

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

Hearing Date/Agenda Number
P.C. 01/22/2003 Item. 3.h

File Number
CP99-057

Application Type
Conditional Use Permit

Council District
4

Planning Area
North San José

Assessor's Parcel Number(s)
241-11-020, 021, 022

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Caleb Gretton

Location: Northeast corner of Commercial Street and Old Oakland Road

Gross Acreage: 1.39

Net Acreage: 1.39

Net Density: NA

Existing Zoning: HI Heavy Industrial

Existing Use: Gas Station

Proposed Zoning: No change

Proposed Use: Demolition of existing gas station consisting of 8 fueling stations an associated service building and a vehicle repair building and the construction of a new gas station that includes 16 fueling stations and an associated service building.

GENERAL PLAN

Completed by: CG

Land Use/Transportation Diagram Designation
Light Industrial

Project Conformance:
 Yes No
 See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: CG

North: Mobile Home Park

A(PD) Planned Development

East: Industrial

HI Heavy Industrial

South: Industrial, Fast Food Restaurant, Hotel

HI Heavy Industrial

West: Industrial

HI Heavy Industrial

ENVIRONMENTAL STATUS

Completed by: CG

Environmental Impact Report found complete on
 Negative Declaration circulated on
 Negative Declaration adopted on

Exempt
 Environmental Review Incomplete

FILE HISTORY

Completed by: CG

Annexation Title: Orchard No. 17A

Date: June 11, 1957

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval
 Approval with Conditions
 Denial
 Uphold Director's Decision

Date: _____

Approved by: _____
 Action
 Recommendation

APPLICANT/OWNER/

Sebastian & Francis Nola
311 Empire Street
San José, CA 95112

DEVELOPER

Nella Oil Company
Jack Rhoades
2349 Rickenbacker Way
Auburn, CA 95602

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: CG

Department of Public Works, Fire Department

See Attached Memorandum.

Other Departments and Agencies

See Attached Memorandum from Fire Department and Santa Clara Valley Water District.

GENERAL CORRESPONDENCE

See Attached Correspondence from John Jones and Jackie Davis

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The developer, Nella Oil, is requesting this Conditional Use Permit to allow the demolition of an existing gas station and an adjacent vehicle repair building and to allow the construction of a new 24-hour gas station, in the HI Heavy Industrial Zoning District. A Conditional Use Permit is required for the any 24-hour use; additionally a Conditional Use Permit is required for the operation of a gasoline service station in this District.

The proposed project includes two fueling areas separated by a 1,212 square-foot sales building. The front fueling area, at the southwest corner of the site, includes three fueling islands with three pumps at each island providing space for 12 fueling stations. The rear fueling area includes three pumps to provide four separate fueling positions. Separate canopies cover the two areas. Typically the front area would serve general commercial customers while the rear area would serve industrial customers. The sales building contains a cashier booth, storage, restrooms and approximately 580 square feet of vending machine sales area. The project includes the demolition of two existing buildings, 1,225 square feet and 9,655 square feet in area, and the removal of an existing 3-pump fueling area. The 1,225 square-foot structure is an attendant's station utilized by the existing gas station. The 9,655 square-foot structure is currently used by a vehicle repair business.

Surrounding land uses include a mix of industrial and commercial uses to the south, east and west. A fast food restaurant is located directly to the west, on the opposite side of Old Oakland Road. A mobile home park is located to the north.

ENVIRONMENTAL REVIEW

The Director of Planning has determined that this project is exempt from further environmental review under the provisions of Section 15302(b) of the California Environmental Quality Act. The project consists of the replacement or reconstruction of a commercial structure with a new structure of substantially the same size, purpose and capacity. The Santa Clara Valley Water District has previously reviewed and approved the closure of underground storage tanks on the project site.

GENERAL PLAN CONFORMANCE

The proposed use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Light Industrial in that service stations in general and in particular stations that can accommodate large trucks are considered to be a supporting and compatible use to industrial uses.

ANALYSIS

The primary project issues are conformance to the Commercial Design Guidelines, consistency with City regulation of retail sales at service stations, interface with the adjacent mobile home park and local traffic circulation.

