

## **RESOLUTION NO. 11-022**

Resolution of the Planning Commission of the City of San José granting, subject to conditions, a Conditional Use Permit to use certain real property described herein for the purpose of allowing the development of an approximately 4,560 square-foot public eating establishment with a drive-through use on a .34 gross-acre portion of a 38.7 gross-acre site on the north side of Headquarters Drive approximately 180 feet easterly of North First Street (53 Headquarters Drive).

### **FILE NO. CP10-063**

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SAN JOSÉ:

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on November 10, 2010, an application (File No. CP10-063) was filed for a Conditional Use Permit for the purpose of allowing the development of an approximately 4,560 square-foot public eating establishment with a drive-through use on .34 acres of a 38.7 gross-acre site, on that certain real property (hereinafter referred to as "subject property"), situate in the CG-Commercial General Zoning District, located on the north side of Headquarters Drive approximately 180 feet easterly of North First Street (53 Headquarters Drive), San José, and

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

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

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

WHEREAS, at said hearing this Planning Commission received and considered the reports and recommendation of the Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this Planning Commission received in evidence a development plan for the subject property entitled, "Chic-fil-A @ First, 53 Headquarters Drive, San Jose, California" dated April 21, 2011. 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 development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said hearing was conducted in all respects as required by the San José Municipal Code and the rules of this Planning Commission;

NOW, THEREFORE:

After considering evidence presented at the public hearing, the Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. The project is located on a .34 gross-acre portion of a 38.7 gross-acre site on the north side of Headquarters Drive approximately 180 feet easterly of North First Street (53 Headquarters Drive).
2. The subject parcel has a designation of Combined Industrial/Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
3. The subject parcel is in the CG-Commercial General Zoning District.
4. Per Table 20-140 of the San José Municipal Code, a Conditional Use Permit is required for a drive-through and late night use in the CG-Commercial General Zoning District.
5. This Permit would allow the development of an approximately 4,560 square-foot public eating establishment with a drive-through use on a .34 gross-acre portion of a 38.7 gross-acre site.
6. The restaurant is integral to a larger shopping center that includes 880,000 square feet of office/research and development space (Brocade), a large-format commercial/retail building (Target), a 164-room hotel (Hotel Sierra), a 157-room hotel (Marriott), and various other retail spaces including retail pad buildings. The subject parcel is surrounded by commercial (retail and hotel) uses to the northeast, residential uses across North First Street to the west and southwest, and office/research and development and hotel uses to the east and southeast.
7. The proposal is subject to City Council Policy 6-10: Drive-Through Uses.
8. The proposal is subject to City's Commercial Design Guidelines.
9. The proposed drive-through use is more than 240 feet away from the nearest residential development.
10. The proposed restaurant building is placed at the edge of the 25-foot setback line.
11. The drive-through lane does not extend in front on the building and provides stacking for 10 cars.
12. A restaurant with a drive-through use on the subject site contributes to revenue generation for the City without compromising the viability of industrial uses in the larger area, and supports the General Plan Economic Development Major Strategy.
13. The proposed use is consistent with the North San Jose Area Development Policy in that restaurant uses within this area support the interaction between retail land uses with and industrial land uses and can help internalize trips within the North San Jose boundaries.

14. Pursuant to Section 15164 of the CEQA Guidelines, the City of San José has determined that the project described below is pursuant to or in furtherance of the Final Environmental Impact Report (EIR) entitled “North San José Development Policy Update,” and findings were adopted by City Council Resolution No. 72768 on June 21, 2005.

This Planning Commission concludes and finds, based upon an analysis of the above facts 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:
  - a. The subject restaurant building, drive-through structure, and associated site improvements are similar in scale, materials, and colors to the existing large-format commercial building, hotels, and 888,000 square-foot office building complex on the 38.7-acre site.
  - b. Sufficient open space separates all structure(s) and uses.
  - c. Sufficient maneuvering room will be provided on site to allow smooth circulation and minimize interference with other uses.
  - d. The project conforms to City Council Policy 6-10: Drive-Through Uses.
  - e. The project conforms to City’s Commercial Design Guidelines.
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:
  - a. The proposed building height, materials, and colors are similar to surrounding buildings and structures.
  - b. The building and structures are located and oriented on-site to provide convenient vehicular and pedestrian access from other buildings in the area.
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 affect on adjacent property or properties, in that:
  - a. The environmental impacts of this project were addressed by a Final EIR entitled, “North San José Area Development Policies Update and findings were adopted by City Council Resolution No. 72768 on June, 2005. The City of San José may take action on the proposed project as being within the scope of the North San José Area Development Policies Update Final EIR, which adequately addresses the environmental effects of the proposed project. The review through the Addendum has identified that the project would not result in significant environmental effects that are not already identified in the Final EIR. The project, therefore, meets the eligibility requirements for preparation of an addendum and does not require a supplemental EIR or Negative Declaration.

