

PLANNED DEVELOPMENT PERMIT

FILE NO.	PD11-002
LOCATION OF PROPERTY	Southwest corner of Newhall Drive and Coleman Avenue
ZONING DISTRICT	A(PD) Planned Development
ZONING FILE NUMBER	PDC09-004
GENERAL PLAN DESIGNATION	Combined Industrial/Commercial
PROPOSED USE	An outdoor soccer stadium seating approximately 16,005 persons for the San Jose Earthquakes on the subject 15.27 gross acre site.
ENVIRONMENTAL STATUS	Airport West Stadium and Great Oaks Place Project Final Environmental Impact Report (EIR) for File Nos. GP07-02-01, PDC07-098, & PDC09-004
OWNER/ADDRESS	

FACTS

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

1. This subject site has a designation of Combined Industrial/Commercial on the adopted Envision San José 2040 General Plan Land Use/Transportation Diagram.
2. The project site is located in the A(PD) Planned Development Zoning District. The Planned Development Zoning (File No. PDC09-004) was reviewed by the City Council and approved with Ordinance No. 28727 adopted on March 30, 2010.
3. This Planned Development Permit proposes to allow for the construction of an outdoor soccer stadium seating approximately 16,005 persons for the San Jose Earthquakes on the subject site.
4. The subject lot contains approximately 15.27 gross acres and 11.9 net acres.
5. The site is currently undeveloped.
6. A Planned Development Permit, File No. PD10-010, was approved by the Director of Planning, Building, and Code Enforcement on October 29, 2010 to allow for the demolition of existing, vacant industrial buildings and the addition of new commercial parking

establishment and new sports field for private, outdoor recreation use only. 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.

7. The proposed project will meet all of the development regulations set forth in Planned Development Zoning, File No. PDC09-004, including but not limited to heights, setbacks, densities, open space, parking and environmental mitigation.
8. An Environmental Impact Report (EIR), "Airport West Stadium and Great Oaks Place Project", was prepared for this project and certified on March 16, 2010, pursuant to the provisions of CEQA (Resolution No. 75657).
 - a. The project includes mitigation to ensure that the proposed use does not result in impacts relative to traffic, aesthetics, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality and noise.
9. This Planned Development Permit includes environmental mitigation measures that reduce any potentially significant impacts to a less than significant level.

FINDINGS

The Director of Planning, Building, and Code Enforcement 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 rezoning under File No. PDC09-004 were found consistent with the site's San Jose 2020 General Plan Land Use Transportation Diagram land use designation of Combined Industrial/Commercial in that it will maintain the flexibility for a mixture of industrial R&D, office and commercial uses while also allowing a new land use that is a combination of assembly, outdoor recreation and other supportive commercial uses.
 - b. The project furthers the General Plan's City Concept Goals and Policies, in that it would create a new cultural attraction in the City of San Jose.
 - c. The project furthers the General Plan's Economic Development Strategy, because it would be increasing the overall development capacity and potential amount of jobs on the subject property.
 - d. The project is consistent to the General Plan's Urban Design Goals and Policies in that the approved development standards meet the intent of the Design Guidelines.
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 proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious, in that:

- a. The Planned Development Zoning and its development standards were found consistent with the Commercial and Industrial Design Guidelines. This permit is in conformance with the zonings development standards.
4. The environmental impacts of the project including, but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, traffic, and odor, which, even if insignificant for the purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties. Any potential negative effects on adjacent property or properties have been addressed in that:
 - a. An Environmental Impact Report, "FMC/Coleman Avenue Planned Development Rezoning (PDC98-104)", was prepared for this project and certified on August 19, 2003, pursuant to the provisions of CEQA (Resolution No. 71716).
 - b. The project will have a significant effect on the environment regarding burrowing owl habitat and transportation (freeway segment impacts).
 - c. Mitigation measures were made a condition of the approval of the project.
 - d. A Mitigation Monitoring and Reporting Program was adopted for this project.
 - e. A Statement of Overriding Considerations was adopted for this project. The City Council determined that there are specific economic, social, legal, technological, and other considerations that make infeasible other mitigation measures or alternatives identified in the EIR and that, as explained in the Statement of Overriding Considerations, the benefits of the project outweigh its potential adverse impacts related to the significant freeway impacts and burrowing owl habitat on the urban site.

