STAFF RECOMMENDATION

Staff recommends the Zoning Administrator approve a Conditional Use Permit for tobacco retail sales within a gas station convenience store located within the C-2-EA-4 General Commercial zone and Executive Airport Overlay. The project is known as file Z23-047. Draft Findings of Facts for the project are included below.

REQUESTED ENTITLEMENTS

1. **Conditional Use Permit** to sell tobacco products within a ±3,799-square foot gas station convenience store within the General Commercial (C-2-EA-4) zone. The gas station and convenience store received planning entitlement approval in 2018 (P16-039) for operation, inclusive of a car wash and off-site sales of beer and wine. The current request requires Zoning Administrator approval of a Tobacco Retail Conditional Use Permit.

PROJECT INFORMATION

Location: 6220 Freeport Boulevard (Council District 5)
Assessor's Parcel Number: 035-0084-040-0000
Applicant: Steve Rawlings, BP Products North America c/o Rawlings Consulting
26023 Jefferson Avenue, Ste D
Murrieta, CA 92562

Property Owner: Alan Lo
Willow Station, LLC
P.O. Box 78435
San Francisco, CA 94107

Project Planner: Angel Anguiano, Associate Planner, (916) 808-5519

Public Hearing: June 27, 2024

General Plan Designation: Employment Mixed Use
Community Plan Area: South Area
Parking District: Traditional
Design Review Area: Citywide
Existing Land Use of Site: Gas station
Existing Zoning of Site: C-2-EA-4 (General Commercial, Executive Airport Overlay)

Surrounding Zoning and Land Use
- North: C-2-EA-4 Multi-unit dwellings
- South: C-2-EA-4 Mini storage
- East: R-1-EA-4 Sacramento Executive Airport
- West: C-2/R-1-EA-4 Residential and Light Industrial

Property Area: ±67,017 sq. ft. / ±1.54 acres
Property Dimensions: ±140.05W x ±322.34”L
Topography: Flat
Street Improvements: Existing
Utilities: Existing

Vehicle Parking: 17 parking spaces
Project Plans: See attached site plan and floor plan exhibits
Previous Planning Files: P16-039 and P87-392

Additional Information
Existing Site
The subject site is located at the northwest corner of Freeport Boulevard and Blair Avenue, directly west of the Sacramento Executive Airport. On June 28, 2018, the Planning and Design Commission approved entitlements for a new Arco gas station with a new 3,799 square foot convenience market and eight fuel islands (16 fuel pumps), a self-service car wash, and beer and wine sales (P16-039).

Proposed Project and Analysis
Conditional Use Permit (CUP)
The City adopted an ordinance that requires a Conditional Use Permit citywide for tobacco retailing within buildings less than 15,000 square feet or with shelf space of more than 250 square feet (OR2019-0027). All tobacco retailers are also required to obtain a license and comply with the requirements established in City Code section 5.138. As part of the Title 5 licensing requirements, no license shall be issued, and no existing license shall be renewed, to authorize tobacco retailing within 1,000 feet of a tobacco retailer already licensed (SCC 5.138.040.B), unless the licensee devotes no more than 5% of total shelf space to tobacco product and at least 10% of shelf space to all of the following: fresh or healthy food; fresh fruits; protein, juice and dairy products; fresh baked goods, breads, and cereals products, and readymade meals. Based on current licensing information available to staff, there is one other approved tobacco retailer located outside a 1,000-foot radius of the subject site, located approximately 0.4-miles away.

The applicant is requesting to sell tobacco products within a gas station convenience store. The proposed floor plan indicates the tobacco products display and stock would be located beneath the sales counter and behind the counter inside cabinets, hidden from customer view. The floor plan
dedicates less than 5% of total shelf space to tobacco product and is providing 55 linear square feet (29%) of total shelf space for fresh and/or healthy food such as fresh fresh or healthy food; fresh fruits; protein, juice and dairy products; fresh baked goods, breads, and cereals products, and readymade meals.

