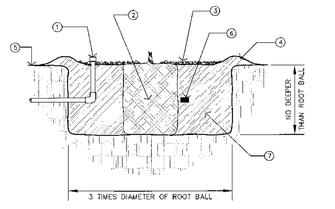


LEGEND

SYMBOL	SIZE	QTY.	MATURE HEIGHT	BOTANICAL NAME	COMMON NAME
TREES					
	15 GAL.	2	20'	RHAPIOLEPIS "MAJESTIC BEAUTY"	MAJESTIC BEAUTY INDIA HAWTHORN
	15 GAL.	1	35'	LOPHOSTEMON CONFERTUS	BRISBANE BOX
PLANTS					
	4" POT	60	18"	NEPETA FAASSENII	CATMINT
	4" POT	356	12"	JUNCUS PATENS	WIRE GRASS
	5 GAL.	9	18"	BERBERIS T. "CRIMSON PYGMY"	DWARF BARBERRY
	4" POT	357	30"	FESTUCA MAIREI	ATLAS FESCUE
	5 GAL.	1	5'-6'	ARCTOSTAPHYLOS "SUNSET"	SUNSET MANZANITA
	5 GAL.	6	5'-6'	MAHONIA P. "KEN HARTMAN"	CALIFORNIA HOLLY GRAPE
	1 GAL.	6	24"	CEANOTHUS G. "ANCHOR BAY"	WILD LILAC
GROUNDCOVER					
				"STRINGY REDWOOD BARK" MULCH, 3" DEEP LAYER	-
				BIOSWALE AREA	-

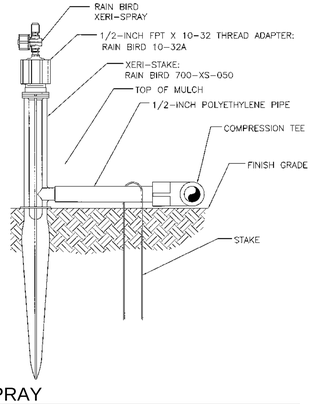
IRRIGATION NOTES:
1. ALL IRRIGATION LATERALS SHALL BE SCHEDULE 40 PVC WITH 18" MINIMUM COVER.
2. DRIP DISTRIBUTION TUBING INSTALLATION: THE TUBING WILL BE SNAKED IN THE TRENCH IN UNDERGROUND SYSTEMS AND ABOUT THE LANDSCAPE IN ABOVE GROUND INSTALLATIONS TO ALLOW FOR THE EXPANSION AND CONTRACTION VARIATIONS (ADD 3% TO TUBING LENGTH REQUIRED AS A GENERAL RULE).
3. BACKFLOW PREVENTION DEVICE SHALL BE INSTALLED PER LOCAL CODES AND APPROVED BY CITY OF SAN JOSE.

PLANTING NOTES:
1. INCLUDE 3 INCHES OF COMPOSTED, NON-FLOATABLE MULCH IN AREAS BETWEEN BIO-RETENTION AREA PLANTINGS.

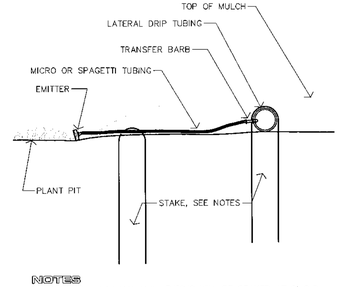


CALL-OUT NOTES
1 BUBBLER OR DRIP EMITTER LOCATION–INSIDE WATERING BASIN.
2 ROOT BALL.
3 1" LAYER OF NITROLIZED REDWOOD MULCH, OR SEE PLANS ON TYPE OF MULCH TO APPLY. KEEP A 3" CLEARANCE AROUND TRUNK(S) OF ALL SHRUBS AND TREES.
4 CONSTRUCT TAMPED EARTH MOUND FOR WATERING BASIN. LOCATE AT OUTSIDE EDGE OF PLANT PIT. 2" HIGH FOR 1 & 5 GALLON PLANTS, 4" HIGH FOR 15 GAL. & LARGER PLANTS. OMIT IN LAWNS.
5 FINISH GRADE.
6 "AGRIFORM" 20–10–5 PLANTING TABLETS. PLACE TABLETS HALFWAY UP & 1" AWAY FROM ROOT BALL. USE 1 TAB FOR 1 GAL., 2 TABS FOR 5 GAL., 3 TABS FOR 15 GAL., AND FOR LARGER PLANTS, USE 1 TAB FOR EACH 1/2" OF TRUNK DIAMETER. PLACE TABS EQUALLY SPACED AROUND ROOT BALL.
7 PLANT PIT BACKFILL. USE NO AMENDMENTS UNLESS STATED DIFFERENTLY IN PLANTING NOTES. BACKFILL SHALL BE NATIVE SITE SOIL BROKEN UP FINELY AND ROCK (1" OR LARGER) AND OTHER DELETERIOUS REMOVED. REMOVE ALL CLAY SLICKS FROM WALL OF PLANT PIT AND SCARIFY SIDES AND BOTTOM. WATER SETTLE PLANT PIT ONCE BACK-FILLING IS COMPLETE.

1 PLANT PIT IRRIGATION
SCALE: N.T.S.



3 XERI-SPRAY
SCALE: N.T.S.



NOTES
1. STAKING – LATERAL DRIP TUBING WILL BE STAKED AT 6' O.C. AND 3' FROM ENDS. MICRO (SPAGETTI) TUBING WILL BE STAKED AT 3' O.C. STAKES WILL BE GALV. METAL AND MANUFACTURED BY SALCO, PEPCO, OR EQUAL.
2. EMITTERS UP SLOPE FROM LATERAL DRIP TUBING WILL BE STAKED ON THE UP SLOPE SIDE OF PLANT PIT.

