COUNCIL AGENDA: 1-29-08
ITEM: 11.3

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: January 11, 2008

Approved Paul Krutko **Date** 1/15/08

COUNCIL DISTRICT: 10
SNI AREA: Hoffman/Via Monte

SUBJECT: CP07-072 & ABC07-006. APPEAL OF THE PLANNING COMMISSION'S DECISION TO DENY A CONDITIONAL USE PERMIT AND DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY TO ALLOW THE OFF-SALE OF BEER, WINE AT A PROPOSED GROCERY STORE (WHOLE FOODS) LOCATED IN THE AREA GENERALLY BOUND BY BLOSSOM HILL ROAD ON THE NORTH, GALLUP DRIVE TO THE WEST, MESA DRIVE TO THE SOUTH, AND ALMADEN EXPRESSWAY TO THE EAST. THE PROPOSAL INCLUDES DEMOLITION OF 78,409 SQUARE FEET OF EXISTING COMMERCIAL BUILDINGS AND CONSTRUCTION OF 80,800 SQUARE FEET RESULTING IN A TOTAL OF 122,584 SQUARE FEET FOR COMMERCIAL USES.

RECOMMENDATION

The Director of Planning, Building and Code Enforcement recommends the City Council approve the subject Conditional Use Permit and make a Determination of Public Convenience or Necessity by finding that the required findings for a Determination of Public Convenience or Necessity can be made and that there is a significant overriding public benefit served by the proposed off-sale of alcohol.

OUTCOME

Should the City Council approve the subject Conditional Use Permit and Determination of Public Convenience or Necessity, the grocery store, Whole Foods Market, would be allowed to sell beer and wine for off-site consumption in a proposed 60,500 square foot retail space within a commercial center. Should the City Council deny the subject requests, the Whole Foods Market would not be able to sell alcohol.

EXECUTIVE SUMMARY

On February 1, 2006, City Council-adopted regulations affecting establishments that sell prepackaged alcohol for off-site consumption ("off-sale alcohol") became effective. The updated regulations revise the approval process and include enhanced findings for approval of a Conditional Use Permit, and new mandatory findings for a Determination of Public Convenience

or Necessity (previously referred to as a Liquor License Exception), when such a determination is required by the State Department of Alcohol Beverage Control (ABC).

The enhanced findings for a Conditional Use Permit include a provision to address the proliferation of establishments in close proximity to existing off-sale uses by generally limiting the number of establishments to four (4) within a 1,000-foot radius. Additionally, the existing finding that addresses the location of such establishments proximate to sensitive uses such as schools and residences, has been augmented to add public parks, child care centers, social service agencies, and residential care and service facilities to the list of sensitive uses. If a new "off-sale alcohol" establishment is to be located within 150 feet of a residential use or residentially zoned property, or within 500 feet of one of the other specified sensitive uses, it must be determined that the proposed establishment is situated and oriented such that it would not adversely affect the sensitive use(s).

The Department of Alcohol Beverage Control (ABC), prior to licensing of a new "off-sale alcohol" establishment in an area of undue concentration or high crime (as defined by State law), requires business operators to obtain a Determination of Public Convenience or Necessity from the local jurisdiction. In the early 1990's, the City of San Jose developed the Liquor License Exception process to provide for consideration of requests for such a determination. With the new regulations, the process has been renamed consistent with the State terminology. All applications for a Determination of Public Convenience or Necessity are considered by the Planning Commission in conjunction with any associated application for a Conditional Use Permit. The revised regulations include factual findings the Planning Commission is required to make in order to approve a request for a Determination of Public Convenience or Necessity. The four findings are as follows:

- The proposed use is not located within a Strong Neighborhoods Initiative or Neighborhood Revitalization area or other area designated by the city for targeted neighborhood enhancement services or programs, or located within an area in which the chief of police has determined that the proposed use: (a) would be detrimental to the public health, safety, or welfare of persons located in the area, or (b) would increase the severity of existing law enforcement or public nuisance problems in the area; and

- Approval of the proposed use would not result in a grouping of more than four (4) establishments that provide alcoholic beverages for off-site consumption within a one thousand (1,000) foot radius from the proposed use; and

- The proposed use would not be located within five hundred (500) feet of a school site, day care center site, public park, social services agency site, residential care facility site or residential service facility site, or within 150 feet of a site upon which a residential use is conducted or that is residentially zoned; and

- Alcohol sales would not represent a majority of sales, stock or shelving space of the proposed use.

Should the Planning Commission find that the above conditions exist, further consideration of the request is subject to discretionary findings. If the Planning Commission is unable to make <u>all</u> necessary findings in order to consider making a Determination of Public Convenience or

Necessity, it is compelled to deny both the request for a Conditional Use Permit and Determination of Public Convenience or Necessity. Appeal of the Planning Commission's decision is heard by the City Council. One of the changes made to the ordinance was to include the opportunity for the City Council to make a finding of overriding public benefit should one of the mandatory factual findings not be met. The City Council is the only body that can make the finding of greater public benefit.

This report, along with the Planning Commission staff report, includes a discussion of the project and whether the required findings can be made in both the case of the Conditional Use Permit and in the Determination of Public Convenience or Necessity. The Planning Commission was unable to make all necessary findings for a Determination of Public Convenience or Necessity in that the subject use is within 150 feet of a residential use and 500 feet of a school site and is within a Strong Neighborhood Initiative area. Therefore, the Commission was compelled to deny both the request for a Conditional Use Permit and Determination of Public Convenience or Necessity as discussed below. The applicant subsequently appealed the Commission's decision to deny these applications to the City Council. Based on an analysis of the findings required for the City Council to approve the Conditional Use Permit and Determination of Public Convenience and Necessity in the face of negative factual findings by the Planning Commission, staff believes that the City Council can make the findings that the proposed off-sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.

BACKGROUND

Planning Commission Hearing

On December 10, 2007, the Planning Commission held a public hearing to consider the proposed Conditional Use Permit and Determination of Public Convenience or Necessity (File Nos. CP07-072 and ABC07-006). The Director of Planning recommended denial of the Conditional Use Permit and request for a Determination of Public Convenience or Necessity because two of the required four findings for the Determination of Public Convenience and Necessity could not be made. As stated in the original staff report (see attached), staff was unable to find that the proposed off-sale use is not located within one hundred and fifty (150) feet of a residential use or residentially zoned property or that the off-sale use is not located within a Strong Neighborhoods Initiative or Neighborhood Revitalization area or other area designated by the city for targeted neighborhood enhancement services or programs.

Commission Discussion

After a brief presentation on the design of the proposed market by the applicant, the public hearing was closed. No one from the public spoke on the project. Commissioner Zito commented that the Commission was sadly unable to make findings for public convenience or necessity, but asked the counsel if the Commission could approve the CUP without the finding for public convenience or necessity. Counsel confirmed that the only option is for the Commission to recommend denial per the Municipal Code. Commissioner Zito moved to regretfully deny CUP while urging applicant to appeal to the City Council. Commissioners Jensen, Kamkar and Kalra also expressed frustration with the mandatory denial and hoped that the City Council would approve the project on appeal.

The Planning Commission denied the proposed project by a vote of 6-0-1, with Commissioner Platten absent.

Appeal

On December 14, 2007, the applicant appealed the Planning Commission decision to deny the subject proposal (see attached Notice of Appeal and associated letter from Dennis Dornan, representative for Whole Foods). The Permit Appeal requests that the City Council find that the proposed off-sale of alcohol proposal at the Whole Foods Market would provide overriding public benefits and that the Council could make a Determination of Public Convenience or Necessity to allow the issuance of the ABC licenses required to operate the proposed business.

ANALYSIS

The original staff report (see attached) provides a full analysis of this project with respect to the new construction on the site, as well as the findings required to be made by the Planning Commission to approve a Conditional Use Permit (CUP) and to make a Determination of Public Convenience or Necessity (PCN). In summary, Planning staff's review provided the Planning Commission with information enabling that body to make the required findings for the Conditional Use Permit, but enabling them to only make two of the four findings required to make a Determination of Public Convenience or Necessity (PCN). In this case, approval of both a CUP and PCN is necessary in order for a Liquor License to be issued by the State of California.

The Planning Commission was unable to make the required finding that the subject use was more than 150 feet from a residential property and 500 feet from a school property and that the off-sale use is not located within a Strong Neighborhoods Initiative or Neighborhood Revitalization area or other area designated by the city for targeted neighborhood enhancement services. Upon an appeal, per Title 6 of the San Jose Municipal Code, where the four required findings cannot be made, the City Council may still make a Determination of Public Convenience or Necessity if it finds that that a "significant or overriding public benefit or benefits will be served by the proposed use." The City Council would also be required to make at least **one** of the four special findings listed below:

A. *The proposed outlet for the off-sale of alcoholic beverages would enhance or facilitate the vitality of an existing commercial area without presenting a significant impact on public health or safety.*

B. *The census tract in which the proposed outlet is located has a low population density in relation to other census tracts in the city, and the proposed outlet would not contribute to an over-concentration in the absolute numbers of outlets for the off-sale of alcoholic beverages in the area.*

C. *The census tract in which the proposed outlet for the off-sale of alcoholic beverages is located is unusually configured and the proposed outlet would act as a convenience to an underserved portion of the community without presenting a significant impact on public health or safety.*

D. *The proposed off-sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.*

Finding of Overriding Public Benefit - Finding D

Staff believes the finding can be made that the proposed off-sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience. Of the 60,500 square-foot retail space, only approximately 7% of the grocery store will be dedicated to sales of beer and wine, a percentage that is incidental to the overall use. A condition has been added to the draft resolution which limits the relative percentage of floor area dedicated to the sale of alcoholic beverages to ensure that the off-sale of alcohol remains an incidental component to the existing retail use.

Whole Foods Market is a grocery retailer which sells predominantly natural and organic goods. Although there is wide cross section of clientele that shop at Whole Foods Market, a significant percentage of customers also purchase the higher end beers and wines that are available at the store, reducing the need to go to a separate beer or wine store.

Findings of Overriding Public Benefit - Findings A, B and C

Since Finding D can clearly be made in this case, there is no need for the Council to make any other finding. A case could also be made that it is possible to make as the project will enhance the existing shopping center, which is currently one of the least attractive and productive shopping centers in a highly commercial area. Staff does not believe that any of the other two findings, described on Page 4 of this report, can be made in regard to the proposed off-sale of alcohol. The census tract in which the proposed outlet is located has only a slightly lower population density (11.0 persons per acre in this census tract versus 13.9 persons per acre as the City average) in relation to other census tracts in the city and is not unusually configured in such a way that this area is underserved.

