



AGENDA REPORT

Meeting of the San Marcos Planning Commission

MEETING DATE: April 1, 2013
SUBJECT: Nattiya's Thai Northern Spirits, 727 W. San Marcos Blvd., Suites 115, 116 & 117
APN: 219-270-63
CASE: Conditional Use Permit 12-002 (P12-0024)

Recommendation

Conditionally approve the use of live entertainment at an existing restaurant through a Major Conditional Use Permit (CUP).

Introduction

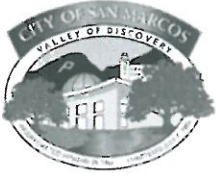
The project is located in the San Marcos Pavilion, an existing shopping center on a 3.45 acre site at the Southwest corner of San Marcos Boulevard and Grand Avenue. The existing restaurant occupies a 3,848 square foot tenant space comprised of suites 115, 116 and 117. It recently underwent an expansion that added suite 117. The project proposes to provide live entertainment for dine-in customers of the restaurant and no additional tenant improvements would result from the project.

Discussion

The subject site is zoned San Marcos Creek Specific Plan Area (SPA). Per the specific plan, approval of a Major Conditional Use Permit is required to allow live entertainment at an eating and drinking establishment within the plan area. The applicant proposes to conduct live entertainment in a small area of the dining room (approx. 50 square feet) designated for such activities. The proposed live entertainment would consist of 1 to 4 person bands performing songs or playing music such as classical, jazz, blues, soft rock or other similar musical types.

Under this Conditional Use Permit, live entertainment would be limited to 10:00 PM Monday through Wednesday, 12:00 AM on Thursdays and 1:00 AM on weekends, or more specifically:

Day of the Week	Live Entertainment Allowed
Monday-Wednesday	3:00 PM to 10:00 PM
Thursday	3:00 PM to 12:00 AM
Friday – Sunday	3:00 PM to 1:00 AM



These hours of operation (with the exception of Thursday at 12:00 AM) are consistent with other CUP's for live entertainment and the City's Noise Ordinance which generally prohibits the use of sound amplifying equipment at 10:00 PM. The CUP conditions also require the live entertainment to comply with the General Plan's noise level limits (60 dBA CNEL/L_{dn}). In addition, if noise complaints are received from neighboring businesses, the applicant will be required to modify entertainment operations to eliminate nuisance complaints. Operational standards for the live entertainment have been included in the resolution and include, but are not limited to: hours of operation for entertainment, size and type of entertainment, and ABC restrictions. In addition, the existing 219 parking spaces are sufficient to provide parking to the project.

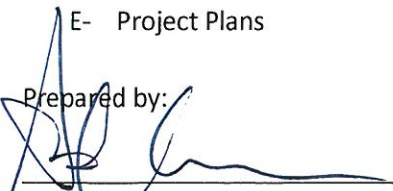
Lastly, the applicant currently has an ABC License that allows the serving of beer, wine and spirits in conjunction with the operation of a bona fide eating establishment (no entertainment is allowed). Prior to the reliance on this Conditional Use Permit, the applicant will need to obtain a modified ABC License permitting the occurrence of live entertainment at the site while serving food and drink.

Attachment(s)


Adopting Resolution

- A- Vicinity Map
- B- Aerial Photo
- C- Requested Entitlement
- D- Site & Project Characteristics
- E- Project Plans

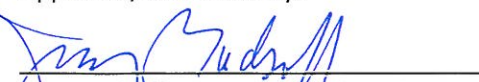
Prepared by:


Sean del Solar, Assistant Planner

Reviewed by:


