

CITY COUNCIL RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRENTWOOD DENYING AN APPEAL FILED BY WCHB, LLC OF THE PLANNING COMMISSION'S APPROVAL OF CONDITIONAL USE PERMIT (CUP 22-001) TO ALLOW A COSTCO FUELING FACILITY WITH A 11,500 SQUARE FOOT CANOPY OVER 16 FUELING DISPENSERS, WHICH ALLOWS FOR 32 FUELING POSITIONS GENERALLY LOCATED SOUTH OF LONE TREE PLAZA DRIVE AND EAST OF HEIDORN RANCH ROAD (APNS 016-170-032, 016-170-034, AND 016-170-035) AND MAKING CEQA FINDINGS OF EXEMPTION PURSUANT TO STATE CEQA GUIDELINES SECTION 15183.

WHEREAS, Arcadia Development Co (the "Applicant") submitted an application to the City of Brentwood, requesting approval of a conditional use permit application (CUP 22-001) for the development of a Costco fueling facility with a 11,500 square foot canopy over 16 fueling dispensers, which allows for 32 fueling positions. The project generally located south of Lone Tree Plaza Drive and east of Heidorn Ranch Road (APNs 016-170-032, 016-170-034, and 016-170-035); and

WHEREAS, the Applicant concurrently submitted requests for a tentative parcel map (MS 351-11), design review (DR 22-002) to allow the construction of the Costco retail warehouse, fuel facility and associated site improvements, and a master sign program (MSP 22-001) for the Costco signage within the project; and

WHEREAS, collectively, MS 351-22, CUP 22-001, DR 22-002, and MSP 22-001 constitute the "Project;" and

WHEREAS, the City referred the Project to various departments and agencies for review and recommendations; and

WHEREAS, on November 13, 2018, the City Council adopted the PA-1 Specific Plan and certified the associated PA-1 Specific Plan EIR (State Clearinghouse (SCH) #2018042064) in accordance with the California Environmental Quality Act ("CEQA"), codified at Public Resources Code §§ 15000, *et seq.*, and as further governed by the State CEQA Guidelines, found at 14 CCR 21000, *et seq.* Cumulative impacts associated with full development and buildout of the Specific Plan Area, including the proposed project site, were fully addressed in the PA-1 Specific Plan EIR; and

WHEREAS, on October 11, 2022 the City Council approved an Addendum to the PA-1 Specific Plan EIR to amend the PA-1 Specific Plan and completed additional environmental review; and

WHEREAS, the Project is consistent with the PA-1 Specific Plan EIR (EIR) and subsequent Addendum and would not result in any Project-specific significant effects to the environment, and is therefore determined to be exempt per California Environmental Quality Act Section 15183 ('Consistent with Community Plan, General Plan, and Zoning Code'); and

WHEREAS, the City distributed a Notice of Public Hearing to all property owners of record within 300 feet of the Project Site and published it in the Brentwood Press on June 9, 2023, in accordance with City policies and Government Code Section 65090, and a public hearing notice sign was posted on the site during this same timeframe for the June 20, 2023 Planning Commission hearing; and

WHEREAS, on June 20, 2023, the Planning Commission held a public hearing, reviewed said conditional use permit request, studied the compatibility of this request with adjacent land uses, and considered this request in accordance with the conditional use permit criteria established in Chapter 17.830.005 of the Brentwood Municipal Code, as well as considered the staff report, all accompanying information, and testimony received from the Applicant and other interested parties; and

WHEREAS, on June 20, 2023, the Planning Commission approved the requested conditional use permit application (CUP 22-001) for the Costco project, by Planning Commission Resolution No. 23-021; and

WHEREAS, on June 28, 2023, WCHB, LLC filed a timely appeal of the Planning Commission's decision to approve the Tentative Parcel Map MS 351-22, Conditional Use Permit CUP 22-001, Design Review DR 22-002, and Master Sign Program MSP 22-001 for the Costco project; and

WHEREAS, the City distributed a Notice of Public Hearing to all property owners of record within 300 feet of the Project Site and published it in the Brentwood Press on July 21, 2023, in accordance with City policies and Government Code Section 65090, and a public hearing notice sign was posted on the site during this same timeframe; and

WHEREAS, the City Council considered an appeal of the Project at its regular meeting of July 25, 2023, and considered the staff report, all accompanying information, and testimony received from the Permittee and other interested parties.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Brentwood:

- A. Hereby finds that, in accordance with California Public Resources Code Section 21083.3 and CEQA Guidelines Section 15183, and based on the entirety of the record of proceedings, including the Environmental Checklist for Streamlined Review prepared for this Project, that the Project is consistent with the land use designation and densities established by the PA-1 Specific Plan, for which an EIR was certified. In particular, the Project would not result in any significant impacts that: (1) are peculiar to the project or project site; (2) were not identified as significant project-level, cumulative, or off-site effects in the PA-1 Specific Plan EIR; or (3) were previously identified significant effects, which as a result of substantial new information that was not known at the time that the PA-1 Specific Plan EIR was certified, are determined

to have a more severe adverse impact than discussed in the PA-1 Specific Plan EIR. In addition, the project would also be subject to all applicable requirements identified under the PA-1 Specific Plan and EIR. As a result, the Project is exempt from further environmental review under CEQA. The City Council directs staff to file a Notice of Exemption for this Project with the County Clerk within five working days of the project approval.

