

FRANCIS J. SLAVIN  
JOSEPH J. MORITZ, JR.\*  
DANIEL J. SLAVIN  
HEATHER N. DUKES

\*CERTIFIED SPECIALIST REAL ESTATE LAW

EMAIL: [h.dukes@fjslegal.com](mailto:h.dukes@fjslegal.com)

September 13, 2017

**VIA U.S. MAIL AND EMAIL: [Ajuhlin@sedonaaz.gov](mailto:Ajuhlin@sedonaaz.gov)**

Ms. Audree Juhlin, Director  
CITY OF SEDONA  
Community Development Department  
102 Roadrunner Drive, Building 104  
Sedona, Arizona 86336

Mr. Marty Losoff, Chairman  
CITY OF SEDONA  
Planning and Zoning Commission  
102 Roadrunner Drive, Building 104  
Sedona, Arizona 86336

**RE: Parking Study for Son Silver West Major Community Plan Amendment  
("Major CPA") Case No. PZ17-00011 and Responses to Community  
Development Department Staff Report**

Dear Director Juhlin and Chairman Losoff:

On behalf of our client and the owner of Tract 40 of the Broken Arrow subdivision, the Linda Rose Robson Living Trust dated July 12, 1999, we submit the following documentation and information for your review prior to the September 14, 2017 work study session and the September 19, 2017 public hearing before the Planning and Zoning Commission:

1. Our discussions this year with the Community Development Department regarding a Major Community Plan Amendment have been limited to Tract 40 only. Our purpose in limiting the application to Tract 40 was set forth in greater detail in our August 24, 2017 letter to the Department, which has been provided to the Commission. As the Department and Commission are aware, the Son Silver West art gallery is currently operating on Tracts 42 and 41 as a legal non-conforming art gallery use with accessory outdoor retail areas. As a legal non-conforming use, Tracts 42 and 41 are subject to greater limitations than would be achievable through a zone change application. For instance, under Arizona common law and the Sedona Land Development Code's restrictions pertaining to legal non-conforming uses, Tracts 42 and 41 are currently limited to art gallery use only. If the Robsons were to obtain a Major Community Plan Amendment and

commercial zone change for Tracts 42 and 41, the allowable use of Tracts 42 and 41 would not be limited solely to an art gallery business. Instead, the Robsons and any future owners of Tracts 42 and 41 would be permitted to establish and operate any of the enumerated commercial uses allowed in the commercial zoning district. At this time, the Robson's main focus is: (1) continuing to operate their legal non-conforming art gallery use on Tracts 42 and 41, and (2) providing sufficient overflow parking for customers, visitors and employees on Tract 40. A major community plan amendment and rezoning application for Tracts 42 and 41 would not be necessary to accomplish those 2 goals. Furthermore, the Broken Arrow neighborhood would seemingly object to unrestrained commercial uses on Tracts 42 and 41.

2. On August 29, 2017, we filed with the Community Development Department a Zone Change application requesting approval to rezone Tract 40 from the RS-18b Single-Family Residential District to the Parking (P) District so as to allow the development of the 36-space surface parking area on Tract 40. The Robsons are committed to proceeding with the Parking District zone change necessary to construct the surface parking area on Tract 40.

3. As part of the Zone Change application, we submitted a parking and traffic study prepared by Charles R. Wright, P.E. of Kimley-Horn and Associates, Inc. dated August 29, 2017. We are enclosing another copy of this study for your review as part of the Major Community Plan Amendment application as well. See **Exhibit "A"** attached hereto.

4. In their report, the staff raised a concern that the Robsons could pursue a zone change application for not only a private parking lot, but other non-residential uses, now that the Major Community Plan Amendment and Zone Change Application were not being simultaneously processed by the Department. First, the Robsons have filed their Zone Change application seeking a Parking District approval for Tract 40. Their goal would be to have the City Council hear and decide both the Major Community Plan Amendment and Zone Change applications at the same hearing before the end of the year. This would require the City Council to hear the Son Silver West Major Community Plan Amendment application on October 24, 2017 with the other Major Amendment applications, but then continue a decision on the Son Silver West Major Amendment to a hearing date in December 2017. The continuance of the City Council decision would allow both Son Silver West applications to be heard and decided simultaneously by the City Council.

Second, the Robsons have committed to developing Tract 40 with a much-needed overflow parking area. In the unlikely event a different zone change application were to be submitted in the future, the zone change application and proposed use would require an approval by the Mayor and City Council after notice and hearing to the public. The zone

change application process which the Robsons are undertaking now would be the same application process required in the event the Robsons were to propose a different use for Tract 40.

