

FINDINGS & CONDITIONS OF APPROVAL FOR COUNTY FILE #'s CDGP10-00003, CDRZ13-03222, and CDLP/DP13-02025, CONTINENTAL DEVELOPMENT CONSULTANTS (APPLICANT) JASVIR SINGH (OWNER).

FINDINGS

A. General Plan Amendment

1. *Required Finding: That adoption of the proposed General Plan amendment is consistent with the provisions of the County's Urban Limit Line as outlined in Measure L-2006.*

Project Finding: The project includes approval of a General Plan Amendment (GPA), rezoning and land use permit/development plan combination to demolish the existing gas station, convenient store, and restaurant located on Assessor's Parcel Number (APN) 002-140-010 and to re-construct an expanded gas station, convenient store and restaurant on three parcels, APN's: 002-140-010, 025 and 027. Adoption of the GPA to change from Single-Family Residential-High Density (SH) to Commercial (CO) is consistent with the provisions of the Urban Limit Line (ULL). No change to the ULL would occur and the project does not require extension of urban services (i.e., water and sewer mains) beyond the ULL. The subject site is located inside the ULL and therefore may be developed with "urban" or "non-urban" uses, as defined in the 2005-2020 Contra Costa County General Plan. The proposed land use designation, CO, is urban.

2. *Required Finding: That adoption of the proposed General Plan amendment will not result in a violation of the County's 65/35 Land Preservation Standard.*

Project Finding: Adoption of the GPA will not result in a violation of the 65/35 Land Preservation Standard (the "65/35 Standard"), established through voter adoption of Measure C-1990 and reaffirmed through adoption of Measure L-2006. Under the 65/35 Standard, no more than 35 percent of the land in the county, inclusive of the cities, may be designated for development of urban uses and at least 65 percent of the land must be designated for non-urban uses such as agriculture, open space, parks, etc. Approximately 28 percent of the land is currently designated for urban uses. The subject site's Single-Family High Density (SH) land use designation is an urban designation. The change to a CO land use designation is also an urban designation, meaning adoption of the GPA will not change the percentage of land designated for urban uses.

3. *Required Finding: That adoption of the proposed General Plan amendment complies with the provisions of Measure J-2004, the Contra Costa Growth Management Program, and related Contra Costa Transportation Authority resolutions.*

Project Finding: The project complies with the objectives and requirements of Measure J-2004, the Contra Costa Growth Management Program (GMP), and related Contra Costa Transportation Authority (CCTA) resolutions. The CCTA GMP Implementation Guide (February 2021) sets forth procedures for local agency consultation and evaluation of impacts related to proposed GPAs. The project is expected to generate approximately 108 a.m. and 95 p.m. peak hour trips which will not result in a significant impact to a Route of Regional Significance. The project is therefore exempt from the GMP GPA Review Process. Nevertheless, the project was referred to the Regional Transportation Planning Committee for East Contra Costa County (TRANSPLAN) for review and comment; no comments were received.

4. *Required Finding: That adoption of the proposed General Plan amendment will not cause the General Plan to become internally inconsistent, in violation of Government Code Section 65300.5.*

Project Finding: The General Plan comprises an integrated, compatible, and internally consistent statement of policies governing land use in unincorporated areas. The GPA is limited to a change to the Land Use Element Map and its adoption will not cause the General Plan to become internally inconsistent. The subject site is designated for single-family residential development, but is developed with a gas station, convenience store, and restaurant. The GPA involves redesignation of the site to allow for demolition and reconstruction, including expansion, of these commercial uses. CO and SH land use designations exist side-by-side throughout the county, including elsewhere in Byron. The County presumes these designations to be compatible because it is beneficial for commercial services to be proximate to residential areas. There are no General Plan policies precluding redesignation of the subject site to nonresidential use and the redesignation in no way conflicts with the overarching goals and policies of the General Plan related to land use, growth management, transportation, housing, noise, conservation, open space, and safety. Instead, the redesignation supports General Plan policies related to economic development and provision of adequate commercial services to meet the needs of county residents.

5. *Required Finding: That adoption of the proposed General Plan amendment is in the public interest, as required under Government Code Section 65358(a).*

Project Finding: Byron is a small community with limited commercial services. The existing gas station is one of two in the immediate vicinity, and the only one conveniently located near the community's center. The gas station building is aging, and the site layout is not optimal for ingress and egress. Reconstruction of the station and its associated convenience store and restaurant uses, will improve

safety by installing sidewalks along both property frontages and creating more separation between one of the driveways and the Byron Highway/Camino Diablo intersection. The project will also enhance the site's appearance through construction of new buildings and installation of new landscaping; and allow for continued operation of small businesses that serve the community. Adoption of the proposed GPA is therefore in the public interest because it allows the project to move forward and provide beneficial uses to the immediate Byron community.

6. *Required Finding: That adoption of the proposed General Plan amendment will not exceed the annual limit on General Plan amendments specified under Government Code Section 65358(b).*

Project Finding: Pursuant to Government Code Section 65358(b), no mandatory element of the General Plan may be amended more than four times per calendar year. The subject GPA affects the Land Use Element, a mandatory element, and is the first consolidated amendment of the Land Use Element for 2024.

B. Rezone Findings

Section 26-2.1806 of the County Ordinance Code requires specific findings to be made by the planning agency when a request for change in land use district is made; they are as follows:

1. *Required Finding: The change proposed will substantially comply with the general plan.*

Project Finding: The project site consists of three parcels. The northern most parcel (APN: 002-140-010) is currently developed with a gas station, convenience store and restaurant. The zoning for this parcel is R-B Retail Business (R-B) and does not require a re-zoning. As the project includes the demolition of all improvements and construction of an expanded gas station, convenience store and restaurant. The two southern parcels (APN's: 002-140-025 and 027) will need to be re-zoned from A-2 General Agricultural District (A-2) to R-B.