2 DRIP EMITTER
SCALE: N.T.S.

architecture engineering
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ph 805.540.5240
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CONSULTANTS

REVISIONS

SUBMITTAL DATES

OWNER:	09/27/2017
REG. AGENCIES	--
O.T.B.:	--

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ROTTEN ROBBIE #67
SAN JOSE, CALIFORNIA

1202 OAKLAND ROAD
SAN JOSE, CALIFORNIA 95112

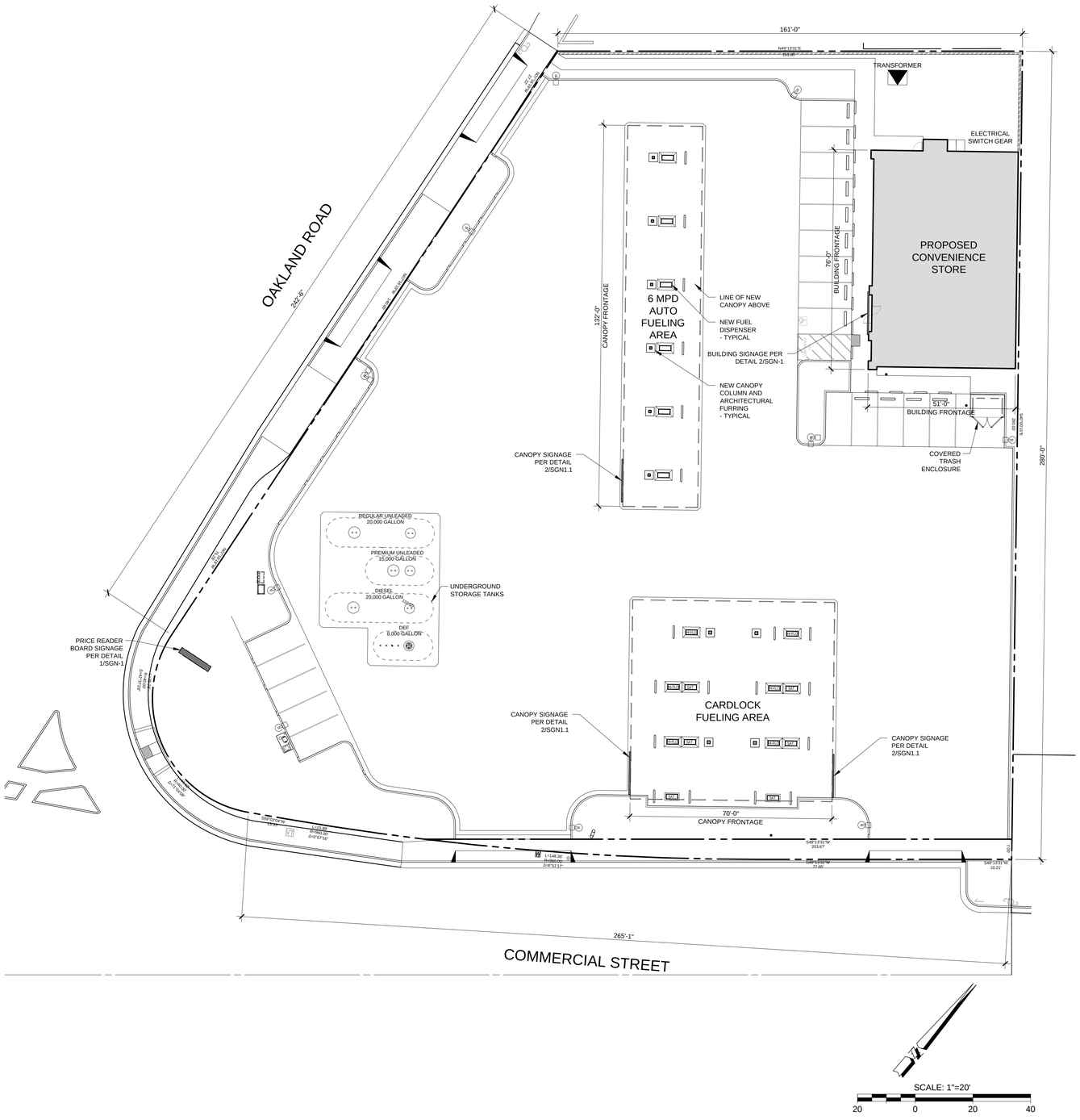
SHEET TITLE

CONCEPTUAL LANDSCAPE PLAN

SHEET NO.

L-1

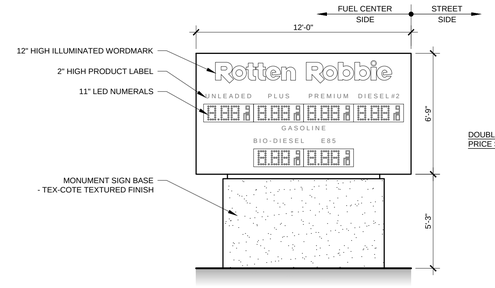
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SCALE: 1"=20'

20 0 20 40

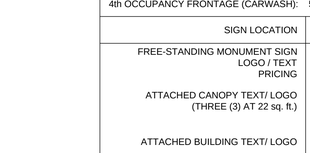
EXISTING BUILDING



TOTAL SQUARE FEET
LOGO'S : 10 sq. ft.
PRICES : 21 sq. ft.
SIGN FACE : 81 sq. ft.

1 PRICE SIGN READER BOARD

SCALE: 1/4"=1'-0"



2 WORDMARK - 18" HIGH

SCALE: 1/4"=1'-0"

TOTAL SIGNAGE SQUARE FEET

STREET FRONTAGE (OAKLAND ROAD):	242 FEET
1st OCCUPANCY FRONTAGE (BUILDING):	76 FEET
2nd OCCUPANCY FRONTAGE (CANOPY):	132 FEET
3rd OCCUPANCY FRONTAGE (CANOPY):	70 FEET
4th OCCUPANCY FRONTAGE (CARWASH):	50 FEET

SIGN LOCATION	TOTAL
FREE-STANDING MONUMENT SIGN	
LOGO / TEXT	10 sq. ft.
PRICING	21 sq. ft.
ATTACHED CANOPY TEXT/ LOGO (THREE (3) AT 22 sq. ft.)	66 sq. ft.
ATTACHED BUILDING TEXT/ LOGO	22 sq. ft.
TOTAL SIGNAGE:	119 sq. ft.

LHB architecture engineering
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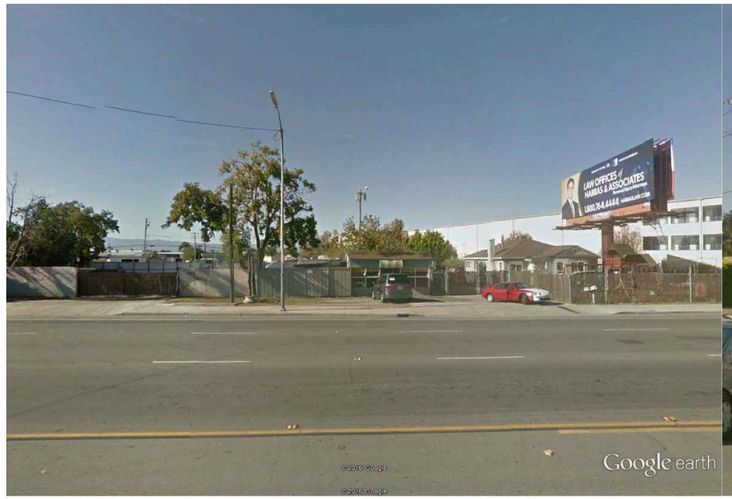
SHEET TITLE

CONCEPTUAL SIGNAGE PLAN

SHEET NO.

