



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Rosalynn Hughey

SUBJECT: SEE BELOW

DATE: May 31, 2018

COUNCIL DISTRICT: 8

SUBJECT: FILE NO. PDA79-094-02: PLANNED DEVELOPMENT PERMIT AMENDMENT TO ALLOW THE OFF-SALE OF ALCOHOL (BEER AND WINE) AND EXTERIOR MODIFICATIONS (OUTDOOR SEATING) IN AN EXISTING 30,130-SQUARE FOOT COMMERCIAL TENANT SPACE. FILE NO. ABC18-001: DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY FOR THE OFF-SALE OF ALCOHOL (BEER AND WINE) FOR A PROPOSED RETAIL USE ON A 17.4-GROSS ACRE SITE, ON THAT CERTAIN REAL PROPERTY SITUATED IN THE A(PD) PLANNED DEVELOPMENT ZONING DISTRICT, LOCATED ON THE NORTH SIDE OF EAST CAPITOL EXPRESSWAY, APPROXIMATELY 280 FEET EASTERLY OF SILVER CREEK ROAD (1771 EAST CAPITOL EXPRESSWAY)

RECOMMENDATION

The Planning Commission voted 4-0-3 (Commissioners Abelite, Pham, and Bit-Badel absent) to recommend that the City Council:

1. Make the required findings for the Determination of Public Convenience or Necessity for the proposed off-sale use.
2. Adopt a resolution approving the Planned Development Permit Amendment and Determination of Public Convenience or Necessity for File Nos. PDA79-094-02 and ABC18-001 to allow the off-sale of alcohol (beer and wine) for a proposed retail use and exterior modifications for outdoor seating on a 17.4-gross acre site at the north side of East Capitol Expressway, approximately 280 easterly of Silver Creek Road (1711 East Capitol Expressway).

OUTCOME

If the City Council adopts the resolution, the applicant would be able to operate a retail establishment with the off-sale of alcohol (beer and wine) and allow exterior modifications (outdoor seating) to an approximately existing 30,130-square foot commercial tenant space.

BACKGROUND

On May 23, 2018, the Planning Commission considered the proposed Planned Development Permit Amendment and Determination of Public Convenience or Necessity. This item remained on the Planning Commission's Consent Calendar. No members of the public requested to speak on this item, and there was no discussion by the Commissioners.

The Planning Commission voted 4-0-3 (Commissioners Abelite, Pham, and Bit-Badel absent) to forward a recommendation to the City Council to make the required findings for the significant and overriding public benefit of the proposed use, and approve the adoption of the resolution for the Planned Development Permit Amendment and Determination of Public Convenience or Necessity for the proposed project.

ANALYSIS

A complete analysis of the issues regarding the project are contained in the attached Planning Commission Staff Report. Staff has updated Condition 15 of the draft Resolution to reflect the allowed loading activities during business hours from 7:00 a.m. to 10:00 p.m., as described in the Staff Report and shown in the Revised Exhibit of Condition 15 for the Draft Resolution attached to this memorandum.

EVALUATION AND FOLLOW-UP

If the City Council approves the Planned Development Permit Amendment and Determination of Public Convenience or Necessity, the applicant would be able to operate a retail establishment with the off-sale of alcohol (beer and wine) and construct outdoor seating for the shopping plaza in a 30,130-square foot commercial tenant space.

PUBLIC OUTREACH

Staff followed Council Policy 6-30: Public Outreach Policy to inform the public of the project. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

COORDINATION

Preparation of this memorandum was coordinated with the City Attorney's Office.

CEQA

Under the provisions of Section 15301 for Existing Facilities of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, the project is found to be exempt from the environmental review requirements of Title 21 of the San Jose Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The key consideration is whether the project involves negligible or no expansion of an existing use.

The proposed project would occupy a vacant tenant space in an existing neighborhood shopping center with over 100,000-square feet designated for typical commercial uses. The proposed off-sale of alcohol would be incidental to a future grocery store located in an existing structure. The proposed use would not require expansion of the building, and the proposed exterior seating would be a minor addition to the existing structure. The proposed retail use of a grocery store meets the vehicle parking requirements. The existing structure is consistent with the height, setback, and loading requirements of the A(PD) Planned Development Zoning District. Therefore, a CEQA exemption can be issued under Section 15301.

/s/

ROSALYNN HUGHEY, SECRETARY
Planning Commission

For questions please contact Ned Thomas, Division Manager, at (408) 793-5302.

Attachment: Planning Commission Staff Report
Revised Exhibit of Condition 15 of the Draft Resolution



PLANNING COMMISSION STAFF REPORT

File Nos.	PDA79-094-02 and ABC18-001
Applicant:	Sprouts Farmers Market
Location	1771 East Capitol Expressway
Existing Zoning	A(PD) Planned Development (File No. PDC77-152)
Historic Resource	No
Annexation Date:	October 21, 1966 (Evergreen No. 6)
CEQA:	Exempt per CEQA Guidelines Section 15301 for Existing Facilities

APPLICATION SUMMARY:

- Planned Development Permit Amendment (PDA79-094-02)** to allow the off-sale of alcohol (beer and wine) and exterior modifications (outdoor seating area) in an existing 30,130-square foot commercial tenant space.
- Determination of Public Convenience or Necessity (ABC18-001)** for the off-sale of alcohol (beer and wine) for a proposed retail use, on a 17.4-gross acre site

RECOMMENDATION:

Staff recommends that the Planning Commission recommend that the City Council **adopt** a resolution approving the proposed Planned Development Permit Amendment and Determination of Public Convenience or Necessity based upon the facts and findings in this staff report and the attached draft Resolution.

PROJECT DATA

GENERAL PLAN CONSISTENCY	
General Plan Designation	Regional Commercial <input checked="" type="checkbox"/> Consistent <input type="checkbox"/> Inconsistent
Consistent Policies	LU-4; LU-4.2; LU-5.1; LU-5.10

SURROUNDING USES			
	General Plan Land Use	Zoning	Existing Use
North	Residential Neighborhood Neighborhood/Community Commercial	R-1-8 Single-Family Residence District CP Commercial Pedestrian District	Single-family detached residences and commercial shopping center

South	Neighborhood/Community Commercial	A(PD) Planned Development (File No. PDC87-008)	Commercial Shopping Center
East	Neighborhood /Community Commercial Residential Neighborhood	A(PD) Planned Development and R-1-8(CL) Single-Family Residence District (File No. PDC78-128)	Commercial uses and Single-family detached residences
West	Neighborhood/Community Commercial	A(PD) Planned Development (File No. PDC04-008) and LI(PD) Planned Development (File No. PDC72-100)	Commercial shopping center

RELATED APPROVALS

Action	
10/21/1966	Site annexed into the City of San José (Evergreen No. 6)
11/29/1977	Planned Development Rezoning (File No. PDC77-152) to allow for the development of approximately 260,000 square feet of commercial uses on an approximately 24.7-gross acre site. (The proposed project is a portion of the PDC77-152 site).
04/03/1980	Planned Development Permit (File No. PD79-094) to allow for the development of the "Silver Creek Plaza" including up to 197,500 square feet of commercial building area.
10/10/2017	Planned Development Major Permit Adjustment (File No. AD17-956) for a new façade change and tenant improvements to the existing grocery store to facilitate a new tenant.

PROJECT DESCRIPTION AND SITE LOCATION

On January 10, 2018, the applicant, Sprouts Farmers Market, applied for a Planned Development Permit Amendment and a Determination of Public Convenience or Necessity (PCN) to allow the off-sale of alcohol (beer and wine) and exterior modifications (outdoor seating area) to an existing 30,130 -square foot commercial tenant space in the A(PD) Planned Development Zoning District (File No. PDC77-152) on 17.4-gross acre commercial center site. The proposed project would facilitate a new Sprouts Farmers Market location in the existing shopping center. The proposed outdoor seating area, consisting of twelve fixed seats and three fixed tables located east of the tenant space's entrance, would be for the use of the Silver Creek Plaza shopping center. A State Alcoholic Beverage Control (ABC) Type 20 License is required for the sale of beer and wine for consumption off the premises where items are sold. A Determination of Public Convenience or Necessity is needed because the proposed use would result in an over-concentration of the off-sale licenses in the project's census tract 5033.05. The census tract allows up to three off-sale licenses; currently the census tract is over-concentrated with five off-sale licenses. On-site consumption of the beer and wine would not be permitted within the proposed outdoor seating area.

The project site is located on the north side of East Capitol Expressway, approximately 280 feet easterly of Silver Creek Road, at 1771 East Capitol Expressway (See Figure 1). Land uses surrounding the site include a neighborhood shopping center with a grocery store to the north, the Guadalupe River to the northeast with single-family detached residences located across the Guadalupe River, the Santa Clara Valley Water District percolation ponds to the east, an elevated portion of State Highway Route 85 to the south, and a variety of large and small retail and commercial uses to the west. The project site is located 146 feet from the nearest residential lot and is adjacent to commercial uses. Additionally, the subject project is located in the East Capitol Express/Silver Creek Road Urban Village boundary. The Envision San José 2040 General Plan identifies this area as a Horizon Three Urban Village and a designated growth area. Projects that propose commercial uses, may proceed ahead of the timeline for the approval of the Urban Village Plan.

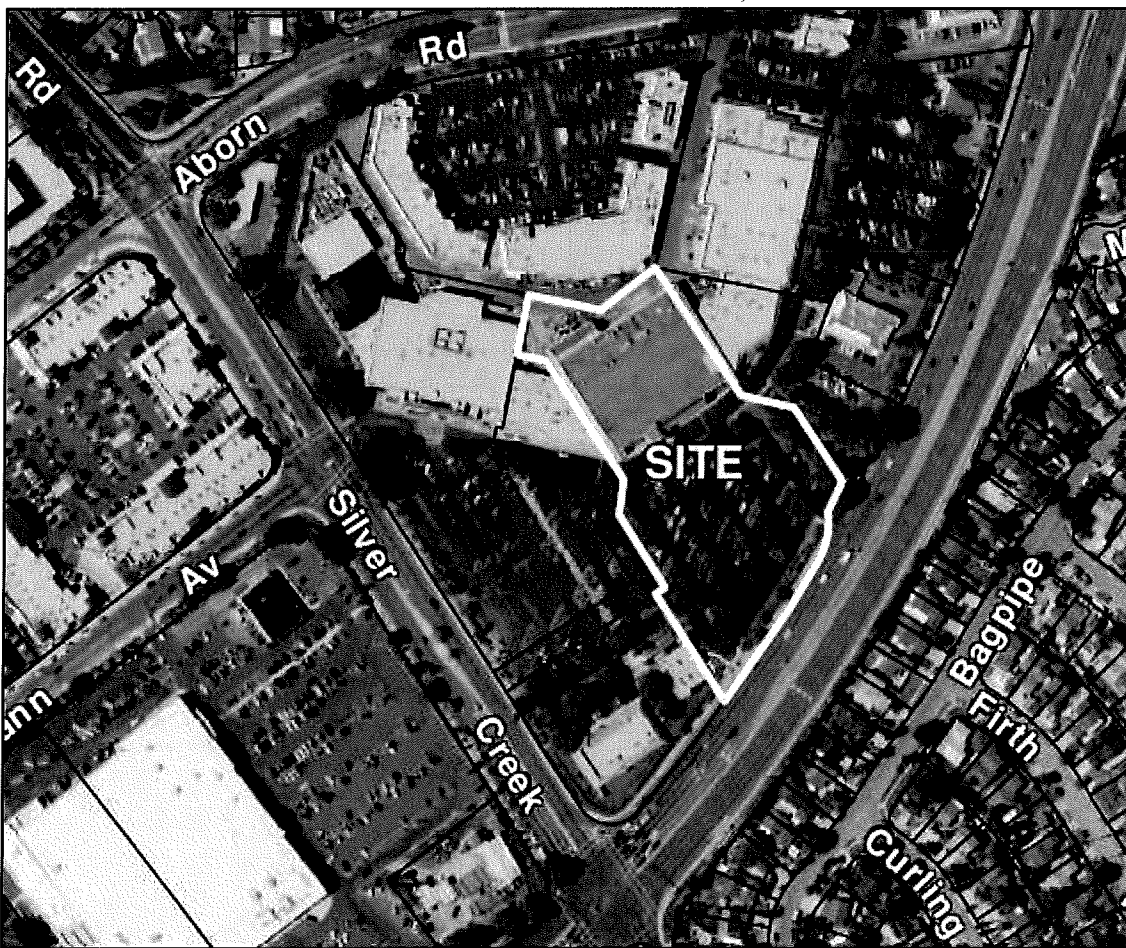


Figure 1: Aerial of Site Location and Surrounding Area

The project site is a 30,130-square foot vacant tenant space located within the existing 197,500 square foot Silver Creek Plaza Shopping Center. The tenant space was previously occupied by a Safeway grocery store with an ABC Type 21 liquor license. The shopping center is a mix of existing retail, restaurants, and commercial tenants, and includes a paved parking lot with 857 spaces. Access to the shopping center is from one drive driveway on Capitol Expressway, two driveways on Aborn Road, and three driveways on Silver Creek Road.