- b. Mitigation measures have been incorporated into this Permit as Permit conditions.
4. Traffic access, pedestrian access and parking are adequate in that:
    - a. Sufficient parking and traffic capacity including mitigation measures funded by traffic fees are available for the traffic this project will create.
    - b. Convenient pedestrian paths of travel connect the building and structures on the site with other buildings and structures on the site.
  5. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior hearing, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood in that:
    - a. The proposed landscaping and publicly accessible plazas help the site blend with its surroundings.
    - b. Ventilation, plumbing, utility, and trash facilities are screened.
  6. The Permit, as issued, furthers the policies of the General Plan, in that the project is consistent with the site's General Plan Land Use/Transportation Diagram designation of Combined Industrial/Commercial.

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

1. The proposed use at the location requested will not
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
  - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
  - b. By other public or private service facilities as are required.

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

## CONDITIONS

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
  - a. Acceptance of the Permit by the applicant; and
  - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Conditional Use Permit shall automatically expire four years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such four-year period, the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years.
3. **Use Authorization.** This Conditional Use Permit authorizes the following uses to be implemented on the property subject to the terms of this permit:
  - a. Drive-through use associated with an approximately 4,560 square-foot public eating establishment.
4. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
5. **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.

6. **Conformance with Plans.** Construction and development shall conform to approved Conditional Use Permit plans entitled, “Chic-fil-A @ First, 53 Headquarters Drive, San Jose, California” dated April 21, 2011 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).
7. **Permit Adjustment Required.** The applicant shall secure and agree to implement a Permit Adjustment within 90 days of approval of this Permit to the satisfaction of the Director of Planning to address the following:
  - a. *Parking and Vehicle Circulation Requirements.* The parking layout shall be modified to provide bicycle and motorcycle parking in compliance with per the Zoning Ordinance.
  - b. *Front Setback Requirement.* The drive-through lane shall be shifted at least 7 feet further from the property line adjacent to Headquarters Drive to ensure a minimum 25-foot front setback from this property line. This shall be accomplished by reducing the parking aisle to 15 feet in width as allowed by the Zoning Ordinance for parking areas with a one-way, 45 degree angled parking configuration and relocation of a trash enclosure to accommodate a two-foot reduction in the width of the internal landscaped area between the angled parking area and balance of the shopping center parking area.
8. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the applicant shall be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits.
  - a. *Transportation:* The project site is located within the North San Jose Policy Area. The proposed land use support the industrial and residential uses in the Policy Area and is consistent with the General Retail, Food Service and General Service uses, as defined in the City's Zoning Ordinance. Per the NSJ Policy, traffic impact fees are not required with the proposed land use. We conclude that the subject project will be in conformance with the North San Jose Policy and a determination for a negative declaration can be made with respect to traffic impacts.
  - b. *Grading/Geology:* The existing grading permit (Permit No. 08-026518 GR) may need to be revised to reflect the proposed changes or a new a grading permit may be required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.

- i. The project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.
- c. *Stormwater Runoff Pollution Control Measures:* This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) that include site design measures, source controls, and stormwater treatment controls to minimize stormwater pollutant discharges. Post-construction treatment control measures, shown on the project's Stormwater Control Plan, shall meet the numeric sizing design criteria specified in City Policy 6-29.
- i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.
  - ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
  - iii. Any changes to the previously-approved Stormwater Control Plan will need to be shown on the Grading Plan.
- d. *Stormwater Peak Flow Control Measures:* The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
- e. *Flood: Zone A*
- i. The flood zone designation for the project site is Flood Zone A, effective May 18, 2009, per the new Countywide flood maps issued by the Federal Emergency Management Agency (FEMA). Although the flood elevation is not shown on the flood map, the City has determined the flood elevation to be a minimum Elevation 12.00' NAVD 1988 (9.00' NGVD 1929) based on the effect of tidal flooding. Therefore, the project should be elevated or floodproofed to this minimum elevation.
  - ii. The project shall also conform to the Updated 2006 North San Jose Floodplain Management Study (NSJFMS). The NSJFMS was updated to reflect the completed Downtown and Lower Guadalupe River Flood Protection Projects and to show the resulting blockage requirements for applicable projects in North San Jose. Based on the 2006 NSJFMS, ultimate blockage should not to exceed 75% of the site perpendicular to flow of flood waters. Flow direction is south to north.
    - 1) The blockage requirements for the project site was addressed with the adjacent project, The Offices @ First (Planning Permit H07-018), which included a Private Flood Path Easement on a parcel map recorded on May 5, 2008 in Book 824, pages 39-42, File number 19841502.

