

RESOLUTION NO. 74318

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 PROVIDING THE OFF-SALE OF ALCOHOLIC BEVERAGES 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, WHICH PROPOSAL ALSO INCLUDES DEMOLITION OF 78,409 SQUARE FEET OF EXISTING COMMERCIAL BUILDINGS AND CONSTRUCTION OF 80,800 SQUARE FEET OF SPACE RESULTING IN A TOTAL OF 122,584 SQUARE FEET OF SPACE 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

WHEREAS, 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 April 8, 2008, 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 the Planning Commission; 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 January 14, 2008, and revised April 4, 2008, 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 area 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 and shall 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 Notice of Appeal and associated letter from Dennis Dornan, representative for Whole Foods, attached to that certain staff report for File Nos. CP07-072 and ABC07-006 dated January 11, 2008 and provided to City Council by the Director of Planning, Building and Code Enforcement as a part of the record for this Resolution). The Permit Appeal requested that the City Council find that the proposed off-sale of alcohol proposal at the Whole Foods Market would provide an overriding public benefit 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 as the Whole Foods Market provides beer and wine sales only in conjunction with 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 not 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 is within one hundred fifty feet of an existing residence and residentially zoned property and is 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 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 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 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 trees 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 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 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 and in the manner specified above and subject to each and all of the conditions hereinafter set forth is 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 to be built 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 January 14, 2008, revised April 4, 2008, 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 new signs are approved with this Permit at this time. The existing legal non-conforming pylon sign located along the Blossom Hill Road frontage on the subject site adjacent to the northeastern entrance may remain in its current location, subject to the requirement for Permittee to fully comply with all other conditions of this Permit. Onsite and offsite improvements may be designed and constructed to preserve the current location of the legal non-conforming pylon sign. If compliance with any other condition of this Permit necessitates the relocation of the existing legal non-conforming pylon sign on the site, such relocated sign, as well as any and all proposed new signage, must first be reviewed and permitted under and pursuant to a separate Sign Permit and then maintained thereafter in accordance with the terms and conditions of that applicable 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.** There exists a current curb cut between the subject site and the adjacent gas station site to the northeast of the subject site along the property line perpendicular to Almaden Expressway. The current cross access shall remain open and available for users of the sites in order to facilitate safe vehicular circulation in that area. Future proposed site renovation of the gas station may consider consolidation of the Almaden Expressway entrances of both properties. Any consolidation shall be without impairment to the current access to the shopping center. Permittee acknowledges that consolidation of such curb cuts is envisioned in the future with the expansion or redevelopment of the adjacent gas station site, and Permittee agrees to work cooperatively to facilitate such consolidation. Permittee agrees to duly document the cross access arrangements agreed to at such future time through the execution of appropriate cross access easements or other similar documentation to the satisfaction of the Director of Planning, Building and Code Enforcement.
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:**

I. The projected traffic for this project was reviewed and found to 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.

II. An operational analysis was completed by Hexagon Transportation Consultants. The study included Trip Generation Estimates, Driveway Access Analysis and Truck Access and Circulation.

III. The study concluded the following:

i. The net increase in trips is minimal based on the general shopping center trip rates but it should be noted that a Whole Foods Market would generate more traffic than a fully utilized Rite Aid drugstore.

ii. Improvements are required at the driveway east of the Shell gas station and west of the Plaza Way entrance on Blossom Hill Road. Included in the improvements will be the curb realignment at the southwesterly corner of Blossom Hill Road and Almaden Expressway which will remove the "free" right turn from eastbound traffic onto Almaden Expressway.

iii. Adjacent driveways located on Almaden Expressway southerly of the Shell gas station shall remain and will require no improvements at this time. In the future a reciprocal easement

shall be granted to the adjacent Shell gas station and the driveways will be consolidated.

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. Existing driveways located on Blossom Hill Road west of intersection shall be redesigned to allow access such that delivery trucks would not require all three eastbound travel lands on Blossom Hill Road.
- V. Redesign the left turn pocket from westbound Blossom Hill Road to the Plaza Way driveway to accommodate an additional left turn lane. The improvements shall include median reconstruction, realigning Blossom Hill Road, and may include right-of-way dedication and utility relocation.
- VI. Redesign curb on the southwest corner of Almaden Expressway and Blossom Hill Road intersection, this curb realignment will help resolve the existing operational problems while not affecting access to and from the gas station, the shopping center or Mesa Drive. In the future, cross access arrangements shall be memorialized and executed in accordance with the condition related to "Cross Access" set forth above. The improvements may require utility modifications.
- VII. Install handicap ramp at the corner of Blossom Hill Road and Almaden Expressway.
- VIII. Existing driveways located on Blossom Hill Road east of the Plaza Way intersection shall be redesigned to allow access such that delivery trucks would not require all three eastbound travel lanes on Blossom Hill Road.
- IX. Redesign the left turn pocket from westbound Blossom Hill Road to the Plaza Way driveway to accommodate an additional left turn lane. The improvements shall include limited median reconstruction for the additional left turn lane, some realignment

of Blossom Hill Road and may include right-of-way dedication and utility relocation.

- X. Redesign curb on the northeast corner of Almaden Expressway and Blossom Hill Road intersection to help resolve an existing operational problem while not affecting access to and from the gas station, the shopping center or Mesa Drive.
- XI. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works. Any dedication and improvement may preserve the existing pylon signs at their current locations in the shopping center so long as the terms and conditions of this Permit continue to be fully satisfied and met.
- XII. 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.
 - I) **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.

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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 **8th** day of **April**, 2008, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, LICCARDO,
NGUYEN, OLIVERIO, PYLE, WILLIAMS; REED.

NOES: NONE.

ABSENT: CORTESE.

DISQUALIFIED: NONE.

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk