



CITY OF
HAYWARD
HEART OF THE BAY

PLANNING COMMISSION

MAY 10, 2012

Table of Contents

Agenda	2
Recommended FY13-FY22 Capital Improvement Program	
Staff Report	4
Attachment I - Letter from City Manager, dated April 19, 2012.	6
Attachment II - Recommended FY13-FY22 Capital Improvement Program	19
Conditional Use Permit Application PL-2012-0035 – Cash For Gold Express, Maurice Younes (Applicant) / Southland Office Investors, LLC (Owner) – Request to Operate a Cash for Precious Metals Store.	
Staff Report	20
Attachment I - Area Map	26
Attachment II - Hayward Licensed Gold Buying Stores Map	27
Attachment III - Secondhand Dealer Licenses Issued	28
Attachment IV - Applicant's Secondhand Dealer's License	29
Attachment V - Plans	30
Attachment VI - Conditions of Approval.	35
Attachment VII - Findings for Approval	38
Approval of Minutes	
April 5, 2012.	40



CITY OF HAYWARD
777 B STREET, HAYWARD, CA 94541-5007
(510) 583-4205 / www.hayward-ca.gov
LIVE BROADCAST – LOCAL CABLE CHANNEL 15

AGENDA
HAYWARD PLANNING COMMISSION
Thursday, May 10, 2012 , AT 7:00 PM
COUNCIL CHAMBERS

MEMBERS OF THE AUDIENCE WISHING TO ADDRESS THE PLANNING COMMISSION:

Obtain a speaker's identification card, fill in the requested information, and give the card to the Commission Secretary. The Secretary will give the card to the Commission Chair who will call on you when the item in which you are interested is being considered. When your name is called, walk to the rostrum, state your name and address for the record and proceed with your comments. The Chair may, at the beginning of the hearing, limit testimony to three (3) minutes per individual and five (5) minutes per an individual representing a group of citizens for organization. Speakers are expected to honor the allotted time.

ROLL CALL

SALUTE TO FLAG

PUBLIC COMMENT: (The PUBLIC COMMENTS section provides an opportunity to address the Planning Commission on items not listed on the agenda. The Commission welcomes your comments and requests that speakers present their remarks in a respectful manner, within established time limits and focus on issues which directly affect the City or are within the jurisdiction of the City. As the Commission is prohibited by State law from discussing items not listed on the agenda, your item will be taken under consideration and may be referred to staff for further action).

ACTION ITEMS: (The Commission will permit comment as each item is called for Public Hearing. Please submit a speaker card to the Secretary if you wish to speak on a public hearing item).

PUBLIC HEARINGS: For agenda item No. 1, the Planning Commission may make a recommendation to the City Council. For agenda item No. 2, the decision of the Planning Commission is final unless appealed. The appeal period is 10 days from the date of the decision. If appealed, a public hearing will be scheduled before the City Council for final decision.

1. Recommended FY13-FY22 Capital Improvement Program

[Staff Report](#)

[Attachment I - Letter from City Manager, dated April 19, 2012](#)

[Attachment II - Recommended FY13-FY22 Capital Improvement Program](#)



Assistance will be provided to persons requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Persons needing accommodation should contact Sonja Dal Bianco 48 hours in advance of the meeting at (510) 583-4204, or by using the TDD line for those with speech and hearing disabilities at (510) 247-3340.

2. Conditional Use Permit Application PL-2012-0035 – Cash For Gold Express, Maurice Younes (Applicant) / Southland Office Investors, LLC (Owner) – Request to Operate a Cash for Precious Metals Store. The Property is Located at 24303 Southland Drive, in the Commercial Business (CB-B20) Zoning District.

[Staff Report](#)

[Attachment I - Area Map](#)

[Attachment II - Hayward Licensed Gold Buying Stores Map](#)

[Attachment III - Secondhand Dealer Licenses Issued](#)

[Attachment IV - Applicant's Secondhand Dealer's License](#)

[Attachment V - Plans](#)

[Attachment VI - Conditions of Approval](#)

[Attachment VII - Findings for Approval](#)

COMMISSION REPORTS:

3. Oral Report on Planning and Zoning Matters
4. Commissioners' Announcements, Referrals

APPROVAL OF MINUTES

5. April 5, 2012
[April 5, 2012](#)

ADJOURNMENT

PLEASE TAKE NOTICE that if you file a lawsuit challenging any final decision on any public hearing item listed in this agenda, the issues in the lawsuit may be limited to the issues which were raised at the City's public hearing or presented in writing to the City Clerk at or before the public hearing. **PLEASE TAKE FURTHER NOTICE** that the City Council has adopted Resolution No. 87-181 C.S., which imposes the 90 day deadline set forth in Code of Civil Procedure section 1094.6 for filing of any lawsuit challenging final action on an agenda item which is subject to Code of Civil Procedure section 1094.5.

NOTE: Materials related to an item on this agenda submitted to the Planning Commission after distribution of the agenda packet are available for public inspection in the Permit Center, first floor at the above address. Copies of staff reports for agenda items are available from the Commission Secretary and on the City's website the Friday before the meeting.

DATE: May 10, 2012
TO: Planning Commission
FROM: Richard Patenaude, Planning Manager
SUBJECT: Recommended FY13-FY22 Capital Improvement Program

RECOMMENDATION

That the Planning Commission find that the Recommended FY13-FY22 Capital Improvement Program is consistent with the City's General Plan.

BACKGROUND/DISCUSSION

State law requires Planning Commission review of the Recommended FY13-FY22 Capital Improvement Program (CIP) as to its conformance with the City's General Plan. An overview of the proposal being presented to you is located in the April 19 letter to the City Council from the City Manager, which is found in the front of the attached Recommended FY13-FY22 CIP and included with this report as a matter of reference. Many of the projects in this edition of the CIP are focused on the maintenance, security, and upkeep at many of the City's government buildings, especially City Hall. There is also continued emphasis on improving the City's appearance through efforts such as the very successful mural program. In addition, there are a couple of new projects which are of importance to the community, such as funding for a disaster preparedness exercise as well as an update to the General Plan. Staff will be available at the meeting to provide further information and clarification.

PUBLIC CONTACT

A public hearing notice was published in the Daily Review the requisite 10 days prior to tonight's meeting. No responses to such notice were received at time of finalization of this report.

NEXT STEPS

The City Council will review this document during a work session in May.

Prepared by: Morad Fakhrai, Director of Public Works – Engineering and Transportation

Recommended by:



Richard Patenaude, AICP
Planning Manager

Approved by:



David Rizk, AICP
Development Services Director

Attachments:

- Attachment I: April 19 letter from City Manager
- Attachment II: Recommended FY13-FY22 Capital Improvement Program (previously distributed to Planning Commissioners; see document at:
http://www.hayward-ca.gov/blogdocs/cityclerk/2012/FULL_VERSION_OF_APRIL_CIP.pdf)



April 19, 2012

Honorable Mayor and City Council:

This letter serves to transmit the Ten-Year Capital Improvement Program (CIP) for your consideration: FY 2013 and FY 2014 generally reflecting actual scheduled projects; while FY 2015 through FY 2022 reflect planned or proposed projects that may be adjusted or changed as we approach closer to those years. The City Council will review this document during a work session in May. Beforehand, the Planning Commission will have reviewed the document for conformance with the General Plan. The City of Hayward's FY 2013 capital budget totals about \$106 million, with approximately \$357 million programmed for the period FY 2013 through FY 2022.

The draft before you contains description sheets for each current project, as well as identified future projects. In addition, an overview of program changes is offered in the "Project Changes and Modifications" section beginning on page 5.

Over the last few years, the number of funds within the document has grown through the addition of a housing authority capital fund and funds that address critical capital needs for Police, Fire, Maintenance, and Fleet. In this edition of the CIP, a new fund was added to address the capital needs for Library and Community Services. Council added all of these funds, whether funded or not in the current Plan, in order to better understand and capture a more complete picture of the overall capital needs for each program area, and to allow for the prioritization of projects versus the amount of funding available each fiscal year. Following past practice, a separate divider continues to be utilized for the internal service funds and the operating capital replacement funds.

As a matter of reference, the FY 2013 CIP also includes three funds that were discontinued due to the recent State action to dissolve redevelopment agencies within California: the Redevelopment Tax Allocation Fund, the Redevelopment Project Fund, and the Low/Moderate Housing Fund.

Unrestricted Funds

As was the case last year, there continues to be minimal unrestricted funding available for CIP-related projects. Most of the unrestricted funding available in the FY 2013 CIP continues to be allocated towards addressing or supporting Council's priorities, especially as they pertain to improving the attractiveness and safety of neighborhoods.

Although the economy is showing signs of improvement, the City's budget picture is still precarious, at best. Depending on the actual amount of the deficit for FY 2013, it is possible that some or all of the funding transferred from the General Fund to support capital projects may be eliminated in order to balance the budget. An additional balancing measure that has been utilized in prior years has been to increase the transfer from the Gas Tax fund to the General Fund to support

street maintenance-related activities paid out of the General Fund. For FY 2013 and FY 2014, this increase will amount to an additional transfer of \$200,000 per year to the General Fund, for a total of \$1,030,000 and \$1,038,000, respectively. It is important to note that this increase to the transfer will not hinder the City's ability to fund pavement-related projects in the Gas Tax Fund due to the voter-approved additional \$10 fee assessed on registered vehicles in Alameda County. The City expects to annually receive approximately \$630,000, commencing in FY 2012.

Consistent with the priorities established by Council, many of the issues raised at Neighborhood Partnership meetings have been addressed, such as new speed control measures (i.e. speed lumps) and improved lighting. Such efforts will continue into FY 2013; however, the amount and flexibility of funds available to address neighborhood concerns continues to be much less than needed. As was the case last year, staff will not be able to respond as quickly or to the extent residents have come to expect in prior years.

During the past couple of years, there was a key emphasis on implementing projects that enhance the City's appearance. The one project that best demonstrates this effort is the painting of murals in the downtown and along Foothill Boulevard; this effort will continue as funds allow.

New Projects

The focus of the FY 2013 CIP shifts more towards maintenance, security, and upkeep at many of the City's government buildings, especially City Hall. There are new small projects in the CIP that pertain to improving the sound system in the rotunda, as well as improvements to the City Council chambers. Other key maintenance projects are funded out of the Facilities Internal Service Fund and discussed later in this letter.

While maintenance-related projects will be emphasized in FY 2013, there are other projects that address more global, critical community needs. For one, a disaster preparedness exercise is scheduled for FY 2013. This exercise will allow City staff members to practice and enhance their abilities to quickly and efficiently provide critical services to the public in the event of a major crisis.

It is time for another biennial community satisfaction survey as directed by Council, and this has been added into the CIP for FY 2013, which covers all facets of City operations; and which tests the priorities of the community.

One other major project expected to be completed by FY 2014 is an update of the City's General Plan. At Council direction, the cost of this Plan update has been reduced to \$2.2 million, and will be funded through a combination of General Fund transfers and revenue collected from building permit fees; and the projected timeframe for Plan completion has been reduced to two years.

As noted earlier, CIP continues to highlight the Council priority of improving the City's appearance wherever possible. One series of projects serves to support that priority through the beautification and improvement of landscaping along key thoroughfares throughout the City. Over the life of the CIP, five separate projects are noted. During FY 2011, the roundabouts in the Fairway Park area were improved, while landscaping improvements along portions of Industrial Parkway have entered the design phase and will be completed during FY 2013.

It is important to note that the Neighborhood Improvement Project, the General Plan update, and the maintenance projects proposed in this CIP continue to be budgeted out of the City's Capital Improvement Fund. They rely on revenues received from construction tax, non-discretionary reimbursements from outside agencies, and the aforementioned building permit fees. While the fund currently enjoys an adequate fund balance (most of this is reserved for the New Library Programming/Design Project), that could change if the needed General Fund transfer for the General Plan update is deferred or postponed indefinitely.

Library

A continuing key project in the Capital Improvement Fund is the design and construction of a new Community Learning Center (Library). Several factors have affected the preliminary design process. The recommended site entails acquiring land from the US Postal Service when it becomes available. Should that property become available for purchase, funding is available to complete this acquisition during FY 2013, along with completion of the preliminary design process. Although delayed, this project continues to be a high-priority item for staff and the community, and will show some incremental design progress during the coming fiscal year so that the project does not lose momentum. As noted in last year's transmittal, the donation of \$10 million from Calpine has favorably positioned the City to establish a funding foundation from which to pursue bond or alternate funding for construction of the new Community Learning Center in the coming years.

In order to address all major infrastructure projects, staff added a new project to the Capital Improvement Fund in FY 2012 to conduct a comprehensive needs analysis of all City facilities. This project will allow for the planning of future bond-related programs for infrastructure improvements of various City facilities (e.g. a new Police building and fire station improvements).

In order to address critical capital needs for the Community Learning Center, a new fund was created for FY 2013 for that very purpose. The sole project in this new fund will allow for the implementation of a state-of-the-art, automated materials handling (AMH) system in the existing Main Library facility. This is a project that will not only enhance current library operations, but will ultimately be integral to the construction of a new Community Learning Center and Library facility. Funding is provided through a portion of the Calpine donation consistent with that money being set aside for furniture, fixtures, and equipment that might not otherwise be eligible acquisitions with bond money.

Streets and Roads

With the assistance of Federal, State, and local funding, the City was able to complete work on several larger-scale projects associated with pavement rehabilitation and sidewalks during FY 2012. The City completed a total of six major pavement rehabilitation or reconstruction-related projects at a total of almost \$4 million. One of the larger projects, which totaled over \$1.7 million, included pavement rehabilitation along portions of D Street, Huntwood Avenue, Industrial Parkway SW, and Second Street.

The Route 238 Corridor Improvement Project continues to progress at a steady pace. In July 2010, the first phase of construction commenced on the project. Thus far, key milestones have been reached on time and according to schedule; staff will continue to carefully monitor the

progress of the contractor and advise Council of any significant changes to the timing for this project. It is expected that all construction should be completed by the end of FY 2013.

For FY 2013, the most critical new roadway project continues to be the 880/92 Reliever Route project, which includes construction of the Whitesell Street extension and improvements along the Winton Avenue corridor. The design will be completed in early FY 2013, while all necessary right-of-way should be acquired by the end of FY 2013, with construction commencing soon thereafter. As noted in prior staff reports on this item, nearly all of the costs associated with the design and construction of the reliever route project will be reimbursed from Measure B funds through the Alameda County Transportation Commission (ACTC), and staff will continue to work proactively to minimize the right-of-way impacts of the project.

One other major project, which is expected to begin construction in FY 2013, involves improvements along Dixon Street in support of the South Hayward BART transit-oriented development. Improvements specific to this project include streetscape and access improvements to both sides of Dixon Street between Tennyson Road and Valle Vista Avenue.

Livable Neighborhoods

City staff continued to focus efforts on supporting livable neighborhoods through the evaluation, design, and construction/improvement of sidewalks and wheelchair ramps throughout the City. During FY 2012, staff targeted Districts 6 and 9, which include the area bordered by Tennyson, La Playa Drive, and Hesperian, as well as the area bordered by Winton, Grand, and A Street for improvement at a cost of approximately \$1 million. In addition, new sidewalks were installed along Bellina Street from 2nd Street to 3rd Street at a cost of about \$280,000, thereby greatly improving pedestrian safety in that area. Similar funding is set aside for the FY 2013 projects, which will include commencing work in District 4 (bordered by Jackson Street and Harder Road to the north and Tennyson Road to the south) and District 5 (bordered by Industrial Parkway to the north and Whipple Road to the south), as well as new sidewalk construction along Franklin Avenue, Harder Road and Phillips Way.

In late FY 2012, the City received authorization from Council to replace all of its streetlights and traffic signal safety lights with light-emitting diode (LED) lights at a total cost of approximately \$3.8 million. The LED streetlight conversion project will convert about 7,600 streetlights to LEDs, while approximately 400 traffic signal safety lights throughout the City will be switched over to LEDs as well. It is estimated that the citywide conversion to LED streetlights would save about \$350,000 per year in utility costs, while there will be an additional energy cost savings of about \$60,000 annually from the traffic signal safety light conversion.

Redevelopment

As mentioned above, due to the State's irresponsible action to dissolve redevelopment agencies across California, several redevelopment-related funds were eliminated from the CIP. However, the Low/Moderate Housing Capital fund was replaced by a capital fund in the City's Housing Authority (Fund 242), which assumed responsibility for administration of the remaining low/moderate housing funds coming from property tax increment revenues. The current project includes construction financing for 206 units of affordable housing at South Hayward BART; the 206 units will consist of 81 units for senior housing and 125 for family housing.

Utilities

Utilities capital projects are developed and implemented to deliver dependable, efficient water and sewer service to Hayward residents and businesses. There is a strong focus on ensuring that the infrastructure is structurally reliable and appropriately sized to meet current and future community needs. Environmental Services capital projects focus on water conservation and energy use efficiency. Specific projects address resource conservation and recycling, clean and green energy, and stormwater runoff quality and protection.

Water System CIP (\$68,150,000)

Major water system projects in the near term focus on improving the system's reliability. In FY 2012, installation of emergency sudden-loss valves at various locations was completed. These devices can be set to automatically or manually close in the event of an earthquake, which will minimize the loss of precious water resources in these critical situations. Work was also initiated on seismic improvements to the Mission 24-inch aqueduct where it crosses the Hayward Fault. The aqueduct is an essential water facility and needs to be returned quickly to service after a seismic event. A new project has been added to evaluate the condition of the 24-inch aqueduct in its entirety and make recommendations regarding needed improvements related to its seismic performance, and to apply cathodic protection as needed to control corrosion.

A project to replace 4,100 feet of deteriorated 16-inch pipeline between the 250 and 500 reservoirs will be undertaken in FY 2013 to improve water supply reliability to the higher elevations. In addition, the Highland 250 and Maitland reservoirs are currently scheduled to undergo seismic upgrades over the next two to three years.

In future years, projects to replace the existing one-million-gallon (MG) High School Reservoir, located above City Center Drive, with a three MG facility, and to construct a new two MG reservoir on Hesperian Boulevard are included to improve storage capacity. Various water main replacement and improvement projects are included to ensure that system capacity requirements are achieved and that facilities are maintained for optimal operating efficiency. A new project has been added over the next four to five years to replace existing cast iron pipes, which are prone to breaks as they age.

Several new projects have been added to the CIP to address issues of water quality and system management. These include installation of a chlorine booster station to maintain water quality, improvements to the Garin Reservoir to reduce the need for excessive flushing and water waste, and assessment of the City's cross connection control program, which protects drinking water supplies from contamination caused by harmful substances entering the system through backflow.

In order to keep pace with changing conditions and to assess future needs, the CIP includes an update to the Water System Master Plan in FY 2013 to evaluate the system, in view of current conditions, future needs, and the improvements made in recent years. Additional funding is proposed in subsequent years for recommended projects identified in the update.

Sewer System CIP (\$78,389,000)

The Sewer Collection System will undergo several pipeline improvements in the next few years. These improvements are planned to either replace pipelines that are showing signs of age and

require frequent maintenance and repair, or to upsize undersized mains to increase their hydraulic capacity to handle current and near-term future flows. A Master Plan update is also planned for the Sewer Collection System, beginning in FY 2012, with funding provided in future years to implement recommendations resulting from these planning efforts.

