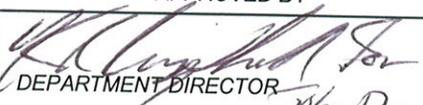




REPORT TO THE PLANNING COMMISSION

AGENDA ITEM NO. VIII-A
COMMISSION MEETING 6-1-11
APPROVED BY
 DEPARTMENT DIRECTOR

June 1, 2011

FROM: KEVIN FABINO, Planning Manager
Development Services Division 

THROUGH: MIKE SANCHEZ, Planning Manager
Development Services Division 

BY: BONIQUE SALINAS, Planner
Development Services Division 

SUBJECT: CONSIDERATION OF CONDITIONAL USE PERMIT APPLICATION NO. C-11-022
AND ENVIRONMENTAL FINDING FOR ENVIRONMENTAL ASSESSMENT NO.
C-11-022

RECOMMENDATION

Upon consideration of staff evaluation, it can be concluded that the proposed Conditional Use Permit Application No. C-11-022 is appropriate for the project site. Therefore, staff recommends the Planning Commission take the following actions:

1. APPROVE the finding of a Categorical Exemption for Environmental Assessment No. C-11-022 issued May 14, 2011.
2. DENY the appeal and UPHOLD the action of the Development and Resource Management Department Director approving Conditional Use Permit Application No. C-11-022 subject to the following:
 - a. Development shall take place in accordance with Exhibits A, F and L dated February 11, 2011.
 - b. Development shall take place in accordance with the Conditions of Approval dated March 16, 2011.

EXECUTIVE SUMMARY

Conditional Use Permit Application No. C-11-022, filed by Jim Shehadey, pertains to approximately 0.56 acres of property located on the northeast corner of North West and West Herndon Avenues. The applicant requests authorization to establish a State of California Alcoholic Beverage Control Type 21 License (*Package Store -- sale of beer, wine, and distilled spirits for consumption off the premises where sold*) and convert an existing building that had been an auto repair shop into a Shop 'N' Go convenience store with alcohol sales and add a 718 square-foot automatic car wash at the south end of the building.

The Development and Resource Management Department Director approved this conditional use permit application on March 16, 2011. In accordance with the Special Permit Procedures of the Fresno Municipal Code, a notice of granting of the conditional use permit application was mailed to surrounding property owners and interested parties. In response to this notice, one appeal was received.

PROJECT INFORMATION

PROJECT	Conditional Use Permit Application C-11-022 requests authorization to establish a State of California Alcoholic Beverage Control Type 21 License (<i>Package Store -- sale of beer, wine, and distilled spirits for consumption off the premises where sold</i>) and convert an existing building that had been an auto repair shop into a Shop 'N' Go convenience store with alcohol sales and add a 718 square-foot automatic car wash at the south end of the building.
APPLICANT	Jim Shehadey (owner)
LOCATION	7010 North West Avenue Located on the northeast corner of North West and West Herndon Avenues. (APN: 405-080-21) (Council District 2, Councilmember Borgeas)
SITE SIZE	± .56 acres
LAND USE	Existing - Repair shop and gas station Proposed - Convenience Store/Mini-Mart with a gas station and drive-through car wash
ZONING	C-1/EA/UGM (<i>Neighborhood Shopping Center/Expressway Area Overlay/Urban Growth Management</i>)
PLAN DESIGNATION AND CONSISTENCY	The request to establish a convenience store with a gas station (automobile service station) and carwash within an integrated shopping center is consistent with the existing C-1 (<i>Neighborhood Shopping Center District</i>) zone district and the Neighborhood Commercial planned land use designation of the 2025 General Plan and the Bullard Community Plan
ENVIRONMENTAL FINDING	The proposed project was determined to be exempt from CEQA by the Development and Resource Management Department on March 14, 2011 through a Class 32 Categorical Exemption.
PLAN COMMITTEE RECOMMENDATION	The District 2 Plan Implementation Committee reviewed and recommended approval of the proposed project at their February 28, 2011 meeting with the condition that all mechanical equipment is properly screened so that it is not visible from the property or from the public right-of-way surrounding the property. This is required as a condition of approval.
STAFF RECOMMENDATION	Approve Conditional Use Permit Application No. C-11-022

BORDERING PROPERTY INFORMATION

	Planned Land Use	Existing Zoning	Existing Land Use
North	Neighborhood Commercial	C-1 <i>Neighborhood Shopping Center</i>	Integrated Neighborhood Shopping Center
South	Office Commercial	R-P <i>Residential and Professional Office</i>	Office
East	Neighborhood Commercial	C-1 <i>Neighborhood Shopping Center</i>	Integrated Neighborhood Shopping Center
West	Neighborhood Commercial	C-1 <i>Neighborhood Shopping Center</i>	Walgreens Drug Store

ENVIRONMENTAL FINDING

The proposed project was determined to be exempt from CEQA on March 14, 2011, under a Class 32 Categorical Exemption. Under the Section 15332/Class 32 exemption, in-fill development that meets the following conditions is exempt from the California Environmental Quality Act (CEQA): a) the project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations, b) the proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses, c) the project site has no value as habitat for endangered, rare or threatened species, d) approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality, and e) the site can be adequately served by all required utilities and public services.

The proposed project consists of a small addition to an existing building to be used as a carwash, a request for an alcohol license, and the conversion the existing building to a use allowed by right, is within the City limits and is consistent with the 2025 Fresno General Plan policies. The property is zoned C-1 which is consistent with the 2025 General Plan and Bullard Community Plan land use designation of neighborhood commercial pursuant to section 12-607-A-1 of the FMC. The operation of a convenience store/gas station with alcohol sales and a carwash on this 0.56 acre site is allowed within the designated zone district. The site is already built-out, has no value as habitat for endangered, rare or threatened species and complies with the conditions of the Class 32 Categorical Exemption. No adverse environmental impacts would occur as a result of the proposed project.

ANALYSIS

LAND USE PLANS AND POLICIES

The subject site is located within the boundaries of the Bullard Community Plan and the 2025 Fresno General Plan. The proposed project has been required to comply with all applicable goals and policies contained within these plans.

Bullard Community Plan

There are no specific policies in the Bullard Community Plan that apply to site design that would affect the proposed project. None of the interface standards apply to the proposed project given that the subject site is not adjacent to property zoned or planned for residential uses. The landscaping and trail improvements required along Herndon Avenue adjacent to the subject site have already been constructed.

2025 Fresno General Plan

The following are some of the goals and policies of the 2025 Fresno General Plan that are applicable to the subject property:

- (i) Objective C-12: Commercial land uses shall be classified, located, sized, and developed to meet needs for goods and services while minimizing travel requirements, infrastructure demands, and adverse impacts.
 - a. Policy C-12-a: Ensure that all commercial land uses are developed and maintained in a manner complementary to and compatible with adjacent residential land uses, to minimize interface problems with the surrounding environment and to be compatible with public facilities and services.
 - (i) *Appropriate buffering (interface) measures have been required of this project given that the subject property does not directly abut residential uses. The applicant has been required to screen the proposed LPG tank with a berm to minimize its visual impact to the surrounding neighborhood and public right-of-way.*
- (ii) Objective C-20: As part of the city's project review process, major emphasis will be given to site and building design in order to preserve functionality and community aesthetics.
 - a. Policy C-20-d: Development projects shall be designed with appropriate layouts that provide sufficient areas for all proposed activities, for support functions, and for efficient and safe vehicular access.
 - i. Safe vehicular, bicycle, and pedestrian access shall be provided and maintained. Access for the disabled shall be incorporated into project designs as required.
 - (i) *The applicant has provided a pedestrian walkway from the sidewalk along from the bikeway along West Herndon Avenue to the walkway in front of the building which will provide pedestrian access to the site. The applicant has been required to place the bicycle racks in an ideal location to facilitate their use.*

DIRECTOR'S ACTION ON CONDITIONAL USE PERMIT

The Development and Resource Management Department Director took action on March 15, 2011 to approve Conditional Use Permit Application No. C-11-022. In accordance with Government Code Section 65091 (Planning and Zoning Law) and the Special Permit Procedure of the Fresno Municipal Code, a notice of granting of the conditional use permit application was mailed to surrounding property owners within 350-feet of the subject property (Noticing Map attached as Exhibit C) and interested parties. The special permit does not become effective until 15 days from the date the special permit is granted in order to allow time for any interested parties to file an appeal.

One appeal was received during the 15-day appeal period. This appeal letter is attached as Exhibit D.

ANALYSIS OF THE APPEAL LETTER

Below is an analysis of the issues raised in the appeal letter received on April 11, 2011 from the attorney representing Longs Drug Stores California, LLC (Longs), owner of the CVS Pharmacy located in the same shopping center as the proposed project.

Issue #1: The proposed project violates Objective C-12 of the 2025 Fresno General Plan which states that "Commercial land uses shall be classified, located, sized, and developed to meet the needs for goods and services while minimizing travel requirements, infrastructure demands, and adverse impacts" because the shopping center already has two businesses that sell beer, wine and liquor and the area is currently underserved by auto repair facilities.

Response:

While the City can prohibit or encourage certain kinds of uses, it cannot mandate that a business owner must continue doing business or change to a specific type of business at the location as requested by appellant. Secondly, a neighborhood shopping center is not an ideal location for an auto repair shop. The City's Zoning Ordinance restricts use to only limited auto repair in the C-1 zone district, which can only be used in conjunction with an automobile service station (gas station). None of these circumstances is present here. Instead, the Zoning Ordinance makes clear auto repair shops are more appropriate for light industrial or general/heavy commercial areas. Finally, this area is already developed with a sufficient number of auto shops to meet the needs for services in the area, with several repair shops located east of Palm Avenue (north of Herndon Avenue in Palm Bluffs, and along Blackstone Avenue) about one and a half (1.5) to two (2) miles east of the subject site, thus, there is not a lack of repair shops in the area.

Issue #2: Having a third Type 21 liquor license in the shopping center will result in adverse impacts inconsistent with Objective C-12 of the General Plan. Having a surplus of overlapping needs in a shopping center will reduce sales at each business which may result in urban blight if an overabundance of similar goods are sold in the same location leading to businesses closing.

Response:

The City's Plans and Zoning Ordinances are designed to protect the public health, safety and welfare. There is no substantial evidence in the record that the issuance of a Type 21 license will result in the closure of nearby businesses. The appellant cites one example in which there was a grocer, a pharmacy and convenience store in another shopping center. The appellant states CVS vacated that location because there was not enough business for all three stores to survive. There is no direct correlation between that store closing and a third ABC license in this shopping center. There are other places in the City of Fresno where there is a convenience store, a grocery and pharmacy in the same center or across the street from each other that continue to stay in business. Finally, even assuming a business was to close, there is no substantial evidence in the record the general area would experience an extended period of closed businesses and decrepit buildings rising to the level of "blight" as a result of another Type 21 liquor license in the shopping center.

Issue #3: The proposed project is not consistent with Objective C-12 of the 2025 Fresno General Plan because it will have adverse impacts on the center and surrounding areas due to loitering, vagrants and robberies, as there was an existing robbery at the existing gas station, and that was before alcohol sales were conducted.

Response:

There is no substantial evidence in the record that the proposed project will cause loitering, vagrants and robberies and thus adversely impact the center and the surrounding community. The Police Department supports the proposed project and has conditioned the project to help ensure that there will not be an increase in calls for service as a result of the proposed project.

Issue #4: The proposed project violates Policy C-20-d of the General Plan which states that "Development projects shall be designed with appropriate layouts that provide sufficient areas for all proposed activities, for support functions, and for efficient and safe vehicular access" because the proposed project does not provide sufficient areas for parking, safe vehicular access, pedestrian circulation and cross access for other tenants of the shopping center.

Response:

The proposed project complies with all code requirements that are intended to ensure that the project provides sufficient parking, safe vehicular access, pedestrian circulation, and adequate cross access through the site. The parking provided is more than what is required on the site. The Public Works Department has reviewed the proposed project to ensure that it complies with the adopted Parking Manual and provides safe vehicular access through the site. The elimination of the access drive to the parcel to the east of the subject site (at the southeast corner of the subject site) will not negatively impact circulation through the site. Cars will still be able to circulate throughout the site and access every parcel within the shopping center through the parking lot.

Issue #5: Many of the Police Department's conditions are not included in the Proposed Project's Conditions of Approval.

Response:

This statement is not accurate. Police Department requirements have been included as conditions of approval for the proposed project. The appeal fails to identify any specific Police Department condition not included for the proposed project.

Issue #6: The Conditions of Approval state that the approval of the site plan is contingent upon the submittal of corrected exhibits showing all existing/proposed on-site conditions as reflected on all exhibits and the requirements in Part F of the conditions of approval. However, based on the City's Code, the City should not be able to approve a site plan contingent on fixing the problems with the site plan later.

Response:

The Director and staff of the Development Services Division deemed the application, including the site plan exhibit, to be complete shortly after the project was submitted for review. If there were any major changes that required the site plan to be completely redesigned, staff would have given the applicant the initial comments and require that the site plan be revised and resubmitted. However, in staff's opinion, there were no major corrections that needed to be made to the site plan that would result in a complete redesign of the site layout. In addition, the findings of Section 12-405-a-3 of the Fresno Municipal Code have been met, as "all applicable provisions of this code are complied with and, in addition, that the following are so arranged that traffic congestion is avoided, pedestrian and vehicular safety and welfare are protected, and surrounding

property is protected from adverse effects.” There is sufficient information on the site plan, in the operational statement as well as the conditions of approval, for the public to fully review and comment on the proposed project.

Issue #7: The proposed project does not meet the 16 parking stall requirement because the spaces in front of the 12 gasoline pumps cannot be counted as parking stalls because they do not meet minimum size requirements and other requirements as detailed in Sections 12-306-l-5-a, l-3-e and i, and l-1-d.

Response:

This statement is not accurate as the project has a total of 24 parking spaces. Although 12 of these parking stalls are not painted with stripes, they meet the minimum size and other requirements and are consistent with other parking stall spaces previously approved by the Director and the Planning Commission. It has been the City’s practice to include the area underneath a fuel canopy towards the required number of parking stalls. Section 12-306-l-3-e requires that no parking space shall be located so as to require the moving of another vehicle in order to enter or leave any other stall unless there is a parking attendant, and Section 12-306-1-i requires parking spaces to be arranged so ingress and egress does not require backing into a pedestrian access way. Here, there is sufficient room behind each stall (a minimum of 27-feet) for a car to back out of the stall without backing into another parking stall or into a public or private pedestrian access way. Finally, all of the parking stalls were reviewed and compliance verified by an engineering technician who enforces the City of Fresno Parking Manual and onsite parking requirements.

Issue #8: The proposed project violates the existing cross access agreement.

Response:

The document referenced as the “existing cross access agreement” is a private agreement that the City is not a party to and thus cannot enforce. The City has not approved the agreement as to legal form. In addition, private parties cannot enter into an agreement which purports to limit or prohibit the City from exercising its police powers to address public health, safety and welfare concerns.

Issue #9: The City’s Municipal Code and the Proposed Project’s conditions of approval require a car wash facility to comply with the City’s noise ordinance. There is no evidence that the project will comply. The appellant requests that the project applicant prepare a noise/acoustical study to demonstrate the proposed project’s compliance with the City’s Noise Ordinance.

Response:

The proposed carwash is not adjacent to a noise sensitive land use and the adjacent expressway (Herndon Avenue) most likely causes noise that exceeds maximum noise levels at the property lines. In addition, pursuant to policy H-1-d “the City shall require an acoustical analysis in those cases where a project potentially threatens to expose existing or proposed noise sensitive land uses to excessive noise levels”. The proposed project is adjacent to an expressway, a major street and parking lots, and thus does not have the potential to expose noise sensitive land uses to excessive noise levels. Staff believes that a noise study is not necessary or required as consistent with policy H-1-d.

Issue #10: The City's CUP submittal requirements checklist provides that elevations and floor plans must include samples of each proposed color (i.e. color schedule). However, the applicant did not submit a color schedule with the CUP application.

Response:

The CUP application was accepted as complete by the City. The City requires submittal of a color schedule prior to issuance of buildings permits, but typically does not request them at the time of submittal of a CUP application. The City may condition the CUP to require color and material compatibility with adjacent structures. Staff will ensure that the proposed structure is compatible with other buildings within the shopping center prior to issuance of building permits for the proposed project. The Fresno Municipal Code does not require the approval of a proposed color schedule by nearby property owners, lessees or economic competitors.

Issue #11: The City's Municipal Code provides that a car wash facility shall undergo a design review of architecture, style and appearance to insure similarity and compatibility with surrounding residential, commercial and industrial developments. There is no evidence that this design review has been completed or will be required as it is not a condition of approval.

Response:

Staff reviewed the design of the elevations, and, as mentioned above, conditioned the proposed project to ensure that the proposed structure will be compatible with its surroundings. For example, as noted on Exhibit F dated February 11, 2011, the applicant has been required to tie in materials and/or color from the existing building into the carwash addition to ensure compatibility.

Issue #12: Longs agrees with the Fresno Metropolitan Flood Control District (FMFCD) that the project should select and implement the storm water controls recommended in the Fresno-Clovis Storm Water Quality Management Construction and Post-Construction Guidelines to meet the requirements of the State General Permits. There is no evidence that the appropriate permits for the car wash storm water discharges have been sought or that the project includes any storm water controls.

Response:

In the above referenced memorandum from the FMFCD dated February 22, 2011 (attached to the Conditions of Approval contained in this staff report), the FMFCD doesn't say that the project "should" select and implement these measures, but that it is "encouraged". FMFCD signs-off (approves) grading plans, which are required for grading permits and construction of the project. At that time, FMFCD will verify if its conditions have been met.

Issue #13: The landscape plan does not comply with the City's CUP Submittal Requirements Checklist and the City's Municipal Code because very detailed requirements are not illustrated on the landscape plan.

Response:

A final landscape plan with detailed requirements is not required at the time of submittal of a CUP application as long as the CUP is conditioned upon the requirements of the Fresno Municipal Code being met before a building permit is issued. Staff requests at least a conceptual landscape plan to verify that parking lot shading requirements have been met and to verify that the site, with the proposed modifications, can accommodate the required trees on-site. There is a "Corrected Exhibit" process which begins after project approval and before issuance of building permits. The applicant will be required to submit a corrected landscape exhibit that verifies that all landscape requirements have been met prior to issuance of building permits. There is no requirement to submit a "very detailed" landscape plan until the applicant is ready to move forward and construct the proposed project.

Issue #14: The proposed project's Type 21 liquor license request may violate the California Alcoholic Beverage Control Act.

Response:

The California Department of Alcoholic Beverage Control (ABC), not the City of Fresno, is the State's regulatory body for the California Alcoholic and Beverage Control Act. The applicant will be required to comply with the ABC review and compliance process in order to obtain a Type 21 liquor license. As part of this process, ABC makes a determination whether there is an overconcentration of alcohol licenses in a defined area. In contrast, the City issues a CUP, which may allow the use in accordance with the Zoning Ordinance and assuming the applicant also obtains a liquor license as required by law. As such, there is a chance that the CUP could be approved by the City, but the actual license be denied by ABC.

In addition, staff does not believe that the approval of this alcohol CUP will create a law enforcement problem given the fact that the Police Department is not opposed to the proposed alcohol CUP as long as all conditions contained in their letter are met (these conditions were made conditions of approval of this CUP). Finally, there is no substantial evidence in the record the issuance of this liquor license, along with the applicable conditions of approval for the CUP, will lead to an increase in criminal activity.

Issue #15: The proposed project violates several of the CC&R (Covenants, Conditions and Restrictions) Provisions.

Response:

Staff reviewed the CC&R's and determined they are a private agreement to which the City is not a party. Private agreements cannot generally be enforced by non-parties. If the applicant is allegedly in violation of the CC&R's, persons who are actually parties to the agreement may have remedies against one another. However, private parties cannot contract away the City's police powers and ability to condition a project.