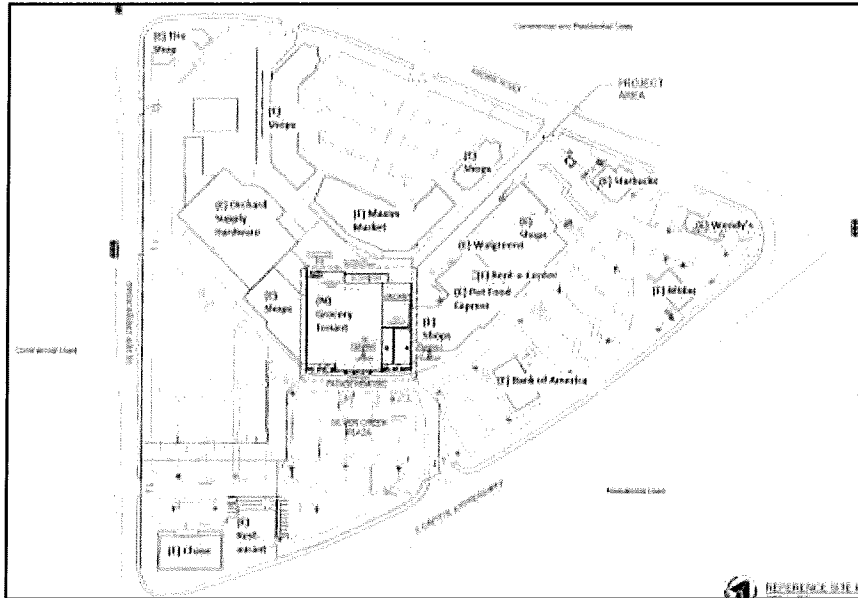


Figure 2: Site Plan of Silver Creek Plaza Shopping Center

The off-sale of alcohol would consist of an approximately 220-square foot portion of the store's 17,670-square foot proposed sales area, which is approximately 1.2% of the total sales area. (See Figure 3).

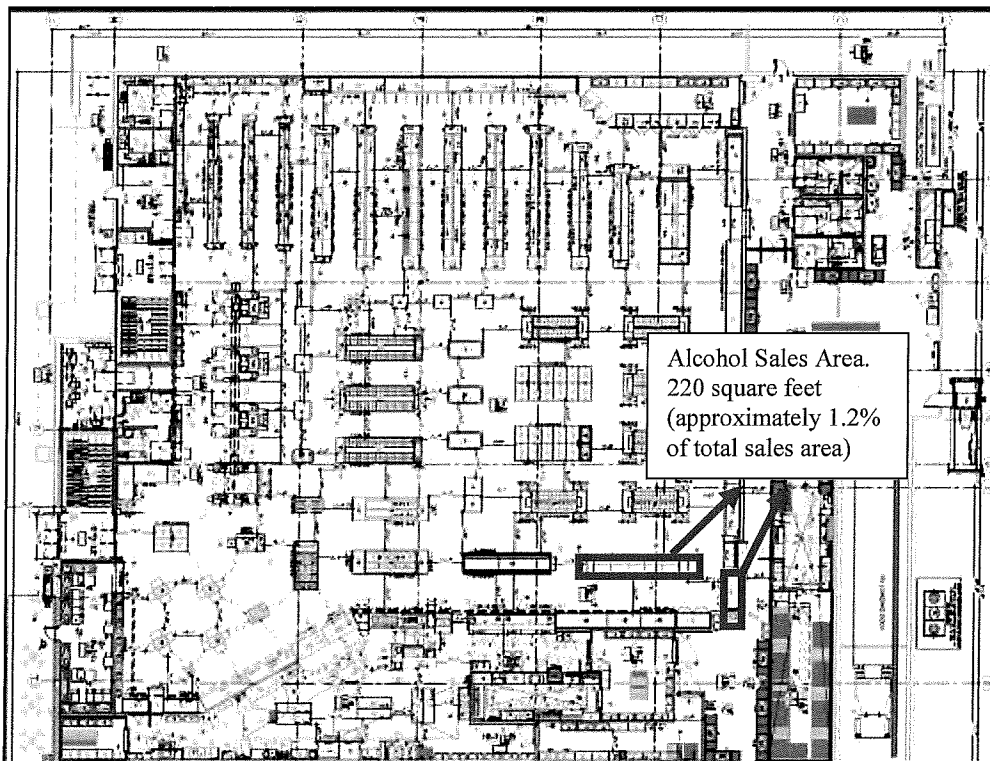


Figure 3: Proposed Floor Plan

The Planned Development Permit Amendment is required to allow the off-sale of alcohol and the exterior modifications (outdoor seating area) to an existing building. These uses are associated with the grocery store use of the 30,130-square foot Sprouts Farmers Market that would operate at this location. Pursuant to Table 20-260 in Section 20.100.220 of the San José Municipal Code, the Planning Director is generally the decision-maker for Planned Development Permits or Amendments. However, this Planned Development Permit Amendment requires Planning Commission review and recommendation because the subject site is located within a census tract that is considered over-concentrated with license for the off-sale of alcohol (i.e., the average number of off-sale licenses for the census tract is higher than the county average). For projects located in over-concentrated census tracts, a Determination of Public Convenience or Necessity is required. The project site is located in a Strong Neighborhoods Initiative (SNI) area. Therefore, the Planning Commission cannot make all the required findings, and the City Council would need to make the final determination for the proposed use. Additional analysis and details are discussed below in the findings analysis.

ANALYSIS

The proposed Planned Development Permit Amendment and Determination of Public Convenience or Necessity are analyzed with respect to conformance with: 1) Envision San José 2040 General Plan; 2) Zoning Ordinance; 3) Determination of Public Convenience or Necessity; and 4) California Environmental Quality Act (CEQA).

Envision San José 2040 General Plan Conformance

The proposed project site has an Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Neighborhood/Community Commercial (see Figure 4). This designation is intended for neighborhood serving retail, services, and commercial developments. Commercial uses in this designation should provide services and amenities for the nearby community. Additionally, the subject project is located in the East Capitol Express/Silver Creek Road Urban Village boundary. The Envision San José 2040 General Plan identifies this area as a Horizon Three Urban Village and a designated growth area. The General Plan policies allow commercial projects to develop ahead of an adopted Urban Village Plan. The policies encourage commercial uses that are consistent with the existing commercial land use designation and designs that incorporate pedestrian-focused elements into the projects.

The proposed project conforms to the following key General Plan policies:

1. Commercial Lands Goal LU-4: Establish commercial uses that maximize revenue to the City and provide employment for its residents in order to achieve fiscal sustainability and our desired jobs per employed resident ratio.

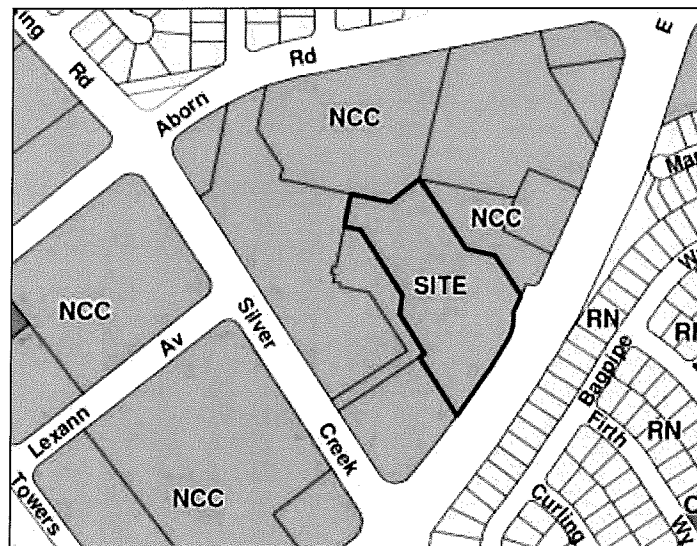


Figure 4: General Plan Designation

2. Commercial Policy LU-4.2: In order to attract shoppers from throughout the region, encourage distinctive regional-serving commercial uses on sites near the City's borders. Give preference to locations having good access to freeways and major arterials or near multimodal transit stations.
3. Commercial Policy LU-5.1: In order to create complete communities, promote new commercial uses and revitalize existing commercial areas in locations that provide safe and convenient multi-modal access to a full range of goods and services

Analysis: Sprouts Farmers Market is a full-service grocery store that specializes in farm-fresh produce purchased from local growers. The store would offer a wide variety of grocery products including bakery goods, a full-service meat counter, deli, produce, and dairy products. While this is a full-service grocery store, Sprouts has a unique business model that specializes in farm-fresh produce and an extensive mix of natural and organic foods. The proposed Sprouts Farmers Market would re-vitalize the existing shopping center by filling a commercial tenant vacancy and maintaining an employment use on the site. The proposed project is anticipated to provide up to 100 jobs. Additionally, the proposed project would enhance the pedestrian area with the addition of an outdoor seating area. The proposed Sprouts Farmers Market would complement the existing commercial uses in the shopping center, such as the Orchard Supply Hardware Store and Walgreens Drug Store, by providing another neighborhood-serving retail business. The proposed location is easily accessible from Highway 101 and Capitol Expressway. The building entrance is also within 300 feet of the Valley Transportation Authority bus line 31 and 70.

4. Commercial Policy LU-5.10: In the review of new locations for the off-sale of alcohol, give preference to establishments that offer a full range of food choices including fresh fruit, vegetables, and meat.

Analysis: The full-service grocery store would provide a wide range of groceries that serve the daily necessities of the nearby community. The grocery store would occupy a tenant space recently vacated by another grocery store. The proposed off-sale of alcohol would allow the grocery store to increase its convenience for the community and would economically benefit the shopping center. The off-sale of alcohol use would offer patrons of the store to a wide variety of beer and wine options. The percentage of the floor area dedicated to the off-sale of alcohol would be 1.2% (220-square foot portion of the store's 17,670-square foot sales area) of the total sales area and therefore, reasonably balanced with the grocery goods provided.

Zoning Ordinance Conformance

Land Use

This site is in the A(PD) Planned Development Zoning District (File No. PDC77-152). The existing shopping center conforms to the Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Neighborhood/ Community Commercial (See Figure 5). The PD Zoning's Development Standards permit retail uses.

The initial decision making body for a Planned Development Permit Amendment is the Director of Planning. However, since the State Department of Alcohol and Beverage Control (ABC) requires a Determination of Public Convenience or Necessity (PCN), the PCN determination is made by the Planning Commission per Section 6.84 of the San José Municipal Code. As a result, the Planned

Development Permit Amendment and PCN are considered concurrently by the Planning Commission. If the Planning Commission's decision is appealed, or the Planning Commission is unable to make all the requisite findings related to the PCN, the concurrent applications would then be addressed at a public hearing by the City Council.

Parking

The Development Standards for this Planned Development Zoning require a parking ratio per Section 9106 of the 1977 Zoning Ordinance; one parking space per 200 square feet of retail and commercial floor area. The shopping center has a total of 857 parking spaces of which 170 parking spaces are allocated to the proposed project's tenant space.

The project, which as a full-service grocery store is similar to the previous tenant's use, would occupy an existing tenant space within the larger shopping center. As the prior approval met the required parking, no additional parking is required as no new square footage or change of use is proposed.

Additional Development Standards

The proposed project would occupy an existing tenant space within the Silver Creek Plaza shopping center. Development requirements for buildings on this site, such as landscaping and building location, were previously approved under Planned Development Permit (File No. PD79-094) and were found to be in conformance with the existing approved General Development Plan of the Planned Development Zoning District (File No. PDC77-152).

Noise

Pursuant to Section 20.40.600 of the Zoning Ordinance, the maximum noise level at the property line of a residential use is 55 decibels. The maximum noise level at the property line of a commercial use and other non-residential uses is 60 decibels. The proposed project would occupy an existing tenant space in a developed shopping center. The nearest residential property is approximately 450 feet from the front entrance. The loading dock for the tenant space is located behind the building and out of site from the residential properties. It is only utilized during normal hours of operations (7am to 10pm daily). Given the operations of the business located inside the existing building, the proposed project would not operate during late night hours, is located more than 450 feet away from the nearest residential property line, the project would not exceed the maximum noise levels at a residential and non-residential property line.

Findings

In order for this application to be approved, the Planning Commission must be able to articulate facts to affirm all required findings for: (A) Planned Development Permit Amendment; (B) Conditional Use Permit; (C) Off-sale of alcohol; and, (D) Determination of Public Necessity or Convenience.