Karen Brindley, Principal Planner

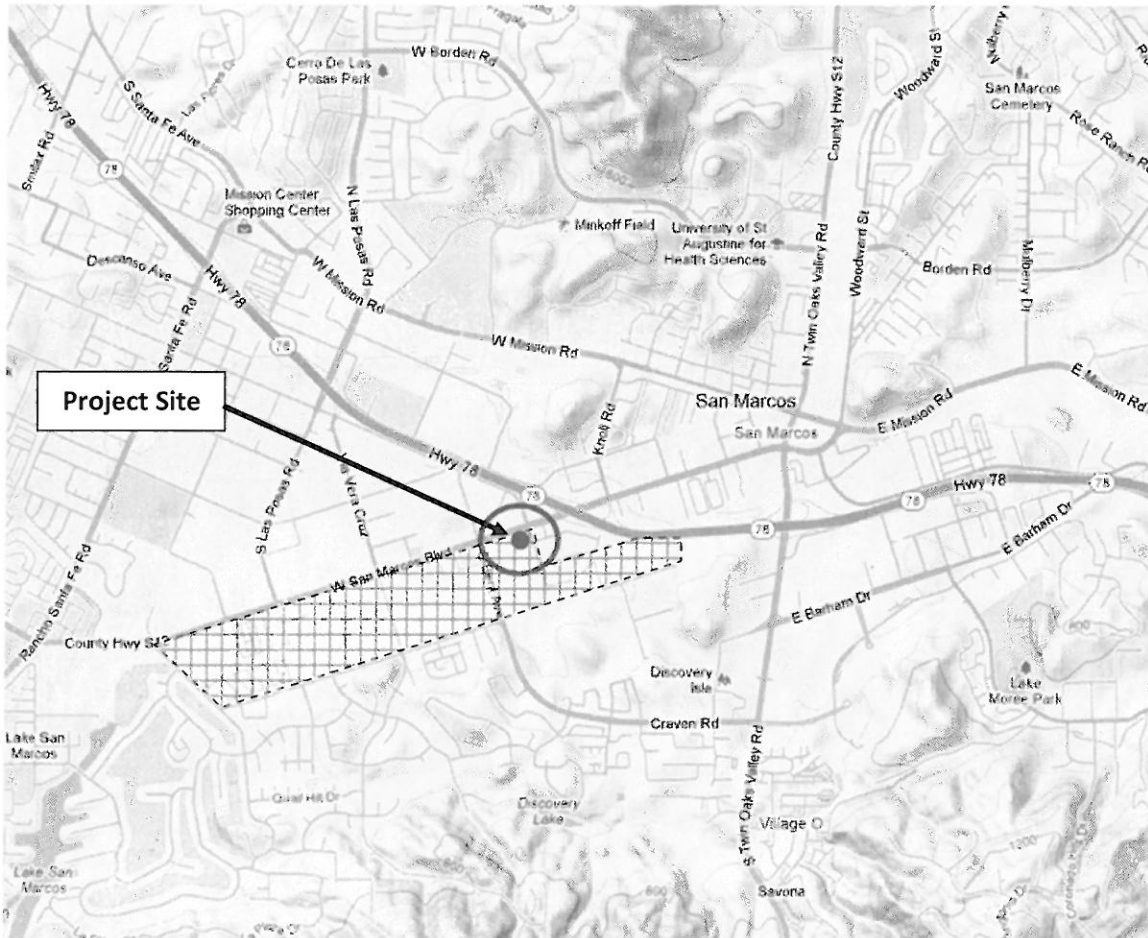
Approved/Submitted by:


Jerry Backoff, Planning Division Director

AGENDA ITEM NO. _____



ATTACHMENT A Vicinity Map



San Marcos Creek Specific Plan Area (SPA)

AGENDA ITEM NO. _____



ATTACHMENT B
Aerial Photo



Project Site



AGENDA ITEM NO. _____



ATTACHMENT C

Requested Entitlement

- A Major Conditional Use Permit to allow live entertainment at an existing eating and drinking establishment located in the San Marcos Creek Specific Plan Area (SPA).