An asset management program, benefitting both the Water and the Sewer Collection Systems, was implemented in FY 2012. This program enables efficient monitoring and replacement planning of Utilities structures, equipment, meters, and facilities, as well as proactive maintenance and cleaning schedules to keep facilities operating at optimum efficiency.

Noteworthy, near-term Water Pollution Control Facility (WPCF) projects include Phase II Improvements that will enclose the effluent channel and convert an existing gravity thickener to a new primary clarifier. Enclosing the channel would reduce maintenance and operational impacts of using an open dirt channel and the master plan identifies a need for an additional primary clarifier. Design of the effluent channel enclosure will commence in FY 2012, with construction planned for the following year. Design of the conversion of the gravity thickener is scheduled to commence FY 2013, with construction to begin the following year. Work is also scheduled to begin in FY 2013 on the replacement of an existing trickling filter that is inefficient and does not meet current seismic standards. This project is also part of the WPCF Phase II Improvements.

An update of the WPCF Master Plan will commence in FY 2012 to evaluate treatment process and equipment needs to meet future demands particularly in light of the recently completed and planned improvements. The Master Plan update will also look at the need for additional sludge drying facilities and future sludge disposal alternatives. In addition to infrastructure improvements, the Utilities and Environmental Services CIP will continue to focus on identifying and implementing sustainable practices and resource efficiency opportunities within the Utilities systems.

Water System projects in this CIP budget include:

- **Water Conservation.** Funding is continued for City rebate programs for residents and businesses to replace existing fixtures, such as toilets, with high efficiency models that exceed the fixture efficiency currently required by the State Plumbing Code.
- **Leak Detection Survey.** A survey of the entire water distribution system was initiated in FY 2012 to locate, evaluate the size of, and repair leaks along the City's water mains. As of April 2012, the project is over 50% complete. A number of leaks have been detected; City Water Distribution crews work on fixing the leaks as they are detected and marked. Project completion is anticipated by the end of FY 2012.
- **Conversion to Advanced Meter Infrastructure (AMI).** This project would evaluate the feasibility of converting existing water meters to AMI meters, enabling customers to obtain accurate real-time water use information and better manage their water consumption. Because of their accuracy and immediacy, AMI meters can achieve significant water savings, but such an endeavor would be costly. Thus, it is critical that the City review carefully all of the issues, including issues encountered by other utility providers, before making a decision on whether to proceed with a conversion. Assuming that the results of the study are positive, funding is included to implement a conversion project beginning in FY

2013.

- **Solar Power at Various Water Facilities.** A new project has been added to install solar panels at water facilities, such as pump stations, where significant amounts of purchased energy are used.

The WPCF is the largest energy user among all of the City facilities, utilizing the equivalent of over \$1 million of electricity. A new project has been added to the CIP to review and make recommendations for energy management by evaluating the most efficient and effective way of using available energy resources, such as solar and cogeneration. In addition to alternative energy strategies, the CIP includes a recycled water project. Specific energy projects, which are listed below, will be implemented to help the City reduce its reliance on PG&E.

- **New Energy Co-Generation System.** The City Council recently approved a design/build contract to construct a new co-generation energy system utilizing fuel cell technology. Energy production from this project, combined with the solar energy that is now produced from the one-megawatt solar facility, will enable the City to significantly reduce its reliance on purchased power. Fuel cells are cleaner and greener than other co-generation alternatives, and a sizeable reduction in air pollutants emitted from the system will also be realized. A smaller supporting project, commencing construction in FY 2012, involves the installation of a grease receiving and processing facility so that waste grease can be put to beneficial use at the WPCF by increasing digester gas production, which can then be utilized in the Plant's new energy co-generation system.
- **Solar Energy.** A recently completed project that constructed a one megawatt solar facility at the WPCF enables the facility to draw about 30% of its needed energy from an alternative, clean, renewable source. Funding is provided in the proposed CIP to evaluate, and if economically feasible, construct a similarly sized second facility.
- **Recycled Water.** In order to make more efficient use of potable water, the City is pursuing the opportunity to produce recycled water, in cooperation with Calpine, and to develop a distribution system to deliver the excess tertiary treated recycled water to nearby sites for use in landscape irrigation and some industrial processes.

Airport

A primary focus at the Airport during FY 2013 will be the construction of a new Airport administration building at a cost of approximately \$2.6 million. This building will provide a single location for transient users to meet and will provide a facility for pilots to conduct flight planning activities. Pavement rehabilitation needs are also addressed in the CIP for the Airport with an annual allocation of \$350,000 for such work. Similar to the City's street pavement rehabilitation, a program is now in place to bi-annually monitor and update pavement conditions on the Airport, starting in FY 2013. The program will greatly assist Engineering and Airport staff in targeting which pavement segments would be the best candidates for future pavement rehabilitation work. In addition to the annual project noted above, one other pavement-related project is scheduled for FY 2013 funded through a grant from the Caltrans Division of

Aeronautics. This new, non-recurring project will support the repair of several airfield taxiways that are in poor to very poor condition.

One other critical project that is scheduled to commence construction next fiscal year will enclose portions of Sulphur Creek in order to address a safety issue resulting from the existing open channel that crosses the runway safety areas. Federal funding will reimburse the Airport Enterprise Fund \$1.35 million out of the estimated total cost of \$1.5 million. The total amount of investment planned at the Airport from FY 2013 through FY 2022 is approximately \$20.5 million, with much of the funding for these projects dependent on projected Federal Aviation Administration (FAA) grants under the Airport Improvement Program, as well as transfers from the Airport's operating fund. It is worth noting that several projects in the future years of this fund were eliminated from the CIP due to a tightening of allocations from the FAA to the City over the next several years.

Facilities

The Internal Service Fund for Facilities is utilized to address the improvements and upkeep necessary for many of the City's older buildings, such as the Police Department and various fire stations. Some of the more prominent projects in this fund include HVAC upgrades, roof repair and replacement, and the replacement of flooring and carpet at various City facilities. As noted earlier in this letter, maintenance projects for FY 2013 (approximately \$400,000) include a new fire alarm/smoke detector system at the Police department, replacement camera systems at City Hall, , and the interior/exterior painting of various City facilities. The projects contained within this fund are dependent on facility charges originating from supported departments. The long-term goal is to develop sufficient reserves in the Facilities Fund to address City-wide improvements and maintenance on an on-going and systematic basis.

Technology Services

Another Internal Service Fund addresses the aging information technology infrastructure and the unmet technology needs throughout the City. During the past several years, many of the City's desktop computers have been replaced with newer, more efficient models; this replacement cost is an ongoing expense of \$100,000 per year as the life span of most desktops is no more than four years. Other ongoing, annual appropriations have been provided for the replacement of public safety mobile units and network servers of \$50,000 and \$100,000, respectively. Other technology infrastructure improvements that have no long-term replacement funding or are inadequately funded at this time are included in the Identified Capital Needs document, which is discussed in greater detail in the next section of this letter.

The largest project in this fund is the replacement of the City's outdated legacy financial system with an Enterprise Resource Planning (ERP) system. During FY 2012, a thorough needs analysis was completed and a vendor selected. Several modules will be implemented in FY 2013 (at a cost of approximately \$1.5 million), with the remaining modules to be installed from FY 2014 through FY 2016 at cost of \$940,000 in FY 2014 and \$140,000 each in FY 2015 and FY 2016; full implementation is expected by the end of FY 2016.

Successful implementation of projects within this fund is wholly dependent on the assessment of Information Technology Charges on supported departments. And, there is no source yet

identified for accumulating funds to replace major systems, such as the new CAD/RMS system, in the out years at the end of their useful lives.

Fleet

Commencing with the FY 2011 CIP, Fleet capital replacement funds were added, one for General Fund vehicles and one for Enterprise vehicles. General Fund vehicle needs are separated as to Police, Fire, and general fleet. Primary identified funding sources include proceeds from loan financing and transfers from the General Fund. In the case of Enterprise vehicle replacement, annual funding is now being transferred from the Enterprise funds for their planned vehicle replacements. Staff is committed to ensuring that the City's fleet of vehicles reflects Council's "green" priority. To that end, staff has thoroughly evaluated and is incorporating (where possible) the use of "green" technology into vehicle purchases. Furthermore, staff has been critically assessing the needed amount of fleet vehicles, reducing the number of "take-home" vehicles, and determining which vehicles are non-essential and thus have been or can be removed from the City's fleet and not replaced.

Identified Capital Needs

The last section of the CIP is the Identified and Unfunded Capital Needs section. The list was significantly modified as part of the FY 2011 CIP and reviewed in even greater detail during the FY 2012 and FY2013 processes. Several projects within Technology Services were removed from the list as they were funded or completed in FY 2012 or FY 2013. Such projects, totaling approximately \$2,100,000, include the Enterprise Resource Planning System, network server replacement, and SharePoint business intelligence and enterprise content management. Likewise, Facilities has been able to fund several projects that were in prior editions of the unfunded capital needs list. Among the highlights are a lighting retrofit at City Hall and the Police Department; the provision of air conditioning to wards, staff areas, and public viewing areas at the animal shelter; surveillance camera replacements at City Hall and the City Hall parking structure; and the installation of a new smoke detector system at the Police Department. Total for all of these Facilities projects was approximately \$450,000. As noted in last year's letter, all of the annual vehicle replacement needs for Fleet are now reflected in the CIP.

In order to create a more thorough and comprehensive document that reflects all of the City's needs, many other projects were added as well and are identified with shading in the document. The Technology Services section includes cost updates to previously listed projects as well as identified unmet needs from the IT Strategic Plan, such as replacement of the citywide wireless network infrastructure and a network file share and backup system. Numerous projects were also added to the Facility Maintenance and Improvement Projects section, such as projects pertaining to the maintenance and replacement of various appurtenances for Police and at the fire stations. The estimated, combined cost of all new projects in the Identified Needs category mentioned above for Facilities and Technology Services is \$8,300,000. In addition, cost estimates were updated for new fire stations at Station #7 and Station #9. As a result of the additions/revisions to this list, the total value of the unfunded projects in the Identified Capital Needs document exceeds \$325 million for at least the next ten years.

Many of the projects that might likely be included in any potential future bond measure (i.e. a new Police facility, construction of a new Fire Station #7, and the new Library) are also

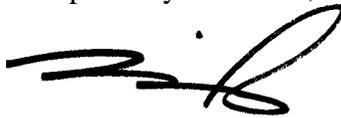
identified in this document. The estimated cost for these major facilities total approximately \$110 million. Additionally, projects in the Industrial Area, including many interchange related projects along 880 and 92 corridors are the largest part of this unfunded list of approximately \$170 million. Many of these projects are identified in the Countywide Transportation Plan, as well as the Transportation Expenditure Plan, and could be funded if the next cycle of Measure B is approved by Alameda County voters in November 2012.

It is important to reiterate that this list identifies critical needs that have, as of now, no identified funding sources. The number of projects will continue to grow over time as will the amounts needed to fund these extremely important upgrades/repairs to infrastructure and equipment.

In light of the ongoing structural deficit in the General Fund and stagnant revenues, staff has re-doubled its efforts to dedicate as many financial and staff-related resources as possible towards projects deemed as most critical to both the community and Council. As noted earlier in this letter, although General Fund transfers have been identified to fund critical Police, Fire, and Maintenance capital and fleet replacement needs, many of the projects may need to be postponed if the proposed transfers from the General Fund are needed to balance the budget for FY 2013 and/or beyond.

Attached to this letter is a summary of the key assumptions (Attachment A) that were used in preparing the FY 2013 CIP. The staff and I look forward to discussing projects and issues embodied in this capital plan.

Respectfully submitted,



Fran David
City Manager

Attachment A – Assumptions

ATTACHMENT A

FY13 Capital Improvement Program
Working Assumptions

1. Interest Rates: Rate of return on existing fund balances - 1% for FY13-FY14; 2% for FY15-FY19; and 3.0% for FY20-FY22. Projected interest rate on City borrowing - based on current market information - 4.0% per year.
2. Construction Inflation Rate: 1% per year.
3. Monies received from Gas Tax, which includes Proposition 111 (Gas Tax), have been decreased by 4% for FY13. For FY14, Gas Tax receipts are expected to increase slightly, as reflected in the 1% increase from FY13. For FY15 through FY22, Gas Tax has been escalated by 1% per year. The City will receive \$630,000 in FY12 annually for street improvements due to a recent voter-approved increase of \$10 to the vehicle licensing fee; this amount has been escalated by 1% per year from FY13-FY22. Transfers to the General Fund from the Gas Tax Fund to support eligible expenditures for FY13 will be \$830,000, increasing by 1% per year through FY22.
4. Based on sales tax projections provided by the City's Finance Department, anticipated revenue from the Measure B program is assumed to be \$1,835,000 in FY13 and \$1,872,000 in FY14 (an increase of 1.5% for FY13 and 2% for FY14); future increases are estimated at 2% from FY15 through FY22.
5. Monies received from the Measure B Non-Motorized Fund for pedestrian and bicycle improvements are assumed to be \$376,000 in FY13 and \$383,000 in FY14 (an increase of 1.5% for FY13 and 2% for FY14); future increases are estimated at 2% from FY15 through FY22.
6. Due to a marked slowdown in development, revenue from the Construction Improvement Tax is expected to decrease by 50% (from \$200,000 to \$100,000) in FY13. Gradual increases are expected from FY14 through FY22, at which time revenues are assumed to have returned to the previous level of \$250,000.
7. The per year transfer from the Route 238 Trust Fund related to the Route 238 Corridor Improvement Project will continue at \$250,000 until FY20-FY21, at which time the residual amounts remaining in the fund balance will be transferred to the Street System Improvements Fund.
8. Funds received under the Governor's Traffic Congestion Relief Program (TCRP) established under Proposition 42 were eliminated in FY11 and replaced by a Gas Tax "swap," which serves to backfill the amounts that would have been provided through Proposition 42. This amount is transferred from the Gas Tax Fund to the Street System Improvements Fund on a monthly basis. It is estimated that this amount will be about \$1.7

million in FY13; future years (FY14-FY20) are estimated to increase by 1% per year. Monies received under this source will be applied towards street maintenance projects.

9. In prior years, the transfer from the General Fund to the Transportation System Improvement Fund was significantly reduced in order to reduce General Fund expenditures. However, the \$350,000 per year transfer from the General Fund to the Transportation System Improvement Fund will be re-established in FY13 and will continue at that level through FY22; this transfer provides funding for transportation projects.
10. Although not shown as a specific project since PG&E will fund the work, use of an estimated \$7.8 million in Rule 20A monies allotted to the City will allow for completion of the undergrounding of utilities on Mission Boulevard from Sycamore Avenue to Overhill Street, which will be completed as part of the Route 238 Corridor Improvement Project. An estimated \$4 million will be required for the Phase II project which will complete undergrounding of Mission Boulevard for its entire length within the City. Based on Rule 20A allocations to date and projected future reductions by PG&E, it is projected that these projects will use the City's allocation through FY18.
11. Planned transfers from the sewer and water operating funds to the capital funds allows for critical capital projects identified in the Sewer and Water System Master Plan Updates, plus the Water and Sewer Seismic Study, to be accomplished.
12. Continued transfers from the Airport Operations Fund provide funding for Airport Capital Improvement Projects identified in the Airport Master Plan and Updated Airport Layout Plan.
13. Facility charges against operating budgets will provide \$275,000 in FY13 and \$250,000 in FY14, eventually decreasing to \$200,000 in FY15-FY22 to provide an ongoing funding source for the Facilities Internal Service Fund.
14. Information Technology charges against operating budgets will provide \$82,000 in FY13, increasing by approximately 3% per year to \$98,000 in FY22 to provide a minimum ongoing funding source for the Technology Services Internal Service Fund. A transfer of \$209,000 from the General Fund in FY13 will fund various projects in this fund, such as public safety mobile replacements, network server replacements, and geographic information system improvements.
15. A transfer of \$797,000 from the General Fund into the Fire Capital Project Fund will occur in FY13; \$400,000 of the amount is reserved to fund design work pertaining to the new Fire Station #7. In FY14 and FY15, the transfer will be \$779,000 and \$137,000, respectively. From FY16-FY22, the amount of the annual transfer will increase between \$2,000 and \$4,000. A transfer of \$170,000 from the General Fund into the Police Capital Project Fund will occur in FY13; in FY14 and FY15, the transfer will be \$349,000 and \$173,000, respectively. The transfer will then fluctuate from FY16-FY22; the amount to be transferred will depend on residual fund balance and the overall level of need in future years. These transfers will provide critical funding necessary for major equipment replacement, e.g. fire hoses, self-contained breathing apparatus, guns, etc. A transfer

from the General Fund of \$10,000 per year from FY13-FY22 is provided in the Maintenance Services Capital Fund in order to purchase replacement equipment on an annual basis.

16. In order to replace vehicles within the Enterprise funds each fiscal year, the following annual transfers will occur into the Fleet Management Enterprise Capital Fund: \$71,000 from the Airport Operating Fund; \$85,000 from the Stormwater Fund; \$240,000 from the Sewer Fund; and \$286,000 from the Water Fund.
17. In order to replace vehicles within departments funded through the General Fund, transfers into the Fleet Management General Fund Capital Fund will be \$500,000 in FY13, increasing to \$600,000 in FY 14 and \$1,000,000 in FY15, respectively. From FY16-FY20, the transfer will increase by \$500,000 per year, culminating in a transfer of \$3,000,000 into the fund by FY19 and continuing through FY22.
18. The Program reflects expected cash flow in future program years and Council appropriations carried forward from the current year.

RECOMMENDED FY13-FY22 CAPITAL IMPROVEMENT PROGRAM
(PREVIOUSLY DISTRIBUTED)

DATE: May 10, 2012

TO: Planning Commission

FROM: Arlynn J. Camire, Associate Planner

SUBJECT: **Conditional Use Permit Application PL-2012-0035 – Cash For Gold Express, Maurice Younes (Applicant) / Southland Office Investors, LLC (Owner) – Request to Operate a Cash for Precious Metals Store.**

The Property is Located at 24303 Southland Drive, in the Commercial Business (CB-B20) Zoning District

RECOMMENDATION

That the Planning Commission finds that 1) the proposed project is Categorical Exempt from the California Environmental Quality Act (CEQA) Guidelines, Section 15301: Existing Facilities, and 2) approves the conditional use permit, subject to the attached findings and conditions of approval.

BACKGROUND

“Cash For Gold Express” would be located in a ground floor, 1,120-square-foot tenant space in the Southland Office Center, a six-story office building. The business would front on a parking lot adjacent to, and visible from, Southland Drive (see area map, Attachment I). The space was most recently occupied by Staff Chex staffing agency. The office building contains a variety of administrative, legal and medical office uses: Nume Nail and Skin Salon, California Employment Services, Office of former Supervisor Nadia Lockyer, and Bank of the West are the other uses that occupy the tenant spaces that face Southland Drive. The Elephant Bar and Panera Bread restaurants are to the north, and Chase Bank and a retail center with restaurants and a game store are located south of the office building.

According to Hayward Police Department records, there are three establishments in the City of Hayward that are similar cash for gold businesses located within an approximately one-mile radius of the proposed establishment (see map, Attachment II). These businesses are located at 24563 Soto Road, 402 West Harder Road, and 206 A Street.

A Secondhand Dealer License, issued by the California Department of Justice (DOJ), is required to operate a “cash for gold” business. California Business and Professions Code Section 21641 defines a *secondhand dealer* as any person whose business includes buying, selling, taking in trade, taking in pawn, taking on consignment, accepting for auction, or auctioning secondhand personal property. The Hayward Police Department facilitates the process, which includes reviewing each application, completing background checks, and forwarding the applications to DOJ. The Hayward

Police Department also imposes conditions of approval that include the requirement of documentation for each item bought and a 30-day hold for all items bought, as required by the DOJ.