CONDITIONAL USE PERMIT APPLICATION REVIEW FINDINGS

No special permit may be issued unless it is found that the privilege exercised under the permit, as it may be conditioned, conforms to the findings of Section 12-405-A-2 of the Fresno Municipal Code. Based upon analysis of the conditional use permit application, staff concludes that all of the required findings can be made for this conditional use permit application as follows:

Findings per Fresno Municipal Code Section 12-405-A-2	
<p>a. <i>All applicable provisions of this Code are complied with and the site of the proposed use is adequate in size and shape to accommodate said use, and accommodate all yards, spaces, walls and fences, parking, loading, recycling areas, landscaping, and other required features; and,</i></p>	
Finding a:	<p>The 0.56 acre site is adequate in size and shape to accommodate the proposed use. Conditional Use Permit Application No. C-11-022 will comply with all applicable codes, including parking, landscaping, walls, etc., given that the special conditions of project approval will ensure that all conditions are met prior to the site being occupied.</p>
<p>b. <i>The site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use; and,</i></p>	
Finding b:	<p>The Public Works Department, Traffic Engineering Division reviewed the proposed project and assessed the adjacent streets to ensure that the proposal would not have significant impacts on traffic and the surrounding community. Subject to the Conditions of Approval for Conditional Use Permit Application No. C-11-022, the streets and highways will be of adequate width and pavement type to carry the quantity and kind of traffic generated by the proposed use.</p>
<p>c. <i>The proposed use will not be detrimental to the public welfare or injurious to property or improvements in the area in which the property is located. The third finding shall not apply to uses which are subject to the provision of Section 12-306-N-30 of the FMC.</i></p>	
Finding c:	<p>The proposed use will not have a negative impact on either the subject site, or neighboring properties given that the proposed project will be well designed and will be compatible with existing and proposed adjacent uses. The applicant has been required to provide adequate landscaping, parking, and pedestrian access, and has been required to comply with all property development standards as detailed in the Fresno Municipal Code and the 2025 Fresno General Plan. These conditions are intended to help protect the public health, safety and welfare of patrons and neighbors, alike, and are expected to improve the overall appearance of the area.</p>

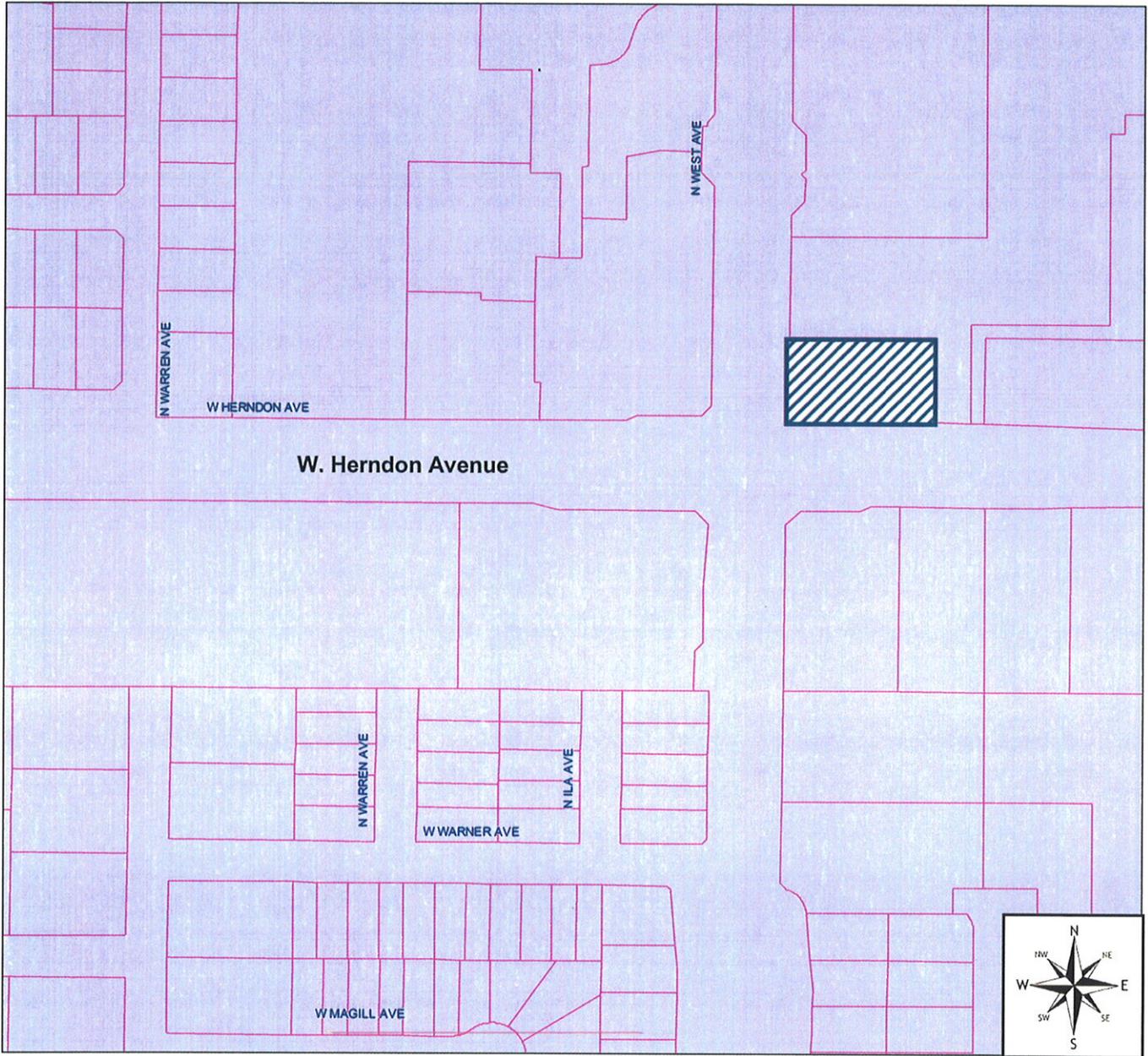
Conclusion

In conclusion, given that all mandated conditional use permit findings required pursuant to Section 12-405-A-2 of the Fresno Municipal Code can be made for Conditional Use Permit Application No. C-11-022, staff recommends that the Planning Commission deny the appeal and uphold the action of the Director as previously described in this staff report.

- Attachments:
- Exhibit A: Vicinity Map
 - Exhibit B: Aerial Photograph of site
 - Exhibit C: Noticing Map
 - Exhibit D: Appeal Letter
 - Exhibit E: Conditions of Approval dated March 16, 2011
 - Exhibit F: Site Plan, Floor Plans, Elevations
 - Exhibit G: Operational Statement
 - Exhibit H: Environmental Assessment No. C-11-022

Exhibit A
Vicinity Map

VICINITY MAP



CONDITIONAL USE PERMIT APPLICATION NO. C-11-022

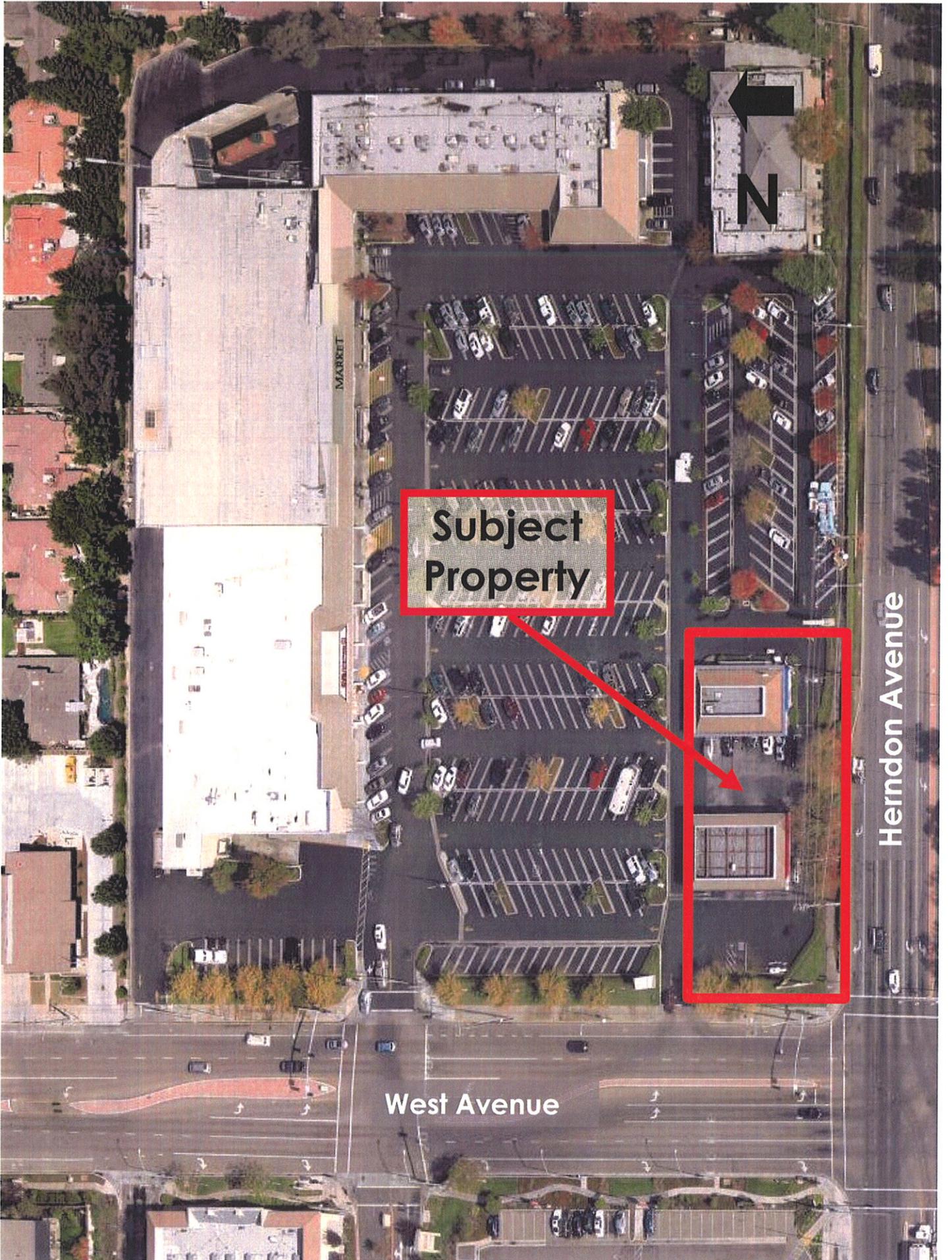
7010 North West Avenue

LEGEND



Subject Property

Exhibit B
Aerial Photograph of Site



Subject
Property



Herndon Avenue

West Avenue

MARKET

Exhibit C
Surrounding Property Notification Map

Request ID: C-22-022 350



N WEST AVE

W HERNDON AVE

N ILA AVE

40508021

40508020

4066077S

40770122

40770123

40770124

40770125

40660616

40660704

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40770130

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Exhibit D
Appeal Letter

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March 31, 2011

Via E-mail (John.Dugan@fresno.gov)
Via U.S. Mail

John Dugan
Development & Resource Management Director
Fresno City Hall
2600 Fresno Street
Room 3043
Fresno, CA 93721

Re: Appeal of Conditional Use Permit No. C-11-022 for a Shop 'N' Go convenience store with alcohol sales and an automatic car wash

Dear Mr. Dugan:

We represent Longs Drug Stores California, L.L.C. ("Longs"), holder of a leasehold interest in Parcel B (CVS/pharmacy store #9865) of the shopping center located at N. West Avenue and W. Herndon Avenue (the "Shopping Center") in the City of Fresno (the "City"). As you know, on March 15, 2011, you approved Conditional Use Permit Application No. C-11-022 (the "CUP") for a State of California Alcoholic Beverage Control Type 21 License (Package Store -- sale of beer, wine, and distilled spirits for consumption off of the premises where sold), to convert an existing building that had been an auto repair shop into a Shop 'N' Go convenience store with alcohol sales, to add a 718 square foot automatic car wash at the south end of the convenience store building and to increase the gasoline pumps at the existing gas station from 10 to 12 pumps (the "Proposed Project"). A notice of the CUP approval was mailed on March 16, 2011 starting the appeal period ending on March 31, 2011.

Longs hereby appeals the CUP approval to the Planning Commission on grounds that the Proposed Project violates the City's General Plan, Zoning Code and other City requirements, may violate the California Alcoholic Beverage Control Act, and violates the Shopping Center's Declaration Establishing Restrictions and Grants of Easements dated April 8, 1980 (the "CC&Rs").

A. The Proposed Project Violates Numerous City Requirements.

1. Violates the City's 2025 General Plan.

(a) Objective C-12

As referenced in Condition of Approval Part D(4)(a)(i), the Proposed Project is subject to Objective C-12 of the 2025 Fresno General Plan: "Commercial land uses shall be classified, located, sized, and developed to meet needs for goods and services while minimizing travel requirements, infrastructure demands, and adverse impacts."

Here, the existing CVS/pharmacy and The Market within the Shopping Center both already have Type 21 Liquor Licenses and sell beer, wine and liquor. However, the area is currently underserved by auto-repair facilities. Consequently, eliminating the existing auto-repair facility and replacing it with another Type 21 Liquor License in the Shopping Center does not further meet the needs for goods and services in the area.

Furthermore, having a third Type 21 Liquor License in the Shopping Center will result in adverse impacts. Having a surplus of overlapping needs in the Shopping Center will reduce sales at each business and may result in urban blight if an overabundance of similar goods are sold in the same location leading to businesses closing. For example, CVS/pharmacy vacated the Herndon/Marks building in a shopping center with a grocer and convenience store. There was not enough business for all three stores to survive. Allowing an additional retailer of alcohol, and convenience items, in the Shopping Center could lead to the same result.

Moreover, the Proposed Project is not consistent with Objective C-12 of the General Plan because it will result in adverse impacts on the Shopping Center and surrounding area. These adverse impacts may include such as loitering, vagrants, and robberies, as there was a recent robbery at the existing gas station, and that was before alcohol sales were conducted. A higher concentration of alcohol sales may lead to increased crime and reduced safety in the community.

(b) Other Commercial Objectives and Policies

The Proposed Project also violates several other Commercial General Plan policies. For example, the Proposed Project violates Policy C-20-d which requires projects to be "designed with appropriate layouts that provide sufficient areas for all proposed activities, for support functions, and for efficient and safe vehicular access." As will be discussed below in the letter, the Proposed Project does not provide sufficient areas for parking, safe vehicular access, pedestrian circulation and cross access for other tenants of the Shopping Center.

(c) Policy E-24-c

The City Police Department's February 18, 2011 letter commending on the Proposed Project includes numerous conditions to be included in the Proposed Project's Conditions of Approval. However, many of the Police Department's conditions are not included in the Proposed Project's Conditions of Approval. This failure to include the conditions also violates the City's General Plan Policy E-24-c which provides that the Police Department shall "continue to identify and apply appropriate safety design and operational measures as conditions of development entitlement approval including but not limited to access control measures, lighting and visibility of access points and common areas, functional and secure on-site recreational and open space improvements within residential developments, and utilization of private "certified" security services." (City's General Plan, Policy E-24-c).

2. Violates the City's Zoning Code.

(a) Site Plan

The Conditions of Approval state that the approval of the site plan is contingent upon the submittal of corrected exhibits showing all existing/proposed on-site conditions as reflected on all exhibits and the requirements in Part F of the conditions of approval. (Conditions of Approval, Part F(1)). However, based on the City's Code, the City should not be able to approve a site plan contingent on fixing the problems with the site plan at a later time. Such premature approval prevents the public from fully reviewing the Proposed Project. The City's Code provides that a site plan "shall be approved *only* when it is found that: (a) All applicable provisions of this Code are complied with and, in addition, that the following are so arranged that traffic congestion is avoided, pedestrian and vehicular safety and welfare are protected, and the surrounding property is protected from adverse effect." (City's Municipal Code §12-405(A)(3)(a)). A site plan is required for a complete CUP application so the City cannot issue a CUP without an accurate site plan. (City's CUP Submittal Requirements checklist; City Code §12-405(A)(2)). Given the numerous outstanding issues raised by several City departments that commented on the Proposed Project that have yet to be resolved with the site plan, the City should not have approved the draft site plan and issued the CUP. The failings of the site plan are not only numerous but they are significant items, to cite just one example, no pedestrian access is provided to the 10 parking stalls located opposite the gas pumps from the convenience store.

Given the draft nature of the site plan, it is impossible for Long's to fully comment on the missing information. Once the site plan is complete, Long's would like the opportunity to review the site plan to ensure that the Proposed Project will not cause adverse impacts on the Shopping Center and reserves the right to comment further at that time. The following are our initial comments regarding the Proposed Project's inconsistency with the City's Zoning Code.

(b) Off-Site Parking

As noted in Condition of Approval Part D(10), the Proposed Project requires 16 parking stalls. This calculation is based on the off-street parking requirements in the City's Code which bases the calculation on total building area (Section 12-217.5(I)). The Proposed Project's site plan only provides 12 parking stalls. The Proposed Project applicant and the City are counting the 12 gasoline pumps as 12 additional parking stalls for a total of 24 parking stalls.

Based on the following City Municipal Code sections governing off-street parking, Longs does not believe that the Proposed Project applicant can count the 12 gasoline pumps as parking stalls: (i) parking spaces have a minimum dimension of eight and one-half by twenty feet; (ii) parking spaces will not require the moving of any vehicle on the premises in order to enter or leave any other stall; (iii) the parking stalls will not be arranged so that ingress or egress from a parking stall requires backing into a public or private pedestrian access way; and (iv) parking spaces shall be in an area for the parking of a motor vehicle plus those additional areas required to provide for safe ingress and egress from said space and set aside to meet these provisions must be usable and accessible for off-street parking (City Municipal Code Sections 12-306(I)(5)(a), (I)(3)(e) and (i), (I)(1)(d)). The "parking stalls" that are in fact the 12 gasoline pumps do not meet any of these requirements as they do not provide the specified dimensions and require other vehicles in front of or behind each space to enter or leave each space, or if another car is blocking the ability to leave the space cars must back into a pedestrian access area. In addition, the parking area itself is part of the area required for ingress and egress out of the space and the area is not set aside for off-street parking.

(c) Cross Access Agreement

The Conditions of Approval require either compliance with cross access or creation of such agreement. (Conditions of Approval Part D(12)(d) and Part F(1)(a)). The Proposed Project violates the existing cross access agreement recorded as Section VI of the CC&Rs. See Exhibit A. Cross access is currently provided through the Proposed Project site on the south side of the existing building to allow access to the rest of the Shopping Center. The proposed carwash will block the traffic flow on the south side of the building preventing the cross access into the Shopping Center. The restricted access created by the Proposed Project violates the cross access provision of the CC&Rs.

(d) Noise Study

The City's Municipal Code (Section 12-105(C)(6)) and the Proposed Project's conditions of approval (Part F(1)(b)) require a car wash facility to comply with the City's Noise Ordinance. There is no evidence to indicate that the Proposed Project will comply with the City's Noise Ordinance. However, Longs hereby requests that the Proposed Project applicant prepare a noise/acoustical study to demonstrate the Proposed Project's compliance with the City's Noise Ordinance.

(e) Color Schedule

The City's CUP Submittal Requirements checklist provides that elevations and floor plans must include samples of each proposed color (*i.e.*, color schedule). However, the Proposed Project applicant did not submit such color schedule with its CUP Application. Condition of Approval Part F(1)(g) provides that approval is contingent upon the submittal of a color and material schedule on the elevations for the exterior of all buildings and structures. Longs would like the opportunity to review the color schedule to ensure that the Proposed Project will be architecturally harmonious with the Shopping Center.

(f) Design Review

The City's Municipal Code provides that a car wash facility shall undergo a design review of architecture, style and appearance to insure similarity and compatibility with surrounding residential, commercial and industrial developments. (City Municipal Code Section 12-105(C)(6)). There is no evidence that this design review has been completed or will be required as it is not a condition of approval.

(g) Storm Water

Longs agrees with the Fresno Metropolitan Flood Control District that the Proposed Project should select and implement storm water quality controls recommended in the Fresno-Clovis Storm Water Quality Management Construction and Post-Construction Guidelines to meet the requirements of the State General Permits, eliminate the potential for non-storm water to enter the municipal storm drain system. (See February 22, 2011 letter from the Flood Control District regarding the Proposed Project). There is no evidence that the appropriate permits for the car wash storm water discharges have been sought or that the Proposed Project includes any storm water controls.

(h) Landscape Plan

The landscape plan also does not comply with the City's CUP Submittal Requirements checklist and the City's Municipal Code. The CUP Submittal Requirements require the landscape plan to include the percent of parking lot shading that will be provided in 15 years and it does not appear that adequate shade cover is provided. The City's Municipal Code includes very detailed requirements for what must be illustrated on a landscape plan. (City's Municipal Code §12-306(N)(23)(b)). The landscape plan states that the landscaping will comply with City Code Sections 12-306(N)(23) & (24) but the plan does not include several details required by these Code sections to be illustrated on the landscape plan. Just one example is the failure to include specifications for the irrigation system on the landscape plan. (City's Municipal Code §12-306(N)(23)(b)(4)). Furthermore, the landscape plan's statement that it will comply with the City Code requirements does not include the certification language required in City Code Section 12-306(N)(23)(d)(2)).

B. The Proposed Project's Type 21 Liquor License May Violate the California Alcoholic Beverage Control Act.

The California Alcoholic Beverage Control Act ("ABC Act") determines that the public welfare and morals require that there be a limitation on the number of premises licensed for the sale of distilled spirits, beer and wine. (Business and Professions Code §§23815 and 23817.4). The City and the Proposed Project applicant have not demonstrated compliance with the limitations in the ABC Act Business and Professions Code Sections 23817, 23817.5 and 23817.7. In sum, the number of premises for which an off-sale beer and wine license, when combined with an off-sale general license for distilled spirits, shall be limited to one premises for each 1,250 inhabitants of the city and county in which the premises is situated. (Business and Professions Code §23817.5(a)(2)). If the concentration of the premises exceeds those outlined above, the applicant must show that the public convenience or necessity would be served by the issuance of the license and that certain conditions are satisfied. (Business and Professions Code §23817.7).

Specifically, the Business and Professions Code prohibits the issuance of new alcohol retail licenses in any area that would tend to create a law enforcement problem, or would result in or add to an undue concentration of alcohol licenses unless a determination is made that the license would serve the public convenience or necessity. (Business and Professions Code §§23958 and 23958.4). Here it is possible that a gas station serving alcohol will result in crime/loitering and it creates an abundance of alcohol sales in one area (3 Type 21 Licenses in the same Shopping Center).

If there is an undue concentration at the Shopping Center, the City must determine within 90 days of notification of a completed application that public convenience or necessity would be served by the issuance of the license. (Business and Professions Code §23958.4(b)(2)). Regardless if the City makes this determination, with two other premises within the Shopping Center selling beer, wine and distilled spirits there is simply no need for another Type 21 License at the Proposed Project.