Table 3-5 of the 2005-2020 County General Plan (Consistency Between the General Plan and the Zoning Ordinance) outlines which specific zoning districts are consistent with each General Plan designation. As indicated within that table, the General Plan designation of CO is consistent with the R-B zoning district. Furthermore, as the project site is located immediately adjacent to the Byron Highway, which is a heavily traveled roadway and within close proximity to established commercial, agricultural and residential neighborhoods, the rezoning to allow an expansion of the existing retail uses is justified.

2. *Required Finding: The uses authorized or proposed in the land use district are compatible within the district and to uses authorized in adjacent districts.*

Project Finding: Zoning districts in the immediate vicinity are A-2 General Agricultural District, R-6 Single-Family Residential District, and General Commercial. The Union Pacific Railroad Company owns and operates a railroad directly to the west of the site across Byron Highway. Although the R-B district allows uses which tend to be more intense than a residential or agricultural zoning district, the subject property will essentially contain the same current uses. As the site is adjacent to the Byron Highway and a residential community, it is reasonable that services are to be in general proximity to meet local needs. By granting the rezone, the developer has an opportunity to modernize a gas station/convenience store and restaurant to meet current codes and regulations. Any proposed future use that includes noise, smoke or vibration in nature, would require approval from the County and must undergo its own environmental review. For those reasons it is unlikely that a major change in use other than retail would be considered for this site. Nevertheless, the primary land uses in the R-B district are generally community orientated services such as dry cleaners, restaurants and other residentially compatible uses.

3. *Required Finding: Community need has been demonstrated for the use proposed, but this does not require demonstration of future financial success.*

Project Finding: Approval of County File #LP2138-86 by the Board of Supervisors allowed the subject gas station to be developed nearly 40 years ago. The gas station has been in continuous use and has been improved over time with a convenience store and small restaurant. However, the current infrastructure (buildings, etc.) no longer provide the footprint that a modern gas station requires. By allowing the rezone, the development will offer the property owner an opportunity to improve the value of site and to address existing drainage issues in the area by metering the rainwater runoff that leaves the site by installing landscaped areas and detention basins. Therefore, the project is justified as it will serve the immediate community and County residents that generally use the Byron Highway corridor.

C. Land Use Permit Findings

1. *The proposed project shall not be detrimental to the health, safety and general welfare of the County;*

Project Finding: The project involves a General Plan Amendment, Rezoning and Land Use Permit/Development Plan Combination to demolish an existing gas pump canopy (4 dispensers), convenience store and small restaurant to construct

a new gas pump canopy (12 dispensers), convenience store and restaurant. Gas stations typically store and transport large volumes of fuel which is highly combustible, thus there are risks associated with permitting these types of uses in any portion of the County. However, the industry is heavily regulated, and transport of any fuel will be routed through Bryon Highway which is away from the residential community to the east. Moreover, all existing underground storage tanks for gas and diesel will remain in-place which will limit site disturbance. Given that California codes are typically more stringent than Federal standards, the project will represent a minimal risk of exposure to the public and overall is considered a benefit to an area that is lacking in community services.

2. *The proposed project shall not adversely affect the orderly development of property within the County;*

Project Finding: The subject gas station and convenience store have been in operation since the 1980's. The project includes demolition of all buildings and construction of a new larger gas station and convenience store/restaurant. Rezoning of the site will not divide any existing communities nor preclude surrounding properties from performing routine improvements. As the site is retail in nature, it is unlikely that the project will induce substantial population growth or result in displacement of existing housing or people. Staff is unaware of any evidence which suggests that the project will adversely affect development within the County or immediate area.

3. *The proposed project shall not adversely affect the preservation of property values and the protection of the tax base within the County;*

Project Finding: The project involves the demolition of a gas station/convenience store/restaurant that has been in operation since the 1980's. Construction of a new fuel pump canopy and convenience store/restaurant will offer a quality service option to the subject area where few retail options exist. Since the site has been developed with similar uses for decades, these improvements are not of a type and scale that would be expected to adversely affect property values. The convenience store will include 1 on-site manager and two cashiers, while the restaurant will employ 5 individuals. Operating hours of the gas station will be from 5:00 a.m. to 11:00 p.m. No use is proposed that would create permanent odors, smoke, or other nuisances which would expectedly affect property value in the vicinity. Therefore, the project is expected to positively add to the tax base within the County.

4. *The proposed project as conditioned shall not adversely affect the policy and goals as set by the General Plan;*

Project Finding: This approval allows a General Plan designation change from Single-Family Residential-High Density (SH) to Commercial (CO). The CO designation allows for a broad range of commercial uses typically found in smaller-scale neighborhood, community, and thoroughfare commercial districts. Gas stations, convenient stores and restaurants fit into this category of smaller-scale neighborhood uses that are allowed. Therefore, the project is not expected to adversely affect the policies and goals within the General Plan.

5. *The proposed project shall not create a nuisance and/or enforcement problem within the neighborhood or community;*

Project Finding: The project allows gas station operating hours between 5:00 a.m. and 11:00 p.m. However, because the project doesn't include any uses that incorporate amplified loudspeakers or gathering of large numbers of people, the gas station/convenience store/restaurant use will be consistent with the present uses of the site. Furthermore, the project doesn't include uses that would create permanent odors, smoke, or other nuisance which would expectedly affect quiet enjoyment of private property in the vicinity. The project's compliance with all Building Regulations and Conditions of Approval will ensure that all project elements are permitted and constructed in a manner that does not encourage any nuisance related to drainage, mosquito or vector habitat, substandard buildings/structures, or any other known nuisance types. Therefore, the project will not create a nuisance and/or enforcement problem within the neighborhood or community.