AGENDA ITEM NO. _____



ATTACHMENT D

Site & Project Characteristics

Property	Existing Land use	Zoning	General Plan Designation
Subject	Restaurant	SPA	Specific Plan Area (SPA)
North	Retail	MU1	Mixed-Use 1
South	Vacant	SPA	Specific Plan Area (SPA)
East	Retail Center	C	Commercial
West	Auto Repair	SPA	Specific Plan Area (SPA)

Flood Hazard Zone	<input type="checkbox"/> yes	<input checked="" type="checkbox"/> no
Resource Conserv. Area	<input type="checkbox"/> yes	<input checked="" type="checkbox"/> no
Sewers	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no
Septic	<input type="checkbox"/> yes	<input checked="" type="checkbox"/> no
Water	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no
Gen. Plan Conformance	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no
Land Use Compatibility	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no

* with approval of CUP

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P12-0024

Nattiya's Thai Northern Spirits
727 W. SM Blvd., #115, #116, #117

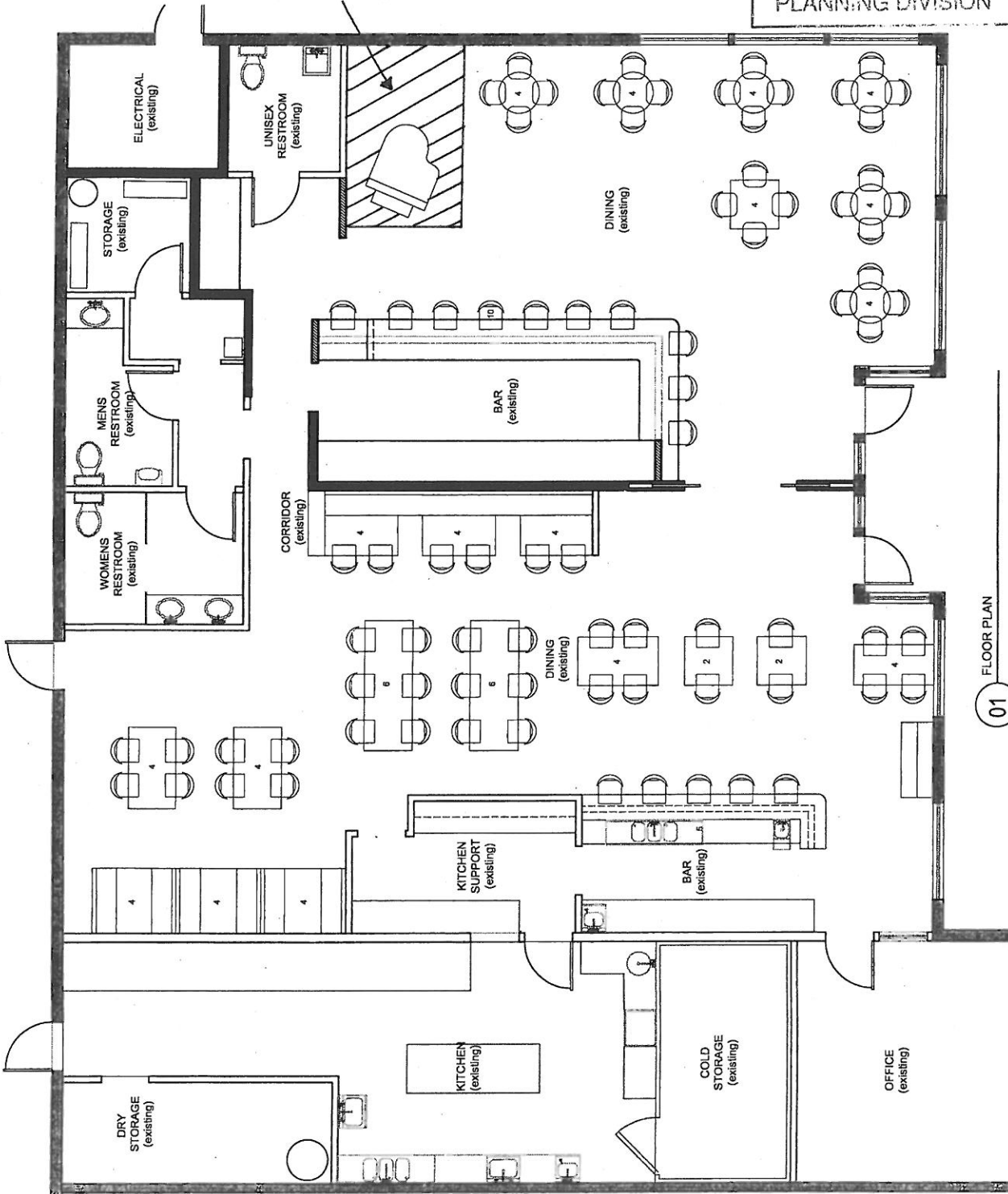
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JAN 10 2013

CITY OF SAN MARCOS
PLANNING DIVISION

"E"

Area reserved for Entertainment



RESOLUTION PC 13-4338

A RESOLUTION OF THE CITY OF SAN MARCOS APPROVING A
CONDITIONAL USE PERMIT TO ALLOW LIVE
ENTERTAINMENT AT AN EXISTING EATING AND DRINKING
ESTABLISHMENT IN THE SAN MARCOS CREEK SPECIFIC PLAN
AREA (SPA)

CUP 12-002 (P12-0024)
Nattiya's Thai Northern Spirits

WHEREAS, on December 19, 2012, an application was received from Nattiya's Thai Northern Spirits requesting a Conditional Use Permit to allow live entertainment to occur ancillary to the operation of an eating and drinking establishment at 727 W. San Marcos Blvd., Suites 115, 116 and 117 in the San Marcos Creek Specific Plan Area (SPA) Zone in the Business Industrial District, more particularly described as:

Parcel C, of Parcel Map 14531, in the city of San Marcos, County of San Diego, State of California, as filed in the Office of the County Recorder of San Diego, on October 30, 1986.
Assessor's Parcel Number: 219-270-63

WHEREAS, the Development Services Department did study and recommend approval of the requested use; and

WHEREAS, the required public hearing for the proposed Conditional Use Permit was held on April 1, 2013, as duly advertised and held in the manner prescribed by law; and

WHEREAS, the property was previously annexed into Community Facility Districts 98-01 and 98-02; and

WHEREAS, the City of San Marcos did find the project Categorically Exempt pursuant to Section 15301 Class 1 of the California Environmental Quality Act (CEQA); and

WHEREAS, the City of San Marcos' decision is based upon the following findings and determinations:

1. The approval of this Conditional Use Permit will not result in detrimental impacts to adjacent properties or the character and function of the neighborhood because the project has been designed and constructed in conformance with the California Building Code and conditioned to mitigate potential impacts to existing facilities or the environment (i.e. the use of 219 parking spaces, noise emissions not to exceed 60 dBA CNEL/L_{dn}, etc.).
2. The design, development and conditions associated with this Conditional Use Permit are consistent with the goals, policies and intent of the General Plan and the character of the San Marcos Creek Specific Plan because approval of the project will implement General Plan Goal LU-5 in that the project will create memorable places and enrich community life. The land use allowed in conjunction with the Conditional Use Permit is compatible with the existing and future land uses of the San Marcos Creek Specific Plan and the general area in which the proposed use is to be located.

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NOW THEREFORE, the City of San Marcos resolves as follows:

- A. The foregoing recitals are true and correct.
- B. The Conditional Use Permit is approved per the submitted site and floor plans for a 3,848 square-foot tenant space with approximately 21 tables in Suites 115, 116 & 117 accept as modified herein and shall not be expanded or revised unless a modification to this permit is approved.
- C. Prior to the reliance on this Conditional Use Permit:
 - 1. Applicant/operator shall obtain a revised license from the State of California Department of Alcoholic Beverage Control (ABC) to allow live entertainment to occur concurrently with the service of alcoholic beverages.
- D. The reliance on this Conditional Use Permit and the ongoing operation of the facility shall comply with the following:
 - 1. Live entertainment ("entertainment") shall be ancillary to the normal operation of the business as an eating and drinking establishment. At all times of entertainment, the kitchen shall remain open and all food and drink items on the menu shall remain available in all areas of the restaurant.
 - 2. Entertainment events shall be limited to 1 to 4 person bands playing jazz, classical, folk, blues, rock, pop, reggae, Latin, and classical R&B. Any other form of entertainment is unauthorized and shall be prohibited. Examples of unauthorized entertainment include, but are not limited to: wet t-shirt contests, bikini contests, fashion/lingerie shows, casino night themes, burlesque dancers, lap dancers, strippers, or any form of adult entertainment.
 - 3. All entertainment shall be conducted within the enclosed building and within the 50 square foot area identified as for entertainment on the approved floor plan.
 - 4. All entertainment shall be provided on the same elevation as the surface of the dining area. The use of a stage or other similar type platform or device is prohibited.
 - 5. Tables and chairs in the facility shall be limited to the areas and quantities shown on the approved floor and site plans.
 - 6. Dancing on the premises shall be prohibited.
 - 7. Entertainment may occur seven (7) days a week, but shall be limited to the following times:

Day of the Week	Permitted Time(s)
Sunday, Monday, Tuesday and Wednesday	3:00 PM to 10:00 PM
Thursday	3:00 PM to 12:00 AM
Friday and Saturday	3:00 PM to 1:00 AM

- 8. The applicant/operator shall not charge a fee to enter the premises which includes, but is not limited to, advanced ticket sales for any entertainment event or a "cover charge."

9. The applicant/operator shall not use the services of paid promoter at any time.
10. Entertainment shall be conducted whereas not to become a noise nuisance to neighboring uses. Maximum sound levels shall not exceed 60 decibels at the property lines of the establishment. It shall be the responsibility of the applicant/operator to monitor onsite noise levels during entertainment. If complaints are received by the City, even if the 60 decibel level is being maintained, the applicant shall be required to take immediate corrective action to respond to such complaints as deemed necessary by the Planning Division Director including, but not limited to, restricting amplified music, reducing hours of entertainment, changing type of music, etc.
11. All doors that separate suites 115/116 and 117 shall remain open during entertainment activities.
12. The applicant/operator shall be responsible for compliance with all applicable State of California Department of Alcoholic Beverage Control (ABC) rules and regulations. If any ABC regulations/terms/conditions for the proposed use are more restrictive than those contained within this Conditional Use Permit, then those more restrictive ABC regulations/terms/conditions shall take precedence. All ABC license conditions are incorporated herein.
13. An owner or manager shall be on site during all entertainment activities.
14. All entertainers, staff members and patrons shall be clothed at all times so that no anatomical areas, as specified by the City Municipal Code, are visible.
15. All personnel, including management, are prohibited from consuming alcoholic beverages while on duty.
16. The applicant/operator shall not maintain or construct any type of enclosed room intended for use by entertainers (i.e. dressing rooms, "green rooms," etc.).
17. No one under the age of 18, including entertainers, shall be allowed on site after 10:00 PM unless accompanied by his or her responsible adult.
18. All employees who serve alcohol or check identification shall attend the Alcohol Beverage Control (ABC) LEAD Training or Responsible Beverage Sales & Service (RBSS) Training every two (2) years as required by City Ordinance No. 2009-1318. Confirmation of program participation shall be kept on file and made available upon request.
19. The Occupancy Load sign shall be posted at all times for the building. The maximum occupancy for the building shall not be exceeded at any time.
20. Exit doors shall not be blocked at any time.
21. The parking lot of the premises shall be equipped with sufficient lighting to illuminate and make easily discernible the appearance and conduct of all persons on or about the parking lot.

