



**CITY OF SAN JOSE**  
 Planning, Building and Code Enforcement  
 200 East Santa Clara Street  
 San José, CA 95113-1905  
 tel (408) 535-3555 fax (408) 292-6055  
 Website: www.sanjoseca.gov/planning

**NOTICE OF PERMIT APPEAL**

**TO BE COMPLETED BY PLANNING STAFF**

FILE NUMBER <b>CP 09-015</b>	RECEIPT # <b>574308</b>
PROJECT LOCATION <b>Southeast corner of McKee Rd. &amp; <del>N. 33rd</del> N. 33rd St.</b>	AMOUNT <b>\$120</b>
	DATE <b>4-26-10</b>
	BY <b>P. Shaffer</b>

**TO BE COMPLETED BY PERSON FILING APPEAL**

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

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

**1604 MCKEE ROAD, SAN JOSE**

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

**PLEASE SEE ATTACHED**

**PERSON FILING APPEAL**

NAME <b>ANDY SABERI</b>	DAYTIME TELEPHONE <b>(650) 588-3088</b>
ADDRESS <b>1590 MCKEE RD</b>	CITY <b>SAN JOSE</b>
	STATE <b>CA</b>
	ZIP CODE <b>95116</b>
SIGNATURE <i>[Signature]</i>	DATE <b>04/26/10</b>
RELATIONSHIP TO SUBJECT SITE: (e.g., adjacent property owner, property owner within one thousand (1,000) feet) <b>PROPERTY OWNER</b>	

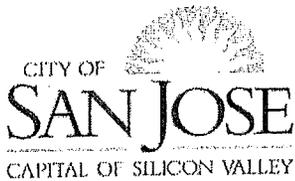
**CONTACT PERSON (IF DIFFERENT FROM PERSON FILING APPEAL)**

NAME <b>JAMES DOMBSKI</b>			
ADDRESS <b>P.O. Box 751027</b>		CITY <b>REDWOOD</b>	STATE <b>CA</b>
		ZIP CODE <b>94975</b>	
DAYTIME TELEPHONE <b>(707) 769-7807</b>	FAX NUMBER <b>(707) 769-0419</b>	E-MAIL ADDRESS <b>JDOMSKI@AOL.COM</b>	

**PROPERTY OWNER**

NAME <b>ANDY SABERI</b>	DATE <b>04/26/10</b>
ADDRESS <b>1045 AIRPORT BLVD</b>	CITY <b>SO. SAN FRANCISCO</b>
	STATE <b>CA</b>
	ZIP CODE <b>94080</b>

PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT.



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## NOTICE OF PERMIT APPEAL

TO BE COMPLETED BY PLANNING STAFF			
FILE NUMBER	CP 09-015		RECEIPT #
PROJECT LOCATION	Southeast corner of McKee Rd. & N. 33 <sup>rd</sup> St.		AMOUNT
			DATE
			BY
TO BE COMPLETED BY PERSON FILING APPEAL			
PLEASE REFER TO PERMIT APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE. THIS FORM MUST BE ACCOMPANIED BY THE APPROPRIATE FILING FEE.			
THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE PROPERTY WHICH IS LOCATED AT:			
1604 MCKEE ROAD, SAN JOSE			
REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.):			
PLEASE SEE ATTACHED			
PERSON FILING APPEAL			
NAME	ANDYS BP, INC		DAYTIME TELEPHONE
ADDRESS	CITY	STATE	ZIP CODE
1590 MCKEE ROAD	SAN JOSE	CA	95116
SIGNATURE			DATE
			04/26/10
RELATIONSHIP TO SUBJECT SITE: (e.g., adjacent property owner, property owner within one thousand (1,000) feet)			
ADJACENT PROPERTY,			
CONTACT PERSON (IF DIFFERENT FROM PERSON FILING APPEAL)			
NAME			
JAMES DOMBROSKI			
ADDRESS	CITY	STATE	ZIP CODE
P.O. BOX 751027	PETALUMA	CA	94945
DAYTIME TELEPHONE	FAX NUMBER	E-MAIL ADDRESS	
(707) 769-3807	(707) 769-0419	JDOMSKI@DOL.COM	
PROPERTY OWNER			
NAME			DATE
ANDY SOBERA			04/26/10
ADDRESS	CITY	STATE	ZIP CODE
1045 AIRPORT BLVD	SO. SAN FRANCISCO	CA	94080

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 200 East Santa Clara Street  
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**NOTICE OF ENVIRONMENTAL APPEAL**

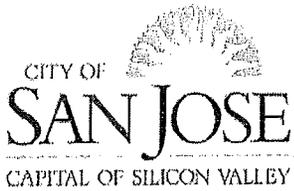
TO BE COMPLETED BY PLANNING STAFF	
FILE NUMBER <b>CP09-015</b>	RECEIPT # <b>574045</b>
TYPE OF ENVIRONMENTAL DETERMINATION (EIR, MND, EX)  <b>Negative Declaration</b>	AMOUNT <b>\$100.00</b>
	DATE <b>4/22/2010</b>
	BY <b>Jeff Roche</b>

TO BE COMPLETED BY PERSON FILING APPEAL
PLEASE REFER TO ENVIRONMENTAL APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE.  THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE FOLLOWING ENVIRONMENTAL DETERMINATION:  <b>1604 MCKEE ROAD</b>
REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet):  <b>PLEASE SEE ATTACHED</b>

PERSON FILING APPEAL	
NAME <b>ANDY SABERI</b>	DAYTIME TELEPHONE <b>(650) 588-3088</b>
ADDRESS <b>1045 AIRPORT BLVD</b>	CITY STATE ZIP CODE <b>SO. SAN FRANCISCO CA 94080</b>
SIGNATURE <i>[Signature]</i>	DATE

CONTACT PERSON (IF DIFFERENT FROM PERSON FILING APPEAL)		
NAME <b>JAMES DOMBROSKI</b>		
ADDRESS <b>P.O. Box. 751027,</b>	CITY <b>Petaluma</b>	STATE ZIP CODE <b>CA 94975</b>
DAYTIME TELEPHONE <b>(707) 762-7807</b>	FAX NUMBER <b>(707) 769-0419</b>	E-MAIL ADDRESS <b>Jdombroski @ dol.com,</b>

PLEASE SUBMIT THIS APPLICATION IN PERSON TO THE DEVELOPMENT SERVICES CENTER, CITY HALL.

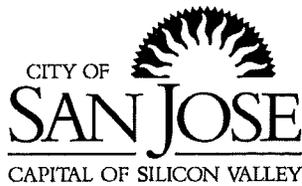


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## NOTICE OF ENVIRONMENTAL APPEAL

TO BE COMPLETED BY PLANNING STAFF			
FILE NUMBER <span style="font-size: 1.5em; margin-left: 100px;">CP 09-015</span>	RECEIPT # <u>574046</u>		
TYPE OF ENVIRONMENTAL DETERMINATION (EIR, MND, EX) <span style="font-size: 1.5em; margin-left: 50px;">Negative Declaration</span>	AMOUNT <u>\$100.00</u>	DATE <u>4/22/2010</u>	
		BY <u>Jeff Roche</u>	
TO BE COMPLETED BY PERSON FILING APPEAL			
PLEASE REFER TO ENVIRONMENTAL APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE.			
THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE FOLLOWING ENVIRONMENTAL DETERMINATION:			
<u>1604 MCKEE ROAD</u>			
REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet):			
<u>PLEASE SEE ATTACHED...</u>			
PERSON FILING APPEAL			
NAME <u>ANDY'S BP, INC</u>	DAYTIME TELEPHONE <u>(650) 588 3088</u>		
ADDRESS <u>1045 AIRPORT BLVD</u>	CITY <u>SO. SAN FRANCISCO</u>	STATE <u>CA</u>	ZIP CODE <u>94080</u>
SIGNATURE 	DATE <u>04/22/10</u>		
CONTACT PERSON (IF DIFFERENT FROM PERSON FILING APPEAL)			
NAME <u>JAMES DONBROSKI</u>			
ADDRESS <u>P.O. Box 751027</u>	CITY <u>PETALUMA</u>	STATE <u>CA</u>	ZIP CODE <u>94975</u>
DAYTIME TELEPHONE <u>(707) 762-7807</u>	FAX NUMBER <u>(707) 769-0419</u>	E-MAIL ADDRESS <u>JDOMSKI@AOL.COM</u>	

**PLEASE SUBMIT THIS APPLICATION IN PERSON TO THE DEVELOPMENT SERVICES CENTER, CITY HALL.**



# Memorandum

**TO:** Planning Commission

**FROM:** Joseph Horwedel

**SUBJECT:** SEE BELOW

**DATE:** April 21, 2010

---

## S U P P L E M E N T A L M E M O

**SUBJECT:** CP09-015. Conditional Use Permit to allow the demolition of an existing single-family detached residence and the expansion of an existing gas and service station, including construction of three additional gas pumps and a canopy for the new pumping facility, in the CP Pedestrian Commercial Zoning District, located at 280 N. 33rd Street & 1604 McKee Road

### REASON FOR SUPPLEMENTAL

Staff has received timely comments from James Dombroski, the attorney representing Andy's BP, located across the street from the subject property, dated April 16, 2010, objecting to the conclusions of the Initial Study and Draft Negative Declaration that circulated from March 29, 2010 to April 19, 2010. The comments received were primarily regarding traffic impacts and the underground gasoline tanks (geology & soils and hazards & hazardous materials).

Section 15384 of the California Environmental Quality Act (CEQA) defines "substantial evidence" as enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion.

### SUMMARY OF RESPONSES

The comments allege that the City ignored substantial evidence in the record that supports fair argument for significant environmental impacts. Within the letter received from Mr. Dombroski were comments regarding the status of the subject property's compliance with California Health and Safety Code in regards to the underground storage tanks and potential significant impacts to traffic. The specific comments have been excerpted from the letter and are presented as "comment" with each response directly following. A copy of the letter received is attached (Attachment A).

#### **Comment 1:**

The comments dispute the Public Works traffic analysis. The proposed project will result in significant impacts to transportation and traffic, as document in the "Generation Study" prepared by the commenter's consultant, Traffic Data Service. (Substantial evidence #1, #2, and #3)

#### **Response 1:**

Traffic Data Service submitted a trip generation study for the proposed project. Traffic counts were conducted on the existing gas station which resulted in the consultants' belief that the additional pumps added to the site would double the existing volumes. Department

of Public Works (PW) and Department of Transportation (DOT) do not concur with this opinion. The opinion does not consider the characteristics of peak hour traffic on the US101 corridor, functionality of McKee Road during the peak hours, and general traffic characteristics unique to the project site.

Although gas prices may motivate drivers to certain areas, typically during the peak travel periods the existing congestion like that on McKee Road and the adjacent Interstate 101 corridor would deter drivers. However, this would not be the case during non-peak travel periods.

In spite of PW and DOT's professional opinion, LOS analysis was performed for the PM peak hour at the intersection of McKee/33<sup>rd</sup> St. using the traffic data submitted by Traffic Data Service which resulted in no level of service impact. Attached are the traffic files.

**Comment 2:**

Subject property is out of compliance with underground storage tanks, as documented by letter from Gerald O'Regan of the Department of Environmental Health, County of Santa Clara, dated August 13, 2009. (Substantial evidence #4)

**Response 2:**

The substantial evidence in the record circulated with the Initial Study refutes this comment. Correspondence received from Mr. O'Regan of the County Department of Environmental Health, dated December 7, 2009, stated that "Moe's Arco located at 1604 McKee Road in San Jose is in compliance with all Santa Clara County Department of Environmental Health requirements." Therefore, this property is in compliance.

**CONCLUSION**

The evidence presented does not support a fair argument for geology & soils, hazards & hazardous materials, or transportation/traffic. The Initial Study and Draft Negative Declaration have disclosed the lack of potential impacts. Section 15073.5(c)(4) of CEQA states that recirculation of an Negative Declaration is not required when new information is added to the negative declaration which merely clarifies the negative declaration. Therefore, no mitigation or Environmental Impact Report is required.

  
\_\_\_\_\_  
JOSEPH HORWEDEL, DIRECTOR  
Planning, Building and Code Enforcement

Law Offices of  
**JAMES M. DOMBROSKI**  
ATTORNEY AT LAW  
LICENSED IN CALIFORNIA AND HAWAII  
P.O. BOX 751027  
PETALUMA, CALIFORNIA 94975-1027  
TELEPHONE (707) 762-7807  
FAX (707) 769-0419  
Email Address: jdomski@aol.com

April 16, 2010

VIA EMAIL

Mr. Avril Baty  
Project Manager  
Department of Planning, Building  
and Code Enforcement  
200 E. Santa Clara Street, 3<sup>rd</sup> Floor  
San Jose, California 95113

Re: CP09-015 / Objections to Draft Negative Declaration

Dear Mr. Baty:

This office represents Andy's BP, Inc., located at the southwest corner of McGee Road on N. 33<sup>rd</sup> Street, across the street from Moe's Gas, applicant, in the above-referenced conditional use permit proceeding.

We object to the Draft Negative Declaration, dated March 30, 2010, paragraphs VI, "Geology and Soils", VII, "Hazards and Hazardous Materials", and XV, "Transportation/Traffic", all of which state: "The project will not have a significant impact on this resource, therefore no mitigation is required."

In reaching the conclusion that the project will not have a significant impact, the Department of Planning ignored substantial evidence in the record that supports a fair argument that significant impacts may occur. The substantial evidence is defined as a matter of law as "fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact." Public Resources Code 21080, subd (e)(1)-(2).

**A. The Substantial Evidence Submitted By My Client.**

**Substantial Evidence #1:** Attached as Exhibit A is my email to Mr. Ed Schreiner (the previous project manager) and the Planning Commissioners, dated November 16, 2009, which stated:

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"Dear Mr. Schreiner and Planning Commissioners,

As you know, my office represents Andy's BP, located at the southwest corner of McKee Road and N. 33<sup>rd</sup> Street, across the street from Moe's Gas, applicant in the above-referenced conditional use permit proceeding.

Attached is undisputed evidence that shows that the 'in-house traffic analysis' performed by Public Works is patently flawed. The Public Works report dated 9/11/09 states that the 'results indicate the intersection of McKee Road and N. 33<sup>rd</sup> Street was not significantly impacted with the addition of the project traffic.' Based upon the attached 'Generation Study' by Traffic Data Service (TDS), TDS states: 'These numbers are more than double the "average" factors show in the ITE Trip end tables for land use 944, Gasoline Station. These are the highest gas station numbers TDS has recorded in more than 35 years doing such studies in the Bay Area.' The attached TDS report with supporting exhibits is dramatic evidence that shows that this matter must be re-examined and properly analyzed.

TDS concludes that 'Even with the highly unlikely trip capture rate of 20% this would mean 130 new trips generated. CALTRANS calls for a full TIA for any development that generates over 100 new peak hour trips.'

Accordingly, it is requested that the Planning Department and/or Planning Commission demand that the applicable submit a Traffic Impact Analysis (TIA), as required by Council Policy 5-3. Please confirm whether or not the applicant will be required to submit a TIA. Thank you."

**Substantial Evidence #2:** The "Generation Study" by Traffic Data Service (TDS) is attached as Exhibit B,

**Substantial Evidence #3:** Emails confirming a Fair Argument that significant impacts may occur.

My email to Mr. Ed Schreiner on November 23, 2009:

"Ed,

I just left a voice mail message requesting: (1) the status of my request emailed to you and the Planning Commissioners on 11/16/09 with the Generation Study by Traffic Data Service which provides reasonable grounds for requiring the applicant to submit a Traffic Impact Analysis (TIA); (2) the status of the compliance issues regarding the applicant's leaking underground gasoline tanks and the environmental review by the planning department—you previously

Mr. Avril Baty  
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indicated that the hearing may proceed on 12/2/09, could you confirm whether the hearing will proceed on 12/2/09?  
Thank you for attention to these matters." (Exhibit C)

In response to my email, Mr. Ed Schreiner stated:

"The Traffic Study was reviewed. No TIA is needed as the project conforms to San Jose's LOS policy" (Attached as Exhibit C).

In response to Mr. Schreiner's email, dated November 25, 2009, I responded as follows:

"Ed,  
Thank you for your response. We have reviewed San Jose's LOS policy and we do not see anything that addresses the criteria about the TIA. We would appreciate receiving a further citation to the specific provisions of the LOS policy that supports the position that no TIA is needed. Thank you for your courtesy and cooperation." (Attached as Exhibit C.)

When I did not receive a response from Mr. Schreiner, on December 8, 2009, I sent the following email to Mr. Schreiner:

"Ed,  
We have not received a response to my email of 11/25/09 requesting a specific citation to the provisions of the LOS policy that supports your Department's position that no TIA is needed.

My client incurred substantial expense for the Generation Study by Traffic Data Service which shows that the in-house analysis performed by Public Works is patently flawed and erroneous. The TDS report clearly shows that a full TIA is required for this project. With all due respect, your email of 11/23/09 claiming that no TIA is needed because you claim it conforms to San Jose's LOS policy is without support and clearly contrary to the expert opinions contained in the TDS Generation Study. At the very least, we again request the specific citation to the provisions of the LOS policy that supports your Department's position.

In addition, we previously requested information in my email to you on 11/23/09 about the status of the compliance issues regarding the applicant's leaking gasoline tanks and the environmental review by the Planning Department. To date, we have not received a response. We would appreciate any information you could provide including a citation to the appropriate website that contains any such related information.

Mr. Avril Baty  
Page 4  
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Finally, we request to be notified of any future hearing date before the Planning Commission regarding any matters related to this application. Thank you for your courtesy and cooperation." (Attached as Exhibit C; emphasis added.)

The emails on November 23, 2009, November 25, 2009 and December 8, 2009, are attached as Exhibit C.

**Substantial Evidence #4:** Applicants "out of compliance" with underground gasoline tanks.

Applicant has historically been "out of compliance" with its underground gasoline tanks in violation of the California Health and Safety Code and the California Business & Professions Code Sections 6735, 7835 and 7835.1. The substantial evidence is the letter to applicant from the Department of Environment Health, County of Santa Clara, attached as Exhibit D.

Additional substantial evidence is that my client's station, adjacent to applicants, is informed and believes that applicant's leaking gasoline tanks have polluted and damages my client's property.

**B. The Record Supports a "Fair Argument" That Significant Impacts May Occur.**

The substantial evidence clearly shows: (1) geology and soils may be impacted based upon applicant's leaking gasoline tanks; (b) hazards and hazardous materials may be impacted based upon applicant's leaking gasoline tanks; and (c) transportation/traffic may be impacted based upon the "Generation Study" by Traffic Data Service.

If the Planning Commission simply believes an impact may occur, an EIR must be required. Applicable treatises and laws clearly mandate an EIR if an impact may occur. Here, applicant's history of "out of compliance" with its underground tanks, coupled with the possible leaking, is sufficient to require an EIR. An impact may occur is sufficient to require an EIR. In addition, there can be no doubt based upon the TDS Study that traffic may be impacted. This is sufficient to require an EIR.

The Guide to CEQA, California Environmental Quality Act, published by Solano Press Books on February 2007, addresses the "fair argument" standard which must be applied to this case:

"An EIR is required whenever substantial evidence in the record supports a "*fair argument*" that significant impacts *may* occur. Even if other substantial evidence

Mr. Avril Baty  
Page 5  
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supports the opposite conclusion, the agency nevertheless must prepare an EIR. *No Oil, Inc. V. City of Los Angeles* (1974) 13 Cal.3d 68, 75 [118 Cal. Rptr. 34] (*No Oil I*); *Friends of 'B' Street v. City of Hayward* (1<sup>st</sup> Dist. 1980) 106 Cal. App. 3d 988, 1000-1003 [165 Cal. Rptr. 514].

The 'fair argument' standard creates a 'low threshold' for requiring preparation of an EIR. *Citizens Action to Serve All Students v. Thornley* (1<sup>st</sup> Dist. 1990) 222 Cal. App. 3d 748, 754 [272 Cal. Rptr. 83]; *Sundstrom v. County of Mendocino* (1<sup>st</sup> Dist. 1988) 202 Cal. App. 3d 296, 310 [248 Cal. Rptr. 352] (*Sundstrom*) (quoting *No Oil I, supra*, 13 Cal.3d at p. 75). The standard is founded upon the principle that, because adopting a negative declaration has a 'terminal effect on the environmental review process' (*Citizens of Lake Murray Area Assn. V. City Council* (4<sup>th</sup> Dist. 1982) 129 Cal. App. 3d 436, 440 [181 Cal. Rptr. 123]), an EIR is necessary to 'substitute some degree of factual certainty for tentative opinion and speculation' and to resolve 'uncertainty created by conflicting assertions' (*No Oil I, supra*, 13 Cal.3d at p. 85) (quoting *County of Inyo v. Yorty* (3d Dist. 1973) 32 Cal.App. 3d 795, 814 [108 Cal. Rptr. 377])). As one court recently put it, '[t]hese legal standards reflect a preference for requiring an EIR to be prepared.' *Mejia v. City of Los Angeles* (2d Dist. 2005) 130 Cal. App. 4<sup>th</sup> 322, 332 [29 Cal. Rptr. 3d 788]." (at page 249).

Based upon the record in this case, there is substantial evidence based upon the substantial evidence shown above that shows that a significant impact may occur, contrary to the findings in the Draft Negative Declaration that the project will not have a significant impact on this resource. Based on the above recitation of the communications to and from the staff in the Planning Department, there does not appear to be any contrary evidence to refute the findings in the Generation Study by TDS and the letter from Santa Clara County.

There can be no doubt that the expert opinions contained in the TDS Generation Study (Exhibit B) and the letter from Santa Clara County (Exhibit D) demonstrates the substantial evidence to require an EIR. Substantial evidence is defined as "Substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact." See Public Resources Code § 21080, subds (e)(1)-(2).