6. *The proposed project as conditioned shall not encourage marginal development within the neighborhood;*

Project Finding: The project allows the continuation of an existing gas station/convenience store/restaurant use that has been in operation for nearly four decades. The built-out nature of the project will discourage loitering by having each space of the site developed with a building, landscaping, drainage or parking. The project has incorporated 35 off-street parking spaces that will ensure patrons and service providers will have ample on-site parking options to avoid parking on adjacent rights-of-way. No vacant retail spaces are included with this project, suggesting that no less desirable uses would have an opportunity to occupy a readily available retail space. Furthermore, development in the neighborhood is controlled by the County's Zoning Code and General Plan, which requires County review and approval prior to establishing new uses. Thus,

as conditioned, the project will not encourage marginal development within the area.

7. *That special conditions or unique characteristics of the subject property and its location or surroundings are established.*

Project Finding: The subject property is an existing gas station/convenience store/restaurant use that provides retail orientated services in the Byron area of Contra Costa County. Given that the majority of adjacent properties have been developed for many years, the unique characteristics of the site and area are well established. The project site is well served by existing infrastructure (sanitary), including direct access to Byron Highway and Camino Diablo. The existing storm drain system for this area has experienced flooding in the past. These existing drainage issues within the area are expected to remain similar to present conditions as downstream properties are privately held and not subject to this County action. However, given that the project incorporates landscaped areas and bio-retention basins, the outflow of rainwater leaving this site will be metered and ultimately reduce the burden on the existing downstream infrastructure. This reduction in peak hour flow is considered a beneficial aspect of the project. Thus, the special conditions or unique characteristics of the subject property, and its location or surroundings, are established and will remain substantially consistent as a result of the project.

D. Development Plan Findings

1. *Required Finding: The proposed project is consistent with the purpose of the zoning district.*

Project Finding: The project site consists of three parcels. The northern most parcel (APN: 002-140-010) is currently developed with a gas station, convenience store and restaurant. The zoning for this parcel is R-B Retail Business (R-B). The two southern parcels (APN's: 002-140-025 and 027) will be re-zoned from A-2 General Agricultural District (A-2) to R-B to allow for the expansion.

Both zoning districts allow neighborhood service-oriented businesses, however, the A-2 district does not provide the flexibility needed to establish a modern commercial gas station/restaurant/convenience store that will serve the immediate Byron community. Although the approved R-B district allows uses which tend to be more intense, the subject property will essentially contain the same current uses. Any proposed future use that is industrial in nature, would require approval from the County and must undergo its own environmental review. Nevertheless, the primary land uses in the R-B district are generally

community orientated services such as dry cleaners, restaurants and other residentially compatible uses. Therefore, the project is consistent with the purpose of the zoning district in which it is located.

2. *Required Finding: The proposed project is architecturally compatible with other uses in the vicinity, both inside and outside the zoning district.*

Project Finding: Uses in the vicinity include residential sites, agricultural and commercial operations as well as the Union Pacific Railroad directly to the west across Byron Highway. As such, the area is diverse with many structures being of moderate height (single-story). The project will change the aesthetics of the site; however, construction of the new building and infrastructure will be an improvement compared to the aged structures slated for demolishing which are nearing the end of their useful lifespan. The new building will be approximately 25 feet tall at its tallest point, however, much of the building will be 18 feet tall due to the different architectural elements. The building will be painted with earth tone colors (Golden and Dellwood sand) and incorporate numerous windows at the entrance which does well to visually diversify the front façade. The new pump canopy will be approximately 22 feet tall with a light brown parapet and associated branding colors (teal, yellow and white) along the fascia. As a similar use and buildings have been operated on this site for many years, the improved aesthetics will be an attractive improvement to this site and surrounding area. Thus, the project is architecturally compatible with other uses both inside and outside the zoning district.

E. Variance Findings

1. *Required Finding: That any variance authorized shall not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and the respective land use district in which the subject property is located.*

Project Finding: The variance is for a 2-foot front setback where 10 feet is required for the re-facing of an existing monument sign. The subject property is a predominantly flat 1.0-acre site located at the southeast corner of Byron Highway and Camino Diablo. The overall project is to demolish an existing gas station/convenience store/restaurant and rebuild new buildings and infrastructure to continue similar uses. Given the type of use and other examples of similar sign locations at other gas stations within the general area, it can be expected that variances would be needed for similar projects within the general vicinity. Thus, the approval of this variance is not considered a grant of special

privilege and is consistent with other properties in the vicinity with respect to the R-B zoning district in which it is located.

2. *Required Finding: That because of special circumstances applicable to the subject property because of its size, shape, topography, location or surroundings, the strict application of the respective zoning regulations is found to deprive the subject property of the rights enjoyed by other properties in the vicinity and within the identical land use district.*

Project Finding: Signage is necessary to identify the site and advertise the approved gas station use. Due to County code requirements, nearly all the site is used for landscaping, off-street parking or drainage. Therefore, given the relatively small size of the project site, no viable alternative locations for the sign have been identified. Therefore, due to the relatively small size of the project site and lack of available space to locate the sign in alternative locations, if strict application of the zoning regulations were implemented it would deprive the subject property of the rights enjoyed by other properties in the vicinity that are also in the R-B zoning district.

3. *Required Finding: That any variance authorized shall substantially meet the intent and purpose of the respective land use district in which the property is located.*

Project Finding: The project is to construct a new upgraded gas station/convenience store/restaurant at this location. The variance is necessary to re-face an existing monument sign in its current location. The existing monument sign has been established in its location for decades suggesting that the location is acceptable. To confirm there are no line-of-sight issues at this intersection, the applicant has provided Exhibit 1 showing that the proposed signage is located outside of the prohibited "Sight Visibility Zone" as required by County Code Chapter 82-18 Sight Obstructions at Intersections. Additionally, per the On-Site Circulation Plan (Sheet LP-RZ-2.2 of the approved plans) the path needed for a double tanker fuel truck dictates the location of the off-street parking etc., which in-turn limits the space available for alternative sign locations. Therefore, given that a monument sign has been established at this location for many years and that no viable alternative locations have been identified, supporting the variance request is justified and substantially meets the intent and purpose of the land use district in which it is located.