There are 15 active Secondhand Dealer Licenses within the City (Attachment III). These businesses include a Best Buy Mobile, one pawn shop, three jewelry stores, a cash for gold kiosk, a cash for gold store, two check cashing stores, one game stores, a real estate office, and Hampton Inn (the license allows precious metal and antique buying events operated by THR & Associates at the hotel). On January 18, 2012, the applicant, Maurice Younes, was issued a secondhand dealer's license by the DOJ through the Hayward Police Department (Attachment IV).

DISCUSSION AND STAFF ANALYSIS

Project Description – Cash For Gold Express would offer cash for precious metals in forms such as jewelry, dental work, and coins. It is one of a nationwide chain of “Buy My Gold Buyer” stores (www.mygoldbuyerstores.com). Customers can visit the website and mail their items for an estimate or visit the proposed store. There would be four employees in two shifts. Staff recommends the hours of operation be similar to those permitted by the Hayward Municipal Code for Secondhand Dealers, which are 9:00 a.m. to 6:00 p.m. Sunday through Thursday, and 9:00 a.m. to 10:00 p.m. on Friday and Saturday. “Cash For Gold Express” would occupy a tenant space improved with a lobby/waiting area and three office spaces. One of the offices would be located behind a bullet resistant wall, door, and window, which would be the main workspace of the employee dealing with customers. The area behind the bullet resistant wall would also contain two storage rooms and an office supply room (see plans, Attachment V). A video camera would record all operations and a security guard would be present. It is at the discretion of the business operator to install bullet resistant separation from the customers, not a requirement of the Hayward Police Department or the State of California Department of Justice.

At the store, items are analyzed in front of the customer. According to the applicant, the process includes passing a magnet over all metals. If the metal has a reaction to the magnet, the item will be refused since precious metals do not react to magnets. Then jewelry is separated by karat, which is an indicator of the purity of metal. The item is then weighed and the data is entered into the inventory system. The customer then receives an offer. If the customer accepts the offer, a final test is completed to determine if the item is plated. If it is, it is returned to the customer.

For every transaction, the store owner is required to complete a “Second Hand Dealer Form,” which includes the customer's personal information (name, address, phone number, etc.), information about the store, a description of the item, transaction information, attesting as to the disposal of the item, and a thumbprint from the customer. Three copies of this form are forwarded to the Hayward Police Department. In addition, the Hayward Police Department requests a copy of a photo identification of the customer and a photograph of the item being sold, and requires that the item be held in the store for 30 days before being sent out for processing. A condition of approval would require that this information be submitted to the Police Department weekly (Attachment VI Condition #12d). The Police Department would forward a copy to the Department of Justice and to the Police Department of the City in which the customer resides if other than Hayward.

These measures are intended to help prevent trafficking in stolen goods, by requiring the reporting of transactions involving identifiable secondhand personal property. The customer could receive cash equal to 60 to 90 percent of the worth of the item, depending on the quality of the precious metal. This process takes approximately five to 30 minutes, depending on the quantity of items.

Police Department Requirements - According to the Police Department, calls for service are relatively low at “cash for gold” locations in Hayward. In 2011, “The Gold Spot” on Soto Road had an incident of grand theft/robbery. However, the other two stores have operated incident free. The Police Department is concerned that cash for gold businesses may be at an increasing risk of grand theft/robbery due to the increased value of gold. In addition, Police personnel are of the opinion that the high value per ounce of gold is a factor in the increase of property crimes over the past few years. The Police Department has seen an increase in burglaries, robberies and street crime, where suspects most often take gold jewelry, which is the most common form of precious metals sold for cash. Because jewelry is smaller than a TV or laptop, and harder to identify, it can be taken to a myriad of locations and easily sold. Through the Hayward Police Department’s Burglaries and Robberies Division investigations and from officers driving around Hayward, it has become apparent that there are numerous, unlicensed locations within the City that do not follow through with all the documentation required by the Police Department and the California Department of Justice. Police staff believes that the owners of the businesses that are not in compliance may not be aware of the regulations, and staff believes that a large portion of these are business owners operating cash for gold business through their existing businesses, such as markets and jewelry stores. In January 2012, in an effort to increase compliance, the Police Department in conjunction with the City’s Revenue Division, mailed approximately 7,500 notices to Hayward businesses requesting compliance with “cash for gold” regulations. From this mailing, only two businesses have contacted the Police Department. Enforcement of the requirement has lagged due to limited Police Department resources. Community Preservation staff will work in conjunction with the Police Department to enforce requirements as business locations are known and as resources allow.

The Police Department states that there is a need for stricter regulation of “cash for gold” businesses in order to help prevent theft of personal items for quick resale and to assure the implementation of safety and security measures. The proposed conditions of approval recommended by the Police Department are designed to prevent undue stress on Police resources and ensure proper documentation of tangible goods that are taken in trade or exchanged for cash.

Conditional Use Permit – Responding to an increase of inquiries and requests for cash for gold businesses in the past year, the Planning Director determined that a cash for gold business, though not specifically listed in the Zoning Ordinance, is similar to pawn shops, check cashing stores, and payday loan facilities, all of which require approval of a conditional use permit in the commercial districts where permitted. The conditional use permit process regulates operations through conditions of approval that are designed to make the business safe for employees and customers, and to discourage the sale of stolen property. A conditional use permit is required to assure that this use is permitted where there is a community need, and to assure that the use is in harmony with the area and with City policies, and gives surrounding property owners, business owners, and residents an opportunity to provide comments regarding the proposed use.

Because of the increase in requests to operate cash for gold businesses and a need for enforcement and regulation, staff has determined that special standards and conditions should be developed for this type of business and that it should be specifically listed in the Zoning Ordinance. Therefore, staff will bring a Zoning Text Amendment to the Planning Commission and the City Council in late 2012 along with other revisions to the Zoning Ordinance.

In order for the Conditional Use Permit to be approved, the following findings must be made. The factual support for these finding is included below and in Attachment VII.

- A. The approval of Conditional Use Permit No. 2012-0035, as conditioned will have no significant impact on the environment, cumulative or otherwise, and the project reflects the City's independent judgment and is exempt from CEQA under section 15301 (Existing Facilities)

B. *The proposed use is desirable for the public convenience or welfare.*

The cash for gold facility would be desirable for the public convenience in that it would provide convenient hours and an additional location for Hayward residents to receive cash at competitive compensation for their precious metals. This establishment would be the first to operate under conditions that would provide a safe environment for the customers and the surrounding business neighborhood. A digital video recording system that covers all points of entry, exit and areas of purchase and an alarm system would be installed. The conditions of approval recommended by the Police Department are designed to discourage the fronting of stolen items of precious metals and thereby, acting as a deterrent to crime.

C. *The proposed use will not impair the character and integrity of the zoning district and surrounding areas.*

The cash for gold facility would not impair the character and integrity of the zoning district in that the applicant would be operating a store in a commercial center with other businesses in compliance with the requirements of the Department of Justice and the Hayward Police Department. The applicant passed all background checks and obtained a Secondhand Dealers License from the California Department of Justice through the Hayward Police Department. There is sufficient customer parking for all businesses within the building.

D. *The proposed use will not be detrimental to the public health, safety, or general welfare.*

The proposed use will not be detrimental to the public health, safety, or general welfare in that a security plan is required to be implemented as approved by the Hayward Police Department, the applicant has passed the Police Department background check, and has obtained the required Secondhand Dealer's License. The business owner is required to meet all the requirements of the City's Municipal Code Section 6-3.22 through Section 6-3.26 that require secondhand dealers to keep a record of all transactions that shall be open to inspections by the Hayward Police Department, that the merchandise shall be held for at least 30 days, and that the hours of operation not exceed 9:00 a.m. to 6:00 p.m. Sunday

through Thursday, and from 9:00 a.m. to 10:00 p.m. Friday and Saturday. In addition, the business owner is required to meet the conditions of approval and the requirements of the California Department of Justice Secondhand Dealers license.

E. The proposed use is in harmony with applicable City policies and the intent and purpose of the zoning district involved.

The proposed use would be in harmony with applicable City policies in that the cash for gold facility would be consistent with the purpose of the Central Business District as it is a professional service located in a central location with “a concentration of shopping comparison facilities, and administrative, legal and other professional services.” It is the policy of the Police Department to require cash for gold businesses to comply with the requirements of Hayward Municipal Code Chapter 6, Article 3, Pawnbrokers, Secondhand Dealers and Auctioneers. The conditions of approval reflect this policy and would require the applicant to maintain records of all transactions, merchandise would be held for 30 days, and merchandise would be available for inspection upon request by the Hayward Police Department.

ENVIRONMENTAL REVIEW

The proposed project is categorically exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15301, Existing Facilities.

PUBLIC OUTREACH

On February 14, 2012, a Referral Notice was mailed soon after the use permit application was received to every property owner and occupant within 300 feet of the subject site, as noted on the latest assessor’s records and to the Southgate Neighborhood Task Force, the Southgate Area Homeowners Association, the Longwood/Winton Grove Task Force, and the Longwood Area Neighborhood Group. No responses were received.

On April 19, 2012, a Notice of Public Hearing for the Planning Commission meeting was mailed for the public hearing scheduled for April 26, 2012. No responses were received. To allow staff additional time to research cash for gold businesses within the City of Hayward, the item was postponed to the Planning Commission meeting of May 10, 2012. On April 27, 2012, a revised Notice of Public Hearing for the Planning Commission meeting was mailed. No responses to such notices have been received by the time this report was prepared.

SCHEDULE

The Planning Commission decision begins a 10-day appeal period, which would expire at 5:00 p.m. on Monday, May 21, 2012. If approved and there is no appeal filed within that time period, the applicant may proceed with obtaining Hayward Police Department approval of a security plan and a building permit for the approved use. If denied, the decision could be appealed and the application would be scheduled for a public hearing before the City Council.

Prepared by: Arlynn J. Camire, AICP, Associate Planner

Recommended by:



Richard Patenaude, AICP
Planning Manager

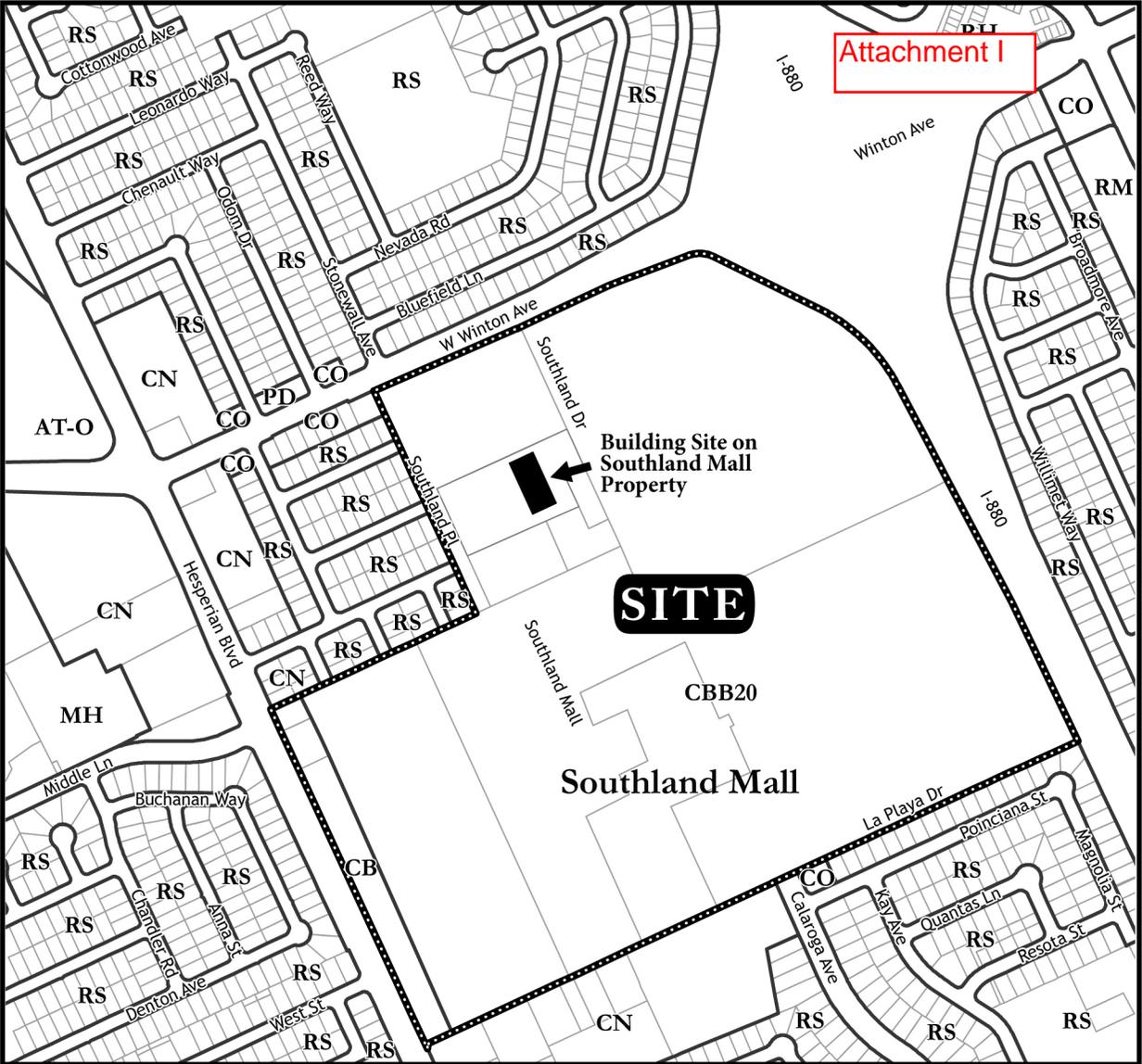
Approved by:



David Rizk, AICP
Development Services Director

Attachments:

Attachment I	Area Map
Attachment II	Vicinity Map Showing Location of Other Nearby Cash-for-Gold Businesses
Attachment III	List of Department of Justice Secondhand Dealer Licenses Issued in Hayward
Attachment IV	Applicant's Secondhand Dealer's License from Department of Justice
Attachment V	Plans
Attachment VI	Recommended Conditions of Approval
Attachment VII	Recommended Findings for Approval

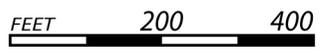


Area & Zoning Map

PL-2012-0035 CUP
 Address: 24303 Southland Drive
 Applicant: Maurice Younes
 Owner: Southland Office Investors, LLC

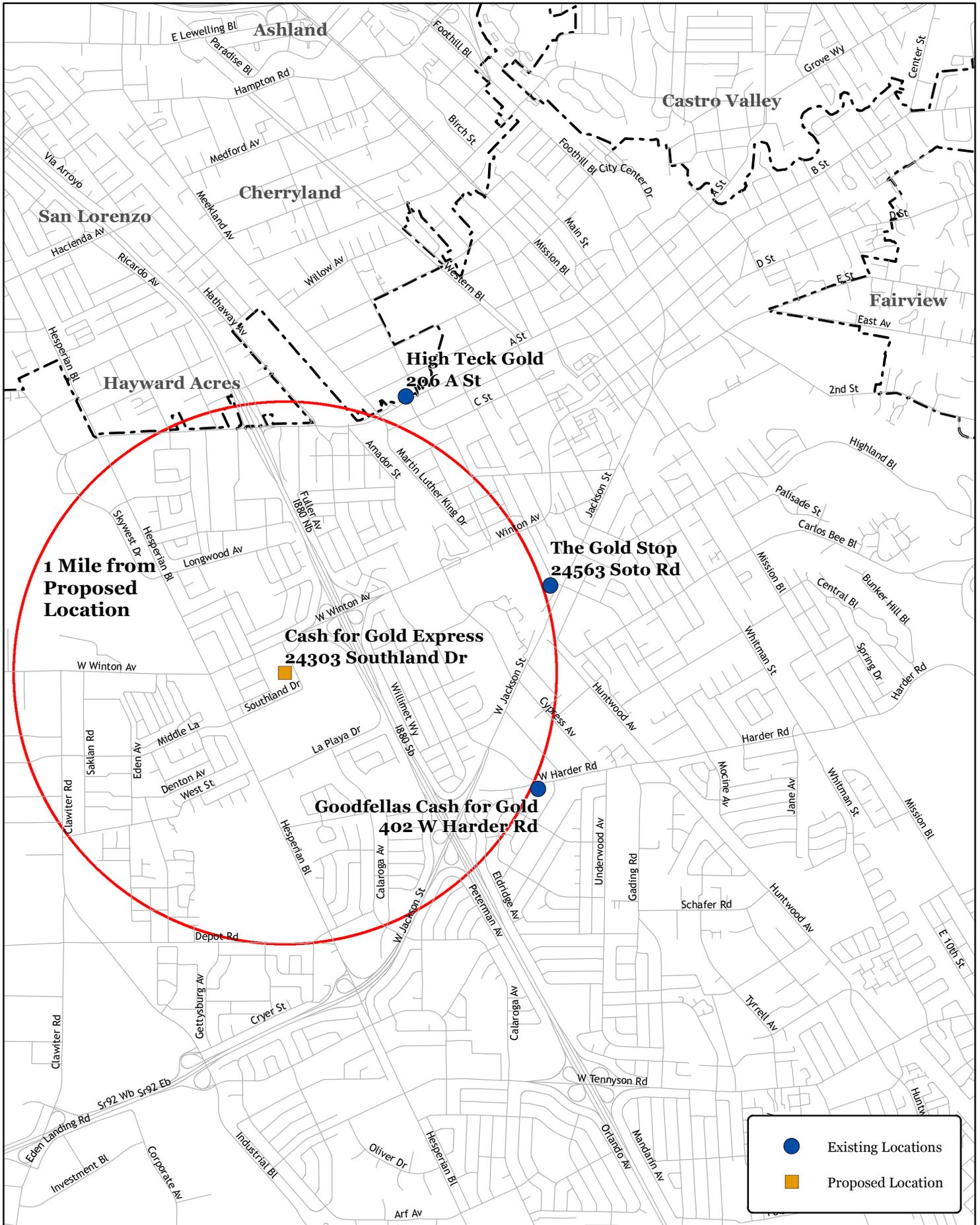
Zoning Classifications

- RESIDENTIAL**
 RM Medium Density Residential, min lot size 2500 sqft
 RS Single Family Residential, min lot size 5000 sqft
- COMMERCIAL**
 CN Neighborhood Commercial
 CO Commercial Office
- OPEN SPACE**
 A Agricultural
 FP Flood Plain
 OS Open Space
- AIR TERMINAL**
 AT-O Air Terminal - Operations
- 26

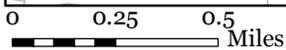




Hayward Licensed Gold-Buying Stores



	Existing Locations
	Proposed Location



Secondhand Dealer Licenses Issued by Police Department and Department of Justice

License Number	Status	Initial Issue Date	Business Name	Business Address	Type of Business
01061028	A	2/21/2012	High Tech Gold	206 A Street	Cash For Gold
01061027	P	1/18/2012	Cash For Gold Express	24303 Southland Drive	Cash For Gold
01061026	A	10/04/2011	Best Buy Store #2872	269 Southland Mall, Space 114	Mobile Phone Store
01061025	A	10/04/2011	Edelson Enterprises, Inc. (Hampton Inn)	24137 Mission Boulevard	Four-5 day events at Hampton Inn buying Precious Metals and Antiques
01061024	A	8/15/2011	THR & Associates	24137 Mission Boulevard	Four-5 day events at Hampton Inn buying Precious Metals and Antiques
01061023	A	8/1/2011	Goodfellas Cash 4 Gold	402 West Harder	Cash for Gold
01061022	A	6/9/2011	Treasure Island	557 Southland Mall	Pawn Shop
01061021	A	5/26/2011	California Check Cashing Stores, LCC	20500 Hesperian Boulevard, F	Check Cashing
01061020	A	5/26/2011	California Check Cashing Stores, LCC	376 Tennyson Road	Check Cashing
01061019	A	1/13/2011	Foothill Coin & Jewelry	22449 Foothill Boulevard	Coins and Jewelry
01061018	A	8/13/2010	The Gold Stop Cash For Gold	24563 Soto	Cash For Gold
01061017	A	6/29/2010	Jim Martin Sales	805 Fletcher Lane, #1	Real Estate Office
01061015	A	2/16/2010	Kay Jewelers #0563	263 Southland Mall Drive	Jewelry Store
01061014	A	12/9/2008	Cash For Gold	1 Southland Mall #5527	Cash for Gold Kiosk
01061013	A	9/24/2008	Gamestop #6208	1159 West A Street	Game Store-Buys Games
01061009	A	2/23/2011	Higgins Jewelry Center	22439 Foothill Boulevard	Jewelry Store
P-Pending - Requires approval of a Conditional Use Permit. A- Active					

SECONDHAND DEALER LICENSE

In accordance with the provisions of Sections 21641 and 21642 of the
Business and Professions Code, license number 01061027 is granted to:

CASH FOR GOLD EXPRESS

to conduct a Secondhand Dealer business at
24303 SOUTHLAND DRIVE
HAYWARD, CA

Off Site Storage Location (If Any)
38224 LOGAN DR., FREMONT, CA

Business Owner: YOUNES

MAURICE

HAYWARD POLICE DEPARTMENT
LICENSING AGENCY

Business Owner:

Initial Issue Date: 1/18/2012

Expiration Date: 1/17/2014

Check if Renewal:


SIGNATURE OF ISSUING OFFICER

Failure to renew this license prior to the expiration date specified above will result in the license being revoked. A new license will be required including an initial application and all associated fees.