iii. The following conditions apply:

- 1) Elevate the lowest floor of the building above 12.00' NAVD 1988 (9.00' NGVD 1929) or floodproof to the same elevation. For insurance rating purposes, the building's floodproofed design elevation must be at least one foot above the base flood elevation to receive rating credit.
  - 2) An Elevation Certificate (FEMA Form 81-31) based on construction drawings is required prior to issuance of a building permit. Consequently, an Elevation Certificate based on finished construction is required prior to issuance of an occupancy permit.
  - 3) If the structure is to be floodproofed, a Floodproofing Certificate (FEMA Form 81-65) for each building and floodproofing details, along with an Elevation Certificate (FEMA Form 81-31) are required prior to the issuance of a Public Works Clearance.
  - 4) Building support utility systems such as HVAC, electrical, plumbing, air conditioning equipment, including ductwork, and other service facilities must be elevated above the base flood elevation or protected from flood damage.
- f. *Sewage Fees:* In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
- g. *Sanitary:* The project is required to submit plan and profile of the private sewer mains with lateral locations for final review and comment prior to construction.
- h. *Municipal Water Fees and Services.* This development is subject to the Major Water Facilities Fee. Potable and recycled water mains front the site along Holger Way. There is an existing 8-inch fire service and a 4-inch domestic service stubbed to the site, as well as a 1.5-inch recycled service for non-potable uses. If any additional services are required for this site, the development will be responsible for the cost of constructing the additional services and will also be subject to a Meter Fee and an Engineering & Inspection Fee.
9. **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. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
  - b. *Construction Plans.* This permit file number, CP10-063, shall be printed on all construction plans submitted to the Building Division.
  - c. *Construction Conformance.* A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms to all applicable requirements of the subject Permit, including the plan sets. To prevent delays in the

issuance of Building Permits, please notify Planning Division staff at least one week prior to the final Building Division inspection date.

- d. *Compliance with Required Major Permit Adjustment.* The developer shall comply with project design modifications as noted under condition number 6.

10. **Fire Department Requirements.** The project shall conform to the requirements of the Fire Department at the building plan review stage to the satisfaction of the Chief Building Official and the Fire Chief.

- a. Fire flow and fire hydrants shall be submitted for approval at the building permit stage.
  - i. Plans shall show that the required fire flow of 1750 gpm thru two (2) fire hydrants is available at the project site. The applicant shall contact Jim Bariteau of San Jose Water Company at 408-279-7874 to get the water flow information and provide a copy of the letter from the San Jose Water Company that indicates the water flow is available.
  - ii. The plans shall show the locations of all fire hydrants that serve the site. The average distance between hydrants shall not exceed 500 feet (based upon 1750 gpm fire flow). The maximum distance from any point on street or road frontage to a hydrant shall be 250 feet. Any exterior portion of all buildings shall be within 400 feet of a hydrant.
- b. Curbs shall be painted red and marked as "Fire Lane - No Parking" under the following conditions: (show exact locations on plan)
  - i. Roads, streets, avenues, and the like that are 20 to less than 26 feet wide measured from face-of-curb to face-of-curb shall have curbs on both sides of the road painted and marked.
  - ii. Roads, streets, avenues, and the like that are 26 to less than 32 feet wide measured from face-of-curb to face-of-curb shall have one curb painted and marked.
- c. Plans shall be submitted to the Fire Department by appointment only (Please call Kelly Gangar) as soon as possible.

11. **Hours of Operation.** This Conditional Use Permit does not allow late night use of commercial uses beyond midnight for the restaurant and associated drive-through use.

12. **Signage.** This Conditional Use Permit 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.

13. **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.

14. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed / permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.