Commercial Design Guidelines

The project proposes architecture and landscaping consistent with City guidelines. A 15-foot landscaped setback will be provided along the two project street frontages and a new landscaped area will be provided along the rear of the site. The proposed landscaping includes eleven “Little-leaf Linden” trees and three “Coast Redwood” trees. The proposed architecture of the sales building and fueling canopies has an industrial character consistent with the neighborhood uses. The building will include an entrance and windows along the south elevation oriented toward the street frontage. Public telephones will be located adjacent to the building and in close proximity to the building entrance. The existing site driveways will be altered to meet current City standards.

The project provides several measures to prevent contaminants from entering the storm sewer system. The trash enclosure, located at the rear of the site, will be roofed. A large canopy will be provided to cover each of the project fueling stations. An oil-water separator will be installed as part of the site storm drain system.

Overall the proposed project improvements represent a substantial upgrade in the functionality and visual character of the site.

Retail Sales at Service Stations

City ordinance prohibits the retail sales of food and beverage items at service stations except for the sale of prepackaged foods from vending machines. The applicant has also requested the ability to sell some non-food items, such as truck driver logbooks. The proposed Permit includes conditions to allow retail sales per this description.

Mobile Home Interface

The subject site is separated from the nearby mobile home park by a dog-legged portion of a parcel not included within this Permit application. This area is occupied by an existing glass and auto upholstery business and also contains a billboard. The project will add a 5-foot to 10-foot

wide landscaping area along its northern property edge, adjacent to the glass and auto upholstery parcel and continue that landscape strip through the parcel to the eastern most edge of the property. This creates a significant buffer between the mobile home park and the proposed gas station. A noise report was conducted for the proposed use and the project will include a recommended nine-foot sound wall, to be installed along the residential property line, to eliminate any potential noise impact associated with the new use.

Traffic Circulation

The Department of Public Works has completed review of the traffic analysis for the subject project. Project traffic impacts and transportation level of service (LOS) have been calculated using Traffix, the City of San Jose and Santa Clara County Congestion Management Program (CMP) approved software. The project Traffic Analysis addresses the proposed 15-dispenser gasoline/diesel fueling facility with separate fueling stations for cars and trucks. The analysis projects that the proposed development would add 68 AM peak hour trips and 77 PM peak hour trips. Based upon this analysis, the Department of Public Works recommended several on-site design measures and off-site improvements that are incorporated into the project.

Vehicular access to the site will be provided via four driveways along the project frontage: two full access driveways on Oakland Road and two limited access driveways on Commercial Street. The westerly driveway on Commercial street will allow right turn in and right turn out only and the easterly driveway on Commercial Street will allow right turn in and out and restricted left turn in and out during peak hours for truck traffic.

The project is required to modify the traffic signal at the intersection of Commercial Street and Oakland Road. This modification shall include the addition of a 2nd westbound left-turn lane on Commercial Street to increase storage capacity. Also, the project shall make modifications to the existing median island on Oakland Road to include an extension of the left turn lane for the southbound onramp to U.S. 101.

Conclusion

As proposed and conditioned, staff concludes that the project meets current City standards and policies.

RECOMMENDATION

Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Light Industrial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.

2. The project site is located in the HI Heavy Industrial Zoning District. A gasoline service station is a conditional use in the HI Heavy Industrial Zoning District and a Conditional Use Permit is required for any 24-hour use.
3. Under the provisions of Section 15302(b) of the State Guidelines for the Implementation of the California Environmental Quality Act (CEQA) this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project consists of the replacement or reconstruction of a commercial structure with a new structure of substantially the same size, purpose and capacity. The project will not have a significant adverse effect on the environment.
4. The subject site currently is occupied by a gasoline service station including three gasoline fueling stations and a 1,225 square foot structure and a separate 9,655 square foot industrial building.
5. The project proposes the construction of two fueling areas, one with 12 fueling stations and the other with 4 fueling stations, separated by a 1,212 square-foot sales building and other site improvements. The sales building contains a cashier booth, storage, restrooms and approximately 580 square feet of vending machine sales area.
6. This Permit will allow operation of a gasoline service station in an HI Heavy Industrial Zoning District. As conditioned, retail sales will be limited to prepackaged foods dispensed from vending machine and non-food items related to the trucking business.
7. The project includes adequate circulation area, the installation of new landscaping and building architecture consistent with the Commercial Design Guidelines. The project includes adequate measures to prevent contaminants from entering the City storm-water system.
8. The project site is generally surrounded by industrial uses consistent with the Light and Heavy Industrial General Plan Land Use/Transportation Diagram designations. A mobile home park is located to the north.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The project is consistent with the Commercial Design Guidelines.