Based on the substantial evidence as shown above, supporting a fair argument that significant impacts may occur, the Planning Commission must find a way to mitigate the impacts or require that the applicant prepare an EIR. From the Guide to CEQA, *supra*, at page 310:

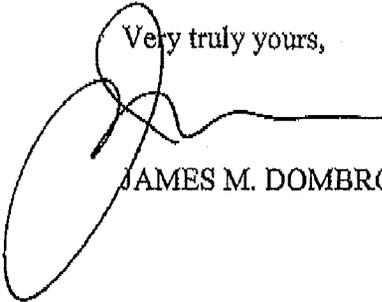
"If the comments contain substantial evidence supporting a fair argument that the project may actually produce significant environmental impacts, then the lead agency must either (1) find a way to mitigate the impacts to a level of

Mr. Avril Baty  
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insignificance, and then circulate a revised proposed negative declaration; or (2) prepare an EIR. See Pub. Resources Code, §§ 21064.5, 31080, subd. (c); CEQA Guidelines, § 15073.5; *Quail Botanical Gardens Foundation, Inc. V. City of Encinitas* (4<sup>th</sup> Dist. 1994) 29 Cal. App. 4<sup>th</sup> 1597, 1605, fn. 4 [35 Cal. Rptr. 2d 470]; *Perley v. County of Calaveras* (3<sup>rd</sup> Dist. 1982) 137 Cal. App. 3d 424, 431-432 [187 Cal. Rptr. 53].”

For the above-stated reasons, it is requested that the proposed negative declaration be rejected and that the applicant be required to prepare an EIR.

Very truly yours,



JAMES M. DOMBROSKI

JMD:sd  
Enclosures: Exhibits A-D

Subj: CP09-015  
Date: 11/16/2009 3:57:26 P.M. Pacific Standard Time  
From: Jdomski  
To: [edward.schreiner@sanjoseca.gov](mailto:edward.schreiner@sanjoseca.gov)  
CC: [laurel.prevetti@sanjoseca.gov](mailto:laurel.prevetti@sanjoseca.gov), [darryl.boyd@sanjoseca.gov](mailto:darryl.boyd@sanjoseca.gov), [tdo@aedisgroup.com](mailto:tdo@aedisgroup.com), [lajensenPC@yahoo.com](mailto:lajensenPC@yahoo.com), [xavierc@macsa.org](mailto:xavierc@macsa.org), [mkamkar@cccengineers.com](mailto:mkamkar@cccengineers.com), [hopecahan@mac.com](mailto:hopecahan@mac.com)  
Re: CP09-015

Dear Mr. Schreiner and Planning Commissioners,

As you know, my office represents Andy's BP, located at the southwest corner of McKee Road and N. 33<sup>rd</sup> Street, across the street from Moe's Gas, applicant in the above-referenced conditional use permit proceeding.

Attached is undisputed evidence that shows that the "in-house traffic analysis" performed by Public Works is patently flawed. The Public Works report dated 9/11/09 states that the "results indicate the intersection of McKee Road and N. 33<sup>rd</sup> Street was not significantly impacted with the addition of the project traffic." Based upon the attached "Generation Study" by Traffic Data Service (TDS), TDS states: "These numbers are more than double the 'average' factors show in the ITE Trip end tables for land use 944, Gasoline Station. These are the highest gas station numbers TDS has recorded in more than 35 years doing such studies in the Bay Area." The attached TDS report with supporting exhibits is dramatic evidence that shows that this matter must be re-examined and properly analyzed.

TDS concludes that "Even with the highly unlikely trip capture rate of 20% this would mean 130 new trips generated. CALTRANS calls for a full TIA for any development that generates over 100 new peak hour trips."

Accordingly, it is requested that the Planning Department and/or Planning Commission demand that the applicant submit a Traffic Impact Analysis (TIA), as required by Council Policy 5-3. Please confirm whether or not the applicant will be required to submit a TIA. Thank you.

\*\*\*\*\*  
James M. Dombroski, Esq.  
Law Offices of James M. Dombroski  
P.O. Box 751027  
Petaluma, CA 94976-1027  
Telephone: (707) 762-7807  
Fax: (707) 769-0419  
Email: [jdomski@aol.com](mailto:jdomski@aol.com)

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"25 Years of Excellence"

## Traffic Data Service

Campbell, CA • Flagstaff, AZ • Arcadia, CA • Denver, CO

**To:** James M. Dombroski

**From:** Keith Manley, TDS

**Date:** 11/11/09

**Subject:** Generation Study, Moe's Gas, 1604 McKee Road, San Jose CA

Jim:

You will find attached the trip generation study TDS conducted at your request for the property known as Moe's Gas, located at 1604 McKee Road in the City of San Jose. This data was gathered manually using a JAMAR hand count board by a senior TDS technician. This tech has personally conducted hundreds of hand turn movement counts at intersections for the City of San Jose. His work is beyond reproach.

Trips in and out of each of the 4 driveways on the subject gas station were recorded on Thursday 11/5/09 from 7-9 AM and 4-6 PM, on Friday 11/6/09 from 7-9 AM and 4-6 PM and on Saturday 11/7/09 from 11 AM-1 PM. The Thursday data can be used directly as mid week trip generation information for the peak hour of the adjacent street. The Friday data was taken for your information at your direction. The Saturday data again fits the ITE trip generation format for the weekend mid day peak period.

The peak hour trips generated as show on the attached JAMAR printouts are as follows:

Thurs AM 143,      Thurs PM 163  
Fri AM 163,      Fri PM 138  
Sat mid 158

It is our understanding that the existing station has 3 islands with 6 fueling stations. Based on that, the following trip generation factors apply.

Mid week AM peak hr.  $143/6=23.83$  trip ends per fueling position  
Mid week PM peak hr.  $162/6=27.0$  trip ends per fueling position  
Weekend midday peak hr.  $158/6=26.33$  trip ends per fueling position.

These numbers are more than double the 'average' factors show in the ITE Trip end tables for land use 944, Gasoline Station. These are the highest gas station numbers TDS has recorded in more than 35 years doing such studies in the Bay Area. The question is

1386 White Oaks Road Suite 1, Campbell CA 95008  
(408) 377-2988 Voice, (408) 377-2998 Fax, e-mail [tdsbay@cs.com](mailto:tdsbay@cs.com)

**EXHIBIT B**

*"25 Years of Excellence"*

## **Traffic Data Service**

Campbell, CA • Flagstaff, AZ • Arcadia, CA • Denver, CO

why such a heavy usage? This station has the lowest priced gas in the area, as results it becomes an Origin / Destination in itself. In doing TIA's TDS has argued that a small portion of trips involving new gas stations are not new trips but instead trips captured from drive by traffic. That is not the case at this station. People were observed waiting 15 minutes in line to get to a pump. People just driving by don't do that. The vast majority of the existing trips are people making special trips to and from the subject station to buy the cheapest gas.

The highest, thus controlling, trip generation peak is the 162 trips during the mid week PM peak. If this station were to double its size from 6 fueling stations to 12 it would also double its trips generated. This would mean 162 trips. Even with the highly unlikely trip capture rate of 20% this would mean 130 new trips generated. CALTRANS calls for a full TIA for any development that generates over 100 new peak hour trips. The station has a sign on site saying not only are 6 more pumps coming, but also a car wash. If that is the case then the existing traffic will more than double. The existing R-1 dwelling unit proposed to be removed should give credit of 0.75 trips in the weekday AM peak and 1.01 trips in the weekday PM peak. This translates to 1 trip in each peak.

Keith Manley TDS

# Traffic Data Service

Campbell, CA  
(408) 377-2988  
idsbay@cs.com

File Name : 115AM FINAL  
Site Code : 00000115  
Start Date : 11/5/2009  
Page No : 1

### Groups Printed- Vehicles

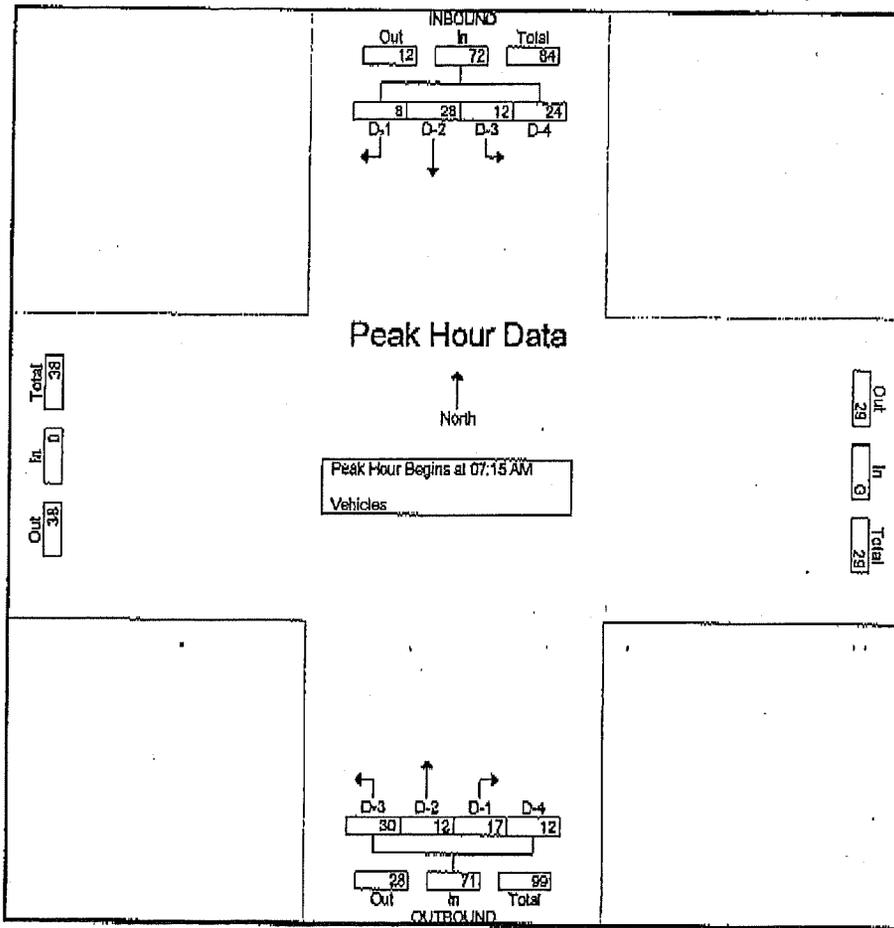
Start Time	INBOUND DRIVEWAYS					OUTBOUND DRIVEWAYS					Int. Total
	D-1	D-2	D-3	D-4	App. Total	D-1	D-2	D-3	D-4	App. Total	
Factor	1.0	1.0	1.0	1.0		1.0	1.0	1.0	1.0		
07:00 AM	1	5	2	3	11	3	0	4	1	8	19
07:15 AM	1	5	3	6	15	5	4	7	3	19	34
07:30 AM	2	8	4	5	19	3	5	10	4	22	41
07:45 AM	1	10	2	5	18	5	1	2	1	9	27
Total	5	28	11	19	63	16	10	23	9	58	121
08:00 AM	4	5	3	8	20	4	2	11	4	21	41
08:15 AM	3	5	2	3	13	9	2	6	2	19	32
08:30 AM	2	11	2	4	19	5	4	4	1	14	33
08:45 AM	5	4	3	6	18	6	5	5	2	18	36
Total	14	25	10	21	70	24	13	26	9	72	142
Grand Total	19	53	21	40	133	40	23	49	18	130	263
Approch %	14.3	39.8	15.8	30.1		30.8	17.7	37.7	13.8		
Total %	7.2	20.2	8	15.2	50.6	15.2	8.7	18.6	6.8	49.4	

Start Time	INBOUND DRIVEWAYS					OUTBOUND DRIVEWAYS					Int. Total
	D-1	D-2	D-3	D-4	App. Total	D-1	D-2	D-3	D-4	App. Total	
Peak Hour Analysis From 07:00 AM to 08:45 AM - Peak 1 of 1											
Peak Hour for Entire Intersection Begins at 07:15 AM											
07:15 AM	1	5	3	6	15	5	4	7	3	19	34
07:30 AM	2	8	4	5	19	3	5	10	4	22	41
07:45 AM	1	10	2	5	18	5	1	2	1	9	27
08:00 AM	4	5	3	8	20	4	2	11	4	21	41
Total Volume	8	28	12	24	72	17	12	30	12	71	143
% App. Total	11.1	38.9	16.7	33.3		23.9	16.9	42.3	16.9		
PHF	.500	.700	.750	.750	.900	.850	.600	.682	.750	.807	.872

Traffic Data Service

Campbell, CA  
 (408) 377-2988  
 tdsbay@cs.com

File Name : 115AM FINAL  
 Site Code : 00000115  
 Start Date : 11/5/2009  
 Page No : 2



### Traffic Data Service

Campbell, CA  
(408) 377-2988  
tdsbay@cs.com

File Name : 115PM FINAL  
Site Code : 00000115  
Start Date : 11/5/2009  
Page No : 1

#### Groups Printed- Vehicles

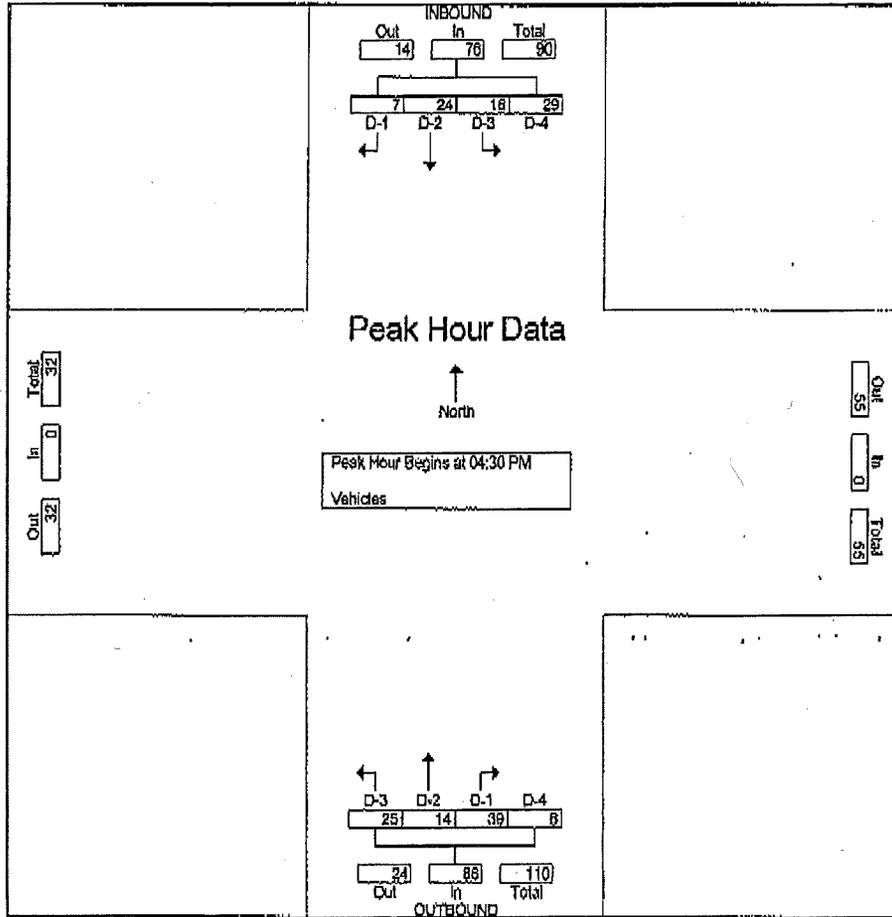
Start Time	INBOUND DRIVEWAYS					OUTBOUND DRIVEWAYS					Int. Total
	D-1	D-2	D-3	D-4	App. Total	D-1	D-2	D-3	D-4	App. Total	
Factor	1.0	1.0	1.0	1.0		1.0	1.0	1.0	1.0		
04:00 PM	1	8	2	3	14	7	1	0	0	8	22
04:15 PM	3	2	4	8	17	5	1	4	1	11	28
04:30 PM	0	3	5	8	16	9	6	6	2	23	39
04:45 PM	1	9	3	6	19	12	1	7	2	22	41
Total	5	22	14	25	66	33	9	17	5	64	130
05:00 PM	4	6	5	9	24	8	6	9	3	26	50
05:15 PM	2	6	3	6	17	10	1	3	1	15	32
05:30 PM	3	4	4	7	18	4	6	5	2	17	35
05:45 PM	1	0	3	6	10	5	4	3	1	13	23
Total	10	16	15	28	69	27	17	20	7	71	140
Grand Total	15	38	29	53	135	60	26	37	12	135	270
Apprch %	11.1	28.1	21.5	39.3		44.4	19.3	27.4	8.9		
Total %	5.6	14.1	10.7	19.6	50	22.2	9.6	13.7	4.4	50	

Start Time	INBOUND DRIVEWAYS					OUTBOUND DRIVEWAYS					Int. Total
	D-1	D-2	D-3	D-4	App. Total	D-1	D-2	D-3	D-4	App. Total	
Peak Hour Analysis From 04:00 PM to 05:45 PM - Peak 1 of 1											
Peak Hour for Entire Intersection Begins at 04:30 PM											
04:30 PM	0	3	5	8	16	9	6	6	2	23	39
04:45 PM	1	9	3	6	19	12	1	7	2	22	41
05:00 PM	4	6	5	9	24	8	6	9	3	26	50
05:15 PM	2	6	3	6	17	10	1	3	1	15	32
Total Volume	7	24	16	29	76	39	14	25	8	86	162
% App. Total	9.2	31.6	21.1	38.2		45.3	16.3	29.1	9.3		
PHF	.438	.667	.800	.806	.792	.813	.583	.694	.667	.827	.810

# Traffic Data Service

Campbell, CA  
(408) 377-2988  
tdsbay@cs.com

File Name : 115PM FINAL  
Site Code : 00000115  
Start Date : 11/5/2009  
Page No : 2



Traffic Data Service

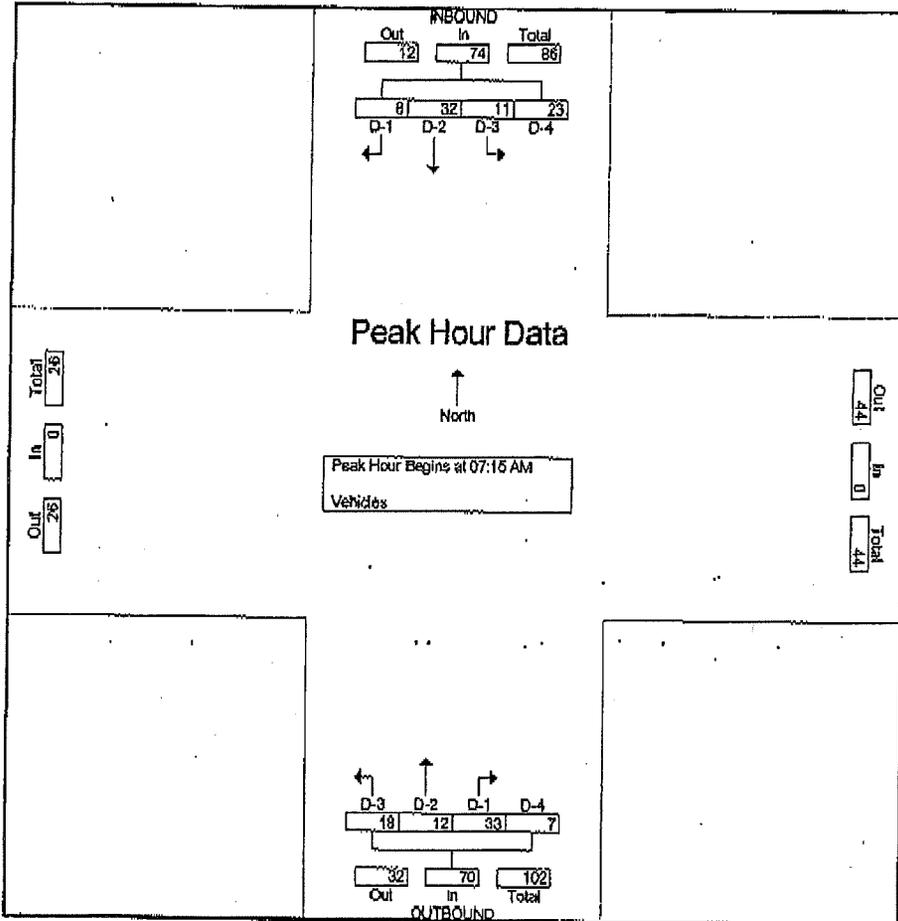
Campbell, CA  
 (408) 377-2988  
 tdsbay@cs.com

File Name : 116AM FINAL  
 Site Code : 00000116  
 Start Date : 11/6/2009  
 Page No : 1

Groups Printed- Vehicles

Start Time	INBOUND DRIVEWAYS					OUTBOUND DRIVEWAYS					Int. Total
	D-1	D-2	D-3	D-4	App. Total	D-1	D-2	D-3	D-4	App. Total	
Factor	1.0	1.0	1.0	1.0		1.0	1.0	1.0	1.0		
07:00 AM	1	6	2	5	14	8	3	2	1	14	28
07:15 AM	0	11	2	5	18	15	2	5	2	24	42
07:30 AM	3	9	3	5	20	6	4	5	2	17	37
07:45 AM	3	8	3	7	21	3	4	6	2	15	36
Total	7	34	10	22	73	32	13	18	7	70	143
08:00 AM	2	4	3	6	15	9	2	2	1	14	29
08:15 AM	1	8	2	6	17	7	6	4	2	19	36
08:30 AM	4	6	2	5	17	5	6	4	2	17	34
08:45 AM	1	8	5	10	24	11	3	4	2	20	44
Total	8	26	12	27	73	32	17	14	7	70	143
Grand Total	15	60	22	49	146	64	30	32	14	140	286
Approch %	10.3	41.1	15.1	33.6		45.7	21.4	22.9	10		
Total %	5.2	21	7.7	17.1	51	22.4	10.5	11.2	4.9	49	