F. Growth Management Performance Standards

1. Traffic: The project involves construction of a 12-dispenser gas station, convenience store and restaurant totaling 4,692 square feet in area. The project will generate approximately 100 or more AM or PM peak-hour trips (1,290 existing minus 2,518 proposed trips equals 1,348 new trips per day) therefore, the applicant has contracted TJKM Transportation Consultants to prepare a Transportation Impact Assessment (Report) for the project, final report dated July 2022 (supplemental Technical Memorandum dated January 2023). The Report analyzed existing conditions, project conditions, cumulative conditions and project's influence on the adjacent bicycle, pedestrian and transit network. Numerous intersections have been studied in preparation of the Report, in part using traffic counts during weekday AM and PM peak hour traffic volumes.

The Holway Drive/Camino Diablo intersection which is located one block to the west of the project site was identified as being potentially impacted by the project. The potential impact to that intersection's Level of Service (LOS) may increase traffic queuing by 1.7 seconds. Mitigation measures have been identified aimed at reducing this traffic related impact to less than significant levels (COA #22). Thus, the project applicant must provide evidence to DCD staff prior to Final Building Inspection (occupancy), showing that a fair-share payment has been made towards the installation of a traffic signal at the Holway Drive/Camino Diablo intersection. Installation of the signal light would result in improved intersection LOS performance. Therefore, the project as conditioned will not cause any unacceptable traffic related impacts in the immediate vicinity or area in general.

2. Water: Potable water is provided by an on-site well that has been producing for decades. No evidence has been provided to suggest potable water will not be available to the project site in the future.
3. Sewage: The sewage collection system would transport wastewater from the project site to a Byron Sanitary District facility for treatment. The new on-site piping system is required to comply with all applicable requirements established by the District. District staff has returned comments indicating that permits are required for the project which suggests that capacity exists in the system to accommodate the project. Therefore, the project related wastewater is not expected to exceed wastewater treatment regulations.
4. Fire Protection: The service standard for fire protection is based on distance. The General Plan states that new development must be within 1.5 miles driving distance of a fire station or must be equipped with improvements, such as automatic sprinklers and in some cases water storage tanks, to enhance

firefighting capabilities. The project will incorporate a water storage tank and sprinklers per the current Building Code. Rezoning the site would neither alter its distance to a fire station nor lessen the requirements for installation of fire suppression equipment. Based on the foregoing, there is no evidence in the record that the project would be detrimental to the health, safety and general welfare of the County. The project's compliance with all County Ordinances, California Health and Safety Code, California Building Code, and California Fire Code ensure that the project will be operated in accordance with all applicable health and safety regulations.

5. Public Protection: The project is not anticipated to increase the demand for police service facilities, as the project will not significantly add to the population of the County or include any marginal uses.
6. Parks and Recreation: The project will not increase the demand for parks or recreation facilities, as the project does not increase the housing stock in the County.
7. Flood Control and Drainage: The entire site's drainage is required to be addressed as part of the project design. As such, the proposal includes landscaping, a retention basin and porous asphalt which will account for 30% of the site. Currently, approximately a third of the runoff from parcel-2 (APN #002-140-025) – situated behind the gas station – drains onto Byron Highway and then into a ditch at the eastern end of the site. In contrast, the post-development strategy channels the runoff from both parcels 2 and 3 (APN #002-140-027) to an on-site detention pond first, before draining into the ditch. This approach will result in flow rate reductions of 0.158 cubic feet per second (cfs) (10yr-3hr storm) and 0.273cfs (100yr-3hr storm) between the pre and post-development phases. The County Public Works Department has reviewed the project and associated Stormwater Control Plan and deemed it preliminarily complete and has recommended conditions of approval which ensure compliance with federal pollutant discharge and County storm water management regulations. Those recommended conditions of approval (COA) have been incorporated into the project approval as COA's #33-55.

G. Alcohol Sales Findings

Section 82-38.606 of the County Ordinance Code requires specific findings to be made by the planning agency when a request for change in mode of operation of an alcohol sales use is considered for approval:

1. Required Finding: *A finding of "public convenience and necessity" (Business and Professions Code Section 23958.4(b)(2)), if the activity will be located in an area*

that has been determined by the state of California Department of Alcoholic Beverage Control to have an undue concentration of licenses as defined in Business and Professions Code Section 23958.4(a).

Project Finding: The project includes demolition and re-construction of a larger gas station, convenience store, and restaurant. A search of nearby properties indicated that the subject site is not within 700 feet of another alcohol sales business, which will aid in eliminating any undue concentration of alcohol licenses in this portion of Byron. Additionally, there are no schools, public parks, churches, hospitals, rehab facilities, or social service facilities within 400 feet of the site. Therefore, the project site is appropriate for the intended alcohol sales activity.

2. Required Finding: *A finding that the alcoholic beverage sales commercial activity will not aggravate existing problems in the neighborhood created by the sale of alcohol such as loitering, public drunkenness, alcoholic beverage sales to minors, noise and littering.*

Project Finding: The subject site has conducted alcohol sales for many decades. Although occasional "Calls For Service" have been generated from this location, Sheriff reports indicate that the causes are varied and not as result of alcohol sales. As such, this location is not within a "Crime Reporting District" as determined by the Contra Costa County Sheriff's Office, which suggests that the site does not experience an elevated amount of crime or "Calls For Service" compared to the County as a whole.