ALTERNATIVES

The City Council in their review of the project can take the following actions:

1. Find that one of the four mandatory findings for a making a Determination of Public Convenience or Necessity can be made and that there is a significant overriding public benefit served by the proposed off-sale of alcohol, and adopt a resolution approving the subject Conditional Use Permit and making the Determination of Public Convenience or Necessity; or

2. Find that there is no overriding public benefit served by the proposed off-sale of alcohol and uphold the Planning Commission's decision to deny the subject Conditional Use Permit, and not make a Determination of Public Convenience or Necessity.

3. The City Council could approve the Conditional Use Permit for the physical development as proposed absent the off-sale of alcohol.

PUBLIC OUTREACH

Approximately eight members of the public attended the community meeting held for this project at the Cornerstone Community Church on November 29, 2007. A majority of those in attendance were people from the neighborhood to the south. Attendees were largely supportive of the project but expressed some concerns about the project. The main concerns expressed dealt with truck circulation

and loading, and the collection of shopping carts so they would not end up scattered throughout the neighborhood. Other comments expressed a desire to maintain the existing redwood trees at the back of the site, ensure adequate lighting, and control truck delivery and loading operations.

The applicant has posted a notification sign at the site in conformance with the Public Outreach Council Policy. Notices of the public hearing were distributed to the owners and tenants of all properties located within 1,000 feet of the project site. The Planning Commission's agenda is posted on the City of San Jose's website along with this staff report. Staff has been available to answer questions and discuss the proposal with members of public. Additionally, prior to the appeal public hearing, an electronic on-line version of the staff report has been made available, accessible from the City Council agenda on the City's website. Staff has been available to discuss the proposal with members of the public.

COORDINATION

Preparation of this memorandum has been coordinated with the City Attorney's office.

CEQA

Under the provisions of Section 15302, Replacement or Reconstruction, of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. This project qualifies in that the construction of the new structure will be substantially the same size as the structures replaced (an increase of less than 2% in size) and will have substantially the same purpose and capacity as the structures replaced.

Janet Hamilton

FOR JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

Attachments:
- Location Maps
- Planning Commission Staff Report & Attachments
- Notice of Appeal, Associated Letter, and Petition
- Draft Resolution
- Plans

cc: Applicant/Appellant

RESOLUTION NO.

A Resolution of the City Council of the City of San Jose approving a Conditional Use Permit and a request for a Determination of Public Convenience or Necessity to use certain real property described herein for the purpose of off-sale of alcohol at a grocery store located in the area generally bound by Blossom Hill Road on the north, Gallup Drive to the west, Mesa Drive to the south, and Almaden Expressway to the east. The proposal includes demolition of 78,409 square feet of existing commercial buildings and construction of 80,800 square feet resulting in a total of 122,584 square feet for commercial uses.

FILE NO. CP07-072 & ABC07-006

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San Jose on September 18, 2007, an application (File No. **CP07-072** & **ABC07-006**) was filed for a Conditional Use Permit and Determination of Public Convenience or Necessity to allow the sale of beer and wine and other liquors for off-site consumption, as well as demolition of 78,409 square feet of existing commercial buildings and construction of 80,800 square feet resulting in a total of 122,584 square feet for commercial uses, on that certain real property (hereinafter referred to as "subject property"), situate in the CG Commercial General Zoning District, located in the area generally bound by Blossom Hill Road on the north, Gallup Drive to the west, Mesa Drive to the south, and Almaden Expressway to the east, San José, and

WHEREAS, the subject property is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, on December 10, 2007, the Planning Commission denied the application, from which decision the property owner has appealed to this City Council; and

WEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San Jose Municipal Code, this City Council conducted a hearing on said application on June 13, 2006, notice of which was duly given; and

WHEREAS, at said hearing, this City Council gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this City Council received and considered the reports and recommendation of the Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this City Council received in evidence a development plan for the subject property entitled "Whole Foods Market Blossom Hill," dated October 29, 2007, which plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested therein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said hearing was conducted in all respects as required by the San Jose Municipal Code and the rules of this City Council.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE:

After considering evidence presented at the Public Hearing, the City Council finds that the following are the relevant facts regarding this proposed project:

1. The subject site is located in the area generally bound by Blossom Hill Road on the north, Gallup Drive to the west, Mesa Drive to the south, and Almaden Expressway to the east (1110 Blossom Hill Road).

2. The subject site is located within CG Commercial General Zoning District.

3. This site has a designation of Regional Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.

4. Under the provisions of Section 15302, Replacement or Reconstruction, of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

5. The proposal includes demolition of 78,409 square feet of existing commercial buildings and construction of 80,800 square feet resulting in a total of 122,584 square feet for commercial uses.

6. The subject proposed grocery store will be 60,500 square feet and is part of a larger neighborhood shopping center.

7. The existing buildings on the site are approximately forty years old, being constructed circa 1969.

8. The site has a total of 485 parking spaces provided. Since the overall center is greater than 100,000 square feet, the parking requirement is one space per 225 feet. Under this standard, the project exceeds the City's parking requirements.

9. The project proposes removal of six non-native trees, including three ordinance size trees.

10. The trees are located along the north and south of the property in areas in which drive aisles will need to be widened.

11. The subject retail establishment is a grocery store that proposed to close at 9:00 p.m. The store may remain open between the hours of 6:00 a.m. and midnight per Title 20 of the San Jose Municipal Code.

12. The proposed grocery store proposes to utilize approximately 7 percent of the floor area to the sales of alcoholic beverages.

13. The project is subject to the requirements for a Determination of Public Convenience or Necessity for a liquor license for the off sale of alcohol beverages. The granting of such a determination requires that four specific findings be made as prescribed by Title 6 of the SJMC.

14. The project site is located in a census tract with an existing over-concentration of liquor licenses. However, there are not three other off-sale establishments within 1000' of the subject site.

15. The site is not located in an area with a high number of calls for police service or a high crime rate.

16. The site is not located in an existing Project Crackdown /Weed and Seed Area.

17. The proposed use is within a Strong Neighborhoods Initiative are or other area designated by the city for targeted neighborhood enhancement services or programs.

18. The project site is located adjacent to and within 150 feet of residentially zoned property to the south.

19. The proposed grocery store's entrance and primary parking field are oriented away from the above mentioned residential use.

20. Based on the orientation of the retail use to residential areas, there is a 450'minimum walking distance to the nearest residence on Mesa Drive.

21. The proposed use is located within 500 feet of a child care center, a social service agency, a residential care facility, a residential service facility, a secondary school or a college or university.

22. Based on the orientation of the retail use to the nearby, there is a 800'minimum walking distance to the nearest school site to the west.

23. The proposed use is separated from the apartments that front onto Mesa Drive by the street, a landscaped area and a driveway. The proposed grocery store orients to Blossom Hill Road.

24. The Police Department memorandum indicates that the project site is not located within an area of high crime, but that the area does have an over-concentration of existing liquor licenses. For ABC to be able to issue a liquor license for this use, the City must grant a "determination of public convenience or necessity."

25. The proposed use does not include late night operation. The retail sales of beer and wine is intended to be in conjunction with the existing retail sale of food and beverages.

26. On December 10, 2007, the Planning Commission held a public hearing to consider the proposed Conditional Use Permit and Determination of Public Convenience or Necessity (File Nos. CP07-072 and ABC07-006). The Director of Planning recommended denial of the Conditional Use Permit and request for a Determination of Public Convenience or Necessity because two of the required four findings for the Determination of Public Convenience and Necessity could not be made.

27. On December 14, 2007, the applicant appealed the Planning Commission decision to deny the subject proposal (see attached Notice of Appeal and associated letter from Dennis Dornan, representative for Whole Foods). The Permit Appeal requests that the City Council find that the proposed off-sale of alcohol proposal at the Whole Foods Market would provide an overriding public benefits and that the Council make a Determination of Public Convenience and Necessity to allow the issuance of the ABC licenses required to operate the proposed business insofar that the Whole Foods Market provides beer and wine sales only in conjunction will a full-service grocery store.

28. The proposed off-sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience. For the 60,500 square-foot proposed retail space, only approximately 7% is to be dedicated to the sale of beer and wine, which is incidental to the overall grocery store use. A condition has been added to the resolution which limits the relative percentage of floor area dedicated to the off-sale of alcoholic beverages to ensure that the off-sale of alcohol remains an incidental component to the existing retail use.

29. Upon an appeal, Title 6 allows the City Council to make a Determination of Public Convenience or Necessity for a proposal that does not meet all of the required factual findings, if the Council makes a finding of significant and overriding public benefit.

30. The proposed sale of alcoholic beverages is incidental to a larger retail use.

Based on the above stated facts, the City Council concludes and finds:

1. Based on the findings in the subsection below, the City Council hereby makes a Determination of Public Convenience and Necessity for the subject liquor license:

   a. The proposed use is located within a Strong Neighborhoods Initiative or Neighborhood Revitalization area or other area designated by the city for targeted neighborhood enhancement services or programs, or located within an area in which the chief of police has determined that the proposed use would be detrimental to the public health, safety, or welfare of persons located in the area, or increase the severity of existing law enforcement or public nuisance problems in the area; and

   b. The proposed use would not lead to the grouping of more than four off-sale uses within a one thousand-foot radius from the proposed use; and

   c. The proposed use <u>is</u> within one hundred fifty feet of an existing residence and residentially zoned property and <u>is</u> within five hundred feet of an existing school site.

   d. Alcohol sales would not represent a majority of the proposed use.

   e. Significant and overriding public benefits will be served by the proposed use, as noted in Items 28 and 30 in the Facts section above.

   f. The proposed off-sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.

2. The City Council concludes and finds, based on the analysis of the above facts in regard to the Conditional Use Permit, that:

   a. For this use is located closer than five hundred (500) feet from any other use involving the off-sale of alcoholic beverages, situate either within or outside the City, the proposed location of the off-sale of alcoholic beverages use <u>would not</u> result in a total of more than four (4) establishments that provide alcoholic beverages for off-site consumption within a one-thousand (1,000) foot radius from the proposed location; and

   b. The use is closer than one hundred fifty (150) feet from residentially used and zoned property; however, the building in which the proposed use is to be located is

situated and oriented in such a manner that would not adversely affect such residential use.

3. The City Council has considered all of the following criteria in evaluating the proposed demolition.

    a. The failure to approve the permit would result in the creation of continued existence of a nuisance, blight or dangerous condition.

    b. The failure to approve the permit would jeopardize public health, safety or welfare.

    c. The approval of the permit should maintain the supply of commercial space in the City of San José

    d. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible.

    e. Rehabilitation or reuse of the existing building would not be feasible.

    f. The approval of the demolition of the building should facilitate a project which is compatible with the surrounding neighborhood.

    g. The demolition of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.

