CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

STAFF REPORT

Hearing Date/Agenda Number
P.C. 08/13/2003 Item: 4.??

File Number
CP02-047

Application Type
Conditional Use Permit

Council District
8

Planning Area
Evergreen

Assessor's Parcel Number(s):
491-04-006; -025, -032, -040

PROJECT DESCRIPTION

Completed by: John W. Baty

Location: Southwest corner of Tully Road and Capitol Expressway

Gross Acreage: 27.3 | Net Acreage: 27.3 | Net Density: n/a

Existing Zoning: CG-Commercial General | Existing Use: Regional shopping center

Proposed Zoning: No change | Proposed Use: Regional shopping center

GENERAL PLAN

Completed by: JWB

Land Use/Transportation Diagram Designation
Regional Commercial

Project Conformance:
[x] Yes [ ] No
[x] See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: JWB

North:	Commercial, Vacant, Airport	CG/CP-Commercial General/Pedestrian, A-Agriculture, IP-Industrial Park
East:	Transit Center, Residential	CG-Commercial General, R-1-8 Residential
South:	Commercial, Vacant, Industrial	CG-Commercial General, R-1-8 Residential, A-Agriculture, A(PD) Planned Development
West:	Commercial, Residential	CG-Commercial General, R-2(PD) Planned Development, R-1-8 Residential

ENVIRONMENTAL STATUS

Completed by: JWB

[x] Environmental Impact Report circulated, to be considered 8/13/03
[ ] Negative Declaration
[ ] Negative Declaration adopted on

[ ] Exempt
[ ] Environmental Review Incomplete

FILE HISTORY

Completed by: JWB

Annexation Title: Amos No. 18, Amos No. 19, Amos No. 23

Date: 11/2/1971, 11/2/1971, 9/1/1972

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

[x] Approval
[ ] Approval with Conditions
[ ] Denial

Date: _____

Approved by: _____
[ ] Action
[x] Recommendation

APPLICANT / OWNER / DEVELOPER	OWNER	ARCHITECT
Eastridge Shopping Center, LLC 110 North Wacker Drive Chicago, IL 60606	Sears Roebuck & Co 3333 Beverly Road Hoffman Estates, IL 60192-3322	ELS Architecture & Urban Design 2040 Addision Street Berkeley, CA 94704

PUBLIC AGENCY COMMENTS RECEIVED Completed by: John W. Baty

Department of Public Works

Under Separate Cover

Other Departments and Agencies

Included in the DEIR and First Amendment.

GENERAL CORRESPONDENCE

CRAMP (s/John Blair) received July 31, 2003. Berliner Cohen (s/Andy Faber) received August 1, 2003.
City Council Policy- Evaluation of 24-hour Uses

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, Eastridge Mall, LLC, an affiliate of General Growth Properties, Inc, is requesting a Conditional Use Permit to allow the demolition of 254,991 square feet of existing building area and the addition of new building area equal to the square footage of building being demolished on 27.3 acres. The existing building area proposed for demolition includes the vacant former Emporium (185,220 square feet), the ice rink (24,463 square feet) and portions of the existing mall (45,308 square feet). The proposed new building area includes an 84,535 square foot 16-screen theater, 115,996 square feet of new and reconfigured mall space, and 54,490 square feet of non-mall outbuildings. The total gross floor area of the mall (1,637,225 square feet) would remain the same after renovation.

The subject property has a zoning designation of CG-Commercial General. An approved Conditional Use Permit is required in the CG-Commercial General District for the indoor theater use and for operation of any mall activities past midnight.

Tully Road to the north, Quimby Road to the south and west and Capitol Expressway to the east provide access to the site with the interior “Eastridge Loop” road providing circulation around the shopping center. The subject site is generally flat along the ring road with the existing mall building sitting in a bowl-like depression. Located throughout the site and along the ring road are several large eucalyptus trees. Surrounding land uses include Reid-Hillview Airport to the north across Tully Road, a shopping center and automobile dealership to the northeast across Capitol Expressway, the Eastridge Transit Center, Capitol Expressway, Thompson Creek (Lower Silver Creek) and single-family residential to the east, vacant land, commercial, and industrial park to the south and commercial and single-family residential to the west.

Permit History

At the time of initial permitting and construction of the mall, the subject site was unincorporated and subject to the land use policies and regulations of the County of Santa Clara. The developer, Bayshore Properties, secured approval from the Architectural and Site Approval (ASA) Committee of Santa Clara County for the design of the mall on October 10, 1968. Subsequent additions to this approval were made throughout 1969 and 1970 to address specific exterior sign proposals, grading plans and other related issues. A separate ASA Committee approval was given for the ice rink on November 5, 1970. Construction

of the mall occurred from 1969 to 1971.

Three separate annexations of the subject site by the City of San Jose were approved from November 1971 to September 1972 incorporating the subject territory and the newly constructed mall building into the City. Subsequent interior and minor exterior renovations have occurred since annexation with the latest occurring in 1995. The mall has not been substantially remodeled since its original construction.

Project Description

The proposed project would allow the demolition of 254,991 square feet of existing commercial retail space and an addition equivalent to the amount of space demolished. The demolition includes the removal of an existing indoor ice rink facility. The square footage before and after renovation would remain the same at 1,637,225 square feet of total commercial retail space with the following new components:

- *Movie Theater.* An 84,535 square foot 16-screen movie theater is located on the second floor of a two-story addition located at the southwest corner of the existing mall building. The movie theater is accessed from within the mall by way of a second story pedestrian walkway/bridge.
- *Mall Addition.* 115,996 square feet of new mall space will be added along the south side of the mall with 52,800 square feet of that space located on the ground floor under the movie theater.
- *Non-mall Out-buildings.* The project would include a total of five new freestanding non-mall buildings with a total combined area of 54,490 square feet. These buildings are intended for retail and/or restaurant uses, but may also accommodate other permitted or conditionally permitted uses of the CG-Commercial General Zoning District. Two of the non-mall buildings will be located to the southeast of the mall structure and one would be located across the Eastridge Loop Road. The architecture for these three buildings will be reviewed under separate Permit Adjustments. The fourth and fifth buildings would be generally located in the northwestern portion of the mall site outside of the airport safety zones for Reid-Hillview Airport. These two buildings will require subsequent discretionary land use permit approval (probably a Conditional Use Permit or Amendment) to specify their exact location and for site design and architectural review.

