

SITE DEVELOPMENT PERMIT AMENDMENT

FILE NO.	HA01-054-01
LOCATION OF PROPERTY	East corner of Saratoga Avenue and Campbell Avenue (1600 Saratoga Avenue)
ZONING DISTRICT	CG Commercial General
GENERAL PLAN DESIGNATION	Regional Commercial
USE UNDER ORIGINAL PERMIT	Site Development Permit for the demolition of two commercial buildings totaling 167,270 square feet and reconstruction of one 166,339 square foot building in an existing commercial shopping center on a 44.6 gross acre site
PROPOSED USE	Site Development Permit Amendment to allow facade, site, and landscaping improvements for an existing commercial shopping center (Westgate Mall) on a 44.6 gross acre site
ENVIRONMENTAL STATUS	Exempt
OWNER / APPLICANT	FR Westgate Mall, LLC 3055 Olin Avenue, Suite 2100 San Jose, CA 95128

FACTS

The Director of Planning, Building, and Code Enforcement finds that the following are the relevant facts regarding this proposed project:

1. This Site Development Permit Amendment is to allow façade, site, and landscaping improvements for an existing commercial on a 5.5 gross acre site.
2. This site has a designation of Regional Commercial on the adopted Envision San José 2040 General Plan Land Use/Transportation Diagram.
3. The site is zoned CG Commercial General Zoning District.
4. The site is surrounded by commercial uses to the north, west, and south, multi-family residential uses to the west and south, two-family residential uses to the north, and single-family residential uses to the north, east, and south.

5. The site is developed with an approximately 660,000 square foot commercial shopping center with approximately 2,964 parking spaces and associated site, circulation, and landscaping improvements.
6. No new buildings or additional square footage is proposed as part of this project.
7. Sufficient on-site vehicular circulation exists on the site to meet the requirements set forth in Table 20-220 of the San Jose Municipal Code.
8. There are nine (9) ordinance-sized trees and eleven (11) non-ordinance sized trees proposed to be removed as part of the subject development.

FINDINGS

The Director of Planning, Building, and Code Enforcement concludes and finds, based on the analysis of the above facts, that:

1. This Site Development Permit Amendment, as issued, furthers the Envision San Jose 2040 General Plan, in that the project is consistent with the designation of Regional Commercial.
2. The interrelationship between the orientation, location and elevations of the proposed building and site alterations are mutually compatible and aesthetically harmonious in that:
 - a. Sufficient open space separates all structure(s) and uses.
 - b. Sufficient maneuvering room will be provided on-site to allow smooth circulation and minimize interference with other uses.
3. The orientation, location and elevations of the proposed alterations to building(s), structure(s) and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood in that:
 - a. The proposed façade screen structures are compatible with the materials and architecture of existing adjacent or nearby structures.
 - b. The structure(s) proposed on site are comparable in terms of mass, scale and height with existing adjacent or nearby structures.
 - c. The proposed structure(s) do not unreasonably interfere with the light and air available to adjacent sites.
4. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain the appearance of the neighborhood in that:
 - a. The proposed landscaping upgrades the appearance of the existing shopping center.
5. Traffic access, pedestrian access and parking are adequate in that:
 - a. Sufficient driveway curb cuts and driveways will be provided on site to provide access to the site without interfering with off-site circulation.
 - b. The proposed number, size and access of off-street parking spaces comply with the requirements of Section 20.90.060 of the Zoning Ordinance in that 2,496 parking spaces are required for the approximately 660,000 square foot shopping center and 2,964

parking spaces are provided.

- c. There are sufficient walkways proposed around the perimeter of the building.
6. 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 affect on adjacent property or properties, in that:
 - a. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), which allows for the continuing use of existing facilities, this project is found to be exempt from the environmental review requirements.
7. The amendment does not negate any findings required by Section 20.100.630.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit Amendment within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit Amendment by the applicant; and
 - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Site Development Permit Amendment shall automatically expire 24 months from and after the date of issuance hereof by said Director, if within such 24-month period, the proposed alterations of buildings has not commenced, pursuant to and in accordance with the provisions of this Site Development Permit Amendment. The date of issuance is the date this Permit Amendment is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit in accordance with Title 20 of the San José Municipal Code.
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 applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.