Start Time	INBOUND DRIVEWAYS					OUTBOUND DRIVEWAYS					Int. Total
	D-1	D-2	D-3	D-4	App. Total	D-1	D-2	D-3	D-4	App. Total	
Peak Hour Analysis From 07:00 AM to 08:45 AM - Peak 1 of 1											
Peak Hour for Entire Intersection Begins at 07:15 AM											
07:15 AM	0	11	2	5	18	15	2	5	2	24	42
07:30 AM	3	9	3	5	20	6	4	5	2	17	37
07:45 AM	3	8	3	7	21	3	4	6	2	15	36
08:00 AM	2	4	3	6	15	9	2	2	1	14	29
Total Volume	8	32	11	23	74	33	12	18	7	70	144
% App. Total	10.8	43.2	14.9	31.1		47.1	17.1	25.7	10		
PHF	.667	.727	.917	.821	.881	.550	.750	.750	.875	.729	.857



### Traffic Data Service

Campbell, CA  
(408) 377-2988  
idsbay@cs.com

File Name : 116PM FINAL  
Site Code : 00000116  
Start Date : 11/6/2009  
Page No : 1

Groups Printed - Vehicles

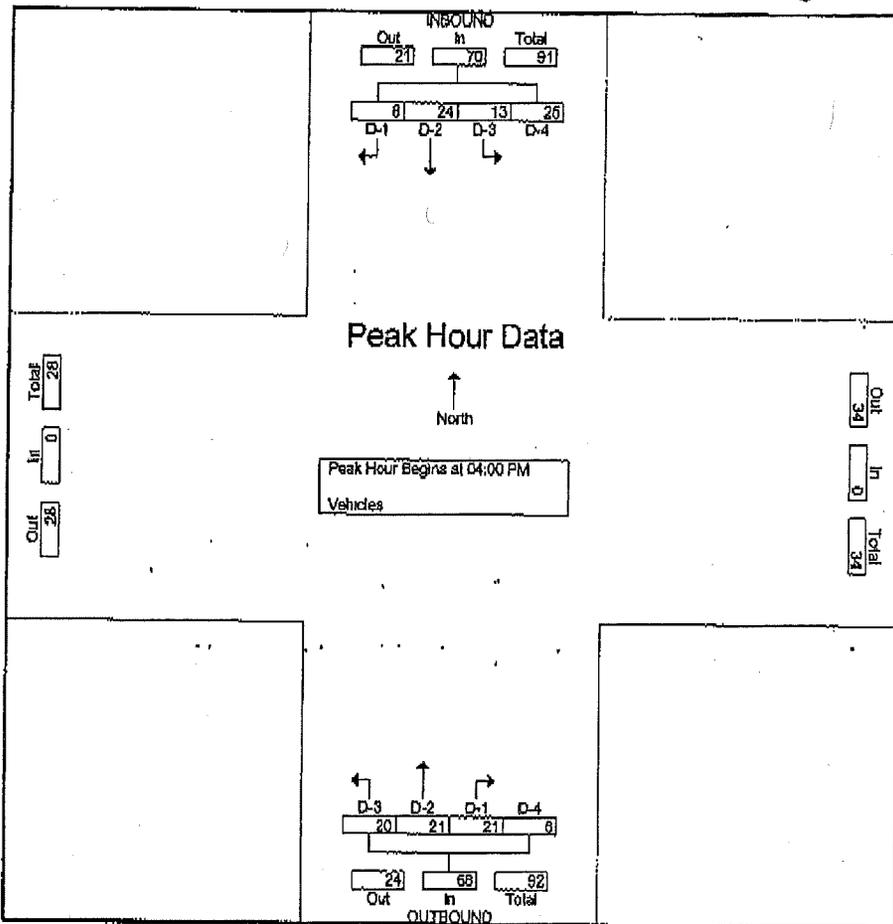
Start Time	INBOUND DRIVEWAYS					OUTBOUND DRIVEWAYS					Int. Total
	D-1	D-2	D-3	D-4	App. Total	D-1	D-2	D-3	D-4	App. Total	
Factor	1.0	1.0	1.0	1.0		1.0	1.0	1.0	1.0		
04:00 PM	0	10	5	9	24	9	7	6	2	24	48
04:15 PM	1	4	3	6	14	6	4	2	1	13	27
04:30 PM	2	5	3	6	16	3	3	5	1	12	28
04:45 PM	5	5	2	4	16	3	7	7	2	19	35
<b>Total</b>	<b>8</b>	<b>24</b>	<b>13</b>	<b>25</b>	<b>70</b>	<b>21</b>	<b>21</b>	<b>20</b>	<b>6</b>	<b>68</b>	<b>138</b>
03:00 PM	0	7	2	4	13	3	5	5	2	15	28
05:15 PM	2	7	2	4	15	3	4	5	1	13	28
05:30 PM	0	4	3	5	12	4	4	5	1	14	26
05:45 PM	1	8	3	6	18	6	1	6	2	15	33
<b>Total</b>	<b>3</b>	<b>26</b>	<b>10</b>	<b>19</b>	<b>58</b>	<b>16</b>	<b>14</b>	<b>21</b>	<b>6</b>	<b>57</b>	<b>115</b>
<b>Grand Total</b>	<b>11</b>	<b>50</b>	<b>23</b>	<b>44</b>	<b>128</b>	<b>37</b>	<b>35</b>	<b>41</b>	<b>12</b>	<b>125</b>	<b>253</b>
Approch %	8.6	39.1	18	34.4		29.6	28	32.8	9.6		
Total %	4.3	19.8	9.1	17.4	50.6	14.6	13.8	16.2	4.7	49.4	

Start Time	INBOUND DRIVEWAYS					OUTBOUND DRIVEWAYS					Int. Total
	D-1	D-2	D-3	D-4	App. Total	D-1	D-2	D-3	D-4	App. Total	
Peak Hour Analysis From 04:00 PM to 05:45 PM - Peak 1 of 1											
Peak Hour for Entire Intersection Begins at 04:00 PM											
04:00 PM	0	10	5	9	24	9	7	6	2	24	48
04:15 PM	1	4	3	6	14	6	4	2	1	13	27
04:30 PM	2	5	3	6	16	3	3	5	1	12	28
04:45 PM	5	5	2	4	16	3	7	7	2	19	35
<b>Total Volume</b>	<b>8</b>	<b>24</b>	<b>13</b>	<b>25</b>	<b>70</b>	<b>21</b>	<b>21</b>	<b>20</b>	<b>6</b>	<b>68</b>	<b>138</b>
<b>% App. Total</b>	<b>11.4</b>	<b>34.3</b>	<b>18.6</b>	<b>35.7</b>		<b>30.9</b>	<b>30.9</b>	<b>29.4</b>	<b>8.8</b>		
<b>PHF</b>	<b>.400</b>	<b>.600</b>	<b>.630</b>	<b>.694</b>	<b>.729</b>	<b>.583</b>	<b>.750</b>	<b>.714</b>	<b>.750</b>	<b>.708</b>	<b>.719</b>

Traffic Data Service

Campbell, CA  
(408) 377-2988  
tdsbay@cs.com

File Name : 116PM FINAL  
Site Code : 0000116  
Start Date : 11/6/2009  
Page No : 2



# Traffic Data Service

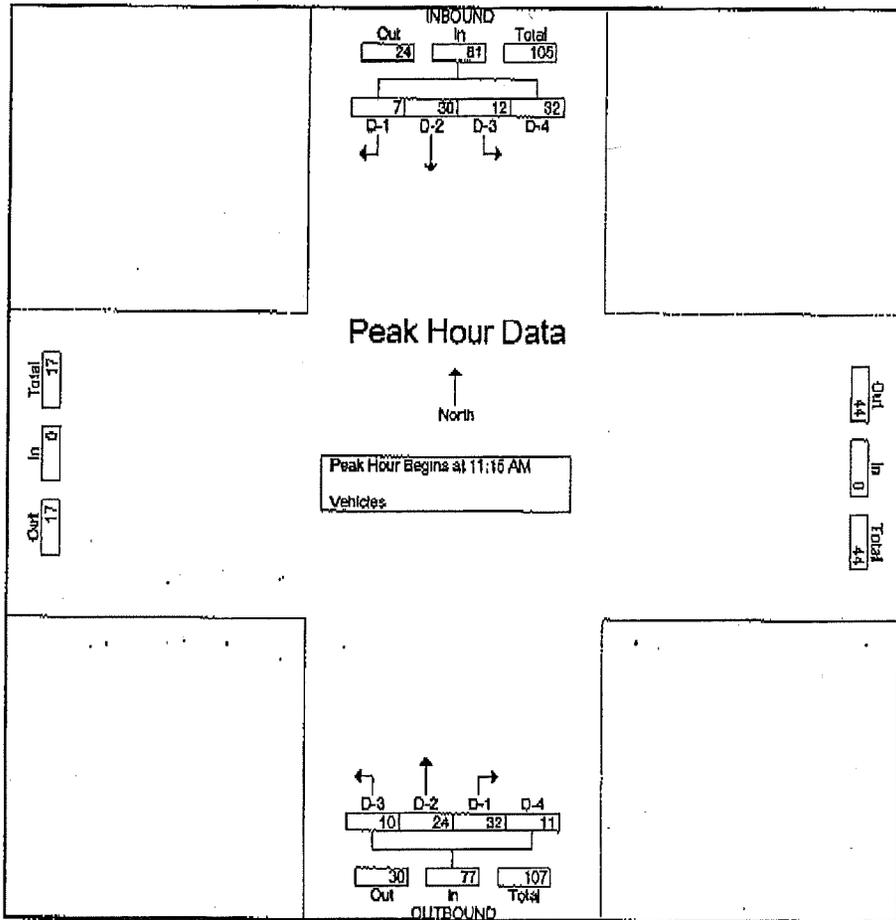
Campbell, CA  
 (408) 377-2988  
 tdsbay@cs.com

File Name : 117SAT FINAL  
 Site Code : 00000117  
 Start Date : 11/7/2009  
 Page No : 1

## Groups Printed- Vehicles

Start Time	INBOUND DRIVEWAYS					OUTBOUND DRIVEWAYS					Int. Total
	D-1	D-2	D-3	D-4	App. Total	D-1	D-2	D-3	D-4	App. Total	
Factor	1.0	1.0	1.0	1.0		1.0	1.0	1.0	1.0		
11:00 AM	2	6	2	4	14	12	1	5	2	20	34
11:15 AM	1	10	4	8	23	12	7	6	2	27	50
11:30 AM	3	6	2	10	21	6	5	0	3	14	35
11:45 AM	3	7	2	6	18	8	7	2	3	20	38
Total	9	29	10	28	76	38	20	13	10	81	157
12:00 PM	0	7	4	8	19	6	5	2	3	16	35
12:15 PM	6	2	4	4	16	5	3	3	3	14	30
12:30 PM	3	4	4	6	17	7	3	4	2	16	33
12:45 PM	2	4	6	6	18	9	0	5	3	17	35
Total	11	17	18	24	70	27	11	14	11	63	133
Grand Total	20	46	28	52	146	65	31	27	21	144	290
Approch %	13.7	31.5	19.2	35.6		45.1	21.5	18.8	14.6		
Total %	6.9	15.9	9.7	17.9	50.3	22.4	10.7	9.3	7.2	49.7	

Start Time	INBOUND DRIVEWAYS					OUTBOUND DRIVEWAYS					Int. Total
	D-1	D-2	D-3	D-4	App. Total	D-1	D-2	D-3	D-4	App. Total	
Peak Hour Analysis From 11:00 AM to 12:45 PM - Peak 1 of 1											
Peak Hour for Entire Intersection Begins at 11:15 AM											
11:15 AM	1	10	4	8	23	12	7	6	2	27	50
11:30 AM	3	6	2	10	21	6	5	0	3	14	35
11:45 AM	3	7	2	6	18	8	7	2	3	20	38
12:00 PM	0	7	4	8	19	6	5	2	3	16	35
Total Volume	7	30	12	32	81	32	24	10	11	77	158
% App. Total	8.6	37	14.8	39.5		41.6	31.2	13	14.3		
PHF	.583	.750	.750	.800	.880	.667	.857	.417	.917	.713	.790



# Gasoline/Service Station (944)

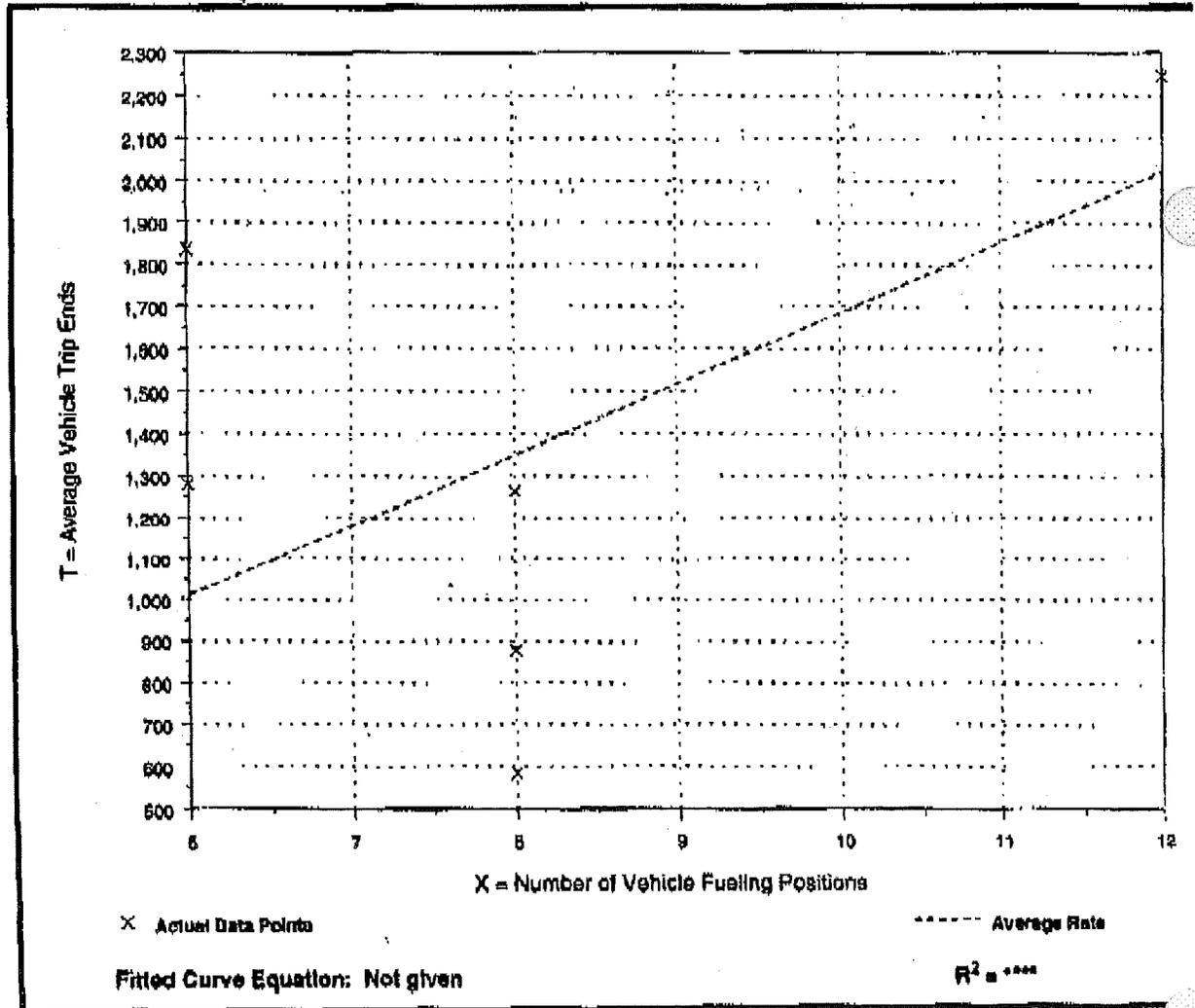
**Average Vehicle Trip Ends vs: Vehicle Fueling Positions  
On a: Weekday**

Number of Studies: 6  
Average Vehicle Fueling Positions: 8  
Directional Distribution: 50% entering, 50% exiting

## Trip Generation per Vehicle Fueling Position

Average Rate	Range of Rates	Standard Deviation
168.58	73.00 - 306.00	71.19

## Data Plot and Equation



# Gasoline/Service Station (944)

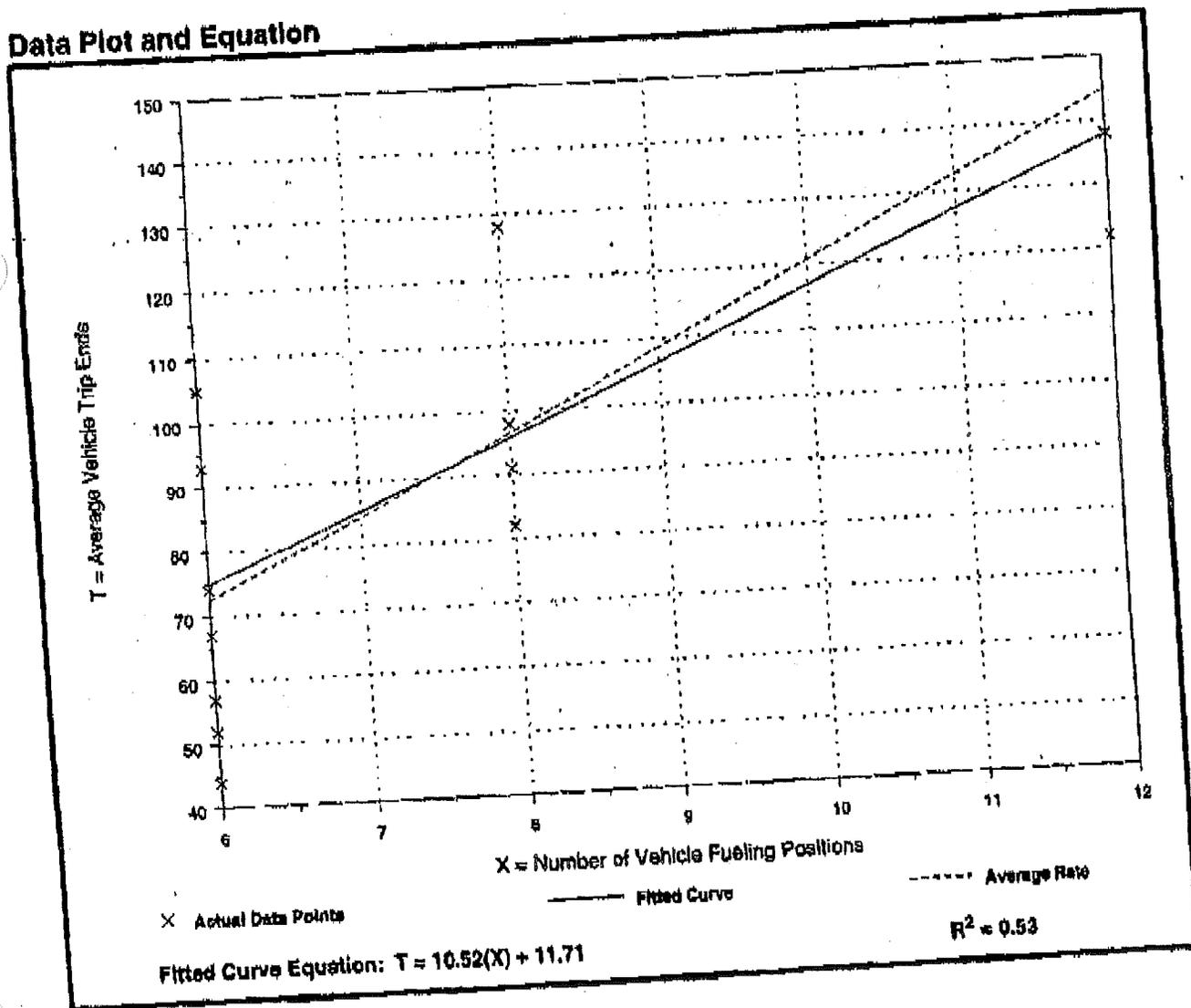
Average Vehicle Trip Ends vs: Vehicle Fueling Positions  
On a: Weekday,  
Peak Hour of Adjacent Street Traffic,  
One Hour Between 7 and 9 a.m.

