

## **PLANNED DEVELOPMENT PERMIT**

<b>FILE NO.</b>	<b>PD10-010</b>
<b>LOCATION OF PROPERTY</b>	<b>Northwest corner of Coleman Avenue and Newhall Street (APN: 230-46-055)</b>
<b>ZONING DISTRICT</b>	<b>A(PD) Planned Development</b>
<b>GENERAL PLAN DESIGNATION</b>	<b>Combined Industrial/Commercial</b>
<b>PROPOSED USE</b>	<b>Planned Development Permit for the demolition of existing buildings and to allow a new commercial parking establishment and sports field on a 2.6 gross acre site.</b>
<b>ENVIRONMENTAL STATUS</b>	<b>Exempt</b>
<b>APPLICANT / ADDRESS</b>	<b>Brent Downing % Devcon Construction 690 Gibraltar Drive Milpitas, CA 95035</b>

### **FACTS**

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

1. This site has a designation of Combined Industrial/Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The site is zoned A(PD) Planned Development.
3. The subject lot contains approximately 2.6 acres.
4. The project proposes the demolition of existing, vacant industrial buildings and a new commercial parking establishment and new sports field.
5. The proposed commercial parking establishment is considered an interim use of the site, until the development of the subject property for a professional sports stadium.
6. The proposed sports field is for private, outdoor recreation use only.
7. The proposed project will meet or exceed all of the development regulations set forth in Planned Development Zoning, File No. PDC09-004.
8. No trees are proposed for removal as part of the subject development.
9. An Environmental Impact Report (EIR), entitled "Airport West Stadium and Great Oaks Place Project" was certified for this project on March 16, 2010, and includes mitigation to ensure that

the proposed use does not result in impacts relative to traffic the aesthetics, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality and noise.

## **FINDINGS**

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

1. The Planned Development Permit, as issued, furthers the policies of the General Plan, in that:
  - a. The proposed development conforms to the General Plan Land Use/Transportation Diagram designation of Combined Industrial/Commercial for the site, and is compatible with the surrounding area.
2. The Planned Development Permit, as issued, conforms in all respects to the Planned Development Zoning of the property in that:
  - a. The proposed project conforms to the approved General Development Plan.
3. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of the existing buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious, in that there are no new buildings proposed.
4. 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 effect on adjacent property or properties in that:
  - a. The environmental impacts of this project were addressed in an EIR entitled "Airport West Stadium and Great Oaks Place Project" that was adopted on March 16, 2010. The EIR identified mitigation measures in the following categories: hazards and hazardous materials. Mitigation has been included in the project to ensure that the project does not result in significant environmental impacts.

Further, the following criteria have been considered to determine whether the benefits of permitting the demolition of the existing building outweigh the impacts of demolition:

1. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;
2. The failure to approve the permit would jeopardize public health, safety or welfare;
3. The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood.
4. The approval of the permit would not affect the supply of existing housing stock in the City of San José;

5. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible, however there are no buildings of historical significance on the subject site;
6. Rehabilitation or reuse of the existing building would not be feasible; and
7. The demolition, removal or relocation of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Director of Planning approves, pursuant to Section 20.80.440(B) and Chapter 20.100 of the San José Municipal Code, the subject Planned Development Permit.

**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 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 Planned Development Permit shall automatically expire four (4) years from and after the date of issuance hereof by said Director, if within such four (4) year period, the proposed use has not commenced, pursuant to and in accordance with the provisions of this Planned Development Permit. The date of issuance is the date this Permit 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 the provisions of Title 20. The Permit Adjustment must be approved prior to the expiration of this Permit.
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. **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 a 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. **Conformance with Plans.** Construction and development shall conform to approved plans entitled “”, 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).
6. **Revocation.** This Permit is subject to revocation for violation of any of its provisions or conditions.
7. **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 will 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. *Grading/Geology.* If this project proposes grading, the following conditions will apply:
    - i A grading permit is required prior to the issuance of a Public Works Clearance.
    - ii If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
    - iii Because this project involves a land disturbance of one or more acres, the applicant is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
    - iv 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.
  - b. *Stormwater Runoff Pollution Control Measures:*
    - i 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.