Finally, based on the above-stated findings and subject to the conditions set forth below, the City Council finds that:

1. The removal of three (3) ordinance sized tree is proposed as part of the subject development. The trees affected are in such a location in such surroundings that their removal would not significantly frustrate the purposes of Section 13.32.010 of the San Jose Municipal Code in that the location of the tree with respect to the proposed improvement unreasonably restricts the economic development of the subject property.

2. The benefits of permitting the demolition, removal or relocating of the subject structures outweigh the impacts of the demolition, removal or relocation.

3. The proposed use at the location requested <u>will not</u>:

    a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or

    b. Impair the utility of value of the property of other persons located within the vicinity of the site; or

c. Be detrimental to public health, safety or general welfare; and

4. The proposed site is adequate in size and shape to accommodate the yards, walls, fences parking, loading facilities, landscaping and other development features prescribed in this Title, or as is otherwise required in order to integrate said use with the surrounding area.

5. The proposed site is adequately served:

   a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and

   b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth are hereby granted. Further, in accordance with the findings set forth above, the City Council makes a Determination of Public Convenience or Necessity in conjunction with the proposed off-sale of alcoholic beverages. This City Council expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:

   a. Acceptance of the Permit by the applicant; and

   b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.

2. **Recordation.** This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until this Resolution has been recorded with the County Recorder.

3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San Jose Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.

4. **Demolition Permit.** Obtainment of a Demolition Permit is evidence of acceptance of all conditions specified in this document and the applicant's intent to fully comply with said conditions. No demolition of the structure may be implemented unless and until the Building Division issues a Demolition Permit pursuant to Section 301 of the Uniform Building Code, as adopted pursuant to the provisions of Chapter 17.04 of Title 17 of the San José Municipal Code.

5. **ABC Permit.** Obtainment and maintenance of an ABC License is evidence of acceptance of all conditions specified in this document and the applicant's intent to fully comply with said conditions. The permittee shall at all times be and remain in compliance with the ABC licensing and shall cause any occupants of the subject site to be and remain in compliance with the ABC licensing.

6. **Conformance with Plans.** The use development shall conform to approved plans entitled, 'Whole Foods Market Blossom Hill', dated October 29, 2007 on file with the Department of Planning, Building and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).

8. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance.

9. **Hours of Operation.** The use shall not operate between the hours of 12:00 midnight and 6:00 a.m.

10. **Construction Impact Mitigation Measures.** The applicant shall ensure that the following construction impact mitigation measures are fully implemented throughout the duration of construction activities associated with this project. For the purposes of this Permit, "construction" shall mean all on-site activities including site clearing, grading, and construction. Failure to comply with these conditions by the applicant, project contractors or subcontractors shall be cause for shutdown of the project site until compliance with the following conditions can be ensured by the City.
    a. ***Mitigation Measures.*** These construction impact mitigation measures shall be included in all contract documents for the project to ensure full disclosure

to contractors and subcontractors.

b. ***Equipment***. Mitigation of construction phase noise at the site shall include the use of quiet or "new technology" equipment, particularly with improved exhaust mufflers. All internal combustion engines used at the project site shall be equipped with the type of muffler recommended by the equipment manufacturer. In addition, all equipment shall be maintained in good mechanical condition so as to minimize noise created by faulty or poorly maintained engine, drive-train and other components.

c. ***Construction Hours***. Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any onsite or offsite work within 500 feet of any residential unit so as to avoid the more sensitive evening, nighttime and weekend hours.

d. ***Construction Deliveries***. Deliveries shall not occur outside the above construction hours. All deliveries shall be coordinated to ensure that no delivery vehicles arrive prior to the opening of the gates to prevent the disruption of nearby residents.

e. ***Plans***. The construction hours shall be printed on all plans for the project used to construct the project.

f. ***Fencing***. The site shall be wholly enclosed by security fencing. The gates to the project site shall remain locked during all other times, except for a fifteen-minute period immediately preceding and following the above hours of construction.

g. ***Construction Employees***. Construction workers shall not arrive to the site until the opening of the project gates. The applicant shall designate a location without adjacent residential units for workers to wait prior to the opening of the project gates.

h. ***Construction Activities***. Construction equipment, materials, and workers shall not be staged on any area of the site within 50 feet of an adjoining property used for residential purposes unless the Director of Planning approves a Permit Adjustment authorizing such activity. The construction staging area shall not create a public or private nuisance.

i. ***Disturbance Coordinator***. A disturbance coordinator shall be identified by the developer for this project. The disturbance coordinator shall be responsible for ensuring compliance with the hours of construction, site housekeeping, and other construction-related conditions in this permit.

j. ***Daily Log***. The disturbance coordinator shall maintain a log of daily activities on the project, including but not limited to, verification of site closure activities, project cleanliness, complaints on site activities and conditions and dates and times of the coordinators visits to the project if the coordinator is not solely responsible for this project site. This log shall be available for inspection by City Staff upon request.

k. ***Telephone Contact***. A phone with answering machine for complaints or other communication during non-work hours shall be maintained during the duration of project construction. The phone number should be a local call for surrounding residents.

l. ***Signage***. The name and phone number of the disturbance coordinator, the hours of construction limitations, the project contact telephone number, City File Number CP07-072, city contact and phone number (department and phone number) shall be displayed on a weatherproof sign posted at each entrance to the project site.

11. **Operations Plan.** Loitering is prohibited on or around the premises or the area under the control of the applicant licensee(s). No alcoholic beverages shall be consumed on any property adjacent to the premises over which the project developer/applicant has control. The project developer/applicant shall be responsible for maintaining free of litter the area adjacent to the premises over which they have control.

12. **Dust Control/Air Quality.** Project construction shall implement the Bay Area Air Quality Management District's list of feasible construction dust control measures. The following construction practices shall be implemented during all phases of construction on the project site:

a. Water all active construction areas at least twice daily or as often as needed to control dust emissions.

b. Cover all trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.

c. Apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas during construction of the site.

d. Sweep daily or as often as needed with water sweepers all paved access roads, parking areas and staging areas at construction sites to control dust.

e. Sweep public streets daily, or as often as needed, with water sweepers, to keep streets free of visible soil material.

f. Hydro seed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more).

g. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.) sufficient to prevent visible airborne dust.

h. Limit traffic speeds on unpaved roads to 15 mph.

i. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.

j. Replant vegetation in disturbed areas as quickly as possible.

13. **Floor Area.** The maximum floor area devoted to the sale of alcohol shall be 15% of the overall tenant space.

14. **Shopping Cart Management.** A shopping cart management program shall be adopted to ensure that shopping carts do not end up in residential neighborhoods. The plan may either ensure that carts cannot be removed from the property or can be quickly tracked and retrieved if they are removed from the property.

15. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.

16. **Noise.** Noise levels associated with this use shall not exceed 55 db DNL at the adjacent residential property line.

17. **Signs.** No signs are approved at this time. All proposed signage will be reviewed under a separate Sign Permit.

18. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.

19. **Tree Removals.** This permit allows the removal of three ordinance size trees. No other tree larger than 56 inches in circumference, at a height of 24 inches above the natural grade slope, shall be removed without a Tree Removal Permit issued by the Director of Planning.

20. **Roof Equipment.** All roof equipment shall be screened from view.

21. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.

22. **Recycling.** Scrap construction material should be recycled. Integrated Waste Management staff at 277-5533 can provide assistance on how to recycle construction debris from the project, including information on available haulers and processors.

23. **Outside Storage.** No outside storage is permitted except in areas designated on the approved plan set.

24. **Cross Access.** The developer shall make an irrevocable offer to the adjacent gas station site to the northeast to allow cross access to the satisfaction of the Director of Planning.

25. **Truck Access Restrictions.** No delivery trucks shall access or exit the subject site from Mesa Drive.

26. **Cultural Resources.** Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.

27. **Public Works Clearance for Building Permit(s).** Prior to the issuance of Building permits, the applicant will be required to have satisfied all of the following Public Works conditions (File No. 3-00952).

    a) **Construction Agreement**: The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
    b) **Transportation**: The projected traffic for this project was reviewed and found to be minimal, and in conformance with the City of San Jose Transportation Level of Service Policy (Council Policy 5-3) and a determination for a negative declaration can be made with respect to traffic impacts.
    c) **Grading/Geology:**
        I. A grading permit is required prior to the issuance of a Public Works Clearance.
        II. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.

III. Because this project involves a land disturbance of one or more acres, the applicant is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.

IV. The Project site is within the State of California Seismic Hazard Zone. A soil investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The investigation should be consistent with the guidelines published by the State of California (CDMG Special Publication 117) and the Southern California Earthquake Center ("SCEC" report). A recommended depth of 50 feet should be explored and evaluated in the investigation.

d) **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) that include site design measures, source controls, and stormwater treatment controls to minimize stormwater pollutant discharges. Post-construction treatment control measures, shown on the project's Stormwater Control Plan, shall meet the numeric sizing design criteria specified in City Policy 6-29 -or- the project shall provide an Alternative Measure, where installation of post-construction treatment control measures are impracticable, subject to the approval of the Director of Planning, Building & Code Enforcement.

I. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.

II. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.

III. A post construction Final Report is required by the Director of Public Works from a Civil Engineer retained by the owner to observe the installation of the BMPs and stating the all post construction storm water pollution control BMPs have been installed as indicated in the approved plans and all significant changes have been reviewed and approved in advance by the Department of Public Works.

e) **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.

f) **Reimbursement**: The developer will be required to reimburse the City for costs advanced for the construction of street improvements along Blossom Hill Road in accordance with City Ordinance #19663.

g) **Street Improvements**:

I. Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.

II. Remove and replace broken or uplifted curb, gutter, and sidewalk along project frontage.

III. Proposed driveway width to be 26'.

IV. Install handicap ramp at the corner of Blossom Hill Road and Almaden Expressway.

V. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.

VI. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans. (To assist the Applicant in better understanding the potential cost implications resulting from these requirements, existing pavement conditions can be evaluated during the Planning permit review stage. The Applicant will be required to submit a plan and the applicable fees to the PW Project Engineer for processing. The plan should show all project frontages and property lines. Evaluation will require approximately 20 working days

h) **Complexity Surcharge**: Based on established criteria, the public improvements associated with this project have been rated medium complexity. An additional surcharge of 25% will be added to the Engineering & Inspection (E&I) fee collected at the street improvement stage.

i) **SNI:** This project is located within the Hoffman/Via Monte SNI area. Public improvements shall conform to the approved EIR and neighborhood improvement plan.

j) **Sanitary:** The project is required to submit plan and profile of the private sewer mains with lateral locations for final review and comment prior to construction.

k) **Electrical**:

I. Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans

II. Locate and protect existing electrical conduit in driveway and/or sidewalk construction.

III. Provide clearance for electrical equipment from driveways, and relocate driveway or electrolier. The minimum clearance from driveways is 10' in commercial areas.