This license is not transferable, and must be visibly displayed on the business premise.

This license does not affect the power of a city, county, or city and county to charge a fee or tax upon the conduct of business specified above.

This license enables the business shown above to engage in the business of a secondhand dealer at the address shown above in accordance with the provisions of Article 4 of the Business and Professions Code.

R. CANTRELL
NAME OF ISSUING OFFICER

DETECTIVE
TITLE OF ISSUING OFFICER

JUS 126A

Original copy to Licensee, One copy to Licensing Authority and One copy to the DOJ.

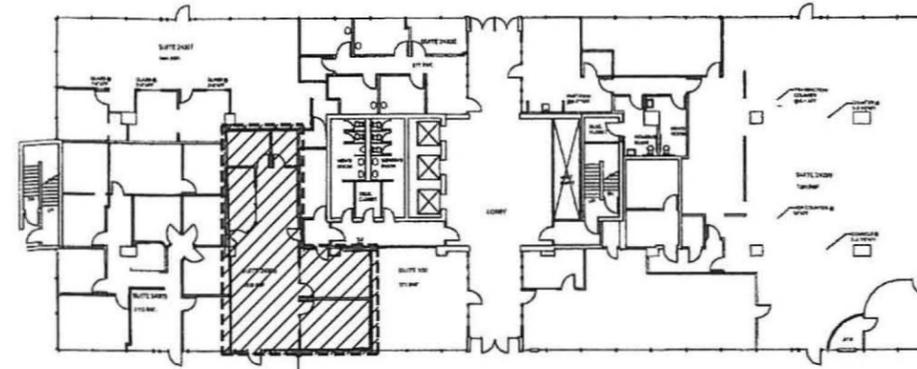
PROJECT INFORMATION

APN : = 442-10-9
 LOT SIZE = 150,228.83 S.F.

APPLICABLE CODES USED: CA RESIDENTIAL CODE 2010
 CALIFORNIA BUILDING CODE (CBC) 2010 EDITION (2009 IRC)
 CALIFORNIA FIRE CODE 2010 EDITION (2000 UFC)
 CALIFORNIA MECHANICAL CODE (CMC) 2010 EDITION (2009 UMC)
 CALIFORNIA PLUMBING CODE (CPC) 2010 EDITION (2009 UPC)
 CALIFORNIA ELECTRIC CODE (CEC) 2010 EDITION (2008 NEC)
 AND OTHER APPLICABLE LOCAL & STATE LAWS & REGULATIONS
 CITY OF HAYWARD MUNICIPAL CODE & ORDINANCES

SHEET INDEX

A-1	SITE PLAN, PROJECT INFORMATION, SHEET INDEX
A-2	GENERAL NOTES, LEGEND & NOTES
A-3	FLOOR PLAN
A-4	DETAIL AND SPECIFICATIONS
E-1	ELECTRICAL PLAN



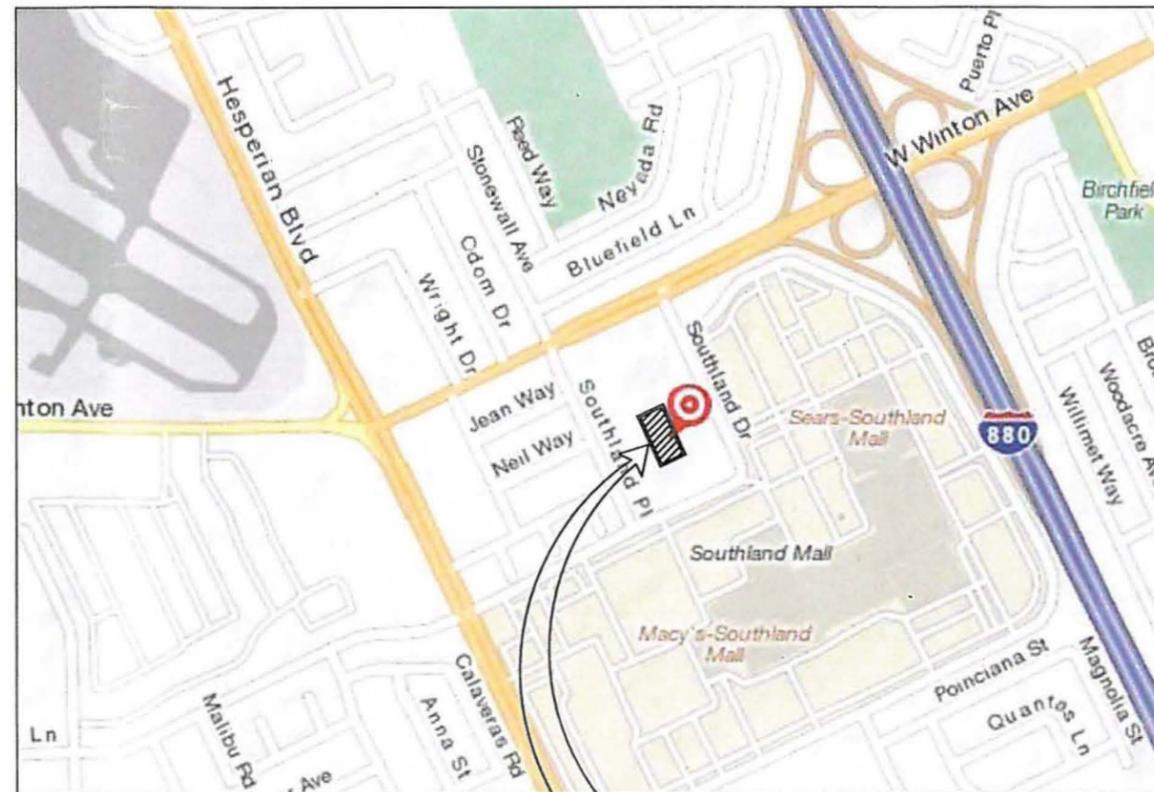
SUITE 24303

ENLARGE FLOOR PLAN

SCALE : NOT TO SCALE

**PROJECT NUMBER
 PL-2012-0035 CUP**

Tenant Improvement for :
Cash for Gold Express
 Suite 24303 Southland Drive, Hayward CA 94545



BUILDING LOCATION

VICINITY MAP

SCALE : NOT TO SCALE

RECEIVED

JAN 30 2012



Drawing Title

Site Plan, Sheet Index,
 Project Information

Date

Revision

NO.

Drawn By:
 TS

Scale:
 As Shown

Date:
 01/24/2012

Drawing No
A-1
 Sheet ___ OF ___

PLANNING DIVISION

GENERAL NOTES AND CONDITIONS

1. THE BUILDING PLANS PREPARED BY GEMINI DESIGN, THE DESIGNER, ARE INTENDED FOR USE ONLY ON THE PROPERTY FOR WHICH THEY WERE DESIGNED AND SHALL REMAIN THE PROPERTY OF GEMINI DESIGN. THE BUILDING PLANS ARE NOT INTENDED TO BE COMPREHENSIVE AND IT SHALL BE THE RESPONSIBILITY OF THE GENERAL CONTRACTOR AND SUBCONTRACTORS TO NOTIFY THE OWNER AND / OR THE DESIGNER OR ANY NECESSARY CLARIFICATIONS OR MODIFICATIONS.
2. ALL INFORMATION PERTAINING TO THE SITE SHALL REMAIN THE OWNERS RESPONSIBILITY. SITE INFORMATION SHALL INCLUDE LEGAL DESCRIPTION, DEED RESTRICTIONS, EASEMENTS, SITE SURVEYS, STREET AND UTILITY IMPROVEMENTS, GEOTECHNICAL INVESTIGATIONS AND REPORTS, GRADING AND EXCAVATION, LANDSCAPING, DRAINAGE, AND ALL RELATED DATA.
3. ALL WORK CONNECTED WITH THIS PROJECT SHALL BE DONE IN PROFESSIONAL MANNER IN ACCORDANCE WITH THE TRADITIONALLY AND LEGALLY DEFINED "BEST ACCEPTED PRACTICE" OF THE TRADE INVOLVED. ADDITIONALLY, ALL WORK SHALL COMPLY WITH APPLICABLE CODES AND TRADE STANDARDS WHICH GOVERN EACH BUILDING CODE:
 THE CITY / COUNTY HAS ADOPTED THE: 2010
 CALIFORNIA RESIDENTIAL CODE
 CALIFORNIA BUILDING CODE
 CALIFORNIA MECHANICAL CODE
 CALIFORNIA ELECTRICAL CODE
 CALIFORNIA PLUMBING CODE
 AND ALL APPLICABLE LOCAL CODES AND LEGISLATION.
4. THE OWNER SHALL BE RESPONSIBLE FOR NOTIFYING THE DESIGNER AND/OR ENGINEER FOR ANY UNUSUAL OR UNFORESEEN STRUCTURAL CONDITIONS. DISCREPANCIES OR OMISSIONS WITHIN THE CONSTRUCTION DOCUMENTS OR ANY DEVIATIONS OR CHANGES FROM THE DOCUMENTS BEFORE PROCEEDING WITH THE WORK INVOLVED; OTHERWISE THEY WILL BE CONSIDERED ADEQUATE FOR PROPER COMPLETION OF THE PROJECT.
5. ADEQUATE SUPERVISION AND PERIODIC INSPECTION DURING THE CONSTRUCTION PHASE ARE RECOMMENDED. THE OWNER SHALL BE RESPONSIBLE TO INSURE THAT THIS INSPECTION AND SUPERVISION ARE PROVIDED BY QUALIFIED PERSONS.
6. THE GENERAL CONTRACTOR AND EACH SUPERVISOR SHALL BE RESPONSIBLE FOR CHECKING AND VERIFYING ALL DIMENSIONS AND MEASUREMENTS PRIOR TO COMMENCEMENT OF ANY WORK. CONTRACTOR SHALL BRING ANY DISCREPANCIES TO THE DESIGNER AND OWNER'S ATTENTION PRIOR TO COMMENCING ANY WORK. IN THE EVENT WORK COMMENCED WITH FAILURE TO NOTIFY BOTH THE DESIGNER AND OWNER. THE CONTRACTOR IS SOLELY RESPONSIBLE FOR ANY AND ALL, CORRECTIVE MEASURES OR ERRORS.
7. NO GUARANTEE FOR QUALITY OF CONSTRUCTION IS IMPLIED OR INTENDED BY THE CONSTRUCTION DOCUMENTS AND THE GENERAL CONTRACTOR SHALL ASSUME FULL RESPONSIBILITY FOR ALL CONSTRUCTION DEFICIENCIES.
8. THE GENERAL CONTRACTOR SHALL HOLD HARMLESS, INDEMNIFY AND DEFEND THE DESIGNER AND ENGINEER FROM ANY ACTION INITIATED BY THE INITIAL OWNER OR ANY SUBSEQUENT OWNERS FOR CONSTRUCTION DEFICIENCIES, MODIFICATIONS OR SUCH CONDITIONS WHICH MAYBE BEYOND THE CONTROL OF THE DESIGNER OR ENGINEER.
9. THESE DOCUMENTS ARE INTENDED FOR USE IN NEGOTIATED CONSTRUCTION CONTRACT AND, THEREFORE, MAY NOT SPECIFICALLY DETAIL OR SPECIFY MATERIALS AND / OR MANUFACTURERS. THE GENERAL CONTRACTOR SHALL PROVIDE ALL SAMPLES AS REQUIRED. TO ASSIST THE OWNER IN MAKING MATERIAL OR EQUIPMENT SELECTIONS OR COMPARISON. FOR THE PURPOSE OF ESTIMATING, THE GENERAL CONTRACTOR SHALL USE MATERIALS SELECTED BY THE OWNER. OR IN THE ABSENCE OF OWNER, HE SHALL PROVIDE AN ALLOWANCE AMOUNT. AND SO CONDITION ANY COST ESTIMATE. ALL MATERIALS SPECIFIED IN THESE DOCUMENTS SHALL BE INCLUDED IN ANY ESTIMATES.

10. THE GENERAL CONTRACTOR SHALL REVIEW AND RECORD ALL EXISTING CONDITIONS, INCLUDING PAVED AREAS. HE SHALL MAKE KNOWN ALL EXISTING DAMAGED OR DISREPAIRED ITEMS AND CONDITIONS THAT MAY WORSEN DUE TO THE PROPOSED CONSTRUCTION. ALL EXISTING ITEMS AND CONDITIONS IN GOOD CONDITION SHALL BE MAINTAINED IN THEIR PRESENT CONDITION AND ANY REPAIR OR DAMAGE WHICH OCCURS DURING CONSTRUCTION SHALL BE THE RESPONSIBILITY OF THE GENERAL CONTRACTOR.
11. THE CONSTRUCTION DOCUMENTS SHALL NOT BE CONSIDERED COMPLETE AND READY FOR CONSTRUCTION UNTIL A BUILDING PERMIT HAS BEEN ISSUED.
12. EXAMINATION OF SITE: THE GENERAL CONTRACTOR SHALL THOROUGHLY EXAMINE THE SITE AND SATISFY HIMSELF AS TO THE CONDITION UNDER WHICH THE WORK IS TO BE PERFORMED. THE GENERAL CONTRACTOR SHALL VERIFY AT THESE SITE. ALL MEASUREMENTS AFFECTING HIS WORK AND SHALL BE RESPONSIBLE FOR CORRECTNESS OF SAME. NO EXTRA COMPENSATION WILL BE ALLOWED TO THE CONTRACTOR FOR ANY EXPENSES DUE TO NEGLIGENCE TO EXAMINE OR FAILURE TO DISCOVER CONDITIONS WHICH MAY AFFECT HIS WORK.
13. EXAMINATION OF EXISTING PLUMBING AND ELECTRICAL; IN ANY CASE WHERE A NEW LINE MAY TIE INTO AN EXISTING LINE WITHIN THE LIMITS OF THE RENOVATION WORK. THE GENERAL CONTRACTOR OR HIS SUBCONTRACTOR SHALL EXAMINE THE ENTIRE EXISTING LINE. AND DETERMINE WHETHER THE NEW WORK WILL ADVERSELY BE AFFECTED BY IT. AND NOTIFY THE OWNER AND THE DESIGNER OF ANY SUCH DEFECT BEFORE COMMENCING WORK.
14. THE DESIGNER AND ENGINEER ARE NOT RESPONSIBLE FOR PERMITS OF ANY KIND. THE DESIGNER'S AND ENGINEER'S LIABILITY IS LIMITED TO THE CORRECTION OF THE DRAWINGS.
15. THE CONTRACTOR IS RESPONSIBLE FOR THE SAFETY OF HIS PERSONNEL. PUBLIC SAFETY AND COMPLIANCE WITH ALL STATE, LOCAL AND FEDERAL AGENCY.
16. THESE PLAN SHALL NOT BE REPRODUCED IN ANY WAY WITHOUT THE WRITTEN PERMISSION OF GEMINI DESIGN. ALWAYS USE LICENSED CONTRACTOR.

