

CITY OF SAN JOSE, CALIFORNIA
 Redevelopment Agency of the City of San Jose
 50 W. San Fernando Street, Suite 900
 San Jose, California 95110

STAFF REPORT

Hearing Date/Agenda Number

P.C.: 2-13-02 Item: 4.c.

File Number: RCP 00-05-005

Application Type:
 Conditional Use Permit

Council District:
 3

Planning Area:
 Central

Assessors Parcel Number(s): 264-29-066

PROJECT DESCRIPTION

Completed by: Judie Gilli

Location: 389 South First Street

Gross Acreage: 0.13

Net Acreage: N/A

Net Density: N/A

Existing Zoning: CG

Existing Use: Vacant Site

Proposed Zoning: No Change

Proposed Use: Entertainment Establishment, consisting of restaurant, nightclub and poolroom uses operating until 2:00 am, daily

GENERAL PLAN

Completed by: JG

Land Use/Transportation Diagram Designation
 Core Area

Project Conformance:

Yes No

See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: JG

North: Gallery/Retail

Commercial General (CG)

East: Nightclub

Commercial General (CG)

South: Restaurant

Commercial General (CG)

West: Vacant Lot

Commercial General (CG)

ENVIRONMENTAL STATUS

Completed by: JG

Reuse of Downtown Supplemental EIR, Certified 04/27/99

Exempt

Environmental Impact Report complete on:

Environmental Review Incomplete

Negative Declaration circulated on :

Negative Declaration adopted on:

FILE HISTORY

Completed by: JG

Annexation Title: Original City

Date:

HISTORIC STATUS: N/A

Completed by: JG

REDEVELOPMENT AGENCY RECOMMENDATIONS AND ACTION

Approval

Action

Approved by: _____ Date: _____

Conditional Approval

Recommendation

Denial

Approved by: _____ Date: _____

Uphold Director's Decision

PROPERTY OWNER

Jacek Rosicki
 Middlefield Road
 Palo Alto, CA 94301

BACKGROUND

Project Description

The applicant, Jacek Rosicki, is requesting the subject Conditional Use Permit (CUP) to construct and operate an entertainment establishment (Agenda Annex) consisting of an approximately 150-seat restaurant, nightclub and poolroom uses, until 2:00 am, seven days-a-week. The site is in the Commercial General (CG) Zoning District, therefore, a CUP is required for entertainment establishments that serve alcohol, poolrooms, and for all commercial uses that operate after midnight. The CUP also fulfills the requirement for a Site Development Permit since the proposal includes the construction of a two-story (with mezzanine-level), approximately 13,000 square-foot building on the presently vacant project site.

The project is immediately adjacent to the existing Agenda restaurant and bar, which is located on the northwest corner of First and San Salvador Streets, and is also owned and operated by the applicant. The proposed project is on a separate parcel from the Agenda, so despite common ownership, proximity and similarity of use, the facilities are distinct from each other.

The ground-level of the proposed Agenda Annex consists of dining, dancing and musical entertainment uses. The mezzanine-level provides additional dining area and the top-floor contains poolroom, dining and musical entertainment uses. Musical entertainment may consist of either live or recorded entertainment. All of the proposed uses will be allowed to operate from 6:00 AM until 2:00 am, seven days-a-week with live entertainment limited to 11:00 PM to 2:00 am daily.

Project Site and Surrounding Area

The 0.13-acre, L-shaped project site is located at 389 South First Street, just north of West San Salvador Street, in the heart of the South of First Area (SoFA). The site is currently vacant, except for a small patio area located along the South First Street frontage. The existing patio is improved with pavers, outdoor seating, and landscaping and is screened from the South First Street right-of-way by a wrought iron gate. The existing patio and gate will remain and be used by the proposed Agenda Annex restaurant.

The proposed Agenda Annex building is surrounded by commercial land uses in all directions. A gallery space/retail use is located north of site. An existing Agenda Restaurant is located south of the site. Two nightclubs are located east of the site. A vacant site is located west of the site. No residential uses are in the vicinity of the site. The proposed building will be constructed so that it abuts two existing buildings along South First Street. As noted, the two-story building immediately south of the site is the Agenda bar and restaurant; another two-story commercial building lies to the north. Both of the adjacent structures are designated as Contributing Structures to the area by the Historic Resources Inventory.

