



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Rosalynn Hughey

**SUBJECT:** SEE BELOW

**DATE:** August 21, 2020

Approved

Date

8/21/2020

**COUNCIL DISTRICT: 9**

**SUBJECT: ADMINISTRATIVE HEARING ON THE APPEAL OF THE PLANNING  
COMMISSION'S APPROVAL OF CONDITIONAL USE PERMIT  
AMENDMENT NO. CPA16-035-01 FOR THE BASCOM ANDOIL CAR  
WASH AMENDMENT PROJECT**

## **RECOMMENDATION**

1. Conduct an Administrative Hearing to consider the Appeal of the Planning Commission's approval of the Conditional Use Permit Amendment, Permit No. CPA16-035-01, for the Bascom Andoil Car Wash Amendment Project, which permits the addition of an automatic car wash, the reduction in overall project square footage, and site improvements at an existing gas station on an approximately 0.8-gross acre lot located at 3702 South Bascom Avenue.
2. Consider the Exemption in accordance with the California Environmental Quality Act (CEQA) Guidelines Section 15332 for infill projects; and
3. Adopt a resolution denying the permit appeal and approving, subject to conditions, Conditional Use Permit Amendment No. CPA16-035-01, for the Bascom Andoil Car Wash Amendment Project, which permits the addition of an automatic car wash, the reduction in overall project square footage, and site improvements at an existing gas station on an approximately 0.8-gross acre site, on the southeast corner of South Bascom Avenue and Woodard Road (3702 South Bascom Avenue).

## **OUTCOME**

The hearing before the Council is a de novo hearing pursuant to Section 20.100.280 of the Zoning Ordinance. That means that the Council hears the report from staff and comments and

evidence presented by the appellant, the applicant and the public anew, and must make the required findings to support the Council's determination whether to grant or deny the permit.

Approving the Condition Use Permit Amendment, and thereby denying the appeal, would allow the project applicant to move forward with the building permit phase of the project to allow the automatic car wash use in conjunction with a gas station on the approximately 0.8-gross acre site.

Denying the Conditional Use Permit Amendment, and thereby granting the permit appeal, would mean that the project applicant could still develop the site in accordance with the originally approved Conditional Use Permit, File No. CP16-035, to redevelop the site with a gas station but with no automatic carwash use.

### **EXECUTIVE SUMMARY**

On December 11, 2018, Tony Andary, representing the applicant Andarys Enterprise Inc., submitted an application for a Conditional Use Permit Amendment to amend Conditional Use Permit File No. CP16-035. The site is located at 3702 South Bascom Avenue and is currently used as a gas station. The project was considered and approved at the Planning Commission's Hearing on June 24, 2020.

A timely appeal (Exhibit A) of the permit was filed on June 29, 2020 by Ms. Kathleen Flynn. The appeal identified the following concerns:

1. The approved project is 44 feet from multi-family residential uses.
2. The project would increase unsafe traffic conditions.
3. City Council previously denied the carwash use.

The analyses in this memorandum and the Planning Commission Staff Report outline the project's conformance with the General Plan policies, Municipal Code requirements, and City Council policies which address the location, traffic, and use concerns.

Staff recommends denial of the permit appeal. The comments raised in the permit appeal do not negate any of the Conditional Use Permit Amendment findings and the proposed project is consistent with the goals and policies of the General Plan, Planned Development Zoning District, and City Council policies.

### **BACKGROUND**

#### ***Site Location***

There is an existing gas station on the project site with eight fueling positions and a fueling canopy fronting South Bascom Avenue. Four driveways currently serve the corner lot, two on South Bascom Avenue and two on Woodard Road. The project site has a 25-foot private

ingress/egress access easement located at the eastern edge and to the rear of the site extending from the driveway on Woodard Road to the adjacent commercial properties south of the project site.

Multi-family residential properties are located to the north of the site across Woodard Road. A liquor store and strip mall are located south of the site and multi-family residential properties are east of the site. West of the site is South Bascom Avenue and a commercial office located within the boundaries of the City of Campbell. Farnham Elementary School is located northeast of the site across Woodard Road. The project is located approximately 200 feet from the front edge of the Elementary School property.

### ***Site History***

On July 18, 2016, Conditional Use Permit application (File No. CP160-035) was filed with the Department of Planning, Building and Code Enforcement to permit the construction of a new 5,744-square foot convenience store and fully automated car wash with early morning use opening at 5:00 a.m., a temporary use trailer, and exceedance of the Zoning Ordinance noise performance standards by two decibels on the existing gas station site.

On August 9, 2017, the Planning Commission considered and approved the requested project. The project's approval was appealed to the City Council. The appeal raised concerns regarding public safety, hours of operation, traffic, proximity to residences, odor, dust, exhaust fumes, noise, impacts to the nearby elementary school, issues with the driveway closure on Woodard Road, crime, police and fire access, and construction impacts. The administrative hearing on the appeal was considered by the City Council on October 24, 2017, and continued to November 28, 2017, December 12, 2017, December 19, 2017, and January 23, 2018. The Council hearings were continued to provide the applicant time to have a consultant conduct an updated noise study and traffic assessment of the immediate area to address concerns raised in the public hearing.

On January 23, 2018, the City Council took action on the appeal of the Conditional Use Permit. The City Council denied the permit appeal and approved a modified Conditional Use Permit which excluded the car wash. In its decision, the City Council identified significant concerns with the noise impacts of the originally proposed car wash on the surrounding uses of the site. The City Council found the noise generated by the originally proposed car wash was inconsistent with the General Plan and Zoning Code noise requirements and determined the car wash was located within twenty-five feet of the current residential uses which would create a negative impact to the surrounding uses.

### ***Proposed Project***

The subject Conditional Use Permit Amendment was filed by Tony Andary, on behalf of Andarys Enterprise Inc., on December 11, 2018. The subject project would amend the previous approval and allow a fully automated car wash in conjunction with the gas station on-site and site improvements.

The originally approved project, File No. CP16-035, approved a 5,744 square foot, two story, convenience store and office building. The new building would be 5,227 square feet including 3,617 square feet of convenience store and office space and the construction of a 1,610 square foot automated car wash. The car wash hours of operation would be 8:30 a.m. to 9:00 p.m., daily.

The car wash would be located behind and connected to the convenience store and office building. Vehicles would enter the car wash tunnel along the south side of the property and would exit along the north side of the property. On-site directional signage and a curved wall extending from the car wash tunnel exit would direct exiting car wash users to use the South Bascom Avenue driveway to exit the site rather than the Woodard Road driveway. The car wash includes a masonry 33-foot-long, curved wall which would extend from the car wash exit on the north site of the property and curve exiting vehicles toward South Bascom Avenue. The masonry wall would be 16 feet in height, and its design would be integrated into the design of the overall new building. The car wash entrance would also include a 12-foot-high masonry wall extending approximately 11 feet to the south of the entrance. The 16-foot-high and 12-foot-high walls extending from the car wash tunnel would help reduce noise generated by the car wash use and would also eliminate a direct line of site from the adjacent multi-family residences.

In addition, the existing wooden fence along the eastern property line would be replaced with a seven-foot-high masonry wall (for visibility the wall would be limited to three feet in height for the first six feet as measured from Woodard Drive along the property line). The concrete (CMU) wall along the southern property line would remain. The rear of the new building which faces multi-family residences to the east would be located approximately 44 feet from the property line. The rear of the building (eastern façade) would include decorative steel canopies and would be landscaped.

According to the Environmental Noise and Vibration Assessment for the Bascom Andoil Car Wash Project prepared by Dudek (February 2020), noise sources associated with the operation of the project would include people accessing the site and the operations of the automated car wash. Vacuum equipment would not be provided for this project. The car wash would use a MacNeil Tech 21 Dryer system configured as a stationary, stand-alone drying system with four 15 horse-power blowers. The dryer system would be located approximately 10 feet inside of the northern end of the car wash tunnel, near the exit. The Noise Assessment found that with the project's layout including the 16-foot-high and 12-foot-high walls, noise levels generated from the car wash would range from approximately 47 to 48 dBA DNL at the nearby property lines. Based on the site plan, car wash dryer noise levels were calculated to range from 42 to 51 dBA DNL at the nearest sensitive residential use east of the site. A Condition of Approval requires changes to the dryer system or location of the dryer system, to provide a noise study which confirms the noise generated by the new equipment does not exceed General Plan or Zoning Standards and requires further planning review.

Additionally, the Environmental Noise and Vibration Assessment found the project would only result in a less than 1 dB increase to the existing ambient noise. With the construction of the seven-foot-high masonry wall along the eastern property line and the additional 16-foot and 12-

foot-high walls extending from the car wash's exit and entrance, the project would serve as a shield to the eastern residential properties from the noise generated along South Bascom Avenue.

### ***Planning Commission's Hearing***

On Jun 24, 2020, the Planning Commission considered the proposed Conditional Use Permit Amendment and associated Categorical Exemption. Seventeen members of the public spoke against project approval citing several concerns including:

- Increase of traffic in the neighborhood from the car wash and other proposed development projects
- Dangerous traffic conditions impacting the nearby school's students, pedestrians, and bicyclists
- Location of the carwash is too close to residential uses
- Car wash would negatively impact the surrounding residential and commercial properties
- Car wash would block the shared commercial driveway on South Bascom Avenue
- Site is too small for the proposed use and does not have adequate stacking for the drive-through use
- Car wash is inconsistent with City Council Policy 6-10: Criteria for the Review of Drive-Through Uses
- Identification of the signed petition opposing the car wash use and its impact to the area
- City Council Policy 6-10's location exception for automatic car washes at existing gas stations is the only reason this project could be considered; City Council Policy is old and should be updated
- Concerns about odors from the car wash use
- Project and its construction will bring safety issues
- Wet wheels from the car wash vehicles is a hazard and traffic/pedestrian safety issue
- Already too many car washes in the area
- Car wash would be a loud use and the sound walls do not seem effective

In response to the provided testimony, the applicant noted the importance of the car wash use for the business and efforts to respond to concerns raised by the neighborhood.

During the hearing, staff noted that since posting of the draft resolutions and the Planning Commission Staff Report, additional comment letters had been provided including two petitions with over 500 signatures and two videos: one showing the noise generated by a hair dryer from different distances and the other showing neighborhood traffic.

Staff addressed points raised in the comment letters and public hearing testimony including:

- Submitted letters stated the staff report misrepresented the original Conditional Use Permit's approval history. While staff acknowledges that the staff report was a summary of the history, all facts presented in the staff report are accurate. Noise studies for the original project included noise analysis submitted by the applicant by Mei Wu Acoustics and by the appellant, by Illingworth and Rodkin Inc.

- Staff addressed concerns with the exception to the location requirement in City Council Policy 6-10: Criteria for the Review of Drive-Through Uses. For the previous project, File No. CP16-035, City Council had outlined concerns with the drive through use's location and specifically identified noise and the line of sight of the car wash to the residences as one major concern. The Conditional Use Permit Amendment project continues to be within 200 feet of residences. However, the project would comply with the applicable traffic provisions of the City Council Policy, in accordance with the permitted exception for car washes at existing gas stations. Consistent with the applicable traffic conditions, the Traffic Analysis and Public Works traffic memorandum for the project, found the intersection of Woodard Road and South Bascom Avenue would continue to operate acceptably at a level of service of C during AM peak hours and a level of service B during PM peak hours, consistent with the City Council Policy 6-10.
- The Conditional Use Permit Amendment's design (which revised the original Conditional Use Permit's design) incorporates entrance and exit walls. The revised design was found to not have a General Plan noise impact, nor exceed zoning noise thresholds pursuant to the project's Noise Report conducted by Dudek. Additionally, these walls would eliminate the line of site view into the car wash.
- Regarding concerns with the car wash's exit, staff shared that Department of Public Works staff and Planning staff reviewed the site circulation for conformance with Municipal Code standards and functionality. The curved exit wall in addition to on-site signage is intended to encourage exiting onto South Bascom Avenue. The Council Policy does not prohibit the use of other streets for ingress and egress but requires primary ingress and egress to be from a four-lane street such as South Bascom Avenue.
- Staff noted five stacking spaces are identified on the site plan and two overflow spaces. There is over 70 feet of space behind the last stacking space to accommodate a minimum of three overflow stacking spaces within the car wash site at the 20-foot length as prescribed by the Council Policy. Additionally, as noted in the Traffic Memorandum, any vehicle that would overflow from the stacking lane would spill out on the west side of the gas station and not the public street or gas pumps major aisles.
- Regarding pedestrian access and circulation for the site, staff stated that the final site plan, attached to the Planning Commission packet, shows the project's proposed painted pedestrian walkway. This walkway, although not direct, would provide pedestrian access to the site which would not involve crossing the drive-through use.
- Staff confirmed that 21 parking spaces are provided on-site. The space noted for trailer use is not a dedicated parking space but the location of the temporary use trailer approved under the original Conditional Use Permit to be used during construction.
- Responding to safety concerns, staff noted the project's closure of one existing driveway on Woodard Road would enhance the areas' safety and function and that the project is not anticipated to impede traffic on surrounding streets or impact the shared project driveways.
- Regarding wet wheel safety concerns, staff noted slip hazards typically only occur if water is pooled on-site and staff confirmed the project's plans were reviewed to ensure proper on-site drainage. Given the adequate on-site drainage, this slip hazard is not anticipated to be an issue. Additionally, staff noted slip hazards tend to occur at high

speeds which existing car wash vehicles would not be able to reach given the short distance between the carwash exit and driveway exit.

- Staff noted six documented collisions due to speeding and red-light violations occurred at the intersection of Woodard Road and South Bascom Avenue within the past five years which do not warrant further safety measures pursuant to Department of Transportation standards. However, staff noted the new interim bicycle lanes would help reduce traffic speeds.
- Regarding odor, staff noted that the car wash use is not a use listed by the Bay Area Quality Air Management District as a significant odor generator (such as a waste water facility or a coffee roasting plant) and the site would contain the majority of the car wash uses within the car wash tunnel or mechanical room.

After consideration of the testimony, Commissioner Yesney made a motion to approve staff's recommendation. Commissioner Bonilla seconded the motion. Commissioner Yesney noted the staff report was very clear. The Planning Commission voted (4-0-1, Caballero opposed) to approve the Conditional Use Permit Amendment and adopt the permit resolution.

### ***Appeal***

A timely appeal (Exhibit A) of the Conditional Use Permit Amendment was filed on June 29, 2020 by Kathleen Flynn. The appeal identified the following concerns:

1. The approved project is 44 feet from multi-family residential uses.
2. The project would increase unsafe traffic conditions.
3. City Council previously denied the carwash use.

### **ANALYSIS**

The appeal identified project issues related to the project's location, unsafe traffic conditions, and the Council's previous denial.

#### ***Response to Appeal Item #1 – Location***

The car wash would be located 44 feet from the shared residential property line; the existing gas station structure is approximately 70 feet from the shared property line. As noted in the Planning Commission Staff Report (See Exhibit B), City Council Policy 6-10 requires drive-through uses to be 200 feet or more from the immediately adjacent residential properties. Self-service car washes proposed in conjunction with an existing gasoline service station may be excluded from this locational criterion provided the traffic criteria is satisfied. The March 17, 2020 Traffic Analysis prepared for the site by Hexagon Transportation Consultants and the Department of Public Works Traffic Memorandum found the project would result in a less than significant impact in Vehicles Miles Traveled. The intersection of Woodard Road and South Bascom Avenue would continue to operate at a level of service of C during AM peak hours and a level of service of B during PM peak hours, consistent with the City Council Policy. Additionally, the car wash would be separated from the adjacent residential properties with a seven-foot-high masonry

wall and a 16-foot-high wall and 12-foot-high wall extending from the car wash tunnel's exit and entrance. These walls would help to visually separate the use from the residential uses and contain the operational noises of the car wash site on the site. Pursuant to the February 2020 Environmental and Vibration Assessment conducted by Dudek, the project's walls and landscaping would buffer noise generated on-site as well as existing traffic noise generated by South Bascom Avenue. Noise levels would meet City standards.

*Response to Appeal Item #2 – Unsafe Traffic Conditions*

Access to the project site would be provided via two driveways along South Bascom Avenue and one driveway along Woodard Road. One existing driveway on Woodard Road located near the intersection would be removed, which would enhance circulation on and around the site. Circulation within the project site would provide adequate access to the car wash, gasoline aisles, and parking. The project complies with the minimum drive aisle requirements for parking lots set forth in Municipal Code Section 20.90.

Sight distance from the Woodard Road driveway is adequate as there is street parking. Sight distance from the southern-most South Bascom Avenue driveway is currently not adequate; however, the permit includes a Condition of Approval to install 20 feet of red curb markings south of the driveway, prohibiting street parking to ensure sufficient sight distance. As noted by staff during the Planning Commission hearing, the new bicycle lanes along South Bascom Avenue would slow down vehicle traffic making roadway conditions safer.