5. This project will be required to contribute toward the construction of a landscaped median island across the project street frontage. Contribution of future island construction will be as determined by the Director of Public Works.
 - a. The purpose of this in-lieu fee for landscaping is to promote the goals and policies of the General Plan of creating a positive community image by developing a network of landscaped thoroughfares, and to promote traffic safety by providing appropriate separation of traffic and control turning movements.
 - b. The fee will be used to construct median islands, landscaping, irrigation, and necessary improvements to control and facilitate turning movements within the public right-of-way.
 - c. There is a reasonable relationship between use of the fee and the type of development project upon which the fee is imposed in that the subject project will be viewed by substantial numbers of the traveling public since it is located on a non-residential street carrying high volumes of traffic or will by its nature attract high volumes of traffic.
6. The project will be required to contribute toward a Congestion Management Program to fulfill the requirements of CMA North San José Deficiency Plan Measures:
 - a. The purpose for deficiency measures is to promote the goals and policies of the General Plan of creating a positive community image by developing programs to reduce trips generated by San José employers and thereby improving air quality.
 - b. The fee will be used to fund facilities and/or programs that include bike lockers at transit facilities, bike lanes, transit signal preempts, public education programs and traffic flow improvements.
 - c. There is a reasonable relationship between use of the fee and the type of development project upon which the fee is imposed in that the subject program will generate a substantial amount of vehicle trips.
7. Under the provisions of Section 20.08.1320A of the San José Municipal Code, except as specifically exempted by Section 20.08.1330, no demolition permit or removal permit shall be issued unless and until a Development Permit which specifically approves such demolition or removal has been issued and has become effective pursuant to the provisions of Chapter 20.44.
 - a. This Permit includes the demolition of a 1,225 square foot commercial structure and the demolition of a 9,655 square-foot industrial structure in the HI Heavy Industrial Zoning District.
 - b. The Director of Planning has considered all of the following criteria in evaluating the proposed demolition.

- (1) The failure to approve the permit would result in the creation of continued existence of a nuisance, blight or dangerous condition.
 - (2) The failure to approve the permit would jeopardize public health, safety or welfare.
 - (3) The approval of the permit would not negatively impact the supply of existing housing stock in the City of San José.
 - (4) Both inventoried and non-inventoried buildings, sites and districts of historical significance should not be negatively impacted.
 - (5) Rehabilitation or reuse of the existing building would not be feasible.
 - (6) The approval of the demolition of the building should facilitate a project which is compatible with the surrounding neighborhood.
 - (7) The demolition of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.
- c. Further the Director of Planning concludes and finds, based on the analysis of the above facts, that:
- (1) The proposed project conforms in all respects to the provisions of Title 20 of the San José Municipal Code.
 - (2) The proposed project is in conformance with the California Environmental Quality Act.
 - (3) The benefits of permitting the demolition, removal or relocation of the subject building outweigh the impacts of the demolition, removal or relocation.
- d. Finally, based upon the above-state findings and subject to the conditions set forth below, the Director of Planning approves, pursuant to Section 20.08.1320B of the San José Municipal Code, the demolition of the subject structure.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. 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
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.
4. The benefits of permitting the demolition, removal or relocation of the subject building outweigh the impacts of demolition, removal or relocation.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission 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.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.
2. **Site Development Permit.** This permit fulfills the requirement for a Site Development Permit.
3. **Industrial Waste.** If industrial waste, as defined by Section 15.12 of the San José Municipal Code, is to be discharged into the sanitary sewer system, a clearance shall be obtained from the Water Pollution Control Plant, Industrial Waste Section.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California

Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
2. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Nella Oil, Commercial and Oakland Rd" dated November 12, 2002 on file with the Department of Planning, Building and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 24).
3. **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.
4. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
5. **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 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
6. **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.