H. California Environmental Quality Act (CEQA) Findings

The combination of type and location of the project creates a scenario where there is minimal potential for adverse impacts to plant/animal communities, examples of California history, or the environment in general. However, the construction phase of the project may have impacts on unforeseen cultural resources yet to be discovered, air quality and traffic. To mitigate those potential impacts, mitigation measures have been incorporated into this project that once implemented will reduce potential impacts to less than significant levels. Once constructed, the gas station, restaurant and convenience store will primarily require electrical power and re-fueling for operation and will not produce significant amounts of hazardous waste as a byproduct of its operation. There is no substantial evidence that the project involves unusual circumstances, including future activities, resulting in, or which might reasonably result in, significant impacts which threaten the environment.

I. Findings for Granting Exceptions to Division 914 (Drainage)

The applicant shall be permitted exceptions from Section 914-2.004 (Offsite collect and convey requirements) and Section 914-12.010 (Detention Basins-Maintenance) of the Code to allow for private maintenance of the detention infrastructure.

1. *Required Finding: That there are unusual circumstances or conditions affecting the property.*

Project Finding: The existing drainage ditch hydraulic analysis indicates that the system collecting & conveying pre-development storm water 10-yr flows is inadequate. This is because the ditch traverses several private properties and with multiple culverts of unknown sizes and hydraulic properties. Any improvements to the on-site portion of the channel will not improve the channel's capacity as the further downstream flows remain constrained. So, the existing overall drainage system will continue to remain inadequate. The use of a private detention basin is necessary to make certain that the post development flows don't exceed predevelopment flows which will alleviate the inadequacy of the natural water course (drainage ditch).

2. *Required Finding: That the exception is necessary for the preservation and enjoyment of a substantial property right of the applicant.*

Project Finding: Site design parameters for retaining post-development onsite flows are fully utilized in the form of a private detention basin. These flows have to be collected and conveyed into existing public storm drainage, so that the applicant can exercise the right to develop the business to remain competitive with the growing market, in compliance with Contra Costa County municipal code as well as California Building Code. The exception is required to preserve substantial property rights of the property owner for the betterment of the property.

3. *Required Finding: That the granting of the exception will not be materially detrimental to the public welfare or injurious to other property in the territory in which the property is situated.*

Project Finding: Section 914-2.004 requires construction of improvements to make the system adequate. However, post development runoff is lower than predevelopment flows and will alleviate some capacity concerns of the public drainage infrastructure. Additionally, existing drainage patterns are maintained. The approved development is physically suitable for the type, density and intensity for this site. The use of detention basins is necessary to mitigate post development

flows and comply with this finding. Hence, granting of the exception will not be materially detrimental to the public welfare or injurious to other property/properties in the project vicinity.

CONDITIONS OF APPROVAL

Project Approval

1. Development is APPROVED as generally described in the application materials received by the Department of Conservation and Development/Community Development Division (CDD) on January 31, 2013, (including revised plans dated July 12, 2021) and subject to the conditions of approval below.
2. Approval is granted to allow for the following variance that meets the requirements of Section 26-2.2006 of the County Ordinance Code:
 - 2-foot setback granted where 10 feet is the minimum required for a monument sign.
3. Approval is granted to allow a Type 21 Alcohol Sales License – Off Sale General (beer, wine, and distilled spirits for consumption off the premises where sold).

Application Fees

4. The applications submitted were subject to an initial deposit of \$9,979 for the Land Use Permit/Development Plan Combination, \$6,500 for the rezone and \$8,500 for the General Plan Amendment. The applications are subject to time and material costs if the application review expenses exceed the initial deposit. Any additional fee due must be paid prior to an application for a grading or building permit, or 60 days of the effective date of this permit, whichever occurs first. The fees include costs through permit issuance and final file preparation. Pursuant to Contra Costa County Board of Supervisors Resolution Number 2019/553, where a fee payment is over 60 days past due, the Department of Conservation and Development may seek a court judgement against the applicant and will charge interest at a rate of ten percent (10%) from the date of judgement. The applicant may obtain current costs by contacting the project planner. A bill will be mailed to the applicant shortly after permit issuance in the event that additional fees are due.

Indemnification

5. The applicant (including the developer or any agent thereof) shall defend, indemnify, and hold harmless the County, agents, officers, and employees from any claim, action, or proceeding against the Agency (the County) or its agents, officers, or employees to attack, set aside, void, or annul, the Agency's approval concerning this project, which action is brought within the time period provided in Section 66499.37. The County will promptly notify the developer of any such claim, action, or proceeding and cooperate fully in the defense.

Compliance Report

6. At least 45 days prior to applying for a grading or building permit, whichever occurs first, the applicant shall provide a permit compliance report to the Department of Conservation and Development, Community Development Division (CDD) for review and approval. The report shall identify all conditions of approval that are administered by the CDD. The report shall document the measures taken by the applicant to satisfy all relevant conditions. Copies of the permit conditions may be obtained from the CDD. Unless otherwise indicated, the applicant will be required to demonstrate compliance with the applicable conditions of this report prior to applying for related permits.

The permit compliance review is subject to staff time and materials charges, with an initial deposit of \$1,500, which shall be paid at the time of submittal of the compliance report.

General Provisions

7. County File #LP2138-86 shall become null and void upon execution (e.g., issuance of building, demolition, or grading permits) of this project approval.
8. At least 30-days prior to occupancy, any new tenant shall submit a Property Use Verification (PUV) application to CDD staff in order to verify consistency with this permit. The PUV will be necessary to obtain any required business licenses from the County Tax Collector's Office.