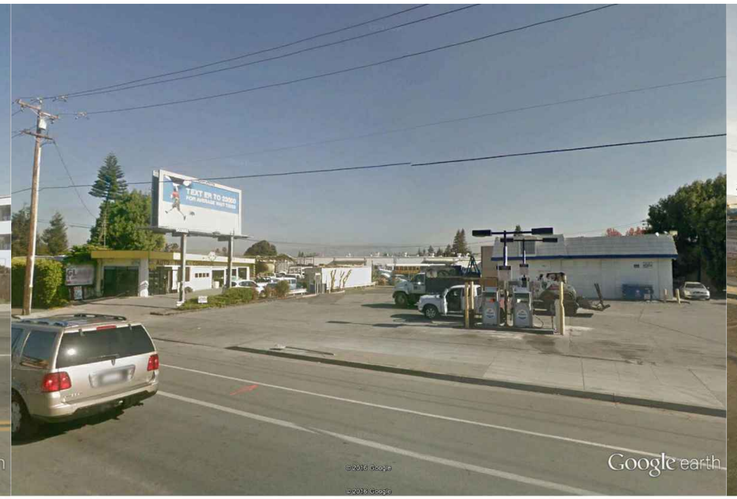
SGN-1

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feet 10
meters 5

VIEW OF ADJACENT PROPERTY LOOKING WEST FROM OAKLAND ROAD



feet 10
meters 5

VIEW OF SITE LOOKING EAST FROM OAKLAND ROAD



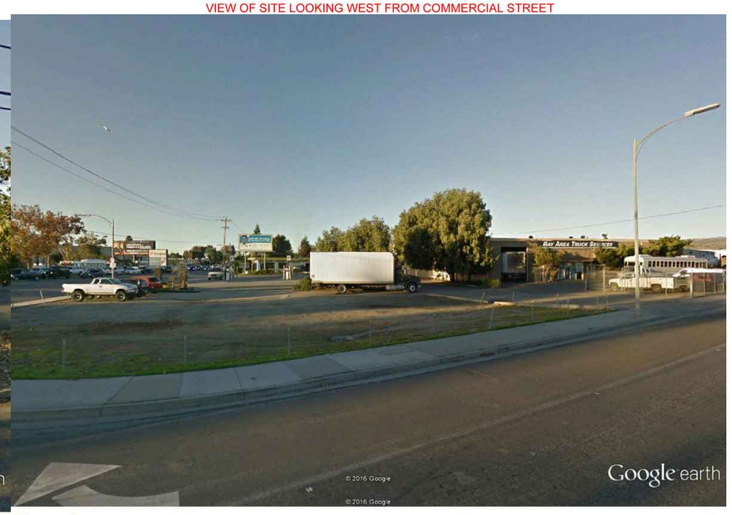
feet 10
meters 4

VIEW OF SITE LOOKING WEST FROM COMMERCIAL STREET



feet 10
meters 5

VIEW OF ADJACENT PROPERTY LOOKING NORTH FROM COMMERCIAL STREET



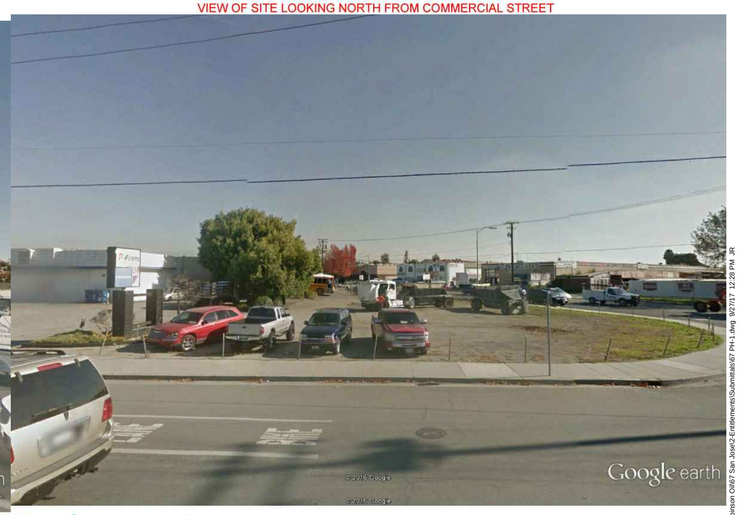
feet 10
meters 5

VIEW OF SITE LOOKING NORTH FROM COMMERCIAL STREET



feet 10
meters 5

VIEW OF ADJACENT PROPERTY LOOKING SOUTHWEST FROM COMMERCIAL STREET AND OAKLAND ROAD



feet 10
meters 5

VIEW OF SITE LOOKING EAST FROM OAKLAND ROAD

LHB
architecture
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CONSULTANTS

REVISIONS

SUBMITTAL DATES

OWNER:	09/27/2017
REG. AGENCIES	--
O.T.B.:	--

PROJECT NO.	09-30-67
DRAWN BY:	JRB
CHECKED BY:	JRB

ROTTEN ROBBIE #67
SAN JOSE, CALIFORNIA

1202 OAKLAND ROAD
SAN JOSE, CALIFORNIA 95112

SHEET TITLE

SITE AND NEIGHBORHOOD PHOTOS

SHEET NO.

PH-1

G:\09-30 Anderson Dr\67 San Jose\2 Entitlements\Submittals\67 PH-1.dwg 9/27/17 12:29 PM JR

PC AGENDA: 11-15-17
ITEM: 8.a.

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

PLANNING COMMISSION STAFF REPORT

File No.	GP16-011/C17-008/CP17-015
Applicant	John Hicks
Location	1202 Oakland Road
Existing General Plan Land Use Designation	Heavy Industrial
Proposed General Plan Land Use Designation	Combined Industrial/Commercial
Existing Zoning Districts	HI Heavy Industrial
Proposed Zoning Districts	CIC Combined Industrial/Commercial
Council District	3
Historic Resource	No
Annexation Date:	June 11, 1957 (Orchard No. 17-A)
CEQA:	Mitigated Negative Declaration for the Rotten Robbie #67 Gas Station Project

APPLICATION SUMMARY:

File No. GP16-011: General Plan Amendment to change the Land Use/Transportation Diagram land use designation from Heavy Industrial to Combined Industrial/Commercial on an approximately 1.54 gross acre site.

File No. C17-008: Conforming Rezoning from the HI Heavy Industrial Zoning District to the CIC Combined Industrial/Commercial Zoning District on an approximately 1.54-gross acre site.