Reid-Hillview Airport

The Eastridge Mall is subject to the land use regulations of the City of San Jose. However, because the mall is located adjacent to the Reid-Hillview Airport certain land uses at the mall are subject to regulations of the Federal Aviation Administration (FAA). The mall is also within the advisory jurisdiction of the County of Santa Clara Airport Land Use Commission, which is a State mandated agency, administered by County Planning.

Federal Aviation Administration

The FAA is the governing body over all civilian aircraft procedures and airport operations in the United States. The FAA is responsible for certifying pilots and the airworthiness of aircraft, controlling and regulating airspace, and approving airport plans and aircraft flight procedures. Most airport regulations, policies, federal airport improvement funds and capital improvement programs are based on FAA regulations, guidelines, and monitoring. The FAA has established safety zones for the Reid-Hillview Airport.

Airport Land Use Commission

The Santa Clara County Airport Land Use Commission (ALUC) was established in 1971 pursuant to public Utilities Code Section 21670, as amended September 19, 1994, which mandates that the County Board of Supervisors establish an ALUC if the county has an airport served by a scheduled airline. The ALUC consists of seven members and County Ordinance establishes membership.

The purpose of the ALUC is to provide for the orderly growth of areas surrounding public airports in Santa Clara County. It is also intended to minimize the public's exposure to excessive noise and safety hazards, and to ensure that the approaches to public airports are kept clear of structures that could pose an aviation safety hazard. The ALUC has three primary responsibilities:

1. To prepare and adopt a land use plan for areas surrounding public airports in the County in accordance Section 21675 of the California Public Utilities Code.
2. To review general plans and specific plans by local agencies for consistency with the ALUC land use plan.
3. To review individual land use actions for areas surrounding public airports.

Ice Rink Feasibility Study

A controversial component of the project involves the demolition, with no on-site replacement, of the existing 24,463 square foot ice rink. Although its loss is opposed by the primary users, the developer is under no legal obligation to retain or replace the ice rink. The City's land use regulations cannot require retention or replacement of the ice rink as a condition of this permit, nor is it an environmental issue. Recognizing the importance of this issue, the developer has been working with the City and the ice rink users to explore the possibility of locating a new ice rink elsewhere. The applicant has volunteered to fund the preparation of an ice rink feasibility study. Staff understands that a consultant has been selected and the scope of services for the study is being prepared.

At the present time it is anticipated that the Ice Rink Feasibility Study will address issues such as:

- the financial feasibility of a new, 100% privately financed ice rink in the southeastern San Jose
- the market demand for a new rink in this area given the existing facilities in the South Bay,
- typical ice rink facility size,
- physical requirements,
- financially feasibility, and
- appropriate site location.

ENVIRONMENTAL REVIEW

A Draft EIR, entitled Eastridge Mall Redevelopment Conditional Use Permit, was prepared for the project and circulated on May 8, 2003. The City of San Jose determined that an EIR should be prepared to address and evaluate the specific environmental impacts of the renovation of the existing Eastridge Mall structure and site. The California Environmental Quality Act (CEQA) requires the preparation of an EIR for a project that may have a significant effect on the environment. In this case, the project is considered to be of statewide, regional, or areawide significance in accordance with CEQA Section 15206, as well as resulting in potentially significant environmental impacts to land use and transportation.

The City of San Jose is the lead agency for the Eastridge Mall DEIR as defined by CEQA. San Jose Municipal Code Chapter 21.07 designates the Planning Commission as the decision-making body for the

certification of EIRs. The Planning Commission must hold a noticed public hearing to certify the Final EIR. Upon conclusion of its certification hearing, the Planning Commission may find that the Final FEIR is completed in compliance with CEQA.

CEQA requires the Lead Agency to prepare a Final EIR responding to all environmental comments received on the Draft EIR during the public review period and to certify the Final EIR before approving the project. The responses to comments on a Draft EIR must include good faith, well-reasoned responses to all comments received on the Draft EIR. In responding to comments, CEQA does not require a Lead Agency to conduct every test or perform all research, study, or experimentation recommended or demanded by commentors. CEQA only requires a Lead Agency to respond to significant environmental issues and does not need to provide all information requested by reviewers as long as a good faith effort at full disclosure is made in the EIR.

The City's responses to comments on the Draft EIR are contained in the First Amendment to the Draft Environmental Impact Report. The First Amendment and the Draft EIR constitute the Final EIR. As required by CEQA, the First Amendment contains (1) a list of persons, agencies, and organizations commenting on the Draft EIR, (2) copies of comments received during the public review period of the Draft EIR, (3) the City's responses to those comments. The City provided a copy of its responses to each public agency and organization that submitted comments on July 22, 2003, at least ten days prior to certifying the Final EIR in conformance with CEQA Guidelines Section 15089(b).

The California Environmental Quality Act (CEQA) Guidelines 15090 require, prior to approving a project, the lead agency to certify that:

1) the Final EIR has been completed in compliance with CEQA,

2) the Final EIR was presented to the decision-making body of the lead agency and the decision-making body reviewed and considered the information contained in the Final EIR before approving the project, and

3) the Final EIR reflects the independent judgement and analysis of the lead agency.

If the Planning Commission certifies the Final EIR, it may then immediately act on the project associated with the EIR. No action or recommendation by the Planning Commission may be deemed final until after the appeal period has expired. A decision by the Planning Commission not to certify a Final EIR is not subject to an appeal. When an EIR is certified by a non-elected decision-making body, that certification may be appealed to the local lead agency's elected decision-making body. If the Planning Commission does not certify the EIR, it may not take action or make any recommendation with regard to the project. A Final EIR, which is revised at the direction of the Planning Commission, shall require another noticed public hearing.

The Draft EIR contains the contents required by Public Resources Code Section 21002.1 and CEQA Guidelines 15143. The required EIR contents include (1) a table of contents, (2) executive summary, (3) project description, (4) environmental setting, significant environmental impacts of the project, and mitigation measures, (5) cumulative impacts, (6) alternatives to the proposed project, including the no project alternative and identification of an environmentally superior alternative, (7) growth inducing impacts, and (8) significant unavoidable adverse impacts.