Further, the Director of Planning, Building, and Code Enforcement concludes and finds, based on the analysis of the above facts, that the proposed project conforms in all respects to the provisions of Title 20 of the San José Municipal Code.

Based upon the above-stated findings and subject to the conditions set forth below, the Director of Planning approves, pursuant to Section 20.100.940 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 two years from and after the date of issuance hereof by said Director, if within such two-year period, the proposed construction of buildings/structures 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 Title 20 of the San Jose Municipal Code. 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 for construction 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 Jose Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
5. **Conformance to Plans.** Development of the site shall conform to approved Planned Development plans entitled "**San Jose Earthquakes Stadium, 1145 Coleman Avenue, San Jose, CA**", dated **November 4, 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), with the exception of any subsequently approved changes.
6. **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.
7. **Conformance with Previously Approved Zoning and Environmental Clearance.** All conditions of approval and required environmental mitigation measures from the approved Planned Development Zoning, File No. PDC09-004, remain in effect.
8. **Revocation.** This Planned Development Permit is subject to revocation for violation of any of its provisions or conditions.
9. **Planned Development District Effectuated.** Once this Planned Development Permit is accepted, the use of territory not covered by the permit shall only be land uses consistent with the Planned Development Zoning District and only upon issuance of a Planned Development Permit for those uses. Issuance of this permit in no way negates the permittee's or property owner's obligation to fully and timely comply with each and every provision set forth in the Development Standards of Planned Development Zoning, File No. PDC09-004.
10. **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.

11. **Stadium Uses.** This Permit allows for the operation of a soccer stadium and similar sporting events, as well as, public gatherings as noted in the Planned Development Zoning.
12. **Concert Events.** Concert events are not a permitted use under the scope of this Permit. Operation of the stadium with this Permit at the request of the applicant does not include extraordinary noise events such as concerts as analyzed in the EIR for the stadium. Future extraordinary noise events such as concerts and motor events shall require specific approval through a Planned Development Permit, which shall include the preparation of a specific noise analysis for the additional uses. The noise analysis shall measure actual noise from such event at the stadium as experienced in the surrounding neighborhood across the railroad. Extraordinary noise events are those that exceed the noise levels analyzed in the EIR as soccer events.
13. **Noise.** The project developer and stadium operator shall ensure that the stadium complies with noise requirements of the EIR. This shall include assessing the amplified noise from speakers on site to stay within the noise level analyzed in the EIR for the soccer uses.
14. **Amplified Sound.** Speakers shall be oriented toward the Airport, away from the existing residences south of the site.
15. **Temporary Parking Lot.** The temporary parking lot shall be used during non-daylight hours only in conjunction with events inside the soccer stadium and in no case shall be open past 10:30 pm. The temporary parking lot is an interim use until such time that permanent buildings contemplated under the approved Planned Development Zoning are constructed on the site.
16. **Temporary Parking Lot Lighting.** Any temporary lighting shall only be used for events inside the stadium and shall be turned off no later than 10:30 pm. Any security lighting of the temporary parking lot shall be fully compliant with the City's Outdoor Lighting Policy and shall include the use of full cut off fixtures.
17. **Good Neighbor Plan.** Prior to the start of construction, the applicant shall provide the City of San José, adjacent property owners, and the local residents with their Good Neighbor Plan, which will confirm the Applicant's commitment to comply with all mitigation conditioned on the project by the Director of Planning, Building, and Code Enforcement, and as required by the EIR. The Plan shall include the stadium operator's contact information for the expression of any concerns and to provide a means for ongoing communication between the Applicant/stadium operator and the surrounding community.
 - a. *Pre-Construction Community Meeting.* A community meeting for adjacent property owners and the local residents shall be held prior to the start of construction, to present the Good Neighbor Plan and address construction related concerns.
 - b. *Construction Updates.* The Good Neighbor plan shall include regular updates through monthly letters on the progress of the project during construction to adjacent property owners and the local residents to the satisfaction of the Director of Planning, Building and Code Enforcement.