15. **Trash Bins and Recycling Containers.** Any drainage within trash enclosure areas shall be connected to sanitary system. No hazardous waste material shall be allowed to enter the solid waste stream (garbage or recycling). The property owner shall provide for independent disposal of waste, such as, but is not limited to, paint products and solvents, chemicals and nutrients used for landscaping, batteries and automotive fluids.
16. **Colors and Materials.** All building colors and materials are to be as specified on the approved plan set.
17. **Street Cleaning and Dust Control.** During construction, the developer shall sweep and wash down the public streets each working day. In any on-site area visible to the public from the public right-of-way, the site shall be clean of debris, rubbish and trash at least once a week. The developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the construction site.
18. **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.
19. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
20. **Irrigation Standards.** The applicant shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set and is consistent with the City of San José Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
21. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
22. **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.

23. **Recycled Water.** The development is adjacent to an existing recycled water pipeline and therefore must conform to Chapters 15.10 and 15.11 of the San José Municipal Code. These chapters require all new and rehabilitated landscaping for projects that require a development permit from the City to be designed and constructed to receive recycled water. All irrigation systems shall be metered separately from the potable water supply system, shall have no on-site cross-connections to the potable water supply and shall meet all other legal requirements necessary to allow for recycled water use. The use of potable water to irrigate any outdoor landscaping plumbed for recycled water where recycled water is available to the property is prohibited. The design and construction of the irrigation system shall conform to South Bay Water Recycling (SBWR) Rules and Regulations and must be submitted to and approved by SBWR. Standard Details, specifications and notes are available online at [www.sanjoseca.gov/sbwr](http://www.sanjoseca.gov/sbwr) or by calling (408) 277-3671. The project should also consider using recycled water in lieu of drinking water for other non-potable applications such as toilet flushing, commercial laundry, and building cooling. Further, section 15.10.260 of the Municipal Code prohibits the use of potable water for construction purposes, such as dust control, without an exception from the City. A recycled water truck-fill station is located on Spring Street near Hedding Street to provide recycled water for construction uses. Please visit SBWR's website for more information and a complete list of approved uses of recycled water. Questions regarding recycled water use should be directed to Nicole Quesada or SBWR staff at the above number.
24. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
25. **Lighting.** All proposed lighting shall conform to the City of San José's Outdoor Lighting Policy.
26. **Covenant of Easement.** An easement for the purposes of emergency vehicle access, cross-access for parking, and general ingress/egress must be recorded to the subject property prior to the issuance of Building Permits.
27. **Air Quality.** Consistent with guidance from the BAAQMD, the following measures shall be required of construction contracts and specifications for the project.
- a. *Demolition.* The following controls shall be implemented during demolition:
    - i. Watering shall be used to control dust generation during demolition of structures and break-up of pavement.
    - ii. Cover all trucks hauling demolition debris from the site.
    - iii. Use dust-proof chutes to load debris into trucks whenever feasible.
  - b. *Construction.* The following controls shall be implemented at all construction sites:
    - i. Water all active construction areas at least twice daily and more often during windy periods; active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers to control dust;

- ii. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard;
  - iii. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites;
  - iv. Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas at construction sites; water sweepers shall vacuum up excess water to avoid runoff-related impacts to water quality;
  - v. Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets;
  - vi. Apply non-toxic soil stabilizers to inactive construction areas;
  - vii. Enclose, cover, water twice daily, or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.);
  - viii. Limit traffic speeds on unpaved roads to 15 mph;
  - ix. Install sandbags or other erosion control measures to prevent silt runoff to public roadways;
  - x. Replant vegetation in disturbed areas as quickly as possible;
  - xi. Install base rock at entryways for all exiting trucks, and wash off the tires or tracks of all trucks and equipment in designated areas before leaving the site;
  - xii. Suspend excavation and grading activity when winds (instantaneous gusts) exceed 25 mph.
28. **Green Building Requirements.** The project shall comply with applicable Green Building standards in the City of San Jose Municipal Code in effect at time of submittal of building permit application.
- a. The project is subject to the mandatory requirements of the State of California Green Building Code Standards in effect at time of submittal of building permit application (currently 2010 standards).
  - b. The proposed project is subject to the bicycle parking and Clean Air Vehicle parking requirements of Chapter 20.90 Parking and Loading of the Zoning Ordinance, Title 20 of the San José Municipal Code.
29. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

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 **11<sup>th</sup> day of May 2011**, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Chairperson

ATTEST:

Joseph Horwedel, Secretary

Deputy

**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.*