Finally, in the last five years, collision data has shown there have been six collisions related to speeding and red-light violations within the intersection limits. Pursuant to Department of Transportation's (DOT) best practice methods, three or more collisions per year warrant DOT to analyze improvements to a signalized intersection for short term and long term safety. (See Exhibit C). This intersection has not triggered such an evaluation.

*Response to Appeal Item #3 – Previously Denied Project*

The Conditional Use Permit Amendment would have a different site design than the originally proposed Conditional Use Permit. In response to concerns of the community, the following changes were made in the Conditional Use Permit Amendment submittal:

- All parking spaces on the rear (east) side of the property are located outside the existing shared ingress egress easement with the southern commercial property.
- The project includes a 7-foot-high masonry wall along the eastern property line (for visibility and safety, the wall would be limited to three feet in height for the first six feet as measured from Woodard Drive along the property line.)
- The project includes a curved, 33-foot-long, 16-foot-high masonry wall extending from the car wash exit and an 11-foot long, 12-foot-high masonry wall extending from the car wash tunnel's entrance. These walls are intended to block the line of sight to the adjacent residential properties and contain car wash noises on-site.
- The curved exit wall will have "no right-turn" signs placed on the wall, to direct car wash vehicles exiting the site toward the South Bascom Avenue driveway.



While the Conditional Use Permit Amendment requests the same use of the site, a gas station with an automatic car wash, the site design differs from the site design originally proposed for the Conditional Use Permit, File No. CP16-035. Unlike the previous project, the Conditional Use Permit Amendment Project was found to comply with both the Zoning Code and General Plan noise standard (See Exhibit B). Previously, the Conditional Use Permit requested to exceed Zoning Code noise requirements by 2 decibels. Finally, Planning Commission and staff found the Conditional Use Permit Amendment meets the required findings for the issuance of the permit. The project was found in conformance with the City's General Plan, Municipal Code, Development Policies, and Design Guidelines.

*Summary of Project Conformance with Conditional Use Permit Amendment Findings*

The project is consistent with the General Plan, Municipal Code's Zoning Standards, and City Council Policies as detailed in the Planning Commission Packet Exhibit B and the Permit Resolution Exhibit D. The project is consistent with the site's Neighborhood Community Commercial General Plan land use designation which supports a broad range of commercial activity. The project is in conformance with Land Use Policies LU-4.1 and LU-5.1, and Environmental Considerations Policies EC-1.1, EC-1.2, and EC-1.3. The project conforms to the CN Commercial Neighborhood Zoning District standards including use, height, setbacks, and parking. The project complied with the City Council Public Outreach Policy, 6-30 through posting an on-site sign to inform the neighborhood of the proposed project and hosting a project community meeting in coordination with the Council District 9 Office 9; Council District staff attended the meeting. The project was also found to be in conformance with the City Council Policy 6-10 for Drive-Through Uses.

The issues raised in the Conditional Use Permit Amendment Appeal do not negate the Conditional Use Permit Amendment findings for approval outlined in the appealed Conditional Use Permit Resolution (see Exhibit B) and the Draft Resolution (See Exhibit D).

**CONCLUSION**

The Conditional Use Permit Amendment conforms with the Conditional Use Permit Amendment findings set forth in San José Municipal Code Section 20.100.760. Staff recommends that the City Council approve the Conditional Use Permit Amendment and make positive findings for the reasons stated in this memorandum, in the Planning Commission report, and in the proposed resolution, thereby denying the appeal. The subject site has a Neighborhood Community Commercial General Plan land use designation and is in a Commercial Neighborhood Zoning district; the subject project conforms to the applicable General Plan, Municipal Code, City Development Policies, and City goals, policies, and strategies.

While staff acknowledges the comments and concerns from the public, the decision to approve the Conditional Use Permit Amendment should be based on the merits of the proposed project and its conformance to the General Plan, Zoning Ordinance, and applicable City policies. The proposed project conforms to these requirements.

## **EVALUATION AND FOLLOW-UP**

If the City Council approves the Conditional Use Permit Amendment, the applicant would need to obtain demolition, grading, and building permit(s) to allow the demolition of the existing gas station/service station building and the construction of the 3,617 square foot convenience store and office space and the construction of a 1,610 square foot automated car wash on an approximately 0.8-gross acre site. The project would be required to adhere to the permit conditions of approval.

## **CLIMATE SMART SAN JOSE**

The recommendation in this memorandum aligns with one or more Climate Smart San José energy, water, or mobility goals. The redevelopment of the project would facilitate the construction of an energy and water efficiency building

## **POLICY ALTERNATIVES**

For its decision on the Conditional Use Permit Amendment Appeal, the Council may:

- a. Approve the Conditional Use Permit Amendment, thereby denying the appeal; or
- b. Approve the Conditional Use Permit Amendment with additional modifications or conditions of approval, thereby denying the appeal; or
- c. Deny the Conditional Use Permit Amendment and making findings for denial, thereby granting the appeal.

Staff recommends that the City Council approve the Conditional Use Permit Amendment without change and deny the appeal.

## **PUBLIC OUTREACH**

Staff followed Council Policy 6-30: Public Outreach Policy, whereby, the project is considered a development proposal of Significant Community Interest. Following City Council Policy 6-30, the applicant posted the on-site sign to inform the neighborhood of the proposed project. A project community meeting was held on June 13, 2019. Comments received during the community meeting and project review are further discussed in the attached Planning Commission Staff Report and packet. The meeting was coordinated with Council District Office 9 and Council District staff attended the meeting.

Staff contact information has also been available on the community meeting notices and on the project webpage. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

## **COORDINATION**

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

## **CEQA**

Exempt pursuant to CEQA Guidelines 15332 In-Fill Development Project.

/s/  
ROSALYNN HUGHEY, Director  
Planning, Building and Code Enforcement

For questions, please contact Deputy Director, Robert Manford, at  
[robert.manford@sanjoseca.gov](mailto:robert.manford@sanjoseca.gov).

### Attachments:

- Exhibit A: Appeal Application
- Exhibit B: [Planning Commission Packet](#)
- Exhibit C: Traffic Data
- Exhibit D: Conditional Use Permit Amendment Resolution

C PA 16-035-01

## NOTICE OF PERMIT APPEAL

### TO BE COMPLETED BY PLANNING STAFF

FILE NUMBER	RECEIPT # _____
PROJECT LOCATION	AMOUNT _____
	DATE _____
	BY _____

### TO BE COMPLETED BY PERSON FILING APPEAL

PLEASE REFER TO PERMIT APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE. THIS FORM MUST BE ACCOMPANIED BY THE APPROPRIATE FILING FEE.

THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE PROPERTY WHICH IS LOCATED AT:

3702 S. Bascom Ave, San Jose (SE corner of S. Bascom & Woodside Rd)

REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.):

Car wash is approx 44 ft. from multiple residential uses. Increased and unsafe traffic conditions. Project previously denied by City Council.

### PERSON FILING APPEAL

NAME <u>Kathleen Flynn</u>	DAYTIME TELEPHONE ( ) _____
ADDRESS _____	
SIGNATURE _____	DATE <u>6-26-2020</u>
RELATIONSHIP TO SUBJECT SITE: (e.g., adjacent property owner, property owner within one thousand (1,000) feet) <u>Tenant within 1000 feet</u>	

### CONTACT PERSON (IF DIFFERENT FROM PERSON FILING APPEAL)

NAME _____			
ADDRESS _____		CITY _____	STATE _____
DAYTIME TELEPHONE ( ) _____		FAX NUMBER ( ) _____	E-MAIL ADDRESS _____

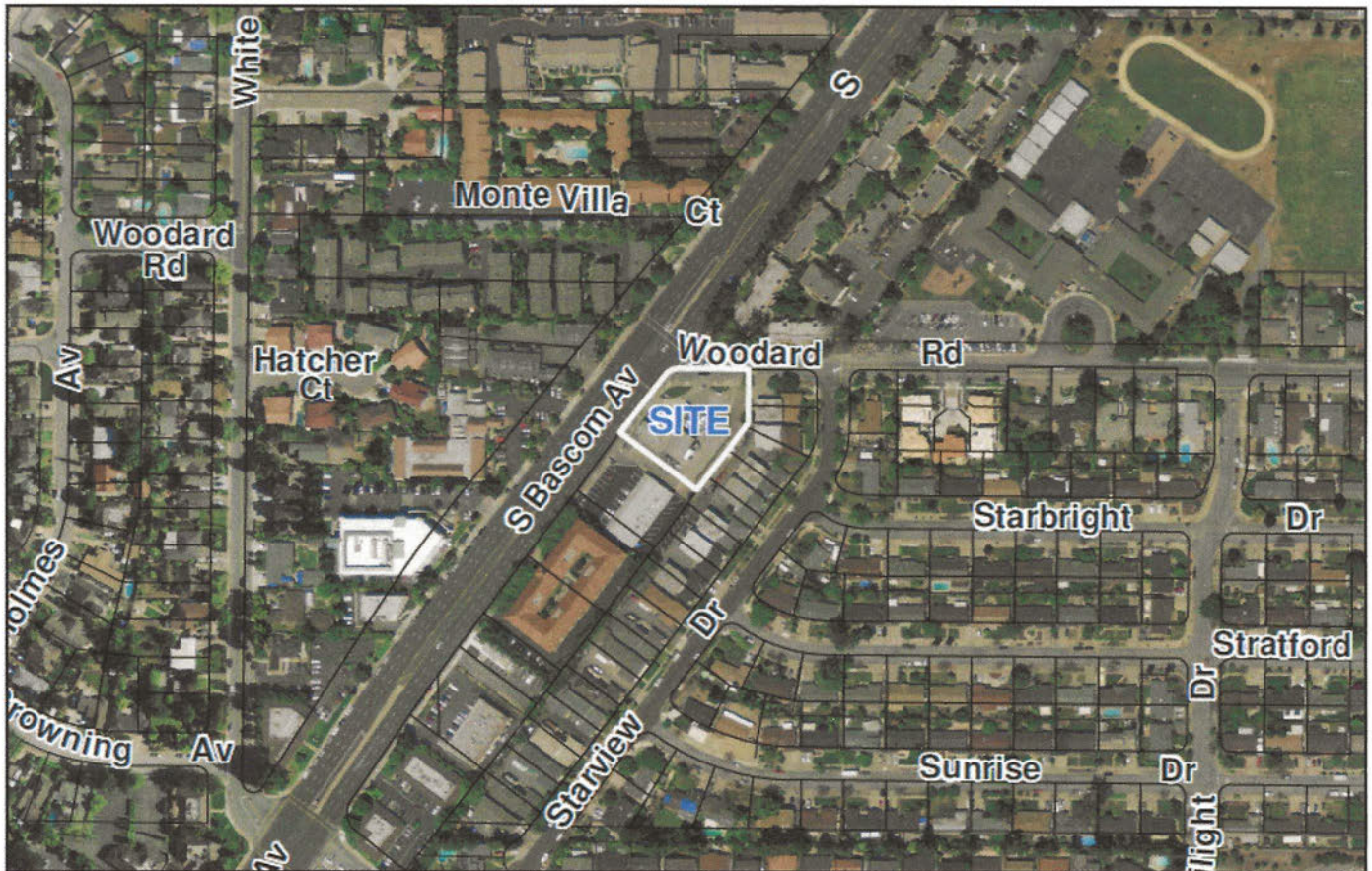
### PROPERTY OWNER

NAME <u>N/A</u>	DATE _____
ADDRESS _____	CITY _____
	STATE _____
	ZIP CODE _____

Please submit this application IN PERSON to the Development Services Center, **1<sup>ST</sup> FLOOR**, City Hall. Appointments are not required but may be accommodated by calling (408) 535-3555 or by visiting the Planning Division's website: <http://www.sanjoseca.gov/index.aspx?nid=3839>. For Assistance, call (408) 535-5680.



Exhibit A: Aerial of Site



File No: CPA16-035-01

District: 9

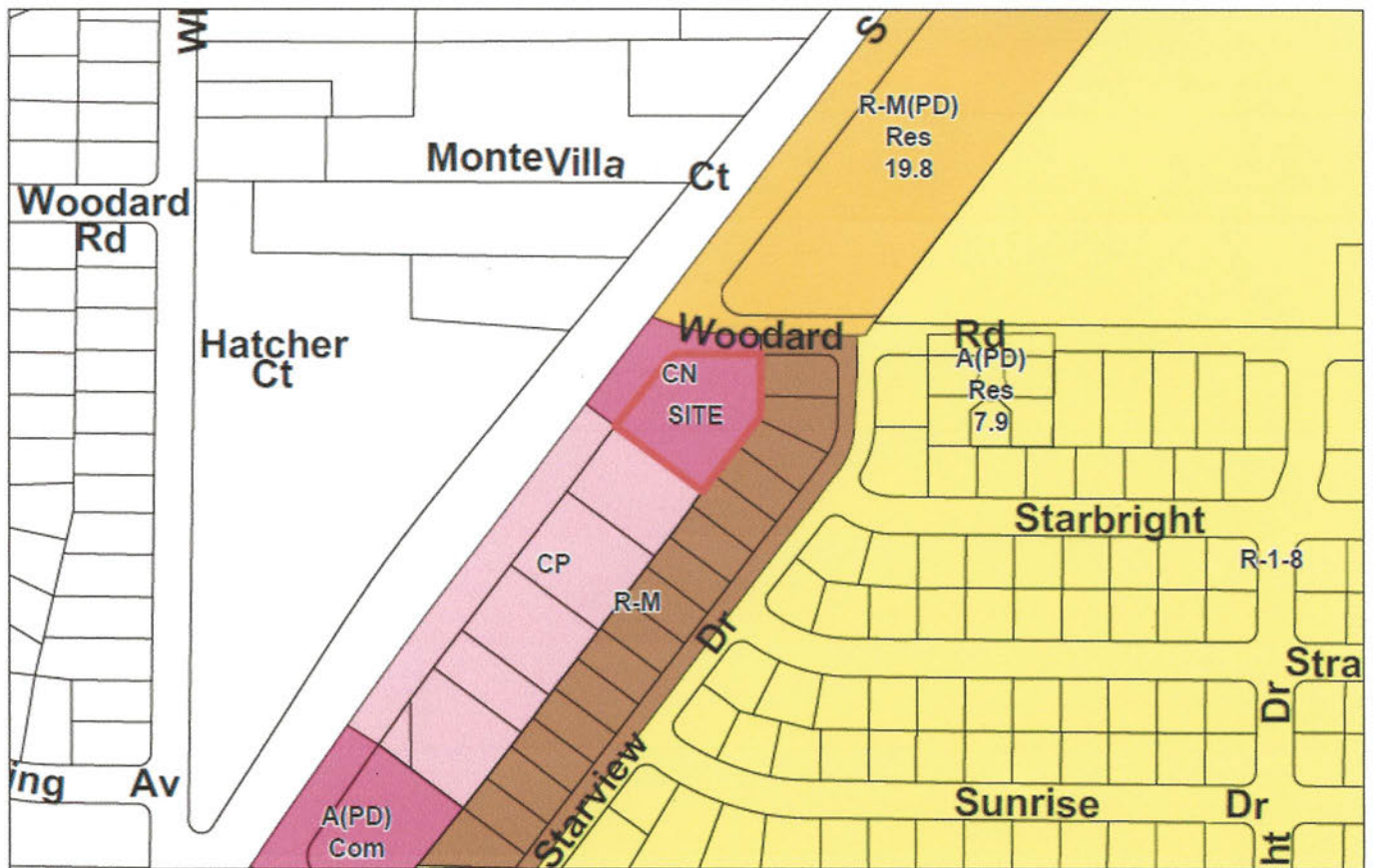
AERIAL



Prepared by the Department of Planning,  
Building and Code Enforcement  
12/19/2018

[illegible]

Exhibit C: Zoning District



File No: CP16-035  
District: 9

ZONING



# Memorandum

**TO:** PLANNING COMMISSION

**FROM:** Rosalynn Hughey

**SUBJECT:** CPA16-035-01

**DATE:** June 17, 2020

**COUNCIL DISTRICT: 9**

Type of Permits	Conditional Use Permit Amendment (File No. CPA16-035-01)
Demolition	1,276 square foot convenience store of an existing gas station (demolition previously approved in CP16-035)
CP16-035 Previously Approved Project size	5,744 square foot convenience store and office
Proposed Land Uses	Automatic Car Wash Service station Convenience Store and Office
New Residential Units	n/a
New/Revised Square Footage	1,610 square foot automatic car wash 3,617 square foot convenience store and office (in lieu of previously approved CP16-035 project size)
Additional Policy Review Items	City Council Policy 6-10: Criteria for the Review of Drive-Through Uses
Tree Removals	n/a
<b>Project Planner</b>	Cassandra van der Zweep
<b>CEQA Clearance</b>	Exempt per CEQA Guidelines 15332 In-Fill Development Project
<b>CEQA Planner</b>	Kara Hawkins

## RECOMMENDATION

Staff recommends that the Planning Commission:

1. Consider the Exemption in accordance with the California Environmental Quality Act (CEQA) Guidelines Section 15332; and
2. Adopt a Resolution approving a Conditional Use Permit Amendment, subject to conditions, to amend the previously approved permit (File No. CP16-035 for a gas station) to allow the addition of an automatic car wash, the reduction in overall project square footage, and site improvements on an approximately 0.8-gross acre site; and
3. Direct Staff to file a Notice of Exemption pursuant to Section 15062 of the State CEQA Guidelines.