Page vi of the Summary in the Draft EIR contains a table identifying potentially significant environmental impacts. It identifies as "Less Than Significant" impacts regarding Land Use, Aesthetics, Air Quality, Noise, Hazardous Materials, Utilities and Service Systems, Energy, Availability of Public Services, and Cumulative Impacts. Impacts identified as "Less Than Significant with Mitigation" are Geology and Soils, Hydrology/Water Quality, Biological Resources, Transportation, and Cultural Resources. "Less Than

Significant with Mitigation" means the impacts of the proposed project will not exceed the significance thresholds contained in the EIR with changes (mitigation measures) included in the project. The Draft EIR identifies that the project will result in no "Unavoidable Significant Impacts". "Unavoidable Significant Impact" means that impacts of the project would exceed the significance thresholds even with changes or mitigation included in the project.

The key issues identified in this EIR that warrant additional discussion include land use compatibility with respect to aircraft safety, and transportation.

Land Use Compatibility with Reid-Hillview Airport

Extensive discussion of the project's consistency with the FAA and ALUC regulations is included in the DEIR in the Consistency with Relevant Plans and Policies section (pages 13-18), and the Land Use section (pages 21-25). Appendix E of the DEIR includes a Summary of the ALUC Action on the project and a very thorough Aviation Procedures Report. The First Amendment to the DEIR, dated July 2003, includes a copy of the ALUC staff report and additional related correspondence.

Upon completion of a revised design that addressed specific key aviation safety concerns the Airport Land Use Commission (ALUC) determined that the project was in conformance with applicable safety policies as defined in the Land Use Plan for Areas Surrounding Santa Clara County Airports (ALUP). This is documented in the ALUC Summary of Actions included in Appendix E of the DEIR, as well as the June 17, 2003 letter included in the First Amendment.

Transportation

A Transportation Impact Analysis (TIA) was prepared for the DEIR by Hexagon Transportation Consultants, Inc. for the purpose of identifying the potential traffic impacts related to the proposed project. The impacts of the project were evaluated in accordance with the standards and methodologies established by the City of San Jose and the Valley Transportation Authority (VTA). The traffic analysis was based on peak-hour levels of service (LOS) for signalized intersections and peak-hour vehicle queuing analyses for selected locations. Eighteen (18) signalized intersections were evaluated using the City of San Jose Evergreen Development Policy Area (EDP) standards, with six (6) of these intersections also evaluated using the Congestion Management Program (CMP) level of service methodology.

The Evergreen Development Policy (EDP) was originally adopted in 1976, with revisions in 1991, 1995, and 1998 to address the unique traffic problems of this area. Much of this area's traffic congestion problems stem from its relative geographical isolation at the southeast corner of the City and limited arterial street connections to outside areas. Additionally, the traffic issues have been compounded as a result of this area having been developed primarily with residential uses and comparatively limited job opportunities within this area. Under the EDP, which is more restrictive that the City's Transportation Level of Service (LOS) Policy, commercial projects may be constructed if the traffic impacts do not result in the addition of more than a one-half percent increase in critical traffic movement at an intersection operating at LOS E or F.

The traffic report for this project concluded that, based on City of San Jose EDP methodology, the project will have an impact at one intersection; Capitol Expressway and Quimby Road. The following mitigation measure is included in the project in order to reduce impacts to the above noted intersection to less than significant:

✍ Add a separate right turn lane on eastbound Quimby Road as it approaches Capitol Expressway.

Based on the VTA administered CMP level of service methodology, no study intersections would be significantly impacted by the project.

Trees

114 trees would be removed in order to facilitate the construction of the proposed project. 35 of these trees would be relocated to other parts of the project site. Of the 114 trees to be removed 24 are of ordinance size. Replacement trees will be planted on-site per the City of San Jose Tree Ordinance. Each tree less than 12 inches in diameter will be replaced with one (1) 15-gallon tree. For each tree between 12 and 17 inches in diameter two (2) 24-inch box trees will be planted. Each tree 18 inches or greater in diameter (ordinance size) will be replaced with four (4) 24-inch box trees.

The EIR concludes that there are no potential significant impacts that cannot be reduced to a less than significant level with mitigation. The mitigation measures have been included in the project design or as conditions of approval.

GENERAL PLAN CONFORMANCE

The subject site is designated Regional Commercial on the San Jose 2020 General Plan Land Use Transportation Diagram. The proposed project conforms to this General Plan designation in that it would allow for the renovation of an existing regional shopping center. The proposed project supports the General Plan policy that encourages the upgrading, beautifying, and revitalization of existing shopping centers.

The project also furthers the General Plan's Economic Development Major Strategy, which encourages commercial growth in order to reduce the imbalance between jobs and residents and create a more equitable distribution of job centers throughout the City. The proposed project would provide new job opportunities by developing new retail uses and revitalizing an underutilized shopping mall.

The project conforms to the Aviation Policies of the General Plan, which generally state that new commercial uses or expansion of existing uses within the referral area of the Airport Land Use Commission should give appropriate consideration to FAA and ALUC policies. The ALUC, at a meeting held on January 22, 2003, found the project to be in conformance with the applicable Airport Land Use Plan safety policies.

ANALYSIS

The key issues analyzed for the proposed project include: 1) consistency with Santa Clara County Airport Land Use Commission (ALUC) Land Use Plan, 2) Site Design and Architecture, and 3) Consistency with Council Policy 6-27 for Evaluation of 24-hour Uses.

Consistency with the Santa Clara County ALUC Land Use Plan

The Land Use Plan for Areas Surrounding Santa Clara County Airports (ALUP), adopted by the Santa Clara County Airport Land Use Commission (ALUC) in September 1992, established land use policies that provide for the orderly growth of areas surrounding the airports in Santa Clara County. The ALUC has established provisions for the regulation of land use, building height, safety and noise insulation within areas adjacent to each of the public airports in the County. Proposals for development by local agencies must be submitted to the ALUC for a determination of compliance. Under State law, if the ALUC determines that a proposed project is inconsistent with the ALUP, project approval by the local lead agency requires an action by the agency's decision-making body, by a two-thirds vote, adopting specific findings overriding the ALUC determination.