IV. Provide clearance for electroliers from overhead utilities and request clearance from utility companies. Clearance from electrolier(s) must provide a minimum of 10' from high voltage lines; 3' from secondary voltage lines; and 1' from communication lines.

V. To assist the Applicant in better understanding the potential cost implications resulting from these requirements, the electroliers along the project frontage can be evaluated during the Planning permit review stage. The Applicant will be required to submit a plan and the applicable fees to the PW Project Engineer for processing. The plan should show all project frontages and property lines. Evaluation will require approximately 15 working days.

l) **Street Trees**:

I. The locations of the street trees will be determined at the street improvement stage. Street trees shown on this permit are conceptual only.

II. Contact the City Arborist at (408) 277-2756 for the designated street tree.

III. Replace any missing street trees in empty tree wells or park strips along Blossom Hill Road and match existing trees per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Obtain a DOT street tree planting permit for any proposed street tree plantings.

IV. Show all existing trees by species and diameter that are to be retained or removed. Obtain a street tree removal permit for any street trees that are over 6 feet in height that are proposed to be removed.

28. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:

a. ***Construction Plans.*** This permit file number, CP07-072, shall be printed on all construction plans submitted to the Building Division.

b. ***Emergency Address Card.*** The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.

c. ***Americans With Disabilities Act.*** The applicant shall provide appropriate access as required by the Americans With Disabilities Act (ADA).

d. ***Street Number Visibility.*** Street numbers of the buildings shall be easily visible at all times, day and night.

29. **Fire Clearance.** A Fire Clearance shall be obtained from Fire Chief ((408) 535-3555) prior to the issuance of a building permit.

30. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief.

31. **Fire Flow.** Required fire flow for the site is 4,500 GMP.

32. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.

33. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:

    a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or

    b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or

    c. The use as presently conducted creates a nuisance.

In accordance with the findings set forth above, a Conditional Use permit to use the subject property for said purpose specified above is hereby **approved** and a Determination of Public Convenience or Necessity **is** made.

ADOPTED this 29th day of January 2007, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

VACANT:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

CITY OF SAN JOSE
Planning, Building and Code Enforcement
200 East Santa Clara Street
San José, CA 95113-1905
tel (408) 535-3555 fax (408) 292-6055
Website: www.sanjoseca.gov/planning

NOTICE OF PERMIT APPEAL

TO BE COMPLETED BY PLANNING STAFF

FILE NUMBER CP07-072

RECEIPT # 478749
AMOUNT 2,719.34
DATE 12/14/2007
BY

PROJECT LOCATION
SW corner of Blossom Hill Rd & Almaden Expy.

TO BE COMPLETED BY PERSON FILING APPEAL

PLEASE REFER TO PERMIT APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE. THIS FORM MUST BE ACCOMPANIED BY THE APPROPRIATE FILING FEE.

THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE PROPERTY WHICH IS LOCATED AT:
1140 BLOSSOM HILL ROAD, SAN JOSE, CA 95118

REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.):
PLEASE REFER TO ATTACHED STATEMENT

PERSON FILING APPEAL

NAME: DENNIS R. DORNAN		DAYTIME TELEPHONE: (415) 788 6606	
ADDRESS: FIELD PAOLI ARCHITECTS 150 CALIFORNIA STREET	CITY: SAN FRANCISCO	STATE: CA	ZIP CODE: 94111
SIGNATURE:		DATE: 14. DEC. 07	
RELATIONSHIP TO SUBJECT SITE: (e.g., adjacent property owner, property owner within one thousand (1,000) feet): ARCHITECT FOR PROJECT			

CONTACT PERSON
(IF DIFFERENT FROM PERSON FILING APPEAL)

NAME: AS ABOVE			
ADDRESS	CITY	STATE	ZIP CODE
DAYTIME TELEPHONE: ( )	FAX NUMBER: (415) 788 · 6650	E-MAIL ADDRESS: drd@fieldpaoli.com	

PROPERTY OWNER

NAME: PUEBLO PLAZA PARTNERSHIP, ATT'N: BUTCH HAMANN		DATE: 14. DEC. 07	
ADDRESS: 19285 MOCKINGBIRD LANE	CITY: SAN JOSE	STATE: CA	ZIP CODE: 95120

PLEASE SUBMIT THIS APPLICATION IN PERSON TO THE 2ND FLOOR OF THE DEVELOPMENT SERVICES CENTER, CITY HALL.

The City of San Jose

Conditional Use Permit Application CP07-072 and ABC 07-006

Notice of Permit Appeal

Reasons for appeal

The CUP application was denied by The Planning Commission at a hearing on 10 December 2007 because the proposed use **is** within a Strong Neighborhoods Initiative Area, **is** within 500 feet of a school to the West, **is** within 150 feet of a residentially zoned property to the South and **is** within a census tract with an existing over-concentration of liquor licenses.

However, the applicant believes that;

1. The census tract in which the proposed outlet for the off-sale of alcoholic beverages is located is unusually configured and the proposed outlet would act as a convenience to an underserved portion of the community without presenting a significant impact on public health or safety.

2. The proposed outlet for the off-sale of alcoholic beverages would enhance or facilitate the vitality of an existing commercial area without presenting a significant impact on public health or safety.

3. The census tract in which the proposed outlet is located has a low population density in relation to other census tracts in the city, and the proposed outlet would not contribute to an over-concentration in the absolute numbers of outlets for the off-sale of alcoholic beverages in the area.

4. The proposed off-sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.

Dennis R Dornan
Architect
Field Paoli Architects
150 California Street
San Francisco
CA 94111

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

Department of Planning, Building and Code Enforcement
JOSEPH HORWEDEL, DIRECTOR

December 11, 2007

Pueblo Plaza Partnership
Attn: Butch Hamann
19285 Mockingbird Lane
San José, CA 95120

Dear Mr. Hamann:

RE: **Conditional Use Permit,** File No. **CP07-072 & ABC07-006**, located by Blossom Hill Road on the north, Gallup Drive to the west, Mesa Drive to the south, and Almaden Expressway to the east.

The enclosed is your copy of the Planning Commission's action on this Conditional Use Permit.

This permit may contain one or more conditions, such as revised plans, which must be met within a specific deadline. If conditions are not met the permit will automatically expire. Please read your permit carefully!

The Planning Commission's action taken on this permit or any of the conditions of this permit may be appealed by the applicant to the City Council by filing a Notice of Appeal and a $2,232.00 fee. The appeal must be submitted in person and presented on the Notice of Appeal form available from this department on or before **5:00 p.m., December 21, 2007.** If you have any questions, please feel free to contact your Project Manager, Ed Shreiner, at (408) 535-7800 or by e-mail at Ed.Shreiner@sanjoseca.gov.

Sincerely,

Susan Walton

Deputy

cc: Dennis Dornan, Field Paoli Arhictects, Inc. 150 California Street, 7th Floor, San Francisco, CA 94111

ES:ds

RESOLUTION NO. 07-080

Resolution of the Planning Commission of the City of San José denying, a Conditional Use Permit and Determination of Public Convenience or Necessity to use certain real property described herein for the purpose of allowing the sale of beer and wine for off-site consumption.

FILE NO. CP07-072 & ABC07-006

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SAN JOSÉ:

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on September 18, 2007, an application (File No. **CP07-072** & **ABC07-006**) was filed for a Conditional Use Permit and Determination of Public Convenience or Necessity to allow the sale of beer and wine for off-site consumption, on that certain real property (hereinafter referred to as "subject property"), situate in the CG Commercial General Zoning District, located in the area generally bound by Blossom Hill Road on the north, Gallup Drive to the west, Mesa Drive to the south, and Almaden Expressway to the east, San José, and

WHEREAS, the subject property is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this Planning Commission conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this Planning Commission received and considered the reports and recommendation of the Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this Planning Commission received in evidence a development plan for the subject property entitled, "Whole Foods Market Blossom Hill," dated October 29, 2007. Said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said hearing was conducted in all respects as required by the San José Municipal Code and the rules of this Planning Commission;

NOW, THEREFORE:

17. The above mentioned residential use is oriented in a manner that backs up to the existing commercial structure.
18. Based on the orientation of the retail use to residential areas, there is a 450'minimum walking distance to the nearest residence on Mesa Drive.
19. The Police Department memorandum indicates that the project site is not located within an area of high crime, but that the area does have an over-concentration of existing liquor licenses. For ABC to be able to issue a liquor license for this use, the City must grant a "determination of public convenience or necessity".
20. The Police Department has indicated that they are neutral to the issue of off-sale of alcohol in conjunction with a Whole Foods proposed at this location.
21. The proposed use does not include late night operation. The retail sales of beer and wine is to be in conjunction with the retail of a full range of specialty foods.

Based on the above stated facts, the Planning Commission concludes and finds:

1. Based on the findings in the subsection below, the Planning Commission is not able to make a Determination of Public Convenience and Necessity for the subject liquor license in that:
   a) The proposed use is located within a Strong Neighborhoods Initiative area or other area designated by the city for targeted neighborhood enhancement services or programs, or located within an area in which the chief of police has determined that the proposed use would be detrimental to the public health, safety, or welfare of persons located in the area, or increase the severity of existing law enforcement or public nuisance problems in the area; and
   b) The proposed use would not lead to the grouping of more than four off-sale uses within a one thousand-foot radius from the proposed use; and
   c) The proposed use would be located within five hundred feet of a school, day care center, public park, social services agency, or residential care or service facility. The proposed use is within one hundred fifty feet of an existing residence and is therefore not in conformance with the requirements of Title 6 of the SJMC.
   d) Alcohol sales would not represent a majority of the proposed use.
2. Finally, the Planning Commission concludes and finds, based on the analysis of the above facts in regards to the Conditional Use Permit, that:
   a) For the use located closer than five hundred (500) feet from any other use involving the off-sale of alcoholic beverages, situate either within or outside the City, that the proposed location of the off-sale of alcoholic beverages use would not result in a total of more than four (4) establishments that provide alcoholic beverages for off-site consumption within a one-thousand (1,000) foot radius from the proposed location; and
   b) The use is no closer than five hundred (500) feet from any other use involving the off-sale of alcoholic beverages, situate either within or outside the City, where the proposed location of the off-sale of alcoholic beverages use would result in a total of more than four (4) establishments that provide alcoholic beverages for off-site consumption within a one thousand (1,000) foot radius from the proposed location, that the resulting excess concentration of such uses will not:

1. Adversely affect the peace, health, safety, morals, or welfare of persons residing or working in the surrounding area; or
2. Impair the utility or value of property of other persons located in the vicinity of the area; or
3. Be detrimental to public health, safety or general welfare.

c) The use is located closer than five hundred (500) feet from any child care center, public park, social service agency, residential care facility, residential service facility, elementary school, secondary school, college or university. The walking distance from the school to the store entrance is approximately 850 feet. The use is located closer than one hundred fifty (150) feet from any residentially zoned property, where the proposed use is situated and oriented in such a manner that would not adversely affect such residential use in that the building entrance faces west, and the physical walking distance between the store entrance and the residential property line is approximately 450 feet, which is a sufficient separation to avoid adverse impacts.

