



MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: January 11, 2012

APPLICATION: Conditional Use Permit No. UP11- 0038, Smog Test Center

APPLICATION
SUMMARY:

A request to operate a smog test center within an existing service bay at gas service station.

LOCATION:

10 N. Main Street (APN 28-24-030),

APPLICANT:

Thanh Duong, 4655 Rotherhaven Way, San Jose, CA 95111

OWNER:

Mahatdejkul Prasert and Hattaya Trustee, 718 Los Pinos Ave. Milpitas, CA 95035

RECOMMENDATION:

**Staff recommends that the Planning Commission:
Adopt Resolution No. 12-001 approving the project subject to conditions of approval.**

PROJECT DATA:

General Plan/

Zoning Designation:

Mixed Use (MXD) / Mixed Use (MXD).

Overlay District:

Site and Architectural Overlay

Specific Plan:

Midtown Specific Plan

Site Area:

0.21 Acres

Tenant Square Footage:

CEQA Determination:

Categorically exempt from further environmental review pursuant to Class 1, Section 15301 (Existing Facilities) of the California Environmental Quality Act.

PLANNER:

Cindy Hom, Assistant Planner

PJ:

2780

ATTACHMENTS:

A. Resolution No. 12-001
B. Project Plans

LOCATION MAP



No scale

BACKGROUND

In June 1965, the Planning Commission granted site and architectural approval for a gas service station. With the adoption of the Midtown Specific Plan in 2002, the auto service became legal non-conforming due to the zoning provision (XI-10-6.02-2 (A) (1)) that places a 1,000-foot spacing requirement for auto service uses. This property is approximately 110-feet away from another auto service use located on Winsor Street which is located east of the site. Although the gas service (pump station and mini mart) are still in operation, the auto service bays have been vacant since 1999. Since the service bays have been vacant for more than a year and the applicant proposes to allow a non-conforming use, the project must meet certain criteria to re-establish a discontinued use outlined in the city's zoning ordinance.

On November 28, 2011, Thanh Duong submitted a conditional use permit application to re-establish the auto service use that would allow for the operations of a smog test center within an existing service bay of a gas service station. The application is submitted pursuant to Milpitas Municipal Code (MMC) XI-10-56.03 (B) which requires Planning Commission review and approval for the re-establishment of a discontinued use within the Midtown and Transit Area Specific Plan.

PROJECT DESCRIPTION

The project site is located on a 0.21 acre parcel located at the northeast corner of North Main Street and Carlo Street. The site is developed as gas service station that includes a one story, 1,564 square foot commercial building that provides space for a mini-mart and two service bays and a gas service canopy that has four fuel dispensers. Surrounding land uses includes a religious temple and preschool to the south; a vacant convenience store (formerly Mr. P's Market) and auto repair shop (A-Plus Auto) to the east; a vacant lot, residential home, and a bar and restaurant (Tequila Shot's) to the north, and a one story commercial office building located to the west. A vicinity map of the project site is shown on the previous page.

The project proposal is a request to re-establish an auto service use in an existing auto service bay. The applicant is proposing to operate a smog only test center that would be operated Monday through Friday between the hours of 8:00 am to 5:00 pm.

Development Standards

The project does not propose any exterior or site modifications. The project would maintain existing setbacks, height, lot coverage, floor area ratio, landscaping and architecture. The project would propose minor tenant improvements such as but not limited to equipment installation.

ADOPTED PLANS AND ORDINANCES CONSISTENCY***General Plan***

The table below outlines the project's consistency with applicable General Plan Guiding Principles and Implementing Policies:

Table 2
General Plan Consistency

Policy	Consistency Finding
<i>2.a-I-3 Encourage economic pursuits which will strengthen and promote development through stability and balance.</i>	Consistent. The project allows for the flexibility to use an underutilized building before its eventual conversion to conforming use in the Mixed Use Zoning District.
<i>2.a-I-6 Endeavor to maintain a balanced economic base that can resist downturns in any one economic sector.</i>	Consistent. The project would re-establish a use that supports and revitalizes the gas service station operations. The use would also encourage small business opportunities and promote business retention.