5. Department staff also instructed the Commission to determine if a Planned Area land use designation is appropriate for Tract 40 in isolation, without considering the uses on adjacent properties. We respectfully disagree with this statement. The Department staff and this Commission must evaluate the Major Community Plan amendment by taking into account the existing uses surrounding Tract 40 – several of which are commercial and office uses directly north of Tract 40 as well as a major state highway along Tract 40's frontage. The Morgan Road CFA, which is part of the Community Plan, takes into account both the existing attributes of the area as well as the community expectations for the area – both of which acknowledge non-residential uses along SR-179. The Community Plan, pgs. 34-35, specifies that, among other traits, "CFAs have existing characteristics that should be retained." Therefore, when evaluating the Son Silver West Community Plan Amendment, the existing characteristics of the Morgan Road CFA, including the commercial legal-non-conforming uses, offices and highly-traveled SR-179, must be considered by the Planning Commission and City Council.

6. The Community Development Department has submitted a report to the Commission members titled "Comments on Letter of Intent." The following subsection 1(b) of the Comments on the Letter of Intent must be addressed:

#### City of Sedona Community Development Department Comments on Letter of Intent

PZ17-00010 (Major CPA)  
Son Silver West Parking Lot  
Comments on Letter of Intent



City of Sedona  
Community Development Department  
102 Roadrunner Drive Sedona, AZ 86336  
(928) 282-1154 • Fax: (928) 204-7124

The following are provided as general comments on the Letter of Intent.

1. Page 4

- a. Discussion related to Covenants, Conditions & Restrictions (CC&Rs) are included in the LOI and provided as an exhibit. These documents do not fall within the City's review and enforcement authority and are not considered as part of the review and approval process for either the Major Community Plan Amendment or future Zone Change application. This comment is applicable anywhere that mentions the CC&Rs.
- b. Last paragraph: While the City does not review for CC&R requirements, the applicant repeatedly states that the CC&Rs allow for up to 600 square feet of commercial space. The existing use of the property as a gallery exceeds the 600 square foot limitation from the CC&Rs.

Page 4 of the Letter of Intent does not state that the CCRs applicable to Tract 40 allow for up to 600 square feet of commercial space. After taking a closer look at Page 4 of the Letter of Intent, we can see how the information could be misinterpreted. Therefore, we would like to clarify with a hi-lighted excerpt of Page 4 below:

**Page 4 from Applicant's Letter of Intent dated June 5, 2017**

Initially, development within the subdivision was governed not by county or municipal zoning controls but instead by a private set of restrictions and covenants recorded on July 21, 1955 against the land subdivided by the Broken Arrow West plat.<sup>2</sup> The 1955 Declaration of Restrictions states in part as follows:

9. The forgoing restrictions and covenants run with the land and shall be binding on all owners of said Tracts and all persons claiming under then [sic] until January 1, 1966, at which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless by a majority of the then owners of the Tracts, it is agreed to change the said covenants in whole or in part.

13. The business district shall be confined to those Tracts numbered 38 to 44 inclusive, fronting on Sedona Rimrock Highway.

As set forth in Paragraph 13 of the Declaration of Restrictions, and as affirmed by the recorded 1992 First Amendment,<sup>3</sup> the developer and subsequent owners within the Broken Arrow West subdivision contemplated business uses on tracts fronting on State Route 179, including the Son Silver West Property and the Tract 40 Property.

The private deed restrictions for the Broken Arrow subdivision lying east of State Route 179 ("Broken Arrow East") also provide for business uses on Tracts 1 through 6 and Tracts 31 through 34, fronting on the Sedona Rimrock Highway.<sup>4</sup> These business district lots within Broken Arrow East are permitted to conduct any lawful profession, including the making or sale of any items offered for sale, within a room containing 600 square feet or

The recorded restrictions applicable to the west side of SR-179 (including Tract 40 and the Son Silver West Tracts 41 and 42) are different from the restrictions applicable to the east side of SR-179. The recorded restrictions hi-lighted above in the teal-blue color apply to the business district lots on the west side of SR-179 (Tracts 38-44, which include Tract 40 and the Son Silver West Property). Those restrictions do not limit the square footage of the businesses operating on Tracts 38-44. Therefore, Tract 40 and the Son Silver West property are not limited to 600 square feet of commercial space under the deed restrictions.

On the other hand, the recorded deed restrictions hi-lighted above in yellow apply to the business district lots on the east side of SR-179 (Tracts 1-6 and 31-34). Those restrictions limit the type and square footage of the businesses conducted on Tracts 1-6 and 31-34 on the east side of SR-179. As a result, the 600 square-foot limitation applies to the business district lots on the east side of SR-179 only. Tract 40 and the Son Silver West Property are located on the west side of SR-179.

Again, we understand that the City of Sedona does not enforce private restrictions. This information was provided in the Letter of Intent to demonstrate that, prior to the enactment of any zoning restrictions by the County or the City, the private restrictions for Broken Arrow contemplated business uses along SR-179. First, La Galeria, and now, Son Silver West, have been lawfully operating on business tracts within the Broken Arrow West subdivision. Tract 40 is also designated as a business tract, making the parking area proposal an allowable business use under the Broken Arrow private restrictions applicable to the west side of SR-179.