Based on the above-stated findings, with respect to the Conditional Use Permit, the Planning Commission finds that:

1. The proposed use at the location requested will not:
   a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
   b. Impair the utility of value of the property of other persons located within the vicinity of the site; or
   c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences parking, loading facilities, landscaping and other development features prescribed in this Title, or as is otherwise required in order to integrate said use with the surrounding area.
3. The proposed site is adequately served:
   a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
   b. By other public or private service facilities as are required.

Finally, based on all of the above findings for both applications, this project for off-sale of alcohol is hereby denied.

DENIED this 10th day of December, 2007, by the following vote:

AYES: CAMPOS, JENSEN, KALRA, KAMKAR, KINMAN, ZITO

NOES: NONE

ABSENT: PLATTEN

ABSTAIN: NONE

Ash Kalra

Chairperson

ATTEST:

Joseph Horwedel, Secretary

Susan Walton

Deputy

NOTICE TO PARTIES

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
200 East Santa Clara Street
San José, California 95113

STAFF REPORT

Hearing Date/Agenda Number
PC 12/10/07 Item: 4.a.

File Number
CP07-072 & ABC07-006

Application Type: Conditional Use Permit & Determination of Public Convenience or Necessity

Council District: 10

SNI: Hoffman/Via Monte

Planning Area: Cambrian/Pioneer

Assessor's Parcel Number: 567-50-005, 012, 013, 015, 017, 018

PROJECT DESCRIPTION

Completed by: Ed Schreiner

Location: Area generally bounded by Blossom Hill Road on the north, Gallup Drive to the west, Mesa Drive to the south, and Almaden Expressway to the east

Gross Acreage: 10.2 Net Acreage: N/A Net Density: N/A

Existing Zoning: CG Commercial General Existing Use: Retail

Proposed Zoning: No change Proposed Use: Same with off-sale of alcohol beverages

GENERAL PLAN

Land Use/Transportation Diagram Designation
Regional Commercial

Project Conformance:
[☒] Yes [☐] No
[☐] See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

North: Commercial	A(PD) Planned Development District
East: Almaden Expressway/Commercial	CG Commercial General District
South: Multi-family residential	R-M Multiple Residence District
West: Church/Commercial	CN Commercial Neighborhood/CP Commercial Pedestrian

ENVIRONMENTAL STATUS

[☐] Environmental Impact Report
[☐] Negative Declaration circulated on
[☐] Negative Declaration adopted on

[☒] Exempt
[☐] Environmental Review Incomplete

FILE HISTORY

Date Filed: September 18, 2007

Annexation Title: Coleman No: 1 Date: May 31, 1957

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

[ ] Approval
[X] Denial as mandated by the Municipal Code. Date: December 4, 2007

Approved by: Susan Walton
[X] Action

APPLICANT/OWNER

Butch Hamann, Pueblo Plaza Partnership
19285 Mockingbird Lane
San José, CA 95120

CONTACT PERSON/ DEVELOPER

Dennis Dornan, Field Paoli Arhictects, Inc.
150 California Street, 7th Floor
San Francisco, CA 94111

PUBLIC AGENCY COMMENTS RECEIVED	Completed by: ES
Department of Public Works: See attached.	
Other Departments and Agencies See attached memorandum from Environmental Services, the Police Department and Fire Prevention	
GENERAL CORRESPONDENCE	
None received	
ANALYSIS AND RECOMMENDATIONS	

BACKGROUND

Dennis Dornan, on behalf of Pueblo Plaza Partnership, is requesting a Conditional Use Permit and Determination of Public Convenience or Necessity to allow the sale of beer and wine for off-site consumption for a proposed Whole Foods Market, and to allow the demolition of 78,409 square feet of existing commercial space and construction of 80,800 square feet of new building resulting in a total of 122,584 square feet for commercial uses. A Conditional Use permit is required for the sale of alcohol for off-site consumption (off-sale) in the CG Commercial General Zoning District. A "Determination of Public Convenience and Necessity" is also required because the project is located within a census tract with a higher ratio of existing liquor licenses to population than is found in the County as a whole. If not for the off-sale alcohol, a new construction project, such as this, would be subject to a Site Development Permit.

The Whole Foods Market will be located within a shopping center with a variety of commercial uses. The only uses currently on the site to remain include an OfficeMax and a Hollywood Video located in a separate pad building. Multi-family residential uses are located across Mesa Drive to the south of the site. The remainder of the site is surrounded by commercial uses, as well as a church to the west.

Project Description

The applicant has indicated that Whole Foods Market proposes to sell wine and beer for off-site consumption, and that the sale of alcohol will be incidental to that of the retail sale of a full range of groceries. The store is proposed to operate seven days a week from 8:00 a.m. until 10:00 p.m.

The project will be facilitated by the demolition of 78,409 square feet of existing commercial buildings (all or part of three separate buildings), and construction of 80,800 square feet of retail space, resulting in a total of 122,584 square feet for commercial uses. The new construction is proposed to include an approximately 60,500 square foot Whole Foods store and the remainder to be speculative retail space. The project also includes modifications and upgrades to the parking and landscaping areas on the site.

Proposed Building. The location of the building area to be constructed is proposed on the southwestern portion (near Gallup Place and Mesa Drive) of the site, attached to the existing OfficeMax. This new construction will replace the existing building that currently contains a RiteAid. Two other buildings on the site, the Goodyear tire store and the strip mall that includes a restaurant, bar and fish store, among other uses, will be completely demolished. The video store, located in a freestanding pad building, near Blossom Hill Road will remain. The approximately 73,000 square foot building to be connected to the Office Max store will include an approximately 60,500 square foot space for the Whole Foods Market. The market would have two entrances fronting the parking area to the north. The remaining new addition of 12,500 square feet would be a speculative retail space and could be used as one or two additional tenant spaces. The maximum height of the proposed market building is approximately 40 feet.

Parking and Circulation. A total of 485 surface parking spaces are proposed in the parking lots surrounding the building. Access to the parking lot is via multiple access points from all the surrounding streets. A truck loading dock is proposed on the southern side of the proposed market building, generally located in the same area as for the current building. Delivery trucks would enter and exit the site from the main driveway on Blossom Hill Road. Trucks would circulate on the site according to the truck access plan. No truck circulation would occur on Mesa Drive or Gallup Drive. It is anticipated that large semi-trucks would arrive at the site as early as 6 a.m., although smaller delivery trucks could access the site throughout the day.

Landscaping, Grading, and Drainage - Landscaping is proposed as shown on the Conceptual Landscape Plan and includes trees within the proposed surface parking lot and within the park strip along Blossom Hill Road. All trees to be planted within the park strip would be coordinated with the City arborist as to species and location. The proposed project site would not require substantial grading prior to construction to achieve appropriate drainage, and the project does not propose any underground facilities.

The proposed project includes construction and implementation of a Stormwater Control Plan for the treatment of stormwater on-site prior to outfall to the City's storm drainage system. The site is proposed to be treated 100% through the use of vegetated swales, in accordance with the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) and San José City Council Policies 6-29 and 8-14.

ENVIRONMENTAL REVIEW

Under the provisions of Section 15302, Replacement or Reconstruction, of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. This project qualifies in that the construction of the new structure will be substantially the same size as the structures replaced (an increase of less than 2% in size) and will have substantially the same purpose and capacity as the structures replaced.

GENERAL PLAN CONFORMANCE

The project site has a designation of Regional Commercial on the San José 2020 General Plan Land Use/Transportation Diagram. The proposed commercial use is in conformance with the General Plan in that commercial uses, such as the subject retail sales of groceries, are supported by the Regional Commercial designation.

ANALYSIS

This analysis is split into two parts; the first part covers the off-sale of alcohol use, and the second part analyzes the new construction and site improvements. In order for the proposed retail store to be able to sell alcoholic beverages at the subject location, the applicant needs to secure both a Conditional Use Permit and a Determination of Public Convenience or Necessity. An approval of one without the other is of no value in ultimately facilitating the off-sale alcohol use. For this reason, this staff report links these two required applications together for concurrent consideration. The primary issues for this project include 1) conformance with the Zoning Code requirements for approval of a Conditional Use Permit, and 2) requirements for a Determination of Public Convenience or Necessity.

Zoning Code Requirements for Conditional Use Permits

A Conditional Use Permit may be issued pursuant to the applicable provisions of the Zoning Ordinance for the off-sale of any alcoholic beverages only if the decision-making body first makes the following three special findings applicable to the off-sale of alcoholic beverages:

1. For such use at a location closer than five hundred (500) feet from any other use involving the off-sale of alcoholic beverages, situate either within or outside the City, that the proposed location of the off-sale of alcoholic beverages use would not result in a total of more than four (4) establishments that provide alcoholic beverages for off-site consumption within a one-thousand (1,000) foot radius from the proposed location.

Analysis of Required Finding. There are two existing businesses located within a 1,000 foot radius of the proposed use that provide alcoholic beverages for off-site consumption. These include Cost Plus located across Almaden Expressway to the east, and Trader Joe's, located in the commercial center to the north, across Blossom Hill Road. The existing Rite Aid store on the site includes off-sale but will be replaced by the proposed Whole Foods Market. The proposed use together with existing facilities would <u>not</u> result in a total of more than four such establishments within a 1000-foot radius.

2. For such use at a location closer than five hundred (500) feet from any other use involving the off-sale of alcoholic beverages, situate either within or outside the City, where the proposed location of the off-sale of alcoholic beverages use would result in a total of more than four (4) establishments that provide alcoholic beverages for off-site consumption within a one thousand (1,000) foot radius from the proposed location, that the resulting excess concentration of such uses will not:
   a. Adversely affect the peace, health, safety, morals, or welfare of persons residing or working in the surrounding area; or
   b. Impair the utility or value of property of other persons located in the vicinity of the area; or
   c. Be detrimental to public health, safety or general welfare.

Analysis of Required Finding. As stated above, the proposed use will not result in more than four (4) establishments that provide alcoholic beverages for off-site consumption within a one thousand (1,000) foot radius of the proposed location. Therefore, this finding is not applicable to the consideration of approval of the subject proposal.

3. For such a use at a location closer than five hundred (500) feet from any child care center, public park, social service agency, residential care facility, residential service facility, elementary school, secondary school, college or university, or closer than one hundred fifty (150) feet from any residentially zoned property, that the building in which the proposed use is to be located is situated and oriented in such a manner that would not adversely affect such residential, child care center, public park, social service agency, residential care facility, residential service facility and/or school use.