File No. CP17-015: Conditional Use Permit to demolish an existing building and fueling dispensers, and construct a 3,750-square foot convenience store with the off-sale of beer and wine, a gas station with 6 auto retail fueling dispensers (12 pumps), canopies, and 12 cardlock fueling dispensers (24 pumps), and 24-hour uses on an approximately 1.54-gross acre site.

RECOMMENDATION:

Staff recommends that the City Council:

1. **Deny** the General Plan Amendment to change the Land Use/Transportation Diagram land use designation from Heavy Industrial to Combined Industrial/Commercial.
2. **Deny** the Conforming Rezoning from the HI Heavy Industrial Zoning District to the CIC Combined Industrial/Commercial Zoning District.
3. **Deny** the Conditional Use Permit for a 3,750-square foot convenience store with the off-sale of alcohol, retail, and a gas station with cardlock fuel dispensers, and 24-hour uses.

The proposal is not in conformance with the existing General Plan land use designation and zoning district and is being recommended for denial to preserve existing and planned heavy industrial employment land. The proposed gas station and associated uses are considered to be a

retail/commercial use, not an industrial use permitted by both the existing Heavy Industrial land use designation and the HI Zoning District. Because of the limited supply of land available for heavy industrial uses, the General Plan restricts land use changes in areas reserves exclusively for industrial uses.

A detailed analysis of the gas station and convenience store project is not included in this staff report, as staff is recommending the proposed General Plan Amendment be denied along with the rezoning and CUP applications. Staff prepared a resolution for denial. Should Council desire to approve the General Plan Amendment, Council should direct staff to return at a specific future date where Council could consider adopting a resolution approving the Initial Study (IS) and Mitigated Negative Declaration (MND) for the project (including the General Plan Amendment, Conforming Rezoning, and CUP), and direct staff to prepare a resolution approving the amendment to the General Plan land use designation in accordance with Council direction, an ordinance approving the rezoning of the subject site, and a resolution approving the Conditional Use Permit. With regard to the CUP application, staff would particularly need to return with a report including an analysis of the specific findings required for off-sale of alcoholic beverages and include a determination of public convenience and need with regard to proximity to other off-sale outlets and sensitive land uses, as well as for overconcentration of off-sale outlets within the census tract. Because the project is inconsistent with City Council Policy 6-27, Evaluation of 24-Hour Uses, as analyzed in the Analysis Section of this report, staff would expect to maintain a denial recommendation for the Conditional Use Permit.

PROJECT DATA

General Plan	☐ Consistent ☒ **Inconsistent**		
SURROUNDING USES			
	General Plan Land Use	**Zoning**	**Existing Use**
North	Heavy Industrial	R-MH Mobilehome Park	Trailer Tel RV Park
South	Heavy Industrial	HI Heavy Industrial	Lumber store and wholesale company
East	Heavy Industrial	HI Heavy Industrial	Industrial condominiums
West	Heavy Industrial	HI Heavy Industrial	Motel and fast food restaurant

RELATED APPROVALS	
Date	**Action**
1995	City-initiated General Plan Amendment to the San José 2020 General Plan Land Use/Transportation Diagram to add a Mixed Industrial Overlay that included the subject site and surrounding area
2001	City-initiated General Plan Amendment to remove the Mixed Industrial Overlay on 427.5 acres (File No. GP01-04-05)
2003	Conditional Use Permit to allow the demolition of an existing gas station, an associated service building and vehicle repair building, and the construction of two fueling areas, a 1,212-square foot sales building, and other site improvements (File No. CP99-057)

PROJECT DESCRIPTION

Between September 2016 and May 2017 the applicant submitted the following applications related to the approximately 1.54-gross acre subject site located on the northeast corner of Commercial Street and Oakland Road:

- General Plan Amendment request to change the General Plan Land Use/Transportation Diagram land use designation from Heavy Industrial to Combined Industrial/Commercial (September 21, 2016);
- Conforming Rezoning from the HI Heavy Industrial Zoning District to the CIC Combined Industrial/Commercial Zoning District (March 20, 2017); and
- Conditional Use Permit to remove the existing building and fueling dispensers, and construct a 3,750 square foot convenience store with the off-sale of alcohol, a gas station with 12 auto retail fueling dispensers, canopies, and 12 cardlock fueling dispensers, and 24-hour uses on an approximately 1.54-gross acre site. (May 8, 2017).

Changing the General Plan land use designation to Combined Industrial/Commercial and the Zoning District to Combined Industrial/Commercial will allow commercial and retail uses on the site, in addition to limited industrial uses.

Background

In 1995, the City Council approved a General Plan Amendment to apply a Mixed Industrial Overlay to the *San José 2020 General Plan* Land Use/Transportation Diagram, which included the subject site. The Mixed Industrial Overlay, totaling 1,574 acres, was intended to allow a mixture of primarily industrial uses with compatible commercial or public/quasi-public uses. This overlay supported the conversion of existing industrial land to commercial and office uses, and was created to provide opportunities for land uses that may have had difficulty locating in commercial or residential areas, particularly due to neighborhood concerns about such uses. Consequently, from 1996 to 2000, approximately 340 acres of land designated Heavy or Light Industrial were converted to non-industrial land uses within the Mixed Industrial Overlay. Several of the properties surrounding the subject site were converted during this time, including the Burger King restaurant across Oakland Road and the Chevron gas station on Commercial Street.

To address various impacts and implications of losing heavy and light industrial land base, and to prevent further industrial land from being converted to non-industrial uses, staff recommended a series of General Plan Amendments in 2001 to remove the Mixed Industrial Overlay from the *San José 2020 General Plan* Land Use/Transportation Diagram. Staff noted that the overlay "sent mixed messages" about the importance of the underlying industrial land use designations, in turn making it difficult to attract industrial development to these areas, and putting pressure on these areas to convert to non-industrial land use designations. City Council approved the removal of the Mixed Industrial Overlay, agreeing with staff's statement that "any further erosion would threaten the City's ability to provide a satisfactory job base for low, medium, and high skilled workers, a diverse economy, and long-term growth potential for a needed tax base."

Site Location

The site is located on the northeast corner of Commercial Street and Oakland Road (1202 Oakland Road), and is within the General Plan East Gish Employment Growth Area, and is located within the US-101/Oakland/Mabury Transportation Development Policy area. The site currently has an existing non-conforming gas/diesel fuel station with 4 fuel dispensers and an associated 1,300

square foot building, as well as two light industrial buildings including a 9,700 foot truck service and repair shop, and a 1,800 square foot auto glass and upholstery business.