Zoning Ordinance

Once discontinued for a year or more, nonconforming uses only within the Midtown Specific Plan Area and the Transit Area Specific Plan Area may be re-established if all of the following findings can be made:

- a. The proposed re-establishment of a nonconforming use would not cause a nuisance to the surrounding properties and district (e.g., excessive parking demand, traffic, noise, etc.).

Finding: The project complies will not create additional parking or traffic considering the building is an existing gas service station with auto service bays. Furthermore, the smog test center would not create a parking issue since the cars are there for a short duration compared to an auto repair use that would require cars to stay on the property for a certain period of time while they are being serviced.

- b. The proposed re-establishment of a nonconforming use would be compatible with the existing general character of the surrounding neighborhood or district.

Finding: The project is surrounded by residential, quasi-public, commercial uses as well as other auto service uses. The use would be neighborhood serving and compatible with the general character in that facility is an existing gas station. In addition, cars that come in for smog testing are on-site for a short duration and would generate less noise compared to auto body or auto mechanic shop.

- c. The proposed re-establishment of a nonconforming use is necessary to allow gainful economic use of structures or improvements until such structures or improvements can be permanently converted to conforming uses.

Finding: The building was developed and intended for auto service use. The project proposes to operate a smog test only center in on of the existing auto service bays.

Midtown Specific Plan

While the project site is located within the Midtown Specific Plan, the project does not meet the threshold to require specific plan upgrades.

ENVIRONMENTAL REVIEW

The Planning Division conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). Staff determined that the project is categorically exempt from further environmental review pursuant to Class 1, Section 15301 (Existing Facilities) of the California Environmental Quality Act. The project would be a negligible expansion of use considering the project proposes to operate a smog only test center in is one of the vacant service bays of an existing gas service station.

PUBLIC COMMENT/OUTREACH

Staff publicly noticed the application in accordance with City and State law. As of the time of writing this report, there have been no inquiries from the public.

CONCLUSION

The project proposes the re-establishment of a discontinued auto service use within an existing gas service station. The continued use of the building for auto service will not cause any nuisances for the surrounding properties in that vehicles that are serviced are

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission adopt Resolution No. 12-001 approving Conditional Use Permit Amendment UA11-0038, Smog Test Center, subject to the attached Conditions of Approval.

Attachments:

- A. Resolution 12-001
- B. Project Plans

RESOLUTION NO. 12-001

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT NO. UP11-0038, SMOG TEST CENTER, TO RE-ESTABLISH A DISCONTINUED AUTO SERVICE USE WITHIN A SERVICE BAY OF AN EXISTING GAS SERVICE STATION IN ACCORDANCE WITH THE CITY'S NONCONFORMING STANDARDS, LOCATED AT 10 N. MAIN STREET

WHEREAS, on November 28, 2011, an application was submitted by Thanh Duong, 4655 Rotherhaven Way, San Jose, CA 95111, to re-establish a discontinued auto service use in accordance with the City's Zoning nonconforming standards. The property is located within the Mixed Use Zoning District with Site and Architectural Overlay (MXD-S) (APN: 28-24-030); and

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission determine this project categorically exempt; and

WHEREAS, on January 11, 2012, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

NOW THEREFORE, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

Section 1: The recitals set forth above are true and correct and incorporated herein by reference.

Section 2: The project is categorically exempt under section 15301 for existing facilities, since the project entails the re-establishment of an auto service use within a vacant service bay of an existing gas service station. The project is a negligible expansion of use considering the bay was previously used for auto services.

Section 3: The proposed re-establishment of a nonconforming use would not cause a nuisance to the surrounding properties and district (e.g., excessive parking demand, traffic, noise, etc.) in that the subject site and building was originally developed for auto services. The nearest residential use is located approximately 60 feet away.

Section 4: The proposed re-establishment of a nonconforming use would be compatible with the existing general character of the surrounding neighborhood or district in that the proposed smog test center would be neighborhood serving to near by residents and other commercial uses. The smog test center is located in a building that was designed and intended for auto services.

Section 5: The proposed re-establishment of a nonconforming use is necessary to allow gainful economic use of structures or site until such it can be permanently converted to a conforming use. The project would remove a long term vacancy with a use that complements the gas service station.