7. Subsection 9 of the Comments on the Letter of Intent must also be addressed. The Community Development Department comments state that the applicant has provided no supporting documentation demonstrating that a private parking lot in the proposed location would provide a land use transition between the single-family use and the nearby commercial and office uses. We would point the Department and the Planning and Zoning Commission to the following documents submitted as part of the Major Community Plan Amendment:

- a. The Preliminary Landscaping Plan prepared by Coe & Van Loo dated August 15, 2017, together with the parking lot color rendering, demonstrate the substantial screening along the boundaries of Tract 40 and the SR-179 frontage. This screening would serve the purpose of the Planned Area designation to provide “land use transitions and buffers between residential areas, commercial uses and highway corridors.” The proposed landscape buffer will be a significant improvement to the existing conditions on Tract 40, benefiting the views from residences located on the east side of SR-179 directly across from Tract 40. Moreover, parking is a passive use limited to daylight hours. Parked cars together with landscaped buffers will serve as an ideal transition from the busy traffic on SR-179.
- b. The Parking and Traffic Study prepared by Kimley-Horn & Associates, Inc. dated August 29, 2017 demonstrates the existing Son Silver West parking demand and the inadequate number of parking spaces available on Tract 41. (“Based on the high utilization of the existing parking area on a day with activity significantly below the peak for the year, it is apparent that the peak parking demand would substantially exceed the currently available parking”).

The City has received complaints of unlawful parking on Tract 40 and overflow parking along Arrow Drive. The parking study and these complaints received by the City are prima facie evidence that a parking area on Tract 40 would serve as an appropriate land use transition and buffer between the Broken Arrow residential neighborhood and the existing Son Silver West art gallery along SR-179. The additional parking area would provide adequate and safe parking for employees, visitors and customers with appropriate landscaping and screening walls.

- c. Page 19 of the Letter of Intent provides a description of the parking area proposal, including a description of new Dark-Sky compliant lighting to be installed in both the proposed parking area on Tract 40 and the existing parking area on Tract 41. This improved lighting will also enhance the land use transition between the SR-179 highway, the commercial art gallery and the surrounding residences by decreasing the existing light pollution emitted from the Son Silver West parking lot.

Thank you for taking the time to review the attached traffic and parking study and our additional comments. We look forward to addressing any questions or concerns you may have at the upcoming Planning and Zoning Commission hearings. Thank you again.

Yours very truly,



Heather N. Dukes

Enclosures:

1. Traffic and Parking Study prepared by Charles R. Wright, P.E. of Kimley-Horn and Associates, Inc. dated August 29, 2017

# **EXHIBIT A**



August 29, 2017

William and Linda Rose Robson  
SON SILVER WEST GALLERY, INC.  
1476 HWY 179  
Sedona, Arizona 86336

Re: Parking and Traffic Review  
Sedona, Arizona

Kimley-Horn and Associates, Inc. has prepared this letter to document the parking and traffic conditions experienced at the existing Son Silver West Gallery, located on the west side of SR 179, south of Arrow Drive in Sedona, Arizona. A copy of the existing building plan with the proposed parking expansion is attached. Kimley-Horn collected turning movement counts at the existing driveways serving the site on Saturday, May 27, 2017. The counts were collected between the hours of 9:00 AM and 8:00 PM. The data is attached to this letter and the peak hour volumes are depicted in the attached graphic. The highest hourly volume observed entering the site was 25 southbound right turning vehicles at the northern driveway between 2:45 PM and 3:45 PM. The highest observed exiting volumes occurred between 1:15 PM and 2:15 PM at the southern driveway when 13 eastbound vehicles turned left out of the driveway and 17 vehicles turned right out of the site in one hour. The total volume over the entire observation period was slightly less than 250 vehicles. Based on the observed volumes, it appears that the existing driveway geometry adequately accommodates the existing driveway traffic volumes.

In addition to the traffic counts, parking accumulation data was recorded for three days on May 27<sup>th</sup>, 28<sup>th</sup> and 29<sup>th</sup> between the hours of 8:00 AM and 8:00 PM. Vehicles occupying any of the 24 spaces in the existing parking area were observed and recorded at 15 minute intervals by the attendant facilitating parking for the gallery. The total number of vehicles recorded in the parking lot was 211 on the 27<sup>th</sup>, 313 on the 28<sup>th</sup> and 354 on the 29<sup>th</sup>. This information was transcribed to determine the utilization of space by time of day for each of the three days and is summarized in the attached graphs. The graphs show that on May 29<sup>th</sup>, the parking lot was utilized by more than 20 vehicles during all but 10 of the 48 observation periods, indicating a very high utilization of the spaces throughout the 12 hours of observation. The lot was occupied by 20 or more vehicles for the entire period between 9:00 AM and 5:00 PM. The lot was more than 90% occupied for over six hours over the observation period. Each of the parking spaces was occupied by an average of 15 different vehicles with an average parking duration of nearly 30 minutes.

The gallery provided information identifying the number of sales on May 29, 2017 compared with the peak activity level for the gallery. This information indicated that the peak activity could be up to 40% higher than what was observed on May 29<sup>th</sup>. Based on the high utilization of the existing parking area on a day with activity significantly below the peak for the year, it is apparent that the peak parking demand would substantially exceed the currently available parking.