Tenant Improvement for :
Cash for Gold Express
 Suite 24303 Southland Drive, Hayward CA 94545

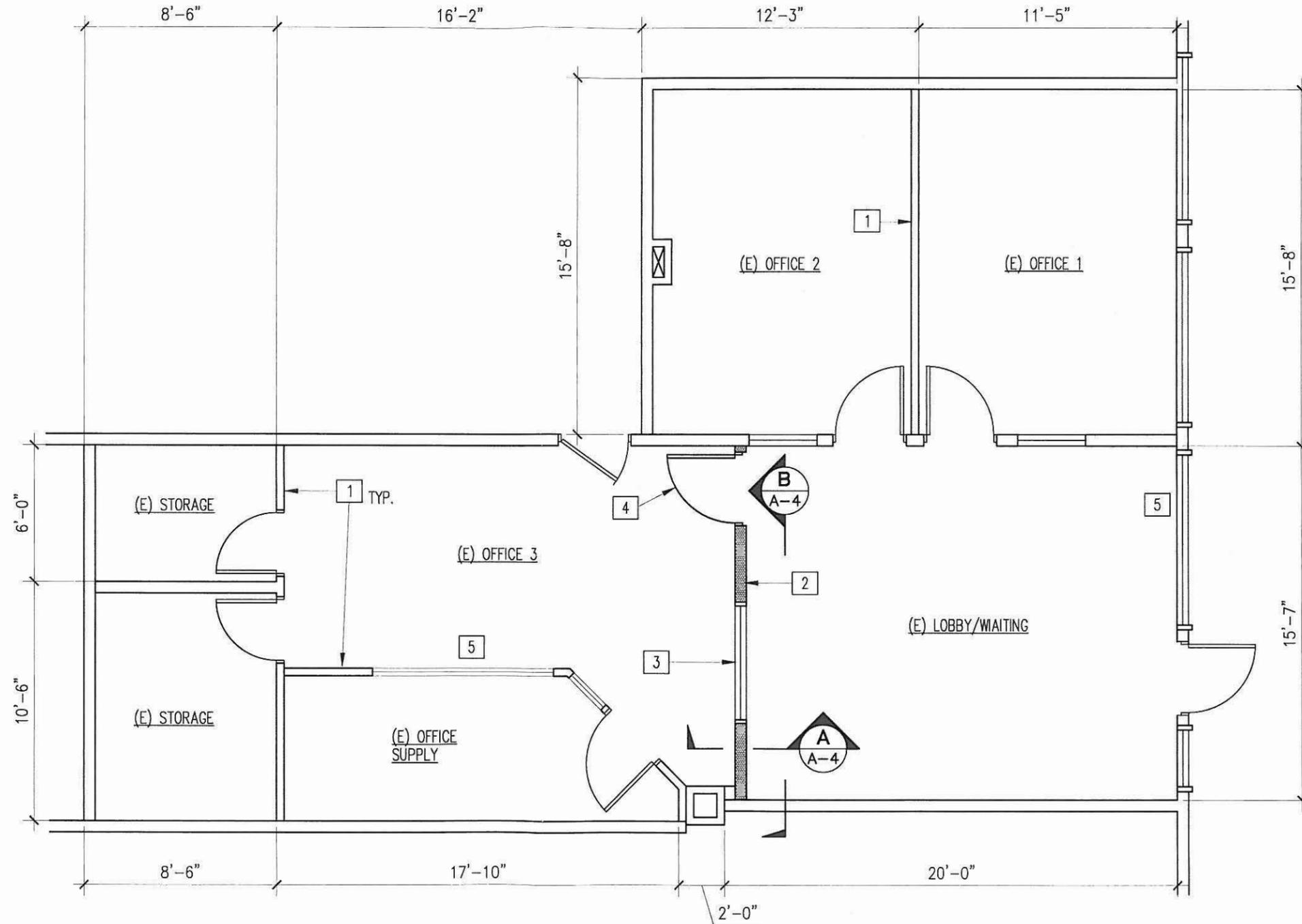
Drawing Title
General Notes

NO.	Revision	Date

Drawn By: **TS**
 Scale: **As Shown**
 Date: **01/24/2012**
 Drawing No
A-2
 Sheet _____ OF _____

SHEET NOTES:

- 1 EXISTING 2x4 STUDWALL
- 2 8' HIGH 2X6 STUDWALL @ 16" O.C. WITH 1/2" THICK BULLETPROOF FIBERGLASS SIDING. (INSTALLATION PER MANUFACTURER'S RECOMENDATION)
- 3 CUSTOMER COUNTER WITH 5'x 3'-6" BULLETPROOF WINDOW WITH 1" FIBERGLASS FOR MAXIMUM SAFETY. (INSTALLATION PER MANUFACTURER'S RECOMENDATION)
- 4 2'-6"x 6'-8" BULLETPROOF DOOR.
- 5 (E) FIXED GLASS WINDOW



SUITE 24303 FLOOR PLAN

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

Tenant Improvement for :
Cash for Gold Express
 Suite 24303 Southland Drive, Hayward CA 94545

Floor Plan, Sheet Notes

NO.	Revision	Date

Drawn By:
TS

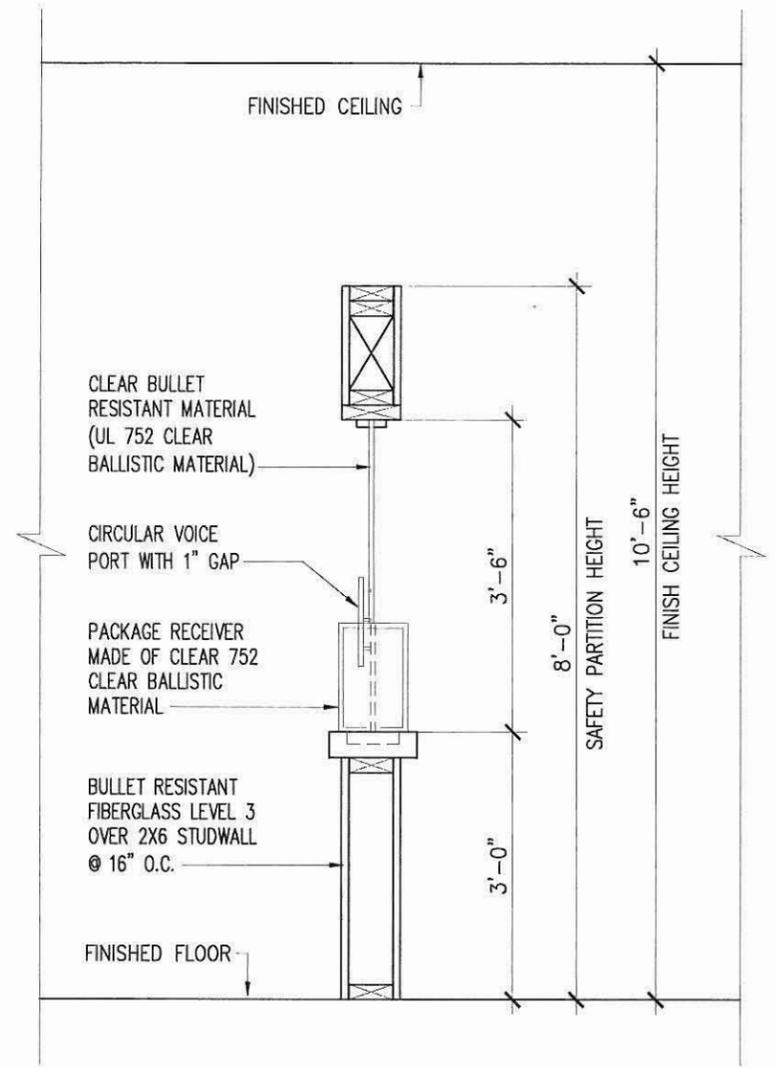
Scale:
As Shown

Date:
01/24/2012

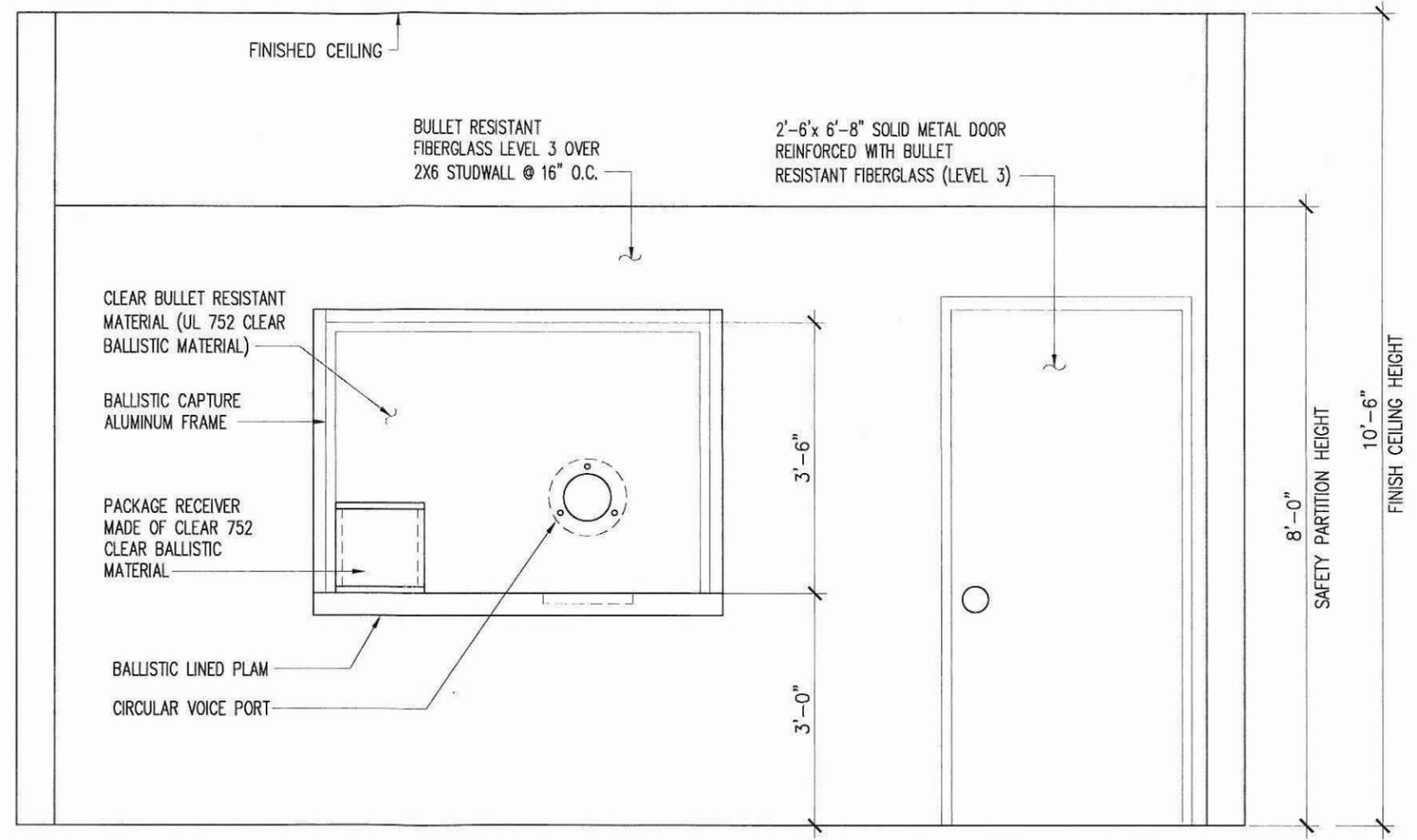
Drawing No
A-3
 Sheet ___ OF ___

A B C D E F G H

1
2
3
4
5



SECTION A
SCALE : 1/2" = 1' - 0"



SECTION B
SCALE : 1/2" = 1' - 0"

Tenant Improvement for :
Cash for Gold Express
Suite 24303 Southland Drive, Hayward CA 94545

Sections & Specifications

NO.	Revision	Date	Drawn By

Drawn By: **TS**

Scale: **As Shown**

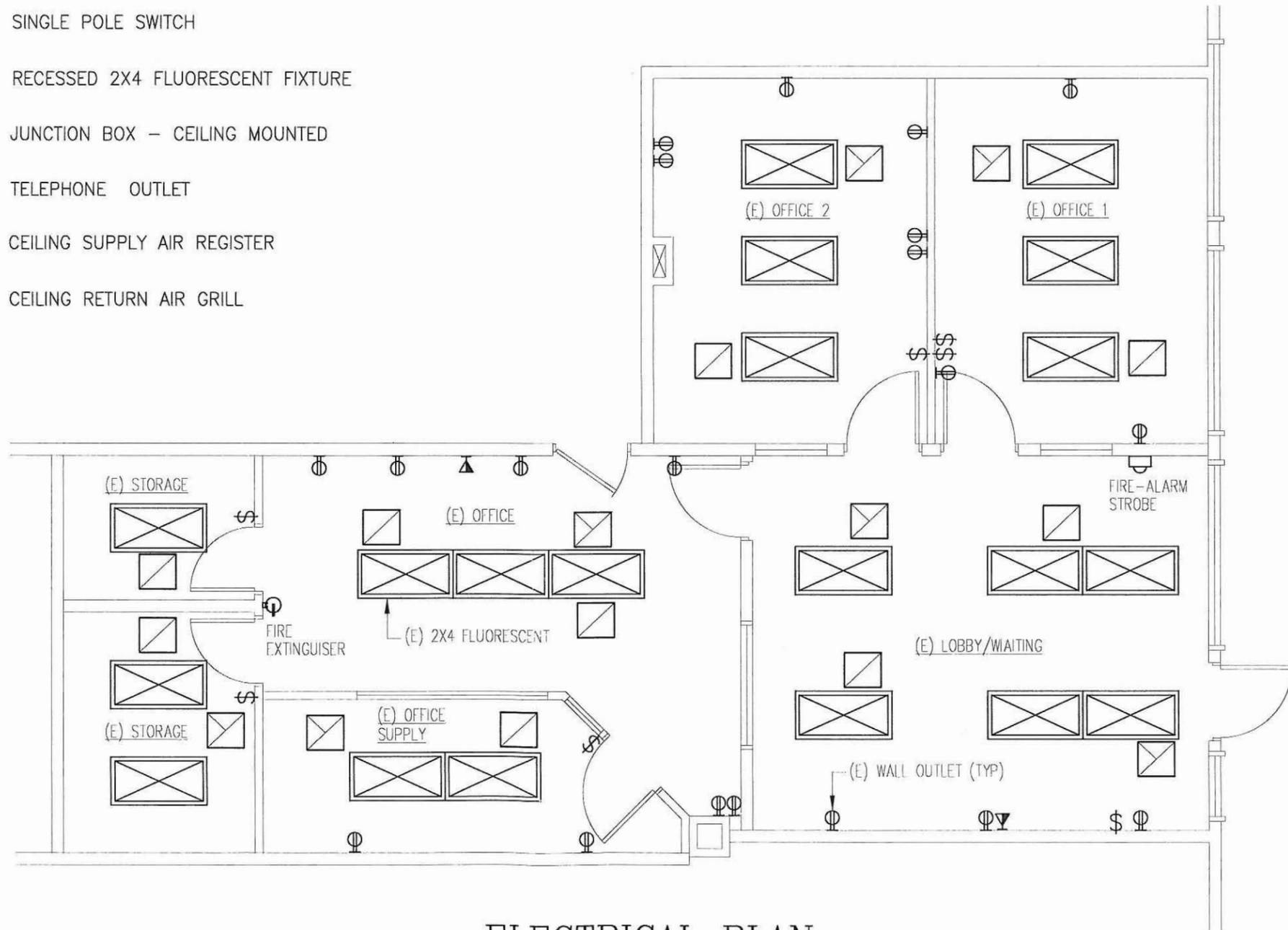
Date: **01/24/2012**

Drawing No: **A-4**

Sheet _____ OF _____

ELECTRICAL / MECHANICAL LEGEND

- ⊕ DUPLEX ELECTRICAL OUTLET
- AF ⊕ DUPLEX ARC-FAULT PROTECTED OUTLET
- \$ SINGLE POLE SWITCH
- ⊠ RECESSED 2X4 FLUORESCENT FIXTURE
- ⊙ JUNCTION BOX - CEILING MOUNTED
- ▼ TELEPHONE OUTLET
- ▧ CEILING SUPPLY AIR REGISTER
- ▩ CEILING RETURN AIR GRILL



ELECTRICAL PLAN

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

Tenant Improvement for :
Cash for Gold Express
 Suite 24303 Southland Drive, Hayward CA 94545

Electrical Plan

NO.	Revision	Date

Drawn By
TS

Scale:
As Shown

Date:
01/24/2012

Drawing No
A-5
 Sheet ___ of ___

**CITY OF HAYWARD
CONDITIONS OF APPROVAL**

USE PERMIT APPLICATION NO. PL-2012-0035

May 10, 2012

Conditional Use Permit Application PL-2012-0035 – Cash For Gold Express, Maurice Younes (Applicant) / Southland Office Investors, LLC (Owner) – Request to Operate a Cash for Precious Metals Store.

The Property is Located at 24303 Southland Drive, in the Commercial Business (CB-B20) Zoning District

Conditional Use Permit Application PL-2012-0305 approving the operation of a cash for precious metals facility is approved subject to the plan labeled “Exhibit A” and the conditions listed below.

This permit becomes void three years after the effective date of approval, unless prior to that time the operation Cash For Gold Express has commenced. A request for a one-year extension, approval of which is not guaranteed, must be submitted to the Planning Division at least 15 days prior to May 10, 2013.

Any modification to the approved plans or conditions shall require review and approval by the Planning Director. If determined to be necessary for the public safety and general welfare, the City may impose additional conditions or restrictions on this permit.

CONDITIONS OF APPROVAL

1. The permittee shall assume the defense of and shall pay on behalf of and hold harmless the City, its officers, employees, volunteers and agents from and against any or all loss, liability, expense, claim costs, suits and damages of every kind, nature and description directly or indirectly arising from the performance and action of this permit.
2. The property owner shall maintain in good repair all building exteriors, walls, lighting, drainage facilities, landscaping, driveways and parking areas. The premises shall be kept clean and free of litter and weeds. Any graffiti painted on the property shall be painted out or removed within 48-hours of occurrence. Any litter, weeds and graffiti shall be removed and the building shall be painted to the satisfaction of the Planning Director. The applicant shall contact the property manager if the exterior lighting shall fail and for graffiti on the store front. The applicant shall keep the area around the storefront litter free.
3. The hours of operation shall be limited to the hours 9:00 a.m. to 6:00 p.m. Sunday through Thursday, and from 9:00 a.m. to 10:00 p.m. Friday and Saturday.

4. New signs are subject to the City's sign regulation ordinance. A sign permit is required to be approved prior to the installation of any new signs. All window signs shall not exceed twenty-five percent of the area of each window. Any grand opening or temporary sign can be displayed when approved with a sign permit.
5. If it comes to the attention of the Planning Director that the conditions of approval have been violated, the Planning Director may call the use permit application up to the Planning Commission for consideration of imposing additional conditions or revocation. The failure to comply with any or all the conditions of approval is grounds for termination, revocation and/or modification of the use permit.

Police Department

6. Prior to the operation of business, the business shall submit a security plan to the Hayward Police Department outlining procedures for employees/management's responsibilities during emergency incidents. The security plan shall also outline how to access the business' video recordings, alarm systems and procedures on how employees are to record/document sales transactions required by California law. Police Department approval of the security plan is required prior to the commencement of business.
7. The facility shall have an extensive digital video recording system that covers all points of entry, exit and areas of purchase. The video recording shall also cover areas where cash and gold/precious metals are stored within the facility. Records of this recording capability shall be of good quality and have archives up to 45 days. The video recording archives shall be accessible to members of the Hayward Police Department and California Department of Justice upon request. The hard-drive or computer storing all digital records shall be maintained in a secured area and away from the view of the public.
8. The facility shall be equipped with an alarm system that has instant panic-button/robbery notification capabilities and silent monitoring. The applicant shall maintain a valid alarm permit on file with the Hayward Police Department at all times.
9. A separate room/area shall be maintained and alarmed for the storage of precious metals and cash. Property may be stored off-site for the Department of Justice 30-day holding requirements.
10. The following licensing requirements shall be maintained by the applicant/owner:
 - a. The applicant shall maintain a valid City of Hayward Business Tax License.
 - b. The applicant shall maintain a valid Secondhand Dealer's License issued by that California Department of Justice (21641 Business & Professions Code). This

license shall be displayed in a conspicuous manner as to easily be seen by the public.

11. The applicant shall properly document all property taken in trade or exchanged for cash and documented by the Secondhand Dealer Report Form (JUS 123).
12. The following forms of documentation/processes shall be administered during each customer transaction:
 - a. A clear photo or digital copy of each person's driver's license, identification card, passport, military identification or any valid government issued form of identification.
 - b. A digital photograph of each item of property taken in trade or exchanged for cash. This photograph shall be maintained by the business for a minimum of five (5) years.
 - c. All property shall be stored and maintained by the business for 30 days prior to disposition.
 - d. All Secondhand Dealer Report Forms shall be submitted weekly to the Hayward Police Department (Pawn Unit) at 300 West Winton Ave, Hayward, CA 94544.

**CITY OF HAYWARD
PLANNING DIVISION
CONDITIONAL USE PERMIT**

May 10, 2012

Conditional Use Permit Application PL-2012-0035 – Cash For Gold Express, Maurice Younes (Applicant) / Southland Office Investors, LLC (Owner) – Request to Operate a Cash for Precious Metals Store.