4. **Conformance to Plans.** Development of the site shall conform to approved Site Development plans entitled “Westgate Center Planning Department Re-Submittal” dated March 12, 2012, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04), with the exception of any subsequently approved changes.
5. **Previous Permits.** Unless specifically modified with this permit, this project shall comply with all conditions of the previously approved Site Development Permit (File No. H01-054).
6. **Revocation.** This Site Development Permit Amendment is subject to revocation for violation of any of its provisions or conditions.
7. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
8. **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 Planned Development Permit incorporated by reference in this Permit in accordance with Chapter 20.100 of the San José Municipal Code.
9. **Replacement Tree.** Within 30 days of removal of the trees, the applicant shall replace the nine (9) ordinance-sized trees and eleven (11) non-ordinance sized trees removed with twenty-three (23) 36-inch box trees, as shown on the approved plans, on the same property as the trees that are removed. The applicant shall provide appropriate evidence such as, but not limited to, photographs and/or receipts to the Planning Project Manager, to verify compliance with the mitigation requirements. Such evidence should be labeled HA01-054-01 and sent to the Planning Project Manager, within 30 days of the replacement of the subject tree.
10. **Construction Impact Mitigation Measures.** The applicant is responsible for notifying all contractors of the conditions of this permit and that they shall perform construction activities in compliance with these conditions, or be subject to enforcement action.
 - a. *Compliance.* The applicant shall ensure that the following construction impact mitigation measures are fully complied with throughout the duration of all construction activities associated with this project and related off-site construction work. 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. These construction impact mitigation measures shall be included in all contract documents for the project to ensure full disclosure to contractors and subcontractors.
 - b. *Construction Hours.* Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Interior construction that is not audible at the adjacent property lines is permitted on Saturday and Sunday between 9:00 am and 6:00 pm.
 - c. *Enforcement.* The Director of Planning, Building and Code Enforcement may order an immediate halt to construction activities on the project site any time that the Director determines that the project is not in substantial conformance with the requirements of this Permit. Within seven days of ordering such a halt to construction, the Director of Planning, Building and Code Enforcement shall issue a Notice of Noncompliance in conformance with Section 20.100.320 of Title 20 of the San José Municipal Code

indicating the specific area(s) of noncompliance and providing notice that the Director may issue an Order to Show Cause why the development permit shall not be revoked, suspended, or modified if the noncompliance is not corrected.

- d. *Dust Control.* On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.

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

- a. *Construction Plans.* This permit file number, HA01-054-01, shall be printed on all plans submitted to the Building Division.
- b. *Conformance Review.* A project construction 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 plan check approval and building permit issuance by the Building Division, the developer shall obtain confirmation from the Planning Division that the project conforms to all applicable requirements of the subject Permit, including the plan sets.

12. Fire Clearance for Issuing Permits. Compliance with all applicable fire and building codes and standards relating to fire and panic safety shall be verified by the Fire Department during the Building Permit process.

13. Colors and Materials. All building colors and materials are to be as specified on the approved plan set.

14. Signage. This Site Development Permit Amendment does not include the approval of any signage. Any future signs are to conform to the regulations of Title 23 of the Municipal Code and allowed with the issuance of a Sign Permit Adjustment.

15. Lighting. Any new exterior lighting shall conform to the City of San José's Outdoor Lighting Policy.

16. 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.