- ii This project is not required to provide numerically sized treatment control measures because the proposed impervious surface (new and replaced) is less than 10,000 s.f.
  - c. *Transportation:* This project will not generate significant peak-hour traffic and no further traffic analysis will be required.
  - d. *Street Improvements:*
    - i The proposed driveway along Newhall Drive shall be 32' wide. This driveway is only allowed for the interim commercial parking use and must be removed with the redevelopment of site.
    - ii San Jose Bike Plan 2020 identifies a bike / pedestrian facility on Newhall Drive behind the existing public sidewalk. Provide a 6' wide Irrevocable Offer of Dedication for pedestrian and bicycle use along Newhall Drive frontage.
    - iii Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
8. **Environmental Mitigation.** The project shall be constructed in a manner that fully comports to the City Council's EIR Findings Resolution, including without limitation the applicable portions of the Mitigation Monitoring and Reporting Program. Without in any way limiting the application and requirements of the foregoing provision, the mitigation measures are as follows:
- a. *Hazards and Hazardous Materials.*
    - i A registered asbestos abatement contractor shall be retained to remove and dispose of asbestos containing materials (ACMs) identified in the asbestos survey performed for the site.
    - ii Materials containing more than one percent (1%) asbestos are also subject to BAAQMD regulations. Removal of materials containing more than one (1) percent asbestos shall be completed in accordance with BAAQMD requirements.
    - iii Requirements outlined by Cal/OSHA Lead in Construction Standard, Title 8, CCR 1532.1 shall be followed during demolition activities, including employee training, employee air monitoring and dust control. Any debris or soil containing lead-based paint or coating shall be disposed of at landfills that meet acceptance criteria for the waste being disposed.
    - iv All potentially friable ACMs shall be removed in accordance with NESHAP guidelines prior to building demolition or renovation that may disturb the materials. All demolition activities shall be undertaken in accordance with OSHA standards contained in Title 8 of the CCR, Section 1529, to protect workers from exposure to asbestos. Specific measures could include air monitoring during demolition and the use of vacuum extraction for asbestos-containing materials.
9. **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.

**10. Demolition 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 demolition impact mitigation measures are fully complied with throughout the duration of all demolition activities associated with this project. 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 impact mitigation measures shall be included in all contract documents for the project to ensure full disclosure to contractors and subcontractors.
- b. *Demolition Hours.* Demolition and grading activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday. This includes the staging of equipment and personnel. The demolition hours shall be printed on all plans for the project used to construct the project.
- c. *Enforcement.* The Director of Planning, Building and Code Enforcement may order an immediate halt to demolition 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, 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. *Deliveries.* Deliveries shall not occur outside the above demolition hours. All deliveries shall be coordinated to ensure that no delivery vehicles arrive prior to the opening of the gates to prevent the disruption of nearby residents.
- e. *Assembly Area.* 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.
- f. *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 demolition, site housekeeping, and other nuisance compliance conditions in this permit. The coordinator shall also listen and respond to community member concerns regarding demolition, determine the cause of the concern (e.g., starting too early, bad muffler, etc.) and institute reasonable measures warranted to correct the problem in a timely manner. The coordinator shall maintain a log of calls and shall make that log available to the City of San Jose upon request.
- g. *Posting of Telephone Number.* The name and phone number of the Disturbance coordinator, the hours of construction limitations, City File Number PD10-001, City contact and phone number (department and phone number), shall be displayed on a

weatherproof sign posted at each entrance to the project site. A local phone number with answering service shall be maintained during the duration of project construction.