There is no evidence that the City or the Proposed Project applicant have analyzed the concentration of premises serving beer, wine and distilled spirits or made any of the required findings to allow the Proposed Project to sell beer, wine and distilled spirits.

C. The Proposed Project Violates Several of the CC&R Provisions.

Lastly, the Proposed Project violates the express provisions of the CC&Rs and such development requires consents and approvals pursuant to the CC&Rs that have not been sought or obtained.

1. March 20, 2011 Letter.

On March 30, 2011, Senior Legal Counsel-Real Estate for CVS Caremark Corporation, Kristine L. Donabedian, sent a letter to the owner of the Proposed Project applicant, John Shehadey, outlining the CC&R violations. This March 30, 2011 letter is attached hereto as Exhibit B and all violations outlined within such letter are incorporated within this appeal letter by reference.

2. Type 21 Liquor Licenses.

One of Longs' main concerns is that the CUP approval violates the CC&Rs which prohibit, for the use and benefit of Longs, the sale of alcoholic beverages for off-premises consumption subject to exceptions that are inapplicable to a gas station, carwash and convenience store. Furthermore, the existing CVS/pharmacy and The Market in the Shopping Center currently have a Type 21 Liquor License and sell beer, wine and distilled spirits. Having three Type 21 Liquor Licenses within the Shopping Center would be an unnecessarily high concentration of such licenses. Such concentration is not sound public policy and leads to too much competition, which is the purpose of the protection in the CC&Rs.

Conclusion

For all of the preceding reasons, Longs respectfully requests that the City Planning Commission repeal the CUP approval. I would be happy to discuss the appeal in more detail or if you have any questions regarding the information presented in this letter.

Sincerely yours,

HOLLAND & KNIGHT LLP



Amanda J. Monchamp

AJM:s l

cc: Rebecca Klisch, City Clerk
Bonique Salinas, City Planner
City Planning Commissioners, hard copy only
Kristine Donabedian, Senior Legal Counsel-Real Estate for CVS Caremark Corporation

Exhibit A

CC&Rs

Declaration/Easement
Agreement

DECLARATION ESTABLISHING
RESTRICTIONS AND GRANTS OF EASEMENTS

West and Herndon
Fresno, California

THIS AGREEMENT is made and entered into this
8th day of April, 1980, by and between LONGS
DRUG STORES, INC., a California corporation (hereinafter
referred to as "Longs"), J-C MARKETS, INC., a California
corporation (hereinafter referred to as "J-C"), and DR. AND
MRS. ALEC SKOLNICK (hereinafter referred to as "Skolnick").

WITNESSETH:

WHEREAS, it is the mutual desire of the parties
hereto that there be a Declaration Of Establishment Of
Restrictions And Grants Of Easements as hereinafter stated;
and

WHEREAS, Longs is the owner of that certain real
property hereinafter referred to as Parcel B, which property
is set forth on that certain Parcel Map No. 79-49, dated
_____, File of Maps in Book _____, Page _____,
in the Office of the County Recorder, County of Fresno,
State of California, and which Parcel Map as so recorded is
attached hereto as Exhibit "A," and by this reference is
incorporated herein; and

WHEREAS, J-C is the owner of a leasehold estate in
that certain real property designated as Parcel A in said
Parcel Map No. 79-49 as attached hereto as Exhibit "A;" and

WHEREAS, Skolnick is the owner of that certain
real property designated as Parcel C, Parcel D, and Parcel E,
as well as the owner of the fee estate in Parcel A, as
shown on Exhibit "A;" and

WHEREAS, all of the parcels mentioned above are intended to be operated as a commercial unit and are referred to collectively as the "Shopping Center;" and

WHEREAS, it is the purpose and intent of each of the parties hereto to develop its respective parcel or parcels for use in conjunction with the other parcel or parcels of the hereinabove described Shopping Center substantially in the manner set forth on the site development plan attached as Exhibit "B," and by this reference incorporated herein, subject to adjustment of said development on Parcels C, D and E as provided herein; and

WHEREAS, for the purpose of this Agreement the entire area of the Shopping Center is divided into two categories which relate to use, which areas are indicated on Exhibit "B" and are hereinafter referred to respectively as "Common Area" (which includes parking, landscaping, walkways and access uses) and "Building Area;" and

WHEREAS, it is the purpose and intent of this Agreement to subject each and every portion of each parcel of the Shopping Center to the covenants, conditions and restrictions hereinafter set forth and to establish the easements hereinafter described, pursuant to a general plan of improvement of the Shopping Center and for the mutual benefit of the owners of any and all portions hereof and their respective heirs, successors, assigns, grantees, mortgagees and tenants; and

WHEREAS, the parties desire to establish a general plan for the protection, development, use, maintenance and improvement of the Shopping Center described hereinabove, and to hereby fix protective provisions, covenants, restrictions, easements and make provisions for liens and charges,

collectively referred to as "restrictions," on and subject to which all of the parcels described above or any part of them is to be improved, held, used, occupied, leased, sold or conveyed and each of restrictions is for the mutual benefit of all of such property and of every portion and of each of the parties and shall run with the land and inure to, and pass with each and all of such property, and shall apply to and bind the respective successors in interest and each and all of which restrictions are imposed on each portion of such property as a mutual, equitable servitude in favor of all other portions of such property and any portion; each benefited portion is to be the dominant estate and each burdened portion of such property is to be the servient estate, and this instrument will terminate and supercede any other instrument or agreement relating to or respecting the use and occupancy of the property described in the recitals hereinabove.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, the parties agree as follows:

I. LAND USE.

The following restrictions relate to Parcels A, B C, D and E in the County of Fresno, State of California, more particularly described in the recitals hereinabove and are imposed for the benefit of Longs and J-C, none of said restrictions being material to Skolnick:

(a) J-C and Skolnick for themselves and for their successors and assigns hereby covenants and agrees with Longs, for the use and benefit of Longs, its successors and assigns and for the benefit of Parcel B, that no portion of Parcel A, C, D or E of the

Shopping Center shall now or in the future be used for any of the following:

(1) For the conduct of any store, business, trade or profession (whether separately or as a part of another entity) which requires or has a license or permit to conduct a pharmacy from the California State Board of Pharmacy or other agency which hereafter may be empowered to license or permit the conduct of a pharmacy, or which employs or is required to employ a registered pharmacist, as such;

(2) For the conduct of any store, business, trade, or profession which is called, labeled, named or is commonly known as or is referred to as a "drug store," "pharmacy" or "apothecary;"

(3) For the conduct of any store, business or trade which sells alcoholic beverages including beer and wine at retail for off-premises consumption; provided, however, that J-C shall be permitted to sell liquor, wine, beer and other spirits as a department of its supermarket; and Skolnick shall be permitted to establish and allow to operate upon Parcel C, D and E (i) one wine and cheese store specializing in the sale of fine wines and specialty items, and (ii) one delicatessen which may serve or sell beer and wine as part of its business; and (iii) one cocktail lounge or tavern for on-premises sales of alcoholic beverages subject to the restrictions of applicable zoning ordinances; and (iv) one restaurant on Parcel C, D

or E with full on-site sale of liquor, beer and wine as a part of its service.

(b) Without limiting or expanding the foregoing restrictions, said restrictions shall not be deemed to apply to nor include in its terms a supermarket (being a market operated by J-C, its lessees or its tenants, or successors to Parcel A) selling items customarily sold by other food supermarket stores, or its successors or assigns, upon the condition that it or they continue to conduct a typical grocery store or supermarket business on Parcel A, and so long as the items customarily sold are not required to be sold by or in the presence of a registered pharmacist.

(c) Longs and Skolnick for themselves and their successors and assigns, hereby covenants and agrees with J-C, for the use and benefit of J-C, its successors and assigns, and for the benefit of Parcel A, that no portion of Parcel B, C, D or E shall now, or in the future, be used for the operation of a grocery supermarket without the prior written consent of J-C; provided, however, that said restriction shall not be deemed to apply to Longs, its lessees, tenants or successors to Parcel B, selling items customarily sold by other Longs Drug Stores, its successors or assigns, so long as the items as are customarily sold do not include fresh or frozen meat, fish, poultry or produce; and provided further, that the foregoing restriction shall not be considered applicable to nor shall it restrict operation on Parcels C, D or E of bakeries, delicatessens, specialty food stores or restaurants selling food prepared for on-premises or off-premises consumption.

(d) No portion of the Shopping Center shall be used for real estate office, medical or dental office, entertainment or recreational facility, or training or educational facility without the prior written consent of Longs, J-C and Skolnick; provided, however, that insurance, title insurance and financial service offices (banks, savings and loans and small loan companies) and travel agencies shall be permitted. Consent to office uses shall not be unreasonably withheld, but it shall be reasonable to withhold consent where the proposed office use is likely to impose a burden upon the parking area greater than the burden which would be imposed by a general commercial use of the same size.

As used herein, "entertainment or recreational facilities" includes, but is not limited to, a bowling alley, skating rink, theater, billiard room, health spa or studio or gym, or other place of public amusement. "Training or educational facility" includes, but is not limited to, a beauty school, barber college, reading room, place of instruction, or any other operation catering primarily to students or trainees rather than to customers.

(e) The Shopping Center shall be used for commercial purposes only, which shall be limited to the development, construction, leasing, operation and maintenance of mercantile business and professional establishments. No Party shall use or permit the use of its Parcel, or any portion thereof, for (i) the conduct of any offensive, noisy or dangerous trade,

business, manufacturing activity or occupation, (ii) the maintenance of any nuisance or the conduct of any activity which violates public policy, (iii) any activity which physically interferes with the business of any other Party or business conducted on any other Parcel, or (iv) any other unreasonable use of its Parcel not compatible with the operation of a first-class shopping center. Deliveries of goods on any Parcel shall be made only at times other than peak business hours and shall be restricted to delivery areas to the extent that such areas are provided. Trucks shall not be permitted to obstruct parking area, driveways or access ways during business hours. No item of merchandise shall be stored or sold in any area outside the walls of any building; provided, however, that this restriction shall not prohibit food sales and service areas located within the Building Area nor shall it prohibit sales through walk-up service windows abutting the sidewalk areas.

II. BUILDING TYPE AND APPROVAL.

No building shall be erected, placed or permitted to remain within the Shopping Center that is not of the same type and quality of design, materials, and workmanship as are consistent with other modern shopping centers now and in the future existing in the area and in no event shall any free-standing building located to the front of Long's' building and the market as shown on Site Plan Exhibit "B" exceed twenty-four (24) feet in height.

Each building in the Shopping Center, now and in the future, will be of high quality construction and architecturally designed so that the exterior elevations (which

will include sign criteria) and color thereof will be architecturally and aesthetically compatible and harmonious with the buildings in the Shopping Center. In connection with the initial construction of the buildings and improvements within the Shopping Center, including common areas as herein defined, the parties shall appoint a Project Architect who shall be responsible to review and recommend approval or disapproval of the exterior elevations or schematics and site plan for any buildings or structures in the Shopping Center to the extent of the controls imposed upon buildings or structures pursuant to the building requirements or criteria set forth hereinabove, subject to agreement by the Parties. When the parties reach agreement as to the exterior elevations and design, said exterior elevations and design shall be initialed by the Parties, attached hereto as Exhibit "C," and by this reference made a part hereof. After written approval thereof has been given by the Parties, the recommendations of the Project Architect with respect to application of the exterior elevations and design criteria shall be followed by the Parties.

No Party hereto may arbitrarily or unreasonably withhold its approval of the recommendations of the Project Architect if the recommendations are based upon sound professional judgment and are in conformity with the intent of this Article II. If approval or disapproval of the Project Architect's recommendations (as accompanied by the pertinent information and drawings) is not given within twenty (20) days from receipt of such recommendations, then the party failing to act within said time period shall be deemed to have approved the recommendations. If one of the Parties hereto rejects or disapproves the recommendations of the

Project Architect, then the disapproving Party shall set forth in writing in reasonable detail within the said twenty (20) day time period its reasons for disapproving. If the recommendations of the Project Architect are disapproved as provided herein, then he may submit alternative recommendations, each of which shall be handled in the same manner as the initial recommendation.

After the full development of the Shopping Center and completion of the duties of the Project Architect, any alterations, remodeling or rebuilding of any of the buildings or structures within the Shopping Center shall be subject to the prior written approval of Longs, Skolnick and J-C with respect to the quality of design, materials, workmanship, exterior elevations, color, compatibility and harmony with the balance of the Shopping Center. Such approval shall not be unreasonably withheld.

Nothing herein contained shall be applied or construed in a manner which shall prevent the use of any Building Area on any Parcel, the intent of the foregoing restrictions being solely for the purpose of regulating such use as to design and architectural harmony.

III. SIGNS.

No free standing or pylon signs shall be located on the Common Area or Building Area of the Shopping Center except in the areas designated therefor on Exhibit "B," provided no such sign shall be erected without written approval of Skolnick, J-C and Longs as to size, style and height, which approval shall not be unreasonably withheld. No exterior wall signs or other exterior advertising media shall be placed, constructed or maintained on any building within the Shopping Center, or in the Common Areas, without

the prior written approval of Longs, Skolnick and J-C, which approval shall not be unreasonably withheld. For the purposes hereof, "exterior advertising media" shall include, without limitation, loudspeakers, flashing lights, search-lights and phonographs.

IV. BUILDING LOCATION.

Subject to the restrictions set forth in this Agreement, all buildings and structures shall only be placed or constructed upon the respective parcels in the Shopping Center in those areas designated on said Exhibit "B" as Building Area; and further, no buildings or structures shall be placed or constructed in the Shopping Center within that certain area designated as Common Area on Exhibit "B" (subject to adjustment to include areas not actually built upon the Skolnick Parcels C, D and E) except loading docks, pylon signs, directional signs, bumper guards or curbs, landscape planters, lighting standards, and any other landscaping improvements as may be required under applicable controls and regulations of the City of Fresno. Each of the Parties may construct and locate sidewalks and walkways and canopies and marquees (with signs which may be affixed thereto) over such sidewalks and walkways, so that the same may encroach a reasonable distance over or upon, as the case may be, the Common Area. All the foregoing must comply with all applicable laws, rules, ordinances and regulations of the local government authority.

Each of the Parties grants to the other for the benefit of the other Parties and their respective Parcels an easement for footings, foundations and eaves (which includes, but is not limited to canopies and marquees) appurtenant to any buildings or structures on any Parcel of the Shopping

Center which may encroach into or upon the Common Area; such encroachments, however, unless otherwise agreed to in writing between the parties, shall be limited to a horizontal extension of ten (10) feet.

Should any building to be constructed pursuant to this Agreement inadvertently encroach on any property surrounding the same and such encroachment is not material in size, then the owner of said surrounding property grants a perpetual easement for such encroachment to the encroaching party.

V. COMMON AREA.

The Building Area as shown on Exhibit "B" may be developed to full building capacity and there shall be no extensions or enlargements of buildings on Building Areas of the Parcels from those shown on Exhibit "B" that will create more gross floor area and/or reduce parking area, such as additions extending over present Common Area, basements, second-story levels, and upstairs without the written consent of Skolnick, Longs and J-C; provided, however, that mezzanine space not utilized for retail sales purposes (or which may be utilized for retail sales purposes so long as the total retail sales area shown on Exhibit B is not increased) may be constructed in any building without any such written consent being required and there shall be no obligation to utilize all Building Area shown upon Exhibit B. There shall be no decrease in the parking ratio or change in parking layout or pattern of traffic flow for the Shopping Center from that shown on Exhibit "B" without the written consent of Skolnick, Longs and J-C.

The Parties intend to enter into a Common Area Maintenance Agreement to provide for the orderly maintenance

and management of the Common Area of the Shopping Center. At any time such an agreement is in force and effect, the respective rights, duties and obligations of the Parties shall be those set out in said Common Area Maintenance Agreement with respect to all matters referred to and covered therein.

At any time when a Common Area Maintenance Agreement is not in effect, each party shall provide for its respective Parcel, public liability insurance and maintenance and repair services required to keep the Common Area of its Parcel neat, clean and in attractive condition and at all times maintained in a state of good and safe repair and in accordance with the laws, rules, ordinances, regulations and in conformity with high quality shopping center practices. In addition, ~~during any such period, and so long as the~~ owner of Parcel B operates it as a drug store or for purposes which impose similar or greater burdens upon the Common Area, the owner of Parcel B shall pay to the owner of Parcel C an amount equal to eleven and 44/100ths percent (11.44%) of the costs incurred in connection with the Common Area on Parcel B to compensate the owner of Parcel C for the use of Common Area on said Parcel by the uses established on Parcel B. Said amount shall be accounted for and paid annually within ninety (90) days after the end of each calendar year with appropriate proration for portions of a year to which the provisions of this paragraph are applicable. ^{Skolnick, Longs and J-C} ^{per 1st Amendment} ^{dated 7-22-86}

VI. STREET AND BOUNDARY ACCESS.

Skolnick, Longs and J-C shall not now nor in the future erect any buildings, structure or barricades along any street boundary nor along any portion of any common boundary lines of their respective properties, Parcel A, B,

C, D and E, except within or along the boundaries of the respective Building Areas shown on Exhibit "B," and none of the Parties hereto shall now nor in the future erect any barricades or structures which prevent or hinder Shopping Center ingress or egress and parking.

VII. SHOPPING CENTER INGRESS AND EGRESS.

Each Party, as grantor, grants to the other Parties for the benefit of said other Parties, their respective successors, assigns, tenants, customers, and invitees and the customers and invitees of such tenants and for the benefit of each respective Parcel or Parcels belonging to the other Parties as grantees the right in common with each other of mutual nonexclusive ingress and egress by vehicular and pedestrian traffic and vehicle parking upon, over and across that portion of the Common Area within the grantor's Parcel or Parcels.

VIII. UTILITY EASEMENTS.

(a) Longs hereby grants to J-C and Skolnick subject to Longs' approval of location and construction, the right in common with Longs to erect, maintain, operate, repair and renew utility lines, transformers and meters upon, under, over and across Parcel B for service of the Building Areas in the Shopping Center.

(b) J-C hereby grants to Longs and Skolnick, subject to J-C's approval of location and construction, the right in common with J-C to erect, maintain, operate, repair and renew utility lines, transformers and meters upon, under, over and across Parcel A for service of the Building Area in the Shopping Center.

(c) Skolnick hereby grants to J-C and Longs, subject to Skolnick's approval of location and construc-

tion, the right in common with Skolnick to erect, maintain, operate, repair and renew utility lines, transformers and meters upon, under, over and across Parcel A (to the extent of Skolnick's interest) and Parcels C, D and E, for service of the Building Area in the Shopping Center.

(d) The Common Area of the Shopping Center will be developed and improved jointly by the Parties hereto; each of the Parties shall have the right and easement to connect to and continually use for the benefit of its respective Parcel or Parcels any and all storm drains, utility lines, sewers and other services which have been installed by the Parties hereto in, to, upon and over certain portions of the Common Area; and none of the Parties hereto will interfere with such storm drains, utility lines, sewers and other services on its respective Parcel or Parcels, except for maintenance, repair, construction or reconstruction if such interference would disrupt the orderly development and operation of the other Party's or Parties' respective portion or portions of the Common Area and/or buildings to be constructed upon its or their respective Building Area of the Shopping Center. In the event that it is necessary for any Party hereto to cause the installation of a storm drain, utility line or sewer across the Common Area subsequent to the initial paving and improving of said Common Area, the Parties hereto shall not withhold such approvals or consents as may be required to perfect the easement or easements; provided, however, that such work shall not unreasonably interfere with the normal operation of any business in the Shopping Center.

(e) The Parties grant said utility easements to the other Parties with the understanding that any difficulties, disagreements and problems arising with respect thereto shall be resolved by mutual agreement if reasonably possible so as to promote the efficient operation, convenience and lower the cost of Shopping Center utilities.

(f) All utility lines, transformers and meters of Longs, Skolnick and J-C, their successors, assigns and tenants shall be maintained in a safe condition. No grantee of a utility easement under this section shall in the use, construction, reconstruction, operation, maintenance or repair of any utility lines, transformers, and meters in any way interfere, obstruct, or delay in any way the receiving of merchandise by said grantor or in the grantor's location, construction, reconstruction, maintenance, use or repair of its Building Area; provided, however, that nothing herein contained shall be deemed to prevent or restrict normal construction, reconstruction or repair activities, properly fenced or screened, on the Building Area on any Parcel.

(g) The grant of utility easement by the Parties hereto is subject to any and all other easements that have been granted by the Parties on the date hereof and that the Parties may hereinafter grant which are not inconsistent with the easements herein granted and created.

IX. REAL PROPERTY TAXES AND ASSESSMENTS.

9.1. Each Party To Pay Taxes On Respective Parcels. Each party hereto and its respective successors and assigns shall pay direct to the tax collector, when due,

the real property taxes and other special taxes and assessments assessed against the property owned by such Party.