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

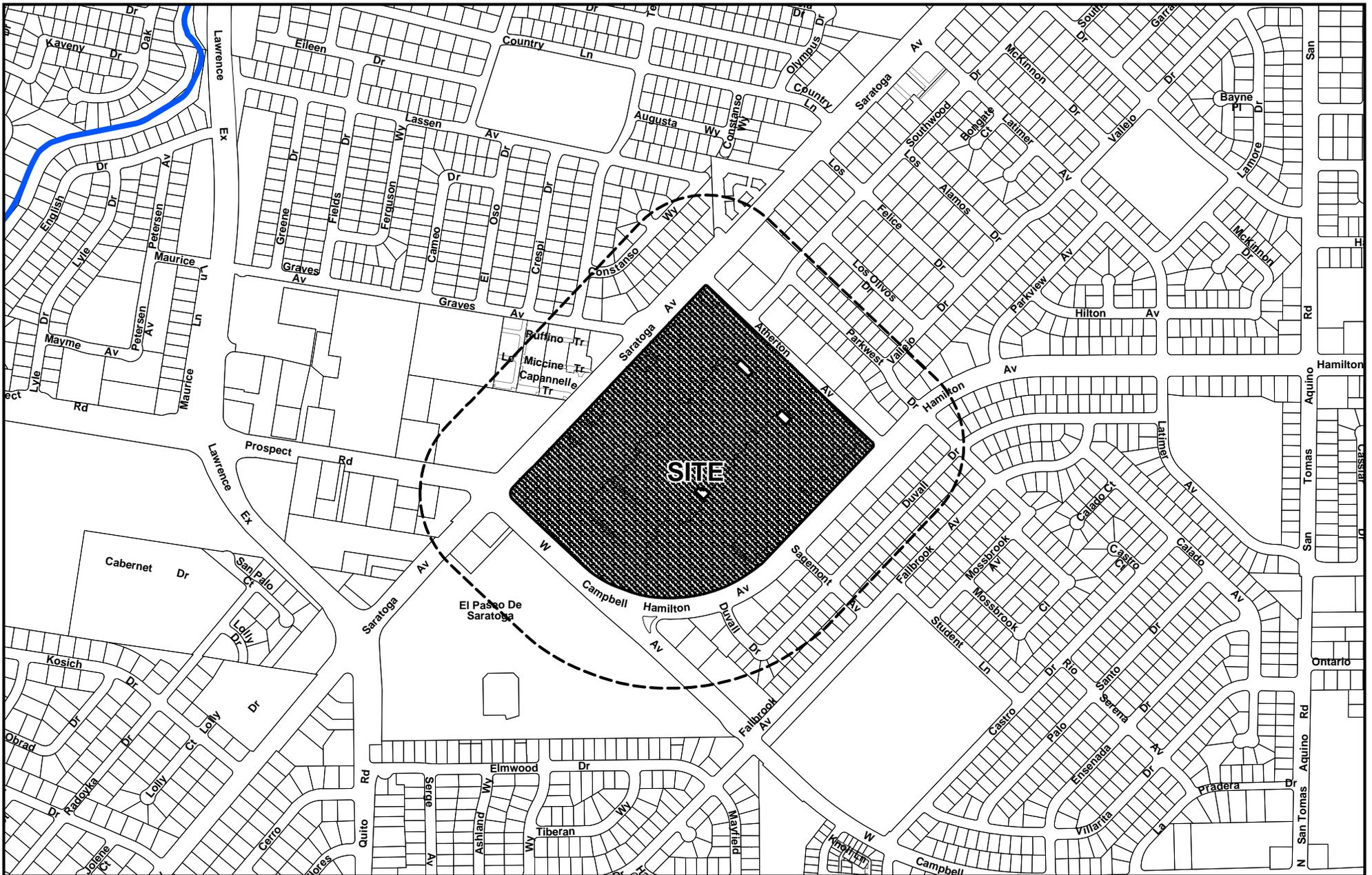
18. Recycling. It is required that scrap construction and demolition debris be recycled instead of disposing of it in a landfill. An infrastructure exists within San José to accommodate such recycling efforts. Integrated Waste Management staff can provide assistance on how to recycle construction and demolition debris from the project, including information on where to conveniently recycle the material. Additional information may be found at <http://www.sjrecycles.org/construction-demolition/cddd.asp> or by contacting the Commercial Solid Waste Program at (408) 535-8550.

APPROVED and issued on this **13th day of April, 2012.**

Joseph Horwedel, Director
Planning, Building, and Code Enforcement

Deputy

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File No: HA01-054-01

District: 1

Noticing Radius: 500 Feet