Furthermore, the peak parking demand for the gallery may be greater than observed on May 29th due to the parking area being filled to capacity during significant time periods of the gallery's business hours. Owner provided information indicates that when the parking area approaches capacity, drivers often enter the gallery parking area on Tract 41 and immediately exit the parking area upon finding no available parking spaces. These vehicles either leave the gallery altogether or continue to drive along SR-179 to find parking elsewhere. These vehicles which are forced to leave the gallery parking area as a result of no available parking could not be accounted for when preparing the attached graphs demonstrating the gallery's current parking demand. Thus, the peak parking demand is most likely greater than demonstrated by the parking accumulation data contained in this report,

The City of Sedona required parking ratio of 1 space per 250 square feet of retail space (4 spaces per 1,000 square feet) is a fairly common standard parking requirement. However, it has been our experience that actually parking demand for retail space can vary greatly, and in fact, may require an actual parking provision as high as 6 parking space per 1,000 square feet of retail.

Additionally, the City required parking calculation based solely upon the retail areas identified in the 1992 conditional use permit staff report indicated that the calculated parking demand would be 34 spaces (1 space per 250 square feet of retail). This calculated peak demand of 34 spaces is significantly greater than the number of spaces shown per the 1992 approved site plan (17 spaces) and the actual number of spaces (24) currently utilized by the development on Tract 41. Therefore, a significantly larger parking area (in addition to the 17 parking spaces approved on Tract 41) would have been required in order for the gallery to meet the City's parking standards in 1992.

Please feel free to contact me if you have any questions.

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.



Charles R. Wright, P.E.



K:\PHX\_Traffic\291146000 - SR179 and Arrow\Correspondence\Proposals and Contracts\179 & Arrow parking1.docx

# PRELIMINARY SITE PLAN FOR SON SILVER WEST

**OWNER:**  
 WILLIAM B. ROBSON AND LINDA ROSE ROBSON,  
 TRUSTEES OF THE LINDA ROSE ROBSON LIVING  
 TRUST DATED JULY 12, 1999  
 SON SILVER WEST  
 1476 S.R. 179  
 SEDONA, AZ 86336  
 PHONE: (928) 282-3580

**OWNER'S REPRESENTATIVE:**  
 FRANCIS J. SLAVIN, ESQ.  
 FRANCIS J. SLAVIN, P.C.  
 2198 EAST CAMELBACK ROAD, SUITE 285  
 PHOENIX, ARIZONA 85016  
 PHONE: (602)381-8700

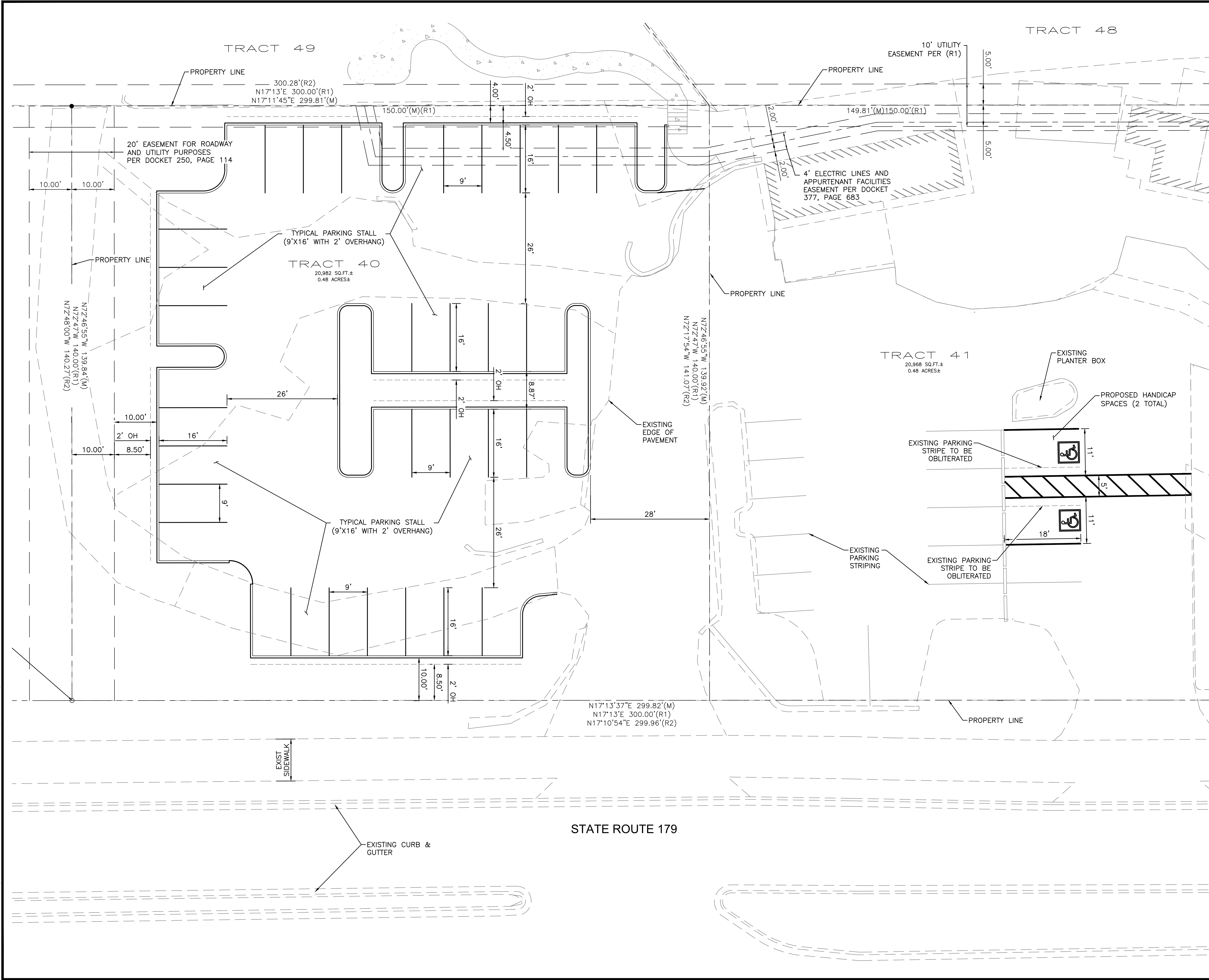
**PREPARED BY:**  
 COE & VAN LOO CONSULTANTS INC.  
 4550 N. 12TH STREET  
 PHOENIX, AZ 85014  
 PHONE: (602) 264-6831  
 FAX: (602) 264-0928  
 CONTACT: DAVE COBLE