Historic Landmark Commission Review/Architectural Compatibility

The proposed project was referred to the Historic Landmarks Commission (HLC) on June 7, 2000, for their review and comment, due to the site's location between two historically Contributing Structures. The HLC expressed support for the proposal, as designed, but had specific concerns regarding the window treatment on the proposed new building and recommended that photo-documentation of the

presently-exposed north façade of the existing Agenda building be completed prior to its being obscured by the proposed new construction. In terms of window treatment, the HLC recommended that the windows used in the new construction be “compatible with but not identical to” those of the adjacent Agenda building. Regarding photo-documentation, the north facade of the existing Agenda building contains a “Ghiradelli Chocolate” sign painted directly onto the brick exterior. The sign has been exposed since the demolition of the previous building that formerly occupied the project site. With the proposed new construction, the “Ghiradelli Chocolate” sign will again be partially hidden.

Both Planning and Redevelopment Agency staffs recommend that photo-documentation and drawings of the sign be completed prior to the commencement of construction of the proposed building. Completion of photo documentation and drawings of the sign is, therefore, a condition of approval in this CUP.

Additionally, Redevelopment Agency Design staff will work with the applicant and review construction drawings (prior to the issuance of building permits) to ensure that the proposed windows are, in fact, compatible but not identical, to the adjacent Agenda building. Colors and materials for the proposed building will also be reviewed and approved by staff prior to the issuance any of building permits.

GENERAL PLAN CONFORMANCE

The project site is designated Core Area by the San Jose General Plan Land Use/Transportation Diagram. The Core Area designation includes commercial, office, and residential uses in the City’s downtown center. The Agenda Annex proposal is consistent with the Core Area designation in that nightclub uses are identified as appropriate for the Core Area so long as they do not adversely impact residential uses or conflict with other General Plan policies and goals. Moreover, such entertainment-oriented uses are not typically considered appropriate outside of the Core Area.

ENVIRONMENTAL REVIEW

Pursuant to Section 15180 of the 2001 CEQA Guidelines, the project does not involve new significant impacts beyond those analyzed in the Final Supplemental Environmental Impact Report (SEIR) entitled " San Jose Downtown Strategy Plan," adopted by City Council Resolution No. 68839 on April 27, 1999.

ANALYSIS

The issues associated with the Agenda Annex proposal are as follows:

Consistency with Council Policies Regarding Nightclubs and Bars and 24-Hour Uses

The applicant proposes construction and operation of an entertainment establishment, with alcohol service, until 2:00 am, daily. Alcohol service will terminate at 1:30 am. Such uses are subject to the City Council 24-hour Use Policy and Guidelines for Evaluation of Nightclubs and Bars. These policies were established to ensure that late-night and early-morning uses, particularly nightclubs and bars, are compatible with surrounding land uses. The key provision of these policies is to ensure that entertainment and after-midnight uses not be approved unless the facilities can operate without

detriment to nearby residential uses and the general welfare of the surrounding area. The following issues address the project's operational compatibility with its surroundings.

After Midnight use in the Downtown Core. As stated, the Agenda Annex, like other downtown entertainment facilities, will operate to no later than 2:00 am, with alcohol service terminating at 1:30 AM. These provisions are consistent with the provisions of the City Council 24-hour Use Policy and Guidelines for Evaluation of Nightclubs and Bars. Restaurants, cafés and other commercial uses are allowed when they can operate without detriment to planned or nearby residential uses or the general welfare of the surrounding area. Given Agenda Annex's location amid commercial uses, no existing or planned residential uses will be affected by the facility's operation.

Land Use Compatibility. As noted, the proposed use, located in the heart of the downtown's SoFA, is compatible with the surrounding commercial land uses. The mix of existing entertainment establishments and restaurants in the South of First Street Area (SoFA) furthers the proposal's compatibility with its immediate neighbors. Art gallery space/retail use is located north of site. The Agenda Restaurant is located south of the site. Two nightclubs are located east of the site, across South First Street. A vacant property is located west of the site. The proposed hours of operation for the Agenda Annex (10:00 am to 2:00 am) coincide with that of existing restaurant and entertainment facility uses in the area. Adjacent uses will not be affected by the proposed project.