**PROPERTY INFORMATION**

<b>Location</b>	3702 South Bascom Avenue (southeast corner of South Bascom Avenue and Woodard Road)
<b>Assessor Parcel No.</b>	421-01-104
<b>General Plan</b>	Neighborhood/ Community Commercial
<b>Growth Area</b>	n/a
<b>Zoning</b>	CN Commercial Neighborhood
<b>Historic Resource</b>	n/a
<b>Annexation Date</b>	03-27-1957 (Parker No_2-A)
<b>Council District</b>	9
<b>Acreage</b>	0.8 acre
<b>Proposed Density</b>	n/a

**PROJECT SETTING AND BACKGROUND***Location*

As shown on the vicinity map (Exhibit A), the project site is located on the southeast corner of the intersection of South Bascom Avenue and Woodard Road. The project site has a CN Commercial Neighborhood Zoning District and a NCC Neighborhood/ Community Commercial General Plan Land Use/Transportation Diagram designation. Four driveways currently serve the corner lot, two on South Bascom Avenue and two on Woodard Road. There is an existing gas station on the project site with eight fueling positions and a fueling canopy fronting South Bascom Avenue. The existing service station is located behind and east of the fuel canopy. The project site has a 25-foot private ingress/egress access easement located at the eastern edge and to the rear of the site extending from the driveway on Woodard Road to the adjacent commercial properties south of the project site.

*Surrounding Area*

The project site is bounded by multi-family residential properties to the north across Woodard Road, a liquor store and strip mall to the south, multi-family residential properties to the east, and commercial office to the west across South Bascom Avenue. Properties located to the west of the site are located within the boundaries of the City of Campbell. Farnham Elementary School is located northeast of the site across Woodard Road. The project is located approximately 200 feet from the front edge of the Elementary School property.

**SURROUNDING USES**

	<b>General Plan</b>	<b>Zoning District</b>	<b>Existing Use</b>
<b>North</b>	Mixed Use Neighborhood	R-M(PD) Planned Development	Multi-Family Residential
<b>South</b>	Mixed Use Neighborhood	CP Commercial Pedestrian	Commercial Retail
<b>East</b>	Residential Neighborhood	R-M Multi-family Residence	Multi-family Residential
<b>West</b>	City of Campbell, n/a	City of Campbell, n/a	Commercial Office

### *Background*

On July 18, 2016, a Conditional Use Permit application (File No. CP160-035) was filed with the City to permit the construction of a new 5,744-square foot convenience store and fully automated car wash with early morning use opening at 5:00 a.m., a temporary use trailer, and exceedance of the Zoning Ordinance noise performance standards by two decibels on the existing gas station site. The existing fuel pumps on-site would remain in the same location.

On August 9, 2017, the Planning Commission considered and approved the requested project. However, the project's approval was appealed to the City Council. The appeal raised concerns regarding public safety, hours of operation, traffic, proximity to residences, odor, dust, exhaust fumes, noise, impacts to the nearby elementary school, issues with the driveway closure on Woodard Road, crime, police and fire access, and construction impacts. The administrative hearing on the appeal was considered and deferred by the City Council on October 24, 2017, November 28, 2017, December 12, 2017, and December 19, 2017. The Council hearings were deferred to provide the applicant time to have a consultant conduct an updated noise study and traffic assessment of the immediate area to address concerns raised in the public hearing.

On January 23, 2018, the City Council took action on the appeal of the Conditional Use Permit. The City Council denied the permit appeal and approved a modified Conditional Use Permit with site design requirements which excluded the car wash. In their decision, the City Council identified significant concerns with the noise impacts of the originally proposed car wash on the surrounding uses of the site. The City Council found the noise generated by the originally proposed car wash was inconsistent with the General Plan and Zoning Code noise requirements and determined the car wash was located within twenty-five feet of the current residential uses which would create a negative impact to the surrounding uses. The City Council site design requirements included:

- Removal of the carwash and relocation of parking spaces, trash enclosure, electrical room, and transformer to the rear of the convenience store. A six-foot landscape bed will be located along the rear wall of the convenience store and office building including plantings of Fern Podocarpus and appropriate ground cover landscaping.
- A 7-foot high masonry wall shall be installed along the east property boundary between the project site and adjacent residential properties. The wall shall be reduced to 3 feet in height of the first 6 feet as measured from Woodard Drive property line.
- Maintain the existing 6-foot tall concrete masonry unit (CMU) wall located between the adjacent commercial property and the subject site on the plan set.
- Additional landscape planters shall be added along the masonry wall at east property boundary. Planters shall be 1 foot by 3 feet in size and spaced at 10-foot intervals.
- The landscape planters adjacent to South Bascom Avenue and Woodard Road shall include two crape myrtle trees in addition to street trees provided by the project.
- Stone veneer applied to the base of the buildings and entries shall be designed to include a finished band to facilitate a transition

Council approved the gas station and convenience store hours of operation from 5:00 a.m. to 12:00 a.m., daily.

### *Project*

On December 11, 2018, Tony Andary, representing the applicant Andarys Enterprise Inc., submitted an application for a Conditional Use Permit Amendment to amend Conditional Use Permit File No. CP16-035.

The subject project would amend the previous approval and allow a fully automated car wash in conjunction with the gas station on-site and site improvements.

The originally approved project, CP16-035, approved a 5,744 square foot, two story, convenience store and office building. The new building would be 5,227 square feet including 3,617 square feet of convenience store and office space and the construction of a 1,610 square foot automated car wash. The car wash hours of operation would be 8:30 A.M. to 9:00 P.M, daily. Twenty-one parking spaces would be provided onsite, and none of the vehicles spaces would encroach into the site's ingress/egress easement.

The car wash would be located behind and connected to the convenience store and office building. Vehicles would enter the car wash tunnel along the south side of the property and would exit along the north site of the property. Interior directional signage and a curved wall extending from the car wash tunnel exit would direct exiting car wash users to utilize the South Bascom Avenue driveway to exit the site rather than the Woodard Road driveway. Stacked stone veneer, windows, green roof and parapet accents, steel canopies, and sand-color stucco are used to articulate the building's exterior. The car wash includes a masonry 33-foot-long, curved wall which would extend from the car wash exit on the north site of the property and curve exiting vehicles toward South Bascom Avenue. The masonry wall would be 16 feet in height, and its design would be integrated into the design of the overall new building. The car wash entrance would also include a 12-foot-high masonry wall extending approximately 11 feet to the south of the entrance. The 16-foot-high and 12-foot-high walls extending from the car wash tunnel would help reduce noise generated by the car wash use and would also eliminate a direct line of site from the adjacent multi-family residences.

In addition, the existing wooden fence along the eastern property line would be replaced with a seven-foot-high masonry wall (for visibility the wall would be limited to three feet in height for the first six feet as measured from Woodard Drive along the property line). The concrete (CMU) wall along the southern property line would remain. The rear of the new building which faces multi-family residences to the east would be located approximately 44 feet from the property line. The rear of the building (eastern façade) would include decorative steel canopies and would be landscaped.

## ANALYSIS

The proposed Conditional Use Permit, is analyzed with respect to conformance with:

1. Envision San José 2040 General Plan
2. City Council Policies
3. Municipal Code
4. Design Guidelines
5. California Environmental Quality Act (CEQA)

### [Envision San José 2040 General Plan Conformance](#)

#### *Land Use Designation*

As shown in the attached General Plan Map (Exhibit B), the project site has an Envision San José 2040 General Plan designation of Neighborhood/Community Commercial. This designation supports a broad range of commercial activity, including commercial uses that serve the communities in the neighboring area. The Neighborhood/Community Commercial uses typically have a strong connection to and provide services and amenities for the nearby community and should be designed to promote that connection.

*Analysis: The project is consistent with the NCC Land Use Designation in that the gas station, car wash, and convenience store are commercial uses that provide services to the neighborhood. Furthermore, the gas*

station has served this neighborhood since 1963 and would be expanded to include enhanced services including a car wash for customers, thereby allowing a trip to the site to complete multiple tasks including fueling, a car wash, and purchasing items at the convenience store.

Furthermore, the project's consistency with the following General Plan Major Strategies, Policies, and Goals are analyzed below.

#### *General Plan Strategies, Goals, and Policies*

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

*Analysis: Approval of the Conditional Use Permit Amendment would allow further intensification of the existing commercial use on the project site. The existing gas station fuel pumps and the new convenience store and car wash would serve the residences, businesses, and visitors in the surrounding neighborhood and consolidate services and amenities in one location. Redevelopment of the site would enhance the economic vitality of the business.*

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

*Analysis: The existing service station is surrounded by a mix of commercial, office, and residential uses. The expansion and revitalization of the gas station site to include a fully-automated car wash would allow one-stop shopping and reduce vehicle miles traveled. The site will continue provide retail products at a corner site in a neighborhood with both pedestrian and vehicular traffic. Additionally, the project will include site improvements including the removal of one Woodard Road driveway, addition of three extra street-side protective bollards surrounding the propane, and landscaping trees. These upgrades will enhance the pedestrian and vehicle safety of the site and enhance the visual character of the site which will promote the existing and new commercial uses.*

*As discussed in the Zoning Conformance section below, the site would provide adequate off-street vehicular and bicycle parking, sufficient site lighting and landscaping, and provide convenient retail products such as pre-packaged food items, fresh produce, self-service beverages, dairy products, and accessories, at a prominent corner site in a neighborhood that has continuous vehicle traffic due to the surrounding commercial shopping center and gas service use. The project includes painted pedestrian walkways to connect the retail building to the public sidewalk for adequate pedestrian access, safety, and circulation.*

The project conforms to the following noise-related General Plan policies:

3. Environmental Considerations Policy 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.
4. Environmental Considerations Policy 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:
  - a. Cause the DNL at noise sensitive receptors to increase by five dBA DNL or more where the noise levels would remain "Normally Acceptable"; or
  - b. 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.

5. 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: Analysis: According to the Environmental Noise and Vibration Assessment for the Bascom Andoil Car Wash Project prepared by Dudek (February 2020), the new car wash would be the primary noise-generating activities on the site. Noise sources associated with the operation of the project would include people accessing the site and the operations of the automated car wash. Vacuum equipment would not be provided for this project. The car wash would use a MacNeil Tech 21 Dryer system configured as a stationary, stand-alone drying system with four (4) 15 horse-power blowers. The dryer system would be located approximately 10 feet inside of the northern end of the car wash tunnel, near the exit. The Noise Assessment found that with the project's layout including the 16-foot-high and 12-foot-high walls, noise levels generated from the car wash would range from approximately 47 to 48 dBA DNL at the nearby property lines. Based on the site plan, car wash dryer noise levels were calculated to range from 42 to 51 dBA DNL at the nearest sensitive residential use east of the site. A Condition of Approval requires changes to the dryer system or location of the dryer system, to provide a noise study which confirms the noise generated by the new equipment does not exceed General Plan or Zoning Standards and requires further planning review. Therefore, the Project would comply with the City of San José 55 dBA noise level standard for residential uses, as outlined in General Plan Policy EC-1.3 and the San José Municipal Code.*

*Additionally, the Environmental Noise and Vibration Assessment found the project would only result in a less than 1 dB increase to the existing ambient noise. With the construction of the 7-foot-high masonry wall along the eastern property line and the additional 16-foot and 12-foot-high walls extending from the car wash's exit and entrance, the project would serve as a shield to the eastern residential properties from the noise generated along South Bascom Avenue.*

### **City Council Policy Conformance**

#### [City Council Policy 6-30: Public Outreach Policy for Pending Land Use Development Proposals](#)

Under City Council Policy 6-30, the project is a project of significant community interest. Council Policy 6-30 specifies the public outreach and communication required regarding development projects including posting a notice of development application on the project site, hosting a community meeting which is appropriately advertised to the community, and providing Public Hearing Notices to the in a timely matter to an appropriate project radius. Under City Council Policy 6-30, the project is a project of significant community interest and requires notification to property owners and tenants within 1,000 feet of the project site.

*Analysis: Following City Council Policy 6-30, the project applicant has posted on-site signs to inform the neighborhood of the project. A community meeting was held to discuss the project on June 13, 2019 at the Camden Community Center. The community meeting was coordinated with Council District 9 and the Councilmember and Council District staff attended the community meeting. Comments from the public were received during the community meeting and addressed by Staff, see public comments section below.*

*Staff contact information have also been available on the community meeting notices and project site. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.*

### City Council Policy 6-10: Criteria for the Review of Drive-Through Uses

Council Policy 6-10 was adopted by the City Council in 1990 to provide guidelines for the development of establishments with drive-through facilities to help assure compatibility with surrounding land uses and avoid potential problems associated with such operations. The policy applies specific criteria to drive-through uses to help ensure compatibility. The car wash is considered a drive-through use.

*Analysis: The project was found to substantially conform to City Council Policy 6-10, as outlined below:*

- a. Traffic: Primary ingress and egress to drive-through uses should be from at least a four-lane major street. The drive-through stacking lane shall be situated so that overflow from the stacking lane shall not spill out onto public streets. Self-Service car washes shall have a minimum of five stacking spaces, a minimum of 20 feet long.

Ingress or egress points for the drive-through uses shall not conflict with turning movements of street intersections. No drive-through use shall be approved within 300 feet of signalized intersections operating at a Level of Service (LOS) D, E, F unless the traffic analysis demonstrates to the satisfaction of the Director of Public Works that the vehicles entering and exiting will not impair the operation of the intersection. Drive-through uses at or near signalized intersections may compound existing traffic conditions and make it intolerable. In these situations, drive through uses shall be discouraged.

No pedestrians crossing of the drive-through lane shall be allowed.

*Traffic Analysis: Consistent with the Council Policy, the primary ingress and egress to the drive-through car wash would be from South Bascom Avenue, a six-lane City Connector Street. The two South Bascom Avenue driveways are limited to right-turn in and out motions to avoid conflicts with through traffic on the six-lane street created by left hand turns from the site. The existing driveway on Woodard Road, located at the northwest corner of the site, would be closed with the implementation of the project. Further, vehicles exiting the car wash tunnel will be physically oriented toward South Bascom Avenue with the curved wall and on-site directional signs directing car wash users to exit onto South Bascom Avenue rather than Woodard Road.*

*As described in the Traffic Analysis by Hexagon Transportation Consultants, dated March 17, 2020 and the Public Works traffic memo dated May 18, 2020 the project would result in a less than significant Vehicle Miles Travelled (VMT) impact because the project, which was converted to the equivalent retail square footage for VMT screening analysis, meets the City's screening criteria as a local-serving retail with less than 100,000 square feet of retail space. Furthermore, the Local Transportation Analysis in the Hexagon Traffic Analysis found that the intersection of Woodard Road and South Bascom Avenue would continue to operate acceptably at a level of service of C during AM peak hours and B during PM peak hours, consistent with the City Council Policy 6-10.*

*The project includes five stacking spaces and two overflow stacking spaces, and the site layout is designed to ensure that overflow stacking does not affect the ingress and egress of the site nor impede the traffic on the surrounding streets. Consistent with the Council Policy, the site plan provides a minimum 20 feet per stacking space and 18 feet for the two additional overflow stacking spaces, providing space for a total of seven stacked cars.*

*The project includes painted pedestrian walkways including one along from the parking at the rear of the building, guiding parkers from the rear of the building around the site's edge, to the sidewalk, and then to the convenience store to not cross the drive-through lane. Given the need for building separation from the eastern property line, existing easement conflicts, and goals to keep pedestrians from crossing the drive-through entrances and exits, the pedestrian path is not direct but would ensure pedestrian crossings of the drive-through is discouraged.*

*The updated convenience store with drive-through car wash significantly upgrades the project site by allowing improved circulation and access by vehicles and pedestrians. The project site includes painted pedestrian pathways connecting the sidewalks directly to the convenience store for ease of pedestrian accessing the site. The closure of one driveway along Woodard Road would help improve pedestrian circulation on and around the site.*

- b. Noise: Drive-through speakers shall not be audible from adjacent properties with General Plan Land Use designations, Zoning Districts, or used for residential purposes. Drive through speakers are prohibited when the drive-through lane abuts residentially used, zoned, or General Planned Property. The use of sound attenuation walls and landscaping is encouraged.