- h. *Street Cleaning and Dust Control.* During demolition, the developer shall damp-sweep the public and private streets within and adjoining the project site each working day sufficient to remove all visible debris and soil. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.
- i. *Site Watering.* The proposed project shall use recycled water for all grading, dust control, and other non-potable approved uses during demolition to the satisfaction of the Director of Public Works.

11. **Short-Term Air Quality Impacts / Demolition Activities.** The project developer shall implement the following measures during demolition of the existing structures to minimize short-term air quality impacts:

- a. During demolition, dust-proof chutes will be used, whenever possible, for loading construction debris onto trucks.
- b. During demolition, watering will be used to control dust generation during the demolition of structures and the break-up of pavement materials.
- c. The project developer shall obtain all necessary local and State Permits.
- d. Cover stockpiles of debris, soil, sand, and any other materials that can be windblown. All trucks transporting these materials shall be covered.
- e. Damp sweep daily or more often if determined necessary by either the Director of Planning or Public Works, all paved construction areas, to keep them free from visible dust, dirt, or debris.
- f. Subsequent to clearing, grading, or excavating, exposed portions of the site shall be watered, landscaped, treated with non-toxic soil stabilizers, or covered as soon as possible.

12. **Construction Recycling.** Scrap construction and demolition debris shall be recycled in conformance with CDDD program. Integrated Waste Management staff at 277-5533 can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors. Go to <http://www.sjrecycles.org/business/cddd.htm> for more information.

13. **Nuisance.** The use shall be operated in a manner that does not create a public or private nuisance. Any nuisance must be abated immediately upon notice by the City.

14. **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 Jose Municipal Code.

15. **Refuse.** All trash areas shall be effectively screened from view, covered and maintained in an orderly state to prevent water from entering into the garbage container, and drainage connected to the sanitary sewer. Trash areas shall be maintained in a manner to discourage illegal dumping. The applicant shall ensure that there are provisions for frequent trash pick-ups as needed to avoid overflow.
16. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning pursuant to applicable sections of the San Jose Municipal Code. A subsequent Sign Permit Adjustment will be required for all future signage.
17. **Trees.** No trees are authorized for removal with this permit. No tree larger than 56 inches in circumference, at a height of 24 inches above the natural grade, shall be removed without a Tree Removal Permit issued by the Director of Planning. Removal of any non-ordinance sized trees at the site shall require approval of a Permit Adjustment, subject to the discretion of the Director of Planning, Building, and Code Enforcement.
18. **Fire Clearance for Issuing Permits.** Fire code review was limited to verifying compliance of the project to Article 9, Appendix III-A, and Appendix III-B of the 2001 California Fire Code with City of San Jose Amendments (SJFC). Compliance with all other 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.
19. **Construction Stormwater Control Measures.** RWQCB and City Best Management Practices shall be implemented to preclude non-stormwater discharges to the stormwater system.
20. **Construction Noise.** The following measures are included in the project to reduce noise impacts:
  - a. Noise-generating activities at the construction site or in areas adjacent to the construction site associated with the project in any way should be restricted to the hours of 7:00 AM and 7:00 PM, Monday through Friday. No construction activities shall occur on weekends or holidays because the project site is within 500 feet of a residential area.
  - b. Designate a “noise disturbance coordinator” who would be responsible for responding to any local complaints about construction noise. The disturbance coordinator would determine the cause of the noise complaints (e.g., beginning work too early, bad muffler, etc.) and institute reasonable measures warranted to correct the problem. A telephone number for the disturbance coordinator would be conspicuously posted at the construction site.

