

Attachment 'C'

Resolution No. 2023-03

A RESOLUTION OF THE CITY OF KERMAN PLANNING COMMISSION APPROVING CONDITIONAL USE PERMIT 2023-03, TO ALLOW FOR THE ESTABLISHMENT OF ALCOHOL BEVERAGE SALES, THE DEVELOPMENT OF A DRIVE-THROUGH FACILITY, AND AN AUTOMOBILE SERVICE STATION, LOCATED AT 14195 WEST WHITESBRIDGE ROAD, IN KERMAN, CA (APN: 023-220-82S) (FAST N ESY).

WHEREAS, the Planning Commission considered a request for a conditional use permit filed by Fred Avila (applicant) on behalf of Vikram Vohra/Fast N Esy (property owner) for the development of a drive-through facility, a fueling station, and the establishment of a type 20 (Off-sale Beer & Wine) Alcohol Beverage Sales, located at 14195 W, Whitesbridge Rd., in Kerman, CA (APN: 023-220-82S) (Fast n Esy); and

WHEREAS, a public notice was circulated to adjacent properties within a 300-foot radius of the project site and published in the local newspaper at least 10 days prior to the meeting as required by law; and

WHEREAS, a written report was prepared by staff which included a recommendation for approval of Conditional Use Permit 2023-03 and was made available for public review at least 72 hours prior to the public hearing; and

WHEREAS, the project was assessed under the California Environmental Quality Act (CEQA); and

WHEREAS, the Planning Commission, after hearing public testimony and deliberating, now desires to approve Conditional Use Permit 2023-03 subject to the findings and conditions of approval, and adopt a finding of a Class 32 Categorical Exemption (In-Fill Development Project) pursuant to CEQA Guidelines Section 15332.

NOW, THEREFORE, BE IT RESOLVED by the City of Kerman Planning Commission as follows:

- 1) Recitals: The above recitals are true and correct and are incorporated herein:
- 2) CEQA: The Planning Commission finds and determines that a Class 32 Categorical Exemption (In-Fill Development Project) set forth in CEQA Guidelines Section 15332 applies to this project as it is (a) consistent with applicable goals and policies of the General Plan and standards of the Zoning Ordinance, (b) the site is within City limits and consists of land less than 5 acres surrounded by substantially developed land, (c) there is no known endangered habitats, rare or threatened species on the project site, (d) as conditioned, the project will not have a significant effect on environment relating to traffic, noise, air quality, and water quality, and (e) the project site can be adequately served by existing utilities and public services. Furthermore, none of the exceptions to categorical exemptions set forth in CEQA Guidelines section 15300.2 apply to this project.
- 3) Conditional Use Permit: The Planning Commission has determined that all findings required for approval of Conditional Use Permit 2023-03 can be made, including those required by the City of Kerman Municipal Code Section 17.12.040 (C) as follows:

- A. That the proposed establishment, maintenance, and operations of the use applied for will not be detrimental to the public health, safety, and welfare of the persons residing or working in the neighborhood of such proposed use, or whether it will be injurious or detrimental to property and improvements in the neighborhood or the city;

Finding A (1). The project will not be detrimental to public health, safety, or welfare. It is located in a designated general commercial area with hours of operation and conditions of approval which will minimize any potential negative impacts on adjacent land uses. The conditions of approval (Exhibit 'A') limit types of uses that may be objectionable or detrimental to other permitted uses or adverse to the public interest health, safety, convenience, or welfare of the city. The Planning Commission adopts the Police Chief's determination that the proposed use: (i) would not be detrimental to the public health, safety, comfort, or welfare of persons located within five hundred (500') feet of the site; and (ii) would not significantly increase the severity of existing law enforcement or public nuisance problems in the area (e.g. increase in service calls related public intoxication nuisance, vagrancy, or loitering).

- B. That the proposed use is substantially consistent with the Kerman General Plan;

Finding B (1). The development of a drive-through facility, an automobile service station, and the establishment of alcohol beverage sales are permitted uses subject to a conditional use permit in the (CG General Commercial), which is a consistent zone with the General Plan GC (General Commercial) land use designation. The project is consistent with the General Plan, including General Plan objectives ED-1.1, LU-2.4, LU-2.5, LU-2.9, and CIRC-4.2.

Finding B (2). The project is located along a general commercial corridor suitable for many retail, business professional, service commercial, and other similar activities and uses.

