

April 11, 2023

Via email: Diana.Martinez@slcgov.com

Salt Lake City Planning Commission
City of Salt Lake
451 S. State Street
Salt Lake City, UT 84111

Re: Response to Planning Division Department of Community and Neighborhoods Staff Report for PLNPCM2022-00053 - Conditional Use Application (“Conditional Use Permit”)

Dear Commissioners:

This firm represents the applicant Kum & Go (“Applicant”) as it seeks conditional use approval for a gas station (the “Use”) that will be located at 2111 South 1300 East (the “Property”) in the above-referenced Conditional Use Application with Salt Lake City (the “City”). We are in receipt of the Staff Report, dated April 12, 2023 (the “Staff Report”), wherein the Salt Lake City planning staff recommended a denial of the Conditional Use Permit with respect to the application.

The Applicant had its Presubmittal Meeting with the City on July 29, 2021 with Daniel Echeverria, Senior Planner, and Anna Anglin, Principal Planner, and has engaged with the City most recently on November 1, 2022, when the final Conditional Use Permit was submitted, in addition to follow-up emails regarding the Conditional Use Permit.

The Applicant did not have adequate time for review, analysis, and preparation of a response to all the points in the Staff Report and attachments due to the complexity and breadth of the documents provided, and thus reserves the right to supplement this response. The Applicant did not receive the full Staff Report and other pertinent documents until Monday, March 27, 2023, at 4:14 p.m.¹ The Staff Report and other pertinent documents include the following:

- Staff Report (78 pages)
- Public Comments (553 pages)
- Letter from Sugar House Community Council dated March 1, 2023 (3 pages)
- Letter from the Sugar House Park Authority dated April 7, 2022 (8 pages)
- Exhibit A from the Sugar House Park Authority – AEEC Technical Memorandum dated April 6, 2022 (20 pages)

¹ E-mail from Diana Martinez to Nate Abbot (Monday, March 27, 2023, 4:14 PM).

Since delivery of that Staff Report, the Applicant has prepared a response to assist you in your consideration of the Conditional Use Permit at your April 12, 2023 meeting. Because the Staff Report erroneously advises a denial of the Conditional Use Permit, we feel compelled to offer this letter as a response to the Staff Report.

Additionally, Applicant has provided the following Exhibits to support this response:

- Exhibit A - Seneca Companies Environmental Response dated April 11, 2023
- Exhibit B - Corrected Site Location: Groundwater Recharge and Discharge Zones Salt Lake Valley, Utah
- Exhibit C - Utah DEQ Interactive Map – Estimated Secondary Recharge Zone
- Exhibit D - Franklin Fueling Systems Diagram
- Exhibit E - Stormwater Quality Treatment Train

In the interest of brevity, our response is presented in a “point-counterpoint” format. We request that this letter be made a part of the permanent record for all proceedings relating to the Conditional Use Permit, and hope that you find it useful in your deliberations on the Conditional Use Permit.

Executive Summary

The Applicant has successfully owned and operated fuel stations since 1959. Currently, there are approximately 400 fuel stations nationwide. Applicant is excited to partner with Salt Lake City and desires to continue to develop its presence in the greater community. The Conditional Use Permit for a fuel station is part of this desired growth and investment in the community.

Pursuant to Utah Code Ann. § 10-9a-507(2)(a)(i), an application for a conditional use permit can only be denied if the reasonably anticipated detrimental effects of a proposed conditional use cannot be mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards.² A conditional use shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate reasonably anticipated detrimental effects of the proposed use, in accordance with applicable standards.³ To be clear, there is no legal requirement to eliminate the detrimental effects.”⁴ Further, Salt Lake City Code states that conditional uses are allowed unless appropriate conditions cannot be applied which, in the judgment of the planning commission, would mitigate adverse impacts that may arise by introducing a conditional use on the particular site.⁵ Therefore, the Staff Report incorrectly recommended a denial of the Conditional Use Permit as Applicant can clearly demonstrate that reasonably anticipated detrimental effects can be mitigated.

Salt Lake City Code requires that a conditional use is approved if the following standards are met: (i) the use complies with applicable provisions of this title; (ii) the use is compatible, or

² UTAH CODE ANN. § 10-9a-507(2)(c).

³ UTAH CODE ANN. § 10-9a-507(2)(a)(i).

⁴ UTAH CODE ANN. § 10-9a-507(2)(a)(ii).

⁵ SALT LAKE CITY CODE § 21A.54.010 (A).

with conditions of approval can be made compatible, with surrounding uses; (iii) the use is consistent with applicable adopted city planning policies, documents, and master plans; and, (iv) the anticipated detrimental effects of a proposed use can be mitigated by the imposition of reasonable conditions.⁶

The Planning Commission has the authority to review (i) what potentially detrimental impacts of the proposed use are addressed by the standards found in Salt Lake City Code §21A.54.080(B)(1-15), and (ii) in applying those standards from the ordinance, decide what reasonable conditions should be imposed to accomplish the substantial mitigation of those detrimental impacts of the use.⁷

When a use is allowed in a zone as a conditional use, the community must assume that its legislative representatives found such use to be appropriate and beneficial within the specific zoning district and thus allowed the use even in light of potential detrimental impacts.⁸ Such discretion beyond that is outside of the scope of the authority of the Planning Commission; and the dangerous precedent it would set, should not be accepted by the City, and should not be relied upon to deny Applicant the necessary conditional use permit.

The City has failed to introduce substantial evidence stating anticipated detrimental impacts that cannot be mitigated. Utah law defines substantial evidence as evidence which is beyond a scintilla and a reasonable mind would accept as adequate to support a conclusion.⁹ Further, a land use decision shall be considered arbitrary and capricious unless it is supported by substantial evidence.¹⁰ The Applicant has shown, and will show, that any anticipated detrimental impacts can, in fact, be mitigated and that due to the lack of substantial evidence, denial of the Conditional Use Application will be considered arbitrary and capricious.

In conclusion, a prohibited use would not qualify for a conditional use permit. Pursuant to Utah Code Ann. § 10-9a-507(2)(a)(i), an application for a conditional use permit can only be denied if the reasonably anticipated detrimental effects of a proposed conditional use cannot be mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards.¹¹ Applicant has demonstrated that the reasonably anticipated detrimental effects can be mitigated by the imposition of reasonable conditions. Therefore, the Conditional Use Permit should not be denied.

Staff Report Consideration No. 1: Conditional Use Purpose Statement Ordinance 21A.54.010 (“CUP Ordinance”).

Consideration No. 1 Response: The Staff Report concludes that the Use is not appropriate and should not be allowed in this location because potential adverse impacts exist that cannot be mitigated. The chief flaw with this argument is that it ignores the fact that through its adopted land use plan and as described in the City Code of Salt Lake City, Utah (“Salt Lake City Code”), the Use is allowed as a Conditional Use where the Property is located.

⁶ SALT LAKE CITY CODE § 21A.54.080(A)(1-4).

⁷ Craig M Call, J.D., *The Law and Practice of Conditional Uses*, The Utah Land Use Institute, 2022, <https://utahlanduse.org/wp-content/uploads/2022/06/Conditional-Uses-2022.2.pdf>

⁸ *Id.*

⁹ UTAH CODE ANN. § 10-9a-103(67).

¹⁰ *Bradley v. Payson City Corp.*, 70 P.3d 47, 52 (Utah 2003)

¹¹ UTAH CODE ANN. § 10-9a-507(2)(c).

The City Code provides that a “[g]as station” at the Property’s location is conditionally allowed. Salt Lake City Code § 21A.33.030 (“Gas station”). The Code defines “gas station” as “[a] principal building site and structures *for the sale and dispensing of motor fuels or other petroleum products and the sale of convenience retail.*” (Emphasis added.) In conditionally allowing a “[g]as station” at the precise location of the Property, the City already determined that any detrimental impacts associated with “the sale and dispensing of motor fuels or other petroleum products” at the location of the Property could be mitigated. If it hadn’t, the City would have *prohibited* a gas station at the Property’s location.

The Staff Report urges the Planning Commission to do just that: prohibit a gas station at the Property, in defiance of Salt Lake City Code § 21A.33.030. According to the Staff Report, no gas station should *ever* be allowed at the Property’s location. The Staff Report purports to use general considerations outlined in Salt Lake City Code § 21A.54.010 to nullify the determination made in § 21A.33.030, that a “[g]as station” at the Property is a use that can be made compatible with neighboring uses. The Staff Report therefore defies Salt Lake City Code.

Moreover, this reasoning is contrary to Utah law. Utah law imposes a strong presumption that a conditional use application will be granted. “If a land use regulation does not plainly restrict a land use application, the land use authority shall interpret and apply the land use regulation to favor the land use application.”¹² A land use authority shall approve a conditional use if reasonable conditions are proposed or can be imposed to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards.¹³

Salt Lake City Code states that the listing of a conditional use does not constitute an assurance or presumption that such conditional use will be approved and that each proposed conditional use shall be evaluated on an individual basis.¹⁴ However, Salt Lake City Code also imposes the following standards for Conditional Uses:

A conditional use shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards set forth in this section. If the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the conditional use shall be denied.¹⁵

Approval Standards – Salt Lake City Code §21A.54.080(A)(1-4).

Salt Lake City code requires that a conditional use must be approved if the following standards are met: (i) the use complies with applicable provisions of this title; (ii) the use is compatible, or with conditions of approval can be made compatible, with surrounding uses; (iii) the use is consistent with applicable adopted city planning policies, documents, and master plans; and, (iv) the anticipated detrimental effects of a proposed use can be mitigated by the imposition of reasonable conditions.¹⁶

¹² UTAH CODE ANN. § 10-9a-306(2).

¹³ UTAH CODE ANN. § 10-9a-507(2)(a)(i); *Krejci v. Saratoga Springs*, 322 P.3d 662 (Utah 2013).

¹⁴ SALT LAKE CITY CODE § 21A.54.100

¹⁵ SALT LAKE CITY CODE § 21A.54.080.

¹⁶ SALT LAKE CITY CODE § 21A.54.080(A)(1-4).

Standard 1. The use complies with applicable provisions of the Salt Lake City Code §21A.54.080(A).

The Staff Report confirmed that Applicant has demonstrated that the Use complies with the applicable provisions of the Salt Lake City Code. A Gas Station is a Conditional Use category in the CB Zone District and is permitted with Planning Commission approval.

Standard 2. The use is compatible, or with conditions of approval can be made compatible, with surrounding uses.

The Staff Report found that the Application does not comply for environmental reasons. The Applicant rejects this conclusion.