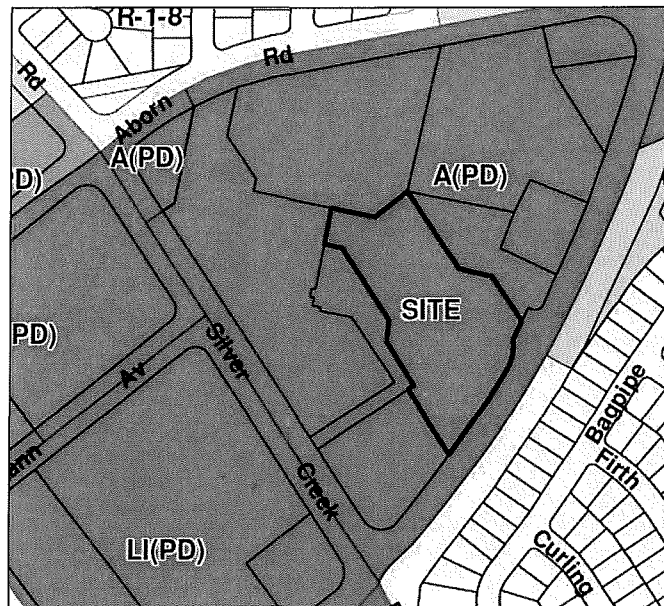


Figure 5: Zoning Designation

Required Findings for Planned Development Permit Amendment

1. The Planned Development Permit Amendment, as issued, furthers the policies of the General Plan. The Planned Development Permit Amendment, as issued, conforms in all respects to the Planned Development Zoning of the property. The planned development permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency.

The project is consistent with the Neighborhood/Community Commercial General Plan designation. The project would complement the existing commercial center and provide neighborhood-serving retail that would serve the surrounding residents. The project would occupy an existing commercial tenant space. Development requirements for the existing tenant space and building on-site, such as landscaping and building location, were previously approved under Planned Development Permit (File No. PD79-094) and were found to be in conformance with the existing approved General Development Plan of the Planned Development Zoning District (File No. PDC77-152).

2. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses onsite are appropriate, compatible and aesthetically harmonious.

The proposed project would be located within an existing tenant space that is compatible with the existing mix of uses, masses, and scale of the buildings on the subject site.

3. The environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.

Under the provisions of 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project was 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. The proposed use would be located within an existing tenant space and would involve minor modifications to the existing building including outdoor seating.

4. Amendments may be granted at the discretion of the director, planning commission on appeal, or city council as appropriate upon a finding that the amendment does not negate any findings required by Section 20.100.940.

As described above, the proposed amendment would be consistent with the General Plan and Planned Development Zoning as the use would be occupy a tenant space with a previously similar use. The project proposed amendment would be compatible with the surrounding area and would not have an unacceptable negative effect on adjacent properties.

Required Findings for Conditional Use Permit

In order to make the Conditional Use Permit findings and recommend approval to the Planning Commission, staff must determine 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

Analysis: As indicated in a Police Department Memorandum, dated January 23, 2018, (See Exhibit C), the proposed use is located in the San José Beat P4 and census tract 5033.05. The reported crime statistics are not over the 20% crime index and therefore the census tract is not considered unduly concentrated. The Police are neutral to this proposal. The proposed daily hours of operation for the Sprouts Farmers Market are from 7:00 a.m. to 10:00 p.m. daily (as stated in their operations plan, see attached); these hours are within the by-right allowances under the Municipal Code. The use would operate as a retail business and would not be considered a bar as no on-site consumption of alcohol is allowed. Therefore, this finding can be made.

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 area; and

Analysis: The proposed project would occupy an existing building within the Silver Creek Plaza shopping center. The tenant space's loading space is located at the rear of the building. It is shielded as it is on the backside of two commercial buildings. The exterior seating will be located east of the grocery store's entrance and will conform to development standards set forth in the General Development Plan of the Planned Development Zoning and approved Planned Development Permit. All other existing development features, including setbacks, loading facilities, landscaping, and parking, etc., are sufficient for the proposed use and comply with the requirements of the previously approved Planned Development Permit for this site (PD79-094). This finding can be made.

3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
 - b. By other public or private service facilities as are required.

Analysis: Access to the subject site is provided by Capitol Expressway, Silver Creek Road, and Aborn Road, which are major public streets. The Silver Creek Plaza shopping center is located near Highway 101. The site is also within 300 feet of Valley Transportation Authority bus routes Nos. 31 and 70. This finding can be made.

Required Findings for the Off-Sale of Alcohol

A Conditional Use Permit may be issued pursuant to the applicable provisions of the Zoning Ordinance (Section 20.80.900) for the off-sale of any alcoholic beverages only if the decision-making body first makes the following three findings, if applicable, to the off-sale of alcoholic beverages:

1. For such use at a location closer than 500 feet from any other use involving the off-sale of alcoholic beverages, situated either within or outside the City, that the proposed location of the off-sale of alcoholic beverages use would not result in a total of more than four

establishments that provide alcoholic beverages for off-site consumption within a one-thousand 1,000-foot radius from the proposed location.

*Analysis: There is one use involving off-sale of alcoholic beverages within a 500-foot radius of the proposed project (see Figure 5) and in total there are four uses involving the off-sale of alcoholic beverages within a 1,000-foot radius of this site. These include a liquor store (Maxim Market) within 500-feet of the site, a major retail store (Target), a convenience store (Stop n' Save), and another liquor store (Aborn Liquor) within the 1,000-foot buffer. This use would be the fifth off-sale of alcoholic beverages location within 1,000 feet. Therefore, this finding **cannot** be made, and the use can only be approved if the Council can make the positive findings in Sections 2 and 3 below (See Municipal Code sections 20.80.900.A.2 and A.3).*

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

Analysis: The proposed location of the off-sale of alcoholic beverages would result in a total of five establishments that provide alcoholic beverages for off-site consumption within a 1,000-foot radius from the project site. However, this buffer is measured from the project lot boundaries rather than the tenant space for the proposed use. Therefore, the 1,000-foot buffer area, is in addition to the approximate 325-foot distance between the entrance of the tenant space to the closest property line. Thus, the tenant space is located more than 1,300 feet from the furthest off-sale alcohol use, the Stop n' Save liquor store.

*Additionally, the proposed off-sale would enhance the convenience of the proposed Sprouts Farmers Market for the surrounding community, and is intended to be incidental and ancillary to the full-service grocery store. As such this use would not be detrimental to the health, safety morals, or welfare of persons residing or working in the surrounding area. Based upon these facts, the project conforms to this requirement and this finding **can** be made.*

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

Analysis: The proposed use is not within 500 feet of a school, day care center, public park, social services agency, or residential care or service facility. Although the closest residential lot is approximately 146 feet from the shopping center property line, the front door of the tenant space is located approximately 300 feet from the shopping center property line and approximately 450 feet from the nearest residential zoned property east

of Capitol Expressway. Additionally, the residential property is separated from the proposed site by a block wall without pedestrian openings and Capitol Expressway, an eight-lane expressway with a median. Therefore, this finding can be made.

Requirements for Determination of Public Convenience or Necessity

Under California Business and Professions Code Sections 23958 and 23958.4, the Department of Alcohol Beverage Control (ABC) must deny an application for a liquor license “if issuance of that license would tend to create a law enforcement problem, or if the issuance would result in or add to an undue concentration of liquor licenses in the area,” unless the City determines that the public convenience or necessity would be served by the issuance of the license (Determination of Public Convenience or Necessity). An “undue concentration” is defined as follows:

1. The premises of the proposed license are located in an area that has 20 percent greater number of reported crimes than the average number of reported crimes for the City as a whole, or
2. The premises of the proposed license are located in a census tract where the ratio of existing retail off-sale licenses to population in the census tract exceeds the ratio in the County as a whole.

The project site is located within a census tract where the ratio of the existing retail off-sale licenses to the population in the census tract exceeds the ratio in the County as a whole (see Figure 6). Therefore, for the ABC Department to be able to issue a license for this off-sale use, the City must grant a Determination of Public Convenience or Necessity. The analysis for the determination of public convenience and necessity is based on the required findings identified in Title 6 of the San José Municipal Code.



Figure 6: Nearby Alcohol Off-sales

Chapter 6.84 of Title 6 identifies the process and findings related specifically to the off-sale of alcohol and specifies that a PCN can be issued only after making all of the findings specified below (see San José Municipal Code section 6.84.030):

1. The proposed use is not located within a Strong Neighborhood Initiative (SNI) 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 based upon quantifiable information that the proposed use:
 - a. Would be detrimental to the public health, safety, or welfare of persons located in the area; or
 - b. Would increase the severity of existing law enforcement or public nuisance problems in the area; and

*Analysis: The proposed project is located in the West Evergreen SNI. Therefore, this finding **cannot** be made.*

2. The proposed use would not lead to more than four uses with off-premises sale of alcoholic beverage within a one thousand-foot radius from the exterior of the building containing the proposed use; and

*Analysis: The proposed use would result in more than four off-sale establishments in a 1,000-foot radius. This would be the fifth off-sale establishment; therefore, this finding **cannot** be made.*

3. The proposed use would not be located within 500 feet of a school, day care center, public park, social services agency, or residential care or service facility, or within one hundred fifty feet of a residence; and

*Analysis: The proposed use is not within 500 feet of a school, day care center, public park, social services agency, or residential care or service facility. Although the entrance of the tenant space is approximately 450 feet from the nearest residentially zoned property, the project site is within 150 feet of a residence. Therefore, this finding **cannot** be made.*

4. Alcoholic beverage sales would not represent a majority of the proposed use; and

*Analysis: Alcoholic beverage sales would not represent a majority of the proposed use. The proposed off-sale would only occupy approximately 1.2% of the total sales area (220-square foot portion of the store's 17,670-square foot sales area). Therefore, this finding **can** be made.*

5. At least one of the following additional findings:

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

*The census tract is not unusually configured. This finding **cannot** be made.*

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

This finding can be made. The off-premises sale of alcoholic beverages would enhance the service of the proposed grocery store and contribute to the vitality of the existing shopping center. The grocery store would operate within normal hours and would not significantly impact public health or safety.

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

The census tract has a population comparable to the surrounding census tracts and allows three off-sale license. The proposed project and beer and wine off-sale (Type 20) license would be the sixth off-sale license in the over-concentrated census tract. This finding cannot be made.

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

The proposed project is a full-service grocery store which would provide a unique and large selection of fresh produces, groceries, wine and beer. The off-site sale of beer and wine would enhance the shopping convenience for patrons and residents. This finding can be made.

Analysis: Given the above-stated analysis, all but one of the findings for PCN cannot be made for the proposed off-sale of alcohol:

- *The project site is located within the West Evergreen SNI (Finding 9a);*
- *The project would result in more than four off-sale establishments within a 1,000-foot radius of the project site (Finding 9b);*
- *The project is within 150 feet of a residence (Finding 9c); and*
- *Over-concentration within the census tract.*

Based on all of the foregoing, the City Council would need to find that a significant and overriding public benefit or benefits would be provided by the proposed use. The off-sale of alcohol meets the General Plan goals and policies of (i) providing a walkable location for grocery stores that offer a broad array of goods to the community; (ii) jobs, employment, and economic development by activating a vacant tenant space within an existing shopping center; (iii) giving preference to off-sale of alcohol to stores that also provide fruits, vegetables, and healthy products; and (iv) implementation of conditions to ensure the off-sale of alcohol will not be detrimental to the community or to public health and safety.

Therefore, City Council approval is required for the proposed use. The Planning Commission must make a recommendation on the proposed use to the City Council and the City Council may issue a determination in connection with an application for a license from the California Department of Alcoholic Beverage Control for the off-premises sale of alcoholic beverages where it can make a determination that not all of the required findings set forth above can be made, and when the Council identifies and finds that a significant and overriding public benefit or benefits will be provided by the proposed use. The Council can identify and find that significant and overriding public benefit will be provided by the proposed use.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act, 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 (CEQA). The Section 15301(a) (Existing Facilities) exemption applies to the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. Examples include but are not limited to: a) interior or exterior alteration involving such things as interior partitions, plumbing, and electrical conveyance. The proposed off-sale of alcohol would be incidental to a future grocery store located in an existing structure. The proposed use would not require expansion of the building and the proposed exterior seating would be a minor addition to the existing structure.