22. Parking shall continue to be provided in the quantities specified in the City's Off Street Parking Ordinance. In the event that complaints are received by the City regarding the availability of parking during the operation of the use, the applicant shall modify the operations of the use to the satisfaction of the Planning Division Director to ensure that adequate parking facilities are available to all tenants of the property in conformance with the City's Off-Street Parking Ordinance.
23. At times of entertainment activities, the applicant shall ensure the protection of the public health, safety and welfare. Should the City receive complaints and/or experience an increase in calls for service for police/fire/medical assistance, additional security measures may be required as determined necessary by the City and/or Sheriff's Department ("additional security measures" may include, but is not limited to: providing security guards, installing additional surveillance or enhanced electronic security systems, etc.).
24. Any incident requiring security measures (reactive intervention or mediation) by on-site staff shall be immediately reported to the Sheriff's Department. All onsite staff shall cooperate, aide and assist the Sheriff's Department in the collection of information regarding any incident requiring a response.
25. Excessive or severe incidents, as determined by the City of San Marcos, Sheriff's Department, or ABC, may result in mandatory training classes, imposition of additional restrictive conditions, modification or revocation of this Conditional Use Permit.
26. Pursuant to Section 12.20.130 of the San Marcos Municipal Code (S.M.M.C.), loitering is prohibited onsite. To the extent feasible, the applicant/operator shall ensure that patrons do not loiter onsite.
27. A separate permit shall be required for any new permanent signage. Signage shall comply with all provisions of the approved Comprehensive Sign Program for the site and the City of San Marcos Sign Ordinance. Portable signs (e.g. A-frame, T-frame, feather-signs, branded vehicles, etc.) either on or off site are prohibited, this includes a prohibition on, but is not limited to, the parking of branded vehicles adjacent to San Marcos Boulevard. Temporary signage (i.e. banners) requires a permit and is subject to the approval of the Planning Division.
28. The applicant shall be prohibited from subleasing the use of any part of the facility to a third party.
29. Operation and maintenance of the facility shall implement Best Management Practices for the protection of stormwater quality, including employee training for all pollutant generating activities. As needed, maintenance of the trash dumpster facilities and parking lot facilities are required year round. The parking lot and dumpster facilities must be thoroughly cleaned no later than October 1st of each year.
30. The applicant shall maintain a City of San Marcos Business License for the duration of the business.

- E. Any new construction, alteration, improvement, or modification to the use of an existing building or change of occupancy shall require compliance with the minimum code requirements of the latest adopted California Building Code and the issuance of a building permit.
- F. Prior to the issuance of any building permits, the following conditions shall be complied with:
 - 1. Per San Marcos Municipal Code Chapter 17.08.030 Section 105.10, the applicant shall obtain written permission from the building or property owner that the applicant is authorized to proceed with the proposed construction.
 - 2. Remodeled structures and tenant improvements shall be designed to conform to the latest design standards adopted by the State of California in the California Building Code, Part 2, Title 24, California Code of Regulations.
 - 3. The City of San Marcos is located in Seismic Design Category "D." Buildings and structures shall be designed to adequately transmit the dynamic lateral forces in accordance with the requirements of the latest adopted California Building Code.
 - 4. Building plans and instruments of service submitted with a building permit application shall be signed and sealed by a California licensed design professional as required by the State Business and Professions Code.
 - 5. Any modifications to the existing automatic fire suppression, detection or alarm system shall require a permit and compliance with the latest adopted standards of the National Fire Protection Association, the California Building Code, and/or the City of San Marcos Fire Code Ordinance.
 - 6. The proposed project is subject to approval by the Vallecitos Water District and all applicable fees and charges shall be paid to the District prior to permit issuance.
 - 7. The proposed development shall comply with the latest Federal Law, Americans with Disabilities Act ("ADA-90"), and State Law, California Code of Regulations, Title 24, for accessibility standards for the disabled. This shall include but is not limited to providing an ADA accessible path of travel from the San Marcos Blvd. right-of-way to the building entrance.
- G. During the construction phase, the following conditions shall be complied with:
 - 1. Unless otherwise approved by the Building Official, all construction operations authorized by building permits, including the delivery, setup and use of equipment shall be conducted on premises during the hours of 7:00 AM to 6:00 PM on Monday through Friday, and on Saturday between 8:00 AM and 5:00 PM. No work shall be conducted on Sundays or Holidays observed by the City of San Marcos. Failure to comply will result in the issuance of STOP WORK NOTICES, REVOCATION OF PERMITS and the issuance of citations and fines as appropriate. Citations for hours of work violations require a mandatory court appearance in North County Superior Court.
 - 2. Dust and dust producing materials shall be controlled within the maximum acceptable concentrations for silica and silicates in accordance with the California Code of Regulations, Title 8, Section 5155. Water and dust palliative shall be used to prevent

excessive dust during blasting, construction and grading operations. Projects are required to comply with the Air Pollution Control District's standards for mitigating fugitive dust during all phases of construction.