Number of Studies: 14  
Average Vehicle Fueling Positions: 8  
Directional Distribution: 50% entering, 50% exiting

## Trip Generation per Vehicle Fueling Position

Average Rate	Range of Rates	Standard Deviation
12.07	7.33 - 17.50	4.29

## Data Plot and Equation



# Gasoline/Service Station (944)

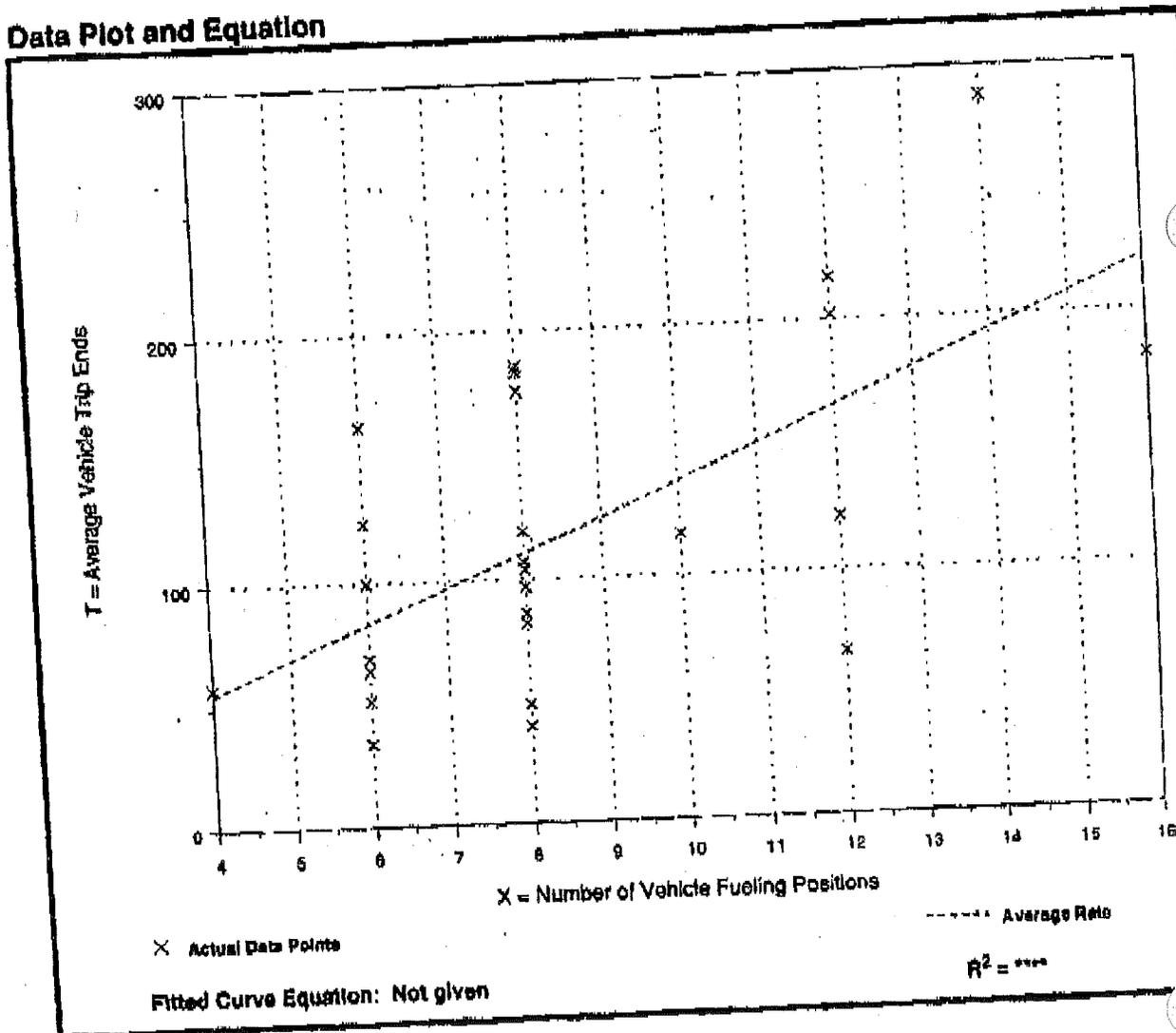
**Average Vehicle Trip Ends vs: Vehicle Fueling Positions**  
**On a: Weekday,**  
**Peak Hour of Adjacent Street Traffic,**  
**One Hour Between 4 and 6 p.m.**

Number of Studies: 27  
 Average Vehicle Fueling Positions: 9  
 Directional Distribution: 50% entering, 50% exiting

## Trip Generation per Vehicle Fueling Position

Average Rate	Range of Rates	Standard Deviation
13.86	5.00 - 27.33	6.69

## Data Plot and Equation



Subj: **Fwd: CP09-015/Moe's Gas**  
 Date: 12/8/2009 2:02:19 P.M. Pacific Standard Time  
 From: Jdomski  
 To: edward.schreiner@sanjoseca.gov  
 CC: Tsaberj, laurel.preveti@sanjoseca.gov, darryl.boyd@sanjoseca.gov, tdo@aedisgroup.com, lajensen  
PC@yahoo.com, xavierc@macsa.org, mkamkar7@gmail.com, hopecahan@mac.com

Ed,

We have not received a response to my email of 11/25/09 requesting a specific citation to the provisions of the LOS policy that supports your Department's position that no TIA is needed.

My client incurred substantial expense for the Generation Study by Traffic Data Service which shows that the in-house analysis performed by Public Works is patently flawed and erroneous. The TDS report clearly shows that a full TIA is required for this project. With all due respect, your email of 11/23/09 claiming that no TIA is needed because you claim it conforms to San Jose's LOS policy is without support and clearly contrary to the expert opinions contained in the TDS Generation Study. At the very least, we again request the specific citation to the provisions of the LOS policy that supports your Department's position.

In addition, we previously requested information in my email to you on 11/23/09 about the status of the compliance issues regarding the applicant's leaking gasoline tanks and the environmental review by the Planning Department. To date, we have not received a response. We would appreciate any information you could provide including a citation to the appropriate website that contains any such related information.

Finally, we request to be notified of any future hearing date before the Planning Commission regarding any matters related to this application.

Thank you for your courtesy and cooperation.

Jim

\*\*\*\*\*  
 James M. Dombroski, Esq.  
 Law Offices of James M. Dombroski  
 P.O. Box 751027  
 Petaluma, CA 94975-1027  
 Telephone: (707) 762-7807  
 Fax: (707) 769-0419  
 Email: jdomski@aol.com

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-----  
 Forwarded Message:

Subj:	<b>Fwd: CP09-015/Moe's Gas</b>
Date:	11/25/2009 11:22:02 A.M. Pacific Standard Time
From:	<u>Jdomski</u>
To:	<u>edward.schreiner@sanjoseca.gov</u>
CC:	<u>Tsaberj</u> , <u>laurel.preveti@sanjoseca.gov</u> , <u>darryl.boyd@sanjoseca.gov</u>

Ed,

Thank you for your response. We have reviewed San Jose's LOS policy and we do not see anything that addresses the criteria about the TIA. We would appreciate receiving a further citation to the specific provisions of the LOS policy that supports the position that no TIA is needed. Thank you for your courtesy and cooperation.

Jim

\*\*\*\*\*  
 James M. Dombroski, Esq.

**EXHIBIT C**

Tuesday, December 08, 2009 America Online: Jdomski

Law Offices of James M. Dombroski  
 P.O. Box 751027  
 Petaluma, CA 94975-1027  
 Telephone: (707) 762-7807  
 Fax: (707) 769-0419  
 Email: jdomski@aol.com

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---

Forwarded Message:

Subj:	<b>RE: CP09-015/Moe's Gas</b>
Date:	11/23/2009 1:19:10 P.M. Pacific Standard Time
From:	<a href="mailto:Edward.Schreiner@sanjoseca.gov">Edward.Schreiner@sanjoseca.gov</a>
To:	<a href="mailto:jdomski@aol.com">jdomski@aol.com</a>
CC:	<a href="mailto:Tsaberl@aol.com">Tsaberl@aol.com</a> , <a href="mailto:Laurel.Prevetti@sanjoseca.gov">Laurel.Prevetti@sanjoseca.gov</a> , <a href="mailto:Darryl.Boyd@sanjoseca.gov">Darryl.Boyd@sanjoseca.gov</a>
<i>Sent from the Internet (Details)</i>	

Jim-

No hearing on 12/2, no. I don't expect a hearing until January at this point.  
 The traffic study was reviewed. No TIA is needed as the project conforms to San Jose's LOS policy:  
[http://www.sanjoseca.gov/planning/counter/policies/pol\\_transportation\\_los.pdf](http://www.sanjoseca.gov/planning/counter/policies/pol_transportation_los.pdf)  
 -Ed

---

**From:** jdomski@aol.com [mailto:jdomski@aol.com]  
**Sent:** Monday, November 23, 2009 1:13 PM  
**To:** Schreiner, Edward  
**Cc:** Tsaberl@aol.com; Prevetti, Laurel; Boyd, Darryl; tdo@aedisgroup.com; lajensenPC@yahoo.com; xavierc@macsa.org; mkamkar7@gmail.com; hopecahan@mac.com  
**Subject:** Fwd: CP09-015/Moe's Gas

Ed,

I just left a voice-mail message requesting: (1) the status of my request emailed to you and the Planning Commissioners on 11/16/09 with the Generation Study by Traffic Data Service which provides reasonable grounds for requiring the applicant to submit a Traffic Impact Analysis(TIA); (2) the status of the compliance issues regarding the applicant's leaking underground gasoline tanks and the environmental review by the planning department--you previously indicated that the hearing may proceed on 12/2/09, could you confirm whether the hearing will proceed on 12/2/09?

Thank you for attention to these matters.

Jim

\*\*\*\*\*

James M. Dombroski, Esq.  
 Law Offices of James M. Dombroski  
 P.O. Box 751027  
 Petaluma, CA 94975-1027  
 Telephone: (707) 762-7807  
 Fax: (707) 769-0419  
 Email: jdomski@aol.com

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distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please contact the sender by telephone or email and delete this message. Thank you.

# County of Santa Clara

Department of Environmental Health  
Hazardous Materials Compliance Division  
1555 Berger Drive, Suite 300  
San Jose, California 95112-2710  
(408) 918-3400 FAX (408) 380-6470  
www.EHinfo.org



August 13, 2009

Mr. Moe Shirazi  
Hill and Company Realtors  
1604 McKee Road  
San Jose, CA 95116

Subject: Fuel Leak Investigation at Moe's Arco, 1604 McKee Road, San Jose, CA 95116,  
Case No. 06-088, SCVWDID No. 07S1E04G01f

Dear Mr. Shirazi:

On May 19, 2009, the State Water Resources Control Board passed a Resolution mandating that groundwater monitoring at fuel leak sites be reduced from quarterly to semi-annually unless site-specific conditions warrant more frequent monitoring. The Local Oversight Program (LOP) can require more frequent monitoring if they provide rationale and notify you and the State Water Resources Control Board.

## GROUNDWATER SAMPLING AND TECHNICAL REPORT REQUEST

In a workplan prepared by your consultant GeoRestoration dated November 11, 2008 the scope of work included construction of approximately four additional groundwater monitoring wells. The workplan was approved by the Department of Environmental Health (DEH) in a letter dated March 25, 2009. A report documenting the additional work was due to the DEH by June 25, 2009. To date, the report has not been received. In addition, the DEH has not received the Second Quarter 2009 Groundwater Monitoring Report. Consequently this site is out of compliance. Please submit the required reports as soon as possible.

Two (2) groundwater monitoring wells are currently gauged and sampled on a quarterly frequency. These two wells should be monitored on a semi-annual frequency during the third and first quarters. Please submit semi-annual groundwater monitoring reports to the DEH (Attention: Mr. Gerald O'Regan), according to the following schedule:

- Third Quarter Semi-Annual Groundwater Monitoring Report – October 31, 2009
- First Quarter Semi-Annual Groundwater Monitoring Report – April 30, 2010

These technical reports are being requested pursuant to our authority under Sections 25289 and 25296.10 of the California Health and Safety Code. Each report shall include conclusions and recommendations for the next phases of work required to protect water resources, human health and safety, and the environment at the site. We request that all required work be performed in a prompt and timely manner. Revisions to the schedule shall be requested at least two (2) weeks prior to the due date in writing with appropriate justification for the anticipated delays and a proposed revised schedule.

Board of Supervisors: Donald R. Gage, George Shirakawa, Dave Cortese, Ken Yeager, Liz Kriss  
Acting County Executive: Gary A. Graves

15

# EXHIBIT D

The California Business and Professions Code (Sections 6735, 7835, and 7835.1) require that work plans and technical or implementation reports containing geologic or engineering evaluations and/or judgments must be performed under the direction of an appropriately registered or certified professional.

**PERJURY STATEMENT**

All proposals and reports submitted to this office must be accompanied by a cover letter from the responsible party which states, at a minimum, the following:

"I declare, under penalty of perjury, that the information and/or recommendations contained in the attached proposal or report is true and correct."

This letter must be signed by an officer or legally authorized representative of your company.

If you have any questions, please feel free to contact Mr. Gerald O'Regan (408) 918-1974 or via email.

Sincerely,



Gerald O'Regan, PG  
Environmental Health Geologist  
Local Oversight Program  
Gerald.o'regan@deh.sccgov.org

cc: Mr. William Dugan, WellTest Inc., P.O. Box 8548, San Jose, CA 95155  
File

Based on 130 new vehicles  
 50% IN/50% OUT (etc)  
 65 IN/65 OUT

PROJECT

City of San Jose  
 Citywide Traffic Database  
 (updated April 2, 2010)

Level Of Service Computation Report  
 2000 HCM Operations Method (Future Volume Alternative)

\*\*\*\*\*

Intersection #3678 MCKEE/33RD

\*\*\*\*\*

Cycle (sec): 130 Critical Vol./Cap.(X): 0.757  
 Loss Time (sec): 9 Average Delay (sec/veh): 27.7  
 Optimal Cycle: 63 Level Of Service: C

\*\*\*\*\*

Approach:	North Bound			South Bound			East Bound			West Bound		
Movement:	L	T	R	L	T	R	L	T	R	L	T	R
Control:	Split Phase			Split Phase			Protected			Protected		
Rights:	Include			Include			Include			Include		
Min. Green:	10	10	10	10	10	10	7	10	10	7	10	10
Y+R:	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0
Lanes:	0	0	1	0	1	0	1	0	1	1	0	1

Volume Module: >> Count Date: 17 Nov 2005 << 4:45-5:45PM

Base Vol:	112	30	64	60	42	76	104	1241	83	78	1153	43
Growth Adj:	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Initial Bse:	112	30	64	60	42	76	104	1241	83	78	1153	43
Added Vol:	0	0	0	0	0	0	0	0	0	0	0	0
ATI:	4	8	1	6	3	9	14	416	1	4	422	7
Initial Fut:	116	38	65	66	45	85	118	1657	84	82	1575	50
User Adj:	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
PHF Adj:	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
PHF Volume:	116	38	65	66	45	85	118	1657	84	82	1575	50
Reduct Vol:	0	0	0	0	0	0	0	0	0	0	0	0
Reduced Vol:	116	38	65	66	45	85	118	1657	84	82	1575	50
PCE Adj:	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
MLF Adj:	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Final Volume:	116	38	65	66	45	85	118	1657	84	82	1575	50

Saturation Flow Module:

Sat/Lane:	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900
Adjustment:	0.92	0.92	0.92	0.95	0.95	0.92	0.92	0.98	0.95	0.92	0.97	0.95
Lanes:	0.53	0.17	0.30	0.59	0.41	1.00	1.00	1.90	0.10	1.00	1.94	0.06
Final Sat.:	927	304	519	1070	730	1750	1750	3521	179	1750	3586	114

Capacity Analysis Module:

Vol/Sat:	0.13	0.13	0.13	0.06	0.06	0.05	0.07	0.47	0.47	0.05	0.44	0.44
Crit Moves:	****			****			****			****		
Green Time:	21.5	21.5	21.5	10.6	10.6	10.6	11.8	80.9	80.9	8.1	77.1	77.1
Volume/Cap:	0.76	0.76	0.76	0.76	0.76	0.60	0.74	0.76	0.76	0.76	0.74	0.74
Delay/Veh:	62.6	62.6	62.6	78.4	78.4	64.3	74.4	19.0	19.0	85.9	20.6	20.6
User DelAdj:	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
AdjDel/Veh:	62.6	62.6	62.6	78.4	78.4	64.3	74.4	19.0	19.0	85.9	20.6	20.6
LOS by Move:	E	E	E	E-	E-	E	E	B-	B-	F	C+	C+
HCM2kAvgQ:	11	11	11	6	6	4	7	26	26	5	25	25

\*\*\*\*\*

Note: Queue reported is the number of cars per lane.

City of San Jose  
 Citywide Traffic Database  
 (updated April 2, 2010)

Level Of Service Computation Report

2000 HCM Operations Method (Future Volume Alternative)

\*\*\*\*\*

Intersection #3678 MCKEE/33RD

\*\*\*\*\*

Cycle (sec): 130 Critical Vol./Cap. (X): 0.727  
 Loss Time (sec): 9 Average Delay (sec/veh): 25.0  
 Optimal Cycle: 57 Level Of Service: C

\*\*\*\*\*

Approach:	North Bound			South Bound			East Bound			West Bound		
Movement:	L	T	R	L	T	R	L	T	R	L	T	R
Control:	Split Phase			Split Phase			Protected			Protected		
Rights:	Include			Include			Include			Include		
Min. Green:	10	10	10	10	10	10	7	10	10	7	10	10
Y+R:	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0
Lanes:	0	0	1	0	0	1	1	0	1	1	0	1

Volume Module: >> Count Date: 17 Nov 2005 << 4:45-5:45PM

Base Vol:	97	27	49	60	39	76	104	1241	83	65	1143	14
Growth Adj:	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Initial Bse:	97	27	49	60	39	76	104	1241	83	65	1143	14
Added Vol:	0	0	0	0	0	0	0	0	0	0	0	0
ATI:	4	8	1	6	3	9	14	416	1	4	422	7
Initial Fut:	101	35	50	66	42	85	118	1657	84	69	1565	21
User Adj:	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
PHF Adj:	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
PHF Volume:	101	35	50	66	42	85	118	1657	84	69	1565	21
Reduct Vol:	0	0	0	0	0	0	0	0	0	0	0	0
Reduced Vol:	101	35	50	66	42	85	118	1657	84	69	1565	21
PCE Adj:	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
MLF Adj:	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Final Volume:	101	35	50	66	42	85	118	1657	84	69	1565	21

Saturation Flow Module:

Sat/Lane:	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900
Adjustment:	0.92	0.92	0.92	0.95	0.95	0.92	0.92	0.98	0.95	0.92	0.97	0.95
Lanes:	0.54	0.19	0.27	0.61	0.39	1.00	1.00	1.90	0.10	1.00	1.97	0.03
Final Sat.:	950	329	470	1100	700	1750	1750	3521	179	1750	3651	49

Capacity Analysis Module:

Vol/Sat:	0.11	0.11	0.11	0.06	0.06	0.05	0.07	0.47	0.47	0.04	0.43	0.43
Crit Moves:	****			****			****			****		
Green Time:	19.0	19.0	19.0	10.7	10.7	10.7	12.4	84.2	84.2	7.1	78.8	78.8
Volume/Cap:	0.73	0.73	0.73	0.73	0.73	0.59	0.71	0.73	0.73	0.73	0.71	0.71
Delay/Veh:	63.0	63.0	63.0	74.6	74.6	63.7	70.0	16.4	16.4	84.8	18.7	18.7
User DelAdj:	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
AdjDel/Veh:	63.0	63.0	63.0	74.6	74.6	63.7	70.0	16.4	16.4	84.8	18.7	18.7
LOS by Move:	E	E	E	E	E	E	E	B	B	F	B-	B-
HCM2kAvgQ:	9	9	9	6	6	4	6	24	24	4	23	23

\*\*\*\*\*

Note: Queue reported is the number of cars per lane.



# Memorandum

**TO:** Planning Commission

**FROM:** Joseph Horwedel

**SUBJECT:** SEE BELOW

**DATE:** April 14, 2010

---

## SUPPLEMENTAL MEMO

**SUBJECT: CP09-015. CONDITIONAL USE PERMIT TO ALLOW THE DEMOLITION OF AN EXISTING SINGLE-FAMILY DETACHED RESIDENCE AND THE EXPANSION OF AN EXISTING GAS STATION ON A 0.51 GROSS ACRE SITE, AT THE SOUTHEAST CORNER OF MCKEE ROAD AND N. 33RD STREET (1604 MCKEE ROAD).**

## REASON FOR SUPPLEMENTAL

The proposed project was noticed and heard at Planning Commission on September 23, 2009. Staff had reported at the hearing that new information was provided that identified that there may have been an issue with a leaking underground fuel tank which was not originally identified by the Fire Department. As a result, the item was deferred so that staff could review this issue, identify appropriate mitigation and provide the appropriate environmental clearance since the proposal could no longer be deemed to be exempt from CEQA.

An Initial Study was prepared for the project, which included a soils report to address the fact that the site is listed as having a leaking underground storage tank. The Santa Clara County Department of Environmental Health and City of San Jose Environmental Services Department both determined that the site is currently in compliance with applicable regulations and no further mitigation is required.

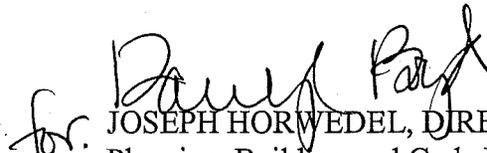
The City's Department of Public Works also analyzed the proposed project for traffic impacts, because there was concern raised by an adjacent gas station that the proposed project would result in significant traffic impacts. This analysis is based on the number of existing pumps and the number of proposed pumps, and is not based on the business model of the existing station or the price of gasoline at the subject property in comparison to other gas stations in the vicinity. Therefore, it has been determined that the proposed project would be in conformance with the City of San Jose Transportation Level of Service Policy (Council Policy 5-3).

Planning Commission  
April 14, 2010  
Subject: CP09-015  
Page 2

Consequently, a Negative Declaration was circulated for public review by the Director of Planning on March 29, 2010. The Director of Planning, Building and Code Enforcement intends to adopt said Negative Declaration on April 19, 2010, because no mitigation is required to reduce any impacts to a less than significant level.