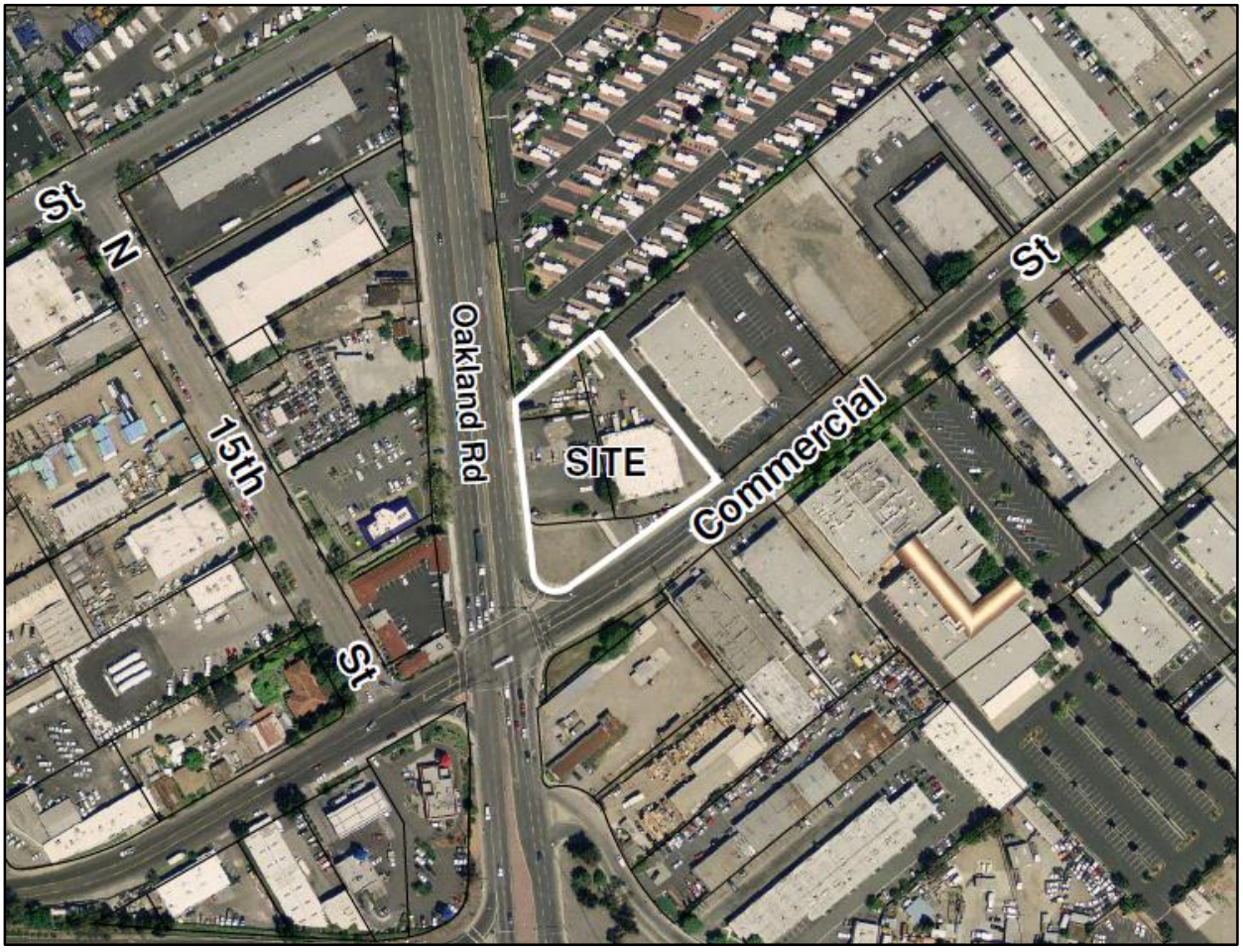


Figure 1: Site Location

ANALYSIS

The proposed project was analyzed for conformance with 1) the Envision San José 2040 General Plan, 2) the Zoning Ordinance, 3) City Council Policy 6-27: Evaluation of 24-hour Uses, and 4) the California Environmental Quality Act (CEQA).

Envision San José 2040 General Plan Conformance

Existing General Plan Land Use Designation: Heavy Industrial

The Heavy Industrial land use designation is intended for industrial users with nuisance or hazardous characteristics which for reasons of health, safety, environmental effects, or welfare are best segregated from other uses. Extractive and primary processing industries are typical of this category. Office and research and development uses are discouraged under this designation in order to reserve development sites for traditional industrial activities, such as heavy and light manufacturing and warehousing. The Heavy Industrial designation is also the appropriate category for solid waste transfer and processing stations, if those sites meet other *Envision General Plan* policies. Very limited scale retail sales and service establishments serving nearby

businesses and their employees may be considered appropriate where such establishments do not restrict or preclude the ability of surrounding Heavy Industrial land from being used to its fullest extent and are not of a scale or design that depend on customers from beyond normal walking distances. Any such uses should be clearly incidental to the industrial users on the property and integrated within an industrial building. The Heavy Industrial designation is applied only to areas where heavy industrial uses presently predominate. Because of the limited supply of land available for heavy industrial uses, the Land Use Policies in the Envision General Plan restrict land use changes in areas reserved exclusively for industrial uses as implemented by several land use policies in Chapter 5.

Proposed General Plan Land Use Designation: Combined Industrial/Commercial

The Combined Industrial/Commercial land use designation allows a significant amount of flexibility for the development of a varied mixture of compatible commercial and industrial uses, including hospitals and private community gathering facilities. Properties with this designation are intended for commercial, office, or industrial developments or a compatible mix of these uses. This designation occurs in areas where the existing development pattern exhibits a mix of commercial and industrial land uses or in areas on the boundary between commercial and industrial uses. Development intensity can vary significantly in this designation based on the nature of specific uses likely to occur in a particular area. In order to maintain an industrial character, small, suburban strip centers are discouraged in this designation, although larger big-box type developments may be allowed because they mix elements of retail commercial and warehouse forms and uses. While this designation potentially accommodates a wide variety of uses and building forms, more specific guidance should be provided through the application of the Zoning Ordinance in order to establish use and form standards that will promote the development of a cohesive employment area across multiple adjoining properties that share this designation.