The project site is located within the ALUCs adopted referral area and height restriction boundary for

Reid-Hillview Airport. The project would be consistent with the ALUC height restrictions for uses within the airport's referral boundary. The project is also consistent with the ALUC noise policies in that the areas of

proposed construction are located outside of the 60 CNEL noise contours for the airport and the mall is not considered a noise sensitive use.

On January 22, 2003 the ALUC formally reviewed the project for consistency with its safety policies. The ALUC found that the project was in conformance with applicable safety policies as defined by the ALUP except as defined for South Safety Areas I and II and Policy S-5b. The ALUC found, nonetheless, that the project satisfied the exemption criteria per Policy S-11, and based its approval on the following: (a) The project conforms to the Basic Safety Compatibility Qualities and Safety Compatibility Criteria Guidelines as defined in Table 9B and 9C of the 2002 California Airport Land Use Planning Handbook; (b) The project reconfigures an existing retail use; it does not result in a net expansion of the use; and (c) The project adequately addresses potential safety concerns in Areas I and II. The ALUC further found that the proposed structural reinforcement components as indicated on plans addressed potential aviation safety concerns to an acceptable degree. Other non-structural design features requested by the ALUC have also been included in the project. For these reasons the ALUC determined that the project is consistent with the policies of the ALUC Land Use Plan.

On July 31, 2003, the City received a letter from the Coalition for Responsible Airport Management & Policy (CRAMP), signed by Mr. John Blair, which is included with this staff report. CRAMP is an organization that represents general aviation pilots and is independent of and not associated with the ALUC. This letter is subsequent to their DEIR comment letter received May 29, 2003. Their opinion is that the proposed project landscaping, as indicated on the revised landscape plans, is not in conformance with the ALUC Land Use Plan and constitutes a safety hazard. The applicant's attorney, Andy Faber of Berliner Cohen, prepared a letter dated August 1, 2003 in response to Mr. Blair's comments.

While it is correct that the project landscape plan as submitted to the Planning Commission is a more recent revision, the project plans referred to the ALUC did include a landscape plan. In fact, the proposed project plans available to the public have always included a proposed landscape plan. Staff strongly disagrees with the conclusions of CRAMP for a variety of reasons; some are included in Mr. Faber's response letter. Their assertion that the ALUC ALUP prohibits trees in the areas as shown on the landscape plan is incorrect. The ALUC is the official public body charged with interpreting the Reid-Hillview ALUC plan. The ALUC concluded that the proposed project is in conformance with applicable safety policies. The official ALUC comments do not mention any issue or concern with landscaping. Furthermore, the City has never indicated support for the removal of any existing trees for aviation safety reasons.

The project is required to plant new trees in accordance with mitigation measures identified in the EIR for the removal of existing ordinance size trees. The removal of all existing trees without replacement planting would alter the conclusions of the DEIR for Biological Resources. The removal of existing trees or not planting any new trees is contrary to the Sustainable City Major Strategy of the General Plan. Additionally the project would not be in conformance with the General Plan Urban Design, Natural Resource and Urban Forest Policies, which encourage preservation of urban trees, mitigation for removal of ordinance size trees, and planting of new trees in conjunction with private development projects.

Site Design and Architecture

The proposed renovation represents a significant and much needed upgrade from the existing blank and uninviting exterior façade and environs of the present mall. Although the mall has undergone previous

renovations the basic exterior has changed little in 32 years.

The proposed exterior mall renovation will almost entirely be taking place along the south side of the mall. The vacant former Emporium building, which is located on the south side of the mall and is owned by the developer, represents the side of the mall with the greatest potential for renovation. This situation is similar to the renovation and expansion of Oakridge Mall, which is currently underway.

The bulk of the change in the site comes from the demolition of the vacant former Emporium building, the ice rink and portions of the adjacent mall space. The initial plans submitted to the City called for replacement of this demolished space in generally the same location extending south and east. It was this initial proposal that raised a number of aircraft safety concerns from various airport and pilot associations. After a number of discussions with these groups and coordination with the ALUC the plan was reconfigured to its present form placing the majority of the replaced square footage to the south of Sears, outside of the flight path of Reid-Hillview Airport.

Circulation. Changes to the site's circulation patterns are generally focused in and around the area of work. These changes help to improve safety and strengthen the sense of a circulation hierarchy. Access points into the project site will remain the same with the exception of two driveways. To facilitate the construction of the movie theater/mall addition at the south side of Sears, one driveway off of Quimby Road will be closed. Another driveway off of Quimby Road located to the west of Sears will also be closed to eliminate a poorly designed access point that resulted in an impractical and confusing circulation pattern. Two other existing access points, at Capitol Expressway near the transit center and at Quimby Road at the northwest corner of the parking area, will be modified to provide for safer vehicle movements into the site.

The Eastridge Loop ring road remains the primary means of on-site circulation. There are major driveway routes leading from the ring road that bring vehicles into the parking fields and around the perimeter of the mall building. Two of the parking fields to the south of Sears and in the area of the vacant former Emporium will be reconfigured to better coordinate circulation with the reconfigured mall space.

Pedestrian circulation will be enhanced with the introduction of wide tree-lined sidewalks in front of the new mall shops. Upon completion of the final design of the new VTA transit center the applicant shall construct a tree-lined pedestrian connection between the mall and the new transit center.

The modifications to the circulation patterns are consistent with the Commercial Design Guidelines.

Parking. There are approximately 7,636 existing parking spaces with the majority located in large parking fields surrounding the mall and within the Eastridge Loop road. Upon completion of the project approximately 7,115 parking spaces will remain. Based on the parking requirements of the City of San Jose Zoning Ordinance this exceeds the minimum parking requirements for the project, which would be 6,530 parking spaces.

Landscaping. The majority of the new landscaping occurs in and around the southern parking fields, which coincides with the principal area of work. Additional landscaping deficiencies throughout the greater mall site would be addressed during future remodeling efforts. A line of new trees will be planted along the perimeter of the southern parking fields and along the ring road. Different types of trees will be used along the major driveway routes to help differentiate them from parking aisles. Within the parking fields canopy trees are located every four (4) spaces between rows of parking and at the end of each row. Accent trees will be located along the pedestrian walkways adjacent to the new mall shops. A variety of shrubs and groundcover will also be located along the pedestrian walkways as well as around the perimeter of buildings and within raised curb planters and islands. Consistent with the Commercial Design Guidelines, the landscape plan provides for an adequate number of trees within and around the parking fields and makes use of a variety of trees to help distinguish between different areas.

Architecture. The architecture has been designed to provide adequate articulation, detailing, and consistent

architectural treatment on all sides of the buildings in the area of work. The new mall shops located along the south side of the mall building and those that form the base of the movie theater provide a good transition from low buildings along the pedestrian and street frontages to the taller spaces behind them. The movie theater, in addition to having a setback from the front edge of the building form below, has broken up a very large continuous volume with substantial variations in wall plane and an appropriate level and variety of detailing. Breaking with the previous pattern of interior oriented shops the new shops provide an enlivened exterior space by facing outward with storefront window systems and pedestrian oriented detailing. Specific architecture for individual outside-facing tenants will require additional Planning review and approval through the Permit Adjustment process.

The Sears, Macy's and JC Penney's anchor tenant spaces are not included in the proposed exterior renovation. At such time that the owners of the anchor spaces wish to move forward with their own exterior renovation they will be required to provide an updated building façade that is complimentary with the mall architecture being proposed.

The project includes the identification of five non-mall outbuildings. A Permit Adjustment or individual adjustments will be required for the approval of final architecture for the two outbuildings located at the southeast corner of the subject site and for the one outbuilding located to the southeast of the movie theater across the ring road. A Conditional Use Permit Amendment or individual amendments will be required for the two outbuildings located to the northwest of Sears for which an exact location has yet to be determined. A comprehensive plan set will need to be provided to address all aspects of the site design and architectural details for these two buildings.

Consistency with City Council Policy 6-27 for Evaluation of 24-hour Uses

The attached Policy for Evaluation of 24-hour Uses is intended to provide guidelines for the appropriate development of commercial businesses that operate between the hours of 12:00 midnight and 6:00 a.m.

The policy states that 24-hour uses should not be approved unless the facility can operate without detriment to nearby residential uses or the general welfare of the surrounding area. The principal means of ensuring that 24-hour uses do not negatively impact residential uses or the surrounding area is by physical separation. Generally, the policy recommends a 300-foot separation between late night uses and residential properties. The southwest corner of the movie theater is approximately 400 feet from the nearest single-family residence located across Quimby Road.

In addition to providing adequate separation, the movie theater is entirely enclosed with the entrance and lobby accessible only through the interior of the mall. Therefore it is very unlikely that any noise generated by the theater use would be audible or distinguishable from Quimby Road traffic noise at the closest residentially used property.

Conclusion

Early in its history the mall was considered innovative and represented an attractive place to do business for retailers and consumers alike. Over the years the perception of the mall has changed and it now lacks the appeal it once held. The desired outcome of the proposed renovation is to make the mall competitive with other regional shopping malls by providing the components that make a mall appealing to consumers and retailers. A substantially renovated mall that attracts both consumers and retailers represents a significant benefit to the fiscal health of the City from a sales tax revenue standpoint. The proposed project will upgrade the facility and bring it into greater conformance to the current development policies and guidelines of the City.

PUBLIC OUTREACH

A notice of the public hearing was distributed to the owners and tenants of all properties located within 1000 feet of the project site.

Three neighborhood meetings coordinated by the City Council office were held in May of 2002.

The Airport Land Use Commission (ALUC) held a workshop on June 26, 2002 to receive public input on the proposed design of the mall and to address key concerns related to consistency with the ALUC Land Use Plan. A subsequent ALUC workshop was held on November 20, 2002 where a revised plan was brought forward that addressed the key aviation safety concerns identified at the previous meeting. The ALUC took formal action on the project at its regular business meeting on January 22, 2003.

The Knight Program in Community Building conducted a charrette, an intensive series of planning sessions spanning several days, from November 13-18, 2002. This effort provided residents, business owners and other stakeholders the means to collaborate on a vision for the future development of the Eastridge-Evergreen area, including the mall.

A community meeting was held on June 18, 2003 in the Eastridge Mall community room. A notice for the community meeting was sent to the owners and tenants of all properties located within 1000 feet of the project site. Staff attended the meeting and the comments and discussion centered almost exclusively on the loss of the existing ice rink. Approximately 50 members of the community attended.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Regional Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the CG-Commercial General Zoning District.
3. A Conditional Use Permit is required for the indoor theatre use and for any mall operations past midnight.
4. The proposed project consists of the demolition of 254,991 square feet of existing building area (the former Emporium, the ice rink, and portions of the existing mall) and the addition of 254,991 square feet of new building area (theater, mall space, and non-mall out-buildings).
5. The proposed project includes 7,115 parking spaces, which exceeds minimum Zoning Ordinance parking requirements for the combined uses of a regional shopping center, theater and non-mall retail buildings.
6. A Draft Environmental Impact was prepared for the project and circulated on May 8, 2003 in accordance with the requirements of CEQA.
7. A Final Environmental Impact Report (FEIR) has been certified for the project, which concludes that the project will result in no significant unavoidable environmental impacts.
8. The FEIR identifies mitigation measures to reduce potentially significant environmental impacts to less than significant levels, and these mitigation measures have been included in the project.
9. The project is adjacent to the Reid-Hillview Airport and is subject to FAA and ALUC regulations and review.
10. The ALUC has reviewed the project and DEIR and determined that the project conforms to the

applicable safety policies of the Reid-Hillview Airport Land Use plan.

11. The project has been evaluated for consistency with the City Council No. 6-27 for the Evaluation of 24-hour Uses.

12. The project site design and architecture is a substantial upgrade for enhanced conformance to the Commercial Design Guidelines Common Elements for circulation, parking, landscaping and architecture, and the specific guidelines for Malls and Regional Centers.

13. There has been substantial public outreach for the proposed project including a number of community meetings.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project will be consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project is consistent with the intent of the Council Policy 6-27 for Evaluation of 24-hour Uses and the Commercial Design Guidelines.