9.2. Longs Payment To Skolnick. In addition to the real estate taxes and assessments payable pursuant to Section 9.1 above, and so long as Longs operates upon the Longs Parcel a drug store or other store or use which imposes similar or greater burdens upon the Common Area, Longs agrees to pay to Skolnick a contribution toward taxes and assessments levied or assessed with respect to the land in Parcel C, equal to eleven and 44/100ths percent (11.44%) of the taxes levied or assessed against the land in the Longs Parcel, exclusive of improvements. Longs shall pay said contribution of taxes and assessments not later than ten (10) days prior to the delinquency date with respect to payment of each installment thereof. ^{See 11/10/2010 meeting per 11/10/2010 meeting dated 7-20-10}

X. CONDEMNATION, DAMAGE AND DESTRUCTION.

10.1. Distribution Of Condemnation Award.

Any award of compensation or damages, whether the same be obtained by agreement or by judgment, verdict or order in a legal proceeding resulting from a taking of any Parcel, or any portion thereof, by exercise of right of condemnation or eminent domain or resulting from a requisitioning of any Parcel, or a portion thereof, by military or other public authority for any purpose arising out of a temporary emergency or other temporary circumstance shall be distributed by allocating to the Party whose Parcel (or portion thereof) is taken the award payable for such taking (including severance) and by allocating to a Party whose Parcel is not taken the portion of the award attributable to loss suffered by that Party in the form of damage to or diminution in the value of its Parcel, as a dominant estate hereunder, entitled to the

benefit of covenants, easements and servitudes over and with respect to the property directly taken or damaged. Any Party or other person having an interest in the award, or any one of them, shall have the right to appeal any judgment, verdict or order to a court of last resort with respect to their or its respective interests. In the event of any sale of any Parcel or any portion thereof under threat of condemnation, such Parcel or portion thereof shall for all purposes be deemed to have been "taken" as that term is used in this Article X, and the net amount of the price received therefor after deduction of the expenses of the sale borne by the Party of the Parcel taken or any successor in interest shall be deemed to constitute an "award" as that term is used herein.

10.2. Termination For Condemnation Of Parking Area. In the event that condemnation or eminent domain or other taking shall result in a taking of the Common Area on the Parcel of any Party so that the Parking Ratio in the Parking Area thereon would be reduced below a minimum of three (3) usable parking spaces for each one thousand (1,000) square feet of Building Area, then the Party whose Parcel is so affected shall devote the net proceeds of the award paid for such taking to provide appropriate replacement of the Parking Area so as to restore the parking ratio to the ratio above set forth; provided, however, that if it is not reasonably feasible in good faith to so provide such replacement Parking Area, then any Party may terminate this Agreement by notice to the other Parties given within ninety (90) days after notice that such space cannot be provided.

10.3. Interests Affected By Condemnation.

Nothing contained in this Article X shall entitle any Party or its successor in interest to any share in any award to the Party of the Parcel taken, other than for the interests of each Party created by this Agreement in the Parcel taken.

10.4. Damage To Or Destruction Of Improvements On Any Parcel. In the event of any damage to or destruction of all or any part of the improvements upon any Parcel, the Party on whose Parcel such damage or destruction occurs shall cause either (i) the complete restoration, repair and rebuilding of such improvements to the condition which existed immediately prior to such damage and destruction, (ii) the complete restoration, repair and rebuilding of such improvements to a changed or altered condition; provided, however, that the plans therefor shall have first been approved by the other Parties as provided in Article I hereof, or (iii) remove the debris and structural remains of the improvements, and pave or landscape the portion of the Parcel affected by the damage and destruction so that said portion shall constitute an integral part of the Shopping Center, architecturally and operationally compatible therewith and any area left in such a condition shall be or become useable as part of the Common Area of the Shopping Center until such time as the Party upon whose Parcel such condition exists shall engage in reconstruction or rebuilding of improvements subject to prior approval by the other Parties as provided in Article I hereof.

XI. RIGHTS UPON DEFAULT.

11.1. Right To Cure. In the event any Party, or any successor in interest, defaults in the performance of any of the obligations of this Agreement, the non-

defaulting Parties shall have the right, but not the obligation, upon ten (10) days written notice, to cure such default for the account of and at the expense of the defaulting Party. To effectuate any such cure, the non-defaulting Parties shall have the right to enter upon the Parcel of the defaulting Party to perform any necessary work or furnish any necessary materials or services to cure the default of the defaulting Party. The non-defaulting Parties shall have the further right to recover from the defaulting Party all costs and other sums expended in connection with the cure of the default hereunder, plus interest thereon at the maximum legal rate. Each Party shall be responsible hereunder for the default of its tenants, agents and concessionaries.

11.2. Legal And Equitable Relief. Each Party shall have the right to prosecute any proceedings at law or in equity against any other Party hereto (or any successor in interest), violating or attempting to violate any of the provisions contained in this Agreement, in order to prevent the violating Party or any such Person from violating or attempting to violate the provisions of this Agreement and to recover damages for any such violation. The remedies available under this Section 11.2 shall include, by way of illustration but not limitation, ex parte applications for temporary restraining orders, and preliminary injunctions and permanent injunctions enjoining any such violation or attempted violation of any provision of this Agreement.

11.3. Costs Of Cure. Any amounts owed by one Party to another hereunder and all costs and expenses incurred by any Party to cure a default of a defaulting Party under the provisions of Section 11.1 hereof, together

with interest thereon, and all costs and expenses of any proceedings at law or in equity, including reasonable attorneys' fees awarded to any party by an order of court pursuant to Sections 11.2 and 11.4 hereof, shall be assessed against and paid by the defaulting or violating Party.

11.4 Lien. Costs and expenses assessed pursuant to Section 11.3 hereof shall constitute a lien against the defaulting Party's Parcel or the interest therein of the Person in default hereunder. The lien shall attach and take effect only upon recordation of a claim of lien in the office of the Recorder of the County in which the Shopping Center is located by the Party making the claim. The claim of lien shall include the following:

- (a) The name of the lien claimant;
- (b) A statement concerning the basis for the claim of lien and identifying the lien claimant as a curing Party;
- (c) An identification of the owner or reputed owner of the Parcel or interest therein against which the lien is claimed;
- (d) A description of the Parcel against which the lien is claimed;
- (e) A description of the work performed which has given rise to the claim of lien and a statement itemizing the amount thereof; and
- (f) A statement that the lien is claimed pursuant to the provisions of this instrument, reciting the date, book and page of recordation hereof.

The notice shall be duly verified, acknowledged and contain a certificate that a copy thereof has been served upon the Party against whom the lien is claimed, either by personal

service or by mailing pursuant to the notice provisions hereof or at the address given for the mailing of tax statements in the Office of the Tax Collector of the County in which the Shopping Center is located for the Parcel or interest against which the lien is claimed. The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and it may be enforced in any manner allowed by law, including, but without limitation, by suit in the nature of a suit to foreclose a mortgage or mechanic's lien under the applicable provisions of the California Code of Civil Procedure.

11.5. Remedies Cumulative. All of the remedies permitted or available to the Parties hereto under this Article XI shall be cumulative. In the event that any action or suit is brought for the enforcement of any provision of this Agreement or as a result of any alleged violation of any of the provisions of this Agreement, the prevailing Party in such suit shall be entitled to recover its costs of suit, including reasonable attorneys' fees, from the losing Party, and any judgment or decree entered in such proceeding shall include an award therefor.

11.6. Estoppel Certificate. Any Party may, at any time and from time to time, in connection with the sale or transfer of the Party's Parcel, or in connection with the financing or refinancing of the Party's Parcel by bona fide mortgage, deed of trust or sale-leaseback made in good faith and for value, deliver written notice to the other Parties requesting such Parties to execute certificates certifying that the requesting Party is not in default in the performance of its obligations under this Agreement, or, if in default, to describe therein the nature and amount of

any and all defaults. Each Party receiving such request shall execute and return such certificate within thirty (30) days following the receipt thereof. Failure by a Party to so execute and return such certificate within the specified period shall be deemed an admission on such Party's part that the Party requesting the certificate is current and not in default in the performance of such Party's obligations under this Agreement. The Parties acknowledge that such certificate may be relied upon by transferees, mortgagees, deed of trust beneficiaries and leaseback-lessors.

XII. TRANSFERS OF INTEREST, RIGHTS,
POWERS AND OBLIGATIONS.

12.1. Limitations On Transfer Or Assignment.

In no event shall the rights, powers and obligations conferred upon the Parties hereto pursuant to this Agreement be at any time transferred or assigned by any of the Parties except through a transfer of their respective interests in their respective Parcels, and then only to the extent and in the manner hereinafter provided:

(a) Transfer of Entire Interest. In the event of the transfer or conveyance of the whole of the interest of any Party, or a successor in interest to such Party, in its Parcel (or in the case of Skolnick, all of its Parcels) without retaining any beneficial interest therein other than as beneficiary under the terms of a deed of trust or mortgage or without simultaneously acquiring a new interest by way of leasehold, life estate, or any other similar interest, then the rights and powers conferred upon and the obligations under this Agreement of the transferring Party shall be transferred and assigned with its interest.

(b) Retention of Interest. In the event that the whole of the interest of any Party, or a successor in interest to such Party, in its Parcel or Parcels is transferred or conveyed, but a new interest is created in the transferring Party, simultaneously with the conveyance of its previous interest, by way of leasehold, life estate, or any other similar interest, or in the event the transferring Party shall convey its interest in its Parcel, or a portion thereof, by deed of trust, mortgage or other security instrument as security for any obligation or indebtedness of such Party, then none of the rights and powers conferred upon and the obligations under this Agreement of the transferring Party shall be transferred or assigned with the transfer or conveyance of its interest, but all of the rights and powers conferred upon and the obligations under this Agreement of the transferring Party shall remain in such Party so long as such Party retains the new interest in and to its Parcel (other than as beneficiary under the terms of a deed of trust or mortgage). Upon the termination of the new interest created in the transferring Party as specified in this subsection (b), the rights and powers conferred upon, or the obligations of such Party shall vest in accordance with subsection (a) or (c) hereof, whichever is applicable, as if the new interest created in such Party had never existed, subject only to the provisions of Article XIII of this Agreement.

(c) Multiple Ownership. In the event that any Party, or any successor in interest to such Party, shall transfer or convey its interest in its Parcel, or

a portion of its interest in its Parcel, in such a manner as to vest ownership of the Parcel in more than one owner, then the several owners of the Parcel involved in such transaction shall designate one of their number to act on behalf of all such owners in the performance of the provisions of this Agreement. Any such designation shall be in writing and shall be served upon all the other Parties to this Agreement in accordance with the notice provisions of this Agreement. In the absence of any such written designation, the acts of the Party to this Agreement, whose interest is so divided with respect to the performance of the provisions of this Agreement, shall be binding upon all of the owners of such Parcel until such time as the written designation is properly served as provided by this subsection (c). Any Person designated pursuant to the provisions of this subsection (c) shall be the agent of its principals, hereby irrevocably appointed for such purpose, upon whom service of any process, writ, summons, order or other mandate of any nature of any court in any action, suit or proceeding arising out of this Agreement may be made, and service upon such designated Person shall constitute due and proper service of any such matter upon its principal, provided a copy of such matter is also mailed to such principal at the principal's last address known to the sender.

XIII. RELEASE UPON SALE OF INTEREST.

13.1. Sale By Any Party. Upon the sale or transfer by any Party, or any successor in interest, of its entire right, title and interest in its Parcel, that Party shall be released from the obligations of this Agreement,

provided that (i) the Party shall not be in default in the performance of any provision of this Agreement and all amounts which may then be due and owing under this Agreement shall have been paid by that Party as required under this Agreement, and (ii) that Party shall have given notice to every other Party of the sale, transfer, conveyance or assignment of all of its right, title and interest in its Parcel concurrently with the filing for record of the instrument effecting the same.

13.2. Sale By Party Maintaining Common Area.

In addition to the provisions of Section 13.1 hereof, upon sale or transfer by the Party, or any successor in interest, maintaining the Common Area under any outstanding Common Area Maintenance Agreement, of its entire right, title and interest in its Parcel, such Party shall be released from the obligations of this Agreement; provided, however, that to obtain such release it shall have delivered to each other Party to this Agreement a final closing statement under the Common Area Maintenance Agreement, detailing all costs and expenses incurred for the operation and maintenance of the Common Area as of the effective date of the sale, transfer, conveyance or assignment of its right, title and interest in its Parcel. Any amounts due such Party pursuant to the provisions of the Common Area Maintenance Agreement at the time of the sale, transfer, conveyance or assignment of such Party's right, title and interest in its Parcel shall be paid in accordance with the provisions thereof at the times therein specified, with appropriate proration.

13.3. Liability Of Transferor. In no event shall any transferee of any Party be liable for any default of the transferring Party, or any successor in interest,

under this Agreement which occurred prior to the effective date of the transfer of all right, title and interest in the affected Parcel to the transferee; provided, however, that nothing contained in this Section 13.3 shall affect the existence, priority, validity or enforceability of any lien placed upon the affected Parcel under the provisions of Section 11.3 of this Agreement prior to the effective date of the transfer.

13.4. Assumption Statement. Concurrently with the transfer of all right, title and interest in any Parcel by any Party, the transferee shall execute and deliver to the other Parties a written statement in which: (i) the name and address of the transferee shall be disclosed, and (ii) the transferee shall acknowledge its obligation to be bound by this Agreement and perform all obligations hereunder in accordance with the provisions of this Agreement. Failure to deliver any such written statement shall not affect the running of any covenants herein with the land, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Agreement, but such failure shall constitute a default by the transferee hereunder.

XIV. EFFECT OF BREACH UPON PURCHASERS AND MORTGAGEES.

14.1. No Termination. The breach of this Agreement shall not entitle any Party or Person to cancel, rescind or otherwise terminate its obligations hereunder.

14.2. Mortgagee Protection. No breach hereof or lien asserted hereunder shall defeat, render invalid, diminish or impair the lien of any mortgage or deed of trust made in good faith and for value, but the covenants

and restrictions, easements and conditions herein contained shall be binding upon and effective against the owner of any Parcel, or any portion thereof, whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

14.3. Subordination As To Encumbrance Prior To Lien Claim. Any lien created pursuant to the provisions hereof shall be subject and subordinate to the interests of any bona fide purchaser or encumbrancer of all or any part of the property subject hereto, or any interest therein, for fair value, who acquired its interest prior to the date of recordation of the claim of lien, notwithstanding the fact that the claim of lien may be asserted with respect to work performed or costs incurred prior to the date the claim was duly recorded.

14.4. Subordination As To Encumbrance Whether Prior To Lien Claim Or Not. In addition, any lien claim pursuant to the provisions hereof shall be subject and subordinate to the interest held by any bona fide encumbrancer under a mortgage, deed of trust or the holder of title under sale and leaseback arrangement (which said mortgage, deed of trust or title is subject to no prior contractual encumbrance securing payment of money), contracted in good faith in connection with financing on customary and usual terms with respect to the Parcel, or portion thereof, which is the subject of the claim of lien, regardless of the date of filing thereof. For purposes of this mortgagee protection clause, a sale and leaseback shall be entitled to the benefits of the clause provided for herein in the event that title is transferred by the Party against whom the lien is claimed subject to no encumbrance securing an obligation for payment of money (other than a lien to secure payment of real estate

taxes) and the premises are leased back in their entirety by the Party against whom the lien is claimed, said party assuming in the leaseback arrangement full responsibility for performance of all obligations to be performed hereunder.

14.5. Title By Foreclosure. All of the provisions contained in this Agreement shall be binding and effective against any Parcel, or any portion thereof, where title thereto is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

XV. COVENANTS AND RECORDATION.

15.1. Covenants Run With The Land. All of the provisions, agreements, rights, powers, covenants, conditions and obligations contained in this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees and all other persons acquiring any Parcel, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, unless and until modified as herein provided. All of the provisions of this Agreement shall be covenants running with the land pursuant to applicable law, including but not limited to Section 1468 of the Civil Code of the State of California. It is expressly agreed that each covenant to do or refrain from doing some act on each Parcel hereunder (i) is for the benefit of each other Parcel and is a burden upon each other Parcel, (ii) runs with each Parcel, and (iii) shall benefit or be binding upon each successive owner during its ownership of each Parcel, or any portion thereof, and each Person having any interest therein derived in any manner through any owner of any Parcel, or any portion thereof.

15.2. Recordation. This Agreement shall become effective and binding upon the Parties and their respective successors in interest in accordance with the provisions of this Article XV upon recordation of this Agreement in the office of the County Recorder of the County in which the Shopping Center is located. Recordation shall be effectuated by Skolnick. All costs of recordation shall be borne equally by the Parties. Upon recordation of this Agreement, Skolnick shall distribute to each Party to this Agreement a copy of the recorded Agreement.

XVI. MERCHANTS' ASSOCIATION.

The Parties agree to organize, form and sponsor a Merchants' Association for promotion of the Shopping Center. The Parties agree that each person, firm or entity conducting a retail sales or service business in the Shopping Center shall join in the membership of such association, provided that each, respectively, shall have first approved the Articles of Incorporation and By-Laws of such association and that the dues therefor with respect to Longs and J-C shall not exceed one-eighth of one percent (0.125%) of Gross Sales (as defined in accordance with the customary and usual definition contained in shopping center percentage leases) per period of computation.

XVII. MISCELLANEOUS.

17.1. Negation Of Partnership. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. This Agreement is not intended nor shall it be construed to create any third party beneficiary rights to

any Person who is not a Party hereto unless expressly otherwise provided.

17.2. Duration, Termination And Amendment.

The provisions hereof shall continue in full force and effect so long as any Party or its successor desires to continue the use of its Parcel as part of a Shopping Center and such use remains practically feasible. This Agreement may be cancelled, changed, modified or amended in whole or in part only by written and recorded instrument executed by all of the record owners of all of each Parcel. Notwithstanding any other provisions of this Agreement to the contrary, the provisions hereof shall terminate upon the eightieth (80th) anniversary date of the recordation hereof.

17.3. Approvals. Unless otherwise herein provided, whenever approval is required of any Party, such approval shall not be unreasonably withheld. Unless provision is made for a specific time period, approval shall be deemed given within thirty (30) days of the receipt of the request for approval, and if any Party shall neither approve nor disapprove within said thirty (30) day period, the Party shall be deemed to have given its approval,* If a Party shall disapprove, the reasons therefor shall be stated.

17.4. Not A Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center or of any Parcel or portion thereof to the general public or for the general public or for any public use or purpose whatsoever, it being the intention and understanding of the Parties hereto that this Agreement shall be strictly limited to and for the purposes herein expressed solely for the benefit of the Parties hereto.

gdy *provided that this section is cited in said request with the statement that it will be deemed approved if not disapproved within thirty (30) days.

17.5. Excusable Delays. Whenever performance is required of any Party hereunder, that Party shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or materials or damage to work in progress by reason of fire or other casualty or causes beyond the reasonable control of a Party, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused.

17.6. Severability. Validation of any of the provisions contained in this Agreement, or of the application thereof to any Person by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other Person and the same shall remain in full force and effect.

17.7. Notices. Any notice to any Party hereto may be given by delivering the same in writing to such Party or in person or by sending the same by registered or certified mail with postage prepaid to the addressee's mailing address. The respective mailing addresses of the Parties hereto are, until changed as hereinafter provided, the following:

J-C: 4825 East Olive Avenue
Fresno, CA 93727

Longs: 141 North Civic Drive
Walnut Creek, CA 94596
Attention: O. D. Jones, Secretary

Skolnick: 345 Parrot Drive
San Mateo, CA 94402

Any Party hereto may change its mailing address at any time by giving written notice of such change to the other Parties in the manner provided herein.

17.8. Entire Agreement. This Agreement and the exhibits hereto contain all the representations and the entire agreement between the Parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement and exhibits hereto.

17.9. Captions. The captions preceding the text of each paragraph and subparagraph hereof are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement.

17.10. Minimization Of Damages. In all situations arising out of this Agreement, all Parties shall attempt to avoid and minimize the damages resulting from the conduct of any other Party. Each Party hereto shall take all necessary measures to effectuate the provisions of this Agreement.

17.11. Signature Pages. Signatures of each of the Parties to this Agreement may be executed and notarized on separate pages and when attached to this Agreement shall constitute one complete Agreement.

17.12. Time. Time is of the essence of this Agreement and each and every provision hereof.

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IN WITNESS WHEREOF, the Parties hereto have executed
this Agreement as of the day and year first above written.

"J-C"

J-C MARKETS, INC., a California
corporation

By *Gregory J. Stalder*
Its _____

By _____
Its _____

"Longs"

LONGS DRUG STORES, INC., a
California corporation

By *R. M. Long* *RL*
R. M. Long, President

By *O. D. Jones*
O. D. Jones, Secretary

"Skolnick"

Alec Skolnick
Alec Skolnick

Emily Skolnick
Emily Skolnick

STATE OF CALIFORNIA)
COUNTY OF _____) ss.

On _____, 1979, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ known to me to be the _____ of J-C MARKETS, INC., the corporation that executed the within instrument, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its Board of Directors.

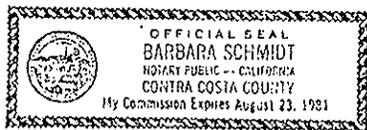
WITNESS my hand and official seal.

NOTARY PUBLIC

STATE OF CALIFORNIA)
COUNTY OF Contra Costa) ss.

On April 8, ¹⁹⁸⁰1979, before me, the undersigned, a Notary Public in and for said State, personally appeared R. M. LONG and O. D. JONES, known to me to be the President and Secretary of LONGS DRUG STORES, INC., the corporation that executed the within instrument, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its Board of Directors.

WITNESS my hand and official seal.



Barbara Schmidt
NOTARY PUBLIC

STATE OF CALIFORNIA)
COUNTY OF San Francisco) ss.

On March 25, ⁸⁰1979, before me, the undersigned, a Notary Public in and for said State, personally appeared ALEC SKOLNICK and EMILY SKOLNICK, known to me to be the persons who signed the within instrument and acknowledged that they executed the same.

WITNESS my hand and official seal.