Figure 2: Existing General Plan Land Use Designation

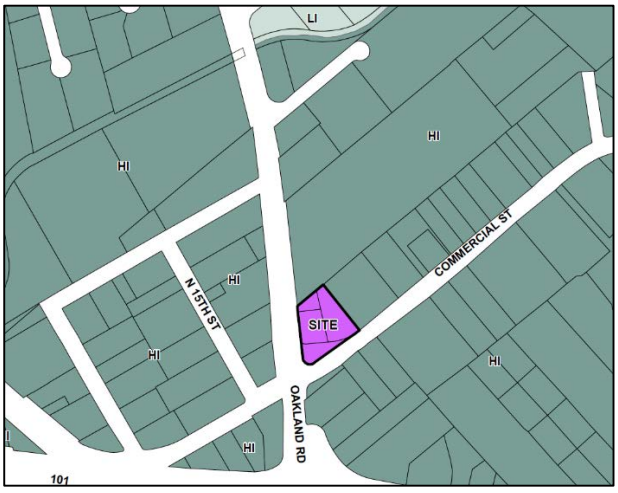


Figure 3: Proposed General Plan Land Use Designation

General Plan East Gish Employment Growth Area

The proposed site is located within the East Gish Employment Growth Area, which encompasses approximately 495 acres, generally east of Highway 880, west of Coyote Creek, and north of Berryessa Road. The East Gish Employment Area was created as part of the General Plan update process in 2011, and was designated to include a large majority of the City's heavy

industrial lands. This area has historically been comprised of industrial uses, and is maintained as such in order to preserve existing heavy and light industrial properties. The East Gish Employment Area has an employment capacity of 2,300 jobs and does not plan for any new housing units within the Growth Area.

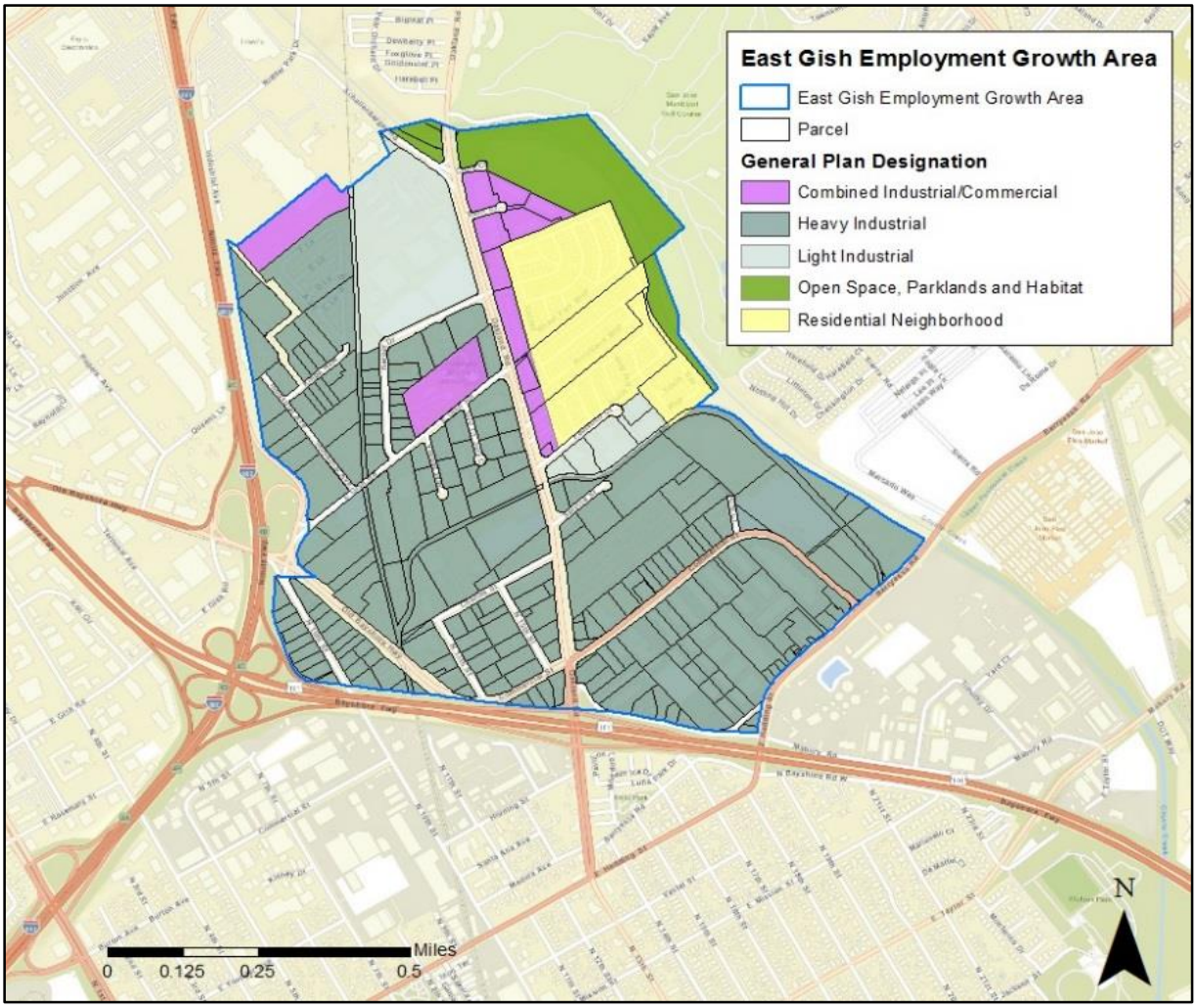


Figure 4: East Gish Employment Growth Area

General Plan Goals and Policies

The proposed General Plan Amendment, Conforming Rezoning, and Conditional Use Permit are **inconsistent** with the following General Plan goals and policies:

1. **Industrial Preservation Goal LU–6:** Preserve and protect industrial uses to sustain and develop the city's economy and fiscal sustainability.

   Industrial Preservation Policy LU–6.1: Prohibit conversion of lands designated for light and heavy industrial uses to non-industrial uses.

   Industrial Preservation Policy LU–6.4: Encourage the development of new industrial areas and the redevelopment of existing older or marginal industrial areas with new industrial uses, particularly in locations which facilitate efficient commute patterns.

Industrial Preservation Policy LU-6.5: Maintain and create Light Industrial and Heavy Industrial designated sites that are at least one acre in size in order to facilitate viable industrial uses.

Industrial Preservation Policy LU-6.7: Encourage supportive and compatible commercial and office uses in industrial areas designated for those uses. In areas reserved for light and heavy industrial uses, only limited auxiliary and incidental commercial uses, such as small eating establishments, may be permitted when such uses are of a scale and design providing support only to the needs of businesses and their employees in the immediate industrial area.

Industrial Preservation Policy LU–6.8: Reserve industrial areas for industrial and compatible support uses, while recognizing that industrial uses come in a variety of types and forms. Allow non-industrial uses which are only incidental to and totally compatible with primary industrial uses in exclusively industrial areas. Consider allowing supportive, non-industrial activities, such as retail sales of materials manufactured or stored on site.