The Applicant has demonstrated that the Use is compatible with surrounding uses. The Property is located at the southeast corner of 2100 South and 1300 East. All four corners of this intersection have auto-centric, commercial uses. There is a fast-food drive-thru restaurant on the northeast corner, zoned CB. A CVS Pharmacy occupies the northwest corner and is zoned Sugar House Business District 2 (CSHBD2). Directly adjacent to the west, across 1300 East, is an Extra Mart convenience store with 16 fueling stations and is zoned Sugar House Business District 1 (CSHBD1). The rear and side yards to the east and south are park land and zoned Open Space (OS). Landscape buffering and screening are provided along the east and south property edges in order to soften the transition to the park and provide screening between the park and the proposed development.

Standard 3. The use is consistent with applicable adopted city planning policies, documents, and master plans.

The Staff Report finds that the Application does not comply because gas station use is high intensity and staff does not believe this meets the intent of the Sugar House Master Plan.

The Use is consistent with applicable adopted city planning policies, documents, and master plans. The subject property is zoned Community Business (CB) in the City Code of Salt Lake City, UT. Retail Goods and Service Establishments (Convenience Store) are permitted uses in the CB Zone District. A Gas Station is a Conditional Use category in the CB Zone District. The Guiding Principle for Growth in Plan Salt Lake is “(g)rowing responsibly, while providing people with choices about where they live, how they live, and how they get around.” The proposed development provides a choice related to how people get around and the method of transportation they choose to do so. Initiatives for Growth within Plan Salt Lake include locating new development in areas with existing infrastructure and amenities, such as transit and transportation corridors and promoting infill and redevelopment of underutilized land. The subject property is currently a vacant restaurant with existing infrastructure and amenities at the intersection of transit and transportation corridors.

The Sugar House Community Master Plan designates Future Land Use for the subject site as Mixed Use – Low Intensity. Low-Intensity Mixed Use allows an integration of residential with small business uses, typically at ground floor levels. Height limits generally include one-and two-story structures. The intent is to support more walkable community development patterns located near transit lines and stops. Proposed development and land uses within the Low-Intensity Mixed Use area must be compatible with the land uses and architectural features surrounding each site. The proposed convenience store and fuel station is limited to one-story structures. Additionally,

the building is pulled up to the street edges in order to create a more inviting and pedestrian-friendly access into the building and is reflective of a pedestrian-oriented development pattern. The Use is compatible with the surrounding land uses, with architectural design standards that meet or exceed the Commercial Design Standards (§ 21A.37) and the CB Zoning Standards (§ 21A.26.030).

Standard 4. The anticipated detrimental effects of the proposed Use can be mitigated by the imposition of reasonable conditions.

The Staff seems to believe that by simply raising a litany of horrors and worst-case scenario issues, this would somehow translate into establishing adverse impacts that cannot be mitigated. Nothing is further from the truth. The City has failed to introduce substantial evidence stating anticipated detrimental impacts that cannot be mitigated. Again, Utah law defines substantial evidence as evidence which is beyond a scintilla and a reasonable mind would accept as adequate to support a conclusion.¹⁷ The Applicant has shown, and will show, that any anticipated detrimental impacts can, in fact, be mitigated and that due to the lack of substantial evidence, denial of the Conditional Use Application will be considered arbitrary and capricious.¹⁸

Traffic. A Traffic Impact Study (“TIS”) was prepared and submitted as part of the review process that included an analysis of existing and future intersections that would be affected by the proposed development. The Application proposes to consolidate the two existing access points along 1300 East to a single right-in/right-out. Additionally, the site will continue to access via 2100 South at the existing right-in/right-out. These two access points will facilitate access and circulation throughout the site. The consolidation of the two existing access points along 1300 East to a single right-in/right-out access point will reduce the points of potential conflict along 1300 East.

In addition to the safety improvements provided by consolidating the existing entrances, the Use may provide additional safety and operational benefits to the network. It has been noted that a number of vehicles will make a northbound U-turn to access the existing Chevron gas station. Users would have the opportunity to utilize the proposed Use and not have to make potentially unsafe U-turn movements.

The proposed Use would attract most of its traffic from existing users of the network. These are referred to as pass-by trips. As an example, getting gas on the way home from work results in the majority of traffic already being on the network and creating minimal new traffic. In comparison, the current restaurant use, where the majority of trips would not already be on the network, and are considered primary trips. A gas station use draws from traffic already existing and would be a less impactful use than many others.

The TIS was conducted adhering to current best practices of study. It concludes that the proposed use would have little impact on the existing signal and due to the use may even improve operations of the existing signal. No queueing, safety or operational concerns were identified and a reduction of access points over the existing conditions would improve safety and circulation for the site and immediate traffic network. Therefore, what can be concluded from the TIS is that, from a traffic perspective, the use can be fully accommodated by the existing network and proposed site design.

¹⁷ Utah Code Ann. § 10-9a-103(67).

¹⁸ *Bradley v. Payson City Corp.*, 70 P.3d 47, 52 (Utah 2003).

Lighting. Based on community feedback, the lighting levels under the fueling canopy have been reduced from 23,000 lumens to 13,000 lumens in order to reduce the average footcandles from 55 FC to 34 FC. Additionally, Applicant also added a 6” rear shield to all the parking lot fixtures that already have the internal sharp cut-off louvers in order to reduce off-site light spill.

Drainage. Currently, all stormwater on site is being released undetained and untreated. Applicant will attenuate flows to reduce downstream impacts and improve water quality for downstream receiving waters. Applicant is installing a system containing storage, treatment, and metered release of storm water. This sequestration system allows storm runoff to be filtered prior to release. *See* [Exhibit E].

Environmental. Especially here, the Staff Report defies the evidence. It succumbs to the hasty generalization fallacy. According to the Staff Report, some (24%) of underground storage tanks were not in compliance, therefore, the Use’s underground storage tanks will fall out of compliance. There are several problems with the Staff Report’s reasoning.

First, the possibility of underground storage tank noncompliance was known when the City adopted § 21A.33.030 and placed the Property within the CB Zone. In doing so, the City must have determined that such possibility should not altogether prohibit a “[g]as station” at the Property.

Second, the Staff Report glosses over the fact that most underground storage tanks (76% according to the Staff’s analysis) have no compliance issues. Thus, even under the Staff’s reasoning, it is far more likely that the Use’s underground storage tanks will comply with UST standards.

Third, the Staff Report conflates noncompliance with unmitigable impacts. None of the supposed impacts listed in the Staff Report are unmitigable. Apparently, most underground storage tanks (76% according to the Staff Report) are well-equipped to prevent leaks, and so will the Use’s, as discussed below.

Detrimental Impacts

The Planning Commission has the authority to review (i) what potentially detrimental impacts of the proposed use are addressed by the standards found in Salt Lake City Code §21A.54.080(B)(1-15) and (ii) and in applying those standards from the ordinance, decide what reasonable conditions should be imposed to accomplish the substantial mitigation of those detrimental impacts of the use.¹⁹

There is no requirement to eliminate detrimental impacts. A conditional use shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards²⁰; absolute elimination of the detrimental effects is not necessary to demonstrate the reasonable mitigation of a detrimental effect.²¹

¹⁹ Craig M Call, J.D., *The Law and Practice of Conditional Uses*, The Utah Land Use Institute, 2022, <https://utahlanduse.org/wp-content/uploads/2022/06/Conditional-Uses-2022.2.pdf>

²⁰ UTAH CODE ANN. § 10-9a-507.

²¹ UTAH CODE ANN. §§ 10-9a-507(2)(a)(ii).

The standards to mitigate the detrimental impacts must be found in the ordinances and not conceived after a conditional use permit application has been received.²² Importantly, the detrimental impact must be proven by substantial evidence in the record.²³ Thus, Utah law demands that a Planning Commission interprets is tasked with considering a proposed conditional use and imposing conditions includes an appropriate interpretation of the relevant law and substantial evidence in the record.²⁴

Salt Lake City Code §21A.54.080(B)(1-15) demands the anticipated detrimental effects of a proposed use must be analyzed under the following:

1. **Salt Lake City Code §21A.54.080(B)(1)** requires that the proposed use is specifically authorized where it is located. Retail Goods and Service Establishments (Convenience Store) are permitted uses in the CB Zone District. A Gas Station is a Conditional Use in the CB Zone District (21A.33.030). Thus, the title specifically authorizes this use, as a conditional use where it is located.

While the City argues that environmental impacts to the park “could potentially be caused by the proposed gas station” and that said impacts could not be mitigated, the evidence shows exactly the opposite – that environmental impacts can in fact be mitigated.

2. **Salt Lake City Code §21A.54.080(B)(2)** requires that the proposed use is consistent with applicable policies set forth in adopted citywide, community, and small area master plans and future land use maps. The Staff Report argues that the Sugar House Master Plan calls for the subject property to be a low intensity use and pedestrian orients, and that the Use is such that the detrimental impact cannot be mitigated.

The Staff Report is incorrect. The proposed project conforms to the requirements of applicable land use regulations. Further, it provides a mix of uses that will serve as an amenity to the surrounding neighborhoods. The 3,957± square foot convenience store will incorporate Applicant’s newest store concept with a high-quality product offerings and fresh food choices such as made-to-order pizzas, sandwiches, wraps, and bakery items cooked on-site. This “bistro” concept will have indoor seating for twelve (12), to include ADA seating. Five (5) employees are expected to work on-site during the highest shift. In addition to clean and convenient fueling offerings, there will also be various seasonal outdoor sales items and a propane tank exchange along the front facade of the building.

3. **Salt Lake City Code §21A.54.080(B)(3)** requires that the use is well suited to the character of the site, and adjacent uses as shown by an analysis of the intensity, size, and scale of the use compared to existing uses in the surrounding area. The

²² Craig M Call, J.D., *The Law and Practice of Conditional Uses*, The Utah Land Use Institute, 2022, <https://utahlanduse.org/wp-content/uploads/2022/06/Conditional-Uses-2022.2.pdf>; OFFICE OF THE PROPERTY RIGHTS OMBUDSMAN, Advisory Op. 25, *Stapel and Cottonwood Heights City* (2007).

²³ *Ralph L. Wadsworth Constr. V. West Jordan City*, 999 P.2d 1240 (Utah Ct. App. 2000).

²⁴ Craig M Call, J.D., *The Law and Practice of Conditional Uses*, The Utah Land Use Institute, 2022, <https://utahlanduse.org/wp-content/uploads/2022/06/Conditional-Uses-2022.2.pdf>; *J.P. Furlong Co. v. Bd. of Oil, Gas & Mining*, 424 P.3d 858, 862 (Utah 2018).

Staff Report states that the size and scale of the proposal is compatible with the existing uses in the area.

The Staff Report found no detrimental impact.