Linda L. Partmann
NOTARY PUBLIC

Exhibit B

March 30, 2011 letter from Kristine L. Donabedian to John Shehadey
regarding the CC&R violations



CVS/pharmacy

Kristine L. Donabedian

Senior Legal Counsel

One CVS Drive
Woonsocket, RI 02895
T: 401.770.2138
F: 401.216.3266
E: kldonabedian@cvs.com

March 30, 2011

Via UPS Next Day

John Shehadey, President
Red Triangle Oil Co.
2809 S. Chestnut
PO Box 2625
Fresno, CA 93745

J S T, LLC
C/O Jim Shehadey and John Shehadey
405 North Palm Avenue
Fresno, CA 93701

Re: CVS #9865 West and Herndon, Fresno, CA – Declaration Establishing
Restrictions and Grants of Easements dated April 8, 1980 (the “CCRs”)

Gentlemen:

This letter is written on behalf of Longs Drug Stores California, L.L.C. (“Longs”), holder of a leasehold interest in Parcel B of the Shopping Center at the above referenced location. It has come to our attention that you propose development of a parcel of land located at the northeast corner of North West and Herndon Avenues, 7010 North West Avenue, Fresno, CA, APN 405-080-21 (the “Property”). The Property is located within the Shopping Center and is burdened by the CCRs. Capitalized terms used, but not defined, herein shall be ascribed the meanings given in the CCRs.

It is our understanding that you intend to convert the existing building on the Property into a Shop ‘n Go convenience store and to construct a 718 square foot addition to operate a car wash. We further understand you intend to offer for sale beer, wine and distilled spirits for off premises consumption and have sought a conditional use permit approving the issuance of a Type 21 license from the Alcoholic Beverages Commission.

You are hereby placed on notice that your proposed development contravenes the express provisions of the CCRs and requires consents and approvals under the CCRs that you have neither sought nor obtained. Your planned development of the Property thus violates certain provisions of the CCRs which include, without limitation, the following:

- Section I(a)(3) which prohibits, for the use and benefit of Longs, the sale of alcoholic for off-premises consumption subject to exceptions that are inapplicable to a convenience store.

- Section II which requires the prior written approval of, to wit, Longs with respect to quality, compatibility and harmony with the balance of the Shopping Center.
- Section III which requires the prior written approval of, to wit, Longs with respect to building and freestanding signage.
- Section IV which requires that building and structures be located only within Building Areas and further prohibits the construction of the same within the Common Areas.
- Section V which requires the prior written consent of, to wit, Longs prior to changing the parking layout, ratio or pattern of traffic flow for the Shopping Center.
- Section VI which prohibits the erection of structures which prevent or hinder Shopping Center ingress or egress and parking.

Your immediate attention is required. Longs demands that you abide by the terms of the CCRs which include the prohibition against the sale of alcohol and the requirement that you seek the necessary consents and approvals as set forth in the CCRs. In the event that you fail to comply with the CCRs, you will be deemed in default thereunder and Longs will pursue all available remedies at law and in equity, including an award of attorneys' fees pursuant to Section 11.3 of the CCRs.

The foregoing is not an exhaustive list of claims that Longs may assert and this shall not constitute a waiver by Longs of any other claim or remedy arising under the CCRs or any other agreement, document, or provision of applicable law.

Very truly yours,



Kristine L. Donabedian
Senior Legal Counsel

cc: Shane Anderson
Amanda Monchamp, Esq.
William Berger
Roxanne Sicard

Exhibit E

Conditions of Approval dated March 16, 2011

CITY OF FRESNO
DEVELOPMENT AND RESOURCE MANAGEMENT DEPARTMENT

CONDITIONS OF APPROVAL

MARCH 16, 2011

CONDITIONAL USE PERMIT APPLICATION NO. C-11-022

NOTICE TO PROJECT APPLICANT

In accordance with the provisions of Government Code Section 66020(d)(1), the imposition of fees, dedication, reservations or exactions for this project are subject to protest by the project applicant at the time of approval or conditional approval of the development or within 90 days after the date of imposition of fees, dedications, reservation, or exactions imposed on the development project.

This notice does not apply to those fees, dedications, reservations, or exactions which were previously imposed and duly noticed; or, where no notice was previously required under the provisions of Government Code Section 66020(d)(1) in effect before January 1, 1997.

PART A - PROJECT INFORMATION

1. Assessor's Parcel No: 405-080-21
2. Job Address: 7010 North West Avenue
3. Street Location: Located on the northeast corner of North West and West Herndon Avenues.
4. Existing Zoning: C-1/EA/UGM (*Neighborhood Shopping Center/Expressway Area Overlay/Urban Growth Management*).
5. Planned Land Use: Neighborhood Commercial
6. Zone Map: 1748
7. Plan Areas: Bullard Community Plan
8. [Ⓢ]Project Description: Conditional Use Permit Application C-11-022 requests authorization to establish a State of California Alcoholic Beverage Control Type 21 License (*Package Store -- sale of beer, wine, and distilled spirits for consumption off the premises where sold*) and convert an existing building that had been an auto repair shop into a Shop 'N' Go convenience store with alcohol sales and add a 718 square-foot automatic car wash at the south end of the building.

PART B – GENERAL CONDITIONS AND REQUIREMENTS

The Development and Resource Management Department, on March 16, 2011, approved the special permit application subject to the enclosed list of conditions and Exhibits A, F and L dated February 11, 2011.

The proposed project was determined to be exempt from CEQA by the Development and Resource Management Department on March 14, 2011 through a Class 32 Categorical Exemption. No further environmental assessment will be needed at this time.

IMPORTANT: PLEASE READ CAREFULLY

Please note that this project may be subject to a variety of discretionary conditions of approval. These include conditions based on adopted City plans and policies, those determined through site plan review and environmental assessment essential to mitigate adverse effects on the environment including the health, safety, and welfare of the community, and recommended conditions for development that are not essential to health, safety, and welfare, but would on the whole enhance the project and its relationship to the neighborhood and environment.

Discretionary conditions of approval are listed in the last section of this list of conditions under the heading "Part F - Miscellaneous" and may be appealed. All code requirements, however, are mandatory and may only be modified by variance, provided the findings pursuant to Fresno Municipal Code (FMC) Section 12-405.A can be made.

All discretionary conditions of approval will ultimately be deemed mandatory unless appealed in writing to the Development and Resource Management Director within 15 days.

In the event you wish to appeal the Director's decision or discretionary conditions of approval, you may do so by filing a written appeal with the Director. The appeal shall include a statement of your interest in or relationship to the subject property, the decision or action appealed and specific reasons why you believe the decision or action appealed should not be upheld. Your appeal must be filed by **March 31, 2011**.

Approval of this special permit shall be considered null and void in the event of failure by the applicant and/or the authorized representative, architect, engineer, or designer to disclose and delineate all facts and information relating to the subject property and the proposed development including, but not limited to, the following:

1. All existing and proposed improvements including but not limited to buildings and structures, signs and their uses, trees, walls, driveways, outdoor storage, and open land use areas on the subject property and all of the preceding which are located on adjoining property and may encroach on the subject property;
2. All public and private easements, rights-of-way and any actual or potential prescriptive easements or uses of the subject property; and,
3. Existing and proposed grade differentials between the subject property and adjoining property zoned or planned for residential use.

Approval of this special permit may become null and void in the event that development is not completed in accordance with all the conditions and requirements imposed on this special permit, the Zoning Ordinance, and all Public Works Standards and Specifications. The Development and Resource Management Department shall not assume responsibility for any deletions or omissions resulting from the special permit review process or for additions or alterations to construction plans not specifically submitted and reviewed and approved pursuant to this special permit or subsequent amendments or revisions. **(Include this note on the site plan.)**

No uses of land, buildings, or structures other than those specifically approved pursuant to this site plan shall be permitted. **(Include this note on the site plan.)**

Transfer all red line notes, etc., shown on Exhibits A, F and L dated February 11, 2011 to the final site plan. CORRECTIONS SHALL INCLUDE ALL THOSE LISTED IN THIS DOCUMENT AND THOSE LISTED IN THE CORRECTION LIST PROVIDED BY THE PLAN CHECK PROCESS.

The exercise of rights granted by this special permit shall commence by **March 16, 2015** (four years from the date of Director approval). There is no exception.

To complete the back-check process for building permits relative to planning and zoning issues, submit four copies of this corrected, final site plan, together with three copies of the elevations, landscape, and irrigation plans, and any fees and title reports for required covenants and any required studies or analyses to Bonique Salinas in the Development Services Division for final review and approval, fifteen days before applying for building permits. It may be necessary to resubmit these "corrected exhibits" a second time if not all the conditions have been complied with or are not shown on the exhibits. Once the "corrected exhibits" are approved by the Development Services Division, please place these exhibits in the plan check set and contact the Development Services Division, along with Traffic Planning, to set up an appointment to signoff and stamp these exhibits. Please bring two additional copies of the site plan exhibit(s) to this appointment so that both the Development Services Division and Traffic Planning have a final signed-off copy of the site plan.

Copies of the final approved site plan, elevations, landscape, and irrigation plans stamped by the Planning Division **must be substituted** for unstamped copies of same in each of the sets of construction plans submitted for plan check prior to issuance of building permits. The final approved site plan must also include all corrections identified in the plan check process.

Be advised that on-site inspections will not be authorized unless the final stamped approved site plan, elevations, landscape, and irrigation plans are included in the plan check file copy.

Please contact Bonique Salinas at (559) 621-8024 or via e-mail at Bonique.Salinas@fresno.gov for an appointment for final sign-off for building permits following your receipt and substitution of the copies of the stamped, corrected, approved exhibits in the plan check sets.

PART C – PUBLIC IMPROVEMENT REQUIREMENTS

1) PUBLIC WORKS, ENGINEERING DIVISION REQUIREMENTS

The following requirements are based on city records and the accuracy of the existing and proposed on-site and off-site conditions depicted on the exhibits submitted. Requirements not addressed due to omission or misrepresentation of information, for which this review process is dependent, will be imposed whenever such conditions are disclosed.

Please see attached memorandum from the Public Works Department, Traffic Engineering dated February 22, 2011 as well as comments made to Exhibit A, dated February 11, 2011.

Questions relative to dedications, street improvements or off-street parking geometrics may be directed to Mario Rocha at (559) 621-8684 / Mario.Rocha@fresno.gov, Engineering Division, Traffic Planning Section.

SURVEY MONUMENTS AND PARCEL CONFIGURATION

- a) Existing survey monuments shall be preserved and if disturbed, shall be reset by a person licensed to practice land surveying in the State of California.

STREET DEDICATIONS, VACATIONS, AND ENCROACHMENT PERMITS,

- b) Exhibit "A" is required to include all street furniture, e.g.: public utility poles and boxes, guy wires, signs, fire hydrants, bus stop benches, mail boxes, news stands, trash receptacles, tree wells, etc., within the existing and proposed public rights of way.
- c) Provide a minimum 4 foot wide path of travel along the public sidewalk on all frontages of the property as required by Title 24 of the California Administration Code. An on-site pedestrian easement may be required if Title 24 requirements can not be met within the existing public rights of way.
- d) The construction of any overhead, surface or sub-surface structures and appurtenances in the public rights-of-way is prohibited unless an encroachment permit is approved by the City of Fresno Public Works Department, Engineering Division, Special Districts / Projects and Right of Way Section, (559) 621-8693. Encroachment permits must be approved **prior** to issuance of building permits.

STREET IMPROVEMENTS

- e) All improvements shall be constructed in accordance with the Standard Specifications and Standard Drawings of the City of Fresno, Public Works Department. The performance of any work within the public street rights-of-way (including pedestrian and utility easements) requires a **STREET WORK PERMIT prior** to commencement of work. Contact the City of Fresno Public Works Department, Engineering Services Section at (559) 621-8686 for detailed information. All required street improvements must be completed and accepted by the city **prior** to occupancy.

- f) Repair all damaged and/or off grade off-site concrete improvements as determined by the Public Works Department, Construction Management Division. For additional information you may call (559) 621-5600.

OFF-STREET PARKING FACILITIES AND GEOMETRICS

- g) Off-street parking facilities and geometrics shall conform to the City of Fresno Public Works Department, Parking Manual and Standard Drawing(s) P-41, P-42, P-43.
- h) Provide parking space needs, circulation, access, directional signs (e.g. "Entrance," "Exit," "Right Turn Only," "One Way" signs, etc.) as noted on **Exhibit "A"**.

TRAFFIC SIGNAL MITIGATION IMPACT (TSMI) FEE:

- i) This project shall pay its TSMI Fee **at the time of building permit** based on the trip generation rate(s) as set forth in the latest edition of the ITE Generation Manual.

FRESNO MAJOR STREET IMPACT FEES (FMSI)

- j) This entitlement is in the **Infill Area**; therefore pay all applicable City-wide regional street impact fees.

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) FEES:

- k) Applicant shall pay fair share contribution as determined by the State of California Department of Transportation (Caltrans) to be collected by the City of Fresno Public Works Department Traffic Engineering, (559) 621-8820, **prior** to a Building Permit.

2) WATER AND SEWER SERVICE REQUIREMENTS

- a) Connection to the City of Fresno water system is required.
- b) Connection to the City of Fresno sewer system is required.
- c) City of Fresno water and sewer connection charge obligations applicable to this project will be computed during the building construction plan check process and shall be payable at time of issuance of building permit unless other arrangements have been approved to defer such payments to a later date. For information relating to water and sewer service requirements and connection charges, contact Frank Saburit at (559) 621-8277.
- d) Open street cuts are not permitted; all utility connections must be bored.
- e) **CROSS-CONNECTION CONTROL.** A backflow prevention device may be required on the water service. Contact the Department of Public Utilities, Water Division (559) 621-5300 for requirements relating to approved devices, locations, testing and acceptance. This requirement must be satisfied prior to final occupancy.

3) DEVELOPMENT IMPACT FEES

a) Sewer Connection Charges (FMC Section 9-503-a). The following sewer connection charges may be required and will be payable at the fee rate listed in the Master Fee Schedule at the time payment is due. New sewer connection charges adopted by the Council prior to the issuance of building permits may also be applied.

- (i) Lateral Sewer Charge (based on property frontage to existing sewer main, to a depth of 100')
- (ii) Oversize Sewer Charge (based on property frontage to a depth of 100')
- (iii) Upon occupancy of the project, the developer shall pay the appropriate sewer facility charge pursuant to the Simple Tiered Equity Program (STEP) as determined by the Department of Public Utilities, Wastewater Division, Environmental Services Section (559-621-5153).

Effective January 9, 1999, Ordinance No. 98-97 also amended certain sewer connection charges. Fresno Municipal Code Article 15, Section 12 provides property owners the incentives and deletes certain sewer connection charges pursuant to the Simple Tiered Equity Program (STEP) and the Employment Development Program (EDP).

For additional information on the STEP and EDP, contact the Department of Public Utilities, Administration Division at (559) 621-8600.

b) Water Connection Charges: (FMC Sections 14-107 to 14-110). The following water connection charges may be required and will be payable at the fee rate listed in the Master Fee Schedule at the time payment is due. New water connection charges adopted by the Council **prior** to issuance of building permits may also be applied.

- (i) Frontage Charge (based on property frontage)
- (ii) Transmission Grid Main Charge (based on acreage)
- (iii) Transmission Grid Main Bond Debt Services Charge (based on acreage)
- (iv) Fire Hydrant Charge (based on square footage to a depth of 250')
- (v) UGM Water Supply Fee (based on living units, living unit equivalents or acreage)
- (vi) Wellhead Treatment Fee (based on living units or living unit equivalents)
- (vii) Recharge Fee (based on living units or living unit equivalents)
- (viii) 1994 Bond Debt Service Charge (based on living units or living unit equivalents)
- (ix) Service Charges (based on service size required by applicant)
- (x) Meter Charges (based on service need)

- c) Traffic Signal Fee Mitigation. This project shall pay its Traffic Signal Mitigation Impact Fee at the time of building permit based on the trip generation rate(s) as set forth in the latest edition of the ITE Generation Manual. Refer to the adopted Master Fee Schedule for fee rate. This fee shall be paid at time of building permit.

Commercial, Industrial (based on Average Daily Trips) Single, Multi-Family Residential
(based on the number of residential units)

- d) Citywide Fire Facilities Charge

Commercial, Industrial (based on building square footage)
Single, Multi-Family Residential (based on the number of residential units)

- e) Citywide Park Facility Charge.

Single, Multi-Family Residential (based on the number of residential units)

- f) Citywide Police Facilities Charge

Commercial, Industrial (based on building square footage)
Single, Multi-Family Residential (based on the number of residential units)

- g) Citywide Regional Street Charge.

Planned Land Use (based on parcel acreage)

- h) Fresno County Facility Impact Fee: Pay the Fresno County Facility Impact Fee. Provide proof of payment or exemption prior to issuance of permits.

4) OTHER AGENCIES IMPACT FEES

- a) Satisfy the Fresno County Facilities Impact Fee obligation. Provide County Facilities Impact Fee receipt from the County Public Works and Planning Department (559-488-3496) as proof of payment or exemption prior to the issuance of building permits.
- b) Satisfy the Fresno County Regional Transportation Mitigation Fee (RTMF), as required by the RTMF Joint Powers Agency (559-233-4148). Provided are the RTMF Informational Summary and the Record of Payment forms.
 - i) The completed Record of Payment of the RTMF form of the must be submitted to the City prior to the issuance of building permits. Prior to issuance of the Certificate of Occupancy, the Record of Payment of the RTMF form must be signed indicating the Disposition of RTMF by the RTMF JPA.

PART D – PLANNING/ZONING REQUIREMENTS

1) PLANNING

a) Development is subject to the following plans and policies:

- (i) C-1, Neighborhood Shopping Center District (*Section 12-217 of the FMC*)
- (ii) EA , Expressway Area Overlay District (*Section 12-244 of the FMC*)
- (iii) Bullard Community Plan
- (iv) 2025 Fresno General Plan
- (v) Development Department, Performance Standards for Parking Lot Shading

2) ZONING

- a) Development is proposed in accordance with the existing C-1 (*Neighborhood Shopping Center District*) zone district. The use proposed for the site as a grocery store/convenience store is a use allowed by right in the C-1 zone district. The proposed sale of alcohol on-site and the proposed drive-through carwash are uses allowed in the C-1 zone district subject to a conditional use permit.
- b) Given that the subject site is less than an acre, there are no specific requirements contained in Section 12-244 of the Fresno Municipal Code (the section related to the Expressway Area Overlay District) that apply to the project.

3) BULLARD COMMUNITY PLAN

- a) There are no specific policies that apply to site design detailed in the Bullard Community plan that would affect the proposed project. None of the interface standards apply to the proposed project given that the subject site is not adjacent to property zoned or planned for residential uses. The landscaping and trail improvements required along Herndon Avenue adjacent to the subject site have already been constructed.

4) 2025 FRESNO GENERAL PLAN

- a) The following plans and policies of the 2025 Fresno General Plan are applicable to the subject property:
- (i) Objective C-12: Commercial land uses shall be classified, located, sized, and developed to meet needs for goods and services while minimizing travel requirements, infrastructure demands, and adverse impacts.
 - a. Policy C-12-a: Ensure that all commercial land uses are developed and maintained in a manner complementary to and compatible with adjacent residential land uses, to minimize interface problems with the surrounding environment and to be compatible with public facilities and services.
 - (i) *Appropriate buffering (interface) measures have been required of this project given that the subject property does not directly abut residential uses. The applicant has*

been required to screen the proposed LPG tank with a berm to minimize its visual impact to the surrounding neighborhood and public right-of-way.

- (ii) Objective C-19: Develop and implement streetscape plans to establish cohesive and aesthetic major and local street design patterns by using distinctive features.
 - a. Policy C-19-b: Properties fronting on major streets shall be improved with landscaped setbacks and sidewalks which reflect a continuity of design, depth, and planting materials. This should include unified design of street furniture and walls.
 - (i) *Exhibit A dated February 11, 2011 depicts landscaping and a setback that will reflect a continuity of design.*
- (iii) Objective C-20: As part of the city's project review process, major emphasis will be given to site and building design in order to preserve functionality and community aesthetics.
 - a. Policy C-20-d: Development projects shall be designed with appropriate layouts that provide sufficient areas for all proposed activities, for support functions, and for efficient and safe vehicular access.
 - i. Particular attention shall be given to location of proposed customer parking areas so as to not discourage pedestrian, bicycle, and other forms of transit to the project site and so as to encourage multi-modal transit activity centers.
 - ii. Safe vehicular, bicycle, and pedestrian access shall be provided and maintained. Access for the disabled shall be incorporated into project designs as required.
 - (i) *The applicant has provided a pedestrian walkway from the sidewalk along from the bikeway along West Herndon Avenue to the walkway in front of the building which will provide pedestrian access to the site. The applicant must place the bicycle racks in an ideal location to facilitate their use.*
 - b. Policy C-20-e: Development projects shall include aesthetic measures which support functionality and add to the appearance and livability of the community.
 - c. Policy C-20-f: The project developer shall provide a set of documents and drawings that will allow assessment of the final building project. Materials, texture, and colors shall be noted on the original special permit drawings and on construction plans.
 - ii. Development projects shall appropriately interface with adjacent properties.
 - iii. High-contrast or gaudy building facades, lighting or signage which create disharmony with adjacent properties, or which draw undue attention, should be avoided.
 - iv. Locate service truck access, loading zones, and waste storage/recycling areas at the maximum practical distance from residences and other living quarters.