Parking and Loading

Based on the parking provisions for the Downtown Off-Street Parking Requirements (San Jose Municipal Code, Section 20.90.510), parking is not required for entertainment establishments, including bars and nightclubs, and restaurant uses. Section 20.90.510 does not, however, provide an exhaustive list of the parking requirements for all land uses that may occur downtown; for example, parking requirements for poolroom (a "poolroom" is any facility having three or more pool or billiard tables, Section 20.200.890) use is not specified. Section 20.90.510 further states, that "Whenever the minimum number of off-street parking spaces required for a use is not specified...the Director shall determine [which] of the specified uses is most similar to the unspecified use, and the minimum requirement for that specified use shall apply." Based on this provision, the Executive Director has determined that the specified uses most similar to poolrooms are bowling alleys, athletic clubs and skating rinks in that they are similarly recreationally oriented. Like entertainment establishments (e.g., nightclubs, bars, dance halls) and restaurants, none of these recreationally oriented uses requires parking within the Downtown. Moreover, in terms of consistency, First Street Billiards, an entertainment establishment and poolroom facility located at 420 South First Street, just south of the proposed Agenda Annex, was approved by the Planning Commission in 1997 without a parking requirement for its poolroom component, which contains 30 pool tables. The Agenda Annex proposes 13 pool tables. Therefore, based on Code requirements for restaurants and entertainment establishments, requirements for similar recreation-oriented uses, and prior policy, it is recommended that parking should not be required for this proposal. Loading for the Agenda Annex will occur on San Salvador Street in the existing loading zone.

RECOMMENDATION

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

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

1. The 0.13-acre project site is located at 389 South First Street in the Downtown Commercial General (CG) Zoning District.
2. The project site is designated in the Core Area on the San Jose 2020 General Plan Land Use/Transportation Diagram.
3. The San Jose 2020 General Plan and the Downtown Strategy Plan states that restaurants, bars and nightclubs may be appropriately located in areas designated Core Area, provided that such uses do not adversely impact existing or planned uses or conflict with other San Jose General Plan Goals and Policies, and the Council Policies on Bars and Nightclubs and 24-Hour Uses.
4. This is a Conditional Use Permit for an entertainment establishment with alcohol service, restaurant, nightclub, and poolroom uses.
5. Restaurants (dining establishments) are a permitted use in the CG Zoning District.
6. Hours of operation for the facility shall be 6:00 AM to 2:00 AM, seven days a week, with alcohol service ceasing at 1:30 AM. Live music shall only be performed between 11:00 AM and 2:00 AM.
7. The San Jose Municipal Code requires that all commercial uses operating between the hours of 12:00 midnight and 6:00 AM obtain a Conditional Use Permit.
8. The environmental impacts of this project were addressed by Final SEIR entitled, "Downtown Strategy Plan" and adopted by City Council Resolution No. 68839 on April 27, 1999.
9. The surrounding South of First Area consists predominately of commercial uses.
10. The project includes the construction of a two-story, approximately 13,000 square foot, commercial structure on a presently undeveloped site.
11. The site is located between two Contributing Structures to the City of San Jose's Historic Inventory.
12. The proposed project was referred to the Historic Landmarks Committee on June 7, 2000 for their review and comment based on its location between two Contributing Structures.
13. Based on the parking requirements for the Downtown (SJMC 20.90.510), no parking is required for the proposed entertainment and restaurant uses. No parking requirements are specified for poolroom use in the Downtown Off-Street Parking Requirements.