Analysis: The Envision San José 2040 General Plan includes many goals and policies related to the preservation and creation of industrial land within San José, including the prohibition of converting heavy and light industrial lands to non-industrial uses. While the proposed Combined Industrial/Commercial land use designation permits industrial uses, it also allows development that is solely commercial and retail in nature. Furthermore, the applicant has confirmed through the submittal of a Rezoning application and Conditional Use Permit that the intended use of the land is for commercial uses. A gasoline service station and convenience store are commercial uses and accordingly not allowed in the HI Heavy Industrial Zoning District. Thus, the proposed General Plan Amendment, Rezoning, and Conditional Use Permit are considered as a conversion of lands designated for heavy industrial uses to non-industrial uses, which is prohibited by the General Plan.

The site is also greater than one acre in size and is considered viable for industrial uses; converting the project site to the Combined Industrial/Commercial land use designation and Zoning District would remove 1.54 acres of heavy industrial lands from the City's land use inventory, and would significantly decrease the possibility for industrial development on this site in the future. The General Plan's Industrial Preservation goals and policies emphasize the preservation and support of industrial lands for industrial uses. While some commercial support uses may be permitted within industrial lands, these services should be incidental to the primary industrial uses. Per Section 20.150.120 of the Zoning Code, incidental retail uses should be directly related to and supportive of an existing industrial use and occupy no more than 15% of the building floor of an industrial building. The proposed retail gasoline service station and convenient store is not an incidental use as they are standalone commercial uses that support a regional need for gasoline and diesel; thus, the proposal directly conflicts with the policies listed above.

2. **Innovative Economy Goal IE-1**: Proactively manage land uses to provide and enhance economic development and job growth in San Jose.

   Innovative Economy Policy IE–1.1: To retain land capacity for employment uses in San José, protect and improve the quantity and quality of all lands designated exclusively for industrial uses, especially those that are vulnerable to conversion to non-employment uses.

   Broad Economic Prosperity Policy IE–6.2: Attract and retain a diverse mix of businesses and industries that can provide jobs for the residents of all skill and education levels to support a thriving community.

Promote Fiscally Beneficial Land Use Policy FS-4.2: Maintain, enhance, and develop the employment lands within identified key employment areas (North Coyote Valley, the Berryessa International Business Park, the East Gish and Mabury industrial areas, the Evergreen industrial area, the Edenvale Redevelopment Project Area, and the Monterey Corridor Redevelopment Project Area). Protect existing employment uses within these areas from potentially incompatible non-employment uses.

Analysis: The General Plan policies above promote the management, enhancement, and protection of jobs and industrial lands within San José. The proposed land use change, rezoning, and conditional use permit would allow non-industrial uses on the subject site, further limiting the potential of industrial development on this property and in the area. The General Plan seeks to maintain employment uses within the East Gish Growth Area; the proposals, however, would displace the existing viable industrial tenants and their employees, and replace them with a low job-generating use. For example, gas stations typically only employ one to two people per shift.

In addition, approval of the proposed project could encourage other industrial properties nearby to request to change their General Plan land use designation to Combined Industrial/Commercial in order to increase the value of their land. This could lead to further erosion of industrially designated lands in this prominently industrial area, as was prevalent when the Mixed Industrial Overlay was incorporated into the San José 2020 General Plan.

For the reasons outlined above, staff recommends denial of the proposed General Plan Amendment request, the proposed Conforming Rezoning, and Conditional Use Permit. The proposals would displace the current industrial users on site (Bay Area Truck Services and Blair Auto Glass and Upholstery) and eliminate the potential for industrial uses in the future by converting lands with a Heavy Industrial General Plan land use designation. As stated above, the proposal would also incentivize other property owners with Heavy Industrial and Light Industrial land use designations to convert their land to Combined Industrial/Commercial. The conversion of an industrial property to a commercial land use designation would increase the site's property value, making it more difficult for industrial businesses to compete with other users for available land. This would further erode the limited employment lands, specifically heavy industrial lands, within the city.

Zoning Conformance

The site currently has an HI Heavy Industrial Zoning District. Gas stations and convenience stores are not permitted within this zoning district. The proposed Conforming Rezoning would change the site's Zoning District from HI Heavy Industrial to CIC Combined Industrial/Commercial. Per Municipal Code Section 20.50.010, the CIC Zoning District is intended for commercial or industrial uses, or a compatible mixture of these uses, that support the goals of the Combined Industrial/Commercial land use designation. The CIC Zoning District allows for a broad range of commercial uses with a local or regional market, including big box retail, and a narrower range of industrial uses, primarily industrial park in nature, but including some low-intensity light industrial uses. Gas stations, late night uses and the off-sale of alcoholic beverages are conditionally-permitted uses in the CIC Zoning District, and retail is a permitted use in this district.