- c. *Non-Soccer Event Noticing.* The operator shall provide adjacent property owners and the local residents with written notice when the stadium is scheduled to be used for a non-soccer event.
 - d. *Annual Community Meeting.* The Good Neighbor plan shall include an annual community meeting. The applicant shall coordinate with the Council District 3 Office and staff to schedule a community meeting each year following the end of the soccer season. The community meeting shall be held at or near the project site within 30 days from completion of the season. Written notice of the meeting shall be provided to the Director of Planning and all owners and tenants adjacent to the property and local residents. The project file number (File No. PD11-002) shall be placed on the community meeting notice. The purpose of this meeting is to allow the adjacent property owners and interested residents of the area to discuss the stadium operation, both in terms of what went well and what could be improved to minimize impacts in the future to surrounding residents. The applicant shall work with staff to consider neighborhood input and modify the operation as necessary to ensure compliance with the requirements of this Permit.
18. **FAA Clearance.** Given the project's proximity to San Jose International Airport, any proposed structure on the project site is required under Federal Aviation Regulations, Part 77, to be submitted to the FAA for airspace safety review via filing of a Notice of Proposed Construction or Alteration (FAA Form 7460-1). The FAA forms should be prepared by a licensed civil engineer or surveyor, with location coordinates (latitude/longitude) in NAD83 datum out to hundredths of seconds, and elevations in NAVD88 datum rounded off to the next highest foot. The applicant shall prepare a draft FAA submittal package for the Airport's informal review prior to formal electronic submittal to the FAA. Prior to the application of a building permit, the applicant shall submit the following package of materials to the FAA:
- a. Four 7460-1 forms for the stadium structure, consisting of the highest point at the NE, SE, NW, & SW corners of the roof canopy.
 - b. One 7460-1 form for the top center point of the scoreboard structure.
 - c. One 7460-1 form for the top center point of the pylon sign structure next to Coleman Ave.
 - d. One 7460-1 form for any other structural element located between Coleman and the stadium structure (e.g., light poles, flag poles) of a height equal to or greater than 35 feet above ground.
 - e. Supplemental drawings and narrative information (to be referenced in the description box on the 7460-1 forms) on the proposed lighting for the project, describing type, location, orientation, brightness levels, and potential off-site spillover. Such information should be provided not only for the lighting array under the stadium's roof canopy, but also for any proposed lighting on the side of the scoreboard and pylon sign facing Coleman Ave.
19. **FAA Clearance Permit Adjustment.** Prior to the application of a building permit, the applicant shall obtain a Permit Adjustment to incorporate all FAA conditions identified in the certificate of no-hazard determination (e.g., obstruction lights or construction-related notifications) into the Planned Development Permit conditions of approval.
20. **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. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
- b. **Transportation:**
 - i. Coleman Avenue / Brokaw Road: Construct as second westbound left-turn lane on Brokaw Road. This includes traffic signal modifications within the existing public right-of-way. This intersection is within City of Santa Clara and will require an encroachment permit from the City of Santa Clara.
 - ii. SR87 / Taylor Street: This signalized intersection is currently under Caltrans jurisdiction but is planned to be transferred to the City of San Jose. To mitigate the impact at this intersection, this project shall be responsible to provide new traffic signal controller and interconnect conduits in order to modify signal timing to support the project.
 - iii. The project will be required to implement a Traffic and Parking Management Plan (TPMP) to address traffic associated with stadium events. The final TPMP shall be produced by Department of Transportation in coordination with the project applicant and other relevant agencies. The final TPMP shall commence at Building Permit issuance and finalized prior to the opening of stadium.
 - iv. Construct a new traffic signal at project driveway (approximately 970' north of Newhall Drive). Extension and modification to the existing median island along Coleman Avenue is required. Construct necessary transition from new curb to the existing curb alignment north of new signalized intersection. The signal should be interconnected.
- c. **Grading/Geology:**
 - 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.
- 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. **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.
 - f. **Flood: Portion in Zone AO, Depth 1 ft.** If any proposed structure is located within the above stated flood zone, the following requirements will apply:
 - i. Elevate the lowest finished floor of the structure to one foot above the highest existing adjacent grade to the proposed structure or floodproof to the same elevation.
 - ii. If the proposed structure is elevated, an Elevation Certificate based on construction drawings is required prior to the issuance of building permit. Consequently, an Elevation Certificate based on finished construction is required prior to issuance of an occupancy permit.
 - iii. If the proposed structure is floodproofed, a Floodproofing Certificate (FEMA Form 81-65), a Flood Emergency Operation Plan, and an Inspection & Maintenance Plan are required prior to the issuance of a Public Works Clearance.
 - iv. Building support utility systems such as HVAC, electrical, and plumbing systems must be elevated above the base flood elevation or protected from flood damage.
 - g. **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.
 - h. **Street Improvements:**
 - i. Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
 - ii. The proposed driveway along Newhall Drive should be temporary. This driveway will be removed when the future north-south street is built.
 - iii. Modify driveway at Aviation Avenue to include ADA handicap ramps.
 - iv. Relocate existing bus stop along Coleman Avenue project frontage to the satisfaction of Director of Public Works.
 - i. **Electrical:** Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.