**RECOMMENDATION**

Staff continues to recommend approval of the Conditional Use Permit, as originally proposed, to allow the demolition of an existing single-family detached residence and the expansion of an existing gas and service station, including construction of three additional gas pumps and a canopy for the new pumping facility, in the CP Pedestrian Commercial Zoning District, located at 280 N. 33<sup>rd</sup> Street & 1604 McKee Road.

for.   
JOSEPH HORWEDEL, DIRECTOR  
Planning, Building and Code Enforcement

For questions please contact Avril Baty, Planner II, at 408-535-7652.

**STAFF REPORT**  
**PLANNING COMMISSION**

**FILE NO.:** CP09-015

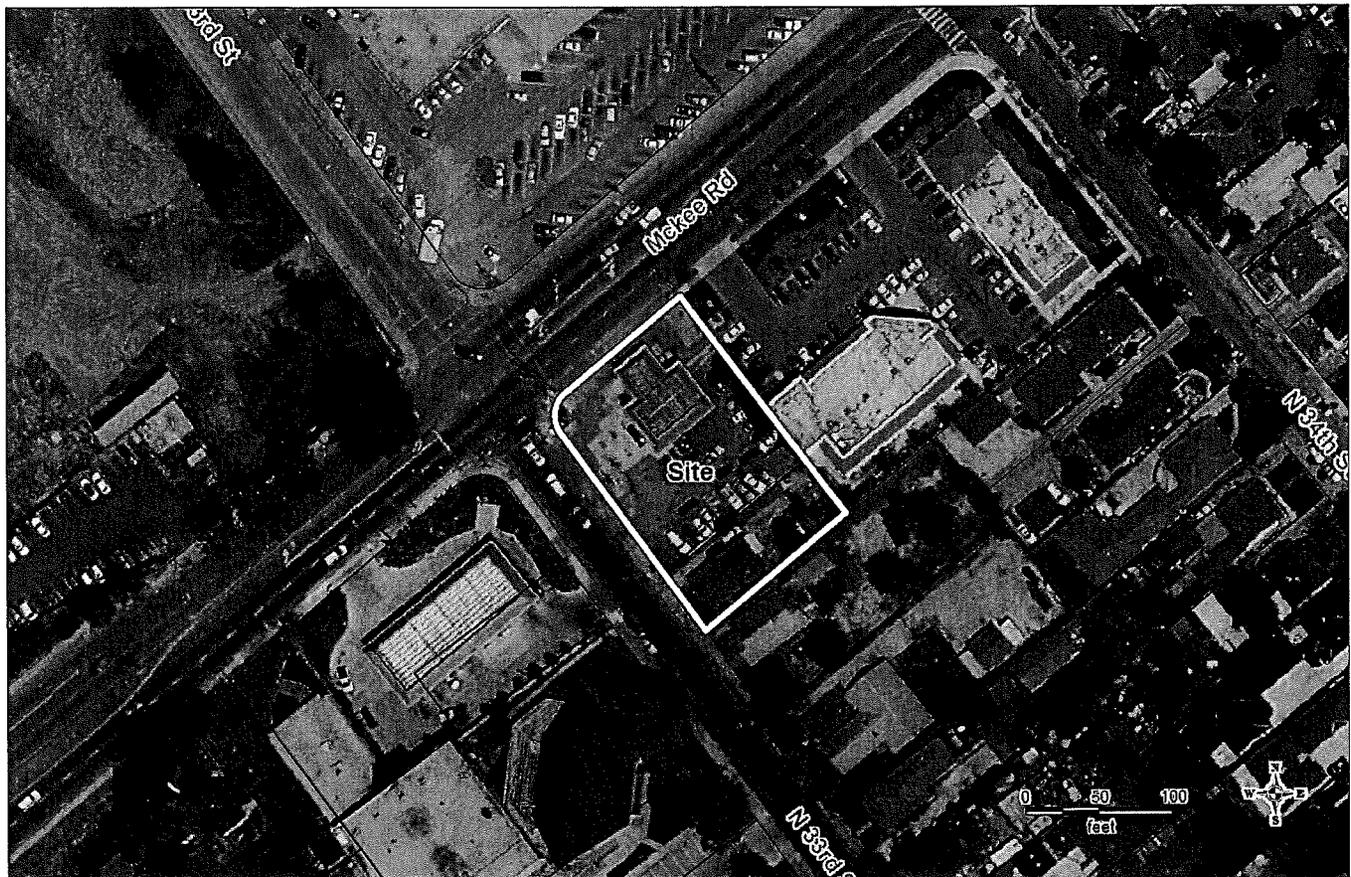
**Submitted:** 04/01/09

**PROJECT DESCRIPTION:** Conditional Use Permit to allow the demolition of an existing single-family detached residence and the expansion of an existing gas and service station on a 0.51 gross acre site.

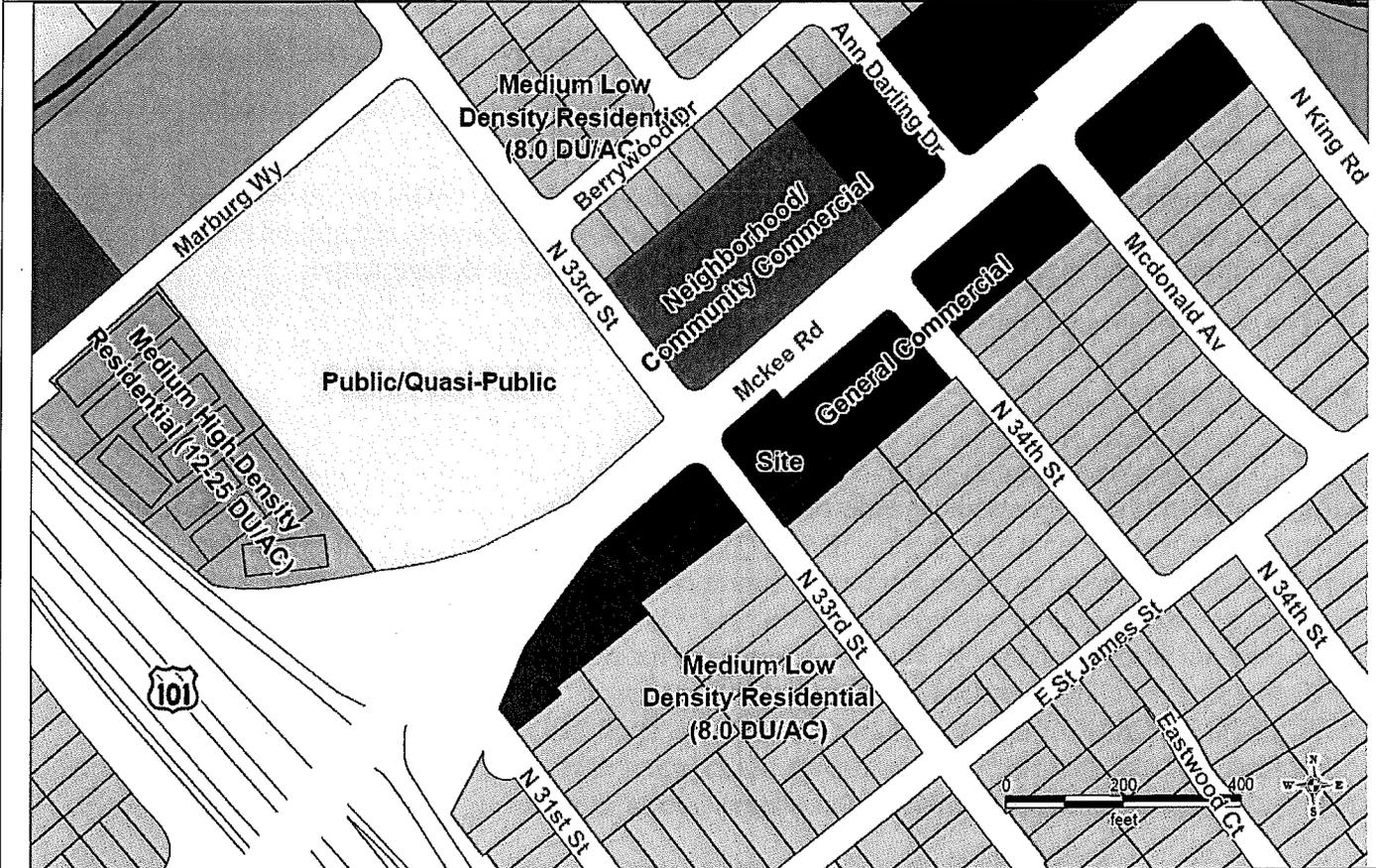
**LOCATION:** Southeast corner of McKee Road and N. 33rd Street (1604 McKee Road).

Existing Zoning	CP Commercial Pedestrian
Proposed Zoning	No change
General Plan	General Commercial
Council District	3
Annexation Date	12/01/1911
SNI	Five Wounds/Brookwood Terrace
Historic Resource	No
Redevelopment Area	SNI
Specific Plan	N/A

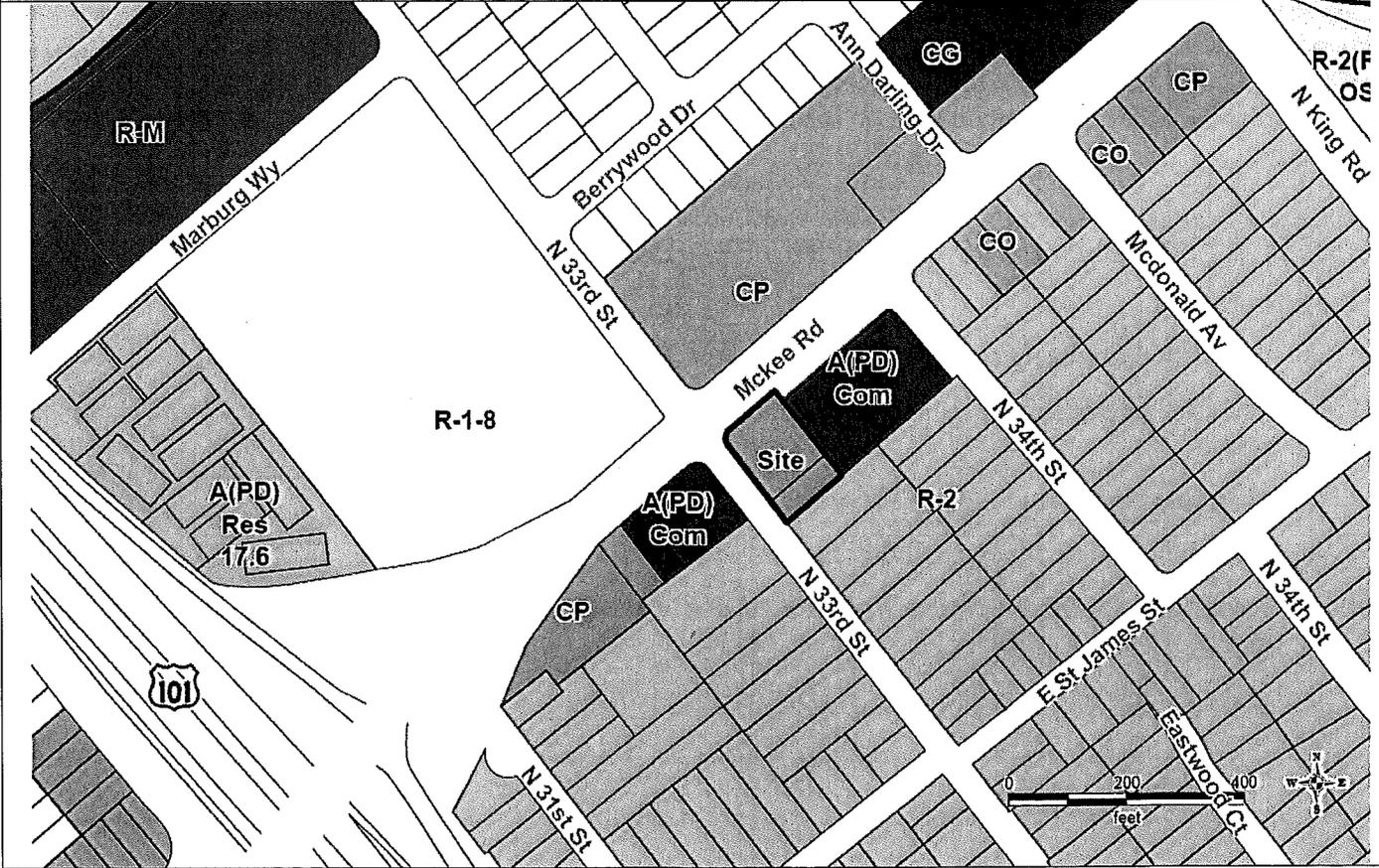
Aerial Map



### GENERAL PLAN



### ZONING



## **RECOMMENDATION**

Planning staff recommends approval of the proposed Conditional Use Permit for the following reasons:

1. The project conforms to the General Plan Land Use/Transportation Diagram's designation of General Commercial, as a gas station is in conformance with this designation.
2. The proposed project is compatible with the surrounding land uses; would not be detrimental to public health, safety or welfare; is on a site of adequate size and shape to accommodate the required development; and is adequately served by transportation and other infrastructure.
3. The proposed project conforms to the requirements of CEQA.

## **BACKGROUND**

On April 1, 2009, the applicant, Victor Yatco for Moe's Stop, requested a Conditional Use Permit to allow the demolition of an existing single-family detached residence and the expansion of an existing gas and service station on a 0.51 gross acre site. The Zoning Ordinance requires a Conditional Use Permit for the gas station expansion in the CP Commercial Pedestrian Zoning district. This permit also functions as a Site Development Permit to address new construction. The applicant had previously filed a conventional rezoning, (File No. C08-053), to rezone the rear portion of the site (the section with the residence) from R-2 Two-Family Residence to CP Commercial Pedestrian Zoning District in order to facilitate the expansion of the gas station use. This was approved by City Council on March 10, 2009. A Lot Line Adjustment (AT09-003) is also on file to remove the lot line between the two subject parcels and would be considered for approval if this subject permit is approved.

The existing gas station includes a 1,408 square foot building used for auto servicing and a small store with a cashier. There are three existing gas dispensers on the site, with the two front dispensers along McKee Road being located under a 900 square foot canopy. The gas station is accessed from two driveways on McKee Road to the north and two driveways on North 33<sup>rd</sup> Street to the west. The subject site is surrounded by commercial uses on the north, east and west and by single-family residential uses to the south.

## **Project Description**

The proposal is to:

- demolish the existing single-family residence at 280 N 33<sup>rd</sup> Street,
- add three new fueling dispensers along the west side of the site with a new 1800 square foot canopy above,
- close one driveway along N 33<sup>rd</sup> Street,
- relocate the other driveway further to the south,
- reconfigure the driveway access on McKee Road closest to the intersection to be one way, exit only, and
- make associated site improvements (landscaping, parking, etc.).

The facility currently has an ABC license for the off-sale of beer and wine. No Conditional Use Permit exists for the use because the license has existed for the site prior to the requirement for a CUP for the off-sale of alcohol and is legal non-conforming. The proposed project will have no effect on the legal non-conforming off-sale of alcohol use.

### **GENERAL PLAN CONFORMANCE**

The project is consistent with the site's General Plan Land Use/Transportation Diagram designation of General Commercial. A gas station is a retail operation in conformance with this designation. The proposed Conditional Use Permit supports the implementation of the Economic Development Major Strategy of the General Plan by facilitating the investment and expansion of an existing business.

### **ENVIRONMENTAL REVIEW**

Under the provisions of Section 15303(c) (New Construction or Conversion of Small Structures) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended in that the project is for a store, motel, office, restaurant or similar structure, totaling up to four buildings not exceeding 10,000 square feet in floor area on sites zoned for such use if not involving the use of significant amounts of hazardous substances where all necessary public services and facilities are available and the surrounding area is not environmentally sensitive.

### **SUSTAINABILITY**

The City Council adopted the Green Building Ordinance (No. 28622) on June 23, 2009 which establishes standards intended to advance greenhouse gas reduction and other sustainability strategies outlined in the City's Green Vision and Council Policy 6-32. Council Policy 6-32 requires that applicable projects achieve minimum green building performance levels using adopted reference standards specified in the policy. The proposed project is not subject to the City's Green Building Policy and Ordinance because the project does not involve new construction of more than 20,000 square feet. The project does conform to the water quality requirements of City Council Policy 6-29: Post-Construction Urban Runoff Management.

### **ANALYSIS**

The primary issues analyzed include project conformance to the following: 1) Zoning Ordinance development standards and 2) Commercial Design Guidelines.

#### **Conformance with the Zoning Ordinance Development Standards**

The site is located within the CP Commercial Pedestrian Zoning District, which has a maximum required front setback of 15 feet. The new construction on the site is for the fueling canopy along North 33<sup>rd</sup> Street. The fueling canopy is set back approximately six feet from the property line, meeting the Zoning Code. There is also a 25 foot rear setback for the CP Commercial Pedestrian Zoning District. The new fueling canopy is set back 67 feet from the rear property line

The proposed new construction, which includes the addition of three gasoline dispensers and the construction of a new fueling canopy, would not create any additional parking demand per the Zoning Code. The proposal would result in the addition of four parking spaces for customers, including the relocation of the water and air service to a site that interferes less with circulation. The project would also expand the size of the parking area used for vehicles associated with the vehicle servicing facility.

#### Conformance with Commercial Design Guidelines

The proposed site plan is consistent with the Commercial Design Guidelines (CDGs) for a service station in terms of site organization, building location and design, parking, and site circulation.

Consistent with the Commercial Design Guidelines, the applicant is proposing a reduction in the number of driveways that connect to the street. The current configuration has two driveways, on each frontage along McKee Road and North 33<sup>rd</sup> Street. The two existing driveways on North 33<sup>rd</sup> Street are being closed and a new driveway cut is being provided further south on North 33<sup>rd</sup> Street. The driveway on McKee Road closest to the intersection would be reconfigured to allow for egress from the site only, which should improve traffic safety at the intersection. The closure of the driveways on North 33<sup>rd</sup> Street would also allow for the provision of a small landscape island at the street corner of the site. The setbacks proposed for the canopy and fuel dispensers are consistent with the setbacks suggested by the CDGs. All of the structures on the site are generally architecturally consistent, as the site continues to upgrade to become more modern.

Based on the above analysis, staff concludes that the proposed use is consistent with the intent of the Commercial Design Guidelines and represents a significant improvement in the function and appearance of the site as compared to that of the existing facility.

#### PUBLIC OUTREACH

A community meeting was held for the project on July 28, 2009 in conjunction with the Five Wounds/Brookwood Terrace NAC. Approximately sixteen people attended the meeting, consisting of nearby residents. The residents expressed concerns over traffic in the area, as well as pedestrian safety with the close proximity to Route 101. However, the meeting attendees largely seemed to support the project as it seemed it would provide some improvements to the traffic circulation and pedestrian safety by limiting the driveway cuts and improving sidewalks and crosswalks.

Shortly after the application was filed with the City, a sign was posted on-site to notify neighbors of the proposed development. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. This staff report is also posted on the City's website. Staff has been available to respond to questions from the public, although there have been no comments or concerns received to date.

**CONCLUSION**

The proposed Conditional Use Permit will allow the expansion and upgrade of the existing gas station. The new project will improve the design of the existing buildings and structures on the site, as well as expand the amount of service the site can offer by adding additional gas pumps. The closure of driveways along North 33<sup>rd</sup> Street and reconfigurations of the driveway cuts along McKee Road will improve vehicular and pedestrian safety around the site. The proposed perimeter landscaping would also improve the streetscape.

**Project Manager:** Ed Schreiner

**Approved by:**



**Date:** 09/16/2009

Owner:	Applicant:	Attachments:
Amir Shirazi 1604 McKee Road San José, CA 95116	Victor Yatco VBY Services 2625 Timberlake Court San Jose, CA 95148	Draft Resolution Public Works Memo Plans

# PROPOSED EXPANSION OF MOE'S STOP GAS AND SERVICE STATION

**VBY SERVICES**  
ARCHITECTS, PLANNERS, DESIGNERS  
2625 Timberlake Court  
San Jose, CA 95148  
(408) 274-4926

**SOUTH VALLEY CONSTRUCTION**  
1604 McKEE ROAD  
San Jose, CA 95116  
License # 888246  
(408) 655-4116

**GENERAL NOTES:**  
THESE DRAWINGS ARE THE PROPRIETARY WORK PRODUCT AND PROPERTY OF VBY SERVICES. NO PART OF THESE DRAWINGS OR CONCEPTS CONTAINED THEREIN SHALL BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT THE WRITTEN PERMISSION OF VBY SERVICES. CONTRACTOR SHALL VERIFY ALL CONDITIONS AND DIMENSIONS AT THE JOB SITE AND NOTIFY THE ARCHITECT OF ANY DIMENSIONAL ERRORS, OMISSIONS OR DISCREPANCIES BEFORE BEGINNING OR FABRICATING ANY WORK.

**PROPOSED EXPANSION OF MOE'S STOP GAS AND SERVICE STATION**  
1604 McKEE ROAD, SAN JOSE, CA 95116-1233

**SHEET TITLE**  
TITLE SHT & SITE

**REVISIONS**

#	DATE
1	11/06
2	02/09

DATE: 24 AUG 2009  
SCALE: NOTED  
DRAWN BY: VBY  
JOB NO.