PUBLIC HEARING NOTIFICATION

Staff followed Council Policy 6-30: Public Outreach Policy in order to inform the public of the proposed project. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

Project Manager: Cassandra van der Zweep

Approved by: *[Signature]* for

Rosalynn Hughey

Director of Planning, Building & Code Enforcement

Date: 5/15/10

Attachments:
Exhibit A: Draft Resolution
Exhibit B: Reduced Plan Set
Exhibit C: Police Department Memorandum
Exhibit D: Operations Plan

Owner:	Applicant:
WRI Southern Industrial Pool, LLC 2600 Citadel Plaza Drive Houston, Texas 77008	Sprouts Farmers Market 5455 East High Street, Suite 111 Phoenix, Arizona, 85054
Contact	
Terri Dickerhoff 5272 Huckleberry Oak Street Simi Valley, California 93063	

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A PLANNED DEVELOPMENT PERMIT AMENDMENT TO ALLOW THE OFF-SALE OF ALCOHOL (BEER AND WINE) AND EXTERIOR MODIFICATIONS (OUTDOOR SEATING) FOR AN EXISTING 30,130-SQUARE FOOT COMMERCIAL TENANT SPACE AND GRANTING A DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY FOR OFF-SALE OF ALCOHOL FOR A PROPOSED RETAIL USE (SPROUTS FARMERS MARKET) IN AN EXISTING SHOPPING CENTER, ON AN APPROXIMATELY 17.4-GROSS ACRE SITE LOCATED ON THE NORTH SIDE OF EAST CAPITOL EXPRESSWAY APPROXIMATELY 280 FEET EASTERLY OF SILVER CREEK ROAD (1771 EAST CAPITOL EXPRESSWAY)

FILE NOS. PDA79-094-02 and ABC18-001

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on January 10, 2018, an application (File Nos. PDA79-094-02 and ABC18-001) was filed by the applicant, Sprouts Farmers Market, with the City of San José for a Planned Development Permit Amendment to allow the off-sale of alcohol (beer and wine) and exterior modifications (outdoor seating) for an existing 30,130-square foot commercial tenant space and granting a Determination of Public Convenience or Necessity to allow the off-sale of alcohol for a proposed retail use on an approximately 17.4-gross acre site, on that certain real property situated in the A(PD) Planned Development Zoning District and located on the north side of East Capitol Expressway approximately 280 feet easterly of Silver Creek Road (1771 East Capitol Expressway, San José, which real property is sometimes referred to herein as the "subject property"); and

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

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a hearing on said application on May 23, 2018, notice of which was duly given; and

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

WHEREAS, at said hearing, the Planning Commission made a recommendation to the City Council respecting said matter based on the evidence and testimony; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this City Council conducted a hearing on said application, 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 recommendations of the City's Planning Commission and the City's Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this City Council received in evidence a plan for the subject property entitled, "Sprouts Famers Market, Silver Creek Plaza," dated February 28, 2018, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said public hearing before the City Council was conducted in all respects as required by the San José Municipal Code and the rules of this City Council; and

WHEREAS, this City Council has heard and considered the testimony presented to it at the public hearing, and has further considered written materials submitted on behalf of the project applicant, City staff, and other interested parties;

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

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

- 1. Site Description and Surrounding Uses.** The 17.4-gross acre project site is located on the north side of East Capitol Expressway approximately 280 feet easterly of Silver Creek Road, at 1771 East Capitol Expressway. The project site is a 30,130-square foot vacant tenant space located within the existing 197,500 square foot Silver Creek Plaza Shopping Center. The tenant space was previously occupied by a Safeway grocery store with an ABC Type 21 liquor license. The shopping center is a mix of existing retail, restaurants, and commercial tenants, and includes a paved parking lot with 857 spaces. Access to the shopping center is from one drive driveway on Capitol Expressway, two driveways on Aborn Road, and three driveways on Silver Creek Road. Land uses surrounding the site include single-family detached residences and a commercial shopping center to the north, commercial uses and single-family detached residences to the south and east, and commercial uses to the west. The proposed project is located 146 feet from the nearest residential lot and is adjacent to commercial uses.
- 2. Project Description.** This project is a Planned Development Permit Amendment to allow the off-sale of beer and wine and exterior modifications (outdoor seating including twelve fixed seats and three fixed tables located east of the grocery store's entrance) for 30,130-square foot commercial tenant space and a Determination of Public Convenience or Necessity for off-sale of alcohol for a proposed Sprouts Farmers Market. Sprouts Farmers Market is a full-service grocery store specializing in offering local, farm-fresh produce and other specialty items. The proposed open outdoor seating area would provide a location for visitors of the grocery store and commercial plaza to rest; no food or drink service would be provided. The grocery store would operate from 7 am to 10 pm daily and it is anticipated to employ up to 100 people

The off-sale of alcohol would consist of an approximately 220-square foot portion of the store's 17,670-square foot proposed sales area, which is approximately 1.2% of the

total sales area. A State Alcoholic Beverage Control (ABC) Type 20 License is required for the sale of beer and wine for consumption off the premises where items are sold.

The project site's Zoning District was established through Planned Development Zoning File No. PDC77-152 on November 29, 1977 to allow for the development of an approximately 260,00-square foot commercial center. Planned Development Permit No. PD79-094 effectuated the Planned Development Zoning District and allowed the construction of "Silver Creek Plaza", including 197,5000 square feet of commercial building area. This Planned Development Permit Amendment is requested to allow the off-sale of alcohol and the exterior modifications (outdoor seating area) to an existing building within the Silver Creek Plaza.

3. **General Plan Conformance.** The proposed project site has an Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Neighborhood/Community Commercial. This designation is intended for neighborhood serving retail, services, and commercial developments. Commercial uses in this designation should provide services and amenities for the nearby community. Additionally, the subject project is located in the East Capitol Express/Silver Creek Road Urban Village boundary. The Envision San José 2040 General Plan identifies this area as a Horizon Three Urban Village and a designated growth area. The General Plan policies allow commercial projects to develop ahead of an adopted Urban Village Plan. The policies encourage commercial uses that are consistent with the existing commercial land use designation and designs that incorporate pedestrian-focused elements into the project.

The proposed project conforms to the following key General Plan policies:

- Commercial Lands Goal LU-4: Establish commercial uses that maximize revenue to the City and provide employment for its residents in order to achieve fiscal sustainability and our desired jobs per employed resident ratio.
- Commercial Policy LU-4.2: In order to attract shoppers from throughout the region, encourage distinctive regional-serving commercial uses on sites near the City's borders. Give preference to locations having good access to freeways and major arterials or near multimodal transit stations.
- Commercial Policy LU-5.1: In order to create complete communities, promote new commercial uses and revitalize existing commercial areas in locations that provide safe and convenient multi-modal access to a full range of goods and services

Analysis: Sprouts Farmers Market is a full-service grocery store that specializes in farm-fresh produce purchased from local growers. The store would offer a wide variety of grocery products including bakery goods, a full-service meat counter, deli, produce, and dairy products. While this is a full-service grocery store, Sprouts has a unique business model that specializes in farm-fresh produce and an extensive mix of

natural and organic foods. The proposed Sprouts Farmers Market would re-vitalize the existing shopping center by filling a commercial tenant vacancy and maintaining an employment use on the site. The proposed project is anticipated to provide up to 100 jobs. Additionally, the proposed project would enhance the pedestrian area with the addition of an outdoor seating area. The proposed Sprouts Farmers Market would complement the existing commercial uses in the shopping center, such as the Orchard Supply Hardware Store and Walgreens Drug Store, by providing another neighborhood-serving retail business. The proposed location is easily accessible from Highway 101 and Capitol Expressway. The building entrance is also within 300 feet of the Valley Transportation Authority bus line 31 and 70.

- **Commercial Policy LU-5.10:** In the review of new locations for the off-sale of alcohol, give preference to establishments that offer a full range of food choices including fresh fruit, vegetables, and meat.

Analysis: The full-service grocery store would provide a wide range of groceries that serve the daily necessities of the nearby community. The grocery store would occupy a tenant space recently vacated by another grocery store. The proposed off-sale of alcohol would allow the grocery store to increase its convenience for the community and would economically benefit the shopping center. The off-sale of alcohol use would offer patrons of the store to a wide variety of beer and wine options. The percentage of the floor area dedicated to the off-sale of alcohol would be 1.2% (220-square foot portion of the store's 17,670-square foot sales area) of the total sales area and therefore, reasonably balanced with the grocery goods provided.

4. **Zoning Ordinance Compliance.** This Project complies with all applicable provisions of the Zoning Ordinance in that the proposed project is located in the A(PD) Planned Development Zoning District (File No. PDC77-152). The proposed project requires a Planned Development Permit Amendment to allow the proposed exterior modifications and use and a Determination of Public Convenience or Necessity for a the off-sale of alcohol.

- **Development Standards.** The proposed project would occupy an existing tenant space within the Silver Creek Plaza shopping center. Development requirements for buildings on this site, such as landscaping and building location, were previously approved under Planned Development Permit (File No. PD79-094) and were found to be in conformance with the existing approved General Development Plan of the Planned Development Zoning District (File No. PDC77-152).
- **Parking.** The Development Standards for this Planned Development Zoning require a parking ratio per Section 9106 of the 1977 Zoning Ordinance; one parking space per 200 square feet of retail and commercial floor area. The shopping center has a total of 857 parking spaces of which 170 parking spaces are allocated to the

proposed project's tenant space. The project, which as a full-service grocery store is similar to the previous tenant's use, would occupy an existing tenant space within the larger shopping center. As the prior approval met the required parking, no additional parking is required as no new square footage or change of use is proposed.

- **Noise.** Pursuant to Section 20.40.600 of the Zoning Ordinance, the maximum noise level at the property line of a residential use is 55 decibels. The maximum noise level at the property line of a commercial use and other non-residential uses is 60 decibels. The proposed project would occupy an existing tenant space in a developed shopping center. The nearest residential property is approximately 450 feet from the front entrance. The loading dock for the tenant space is located behind the building and out of site from the residential properties. It is only utilized during normal hours of operations (7am to 10pm daily). Given the operations of the business located inside the existing building, the proposed project would not operate during late night hours, is located more than 450 feet away from the nearest residential property line, the project would not exceed the maximum noise levels at a residential and non-residential property line.
5. **Environmental Review.** Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act, 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 (CEQA). The Section 15301(a) (Existing Facilities) exemption applies to the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. Examples include but are not limited to: a) interior or exterior alteration involving such things as interior partitions, plumbing, and electrical conveyance. The proposed off-sale of alcohol would be incidental to a future grocery store located in an existing structure. The proposed use would not require expansion of the building and the proposed exterior seating would be a minor addition to the existing structure.
6. **Conditional Use Permit Findings.** The City Council concludes and finds, based on the analysis of the above facts in regards to the Planned Development Permit and Determination of Public Convenience or Necessity, that:
- The proposed use at the location requested will not:
 - i. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - ii. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - iii. Be detrimental to public health, safety or general welfare; and

*Analysis: As indicated in a Police Department Memorandum, dated January 23, 2018, the proposed use is located in the San José Beat P4 area and census tract 5033.05. The reported crime statistics for Beat P3 are not over the 20% crime index and therefore the census tract is not considered unduly concentrated. The Police are neutral to this proposal. The proposed daily hours of operation for the Sprouts Farmers Market are from 7:00 a.m. to 10:00 p.m. daily (as stated in their operations plan); these hours are within the by-right allowances under the Municipal Code. The use would operate as a retail business and would not be considered a bar as no on-site consumption of alcohol is allowed. Therefore, this finding **can** be made.*

- 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 area; and

*Analysis: The project will occupy an existing building within the Silver Creek Plaza shopping center. The tenant space's loading space is located at the rear of the building. It is shielded as it is on the backside of two commercial building. The exterior seating will be located east of the grocery store's entrance and will conform to development standards set forth in the General Development Plan of the Planned Development Zoning and approved Planned Development Permit. All other existing development features, including setbacks, loading facilities, landscaping, and parking, etc., are sufficient for the proposed use and comply with the requirements of the previously approved Planned Development Permit for this site (PD79-094). This finding **can** be made.*

- The proposed site is adequately served:
 - i. 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
 - ii. By other public or private service facilities as are required.

*Analysis: Access to the subject site is provided by Capitol Expressway, Silver Creek Road, and Aborn Road, which are major public streets. The Silver Creek Plaza shopping center is located near Highway 101. The site is also within 300 feet of Valley Transportation Authority bus routes Nos. 31 and 70. This finding **can** be made.*

7. **Required Findings for Off-Sale of Alcohol.** A Conditional Use Permit may be issued pursuant to the applicable provisions of the Zoning Ordinance for the off-sale of any alcoholic beverages only if the decision-making body first makes the following three findings, if applicable, to the off-sale of alcoholic beverages:

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

*Analysis: There is one use involving off-sale of alcoholic beverages within a 500-foot radius of the proposed project (see Figure 5) and in total there are four uses involving the off-sale of alcoholic beverages within a 1,000-foot radius of this site. These include a liquor store (Maxim Market) within 500-feet of the site, a major retail store (Target), a convenience store (Stop n' Save), and another liquor store (Aborn Liquor) within the 1,000-foot buffer. This use would be the fifth off-sale of alcoholic beverages location within 1,000 feet. Therefore, this finding **cannot** be made, and the sue can only be approved if the Council can make the positive findings in Section 2 and 3 below (See Municipal Code section 20.80.900.A.2 and A.3).*

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

Analysis: The proposed location of the off-sale of alcoholic beverages would result in a total of five establishments that provide alcoholic beverages for off-site consumption within a 1,000-foot radius from the project site. However, this buffer is measured from the project lot boundaries rather than the tenant space for the proposed use. Therefore, the 1,000-foot buffer area is in addition to the approximate 325-foot distance between the entrance of the tenant space and to the closest property line. Thus, the tenant space is located more than 1,300 feet from the furthest off-sale alcohol use, the Stop n' Save liquor store.

Additionally, the proposed off-sale would enhance the convenience of the proposed Sprouts Farmers Market for the surrounding community, and is intended to be incidental and ancillary to the full-service grocery store. As such this use would not be detrimental to the health, safety morals, or welfare of persons residing

or working in the surrounding area. Based upon these facts, the project conforms to this requirement and this finding can be made.

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

Analysis: The proposed use is not within 500 feet of a school, day care center, public park, social services agency, or residential care or service facility. Although the closest residential lot is approximately 146 feet from the shopping center property line, the front door of the tenant space is located approximately 300 feet from the shopping center property line and approximately 450 feet from the nearest residential zoned property east of Capitol Expressway. Additionally, the residential property is separated from the proposed site by a block wall without pedestrian openings and Capitol Expressway, an eight-lane expressway with a median. Therefore, this finding can be made.