B. With respect to the conditional use permit findings pursuant to Brentwood Municipal Code Section 17.830.005, hereby finds that:

i. The location, size, design and operating characteristics of the proposed development must be compatible with and must not adversely affect the livability of appropriate development of abutting properties and the surrounding neighborhood. Consideration shall be given, but shall not be limited to:

1. The harmony in scale, bulk, coverage, and density.

One of the primary concerns in reviewing a conditional use permit application is the effect of the proposed use on surrounding properties, such as compatibility with the scale, bulk, coverage, and density of both existing and proposed land uses on surrounding lots. The Project is designed in a manner that is sensitive to nearby developments in that the fueling facility is positioned internal to the site and does not take direct access onto Lone Tree Plaza Drive, which serves the adjacent commercial center and is positioned away from Heidorn Ranch Road which serves more sensitive residential receptors. The fueling station footprint is minor and the scale of the canopy is proportional to nearby commercial buildings. Finally, the canopy and parking lot improvements maintain substantial setbacks from all property lines, thereby accommodating significant common open space and landscape screening through the depth of the site.

2. The availability of public facilities and utilities.

The site is served by the appropriate public facilities and utilities. Potable and non-potable water, as well as sewer services are available in adjacent roadways, and storm drain improvements will be extended along the property frontages. Electricity and communication cables are available along the project frontage as well. Solid waste service will be provided by the City of Brentwood and solid waste facilities are included in the Project designs.

3. The harmful effect, if any, upon desirable neighborhood character or the planned specialization of retail, commercial, or community service areas.

The proposed fueling facility will be located on a site designated and zoned for commercial retail warehouse use that is being reviewed concurrently with this conditional use permit application and conform to the requirements of the General Plan, the Municipal Code, the PA-1 Specific Plan, and the Commercial and Industrial Design Guidelines; therefore, there would be no harmful effect upon the desirable neighborhood character. The fueling facility is a secondary use on the site and will not negatively affect the character of the area, given that it is harmoniously incorporated into the site, and will operate within the hours of 5:00 a.m. to 10:00 p.m., so as to respect the City's noise regulations, which is typical for fueling facility uses. Fuel stations were added as a conditional use in the Regional Commercial zone within the PA-1 Specific Plan plan area in 2022. At that time, an Addendum to the PA-1 Specific Plan EIR was prepared to analyze this modification. As noted above, a Project-specific environmental analysis was likewise conducted per State CEQA Guidelines section 15183. Per that analysis, the construction and operational criteria air pollutant emissions for the proposed Project are less than the emissions outlined in the PA-1 Specific Plan EIR and do not exceed the Bay Area Air Quality Management District daily significance thresholds (see Tables 1-5, pages 34-36). The Project-specific environmental analysis also determined that the potential construction noise, operational noise, and vibration levels of the Project (including the fuel station) would not exceed either the daytime or nighttime standards established in the General Plan for either the nearby residential or commercial uses (see pages 91-95). It has thus been determined that the fuel station use will not have a harmful effect on desirable neighborhood character or the planned specialization of retail, commercial, or community service areas.

4. Generation of traffic and the capacity of surrounding streets.

The proposed Project will be located on a vacant site which will be improved with access and parking lot improvements that meet minimum requirements per the Municipal Code and the PA-1 Specific Plan. In addition, the Project site is

served by a north-south roadway, Heidorn Ranch Road, as well as near a major east-west arterial roadway, Lone Tree Way. Together, these provide adequate access to the development.

5. *Any other relevant impact of the development.*

The Project has the potential to create new sources of light, glare, and noise within the community. A noise analysis was prepared in conjunction with the overall project. The analysis looked at potential construction noise, operational noise, and vibration levels, and determined that the noise levels associated with the overall project will not exceed either the daytime or nighttime standards established in the General Plan for either the nearby residential uses or commercial uses. The project is also designed so as to mitigate such impacts, but submittal of a final photometric plan is required prior to permit issuance to determine adherence to City lighting standards.