4. **Salt Lake City Code §21A.54.080(B)(4)** requires that the mass, scale, style, design, and architectural detailing of the surrounding structures as they relate to the proposed Use have been considered. The Staff Report found that like the current proposal, the surrounding structures in the surrounding area, were required to comply with zoning setbacks and design standards.

The Staff Report found no detrimental impact.

5. **Salt Lake City Code §21A.54.080(B)(5)** requires that access points and driveways are designed to minimize grading of natural topography, direct vehicular traffic onto major streets, and not impede traffic flows. After review of the Traffic Impact Study, the Staff Report determined that there is a detrimental impact that can be mitigated with conditions, including access points are right in/right out for both and textured pedestrian crosswalks for both entrances of subject property. The Applicant is complying and has also proposed to remove the northern most entrance along 1300 East.

The Staff Report found a detrimental impact that can be mitigated with conditions. Applicant has agreed to these conditions.

6. **Salt Lake City Code §21A.54.080(B)(6)** requires that the internal circulation system is designed to mitigate adverse impacts on adjacent property from motorized, nonmotorized, and pedestrian traffic.

The Staff Report found a detrimental impact that can be mitigated with conditions. Applicant has agreed to these conditions.

7. **Salt Lake City Code §21A.54.080(B)(7)** requires the site is designed to enable access and circulation for pedestrian and bicycles. There are concerns from the City regarding safety. By creating a safer connection location to the park from the gas station in the northeast area of the subject property and having a textured/cobbling sidewalk across the ingress/egresses, such safety concerns can be mitigated.

The Staff Report found a detrimental impact that can be mitigated with conditions. Applicant has agreed to these conditions.

8. **Salt Lake City Code §21A.54.080(B)(8)** requires that access to the site does not unreasonably impact the service level of any abutting or adjacent street. The City misconstrued Applicant's Traffic Impact Study and argues that the proposal would add a significant increase in the number of daily trips creating a detrimental impact that cannot be mitigated.

Applicant has shown that the Project would not unreasonably impact the level of service of the existing street network due to the nature of the redevelopment. The existing use is a primary trip or destination for traffic. The proposed Use, by contrast, draws the majority of its trips as pass-by trips, or said differently, trips that

are already present on the network that stop at the proposed use on the way to their primary destination. Fuel uses are “pass-by trips” in traffic engineering. The proposed change in use would not create a substantial difference in levels of service to the surrounding network. Additionally, the project proposes a consolidation of access points that will improve safety for the existing network.

Further, the proposed use potentially would improve safety and operations of the northbound left movement at the signal.

9. **Salt Lake City Code §21A.54.080(B)(9)** requires that the location and design of off-street parking complies with applicable standards of this Code.

The Staff Report found that there is no detrimental impact.

10. **Salt Lake City Code §21A.54.080(B)(10)** requires that utility capacity is sufficient to support the use at normal service levels. The Staff Report stated that Public Utilities has reviewed this proposal and has given requirements for meeting the normal service levels at this location. Applicant showed that the site is within a developed area with all utility infrastructure in place and the site currently has both water and sewer service. The Public Utilities Department has given a list of requirements that the Applicant must meet in order to mitigate any possible contamination to the Park, through surface run-off or underground gas tank leaks. The Public Utilities Department is also requiring that the Applicant add a second natural filtration system in the form of a landscaped retention basin at the south end of the subject property.

The Staff Report finding is that there is a detrimental impact that can be mitigated with conditions. Applicant has agreed to the conditions.

11. **Salt Lake City Code §21A.54.080(B)(11)** requires that the use is appropriately screened, buffered, or separated from adjoining dissimilar uses to mitigate potential use conflicts. The Staff Report finding is that there is a detrimental impact that can be mitigated with conditions. The Applicant stated in its Application that the project will abide by the required buffers and setbacks. The Applicant has agreed to work with the Transportation Engineer to establish a safe and natural connection to the Park.

12. **Salt Lake City Code §21A.54.080(B)(12)** requires that the use meets city sustainability plans, does not significantly impact the quality of surrounding air and water, encroach into a river or stream, or introduce any hazard or environmental damage to any adjacent property, including cigarette smoke.

The Staff Report found that the Use has a high potential for significantly impacting the quality of the air, soil and water of Sugar House Park; but there is no evidence supporting this. The Staff Report further argued that this impact cannot be totally mitigated to prevent fuel leaks—which seeks to hold the Applicant to a standard rejected in MLUDMA.

Speaking to sustainability, Applicant provides alternative fuel options at many of their sites in the form of electric charging stations. As part of this commitment to

consumer choices, Applicant is proposing two (2) “EV-ready” parking spaces, or 20% of the proposed 10 on-site parking stalls. The proposed EV-ready parking spaces shall have electrical conduit and sufficient electrical capacity for the future use of a minimum 200-volt electric vehicle charging station. This proposal is in line with the City’s EV Readiness Policy as part of the City’s Sustainability program. Applicant takes pride in their development and operations of their facilities.

As to mitigation, MLUDMA provides that an Applicant cannot be required to “eliminat[e] . . . detrimental effects” to secure conditional use approval.²⁵ If “reasonable conditions are proposed, or can be imposed, to mitigate,” i.e., to make less harsh or severe,²⁶ “the reasonably anticipated detrimental effects of a proposed use,” the use must be approved.²⁷ Here, the record shows that the risks the Staff Report identifies to fuel leaks and vapors can be made less harsh or severe with conditions the Applicant proposes.

Tanks, Piping, and Dispensing Equipment

As shown in the Applicant’s Narrative and Site Development Drawings, and as further depicted in Exhibit E, the safeguards used as a standard of practice for Applicant include tanks, piping and associated dispensing equipment, all manufactured and installed according to UL and industry standards as listed in PEI RP100. Delivery spill protection is accomplished with double wall spill containment at each fill connection and testable overfill prevention valves set at 95% of the tank capacity. Fuel dispensers are UL labeled and are mechanically anchored to the surrounding concrete drive. Each dispenser is protected by a minimum of four 4-foot steel pipe bollards. Emergency fire/shear valves (Franklin Fueling) are located on the product lines at each dispenser connection and have both a shear section and fusible link to provide vehicle impact and fire protection. If the valve is sheared off, the poppet of the valve closes and stops the flow of fuel. If the fusible link is melted, the poppet of the valve closes and stops the flow of fuel. Dispensing hoses are protected with break-away valves to provide protection against drive-offs (nozzle/hose left in tank after fueling) and dispensing nozzles are automatic shut-off, pressure sensitive and are only activated when the dispenser has been authorized and pumping system energized. Leak detection and regulatory compliance are provided by an automatic tank gauge system (ATG). Functions/components are as follows:

- In-tank leak detection and water detection – capable of continuous statistical leak detection and .1 gph precision leak testing
- Continuous electronic pressure leak detection on product lines – positive shut down if leak condition is detected
- Continuous electronic monitoring of piping containments (liquid sensors in each containment)

²⁵ UTAH CODE ANN. § 10-9a-507(2)(a)(ii).

²⁶ Mitigate Definition & Meaning – Merriam-Webster.

²⁷ UTAH CODE ANN. § 10-9a-507(2)(a)(i).

- Continuous electronic monitoring of tank interstitial space (liquid sensors)
- Inventory level monitoring of tanks

Regulatory monitoring and reporting is done by Seneca Environmental Services (SES) on behalf of the Applicant. All Applicant sites are remotely accessed and monitored daily. Any alarm conditions are identified and repairs and/or emergency response is coordinated with Applicant's Facilities group and service provider. Emergency shut-off switches (Estop) are located at a minimum of three (3) locations at each site, one (1) inside at the sales counter (accessible to store employees) and two (2) on the outside of the building on either side of the front door.

Vapor Control

As shown in Exhibit A, all UST vents have Defender Series® Pressure/Vacuum (P/V) vents regulate the pressure at which vapor is allowed to escape from the underground storage tank and the vacuum at which outside air is allowed to enter the tank. The P/V vent's internal rolling diaphragm delivers consistent and controlled cracking for both *low leak and high-pressure conditions*. *Stage I Vapor recovery* is a control strategy to capture gasoline vapors that are released when gasoline is delivered to a storage tank. *The vapors are returned to the tank truck as the storage tank is being filled with fuel, rather than released to the ambient air*. Salt Lake City has a semi-arid climate (semi-desert) with an average wind speed of nearly 20 MPH, and Utah is the second driest state in the country behind Nevada (Google). The less humidity, the more the evaporation rate of gasoline exceeds the condensation rate. The stronger the wind, the more gasoline molecules disperse and evaporate more quickly. Therefore, the risk of gasoline vapors getting past the vapor controls and accumulating enough at ground level to flow as a condensed mass into a tunnel 200 feet away or even on site enough to make people feel sick is incredibly low to impossible.

Onsite Storage Treatment Train

The primary purpose of the onsite Stormwater Quality Treatment Train is to capture rainwater falling on site, treat the water to remove pollutants and sediment and release that water to the storm drain system owned and maintained by Salt Lake City.

Water is collected by a series of catch basins and conveyed through pipes to an underground storage unit where sediment is removed and water is stored prior to release. Water is treated at various points in the treatment train to remove pollutants as shown in the Stormwater Quality Treatment Train diagram (see Exhibit E). This provides robust treatment that allows us to meet or exceed the storm water quality requirements and provide increased water quality in the stormwater leaving the site

The Staff Report erroneously held that the Use has a high potential for impacting the quality of air, soil, and water of Sugar House Park. Applicant has demonstrated that the detrimental impact can be mitigated.

13. **Salt Lake City Code §21A.54.080(B)(13)** requires that the hours of operation and delivery of the use are compatible with surrounding uses. The Staff Report finding is that there is a detrimental impact that can be mitigated with conditions. Applicant agrees to restrict delivery times to early morning or early evening hours.
14. **Salt Lake City Code §21A.54.080(B)(14)** requires that signs and lighting are compatible with, and do not negatively impact, surrounding uses. The Staff Report found no detrimental impact.
15. **Salt Lake City Code §21A.54.080(B)(15)** requires that the proposed use does not undermine preservation of historic resources and structures. The Staff Report found no detrimental impact.

Staff Report Consideration No. 2: Sugar House Park: Environmental Amenities. The Property is located in a Secondary Recharge Area protected by the Groundwater Source Protection Overlay District.

Consideration No. 2 Response: The Staff Report suggests that surface run-off from the Property that is not filtered properly will run into the storm drain and eventually end up in Parley’s Creek downstream through Hidden Hollow, creating a clear negative impact that cannot be mitigated. However, this is true of all surface run-off in the surrounding area, not just for the Use. Applicant has a robust groundwater protection plan to mitigate impacts from surface run-off.