Analysis of Required Finding. The proposed use is located within 500 feet of a kindergarten/pre-school west of the property along Blossom Hill Road. However, the actual walking distance between the school building and the entrance of the Whole Foods Market is over 800 feet. The project site is located within 150 feet of residentially zoned properties located to the south on Mesa Drive. These residences are located behind the proposed store. As a result, the walking distance between the Whole Foods Market's store front and the property line of the closest residence on Mesa Drive is approximately 450 feet. Based

on the layout of the existing site and orientation of the commercial tenants, staff does not anticipate that the use will adversely affect the adjacent residences and meets the intent of this requirement.

Based on the above analysis, staff believes that the Zoning Code findings for approval of a Conditional Use Permit can be made for the proposed off-sale of alcohol use.

Finding of Public Convenience and Necessity

Unless the City makes a Determination of Public Convenience or Necessity, the State Department of Alcohol Beverage Control (ABC) will not issue a liquor license for off-sale of alcohol if the business is located in an area of high crime or an area of over concentration, defined as follows:

a) The premises of the proposed license is located in an area that has 20% more reported crimes than the average number of reported crimes for the city as a whole, or

b) The premises of the proposed license is located in a census tract where the ratio of existing retail on-sale/retail off-sale licenses to population in the census tract exceeds the ratio in the County as a whole.

The attached Police Department memorandum indicates that the project site is <u>not</u> located within an area of high crime; however, the census tract <u>does</u> have an over-concentration of existing liquor licenses. For ABC to be able to issue a license for this off-sale use, the City must grant a "Determination of Public Convenience or Necessity". The analysis of the proposal is based on the required findings.

Title 6 of the San José Municipal Code specifies that the Planning Commission may issue a Determination of Public Convenience and Necessity only after making the four specified findings identified below:

1. The proposed use is not located within a Strong Neighborhoods Initiative or Neighborhood Revitalization area or other area designated by the city for targeted neighborhood enhancement services or programs, or located within an area in which the chief of police has determined that the proposed use: (a) would be detrimental to the public health, safety, or welfare of persons located in the area, or (b) would increase the severity of existing law enforcement or public nuisance problems in the area.

Analysis of Required Finding. The proposed Whole Foods Market is located within the Hoffman/Via Monte Strong Neighborhoods Initiative area which distinguishes it as an area targeted for neighborhood enhancement services and programs. Per the Police Department, the subject property is not located within an area that the proposed use that would be detrimental to the public or increase the severity of public nuisance or existing law enforcement problems. This required finding <u>cannot be made</u> due to its location within a Strong Neighborhoods Initiative Area.

2. The proposed use would <u>not</u> lead to the grouping of more than <u>four</u> off-sale uses within a one thousand-foot radius from the proposed use.

Analysis of Required Finding. The proposed use would only lead to the grouping of <u>three</u> off-sale uses within a one thousand-foot radius from the proposed use.

3. The proposed use would not be located within five hundred feet of a school, day care center, public park, social services agency, or residential care or service facility, or within one hundred fifty feet of a residence.

Analysis of Required Finding. The proposed use is located within five hundred feet of a school, and the proposed use is within 150 feet of residential properties and therefore not consistent with this finding which must be made in order to grant a favorable determination. Unlike the findings required for the Conditional Use Permit, the orientation of the proposed use to the residences does not compensate for the close proximity. As a result, this required finding cannot be made due to the actual separation distances between the proposed off-sale use and the pre-school/kindergarten on Blossom Hill Road and the existing residences on Mesa Drive.

4. Alcohol sales would not represent a majority of the proposed use.

Analysis of Required Finding. For the 62,000 square-foot retail space, up to only approximately ten percent of the floor area would be dedicated to the sale of beer and wine, and incidental to the sale of the full range of grocery items. Should the Council consider approval of this permit on appeal, staff would propose to include a condition to limit the relative percentage of floor area dedicated to the sale of alcoholic beverages to ensure that the off- sale of alcohol remains an incidental component to the retail grocery use.

Two of the required findings for a Determination of Public Convenience and Necessity (PCN) above, Findings 1 and 3, cannot be made by the Planning Commission. Therefore, in accordance with the Municipal Code, the Planning Commission must deny the requested Determination of PCN.

New Construction and Site Improvements

Land Use Compatibility and Site Design

The conceptual site design with the building oriented toward the main parking lot on Blossom Hill Road is compatible with existing development in the surrounding area. The site will be renovated with new perimeter and parking lot landscaping. The large redwood trees along the southern perimeter adjacent to Mesa Drive will be preserved. The loading dock will be screened and covered. The associated truck traffic is proposing to avoid the use of Mesa Drive to minimize impacts to the adjacent residential uses. The pedestrian circulation and linkages will be improved and better defined.

Architecture

Staff believes that the conceptual building elevations shown in the attached plan set have potential for creating an attractive building, conducive to a pedestrian environment. The front elevation is very attractive and features a varied roofline as well as an articulated elevation, and proposes a mixture of quality materials. A particularly critical elevation is the rear elevation, which includes an interior loading dock, and faces the residential neighborhood. Typically, the rear side of a store can be a rather unattractive feature. In this case, a significant effort has been made to improve the appearance of the rear of the store with a mixture of wall materials, trellises and a significant amount of greenery. The loading dock has been enclosed to reduce visual and sound impacts to the adjacent residential neighborhood. Overall, the redevelopment of the center as proposed would greatly improve its appearance in the neighborhood.

Parking

The conceptual site plan indicates that parking for the project will be provided by a surface parking lot surrounding the site. A total of 485 parking spaces are proposed to serve the project, resulting in a parking ratio of 1 space per 215 net square feet. Typically commercial retail uses are required to provide one (1) parking space per 200 net square feet of the proposed use. However, since the total site is over 100,000 square feet, the project is considered to be a neighborhood shopping center, which has a requirement of one parking space per 225 net square feet, regardless of the use mix. Under this standard, the project exceeds the parking requirement and is providing additional parking to account for a possible future expansion of the existing video store.

Staff is continuing to work with the applicant to improve the plans, and will propose specific permit conditions related to some concerns addressed by the neighborhood such as shopping cart control and lighting, should this Conditional Use Permit be brought to the City Council on appeal.

CONCLUSION

Based on the above analysis, staff concludes that the required findings can be made with regard to the Conditional Use Permit. However, staff believes the Commission can only make two of the four findings that are required in order for the Planning Commission to consider the approval of a Determination for Public Convenience or Necessity as required by Title 6 of the San José Municipal Code. Staff believes the required findings #1, that the proposed use is not located in a area targeted for revitalization, and #3, is at least 500 feet from day care center and school use and 150 feet from a residential use, cannot be made. Therefore, staff is obliged to recommend the Planning Commission deny the project. The Police Department has indicated that it is neutral to the issue of off-sale of alcohol license for this store at this location. In instances where not all of the findings for Public Convenience and Necessity can be made, Title 6 provides an opportunity, upon appeal, whereby the City Council can approve such a proposal if the City Council identifies and finds that a significant and overriding public benefit or benefits will be served by the proposed use. One specific factor for finding such public benefit is if the proposed off-sale use will be in conjunction with a full-service grocery store.

PUBLIC OUTREACH

Approximately eight members of the public attended the community meeting held for this project at the Cornerstone Community Church on November 29, 2007. A majority of those in attendance were people from the neighborhood to the south. Attendees were largely supportive of the project but expressed some concerns about the project. The main concerns expressed dealt with truck circulation and loading, and the collection of shopping carts so they would not end up scattered throughout the neighborhood. Other comments expressed a desire to maintain the existing redwood trees at the back of the site, ensure adequate lighting, and control truck delivery and loading operations.

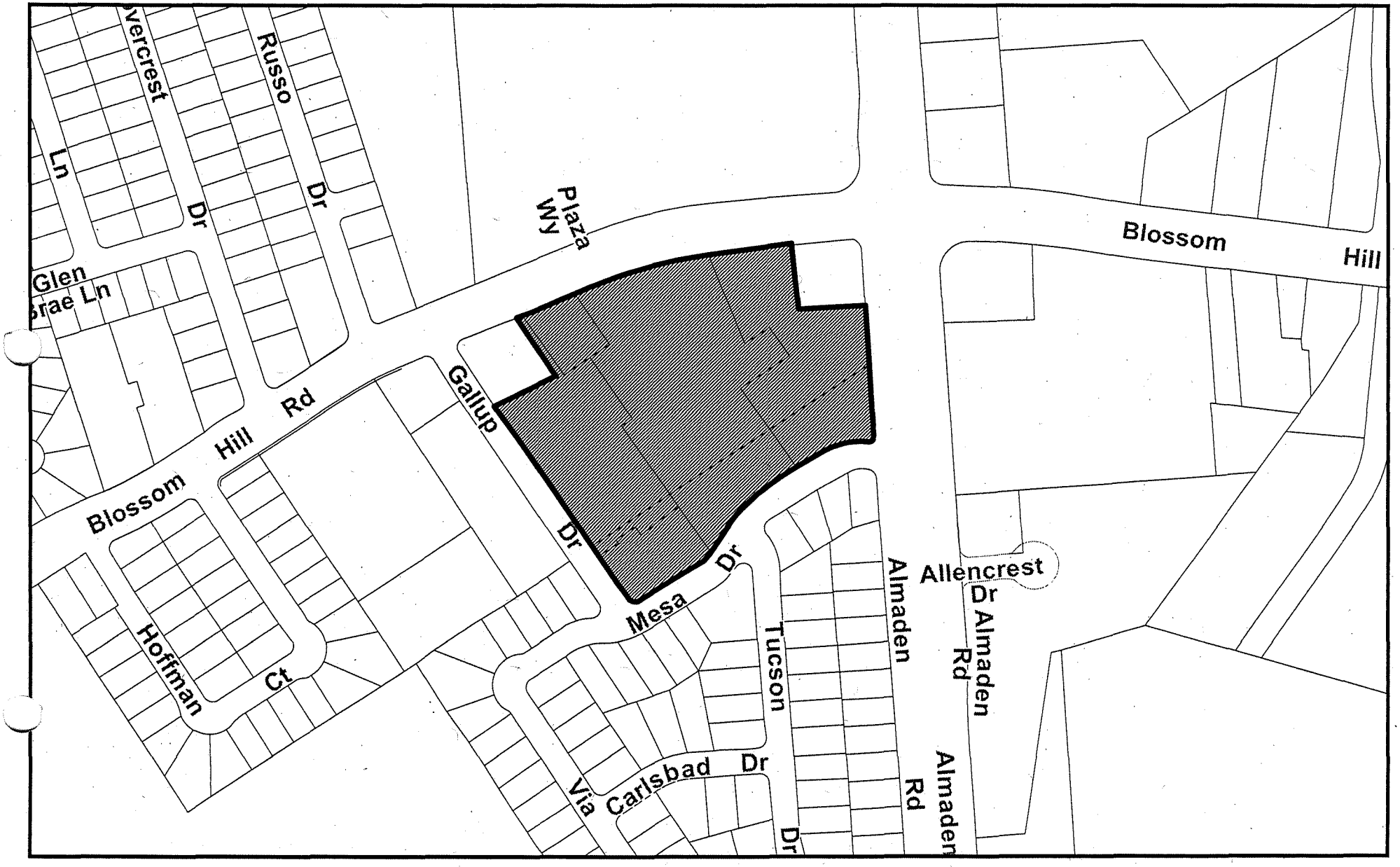
The applicant has posted a notification sign at the site in conformance with the Public Outreach Council Policy. Notices of the public hearing were distributed to the owners and tenants of all properties located within 1,000 feet of the project site. The Planning Commission's agenda is posted on the City of San José's website along with this staff report. Staff has been available to answer questions and discuss the proposal with members of public.