7. **Lighting.** On-site lighting shall use Low-Pressure Sodium fixtures and be designed, controlled and maintained so that no light source is visible from outside of the property. Electroliers shall not exceed 16 feet above grade in general.
8. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
9. **Roof Equipment.** All roof equipment shall be screened from view.
10. **Utilities.** All on-site telephone, electrical and other overhead service facilities shall be placed underground.
11. **Outside Storage.** No outside storage is permitted except in areas designated on the approved plan set.
12. **Sign Approval.** Sign design and location, as delineated on the approved plan set, are hereby approved and constitute the project's entire sign program.
13. **Colors and Materials.** All building colors and materials are to be as specified on the approved plan set.
14. **Street Trees.** Street trees shall be planted on the street frontage to the satisfaction of the Director of the Department of Streets and Traffic. A permit for this is required from the Department of Streets and Traffic, (408) 277-4373.
15. **Tree Removals.** No tree larger than 56 inches in circumference, at a height of 24 inches above the natural grade slope, shall be removed without a Tree Removal Permit issued by the Director of Planning.
16. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-13288) to the satisfaction of the Director of Public Works:
 - a. *Public Works Development Review Fee.* An additional Public Works Review Fee is due. Based on established complexity criteria, the project has been rated high complexity. Prior to the project being cleared, a sum of \$4,286 shall be paid to the Department of Public Works (Room 308).
 - b. *Storm.* The applicant shall submit a conceptive grading/drainage plan at the improvement plan stage, indicate the overland release path in arrows, all release paths must be paved, the on-site ponding must be less than one foot, and the finished floor elevation must be one foot higher than overland release elevation.

- c. *Sewage Fees.* In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less pervious credits, are due and payable.
- d. *Sanitary.* The project is required to submit plan and profile of the private sewer mains with lateral locations for final review and comment prior to construction.
- e. *Geology.* A soils report addressing the potential hazard of liquefaction must be submitted to an accepted by the City Engineering Geologist prior to the issuance of a Public Works Clearance or grading permit. 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.
- f. *Transportation.* This project is required to construct signal modification improvements at the intersection of Oakland Road and Commercial Street. Specifically, addition of a second left turn lane on North bound Commercial Street inclusive of all striping, replacement of signal equipment and concrete “pork-chop” island construction. The City will reimburse the developer for these improvements in the amount not to exceed \$80,000. Also modification of the existing median island on South bound Oakland Road inclusive of the construction of an additional left turn lane onto the U.S. Route 101 South on ramp. Applicant will be responsible for all required permits from the California Department of Transportation related to this required mitigation.
- g. *Transportation Fees.* This project is located within the North San José Deficiency Plan area and must participate in the payment of the North San José Deficiency Plan fee.
- h. *Electrical.* Applicant shall install electroliers along the project frontage on Old Oakland Road to the satisfaction of the Director of Public Works.
- i. *Undergrounding.* The In Lieu Undergrounding Fee shall be paid to the City for all frontage adjacent to Old Oakland Road and Commercial Street prior to issuance of a Public Works clearance. One Hundred percent of the base fee in place at the time of payment will be due.
- j. *Street Trees.* Applicant shall install street trees within the public right-of-way along the entire street frontage per City standards. The location of the street trees will be determined at the street improvement stage. Street trees shown on this permit are conceptual only. Contact the City Arborist at 277-2756 for the designated street tree.
- k. *Landscape Irrigation Equipment.* Pursuant to San José Municipal Code, Section 15.10.478, landscape irrigation equipment shall be installed to the satisfaction of

the Director of Public Works.

- l. *Storm Water Management.* The project shall incorporate Best Management Practices (BMPs) into the project to control the discharge of storm water pollutants including sediments associated with construction activities. Examples of BMPs are contained in the publication *Blueprint for a Clean Bay*. Prior to the issuance of a grading permit, the applicant may be required to submit an Erosion Control Plan to the City Project Engineer, Department of Public Works, Room 308, 801 North First Street, San José, California 95110-1795. The Erosion Control Plan may include BMPs as specified in ABAG's *Manual of Standards Erosion & Sediment Control Measures* for reducing impacts on the City's storm drainage system from construction activities. For additional information about the Erosion Control Plan, the NPDES permit requirements or the documents mentioned above, please call the Department of Public Works at (408) 277-5161.
 - j. *Street Improvements.* Applicant shall, at no cost to the City, remove and replace broken or uplifted curb, gutter and sidewalk along the project frontage. Applicant shall construct curb gutter sidewalk and AC pavement sections along entire Oakland Road frontage. Applicant shall close unused driveway cuts. The proposed driveway width shall be no less than 26-foot minimum. Applicant shall install handicap ramp at the SE/C of Oakland Road and Commercial Street. The applicant is responsible for the dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
 - k. *Reimbursement.* Applicant shall reimburse the City for costs advanced for the construction of street improvements along Old Oakland Road and Commercial Street in accordance with City Ordinance #19663.
 - l. *Median Island.* Applicant shall contribute toward the construction of a landscaped median island across the project frontage on Old Oakland Road. Contribution will equal one-half the cost of future island construction as determined by the Director of Public Works.
 - m. *Construction Agreement.* The applicant shall be required to obtain a Public Works Clearance prior to the issuance of a Building Permit. The clearance will require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
17. **Building 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.* This permit file number, *CP99-057*, shall be printed on all construction plans submitted to the Building Division.
 - b. *Emergency Address Card.* The project developer shall file an Emergency Address

- Card, Form 200-14, with the City of San José Police Department.
- c. *Americans With Disabilities Act.* The applicant shall provide appropriate access as required by the Americans With Disabilities Act (ADA).
 - d. *Archaeology.* There shall be monitoring of site excavation activities to the extent determined by a qualified professional archaeologist to be necessary to insure accurate evaluation of potential impacts to prehistoric and/or historic resources.
 - (1) If no resources are discovered, the archaeologist shall submit a report to the Director of Planning verifying that the required monitoring occurred and that no further mitigation is necessary.
 - (2) If evidence of any archaeological, cultural and/or historical deposits are found, hand excavation and/or mechanical excavation will proceed to evaluate the deposits for determination of significance as defined by CEQA guidelines. The archaeologist shall submit reports, to the satisfaction of the Director of Planning, describing the testing program and subsequent results. These reports shall identify any program mitigation that the Developer shall complete in order to mitigate archaeological impacts (including resource recovery and/or avoidance testing and analysis, removal, reburial and curation of archaeological resources).
 - (3) In the event that human remains and/or cultural materials are found, all project-related construction shall cease within a 50-foot radius in order to proceed with the testing and mitigation measures required. Pursuant to Section 7050.5 of the Health and Safety Code and Section 5097.94 of the Public Resources Code of the State of California:
 - (a) In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified by the developer and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission, who will attempt to identify the descendant of the deceased Native Americans. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the landowner shall reinter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
 - (b) A final report shall be submitted to the Director of Planning prior to release of a Certificate of Occupancy. This report shall contain a description of the mitigation programs and its results including a description of the monitoring and testing program, a list of the resources found, a summary of the resource analysis methodology and conclusions and a description of the disposition/curation of the resources. The report

shall verify completion of the mitigation program to the satisfaction of the Director of Planning

18. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief.
19. **Fire Hydrants and Driveways.** All fire hydrants shall be at least 10 feet from all driveways to the satisfaction of the Fire Chief.
20. **Fire Flow.** Required fire flow for the site is 2,000 gpm, or as otherwise approved in writing by the Fire Chief.
21. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided to the satisfaction of the Fire Chief.
22. **Hazardous Materials Storage.** Any hazardous materials regulated by Chapter 17.68 of the San José Municipal Code on the site must be used and stored in full compliance with the City's Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San José Fire Prevention Bureau.
23. **Street Cleaning and Dust Control.** During construction, the developer shall damp sweep the public and private streets within and adjoining the project site each working day sufficient to remove all visible debris and soil. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.
24. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
25. **Retail Limitations.** Retail sales shall be limited to prepackaged foods dispensed from vending machine and non-food items related to trucking business.
26. **Truck Egress.** The westerly driveway on Commercial Street shall be limited to right turn in and right turn out only and the easterly driveway on Commercial Street shall be limited to right turn in and out and restricted left turn in and out during peak hours for truck traffic. The Commercial Street exits shall be posted with this restriction.
27. **Hours of Operation.** This permit allows for all aspects of the subject business to operate on a 24 hours basis.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.

2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

c: Brian Piper, RHL Design Group, 650 Howe Avenue Suite 504, Sacramento, CA 95825
Engineering Services
Building Division (2)