**LEGAL DESCRIPTION:**  
 TRACT 40, BROKEN ARROW  
 SUBDIVISION, AS SHOWN ON THE PLAT  
 THEREOF, RECORDED IN BOOK 2 OF  
 MAPS, PAGE 71, RECORDS OF  
 COCONINO COUNTY, ARIZONA

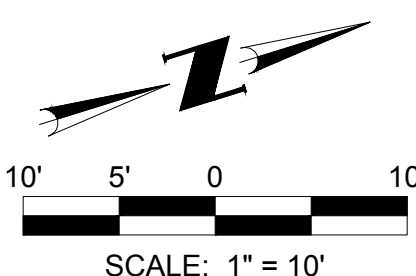
**PARKING SPACES:**  
 36 NEW PARKING SPACES  
 2 NEW HANDICAP PARKING SPACES

LOSS OF 3 EXISTING PARKING SPACES  
 DUE TO CONVERSION TO HANDICAP SPACES

**NOTE:**  
 INFORMATION ON THIS PLAN WAS DERIVED  
 FROM TWO PLANS:  
 1. TOPOGRAPHIC SURVEY  
 BY SHEPHARD & WESNITZER, INC.,  
 SEALED BY JAMES CROWLEY,  
 SEAL DATE 7-31-2015  
 2. CONCEPTUAL SITE PLAN  
 BY SHEPHARD & WESNITZER, INC.,  
 SEALED BY JAMES CROWLEY,  
 SEAL DATE 5-21-2015



Printed By: Parker Print Date: August 15, 2017 File Name: N:\01\0303601\CADD\Preliminary\DS SITE.dwg