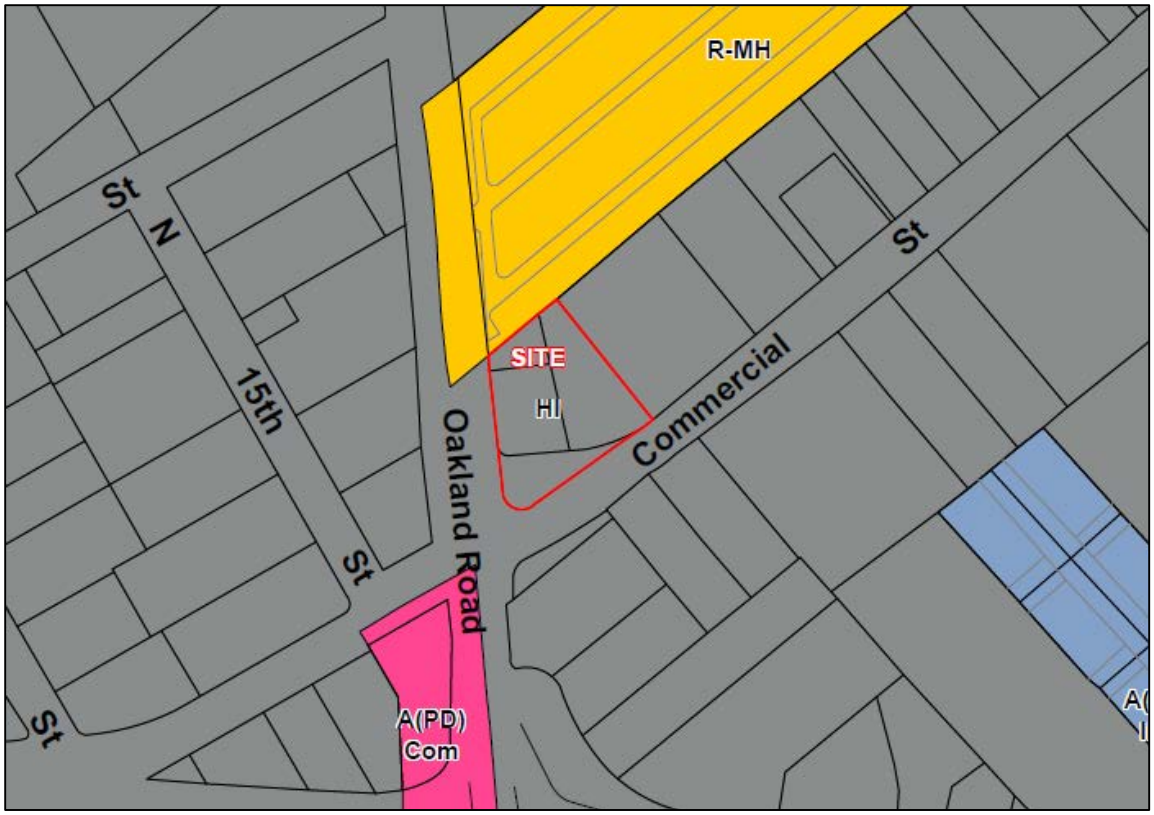


Figure 5. Existing Zoning District

If the proposed General Plan Amendment were approved, CIC would be the conforming zoning district for the site. However, the existing HI Zoning for the site could not be changed to the CIC Zoning District without amending the General Plan designation to Combined Industrial/Commercial. Because staff is recommending the General Plan Amendment be denied, it is also recommended the Conforming Rezoning request be denied.

Findings - Conditional Use Permit

The Conditional Use Permit findings pursuant to Section 20.100.720 of the San José Municipal Code:

1. 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: The proposed gas station and convenience store with off-sale of alcohol and late night use is a non-industrial use that is proposed for development on a parcel that is designated for heavy industrial uses. The Conditional Use Permit would therefore be inconsistent with Policy LU-6.1, which prohibits the conversion of lands designated for light and heavy industrial uses to non-industrial uses. Furthermore, the Conditional Use Permit would be inconsistent with the existing Heavy Industrial land use designation of the site, as this is not an allowable land use within this designation. While the applicant is proposing the land use designation of the property be changed to Combined Industrial/Commercial, this designation would allow a number of non-industrial uses to be developed on the site, which would also be inconsistent with Policy LU-6.1. The Conditional Use Permit is therefore inconsistent with both the existing land use designation and the policies of the General Plan, as analyzed herein and within the General Plan Conformance section, above.

2. 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 discussed in the Zoning Conformance section above, the proposed project is not permitted in the Heavy Industrial Zoning District and therefore does not conform to the San José Municipal Code. While the applicant proposes a change in the zoning district of the subject site from HI Heavy Industrial to CIC Combined Industrial Commercial, which would allow the proposed use, this change would be inconsistent with the Heavy Industrial General Plan land use designation for the subject site. As analyzed in Finding 1 above, amending the land use designation to Combined Industrial/Commercial to allow the proposed CIC zoning would be inconsistent with Policy LU-6.1.

3. The conditional use permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency; and

   Analysis: The proposed project is ***inconsistent*** *with City Council Policy 6-27, Evaluation of 24-Hour Uses, as analyzed in the City Council Policy 6-27 section below.*

4. The proposed use at the location requested will not:

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

   Analysis: The proposed late night use of the gas station could potentially be disruptive to the immediately-adjacent mobile home park to the north of the site due to operational noise during sensitive late night hours. The Initial Study prepared for the project concluded that project noise would not exceed the instantaneous and 24-hour average noise levels of the Zoning Ordinance and General Plan, respectively with regard to adjacent residential uses. Any exterior lighting would be required to comply with the city's outdoor lighting requirements prohibiting light and glare from the use intruding upon the adjacent property. For these reasons, the project would not adversely affect the peace and welfare of persons residing or working in the surrounding area.

5. 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 property for the proposed convenience store and fuel station would have an adequate size and shape to accommodate the yards, walls, fences, and parking and loading facilities, landscaping and other development features, as documented on the proposed project plans.

6. The proposed site is adequately served:

   a. 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

   b. By other public or private service facilities as are required.

Analysis: The subject site is adequately served by the adjacent public streets and can be directly accessed from Oakland Road.

7. 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 site includes an existing gas/diesel fuel station, a truck service and repair shop, and an auto glass and upholstery business, which would be replaced by a gas station and convenience store. The project would induce more vehicle traffic because of the renovation and proposed convenience store; however, the increase in traffic would not have an unacceptable negative impact on adjacent properties or nearby intersections, as analyzed in the Environmental Initial Study prepared for the project. The construction of the building and gas station would cause a temporary increase in noise to the adjacent mobile home park, but will be mitigated through the limited construction hours and other measures included in the Mitigation Monitoring and Reporting Program for the project. Given these counterbalancing factors, the project will not have an unacceptable negative environmental effect on adjacent property or properties.

City Council Policy 6-27: Criteria for the Evaluation of 24-Hour Uses

The Policy states 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, crime, gang activity, drugs, litter, loitering and noise. The Initial Study prepared for the project determined that noise levels resulting from the project would not exceed noise impact thresholds established in the General Plan for the adjacent residential uses to the north of the site, due to the proposed construction of a seven-foot high sound wall along the adjoining property line. The Policy also states, however, that crime statistics and police safety issues which are directly related to uses operating between 12:00 midnight and 6:00 a.m. will be analyzed and considered in determining the appropriateness of 24-hour uses. The Police Department has analyzed the project, and Chief of Police has provided a written memorandum recommending denial of the Conditional Use Permit due to the existing overconcentration of off-sale alcoholic beverage licenses in the subject Census Tract; therefore, the project would not be consistent with Policy 6-27.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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

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

Reporting Program. The entire IS/MND and other related environmental documents are available on the Planning web site at: http://www.sanjoseca.gov/index.aspx?NID=2165

PUBLIC HEARING NOTIFICATION

Staff followed Council Policy 6-30: Public Outreach Policy. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

Community Meeting

Approximately 25 community members attended a joint community meeting for File Nos. GP16-011, GP17-001, and GP17-002. Of the 25 attendees, only two community members expressed general interest in the proposed project. The community members were tenants of one of the existing industrial buildings (Bay Area Truck Services) on site and were concerned about when they would need to relocate if the proposed project were approved. They stated that if the site were redeveloped, the land owner would displace the business and their employees.

Project Managers: Kimberly Vacca and Robert Rivera
Approved by: , Division Manager for Rosalynn Hughey, Interim Planning Director
Date:

Owner	**Applicant**
Dave Mordick 955 Martina Venue Santa Clara, CA 95050	John Hicks PO Box 1676 Santa Rosa, CA 95402

Attachments:
A) Initial Study and Negative Declaration
B) Draft Resolution
C) Public Correspondence
D) Police Department Memorandum
E) Draft Mitigated Negative Declaration Resolution & Mitigation Monitoring and Reporting Program
F) Plans