*Noise Analysis: The Council Policy 6-10 limits the use of drive-through speakers and encourages the use of sound attenuation walls and landscaping. No drive-through speakers would be used for the car wash drive-through. As noted under General Plan Conformance and Zoning Ordinance Compliance sections of this report, pursuant to the Environmental Noise and Vibration Assessment conducted by Dudek in February 2020, the car wash use would not negatively impact the surrounding neighborhood's ambient noise environment. The Environmental Noise and Vibration Assessment, concluded the effect of the Project on the existing ambient environment was calculated to result in an increase in the ambient noise environment of less than 1 dB from measured baseline no-project ambient conditions. Noise generated by the car wash noise was determined to be 7 dB or more below the baseline ambient, project-generated noise and therefore would have a negligible impact on the surrounding neighborhood and sensitive receptors.*

*Additionally, the project design incorporates landscaping and walls to buffer the use's noise from the neighboring residential and commercial properties. The Environmental Noise and Vibration Assessment noted the construction of the project would provide shielding from South Bascom Avenue traffic noise levels at the eastern residential properties.*

- c. Hours of Operation: No drive-through portion of land use shall operate after the hour of 10:00 P.M. when adjacent to residentially used, zoned, or General Planned properties.

*Hours of Operation Analysis: The drive-through car wash's hours of operations will be limited to 8:30 a.m. to 9:00 p.m., with no late night use, consistent with this policy. This limitation is included as a Condition of Approval for the project. (See Exhibit D).*

- d. Emission Control: East-west drive-through are discouraged. Auto emissions would result in "Tunneling" and would be objectionable where adjacent buildings are within thirty (30) feet of each other, or where roof/wall structures enclose a space less than thirty (30) feet. Such situations are discouraged unless air quality analyses shows that unusual pollutant concentrations will not occur. Applicants shall take steps to protect employees of the drive-through facility from emissions caused by idling cars.

Drive-through lanes shall not be located adjacent to patios and other pedestrian use areas, other than walkways. Drive-through use stacking lanes are discouraged near residential uses, existing or planned

*Emission Control Analysis: Consistent with the Policy, the drive-through stacking lane will extend south and west of the car wash tunnel, away from the adjacent residential uses. The drive-through tunnel is oriented north-south.*

*As described in the project's Categorical Exemption Memorandum (See Exhibit E), the project's construction and operation would not exceed the Bay Area Air Quality Management District's (BAAQMD) thresholds for construction or operational period emissions. In addition, the project would be consistent with the General Plan Policies MS-10.1 and MR-13.2 to conform to the BAAQMD Best Management Practices and dust control measures during all phases of construction on the project site*

to reduce fugitive emissions. To ensure conformance with these General Plan policies, the project has incorporated these Standard Permit Conditions in the project's Conditions of Approval (See Exhibit D).

- e. Urban Design: The architecture of drive-through uses shall be compatible and harmonize with the immediate neighborhood. "Corporate" building designs shall be discouraged. Drive-through lanes shall be separated from adjacent properties by landscaping, and sound attenuating uses where appropriate and necessary

Urban Design Analysis: The project will be visually attractive and compatible in terms of mass, scale, and building colors and materials with the adjacent commercial and residential development. The drive-through car wash will be located behind the convenience store and integrated into the design of the convenience store building. The rear of the car wash building, 16-foot-high exit wall, and 12-foot-high entrance wall will include canopies and climbing vines to enhance the appearance of the development. (See Exhibit F).

- f. Lighting: Lighting should be arranged and shielded from residential properties. The maximum level of illumination on residential property lines shall be 0.1 fc (Foot Candles) and 0.5 fc at other adjacent property lines.

Lighting Analysis: The new lighting fixtures are appropriately shielded to shine down per the City's Outdoor Lighting on Private Development Council Policy 4-3 and per Section 20.120.200 (Lighting) of the Zoning Ordinance. Pursuant to the City's drive-through policy, the maximum foot-candles at the residential property line for drive-through projects should not exceed 0.1 foot candle (fc). The photometric plan prepared for the project and included in the plan set (See Exhibit F) indicates that illumination levels at the north and east property lines do not exceed 0.1 fc, and the illumination level with the shared southern property line would not exceed 0.5 fc, consistent with this policy.

- g. Location: Drive-through uses shall be located 200 feet or more from the immediately adjacent residential properties. Self-service car washes which are proposed in conjunction with an existing gasoline service station may be exempted from this locational criterion provided the traffic criteria is satisfied.

Location Analysis: The Council Policy 6-10 states that drive-through uses shall be located 200 feet or more from residential uses. The car wash is located approximately 44 feet from adjacent residences to the east. Pursuant to this Council Policy, self-service car washes in conjunction with existing gasoline service stations may be exempted from location criteria, provided the traffic criteria of the policy is satisfied. As described in the Traffic Analysis by Hexagon Transportation Consultants, dated March 17, 2020 and the Public Works traffic memo dated May 18, 2020 the project would result in a less than significant Vehicle Miles Travelled (VMT) impact. The Traffic Analysis and Public Works traffic memo also found the intersection of Woodard Road and South Bascom Avenue would continue to operate acceptably at a level of service of C during AM peak hours and a level of service B during PM peak hours, consistent with the City Council Policy 6-10. Finally, the car wash is separated and shielded from the residential properties to the east by a seven-foot-high masonry wall and the 16-foot-high wall and 12-foot-high wall extending from the car wash tunnel's exit and entrance.

- h. Other Criteria: Water dripping onto the public streets at the exit of car washes shall be minimized through automatic drying systems or hand drying in connection with full-service car wash facilities or through on-site grading and drainage patterns or other design features.

Other Criteria Analysis: The MacNeil Tech 21 Dryer system will provide automatic drying for the car wash facility. Additionally, the Department of Public Works has reviewed the project's on-site grading and drainage patterns to ensure proper storm water and on-site drainage.



- i. Development Review Process: The on- and off- site circulation, traffic safety, curbside parking, number of driveways, speed bumps, and other site development factors shall be considered and evaluated through the Conditional Use Permit process on a case by case basis.
- j. Development Review Process Analysis: *The project's review included a Local Transportation Analysis prepared by Hexagon and Associates. The analysis and Public Works Traffic Memo concluded the site plan would provide adequate space for on-site maneuvering, incorporation of a Condition of Approval for a 20-foot red curb would provide sufficient sight distance for vehicles using the southern –most driveway on South Bascom Avenue, and the overall network of sidewalks and crosswalks in the area provides good connectivity.*

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

### Zoning Ordinance Conformance

The project is located in the CN Commercial Neighborhood Zoning District, see attached Zoning District Map (Exhibit C). Due to concurrent review procedures, multiple permits may be heard together using the procedure for the higher-level permit, provided separate findings would be required for each permits and approval. For this project, the permits include: a Conditional Use Permit Amendment for the car wash use and a Site Development Permit Amendment for construction of the new building.

#### Use

This Zoning District permits requires the approval of a Conditional Use Permit for drive-through uses in conjunction with any other use pursuant to San José Municipal Code Table 20-90 of [Section 20.40.100](#).

#### Height and Setbacks

Pursuant to Section 20.4.200 of the San José Municipal Code, development in the CN Commercial Neighborhood Zoning District is subject to the following development standards:

Commercial Neighborhood (CN) Development Standards		
Setbacks	Required	Minimum Project Setbacks
Front	10 feet	15.5 feet to existing fuel pump, 69 feet, 2 inches to new building
Side, corner	12.5 feet	28 feet to new trash enclosure
Side Interior	None	31 feet 2 inches to new trash enclosure
Rear	None	44 feet
Maximum Height	50 feet	28 feet 6 inches

As shown in the table above, the project is consistent with the development standards for the CN Commercial Neighborhood Zoning District. The project complies with the setback requirements and does not exceed the maximum height limitation.

### *Parking*

Required vehicle parking is established in [Section 20.90.060](#) and Table 20-190 of the San José Municipal Code, as described in the table below.

<b>Parking Requirements</b>			
<b>Use</b>	<b>Ratio</b>	<b>Required</b>	<b>Total</b>
Gas station	1 per employee, plus 1 per air and water pump service area, plus 1 space for information stop	1.5 employees= 1.5 space Air/water service = 1 space Information Stop= 1 space	3.5 spaces
Retail	1 per 200 square feet of floor area	2,155 net square feet (2,535 gross square feet x 0.85) of retail space	10.77 spaces
Office	1 per 250 square feet of floor area	920 net square feet (1,082 gross square feet x 0.85) of office space	3.67 spaces
<b>Subtotal</b>			<b>20.94</b>
<b>Total Required (Rounded Up)</b>			<b>21 spaces</b>

The project will have one full-time employee and one part-time employee. As shown in the Parking Requirements table above, the project requires vehicle parking for the gas station, convenience store (retail), and office uses on-site requiring a total of 21 parking spaces. The project provides a total of 21 parking spaces for the gas station, convenience store (retail), and office uses on-site, including 8 spaces at the existing pump islands, to meet parking requirements. Required bicycle parking is one space per 10 full-time employees for the gas station and one space per 3,000 square feet of floor area, equaling two spaces total. The project includes two bicycle parking spaces.

Therefore, the project is in conformance with the development standards and parking sections of the Zoning Ordinance, in that the project exceeds the required vehicle and bike parking spaces and meets the required motorcycle parking spaces.

### *Noise Requirement under Zoning Code*

San José Municipal Code Table 20-105 and [Section 20.40.600](#) establish the maximum noise level in the decibels at the property line. Pursuant to the table, the noise generated by the project should not exceed 60 decibels along the southern commercial, property line and should not exceed 60 decibels along the southern, commercial property line nor exceed 55 decibels along the eastern, residential property line. The project design includes implementation of noise attenuation features including the 7-foot-high masonry wall along the eastern property line, and the 16-foot-high and 12-foot-high walls that extending from the new building near the car wash exit and entrance.

As described in the General Plan Conformance Section above, automated car wash equipment and facilities have several potential noise generating sources associated with their general operation; including pumps, compressors, high-pressure applicators and spray nozzles, scrubbers, and dryers. The car wash mechanical equipment (pumps, compressors, etc.) can generate a substantial amount of noise; however, the majority of the mechanical equipment is proposed to be fully enclosed within a mechanical equipment room, inside the car wash tunnel. According to the Environmental Noise and Vibration Assessment by Dudek, (see Exhibit E), the maximum property line noise levels generated by the car wash would be 58.4 decibels along the southern, commercial property line and 53.7 decibels along the eastern residential property line. Thus, the project would comply with the City's Municipal Code noise requirements.

### *Commercial Design Guidelines*

The City's Commercial Design Guidelines establish design objectives for service stations related to site organization and building design. Per the Commercial Design Guidelines, all structures on the site including kiosks, car wash building, gas pump columns, etc. should be architecturally consistent with the main structure. Furthermore, buildings should be compatible with the character of the existing neighborhood, by complimenting the building forms, architectural styles, and landscape patterns of neighboring development. The structures to the north and west of the subject site are two-story multifamily residential. Consistent with the Guidelines, the architecture of the gas station reflects these surrounding uses through compatible massing and building height, and a pitched roof form. The proposed architecture and materials are of high quality and will complement the overall aesthetics of the neighborhood using a similar roof form, stucco, canopies, and stone veneer. The fueling canopy and canopy signage was replaced under a separate permit (File No. AD16-398 and File No. AD16-900) prior to submittal of the original Conditional Use Permit and the architecture of this Conditional Use Permit Amendment reflects the design approved in the original Conditional Use Permit (CP16-035). The architecture of the convenience store, car wash, and trash enclosure build upon the materials and colors of the green canopy. The drive-through car wash is designed such that the vehicles entering and exiting the car wash tunnel will have the minimum five car stacking spaces and will not obstruct on-site circulation. In addition to serving as noise mitigation measures for the residential properties that directly abut the property to the east, a sound barrier and CMU trash enclosure at the car wash entrance and a curve sound barrier at the car wash exit will block the line of sight of the car wash from these residences.

### **Conditional Use Permit Amendment Findings**

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

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

*Analysis: As described in detail above, the project is consistent with the General Plan land designation and policies in that it supports a neighborhood serving use that creates a more complete neighborhood and establishes noise requirements for new developments. The car wash is a neighborhood amenity that provides a service to the local community and visitors to the area. The enhanced retail services provide a one-stop shopping which would minimize vehicle trips. The use of the 7-foot-high masonry wall along the eastern property line and 16-foot-high and 12-foot-high masonry walls which extend from the new building ensure any noise generated from the car wash equipment would be limited. The Environmental Noise and Vibration Assessment conducted by Dudek in February 2020 (see Exhibit E) confirm the noise generated by the project would be under one decibel and the new site design features could help reduce the impact of existing South Bascom Avenue traffic noise experienced by the eastern residential properties.*

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 described above, the project is consistent with the provisions of the Zoning Ordinance in that the development is consistent with required setbacks, maximum allowed height, and vehicular and bicycle parking requirements, as discussed above. The project meets the required noise standards pursuant to Section 20.40.600 of the Zoning Ordinance, as specified in the environmental analysis and detailed.*

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

*Analysis: The project meets the requirements of the San José Commercial Design Guidelines. The project also conforms to City Council Policy 6-10: Criteria for the Review of Drive-Through Uses in regards to traffic, noise, hours of operation, design, and lighting. While the car wash is located within 200 feet of residentially used, zoned, or General Planned properties, self-service car washes which are in conjunction with existing gasoline service stations may be exempted from location criteria, provided the traffic criteria of the policy is satisfied. As described above, the Public Works Department concluded that the project is in conformance with the City's Transportation Policy (Council Policy 5-1) and the local transportation analysis determined the project will not reduce the level of service for the existing South Bascom Avenue and Woodard Avenue intersection. Finally, all lighting fixtures are appropriately shielded pursuant to City Council Policy 4-3: Outdoor Lighting on Private Developments, and will not have adverse effect on adjacent residential properties.*

4. The proposed use at the location requested 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 site; or
- c. Be detrimental to public health, safety or general welfare; and

*Analysis: The project site is located in an area with a mix of commercial and residential uses. Due to the variety of current uses in the area, the addition of the car wash to the gas station would enhance the range of commercial uses in the neighborhood vicinity and provide an additional commercial option for visitors to the site. The project includes site improvements such as new landscaping and trees which would beautify the corner property and enhance the surrounding neighborhood aesthetic. The noise analysis conducted for the project (Dudek, February 2020) determined that the operation of the project would not result in a detrimental increase in noise. Therefore, the project will not adversely impact the surrounding residential neighborhood.*

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 project site is 0.8 gross acre and has been used as a gas station since 1963. The project will result in the replacement of the existing gas station minimart and incidental repair services with a modern and more easily accessible facility. Furthermore, the automated car wash provides space for five car vehicle stacking, as required per the City Council Policy 6-10, Criteria for the Review of Drive-Through Uses. The site plan includes the elimination of an existing driveway on Woodard Road closest to South Bascom Avenue which will increase vehicle and pedestrian safety at this intersection and provide for better traffic circulation on the site. Additionally, on-site traffic signs will direct car wash users to utilize the South Bascom Avenue driveways for exiting to reduce traffic onto the smaller intersecting street. The project site is of adequate size and shape to meet the parking requirements of Title 20 and provide significant landscaping upgrades to the site, including fully landscaped setback areas. The site can also accommodate the installation of a 7-foot-high masonry wall along the eastern property boundary between the project site and the adjacent multi-family residential properties. Additionally, the 6-foot-high existing CMU wall along portions of the southern property line will be remain.*

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

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 project is exempt from environmental review under CEQA exemption Section 15332 for In-fill Development Projects, as evaluated in this report. There are no other unacceptable negative effects on adjacent parcels outside of those items identified for the exemption. The project will be subject to standard construction conditions of approval to ensure dust, erosion and storm water runoff will not negatively impact the adjacent properties. Operational odors associated with the new car wash would be contained within the car wash tunnel.*

### 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 and City Council 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: As discussed above, the project is consistent with the General Plan Land Use/Transportation Diagram and General Plan policies.*

2. 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 detail above, the project is consistent with the CN Commercial Neighborhood Zoning District development standards.*

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

*Analysis: As discussed above, the project is consistent with applicable City Council Policies including Policy 6-10 for Drive-Through uses.*

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, car wash, and fuel island canopy appropriately relate to each other. The convenience store is oriented towards South Bascom Avenue, facing the fuel pumps to facilitate efficient customer access. The convenience store, fuel canopy car wash and trash enclosure structures are aesthetically harmonious in that they utilize similar colors and materials. The 16-foot and 12-foot-high masonry walls which extend along the entrance and exit of the car wash, are integrated into the design of the overall new building and incorporate landscaping and canopies to break up wall.*

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

*Analysis: The building and site are oriented toward South Bascom Avenue, minimizing its commercial presence toward the multi-family residences across Woodard Avenue and directly abutting the site to the east. The maximum height of the two-story building is 28.5 feet, which is taller than the surrounding two-story multi-family residences; however, the two-story portion of the convenience store is located away from the residential properties, thus reducing the perceived height and massing. The painted stucco, metal, and stone veneer exterior of the building and canopy are compatible with the surrounding neighborhood aesthetic. Furthermore, the roof form is consistent with adjacent residential styles in addition to an existing two-story office building located at 3880 South Bascom Avenue.*

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: As discussed above, the project would not result in significant environmental impacts including noise, vibration, dust, drainage, erosion, etc.*

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 along South Bascom Avenue and Woodard Road, which will significantly upgrade the appearance of the existing site. Landscaping will be located at the entrance and exits of the car wash and ivy will be planted along the walls and rear of the building. Building mechanical systems and refuse containers will be stored within an enclosure to conceal the activities.*

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

*Analysis: As discussed above, the project would have pedestrian and bicycle access from the sidewalk to the convenience store. The project would provide adequate parking and traffic access would be primarily directed through the South Bascom Avenue driveways.*

#### **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Under the provisions of Section 15532 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), the Director of Planning found this project to be exempt from environmental review requirements of CEQA and Title 21 of the San José Municipal Code, as amended. CEQA Guidelines Section 15332 (Class 32) – In-Fill Development Projects sets forth criteria for projects characterized as in-fill development that may be found categorically exempt.