The project is conditioned such that 1) tobacco products shall not be visible to customers, 2) any advertisement of tobacco products is prohibited, and 3) fresh or healthy food; fresh fruits; protein, juice and dairy products; fresh baked goods, breads, and cereals products, and readymade meals shall be stocked and available for purchase, consistent with the approved floor plan.

In order to approve a CUP for tobacco retail sales, the project must be able to meet each of the standard four findings for CUPs. Staff finds that the sale of tobacco would meet all four findings because the proposal is consistent with the General Plan and zoning designations, and adequate access to the site will be provided.

Regarding the fourth finding related to “public health and safety, convenience, or welfare of persons residing, working, visiting, or recreating in the surrounding neighborhood, not resulting in the creation of a nuisance, Staff determined the purchasing of tobacco products at the subject site is not expected to be detrimental to the surrounding neighborhood as the site is not in close proximity to sensitive land uses such as schools, parks, libraries, etc. Retail tobacco sales will not become a nuisance because security measures are currently in place including adequate cameras, interior and exterior lighting, anti-loitering best practices as well as having tobacco products that will not be visible to the customers. Staff recommends approval of the CUP for tobacco retail sales, subject to conditions of approval, based upon meeting all four findings.

Community/Neighborhood Contact

The project was routed to South Land Park Neighborhood Association (SLPNA), Pocket Greenhaven Community Association, Freeport Renovation on the Move (FROM), and Preservation Sacramento. Staff received a letter from SLPNA, dated August 7, 2023 opposing the tobacco sales use permit request because three comments previously made were not implemented with the gas station project (P16-039). The comments were the following:

- Sater Oil Company and AM/PM will fund the acquisition and installation of a Sacramento Police Department (POD) Police Observation Device at a location chosen by the Department, near the proposed location of the AM/PM project.

- Sater Oil Company and AM/PM will provide the Police Department with a ‘stand up desk’ within the store to encourage law enforcement to visit the store on a regular basis so as to have a convenient place to do paperwork, provide a presence in the neighborhood, make calls during their shift or just take a break. The officer utilizing the “stand up desk” will be provided coffee at no charge.

- Sater Oil Company and AM/PM Provide a designated parking stall will be provided adjacent to the store for the convenience of the Police representative.

The opposition letter was sent to the applicant for their review. On February 9, 2024, staff received an updated letter from SLPNA rescinding their opposition and expressing support for the tobacco sales use permit. In their letter, SLPNA confirmed the installation of the Police Observation Device and a dedicated parking stall. The stand up desk is no longer requested by the Police Department and therefore SLPNA is no longer requiring it. SLPNA is also supporting the “under the counter” sales approach for tobacco products.
The site was posted with information for the public hearing and all property owners and occupants within 500 feet of the subject site were mailed a notification of the June 27 public hearing for the proposed project. Staff did not receive any comments.

Agency Comments

The project was reviewed by City departments including Police, Regional Sanitation District, and Sacramento Area Sewer District. Those comments and conditions of approval appear below in the report as proposed conditions of approval for the project.

California Healthy Places Index

The subject site is located within a census tract that has healthier community conditions than 56.9% of other California census tracts. It scores in the 80\textsuperscript{th} percentile or above in social, neighborhood, and clean environment indicators, 56\textsuperscript{th} percentile for economic indicators, and 60\textsuperscript{th} percentile for housing and healthcare access indicators. The site scores lower than average in two of the eight indicators, “education” and “transportation” due to a relatively low rate of active transportation commuting and proximity to nearby schools.

Over 60\textsuperscript{th} percent of adults within the census tract have healthcare insurance. The tract scores in the 73\textsuperscript{rd} percentile of Low-Income Homeowner Severe Housing Cost Burden and the 24\textsuperscript{th} percentile of Low-Income Renter Severe Housing Cost Burden. Overall, approval of the tobacco retail sales CUP within the subject census tract does not have indications of contributing to a community that is particularly vulnerable to negative economic, social, or healthcare outcomes.

Environmental Determination

This project will not have a significant effect on the environment and is exempt from environmental review pursuant to California Environmental Quality Act Guidelines, Section 15332 – Infill Development.