8. Requirements for Determination of Public Convenience or Necessity. Under California Business and Professions Code Sections 23958 and 23958.4, the Department of Alcohol Beverage Control (ABC) must deny an application for a liquor license “if issuance of that license would tend to create a law enforcement problem, or if the issuance would result in or add to an undue concentration of liquor licenses in the area,” unless the City determines that the public convenience or necessity would be served by the issuance of the license (Determination of Public Convenience or Necessity). An “undue concentration” is defined as follows:

- The premises of the proposed license are located in an area that has 20 percent greater number of reported crimes than the average number of reported crimes for the City as a whole, or
- The premises of the proposed license are located in a census tract where the ratio of existing retail off-sale licenses to population in the census tract exceeds the ratio in the County as a whole.

The project site is located within a census tract where the ratio of the existing retail off-sale licenses to the population in the census tract exceeds the ratio in the County as a whole. Therefore, for the ABC Department to be able to issue a license for this off-sale use, the City must grant a Determination of Public Convenience or Necessity. The analysis for the determination of public convenience or necessity is based on the required findings identified in Title 6 of the San José Municipal Code.

Chapter 6.84 of Title 6 identifies the process and findings related specifically to the off-sale of alcohol and specifies that a PCN can be issued only after first making all of the findings specified below (see San José Municipal Code section 6.84.030):

- a. The proposed use is not located within a Strong Neighborhood Initiative (SNI) 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 based upon quantifiable information that the proposed use:
 - i. Would be detrimental to the public health, safety, or welfare of persons located in the area; or
 - ii. Would increase the severity of existing law enforcement or public nuisance problems in the area; and

*Analysis: The proposed project is located in the West Evergreen SNI. Therefore, this finding **cannot** be made.*

- b. The proposed use would not lead to more than four uses with off-premises sale of alcoholic beverage within a one thousand-foot radius from the exterior of the building containing the proposed use; and

*Analysis: The proposed use would result in more than four off-sale establishments in a 1,000-foot radius. This would be the fifth off-sale establishment; therefore, this finding **cannot** be made.*

- c. The proposed use would not be located within 500 feet of a school, day care center, public park, social services agency, or residential care or service facility, or within one hundred fifty feet of a residence; and

*Analysis: The proposed use is not within 500 feet of a school, day care center, public park, social services agency, or residential care or service facility. Although the entrance of the tenant space is approximately 450 feet from the nearest residentially zoned property, the project site is within 150 feet of a residence. Therefore, this finding **cannot** be made.*

- d. Alcoholic beverage sales would not represent a majority of the proposed use; and

*Analysis: Alcoholic beverage sales would not represent a majority of the proposed use. The proposed off-sale would only occupy approximately 1.2% of the total sales area (220-square foot portion of the store's 17,670-square foot sales area). Therefore, this finding **can** be made.*

- e. At least one of the following additional findings:

- i. The census tract in which the proposed outlet for the off-premises sale of alcoholic beverages is located is unusually configured and the proposed outlet

would act as a convenience to an underserved portion of the community without presenting a significant adverse impact on public health or safety; or

*The census tract is not unusually configured. This finding **cannot** be made.*

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

*The off-premises sale of alcoholic beverages would enhance the service of the proposed grocery store and contribute to the vitality of the existing shopping center. The grocery store would operate within normal hours and would not significantly impact public health or safety. This finding **can** be made.*

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

*The census tract has a population comparable to the surrounding census tracts and allows three off-sale license. The proposed project and beer and wine off-sale (Type 21) license would be the sixth off-sale license in the over-concentrated census tract. This finding **cannot** be made.*

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

*The proposed project is a full-service grocery store which would provide a unique and large selection of fresh produce, groceries, wine and beer. The off-site sale of beer and wine would enhance the shopping convenience for patrons and residents. This finding **can** be made.*

Analysis: Given the above-stated analysis, all but one of the findings for PCN cannot be made for the proposed off-sale of alcohol:

- *The project site is located within the West Evergreen SNI (Finding 9a);*
- *The project would result in more than four off-sale establishments within a 1,000-foot radius of the project site (Finding 9b);*
- *The project is within 150 feet of a residence (Finding 9c);*
- *Over-concentration within the census tract.*

Based on all of the foregoing, the City Council identifies and finds that a significant and overriding public benefit or benefits will be provided by the proposed use. The off-sale of alcohol meets the General Plan goals and policies of (i) providing a walkable location for grocery stores that offer a broad array of goods to the community; (i) jobs, employment,

and economic development by activating a vacant tenant space within an existing shopping center; (iii) giving preference to off-sale of alcohol to stores that also provide fruits, vegetables, and healthy products; and (iv) implementation of conditions to ensure the off-sale of alcohol will not be detrimental to the community or to public health and safety.

In accordance with the findings set forth above, this Planned Development Permit Amendment and Determination of Public Convenience or Necessity to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The 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.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the permittee fail to file a timely and valid appeal of this Planned Development Permit Amendment and Determination of Public Convenience or Necessity within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the permittee:
 - a. Acceptance of the Planned Development Permit Amendment by the permittee; and
 - b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this Permit Amendment or other approval and the provisions of Title 20 of the San José Municipal Code applicable to such Permit Amendment.
2. **Permit Expiration.** This Planned Development Permit Amendment shall automatically expire two years from and after the date of issuance hereof by the City Council, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit Amendment. The date of issuance is the date this Permit Amendment is approved by the City Council. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit Amendment in accordance with Title 20 of the San José Municipal Code. The Permit Adjustment must be approved prior to the expiration of this Permit Amendment.
3. **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 permittee 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 Regional

Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Regional Wastewater Facility 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.

4. **Conformance to Plans.** The development of the site shall conform to the approved Planned Development Permit Amendment plans entitled, "Sprouts Farmers Market, Silver Creek Plaza," dated February 28, 2018, on file with the Department of Planning, Building and Code Enforcement, as may be amended subject to City's approval, and to the San José Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the "approved plans" or the "Approved Plan Set."
5. **Use Authorization.** This Planned Development Permit Amendment and Determination of Public Convenience or Necessity authorizes the off-sale of alcohol (beer and wine, Type 20 ABC license) and exterior modifications (outdoor seating area) in an existing approximately 30,130-square foot commercial tenant space.
6. **Off-sale of Alcohol.** This Planned Development Permit Amendment authorizes the off-sale of alcohol (beer and wine) at the proposed grocery store and successors of said tenant space whereby the subsequent tenant maintains a similar use as deemed by the Director of Planning.
7. **Hours.** This facility shall be limited to operation between the hours of 6:00 a.m. to 12:00 midnight, unless a Conditional Use Permit or Planned Development Permit, as applicable, is approved by the City for other hours of operation
8. **Certificate of Occupancy.** The permittee shall obtain a Certificate of Occupancy. Procurement of a Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this Permit and the permittee'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 José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
9. **Alcoholic Beverage Control.** The off-sale of alcoholic beverages shall only be allowed in strict conformance with the requirements of the Department of Alcohol Beverage Control (ABC). The permittee shall maintain full compliance and in good standing with the Department of Alcoholic Beverage Control.
10. **Limitations on Area of Alcohol Sales.** The sale of alcohol for off-site consumption allowed by this Permit shall be limited and incidental to the primary use of a full-service grocery store. "Full service grocery store" as used herein means a retail establishment

that provides a full and wide complement of fresh produce, grains, dairy goods, and baked products, together with other food and household merchandise for general public consumption. The area in which alcoholic beverages are displayed or otherwise offered for sale shall not exceed 1.2% percent of the total floor area of the retail area that is open and accessible to the general public (i.e., excluding backroom storage and office spaces). Alcohol product displays shall not be placed outside the retail tenant space.

11. **Disturbance Coordinator.** The permittee shall implement the following:
 - a. Provide an on-site disturbance coordinator during all hours of operation;
 - b. Post contact information for the disturbance coordinator in a prominent location within the establishment near the primary entrance;
 - c. Maintain a complaint log including the time and content of all complaints and a summary of the time and nature of the establishment's response to each complaint;
 - a. Ensure that the log is kept current and is available on the project site for inspection by City staff.
12. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local, state and federal laws, regulations and required permits. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Planned Development Permit Amendment shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined below.
13. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit Amendment incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
14. **Building and Property Maintenance.** The property owner or operator shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.
15. **Loading Activity Hours.** All loading activities shall be limited to the hours of 6:00 a.m. to 9:00 p.m.
16. **Generators.** This Planned Development Permit Amendment does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
17. **Window Glazing.** Unless otherwise indicated on the approved plan, all windows shall consist of a transparent glass.

18. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
19. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance shall be abated immediately upon notice by the City.
20. **Anti-Graffiti.** During construction, the permittee shall remove all graffiti from buildings, walls and other surfaces within 48 hours of defacement. Upon project completion and/or transfer of ownership, the property owner, and/or Maintenance District shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
21. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. All publicly used areas shall be maintained free of litter, trash, cigarette butts and garbage.
22. **Loitering.** Loitering shall not be allowed in the public right-of-way adjacent to the subject site.
23. **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. Trash areas shall be maintained in a manner to discourage illegal dumping.
24. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
25. **Building Division Clearance for Issuing Permits.** Prior to the issuance of a Building permit, the following requirements shall be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This Permit file numbers PDA79-094-02 and ABC18-002 shall be printed on all construction plans submitted to the Building Division.
 - b. *Americans with Disabilities Act.* The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
 - c. *Emergency Address Card.* The permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
 - d. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any Building Permit issuance, Building Permit plans shall conform to the approved Planning development permits and applicable conditions.
26. **Revocation, Suspension, Modification.** This Planned Development Permit Amendment and Determination of Public Convenience or Necessity may be revoked, suspended or modified by the City Council 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 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Planned Development Permit Amendment and Determination of Public Convenience or Necessity was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

In accordance with the findings set forth above, a permit to use the subject property for said purpose specified above is hereby approved.

APPROVED and issued this ____ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

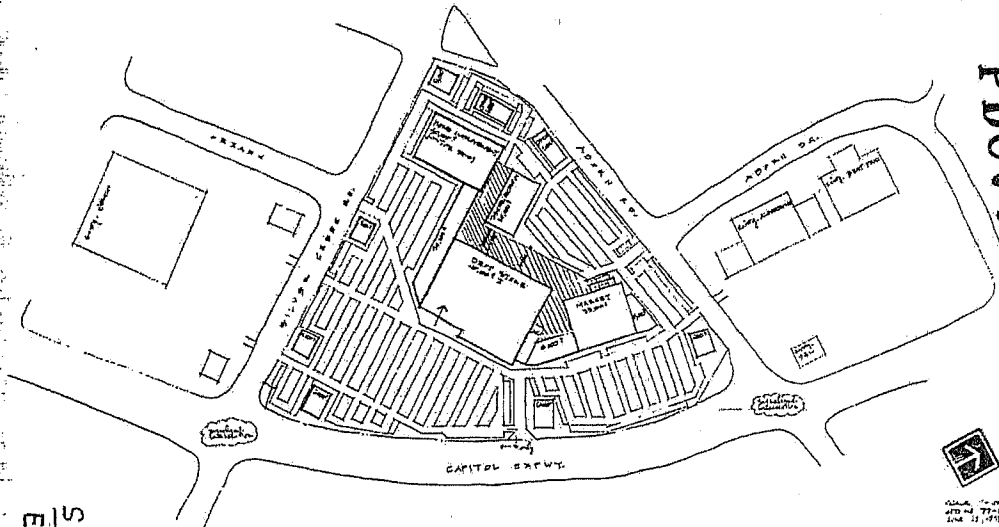
ATTEST:

TONI J. TABER, CMC
City Clerk

NOTICE TO PARTIES

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

DRAFT



PDC77-7-152



Scale: 1/4" = 1'-0"

LEGEND:
 --- WALL
 --- DOOR
 --- WINDOW
 --- FLOOR
 --- ROOF

SITE PLAN
 EXHIBIT "A"

PRELIMINARY
 JAMES W. FOUQ & ASSOCIATES, ARCHITECTS
 PALO ALTO, CALIFORNIA

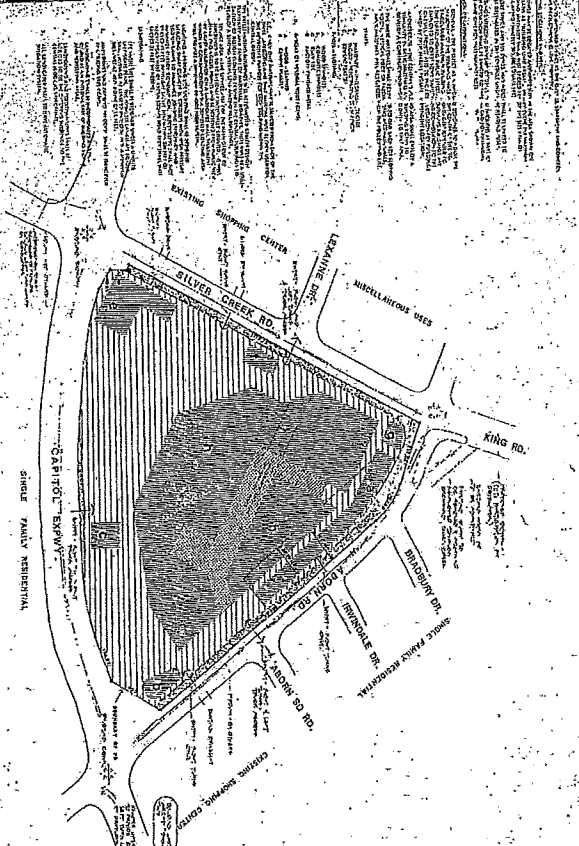
**GENERAL DEVELOPMENT PLAN
CITY OF SAN JOSE
SILVER CREEK PLAZA**

**FOUG & ASSOCIATES ARCHITECTS
PALO ALTO, CALIFORNIA**



SCALE 1" = 100'

APPROVED
PLANNING PLAN SHEET



PROJECT SUMMARY

Item	Quantity	Unit	Notes
1. Total Site Area	10.0	Acres	
2. Total Building Area	150,000	Sq. Ft.	
3. Total Parking Spaces	1,000	Spaces	
4. Total Landscaping Area	50,000	Sq. Ft.	
5. Total Stormwater Management	100,000	Cu. Yds.	
6. Total Utility Work	50,000	Lf.	
7. Total Construction Cost	\$10,000,000	Dollars	



VICINITY MAP

APPROVED	DATE

SILVER CREEK PLAZA - SAN JOSE, CA

DATE	

Locible (Retyped) General Development Plan

Scope

This plan is intended to act as the official statement and control for the development of the property.