- j. **Street Trees:**
- i. The locations of the street trees will be determined at the street improvement stage. Street trees shown on this permit are conceptual only.
 - ii. Contact the City Arborist at (408) 277-2756 for the designated street tree.
 - iii. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current “Guidelines for Planning, Design, and Construction of City Streetscape Projects”. Street trees shall be installed in cut-outs at the back of curb.
21. **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, **PD11-002**, shall be printed on all construction plans submitted to the Building Division.
 - b. *Americans with Disabilities Act.* The applicant shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
22. **Green Building.** The development is subject to the City’s Green Building Ordinance for Private Sector New Construction. This project falls within the Tier 2 – Greater Than 25,000 square feet. Prior to the issuance of any shell or complete building permits issued for the construction of commercial buildings/structures approved through the scope of this Planned Development Permit, the applicant shall pay a Green Building Refundable Deposit applicable to the gross square footage of the buildings/structures.
- a. The project must receive the minimum green building certification of LEED Silver. The request for refund of the Green Building Deposit together with green building certification evidence demonstrating the achievement of the green building standards indicated above shall be submitted within a year after the building permit expires or becomes final, unless a request for an extension is submitted to the Director of Planning, Building, and Code Enforcement in accordance with Section 17.84.305D of the Municipal Code.
23. **Fire Clearance for Issuing Permits.** This review is limited to verifying compliance of the project to Chapter 5, Appendix B, and Appendix C of the 2007 California Fire Code with City of San Jose Amendments (SJFC). Additional review will be required at the building permit stage. All other code requirements for this project shall be reviewed and commented upon by both Fire and Building departments during the building permit process. Standards relating to fire and panic safety shall be verified by the Fire Department during the Building Permit process.
24. **Firework Displays.** If firework displays are planned at the stadium, the stadium operator shall obtain the required City permit for firework displays. In addition, firework sponsors shall coordinate events in advance with the FAA (if requested by the FAA) to ensure that the activity (timing, height, and materials) does not pose a hazard to the safe operation of the Airport.