Finding B (3). The conditions of approval preserve the integrity and character of the zone district and ensure compliance with the General Plan and Zoning Ordinance.

- C. That the environmental document is prepared as per the California Environmental Quality Act (CEQA).

Finding C (1). As described in greater detail, above, a preliminary environmental assessment was prepared for this project in accordance with the requirements of the California Environmental Quality Act (CEQA). The project falls within Categorical Exemption per CEQA Guidelines Section 15332 (In-Fill Development Project) as the project as a whole meets the required criteria described in said section. There are no project-specific significant effects on the project or the site which would require additional environmental review.

- D. That the site for the proposed is adequate in size, shape, and location to accommodate the use as it relates to the district for which the use is proposed.

Finding D (1). The location of the project is within the CG - General Commercial zone district which is located along a commercial corridor suited for retail, office, commercial services, and other similar activities and uses along the Whitesbridge Road corridor in an undeveloped

parcel of land. The project's design and operations are appropriate to meet all applicable development and operational standards of the Zoning Ordinance.

4. Conditions of Approval: Given the foregoing, the Planning Commission approves Conditional Use Permit 2023-03, subject to the conditions of approval attached herein as **Exhibit 'A'**.
5. Effective Date: This Resolution shall take into effect immediately.

I HEREBY CERTIFY that the foregoing Resolution was approved at a regular meeting of the Planning Commission of the City of Kerman on the 10th day of April 2023, and was fully adopted at the said meeting by the following vote:

AYES: S. Bishop, R. Bandy, R. Felker, C. Molloy, K. Nehring

NOES:

ABSENT: V. Villar, M. Nunez

ABSTAIN:

The foregoing resolution is hereby approved.



Scott Bishop
Chairperson

ATTEST:



Jesus R. Orozco
Planning Commission Secretary

Exhibit 'A'

Conditions of Approval Fast N Esy – CUP 2023-03 April 10, 2023

Notice To Applicant

Pursuant to Government Codes Section 66020(d)(1) and/or Section 66499.37, any protest related to the imposition of fees, dedications, reservations, or exactions for this project or any proceedings undertaken regarding the City's actions taken or determinations made regarding the project, including but not limited to validity of conditions of approval must occur within ninety (90) calendar days after the date of this decision. This notice does not apply to those fees, dedications, reservations, or exactions which were previously imposed and duly noticed; or where no notice was previously required under the provisions of Government Code Section 66020(d)(1) in effect before January 1, 1997.

Important: Please Read Carefully

This project is subject to a variety of discretionary conditions of approval. These include conditions based on adopted City plans and policies; those determined through conditional use permit review and environmental assessment essential to mitigate adverse effects on the environment including the health, safety, and welfare of the community; and recommended conditions for development that are not essential to health, safety, and welfare, but would on the whole enhance the project and its relationship to the neighborhood and environment.

Discretionary conditions of approval may be appealed. All code requirements, however, are mandatory and may only be modified by variance, provided the findings can be made.

All discretionary conditions of approval for CUP 2023-03 will ultimately be deemed mandatory unless appealed by the applicant to the City Council within ten (10) working days after the decision by the Planning Commission. In the event you wish to appeal the Planning Commission's decision or discretionary conditions of approval for this entitlement, you may do so by filing a written appeal with the City Clerk. The appeal shall state the grounds for the appeal and wherein the Commission failed to conform to the requirements of the zoning ordinance. This should include identification of the decision or action appealed (including its identification number) and specific reasons why you believe the decision or action appealed should not be upheld, and the identity of the appellant.

Approval of this conditional use permit shall be considered null and void in the event of failure by the applicant and/or the authorized representative, architect, engineer, or designer to disclose and delineate all facts and information relating to the subject property and the proposed development.

Approval of this conditional use permit may become null and void in the event that development is not completed in accordance with all the conditions and requirements imposed on this use permit, the zoning ordinance, and all City standards and specifications. This use permit and site plan review is granted, and the conditions imposed, based upon the application submittal provided by the applicant, including any operational statement. The application is material to the issuance of this use permit. Unless the conditions of approval specifically require operation inconsistent with the application, a new or revised use permit is required if the operation of this establishment changes or becomes inconsistent with the application. Failure to operate in accordance with the conditions and requirements imposed may result in revocation

of the use permit, or any other enforcement remedy available under the law. The City shall not assume responsibility for any deletions or omissions resulting from the use permit review process, or for additions or alterations to any construction or building plans not specifically submitted and reviewed and approved pursuant to this use permit or subsequent amendments or revisions. These conditions are conditions imposed solely upon the use permit as delineated herein and are not conditions imposed on the City or any third party. Likewise, imposition of conditions to ensure compliance with federal, state, or local laws and regulations does not preclude any other type of compliance enforcement.