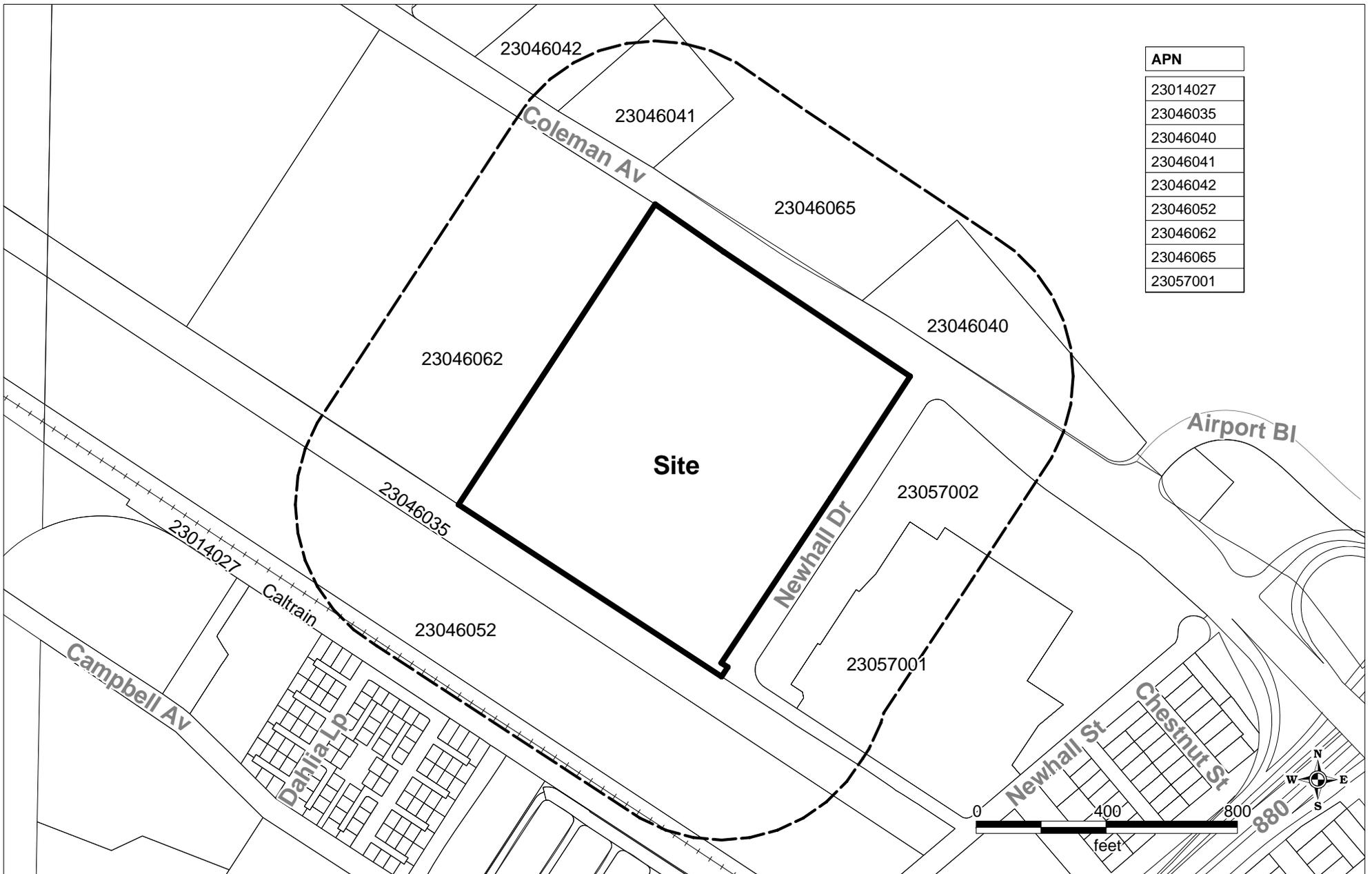
**APPROVED** and issued on this 21<sup>st</sup> day of July, 2010.

Joseph Horwedel, Director  
Planning, Building and Code Enforcement

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Deputy

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File No: PD10-010  
 District: 3

Noticing Radius: 500 Feet



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 Building, and Code Enforcement  
 6/9/2010