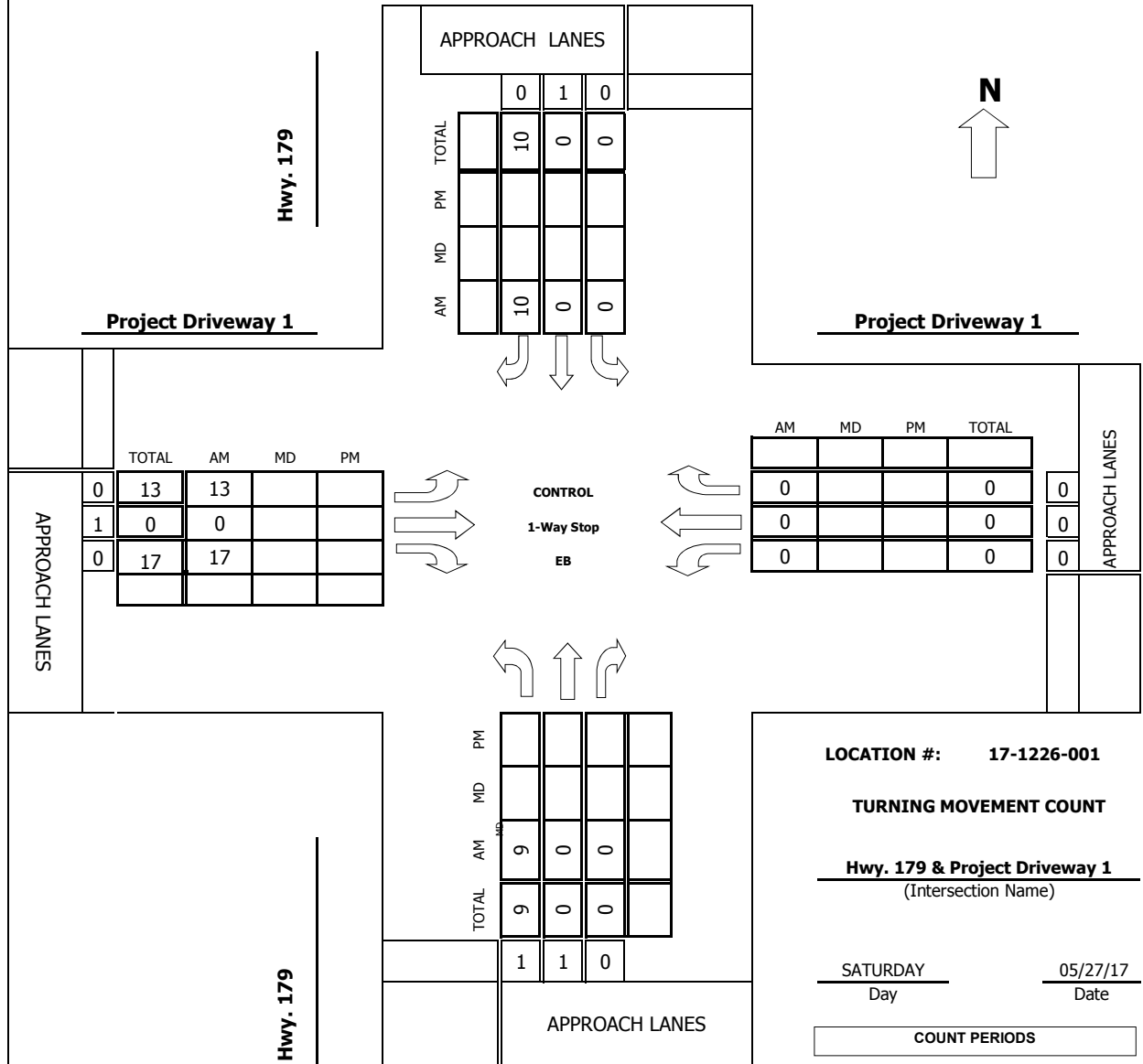


**CVL CONSULTANTS**  
 4550 N. 12TH STREET  
 PHOENIX, AZ 85014  
 PHONE 602.264.6831  
 FAX 602.264.0928  
 WEB www.cvlci.com