3. The applicant shall implement and maintain stormwater pollution prevention measures as required on the approved plans. Violations of the City's Stormwater Management Ordinance (Chp. 14.15 S.M.M.C.) will result in Stop Work Orders, Notices of Violations and/or citations with fines. Work on the project may be delayed until the City determines that compliance with stormwater requirements has been achieved.
 4. The project area shall not be occupied until the appropriate City Divisions/ Departments and/or other agencies have approved the area for occupancy.
- H. Prior to occupancy or reliance on this Conditional Use Permit, the following conditions shall be complied with:
1. The proposed project shall satisfy the conditions of approval prior to occupancy. The applicant/contractor shall obtain approval from all City Departments and other Agencies before requesting a Certificate of Occupancy ("C of O") from the Development Services Department.
- I. The storage, use or handling of hazardous, toxic or flammable materials shall be clearly indicated on all floor plans submitted for a building permit. Materials shall be identified in accordance with Health and Safety Code Section 25101.
- J. The applicant shall be responsible for compliance with all relevant portions of the City of San Marcos Municipal Code.
- K. Use of the site shall be conducted so as not to become obnoxious by reason of noise, odor, refuse or maintenance of grounds and in such a manner as will not detrimentally affect adjoining properties and uses.
- L. To the extent feasible and as permitted by law, developers and contractors are requested to first consider the use of San Marcos businesses for any supplies, materials, services, and equipment needed, and the hiring of local residents in order to stimulate the San Marcos economy to the greatest extent possible.
- M. This Conditional Use Permit shall become null and void if not acted upon within twelve (12) months of the adoption of this resolution, or the approved use ceases to operate at the subject property for a period more than twelve (12) months.
- N. Any future expansion of the use shall require a modification to this Conditional Use Permit. The Conditional Use Permit application must be submitted for review and approval by the Development Services Department prior to the issuance of any building permits.
- O. The Planning Division may inspect the premises annually to ensure compliance with all conditions of the use permit approval. If the Planning Division determines that compliance is not being achieved, then a public hearing shall be scheduled for possible use permit modification or revocation.

- P. If determined necessary by the City, the imposition of additional restrictive conditions, modification or revocation of this Conditional Use Permit may occur.
- Q. This Conditional Use Permit shall expire on April 1, 2018. Any request for permit extension shall be applied for by the permittee no later than thirty (30) days prior to the expiration date.
- R. To the extent permitted by law, the Developer shall defend and hold the City of San Marcos ("City"), its agents and employees harmless from liability from: (i) any and all actions, claims, damages, injuries, challenges and/or costs of liabilities arising from the City's approval of any and all entitlements or permits arising from the project as defined in the conditions of approval, or issuance of grading or building permits; (ii) any damages, liability and/or claim of any kind for any injury to or death of any person, or damage or injury of any kind to property which may arise from or be related to the direct or indirect operations of the Developer or its contractors, subcontractors, agents, employees or other persons acting on Developer's behalf which relate to the project; and (iii) any and all damages, liability and/or claims of any kind arising from operation of the project. Developer further agrees that such indemnification and hold harmless shall include all defense-related fees and costs associated with the defense of City by counsel selected by the City. This indemnification shall not terminate upon expiration of the conditions of approval or completion of the project, but shall survive in perpetuity.

PASSED AND ADOPTED by the City of San Marcos, State of California, this 1st day of April, 2013.

APPROVED:

Dean Nelson, Chairman
SAN MARCOS CITY PLANNING DIVISION

ATTEST:

Lisa Kiss, Office Specialist III
SAN MARCOS CITY PLANNING DIVISION