Additionally, UDEQ Interactive map, attached as Exhibit C, shows UST sites within the secondary recharge zone. It should be noted the site is closer west to the discharge zone on the east side of the Jordan River than the AEEC map depicts.

See additional information regarding the robust groundwater protection plan to mitigate impacts from surface run-off in Consideration No. 4 Response below.

Staff Report Consideration No. 3: Environmental Concerns: Underground Storage Tanks (“USTs”). The main environmental concern is soil, water and air contamination caused by a release of petroleum from the USTs.

Consideration No. 3 Response: This third point in the Staff Report seems to be offered in support of the notion that the USTs will be non-compliant. Applicant uses top of the line Fiberglass Petroleum Tanks for USTs and are in compliance with all state requirements.

The Applicant’s UST System have been designed with the state-of-the-art protections. First of all, UST dispensing, containment, monitoring and spill prevention technology has come a long way since the 1998 ordinance provided in the Staff Report was adopted. Every component of the fuel system is secondarily contained with sensors to let the operator know of any concerns. Additional components include:

- **Overfill Protection Valve** – set to close at 95% tank capacity. Flapper valve shuts forcing the backpressure to stop fueling.
- **Double Wall Fiberglass USTs** – Secondary Containment (see tank diagram) with interstitial sensors. Tanks are pressure or vacuum tested and inspected by DEQ prior to being installed.

- **ATG** – Automatic Tank Gauge systems monitors 24/7, if the Electronic Line Leak Detectors detect a leak, the system shuts down. All leak detectors and monitoring equipment is inspected and tested according to UDEQ Regulations.
- **Secondary Containments** – 5-gallon spill buckets to prevent spillage from fueling, under dispenser containments (UDC) designed to contain any leaks from the dispenser, and STP’s sealed to the tank top meant to contain any leakage from the fuel pump.
- **Piping** – continuous double wall flex with all connection fittings located inside a secondary containment. Virtually no way for fuel to leak out of the pipe.
- **Discriminating Sensors** – any fluid including water within secondary containments (STP and UDC), the shuts system down.
- **“Sniffer” wells** – Applicant’s fuel system installation SOP includes the placement of 4” monitoring wells at two corners within the excavation during backfill. These wells can be inspected to detect the presence of petroleum vapors or free product.

All monitoring sensors will be inspected by Salt Lake Fire Department to confirm that all sensors are in place prior to the fuel system being put into operation.

Additionally, the “Summary Information for Release Sources and Causes” chart provided in the Staff Report is misleading. Most—29 of the 54 confirmed releases (53%)—are “unknown”, plus another 7 arose from corrosion. Dismissing the “unknown” events and knowing the proposed fuel system has all fiberglass components that cannot corrode, eliminates 36 of 54 release causes.

Of the remaining 18 sites, 2 are “other” via “other” or delivery problem, and 2 were due to damage of subgrade tank or piping, while all other 16 are surface spills as a result of dispenser or delivery scenarios which would be addressed by the 5 levels of Storm Runoff Mitigation defenses discussed earlier.

None of releases are due to spill or overflow of tank and/or piping. So according to this data, contrary to the staff report, it is very rare for a fiberglass tank to have a release.

Even if one denies the reality of the analysis of the Summary Information For Release Sources and Causes, this does not demand a denial of the Conditional Use Permit. A conditional use needs to “mitigate” the detrimental impacts, not eliminate each foreseeable detrimental impact. Here, the Staff is holding the Applicant to an incorrect standard, and the Applicant has demonstrated that through the type of USTs used and the protections in place, the detrimental impacts have been substantially mitigated.

Staff Report Consideration No. 4: Environmental Concerns. A Second Environmental Concern for having a gas station next to Sugar House Park is the possibility of surface water runoff from the gas station, contaminating the soils and water sources of the park.

Consideration No. 4 Response: The Applicant has multiple lines of defense in place to prevent contamination of the soils and water sources of the park. According to the Geotech Report dated January 17, 2022 by GSH Geotechnical, Inc., soil lithology in borings B-1 and B-6 consist

of silty clay to 7-8' below ground surface. This is favorable to prevent a potential surface release from leaching vertically if exposed surface soil is impacted, which is highly unlikely at the proposed location. Sands and gravels dominate to 41' in boring location B-1 north of the proposed USTs, however location B-6 located just east of the UST basin contains a 3.5' layer of silty clay from 23-26.5' below ground surface, which would assist in some level of confinement. The deepest soil boring was drilled to 41' below grade and groundwater was not encountered in any of the 11 locations. Groundwater is presumed to flow in a southwesterly direction.

Applicant also has significant Storm Water Runoff Mitigation in place. As shown in Exhibit A, the first line of defense includes a 65-gallon spill kit containing oil absorbing booms, pads, granular absorbent, gloves and an overpack drum will be readily available for Applicant's staff to quickly respond to surface spills. Per standard operating procedure, the Fire Department and Seneca Compliance will be called to activate Applicant's Emergency Response contractor, which is located only 13 minutes away from the property.

The second line of defense includes storm water inlet filters, FlexStorm Pure™ that remove 99% TSS and 97% Total Petroleum Hydrocarbons. Additionally, the third line of defense includes a 24" Manway Bottom Sump. This will contain liquids in place until they can be removed. The fourth line of defense includes a line stormwater filtering system that filters out sediment and can prevent contaminants from leaching into the ground.

The fifth line of defense includes a 1,250-gallon oil water separator. Coalescing plate oil-water separators (CPS) utilize enhanced coalescing and gravitational separation to greatly improve oil-water separation in storm water runoff. In doing so, these specialized concrete vaults separate and intercept free oils and greases from storm water runoff before they reach local water or sewer systems. CPS units are intended for use on sites that have strict effluent criteria and repeatable, verifiable performance is required.

Exhibit A further shows that Dispensing Equipment Protection includes the following:

- Concrete filled steel bollards around pumps, shear or breakaway valves automatically stop the flow of fuel to the dispenser if one is hit.
- Break Away Valves are designed for fuel hoses to fracture when a specific amount of lateral stress is applied. This means that should a vehicle drive-away during refueling, the valve assembly will separate into two Dry Break components. This minimizes spills, avoids fires, and stops expensive refueling and fuel management hardware being dragged off and destroyed should a drive-away occur.
- Shear Valves are installed on fuel-supply lines beneath dispensers at grade level to minimize hazards associated with collision or fire at the dispenser. If the dispenser is pulled over or dislodged by collision, the top of the valve breaks free at the integral shear groove, activating poppets that shut off the flow of fuel.

Lastly, Seneca Compliance Manager includes remote monitoring from Des Moines, IA to pull data and maintain compliance for all Applicant stores throughout the US. This gives Applicant the capability to conveniently provide annual reports of inspections from UDEQ and/or reports regarding any leaks from the UST system or spills on site. In accordance with all applicable regulations, any potential leak or spill within reportable limits would be reported to UDEQ.

By providing this information, we re-emphasize that the Applicant is committed to preventing contamination of the soils and water sources of the park and has a multi-level plan in place to mitigate any detrimental impacts.

Staff Report Consideration No. 5: Traffic Concerns: Vehicular increase to the 2100 South/1300 East Intersection

Consideration No. 5 Response: The Staff Report argues that the Use is too vehicular intense for the Property. Applicant disagrees.

The first point noted in the Staff Report in this Consideration is the following: *“The study was conducted last year when the Sizzler was inoperable and there were no counts taken from the subject property because there were no cars entering or exiting the property. The traffic impact study cannot be reasonably relied upon to provide meaningful understanding of the potential impacts.”* This statement is inaccurate and does not represent best practice in traffic engineering. The purpose of the TIS is to understand the total impacts of the proposed use. While providing a comparison to any existing use on site is helpful, ultimately the analysis is conducted as if any proposed development was new to the site. In practice, if the Sizzler was operational, when counts were taken, the trips would have been removed from the site entrances and the surrounding network in the analysis so that the full impacts of the proposed Use could be understood. The Sizzler being vacant provides the best opportunity to fully understand potential impacts of the proposed land use.

The Staff Report goes on to describe that LOS “E” is an unacceptable level of service for the network. It should be noted that the TIS specifically identifies the LOS “E” is due to background growth added to the network. Adding background growth helps capture any future developments or regional increases in traffic, which is best practice. The LOS “E” analyzed is not due to any site development. Said differently, if the site is never redeveloped or occupied again, and traffic continues to increase, the signal will degrade to LOS “E.” A review of background (without site) 2023 conditions versus total future (with site) 2023 shows no degradation of the signal. The TIS shows that the proposed development has only minor impacts to the existing signal.

Additionally, although not modeled, a fuel use at this location would decrease the number of northbound left U-turns that were observed at the signal accessing the fuel station to the west. The proposed Use potentially would improve safety and operations of the northbound left movement at the signal.

Fuel uses are not destination spots. This is ultimately a benefit to the traffic network. These are typically described as “pass-by trips” in traffic engineering. Vehicles that are already on the network that stop on their way to their primary destination. These are ultimately less impactful uses as they do not add new trips to the network. Destination uses, such as restaurants, create mostly new trips to the network which increase traffic throughout the network streets.

The design of the site accommodates the proposed trips as well as reduces the number of curb cuts (access points) than the existing use. Fewer curb cuts helps to provide for better pedestrian and bike experience as there are fewer conflict points that non-auto users have to be aware of. Fewer access locations and limited movements are high priorities when adhering to access management principles. The site design improves access management over the existing conditions.

The TIS was conducted adhering to current best practices of study. It concludes that the proposed Use would have little impact on the existing signal and due to the proposed Use may even improve operations of the existing signal. No queuing, safety or operational concerns were identified and a reduction of access points over the existing conditions would improve safety and circulation for the site and immediate traffic network. Therefore, what can be concluded from the TIS is that, from a traffic perspective, the proposed Use can be fully accommodated by the existing network and proposed site design.

Staff Report Consideration No. 6: Traffic Concerns: Fuel Truck Route After Leaving Subject Property

Consideration No. 6 Response: The Planning Staff has concerns about the route that the fuel trucks will take after they leave the subject property.

This consideration discusses the proposed fuel truck routes to get back to the highway. These trucks will need to take 2100 S to the east as discussed. The roadway is designated as a collector and two to three travel lanes in either direction depending on the segment. Collectors connect local roads to arterials and must balance access with mobility. This road serves as a primary east-west connection to get users to/from I-80, I-15, commercial areas, and residential areas along its length. The roadway is designed to carry a mix of traffic to support multiple types of users including heavy vehicles such as the UTA 21 Bus Line. A review of publicly available data from the Wasatch Front Regional Council (WFRC) shows 5% combined unit and 11% single unit trucks along the length of 2100 S. This would suggest that heavy vehicles are present on the roadway either as through trips as 2100 S is an east-west route for the region and also serving the commercial uses along this corridor.