Finally, based upon the above-stated findings and subject to the conditions set forth below, 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 or value of property of other persons located in 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 and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
   a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic 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 is hereby granted. This Planning Commission 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 PRECEDENT

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 all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be signed, notarized, and returned to the Department of City Planning within 60 days from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.
2. **Site Development Permit.** This permit fulfills the requirement for a Site Development Permit.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **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.
2. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Conditional Use Permit Package for Eastridge Mall Renovation," dated July 30, 2003, in addition to required permit adjustments, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24).
3. **Nuisance**. This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction work may occur on Saturdays and Sundays from 7:00 a.m. to 7:00 p.m., within 500 feet of residences if such work is within enclosed buildings.
5. **Street Cleaning and Dust Control.** During construction, the developer shall damp sweep the public and private streets within and adjoining the project site each working day sufficient to remove all visible debris and soil. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.

6. **Contact Person in Case of Disturbance.** The applicant shall permanently display, at readily visible locations, a contact name and phone number to report nuisance activities and noise disturbances during hours of construction, in a format acceptable to the Director of Planning, Building and Code Enforcement.

7. **Construction Conformance.** A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms with all applicable requirements of the subject Permit, including the plan sets. To prevent delays in the issuance of Building Permits, please notify Planning Division staff at least one week prior to the final Building Division inspection date.

8. **Recycling.** Scrap construction and demolition material should be recycled. Integrated Waste Management staff at (408) 277-5533 can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.

9. **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.

10. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.

11. **Lighting.** Outdoor lighting on the site shall conform to the City's Outdoor Lighting Policy. Low-pressure sodium (LPS) lighting fixtures shall be installed in all unroofed areas. Fully shielded lighting sources other than LPS outdoor lighting may be used to illuminate pedestrian walkways and shall be dimmed no later than 10:00 p.m. or an hour following the close of business, whichever is later.

12. **Bicycle Parking.** Bicycle parking shall be provided in accordance with Part 4 of Chapter 20.90 of Title 20 the Zoning Ordinance.

13. **Hours of Operation.** The movie theater may operate past midnight. All other uses shall be restricted to operation between 6:00 a.m. and 12:00 midnight, unless otherwise approved with a separate Conditional Use Permit.

14. **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.

15. **Roof Equipment.** All roof equipment shall be screened from view from surrounding public streets.

16. **Utilities.** All new on-site telephone, electrical and other overhead service facilities shall be placed underground.

17. **Master Sign Program.** Proposed signs shall be consistent with the City of San Jose Sign Ordinance and, with the exception of the signage shown on the approved development plans, are subject to separate review and approval by the Director of Planning through a Conditional Use

Permit Amendment.

18. **Colors and Materials.** All building colors and materials are to be those specified on the approved plan set.

19. **Avigation Easement**. An avigation easement over the development shall be dedicated to the County of Santa Clara for Reid-Hillview Airport in accordance with the Santa Clara County Land Use Plan for Areas Surrounding Santa Clara County Airports, policy G-3.

20. **Geology and Soils.** A geotechnical investigation will be completed prior to the approval of building permits. All new buildings and additions will be designed to conform to the recommendations of the geotechnical investigation. Seismic hazards will be mitigated by using construction practices in accordance with Seismic Zone 4 building Criteria as described in the San Jose Building Code.

21. **Hydrology and Water Quality.** At the time of construction, the project shall be required to obtain a permit from the Regional Water Quality Control Board (RWQCB), which oversees the NPDES general permits for projects greater than five acres in size. In order to comply with the NPDES, a Notice of Intent and a Stormwater Pollution Prevention Plan (SWPPP) shall be submitted 30 days prior to construction. Stormwater flow from the site will be directed into adequate storm drains that have filtration systems for removing oils and debris. The project shall include Best Management Practices (BMPs) to reduce stormwater pollution to the maximum extent practicable.

    a. *Construction Related Activities.* A SWPPP shall be prepared to include the following measures:

        1.) Eliminate or reduce non-stormwater discharges to the storm sewer system;

        2.) Perform regular monitoring of discharges to the stormwater system; and

        3.) Implement BMPs such as restricting grading to the dry season or using BMPs for wet season erosion control, using damp street sweeping; and providing permanent cover to stabilize disturbed surfaces.

    b. *Post Construction/Ongoing Operations*. The project shall comply with Provision C.3 of the City's NPDES Permit. BMPs shall be employed on the site for stormwater quality control, to reduce or avoid long-term impacts to water quality. These BMPs may include the use of landscape-based stormwater treatment measures such as biofilters and vegetated swales. In addition, the project shall implement additional BMPs including:

        1.) Regular maintenance activities conducted to prevent soil, grease, and litter from accumulating on the site and contaminating surface runoff;

        2.) Trash and recycling storage areas shall be covered; and

        3.) Stormwater catch basins shall be stenciled to discourage illegal dumping.

22. **Raptors.** If possible, construction should be scheduled between October and December (inclusive) to avoid the raptor nesting season. If this is not possible, pre-construction surveys for nesting raptors shall be conducted by a qualified ornithologist to identify active raptor nests that may be disturbed during project implementation. Between January and April (inclusive) pre-construction surveys shall be conducted no more than 14 days prior to the initiation of construction activities or tree relocation or removal. Between May and August (inclusive) pre-construction surveys no more than thirty (30) days prior to the initiation of these activities. The surveying ornithologist shall inspect all trees in and immediately adjacent to the construction area for raptor nests. If an active raptor nest is found in or close enough to the construction area to be disturbed by these activities, the ornithologist, shall in consultation with the State of California, Department of Fish & Game

(CDFG) designate a construction-free buffer zone (typically 250 feet) around the nest. The applicant shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Planning Department prior to the issuance of any grading or building permit.

23. **Tree Removals.** With the exception of the trees identified for removal with this permit, no 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.

24. **Tree Protection.** The applicant shall maintain the trees and other vegetation to be retained in this project. Maintenance shall include pruning and watering as necessary and protection from construction damage. All trees to be preserved shall be permanently identified by metal numbered tags prior to the removal of any tree on the site. All trees to be saved shall be protected by fencing of chain link, or other fencing approved by the Director of Planning prior to issuance of the Grading Permit or removal of any tree. The fence shall occur at the dripline in all cases and shall remain during construction. Tree masses to be saved may be protected with a fence surrounding the dripline of the entire mass. All sensitive plant and wildlife habitat areas to be preserved and protected shall be posted prior to issuance of Grading Permit with signs stating that no disturbance, including grading, storage of equipment, vehicles or material, or other disruptions, is allowed. Fencing may be required for areas subject to direct impact, such as trees to be saved or habitat within areas being developed. Fencing and signage shall be maintained by the applicant to prevent disturbances during the length of the construction that might disrupt the habitat or trees.