9. This approval includes the design of a new gas station, convenience store and restaurant. Any changes to the approved plans stated above must be submitted for review and approval of CDD, and may require the submittal of a new application, if deemed necessary.
10. No portion of the building or site shall be leased, rented, or otherwise offered to the general public for the hosting of special events.
11. No live music shall be hosted at this location (amplified or otherwise).
12. The site shall be kept clean of all trash and graffiti at all times.
13. Prior to final building inspection of the building in which alcohol sales will be administered, the applicant shall provide evidence to the CDD that a license has been obtained or is under review by the California Department of Alcoholic Beverage Control for the alcohol sales approved under this permit. All required permits from the California ABC shall remain current and in good standing for the life of the approved alcohol sales use.
14. Outdoor seating shall not be allowed at this location without a subsequent land use permit/development plan combination application and review/approval by the DCD.
15. Upon the request of any private property owner located within 400 feet of the project site, the business operator shall ensure the pick-up and proper disposal of trash, litter, and garbage originating from any establishment on the subject property.
16. The applicant/owner/operator shall make a good faith effort to have fuel deliveries occur after 7pm.

Lot Line Adjustment

17. At least 60 days prior to requesting a grading or building permit, the applicant shall apply for and record an approved lot line adjustment that re-configures the property boundaries into the configuration approved with this application.

Air Quality

18. The following Bay Area Air Quality Management District, Basic Construction mitigation measures shall be implemented during project demolition and construction and shall be included on all construction plans:

- a. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- b. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- c. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- d. Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites.
- e. Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more).
- f. Enclose, cover, water twice daily or apply (non-toxic) soil binders to exposed stockpiles (dirt, sand, etc.).
- g. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- h. Replant vegetation in disturbed areas as quickly as possible.
- i. All vehicle speeds on unpaved roads shall be limited to 15 mph.
- j. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- k. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- l. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.

m. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations. (Mitigation Measure AIR-1)

19. A publicly visible sign shall be posted on the property with the telephone number and person to contact regarding construction-related complaints. This person shall respond and take corrective action within 24 hours. The CDD phone number to call in complaints shall also be visible to ensure compliance with applicable regulations.

Cultural Resources

20. Stop work and conduct an evaluation of accidental discovery of human remains or find.

Section 7050.5 of the California Health and Safety Code states that in the event of discovery or recognition of any human remains in any location other than a dedicated cemetery, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains until the coroner of the county in which the human remains are discovered has determined whether or not the remains are subject to the coroner's authority.

If human remains are encountered, work shall halt within 50-feet of the find and the County Coroner notified immediately. At the same time, an archaeologist should be contacted to evaluate the situation. If the human remains are of Native American origin, the Coroner must notify the Native American Heritage Commission within 24 hours of this identification. The Native American Heritage Commission will identify a Native American Most Likely Descendent to inspect the site and provide recommendations for the proper treatment of the remains and associated grave goods. All work shall be postponed until a qualified archaeologist has had an opportunity to evaluate any potential find. (Mitigation Measure CUL-1)

Hazards and Hazardous Materials

21. The project applicant/or owners and operators of businesses on the site shall obtain all required permits and follow all applicable County, State, and Federal regulations regarding the use, storage and disposal of hazardous materials and shall conduct their operations in compliance with such permits and regulations. (HAZ-1)

Transportation

22. At least 30-days prior to requesting Final Building Inspections (occupancy), the applicant shall provide evidence for review and approval of CDD staff, that the fair-share payment has been made towards the installation of a traffic signal at the Holway Drive/Camino Diablo intersection. (TRAFFIC-1)

Landscaping

23. At least 30 days prior to CDD stamp-approval of plans for issuance of a building permit, a final landscape and irrigation plan shall be submitted to the CDD for review and approval. The landscaping plan shall conform to the State's Model Water Efficient Landscape Ordinance or the County's Ordinance, if one is adopted. Prior to requesting a final inspection, the approved landscaping shall be installed and evidence of the installation (e.g., photos) shall be provided for the review and approval of CDD.

Signage

24. At least 30 days prior to submittal of a building permit application for signage, a detailed sign program shall be submitted for the review and approval of CDD.
25. Tree removal shall occur only with an approved grading or building permit.

Construction Noise

26. The following noise reduction measures shall be implemented during project construction and shall be included on all construction plans.

- A. Unless specifically approved otherwise via prior authorization from the Zoning Administrator, all construction activities shall be limited to the hours of 8:00 A.M. to 5:00 P.M., Monday through Friday, and are prohibited on State and Federal holidays on the calendar dates that these holidays are observed by the State or Federal government as listed below:

New Year's Day (State and Federal)
Birthday of Martin Luther King, Jr. (State and Federal)
Washington's Birthday (Federal)
Lincoln's Birthday (State)
President's Day (State)
Cesar Chavez Day (State)
Memorial Day (State and Federal)
Juneteenth National Independence Holiday (Federal)
Independence Day (State and Federal)
Labor Day (State and Federal)
Columbus Day (Federal)
Veterans Day (State and Federal)
Thanksgiving Day (State and Federal)
Day after Thanksgiving (State)
Christmas Day (State and Federal)

For specific details on the actual day the State and Federal holidays occur, please visit the following websites:

Federal Holidays: Federal Holidays (opm.gov)

California Holidays: <http://www.ftb.ca.gov/aboutftb/holidays.shtml>

- B. The applicant shall make a good faith effort to minimize project-related disruptions to adjacent properties, and to uses on the site. This shall be communicated to all project-related contractors.
- C. The applicant shall require their contractors and subcontractors to fit all internal combustion engines with mufflers which are in good condition and shall locate stationary noise-generating equipment such as air compressors as far away from existing residences as possible.
- D. Large trucks and heavy equipment are subject to the same restrictions that are imposed on construction activities, except that the hours shall be limited

to weekdays between the hours of 9:00 A.M. and 4:00 P.M. and prohibited on State and Federal holidays.