Building Locations and Uses

Buildings may be located anywhere within the area shown on the plans as "Building Limit Areas" in any event the maximum building intensity shall not exceed 25% of the site area of the total approximately 260,000 square feet.

The uses which any building may use shall be limited to those delineated in the schedule under the heading "uses".

Buildings utilizing drive-up facilities as part of their operation shall be limited to the two for the financial uses and one for the "restaurants" use.

DESIGN CONSIDERATIONS

- A. General- The project as a whole is design to house the majority of the building mass at the center of the site to encourage maximum building frontages oriented to the surrounding public streets. Outlying buildings are employed to offer some variety and composition to the overall project and to provide location for buildings which by their nature require different location.
- B. Architecture- The central building area shall employ a similarity to basic materials and building forms to develop continuity to the area

The basic materials shall be limited to one each for sloping roof, vertical roof or fascia forms or main walls. Basic materials will be selected from the following list:

1. Walls
 - a. Masonry
 - b. Wood
 - c. Cement Plaster
2. Roofs/Sloping
 - a. Wood Shingles
 - b. Concrete Shingles
 - c. Clay tile
 - d. Factory finished metal
3. Fascia or Vertical Roof Forms
 - a. Wood-shaded
 - b. Cement Plaster

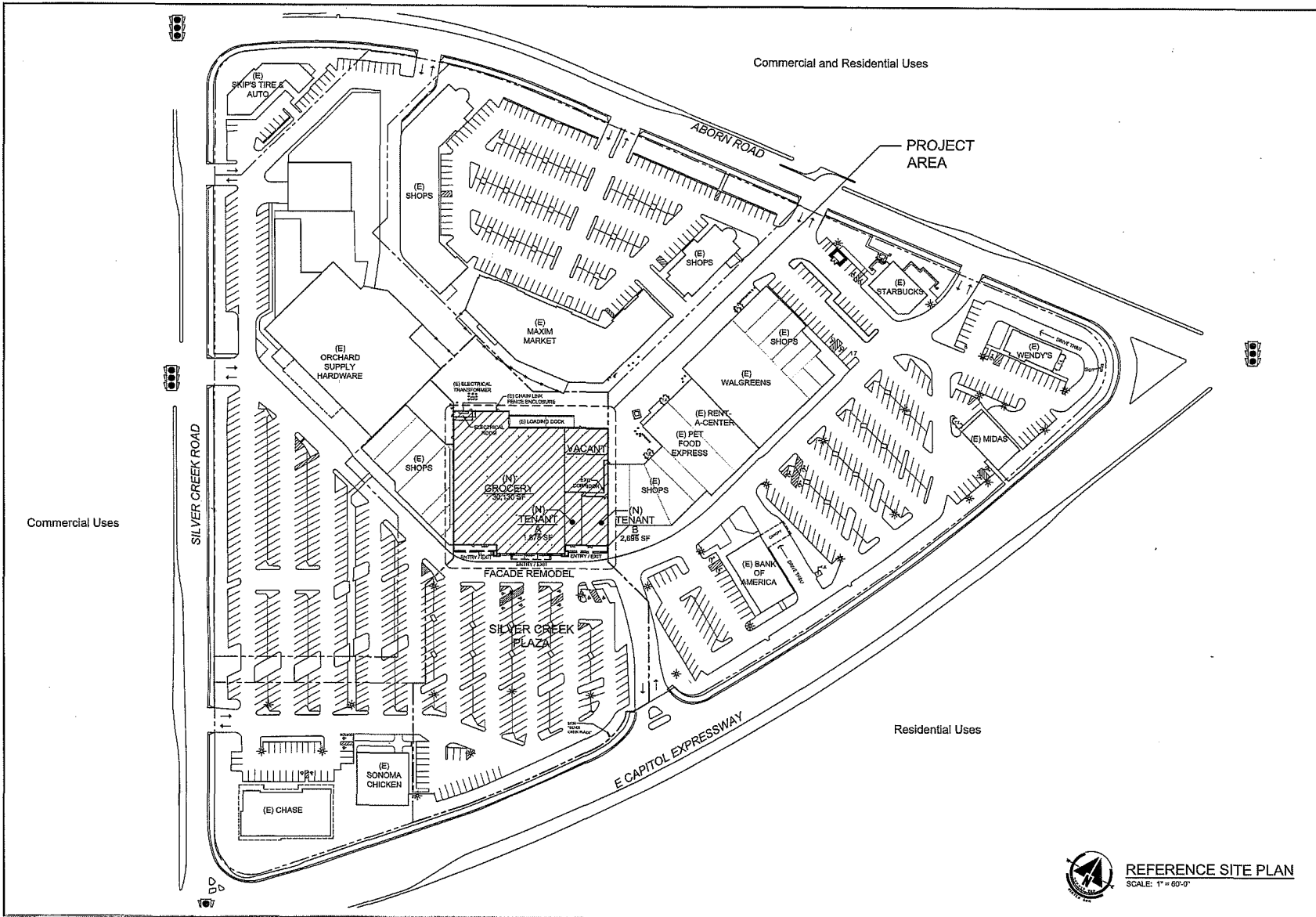
If only one material may be selected from each of the categories and that material must be used then for the respective purpose for each building within the central group.

The free standing buildings will be permitted greater design flexibility and range of materials. However, there must be a utilization of the design elements found in the central buildings to develop a strong visual line among all buildings

- C. Service area- The service area of the main group of buildings is to be basically internally situated. It will have two access points and be screened from public view by either buildings on a landscaped wall treatment which in conjunction with a depressed loading area will provide a minimum 10-foot high screen.
- D. Lighting- Parking lot lighting shall be designed utilizing sharp cut-off electrolux with high pressure sodium lamps to maximize lighting efficiency and minimize energy consumption. Electrolux shall not exceed 45 feet in height except within 200 feet of Alcorn Road west of Alcorn Square Road they shall not exceed 25 feet in height.
- E. Landscaping
 1. The entire site shall be designed under a unified landscape plan; the perimeter landscape buffer shall average at least 20 feet in width with a minimum distance of any point of 15 feet.
 2. Main drives and parking blocks shall be identified by utilizing tree forms.
 3. Landscaping shall be incorporated and included as an integral part of building forms and pedestrian areas.
 4. Landscaping and pedestrian links shall be utilized to tie the outlying buildings to the central block as appropriate
 5. All landscaped areas to have automatic irrigation system.

SYMBOL	USE	NET		LANDS	OFF STREET PARKING
		ACRES	BLDG INT.		
	Public street dedication	1.8			
	Loading and delivery	1.3			
	Plg. and landscaping	15.3		12%	Per Sec. 9106 of Ordinance, Basically 1 car per 200 sq. ft. of net retail sales area.
	Area				
	a. Any use permitted in a "C" Commercial district (professional office) — Permitted by Ordinance	6.3	25%		
	b. Any use permitted in a "C" commercial district (professional office) any use permitted in a C-1 Commercial district (retail)				
	c. Any use permitted in a "C-1 Commercial district (retail) except hotels, any use permitted in a C-1 Commercial district except hotels and motels and lire, bottles, and accessories				
	d. Any use permitted in a "C-1 Commercial district (retail) except hotels and motels and lire, bottles, and accessories				
	e. Any use permitted in a "C-1 Commercial district (retail) except hotels and motels and lire, bottles, and accessories				
	f. Any use permitted in a "C-1 Commercial district (retail) except hotels and motels and lire, bottles, and accessories				
	h. Any use permitted in a C-3 commercial district including home improvement stores.				
Gross Acreage		24.7			

PLOTTED 4/23/2017 12:59 PM \\USDEV01\DATA\PROJECTS\NVA_PROJECTS\NVA - Weingarten Realty\0510\0510-001-001.dwg, Site Plotting by JLL



TOM WILSON ARCHITECT, INC.
 620 First Street, Suite 202
 Berkeley, CA 94710
 Tel: (707) 784-1281
 www.tw-architects.com

FACADE REMODEL
 (FORMER SAFEWAY)
 SILVER CREEK PLAZA
 EAST CAPITOL EXPRESSWAY
 SAN JOSE, CA 95136

WEINGARTEN REALTY
 7025 Linden Drive, Chino Hills, CA 91708
 (916) 727-2308
 www.weingarten.com

DATE:	05-10-2017
REV. NO.	REV. DATE
1	06-07-2017
2	08-29-2017

REFERENCE
 SITE PLAN

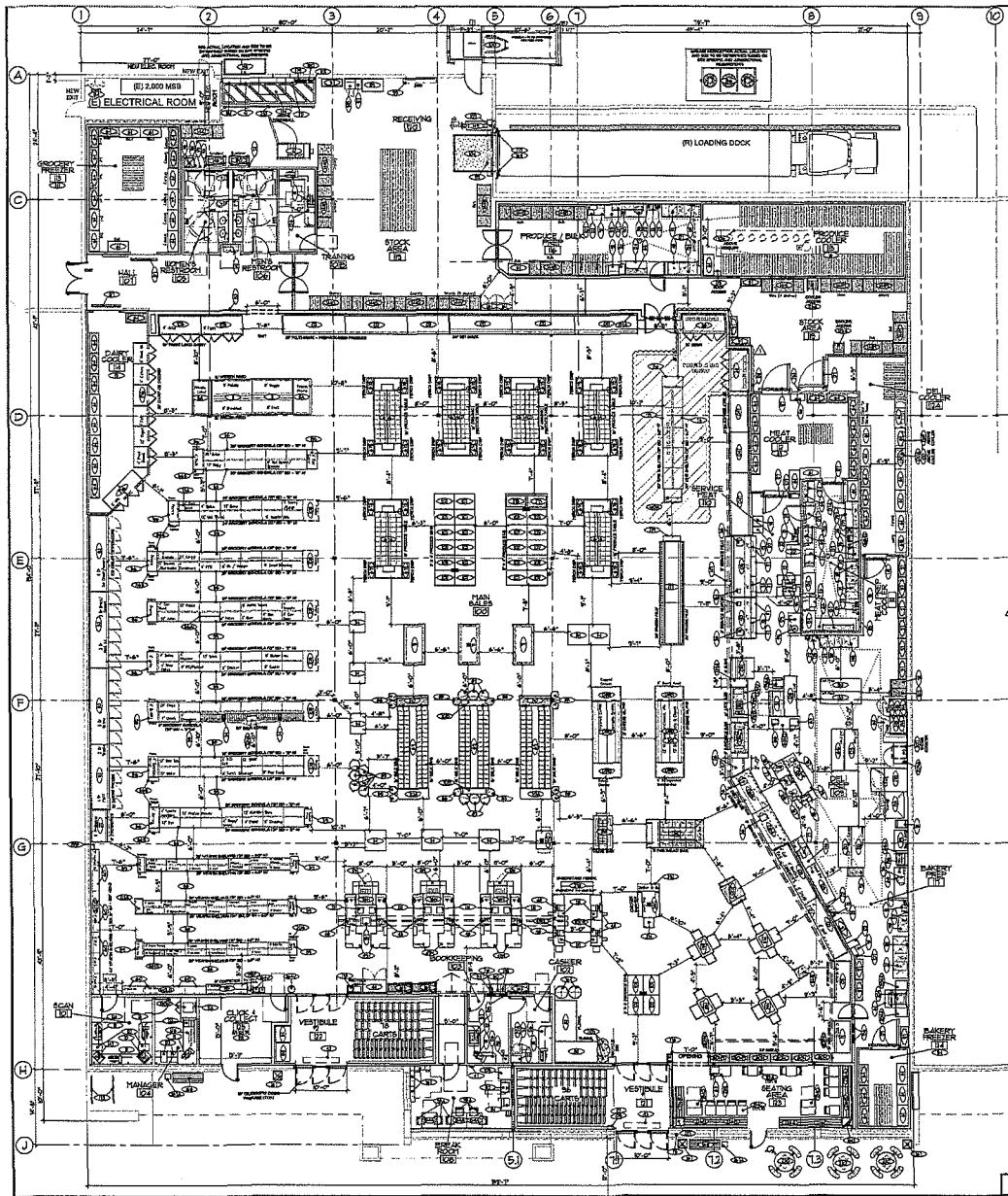
DR - 2

JOB NO.: WG043



REFERENCE SITE PLAN
 SCALE: 1" = 60'-0"