The Operator has the ability to regulate when fuel deliveries are made. If a condition of approval was to limit the times, it would be recommended to limit them to off-peak hours.

Generally, this route includes collector road. Collector roads are intended for truck traffic and higher volume passenger vehicle traffic. If residents live on or near a collector road, such residents know that when purchasing their homes. Collector roads are not residential roads for a reason.

Lastly, if a reasonably anticipated detrimental effect is having large trucks on 2100 South and the impact on the safety of pedestrians, then Applicant can mitigate this concern by restricting large trucks to off peak hours. This is a reasonable mitigation of such a detrimental impact.

Staff Report Consideration No. 7: City Plan Policies. The Master Plan labels this subject Property as Low Intensity Mixed Use.

Consideration No. 7 Response: The Staff Report states that the subject proposal is a vehicular focused development that would generate more traffic than a high-volume sit-down restaurant and is not consistent with the policies of the Sugar House Master Plan.

The Use includes ground floor level retail that supports a more walkable community. The compatibility of the Use is demonstrated as the Use includes indoor and outdoor seating for pedestrians and bicyclists. The Use is consistent with applicable adopted city planning policies, documents, and master plans.

Additionally, the Use is created to support more walkable community development patterns located near transit lines and stops. The proposed convenience store and fuel station is limited to one-story structures and is designed to create an inviting and pedestrian-friendly access into the building and is reflective of a pedestrian-oriented development pattern. The Use is compatible with the surrounding land uses, with architectural design standards that meet or exceed the Commercial Design Standards (§ 21A.37) and the CB Zoning Standards (§ 21A.26.030).

Staff Report Consideration No. 8: Landscaping Buffer – for separation and storm drain filtration system.

Consideration No. 8 Response: The Staff Report states that because of the incompatibility of the gas station proposal use and the Sugar House Park, having a significantly upgraded landscaping buffer between the Use and the Sugar House Park is advisable.

Applicant is amenable to an upgraded landscaping buffer and will coordinate with the City to remedy this concern.

Decision

The Planning Staff recommended the denial of the Application to the Planning Commission. However, Utah law demands that a conditional use shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed Use in accordance with applicable standards.²⁸ Here, the reasonably anticipated detrimental effects of the Use can be mitigated with reasonable conditions as this response has demonstrated.

However, should the Planning Commission decide to approve this Application, the Planning Staff recommended adding the following list of conditions. This further support's Applicant's position that the detrimental impacts can be adequately mitigated; if not, the Planning Staff would not have recommended the following:

1. Monitoring sensors to be placed with the petroleum tanks for detecting a release of any level. This should be inspected by the Salt Lake City Fire Department to confirm that the sensors are in place.

Applicant utilizes a state of the art fueling system that is compliant with all local and State requirements, and detects releases in accordance with best practices as described in this response.

2. The landscaping along the east and south property lines should be upgraded to give an appropriate buffer between the gas station and the Park.

Applicant agrees to comply with this condition; provided, however, landscaping requirements shall be reasonable.

3. USTs should have over-fill prevention valves to protect, prevent and detect, any overfilling of fuels to the USTs.

Applicant agrees to this condition and has described the system in place in this response.

²⁸ UTAH CODE ANN. §10-9a-507.

4. Fiberglass tanks should be used for the underground storage fuel tanks, to ensure a greater durability and lifespan for the site.

Applicant agrees to this condition, as this is industry standard and best practice.

5. Building entrances facing 2100 South and 1300 East must remain open 100% of the time during business hours for customer access, since they are the main entrances for the building.

Applicant would agree to keep both entrances open during normal business hours, but there is no City requirement to have both open at all times. During late or early hours or when Applicant has minimal employee coverage, it may need to lock one of the entrances for safety reasons.

6. No fencing shall be permitted along the east or south property lines, which would create a delineated separation between the subject property and Sugar House Park.

Applicant agrees to this condition.

7. Work with the planning staff to create a safer park connection from the subject property for pedestrian traffic in the northeast area of the subject property, rather than the southeast corner connection near the gas pumps and more vehicular traffic.

Applicant has already agreed to collaborate with City.

8. Work with the transportation engineers on a trail connection to Sugar House Park.

Applicant has already agreed to collaborate with City.

9. Work with the transportation engineers on a bike connection along the frontage sidewalk along 1300 East.

Applicant has already agreed to collaborate with City.

10. For stormwater quality – because of the proximity to Parley’s Creek and the Sugar House Park Detention Pond, supplemental stormwater quality treatment is required on-site. The treatment must include both mechanical best management practices and green infrastructure (landscaping) as a secondary treatment and containment (detention basin) on-site prior to leaving the subject property and must be approved by the Public Utilities Department.

Applicant has already agreed to collaborate with City.

11. Applicant must provide annual reports of inspections from the DEQ (Department of Environmental Quality) and/or reports regarding any leaks from their USTs or spills on-site.

Applicant agrees to comply with all local and state law regarding leaks and has a robust system in place to monitor and address leaks.

12. The Salt Lake City Planning Division is to be notified within 24 hours of any leaks or spills that have occurred on the subject property, in addition to those agencies noted in Ordinance 21A.34.060.G.1.d. (21A.34.060).

To restate the notation above, Applicant agrees to comply with all local and state law regarding leaks and has a robust system in place to monitor and address leaks.

13. Deliveries to the subject property for goods and fuel are to be limited to the hours of 07:00 am-10:00 am and 06:00 pm-10:00 pm.

Applicant would agree to accept deliveries between 7:00 a.m. and 10:00 p.m., and it will collaborate with the City to determine ideal time outside of peak hours and agrees to plan deliveries during mutually agreeable hours. Deliveries between 10:00 a.m. and 6:00 p.m. would have no, or only a de minimus, impact on traffic.

14. The Applicant should be accountable for any cleanup and remediation of the subject property, Sugar House Park property, and any City property downstream of the site, should a leak or surface-runoff contamination occur.

Existing law already makes owners and operators accountable for releases of hazardous substances.

15. Proposed stamped internal-colored concrete shown across the ingress/egress points along 1300 East and 2100 South.

Applicant agrees to this condition.

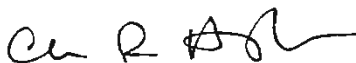
Summary

Lastly, Applicant would like to address the public commentary surround this Application. Utah law unambiguously states that that public clamor alone is not sufficient to deny a conditional use permit.²⁹

We thank you again for your review and careful consideration of the issues involved in this important matter. If you have any comments or questions, or would like to discuss further any of these items, please contact us.

Respectfully,

Holland & Hart LLP



Christopher R. Hogle
Partner

²⁹ *Davis City. v. Clearfield*, 756 P.2d 704, 712 (Utah Ct. App. 1988).



cc: Ryan Halder (w/encls.) (via email)
Christian Michaelson (w/encls.) (via email)
Nate Abbott (w/encls.) (via email)
Michael C. Dimino (w/encls.) (via email)
Brian Horan (w/encls.) (via email)
Matt Wirthlin (w/encls.) (via email)
Havilah Coady (w/encls.) (via email)

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EXHIBIT “A”



DENVER BRANCH

200 S. RARITAN STREET WWW.SENECACO.COM
DENVER, CO 80223 STORE.SENECACO.COM
PHONE: 303-744-2125

The Complete Solution
April 10, 2023

Mr. Ryan Halder
Kum & Go L.C.
1459 Grand Ave.
Des Moines, IA 50309

submitted via email to Ryan Halder > ryan.halder@kumandgo.com

**RE: CITY STAFF REPORT ENVIRONMENTAL RESPONSES FOR THE PROPOSED KUM & GO
#2506 LOCATED AT 2111 SOUTH 1300 EAST, SALT LAKE CITY, UTAH**

STORM RUNOFF MITIGATION

➤ **LINE OF DEFENSE #1 – SPILL KIT**

A 65-gallon spill kit containing oil absorbing booms, pads, granular absorbant, gloves and an overpack drum will be readily available for Kum & Go staff to quickly respond to surface spills. Per SOP the Fire Department and Seneca Compliance will be called to activate Kum & Go's Emergency Response contractor, who is located only 13 minutes away from the property.



The Complete Solution

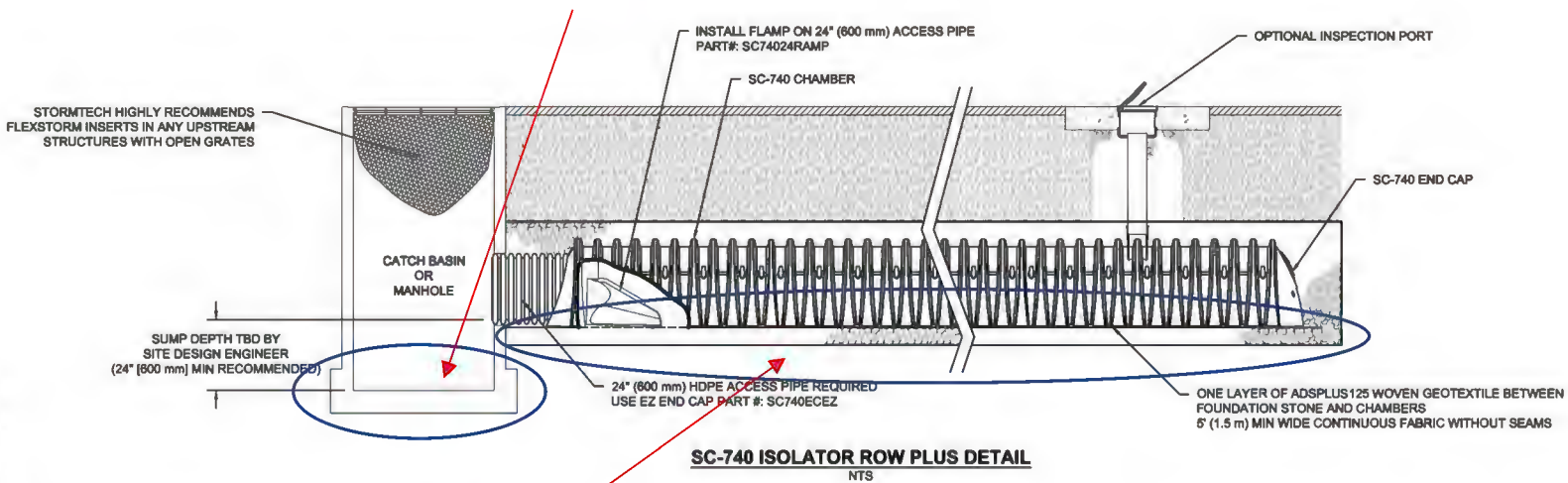
➤ **LINE OF DEFENSE #2 – STORM WATER INLET FILTERS**

FlexStorm Pure™ removes **99% TSS and 97% Total Petroleum Hydrocarbons**.