These conditions are applicable to any person or entity making use of this use permit, and references to “developer” or “applicant” herein also include any applicant, property owner, owner, leasee, operator, or any other person or entity making use of this use permit.

General Conditions

1. Project approval is conditioned upon acceptance of the conditions of approval contained herein, as evidenced by the receipt in the Planning Division of the applicant’s signature upon an Acknowledgement and Acceptance of Conditions within 30 days of the date of approval.
2. Any intensification or expansion of the uses beyond their approval shall be cause for review and modification of the use permit to be approved by the Commission.
3. Any proposed future modifications to the site not specifically contemplated by CUP 2023-03, including but not limited to; the building exterior, parking/loading areas, fences/walls, new buildings, or landscaping shall require an amendment to CUP 2023-03.
4. All conditions of approval shall be the sole financial responsibility of the applicant/owner, except where specified in the conditions of approval listed herein or mandated by statute.
5. It shall be the responsibility of the property owner and/or applicant to ensure that any required permits, inspections, and approval from any regulatory agency are obtained from the concerned agency prior to issuance of a business license or final occupancy issuance.
6. Failure to comply with the conditions of approval contained herein shall be cause for review and possibly modification or revocation to CUP 2023-03.
7. Approval of CUP 2023-03 is for the benefit of the applicant. The submittal of application(s) by the applicant for this project was a voluntary act on the part of the applicant not required by the City. Therefore, as a condition of approval of this project, the applicant agrees to defend, indemnify, and hold harmless the City of Kerman and its agents, officers, consultants, independent contractors, and employees (“City”) from any and all claims, actions, or proceedings against the City to attack, set aside, void, or annul an approval by the City concerning the project, including any challenges to associated environmental review, and for any and all costs, attorney’s fees, and damages arising therefrom (collectively “claim”). The City shall promptly notify the applicant of any claim.

Nothing in this condition shall obligate the City to defend any claim and the City shall not be required to pay or perform any settlement arising from any such claim not defended by the City, unless the City approves the settlement in writing. Nor shall the City be prohibited from independently defending any claim, and if the City does decide to independently defend a claim,

the applicant shall be responsible for City's attorneys' fees, expenses of litigation, and costs for that independent defense, including the costs of preparing any required administrative record. Should the City decide to independently defend any claim, the applicant shall not be required to pay or perform any settlement arising from any such claim unless the applicant approves the settlement.

Building Division

8. A building permit shall be required for all proposed or future tenant and site improvements as required by the California Building Code, California Fire Code, and Americans with Disability Act (ADA) prior to occupancy.
9. The developer and/or property owner shall submit plans consistent with California Building Standards Code, to include site development and ADA accessibility based upon the codes in effect at the time of plan check submittal.
10. The applicant and/or owner shall submit an application for a Construction and Demolition (C&D) permit per KMC, Chapter 8.12 and required permits from other enforcement agencies including but not limited to the following: Mid Valley Disposal, San Joaquin Valley Air Pollution District.
11. Prior to the commencement of any work on the project site, the general contractor and all sub-contractors shall obtain a City business license.
12. Construction, repair, and/or remodeling shall be permitted to occur between the hours of 7:00 a.m. and 10:00 p.m., consistent with 9.26.020 of the KMC.

North Central Fire Protection District

13. Please contact the NCFPD by email at Fire.Prevention@NorthCentralFire.org or by phone at (559) 878-4560 to schedule an over-the-counter meeting to receive your specific requirements for your project. Failure to schedule an appointment with the NCFPD will affect your ability to obtain final approval for your project.

Planning Division

General

14. On-site litter and graffiti shall be corrected per the KMC, Section 17.100.050 (B) – Litter and Graffiti.
15. The business and/or property owner shall keep the property clear of all trash, rubbish, and debris at all times. Dumping of refuse shall be restricted to the refuse containers scheduled to service the site.
16. The business and/or property owner shall comply with all applicable federal, state, or local laws, rules, and regulations. Material violations of said laws, rules, and regulations may be cause for review and possible revocation of the use permit.
17. Business owner(s) shall be responsible for securing a business license from the Finance Department before the commencement of any commercial activity.