25. **Archaeology.** The following mitigation measures are included in the project to avoid or reduce potentially significant impacts to cultural resources to a less than significant level:

    a. Archaeological monitoring of all proposed construction activities shall be performed by an archaeologist until that person is satisfied that there is not potential for the discovery of archaeological materials.

    b. In the event materials are discovered, work shall be halted within 50 feet of any discovery until the area of archaeological deposit has been accurately mapped and a plan for the evaluation of the resources as required under current CEQA guidelines has bee approved by the San Jose Planning Department.

    c. If evaluative testing demonstrates that a resource area eligible for the California Register of Historic Resources is present in areas to be impacted by further development, it will be the responsibility of the project sponsor to submit a plan for mitigation of impacts.

    d. A final report shall be prepared when a find is determined to be a significant archaeological site, and/or when Native American remains are found on site.

    e. If human remains are discovered, the Santa Clara County Coroner shall be notified.

26. **Hazardous Materials.** Implementation of the following measures will avoid or reduce the impacts of construction related release of asbestos to a less than significant level:

    a. Handling asbestos in accordance with al local, state and federal laws.

    b. Removal or disturbance of asbestos containing materials (ACMs) shall be subject to certain requirements of Cal/OSHA asbestos standard contained in Title 8 of the CCR, Section 1529.

    c. A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site, according to all OSHA and EPA

standards. ACMs shall be disposed of in conformance with federal, state and local laws.

d. Materials containing more than 1% asbestos are also subject to Bay Area Air Quality Management District (BAAQMD) regulations.

27. **Hazardous Materials Storage.** This permit does not include approval of any facilities or areas on, within, or under the site to be used for the storage of hazardous, toxic, flammable, or combustible materials, and such facilities or areas are subject to review under separate Permit.

28. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-02202) to the satisfaction of the Director of Public Works:

a. *Storm Drainage, Sewer Fees.* Storm drainage area fees, sanitary sewer connection fees and sewage treatment plant fees are due, less previous credits.

b. *Storm Water Stenciling.* All drain inlets shall be labeled "No Dumping--Flows to Bay." Please contact the City of San José, Department of Public Works, at (408) 277-5161 to obtain free stencils.

c. *Geology.*

1.) A grading permit is required prior to the issuance of a Public Works Clearance.

2.) 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) 277-4304 for more information concerning the requirements for obtaining this permit.

3.) Because the project involves a land disturbance of more than five 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.

4.) 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 Project Engineer and/or 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. *Undergrounding*. The In Lieu Undergrounding Fee shall be paid to the City for all frontage adjacent to Quimby Road prior to the issuance of a Public Works clearance. The percentage will be based on the increase in traffic as reported from the TIA prepared by Hexagon Traffic Engineers. (Currently the fee is $112 per linear foot of frontage and the fee is expected to increase in the near future).

e. *Electrical*. Electrolier installation, relocation, and relamping will be evaluated at the improvement plan stage.

f. *Landscape*.

1.) Install street trees within the public right-of-way along the entire street frontage of Tully

Road, Quimby Road and Capitol Expressway per City standards.

2.) The locations of the street trees will be determined at the street improvement stage.

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

g. *Inlet Filters.* The project developer shall install inlet filters in all on-site storm drainage inlets. These filters shall be installed, maintained and replaced by a qualified consultant hired by the property owner. Copies of all inspection and maintenance records shall be provided to the City upon request. The project developer shall implement a maintenance program for these inlet filters that includes but is not limited to the following measures:

1.) Installation. The inlet filters shall be installed by a qualified individual in conformance with the manufacturer's specifications. Installation records shall be maintenance by the project developer and subsequent property owner.

2.) Maintenance Record. The property owner must keep a record available for inspection on the project site of all inspections and maintenance of the inlet filters.

3.) Regular Sweeping. Paved surfaces subject to runoff shall be swept regularly during dry periods to remove dirt, silt and other loose debris.

4.) Regular Inspections. The inlet filters shall be inspected monthly between September and April, and the absorbent material shall be replaced by a qualified individual as necessary to ensure the filters are functioning property.

5.) Replacement of Absorbent Material. The absorbent material shall be replaced by a qualified individual in conformance with the manufacturer's specifications. Care should be taken to avoid spilling the contaminated material into the drainage system.

6.) Disposal of Used Absorbent Material. Used absorbent material shall be disposed of in conformance with all applicable local, state and federal regulations.

7.) Replenishment of Absorbent Materials Supply. The property owner shall keep a sufficient amount of absorbent material on hand to replace the amount of installed absorbent material plus a reserve to handle emergencies.

h. *Transportation.* A Traffic Impact Analysis has been completed for the proposed expansion. The proposed mall expansion with the inclusion of the proposed mitigation measures is in conformance with both the City Transportation Los Policy and the Congestion Management Program. All traffic mitigation measures shall be designed to the satisfaction of the Director of Public Works prior to occupancy. The project is required to construct the following traffic mitigation measures:

1.) Add a separate right turn lane on eastbound Quimby Road as it approaches Capitol Expressway.

i. *Street Improvements*.

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

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

3.) Install handicap ramps at opposite returns and pork chop islands across Eastridge Way and Eastridge Lane at Tully Road.

4.) Improve the public streets to the satisfaction of the Director of Public Works.

5.) 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.

j. *Municipal Water.* In accordance with City Ordinance #23975, Major Water Facilities Fee is due and payable. Contact Tim Town at (408) 277-3671 for further information.

k. *Reclaimed Water Irrigation Systems.* Pursuant to San José Municipal Code, Section 15.10.480, irrigation systems for all landscaped areas in excess of 10,000 square feet, unless specifically exempted by the Director of Planning, shall be designed and installed to allow the current and future use of reclaimed water to the satisfaction of the Director of Public Works.

l. *Construction Agreement.* The applicant will be required to obtain a Public Works Clearance prior to the issuance of a Building Permit. The clearance will 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.

29. **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, CP02-047, 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).