- v. Building facades shall include design features and decorative treatments. Visible sides of buildings shall not develop with featureless, "blank" walls.
- vi. Landscaping and parking lot shading shall be employed for environmental and aesthetic improvement, while observing safe lines-of-sight along access routes.
- vii. Exterior lighting shall not create glare for neighboring properties, but shall provide adequate on-site lighting for safety and security purposes.

5) BUILDING HEIGHT

- a) The maximum allowable building height shall not exceed 35 feet. The project's highest design element is approximately 21-feet, which does not exceed the maximum allowable building height. The height of the proposed building shall not exceed the depicted height on Exhibit F dated February 11, 2011. All elevations are subject to review and approval by the Development and Resource Management Department.

6) LOT COVERAGE

- a) The maximum coverage of the lot by buildings or structures shall not exceed thirty-three (33) per cent of the total lot area, including easements.

7) BUILDING SETBACK, OPEN SPACES AND LANDSCAPING

- a) Provide the following minimum building setbacks:
 - (i) North West Avenue: 20-feet required
 - (ii) West Herndon Avenue: 20-feet required
- b) Provide the following minimum landscape setbacks:
 - (i) North West Avenue: 20-feet required
 - (ii) West Herndon Avenue: 20-feet required
- c) All other landscaping as shown on Exhibits A and L dated February 11, 2011.
- d) All landscaping shall comply with the Anti-Graffiti Landscaping, Landscaped Buffer Development and Planting Standards, attached.
- e) Clearly identify all condensing units, air conditioning and heating units on the site and elevation plans.

- f) No structures of any kind (*including signs and/or fences*) may be installed or maintained within the above-landscaped areas. No exposed utility boxes, transformers, meters, piping (excepting the backflow prevention device), etc., are allowed to be located in the landscape areas or setbacks or on the street frontages of the buildings. All transformers, etc., shall be shown on the site plan. The backflow device shall be screened by landscaping or such other means as may be approved. **(Include this note on the site plan.)**
- g) The number of trees will be determined by the following formula:
 - (i) Provide one medium size tree for every two parking spaces (*Section 12-306-N-24-g-3 of the FMC*).
 - o Provide a total of **12** medium sized trees on-site (in addition to the 6 street trees required):
 - $24 \text{ parking spaces provided} / 2 = 12 \text{ medium sized trees required on-site.}$

NOTE: Two small trees (15-30 feet at maturity) shall be counted as one medium-sized tree.

- h) Provide shade calculations on the landscape plan for parking lot shading in accordance with the attached *Development Department, Performance Standards for Parking Lot Shading*, including tree species and tree counts. **Exhibit L dated February 11, 2011 depicts several trees that cannot be counted towards fulfilling parking lot shading requirements. Please revise calculations accordingly.**
- i) Disperse trees over the parking lot area to provide 50 percent shading of the parking area surface within 15 years. (This requirement may be reduced to 40 percent for existing development if it is demonstrated that the constraints of an existing site would make it impossible to meet the normal standards.) Trees shall also be planted in the required landscaped area along the periphery of the development in order to shade and enhance adjacent property and public rights-of-way. Refer to the attached "Performance Standards for Parking Lot Shading," for the tree list and further details.
- j) Trees shall be maintained in good health. However, trees may not be trimmed or pruned to reduce the natural height or overall crown of the tree, except as necessary for the health of the tree and public safety; or as may otherwise be approved by the Planning and Development Department. **(Include this note on the site and landscape plans.)**
- k) Submit three copies of landscaping and irrigation plans prepared by a landscape professional, showing the number and types of trees, to the Planning Division. These plans must be reviewed and approved prior to obtaining building permits.
- l) Landscaping must be in place before issuance of the certificate of occupancy. A Hold on Occupancy shall be placed on the proposed development until such time that landscaping has been approved and verified for proper installation by the Planning Division. **(Include this note on the site and landscape plans.)**
- m) Prior to final inspection, a written certification, signed by a landscape professional approved by

the Director, shall be submitted stating that the required landscaping and irrigation system was installed in accordance with the landscaping and irrigation plans approved by the Planning Division, Development Department. **(Include this note on the site and landscape plans.)**

8) SPACE BETWEEN BUILDINGS

- a) There are no requirements for space between buildings.

9) FENCES, HEDGES, AND WALLS

- a) Temporary fences to secure projects under construction are allowed. Any temporary fence shall be adequately secured and constructed to prevent overturning due to wind, vandalism, and/or casual contact by the general public. The construction shall be performed in such a manner as to minimize any potential safety hazard, which may occur as a result of improper fence installation or damage to the fence.
- b) Only those fences as shown on the site plan shall be reviewed for approval.
- c) Future fences shall be reviewed and approved by the Development and Resource Management Department prior to installation. **(Include this note on the site plan.)**

10) OFF-STREET PARKING

- a) Pursuant to Section 12-217.5-l of the FMC, there shall be two square feet of parking area for each square foot of floor area.
- b) A minimum of **16** parking stalls are required for the proposed use pursuant to the following:
- Total Building Area = $2,871 \times 2 = 5,742$
- $5,742/370 = 16$ stalls required
- Exhibit A dated February 11, 2011 depicts 24 parking stalls, exceeding the parking requirement.
- c) Future tenants, including tenant improvements shall be reviewed to ensure adequate parking pursuant to Section 12-218.5-l (off-street parking) of the FMC.
- d) **Outdoor storage of materials, including ISO containers, is prohibited. All materials shall be stored within a completely enclosed building, unless approved by the Development and Resource Management Department. (Include this note on the site plan.)**
- e) The parking lot design must accommodate the provision of trees in accordance with the attached Parking Lot Shading Policy.
- f) A minimum of **1** handicap accessible parking stall is required for the subject site per Table 11B-6 of the 2007 State of California Building Code (page 462). Please review the current California Building Code to ensure requirements have been met. Exhibit A dated February 11, 2011

depicts 1 handicap accessible parking stall.

- g) All handicap accessible stalls shall be marked with the international symbol of spaces and a warning that vehicles in violation of Section 10-1017 of the Municipal Code shall be towed away. The international symbol and tow-away warning shall be posted conspicuously on seven-foot poles. **(Include this note on the site plan.)**
- h) All handicap accessible parking stalls shall be placed adjacent to facility access ramps or in strategic areas where the handicapped shall not have to wheel or walk behind parked vehicles while traveling to or from handicapped parking stalls and ramps. **(Include this note on the site plan.)**
- i) Lighting where provided to illuminate parking, sales or display areas shall be hooded and so arranged and controlled so as not to cause a nuisance either to highway traffic or to the living environment. The amount of light shall be provided according to the standards of the Department of Public Works. **Depict all proposed lights on the site plan.**
- j) A minimum of 3 bicycle parking spaces shall be provided for the proposed commercial building pursuant to Section 12-306-I-2.1c of the FMC. Bicycle parking spaces shall each consist of one slot in a bike rack. They shall be grouped in racks which allow four feet of clearance on all sides. There shall be adequate space between rack slots to park, lock, and remove bicycles. Bicycle parking spaces and the required four-foot clearance shall be protected from motor vehicle encroachment by means of fixed barriers not less than six inches or more than three in height. Bicycle parking spaces shall not encroach into pedestrian ways, landscaped areas, or other required open spaces, and shall be located proximal to structures.

(i) Please depict these required stalls on Exhibit A.

- k) All general provisions of Section 12-306-I of the FMC shall apply to all parking areas.

11) LOADING SPACE REQUIREMENTS

- a) Pursuant to Section 12-306-L-1, a commercial building less than 3,500 square feet does not require a loading zone.

12) ACCESS

- a) There shall be adequate vehicular access from a dedicated and improved street or alley to off-street parking and loading facilities on the property requiring off-street parking and loading.
- b) Vehicular and/or pedestrian access shall be provided and shall remain clear at all times.
- c) When pedestrian paths traverse the parking lot, the pedestrian path shall be delineated by stamped concrete, paving stones, brick, flagstone, or other contrasting paving material to clearly demarcate the path and to provide a safe walking area and to act as traffic calming devices for vehicles entering the center. Because this material often fades over time, white striping may sufficient. Stamped concrete or other material outlined with white striping is also acceptable. Identify path material on Exhibit A.

- d) A cross access agreement is required given that the subject site is located within an integrated shopping center and will share access with adjacent parcels. Such an agreement should already exist. Provide a copy of such agreement or remit \$520 to the City of Fresno for the preparation of this agreement/covenant.

13) ADDRESSING

- a) The address listed in the conditions of approval is the 'Official Address' given to the building. If you would like separate suite or unit numbers for a building, provide a floor plan and contact the City of Fresno Development and Resource Management Department for 'Official Addresses'. **Only those addresses assigned by the City of Fresno will be recognized as 'Official Addresses'**. The United States Post Office will only recognize addresses assigned by the City of Fresno. If a non-official address is given to a building and or/separate suites, the City of Fresno has the authority to charge a fee and have those addresses corrected. In addition, the United States Post Office will cease mail delivery to those addresses that are not 'Official Addresses'.

14) NOISE

- a) Pursuant to Section 10-102.b of the FMC, noise levels for commercial zoned properties shall not exceed 60 decibels from 10 p.m. to 7 a.m. and 65 decibels from 7 a.m. to 10 p.m. measured at the nearest subject property line. Future uses and/or development shall be required to comply with this provision. **(Include this note on the site plan.)**

15) OUTDOOR ADVERTISING

- a) Signs, *other than directional signs, if applicable*, are not approved for installation as part of this special permit. **(Include this note on the site plan.)**
- b) All signs shall be architecturally compatible with the proposed building.
- c) Signs must comply with the Master Sign Permit established for the entire shopping center (MSP 176).
- d) The provisions of the C-1 District, Section 12-217.5-K apply to the subject site.
- e) Window signs are limited to 4 square feet in area, providing information about hours of operation and emergency, sale or rental information only. Exterior signage such as banners, flags and pennants are prohibited. However, special even banner signs are permitted for 30 days if approved by the Development and Resource Management Department, attached to the building, and not exceeding 32 square feet in area.
- f) Permanent window signs over 6 square feet in area can be submitted for approval under a sign review application (for a current fee of \$150). Window signs:
 - i) Must not exceed 10% of the total exterior wall surface (which includes the window)

- ii) Can be painted on the window (if paint is a permanent type of paint- not water based)
 - iii) Can be attached to the interior or exterior of the window with paste or glue (must be attached to the window in a manner which is attractive and free of exposed tape, wires, or other adhesive material)
 - iv) Sign must be constructed utilizing material(s) designed to maintain an attractive appearance for as long as the sign is displayed.
- g) Temporary window signs are allowed if they do not exceed 10% of the total exterior wall surface and must be approved by the Development and Resource Management Department (the fee is currently \$35). Temporary window signs shall be constructed of cloth, canvas, fabric, wood, or may be painted with or without a structural frame. Each site is limited to two (2) 30-day temporary window sign approvals in any calendar year, with a separate application required for each 30-day period/approval.

PART E – CITY AND OTHER SERVICES

1) BUILDING AND SAFETY DIVISION

- a) The Building and Safety Division indicated that plans and permits are required for the proposed project.

2) FIRE PROTECTION REQUIREMENTS

- a) In a response dated February 28, 2011, the Fresno Fire Department indicated that they had no additional requirements for the proposed project.

3) SOLID WASTE MANAGEMENT

- a) Comply with the attached Department of Public Utilities-Solid Waste memorandum, dated February 24, 2011, which indicates that the location of the proposed enclosure is acceptable and that the enclosure must be built in accordance with current Solid Waste standards.

4) FLOOD CONTROL REQUIREMENTS

- a) Comply with the attached Fresno Metropolitan Flood Control District (FMFCD) Notice of Requirements dated February 22, 2011. Contact the Fresno Metropolitan Flood Control District for further explanation regarding their requirements at (559) 456-3292.

5) SCHOOL FEES

- a) School fees must be paid, if required, prior to the issuance of building permits. Contact Clovis Unified School District. Provide proof of payment (or no fee required) prior to the issuance of building permits.

6) STREET TREE REQUIREMENTS

- a) The on-site trees on West Avenue and the trees along the trail on Herndon Avenue meet the Public Works requirements at this time. No additional requirements will be imposed.

7) SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT

- a) Comply with the attached letter from the San Joaquin Valley Air Pollution Control District (SJVAPCD) dated March 14, 2011.

8) DEPARTMENT OF PUBLIC UTILITIES

- a) Comply with the attached memorandums (2: one for water and one for sewer) from the Department of Public Utilities, dated March 7, 2011.

9) DEPARTMENT OF TRAFFIC ENGINEERING

- a) Comply with the attached Public Works-Traffic Engineering memorandum, dated February 22, 2011.
- b) Transfer all comments and conditions on Exhibit A dated February 22, 2011 to the corrected exhibit.

10) FRESNO COUNTY ENVIRONMENTAL HEALTH

- a) Comply with the attached County of Fresno Department of Community Health memorandum, dated February 18, 2011.

11) FRESNO IRRIGATION DISTRICT

- a) Contact the Fresno Irrigation District for any requirements for the proposed project.

12) POLICE DEPARTMENT

- a) Comply with the conditions contained in the attached letter from the Fresno Police Department dated February 18, 2011.

13) DISTRICT 2 PLAN IMPLEMENTATION COMMITTEE

- a) The District 2 Plan Implementation Committee reviewed and recommended approval of the proposed project at their February 28, 2011 meeting with the condition that all mechanical equipment is properly screened so that it is not visible from the property or from the public right-of-way surrounding the property. This is required as a condition of approval.

PART F – MISCELLANEOUS

- 1) Approval of this site plan is contingent upon the submittal of corrected exhibits showing all existing/proposed on-site conditions as reflected on all exhibits and the following:
 - a) Provide a copy of the title report for the subject property and relevant covenants/agreements to verify that the proposed carwash is not being constructed across a previously established easement for cross access and to verify that a cross access agreement exists.
 - b) A car wash facility shall comply with the City of Fresno Noise Ordinance, and shall undergo a design review of architecture, style and appearance to insure similarity and compatibility with surrounding residential, commercial and industrial development.
 - c) Pursuant to Section 12-105-C-6-a, a drive-through car wash, as permitted under this conditional use permit, shall mean any occupancy that provides for washing of automobiles through a low noise fully automated car wash facility without vacuum cleaners unless located within a completely enclosed noise attenuated room, and where the customer drives the vehicle into the facility and remains in the car during the wash process.
 - d) As indicated in the approved site plan for Conditional Use Permit Application No. C-97-11, the application that approved the original LPG tank, this tank shall not be located in the required 20-foot setback.
 - e) Provide an elevation of the LPG tank. How high is it? It appears to be larger than the existing tank. This tank shall be screened from the public right-of-way with hedges that are at least as high as the tank.
 - f) Posting of fuel prices by service stations: Notwithstanding any other provisions of this Code to the contrary, no gasoline or other motor vehicle fuel shall be sold or otherwise dispensed from any service station unless fuel price signs are displayed as provided below:
 - a. All gasoline or other motor fuel price signs shall include:
 1. The total price per gallon or liter including all taxes
 2. The trademark or brand of the motor fuel;
 3. The word "gasoline" or the name of the other motor fuel;
 4. The grade designation of the motor fuel;
 5. The word "liter" if the prices are advertised by the liter.
 - b. Advertisements for discount or price reduction for motor fuel shall contain the price per gallon or liter from which the discount or price reduction is to be taken, the amount of the discount or price reduction in cents per gallon or liter and any limitations under which the discount or price reduction is offered.
 - c. Advertisements displayed in accordance with subsections a and b of this section may contain a description of the products offered for sale, methods of sale such as self-serve or full-serve, and words describing the types of services offered at the place of business,

such as food market, car wash, tune-up and the registered trademark or tradename of the service but not the price of the service.

- d. All letters, words, figures and numerals used to advertise products in accordance with subsections a, b and c of this section shall be of a height, size and color which complies with section 13532 of the Business and Professions Code.
- e. In the case of any conflict between the provisions of this chapter and requirements in the state Business and Professions Code for signs related to gasoline sales, the state provisions shall govern.
- f. Sign height, area and setback limitations of the zone district in which the service station is located shall apply to signs installed in accordance with this section.
- g. In addition to any price information signs allowed by subsections a, b and c above, the service station operator may display wall or canopy signs intended exclusively for the transmittal of safety-related messages or warnings.
- g) Provide a color and material schedule on the elevations for the exterior of all buildings and structures.
- h) Screen all roof-mounted equipment from the view of public rights-of-way. **Depict all mechanical equipment on site plan and elevations.**
- i) If archaeological and/or animal fossil material is encountered during project surveying, grading, excavating, or construction, work shall stop immediately. **(Include this note on the site plan.)**
- j) If there are suspected human remains, the Fresno County Coroner shall be immediately contacted. If the remains or other archaeological material is possibly Native American in origin, the Native American Heritage Commission (Phone: (916) 653-4082) shall be immediately contacted, and the California Archaeological Inventory/Southern San Joaquin Valley Information Center (Phone: (805) 644-2289) shall be contacted to obtain a referral list of recognized archaeologists. An archeological assessment shall be conducted for the project, the site shall be formally recorded, and recommendations made to the City as to any further site investigation or site avoidance/preservation. **(Include this note on the site plan.)**
- k) If animal fossils are uncovered, the Museum of Paleontology, U.C. Berkeley shall be contacted to obtain a referral list of recognized paleontologists. An assessment shall be conducted by a paleontologist and, if the paleontologist determines the material to be significant, it shall be preserved. **(Include this note on the site plan.)**

All discretionary condition of approval will ultimately be deemed mandatory unless appealed in writing to the Planning and Development Department Director within 15 days.



DEPARTMENT OF PUBLIC UTILITIES



Date: February 24, 2011

To: BONIQUE SALINAS, Planner III
Planning and Development Department, Current Planning

From: CHRIS WEIBERT, Management Analyst II
CW Public Utilities Department, Administration

Subject: C-11-022 ABCUP was filed by Jim Shehadey and pertains to 0.65 acre of property located on the northeast corner of North West and West Herndon Avenues, 7010 North West Avenue, APN 405-080-21. The applicant requests authorization to establish a State of California Alcoholic Beverage Control Type 21 License, Package Store, sale of beer, wine, and distilled spirits for consumption off the premises where sold, and convert an existing building that had been an auto repair shop into a Shop N Go convenience store with alcohol sales and add a 718 square foot automatic car wash at the south end of the building. The property is zoned C-1-EA-UGM, Neighborhood Shopping Center-Expressway Area Overlay-Urban Growth Management.

Does Project Affect Your Agency/Jurisdiction

Yes - Project will be serviced by Solid Waste Division

Suggestions to Reduce Impacts/Address Concerns

Three-cell trash enclosure not required unless grease (or grease barrels) will be generated from a full-service kitchen area.

Enclosure shall be constructed on a level surface.

Recommended Conditions of Approval

Project will be serviced by Solid Waste Division.

Enclosure shall be built in accordance with current Solid Waste standards.

Two cell trash enclosure required.

Additional Information

Location of enclosure is acceptable

No notes on site plan



Mariposa Mall
P.O. Box 1271
Fresno, CA 93715-1271

Police Department

Jerry P. Dyer
Chief of Police



February 18, 2011

City of Fresno, Development Department
Director of Development
Special Permit, Conditional Use Permit
2600 Fresno Street
Fresno, California, 93721-3604

Attn. **Bonique Salinas**

Re: **SPECIAL PERMIT NO. C-11-022**
Shop 'N' Go
7010 N. West
Fresno, CA 93711

Mrs. Salinas,

The City of Fresno has requested that the Fresno Police Department review the application of real property development at 7010 N. West Ave. The property has been zoned **C-1/EA/UGM** for neighborhood shopping/expressway area overlay/urban growth management. The primary concern for the Fresno Police Department with the application at this location is the propensity of an increase of calls for police service.

We request the following conditions be attached to this location. This will maintain an environment that is least likely to generate public complaints and calls for service. The Fresno Police Department is not in opposition of this Conditional Use Permit, providing the applicant agrees to the listed conditions. If the applicant does not agree to the listed conditions the Fresno Police Department is in opposition of this conditional use permit, and wishes to protest this Conditional Use Permit.

1. **Fresno Municipal Codes**

The applicant will not violate Fresno Municipal Codes, specifically, but not limited to:

FMC 6-502 (Amusement Devices-Permit Required)
FMC 7-203 (Hours of Operation Billiard Hall)

FMC 7-204 (Minors in Billiard Hall)
FMC 7-204.1 (Minors accompanied by parent or guardian in Billiard Hall)
FMC 7-308 (Public Dancing-Permit Required)
FMC 8-305 (Noise Ordinance)
FMC 9-909 (Unlawful Nuisances-High Calls for Police Services)

2. **ABC Education**

Any and all employees hired to sell alcoholic beverages shall provide evidence that they have either:

- (1) taken training from the State of California Department of Alcoholic Beverage Control—Fresno District Office-administered “Leadership and Education in Alcohol and Drugs” (LEAD) Program in the form of an ABC-issued certificate; or,
- (2) taken an accepted equivalent by the ABC—Fresno District Office to ensure proper distribution of beer, wine, distilled spirits, tobacco, and inhalants to ensure proper distribution of beer, wine, distilled spirits, tobacco, and inhalants to adults of legal age. If any prospective employee designated to sell alcoholic beverages, tobacco or inhalants does not currently have such training then,
- (3) The ABC-licensed proprietors shall have confirmed with the Development Department within 15 days of the Director’s decision, or by final project approval, that a date certain has been scheduled with the local ABC Office to take the LEAD Program course.

Within 30 days of taking said course the employee(s) or responsible employer shall deliver each required LEAD Program Certificate showing completion of said course.