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PROJECT DATA	
GRAND BLDG. SQ. FT.	167510
SALES AREA SQ. FT.	75996 SQ. FT. 3000 SQ. FT. 10596 SQ. FT. 10500 SQ. FT.
COOLERS/BEVERAGES	
HEAT PREP COOLER SQ. FT.	216 SQ. FT. 216 SQ. FT.
HEAT COOLER SQ. FT.	378 SQ. FT. 378 SQ. FT.
DELII COOLER SQ. FT.	351 SQ. FT. 354 SQ. FT.
PRODUCE COOLER SQ. FT.	649 SQ. FT. 536 SQ. FT.
BAKERY FREEZER SQ. FT.	140 SQ. FT. 140 SQ. FT.
BAKERY FREEZER SQ. FT.	344 SQ. FT. 422 SQ. FT.
BAKERY COOLER SQ. FT.	158 SQ. FT. 489 SQ. FT.
GROCERY	
GROCERY SHELVING	404 L.F. 404 L.F.
GROCERY SHELVING END CAP	36 L.F. 36 L.F.
TOTAL L.F.	440 L.F. 440 L.F.
VITAMIN	
VITAMIN SHELVING LEAF	88 L.F. 88 L.F.
VITAMIN SHELVING	48 L.F. 44 L.F.
VITAMIN END CAP	18 L.F. 18 L.F.
COSMETICS SHELVING	8 L.F. 8 L.F.
PROSPECTS COOLER	8 L.F. 8 L.F.
TOTAL L.F.	148 L.F. 144 L.F.
FROZEN FOOD	
REACH-IN DOOR CASES	23 DRS. 23 DRS.
DOOR CASES	3 L.F. 3 L.F.
DOOR CASES	0 L.F. 0 L.F.
DAIRY	
MULTI-DECK CASE REAR FILL	33 L.F. 33 L.F.
MULTI-DECK CASE FRONT FILL	16 L.F. 16 L.F.
COLD DRINKS	8 L.F. 8 L.F.
TOTAL L.F.	57 L.F. 57 L.F.
BAKERY	
BULK BINS	20 L.F. 20 L.F.
COFFEE	20 L.F. 20 L.F.
PRODUCE	
PRODUCE SET RACK	36 L.F. 36 L.F.
PRODUCE PACKAGED	33 L.F. 33 L.F.
TOTAL L.F.	69 L.F. 69 L.F.
HEAT	
SERVICE HEAT CASE	0 L.F. 0 L.F.
PROZEN HEAT DRINKER	36 L.F. 36 L.F.
SELF SERVICE HEAT CASE	18 L.F. 18 L.F.
TOTAL L.F.	76 L.F. 76 L.F.
MEAT/FOOD	
SERVICE SEAFOOD CASE	8 L.F. 8 L.F.
SUBI CASE	4 L.F. 4 L.F.
TOTAL L.F.	12 L.F. 12 L.F.
DELI	
SERVICE CASE 'DELI HEATS 4 CHEESE	8 L.F. 8 L.F.
SERVICE CASE SERVICE DELI	8 L.F. 8 L.F.
BANQUET BAR SERVICE CASE	8 L.F. 8 L.F.
NINE JUICE BAR SERVICE CASE	6 L.F. 6 L.F.
NINE COFFEE BAR SERVICE CASE	0 L.F. 0 L.F.
SELF SERVICE DELI CASE HIGH	24 L.F. 24 L.F.
SALAD BAR ISLAND CASE	11 L.F. 11 L.F.
CHEESE ISLAND CASE	36 L.F. 36 L.F.
'REALS' ISLAND CASE	52 L.F. 52 L.F.
TOTAL L.F.	151 L.F. 151 L.F.
BAKERY	
BAKERY CASE	4 L.F. 4 L.F.
REFRIGERATED DOZARD	2 L.F. 2 L.F.
TOTAL L.F.	20 L.F. 20 L.F.
BEER/WINE	
WINE SHELVING	4 L.F. 4 L.F.
GOLD BEER	4 L.F. 4 L.F.
BEER	2 L.F. 2 L.F.

BEER AND WINE SALES AREA IS APPROXIMATELY 220 SQUARE FEET
1.2% OF THE TOTAL SALES AREA

EQUIPMENT LIST			
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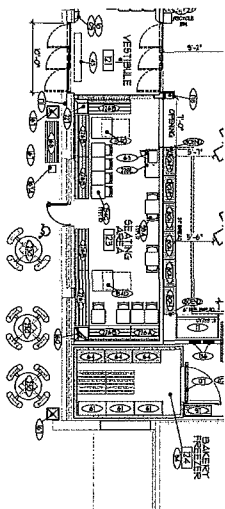
1711 EAST CAPITOL EXPRESSWAY
SAN JOSE, CA
REVISION F
FIXTURE PLAN
04/18/15

1711 EAST CAPITOL EXPRESSWAY
SAN JOSE, CA
REVISION F
FIXTURE PLAN
04/18/15

SCALE: 1/8" = 1'-0"

FIXTURE PLAN REVISION IF

SEATING AREA ENLARGED FLOOR PLAN

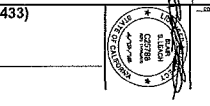


- GENERAL NOTES:**
1. REMOVE EXISTING SEATING AREA AND REPLACE WITH NEW SEATING AREA AS SHOWN ON THIS PLAN.
 2. EXISTING SEATING AREA TO REMAIN AS SHOWN ON THIS PLAN.
 3. ALL EXISTING SEATING AREA TO BE REMOVED AND REPLACED WITH NEW SEATING AREA AS SHOWN ON THIS PLAN.
 4. ALL EXISTING SEATING AREA TO BE REMOVED AND REPLACED WITH NEW SEATING AREA AS SHOWN ON THIS PLAN.
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 9. ALL EXISTING SEATING AREA TO BE REMOVED AND REPLACED WITH NEW SEATING AREA AS SHOWN ON THIS PLAN.
 10. ALL EXISTING SEATING AREA TO BE REMOVED AND REPLACED WITH NEW SEATING AREA AS SHOWN ON THIS PLAN.

SPROUTS FARMERS MARKET (433)
 SILVER CREEK PLAZA
 1771 E. CAPITAL EXPRESSWAY
 SAN JOSE, CALIFORNIA 95121

DATE: 02/25/14
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 PROJECT: 338181733

F1.3



NO.	REVISION



320107338

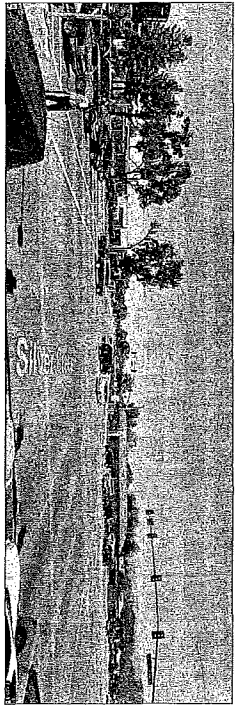
PROJECT: 338181733

DATE: 02/25/14

SCALE: AS SHOWN

BY: [Name]

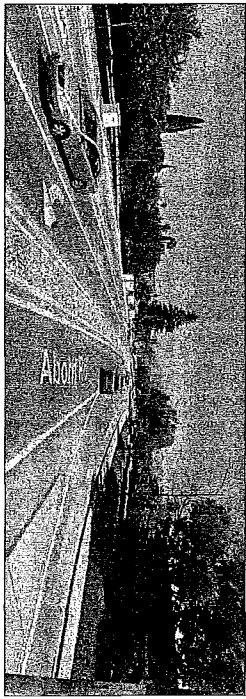
CHECKED BY: [Name]



LOOKING NORTHEAST ON EAST CAPITOL EXPRESSWAY AT CORNER OF SILVER CREEK ROAD AND EAST CAPITOL EXPRESSWAY



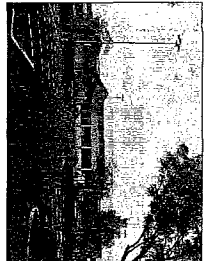
LOOKING NORTH AT THE CORNER OF SILVER CREEK ROAD AND EAST CAPITOL EXPRESSWAY



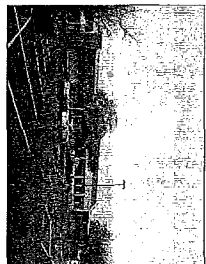
LOOKING SOUTH ON SILVER CREEK ROAD, CORNER OF SILVER CREEK AND ABRON ROADS



LOOKING EAST ON ABRON ROAD



STOREFRONT



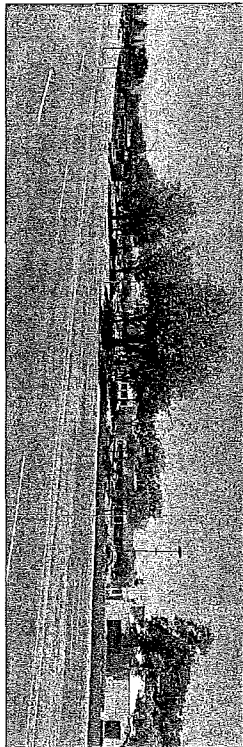
STOREFRONT (NORTH)



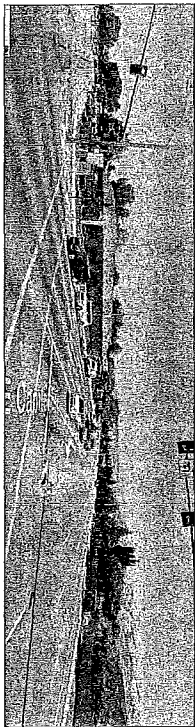
STOREFRONT (SOUTH)



SILVER CREEK PLAZA PROPOSED SPROUTS FARMERS MARKET



LOOKING AT PROPOSED PROJECT SITE FROM EAST CAPITOL EXPRESSWAY



LOOKING AT PROPOSED PROJECT SITE FROM EAST CAPITOL EXPRESSWAY

SPROUTS FARMERS MARKET (433)
 SILVER CREEK PLAZA
 1771 E. CAPITAL EXPRESSWAY
 SAN JOSE, CALIFORNIA 95121

PH-1

SPROUTS
 FARMERS MARKET
 SILVER CREEK PLAZA
 1771 E. CAPITAL EXPRESSWAY
 SAN JOSE, CA 95121

AAD-FITCH, Inc.
FITCH

320107338



Memorandum

TO: Michelle Flores
Planning Department

FROM: Sgt. Rick Galea #3495
San Jose Police Vice Unit

SUBJECT: Sprouts Farmers Market
1771 East Capitol Expressway
PDA 79-094-02

DATE: January 23, 2018

Approved

Date

I have received your request for input regarding Sprouts Farmers Market, located at 1771 East Capitol Expressway, San Jose. Sprouts Farmers Market is applying to be a grocery store and for an off sale beer and wine license to sell alcohol. The hours of operation would be from 7:00 am to 10:00 pm daily.

A location can be unduly concentrated because of its criminal statistics and/or it's proximity to other Alcohol Beverage Control (ABC) licenses. ABC can issue the license per B&P Sections 23958.4 (b)(1), and 23958.4 (b)(2) if the local governing body determines that the public convenience or necessity would be served. The City of San Jose Planning Department and the Planning Commission are the delegated authorities to grant these exceptions.

1771 East Capitol Expressway is located in San Jose Police Beat Paul Three. The reported crime statistics as defined by B&P Section 23958.4(c) are not over the 20% crime index thus the location is not considered unduly concentrated per B&P Section 23958.4 (a)(1).

Police Beat Crime Statistics

Beat	Index Crimes	Arrests	Total	20% Above Average
P4 (2017)	371	117	488	No
City Average	319	122	441	

ABC records indicate that 1771 East Capitol Expressway is in census tract 5033.05. Pursuant to B&P Section 23958.4 (a)(3), the ratio of off-sale retail licenses population in census tract 5033.05 does exceed the ratio of off-sale retail licenses to population in the county in which the applicant premises are located.

Authorized and Current ABC Licenses in Census Tract 5033.05

Census Tract	Authorized ABC Licenses		Current ABC Licenses		Unduly Concentrated	
	On - Sale	Off - Sale	On - Sale	Off - Sale	On - Sale	Off - Sale
5033.05	8	3	22	5	No	Yes

The San Jose Police Department is neutral to Sprouts Farmers Market, located at 1771 East Capitol Expressway for obtaining a license to be a grocery store and off sale beer and wine license. Feel free to contact me at 277-4322 if you have any questions.