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

1. Upon issuance of this Conditional Use Permit, the proposed use will comply with the Zoning Ordinance in that the operation of a bar or nightclub after midnight requires the approval of a Conditional Use Permit.
2. The proposed project conforms to the Core Area land use designation in the San Jose 2020 General Plan.
3. This project is consistent with the City Council 24-hour Use and Bar and Nightclub Policies for the operation of a bar/nightclub after midnight given its location away from sensitive uses and compatibility with adjacent uses.
4. This property is well suited for the proposed subject activities due to its location in the Core Area and its distance from existing or planned residential uses. Based on its location and conditions of approval, the project will not negatively impact the general welfare of the surrounding area.
5. The project is in conformance with the California Environmental Quality Act in that it does not include additional impacts to those addressed in the Downtown EIR.
6. The proposed use complies with the parking requirements as stated in the Downtown Off-Street Parking Requirements, Section 20.90.500 in that there is no parking requirement for restaurant, bar and nightclub uses in the Downtown and the Director has determined that poolrooms, like other recreation and entertainment oriented uses for which a parking requirement is specified, do not require parking when located in the Downtown Area.
7. The project is compatible with the adjacent historic buildings in that the size, scale and massing is consistent with these existing structures.
8. The project is compatible with the surrounding uses in the South of First Street Area due to the similar uses, such as nightclubs, restaurants and retail, adjacent to the site.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size to accommodate the development features prescribed in Title 20 of the SJMC, or as is otherwise required in order to integrate said use with the uses in the surrounding area; and
3. The proposed site is adequately served:

- a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate in that the project will not need to provide offsite improvements to the existing roadway network.; and
- b. By other public or private service facilities as are required in that the scale of the project will not necessitate expansion of existing service facilities.

This Planning Commission further concludes and finds, in accordance with Zoning Ordinance Section 20.100.630, regarding the required Site Development Permit findings, that:

1. The interrelationship between the orientation, location, and elevations of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious in that the proposed building addition integrates into the adjacent structures, creating a unified design.
2. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood in that the proposed two-story building addition is of a similar scale, employs complimentary building materials, and uses a similar architectural style as the adjacent commercial structures.
3. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties in that the project has incorporated a variety of building materials and construction methods, listed in the conditions of approval, to mitigate potential impacts, particularly noise, to a level consistent with City standards and objectives.
4. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood in that the site's existing patio/outdoor dining area, including the existing wrought iron fence, will be enhanced through development of the project.
5. Traffic access, pedestrian access and parking are adequate in that the project complies with downtown parking requirements and utilizes two frontages to appropriately separate pedestrian access and loading areas.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions. Each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below enumerated precedent

conditions all have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. Acceptance and Payment of Recording Fees. Within sixty (60) days from the date of this Resolution, the property owner(s) shall accept this permit by signing the form provided hereto, and paying the fee for its recordation by the Recorder of the County of Santa Clara.

CONCURRENT CONDITIONS

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

1. Water Pollution Control Plant Notice. This Conditional Use Permit is subject to the operation of Part 2.75 of the Chapter 15.12 of Title 15 of the San Jose Municipal Code. The applicant for or recipient of such land use approval hereby acknowledges receipt of notice that the issuance of a building permit to implement such land development approval may be suspended, conditioned or denied where the City Manager has determined that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San Jose or to meet the discharge standards of the sanitary sewer system imposed on the California Regional Water Quality Control Board for the San Francisco Bay Region.
2. Nuisance. This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City or the Redevelopment Agency.
3. Development Plans. The subject property shall be developed, maintained and operated in conformance with the Development Plan, "Agenda Annex", dated 1-25-02, prepared by ASI Consulting Engineers.
4. Colors and Materials: Colors and Materials shall be reviewed and approved by the Executive Director of the Redevelopment Agency prior to issuance of a building permit.
5. Window Specification: Window specification, including materials, color, and the manufacturer shall be reviewed and approved by the Executive Director of the Redevelopment Agency prior to issuance of a building permit.
6. Photo Documentation: Photo documentation and drawings of the north façade of the existing Agenda building, including the "Ghiradelli Chocolate" sign shall be completed and submitted to the Executive Director of the Redevelopment Agency prior to commencement of construction on the project.
7. Signs.
Signs are not included as part of this Conditional Use Permit. Any proposed signage will require approval by the Executive Director of the Redevelopment Agency.
8. Hours of Operation. The restaurant, nightclub and poolroom shall be limited to 6 AM to 2 AM daily. Live entertainment will be limited between the hours of 11:00 AM and 2:00 AM.