**SHEET NUMBER**  
 1 OF 1  
 CVL Contact: D. COBLE  
 CVL Project #: 01-0303601  
 CVL File #:

**Project #:** 17-1226-001

**TMC SUMMARY OF Hwy. 179 & Project Driveway 1**



		TOTAL	AM	MD	PM
APPROACH LANES	0	13	13		
	1	0	0		
	0	17	17		

		AM	MD	PM	TOTAL
APPROACH LANES	0				0
	0				0
	0				0

		AM	MD	PM
APPROACH LANES	1	9	0	0
	1	0	0	0
	0	0	0	0
	TOTAL	9	0	0
		1	1	0

**LOCATION #:** 17-1226-001

**TURNING MOVEMENT COUNT**

**Hwy. 179 & Project Driveway 1**  
 (Intersection Name)

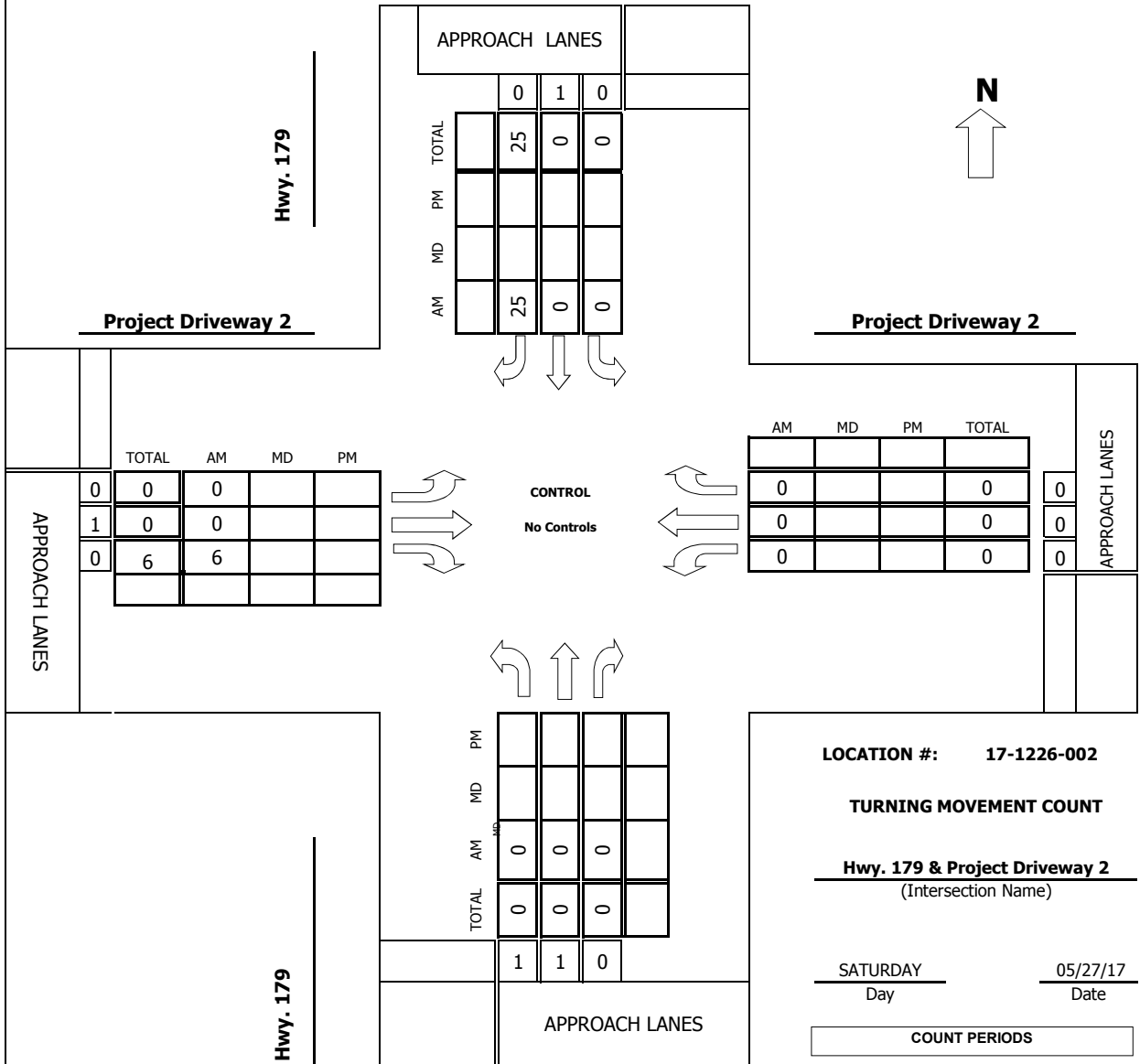
SATURDAY                      05/27/17  
 Day                                      Date

COUNT PERIODS		
<b>AM</b>	800AM	- 800PM
<b>NOON</b>	-	-
<b>PM</b>	-	-

AM PEAK HOUR                      115 PM  
 NOON PEAK HOUR                      \_\_\_\_\_  
 PM PEAK HOUR                      \_\_\_\_\_

**Project #:** 17-1226-002

**TMC SUMMARY OF Hwy. 179 & Project Driveway 2**



**LOCATION #:** 17-1226-002

**TURNING MOVEMENT COUNT**

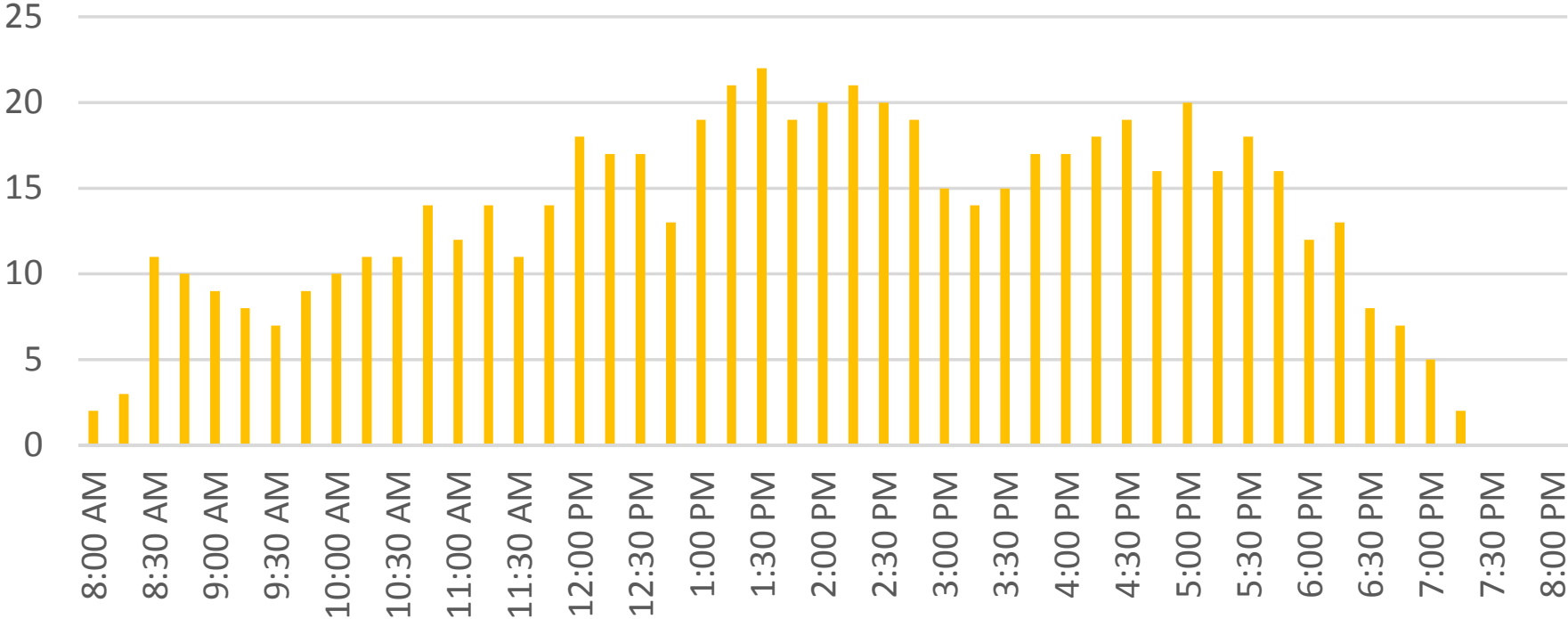
**Hwy. 179 & Project Driveway 2**  
(Intersection Name)