➤ **LINE OF DEFENSE #3 - 24" Manway Bottom Sump**

Will contain liquids in place until they can be removed.

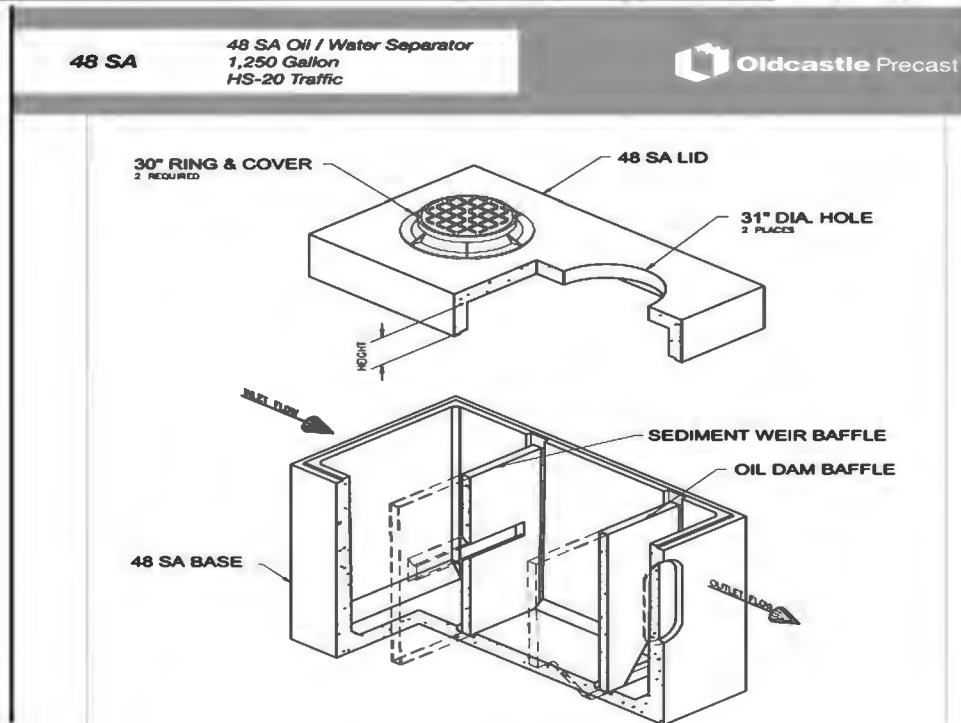


➤ **LINE OF DEFENSE #4 – LINE STORMWATER FILTERING SYSTEM**

Filters out sediment and can prevents contaminants from leaching into the ground

The Complete Solution

➤ **LINE OF DEFENSE #5 – 1,250-GALLON OIL WATER SEPARATOR**



Coalescing plate oil-water separators (CPS) utilize enhanced coalescing and gravitational separation to greatly improve oil-water separation in storm water runoff. In doing so, these specialized concrete vaults separate and intercept free oils and greases from storm water runoff before they reach local water or sewer systems. CPS units are intended for use on sites that have strict effluent criteria and repeatable, verifiable performance is required.



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DISPENSING EQUIPMENT PROTECTION

- Concrete filled steel bollards around pumps, shear or breakaway valves automatically stop the flow of fuel to the dispenser if a one is hit.
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GROUNDWATER PROTECTION

UDEQ Interactive map shows UST sites located within the secondary recharge zone. There are many other UST sites located within the Secondary Recharge Zone. It should be noted the site is closer west to the discharge zone on the east side of the Jordan River than the AEEC map depicts. There are no restrictions for the discharge zones, hence why there are many more UST sites in the discharge zone than the secondary recharge zone.

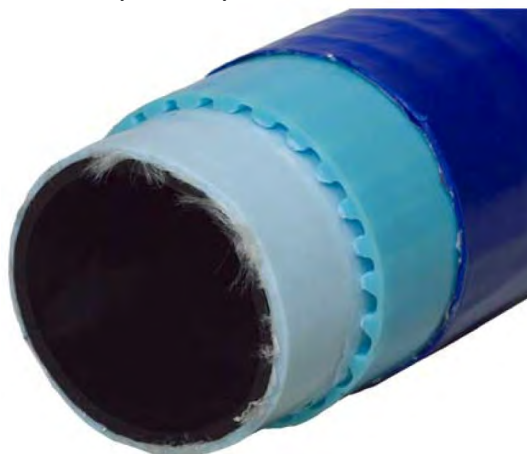
Site Geology - According to the Geotech Report dated January 17, 2022 by GSH Geotechnical, Inc., soil lithology in borings B-1 and B-6 consist of silty clay to 7-8' below ground surface. This is favorable to prevent a potential surface release from leaching vertically if exposed surface soil is impacted which is highly unlikely at the proposed location. Sands and gravels dominate to 41' in boring location B-1 north of the proposed USTs, however location B-6 located just east of the UST basin contains a 3.5' layer of silty clay from 23-26.5' bgs which would assist in some level of confinement. The deepest soil boring was drilled to 41' below grade and groundwater was not encountered in any of the 11 locations. Groundwater is presumed to flow in a southwesterly direction.

UST System Bells and Whistles – UST dispensing, containment, monitoring and spill prevention technology has come a long way since the 1998 ordinance was adopted. Every component of the fuel system is secondarily contained with sensors to let the operator know.

- **Overfill Protection Valve** – set to close at 95% tank capacity. Flapper valve shuts forcing the backpressure to stop fueling.
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The Complete Solution

- **Piping** – continuous double wall flex with all connection fittings located inside a secondary containment. Virtually no way for fuel to leak out of the pipe.



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All monitoring sensors will be inspected by Salt Lake Fire Department to confirm that all sensors are in place prior to the fuel system being put into operation.

Other Worthy Mentions

- Seneca Compliance Manager – remote monitoring from Des Moines, IA to pull data and maintain compliance for all Kum & Go stores throughout the US. This gives Kum & Go the capability to conveniently provide annual reports of inspections from UDEQ and/or reports regarding any leaks from the UST system or spills on site. Within 24 hours, any potential leak or spill within reportable limits would be reported to UDEQ.

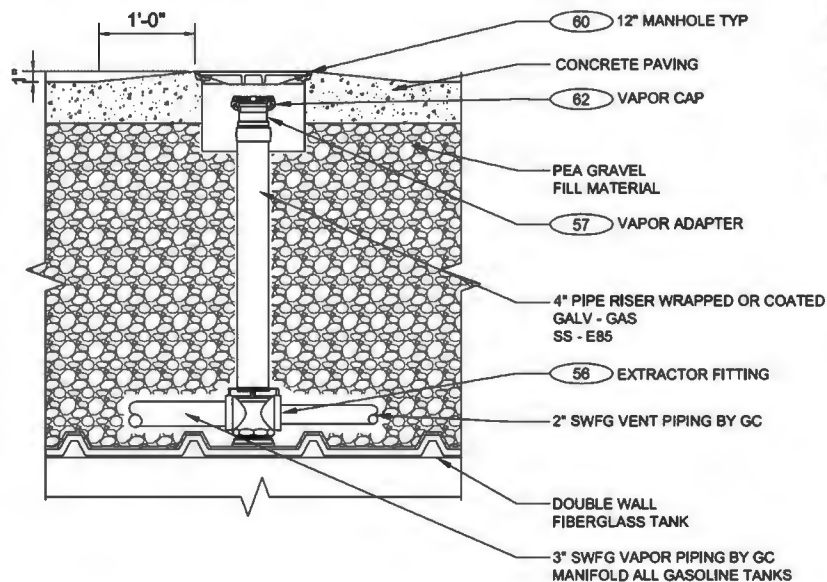
VAPOR CONTROL

- All UST vents have Defender Series® Pressure/Vacuum (P/V) vents regulate the pressure at which vapor is allowed to escape from the underground storage tank and the vacuum at which outside air is allowed to enter the tank. The P/V vent's internal rolling diaphragm delivers consistent and controlled cracking for both ***low leak and high-pressure conditions.***



- ***Stage I Vapor recovery*** is a control strategy to capture gasoline vapors that are released when gasoline is delivered to a storage tank. ***The vapors are returned to the tank truck as the storage tank is being filled with fuel, rather than released to the ambient air.***

The Complete Solution



- Salt Lake City has a semi-arid climate (semi-desert) with an average wind speed of nearly 20 MPH, and UT is the second driest state in the country behind Nevada (Google). The less humidity, the more the evaporation rate of gasoline exceeds the condensation rate. The stronger the wind, the more gasoline molecules disperse and evaporate more quickly. Therefore, the risk of gasoline vapors getting past the vapor controls and accumulating enough at ground level to flow as a condensed mass into a tunnel 200 feet away or even on site enough to make people feel sick is incredibly low to impossible.

STATS

- 29 of the 54 confirmed releases (53%) are “unknown”, plus another 7 due to corrosion. Dismissing the “unknown” events and knowing the proposed fuel system has all fiberglass components that cannot corrode, eliminates 36 of 54 release causes.
- Of the remaining 18 sites, 2 are “other” via “other” or delivery problem, and 2 were due to damage of subgrade tank or piping, while all other 16 are surface spills as a result of dispenser or delivery scenarios which would be addressed by the 5 levels of Storm Runoff Mitigation defenses discussed earlier.
- 0% of releases are due to spill or overfill of tank and/or piping. So according to this data, contrary to the staff report, it is very rare for a fiberglass tank to have a release.