9. Security. A minimum of two security officers shall be on duty for every 100 patrons using the bar facility during its hours of operation.
10. Noise and Acoustics.
 - a. During the hours of operation, amplified sound shall be carefully regulated to ensure compatibility with adjacent uses.
 - b. Windows and doors for the facility shall remain shut, during periods in which amplified music is played, to insure compatibility with the surrounding neighborhood and conformance with General Plan noise policies.
11. Trash, Refuse, Garbage and Litter.
 - a. Outdoor cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall further include daily damp-washing of all exterior walls and sidewalks along the project's frontage on South First Street and West San Salvador Street.
 - b. Mechanical equipment used for outside maintenance, including blowers and street-sweepers shall not be used between 10:00 PM and 6:00 AM, seven days a week.
 - c. All trash areas, equipment, and containers shall be effectively screened from view and maintained in an orderly state at all times.
 - d. The facility operator shall provide adequate ashtrays along the business frontage and on the patio to accommodate patrons who wish to smoke outdoors. Patrons smoking outdoors shall not impede pedestrian traffic along the project frontages.
12. Patron Parking. The project operator shall identify and publicize to its patrons the location and availability of parking facilities within the vicinity of the project site.
13. Vendor Delivery Parking. The project operator shall discourage vendors from parking delivery vehicles illegally on City streets and shall identify to vendors the available legal loading and unloading zones along West San Salvador.
14. ABC License. The project operator shall obtain the appropriate permit, based on the use of the facility from the State of California Department of Alcoholic Beverages Control (ABC) and shall maintain that license according to the use operated.
15. Entertainment Permit. The project operator shall obtain and maintain the appropriate Entertainment Permit issued by the City of San Jose Police Department.
16. Radio Promotions Vehicles. The project operator shall discourage radio promotion vehicles or any other vehicles from parking illegally on City streets or sidewalks.
17. Fire Conditions: The applicant shall meet all conditions and regulations required by the Fire Department.

18. Public Works Conditions:

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

Geology:

- a. A grading permit may be required prior to the issuance of Public works clearance. The construction operation shall control the discharge of pollutants to the storm drain system from the site. An erosion plan may be required with the grading application.
- b. A soils report addressing the potential hazard of liquefaction must be submitted to and accepted by the City Engineering Geologist prior to the issuance of a Public Works Clearance or grading permit.

Landscape: Install street trees within public right of way long entire street frontage per City Standards. Street trees shall be installed in cut-outs an the back of the curb.

Sanitary: Install new sanitary sewer lateral if necessary.

Street Improvements: Applicant shall be responsible to remove and replace curb, gutter and sidewalk damage during construction of the proposed project.

Storm: Remove two storm grates from public sidewalk on the First Street frontage.

Minor Improvement Permit: The applicant will be required to satisfy all public Works conditions prior to the issuance of a Public Works Clearance. The clearance may require the execution of a Minor Street Improvement Permit that guarantees the completion of the public works improvements to the satisfaction of the Director of Public Works. This permit includes plans, insurance, bonds/deposit certificate, and engineering and inspection fees.

19. Construction Measures. The applicant shall ensure that the following measures are fully complied with throughout the duration of all construction activities associated with this project and related off-site construction work, including any demolition activities. Failure to comply with these conditions by the applicant, their contractors or subcontractors shall be cause for shutdown of the project site until compliance with the following conditions can be ensured by the City.

- a. *Construction Hours.* Construction shall be limited to the hours of 7:00 AM to 7:00 PM Monday through Friday; however, interior construction in closed environs is also allowed on Saturdays from 7:00 AM to 7:00 PM. The Executive Director of the Redevelopment Agency is authorized to modify the period during which construction activities may occur, but only upon written notice to the developer.
- b. *Construction Deliveries.* Deliveries shall not occur outside the specified construction hours. Moreover, deliveries shall be coordinated to ensure that delivery vehicles do not

arrive prior to the opening of the gates to the project site to prevent potential disruption of nearby residents.