RECOMMENDATION

Planning staff recommends that the Planning Commission deny the requested Conditional Use Permit and not make a Determination of Public Convenience or Necessity as mandated by the Municipal Code and include the facts and findings as included in the attached resolution.

Attachments:

- Draft Resolution
- Location Map
- Police Department Memorandum
- Memoranda from Public Works, Environmental Services, Fire Department
- Statement of Exemption



N

09/19/2007

Scale: 1"= 300'
Noticing Radius: 500 feet

File No: CP07-072

District: 10

Quad No: 128

DEC 20

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: Edward Schreiner

FROM: Russell Chung

SUBJECT: **INITIAL RESPONSE TO DEVELOPMENT APPLICATION**

DATE: 12/19/07

Re: Plan Review Comments

PLANNING NO:	CP07-072
DESCRIPTION:	Conditional Use Permit to allow construction of 122,584 square feet for commercial uses on a 10.2 gross acres site and permit the off-sale of alcohol for a Whole Foods (Mandatory denial by PC 12/10/07)
LOCATION:	generally bound by Blossom Hill Road on the north, Gallup Drive to the west, Mesa Drive to the south, and Almaden Expressway to the east
ADDRESS:	generally bound by Blossom Hill Road on the north, Gallup Drive to the west, Mesa Drive to the south, and Almaden Expressway to the east (1110 BLOSSOM HILL RD)
FOLDER #:	07 031205 AO

The Fire Department's review was limited to verifying compliance of the project to Article 9, Appendix III-A, and Appendix III-B of the 2001 California Fire Code with City of San Jose Amendments (SJFC). Compliance with all other applicable fire and building codes and standards relating to fire and panic safety shall be verified by the Fire Department during the Building Permit process.

- These comments are based on the following information from drawings dated 10/29/07 by Lowney Architect

  Largest building: 72,999 sq. ft.

  Construction Type: VN A/S

  Occupancy Group: M/S2

  Number of stories: 1

1. The project plans as submitted, do not comply with the Fire Code. The following are discrepancies noted.

a) Fire apparatus access roads are not in accordance with the requirements of the SJFC.

b) The plans do not indicate that the required fire flow of 4,500 GPM will be available at the project site. Please ask the applicant to immediately contact Jim Bariteau of San Jose Water Co. at 408-279-7874 to get the water flow information.

c) The plans do not show location of hydrants. The required fire flow shall be provided through 4 hydrants. Flow hydrant A-05760 at Mesa/Tucson, A-11822 at Gallop/Blossom Hill, A-05759 and A05758 on Blossom Hill

2. Please advice the applicant to submit plans to the Fire Department that provide the following information:

a) Width, length, and grade of the fire apparatus access roads, streets, avenues, and the like. Every portion of all building exterior walls shall be within 150 feet of an access road. The fire access shall:

- be at least 20 feet wide; OK
- have an unobstructed vertical clearance of not less than 14 feet; Specify
- be designed and maintained to support the loads of fire apparatus of at least 69,000 pounds; Specify
- have a minimum inside turning radius of 30 feet and an outside turning radius of 50 feet; OK
- be designed with approved provisions for turning around of fire apparatus if it dead ends and is in excess of 150 feet; N/A
- have a gradient less than or equal to 15%. N/A
- **Curbs are required to be painted red and marked as "Fire Lane - No Parking" under the following conditions: (show exact locations on plan)**

  i) **Roads, streets, avenues, and the like that are 20 to less than 26 feet wide measured from face-of-curb to face-of-curb shall have curbs on both sides of the road painted and marked**

  i) **Roads, streets, avenues, and the like that are 26 to less than 32 feet wide measured from face-of-curb to face-of-curb shall have one curb painted and marked**

c) Location of fire hydrants. The average distance between hydrants shall not exceed 250 feet.

b) Available fire flow. Provide a copy of the letter from the San Jose Water Co that indicates the water flow available.

c) All fire department connections shall be located within 100 feet from a standard public fire hydrant. The public fire hydrant(s) shall be located on the same frontage as all fire service connections.

Note: The plans shall be submitted to the Fire Department ***by appointment only*** (call Russell Chung) as soon as possible.

Russell Chung
Fire Protection Engineer
Bureau of Fire Prevention
Fire Department
(408) 535-7697

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: Edward Schreiner
Planning Department

FROM: Ofc. Jeff Enslen #3408
San Jose Police Vice Unit

SUBJECT: Whole Foods
1110 Blossom Hill Rd.

DATE: November 6, 2007

Approved

Date

I have received your request for input regarding Whole Foods, soon to be located at 1110 Blossom Hill Rd., in San Jose. Whole Foods is a full service grocery store and is seeking a Type 20 Off-Sale ABC License to sell alcohol.

Per Business and Professions (B&P) Code Section 23958, the State of California Department of Alcohol Beverage Control shall deny an ABC Application for an ABC License if the issuance of that license would tend to create a law enforcement problem or if it would result in or add to an undue concentration of ABC Licenses, as described in B&P Sections 23958.4 (a)(1) and 23958.4(a)(3). A location can be unduly concentrated because of its criminal statistics and/or it's proximity to other ABC Licenses. ABC can issue the license per B&P Sections 23958.4 (b)(1), and 23958.4 (b)(2) if the local governing body determines that the public convenience or necessity would be served. The City of San Jose Planning Department and the Planning Commission are the delegated authorities to grant these exceptions.

The location is currently in the Via Monte / Hoffman Strong Neighborhood Initiative (SNI) area. I contacted SNI and they were neutral to the project.

1110 Blossom Hill Rd. is located in San Jose Police Beat A4. The reported crime statistics as defined by B&P Section 23958.4(c) **are not** over the 20% crime index thus the location **is not** considered unduly concentrated per B&P Section 23958.4 (a)(1).

Police Beat Crime Statistics

Beat	Index Crimes	Arrests	Total	20% Above Average
A4 (2006)	338	208	546	No
City Average	335	307	642	

Department of Alcohol Beverage Control (ABC) records indicate that 1110 Blossom Hill Rd. is in census tract 5029.10. Pursuant to B&P Section 23958.4 (a)(3), the ratio of off-sale retail licenses population in census tract 5029.10 **does** exceed the ratio of off-sale retail licenses to population in the county in which the applicant premises are located.

Authorized and Current ABC Licenses in Census Tract 5029.10

Census Tract	Authorized ABC Licenses as of August 2005		Current ABC Licenses as of December 5, 2006		Unduly Concentrated	
	On - Sale	Off - Sale	On - Sale	Off – Sale	On - Sale	Off – Sale
5029.10	5	2	4	5	No	Yes

The San Jose Police Department is **neutral** to Whole Foods, located at 1110 Blossom Hill Rd., to obtain a Type 20 Off-Sale ABC License to sell alcohol.

Please feel free to contact me at 277-4322 if you have any questions.

Ofc. Jeff Enslen #3408
Administrative Officer
Special Investigations/Vice

NORM'S COPY

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: Edward Schreiner
Planning and Building

FROM: Norman Mascarinas
Public Works

SUBJECT: **INITIAL RESPONSE TO DEVELOPMENT APPLICATION**

DATE: 10/24/07

Approved ES Date 10/24/07

PLANNING NO.: CP07-072
DESCRIPTION: Conditional Use Permit to allow construction of 122,584 square feet for commercial uses on a 10.2 gross acres site and permit the off-sale of alcohol for a Whole Foods
LOCATION: generally bound by Blossom Hill Road on the north, Gallup Drive to the west, Mesa Drive to the south, and Almaden Expressway to the east
P.W. NUMBER: 3-00952

Public Works received the subject project on 09/18/2007 and submits the following comments and requirements. **Upon completion of the Action/Revisions Required items by the applicant, Public Works will forward a Final Memo to the Department of Planning prior to the preparation of the Staff Report for Public Hearing.**

Actions / Revisions Required:

1. **Public Works Development Review Fees:** Additional Public Works Review Fees are due. Prior to the project being cleared for the hearing and approval process, these fees shall be paid to the Development Services Cashier using the attached invoice(s). Additional fees due are as follows:
   a) An NPDES - C.3 Requirements Review Fee of $1850.

2. **Stormwater Runoff Pollution Control Measures:**
   a) Submit the following:
      i) All existing and proposed topographic contours with drainage areas and sub areas delineated and arrows showing flow direction.
      ii) The numeric sizing calculations based on the Stormwater Control Plan, certified by a qualified stormwater professional (civil engineer, licensed architect or landscape architect), used to determine runoff quantity and to design/select the post-construction treatment control measures.
      iii) Include a table showing minimum performance criteria vs. designed performance for the selected BMPs for each drainage area. For minimum performance standards refer to SCVURRP handbooks (http://www.scvurppp-w2k.com/Default.htm) and CASQA guidelines (http://www.casqa.org/) and the Public Works Project Engineer. (*only CSJ*

exception, 7 minutes minimum on HRT for grassy swales and 4% ratios for minimum surface areas for planter boxes)

iv) Provide inverts on drainage plan.

v) Provide more information for Drainage area 1 and how it ties into the proposed vegetative swales.

2. **Transportation:** An operation analysis is required prior to environmental clearance or zoning.

3. **Street Improvements:**
   a) Adjust driveway openings on Blossom Hill Road to facilitate a smoother ingress/egress for delivery trucks to the site.
   b) Alamden Expressway is in the jurisdiction of the County of Santa Clara and any street improvements along the expressway frontage needs to be coordinated through them.

4. **Sanitary:** Submit a conceptive sanitary sewer plan prior to approval.

5. **Storm**:
   a) Submit a conceptive grading/drainage plan prior to approval.
   b) Indicate the overland release path in arrows.
   c) The release path must be paved.
   d) On-site ponding must be less than one foot.
   e) Finished floor elevations must be one foot higher than overland release elevation.