30. **Fire Department Requirements.** The San Jose Fire Department has reviewed the plans as submitted with the following requirements to be met to the satisfaction of the Fire Chief:

a. *Fire Flow.* Required fire flow for the site is 4,500 G.P.M. or as otherwise approved in writing by the Fire Chief. The needed fire flow shall be provided from a minimum of 5 hydrants and shall be spaced apart on average 250-feet from the proposed project. Fire flow may be reduced upon construction of a four-hour wall, without openings, as per the adopted fire code and subject to review by the Fire Department.

b. *Fire Hydrants and Driveways.* Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by Protection Engineering Division of the Fire Department (408) 277-5357. All existing and new fire hydrants shall be at least 10 feet from all driveways. All structures shall be located wholly within 450-feet (road distance) of an accessible standard street hydrant.

c. *Fire Alarm System.* Any assembly use type occupancy with an occupant load of 300 or more shall be provided with an approved fire alarm system per the Uniform Building and Fire Code, 1994 edition. All buildings classified as an A2.1 occupancy shall be provided with an approved fire alarm system. An area separation shall not define separate buildings as per UFC 1007.2.1.2, 1994 edition. Voice communication and public-address systems shall also be provided with an approved emergency power source.

d. *Fire Extinguishing System(s).* All buildings exceeding 6,200 square feet shall be provided with an approved automatic fire extinguishing system(s) as per the adopted San Jose Municipal Code. Systems serving more than 100 sprinklers shall be supervised by a remote alarm system.

All alternate means of protection shall be reviewed by the Fire Department. Alter the sprinkler system as needed by new partitions, floors and ceilings. Plans and a permit application shall be submitted to the San Jose Fire Department's Bureau of Fire Prevention for review and approval before altering the system. A separate inspection will be required before the final fire inspection can be scheduled. Call (408) 277-4656 for more information.

e. *Facilities for Emergency Vehicle Access.* Roads and/or driveways shall have a minimum clear width of 20 feet. Minimum turning radius shall be 30 feet inside and 50 feet outside. A bulb or hammerhead turn-around shall be provided at the end of all dead-end driveways over 150 feet in length. Minimum vertical clearance shall be 14 feet. All interior ingress and egress median dividers shall be recessed a minimum of 20 feet for emergency vehicle accessibility per the adopted Fire Code.

f. *Wood Framing Stage.* Approved access road(s) and hydrant(s) shall be provided once wood framing is available at site or provide an alternate means of water suppression subject to the approval of the Fire Department. Obtain permit and pay applicable fees prior to the installation. Contact the San Jose Fire Department's Fire Protection Systems Section at (408) 277-8756.

g. *Exit Doors.* All required exit doors shall be provided with approved panic hardware in accordance with Section 2501.8.2 of the Uniform Fire Code.

h. *Fire Lanes.* Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided.

i. *Street Numbers.* Street numbers shall be visible day and night from the nearest street, either by means of illumination or by the use of reflective materials.

31. **Loading Hours.** All loading operations shall be limited to the hours between dawn and dusk.

32. **Alcohol Sales.** This permit does <u>not</u> include approval for the off-sale of alcoholic beverages beyond any previous approvals. This permit does not preclude future off-sale approvals.

33. **Amplified Sound.** All amplified sound shall be contained within the buildings and the buildings shall be adequately insulated to prevent sound from emanating outside. Incidental music associated with outdoor dining areas shall not be subject to this requirement.

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

35. **Discretionary Review.** The Director of Planning maintains the right of discretionary review of requests to alter or amend structures, conditions or restrictions of this Conditional Use Permit incorporated by reference in this Permit in accordance with Section 20.44.200 of the San José Municipal Code.

36. **Outdoor Special Events.** A maximum of ten (10) Outdoor Private Property Special Events per calendar year that do not meet the requirements for an Event Permit are allowed as a part of this Conditional Use Permit. Each Special Event is required to secure an approved Permit Adjustment to the satisfaction of the Director of Planning, no later than one week prior to each Special Event. All Special Events shall comply with the Conditions for Issuance of Permits for Outdoor Private Property (Section 20.80.1520), Conduct of Outdoor Private Property (Section 20.30.1530) and Responsibility for Compliance (Section 20.80.1540) as included in the San José Municipal Code, or as amended unless otherwise indicated in this permit. The following requirements shall be met:

a. Temporary uses shall be placed entirely outside of the flight path, as defined by the Airport Land Use Commission (ALUC). No portion of a temporary use may be located between the mall structure and Tully Road.

b. No more than one Special Event shall occur within any one-month period.

c. No Special Events shall occur during the period one-week prior to and immediately following the Thanksgiving and Christmas holidays.

d. The hours of the event shall be consistent with the business hours of Eastridge Mall. Set-up activities shall not commence before 7:00 a.m. Breakdown activities shall not extend later than 10:30 p.m. The public shall be cleared from the site within 30 minutes of shut down.

e. The maximum number of vehicle related (e.g. automobile, recreational vehicle or boat) Special Events shall be limited to a maximum of five (5) per calendar year.

f. In no case shall any equipment, tents or vehicles be allowed on existing perimeter landscaping.

g. This permit does not preclude the ability for additional Special Events to be approved by either an Event Permit (through the Conventions, Arts & Entertainment Department (CAE)) or a subsequent Special Use Permit.

37. **Adjustments Required.** The developer shall secure and agree to implement a Permit Adjustment or individual Permit Adjustments that addresses the following project design issues to the satisfaction of the Director of Planning:

a. *Non-mall Outbuildings.* A comprehensive plan set shall be provided which addresses all aspects of the site design and architectural details for the two outbuildings located at the southeast corner of the subject site and for the one outbuilding located to the southeast of the movie theater across the ring road.

b. *Tenant Improvements.* Individual outside facing mall tenants shall provide colors, materials and signage details.

c. *Pedestrian Connection.* A tree-lined pedestrian connection shall be constructed between the mall and the transit center. Plans for the connection shall be submitted within 60-days of VTA approval of a final design for the new transit center.

38. **Subsequent Permits Required.** The developer shall secure and agree to implement a Conditional Use Permit Amendement or Amendments to provide location, site design and architectural details for the two outbuildings located at the northwest corner of the subject site.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.

2. **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.

c: Engineering Services