The environmental analysis determined that: a) none of the exemption exceptions contained in Section 15300.2 (including Location, Cumulative Impact, Significant Effect, Scenic Highways, Hazardous Waste Sites, or Historical Resources) apply to the project, and, b) the project is consistent with the in-fill criteria in Section 15332. The project site is an urban site under five acres in size. The project is consistent with the General Plan land use designation and Zoning requirements, as described above. The urban site is classified as urban-suburban land cover within the Santa Clara Valley Habitat Conservation Plan area, and does not identify habitat for endangered, rare, or threatened species. Finally, approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality as supported by a traffic study, air analysis, and Greenhouse Gas analysis.

## **PUBLIC OUTREACH**

Staff followed Council Policy 6-30: Public Outreach Policy in order to inform the public of the proposed project. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Below is a general summary of the comments by members of public. Exhibit G attached to the staff report, contains written comments and concerns received regarding the project.

One community/scoping meetings was held to introduce the project to the community on June 13, 2019.

<b>Community Meeting</b>
Number of Attendees: 25
<b>Comments and Concerns During the Community/Scoping Meeting</b>
Opposition to the project. The car wash will run 12.5 hours every day and will affect the school and residences nearby. Could impact ability to sleep.
Wet wheels are dangerous, especially during morning rush hour
The project would result in blocked driveways.
Narrowing South Bascom Avenue for proposed bicycle lanes has increased traffic on Woodard Road. Morning traffic is terrible.
Existing cars using Woodard Road is already negative, the project will make it worse.
Gentrification combined with noise and smell of car wash will have a negative impact on the neighborhood.
Safety is a concern of residents.
Air quality, dust, traffic, and noise concerns during construction of the project.
Accidents near the existing propane tank are concerning
Too many car washes are already in the area.
More traffic on South Bascom Avenue is bad, road speeds are also increasing which is bad.
With more clean air vehicle cars on the market, this is the wrong business.
The car wash next to the school is a problem, even if most of the traffic issues come from the parents.

Staff received several comment letters from individuals including submittal of the entire CP16-035 project record, a hair dryer test video to show the noise level, and site analysis reviews by an engineering firm of the project (see Attachment G). The comments included the following concerns:

<b>Public Correspondence Summary of Comments and Concerns (Attachment G)</b>
Opposition to the car wash. Modernization of the old gas station would be fine but the new use is a concern especially given traffic in the area.
Sound walls don't really block the noise. The lack of parking would negatively impact the existing businesses.

A car wash is not a safe use near a school which generates a lot of pedestrian traffic.
The car wash would cause pedestrian vehicle conflicts for the school pedestrians and people who visit the nearby commercial uses such as the liquor shop.
A fundamental reason for the prior denial is that the City policy requires that primary ingress and egress to the drive-through uses be to and from a street or streets of at least four lanes. The original orientation on the site directed traffic toward Woodard Road driveway, the closest driveway to the car wash exit. The curve concrete wall will encourage traffic towards South Bascom Avenue however existing vehicles can still maneuver to the Woodard driveway that remains the closest.
Concerns with the parking and counting fuel positions as parking spaces.
No effective strategy has been defined responding to the special needs associated with severe surges in traffic, parking, and pedestrian activity on Woodard Road associated with the assemble and dismissal periods at the Farnham Elementary school which added to the carwash and convenience store would compound.
Concerns with the dangers of the existing intersection and request Staff review traffic accident data.
Noise concerns for the business tenants south of the project.
Concerns regarding an existing drainage issue on-site impacting the wooden fence along the eastern property line.
How will emergency vehicles enter and exit the site?
Concerns regarding the stacking spaces for car wash vehicles are not appropriately sized and might be double counted.
Concerns with internal circulation vehicle conflicts and conflicts with landscaping.
Issues regarding the safety of the existing propane tank on-site.
Concerns the addition of bicycle lanes on South Bascom Avenue would further impact traffic when added to the traffic generated by the project.
Concerns that car washes will come with extra services like hand drying, polishing, detailing, and vacuuming which will further clutter the site.
Issues regarding the need to utilize the easement to enable construction of the 7-foot height concrete fence.

### Car Wash Use and Location

*As stated in the Council Policy 6-10 review, car wash drive-through uses in conjunction with existing gas stations are eligible to be located within 200 feet of residential uses provided the traffic criteria of the Council Policy is satisfied. The project would conform to the traffic criteria of the Council Policy. Five, 20-foot-long, stacking spaces are provided on-site to accommodate the drive-through users. The project's primary entrance and exit would be from South Bascom Avenue. While the project does have an ingress/egress driveway along the two-lane Woodard Road, the site design would orient drive-through users toward South Bascom Avenue. Additionally, the Woodard Road driveway cannot be removed as it serves as the ingress/egress driveway for the commercial property to the south of the site through an easement.*

*The car wash hours would be consistent with the hours of operation permitted for drive-through uses and as described in the Noise and Vibration Assessment by Dudek, the project would not increase the ambient noise level by more than 1dB. Furthermore, the sound attenuation walls which are part of the project's design would likely shield the eastern residential properties from noise along South Bascom Avenue.*



*The project site is within 200 feet of an elementary school. While there is a school nearby, the drive-through car wash would not necessarily be inconsistent with the use. The site layout and building design with a curved exit wall would encourage car wash users to exit onto South Bascom Avenue, further from the school and potential school pedestrians. Given the distance, noise attenuating features, and pedestrian circulation enhancements to the site including the removal of one driveway along Woodard Road and the addition of more bollards surrounding the propane tank, the project should result in an overall safety improvement to the area.*

*The automatic car wash does not include extra services such as hand drying, polishing, detailing, or vacuuming equipment. The car wash service is intended as a quick cleaning service for vehicles. Should any additional site modifications be proposed in the future to include additional services, the modifications would require City review.*

#### Construction Impact Concerns

*The project would be subject to the City's Standard Environmental Permit Conditions. (See Exhibit D, conditions 30). These conditions include measures to control dust and exhaust at the project site during all phases of construction, measures to protect water quality and ensure appropriate site drainage during construction, and measures to minimize noise produced during construction activities including limited hours of construction.*

#### Traffic Concerns

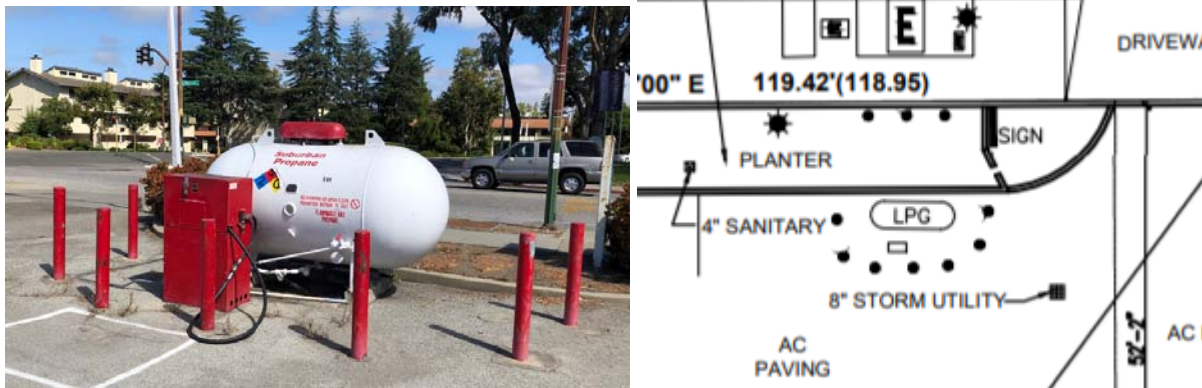
*As described in the Traffic Analysis by Hexagon Transportation Consultants, dated March 17, 2020, and the Public Works Traffic Memo dated May 18, 2020, the project would result in a less than significant Vehicle Miles Travelled (VMT) impact. Furthermore, in accordance with City Council Policy 6-10 for Drive-Through uses, the intersection of Woodard Road and South Bascom Avenue would continue to operate acceptably at a level of service of C during AM peak hours and B during PM peak hours. Gas stations and drive-through car washes are considered pass-by trips. Pass-by trips are intermediate stops on the way from an origin to a destination without diverting to another roadway and are an immediate stop along the primary destination, therefore the project is not anticipated to significantly impact roadway congestion in the area. The Traffic Analysis considered the addition of bicycle lanes on South Bascom Avenue and did not find that the change in roadway would result in any further impacts with the implementation of this project.*

#### Safety Concerns

*The project applicant shall comply with the approved Mitigation Management Plan/Operations Plan from File No. CP16-035 (Exhibit H) which includes trash and graffiti removal, site security and safety measures, loitering and panhandling restrictions, and mandatory employee training, all which combat blight.*

*In consideration of the project, Staff reviewed the past accident data for the Woodard Road and South Bascom Avenue. intersection. In the last five years, collision data has shown there have been six collisions related to speeding and red light violations within the intersection limits. Per Department of Transportation (DOT) best practice methods, three or more collisions per year warrant DOT to analyze improvements to a signalized intersection for short term and long term safety. Short term and long term improvements at this intersection have been included as part of the VTA Bascom Complete Streets Corridor planline, but there is currently no budget identified for its implementation. Further, development projects are not penalized for the surrounding safety of the roadways. Rather, the project is analyzed to confirm the project improvements will not result in a detriment to the public right of way, circulation, or surrounding neighborhood. The closure of one driveway along Woodard Road would enhance the pedestrian safety along the property's frontage for pedestrians passing by or to the site.*

Finally, the project plans include the addition of more bollards around the propane tank on-site. The image below depicts the existing condition of the propane tank. The project plans will add three bollards along the street side of the propane tank to enhance safety of the site.



### Site Design Concerns

The on-site circulation was reviewed by Staff and in the Local Traffic Analysis prepared by Hexagon and Consultants (See Exhibit E). The project was found in conformance with generally accepted traffic engineering standards. The project was also found in conformance with San José Fire Department emergency vehicle access requirements.

Comments provided on the project plan sets by the Smith Engineering comment letters were made during earlier versions of the project plan sets. During the project's review, the parking on-site was revised to ensure on-site circulation would function appropriately. This included the removal of one parking space along the north of the new building which was found to conflict with the car wash exit. One parking space remains but is appropriately separated by over 10 feet from the exiting car wash vehicles. The parking spaces would conform to the standard parking dimensions of 9 feet by 18 feet. Five stacking stalls would be 10 feet by 20 feet and the additional two overflow stacking stalls, in excess of the five required stalls, would be 9 feet by 19 feet.

Direct access from the South Bascom Avenue and Woodard Road sidewalk is provided to the new building on-site. Additionally, parking along the rear of the building has a painted pedestrian walkway guiding parkers at the rear of the building around the site's edge, to the sidewalk, and then to the convenience store. Given the need for building separation from the eastern property line, existing easement conflicts, and goals to keep pedestrians from crossing the drive-through entrances and exits, the pedestrian path is not direct. The applicant has indicated these spaces will likely be used by employees and any customers interested in utilizing the three charging stations.

## Noise Concerns

*As described above, the project meets the General Plan and Zoning Ordinance noise standards. The project's noise would not adversely impact the surrounding residential neighborhood, nor be a nuisance to the community as it would meet the General Plan and Zoning standards and not increase more than 1 dB. The project includes a 7-foot-high masonry block wall along the eastern property line. The block wall will not have a landscaping strip along the wall as the ingress/egress easement does not allow the reduction of the access way. Any encroachment into the easement during construction would require concurrence from the related party(s) during the building permit process. The project also includes a curve 16-foot-high masonry wall extending from the car wash tunnel's exit and a 12-foot-high, straight masonry wall extending from the car wash tunnel's entrance. These additional walls would ensure sound emitted by the car wash equipment would not impact surrounding properties. A curved wall along the entrance is not necessary as the louder car wash equipment, such as the dryer, is located at the car wash exit. The noise analysis confirmed the noise along the southern, commercial property line would not exceed 60 dB in conformance with the Zoning Ordinance noise standards.*

**Project Manager:** Cassandra van der Zweep

**Approved by:** /s/ Director for Rosalynn Hughey, Planning Director

ATTACHMENTS:
Exhibit A: Vicinity Map
Exhibit B: General Plan Map
Exhibit C: Zoning Map
Exhibit D: Conditional Use Permit Amendment Resolution
Exhibit E: Categorical Exemption and appendices
Exhibit F: Conditional Use Permit Amendment Plan Set
Exhibit G: Public Correspondence
Exhibit H: Operations Plan

Owner:	Applicant:
Andarys Enterprise Inc. 3702 South Bascom Avenue San José, CA 95124	Andarys Enterprise Inc. 3702 South Bascom Avenue San José, CA 95124

## List of Attachments

[Exhibit A: Vicinity Map](#)

[Exhibit B: General Plan Map](#)

[Exhibit C: Zoning Map](#)

[Exhibit D: Conditional Use Permit Amendment Resolution](#)

[Exhibit E: Categorical Exemption and Appendices](#)

[Exhibit F: Conditional Use Permit Amendment Plan Set](#)

[Exhibit G: Public Correspondence](#)

[Exhibit H: Operations Plan](#)

[Correspondence Received After 06/17/20](#)

Report 39 - Crash Details by Intersection

Crash Date Range

2010 - 2019

YEARS

2000

2001

2002

2003

2004

2005

2006

2007

2008

2009

2010

2011

2012

2013

2014

2015

2016

2017

2018

2019

2020

As of: 6/2/20 2:27 PM

Int #	Intersection Name	TCR No.	Crash Date/Time	Direction From Intersection	Distance	Proximity to Intersection	Weather	Lighting	Roadway Surface	Vehicle Involved With	Collision Type	Fatal	Severe	Moderate	Minor	At Fault	Sex	Age	Party Type	Movement Preceding Collision	Vehicle Direction	Violation	Sum of Vehicle Count
14200	BASCOM AV & WOODARD RD	10-051-9709	2/19/2010 13:00	South Of		0 Non-Related	Clear	Daylight	Dry	Parked Vehicle	Other		0	0	0	0 Unknown	(blank)	0	Car	Parked	North	Unknown	1
		10-091-9712	3/31/2010 11:50	North Of		0 Related	Cloudy	Daylight	Dry	Other Vehicle	Rear End		0	0	0	0 Unknown	F	0	Unknown	Unknown	North	Unknown	1
		10-104-0786	4/14/2010 17:47	North Of		300 Non-Related	Clear	Daylight	Dry	Other Vehicle	Sideswipe		0	0	0	0 Unknown	F	23	Car	Changing Lanes	South	Unsafe Turn Movement	1
		10-178-0828	6/27/2010 18:25	East Of		90 Non-Related	Clear	Daylight	Dry	Parked Vehicle	Other		0	0	0	0 Unknown	M (blank)	28	Car	Proceeding Straight	South	Unknown	1
		10-201-0429	7/20/2010 12:05	South Of		135 Driveway	Clear	Daylight	Dry	Other Vehicle	Broadside		0	0	1	0 Unknown	M	0	Car	Parked	West	Unknown	1
		10-324-0078	11/20/2010 1:37	North Of		0 Related	Rain	Dark - Street Light	Wet	Fixed Object	Other		0	0	0	0 Unknown	M	27	Panel Truck	Proceeding Straight	West	Driving Drunk	1
		11-028-0623	1/28/2011 16:21	South Of		200 Non-Related	Cloudy	Daylight	Dry	Other Vehicle	Sideswipe		0	0	0	0 Unknown	F	71	Car	Entering Traffic	North	Unknown	1
		11-267-9722	9/14/2011 20:00	South Of		0 Non-Related	Clear	Dusk - Dawn	Dry	Parked Vehicle	Other		0	0	0	0 Unknown	M	20	Panel Truck	Ran Off Road	West	Yield From Driveway/Curb	1
		11-288-0117	10/15/2011 1:52	South Of		100 Non-Related	Clear	Dark - Street Light	Dry	Parked Vehicle	Other		0	0	0	0 Unknown	F (blank)	72	Car	Changing Lanes	North	Unsafe Turn Movement	1
		12-062-0497	3/2/2012 14:00	North Of		490 Non-Related	Clear	Daylight	Dry	Parked Vehicle	Other		0	0	1	0 Violation Driver 1	M	82	Car	Proceeding Straight	North	Unsafe Lane Change	1
		12-108-0569	4/17/2012 15:33	North Of		388 Non-Related	Clear	Daylight	Dry	Other Vehicle	Other		0	0	0	0 Violation Driver 1	(blank)	0	Car	Parked	North	Unknown	1
		12-132-0135	5/11/2012 5:14	North Of		200 Non-Related	Clear	Dark - Street Light	Dry	Parked Vehicle	Other		0	0	0	0 Violation Driver 1	(blank)	0	Unknown	Other Unsafe Turning	Unknown	Unknown	1
		14-305-0172	11/1/2014 3:16	North Of		65 Non-Related	Rain	Dark - Street Light	Wet	Fixed Object	Other		0	0	0	0 Violation Driver 1	M	0	Panel Truck	Parked	North	Leave Accident Scene	1
		15-040-0384	2/9/2015 11:33	At		0 Intersection	Cloudy	Daylight	Dry	Other Vehicle	Sideswipe		0	0	0	1 Violation Driver 1	F	45	Car	Ran Off Road	North	Improper Turn	1
		15-296-0585	10/23/2015 15:46	At		0 Intersection	Clear	Daylight	Dry	Other Vehicle	Broadside		0	0	0	0 Violation Driver 1	M	30	Car	Proceeding Straight	South	Unknown	1
		16-012-0216	1/12/2016 9:19	South Of		232 Non-Related	Clear	Daylight	Dry	Other Vehicle	Rear End		0	0	0	0 Violation Driver 1	(blank)	42	Car	Other Unsafe Turning	South	Unsafe Turn Movement	1
		16-119-0138	4/28/2016 7:23	South Of		32 Related	Clear	Daylight	Dry	Other Vehicle	Rear End		0	0	0	1 Violation Driver 1	F	0	Car	Parked	Not Applicable	Unknown	1
		16-282-0860	10/8/2016 20:22	South Of		0 Related	Clear	Dark - Street Light	Dry	Other Vehicle	Rear End		0	0	0	0 Violation Driver 1	M	56	Car	Parking Maneuver	Not Applicable	Unknown	1
		16-343-0030	12/8/2016 0:44	At		0 Intersection	Rain	Dark - Street Light	Wet	Other Vehicle	Broadside		0	0	0	2 Violation Driver 1	F	51	Car	Ran Off Road	North	Unknown	1
		17-136-0143	5/16/2017 7:52	North Of		330 Non-Related	Cloudy	Daylight	Dry	Other Vehicle	Broadside		0	0	0	1 Violation Driver 1	M	26	Car	Unknown	South	Unknown	1
		17-283-0997	10/10/2017 21:00	At		0 Intersection	Clear	Dark - Street Light	Dry	Fixed Object	Hit Object		0	0	0	0 Violation Driver 1	F	76	Car	Proceeding Straight	North	Run Red Light	1
		18-261-0538	9/18/2018 13:27	South Of		30 Related	Clear	Daylight	Dry	Other Vehicle	Rear End		0	0	0	1 Violation Driver 1	F	19	Panel Truck	Proceeding Straight	North	Unknown	1
		19-081-9733	3/19/2019 11:42	At		0 Intersection	Clear	Daylight	Dry	Other Vehicle	Broadside		0	0	0	0 Unknown	(blank)	46	Panel Truck	Making Left Turn	East	Run Red Light	1
		19-112-0176	4/22/2019 6:45	North Of		330 Non-Related	Clear	Daylight	Dry	Parked Vehicle	Rear End		0	0	1	0 Violation Driver 1	F (blank)	0	Car	Parked	Unknown	Unknown	1
																	M	43	Car	Making Left Turn	South	Unknown	1
																		41	Car	Ran Off Road	Not Applicable	Not Applicable	2
																				North	Speeding	1	

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE DENYING AN APPEAL AND APPROVING, SUBJECT TO CONDITIONS, A CONDITIONAL USE PERMIT AMENDMENT TO AMEND THE PREVIOUSLY APPROVED PERMIT (FILE NO. CP16-035 FOR A GAS STATION) TO ALLOW THE ADDITION OF AN AUTOMATIC CAR WASH, THE REDUCTION OF THE OVERALL PROJECT SQUARE FOOTAGE, AND SITE IMPROVEMENTS ON AN APPROXIMATELY 0.8-GROSS ACRE SITE, LOCATED ON THE SOUTHEAST CORNER OF SOUTH BASCOM AVENUE AND WOODARD ROAD (3702 SOUTH BASCOM AVENUE)**

**FILE NO. CPA16-035-01**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on December 11, 2018, an application (File No. CPA16-035-01) was filed by the applicant, Tony Andary, on behalf of Andarys Enterprise Inc., with the City of San José for a Conditional Use Permit Amendment to amend the previously approved permit (File No. CP16-035 for a gas station) to allow the addition of an automatic car wash, the reduction of the overall project square footage, and site improvements on an approximately 0.8-gross acre site, on that certain real property situated in the CN Commercial Neighborhood Zoning District and located on the southeast corner of South Bascom Avenue and Woodard Road (3702 South Bascom Avenue, San José, which real property is sometimes referred to herein as the “subject property”); and

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

**WHEREAS**, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a hearing on said application on June 24, 2020, notice of which was duly given; and

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

**WHEREAS**, at said hearing, the Planning Commission approved the requested Conditional Use Permit Amendment, for which decision an appeal to the City Council was timely filed by a neighbor of the subject property; and

**WHEREAS**, on June 29, 2019, a timely appeal of the Planning Commission's approval of the Conditional Use Permit Amendment was filed by Kathleen Flynn, and

**WHEREAS**, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this City Council conducted a de novo hearing on said application and the appeal of the Planning Commission's decision, 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 Director of Planning, Building and Code Enforcement; and

**WHEREAS**, at said hearing, this City Council received in evidence a plan for the subject property entitled, "Bascom Andoil Replacement CUP and Car Wash Addition Amendment," dated May 2019, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

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

**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 and findings regarding this proposed project:

1. **Site Description and Surrounding Uses.** The project site is located on the southeast corner of the intersection of South Bascom Avenue and Woodard Road. The project site has a CN Commercial Neighborhood Zoning District and a NCC Neighborhood/ Community Commercial General Plan Land Use/Transportation Diagram designation. Four driveways currently serve the corner lot, two on South Bascom Avenue and two on Woodard Road. There is an existing gas station on the project site with eight fueling positions and a fueling canopy fronting South Bascom Avenue. The existing service station is located behind and east of the fuel canopy. The project site has a 25-foot private ingress/egress access easement located at the eastern edge and to the rear of the site extending from the driveway on Woodard Road to the adjacent commercial properties south of the project site.

The project site is bounded by multi-family residential properties to the north across Woodard Road, a liquor store and strip mall to the south, multi-family residential properties to the east, and commercial office to the west across South Bascom Avenue. Properties located to the west of the site are located within the boundaries of the City of Campbell. Farnham Elementary School is located northeast of the site across Woodard Road. The project is located approximately 200 feet from the front edge of the Elementary School property.

#### *Background*

On July 18, 2016, a Conditional Use Permit application (File No. CP160-035) was filed with the City to permit the construction of a new 5,744-square foot convenience store and fully automated car wash with early morning use opening at 5:00 a.m., a temporary use trailer, and exceedance of the Zoning Ordinance noise performance standards by two decibels on the existing gas station site. The existing fuel pumps on-site would remain in the same location.

On August 9, 2017, the Planning Commission considered and approved the requested project. However, the project's approval was appealed to the City Council. The appeal raised concerns regarding public safety, hours of operation, traffic, proximity to residences, odor, dust, exhaust fumes, noise, impacts to the nearby elementary school, issues with the driveway closure on Woodard Road, crime, police and fire access, and construction impacts. The administrative hearing on the appeal was



considered and deferred by the City Council on October 24, 2017, November 28, 2017, December 12, 2017, and December 19, 2017. The Council hearings were deferred to provide the project applicant time to have a consultant conduct an updated noise study and traffic assessment of the immediate area to address concerns raised in the public hearing.

On January 23, 2018, the City Council took action on the appeal of the Conditional Use Permit. The City Council denied the permit appeal and approved a modified Conditional Use Permit with site design requirements which excluded the car wash. In their decision, the City Council identified significant concerns with the noise impacts of the originally proposed car wash on the surrounding uses of the site. The City Council found the noise generated by the originally proposed car wash was inconsistent with the General Plan and Zoning Code noise requirements and determined the car wash was located within twenty-five feet of the current residential uses which would create a negative impact to the surrounding uses. The City Council site design requirements included:

- Removal of the carwash and relocation of parking spaces, trash enclosure, electrical room and transformer to the rear of the convenience store. A six-foot landscape bed will be located along the rear wall of the convenience store and office building including plantings of Fern Podocarpus and appropriate ground cover landscaping.
- A 7-foot high masonry wall shall be installed along the east property boundary between the project site and adjacent residential properties. The wall shall be reduced to 3 feet in height of the first 6 feet as measured from Woodard Drive property line.
- Maintain the existing 6-foot tall concrete masonry unit (CMU) wall located between the adjacent commercial property and the subject site on the plan set.
- Additional landscape planters shall be added along the masonry wall at east property boundary. Planters shall be 1 foot by 3 feet in size and spaced at 10-foot intervals
- The landscape planters adjacent to South Bascom Avenue and Woodard Road shall include two crape myrtle trees in addition to street trees provided by the project.
- Stone veneer applied to the base of the buildings and entries shall be designed to include a finished band to facilitate a transition
- Council approved the gas station and convenience store hours of operation from 5:00 a.m. to 12:00 a.m., daily.

2. **Project Description.** On December 11, 2018, Tony Andary, representing the project applicant Andarys Enterprise Inc., submitted an application for a Conditional Use Permit Amendment to amend Conditional Use Permit File No. CP16-035.

The subject project would amend the previous approval and allow a fully automated car wash in conjunction with the gas station on-site and site improvements.

The originally approved project, Planning File No. CP16-035, included a 5,744-square foot, two-story convenience store and office building. The new building would be 5,227 square feet including 3,617 square feet of convenience store and office space and the construction of a 1,610 square foot automated car wash. The car wash hours of operation would be 8:30 A.M. to 9:00 P.M, daily. Twenty-one parking spaces would be provided onsite, and none of the vehicles spaces would encroach into the site's ingress/egress easement.

The car wash would be located behind and connected to the convenience store and office building. Vehicles would enter the car wash tunnel along the south side of the property and would exit along the north side of the property. Interior directional signage and a curved wall extending from the car wash tunnel exit would direct exiting car wash users to utilize the South Bascom Avenue driveway to exit the site rather than the Woodard Road driveway. Stacked stone veneer, windows, green roof and parapet accents, steel canopies, and sand-color stucco are used to articulate the building's exterior. The car wash includes a concrete masonry 33-foot-long, curved wall which would extend from the car wash exit on the north side of the property and curve exiting vehicles toward South Bascom Avenue. The masonry wall would be 16 feet in height, and its design would be integrated into the design of the overall new building. The car wash entrance would also include a 12-foot-high masonry wall extending approximately 11 feet to the south of the entrance. The 16-foot-high and 12-foot-high walls extending from the car wash tunnel would help reduce noise generated by the car wash use and would also eliminate a direct line of site from the adjacent multi-family residences.

In addition, the existing wooden fence along the eastern property line would be replaced with a seven-foot-high concrete masonry wall (for visibility the wall would be limited to three feet in height for the first six feet as measured from Woodard Drive along the property line). The concrete masonry wall along the southern property line would remain. The rear of the new building which faces multi-family residences to the east would be located approximately 44 feet from the property line. The rear of the building (eastern façade) would include decorative steel canopies and would be landscaped.

3. **General Plan Conformance.** The project site has an Envision San José 2040 General Plan designation of Neighborhood/Community Commercial. This designation supports a broad range of commercial activity, including commercial uses that serve the communities in the neighboring area. The Neighborhood/Community Commercial uses typically have a strong connection to and provide services and amenities for the nearby community and should be designed to promote that connection.

*Analysis: The project is consistent with the NCC Land Use Designation in that the gas station, car wash, and convenience store are commercial uses that provide services to the neighborhood. Furthermore, the gas station has served this neighborhood since 1963 and would be expanded to include enhanced services including a car wash for*

*customers, thereby allowing a trip to the site to complete multiple tasks including fueling, a car wash, and purchasing items at the convenience store.*

Furthermore, the project's consistency with the following General Plan Major Strategies, Policies, and Goals are analyzed below:

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

*Analysis: Approval of the Conditional Use Permit Amendment would allow further intensification of the existing commercial use on the project site. The existing gas station fuel pumps and the new convenience store and car wash would serve the residences, businesses, and visitors in the surrounding neighborhood and consolidate services and amenities in one location. Redevelopment of the site would enhance the economic vitality of the business since it would be able to provide multiple services at one location.*

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

*Analysis: The existing service station is surrounded by a mix of commercial, office, and residential uses. The expansion and revitalization of the gas station site to include a fully-automated car wash would allow one-stop shopping and reduce vehicle miles traveled. The site will continue provide retail products at a corner site in a neighborhood with both pedestrian and vehicular traffic. Additionally, the project will include site improvements including the removal of one Woodard Road driveway, addition of three extra street-side protective bollards surrounding the propane, and landscaping trees. These upgrades will enhance the pedestrian and vehicle safety of the site and enhance the visual character of the site which will promote the existing and new commercial uses.*

*As discussed in the Zoning Conformance section below, the site would provide adequate off-street vehicular and bicycle parking, sufficient site lighting and landscaping, and provide convenient retail products such as pre-packaged food items, fresh produce, self-service beverages, dairy products and accessories, at a prominent corner site in a neighborhood that has continuous vehicle traffic due to the surrounding commercial shopping center and gas service use. The project includes painted pedestrian walkways to connect the retail building to the public sidewalk for adequate pedestrian access, safety, and circulation.*

- c. Environmental Considerations Policy 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.

- d. Environmental Considerations Policy 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.

- e. Environmental Considerations 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: According to the Environmental Noise and Vibration Assessment for the Bascom Andoil Car Wash Project prepared by Dudek (February 2020), the new car wash would be the primary noise-generating activities on the site. Noise sources associated with the operation of the project would include people accessing the site and the operations of the automated car wash. Vacuum equipment would not be provided for this project. The car wash would use a MacNeil Tech 21 Dryer system configured as a stationary, stand-alone drying system with four (4) 15 horse-power blowers. The dryer system would be located approximately 10 feet inside of the northern end of the car wash tunnel, near the exit. The Noise Assessment found that with the project’s layout including the 16-foot-high and 12-foot-high walls, noise levels generated from the car wash would range from approximately 47 to 48 dBA DNL at the nearby property lines. Based on the site plan, car wash dryer noise levels were calculated to range from 42 to 51 dBA DNL at the nearest sensitive residential use east of the site. A Condition of Approval requires changes to the dryer system or location of the dryer system, to provide a noise study which confirms the noise generated by the new equipment does not exceed General Plan or Zoning Standards and requires further planning review. Therefore, the Project would comply with the City of San José 55 dBA noise level standard for residential uses, as outlined in General Plan Policy EC-1.3 and the San José Municipal Code.*

*Additionally, the Environmental Noise and Vibration Assessment found the project would only result in a less than 1 dB increase to the existing ambient noise. With the construction of the 7-foot-high masonry wall along the eastern property line and the additional 16-foot and 12-foot-high walls extending from the car wash’s exit and entrance, the project would serve as a shield to the eastern residential properties from the noise generated along South Bascom Avenue.*

4. **Zoning Conformance.** The project is located in the CN Commercial Neighborhood Zoning District. This Zoning District permits requires the approval of a Conditional

Use Permit for drive-through uses in conjunction with any other use pursuant to San José Municipal Code Table 20-90 of Section 20.40.100.