SATURDAY                      05/27/17  
Day                                      Date

COUNT PERIODS		
<b>AM</b>	800AM	- 800PM
<b>NOON</b>	-	-
<b>PM</b>	-	-

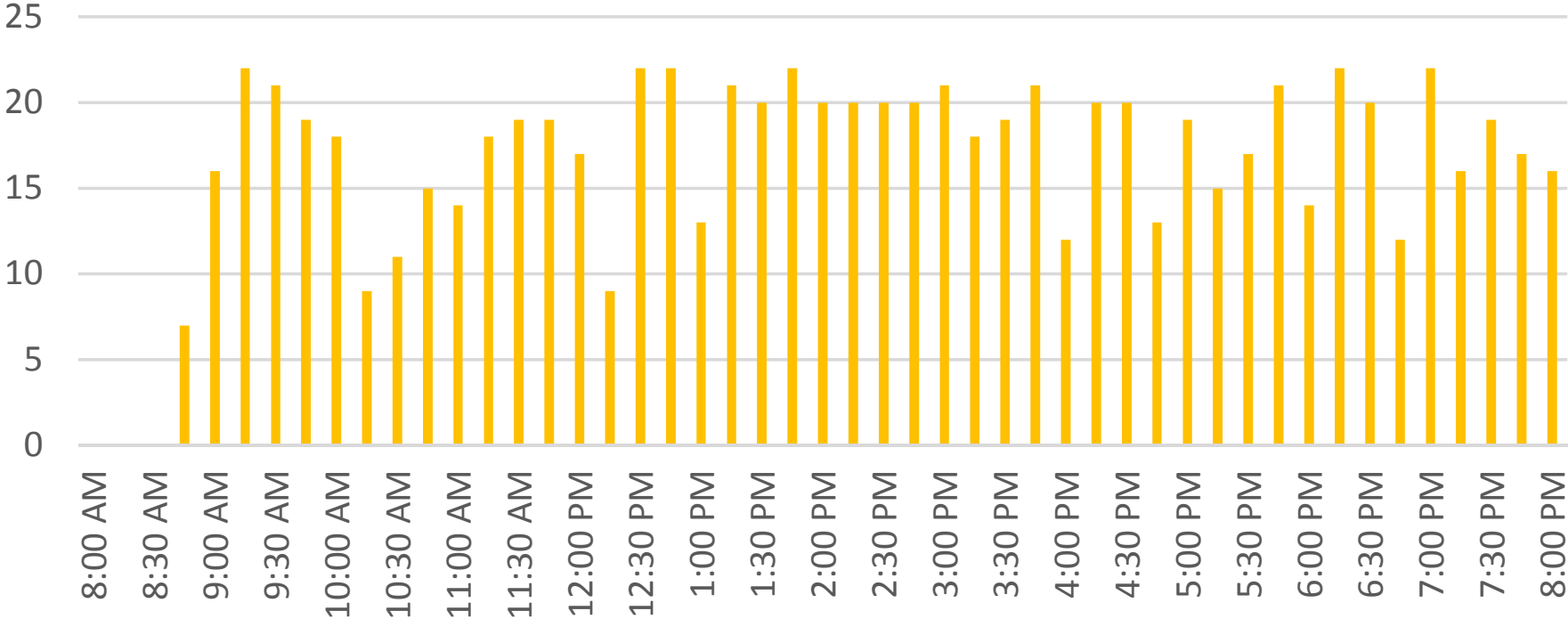
AM PEAK HOUR                      245 PM  
 NOON PEAK HOUR                      \_\_\_\_\_  
 PM PEAK HOUR                      \_\_\_\_\_

# Occupied Spaces



■ 5/27/2017

# Occupied Spaces



■ 5/28/2017

# Occupied Spaces