3. **Parking**

The petitioner shall provide adequate off street parking spaces for use by patrons of the premises.

4. **Video Camera**

A business must have a functional color **digital** video camera system that records, stores and will playback images. The interior of the business must have at least one camera placed to focus on all cash register transactions to include the clerk as well as the customer waiting area. There should be at least one camera focused on the entrance and the camera view should clearly show an image of the color coded height tape installed on the inside of the door jamb.

There shall be exterior camera(s) placed so as to record activities in the primary customer parking areas of their business. These cameras should

be of sufficient quality to be able to identify persons and or vehicles utilizing the business parking lot.

The camera storage capacity should be for at least one week (seven calendar days). Any images of criminal activity shall be provided to the Fresno Police Department within 24 hours of their request.

5. **Illegal Drugs**

The establishment will not allow illegal drugs to be sold, ingested, injected, or inhaled in the building premises or on any adjacent property under its control.

6. **No Iced Alcoholic Beverages**

No alcoholic beverages shall be displayed "on ice", such as in an ice chest, in an ice barrel, or similar containers, outside of the "cold box."

7. **Single Sales**

No beer or malt beverage products shall be sold in less than four pack quantities for sale. They must be sold in manufacturer pre-packaged multi-unit quantities.

8. **Wine Alcohol Per Volume**

No wine shall be sold with an alcoholic content greater than 24% volume, except premium dessert wines valued at \$10.00 or greater.

9. **Container Size**

Beer and malt liquor in containers of 40 oz. or less shall not be sold in units of less than a four pack. All beer, malt beverage and wine cooler products must be sold in manufacturer pre-packaged multi-unit quantities.

10. **Non-refrigerated Alcoholic Beverages**

The newly stocked, non-refrigerated "hard" liquor or "distilled spirits", and other non-refrigerated alcoholic beverages shall be placed either behind or within the cashier's area; or, at a location which is the farthest away as possible from the front entrance to the store. Convenience markets newly stocked, non-refrigerated "hard" liquor or "distilled spirits," shall be located either in a locked cabinet, or other locked shelving system, operated either by manual or remote control locking device(s); only to be opened upon the clerk's verification of "legal age" customer verification from 12:00 p.m. (midnight) through 0200 a.m. No sales of alcoholic beverages from 02:00 a.m. through 0600 a.m. in compliance with B&P Section 25631, Retail Hours of Sale, and these areas shall remain locked during this time period.

11. **Business and Professions Code**

The applicant will not violate any Business and Professions Codes, specifically but not limited to:

BP 24046 (Required to Post ABC License on Premises)

BP 25612.5 (Loitering, Open Alcoholic Beverage Containers, Consuming Alcoholic Beverages on Premises, Exterior Lighting, Litter Removal, Graffiti Removal, Signs and Barriers in Windows and Doors, Public Phones Blocked From Incoming Calls, Areas to Display Harmful Matter, Required Copies of Operating Standards Available for Public Viewing)

12. **Display Conditions**

The applicant will maintain a copy of Police Department conditions and all applicable licenses and permits issued by the city, county, state, and federal government at the premises. The applicant must present conditions immediately upon request of a peace officer.

13. **Lighting**

Exterior.

The parking lot premises shall be equipped with lighting for sufficient power to illuminate and make easily discernable the appearance and conduct of all persons on or about the parking lot.

Interior.

Areas inside the establishment open to the customers will be illuminated sufficiently to allow the identification of persons.

14. **Drinking Outside**

The establishment will not allow alcoholic beverages to be consumed outside the building premises or any other adjacent property under its control.

15. **Loitering**

Petitioner shall not permit any loitering on building premises or any adjacent property under its control.

16. **Litter**

The establishment will collect litter in the immediate area of operation and complete such litter control once per day.

17. **Graffiti**

Any graffiti painted or marked upon the premises or any adjacent area under its control shall be removed or painted (non obtrusive) over within 48 hours.

18. **Posting of Property**

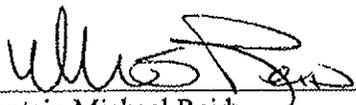
The petitioner shall post the property with the appropriate municipal code signs advising that the consumption of alcoholic beverages, gambling,

trespassing, or loitering will be in violation of municipal ordinances. The applicant must send a letter to the Fresno Police Department every 180 days that authorizes officers to enforce the aforementioned activities at the business. The owners and employees are responsible for abating these activities when they occur during business hours.

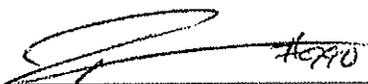
19. **Amendments**

The above listed conditions are subject to amendment by the Fresno Police Department at any time.

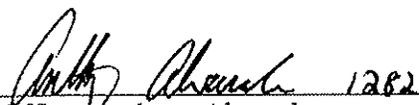
Fresno Police Department



Captain Michael Reid
Fresno Police Department
Northwest District Commander



Detective Patrick Mares
Fresno Police Department
Northwest Investigations Supervisor



Officer Anthony Alvarado
Fresno Police Department

② MAR 20

CITY OF FRESNO – DEVELOPMENT AND RESOURCE MANAGEMENT DEPARTMENT
REQUEST FOR COMMENTS, CONDITIONS, ENVIRONMENTAL ASSESSMENT,
AND ENTITLEMENT APPLICATION REVIEW OF
CONDITIONAL USE PERMIT APPLICATION NO. C-11-022 - ABCUP

Public Works/Traffic Engineering/Traffic Planning

Return Completed Form to:
Bonique Salinas
Email: Routing@fresno.gov
Telephone: 559-621-8277
Development and Resource Management
2600 Fresno Street, Third Floor
Fresno CA 93721-3604

PROJECT DESCRIPTION AND LOCATION:

Conditional Use Permit Application No. C-11-022-ABCUP was filed by Jim Shehadey and pertains to 0.65 acre of property located on the northeast corner of North West and West Herndon Avenues. The applicant requests authorization to establish a State of California Alcoholic Beverage Control Type 21 License (*Package Store -- sale of beer, wine, and distilled spirits for consumption off the premises where sold*) and convert an existing building that had been an auto repair shop into a Shop 'N' Go convenience store with alcohol sales and add a 718 square-foot automatic car wash at the south end of the building. The property is zoned C-1/EA/UGM (*Neighborhood Shopping Center/Expressway Area Overlay/Urban Growth Management*).

APN: 405-080-21

ZONING: C-1/EA/UGM

ADDRESS: 7010 North West Avenue

DATE ROUTED: February 16, 2011

COMMENT DEADLINE: February 28, 2011

If no response is received by the comment deadline, it will be assumed you have no comments to submit.

WILL THIS PROJECT AFFECT YOUR AGENCY/JURISDICTION? (If yes, specify.)

SUGGESTION(S) TO REDUCE IMPACTS/ADDRESS CONCERNS:

REQUIRED CONDITIONS OF APPROVAL: *SEE CONDITIONS OF APPROVAL & EXHIBIT "A" ATTACHED*

IS ANY ADDITIONAL INFORMATION NEEDED FOR YOU TO COMPLETE YOUR REVIEW? (Be specific):

REVIEWED BY: MARIO V. ROCHA 621-8684 2/22/11
Name and Title Telephone Number Date



DATE: February 22, 2011
TO: Bonique Salinas, Planner III
Planning and Development Department, Planning Division
FROM: Mario Rocha, Senior Engineering Technician
Public Works Department, Engineering Division
SUBJECT: Conditions of Approval for **C-11-022 ABCUP**
APN: 405-080-21
ADDRESS: 7010 North West Avenue

SITE PLAN REQUIREMENTS: This site plan is incomplete. Please provide the following information prior to Building Permits:

- A. General Requirements
 - 1. **Legend:** Provide line type and utility symbols
- B. Offsite Information:
 - 1. **Street Improvements:** Identify existing curb, gutter, sidewalks, driveway approaches (provide width), ADA ramps (provide radius), street lights (specify if wood or metal pole), traffic signals.
 - 2. **Street furniture:** Identify utility poles, boxes, guy wires, signs, fire hydrants, bus stop benches, trash receptacles, tree wells, etc.
- C. Onsite Information:
 - 1. **Access:** Provide turning templates on the site plan for all large vehicles if carwash inhibits path of fueling vehicles.
 - 2. **Parking Lots:** (existing and proposed)
 - a. **Directional flow of traffic:** Identify existing and proposed directional arrows.
 - b. **Lighting:** Identify the location (not to be within the 3' vehicular overhang)
 - c. **Paving:** per Public Works Standards **P-21**.
- D. Other Important Information:
 - 1. **CUP/SPR:** Identify previous entitlement numbers

PUBLIC IMPROVEMENT REQUIREMENTS

The following requirements are based on city records and the accuracy of the existing and proposed on-site and off-site conditions depicted on the exhibits submitted. Requirements not addressed due to omission or misrepresentation of information, on which this review process is dependent, will be imposed whenever such conditions are disclosed.

Questions relative to dedications, street improvements or off-street parking geometrics may be directed to Mario Rocha at (559) 621-8684 / Mario.Rocha@fresno.gov, Engineering Division, Traffic Planning Section.

Submit the following, as applicable, in a single package to the City of Fresno Public Works Department Engineering Division (559-621-8650), Plan Check and GIS Mapping Section and Traffic Engineering, for review and approval, **prior** to issuance of building and street

work permits: Street Improvement Plans, Signing and Striping Plans, Street Lighting Plans and Signal Plans.

When preparing Street Plans and/or Traffic Control Plans for projects in the City of Fresno contact Traffic Engineering (Randy Schrey) in advance to make sure that sidewalks or an approved accessible path remain open during construction.

Survey Monuments and Parcel Configuration

All survey monuments within the area of construction shall be preserved or reset by a person licensed to practice Land Surveying in the State of California.

Street Dedications, Vacations and Encroachment Permits

Identify all street furniture, e.g.: public utility poles and boxes, guy wires, signs, fire hydrants, bus stop benches, mail boxes, news stands, trash receptacles, tree wells, etc. within the public right of way. Also, identify the required 4' minimum path of travel along the public sidewalk directly in front of property, as required by the California Administration Code (Title 24). **A pedestrian easement may be required if Title 24 requirements cannot be met.**

The construction of any overhead, surface or sub-surface structures and appurtenances in the public rights-of-way is prohibited unless an encroachment permit is approved by the City of Fresno Public Works Department, Engineering Division, Special Districts / Projects and Right of Way Section, (559) 621-8693. Encroachment permits must be approved **prior** to issuance of building permits.

Street Improvements

All improvements shall be constructed in accordance with the Standard Specifications and Standard Drawings of the City of Fresno, Public Works Department. Dedication shall be sufficient to accommodate additional paving and any other grading or transitions as necessary based on a 45 MPH design speed for Collectors and 55 MPH for Arterials. Utility poles, street lights, signals, etc. shall be relocated as determined by the City Engineer. The performance of any work within the public street rights-of-way (including pedestrian and utility easements) requires a **STREET WORK PERMIT prior** to commencement of work. Contact the City of Fresno Public Works Department, Engineering Services Section at (559) 621-8686 for detailed information. All required street improvements must be completed and accepted by the city **prior** to occupancy.

Repair all damaged and/or off grade off-site concrete street improvements as determined by the City of Fresno Public Works Department, Construction Management Division, (559) 621-5600.

Herndon Avenue: Expressway

1. Modify or replace the existing ramp to meet current Public Works Standards, as determined by the Construction Management engineer **PRIOR** to occupancy. "Detectable Warning Devices" are required, if not existing. Reference Public Works Standards **P-28, P-30** thru **P-32**.

West Avenue: Collector

1. Provide 10' of red curbing (3 coats) on both sides of the existing driveway approach.

Off-Street Parking Facilities and Geometrics

1. Off-Street parking facilities and geometrics shall conform to the City of Fresno Public Works Department, Parking Manual and Standard Drawing(s) **P-21** in areas of new construction.
2. Install **30"** state standard "STOP" sign(s) at location(s) shown. Sign shall be mounted on a **2"** galvanized post with the bottom of the sign **7'** above ground; located behind curb and immediately behind a major street sidewalk. A "right turn only" sign is also required, at the same location; install a **30" x 36"** state standard sign immediately below the stop sign on the same post.

Traffic Impact Study

A Traffic Impact **Study** is not required.

Fresno Major Street Impact (FMSI) Fees:

This entitlement is in the **New Growth Area**; therefore pay all applicable growth area fees and City-wide regional street impact fees.

Regional Transportation Mitigation Fee (RTMF):

Pay all applicable **RTMF** fees to the Joint Powers Agency located at 2035 Tulare Street, Suite 201, Fresno, CA 93721; (559) 233-4148 ext. 200; www.fresnocog.org. Provide proof of payment or exemption **prior** to issuance of building permits.

REVIEW RESEARCH CHART

Address 7010 N. WEST AVE

ITS: YES NO	AMENDMENT #	REZONE #
	WEST	HERNDON
	405-080-21	"
	CITY	
	1252	
	COLLECTOR	EXPRESSWAY
	Ø	BK/PED
	FM 79-49	
	5760, 9439, 9431	9544, 9432, 9433 9512
	53'	49' to 40'
	OP# 59 BK 1 PG 5	OP# 110 BK 7, PG 71
	OP# 90 BK 1 PG 5	# 33-A1 OP# 40 BK 1 PG 10
	Ø	Ø
	NEW GROWTH	"
	C-97-11	C-99-11, S-01-117, C-05-113, C-96-52, C-97-222, S-01-261, S-01-178, C-06-113
	10', 20'(8', 12')	
	IN E-FILE	"
	Ø	Ø

ADDITIONAL COMMENTS:

PM 5760 53' WEST AVE PM 9431, 39 55' WEST AVE

PM 9439 30.44' to 30.29' HERNDON

City of



FIRE DEPARTMENT

Date: February 28, 2011

To: BONIQUE SALINAS, Planner III
Planning and Development Department , Current Planning

From: MIKE SCHMIDT, ^{MS}Supervising Fire Prevention Inspector
Fire Department, Fire Prevention & Investigative Services

Subject: C-11-022 ABCUP was filed by Jim Shehadey and pertains to 0.65 acre of property located on the northeast corner of North West and West Herndon Avenues, 7010 North West Avenue, APN 405-080-21. The applicant requests authorization to establish a State of California Alcoholic Beverage Control Type 21 License, Package Store, sale of beer, wine, and distilled spirits for consumption off the premises where sold, and convert an existing building that had been an auto repair shop into a Shop N Go convenience store with alcohol sales and add a 718 square foot automatic car wash at the south end of the building. The property is zoned C-1-EA-UGM, Neighborhood Shopping Center-Expressway Area Overlay-Urban Growth Management.

General

No requirements.

**CITY OF FRESNO – DEVELOPMENT AND RESOURCE MANAGEMENT DEPARTMENT
REQUEST FOR COMMENTS, CONDITIONS, ENVIRONMENTAL ASSESSMENT,
AND ENTITLEMENT APPLICATION REVIEW OF
CONDITIONAL USE PERMIT APPLICATION NO. C-11-022 - ABCUP**

Fire Department/Fire Prevention/Tech Services

Return Completed Form to:
Bonique Salinas
Email: Routing@fresno.gov
Telephone: 559-621-8277
Development and Resource Management
2600 Fresno Street, Third Floor
Fresno CA 93721-3604

PROJECT DESCRIPTION AND LOCATION:

Conditional Use Permit Application No. C-11-022-ABCUP was filed by Jim Shehadey and pertains to 0.65 acre of property located on the northeast corner of North West and West Herndon Avenues. The applicant requests authorization to establish a State of California Alcoholic Beverage Control Type 21 License (*Package Store -- sale of beer, wine, and distilled spirits for consumption off the premises where sold*) and convert an existing building that had been an auto repair shop into a Shop 'N' Go convenience store with alcohol sales and add a 718 square-foot automatic car wash at the south end of the building. The property is zoned C-1/EA/UGM (*Neighborhood Shopping Center/Expressway Area Overlay/Urban Growth Management*).

APN: 405-080-21

ZONING: C-1/EA/UGM

ADDRESS: 7010 North West Avenue

DATE ROUTED: February 16, 2011

COMMENT DEADLINE: February 28, 2011

If no response is received by the comment deadline, it will be assumed you have no comments to submit.

WILL THIS PROJECT AFFECT YOUR AGENCY/JURISDICTION? (If yes, specify.)

SUGGESTION(S) TO REDUCE IMPACTS/ADDRESS CONCERNS:

No Requests

REQUIRED CONDITIONS OF APPROVAL:

IS ANY ADDITIONAL INFORMATION NEEDED FOR YOU TO COMPLETE YOUR REVIEW? (Be specific):

REVIEWED BY: *M. Schmidt, Inspector* *8088* *2-28-11*
Name and Title Telephone Number Date



DEPARTMENT OF PUBLIC UTILITIES

Date: March 7, 2011



To: BONIQUE SALINAS
Planning and Development Department

From: GREG CONTRERAS, Senior Engineering Technician
Department of Public Utilities, Planning and Engineering

Subject: SEWER REQUIREMENTS FOR CONDITIONAL USE PERMIT C-11-022 ABCUP

General

C-11-022 ABCUP was filed by Jim Shehadey and pertains to 0.65 acre of property located on the northeast corner of North West and West Herndon Avenues, 7010 North West Avenue, APN 405-080-21. The applicant requests authorization to establish a State of California Alcoholic Beverage Control Type 21 License, Package Store, sale of beer, wine, and distilled spirits for consumption off the premises where sold, and convert an existing building that had been an auto repair shop into a Shop N Go convenience store with alcohol sales and add a 718 square foot automatic car wash at the south end of the building. The property is zoned C-1-EA-UGM, Neighborhood Shopping Center-Expressway Area Overlay-Urban Growth Management.

Sewer Requirements

Sanitary sewer facilities are available to provide service to the site subject to the following requirements:

1. The Project Developer shall contact Wastewater Management Division/Environmental Services at (559) 621-5100 prior to pulling building permits regarding conditions of service for special users.



DEPARTMENT OF PUBLIC UTILITIES

Date: March 7, 2011

To: BONIQUE SALINAS
Planning and Development Department

From: GREG CONTRERAS, Senior Engineering Technician
Department of Public Utilities, Planning and Engineering



Subject: WATER REQUIREMENTS FOR CONDITIONAL USE PERMIT C-11-022 ABCUP

General

C-11-022 ABCUP was filed by Jim Shehadey and pertains to 0.65 acre of property located on the northeast corner of North West and West Herndon Avenues, 7010 North West Avenue, APN 405-080-21. The applicant requests authorization to establish a State of California Alcoholic Beverage Control Type 21 License, Package Store, sale of beer, wine, and distilled spirits for consumption off the premises where sold, and convert an existing building that had been an auto repair shop into a Shop N Go convenience store with alcohol sales and add a 718 square foot automatic car wash at the south end of the building. The property is zoned C-1-EA-UGM, Neighborhood Shopping Center-Expressway Area Overlay-Urban Growth Management.

Water Requirements

Water facilities are available to provide service to the site subject to the following requirements:

1. No requirements



County of Fresno

Department of Public Health
Edward L. Moreno, M.D., M.P.H., Director-Health Officer

February 18, 2011

FA0170249
LU0015942
PE 2602

Bonique Salinas
City of Fresno
Development Department
2600 Fresno Street
Fresno, CA 93721

Dear Ms. Salinas:

PROJECT NUMBER: C-11-022-ABCUP

Conditional Use Permit Application No. C-11-022-ABCUP was filed by Jim Shehadey and pertains to 0.65 acre of property located on the northeast corner of North West and West Herndon Avenues. The applicant requests authorization to establish a State of California Alcoholic Beverage Control Type 21 License (*Package Store – sale of beer, wine, and distilled spirits for consumption off the premises where sold*) and convert an existing building that had been an auto repair shop into a Shop 'N' Go convenience store with alcohol sales and add a 718 square-foot automatic car wash at the south end of the building. The property is zoned C-1/EAIUGM (*Neighborhood Shopping Center/Expressway Area Overlay/Urban Growth Management*).

APN: 405-080-21 ZONING: C-1/EAIUGM ADDRESS: 7010 North West Avenue

Recommended Conditions of Approval:

- Prior to issuance of building permits, the applicant shall submit complete food facility plans and specifications to the Fresno County Department of Public Health, Environmental Health Division, for review and approval. Contact the Consumer Food Protection Program at (559) 445-3334 for more information.
- Prior to operation, the applicant shall apply for and obtain a permit to operate a food facility from the Fresno County Department of Public Health, Environmental Health Division. A permit, once issued, is nontransferable. Contact the Consumer Food Protection Program at (559) 445-3334 for more information.
- Prior to operation, the applicant shall contact the California Alcoholic Beverage Control Department at (559) 225-6334 for information relative to applying for and obtaining a license to sell alcoholic beverages.
- The proposed car wash has the potential to expose nearby residents to elevated noise levels. Consideration should be given to your City's municipal code.
- The applicant shall submit an updated Hazardous Materials Business Plan to the Fresno County Department of Public Health, Environmental Health Division. Contact the Certified Unified Program Agency at (559) 445-3271 for more information.

Bonique Salinas
C-11-022 ABCUP
February 18, 2011
Page 2 of 2

- All hazardous waste shall be handled in accordance with requirements set forth in the California Health and Safety Code, Chapter 6.5. This chapter discusses proper labeling, storage and handling of hazardous wastes.