Number Of Confirmed UST Releases:

54

Release Reporting Period Dates:

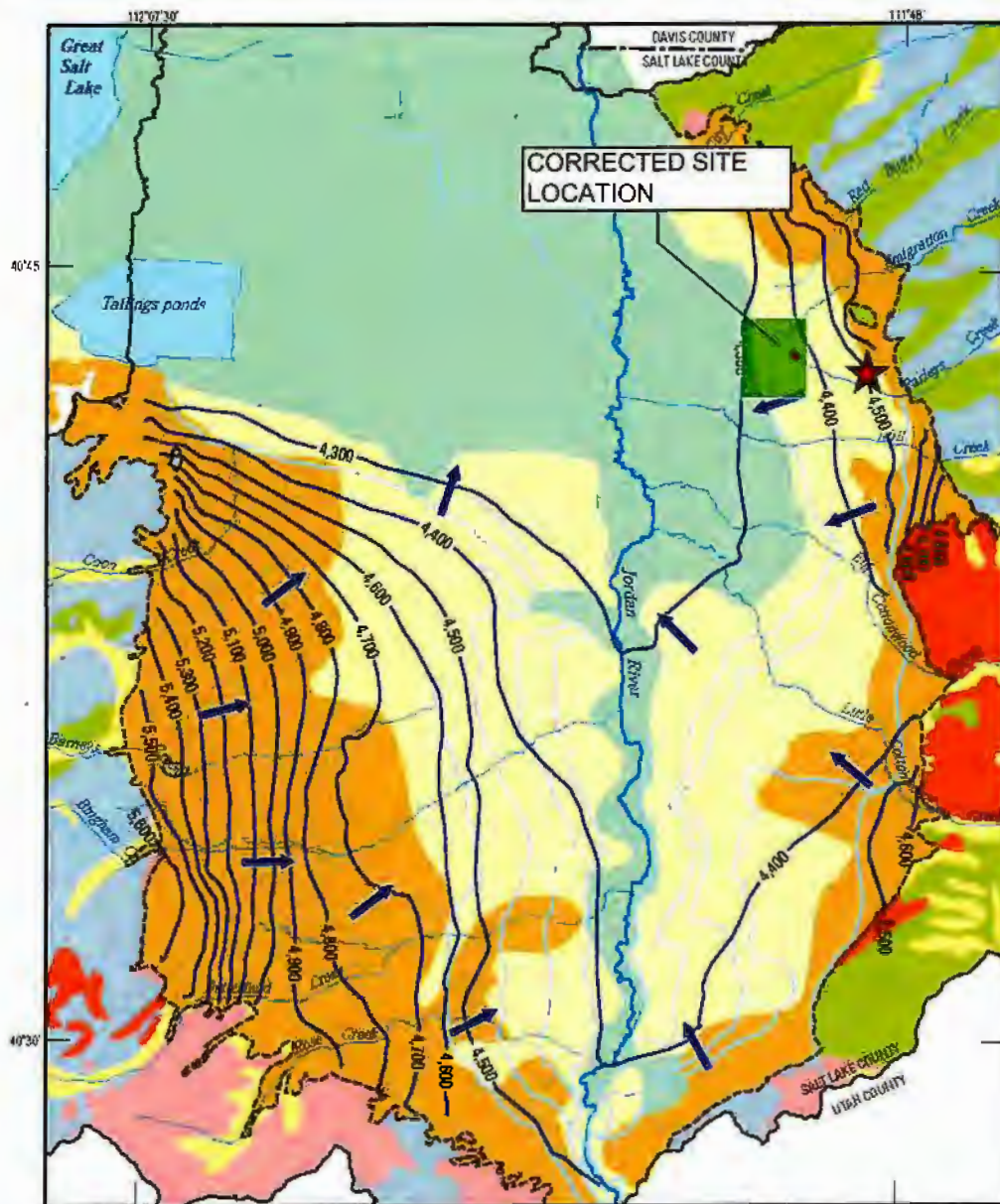
October 1, 2021 To September 30, 2022

Summary Information For Release Sources And Causes

Source			Cause													
			Spill		Overfill		Damage		Corrosion		Install		Other		Unknown	
#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	
Tank	12	22 %	0	0 %	0	0 %	1	33 %	3	43 %	0	0 %	0	0 %	8	28 %
Piping	8	15 %	0	0 %	0	0 %	1	33 %	3	43 %	0	0 %	0	0 %	4	14 %
Dispenser	11	20 %	5	63 %	3	60 %	1	33 %	0	0 %	0	0 %	0	0 %	2	7 %
STP	2	4 %	0	0 %	0	0 %	0	0 %	1	14 %	0	0 %	0	0 %	1	3 %
Delivery Problem	5	9 %	2	25 %	2	40 %	0	0 %	0	0 %	0	0 %	1	50 %	0	0 %
Other	4	7 %	1	13 %	0	0 %	0	0 %	0	0 %	0	0 %	1	50 %	2	7 %
Unknown	12	22 %	0	0 %	0	0 %	0	0 %	0	0 %	0	0 %	0	0 %	12	41 %
Totals	54		8		5		3		7		0		2			

= number, % = percent of total number

EXHIBIT “B”



Base from U.S. Geological Survey digital line graph data, 1979, 1986, Universal Transverse Mercator projection, Zone 12

0 2 4 Miles
0 2 4 Kilometers

- | | |
|---|--|
| <p>Geology</p> <ul style="list-style-type: none"> Carbonate rocks Metamorphic or intrusive igneous rocks Sedimentary-dominated rocks Volcanic rocks Basin-fill sediments Sugarhouse Park | <p>EXPLANATION</p> <ul style="list-style-type: none"> Discharge area Primary recharge area Secondary recharge area Approximate boundary of basin-fill sediments Approximate direction of lateral groundwater movement -4,500- Potentiometric contour—Shows altitude of model-computed potentiometric surface for the principal aquifer in 1991 (from Lambert, 1996). Contour interval is 100 feet. Datum is the National Geodetic Vertical Datum of 1929 Study area boundary Canal |
|---|--|

**Figure 12: Groundwater Recharge and Discharge Zones
Salt Lake Valley, Utah**

Kum & Go Gas Station
2111 South 1300 East
Salt Lake City, Utah



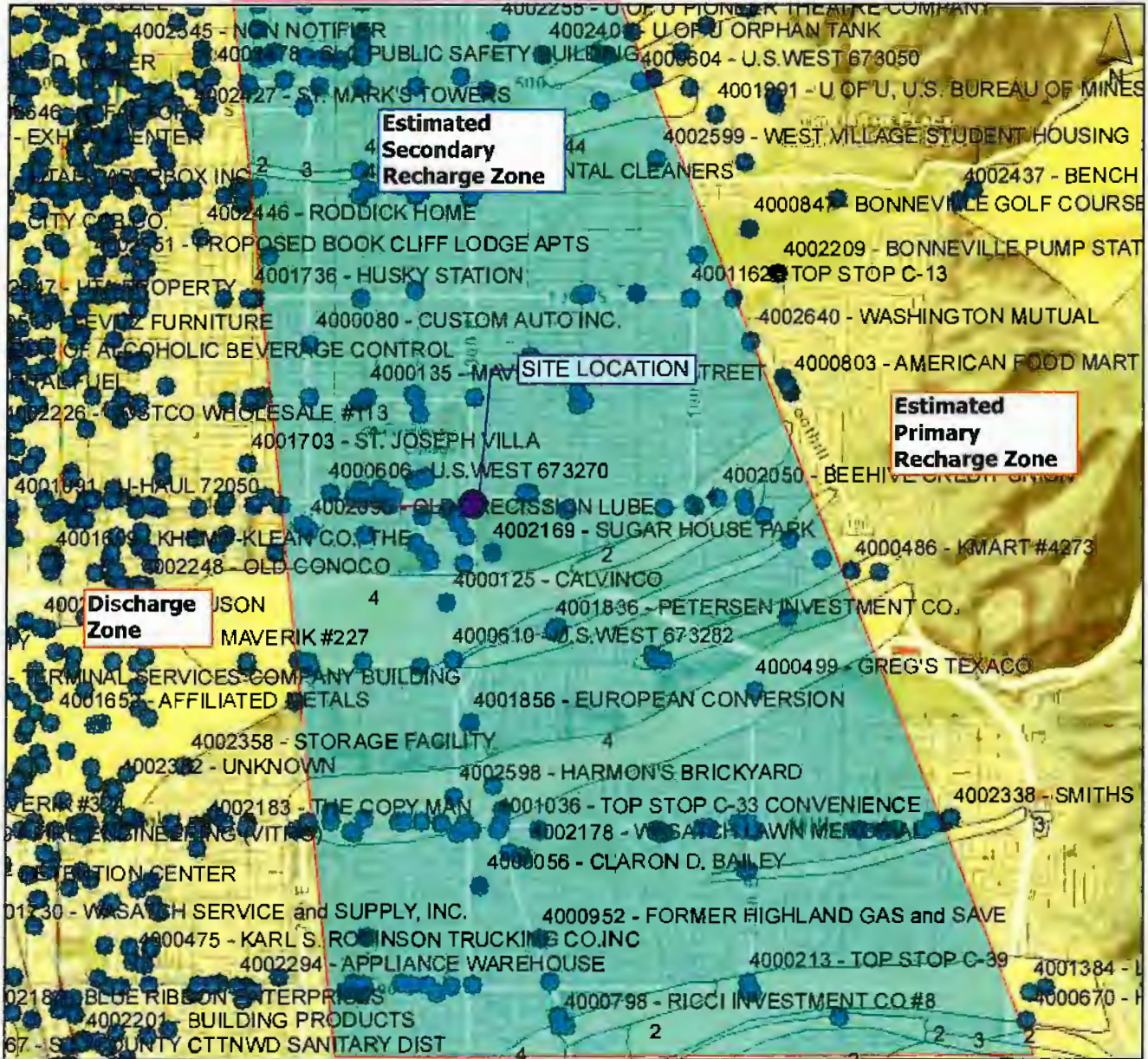
3489 West 2100 South, Suite 150
Salt Lake City, Utah 84119
(801) 908-5447

Project No. 2203

Boundaries are approximate.
Not to scale.

EXHIBIT “C”

Printed from the Utah DEQ Interactive Map



4/10/2023

1:72,224

Petroleum Storage Tanks

Ground Water Protection Zones



EXHIBIT ‘D’



SERVICE STATION HARDWARE

- Product and Vapor Recovery Spill Containers
- Product and Vapor Recovery Caps and Adapters
- Defender Series Overfill Prevention Valves
- Extractor/Vents
- Defender Series® FVV Vents (a) with In-Line Vaults (b)
- Drop Tubes
- Tank Bottom Protectors
- Manways
- Multipoint Manways
- Multipoint Tank Sumps
- Probe Access Manholes
- FLEX-ING® Flexible Connectors
- Product and Vapor Recovery Shear Valves

PIPING & CONTAINMENT SYSTEMS

- Polyethylene or Fiberglass Tank Sumps (fiberglass shown)
- APT® Flexible Pipe
- LIPP® Semi-Rigid Pipe
- Pipe Fittings, Test Boots, and Entry Boots
- Polyethylene or Fiberglass Dispenser Sumps (fiberglass shown)

SUBMERSIBLE PUMPING SYSTEMS

- FE PETRO® Submersible Turbine Pumps (STP)
 - Advanced Protectors
 - Variable and Fixed Speed
 - High Capacity STPs and Controllers
- Corrosion Control™ Systems
 - Diaphragm Pack
 - Corrosion Detection Sensor
 - Water Separator
- Mechanical Leak Detectors
- Dispenser Hook Isolation Controllers
- Control Boxes
- Guardian Series™ Smart Controllers
- Variable Frequency Controllers