Section 6: The Planning Commission of the City of Milpitas hereby approves Conditional Use Permit No. UP11-0038, Smog Test Center subject to the above Findings, and Conditions of Approval attached hereto as Exhibit 1.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on January 11, 2012.

Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on January 11, 2012, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Lawrence Ciardella				
John Luk				
Rajeev Madnawat				
Sudhir Mandal				
Zeya Mohsin				
Gurdev Sandhu				
Steve Tao				
Garry Barbadillo				

EXHIBIT 1

**CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT NO. UP11-0038 SMOG TEST CENTER,
A REQUEST TO OPERATE A SMOG TEST CENTER WITHIN
AN AUTO SERVICE BAY AT AN EXISTING GAS SERVICE
STATION LOCATED AT 10 N. MAIN STREET (APN 28-24-030).**

General Conditions

1. The owner or designee shall develop the approved project in conformance with the approved plans and any color and materials sample boards approved by the Planning Commission on January 11, 2012, in accordance with these Conditions of Approval.

Any deviation from the approved site plan, floor plans, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. (P)

Conditional Use Permit No. UP11-0038 shall become null and void if the project is not commenced within two (2) years from the date of approval unless in conjunction with a tentative map, then the project life coincides with the life of the map. Pursuant to Section 64.06(B) of the Zoning Ordinance of the City of Milpitas, commencement shall be:

- a. Completes a foundation associated with the project; or
 - b. Dedicates any land or easement as required from the zoning action; or
 - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.(P)
2. Pursuant to Section 64.06(1), the owner or designee shall have the right to request an extension of UP11-0038 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein. (P)
 3. The use shall be operated in accordance with all local, state, and federal regulations. (P)
 4. If at the time of application for permit there is a project job account balance due to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. (P)
 5. To the fullest extent permitted by law, applicant shall indemnify, defend with counsel of the City's reasonable choosing that is mutually acceptable to both parties, and hold harmless

City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the project, including but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition. City shall promptly notify the project applicant of any claim, action, or proceeding and engage in reasonable efforts to cooperate with applicant in the defense against the claim, demand, obligation, damage, action, or suit. If City fails to so promptly notify the project applicant, then the applicant's indemnification obligations as set forth in this condition of approval shall thereafter terminate. The applicant shall not be required to pay or perform any settlement unless the settlement is approved by the applicant. (CA)

- (P) = Planning
- (B) = Building
- (E) = Engineering
- (F) = Fire Prevention

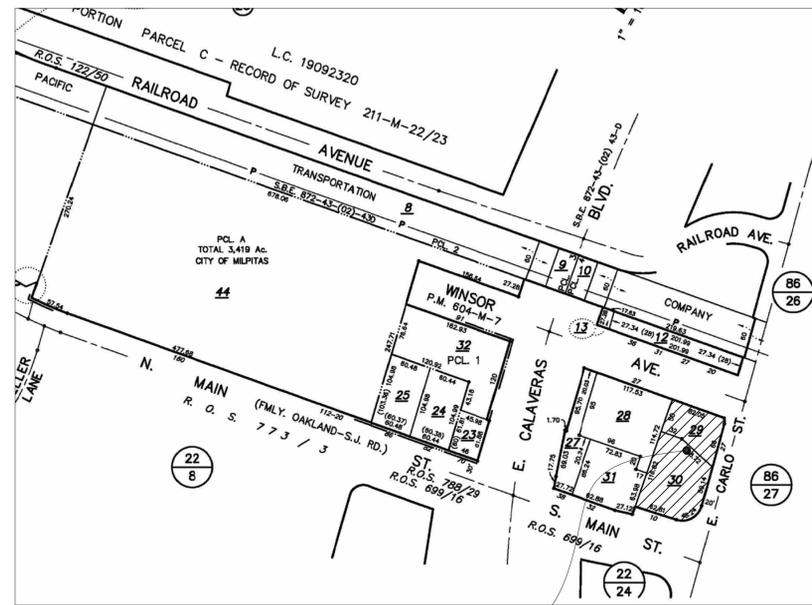
10 N MAIN ST SMOG CHECK STATION

SCOPE OF WORK:

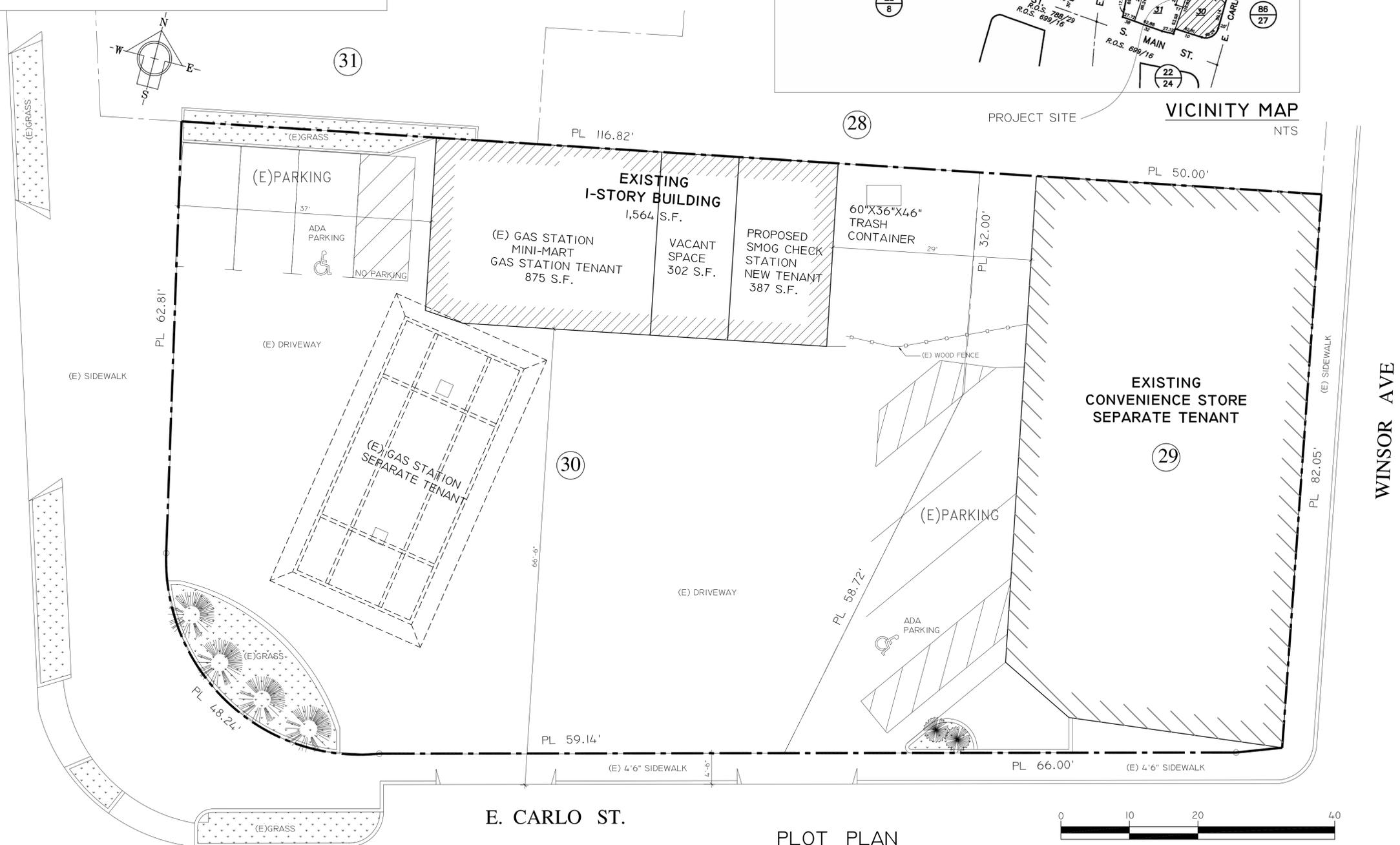
- PROPOSE A NEW SMOG CHECK STATION

PROJECT DATA

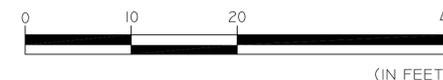
OCCUPANCY: B
 TYPE OF CONSTRUCTION: III-B
 LOT AREA (NET): 9,395 S.F.
 EXISTING USE: COMMERCIAL
 SPRINKLER: NO