Sgt. Rick Galea #3495
San Jose Police Department
Special Investigations/Vice

Sprouts Farmers Market
Site Address: 1771 E. Capitol Expressway

THE REQUEST

Sprouts Farmers Market ("the Applicant") is seeking the following discretionary approval:

- **Pursuant to Section 20.80.900**, the Applicant requests approval of a Conditional Use Permit to allow the off-site sale of beer and wine in conjunction with an approximate 29,942 square foot, full service grocery store. The hours of operation will be from 7 am to 10 pm, daily.
- The Applicant requests a Finding of Public Convenience and Necessity for over concentration in conjunction with an approximate 29,942 square foot, full service grocery store located in the Silver Creek Plaza. There are currently five (5) active licenses in census tract 5033.05 where three (3) licenses are allowed. The addition of Sprouts Farmers Market will bring the total of active licenses to six (6).
- There will be 12 outdoor seats with 3 tables, 4 seats per table, at the corner of the store, east of the entrance. There will be no service or consumption on the premises or in this seating area.

PROJECT DESCRIPTION

Proposed Grocery store

Through this application, the Applicant requests a Conditional Use Permit and a Finding of Public Convenience and Necessity to allow the off-site sale of beer and wine in conjunction with a full-service grocery store. The proposed grocery store will be located in the Silver Creek Plaza, between Aborn Road and E. Capitol Expressway. The shopping center is also bordered by Silver Creek Road to the south.

Sprouts Farmers Market is a grocery store that specializes in farm-fresh produce purchased from local growers. It will offer a full line of grocery products, including a Sprouts Private label of bakery goods, a full-service meat counter and deli. The stores feature natural, organic and favorite indulgence foods at a great value. As a full-service grocery store, Sprouts Farmers Market proudly offers a variety of goods and services, as outlined below:

- **PRODUCE.** Like any farmers market, our great strength is produce. Our selection of quality fruits and vegetables includes seasonal and organic items at prices that are ripe for the picking. Whenever possible, we buy directly from local farms to ensure that customers get the freshest items Mother Nature has to offer — at prices that are often 20% below conventional stores and way below the natural foods megastores.

- **GROCERY & PRIVATE LABEL.** We offer a wide variety of great-tasting natural, organic and mainstream items at highly competitive prices, so customers can do most of their weekly shopping under one roof. We also source select products from around the world for our highly regarded Sprouts private label line.
- **MEAT & SEAFOOD.** Customers always rave about the Sprouts meat department, in large part because of the fabulous value and superior flavor of our all natural Sprouts OldTyme Beef and Pork. Unlike most grocers, we hand-pack our farm-fresh chicken, and grind our own meats and sausages right in the store. Sparkling seafood is delivered to our stores up to six days a week. There are also organic choices, and even lots of delicious ready-to-cook items.
- **VITAMINS & SUPPLEMENTS.** The healthy life costs less at Sprouts. We feature national brands of vitamins and nutritional supplements at 10% or more off the usual retail prices, along with a vast array of Sprouts private label items — plus a friendly and knowledgeable staff, and many ongoing educational classes and seminars.
- **BULK.** In times like these, buying in bulk just makes sense. That's why the Sprouts bulk department is growing in popularity and size — now with more than 200 bins filled with fresh trail mixes, rolled oats, sugars, flours, grains, dried fruits, sweet treats and more.
- **BAKERY.** In the Sprouts Bakery, customers can find fresh rolls and sandwich loaves, delectable cookies, irresistible pastries... and the wafting aromas of warm breads right from the oven. We also carry many sugar-free, gluten-free and low-carb products, all at family-friendly prices.
- **WINE & BEER.** Some farmers markets feature not just fruit, but the fruit of the vine. So the Sprouts wine merchants have been hard at “work,” sampling wines from California, Australia, Chile and Europe, as well as the great specialty beers of the world, narrowing down their eternal search for the best values in bottles and brews.
- **DELI.** We carry a broad array of tasty deli meats and freshly made or made-to-order sandwiches, fresh pre-packed salads, and delectable platters of prepared meals—at prices that are surprisingly easy to swallow.
- **DAIRY.** No farmers market would be complete without an outstanding selection of fresh dairy products. We feature everything from organic milk to fresh juices, and cage-free eggs to kefir.

History of Sprouts

Henry Boney began Sprouts' longstanding legacy of providing fresh, natural food available to anyone interested in eating well and spending less when he opened a San Diego fruit stand in 1943. From there, he creates Speedee Mart, Boney's and other operations in the San Diego area.

In 1969 two of Henry's sons, Stan and Steve, create a second generation Boney's store in Ramona, CA. They went on to open Windmill Farms and Boney's, and in 1997 the family renames the chain "Henry's Marketplace," in honor of their dad. In 1999 the Boney family sells Henry's Marketplace to Wild Oats and due to a non-compete clause in California, they open the first Sprouts in Phoenix AZ in 2002, with two family friends. In 2005 Sprouts expands to California, repurchasing a store in El Cajon previously run by the Boney Family. In 2007 Wild Oats is sold to Whole Foods Market and two years later Whole Foods divests itself of Henry's, selling the chain to Smart & Final, Inc. (which, as of early 2007, is owned by Apollo Management, LP). Sprouts continues to expand into Colorado, Texas and California and by 2010 they open their 50th store, the first in Northern California (Sunnyvale).

Sprouts continued with a period of rapid growth through acquisitions and new store development. In 2011, Sprouts joined with Henry's Holdings, which ran 35 Henry's Farmers Markets stores and eight Sun Harvest Market stores and a year later, Sprouts bought Sunflower Farmers Market, thereby creating one of the largest natural food grocers in the Western United States, with annual revenues more than \$1 billion. In recent years, they have expanded into the Southeast by adding new stores in Georgia, Missouri, Alabama and Tennessee.

Today, Sprouts is one of the fastest growing retailers in the country. Sprouts employs more than 36,000 team members and operates 287 stores in 15 states from coast to coast, with stores in California, Arizona, Colorado, Utah, Texas, Oklahoma, New Mexico, Alabama, Georgia, Kansas, Missouri, Tennessee, North Carolina, Florida and Nevada. There will be even more stores added in 2018 and 2019.

It is with great pleasure that Sprouts Farmers Market is adding a second location in the City of San Jose; a prime location for the newest addition to the Sprouts Farmers Market family.

Alcohol Sales

On average, the sale of beer and wine is less than 5% of Sprouts' total sales volume. In other Sprouts Markets in California, beer is approximately 0.05% of total sales and wine is approximately 2.0% of overall sales, making the sale of beer and wine small although very important to stay competitive within the marketplace. The sales area for beer and wine is approximately 220 square feet, just over 2% of the total square footage for the sales area, see hatched area on the attached floor plan.

Sprouts takes the privilege of selling alcohol very seriously. All staff must complete the State Alcoholic Beverage Control's mandated training, as well as an internal training on the sale of alcohol as part of their new employee orientation. The internal training model/course used for all new personnel is the BARS Program. More information on this training program can be found on their website at <http://www.barsprogram.com>. Also included in this packet is the alcohol policy/training guideline for the store. Additionally, all staff selling alcohol will be over 21 years of age.

Typically, security guards are not needed at any Sprouts Farmers Market and this store should not be any different. The premises, both the interior of the store and the parking lot, will be patrolled by management and staff to ensure a safe environment and compliance with any City mandated conditions to mitigate any impacts from the sale of alcohol.

Public Benefits

Sprouts Farmers Market is a fresh concept and will add nicely to the existing retail and restaurants in the community. Sprouts will provide high quality and organic groceries and related merchandise that contribute to the convenience and welfare of neighborhood residents and workers. The addition of a grocery store at the proposed location will help keep the property leased and vital. Provision of a new quality establishment that is effectively maintained and operated, will enhance the neighborhood's aesthetics, convenience, livability, and security. With operating hours from 7 am to 10 pm, the project will improve the security, lighting, and attractiveness of the location into the nighttime hours, without being open so late it is disruptive to the residents.

The market will be located in an area with a mix of residential, commercial and retail uses, in a commercial center. The grocery store will create approximately 100 new full- and part-time jobs in the neighborhood, and its proposed goods and services will serve the needs of both residents and workers, enhancing the desirability of the neighborhood as a place to work, as well as live, directly and indirectly contributing to the jobs-housing linkage. The proposed project helps realize the goal of co-locating jobs, housing and services in proximity to transit, which in turn encourages greater pedestrian activity and hopefully aids in the longer-term goal of encouraging a safer, more inviting environment.

With the current market conditions, cities are seeing national retail chains go out of business and with the collapse of these retail giants, there is a surplus of retail real estate available. It is imperative that municipalities encourage successful businesses to ensure

continued economic development. The development of successful commercial centers, serving surrounding residential neighborhoods, will add to the value of the adjacent properties. Allowing new development to replace older development will keep neighborhoods safer and will benefit the public health, safety and general welfare of residents and workers.

Sale of beer and wine in the grocery store is consistent with the pattern of markets and restaurants in this neighborhood. The proposed project is part of a development plan that increases the utility of land, provides nearby residents and employees the option of shopping without having to drive elsewhere, and adds appropriately to the mix of uses in the immediate vicinity. Therefore, the proposed location is admirably suited for the grocery store, in that it promotes livability and convenience for residents and employees and furthers community and economic development.

While this is a full-service grocery store, Sprouts has a very different business model. Sprouts Farmers Market is a grocery store that specializes in farm-fresh produce purchased from local growers. It will offer a full line of grocery products, including a Sprouts Private label of bakery goods, a full-service meat counter and a deli. The stores feature natural, organic and favorite indulgence foods at a great value. Sprouts Farmers Market gives neighboring residents and workers a supermarket alternative for their shopping needs. A variety of goods and services is vital for the growth of any neighborhood and with an increase in retail choices, neighborhoods become more desirable to new residents. Sprouts Farmers Market offers an extensive (but not prescriptive) mix of natural, organic and great-tasting mainstream foods with a strong emphasis on value. Sprouts Market has carved out that magical middle ground between conventional supermarkets, healthy food superstores, and Trader Joe's-like discounters, making this a unique retailer in this neighborhood.

Sprouts Farmers Market is a growing retailer, with 108 stores in California. This retailer is strong and will continue to grow. The economic welfare of a community depends on healthy and viable commerce and strong businesses and the grocery store, as proposed, will provide the community with an economically viable and respected commercial establishment as part of its neighborhood-serving retail. The proposed project will put the currently vacant space to good use by establishing a full-service grocery store that will serve the community. This, in turn, will contribute to the economic vitality of the site and to the City's tax base. The grocery store will also employ approximately 100 people, which will provide employment for local residents and help the jobs-housing balance desired by the City and promoted in the General Plan.

Additional Information – Alcohol Sales – Distance Requirement

The site is not located within 500 feet of any elementary, middle or high school, college or university. The tenant site is not located with 150 feet of any residential zoned property.

Located at 1930 Aborn Road, Maxim Market is located in the same shopping center as the proposed Sprouts Farmers Market, see attached exhibit. They hold one of the five off-site licenses, a Type 21, for off-site sale of full alcohol. The other four existing licenses are also

Type 21 licenses, allowing the off-site sale of full alcohol. However, all four are located more than 500 feet from the proposed Sprouts. They are listed below:

JK Liquor – 2960 Aborn Road – 0.3 miles from proposed Sprouts Market

Fresco Market – 2217 Quimby Road – 1.2 miles from proposed Sprouts Market

Longchamp – 1710 Tully Road – 1.3 miles from proposed Sprouts Market

Save Mart – 1972 Tully Road – 1.6 miles from proposed Sprouts Market

that provides a full and wide complement of fresh produce, grains, dairy goods, and baked products, together with other food and household merchandise for general public consumption. The area in which alcoholic beverages are displayed or otherwise offered for sale shall not exceed 1.2% percent of the total floor area of the retail area that is open and accessible to the general public (i.e., excluding backroom storage and office spaces). Alcohol product displays shall not be placed outside the retail tenant space.

11. **Disturbance Coordinator.** The permittee shall implement the following:
 - a. Provide an on-site disturbance coordinator during all hours of operation;
 - b. Post contact information for the disturbance coordinator in a prominent location within the establishment near the primary entrance;
 - c. Maintain a complaint log including the time and content of all complaints and a summary of the time and nature of the establishment's response to each complaint;
 - a. Ensure that the log is kept current and is available on the project site for inspection by City staff.
12. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local, state and federal laws, regulations and required permits. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Planned Development Permit Amendment shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined below.
13. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit Amendment incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
14. **Building and Property Maintenance.** The property owner or operator shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.
15. **Loading Activity Hours.** All loading activities shall be limited to the hours of 7:00:00 a.m. to 9:00-10:00 p.m.
16. **Generators.** This Planned Development Permit Amendment does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
17. **Window Glazing.** Unless otherwise indicated on the approved plan, all windows shall consist of a transparent glass.