Conditional Use Permit 2023-03

18. Approval of Conditional Use Permit 2023-03 is contingent upon the site being developed in substantial conformance with Site Plan Review (SPR) 2022-02, which is pending. Final approval of SPR 2022-02 shall be at the administrative level by the Planning Division.
19. Conditional Use Permit 2023-03 shall allow for the development of a drive-through facility, an automobile service station, and establishment of off-sale Type 20 ABC license as further described in conditions No. 20 through 22.
20. ABC Sales. The site shall be permitted to procure a Type 20 (Off-sale Beer & Wine) ABC license from the State Department of Alcohol Beverage Control (ABC), which requires a determination of Public Convenience or Necessity by the City Council. In the event ABC denies the license, CUP 2023-03 shall be modified, at the Applicant's/Owner's own expense.
 - a. Alcohol sales and services shall only be permitted to occur from the convenience market associated with the vehicle fueling stations. No alcohol sales or services shall be permitted to occur from the adjoining food tenant / drive-through facility use.
 - b. Sales and service of alcohol beverages shall be permitted only between the hours of 6:00 Am to 1:00 AM, each day of the week. All alcohol areas shall be locked or made not accessible to the public outside of the permitted hours.
 - c. The following alcohol beverages shall not be sold in quantities of fewer than three (3) individual containers per sale:
 - i. Beer, including malt beverages and malt liquor products, in containers of 24 oz. or less; and
 - ii. Pre-mixed wine products commonly known as "wine cooler"
 - d. No wine shall be sold with an alcohol content greater than 15% by volume.
 - e. No individual containers of beer or malt beverage products shall be sold, regardless of containers size, unless the containers are in manufactured pre-packaged multi-unit quantities. This restriction applies to any beer that is not sold or marketed by the manufacturer in a multi-unit package quantity.
 - f. The sale or dispensing of alcohol beverages shall be made to persons who are within the interior of the licensed premises only and not through a pass-out window or a slide-out tray to the exterior of the premises.
 - g. The business owner shall be responsible for ensuring that all ABC sales activities comply with the operational standards as codified in KMC 17.100.050.
21. Drive-Through Facility. The site shall be permitted to operate a drive-through facility consistent with SPR 2022-02 (once approved). The drive-through facility shall be permitted to operate within the hours of 6:00 AM and 12:00 AM, every day of the week. There shall be no onsite dining permitted unless the business owner/applicant can demonstrate parking requirements will be met. The Planning Division shall determine said parking requirements via a parking plan.

22. Automobile Service Station. The site shall be permitted to render vehicle fueling services 24-hours, every day of the week. Associated lighting shall be reviewed and approved by the Planning Division as part of SPR 2022-02.
23. There shall be no outdoor dining and/or outdoor storage of equipment or materials permitted as part of this CUP approval.

Signage

24. Proposed and future permanent signage shall comply with KMC 17.76.050 and 17.100.060
25. No sign shall interfere with a driver's or pedestrian's view of public right-of-way or in any other manner impair public safety or interfere with the safe operation of a motor vehicle on public streets. This includes, but is not limited to, the driver's view of approaching, merging, or intersecting traffic.
26. Temporary signage shall be permitted for special events (i.e. grand opening, local, State, or Federal recognized holidays), to be displayed for thirty (30) days or less per year and advertise a grand opening or community affair.

Police Department

27. Video Surveillance shall be installed consistent with KMC 17.100.050 (D) – Video Surveillance. Surveillance system installed shall be in color and monitor areas where alcohol sales and consumption is permitted to occur under this CUP. The system shall have correct date and time stamped and retained for no less than thirty (30) days. Footage shall be made available to law enforcement within 24 hours of initial request.
28. The operation of the business shall not result in criminal activity or repeated nuisance activities on the property as specified in KMC, Section 17.100.070 – Loitering and Other Nuisance Activities.
29. The business owner or operator shall be responsible for the removal of deterrent behavior including loitering and/or vagrancy in or upon the business site or properties adjacent to the licensed premises. The business owner shall install “No Trespassing” and “No Loitering” signs on the premise to the specifications of the Police Department.
30. No alcohol beverages shall be consumed on-site or any property adjacent to the licensed premises under the control of the licensee(s) as depicted on the most recently certified ABC-257 and ABC 253 form.

End of Conditions