VICINITY MAP



PLOT PLAN
 SCALE: 1/8"=1'



TRANVU, LLC
 SURVEYORS - ENGINEERS - ARCHITECTS

526 Calero Ave, San Jose, CA 95123
 Tel: (408) 425-4523
 Fax: (408) 300-1027
 Email: info@tranvu.com



DATE: 02-15-11

DRAWN BY: V.K.	CHECKED BY: T. T.		
REVISION	DATE	REVISION	DATE

10 N MAIN ST,
 SMOG CHECK STATION
 APN # 028-0024-029
 028-0024-030

10 N MAIN ST,
 MILPITAS, CA 95035

10 N MAIN ST,
 MILPITAS, CA 95035

SCALE: 1/8" = 1'
PLOT PLAN

PROJECT NO: SHEET:
A.1

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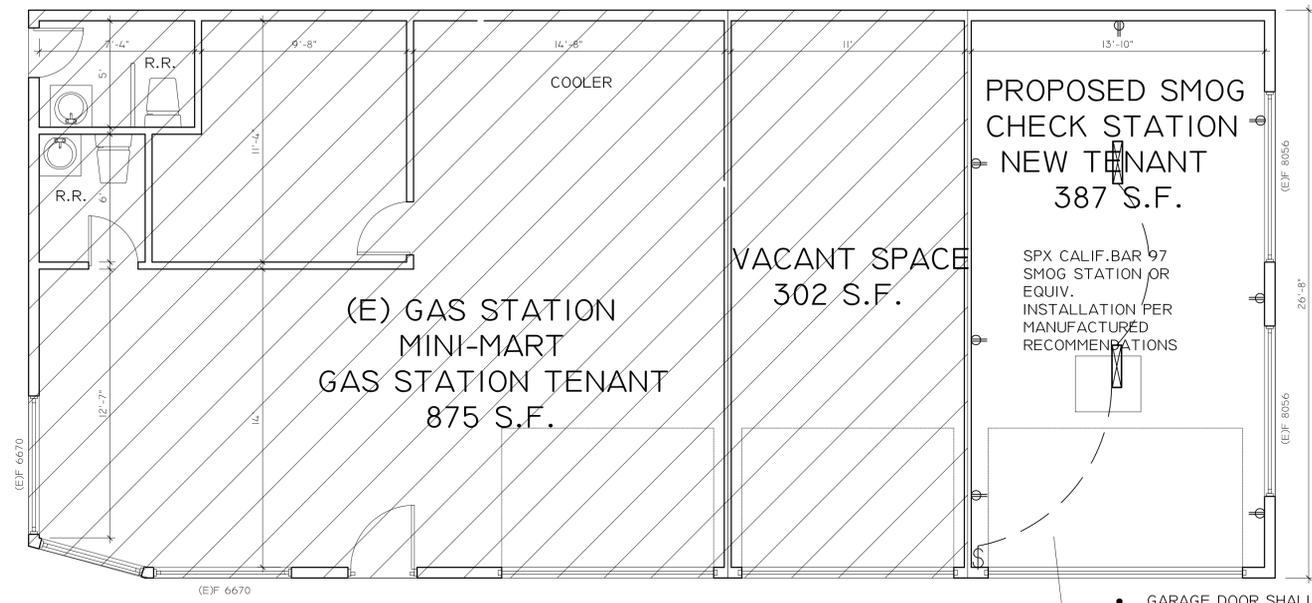
10 N MAIN ST,
 MILPITAS, CA 95035

10 N MAIN ST,
 MILPITAS, CA 95035

SCALE: 1/4" = 1'

EXISTING
 FLOOR PLAN

PROJECT NO:	SHEET:
	A.2



EXISTING FLOOR PLAN
 SCALE : 1/4" = 1'

- GARAGE DOOR SHALL BE OPENABLE FROM INSIDE WITHOUT SPECIAL KNOWLEDGE AND KEY
- THE MAXIMUM FORCE TO RELEASE THE DOOR LATCH SHALL NOT EXCEED 15 POUNDS AND TO SET DOOR IN MOTION SHALL NOT EXCEED 30 POUNDS.