The Property is Located at 24303 Southland Drive, in the Commercial Business (CB-B20) Zoning District

FINDINGS FOR APPROVAL

1. The approval of Conditional Use Permit No. PL- 2012-0035, as conditioned will have no significant impact on the environment, cumulative or otherwise, and the project reflects the City’s independent judgment and is exempt from CEQA under section 15301 (Existing Facilities).

2. *The proposed use is desirable for the public convenience or welfare.*

The cash for gold facility would be desirable for the public convenience in that it would provide convenient hours and an additional location for Hayward residents to receive cash at competitive compensation for their precious metals. This establishment would be the first to operate under conditions that would provide a safe environment for the customers and the surrounding business neighborhood. A digital video recording system that covers all points of entry, exit and areas of purchase and an alarm system would be installed. The conditions of approval recommended by the Police Department are designed to discourage the fronting of stolen items of precious metals and thereby, acting as a deterrent to crime.

3. *The proposed use will not impair the character and integrity of the zoning district and surrounding areas.*

The cash for gold facility would not impair the character and integrity of the zoning district in that the applicant would be operating a store in a commercial center with other businesses in compliance with the requirements of the Department of Justice and the Hayward Police Department. The applicant passed all background checks and obtained a Secondhand Dealers License from the California Department of Justice through the Hayward Police Department. There is sufficient customer parking for all businesses within the building.

4. *The proposed use will not be detrimental to the public health, safety, or general welfare.*

The proposed use will not be detrimental to the public health, safety, or general welfare in that a security plan is required to be implemented as approved by the Hayward Police Department, the applicant has passed the Police Department background check, and has obtained the required Secondhand Dealer's License. The business owner is required to meet all the requirements of the City's Municipal Code Section 6-3.22 through Section 6-3.26 that require secondhand dealers to keep a record of all transactions that shall be open to inspections by the Hayward Police Department, that the merchandise shall be held for at least 30 days, and that the hours of operation not exceed 9:00 a.m. to 6:00 p.m. Sunday through Thursday, and from 9:00 a.m. to 10:00 p.m. Friday and Saturday. In addition, the business owner is required to meet the conditions of approval and the requirements of the California Department of Justice Secondhand Dealers license.

5. *The proposed use is in harmony with applicable City policies and the intent and purpose of the zoning district involved.*

The proposed use would be in harmony with applicable City policies in that the cash for gold facility would be consistent with the purpose of the Central Business District in that it is a professional service located in a central location with "a concentration of shopping comparison facilities, and administrative, legal and other professional services." It is the policy of the Police Department to require cash for gold businesses to comply with the requirements of Article 3, Pawnbrokers, Secondhand Dealers and Auctioneers. The conditions of approval reflect this policy and would require the applicant to maintain records of all transactions, merchandise would be held for 30 days, and merchandise would be available for inspection upon request by the Hayward Police Department.



**MINUTES OF THE SPECIAL MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, April 5, 2012, 7:00 p.m.
777 B Street, Hayward, CA94541**

MEETING

A regular meeting of the Hayward Planning Commission was called to order at 7:00 p.m. by Chair Márquez.

ROLL CALL

Present: COMMISSIONERS: Faria, Lamnin, Lavelle, Loché, McDermott, Mendall
CHAIRPERSON: Márquez
Absent: COMMISSIONER:

Commissioner McDermott led in the Pledge of Allegiance.

Staff Members Present: Conneely, Frascinella, Patenaude, Philis, Rizk

General Public Present: 78

PUBLIC COMMENTS

Commissioner Mendall noted that due to a bad back he may need to stand periodically during the meeting.

PUBLIC HEARING

1. Appeal of Planning Director's Determination that a Proposed Walmart Market Grocery Store at the 34,000-Square-Foot Building Formerly Occupied by Circuit City is a Permitted Use Consistent with Conditional Use Permit No. PL-2004-0039. The 5.14-Acre Site is Located at 2480 Whipple Road, in an Industrial (I) Zoning District

Director of Development Services David Rizk presented a summary of the staff report and identified the three issues the Commission needed to consider: 1) Does the proposed market meet the Zoning Ordinance criterion for the Industrial Zoning District that requires retail uses to be regional or sub-regional; 2) Is the proposed market consistent with the Conditional Use Permit approved for the property in 2004; and 3) Is the project exempt from California Environmental Quality Act (CEQA) guidelines. Mr. Rizk noted that "regional" and "sub-regional" retail uses were not defined in the current Zoning Ordinance. Mr. Rizk also noted that correspondences received after the meeting packet had been posted, both in favor and against the project, were forwarded to interested parties via email and hard copies were provided to Commissioners.

Chair Márquez disclosed that she met with the building owners Mr. and Mrs. Temkin and also with representatives from United Food & Commercial Workers Union (UFCW) Local 5.

Commissioner McDermott said Commissioners received a letter from Mark Wolfe, the attorney representing UFCW, and she asked Mr. Rizk to respond to concerns cited in the letter including language that states that a store closed for more than six months requires a new Conditional Use Permit (CUP).

Mr. Rizk said Mr. Wolfe referenced a provision in the Zoning Ordinance that states that when a use is discontinued for six months or more, then the approval of the CUP becomes invalid. Mr. Rizk responded that the center had not closed down, existing retail uses had remained open, owners had maintained the property, and evidence existed that the owner had continued to market the property and was actively trying to reopen

the use, which, he said, trumps or supersedes some of the regulations in the City's Zoning Ordinance due to case law.

Assistant City Attorney Maureen Conneely pointed out that for the CUP to expire, the Planning Commission would have to conduct a public hearing to revoke the CUP and since the owner had been actively trying to find a replacement tenant, Planning staff had not pursued revocation of the CUP.

Commissioner McDermott asked for more information regarding the traffic analysis noting that a lot had changed since 2004 when the study was conducted. She commented that based on studies she had read and information included in the staff report, a grocery store would generate more traffic than an electronics store. She noted that the traffic study conducted was identified as "rudimentary" and she asked for more information.

Mr. Rizk noted that staff was not stating that traffic wouldn't increase, but that it would be insignificant in terms of delays to the levels of service (LOS) at nearby intersections. He also noted that the traffic analysis was based on current conditions and was in addition to the 2004 Traffic Study. Mr. Rizk then introduced Transportation Manager Don Frascinella. Commissioner McDermott asked staff what the traffic ratings were in 2004 compared to the current analysis.

Mr. Frascinella explained that the approach taken on the analysis included factors such as trip generation from the proposed use and whether the number of trips warranted a traffic study. Once that was determined, he explained, staff would compare the trip generation of the proposed use to the existing use and, more importantly, how those trips were assigned throughout the network and from where the majority of trips would come. Mr. Frascinella explained that for the proposed Walmart site, staff made the basic assumption that most traffic would be coming primarily from east of the project site because there were no grocery stores in that area. He noted there were existing grocery stores on the west side of Highway 880. Consequently, he concluded the majority of people coming to the proposed Walmart would not be coming through the Whipple/Industrial Parkway SW/880 intersection and also that there wouldn't be much of an impact on intersections east of the project, which included Whipple/880, Whipple/Wiegman Road, and the Whipple/Target traffic signals. None of the three intersections studied, he said, would be degraded below traffic LOS D, which would not warrant any additional mitigation or improvements.

Commissioner Lamnin asked about trips coming in from Industrial SW. Transportation Manager Frascinella reiterated that there weren't going to be that many trips from that direction because the area was already well-served by grocery stores. Commissioner Lamnin asked about the proposed 213 cars turning into the driveway and whether that impact was included in the analysis and if it would create delays. Transportation Manager Frascinella said turns were considered in the analysis and were within the acceptable levels of service for the area.

Commissioner Lamnin noted that 200 parking spaces were available at the proposed site, but 213 additional trips were expected and she asked if that would create a problem. Director of Development Services Rizk said traffic generation and parking were two separate standards. He said that the City's off-street parking regulations were recalculated and 200 spaces were required, or one space for every 250 square feet. So using those standards in the analysis, he explained, the same parking requirement would apply for Circuit City and Walmart. He noted that 200 spaces were required, 203 were provided.

Commissioner Lamnin asked what the hours of operation would be for the proposed Walmart and Mr. Rizk suggested she ask the applicant, but added that the existing CUP didn't have any restrictions on hours.

Commissioner Lamnin asked staff to explain how the proposed Walmart would be different from the existing Target. Mr. Rizk said Walmart was a different brand and the "site to store" service wasn't provided by Target. Mr. Rizk also pointed out that the standard wasn't that the proposed Walmart be different, but that it



**MINUTES OF THE SPECIAL MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, April 5, 2012, 7:00 p.m.
777 B Street, Hayward, CA94541**

be regional or sub-regional serving. Mr. Rizk noted that when Circuit City went in, a Best Buy and Radio Shack were already operating across the freeway.

Commissioner Lamnin asked about crime in the area and asked if statistics were available for the types of calls for service. Director of Development Services Rizk said he did not have those statistics, but said occupants in the center and police staff had told him that having a major tenant store closed increased the likelihood for crime versus having an active use.

Regarding on-site parking, circulation and the traffic study, Commissioner Lavelle said she had a hard time believing that a traffic report from 2004 was adequate for conditions today and she expressed concern about what would happen if traffic did increase and created a very, very busy intersection. Regarding parking, Commissioner Lavelle asked staff what happens if there wasn't enough parking. Director of Development Services Rizk said parking was a potential issue for any project and that was why the City had standards for parking. Mr. Rizk said the retail center owner could look for more parking in the area and lease space.

Commissioner Lavelle pointed out that the current parking configuration did not have angled parking and there was landscaping that could be removed. She asked if those changes were made would more parking spaces be created and Mr. Rizk said yes, but under the Zoning Ordinance the land use wouldn't require owners to increase the number of parking spaces and like the parking situation across the street at Union Landing, people would just drive around until a space became available. That said, Mr. Rizk concluded that the City did not anticipate insufficient parking at the site.

Regarding circulation, Commissioner Lavelle noted there was only one true egress to the site and with delivery trucks using the same driveway she asked if that would create a tremendous backup of cars trying to turn onto Whipple. Mr. Rizk deferred the question to Transportation Manager Frascinella, but pointed out that there had been truck deliveries to Circuit City as well. Commissioner Lavelle asked if deliveries at the Circuit City store occurred every day, and Mr. Rizk acknowledged the frequency of deliveries would increase. Mr. Frascinella compared the proposed Walmart parking lot to the Lucky parking lot across from City Hall noting that that store received its deliveries in the morning before traffic got heavy. He also noted there was not a lot of access to the Lucky store either, but circulation flowed quite well and was also controlled by a traffic signal. Mr. Frascinella said he didn't anticipate a problem at Walmart, but acknowledged people may be behind a truck, which in the level of service analysis, accounted for 10% of vehicles.

Transportation Manager Frascinella reiterated that there would be an increase in traffic, but nowhere in the study did it show that level of service was degraded to the point where it went below standards set by the General Plan. Commissioner Lavelle asked if this was true despite the use being different and Mr. Frascinella said yes. Commissioner Lavelle asked Mr. Frascinella to confirm that it was his statement that the 2004 Traffic Analysis was perfectly valid and adequate for the proposal and Mr. Frascinella said yes, pointing out that when traffic counts were done, it was found that traffic levels had stayed the same or decreased from 2005. He noted that the same findings held true when an analysis was completed for the Route 238 Corridor Improvement Project in 2010; traffic levels were the same or below levels in 2005. Commissioner Lavelle said that made sense due to the current economy and pointed out that traffic levels would only be going up as more people moved to the area. She said she needed to be very sure the intersection wouldn't get tied up and that people could move in and out of the area if the Walmart store was approved.

Commissioner Lavelle asked if any comments had been received from people utilizing the community garden located behind the site, next to the highway, and Director of Development Services Rizk said no. Commissioner Lavelle noted that noise would not be an issue for them because the garden was already so close to the highway.

Following up on a question Commissioner McDermott asked earlier, Commissioner Faria asked if the traffic rating had changed since 2004 and Transportation Manager Frascinella said the level of service had stayed the same.

Commissioner Faria asked what would trigger another traffic analysis after the store opened. Director of Development Services Rizk answered that unless there was a requirement for additional analysis at this time, nothing would trigger another study. If there was a requirement for additional study at this time, Mr. Rizk said a noticeable impact to the level of services would be the trigger. Transportation Manager Frascinella said the impact would have to be directly tied to the development and he noted that was not easy to do.

Commissioner Loché disclosed he also met with the property owner and the UFCW representative, Mr. John Nunes. Following up on a question raised by Commissioner McDermott, Commissioner Loché said he understood that the CUP “ran with the land,” but he asked if that meant the CUP was indefinite and that 13 years instead of three years could have gone by as long as the property owner was searching for a tenant. Assistant City Attorney Conneely said the continuation of the CUP was not automatic and depended on the owner’s efforts; for example, if he stopped marketing for five years and then started back up again there might be an argument that the CUP was terminated during that time. But bottom line, she said, for the CUP to be expired, the Planning Commission would have to hold a public hearing and since that hadn’t occurred, the CUP was still a valid use permit.

Commissioner Loché asked about the use of the property changing and Assistant City Attorney Conneely said once it had been determined that the use was consistent with the terms of the existing CUP issued for that property, then the CUP ran with the land.

Commissioner Loché noted that in the 2004 agenda report, what was meant by regional or sub-regional under the Zoning Ordinance was discussed and from the report he quoted: “The Zoning Ordinance specifically recognizes this site as a prime location for regional and sub-regional retailers due to its location.” Commissioner Loché asked staff if it was because of the location or because of the use that the site was deemed regional or sub-regional. Director of Development Services Rizk said it was a combination of both. Commissioner Loché asked staff if the Commission had to make the determination if the business was regional or sub-regional before considering the location and Mr. Rizk said both criteria needed to be considered and noted that location alone wouldn’t generate the same criteria. Mr. Rizk pointed out that the criteria for the Industrial Zoning District discusses minimum lot size, proximity to the freeway, and then the regional/sub-regional designation, so both factors were part of the determination.

Commissioner Loché noted that according to the same report, the smaller shops at the site did not have to be regional or sub-regional and he asked for confirmation from staff that the uses listed for the Central Business District didn’t have to be regional or sub-regional. Mr. Rizk said that Condition 13 of the CUP for the site indicated that the uses permitted for the smaller shops did have to have a regional or sub-regional marketing base. Other uses were permitted, he said, but they also had to be regional or sub-regional. Commissioner Loché asked staff to confirm that all of the potential uses listed also had to be regional or sub-regional and Mr. Rizk said that was how he interpreted the condition.

Commissioner Mendall asked if Starbucks was a regional or sub-regional retail use and Director of Development Services Rizk said based on the CUP from 2004, yes. Commissioner Mendall asked if Quiznos and Wing Stop were also regional or sub-regional uses based on the definition and Mr. Rizk said he would rely on the existing CUP and according to the existing condition, all retail uses at the site had to have a



**MINUTES OF THE SPECIAL MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, April 5, 2012, 7:00 p.m.
777 B Street, Hayward, CA94541**

regional or sub-regional marketing base. Mr. Rizk noted that one of the issues at the site was that uses had to be sub-regional or regional and unfortunately, the Zoning Ordinance did not define “sub-regional.”

In regards to the letter from Ms. Judy V. Davidoff, the attorney representing Walmart, Commissioner Mendall noted the argument of her letter suggested that the nature of the site, and he quoted, was “a suitable location for regional or sub-regional uses.” Commissioner Mendall asked staff if they concurred with that statement and Mr. Rizk said no, staff would suggest that both factors, the location as well as specific uses, would have to be considered. Commissioner Mendall asked for confirmation that the use itself had to be regional or sub-regional in addition to the location being suitable and Assistant City Attorney Conneely said the Industrial District Zoning section of regulations stated that the use had to be regional and sub-regional and not just the location. Director of Development Services Rizk read the full criteria as stated in the Zoning Ordinance.

Regarding the letter from Mr. Wolfe, the attorney representing UFCW Local 5, Commissioner Mendall asked staff to respond to the first point of the letter which stated that “the Zoning Ordinance itself recognizes that supermarkets are neighborhood serving and not regional-serving commercial uses. The ordinance identifies ‘supermarket’ as a primary land use only in the Neighborhood Commercial Zoning District, by contrast, ‘supermarket’ is permissible in the Regional Commercial District only if it is an auxiliary or secondary to a primary commercial use.” Commissioner Mendall asked if the statement was accurate and Director of Development Service Rizk said no, that supermarkets were listed as primary uses in the Neighborhood Commercial District, Central City Commercial Sub-district, Central Business District (Southland Mall), and General Commercial Zoning District. Only Costco falls under the Regional Commercial Zoning designation, and Mr. Rizk explained that the zoning district was formed to encourage a super store or super-sized retailer as the major anchor and other uses would be secondary or subordinate. Mr. Rizk emphasized that the Regional Commercial Zoning District was not regional or sub-regional, it was Regional Commercial. The criteria listed for the Industrial Zoning District was regional or sub-regional, he said, or less than regional. Commissioner Mendall said the two conditions placed on the retail uses at the proposed Walmart site was that they be regional or sub-regional in nature and that they comply with the zoning designation, which implies that there was a difference between the two, and Mr. Rizk said yes.

Commissioner Mendall disclosed that he met also with Mr. Temkin, Walmart representatives, and Mr. Nunes from UFCW Local 5. Commissioner Mendall asked Assistant City Attorney Conneely if it was the City’s opinion that the use being proposed complied with zoning regulations, the existing CUP, and did not require a CEQA and Ms. Conneely said yes, those were the only matters under consideration. Commissioner Mendall asked if the Planning Commission’s opinion of whether or not the proposal would be a good addition to the City had any relevance and Ms. Conneely replied only if the Commission was finding the use as something other than regional or sub-regional. She added that the Commission’s opinion was only relevant to issues being presented. Commissioner Mendall asked if his opinion of whether or not this area needed a grocery store was a relevant factor in making his decision and Ms. Conneely said only if his decision had a bearing on whether the store had a regional or sub-regional draw. Commissioner Mendall asked if his desire to see the site filled to reduce crime and blight was a valid factor for him to consider and Ms. Conneely said that could be part of his decision, but it wasn’t necessarily within the parameters of the three major issues at hand.

Commissioner Lavelle asked if any conditions could be amended or added tonight and Assistant City Attorney Conneely said no, the item tonight had not been noticed for amendment or modification of the use permit. Ms. Conneely said the item would have to be brought back for further consideration if the Commission wanted to make changes.

Commissioner Lavelle asked Director of Development Services Rizk if Walmart wanted to sell liquor at the site and whether that would change any of the CUP conditions. Mr. Rizk said he assumed they would sell liquor and as long as the store complied with ABC and City regulations, no changes to the CUP would be required. Commissioner Lavelle asked if liquor was taxable and Mr. Rizk said he believed so.

Regarding truck traffic, Commissioner Lavelle asked if store hours of operation for the public could be limited to allow for truck deliveries during off times. Mr. Rizk explained that to add that condition, the item would have to come back to the Commission after noticing. Commissioner Lavelle asked if staff would have any input on store hours or it was solely up the retailers. Director of Development Services Rizk said without a condition restricting hours there were no restrictions. Mr. Rizk mentioned that staff had asked the project proponent and was told hours had not been determined. He recommended that the Commission ask the proponents about hours of operation.

Commissioner Lavelle disclosed that at their request, she also met with Mr. Nunes, Mr. Temkin, and representatives from Walmart.