**T-1**  
SHEET NO.

## VICINITY MAP



**PROJECT DESCRIPTION**

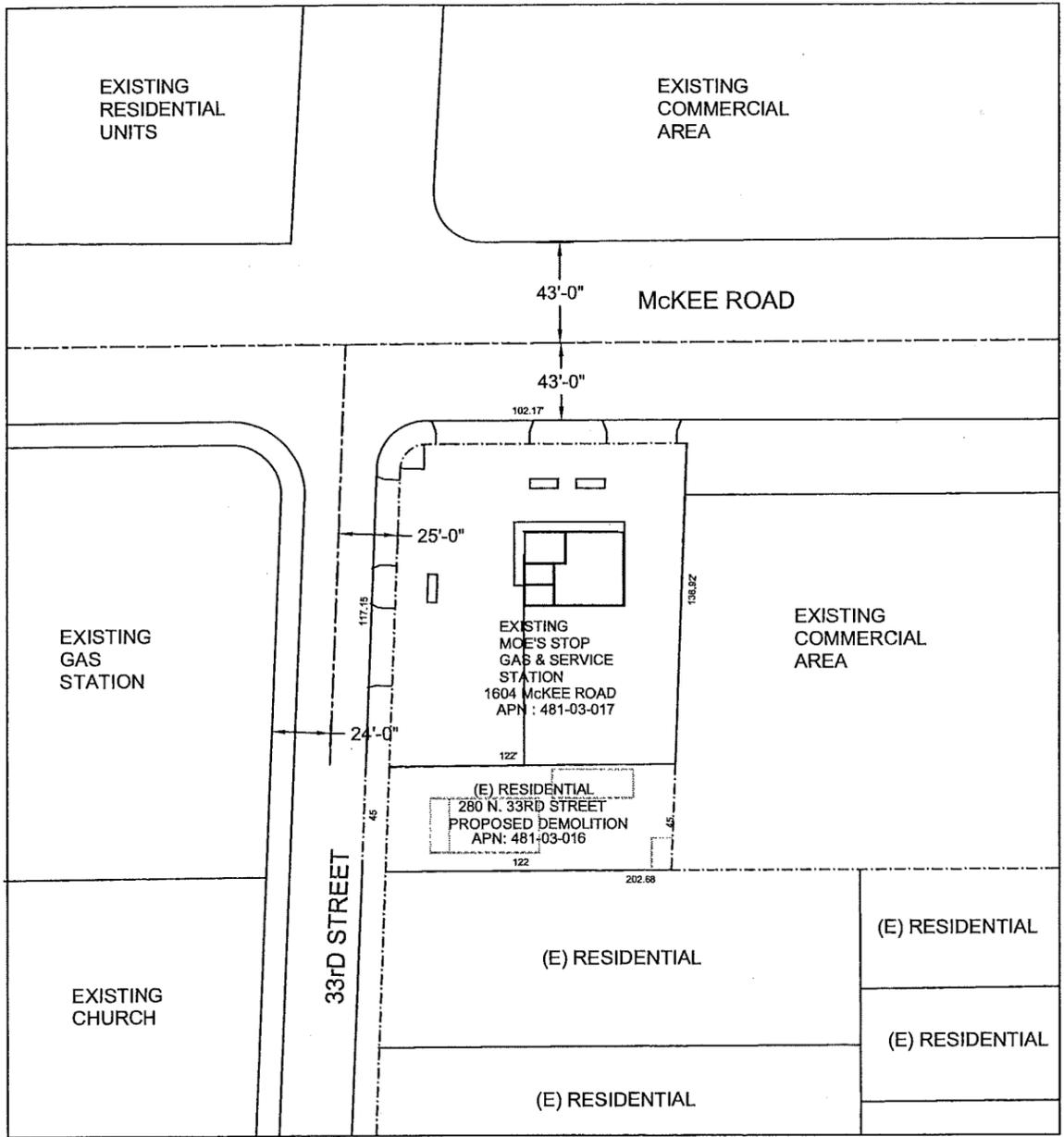
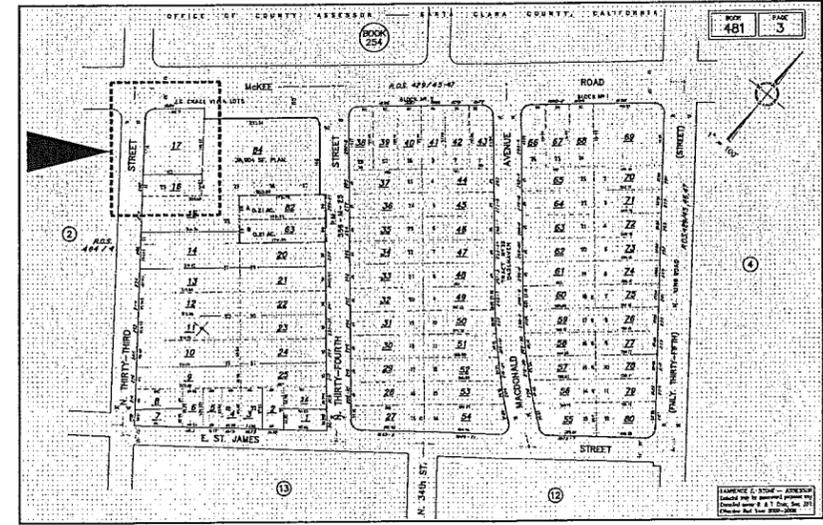
LOT SIZE (APN: 481-03-017)	16,625.53 sq.ft. (.382 ACRES)
PROPOSED ADDITION	5,497.39 sq.ft. (.126 ACRES)
TOTAL PROJECT LOT AREA	22,122.92 SQ. FT. (.508 ACRES)
PROPOSED PARKING SPACES	4 STALLS
EXISTING GAS PUMPS	3 PUMPS
PROPOSED ADDITION	3 PUMPS
TOTAL COMBINED	6 PUMPS
PROPOSED FLOOR AREA RATIO	
EXISTING BUILDING STRUCTURE	1,376 sq.ft.
PROPOSED ADDITIONAL IMPERVIOUS COVERAGE	4,513.83 SQ.FT. (.104 ACRES)
BUILDING OCCUPANCY	CP (GAS STATION)
EXISTING BUILDING OCCUPANCY	R-3 (RESIDENCE) APPROVED CHANGE OF ZONING
BUILDING CODE	2007 IBC (INTERNATIONAL BUILDING CODE)
FIRE CODE	2007 IFC
MECHANICAL CODE	2007 IMC
PLUMBING CODE	2007 IPC
ELECTRICAL CODE	2007 IEC
CITY OF SAN JOSE LOCAL CODES AND ORDINANCES	

- SCOPE OF WORK**
1. THE PROPOSED PROJECT CONSIST OF THE REMOVAL OF THE EXISTING RESIDENTIAL STRUCTURE ON APN 481-03-017 AND THE EXPANSION OF THE EXISTING GAS AND SERVICE STATION INTO THE RESIDENTIAL PROPERTY (SAME OWNER). THE CHANGE OF ZONING FOR THE PROPERTY APN: 481-03-016 TO COMMERCIAL ZONE OR THE SAME ZONING AS THE EXISTING STATION WAS APPROVED ON FEB. 23RD 2009 - PRE08-077
  2. EXPAND THE GAS STATION TO PROVIDE 3 MORE ADDITIONAL GAS PUMPS AND A CANNOPY FOR THE NEW PUMPING FACILITY.
  3. RELOCATE THE DRIVEWAY INTO THE STATION ON 33RD STREET SIDE TO ACCOMMODATE THE NEW TRAFFIC ENTRY AND EXIT.

**SHEET INDEX**

T1	TITLE SHEET, PROJECT INFO AND LAND USE MAP
A1	EXISTING SITE PLAN AND NEW SITE PLAN
A2	ELEVATIONS
L1	PRELIMINARY LANDSCAPE PLANS
C1	PRELIMINARY GRADING AND DRAINAGE PLAN
C2	PRELIMINARY GRADING AND DRAINAGE PLAN

## PARCEL MAP



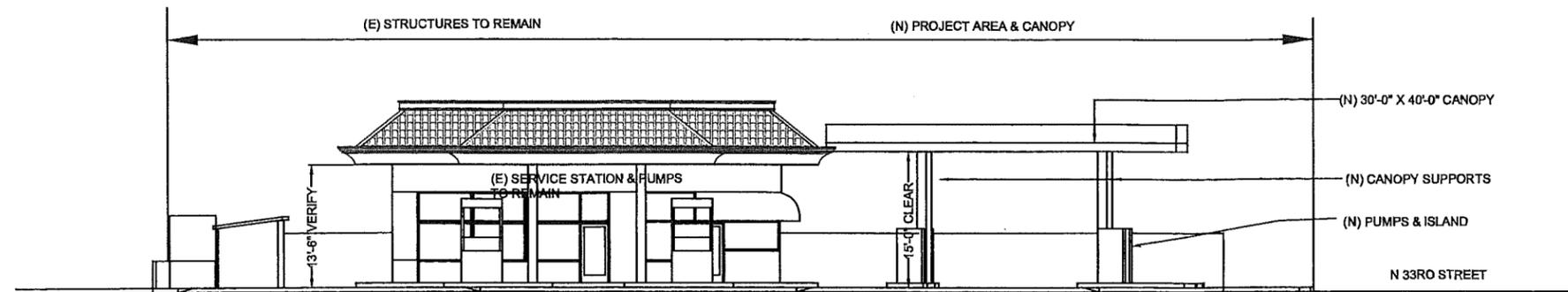
EXISTING LAND USE MAP  
SCALE: 1" = 30'-0"



## PROJECT LOCATION

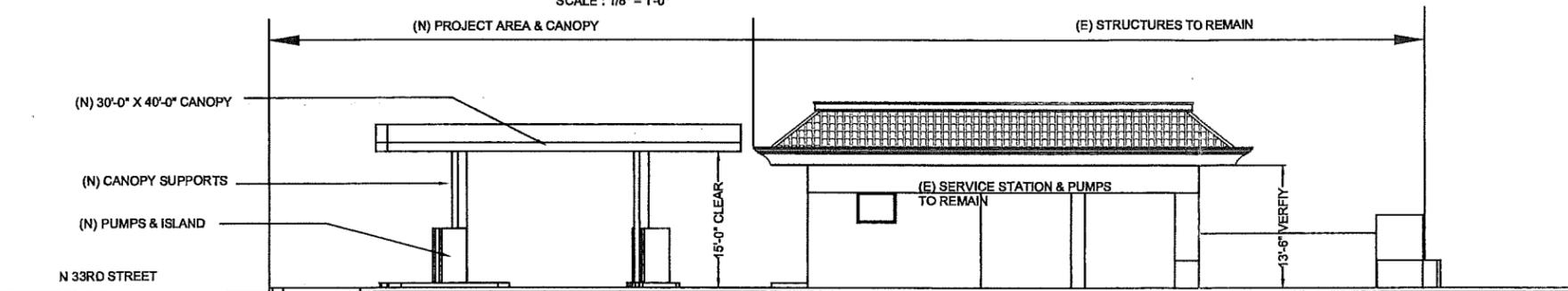
CP09-015





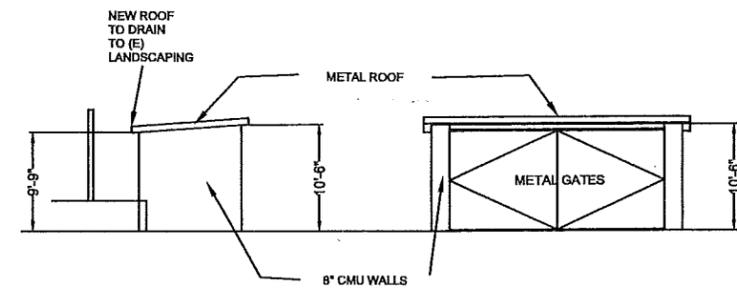
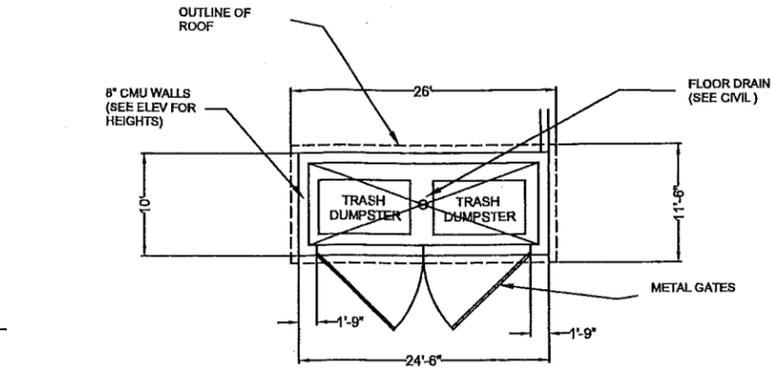
**FRONT ELEVATION**

SCALE : 1/8" = 1'-0"



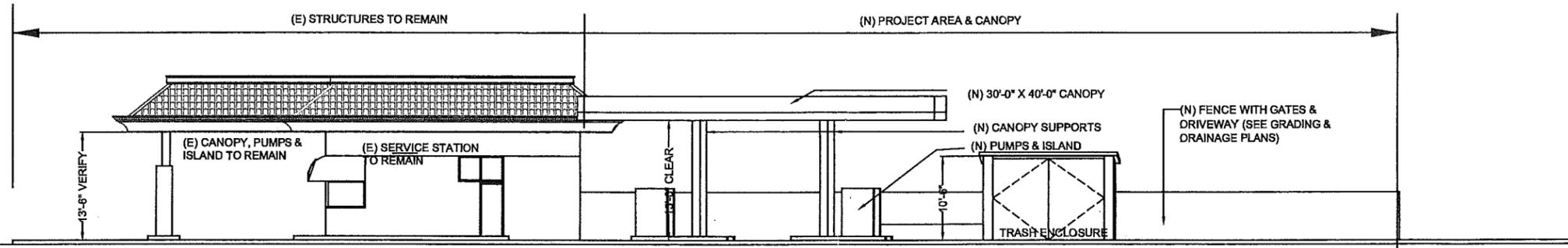
**REAR ELEVATION**

SCALE : 1/8" = 1'-0"



**TRASH ENCL. DETAIL**

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



**SIDE ELEVATION**

SCALE : 1/8" = 1'-0"

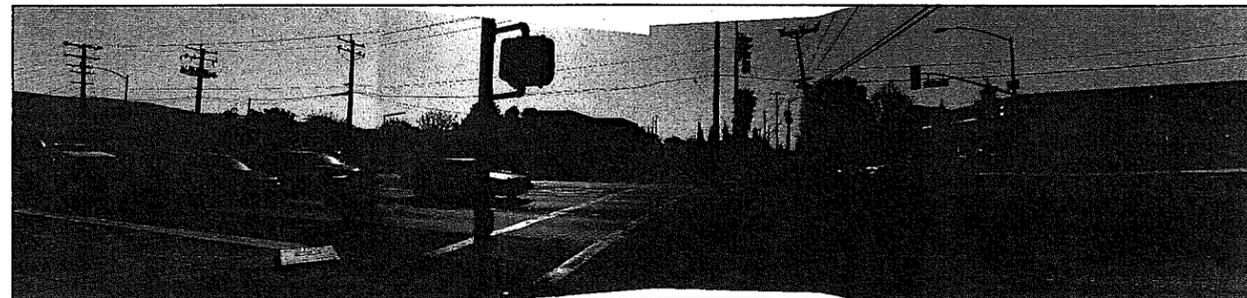


PHOTO 1

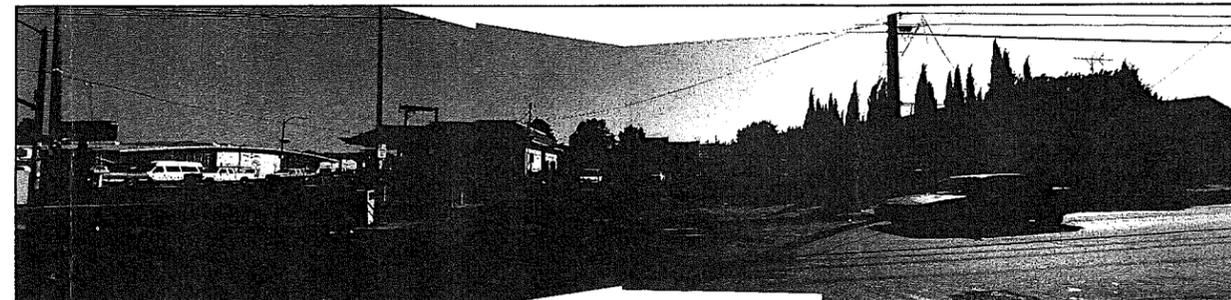


PHOTO 2

**VBY SERVICES**  
ARCHITECTS, PLANNERS, DESIGNERS  
2625 Timberlake Court  
San Jose, CA 95148  
(408) 274-4926

**SOUTH VALLEY CONSTRUCTION**  
1604 McKEE ROAD  
San Jose, CA 95116  
License # 88824B  
(408) 655-4116

**GENERAL NOTES:**  
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**PROPOSED EXPANSION OF MOE'S STOP GAS AND SERVICE STATION**  
1604 McKEE ROAD, SAN JOSE, CA 95116-1233

SHEET TITLE

**ELEVATION SHEET**

REVISIONS

#	DATE
1	7/20/09
2	8/20/09

DATE: 24 AUG 2009  
SCALE: NOTED  
DRAWN BY: VBY  
JOB NO.

**A-2**

SHEET NO.

CP09-015

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**PROPOSED EXPANSION OF MOE'S STOP GAS AND SERVICE STATION**  
 1604 MCKEE ROAD, SAN JOSE, CA 95116-1233

**SHEET TITLE**

**PROPOSED LANDSCAPE SHEET**

**REVISIONS**

#	DATE
1	7/20/08
2	8/25/08

DATE: 24 AUG 2009

SCALE: NOTED

DRAWN BY: VBY

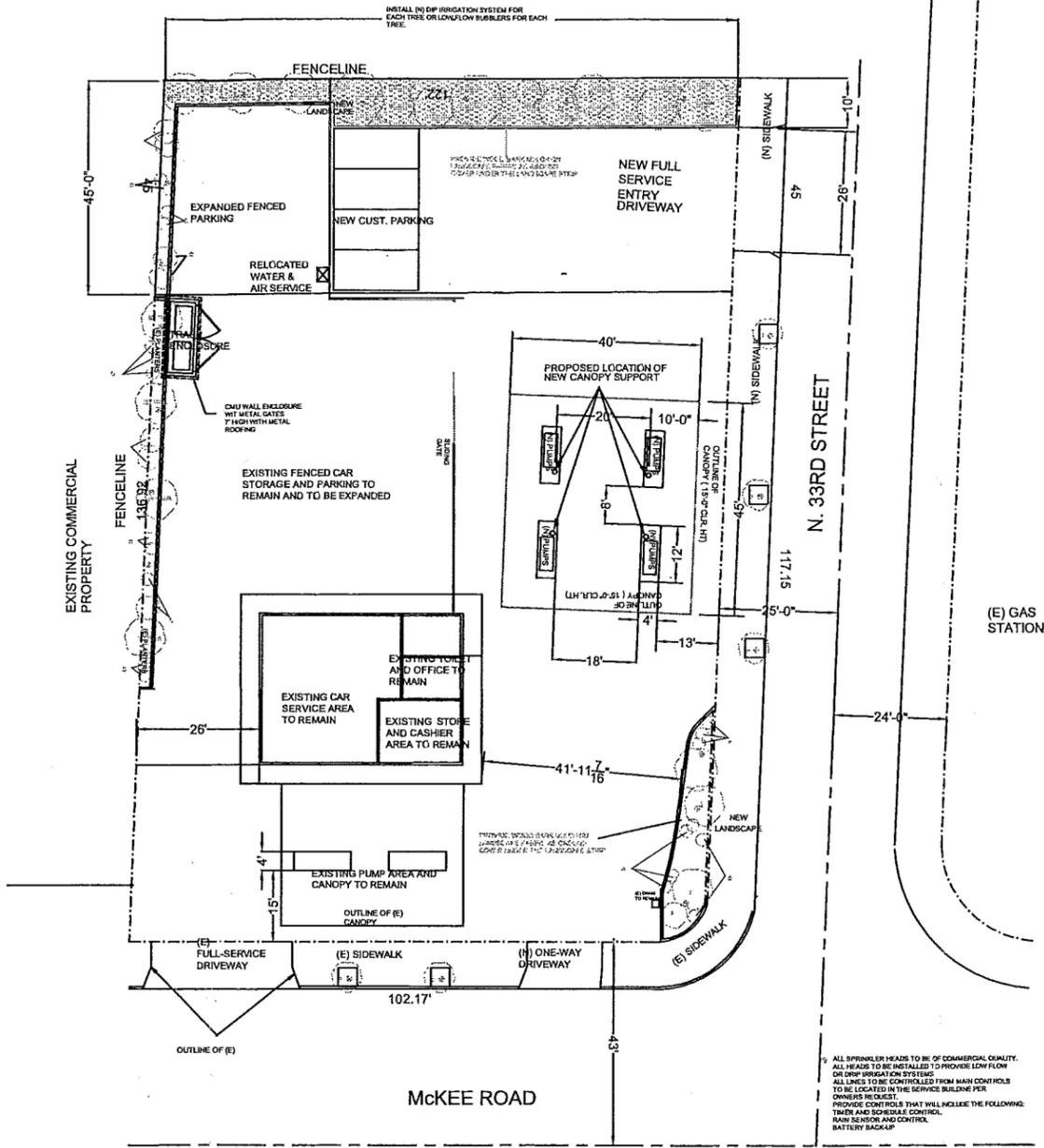
JOB NO.

**L1**

SHEET NO.