- a. **Height and Setbacks.** Pursuant to Section 20.4.200 of the San José Municipal Code, development in the CN Commercial Neighborhood Zoning District is subject to the following development standards:

Commercial Neighborhood (CN) Development Standards		
Setbacks	Required	Minimum Project Setbacks
Front	10 feet	15.5 feet to existing fuel pump, 69 feet, 2 inches to new building
Side, corner	12.5 feet	28 feet to new trash enclosure
Side Interior	None	31 feet 2 inches to new trash enclosure
Rear	None	44 feet
Maximum Height	50 feet	28 feet 6 inches

As shown in the table above, the project is consistent with the development standards for the CN Commercial Neighborhood Zoning District. The project complies with the setback requirements and does not exceed the maximum height limitation.

- b. **Parking:** Required vehicle parking is established in Section 20.90.060 and Table 20-190 of the San José Municipal Code, as described in the table below.

Parking Requirements			
Use	Ratio	Required	Total
Gas station	1 per employee, plus 1 per air and water pump service area, plus 1 space for information stop	1.5 employee= 1.5 space Air/water service = 1 space Information Stop= 1 space	3.5 spaces
Retail	1 per 200 square feet of floor area	2,155 net square feet (2,535 gross square feet x 0.85) of retail space	10.77 spaces

Office	1 per 250 square feet of floor area	920 net square feet (1,082 gross square feet x 0.85) of office space	3.67 spaces
<b>Subtotal</b>			<b>20.94</b>
<b>Total Required (Rounded Up)</b>			<b>21 spaces</b>

The project will have one full-time employee and one part-time employee. As shown in the Parking Requirements table above, the project requires vehicle parking for the gas station, convenience store (retail), and office uses on-site requiring a total of 21 parking spaces. The project provides a total of 21 parking spaces including 8 spaces at the existing pump islands, to meet the parking requirement. Required bicycle parking is one space per 10 full-time employees for the gas station and one space per 3,000 square feet of floor area, equaling two spaces total. The project includes two bicycle parking spaces.

Therefore, the project is in conformance with the development standards and parking sections of the Zoning Ordinance, in that the project exceeds the required vehicle and bike parking spaces and meets the required motorcycle parking spaces.

- c. **Noise:** San José Municipal Code Table 20-105 and Section 20.40.600 establish the maximum noise level in the decibels at the property line. Pursuant to the table, the noise generated by the project should not exceed 60 decibels along the southern commercial, property line and should not exceed 60 decibels along the southern, commercial property line nor exceed 55 decibels along the eastern, residential property line. The project design includes implementation of noise attenuation features including the 7-foot-high masonry wall along the eastern property line, and the 16-foot-high and 12-foot-high walls that extending from the new building near the car wash exit and entrance.

As described in Section 3.c, d, and e, above, automated car wash equipment and facilities have several potential noise generating sources associated with their general operation; including pumps, compressors, high-pressure applicators and spray nozzles, scrubbers, and dryers. The car wash's mechanical equipment (pumps, compressors, etc.) can generate a substantial amount of noise; however, the majority of the mechanical equipment will be fully enclosed within a mechanical equipment room, inside the car wash tunnel. According to the Environmental Noise and Vibration Assessment by Dudek, the maximum property line noise levels generated by the car wash would be 58.4 decibels along the southern, commercial property line and 53.7 decibels along the eastern residential property line. Thus, the project would comply with the City's Municipal Code noise requirements

## 5. City Council Policy Conformance

- a. **City Council Policy 6-30: Public Outreach Policy for Pending Land Use**

**Development Proposals.** Council Policy 6-30 specifies the public outreach and communication required regarding development projects including posting a notice of development application on the project site, hosting a community meeting which is appropriately advertised to the community, and providing Public Hearing Notices to the in a timely matter to an appropriate project radius. Under City Council Policy 6-30, the project is a project of significant community interest and requires notification to property owners and tenants within 1,000 feet of the project site.

*Analysis: Following City Council Policy 6-30, the project applicant has posted on-site signs to inform the neighborhood of the project. A community meeting was held to discuss the project on June 13, 2019 at the Camden Community Center. The community meeting was coordinated with Council District 9 and the Councilmember and Council District staff attended the community meeting. Comments from the public were received during the community meeting and addressed by Staff, see public comments section below.*

*Staff contact information have also been available on the community meeting notices and project site. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.*

- b. **City Council Policy 6-10: Criteria for the Review of Drive-Through Uses:** Council Policy 6-10 was adopted by the City Council in 1990 to provide guidelines for the development of establishments with drive-through facilities to help assure compatibility with surrounding land uses and avoid potential problems associated with such operations. The policy applies specific criteria to drive-through uses to help ensure compatibility. The car wash is considered a drive-through use.

*Analysis: The project was found to substantially conform to City Council Policy 6-10, as outlined below.*

- i. **Traffic:** Primary ingress and egress to drive-through uses should be from at least a four-lane major street. The drive-through stacking lane shall be situated so that overflow from the stacking lane shall not spill out onto public streets. Self-Service car washes shall have a minimum of five stacking spaces, a minimum of 20 feet long.

Ingress or egress points for the drive-through uses shall not conflict with turning movements of street intersections. No drive-through use shall be approved within 300 feet of signalized intersections operating at a Level of Service (LOS) D, E, F unless the traffic analysis demonstrates to the satisfaction of the Director of Public Works that the vehicles entering and exiting will not impair the operation of the intersection. Drive-through uses at or near signalized intersections may compound existing traffic conditions and make it intolerable. In these situations, drive through uses shall be discouraged.

No pedestrians crossing of the drive-through lane shall be allowed.

*Traffic Analysis: Consistent with Council Policy 6-10, the primary ingress and egress to the drive-through car wash would be from South Bascom Avenue, a six-lane City Connector Street. The two South Bascom Avenue driveways are limited to right-turn in and out motions to avoid conflicts with through traffic on the six-lane street created by left hand turns from the site. The existing driveway on Woodard Road, located at the northwest corner of the site, would be closed with the implementation of the project. Further, vehicles exiting the car wash tunnel will be physically oriented toward South Bascom Avenue with the curved wall and on-site directional signs directing car wash users to exit onto South Bascom Avenue rather than Woodard Road.*

*As described in the Traffic Analysis by Hexagon Transportation Consultants, dated March 17, 2020 and the Public Works traffic memo dated May 18, 2020 the project would result in a less than significant Vehicle Miles Traveled (VMT) impact because the project, which was converted to the equivalent retail square footage for VMT screening analysis, meets the City's screening criteria as a local-serving retail with less than 100,000 square feet of retail space. Furthermore, the Local Transportation Analysis in the Hexagon Traffic Analysis found that the intersection of Woodard Road and South Bascom Avenue would continue to operate acceptably at a level of service of C during AM peak hours and B during PM peak hours, consistent with the City Council Policy 6-10.*

*The project includes five stacking spaces and two overflow stacking spaces, and the site layout is designed to ensure that overflow stacking does not affect the ingress and egress of the site nor impede the traffic on the surrounding streets. Consistent with the Council Policy, the site plan provides a minimum 20 feet per stacking space and 18 feet for the two additional overflow stacking spaces, providing space for a total of seven stacked cars.*

*The project includes painted pedestrian walkways including one along from the parking at the rear of the building, guiding parkers from the rear of the building around the site's edge, to the sidewalk, and then to the convenience store to not cross the drive-through lane. Given the need for building separation from the eastern property line, existing easement conflicts, and goals to keep pedestrians from crossing the drive-through entrances and exits, the pedestrian path is not direct but would ensure pedestrian crossings of the drive-through is discouraged.*

*The updated convenience store with drive-through car wash significantly upgrades the project site by allowing improved circulation and access by vehicles and pedestrians. The project site includes painted pedestrian pathways connecting the sidewalks directly to the convenience store for ease of pedestrian accessing the site. The closure of one driveway along Woodard Road would help improve pedestrian circulation on and around the site.*

- ii. **Noise:** Drive-through speakers shall not be audible from adjacent properties with General Plan Land Use designations, Zoning Districts, or used for residential



purposes. Drive through speakers are prohibited when the drive-through lane abuts residentially used, zoned, or General Planned Property.

The use of sound attenuation walls and landscaping is encouraged.

*Noise Analysis: The Council Policy 6-10 limits the use of drive-through speakers and encourages the use of sound attenuation walls and landscaping. No drive-through speakers would be used for the car wash drive-through. As noted under General Plan Conformance and Zoning Ordinance Compliance sections of this report, pursuant to the Environmental Noise and Vibration Assessment conducted by Dudek in February 2020, the car wash use would not negatively impact the surrounding neighborhood's ambient noise environment. The Environmental Noise and Vibration Assessment, concluded the effect of the Project on the existing ambient environment was calculated to result in an increase in the ambient noise environment of less than 1 dB from measured baseline no-project ambient conditions. Noise generated by the car wash noise was determined to be 7 dB or more below the baseline ambient, project-generated noise and therefore would have a negligible impact on the surrounding neighborhood and sensitive receptors.*

*Additionally, the project design incorporates landscaping and walls to buffer the use's noise from the neighboring residential and commercial properties. The Environmental Noise and Vibration Assessment noted the construction of the project would provide shielding from South Bascom Avenue traffic noise levels at the eastern residential properties.*

- iii. **Hours of Operation:** No drive-through portion of land use shall operate after the hour of 10:00 P.M. when adjacent to residentially used, zoned, or General Planned properties.
- iv. **Hours of Operations Analysis:** *The drive-through car wash's hours of operations will be limited to 8:30 a.m. to 9:00 p.m., with no late night use, consistent with this policy. This limitation is included as a Condition of Approval for the project.*
- v. **Emission Control:** East-west drive-through are discouraged. Auto emissions would result in "Tunneling" and would be objectionable where adjacent buildings are within thirty (30) feet of each other, or where roof/wall structures enclose a space less than thirty (30) feet. Such situations are discouraged unless air quality analyses shows that unusual pollutant concentrations will not occur. Applicants shall take steps to protect employees of the drive-through facility from emissions caused by idling cars.

Drive-through lanes shall not be located adjacent to patios and other pedestrian use areas, other than walkways. Drive-through use stacking lanes are discouraged near to residential uses, existing or planned.

*Emission Control Analysis: Consistent with the Policy, the drive-through stacking*

*lane will extend south and west of the car wash tunnel, away from the adjacent residential uses. The drive-through tunnel is oriented north-south.*

*As described in the project's Categorical Exemption Memorandum, the project's construction and operation would not exceed the Bay Area Air Quality Management District's (BAAQMD) thresholds for construction or operational period emissions. In addition, the project would be consistent with the General Plan Policies MS-10.1 and MR-13.2 to conform to the BAAQMD Best Management Practices and dust control measures during all phases of construction on the project site to reduce fugitive emissions. To ensure conformance with these General Plan policies, the project has incorporated these Standard Permit Conditions in the project's Conditions of Approval.*

- vi. **Urban Design:** The architecture of drive-through uses shall be compatible and harmonize with the immediate neighborhood. "Corporate" building designs shall be discouraged. Drive-through lanes shall be separated from adjacent properties by landscaping, and sound attenuating uses where appropriate and necessary

*Urban Design Analysis: The project will be visually attractive and compatible in terms of mass, scale, and building colors and materials with the adjacent commercial and residential development. The drive-through car wash will be located behind the convenience store and integrated into the design of the convenience store building. The rear of the car wash building, 16-foot-high exit wall, and 12-foot-high entrance wall will include canopies and climbing vines to enhance the appearance of the development.*

- vii. **Lighting:** Lighting should be arranged and shielded from residential properties. The maximum level of illumination on residential property lines shall be 0.1 fc (Foot Candles) and 0.5 fc at other adjacent property lines.

*Lighting analysis: The new lighting fixtures are appropriately shielded to shine down per the City's Outdoor Lighting on Private Development Council Policy 4-3 and per Section 20.120.200 (Lighting) of the Zoning Ordinance. Pursuant to the City's drive-through policy, the maximum foot-candles at the residential property line for drive-through projects shall not exceed 0.1 foot candle (fc). The photometric plan prepared for the project and included in the plan set indicates that illumination levels at the north and east property lines do not exceed 0.1 fc, and the illumination level with the shared southern property line would not exceed 0.5 fc, consistent with this policy.*

- viii. **Location:** Drive-through uses shall be located 200 feet or more from the immediately adjacent residential properties. Self-service car washes which are in conjunction with an existing gasoline service station may be exempted from this locational criterion provided the traffic criteria is satisfied.

*Location Analysis: The Council Policy 6-10 states that drive-through uses shall be located 200 feet or more from residential uses. The car wash is located*

*approximately 44 feet from adjacent residences to the east. Pursuant to this Council Policy, self-service car washes in conjunction with existing gasoline service stations may be exempted from location criteria, provided the traffic criteria of the policy is satisfied. As described in the Traffic Analysis by Hexagon Transportation Consultants, dated March 17, 2020 and the Public Works traffic memo dated May 18, 2020 the project would result in a less than significant VMT impact. The Traffic Analysis and Public Works traffic memo also found the intersection of Woodard Road and South Bascom Avenue would continue to operate acceptably at a level of service of C during AM peak hours and a level of service B during PM peak hours, consistent with the City Council Policy 6-10. Finally, the car wash is separated and shielded from the residential properties to the east by a seven-foot-high masonry wall and the 16-foot-high wall and 12-foot-high wall extending from the car wash tunnel's exit and entrance.*

- ix. **Other Criteria:** Water dripping onto the public streets at the exit of car washes shall be minimized through automatic drying systems or hand drying in connection with full-service car wash facilities or through on-site grading and drainage patterns or other design features.

*Other Criteria Analysis: The MacNeil Tech 21 Dryer system will provide automatic drying for the car wash facility. Additionally, the Department of Public Works has reviewed the project's on-site grading and drainage patterns to ensure proper storm water and on-site drainage.*

- x. **Development Review Process:** The on- and off- site circulation, traffic safety, curbside parking, number of driveways, speed bumps, and other site development factors shall be considered and evaluated through the Conditional Use Permit process on a case by case basis.

*Development Review Process Analysis: The project's review included a Local Transportation Analysis prepared by Hexagon and Associates dated March 17, 2020. The analysis, along with the findings from the Public Works Traffic Memo, concluded the site plan would provide adequate space for on-site maneuvering, incorporation of a Condition of Approval for a 20-foot red curb would provide sufficient sight distance for vehicles using the southernmost driveway on South Bascom Avenue, and the overall network of sidewalks and crosswalks in the area provides good connectivity. Based on the above analysis, the car wash drive-through use would be consistent with the intent of the Drive-Through City Council Policy and will enhance the function and appearance of the site. Although the drive-through use is within 200 feet of a residential use, sufficient measures in regard to site design and sound attenuation walls would limit impact to the adjacent properties, as discussed above.*

6. **Environmental Review.** Under the provisions of Section 15332 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), the Director of Planning, Building and Code Enforcement found this project to be exempt from

environmental review requirements of CEQA and Title 21 of the San José Municipal Code, as amended. CEQA Guidelines Section 15332 (Class 32) – In-Fill Development Projects sets forth criteria for projects characterized as in-fill development that may be found categorically exempt.

The environmental analysis determined that: a) none of the exemption exceptions contained in Section 15300.2 (including Location, Cumulative Impact, Significant Effect, Scenic Highways, Hazardous Waste Sites, or Historical Resources) apply to the project, and, b) the project is consistent with the in-fill criteria in Section 15332. The project site is an urban site under five acres in size. The project is consistent with the General Plan land use designation and Zoning requirements, as described above. The urban site is classified as urban-suburban land cover within the Santa Clara Valley Habitat Conservation Plan area, and does not identify habitat for endangered, rare, or threatened species. Finally, approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality as supported by a traffic study, air analysis, and Greenhouse Gas analysis.