Commissioner Mendall noted that nothing in the Zoning Ordinance defined regional and/or sub-regional and he asked for the history of why the site was given that designation. Director of Development Services Rizk said provisions were developed as part of a major revision to the Zoning Ordinance and not generated by anything specifically related to this site. He added that he could only conjecture that the designation was related to the site being visible from the highway.

Commissioner Lamnin disclosed that at their request, she also met with representatives from Walmart, the union, and Mr. Temkin. She said she was also contacted by members of the public.

Commissioner McDermott said she also met with UFCW's Mr. Nunes, Walmart's Debra Huron, and property owner Mr. Temkin.

Commissioner Faria disclosed that at the request of Mr. Nunes, Walmart representatives, Mr. Temkin, and residents of the City of Hayward, she met with them to discuss the item.

Chair Márquez asked if more than the existing four parking spots would need to be designated for handicap parking at the site. Director of Development Services Rizk said building staff would ensure that ADA accessibility requirements were met. Regarding the traffic study, Chair Márquez asked if any consideration had been given to the two bus routes that stopped in front of the site on Whipple in terms of traffic congestion and Transportation Manager Frascinella said no. Chair Márquez asked if there was any contact with the Union City Planning Manager and Mr. Rizk said notice of the hearing was sent to Union City staff, but thought nothing had been received in response. Planning Manager Patenaude confirmed that a notice was sent to the Union City Economic and Community Development department head and no response was received.

Chair Márquez noted that she had questions for Walmart representatives regarding alcohol sales and whether a banking center was being proposed for the site. She asked staff if any type of economic impact analysis had been considered. Mr. Rizk said he didn't know about the banking center and that no, an economic analysis was not conducted because staff didn't feel it was relevant to the issues being presented.

Chair Márquez announced that due to the number of Public Speakers cards received, comments would be limited to two minutes per individual and/or until 11pm, to follow an informal procedure that would allow the Commission to deliberate for an hour and still end the meeting by midnight.

Chair Márquez invited the appellant, Mr. John Nunes, representing the UFCW Local 5, to approach the podium. Mr. Nunes, with business address in San Jose, said the union's land use attorney was present and



**MINUTES OF THE SPECIAL MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, April 5, 2012, 7:00 p.m.
777 B Street, Hayward, CA94541**

would be responding to comments made in letters. He then introduced himself as the Collective Bargaining Director for 32,000 members of the UFCW with an office in Hayward for 30 years and gave some background information about the union, noting 2,000 members lived and worked in the City of Hayward. Mr. Nunes stated that the only matter before the Commission was whether a neighborhood market was the appropriate zoning for an industrial or regional serving commercial use. He said the Zoning Ordinance specifically identified supermarkets as neighborhood-serving commercial uses. He pointed out that it was “doubtful” any involved Planning staff member or elected official approving the Regional Retail Centers in 2004 could have possibly envisioned the Circuit City site as a supermarket. He said the two uses were complete opposites in the context of environmental considerations. Supermarkets were an intense retail use, he said, generating significantly more traffic and for this reason, CEQA review should be initiated.

Mr. Nunes pointed out that Section 10-1.3270 of the City’s Zoning Ordinance clearly stated that developed land uses were deemed discontinued if operations ceased for more than six months; Circuit City stopped operations over two years ago and needed to be re-permitted, he said. Mr. Nunes said Assistant City Attorney Conneely’s interpretation of the Zoning Ordinance regarding the property owner actively trying to lease the property for three years and therefore maintaining occupancy, was absurd. Another absurd statement, Mr. Nunes said, was Director of Development Services Rizk saying that it wasn’t unusual for customers to circle a parking lot waiting for someone to leave. “That’s why there’s a specific Zoning Code for that place,” he said, “You have so many parking lots for the square footage.” Mr. Nunes said he had heard nothing but subjective interpretations from Planning staff to justify a Walmart grocery store at the Circuit City site. He said Planning staff was in support of Walmart and would bob and weave through the zoning code to support their final decision to allow it. He encouraged the Planning Commission to approve the appeal and reject the Walmart grocery store at that location.

Richard Drury, representing the law offices of Mark Wolfe & Associates and UFCW Local 5, with business address in Oakland, thanked the Commissioners for focusing on the key issue of whether the proposed use was allowed under the existing zoning code and CUP and if it was not, that CEQA review was required. He said it was very clear that the existing CUP only allowed regional and sub-regional uses and it was also clear that a 34,000 square foot grocery store was not a regional or sub-regional use. Mr. Drury pointed out that the City’s Zoning Ordinance defined a supermarket as a neighborhood commercial use and the proposed store was smaller than the average Safeway, which is 46,000 square feet. He acknowledged that “regional” and “sub-regional” were not defined in the zoning code, but said that didn’t mean the words had no meaning. According to the law of Plain Language Doctrine, or defining a word by the dictionary when another definition was not available, regional or sub-regional meant “a wide area.” Mr. Drury pointed out that Transportation Manager Frascinella himself stated that all traffic would be coming from the local area and no other direction so it was not a regional or sub-regional use; it was a neighborhood market. Walmart calls these stores “Walmart Neighborhood Markets,” he said. Mr. Drury noted the proposed use was not a permitted use under the CUP and a new CUP was required. He noted that Mr. Nunes addressed the six months issue and it was clear that the existing CUP had expired and was null and void.

Regarding CEQA, Mr. Drury acknowledged the “excellent” questions of the Commission and whether CEQA could be reviewed again later and he noted that the answer was no, this was the only chance to conduct environmental review on the project. He emphasized that a Walmart supermarket was not a Circuit City and would have different environmental impacts. Mr. Drury said staff had made a “significant misstatement” tonight and in the staff report when they said, “The proposed project does not trigger Bay Area Air Quality Management District 2011 Guidelines screening thresholds for air quality impact analysis.” Noting he brought copies for distribution, Mr. Drury said Page 3-2 of the guidelines stated that a supermarket

exceeds greenhouse gas significance thresholds at 8,000 square feet. The proposed supermarket is four times larger than the screening threshold, he said; an electronics superstore triggers greenhouse gas thresholds at 18,000 square feet. In other words, Mr. Drury said, the grocery use had more than double the impact of the electronic superstore and that was a significant greenhouse gas threshold. He said the 2004 Negative Declaration did not analyze greenhouse gas impacts at all, so staff cannot say impacts had been considered. Mr. Drury pointed out that staff had admitted they didn't know the parking impacts and that there might not be enough parking. In *SNARL vs. San Francisco*, he said, the court held that circling traffic was a potentially significant impact because it had traffic and air quality impacts. Under the Institute for Traffic Engineers thresholds, a supermarket had more than twice the traffic impact as electronic superstore, he said. Mr. Drury concluded that the project was not exempt from CEQA and should have a thorough environmental impact review to make sure the City mitigates the impacts, and makes sure that whatever gets built there has as little an impact, and as much benefit, to the community as possible.

Property owner Dan Temkin, with address in Hunts Point, Washington, said he had a CUP for a regional center (emphasizing "center") and noted that unfortunately, the center had a large empty building, but that it had never stopped operating as a retail center. Regarding the parking code requirements, Mr. Temkin said the site had met all requirements as well as 95 other conditions of the CUP. Mr. Temkin then read a statement regarding the importance of the decision before the Commission and the message it would send to potential future developers and business owners about the fairness of the City of Hayward. He noted that in 2004, his family had received unanimous approval from the both the Planning Commission and the City Council to turn the site from a 24-hour truck terminal into a thriving retail center. In comparison, he said to the previous use, the site now contributed much less traffic and pollution.

Mr. Temkin said a lot had occurred since his family had gained the city's approval for the center including an unprecedented economic downturn. He said three years ago, Circuit City went out of business, followed by four more businesses, leaving an 87% vacancy rate for the complex. The remaining businesses, including small, family-owned businesses, were struggling to stay afloat. Mr. Temkin said his family had dipped into their own pockets to pay for the upkeep of the property, noting that a 13% occupancy rate didn't come close to covering the cost of operating the center. Despite his family's efforts, he said, the center was now a hangout for gangs and drug dealers. Wingstop was held up by gunpoint twice last year, he said, and in the last two years, 110 calls for service had been made to 911; an unfortunate by-product of a high vacancy rate.

Mr. Temkin said this was an opportunity to recycle the abandoned retail site and return it to the thriving economic hub it once was. He said a Walmart grocery store with a pharmacy was exactly what residents had been asking for in south Hayward. Mr. Temkin noted that the City's Planning Director had concluded that the potential tenant conformed to the existing zoning code and permit. He said one national retailer was being replaced with another and with its name recognition, reputation for everyday low prices, and proximity to the highway, would draw many shoppers to Hayward.

Mr. Temkin said that if it was any other grocery store requesting to locate at this site, there would be no discussion, just press releases announcing the opening. It was only because the proposed tenant was a Walmart market that everyone was here, not because it was a non-conforming tenant. Mr. Temkin said an outside special interest group didn't like Walmart for its own economic reasons and he was only asking that his tenant receive the same treatment as any other business, and that zoning laws be applied as they would for any other user. Mr. Temkin said that he had met with hundreds of residents not associated with any special interest group and they were in support of the store opening in Hayward, the jobs that would be created, and the construction activity it would generate. Mr. Temkin concluded by saying the question wasn't "Do you like Walmart," but rather if the Commission agreed with the City's Planning Director that the tenant conforms to the retail use that was unanimously approved by the Planning Commission and City Council in 2004. He said the answer would not only affect the property being considered, but also send a message to all prospective businesses and retail establishments that may be considering opening in Hayward. He respectfully asked, on behalf of his family and the struggling businesses at the shopping center, for the



**MINUTES OF THE SPECIAL MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, April 5, 2012, 7:00 p.m.
777 B Street, Hayward, CA94541**

Commission to ratify the Planning Director's determination that the Walmart market conformed to the existing land use permit and deny the appeal.

Mr. Temkin then introduced land use attorney Kristina Lawson, with business address in San Francisco. Ms. Lawson said in all due respect to Mr. Drury, he presented "a great number" of facts that were not related to the decision before the Commission that evening. She explained that the site had a valid CUP that was issued in 2004 and a complete environmental review that had not been challenged. Ms. Lawson said under Condition 1 of the CUP, the permitted use was a Commercial Retail Center consisting of multiple buildings. She noted that the permit applied to the center as a whole and not the individual buildings, so the permitted use had been continuous. She also noted for the record that the building in question had been occupied from time to time by a Halloween store.

Ms. Lawson stated that a determination regarding regional and sub-regional use was the only issue before the Commission. Referring to the Economic Development section of the City of Hayward's General Plan, she read that the environment in which the City functions was primarily a regional economy because of the key location of the City, and that retailers considered the regional customer base as a key factor in locating here. In the Land Use element of the General Plan, she read that the City had a surplus of jobs over housing, meaning people were coming into the City to work, she said, and this regional mobility was a key factor in the City's decision to encourage retail uses along the 880 corridor. From the staff report, Ms. Lawson noted that the purpose of a regional and sub-regional requirement was to encourage retail development along highways in the City's industrial districts, not discourage it, and the incentives had been successful in bringing businesses to Hayward rather than Fremont or Union City. Regarding whether the proposed use would service a regional or sub-regional marketing base, Ms. Lawson noted that looking at the two CUPs issued in the past, one for this property and one for the Target property across the street, approved uses included fast food restaurants, a coffee shop, a mobile telephone company, a computer repair shop, and a postal service store amongst others. She noted that the CUP also referenced the Central Business District retail commercial uses as examples of permitted uses and a supermarket was included. In conclusion, Ms. Lawson said the land use determinations for this site were made in 2004, the General Plan and Zoning Ordinance were in place, and the CUP for the center was unanimously approved.

Commissioner Mendall asked Ms. Lawson if she was arguing that every single one of the uses she listed was regional or sub-regional and she said yes.

Jody Stowers, a Danville resident, and an alumni of Cal State Hayward (now East Bay), said he had been with Walmart for 14 years, and at the Union City store since 2003. He said one of Walmart's values was making an impact on the community and he noted he had been very involved with the police and fire departments, local charity groups, and especially the school district, citing Walmart's involvement with the "Stuff the Bus" fundraiser event that benefitted Hayward and Union City schools. Many customers and associates were Hayward residents, he said, and they were excited to have a Walmart market in the community. Mr. Stowers said over 300 cards had been collected in support of the project. Mr. Stowers said the Hayward Walmart market would occupy the entire 34,000 square foot building formerly home to Circuit City, would sell 24,000 different products, and would offer the free "Site to Store Program" that allowed customers to shop online for all products offered by Walmart, including some not available at the store, for pick-up at the store later. He noted that Walmart would be making upgrades to the building, including sustainability improvements such as day-lighting in the grocery area, a high-efficiency HVAC unit, central energy management, a white roof, low-flow faucets, ozone-friendly refrigerants, and a water heating system

that used waste heat from the refrigerator equipment. Mr. Stowers said the store would also be equipped to recycle cardboard, bottles, cans and plastic waste.

Commissioner Loché asked Mr. Stowers if a Walmart market's "Site to Store Program" would generate as many sales as a Walmart market would in comparison to a regular Walmart and Mr. Stowers said he didn't know, but noted that week by week, the program was getting more popular. Mr. Stowers also mentioned that California didn't have any Walmart markets; the closest markets were in Phoenix and Las Vegas. Commissioner Loché asked for a percentage of sales from "Site to Store" purchases at a regular Walmart store and Mr. Stowers said it varied from store to store, but that the percentage was growing. Commissioner Loché said he lived within walking distance to a grocery store and shopping carts were everywhere. He asked how carts would be contained and Mr. Stowers said the carts would have a locking system and the store would hire a service to retrieve carts.

Commissioner Lavelle asked Mr. Stowers if the same truck could be used to deliver products to his store in Union City and the proposed Walmart market. Mr. Stowers said that would depend on how full the truck was, but if it wasn't a full delivery, logistically it made sense to send one truck to deliver to both stores. Commissioner Lavelle said that would be really neat if that was possible to reduce greenhouse gases.

Commissioner Lamnin asked Mr. Stowers if the Walmart market would have a deli and he said yes. Commissioner Lamnin asked if any other locations were considered in Hayward and Mr. Stowers said he didn't know, but noted that one factor that may have been considered was that his store didn't have a bakery or meat department and only a small selection of produce. Mr. Stowers said that many of his customers had been asking for these other services. Commissioner Lamnin asked what percentage of items available at the proposed market was already available at the Union City store and Mr. Stowers indicated he didn't know.

Commissioner Lamnin asked about security at the Union City store and if Mr. Stowers had any statistics. Mr. Stowers said safety was good and that the store had a great relationship with the Union City Police Department and a lot of security in the building and in the parking lot 24 hours a day. Commissioner Lamnin asked if there were any security issues in the parking lot and Mr. Stowers said occasionally there were incidents, similar to any other retail store, but he noted the 24 hour patrol helped control any problems.

Commissioner Mendall asked what percentage of sales at the Union City store was from "Site to Store" purchases and Mr. Stowers said he didn't have that information.

Commissioner McDermott confirmed that the store in Union City was not a full grocery store and Mr. Stowers said that was correct, it was not a superstore. Commissioner McDermott asked for confirmation that "superstore" was how a full grocery store was referred to and Mr. Stowers said no, not necessarily, and noted his store was referred to as a Division I Walmart store with an expanded food section, but with very limited fresh food. Commissioner McDermott commented that the shoppers at his store were predominantly going for items other than food, but would purchase food items if they were available. Mr. Stowers said many of his customers felt that way because his store didn't have full service, but noted that a lot of his customers shop full-time for their groceries there. He noted that a lot of his customers were from Hayward and were demanding a full-service store. Commissioner McDermott pointed out that his store would lose those customers if the market was approved and he said yes, his store would lose customers looking for a full range of fresh groceries in a more convenient, smaller format store.

Commissioner McDermott asked how many people were employed at the Union City store and Mr. Stowers said there were 400 full-time and part-time employees. Commissioner McDermott asked for the percentage of full-time to part-time employees and Mr. Stowers said the majority of employees were full-time, or 71%.

Commissioner Loché asked Mr. Stowers what the hours of operation were for existing Walmart market stores. Mr. Stowers said there were some stores open 24-hours and some from 7 or 8 in the morning until 10,



**MINUTES OF THE SPECIAL MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, April 5, 2012, 7:00 p.m.
777 B Street, Hayward, CA94541**

11 or midnight; it depended on the location of the store. Commissioner Loché asked Mr. Stowers if he knew how store hours were determined and Mr. Stowers said he wouldn't be able to speak to that.

Commissioner Lamnin confirmed he didn't know what the hours of operation would be for the proposed store and Mr. Stowers said no. She asked if alcohol or tobacco would be sold and Mr. Stowers said because it was a full-service grocery, it would be selling liquor.

Chair Márquez opened the Public Hearing at 8:40 p.m. noting comments would be held to two minutes.

The following people spoke in favor of upholding the appeal (or against the Walmart market): Bernadine Temple, Paul Novak, Mike Machado, Mike Allen, Manuel Ratinho, Cassandra Hunter, Andreas Cluver, Misty Tanner, Tiffany Hawkins, Mindy Davis, Josie Sutton, Simone Mock, Carol Sturholm, Amir Masetic, Silvia Brandon Pérez, Desirae Schmidt, Alfredo Delgado, Jean Powers, and Cindi Pringle. Reasons included: poor quality of fresh foods, poor food handling, impact on union jobs at other local grocery stores, providing substandard jobs that didn't allow workers to fully support their family, because Walmart didn't pay a living wage, because Walmart didn't support unions, impact on food prices at other local stores, lack of need for another discount store, additional burden on Hayward police due to crime and location to freeway, increase in traffic, existing availability of other grocery store options, poor treatment of employees, that a grocery store was not a regional use at this site, increase in truck traffic, that less than 20% of available goods would be taxable and wouldn't cover the cost of generated emergency service calls, that Walmart was not good for the community, increased greenhouse gases from traffic, that the existing CUP had expired, because Walmart was not a good corporate citizen, because a grocery store was a completely different use from an electronics store, because a new environmental impact report would be needed, because a new traffic study would be needed, because Walmart violated labor laws, because Walmart was the number one employer in the nation but not every job was a good job, because Walmart workers were paid "poverty wages" and most couldn't afford the health benefit package, because Walmart associates still needed government assistance after getting paid, because stores could have 40% full-time employees and 60% part-time employees, poor labor practices, lack of sufficient parking at the site for employees and shoppers, because a neighborhood-serving grocery store was only allowed under the Industrial Zoning District when it complimented a regional-serving retail anchor that was at least 100,000 square feet, because there was already "Site to Store" services at the Union City Walmart, that the intersection was already congested, because a Walmart market would hurt small business, that there was already a Target across the street, because Walmart outsourced manufacturing and hurt American industry and workers, because the Walmart business model was to indefinitely sell products at a loss and put other retailers out of business and had the deep pockets to do just that, because Attorney Generals from 17 states sued Walmart for not paying employees for time worked, and cheating workers out of hundreds of millions of dollars.