**PLANT NOTES:**

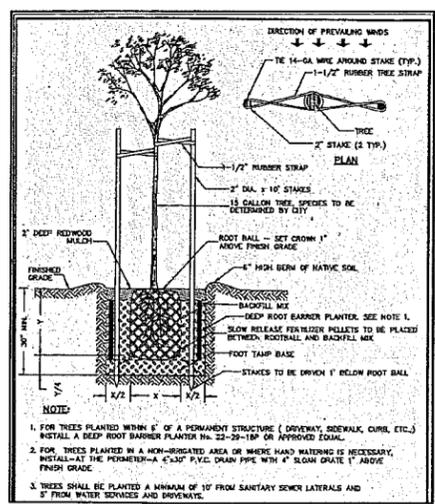
1. THE CONTRACTOR SHALL VERIFY PLANT QUANTITIES FROM THE PLANTING PLAN. QUANTITIES SHOWN IN THE LEGEND ARE FOR CONVENIENCE ONLY.
2. NOTIFY THE OWNER/ARCHITECT IMMEDIATELY IN THE EVENT OF ANY DISCREPANCIES BETWEEN ACTUAL SITE CONDITIONS AND THE PLANTING PLAN.
3. PLANT GROUND COVER IN SHRUB AREAS AS NOTED; USE TRIANGULAR SPACING.
4. SEE DETAIL AND SPECIFICATION SHEETS FOR ADDITIONAL INFORMATION.
5. THERE WILL BE NO MATERIALS OR PLANT MATERIALS SUBSTITUTIONS WITHOUT APPROVAL OF THE OWNER OR THE LANDSCAPE ARCHITECT.
6. ALL SLOPES PLANTED WITH LAWN NOT TO EXCEED A 3:1 SLOPE. ALL SLOPES PLANTED WITH GROUND COVER NOT TO EXCEED A 2:1 SLOPE.
7. PROVIDE POSITIVE DRAINAGE AWAY FROM ALL BUILDINGS (2% MIN).
8. IN THE EVENT OF ANY DISCREPANCIES BETWEEN THIS PLAN AND ACTUAL SITE CONDITIONS, THE LANDSCAPE ARCHITECT IS TO BE NOTIFIED IMMEDIATELY.
9. ENTIRE SITE IS TO BE ROUGH GRADED BY THE GRADING CONTRACTOR TO WITHIN 1/10 FOOT OF FINISH GRADE. LANDSCAPE CONTRACTOR IS TO FINE GRADE ALL LANDSCAPE AREAS.
10. ALL SITE UTILITIES ARE TO BE PROTECTED DURING CONSTRUCTION. IN THE EVENT OF CONFLICT BETWEEN THE PLANS AND UTILITIES THE CONTRACTOR SHALL NOTIFY THE LANDSCAPE ARCHITECT. ANY DAMAGE TO UTILITIES, STRUCTURES, OR OTHER FEATURES TO REMAIN, AND CAUSED BY THE LANDSCAPE CONTRACTOR SHALL BE REPLACED OR REPAIRED BY THE CONTRACTOR AT NO EXPENSE TO THE OWNER.
11. THE WORK IN THESE DRAWINGS AND SPECIFICATIONS MAY RUN CONCURRENTLY WITH WORK BY OTHERS. THE LANDSCAPE CONTRACTOR SHALL COORDINATE HIS WORK WITH OTHER CONTRACTORS.
12. REFER TO CIVIL ENGINEER'S PLAN FOR OVERALL SITE GRADING AND DRAINAGE.
13. PRIOR TO ANY DIGGING, CALL UNDERGROUND SERVICE ALERT 1.800.642.2444.



**PRELIMINARY LANDSCAPING PLAN**  
 SCALE 1/16" = 1'-0"

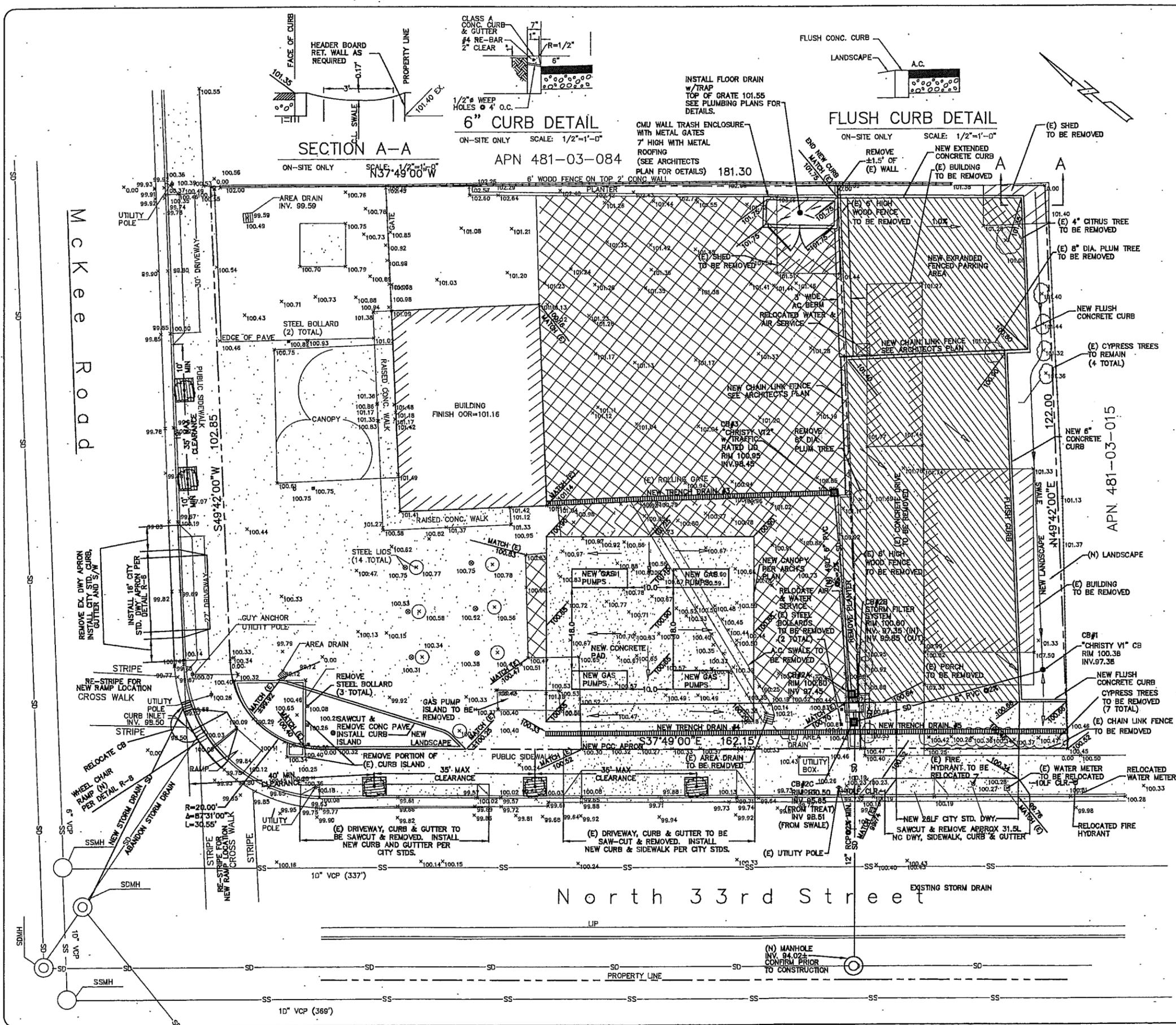
PLANTS FOR 1106 McKee Road

KEY	QUANTITY	BOTANICAL NAME	COMMON NAME	GALLONS	NOTES
A	5	Hesperaloe parviflora	Cholla	1	
B	6	Larrea	Cholla	1	
C	3	Yucca	Yucca	6	
D	10	Stenactis	Stenactis	5	
E					
F	25	Agave attenuata	Century plant	15	
G	7	Yucca filamentosa	Yucca	18	
H		PERISCUE BIRD	SKD		
I	7	Phoradendron	Red Cedar	15	
J	4	Yucca filamentosa	Yucca	15	
K					
L					



- NOTE**
1. FOR TREES PLANTED WITHIN 6' OF A PERMANENT STRUCTURE ( DRIVEWAY, SIDEWALK, CURB, ETC.) INSTALL A DEEP ROOT BARRIER PLANTER NO. 22-20-18" OR APPROVED EQUAL.
  2. FOR TREES PLANTED IN A NON-IRRIGATED AREA OR WHERE HAND WATERING IS NECESSARY, INSTALL AT THE POINT OF PLANTING A 4" DIA. P.V.C. DRAIN PIPE WITH 4" SLOPE GRADE 1" ABOVE FINISH GRADE.
  3. TREES SHALL BE PLANTED A MINIMUM OF 10' FROM SANITARY SEWER LATERALS AND 5' FROM WATER SERVICES AND DRIVEWAYS.

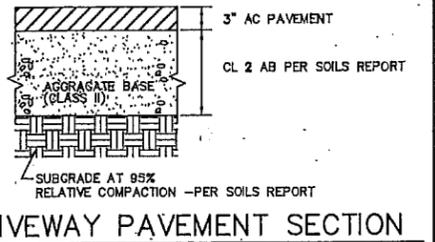
ALL SPRINKLER HEADS TO BE OF COMMERCIAL QUALITY. ALL HEADS TO BE INSTALLED TO PROVIDE LOW FLOW OR LOW FLOW SYSTEMS. ALL LINES TO BE CONTROLLED FROM MAIN CONTROLS TO BE LOCATED IN THE SERVICE BUILDING FOR OWNERS REQUEST. PROVIDE CONTROLS THAT WILL INCLUDE THE FOLLOWING: TRIP AND SCHEDULE CONTROL, RAIN SENSOR AND CONTROL, BATTERY BACKUP



**HATCH LEGEND**


**LEGEND**

- EXISTING SPOT ELEVATION
- NEW CATCH BASIN AS NOTED
- PROPERTY LINE
- NEW DRAIN BOX AS NOTED
- NEW STREET TREE IN 5'x4' TREE WELL PER CITY STANDARDS  
CALL CITY ARBORIST 91-408-277-2756 FOR TREE SELECTION
- NEW TRENCH DRAIN
- SD STORM DRAIN
- SD STORM DRAIN (EXISTING)
- SD SEWER (EXISTING)



**DRIVEWAY PAVEMENT SECTION**

**ABBREVIATIONS**

AC	ASPHALTIC CONCRETE
AD	AREA DRAIN
CB	CLEARANCE
CLR	CLEARANCE CONCRETE
CONC	CONCRETE
(E)	EXISTING
MAX	MAXIMUM
MIN	MINIMUM
(N)	NEW
STDS	STANDARDS



NOT FOR CONSTRUCTION

**SHEET INDEX**

- C1 PRELIMINARY GRADING AND DRAINAGE PLAN
- C2 STORMWATER CONTROL PLAN (SCP)
- C3 STORMWATER CONTROL PLAN (SCP)
- C4 STORMWATER CONTROL PLAN (SCP)

**REVISIONS**

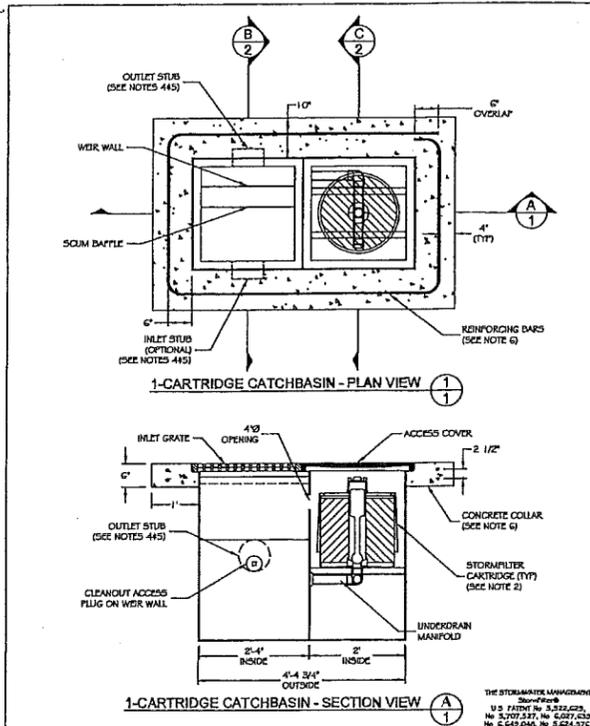
DATE	DESCRIPTION

JOB NO. 08036  
 SCALE: 1"=10'  
 PROJECT MGR: SH  
 DATE: 08/18/09

SHEET  
**C1**  
 OF 4 SHEET

**BAY LAND CONSULTING**  
 LAND SURVEYORS/CIVIL ENGINEERS  
 2136 The Alameda, Suite E San Jose, California 95126  
 Ph: (408) 298-6000 FAX: (408) 404-5579  
 SERVING THE BAY AREA

**PRELIMINARY GRADING & DRAINAGE PLAN**  
 280 NORTH 33RD STREET, SAN JOSE, CA

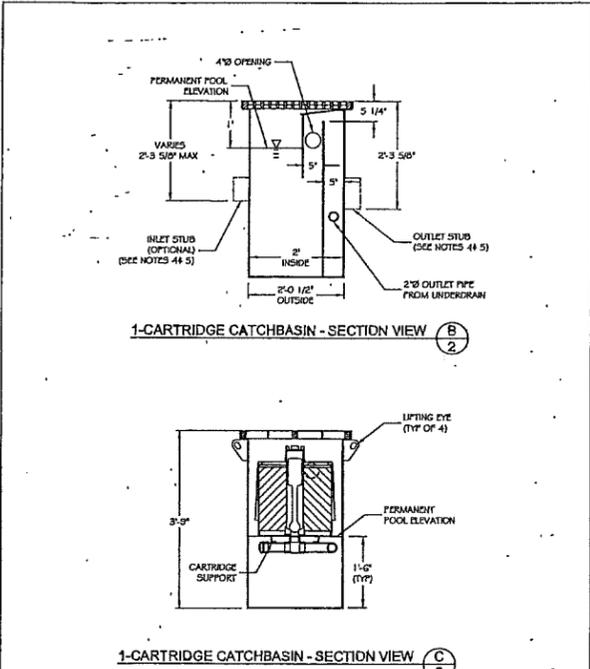


02008 CONTECH Stormwater Solutions

**CONTECH** STORMWATER SOLUTIONS

STEEL CATCHBASIN STORMFILTER  
PLAN AND SECTION VIEWS  
STANDARD DETAIL - 1 CARTRIDGE UNIT

DATE 1/18/08 SCALE NONE FILE NAME CSPT18-01L DRAWN MAM CHECKED ANB

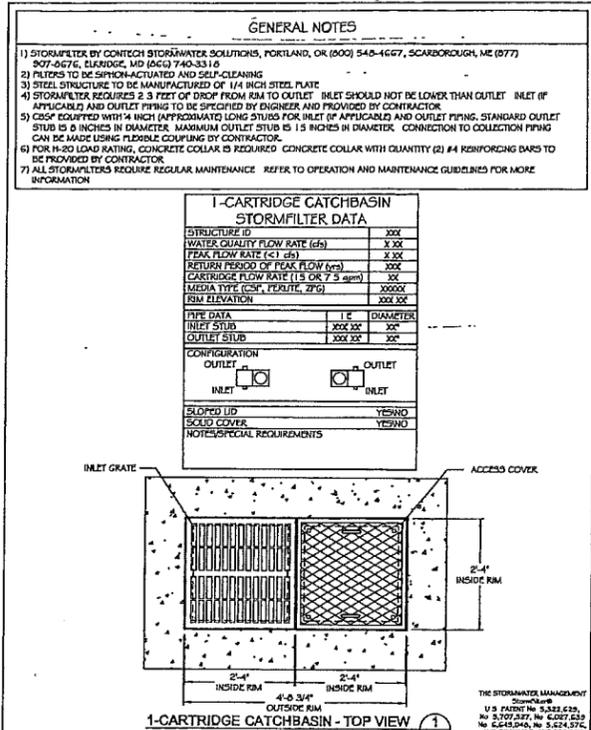


02008 CONTECH Stormwater Solutions

**CONTECH** STORMWATER SOLUTIONS

STEEL CATCHBASIN STORMFILTER  
SECTION VIEWS  
STANDARD DETAIL - 1 CARTRIDGE UNIT

DATE 1/18/08 SCALE NONE FILE NAME CSPT18-01L DRAWN MAM CHECKED ANB



02008 CONTECH Stormwater Solutions

**CONTECH** STORMWATER SOLUTIONS

STEEL CATCHBASIN STORMFILTER  
TOP VIEW, NOTES AND DATA  
STANDARD DETAIL - 1 CARTRIDGE UNIT

DATE 1/18/08 SCALE NONE FILE NAME CSPT18-01L DRAWN MAM CHECKED ANB

**TOTAL SITE DRAINAGE AREAS**

ROOF=121 S.F.  
CONCRETE PAVEMENT=5,966 S.F.  
AC PAVEMENT=12,344 S.F.  
TOTAL IMPERVIOUS=18,421 S.F.  
TOTAL SITE AREA=22,020 S.F.

**SURFACE AREA CALCULATIONS**

NEW/ MODIFIED IMPERVIOUS SURFACE AREA  
TOTAL NEW ADDITIONAL IMPERVIOUS SURFACE AREA=5,866 S.F.  
TOTAL MODIFIED (OVERLAY) IMPERVIOUS SURFACE AREA=5,542 S.F.  
TOTAL=11,408 S.F.

NEW/ MODIFIED PERVIOUS SURFACE AREA  
TOTAL NEW PERVIOUS SURFACE AREA=467 S.F.  
TOTAL NEW MODIFIED PERVIOUS SURFACE AREA=745 S.F.  
TOTAL=1,212 S.F.

**STORM RUN-OFF DRAINAGE AREAS**

INLET	DRAINAGE AREA	DRAINAGE ROUTING
CATCHBASIN #1(IN SWALE) (PERVIOUS)	AREA 1=884 S.F.	TO CB#2C
CATCHBASIN #1(IN-SWALE)	AREA 2=3,918 S.F.	
TOTAL SWALE TREATMENT AREA	4,802 S.F.	

TRENCHRAIN #3/ CATCHBASIN #3	AREA 3=4,900 S.F.	THRU CB#2A TO MEDIA FILTER TO CITY STORM SYSTEM
TRENCHRAIN #4/ CATCHBASIN #2A	AREA 4=3,613 S.F.	
TRENCHRAIN #5/ CATCHBASIN #2A	AREA 5=528 S.F.	
TOTAL MEDIA FILTRATION AREA	9,041 S.F.	

TOTAL MEDIA FILTRATION + SWALE TREAT 13,843 S.F.

**RUN-OFF CALCULATIONS FOR STORMWATER TREATMENT**

THE RUN-OFF CALCULATIONS ARE BASED ON THE RATIONAL UNIFORM INTENSITY METHOD.

**CALCULATIONS FOR SWALE TREATMENT**

AREA #1 & #2 - NEW AC PAVEMENT (DRIVE AISLE & NEW LANDSCAPE)  
 $Q_{wq} = C \times I \times A$   
 $Q_{wq}$  = DISCHARGE FLOW FOR WATER QUALITY TREATMENT IN c.f.s.  
 $C$  = MODIFIED RUN-OFF COEFFICIENT = 0.70  
 $I$  = UNIFORM RAINFALL INTENSITY IN INCHES PER HOUR = 0.2 in/hr  
 $A$  = WATERSHED AREA IN ACRES = 0.11 ac  
**CALCULATION**  
 $Q_{wq} = 0.70 \times 0.20 \times 0.11 = 0.015$  c.f.s. (TREATED BY SWALE)  
**SWALE CALCULATION**  
 $W=3'$ ,  $D=0.17'$ ,  $A=0.51$  s.f.,  $V=0.015/0.51 = 0.029$  ft/sec  
 $LENGTH = 0.029 \times (7min \times 60sec/min) = 12.2$  feet (MIN. LENGTH)

**CALCULATIONS FOR MEDIA FILTER TREATMENT**

AREA #3 - NEW AC PAVEMENT OVERLAY (WORK AREA) (PIPED TO CATCHBASIN 2 STORMWATER TREATMENT)  
 $Q_{wq} = C \times I \times A$   
 $Q_{wq}$  = DISCHARGE FLOW FOR WATER QUALITY TREATMENT IN c.f.s.  
 $C$  = RUN-OFF COEFFICIENT = 0.90  
 $I$  = UNIFORM RAINFALL INTENSITY IN INCHES PER HOUR = 0.2 in/hr  
 $A$  = WATERSHED AREA IN ACRES = 0.11 ac  
**CALCULATION**  
 $Q_{wq} = 0.70 \times 0.20 \times 0.11 = 0.015$  c.f.s.  
**AREA #4 - NEW AC PAVEMENT OVERLAY & NEW CONCRETE PAD (DRIVE AISLE) (PIPED TO CATCHBASIN 2 STORMWATER TREATMENT)**  
 $Q_{wq} = C \times I \times A$   
 $Q_{wq}$  = DISCHARGE FLOW FOR WATER QUALITY TREATMENT IN c.f.s.  
 $C$  = RUN-OFF COEFFICIENT = 0.90  
 $I$  = UNIFORM RAINFALL INTENSITY IN INCHES PER HOUR = 0.2 in/hr  
 $A$  = WATERSHED AREA IN ACRES = 0.08 ac  
**CALCULATION**  
 $Q_{wq} = 0.70 \times 0.20 \times 0.08 = 0.011$  c.f.s.  
**AREA #5 - NEW PCC PAVEMENT (PIPED TO CATCHBASIN 2 STORMWATER TREATMENT)**  
 $Q_{wq} = C \times I \times A$   
 $Q_{wq}$  = DISCHARGE FLOW FOR WATER QUALITY TREATMENT IN c.f.s.  
 $C$  = RUN-OFF COEFFICIENT = 0.90  
 $I$  = UNIFORM RAINFALL INTENSITY IN INCHES PER HOUR = 0.2 in/hr  
 $A$  = WATERSHED AREA IN ACRES = 0.01 ac  
**CALCULATION**  
 $Q_{wq} = 0.70 \times 0.20 \times 0.01 = 0.002$  c.f.s.  
**TOTAL RUNOFF TREATED WITH MEDIA FILTER= .028 CFS**

BAY LAND CONSULTING  
LAND SURVEYORS/CIVIL ENGINEERS  
2136 The Alameda, Suite E, San Jose, California 95126  
Ph: (408) 298-6000 FAX: (408) 404-5579



STORMWATER CONTROL PLAN  
CALCULATIONS AND DETAILS  
280 NORTH 33RD STREET, SAN JOSE, CA

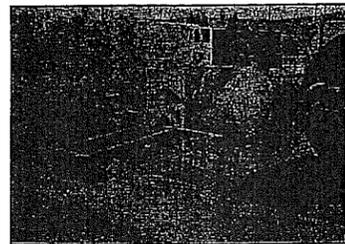
**REVISIONS**

DATE	DESCRIPTION

JOB NO. 08036  
SCALE: AS NOTED  
PROJECT MGR: SH  
DATE: 07/07/09

SHEET  
**C2**  
OF 4 SHEETS

**Vehicle & Equipment Fueling SC-20**



- Objectives**
- Cover
  - Contain
  - Educate
  - Reduce/Minimize

**Description**  
Spills and leaks that occur during vehicle and equipment fueling can contribute hydrocarbons, oil and grease, as well as heavy metals to stormwater runoff. Implementing the following management practices can help prevent fuel spills and leaks.