**7. Conditional Use Permit Amendment Findings.** In order to make the Conditional Use Permit Amendment findings pursuant to Section 20.100.720 of the San José Municipal Code, the City Council must determine that:

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

*Analysis: As described in detail above, the project is consistent with the General Plan land designation and policies in that it supports a neighborhood serving use that creates a more complete neighborhood and establishes noise requirements for new developments. The car wash is a neighborhood amenity that provides a service to the local community and visitors to the area. The enhanced retail services provide a one-stop shopping which would minimize vehicle trips. The use of the 7-foot-high masonry wall along the eastern property line and 16-foot-high and 12-foot-high masonry walls which extend from the new building ensure any noise generated from the car wash equipment would be limited. The Environmental Noise and Vibration Assessment conducted by Dudek in February 2020 confirm the noise generated by the project would be under one decibel and the new site design features could help reduce the impact of existing South Bascom Avenue traffic noise experienced by the eastern residential properties*

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

*Analysis: As described above, the project is consistent with the provisions of the Zoning Ordinance in that the development is consistent with required setbacks, maximum allowed height, and vehicular and bicycle parking requirements, as*

*discussed above. The project meets the required noise standards pursuant to Section 20.40.600 of the Zoning Ordinance, as specified in the environmental analysis and detailed.*

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

*Analysis: The project meets the requirements of the San José Commercial Design Guidelines. The project also conforms to City Council Policy 6-10: Criteria for the Review of Drive-Through Uses in regard to traffic, noise, hours of operation, design, and lighting. While the car wash is located within 200 feet of residentially used, zoned, or General Planned properties, self-service car washes which are in conjunction with existing gasoline service stations may be exempted from location criteria, provided the traffic criteria of the policy is satisfied. As described above, the Public Works Department concluded that the project is in conformance with the City's Transportation Policy (Council Policy 5-1) and the local transportation analysis determined the project will not worsen the level of service for the existing South Bascom Avenue and Woodard Avenue intersection. Finally, all lighting fixtures are appropriately shielded pursuant to City Council Policy 4-3: Outdoor Lighting on Private Developments, and will not have an adverse effect on adjacent residential properties.*

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

*Analysis: The project site is located in an area with a mix of commercial and residential uses. Due to the variety of current uses in the area, the addition of the car wash to the gas station would enhance the range of commercial uses in the neighborhood vicinity and provide an additional commercial option for visitors to the site. The project includes site improvements such as new landscaping and trees which would beautify the corner property and enhance the surrounding neighborhood aesthetic. The noise analysis conducted for the project (Dudek, February 2020) determined that the operation of the project would not result in a detrimental increase in noise that would impair the public health, safety or general welfare. Therefore, the project will not adversely impact the surrounding residential neighborhood.*

- e. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features

prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding area; and

*Analysis: The project site is 0.8 gross acre and has been used as a gas station since 1963. The project will result in the replacement of the existing gas station minimart and incidental repair services with a modern and more easily accessible convenience store and office space. Furthermore, the automated car wash provides space for five car vehicle stacking, as required per the City Council Policy 6-10, Criteria for the Review of Drive-Through Uses. The site plan includes the elimination of an existing driveway on Woodard Road closest to South Bascom Avenue which will increase vehicle and pedestrian safety at this intersection and provide for better traffic circulation on the site. Additionally, on-site traffic signs will direct car wash users to utilize the South Bascom Avenue driveways for exiting to reduce traffic onto the smaller intersecting street. The project site is of adequate size and shape to meet the parking requirements of Title 20 and provide significant landscaping upgrades to the site, including fully landscaped setback areas. The site can also accommodate the installation of a 7-foot-high masonry wall along the eastern property boundary between the project site and the adjacent multi-family residential properties. Additionally, the 6-foot-high existing concrete masonry wall along portions of the southern property line will remain.*

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

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

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

*Analysis: The project is exempt from environmental review under CEQA exemption Section 15332 for In-fill Development Projects, as evaluated herein. There are no other unacceptable negative effects on adjacent parcels outside of those items identified for the exemption. The project will be subject to standard*

*construction conditions of approval to ensure dust, erosion and storm water runoff will not negatively impact the adjacent properties. Operational odors associated with the new car wash would be contained within the car wash tunnel.*

**8. Site Development Permit Findings:** In order to make the Site Development Permit Amendment findings pursuant to San José Municipal Code Section 20.100.630, the City Council determines 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: As discussed above, the project is consistent with the General Plan Land Use/Transportation Diagram and General Plan policies.*

- 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 detail above, the project is consistent with the CN Commercial Neighborhood Zoning District development standards.*

- 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 project is consistent with applicable City Council Policies including Policy 6-10 for Drive-Through 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, car wash, and fuel island canopy appropriately relate to each other. The convenience store is oriented towards South Bascom Avenue, facing the fuel pumps to facilitate efficient customer access. The convenience store, fuel canopy car wash and trash enclosure structures are aesthetically harmonious in that they utilize similar colors and materials. The 16-foot and 12-foot-high masonry walls which extend along the entrance and exit of the car wash, are integrated into the design of the overall new building and incorporate landscaping and canopies to break up wall.*

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

*Analysis: The building and site are oriented toward South Bascom Avenue, minimizing its commercial presence toward the multi-family residences across Woodard Avenue and directly abutting the site to the east. The maximum height of the two-story building is 28.5 feet, which is taller than the surrounding two-story multi-family residences; however, the two-story portion of the convenience store is located away from the residential properties, thus reducing the perceived height and massing. The painted stucco, metal, and stone veneer exterior of the building and canopy are compatible with the surrounding neighborhood aesthetic. Furthermore, the roof form is consistent with adjacent residential styles in addition to an existing two-story office building located at 3880 South Bascom Avenue.*

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

*Analysis: As discussed above, the project would not result in significant environmental impacts including noise, vibration, dust, drainage, erosion, nor will the project have an unacceptable negative affect on adjacent properties.*

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

*Analysis: The project will include new landscaping along South Bascom Avenue and Woodard Road, which will significantly upgrade the appearance of the existing site. Landscaping will be located at the entrance and exits of the car wash and ivy will be planted along the walls and rear of the building. Building mechanical systems and refuse containers will be stored within an enclosure to conceal the activities.*

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

*Analysis: As discussed above, the project would have pedestrian and bicycle access from the sidewalk to the convenience store. The project would provide adequate parking and traffic access would be primarily directed through the South Bascom Avenue driveways.*

In accordance with the facts and findings set forth above, a Conditional Use Permit Amendment 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 Title 20 of the San José Municipal Code, should the permittee fail to file a timely and valid appeal of this Conditional Use Permit Amendment within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the permittee:
  - a. Acceptance of the Conditional Use Permit Amendment 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.
1. **Permit Expiration.** This Conditional Use Permit Amendment shall automatically expire four (4) years from and after the date of issuance hereof by the Planning Commission, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the Planning Commission. However, the Director of Planning, Building and Code Enforcement may approve a Permit Adjustment/ Amendment to extend the validity of this Permit in accordance with Title 20 of the San José Municipal Code. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
2. **Building Permit.** Procurement of a Building Permit from the Building Official for the structures described or contemplated under this Conditional Use Permit Amendment shall be deemed acceptance of all conditions specified in this Conditional Use Permit Amendment 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 Chief 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.
3. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit 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; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be

suspended, conditioned or denied where the City Manager 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 on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.

4. **Conformance to Plans.** The development of the site shall conform to the approved Conditional Use Permit Amendment plans entitled, “Bascom Andoil Replacement CUP and Car Wash Addition Amendment,” dated May 2019 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 approved Conditional Use Permit Amendment plans are referred to herein as the “approved plans” or “Approved Plan Set.”
5. **Use Authorization.** This Conditional Use Permit Amendment authorizes the construction of a 5,227-square foot convenience store, office, and automatic car wash.
6. **Dryer Equipment.** The automatic car wash shall use MacNeil Tech 21 Dryer system, (configured as a stationary, stand-alone drying system, using four (4) 15 horse-power blowers). The dryer system shall be located a minimum of 10 feet inside of the northern end of the car wash tunnel. Changes to the car wash dryer equipment will require a noise study to confirm the noise generated by the new equipment does not exceed General Plan or Zoning Noise Standards and shall require the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
7. **Car Wash Hours of Operation:** Hours of operation for the car wash shall be limited to 8:30 a.m. through 9:00 p.m., daily.
8. **Conformance to Other Permits.** Unless specifically modified with this Permit Amendment, this project shall conform to all of the requirements of previous permit(s) including: CP16-035.
9. **Maintenance of Perimeter Walls/Fences.** The permittee shall, at all times, maintain in good and upright condition, an uninterrupted solid masonry wall, a minimum of 7 feet high, along the eastern residential property line. The wall shall be reduced to 3 feet in height for the first 6 linear feet as measured from Woodard Drive property line. The existing 6-foot tall concrete masonry unit wall located between the adjacent commercial property shall be restored and maintained in good and upright condition.
10. **Specific Landscape Design Requirements:**
  - a. Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set.
  - b. Trees shall be planted in accordance with the plan set.
  - c. No landscaping planters are required within the existing 25-foot easement.

11. **Landscaping:** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered, and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping.
12. **Alteration/Intensification of Use.** Any changes to the project that results in an alteration to the general character, use, and intensity shall require a Conditional Use Permit Amendment.
13. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
14. **Compliance with Local, State and Federal Laws.** The subject use shall be conducted in full compliance with all local, state and federal laws and regulations. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
15. **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 Conditional Use Permit incorporated by reference in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code.
16. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the final Approved Plan Set.
17. **Anti-Graffiti.** The permittee shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
18. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage.
19. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to review and approval by the Director of Planning, Building and Code Enforcement through a subsequent Permit Adjustment.
20. **Building and Property Maintenance.** The permittee shall maintain the project site in good visual and functional condition. This shall include, but not be limited to all exterior elements of the site such as paint, roof, paving, fencing, signs, lighting, and landscaping.
21. **Required Vehicular, Motorcycle, and Bicycle Parking.** This project shall conform to the vehicular, motorcycle, and bicycle parking requirements of the Zoning Ordinance/approved Planned Development Zoning, as amended. Any changes to the required vehicular, motorcycle, or bicycle parking requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.

22. **Mechanical Equipment.** The location and type of mechanical equipment shall be as shown on the Approved Plans and shall be screened from view. Changes to the mechanical equipment requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
23. **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.
24. **Building Division Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
- a. *Construction Plans.* These permit file number, CPA16-035-1 shall be printed on all construction plans submitted to the Building Division.
  - b. *Americans with Disabilities Act.* The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
  - c. *Emergency Address Card.* The permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
  - d. *Construction 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.
25. **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 shall be required to have satisfied all of the following Public Works conditions. The permittee is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following link:  
<http://www.sanjoseca.gov/index.aspx?nid=2246>.
- a. **Minor Improvement Permit:** The public improvements conditioned as part of this permit require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. The Minor Improvement Permit includes privately engineered plans, insurance, surety deposit, and engineering and inspection fees.

- b. **Transportation** (see separate Traffic memo dated 5/18/2020): We conclude that the subject project will be in conformance with both the City of San José Transportation Analysis Policy (Council Policy 5-1) and Drive-Through Policy Analysis (Council Policy 6-10). Therefore, a determination for less than significant impacts can be made with respect to transportation impacts.
- c. **Grading/Geology:**
  - 1) A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
  - 2) 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.
  - 3) A soils report must be submitted to and accepted by the City prior to the issuance of a grading permit.
- 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.
  - 1) The project's Stormwater Control Plan and numeric sizing calculations have been reviewed for conformance with City Policy 6-29.
  - 2) 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 issuance of Public Works Clearance.
- h. **Street Improvements:**
  - 1) Remove and replace broken or uplifted curb, gutter, and sidewalk along project frontage
  - 2) Remove the western most driveway on Woodard Road Replace with city standard curb, gutter, and sidewalk
  - 3) Install 20 feet of red curb marking along the southside of the southernmost driveway along the South Bascom Avenue.
  - 4) Permittee shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the project.
- i. **Electrical:**
  - 1) 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.
  - 2) Locate and protect existing electrical conduit in driveway and/or sidewalk construction.
- j. **Street Trees:** The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in cut-outs at the back of curb. Obtain a DOT street tree planting permit for any street tree plantings. Street trees shown on this permit are conceptual only.

**26. Affordable Housing Financing Plans.** The San José City Council ("City") approved the Envision San José General Plan 2040 ("General Plan") in 2011. The General Plan provides the framework for development located in San José.

The City is in the process of developing financing plans to help fund affordable housing and related amenities and services. The financing plans may include the creation of a (i) Community Facilities District(s); (ii) Enhanced Infrastructure Financing District(s); (iii) Property Based Improvement District(s); (iv) Mitigation Impact Fee program(s); (v) Commercial linkage fee program(s); and/or (vi) other financing mechanisms or combination thereof. For example, the City Council has

directed City staff to complete studies and make recommendations related to commercial impact fees to help fund affordable housing. These efforts are on-going and there will continue to be other similar efforts to study various funding mechanisms for affordable housing.

By accepting this Permit including the conditions of approval set forth in this Permit, permittee acknowledges it has read and understands all of the above. Permittee further agrees that prior to the issuance of any building permit, the project shall be subject to, fully participate in, and pay any and all charges, fees, assessments, or taxes included in any City Council approved financing plans related to affordable housing, as may be amended, which may include one or more of the financing mechanisms identified above.

**27. Green Building Requirements.** This development is subject to the City's Green Building Ordinance for Private Sector New Construction as set for in Municipal Code Section 17.84. Prior to the issuance of any shell permits, or complete building permits, for the construction of buildings approved through the scope of this Permit, the Permittee shall pay a Green Building Refundable Deposit. In order to receive a refund of the deposit, the project must achieve the minimum requirements as set forth in Municipal Code Section 17.84. The request for the refund of the Green Building Deposit together with evidence demonstrating the achievement of the green building standards indicated in Municipal Code Section 17.84 shall be submitted within a year after the building permit expires or becomes final, unless a request for an extension is submitted to the Director of Planning, Building, and Code Enforcement in accordance with Section 17.84.305D of the Municipal Code.

**28. Recycling.** Scrap construction and demolition material shall be recycled. Integrated Waste Management staff at (408) 535-8550 can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.

**29. Construction Disturbance Coordinator.** Rules and regulation pertaining to all construction activities and limitations identified in this Permit, along with the name and telephone number of a Permittee-appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.

**30. Standard Environmental Permit Conditions**

a. **Air Quality:** The following measures shall be implemented during all phases of construction to control dust and exhaust at the project site:

- 1) Water active construction areas at least twice daily or as often as needed to control dust emissions.
- 2) Cover trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
- 3) Remove visible mud or dirt track-out onto adjacent public roads using wet

power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.

- 4) Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
- 5) Pave new or improved roadways, driveways, and sidewalks as soon as possible.
- 6) Lay building pads as soon as possible after grading unless seeding or soil binders are used.
- 7) Replant vegetation in disturbed areas as quickly as possible.
- 8) Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- 9) Minimize idling times either by shutting off equipment when not in use, or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access points.
- 10) Maintain and properly tune construction equipment in accordance with manufacturer's specifications. Check all equipment by a certified mechanic and record a determination of running in proper condition prior to operation.
- 11) Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.

**b. Geology and Soils.**

- 1) To avoid or minimize potential damage from seismic shaking, the project shall be constructed using standard engineering and seismic safety design techniques. Building design and construction at the site shall be completed in conformance with the recommendations of an approved geotechnical investigation. The report shall be reviewed and approved by the City of San José Department of Public Works as part of the building permit review and issuance process. The buildings shall meet the requirements of applicable Building and Fire Codes as adopted or updated by the City. The project shall be designed to withstand soil hazards identified on the site and the project shall be designed to reduce the risk to life or property on site and off site to the extent feasible and in compliance with the Building Code.
- 2) All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
- 3) Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.



- 4) Ditches shall be installed to divert runoff around excavations and graded areas if necessary.
- 5) The project shall be constructed in accordance with the standard engineering practices in the California Building Code, as adopted by the City of San José. A grading permit from the San José Department of Public Works shall be obtained prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.

**c. Construction-related water quality.**

- 1) Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- 2) Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- 3) All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
- 4) Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- 5) All trucks hauling soil, sand, and other loose materials shall be covered and all trucks shall maintain at least two feet of freeboard.
- 6) All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
- 7) Vegetation in disturbed areas shall be replanted as quickly as possible.

- 8) All unpaved entrances to the site shall be filled with rock to remove mud from tires prior to entering City streets. A tire wash system shall be installed if requested by the City.
  - 9) The permittee shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.
- d. **Construction-Related Noise.** Noise minimization measures include, but are not limited to, the following:
- 1) Limit construction hours to between 7:00 a.m. and 7:00 p.m., Monday through Friday, unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence.
  - 2) Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.
  - 3) Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
  - 4) Prohibit unnecessary idling of internal combustion engines.
  - 5) Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.
  - 6) Utilize “quiet” air compressors and other stationary noise sources where technology exists.
  - 7) Control noise from construction workers’ radios to a point where they are not audible at existing residences bordering the project site.
  - 8) Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of “noisy” construction activities to the adjacent land uses and nearby residences.
  - 9) If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.
  - 10) Designate a “disturbance coordinator” who shall be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and shall require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the

construction schedule.

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

- a. A violation of any conditions of the Conditional Use Permit Amendment 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, the appeal of the permit is denied and a permit to use the subject property for said purpose specified above is hereby **approved**.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
SAM LICCARDO  
Mayor

ATTEST:

\_\_\_\_\_  
TONI J. TABER, CMC  
City Clerk

### ***NOTICE TO PARTIES***

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