The following people spoke in favor of denying the appeal (in favor of the Walmart market): Richard Nacianceno, Roy Gordon, Jodie Gordon, Jerry Higgins, Philip Lehrman, Marjorie Sparago, Derek Lee, Joseph Paul Smith, Javier Rincón, Stephanie Skaggs, Vincent Encelan, Loretta Encelan, Kim Huggett, Stephanie Serene, Barbara Sacks, Cathy Conner, John Sechser speaking on behalf of Deborah Perry (who had laryngitis), Chris Pareja, Ralph Farias Jr., David Miller, and Chuck Horner. Reasons included: job creation, to fill a vacant building, to combat blight and crime, not wanting Hayward to appear unfriendly to new businesses, the need for a full service grocery store in the south Hayward area, for the tax revenue generated, to provide nearby and affordable shopping options for seniors, because a Walmart market was better than nothing, to provide affordable shopping options for families, because speaker liked shopping at Walmart, because Mr. Temkin had maintained the property and done everything he could to attract a new

tenant, to keep revenue dollars local, for providing products the Union City store didn't offer, to provide more full-service grocery options, to save money, to have access to fresh produce and meats, because Walmart was a regional use, because Walmart was a great place to work, because Walmart was a good corporate citizen, because Walmart gives back to the community, because Walmart had improved the quality of its products, to help the other small businesses in the complex, because this was a land use issue not a popularity contest, because the vacant property was a horrible burden on the other businesses in terms of crime, because the commercial real estate market was so tough right now and it was so difficult to find a tenant, because Walmart would create synergy at the site, because Hayward shouldn't cater to special interest groups, because Whipple Avenue was a great regional stop along 880, because people could choose to shop somewhere else, because voting against Walmart was un-American, and to deter graffiti.

Greg Warn, with address in Danville, explained that his family owned the property on Whipple for 35 years running a trucking company at the site before Mr. Temkin bought the property from them. Mr. Warn said when the application went before the Commission to change the use of the land in 2004, the Commission was thrilled to get rid of the hundreds of trucks that came in and out of the property 24 hours a day. Now, he said, there was a beautiful shopping center that had had the misfortune of a major tenant going bankrupt, and the smaller businesses were trying to survive. He pointed out the trucking business had been union, but putting that issue aside, noted that Mr. Temkin had maintained the property and Walmart should be allowed to go in. "Let the people decide whether they want to shop there or not," Mr. Warn said, concluding that Mr. Temkin had maintained the property and Walmart would be good for the City of Hayward.

Etenesh Benti, with address on Blossom Way, identified herself as the owner of the Quiznos at the site and alumni of Cal State Hayward. She said she started the business five years ago with the dream of being financially independent and spending more time with her family, but today was working harder than ever and struggled to pay the bills. Ms. Benti said since Circuit City closed, her business had gone down by more than 40%, the location had become an attraction for crime, and she was scared to take out the trash after closing at night because of the cars driving around and spinning donuts. She said that if the Planning Commission denied Walmart they would also be denying the other businesses in the area struggling to exist. Ms. Benti urged the Commission to create more jobs and revenue for the City and consider the other small businesses that were on the verge of closing. She pointed out that other cities were bending over backward to attract businesses and bring jobs to the City, and that she couldn't believe they were arguing about whether or not to bring in Walmart. Ms. Benti noted that looking at Lucky and Food Maxx, she didn't see 200 cars coming in and out at the same time and traffic wouldn't ever be any worse than on Black Friday when Circuit City was open. She urged the Commission to vote yes on Walmart and support small businesses.

Commissioner Lamnin asked Ms. Benti if she anticipated any impact to her business if the Walmart market had a sandwich component to the store. Ms. Benti said Quiznos were great sandwiches and other sandwich shops had closed three months after Quiznos opened. She encouraged Commissioner Lamnin to come down and try a sandwich and said she wasn't worried about the competition; she was worried about not having someone in the store space.

Chair Marquez called for a short break at 9:30pm with Public Comments resuming at 9:40 p.m.

Enrique Bognot, with address in Milpitas, said he was employed with Walmart for eight years, four in Milpitas and four in Fremont. He said that since his injury, Walmart had treated him badly and the store manager had told him there wasn't any more work for him. Mr. Bognot pointed out that if Walmart cared about their associates or their community, they would have done more to help him. He said he wasn't speaking for or against the proposed Walmart market, he just wanted to get back to work. Mr. Bognot said he wanted Walmart to treat their associates fairly, like human beings, and remove the forced labor. He said he was representing himself and the organization, United for Respect, that he joined because he couldn't rely on Walmart.



**MINUTES OF THE SPECIAL MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, April 5, 2012, 7:00 p.m.
777 B Street, Hayward, CA94541**

Roxanne Stone, with address in San Jose, identified herself as the owner of Wingstop on Whipple Road and on B Street. Ms. Stone said she had spent hundreds of thousands of dollars in the City of Hayward and she urged and begged the Commission to approve the Walmart. Ms. Stone said her shop had been held up at gunpoint twice and suggested the Commission ask her employees how that felt (not good, she said). She said the area was dark and not safe and when Circuit City was there it brought light. She pointed out that people didn't shop at a Walmart market on Black Friday, but they did at Circuit City and nobody mentioned any problems. She said truck deliveries were limited and there were more when Circuit City was open. Ms. Stone said "Say yes" to Walmart because she was putting her hard-earned money and time into Hayward and she was suffering. She said she understood Etenesh Benti's comments and she was going to have employees needing other jobs if Mr. Temkin went out of business, because so would she at both locations. She noted that downtown Hayward was vacant and that it was hard to get a loan; otherwise, downtown Hayward would be full and so would Circuit City. Ms. Stone urged the Commission to think like a business owner and to support Walmart, noting there was discrimination everywhere, not just at Walmart.

Judy Davidoff with the law firm Sheppard, Mullin, with business address in San Francisco, representing Walmart, said as the Commission made its decision, they needed to remember that City staff were the experts; the Planning Director was the expert in planning and the Traffic Engineer was the expert in traffic. She pointed out that they had heard a lot of opinions, but not from qualified traffic engineers and planners. Ms. Davidoff urged the Commission to give staff the credit they deserve and support their opinion. She noted that the fact that a new tenant was coming into a long vacant center did not mean the Commission could open the approvals made in 2004 that found the uses at the site were regional and/or sub-regional. Ms. Davidoff said staff had looked at all criteria and had determined the shops and use was regional/sub-regional and therefore, CEQA wasn't triggered and was clearly exempt. This is about the use, she said, not the user. Ms. Davidoff pointed out they had heard a lot about Walmart, but it was not about Walmart or their corporate policies, it was about the use and staff had found the use consistent. She urged the Commission to follow the staff recommendation and deny the appeal.

Shell MacPherson, an engineer with Packland, business address in Roseville, representing Walmart, said the company performed the land use due diligence for the property. Mr. MacPherson said he was only there as a resource in case any of the Commissioners had questions, but commented that in regards to parking, the center offered parking at 4.4 spaces per 1000 square feet for the 34,000 square foot facility. Walmart, he said, required 4 spaces per 1000 square feet, so the center offered more than adequate parking for their needs, including Black Friday and the holiday rush. Regarding traffic, Mr. MacPherson said the center was regionally located and would draw on traffic already there. He said the store may not generate more traffic, but would bring people in who were passing by. Truck traffic would be timed by Walmart's sophisticated distribution system, he said, and would not conflict with the general customer by taking place in the early morning or evening. Mr. MacPherson said Walmart was "setting the stage" for retailers across the country with the sustainable improvements planned, including a roof with skylights that would pick up the daylight and as the day gets brighter, the lights automatically dim. He reiterated other sustainable improvements already mentioned and concluded he was available if the Commission had any further questions.

Chair Márquez called the names of two people who were no longer there and then closed the Public Hearing at 10:28 p.m.

Commissioner Loché asked staff how extensive the environmental impact review was from 2004. Director of Development Services Rizk said it was a typical review involving an initial study where various impact areas

were analyzed. Based on that, he said, a Mitigated Negative Declaration was prepared, which indicated there were potential impacts, but all were mitigated to levels of insignificance.

Regarding a comment made about how “ridiculous” the length of the application process was, Commissioner McDermott said the process involved checks and balances and while the Planning Commission respected staff, they considered other perspectives and represented the community. She acknowledged she was not an expert, but said she did have knowledge others might not. Regarding the union disputing the regional/sub-regional use of the property, Commissioner McDermott said union representatives were protecting the value added by being a member of a union. She said the representatives are trying to protect local stores that would be at a competitive disadvantage because they can’t offer the same prices that Walmart can. She commented that Hayward was predominantly a union city.

Commissioner McDermott commented that she met with Mr. Temkin and found him very conscientious, and noted he had a lot at risk not just for himself, but for his family, because the property was upside down or with a value less than what he owed. She said Mr. Temkin was trying his best by collecting lease payments at reduced rates, so struggling businesses in the center could remain open. Currently dealing with an 87% vacancy rate at the center, Commissioner McDermott said Mr. Temkin relied on the anchor tenant and commented, “Whoever would have thought that Circuit City would be going out of business?” She continued, noting that now Walmart, a strong anchor store, was willing to come in to the struggling center with a long-term lease that would bring business to the other tenants and provide senior citizens with a local shopping option. Commissioner McDermott remembered reading that a Ranch 99 grocery store was interested in that spot, and she wondered why that didn’t happen. She noted that Mr. Temkin’s realtors had been actively looking for a tenant, but the current economy made that very difficult. She concluded that she could see all points of view and that she appreciated all the opinions she had heard and she thanked the people who stayed and listened to the discussion at the Public Hearing that evening.

Commissioner Lavelle thanked the 46 speakers who had the energy, time and willingness to address the Planning Commission, and she noted that 25 spoke against the appeal (or in favor of Walmart coming in), 21 in favor of upholding the appeal, which, she said, mimicked the emails and letters received. She said quite a few people were opposed to Walmart, but more said they would like to shop at the Walmart grocery. Regarding the decision before the Planning Commission, Commissioner Lavelle said it was a simple decision because the Commission had a limited role, unlike the City Council members who were elected representatives who were accountable to constituents. She said the Commission’s decision was based on the three points provided by Director of Development Services Rizk, including if the use requested was correct. She said she believed that it was correct.

That being so, Commissioner Lavelle said she had tremendous respect for the union workers at stores like Safeway. She said she shopped at Safeway and paid higher prices, but knew that workers were treated respectfully, had rights, and had union wages and benefits. She said she was pleased to learn from UFCW Local 5 rep John Nunes that the union worked hard to move non-union stores toward hiring union workers.

As part of her research, Commissioner Lavelle said she considered what grocery store options were in Hayward and if the Commission should create opportunities for more. She said she would support any motion that would allow more opportunities, including for Walmart. Commissioner Lavelle pointed out that the two Fresh and Easy stores in Hayward were not union and had corporate offices based in England, but noted they were small and affordable and Fairway Park residents (where one of the stores was located) were delighted to have somewhere close by to shop. She said maybe someday Fresh and Easy would be a union shop. She listed the other stores in Hayward where groceries were available, noting that less than half were union, and she commented that the Commission was not making decisions based on whether stores were union or not; they were making the decision based on the criteria presented by the Director of Development Services. She thanked speakers Philip Lehrman and Greg Warn in particular, noting their comments helped her reach a decision. Commissioner Lavelle concluded by saying that if this store did not get the opportunity



**MINUTES OF THE SPECIAL MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, April 5, 2012, 7:00 p.m.
777 B Street, Hayward, CA94541**

to open, Hayward might get a reputation of being unfriendly toward business. She noted this was the worst possible time to have that attitude and the City should do all it could to support businesses coming to Hayward. She reiterated that residents could shop somewhere else if they didn't like Walmart.

Commissioner Lavelle made a motion per staff recommendation to adopt the findings determining that the proposed market was categorically exempt from environmental analysis pursuant to Section 15301 (Existing Facilities) of the California Environmental Quality Act guidelines and uphold the Planning Director's approval of the proposed Walmart Market as a permitted use that was consistent with Conditional Use Permit No. PL 2004-0039. Commissioner Lavelle pointed out that if the vote was against the appellant, the matter could be called up to the Council.

Commissioner Faria seconded the motion and said she agreed with the points made by Commissioner Lavelle and said they were all interested in the community and making sure people had a living wage and the ability to supply the things their family needed. Commissioner Faria said they do "absolutely" care about the workers and said the City should care for all of the community and make sure that those with special needs get those met.

Commissioner Mendall said Ms. Davidoff said it is about the use, not the user, and he agreed that was true. He said he wouldn't be voting in favor of the motion, because the site was designated for regional and sub-regional uses and, in his opinion, a grocery store did not comply. Commissioner Mendall said he estimated the number of grocery stores in Hayward at about 40, yet there were many, many people in Hayward that felt they were not being well-served by a grocery store, because there wasn't one within a couple miles of their home. Grocery shopping was inherently a neighborhood activity, he said, and not a regional retail activity, otherwise the residents of Southgate would have no problem driving across town to one of the 40 grocery options available. For that reason alone, Commissioner Mendall said he could not support the motion. Commissioner Mendall said the use didn't conform to the Zoning Ordinance and that that area was called out for a regional/sub-regional use for a reason. He said he remembered talking with Council members about losing retail sales tax revenues to Union City when Union Landing was built and Hayward wanting to counteract that and encourage big regional retailers to come here and generate sales tax. He pointed out that 80% of goods sold at a Walmart market were not taxable and even if someone thought the use fit, it still didn't fit with the reason why the Council made the decision they did. If the proposal came back to the Commission as a Zone Change application, he said he would consider it, but he concluded by saying he wouldn't be voting for it tonight.

Commissioner Lamnin said she would also not be supporting the motion and agreed with Commissioner Mendall that her decision was based on the land use and not a popularity contest. She said the vote was not popular because there were a lot of good people involved in the decision and noted the decision was being considered carefully. Commissioner Lamnin said it had been proven over and over that the location was "absolutely" regional, but she couldn't see the proposed use as regional. She said a supermarket was local use. She said the discrepancy of some of the comments were a challenge because she didn't see the property as blighted. She said she wasn't ignoring the crime issues that had happened, and she applauded the landowner for the immaculate way the property was maintained. She said it was either a regional draw or local traffic and if it was local traffic, then it was not a regional or sub-regional use. Commissioner Lamnin said that was the basis for her inability to support the motion.

Commissioner Lamnin said on the separate issue of looking at job creation, supporting businesses, and being friendly to businesses, she absolutely wanted to see a business at this site. She said something like a Dave &

Busters was both a regional and recreational use, which would address the complaint the Commission heard all time that there was nothing to do in Hayward. Commissioner Lamnin said the City desperately needed a grocery store at Southland Mall and she asked why the Commission was considering a non-regional use at this location, which had three different opportunities to shop for discount groceries in a one mile radius. She said she was really challenged on how the proposed use was unique and her challenge back to staff was to try and get some clarity on the regional and sub-regional meaning because an applicant shouldn't have to wait a year to hear from a decision-making body. Commissioner Lamnin said the City needed to decide what it needed and if the desire was for a grocery store, then the City needed to put a grocery store where one was needed. If what the City needed was a regional use, she said, "then let's work together to find that." She urged everyone present to find a tenant for this important area of the community.

Commissioner Loché said if the decision was a popularity contest he didn't know how he would vote, because the opinions were half and half. Just like the other Commissioners, he said he received a lot of emails, letters, and phone calls, and he assured everyone that he read every last one of them. He said that was the least he could do when citizens, workers and residents were willing to take their time to share their opinion and make their voices heard. Commissioner Loché commented that the letters he received contradicted each other when it came to job creation, but the Commission's decision wasn't based on that. He said the Commission was looking at the very, very narrow issue of whether the proposed market met the Zoning Ordinance criteria and whether the 2004 CUP still applied, he said.

Commissioner Loché said he would not be able to support the motion because he agreed that the use did not represent a regional or sub-regional plan. "It's called a neighborhood market for a reason," he said, and the location alone shouldn't change that. Commissioner Loché also agreed with Commissioner Lamnin that the process should not take a year and the City of Hayward needed to work to make the process move seamlessly and produce decisions quicker. He reiterated that he would not be supporting the motion.

Chair Márquez said she struggled with her decision saying there was a lot to read and a lot of content, and she noted that prior to receiving the meeting packet she was contacted by community members, the appellant, and the property owner. When she finally received the packet she said she still had tons of questions that were not answered in the report. Chair Márquez said she knew staff worked hard, but from the community perspective the report left a lot of unanswered questions. She said she visited the site twice and both times when she drove to the back of the property, someone pulled out and almost hit her. Right away, she said, the layout and flow of the parking lot seemed problematic and she commented that traffic was always congested and access was limited. She listed her concerns and said she couldn't comprehend approving the project when the Commission hadn't even seen a business plan. They didn't even know the business hours, she said. Chair Márquez concluded by saying the use had changed dramatically, she didn't have enough information to make an informed decision, and that she wouldn't be supporting the motion.

Speaking to the building owners, Chair Márquez said she was very impressed with their outreach efforts, their candidness, and the quality of their businesses. She agreed the process shouldn't have taken this long.



**MINUTES OF THE SPECIAL MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, April 5, 2012, 7:00 p.m.
777 B Street, Hayward, CA94541**

The motion to deny the appeal did not pass, 3:4:0.

AYES: Commissioners Faria, Lavelle, McDermott
NOES: Commissioners Lamnin, Loché, Mendall
Chair Márquez

ABSENT:
ABSTAINED:

Chair Márquez started to say the decision could be appealed when Assistant City Attorney Conneely said the Commission needed to take final action because the motion did not pass.

Commissioner Mendall moved that the Commission uphold the appeal and Commissioner Loché seconded the motion. Assistant City Attorney Conneely clarified for the record that Commissioner Mendall's motion was to uphold the appeal based on the comments made by the Commissioners already on record and now part of the findings.

The motion to uphold the appeal passed 4:3:0.

AYES: Commissioners Lamnin, Loché, Mendall
Chair Márquez
NOES: Commissioners Faria, Lavelle, McDermott
ABSENT:
ABSTAINED:

COMMISSION REPORTS

2. Oral Report on Planning and Zoning Matters

Planning Manager Patenaude announced upcoming meeting topics for April.

3. Commissioners' Announcements, Referrals

Commissioner Mendall suggested in light of tonight's hearing a work session be held to discuss regional and sub-regional uses and definitions to help reduce the time it takes for the next application to move through the process.

Commissioner Lamnin agreed that she would also like some clarity but asked staff if a work session would be the most helpful. Director of Development Services Rizk said having a definition in the Zoning Ordinance for both regional and sub-regional was the obvious answer and if the majority of Commission wanted to have a work session the proposed definition could be forwarded to the City Council for consideration.

Regarding the one year processing time for the project, Mr. Rizk commented that he issued a letter in May of last year and didn't receive a response until December, so for over six months it was in their court.

Saying it was likely that the decision tonight would be appealed, Assistant City Attorney Conneely said that if the Commission decided to hold a work session to discuss the definition of regional and sub-regional, they should wait until after the Council had made a decision. Chair Márquez asked staff to note that the Commission would like to come back to the matter after Council made its decision. Commissioner Mendall said he didn't hear enough Commissioners saying they wanted to hold a work session. Commissioner McDermott said she was interested and then commented that she specifically looked at the dates on the letters and she noted that Walmart submitted the application in March of 2011 and in May Mr. Rizk responded that the City needed more information. Commissioner McDermott noted that in fairness to Mr. Rizk it was important to recognize.

APPROVAL OF MINUTES

4. January 26, 2012 unanimously approved with minor changes
March 8, 2012 approved with minor changes with Loché and Lavelle abstaining

ADJOURNMENT

Chair Márquez adjourned the meeting at 11:08 p.m.

APPROVED:

Sara Lamnin, Secretary
Planning Commissioner

ATTEST:

Suzanne Philis, Senior Secretary
Office of the City Clerk