**Approach**  
Reduce potential for pollutant discharge through source control, pollution prevention and BMP implementation. Successful implementation depends on effective training of employees on applicable BMPs and general pollution prevention strategies and objectives.

**Targeted Constituents**

Sediment	
Nutrients	
Trash	
Metals	✓
Bacteria	
Oil and Grease	✓
Organics	✓

- Pollution Prevention**
- Use properly maintained off-site fueling stations whenever possible. These businesses are better equipped to handle fuel and spills properly.
  - Educate employees about pollution prevention measures and goals.
  - Focus pollution prevention activities on containment of spills and leaks, most of which may occur during liquid transfers.

- Suggested Protocols**
- General**
- "Spot clean" leaks and drips routinely. Leaks are not cleaned up until the absorbent is picked up and disposed of properly.



**SC-20 Vehicle & Equipment Fueling**

- Manage materials and waste to reduce adverse impacts on stormwater quality.
- Label drains within the facility boundary, by paint/stencil (or equivalent), to indicate whether they flow to an oil/water separator, directly to the sewer, or to a storm drain. Labels are not necessary for plumbing fixtures directly connected to the sanitary sewer.
- Post signs to remind employees and customers not to top off the fuel tank when filling and signs that ban customers and employees from changing engine oil or other fluids at that location.
- Report leaking vehicles to fleet maintenance.
- Install inlet catch basin equipped with a small sedimentation basin or grit chamber to remove large particles from stormwater in highly impervious areas.
- Ensure the following safeguards are in place:
  - Overflow protection devices on tank systems to warn the operator to automatically shutdown transfer pumps when the tank reaches full capacity.
  - Protective guards around tanks and piping to prevent vehicle or forklift damage.
  - Clear tagging or labeling of all valves to reduce human error.

- Fuel Dispensing Areas**
- Maintain clean fuel-dispensing areas using dry cleanup methods such as sweeping for removal of litter and debris, or use of rags and absorbents for leaks and spills.
  - If you periodically clean by washing, place a temporary plug in the downstream drain and pump out the accumulated water. Properly dispose the water. Note: permission from the local sewerage agency must be obtained before discharging wash water to the sanitary sewer.
  - Fit underground storage tanks with spill containment and overfill prevention systems meeting the requirements of Section 2635(b) of Title 23 of the California Code of Regulations.
  - Fit fuel dispensing nozzles with "hold-open latches" (automatic shutoffs) except where prohibited by local fire departments.
  - Post signs at the fuel dispenser or fuel island warning vehicle owners/operators against "topping off" of vehicle fuel tanks.
  - Design fueling area to prevent stormwater runoff and spills.
  - Cover fueling area with an overhanging roof structure or canopy so that precipitation cannot come in contact with the fueling area and use a perimeter drain or slope pavement inward with drainage to sump; pave area with concrete rather than asphalt.
  - Where covering is not feasible and the fuel island is surrounded by pavement, apply a suitable sealant that protects the asphalt from spilled fuels.

**Vehicle & Equipment Fueling SC-20**

- Install vapor recovery nozzles to help control drips as well as air pollution.
  - Use secondary containment when transferring fuel from the tank truck to the fuel tank.
  - Cover storm drains in the vicinity during transfer.
- Outdoor Waste Receptacle Area**
- Spot clean leaks and drips routinely to prevent runoff of spillage.
  - Minimize the possibility of stormwater pollution from outside waste receptacles by doing at least one of the following:
    - Use only watertight waste receptacle(s) and keep the lid(s) closed.
    - Grade and pave the waste receptacle area to prevent run-off of stormwater.
    - Install a roof over the waste receptacle area.
    - Install a low containment berm around the waste receptacle area.
    - Use and maintain drip pans under waste receptacles.
  - Post "no littering" signs.

- Air/Water Supply Area**
- Minimize the possibility of stormwater pollution from air/water supply areas by doing at least one of the following:
    - Spot clean leaks and drips routinely to prevent runoff of spillage.
    - Grade and pave the air/water supply area to prevent run-off of stormwater.
    - Install a roof over the air/water supply area.
    - Install a low containment berm around the air/water supply area.

- Inspection**
- Aboveground Tank Leak and Spill Control:
    - Check for external corrosion and structural failure.
    - Check for spills and overfills due to operator error.
    - Check for failure of piping system.
    - Check for leaks or spills during pumping of liquids or gases from truck or rail car to a storage facility or vice versa.
    - Visually inspect new tank or container installation for loose fittings, poor welding, and improper or poorly fitted gaskets.

**SC-20 Vehicle & Equipment Fueling**

- Inspect tank foundations, connections, coatings, and tank walls and piping system. Look for corrosion, leaks, cracks, scratches, and other physical damage that may weaken the tank or container system.
- Periodically, integrity testing should be conducted by a qualified professional.
- Inspect and clean, if necessary, storm drain inlets and catch basins within the facility boundary before October 1 each year.

- Training**
- Train all employees upon hiring and annually thereafter on proper methods for handling and disposing of waste. Make sure that all employees understand stormwater discharge prohibitions, wastewater discharge requirements, and these best management practices.
  - Train employees on proper fueling and cleanup procedures.
  - Use a training log or similar method to document training.
  - Ensure that employees are familiar with the site's spill control plan and/or proper spill cleanup procedures.

- Spill Response and Prevention**
- Keep your Spill Prevention Control and Countermeasure (SPCC) Plan up-to-date.
  - Place a stockpile of spill cleanup materials where it will be readily accessible.
  - Use absorbent materials on small spills and general cleaning rather than hosing down the area. Remove the absorbent materials promptly.
  - Store portable absorbent booms (long flexible shafts or barriers made of absorbent material) in unbermed fueling areas.
  - Report spills promptly.
  - If a dead-end sump is not used to collect spills, install an oil/water separator.

- Other Considerations**
- Carry out all Federal and State requirements regarding underground storage tanks, or install above ground tanks.

- Requirements**
- Costs**
- The retrofitting of existing fueling areas to minimize stormwater exposure or spill runoff can be expensive. Good design must occur during the initial installation.
  - Extruded curb along the "upstream" side of the fueling area to prevent stormwater run-off is of modest cost.

- Maintenance**
- Clean oil/water separators at appropriate intervals.

**Vehicle & Equipment Fueling SC-20**

- Keep ample supplies of spill cleanup materials on-site.
- Inspect fueling areas and storage tanks on a regular schedule.

**Supplemental Information**

**Design Considerations**  
*Designing New Installations*  
The elements listed below should be included in the design and construction of new or substantially retrofitted facilities.

- Fuel Dispensing Areas**
- Fuel dispensing areas must be paved with Portland cement concrete (or, equivalent smooth impervious surface), with a 2 to 4% slope to prevent ponding, and must be separated from the rest of the site by a grade break that prevents run-on of stormwater to the extent practicable. The fuel dispensing area is defined as extending 6.5 feet from the corner of each fuel dispenser or the length at which the hose and nozzle assembly may be operated plus 1 foot, whichever is less. The paving around the fuel dispensing area may exceed the minimum dimensions of the "fuel dispensing area" stated above.
  - The fuel dispensing area must be covered, and the cover's minimum dimensions must be equal to or greater than the area within the grade break or the fuel dispensing area, as defined above. The cover must not drain onto the fuel dispensing area.
  - If necessary, install and maintain an oil control device in the appropriate catch basin(s) to treat runoff from the fueling area.

- Outdoor Waste Receptacle Area**
- Grade and pave the outdoor waste receptacle area to prevent run-on of stormwater to the extent practicable.

- Air/Water Supply Area**
- Grade and pave the air/water supply area to prevent run-on of stormwater to the extent practicable.

- Designated Fueling Area**
- If your facility has large numbers of mobile equipment working throughout the site and you currently fuel them with a mobile fuel truck, consider establishing a designated fueling area. With the exception of tracked equipment such as bulldozers and perhaps small forklifts, most vehicles should be able to travel to a designated area with little lost time. Place temporary "caps" over nearby catch basins or manhole covers so that if a spill occurs it is prevented from entering the storm drain.

**Examples**  
The Spill Prevention Control and Countermeasure (SPCC) Plan, which is required by law for some facilities, is an effective program to reduce the number of accidental spills and minimize contamination of stormwater runoff.

**SC-20 Vehicle & Equipment Fueling**

The City of Palo Alto has an effective program for commercial vehicle service facilities. Many of the program's elements, including specific BMP guidance and lists of equipment suppliers, are also applicable to industrial facilities.

- References and Resources**
- California's Noopoint Source Program Plan <http://www.swrcb.ca.gov/nps/index.html>
  - Clerk County Storm Water Pollution Control Manual <http://www.co.clark.wa.us/pubworks/bmpman.pdf>
  - King County Storm Water Pollution Control Manual <http://dnr.metrokc.gov/wlr/3su/epcm.htm>
  - Santa Clara Valley Urban Runoff Pollution Prevention Program <http://www.scvump.org>
  - The Storm Water Managers Resource Center <http://www.stormwatercenter.net/>
  - Best Management Practice Guide for Retail Gasoline Outlets, California Stormwater Quality Task Force, 1997.

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**STORMWATER CONTROL PLAN**  
**SOURCE CONTROL**  
 280 NORTH 33RD STREET, SAN JOSE, CA

REVISIONS	
DATE	DESCRIPTION
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JOB NO. 08036  
SCALE: AS NOTED  
PROJECT MGR: SH  
DATE: 07/07/09

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OF 4 SHEETS

## Section 5 Monitoring, Reporting, and Program Evaluation

Conducting a monitoring program, reviewing the monitoring information, evaluating BMPs, and record keeping and reporting are all important elements of the implementation phase of the SWPPP. The success of the SWPPP depends upon the thorough implementation of the monitoring plan and evaluation of the effectiveness of the plan elements once they have been implemented.

### 5.1 Conduct Monitoring Program

The General Permit requires that a monitoring program be a component of the SWPPP. The program has the following objectives:

- To monitor the quality of the stormwater discharge
- To aid in SWPPP implementation
- To measure the BMP effectiveness

To meet these objectives the monitoring effort has these elements:

- Training
- Visual observations
- Stormwater monitoring
- Authorized non-stormwater discharges

#### 5.1.1 Training

Familiarity with the requirements of the stormwater monitoring plan and competence in the techniques and protocols specified in the plan are essential to ensure that stormwater samples are collected in a manner that meets the goals of the plan, while protecting the health and safety of the monitoring team members. It is recommended that all stormwater monitoring personnel receive training prior to conducting any stormwater monitoring activities. Stormwater monitoring training should include the following basic elements:

- Review of the Monitoring Plan and Health and Safety Plan

Monitoring, Reporting, and Evaluation Elements	
■	Conduct monitoring program
■	Conduct record keeping and reporting
■	Conduct annual site evaluation
-	Review monitoring information
-	Evaluate BMPs
-	Review and revise the SWPPP as necessary

### Section 5 Monitoring, Reporting, and Program Evaluation

- Classroom training session
- Field training and sampling simulation (dry run)
- Annual refresher training

#### 5.1.2 Visual Observations

Visual observations of both stormwater and non-stormwater discharges should be made at all facilities to document the presence of any discolorations, odors, floating and suspended material, oil and grease, etc., and to identify the source of any pollutants and non-stormwater flows. Visual observations should be made under the leadership of the SWPPP Leader, with appropriate members of the Pollution Prevention Team, according to the following schedule:

- All drainage areas within the facility should be checked for the presence of unauthorized non-stormwater discharges on a quarterly basis, during daylight hours, on days with no stormwater discharges.
- All authorized non-stormwater discharges and their sources should be observed quarterly during daylight hours, on days with no stormwater discharges.
- One storm event per month during the wet season (October 1-May 30) should be visually observed during the first hour of discharge at all discharge locations. These observations are only required of stormwater discharges that occur during daylight hours that are preceded by at least three working days without stormwater discharges and that occur during scheduled facility operating hours.

The results of the visual observations should be recorded and include: the date of the observation, locations observed, observations, response taken to eliminate unauthorized non-stormwater discharges, and actions taken to reduce or prevent pollutants from contacting non-stormwater or stormwater discharges. Results are included in the Annual Report.

#### 5.1.3 Stormwater Monitoring

Each facility should either conduct an individual monitoring plan or participate in a group-sampling program. A group-monitoring program may be developed either by an entity representing a group of similar facilities or by a local stormwater agency that holds its own NPDES permit. According to the General Permit, the monitoring plan is to contain the rationale and description of the visual observation methods, location, and frequency; and the analytical methods and corresponding method detection limits used to detect constituents.

Selection of sites for industrial stormwater monitoring will depend on many factors including the following:

#### Representativeness

It is important to select sites that are representative of typical site operations.

- Runoff from the facility should combine to form a definable runoff stream.

### Section 5 Monitoring, Reporting, and Program Evaluation

- The runoff stream should represent the full range of activities at the facility.
- Runoff from the facility should not combine with runoff from other sources.
- Adequate flow volume must be available for sample collection.

#### Personal Safety

Development of a health and safety plan is recommended. Site selection should insure monitoring personnel from the following potential hazards:

- Traffic
- Uneven or slippery footing surface
- Poor night visibility (lighting)

#### Site Access

Ease of monitoring site access for monitoring personnel and vehicles parking is essential. Also, for sites that require installation of sample collection or flow metering equipment, adequate equipment access for maintenance and monitoring activities must be available.

#### Equipment Security

Permanently installed monitoring equipment must be located at a site that will minimize potential vandalism and other possible damage.

#### Adequate Flow Volume

Monitoring sites should be configured such that adequate flow volume is present for sample collection. Hydraulic conditions should be well mixed and free flowing.

#### Utility Access

If automated monitoring equipment is required, electrical power should be readily available at selected monitoring sites. Additionally, telephone service may be required for off-site station controlling and data transfer.

Stormwater samples should be collected during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. If the first event is missed, sampling of two events during the wet season is still required. Furthermore, a justification for failing to sample the first event should be provided in the Annual Report. Sample collection is only required of stormwater discharges that occur during scheduled facility operating hours and that are preceded by at least three working days without stormwater discharge. Sample collection is not required if dangerous weather conditions are present (e.g., flooding, electrical storm, etc.), when stormwater discharges begin after scheduled facility operating hours or when stormwater discharges are not preceded by three working days without discharge. When the required samples are not collected due to these exceptions, an explanation must be provided in the Annual Report. Visual observations and sample collection may be conducted more than one hour after discharge begins if it is determined that the

### Section 5 Monitoring, Reporting, and Program Evaluation

monitoring objectives will be better satisfied. If this occurs, an explanation should be provided in the Annual Report.

Specific sampling and analysis requirements include the following:

- All sampling and sample preservation should be in accordance with the current edition of "Standard Methods for the Examination of Water and Wastewater".
- All monitoring instruments and equipment should be calibrated and maintained in accordance with manufacturers' specifications to ensure accurate measurements.
- All laboratory analyses should be conducted according to test procedures under 40 CFR Part 136, unless other test procedures have been specified by the RWQCB.
- Analyze samples for total suspended solids (TSS), pH, specific conductance, and total organic carbon (TOC). Oil and grease (O&G) may be substituted for TOC.
- Analyze toxic chemicals and other pollutants that are likely to be present in stormwater discharges. Any of these pollutants that are not detected in significant quantities after two consecutive sampling events may be eliminated from future sampling analysis until the pollutant is likely to be present again. (According to the definitions section of the General Permit, "significant quantities" is defined as the volume, concentration, or mass of a pollutant that can cause or threaten to cause pollution, contamination, or nuisance; adversely impact human health or the environment; and/or cause or contribute to a violation of any applicable water quality standards for the receiving water.)
- Other analytical parameters should be included based on the facility's standard industrial classification (see Table D of the General Permit).

#### Rules to Follow to Reduce Potential Sample Contamination

- No smoking.
- Never sample near a running vehicle. Do not park vehicles in immediate sample collection area (even non-running vehicles).
- Always wear clean, powder-free nitrile gloves when handling composite bottles, lids, sterile grab sample bottles, tubing, or strainers.
- Never touch the inside surface of a sample bottle or lid, even with gloved hands.
- Never touch the exposed end of a sampling tube.
- Never allow the inner surface of a sample bottle, lid, or sampling tube to be contacted by any material other than the sample water.
- Never allow any object or material to fall into or contact the collected sample water.
- Avoid allowing rain water to drip from rain gear or other surfaces into sample bottles.
- Do not eat or drink during sample collection.
- Do not breathe, sneeze or cough in the direction of an open sample bottle.

### Section 5 Monitoring, Reporting, and Program Evaluation

In addition to the requirements above, which are outlined in the General Permit, the following procedures are recommended to maximize the ability of sampling personnel to collect samples reliably and with minimal sample contamination.

- Before stormwater samples are collected, personnel must ensure the safety of such activities at each sampling location.
- Select the appropriate sample bottles and equipment for each parameter to be measured. As general guidelines, all sampling equipment and sample bottles used for trace metals determination should be nonmetallic and free from any material that may contain metals. Only high-density plastic or Teflon containers should be used for metals analytical sample storage bottles. All sampling equipment and sample bottles used for trace organics determination should be glass or Teflon. Nutrients and most "conventional" parameters may be sampled using plastic or glass bottles.
- Employ "clean" sampling techniques to minimize potential sources of sample contamination, particularly from trace pollutants. Experience has shown that when clean sampling techniques are used, detected concentrations of constituents tend to be lower.

#### 5.2 Conduct Record Keeping and Reporting

Records of all stormwater monitoring information, inspections and visual observations, certifications, corrective actions and follow-up activities, and copies of all reports should be retained for a period of at least five years. These records should include:

- The date, place, and time of site inspections, sampling, visual observations, and measurements
- The individual(s) who performed the site inspections, sampling, visual observations, and measurements
- Flow measurements or estimates (as required by Section B.6 of the General Permit)
- The date and approximate time of analyses
- The individual who performed the analyses
- Analytical results, method detection limits, and the analytical techniques or methods used
- Quality assurance and quality control records and results
- Non-stormwater discharge inspections and visual observations and stormwater discharge visual observation records
- Visual observations and sample collection exception records
- All calibration and maintenance records of onsite instruments used

### Section 5 Monitoring, Reporting, and Program Evaluation

- All sampling and analysis exemption and reduction certifications and supporting documentation
- The records of any corrective actions and follow-up activities that resulted from the visual observations

It is also recommended that information regarding the rain event be collected. A nearby recording gage should be identified and used to document the start and stop times and date of precipitation event. Some industries may want to consider installing a recording gage at the monitoring site.

Photographs can be useful. Also keep a record of maintenance activities or any other BMPs that are of an "action" nature. It is easy to demonstrate that a BMP that involves a physical change, such as berming or covering, has been accomplished. But actions that relate to good housekeeping can only be demonstrated by record keeping. Keeping a record of catch basin cleaning, for example, also provides insight into how soon it takes for the catch basin sump to refill.

An Annual Report including the items listed below should be submitted by July 1 of each year to the Executive Officer of the appropriate RWQCB.

- Summary of visual observations and sampling results
- Evaluation of the visual observations and sampling and analysis results
- Documentation that the BMPs in the SWPPP are being implemented and properly maintained as necessary
- Laboratory reports (including detection limits for each analytical parameter)
- The Annual Comprehensive Site Compliance Evaluation Report (as described below)
- Documentation, including the justification, of any deviations from the General Permit requirements (if not already included in the Evaluation Report)
- Records
- Detection limits for each analytical parameter

#### 5.3 Conduct Annual Site Evaluation

All facilities should conduct an annual comprehensive site compliance evaluation. It may be helpful to involve the Pollution Prevention Team (PPT) in this effort (see Section 2). The SWPPP should be revised within 90 days of the evaluation based on the evaluation and the revisions implemented. Evaluations should include the following:

- A review of the results of visual inspections of potential pollutant sources for evidence of, or the potential for, pollutants entering the drainage system

### Section 5 Monitoring, Reporting, and Program Evaluation

- A review of visual observation records, inspection records, and sampling and analysis results
- A review and evaluation of each BMP to determine whether it is adequate, properly implemented, and maintained
- A review of site activities to ascertain if change has occurred, and if so, whether new or modified BMPs are needed
- A review of the list of significant materials to ascertain if the list has changed, and if so, whether new or modified BMPs are needed
- A review of spills that have occurred over the past 12 months, with a determination of cause(s) and possible solutions, including modified or new BMPs
- A determination of whether each BMP must be modified, replaced, and whether additional BMPs are needed
- An evaluation report

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