6. **Street Trees:** Submit a plan showing utility and street tree locations within the public right-of-way; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects" for required clearances and setbacks for street trees.

Project Conditions:

Public Works Clearance for Building Permit(s) or Map Approval: Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits.

7. **Construction Agreement**: The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.

8. **Transportation**: The projected traffic for this project was reviewed and found to be minimal, we conclude that the subject project will be in conformance with the City of San Jose Transportation Level of Service Policy (Council Policy 5-3) and a determination for a negative declaration can be made with respect to traffic impacts.

9. **Grading/Geology:**
   a) A grading permit is required prior to the issuance of a Public Works Clearance.
   b) If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
   c) Because this project involves a land disturbance of one or more acres, the applicant is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
   d) The Project site is within the State of California Seismic Hazard Zone. A soil investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The investigation should be consistent with the guidelines published by the State of California (CDMG Special Publication 117) and the Southern California Earthquake Center ("SCEC" report). A recommended depth of 50 feet should be explored and evaluated in the investigation.

10. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) that include site design measures, source controls, and stormwater treatment controls to minimize stormwater pollutant discharges. Post-construction treatment control measures, shown on the project's Stormwater Control Plan, shall meet the numeric sizing design criteria specified in City Policy 6-29 -or- the project shall provide an Alternative Measure, where installation of post-construction treatment control measures are impracticable, subject to the approval of the Director of Planning, Building & Code Enforcement.
   a) The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.
   b) Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
   c) A post construction Final Report is required by the Director of Public Works from a Civil Engineer retained by the owner to observe the installation of the BMPs and stating the all post construction storm water pollution control BMPs have been installed as indicated in the approved plans and all significant changes have been reviewed and approved in advance by the Department of Public Works.

11. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.

12. **Reimbursement**: The developer will be required to reimburse the City for costs advanced for the construction of street improvements along Blossom Hill Road in accordance with City Ordinance #19663.

13. **Street Improvements**:
    a) Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
    b) Remove and replace broken or uplifted curb, gutter, and sidewalk along project frontage.
    c) Proposed driveway width to be 26'.
    d) Install handicap ramp at the corner of Blossom Hill Road and Almaden Expressway.
    e) Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
    f) Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans. (To assist the Applicant in better understanding the potential cost implications resulting from these requirements, existing pavement conditions can be evaluated during the Planning permit review stage. The Applicant will be required to submit a plan and the applicable fees to the PW Project Engineer for processing. The plan should show all project frontages and property lines. Evaluation will require approximately 20 working days.)

14. **Complexity Surcharge**:
    a) Based on established criteria, the public improvements associated with this project have been rated medium complexity. An additional surcharge of 25% will be added to the Engineering & Inspection (E&I) fee collected at the street improvement stage.

15. **SNI:** This project is located within the Hoffman/Via Monte SNI area. Public improvements shall conform to the approved EIR and neighborhood improvement plan.

16. **Sanitary**:
    a) Submit a conceptive sanitary sewer plan at the PD permit stage.
    b) The project is required to submit plan and profile of the private sewer mains with lateral locations for final review and comment prior to construction.

17. **Electrical**:
    a) Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans
    b) Locate and protect existing electrical conduit in driveway and/or sidewalk construction.
    c) Provide clearance for electrical equipment from driveways, and relocate driveway or electrolier. The minimum clearance from driveways is 10' in commercial areas.

d) Provide clearance for electroliers from overhead utilities and request clearance from utility companies. Clearance from electrolier(s) must provide a minimum of 10' from high voltage lines; 3' from secondary voltage lines; and 1' from communication lines.

e) To assist the Applicant in better understanding the potential cost implications resulting from these requirements, the electroliers along the project frontage can be evaluated during the Planning permit review stage. The Applicant will be required to submit a plan and the applicable fees to the PW Project Engineer for processing. The plan should show all project frontages and property lines. Evaluation will require approximately 15 working days.

18. **Street Trees**:

a) The locations of the street trees will be determined at the street improvement stage. Street trees shown on this permit are conceptual only.

b) Contact the City Arborist at (408) 277-2756 for the designated street tree.

c) Replace any missing street trees in empty tree wells or park strips along Blossom Hill Road and match existing trees per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Obtain a DOT street tree planting permit for any proposed street tree plantings.

d) Show all existing trees by species and diameter that are to be retained or removed. Obtain a street tree removal permit for any street trees that are over 6 feet in height that are proposed to be removed.

19. **Median Island Improvements**: The Redevelopment Agency has expressed the desire to install landscaping improvements in the median island along the project frontage on Blossom Hill Road. The possible widening, lane reconfiguration, dedication and frontage improvements will be coordinated with the Redevelopment Agency.

20. **Referrals**: This project should be referred to the County Roads and Airports Department.

Please contact me or Ebrahim Sohrabi at (408) 535- 6812 if you have any questions.

Norman Mascarinas
Project Engineer
Transportation and Development Services Division

RECEIVED

OCT 9 2007

CITY OF SAN JOSE
DEVELOPMENT SERVICES

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

ENVIRONMENTAL SERVICES (ESD)

TO:	Edward Schreiner Department of Planning, Building, & Code Enforcement	**FROM:**	Junko Vroman Environmental Services
SUBJECT:	Response to Development Application	**DATE:**	Staff Review Agenda October 4, 2007
APPROVED:	Junko Vroman	**DATE:**	10-9-07

PLANNING NO. :	CP07-072
LOCATION:	generally bound by Blossom Hill Road on the north, Gallup Drive to the west, Mesa Drive to the south
DESCRIPTION:	Conditional Use Permit to allow construction of 122,584 square feet for commercial uses on a 10.2 gross acres site and permit the off-sale of alcohol for a Whole Foods
APN:	56750012

ESD received the subject project and is submitting the following conditions and comments. Questions regarding these comments may be directed to the program contact given or to me at (408) 975-2579.

Integrated Waste Management (IWM)

Commercial, Industrial, and Institutional Buildings

- Ensure trash / recycling collection areas are included and identified.
- Ensure enclosure size is adequate for facility needs.
- For medical retail or institutional tenants: include notation that medical waste/ prescription medication may not enter solid waste stream (garbage or recycling). Facility must provide independent disposal of this waste.
- Consider use of materials compactor, with access via loading dock, to minimize material volume. For assistance in assessing the need for a materials compactor,

please contact the Recycle Plus Program at (408) 535-3515.

- To ensure proper access for collection vehicles, width of private streets or driveways should be at least 22 feet. Turning radius of 50 feet must also be provided. If collection vehicle access is not provided, tenants or management may need to push carts to the road; or premium on-premise services are available.

1. The proposed commercial development must follow the requirements for recycling container space[1]. When 30 percent or more of the original floor space is added to an existing building, provision must be made for the storage and collection of recyclables. Project plans must show the placement of recycling containers, for example, within the details of the solid waste enclosures.
2. It is recommended that scrap construction and demolition debris be recycled instead of disposing of it in a landfill. An infrastructure exists within San Jose to accommodate such recycling efforts. Integrated Waste Management staff can provide assistance on how to recycle construction and demolition debris from the project, including information on where to conveniently recycle the material. For further information, contact the Commercial Solid Waste Program at (408) 535-3515.

Water Efficiency

Commercial

The proposed development should consider installation of the following water efficient equipment as applicable:

- **High Efficiency Toilets** (1.0 gal/flush) and/or **Dual Flush Toilets** (0.8-1.1 gal/flush for liquids, 1.6 gal/flush for solids) maximize water efficiency. High Efficiency Toilets use at least 20% less water than standard Ultra-Low Flush Toilets (1.6 gal/flush) and Dual Flush Toilets save water by offering two separate flush settings.
- **Electronic Faucets** use a sensor that allows water to flow only when users place their hands adjacent to the faucet. All units comply with mandated flow rates (2.2 gallons per minute), with many offering flow rates as low as 1.5 gallons per minute. Additionally, the replacement of manual hot and cold water valves with an electrically actuated valve eliminates two high-maintenance items from the restroom. Additional benefits can include improved sanitation and perceived cleanliness because of their hands-free operation. Electronic restroom products can also help facilities meet the accessibility requirements of the Americans with Disabilities Act.
- **Efficient Pre-Rinse Sprayers for Food Service** not only save water, but also energy. Efficient pre-rinse sprayers only use 1.6 gallons of water per minute and save energy by reducing the amount of gas or electricity needed to heat the hot water.

[1] In accordance with the California Public Resources Code, Chapter 18, Articles 1 and 2

- **Water Conserving Dishwashers** can save several gallons of water per load over conventional dishwashers and are typically more energy efficient.

Financial incentives may be available for installing various types of residential, commercial, industrial or institutional water efficient appliances or equipment. Contact the Santa Clara Valley Water District for more information and availability.

Call the Santa Clara Valley Water District Water Conservation Hotline at (408) 265-2607 ext 2554 or visit www.valleywater.org

Source Control

Food Service

The proposed facility must conform to the City of San Jose (City) industrial waste discharge regulations[2]. Any non-domestic wastewater discharge into the sanitary sewer system will require Source Control staff to review and approve the final plans. Such review will include sizing of grease traps and interceptors.

Contact Environmental Engineering staff at (408) 945-3000, if you have questions.

Green Building

Commercial

The project should incorporate design/construction principals outlined in the United States Green Building Council's LEED Certification program and are encouraged to pursue LEED Certification (www.usgbc.org)
Strategies include:

- Incorporating principles of passive solar design. Passive solar design is the technology of heating, cooling, and lighting a building naturally with sunlight rather than with mechanical systems because the building itself is the system. Basic design principles are large south-facing windows with proper overhangs, as well as tile, brick, or other thermal mass material used in flooring or walls to store the sun's heat during the day and release it back into the building at night or when the temperature drops. Passive solar also takes advantage of energy efficient materials, improved insulation, airtight construction, natural landscaping, and proper building orientation to take advantage of the sun, shade, and wind.
- Including reflective, EnergyStar™ cool roofs. Cool roofs decrease roofing maintenance and replacement costs, improve building comfort, reduce impact on surrounding air temperatures, reduce peak electricity demand, and reduce waste stream of roofing debris.
- Utilize local and regional building materials in order to reduce energy consumption associated with transporting materials over long distances.

[2] In accordance with the San Jose Municipal Code, Chapter 15.14 - Industrial Waste Discharge Regulations

- Utilizing building products that contain post-consumer recycled materials.
- Incorporating a "green" (living or vegetated) roof. Green roofs help reduce solar heat gain, thereby reducing the need to cool the buildings, extend the life of the roof and are one of the BMPs for complying with C3 stormwater runoff requirements. For specifics on design and installation guidelines, visit www.greenroofs.org/