Flood Hazard Zone

State Law (SB 5) and Planning and Development Code chapter 17.810 require that the City must make specific findings prior to approving certain entitlements for projects within a flood hazard zone. The purpose is to ensure that new development will have protection from a 200-year flood event or will achieve that protection by 2025. The project site is within a flood hazard zone and is an area covered by SAFCA’s Improvements to the State Plan of Flood Control System, and specific findings related to the level of protection have been incorporated as part of this project. Even though the project site is within a flood hazard zone, the local flood management agency, SAFCA, has made adequate progress on the construction of a flood protection system that will ensure protection from a 200-year flood event or will achieve that protection by 2025. This is based on the SAFCA Urban level of flood protection plan, adequate progress baseline report, and adequate progress toward an urban level of flood protection engineer’s report that were accepted by City Council Resolution No. 2016-0226 on June 21, 2016 and the SAFCA 2023 Adequate Progress Annual Report accepted by City Council Resolution No. 2023-0337 on October 24, 2023.

Recommended Findings of Fact – Environmental Determination

1. Based on the determination and recommendation of the City’s Environmental Planning Services Manager and the oral and documentary evidence received at the hearing on the project, the Zoning Administrator finds that:
a. The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations with approval of deviation requests.

b. The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.

c. The project site has no value as habitat for endangered, rare, or threatened species.

d. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.

e. The site can be adequately served by all required utilities and public services.

**Recommended Findings of Fact – Conditional Use Permit for Tobacco Retail Sales**

1. The proposed tobacco retail use is consistent with the Employment Mixed Use land use designation and the goals and policies of the 2040 General Plan by supporting a small business that will support employment generating and residential uses in this area.

2. The proposed use and its operating characteristics are consistent with the applicable standards, requirements, and regulations of the General Commercial (C-2-EA-4) zone and Planning and Development Code. The project is an allowable use in the zone and has been evaluated for any potential impacts it may have on adjacent residential developments.

3. The proposed use is situated on a parcel that is physically suitable in terms of location, size, topography, and access, and that is adequately served by public and private services and utilities. The project will manage its stormwater through appropriate grading and paving and will be served by the required public and private utilities needed to ensure proper operation of the use.

4. The proposed use would not be detrimental to the public health, safety, convenience, or welfare of persons residing, working, visiting, or recreating in the surrounding neighborhood and will not result in the creation of a nuisance. The purchasing of tobacco products at the subject site is not expected to be detrimental to the surrounding neighborhood or a nuisance because the project will provide a point of sale (POS) identification check to ensure tobacco is not sold to minors in addition to the project implementing several security measures as part of establishing the gas station.

**Recommended Conditions of Approval – Conditional Use Permit for Tobacco Retail Sales**

**Planning**

1. The applicant shall obtain required licensing by the Revenue Department prior to operating.

2. This Conditional Use Permit expires after three years from date of approval if no tobacco retail license has been obtained and if the selling of tobacco has not commenced, or upon final suspension or revocation of the Tobacco Retail License, per SCC 5.138.110

3. The following “Good Neighbor” measures shall be implemented by the applicant and any operator: a. Establish a process for neighbors to communicate directly with the management staff of the market should there be any problems or issues. b. Provide signage at the building
storefront that includes a 24-hour emergency contact person and phone numbers on-site that is located in a clearly identified place and kept up to date.

4. Tobacco products shall be located behind and beneath the sales counter and shall not visible to customers.

5. Any advertisement of tobacco products is prohibited.

6. Healthy foods such as fresh fruit and deli products shall be stocked and available for purchase consistent with the approved floor plan and shall not be reduced below the 29% illustrated on the floor plan (Exhibit A.)

ATTACHMENTS: Exhibit A – Site and Floor Plan

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Angel Anguiano

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Angel Anguiano

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Marcus Adams

The decision of the Zoning Administrator may be appealed to the Planning and Design Commission. An appeal must be filed within 10 days of the date of the action by the Zoning Administrator/Design Director. If an appeal is not filed, the action of the Zoning Administrator and Design Director is final.