6. The criteria set forth in Chapter 17.820 for design and site development review if applicable.

All findings and criteria set forth in Chapter 17.820 for design and site development can be found as part design review application (DR 22-002) and Resolution No. 23-022.

ii. *The location, design, landscaping and screening, and overall site planning of the proposed development will provide an attractive, useful and convenient living, working, shopping or community-service area.*

The Project is designed in a manner that is sensitive to nearby developments in that the development is surrounded by commercial uses or land designated for commercial uses to the north, south, and west, and positioned deep into the site, away from the more sensitive residential receptors across Heidorn Ranch Road, and landscaping and screening will be installed along the perimeter of the site. The proposed building and fueling facility is an acceptable design with approaches identified in the City's Commercial and Industrial Design Guidelines and architectural theme (elevations, materials, building form, and color) that is compatible with adjacent developments and Brentwood's community character as envisioned in the Specific Plan. Finally, the buildings and parking lot improvements maintain substantial setbacks from property lines, thereby accommodating significant common open space and landscape screening through the depth of the site, therefore the proposed

use will provide an attractive, useful and convenient working, shopping and community-service area.

- C. Hereby approves Conditional Use Permit No. 22-001, subject to the conditions of approval listed in Exhibit "A," attached hereto and made a part of this resolution, and all City standards applicable to this project.
- D. The documents and materials associated with this Resolution that constitute the record of proceedings on which these findings are based are located at 150 City Park Way in Brentwood, California. Planning Manager Erik Nolthenius is the custodian of records for the record of proceedings.

This permit shall terminate on July 25, 2025, unless actual construction or alteration under valid permits begins prior to that date. However, such period of time may be extended by the Planning Commission upon the filing of an extension request at any time before said date.

ADOPTED by the City Council of the City of Brentwood at its regular meeting on July 25, 2023, by the following vote:

AYES:
NOES:
ABSENT:
RECUSE:

APPROVED:

Joel R. Bryant
Mayor

ATTEST:

Margaret Wimberly, MMC
City Clerk

**EXHIBIT "A" TO
CITY COUNCIL RESOLUTION NO.
CONDITIONS OF APPROVAL FOR
CONDITIONAL USE PERMIT NO. 22-001**

1. The Permittee and Applicant, including all successors in interest (collectively, "Permittee") shall comply with each and every condition set forth in the Permit. Conditional Use Permit No. 22-001 (the "Permit") shall have no force or effect and no building permit shall be issued unless and until (a) all things required by the below-enumerated precedent conditions have been performed, and (b) Minor Subdivision No. 351-22 has been approved. The Permittee shall develop the site in accordance with the approved attachments and as modified by these Conditions of Approval.
2. The use shall be operated in substantial conformance with the project plans submitted by the Permittee dated "Received June 8, 2023," unless otherwise amended by the Planning Commission or the conditions of approval contained herein. Minor changes to plans and operation may be allowed subject to the approval of the Community Development Director, if found to be in substantial conformance with the approved exhibits.
3. All applicable Standard Conditions of Approval for Commercial and Industrial Projects, dated May 2005, are hereby incorporated by reference and shall be complied with, unless modified by any of the conditions below.
4. Any future signage proposed for the project shall require approval of an administrative sign permit by the Community Development Department or approval of a master sign program by the Planning Commission and shall be regulated by the Brentwood Municipal Code.
5. In the event the Permittee proposes to modify the hours of operation of 5:00 a.m. to 10:00 p.m., other aspects of the business, or modify the exterior of the building or site, the modification shall be subject to the review of the Community Development Director. The Director may approve the modification or refer it back to the Planning Commission if judged to be substantial.
6. The Permittee shall maintain the area surrounding the use, including but not limited to the building in which the use is located, sidewalk and parking areas in a clean and orderly manner at all times.
7. The Permittee shall indemnify, defend with counsel of the City's reasonable choosing, and hold harmless City and its City Council, its boards and commissions, officials, officers, employees, and agents (the "Indemnified Parties") from and against any third party claim, action, or proceeding against City and/or the Indemnified Parties to attack, review, set aside, void, or annul the City's approval of the project approved herein, including adoption of CUP 22-001, and any environmental determination made with regard thereto. This

indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, reasonable attorneys' fees, and other reasonable expenses incurred in connection with such claim, action, causes of action, suit or proceeding. The Permittee shall pay to the City upon demand or, as applicable, on a monthly basis to counsel of City's reasonable choosing, amounts owed pursuant to the indemnification requirements prescribed in this condition. City shall promptly notify the Permittee of any claim, action, or proceeding and shall engage in reasonable efforts to cooperate in the defense.

8. If operation of this use results in conflicts pertaining to parking, noise, traffic, or other impacts, at the discretion of the Community Development Director, this conditional use permit may be referred to the Planning Commission for subsequent review at a public hearing. If necessary, the Commission may modify or add conditions to mitigate such impacts, or may revoke said conditional use permit bound upon applicable findings.