DISPENSING SYSTEMS

- Sewel and In-Line Breakways
- Product Hoses
- Vapor Recovery and Enhanced Conventional Nozzles
- Dispenser-Mounted Vacuum Pumps

FUEL MANAGEMENT SYSTEMS

- EVO® Series Automatic Tank Gauges
- Probe and Float Kits
 - Inventory Control
 - Phase Separation
 - Density Measurement
- Electronic Line-Leak Detection
- Discriminating Sensors
- Non-Discriminating Sensors
- FFS PRO® Connect

WIRE MANAGEMENT SYSTEMS

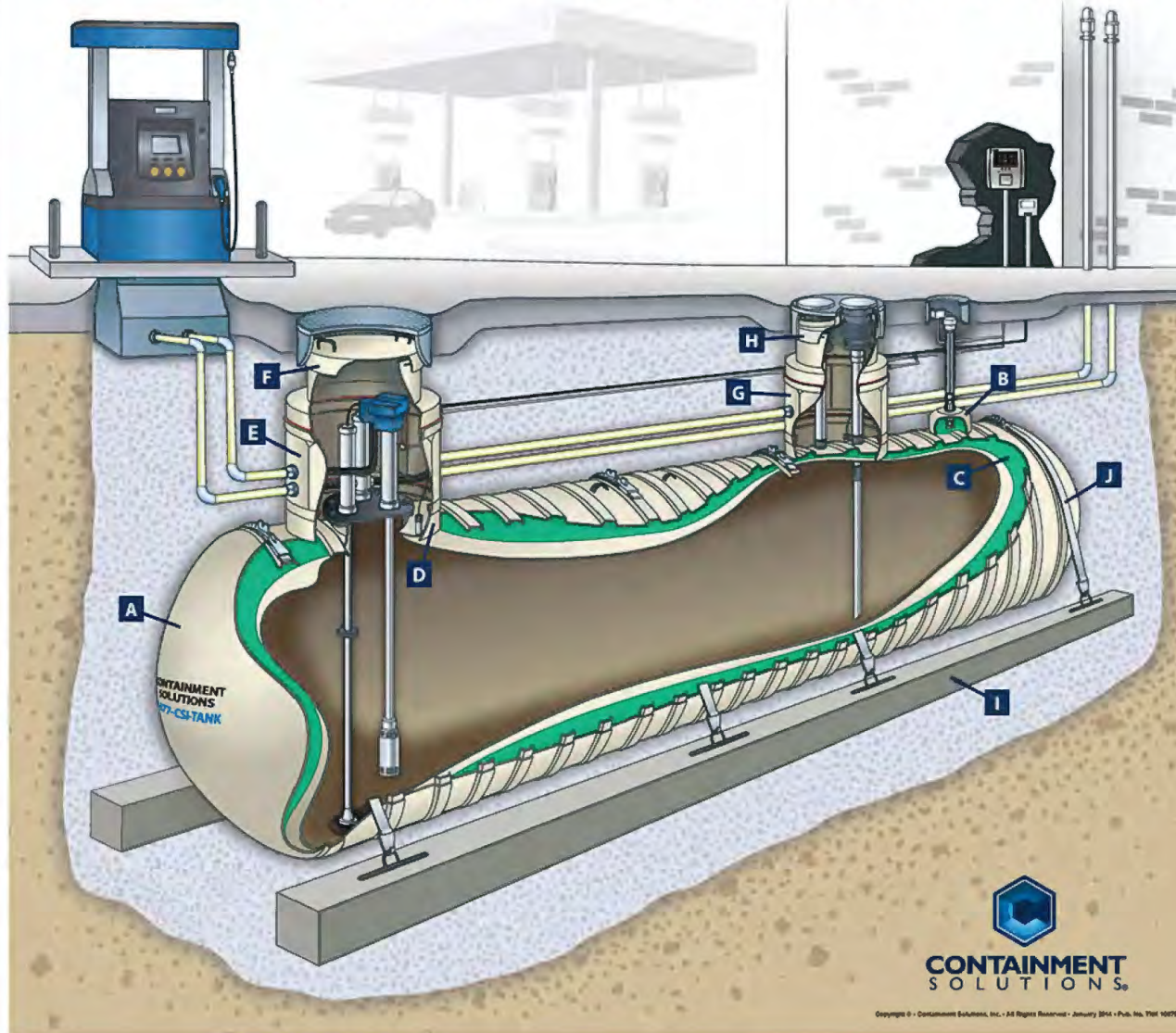
- Cable Tight™ Flexible Conduit
- Cable Tight™ Rigid Conduit
- Entry Seals
- Couplers

see CSI Diagram

FIBERGLASS PETROLEUM TANKS

STANDARD FEATURES

- A. Double-Wall Tank
- B. Hydrostatic Reservoir
- C. Monitoring Fluid
- D. Containment Collar
- E. Turbine Tank Sump
- F. Turbine Sump Lid
- G. Fill / Vapor Tank Sump
- H. Fill / Vapor Sump Lid
- I. Deadman Anchors
- J. Split-Strap System



1-877-CSI-TANK

www.containmentsolutions.com

Innovative Manufacturing Process

Using an automated process, our tank laminate is consistent in thickness and composition. The initial material forming against the steel mold produces an incredibly smooth finish, free of surface variations. The inside surface in our process is not exposed to air as it cures thus eliminating air inhibited cure issues. The result is a well cured, high gloss inner surface without the need for additional interior liners. Other manufacturing methods rely on inferior hand sprayed wax coatings to combat surface cure problems.

Our proven performance and quality products have led the industry for over 45 years.



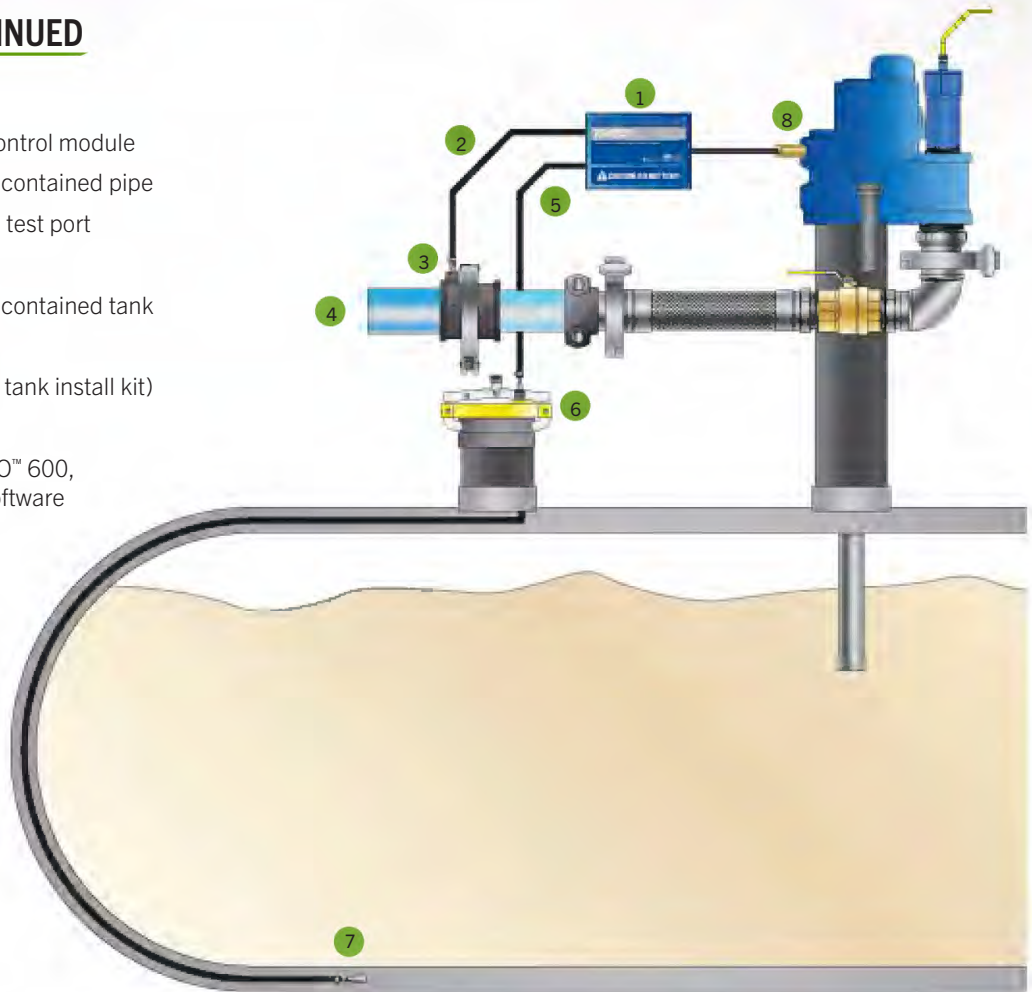
**CONTAINMENT
SOLUTIONS**

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SPECIFICATIONS CONTINUED

Components

- 1 Secondary containment control module
- 2 Vacuum line to secondary contained pipe
- 3 Pipe fitting with integrated test port
- 4 Secondary contained pipe
- 5 Vacuum line to secondary contained tank
- 6 Tank installation kit
- 7 Line weight (included with tank install kit)
- 8 Syphon check valve
- 9 EVO™ 550, EVO™ 5000, EVO™ 600, or EVO™ 6000 with SCM software



ORDERING INFORMATION

Secondary Containment Control Modules

TS-SCCM/1	Single channel secondary containment control module
TS-SCCM/2	Dual channel secondary containment control module
TS-SCMCL	Leak generator kit, one per station
VS-SCCM/1	220 VAC single channel secondary containment control module
VS-SCCM/2	220 VAC dual channel secondary containment control module

Accessories

TSP-SCBRB	¼" NPT barbed fittings (Qty 5)
TSP-SCBRBT	¼" NPT barbed T-fitting
TSP-SCCLP	Hose clamps (Qty 5)
TSP-SCTB25	25' vacuum hose
TSP-SCTB50	50' vacuum hose
TSP-SCTB100	100' vacuum hose
TSP-SCVLV	Schreader valves (Qty 5)
400137937	Syphon check valve
TSP-SCVLV-PF	Push-Fit stem to Barb fitting (Qty 5)

Installation Kits

TSP-SCLSI	Product, vapor line and sump containment install kit
TSP-SCTK2	Tank containment install kit for 2" NPT risers, in-tank hose sold separately
TSP-SCTK2B	Tank containment install kit for 2" BSP risers, in-tank hose sold separately
TSP-SCTK4	Tank containment install kit for 4" NPT risers, in-tank hose sold separately
TSP-SCTK4B	Tank containment install kit for 4" BSP risers, in-tank hose sold separately

EXHIBIT ‘E’



Kum & Go - Sugarhouse - Stormwater Quality Treatment Train