REVIEWED BY:

Janet Gardner

Digitally signed by Janet Gardner
DN: cn=Janet Gardner, o=Environmental Health
Division, ou=San Joaquin County Public Health
Department, email=jgardner@acphd.ca.us, c=US
Date: 2011.02.18 06:45:26 -0800

R.E.H.S., M.P.H.
Environmental Health Specialist

(559) 445-3271

jg

cc: Vince Mendes, Supervising Environmental Health Specialist (CT 4407)
Baruti/Casagrande/Toizmann, Environmental Health Division

C-11-022-ABC Shop N Go

550.10 "AB"

CITY OF FRESNO – DEVELOPMENT AND RESOURCE MANAGEMENT DEPARTMENT
REQUEST FOR COMMENTS, CONDITIONS, ENVIRONMENTAL ASSESSMENT,
AND ENTITLEMENT APPLICATION REVIEW OF
CONDITIONAL USE PERMIT APPLICATION NO. C-11-022 - ABCUP

FMFCD

Return Completed Form to:

Bonique Salinas
Email: Routing@fresno.gov
Telephone: 559-621-8277
Development and Resource Management
2600 Fresno Street, Third Floor
Fresno CA 93721-3604

PROJECT DESCRIPTION AND LOCATION:

Conditional Use Permit Application No. C-11-022-ABCUP was filed by Jim Shehadey and pertains to 0.65 acre of property located on the northeast corner of North West and West Herndon Avenues. The applicant requests authorization to establish a State of California Alcoholic Beverage Control Type 21 License (*Package Store – sale of beer, wine, and distilled spirits for consumption off the premises where sold*) and convert an existing building that had been an auto repair shop into a Shop 'N' Go convenience store with alcohol sales and add a 718 square-foot automatic car wash at the south end of the building. The property is zoned C-1/EA/UGM (*Neighborhood Shopping Center/Expressway Area Overlay/Urban Growth Management*).

APN: 405-080-21

ZONING: C-1/EA/UGM

ADDRESS: 7010 North West Avenue

DATE ROUTED: February 16, 2011

COMMENT DEADLINE: February 28, 2011

If no response is received by the comment deadline, it will be assumed you have no comments to submit.

WILL THIS PROJECT AFFECT YOUR AGENCY/JURISDICTION? (If yes, specify.)

REFER TO FMFCD NOTICE OF REQUIREMENTS FOR
CUP 2011-022

SUGGESTION(S) TO REDUCE IMPACTS/ADDRESS CONCERNS:

SAME AS ABOVE

REQUIRED CONDITIONS OF APPROVAL:

SAME AS ABOVE

IS ANY ADDITIONAL INFORMATION NEEDED FOR YOU TO COMPLETE YOUR REVIEW? (Be specific):

NO

REVIEWED BY:

Gary Chapman Eng Tech II
Name and Title

456-3292
Telephone Number

2/22/10
Date

FRESNO METROPOLITAN FLOOD CONTROL DISTRICT
NOTICE OF REQUIREMENTS

File No. 210.413

Page 1 of 4

PUBLIC AGENCY

BONIQUE SALINAS
DEVELOPMENT SERVICES/PLANNING
CITY OF FRESNO
2600 FRESNO STREET, THIRD FLOOR
FRESNO, CA 93721-3604

DEVELOPER

JIM SHEHADEY
405 N. PALM AVE.
FRESNO, CA 93701

PROJECT NO: 2011-022

ADDRESS: 7010 N. WEST AVE.

APN: 405-080-21

SENT: 2/22/11

Drainage Area(s)	Preliminary Fee(s)
AB	\$0.00
TOTAL FEE: \$0.00	

The proposed development will generate storm runoff which produces potentially significant environmental impacts and which must be properly discharged and mitigated pursuant to the California Environmental Quality Act and the National Environmental Policy Act. The District in cooperation with the City and County has developed and adopted the Storm Drainage and Flood Control Master Plan. Compliance with and implementation of this Master Plan by this development project will satisfy the drainage related CEQA/NEPA impact of the project mitigation requirements.

The proposed development shall pay drainage fees pursuant to the Drainage Fee Ordinance prior to issuance of a building permit at the rates in effect at the time of such issuance. The fee indicated above is valid through 2/28/12 based on the site plan submitted to the District on 2/16/11 Contact FMFCD for a revised fee in cases where changes are made in the proposed site plan which materially alter the proposed impervious area.

Considerations which may affect the fee obligation(s) or the timing or form of fee payment:

- a.) Fees related to undeveloped or phased portions of the project may be deferrable.
- b.) Fees may be calculated based on the actual percentage of runoff if different than that typical for the zone district under which the development is being undertaken and if permanent provisions are made to assure that the site remains in that configuration.
- c.) Master Plan storm drainage facilities may be constructed, or required to be constructed in lieu of paying fees.
- d.) The actual cost incurred in constructing Master Plan drainage system facilities is credited against the drainage fee obligation.
- e.) When the actual costs incurred in constructing Master Plan facilities exceeds the drainage fee obligation, reimbursement will be made for the excess costs from future fees collected by the District from other development.
- f.) Any request for a drainage fee refund requires the entitlement cancellation and a written request addressed to the General Manager of the District within 60 days from payment of the fee. A non refundable \$300 Administration fee or 5% of the refund whichever is less will be retained without fee credit.

Approval of this development shall be conditioned upon compliance with these District Requirements.

- 1. a. Drainage from the site shall REMAIN AS EXISTING
- b. Grading and drainage patterns shall be as identified on Exhibit No.

FR CUP No. 2011-022

FRESNO METROPOLITAN FLOOD CONTROL DISTRICT
NOTICE OF REQUIREMENTS

Page 2 of 4

FR
CUP No. 2011-022

- c. The grading and drainage patterns shown on the site plan conform to the adopted Storm Drainage and Flood Control Master Plan.
2. The proposed development shall construct and/or dedicate Storm Drainage and Flood Control Master Plan facilities located within the development or necessitated by any off-site improvements required by the approving agency:
Developer shall construct facilities as shown on Exhibit No. 1 as "Master Plan Facilities to be constructed by Developer".
 X None required.
3. The following final improvement plans shall be submitted to the District for review prior to final development approval:
 X Grading Plan
 Street Plan
 Storm Drain Plan
 Water & Sewer Plan
 Final Map
 Other
 None Required
4. Availability of drainage facilities:
 X a. Permanent drainage service is available provided the developer can verify to the satisfaction of the City that runoff can be safely conveyed to the Master Plan inlet(s).
 b. The construction of facilities required by Paragraph No. 2 hereof will provide permanent drainage service.
 c. Permanent drainage service will not be available. The District recommends temporary facilities until permanent service is available. TEMPORARY SERVICE IS AVAILABLE THROUGH
 d. See Exhibit No. 2.
5. The proposed development:
 Appears to be located within a 100 year flood prone area as designated on the latest Flood Insurance Rate Maps available to the District, necessitating appropriate floodplain management action. (See attached Floodplain Policy.)
 X Does not appear to be located within a flood prone area.
6. The subject site contains a portion of a canal or pipeline that is used to manage recharge, storm water, and/or flood flows. The existing capacity must be preserved as part of site development. Additionally, site development may not interfere with the ability to operate and maintain the canal or pipeline.

FRESNO METROPOLITAN FLOOD CONTROL DISTRICT
NOTICE OF REQUIREMENTS

Page 3 of 4

7. The Federal Clean Water Act and the State General Permits for Storm Water Discharges Associated with Construction and Industrial Activities (State General Permits) require developers of construction projects disturbing one or more acres, and discharges associated with industrial activity not otherwise exempt from National Pollutant Discharge Elimination System (NPDES) permitting, to implement controls to reduce pollutants, prohibit the discharge of waters other than storm water to the municipal storm drain system, and meet water quality standards. These requirements apply both to pollutants generated during construction, and to those which may be generated by operations at the development after construction.
- a. State General Permit for Storm Water Discharges Associated with Construction Activities, approved August 1999, (modified December 2002) A State General Construction Permit is required for all clearing, grading, and disturbances to the ground that result in soil disturbance of at least one acre (or less than one acre if part of a larger common plan of development or sale). Permittees are required to: submit a Notice of Intent to be covered and must pay a permit fee to the State Water Resources Control Board (State Board), develop and implement a storm water pollution prevention plan, eliminate non-storm water discharges, conduct routine site inspections, train employees in permit compliance, and complete an annual certification of compliance.
 - b. State General Permit for Storm Water Discharges Associated with Industrial Activities, April, 1997 (available at the District Office). A State General Industrial Permit is required for specific types of industries described in the NPDES regulations or by Standard Industrial Classification (SIC) code. The following categories of industries are generally required to secure an industrial permit: manufacturing; trucking; recycling; and waste and hazardous waste management. Specific exemptions exist for manufacturing activities which occur entirely indoors. Permittees are required to: submit a Notice of Intent to be covered and must pay a permit fee to the State Water Resources Control Board, develop and implement a storm water pollution prevention plan, eliminate non-storm water discharges, conduct routine site inspections, train employees in permit compliance, sample storm water runoff and test it for pollutant indicators, and annually submit a report to the State Board.
 - c. The proposed development is encouraged to select and implement storm water quality controls recommended in the Fresno-Clovis Storm Water Quality Management Construction and Post-Construction Guidelines (available at the District Office) to meet the requirements of the State General Permits, eliminate the potential for non-storm water to enter the municipal storm drain system, and where possible minimize contact with materials which may contaminate storm water runoff.
8. A requirement of the District may be appealed by filing a written notice of appeal with the Secretary of the District within ten days of the date of this Notice of Requirements.
9. The District reserves the right to modify, reduce or add to these requirements, or revise fees, as necessary to accommodate changes made in the proposed development by the developer or requirements made by other agencies.
10. X See Exhibit No. 2 for additional comments, recommendations and requirements.

FR
CUP
No. 2011-022


Gerald E. Lakeman
District Engineer


Gary Chapman
Project Engineer

FRESNO METROPOLITAN FLOOD CONTROL DISTRICT
NOTICE OF REQUIREMENTS

Page 4 of 4

CC:

ELIAS SALIBA

4668 W. PINE AVE.

FRESNO, CA 93722

FR CUP No. 2011-022

OTHER REQUIREMENTS
EXHIBIT NO. 2

In an effort to improve storm runoff quality, outdoor storage areas shall be constructed and maintained such that material that may generate contaminants will be prevented from contact with rainfall and runoff and thereby prevent the conveyance of contaminants in runoff into the storm drain system.

The District encourages, but does not require that roof drains from non-residential development be constructed such that they are directed onto and through a landscaped grassy swale area to filter out pollutants from roof runoff.

Runoff from areas where industrial activities, product, or merchandise come into contact with and may contaminate storm water must be directed through landscaped areas or otherwise treated before discharging it off-site or into a storm drain. Roofs covering such areas are recommended. Cleaning of such areas by sweeping instead of washing is to be required unless such wash water can be directed to the sanitary sewer system. Storm drains receiving untreated runoff from such areas that directly connect to the District's system will not be permitted. Loading docks, depressed areas, and areas servicing or fueling vehicles are specifically subject to these requirements. The District's policy governing said industrial site NPDES program requirements are available. Contact the District's Environmental Department for further information regarding these policies related to industrial site requirements.

Development No. CUP 2011-022



COUNCIL DISTRICT 2 PLAN IMPLEMENTATION COMMITTEE

PROJECT REVIEW - February 28, 2011

Project Record

PROJECT INFORMATION

a. **Conditional Use Permit Application No. C-11-022-ABCUP** was filed by Jim Shehadey and pertains to 0.65 acre of property located on the northeast corner of North West and West Herndon Avenues. The applicant requests authorization to establish a State of California Alcoholic Beverage Control Type 21 License (*Package Store -- sale of beer, wine, and distilled spirits for consumption off the premises where sold*) and convert an existing building that had been an auto repair shop into a Shop 'N' Go convenience store with alcohol sales and add a 718 square-foot automatic car wash at the south end of the building. The property is zoned C-1/EA/UGM (*Neighborhood Shopping Center/Expressway Area Overlay/Urban Growth Management*).

APN: 405-080-21

ZONING: C-1/EA/UGM

ADDRESS: 7010 N. West Avenue

COMMITTEE RECOMMENDATION

APPROVE APPROVE WITH CONDITION(S) DENY X NO ACTION

	Bznouni	Hendry	Kowalczyk	Kachadourian	Napoli	Poptanich	Rodriguez	Salazar	Scott	Singh
Approve										
Deny										
Abstain										
Absent										

COMMITTEE CONDITIONS / COMMENTS

5 members were present, which did not constitute a quorum, and the following recommendations were made by consensus:

1. Ensure that all mechanical equipment is properly screened so that it is not visible from the property or from the public right of way surrounding the property.

Staff Liaison: *Sepina Papoulas* Date: *3/1/11*

Bonique Salinas

From: Hilary Kimber
Sent: Monday, March 14, 2011 9:21 AM
To: Bonique Salinas
Subject: RE: C-11-022

The two onsite trees on West Ave. and the trees along the trail on Herndon meet the PW requirements at this time. No additional requirements will be imposed.

From: Bonique Salinas
Sent: Thursday, March 10, 2011 4:18 PM
To: Hilary Kimber
Subject: C-11-022

Hilary,

Do you have any comments on this project?

Thanks,

Bonique



March 14, 2011

Bonique Salinas
City of Fresno
Development and Resource Management
2600 Fresno St., Third Floor
Fresno, CA 93721

Project: CUP Application No. C-11-022-ABCUP
District CEQA Reference No: 20110097

Dear Ms. Salinas:

The San Joaquin Valley Unified Air Pollution Control District (District) has reviewed the project referenced above and finds:

1. The project is expected to have no significant adverse impact on air quality.
2. The proposed project is not subject to District Rule 9510 (Indirect Source Review).
3. The proposed project may be subject to the following District rules: Regulation VIII, (Fugitive PM10 Prohibitions), Rule 4102 (Nuisance), Rule 4601 (Architectural Coatings), and Rule 4641 (Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations). In the event an existing building will be renovated, partially demolished or removed, the project may be subject to District Rule 4002 (National Emission Standards for Hazardous Air Pollutants).

The above list of rules is neither exhaustive nor exclusive. To identify other District rules or regulations that apply to this project or to obtain information about District permit requirements, the applicant is strongly encouraged to contact the District's Small Business Assistance Office at (559) 230-5888. Current District rules can be found online at: www.valleyair.org/rules/1ruleslist.htm.

Seyed Sadredin
Executive Director/Air Pollution Control Officer

Northern Region
4800 Enterprise Way
Modesto, CA 95356-8718
Tel: (209) 557-6400 FAX: (209) 557-6475

Central Region (Main Office)
1990 E. Gettysburg Avenue
Fresno, CA 93726-0244
Tel: (559) 230-6000 FAX: (559) 230-6061

Southern Region
34946 Flyover Court
Bakersfield, CA 93308-9725
Tel: 661-392-5500 FAX: 661-392-5585

Ms. Salinas
District CEQA Reference No. 20110097

If you have any questions or require further information, please call Cherie Clark at (559) 230-5934.

Sincerely,

Dave Warner
Director of Permits Services

Cherie Clark for:

Arnaud Marjollet
Permit Services Manager

DW: cc

Cc: File

FRE-41-30.4477-

CITY OF FRESNO – DEVELOPMENT AND RESOURCE MANAGEMENT DEPARTMENT
REQUEST FOR COMMENTS, CONDITIONS, ENVIRONMENTAL ASSESSMENT,
AND ENTITLEMENT APPLICATION REVIEW OF
CONDITIONAL USE PERMIT APPLICATION NO. C-11-022 - ABCUP

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Fresno CA 93721-3604

PROJECT DESCRIPTION AND LOCATION:

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APN: 405-080-21

ZONING: C-1/EA/UGM

ADDRESS: 7010 North West Avenue

DATE ROUTED: February 16, 2011

COMMENT DEADLINE: February 28, 2011

If no response is received by the comment deadline, it will be assumed you have no comments to submit.

WILL THIS PROJECT AFFECT YOUR AGENCY/JURISDICTION? (If yes, specify.)

SUGGESTION(S) TO REDUCE IMPACTS/ADDRESS CONCERNS:

No Comment
Genis

REQUIRED CONDITIONS OF APPROVAL:

IS ANY ADDITIONAL INFORMATION NEEDED FOR YOU TO COMPLETE YOUR REVIEW? (Be specific):

REVIEWED BY: Jennifer Bryan-Sanchez 488-7307 3/16/11
Name and Title Telephone Number Date
Associate Trans. Planner
Council District 2; Bullard Community Plan

Exhibit F
Site Plan, Floor Plans, Elevations

Exhibit G
Operational Statement

**OPERATIONAL STATEMENT
FOR PROPOSED
SHOP 'N' GO FOOD STORE
UNION 76 GASOLINE FACILITY
APN: 405-080-21**

Proposed 2,153 s.f. building for the food store, <E> 4,350 s.f. gas island canopy for 5 MPD's (multi pump dispensers to remain). <E> Cargo storage to be removed. Proposed 718 s.f. auto car wash.

1. Existing general plan land use designation: Commercial/Neighborhood
2. Existing community plan: Bullard.
3. Existing zone district: C-1 Neighborhood shopping center.
4. Existing specific plan: N/A
5. Redevelopment area: N/A
6. Discussion with neighbors: Not yet.
7. 2025 general plan compliance: Proposal does comply with general plan.
8. Nature of the operation: customers drive or walk to store, buy gas, groceries, beer, wine, liquor(c21), soda, milk, cigarettes, lotto, sandwiches, tacos...or cash a check.
9. Operation Time Limits: open your round, 7 days/week, 24 hours/day, 3 shifts per day. No special activities.
10. Number of Customers: 550 customers /day as average. 700 maximum during busy days. Customers may drop in anytime, mostly during the day.
11. Number of Employees: 2 persons per shift.
12. Service & Delivery Vehicles: Trucks may make 12 deliveries /week.
13. Parking: proposed 12 parking stalls on site plus 12 under gas island canopy, total of 24. Type of surfacing is asphaltous concrete.
14. Goods Sales: Groceries, gas, food, tacos, beer, wine, diary products, cash checks...
15. Equipments used: Walk in ref. (wic), deli cases, slicer, fryer, griddle, stove, hood, cash register, soda machine, and coffee maker...
16. Supplies: Canned & frozen food, oil cans, groceries...stored on Gondolas accessible from aisles. Dairy products stored in WIC, frozen food in WIF.
17. Unightly appearance of use: no noise or odors anticipated. No glare or dust to be produced.
18. Solid Wastes: 120 LB/day of domestic garbage, 110 pounds of paper/card box, will be stored in a container and hauled by City of Fresno solid waste management from proposed onsite trash enclosure once/week.
19. Liquid waste: anticipated 550 gal/day of domestic liquid waste, to city sewer.
20. Water use: estimated consumption 800 gal/day. Source City of Fresno.
21. Advertising: site sign along West Ave., another along front of building. Sign displaying business name. Price sign at the intersection corner.
22. Building operation: proposed building will include sales area, sales counter, stock room, workroom, office, restrooms, typical sandwich shop & hot food operation.
23. Outdoor lighting: lighting fixtures mounted on building walls, canopy ceiling, and parking light poles, all hooded. No sound amplification systems to be used.
24. Landscaping: Existing trees, shrubs, ground cover, lawn .Add more trees&s hrubs..

Owner: John Shehadey
(559) 266-5055

Exhibit H
Environmental Assessment No. C-11-022

**CITY OF FRESNO
CATEGORICAL EXEMPTION
ENVIRONMENTAL ASSESSMENT NO. C-11-022**

THE PROJECT DESCRIBED HEREIN IS DETERMINED TO BE CATEGORICALLY
EXEMPT FROM THE PREPARATION OF ENVIRONMENTAL DOCUMENTS
PURSUANT TO ARTICLE 19 OF THE STATE CEQA GUIDELINES.

APPLICANT: Jim Shehady
405 North Palm Avenue
Fresno, CA 93701

PROJECT LOCATION: 7010 North West Avenue, located on the northeast corner of
North West and West Herndon Avenues (APN: 405-080-21)

PROJECT DESCRIPTION: Conditional Use Permit Application No. C-11-022 is a request to
establish a State of California Alcoholic Beverage Control
Type 21 License (*Package Store -- sale of beer, wine, and
distilled spirits for consumption off the premises where sold*)
and convert an existing building that had been an auto
repair shop into a Shop 'N' Go convenience store with
alcohol sales and add a 718 square-foot automatic car wash
at the south end of the building.

This project is exempt under Section 15332/Class 32 of the State of California CEQA Guidelines.

EXPLANATION: Section 15332/Class 32 consists of projects characterized as in-fill development meeting the conditions described in this Section. (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations. (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses. (c) The project site has no value, as habitat for endangered, rare or threatened species. (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality. (e) The site can be adequately served by all required utilities and public services.

The proposed project consists of a small addition to an existing building to be used as a carwash, a request for an alcohol license, and the conversion the existing building to a use allowed by right, is within the City limits and is consistent with the 2025 Fresno General Plan policies. The property is zoned C-1 which is consistent with the 2025 General Plan and Bullard Community Plan land use designation of neighborhood commercial pursuant to section 12-607-A-1 of the FMC. The operation of a convenience store/gas station with alcohol sales and a carwash on this 0.56 acre site is allowed within the designated zone district. The site is already built-out, has no value as habitat for endangered, rare or threatened species and complies with the conditions of the Class 32 Categorical Exemption. No adverse environmental impacts would occur as a result of the proposed project.

Date: March 14, 2011

Prepared By: Bonique Salinas, Planner

Submitted By:


Mike Sanchez, Planning Manager
City of Fresno
Devlpmnt & Resource Management Department
(559) 621-8277