27. A pre-construction meeting shall be held to confirm that all noise mitigation measures and practices (including construction hours, neighborhood notification, posted signs, etc.) are completed prior to the start of construction.
28. The applicant shall notify neighbors within 300 feet of the subject property at least one week in advance of demolition, grading, and construction activities.

Debris Recovery

29. At least 15 days prior to the issuance of a grading permit or building permit, the developer shall demonstrate compliance with the Debris Recovery Cal Green program.
30. Dumpsters or refuse areas shall be screened from view from any roadway.

PUBLIC WORKS

**CONDITIONS OF APPROVAL FOR COUNTY FILE CDGP10-00003, CDRZ13-03222
and CDLP/DP13-02025.**

**COMPLY WITH THE FOLLOWING CONDITIONS OF APPROVAL PRIOR TO ISSUANCE
OF A BUILDING PERMIT AND/OR PRIOR TO INITIATION OF THE USE APPROVED
UNDER THIS PERMIT.**

General Requirements

31. Applicant shall comply with the requirements of Title 8, Title 9, and Title 10 of the Ordinance Code. Any exceptions(s) must be stipulated in these Conditions of Approval. Conditions of Approval are based on the site plan submitted to the Department of Conservation and Development on July 21, 2021.
32. For Public Works review for compliance relative to this Land Use Permit, a Compliance Review Fee deposit shall be submitted directly to the Public Works Department in accordance with the County's adopted Fee Schedule for such services. This fee is separate from similar fees required by the Department of Conservation and Development and is a deposit to offset staff costs relative to review and processing of these conditions of approval and other Public Works related services ancillary to the issuance of building permits and completion of this project.

33. Improvement plans prepared by a registered civil engineer shall be submitted, if necessary, to the Public Works Department, Engineering Services Division, along with review and inspection fees, and security for all improvements required by the Ordinance Code for the conditions of approval of this subdivision. Any necessary traffic signing and striping shall be included in the improvement plans for review by the Transportation Engineering Division of the Public Works Department.
34. The three parcels shall be merged into a single lot through a lot line adjustment or alternative process as prescribed by the Department of Conservation and Development.

Roadway Improvements (Byron Highway/Camino Diablo)

35. Applicant shall construct curb, 10-foot sidewalk, necessary longitudinal and transverse drainage, streetlights, pavement widening and transitions along the frontages of Byron Highway and Camino Diablo. Applicant shall construct face of curb to match the existing sidewalk and curb line on APN 002-140-010.
36. Any cracked and displaced curb, gutter, and sidewalk shall be removed and replaced along the project frontage of Byron Highway and Camino Diablo. Concrete shall be saw cut prior to removal. Existing lines and grade shall be maintained. New curbs and gutters shall be doveled into existing improvements.
37. Applicant shall construct a street type connection with 20-foot radii curb returns in lieu of standard driveway depressions at Byron Highway and Camino Diablo. Any existing driveways that are not to be used shall similarly be removed and replaced.

Access to Adjoining Property

Proof of Access

38. Applicant shall furnish proof to the Public Works Department of the acquisition of all necessary rights of way, rights of entry, permits and/or easements for the construction of off-site, temporary, or permanent, public, and private road and drainage improvements.

Encroachment Permit

39. Applicant shall obtain an encroachment permit from the Public Works Department, if necessary, for construction of driveways or other improvements within the right-of-way of Byron Highway and Camino Diablo.

Site Access

40. Applicant shall only be permitted access at the locations shown on the approved site/development plan.

Road Alignment/Intersection Design/Sight Distance

41. Applicant shall provide sight distance at the intersection of each driveway onto Byron Highway and Camino Diablo in accordance with Chapter 82-18 "Sight Obstructions at Intersections" of the County Ordinance Code. The applicant shall trim vegetation, as necessary, to provide sight distance at this intersection, and any new signage, landscaping, fencing, retaining walls, or other obstructions proposed at this intersection shall be setback to ensure that the sight line is clear of any obstructions. Per the California Highway Design Manual, improvements shall not obstruct sight distance for a design speed of 35 miles per hour on Camino Diablo and 45 miles per hour on Byron Highway.

Road Dedications

42. Property owner(s) shall convey to the County, by Offer of Dedication, the right-of-way as necessary to accommodate the existing and proposed frontage improvements, i.e., 10-foot offset from the face of curb.

Pedestrian Facilities

Pedestrian Access

43. Curb ramps and driveways shall be designed and constructed in accordance with current County standards. A detectable warning surface (e.g., truncated domes) shall be installed on all curb ramps. Adequate right-of-way shall be dedicated at the curb returns to accommodate the returns and curb ramps; accommodate a minimum 4-foot landing on top of any curb ramp proposed.

Utilities/Undergrounding

44. Applicant shall underground all existing utility distribution facilities, including those along the frontage of Camino Diablo and Byron Highway. Applicant shall provide joint trench composite plans for the underground electrical, gas, telephone, cable television and communication conduits and cables including the size, location and details of all trenches, locations of building utility service stubs and meters and placements or arrangements of junction structures as a part of the Improvement

Plan submittals for the project. The composite drawings and/or utility improvement plans shall be signed by a licensed civil engineer.

Drainage Improvements

Collect and Convey

45. Applicant shall collect and convey all stormwater entering and/or originating on this property, without diversion and within an adequate storm drainage system, to *an adequate* natural watercourse having definable bed and banks, or to an existing adequate public storm drainage system which conveys the stormwater to *an adequate* natural watercourse, in accordance with Division 914 of the Ordinance Code.

Exception Section 914-2.004

Applicant is granted an exception from the off-site collect and convey requirement of the Ordinance Code by the advisory agency as provided for in 92-6.002 of said Code provided:

- o The stormwater runoff from the site is reduced to, or below pre-project flow rates as a result from the construction of on-site detention infrastructure.
- o The existing runoff pattern is not changed.
- o Concentrated stormwater is not discharged onto adjacent property.