- c. *Construction Employees.* Workers shall not arrive to the site until the opening of the project gates. The applicant shall designate a location without adjacent residential units for workers to wait prior to the opening of the project gates.
- d. *Plans.* The construction hours shall be clearly printed on all plans for the project used to construct the project.
- e. *Disturbance Coordinator.* A disturbance coordinator shall be identified by the developer for this project. The disturbance coordinator shall be responsible for ensuring compliance with the hours of construction, site housekeeping, and other nuisance conditions in this permit. The name and phone number of the disturbance coordinator and the hours of construction limitations shall be displayed on a weatherproof sign posted at each entrance to the project site.
- f. *Daily Log.* The disturbance coordinator shall maintain a log of daily activities on the project site. The log shall include, but is not limited to, verification of site closure activities, project cleanliness, complaints regarding on site activities and conditions and dates and times of the coordinators visits to the project site, if the coordinator is not solely responsible for this site.
- g. *Telephone Contact.* A phone answering machine for non-work hours shall be maintained during the duration of project construction. The phone number shall be a local call for surrounding residents.
- h. *Construction Parking.* The Developer shall complete a Construction Workers Parking Plan, including monthly labor power and parking locations for construction workers and the method of transportation to and from the Site, for Agency staff review and approval.

The Developer and/or the general contractor is required to participate in Downtown Projects Construction Coordination Meeting, which the Agency may host on a regular basis, and provide construction schedules and issues updates as needed.

20. Archaeology. There shall be monitoring of site excavation activities to the extent determined by a qualified professional archaeologist to be necessary to insure accurate evaluation of potential impacts to prehistoric and/or historic resources.

- a. If no resources are discovered, the archaeologist shall submit a report to the Executive Director of the Redevelopment Agency of the City of San Jose within 60 days of complete excavation verifying that the required monitoring occurred and that no further mitigation is necessary.
- b. If evidence of any archaeological, cultural, and/or historic deposits are found, hand excavation and/or mechanical excavation will proceed to evaluate the deposits for determination of significance as defined by CEQA guidelines. The archaeologist shall

submit reports, to the satisfaction of the Executive Director of the Redevelopment Agency of the City of San Jose within 120 days of completion of excavation, describing the testing program and subsequent results. These reports shall identify any program mitigation that the Developer shall complete in order to mitigate archaeological impacts (including resource recovery and/or avoidance testing and analysis, removal, reburial and curation of archaeological resources).

- c. In the event that human remains and/or cultural materials are found, all project-related demolition shall cease within a 50-foot radius in order to proceed with the testing and mitigation measures required. Pursuant to Section 7050.5 of the Health and Safety Code and Section 5097.94 of the Public Resources Code of the State of California.
- d. In the event of the discovery of human remains during demolition, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified by the developer and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission, who will attempt to identify descendant of the deceased Native Americans. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to State law, than the landowner shall reinter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
- e. Within two weeks of excavation and/or demolition, a final report shall be submitted to the Executive Director of the Redevelopment Agency of the City of San Jose. This report shall contain a full description of the mitigation programs and its results including a description of the monitoring and testing program, a list of resources found, a summary of the resource analysis methodology and conclusions and a description of the disposition/curation of the resources. This report shall verify completion of the mitigation program to the satisfaction of the Executive Director of the Redevelopment Agency of the City of San Jose.

CONDITIONS SUBSEQUENT

1. Building Permit. If this Conditional Use Permit includes construction of any buildings or structures, said Permit shall expire and be of no further force or effect if the construction of buildings or structures pursuant to a valid Building Permit has not commenced within two (2) years from the date of the adoption of this Resolution. No further Building Permit shall be issued after expiration of the Conditional Use Permit pursuant to this condition or to a time limit condition. However, nothing herein shall be deemed to prevent the renewal or resistance of any Building Permit, which expires by its own terms prior to the expiration of this Permit.
2. Revocation, Suspension, Modification. This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission or by the City Council on appeal, at any time, regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, of the Chapter 20.44, of Title 20, of the San Jose Municipal Code it finds:

- a. A violation of any conditions of the Conditional Use Permit was 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 presently conducted creates a nuisance.
3. **Time Limit.** This Conditional Use Permit expires and has not further force or effect five (5) years from the date of approval. This permit may be renewed in accordance with condition number five, below.
4. **Compliance Review.** A Compliance Hearing may be required at the discretion the Planning Commission at any time during the period of time this permit is in effect.
5. **Renewal.** The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Executive Director of the Redevelopment Agency. In order to be timely, an application for renewal must be filed more than ninety (90) calendar days but less than one hundred eighty (180) calendar days prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.