Exception Section 914-12.010

Applicant is granted an exception from the public entity maintenance requirement of the Ordinance Code by the advisory agency as provided for in 92-6.002 of said Code. The maintenance obligation relative to the detention/stormwater management basin will be satisfied in the Stormwater Maintenance Operation and Maintenance Agreement and Plan.

Miscellaneous Drainage Requirements

46. Applicant shall design and construct all storm drainage facilities in compliance with the Ordinance Code and Public Works Department design standards.
47. Applicant shall prevent storm drainage from draining across the sidewalk(s) and driveway(s) in a concentrated manner.

48. Compliance shall include developing long-term best management practices (BMPs) for the reduction or elimination of stormwater pollutants. The project design shall incorporate wherever feasible, the following long-term BMPs in accordance with the Contra Costa Clean Water Program for the site's stormwater drainage:

- Minimize the amount of directly connected impervious surface area.
- Install approved full trash capture devices on all catch basins (excluding catch basins within bioretention area) as reviewed and approved by Public Works Department. Trash capture devices shall meet the requirements of the County's NPDES Permit.
- Place advisory warnings on all catch basins and storm drains using current storm drain markers.
- Shallow roadside and on-site swales.
- Filtering Inlets.
- Construct concrete driveway weakened plane joints at angles to assist in directing run-off to landscaped/pervious areas prior to entering the street curb and gutter.
- Applicant shall attempt to incorporate the use of pavers and/or pervious pavement on-site to reduce the amount of directly connected impervious surface area.
- The applicant shall sweep the paved portion of the site quarterly, at least once a year a vacuum type sweeper. Verification (invoices, etc.) of the sweeping shall be provided to the County Clean Water Program Administrative Assistant at 255 Glacier Drive, Martinez CA 94553 (925) 313-2238).
- Trash bins shall be sealed to prevent leakage OR shall be located within a covered enclosure.
- Applicant shall develop a spills program for the on-site fueling facility and submit the plan to the Contra Costa County Clean Water Program for review and approval.
- Applicant shall provide a secondary containment system for the above ground fuel storage tank.
- Other alternatives comparable to the above as approved by the Public Works Department.

Stormwater Management and Discharge Control Ordinance

49. The applicant shall submit a final Storm Water Control Plan (SWCP) and a Stormwater Control Operation and Maintenance Plan (O+M Plan) to the Public Works Department, which shall be reviewed for compliance with the County's

National Pollutant Discharge Elimination System (NPDES) Permit and shall be deemed consistent with the County's Stormwater Management and Discharge Control Ordinance (§1014) prior to issuance of a building permit. All time and materials costs for review and preparation of the SWCP and the O+M Plan shall be borne by the applicant.

50. Improvement plans shall be reviewed to verify consistency with the final SWCP and compliance with Provision C.3 of the County's NPDES Permit and the County's Stormwater Management and Discharge Control Ordinance (§1014).
51. Stormwater management facilities shall be subject to inspection by the Public Works Department; all time and materials costs for inspection of stormwater management facilities shall be borne by the applicant.
52. Prior to issuance of a building permit the property owner(s) shall enter into a Stormwater Management Facility Operation and Maintenance Agreement with Contra Costa County, in which the property owner(s) shall accept responsibility for and related to the operation and maintenance of the stormwater facilities, and grant access to relevant public agencies for inspection of stormwater management facilities.
53. Prior to issuance of a building permit, the property owner(s) shall annex the subject property into Community Facilities District (CFD) No. 2007-1 (Stormwater Management Facilities), which funds responsibilities of Contra Costa County under its NPDES Permit to oversee the ongoing operation and maintenance of stormwater facilities by property owners.
54. Any proposed water quality features that are designed to retain water for longer than 72 hours shall be subject to the review of the Contra Costa Mosquito & Vector Control District.

Transportation Impact Mitigation

55. At least 30-days prior to requesting Final Building Inspections (occupancy), the applicant shall provide evidence for review and approval of Public Works and CDD staff, that the fair-share payment has been made towards the installation of a traffic signal at the Holway Drive/Camino Diablo intersection.

ADVISORY NOTES

THE FOLLOWING INFORMATION DOES NOT CONSTITUTE CONDITIONS OF APPROVAL. IT IS PROVIDED TO ALERT THE APPLICANT TO LEGAL REQUIREMENTS OF THE COUNTY AND OTHER PUBLIC AGENCIES TO WHICH THIS PROJECT MAY BE SUBJECT.

- A. Notice of 90-day opportunity to protest fees, dedications, reservation, or other exactions pertaining to the approval of this permit.

This notice is intended to advise the applicant that pursuant to Government Code Section 66000, et seq., the applicant has the opportunity to protest fees, dedications, reservation, and/or exactions required as part of this project approval. The opportunity to protest is limited to a 90-day period after the project is approved.

The ninety (90) day period in which you may protest the amount of any fee or imposition of any dedication, reservation, or other exaction required by the approved permit, begins on the date this permit was approved. To be valid, a protest must be in writing pursuant to Government Code Section 66020 and delivered to the Department of Conservation & Development, Community Development Division within the 90 days of the approval date of this permit.

- Applicant will be required to comply with the requirements of the Bridge/Thoroughfare Fee Ordinance for the East Contra Costa Regional Fee and Finance Authority/Regional Transportation Development Impact Mitigation (ECCRFFA/RTDIM) and East County Regional Areas of Benefit (ECRAOB), as adopted by the Board of Supervisors. Payment is required prior to issuance of a building permit.
- Contra Costa Health Services, Department of Environmental Health.
- Contra Costa Health Services, Hazardous Materials.
- Contra Costa County, Fire Protection District.
- Byron Sanitary District.