- 25. 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 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 construction personnel. The construction hours shall be printed on all plans for the project used to construct the project. Interior construction activities that do not generate any audible noise impacts at residential properties are allowed on Saturdays between 9:00 a.m. and 5:00 p.m.
 - c. *Power Construction Equipment.* The contractor will use “new technology” power construction equipment with state-of-the-art noise shielding and muffling devices. All internal combustion engines used on the project site will be equipped with adequate mufflers and will be in good mechanical condition to minimize noise created by faulty or poorly maintained engines or other components.
 - d. *Stationary Noise-Generating Equipment.* Stationary noise-generating equipment will be located as far as possible from sensitive receptors. Staging areas will be located a minimum of 200 feet from noise-sensitive receptors, such as residential uses.
 - e. *Fencing.* The site shall be wholly enclosed by security fencing where the site is accessible by vehicles. The gates to the project site shall remain locked during all other times, except for a 30-minute period immediately preceding and following the above hours of construction.
 - f. *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.
 - g. *Construction Deliveries.* Deliveries shall not occur outside the above construction 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.
 - h. *Stormwater Pollution Prevention.*
 - i. Restriction of grading to the dry season (April 15 through October 15) or meet City requirements for grading during the rainy season;
 - ii. Utilize onsite sediment control BMPs to retain sediment on the project site;
 - iii. Utilize stabilized construction entrances and/or wash racks;
 - iv. Implement damp street sweeping;

- v. Provide temporary cover of disturbed surfaces to help control erosion during construction; and
 - vi. Provide permanent cover to stabilize the disturbed surfaces after construction has been completed.
 - i. *Street Cleaning and Dust Control.* During construction, 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.
 - j. *Construction Watering.* The proposed project shall use recycled water for all grading, dust control, and other non-potable approved uses during construction to the satisfaction of the Director of Public Works.
 - k. *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.
 - l. *Disturbance Coordinator.* A Construction/Disturbance Coordinator shall be identified by the developer for this project. The Construction/Disturbance Coordinator shall be responsible for ensuring compliance with the hours of construction, site housekeeping, and other nuisance compliance conditions in this permit. The coordinator shall also compile information regarding construction phasing/operations and keep the neighborhood informed of the stages of development. The coordinator shall also listen and respond to neighborhood concerns regarding construction, 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.
 - m. *Posting of Telephone Number.* The name and phone number of the Construction/ Disturbance coordinator, the hours of construction limitations, City File Number PD11-002. 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.
26. **Landscaping.** Planting and irrigation are to be provided as indicated on the approved plans. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced. Permanent 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.

27. **Trees.** Trees located on the Coleman Avenue (east) and Newhall Drive (south) sides of the stadium shall not grow any higher than the stadium structure.
28. **Landscaping Maintenance.** The Property Owner shall maintain on-site landscaping areas and landscaping areas along the public right-of-way areas/streets to the satisfaction of the Director of Public Works.
29. **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 Jose Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect prior to Certificate of Occupancy.
30. **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.
31. **Refuse Enclosures.** 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.
32. **Refuse and Litter Pickup.** The stadium operator shall implement best management practices to deter nuisance species (such as gulls) including avoidance of open garbage bins/receptacles, timely stadium and parking lot clean-up, and/or other measures to be determined by the City at the time of development permit review.
33. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set.
34. **Lighting.** On-site, exterior, unroofed lighting shall conform to the Outdoor Lighting Policy. Lighting shall be designed, controlled and maintained so that no light source is visible from outside of the property.
35. **Perimeter Fencing.** Fence height and materials shall be as shown on the approved plans. Changes to the approved fencing shall require review by the Director of Planning, Building, and Code Enforcement.
36. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
37. **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.
38. **Traffic and Parking Management Plan (TPMP).** The stadium operator shall implement a Traffic and Parking Management Plan (TPMP) in conjunction with the construction of the stadium. This agreement must detail the terms of the TPMP including financial obligations by the developer. The final TPMP shall be produced by DOT in coordination with the project applicant and other relevant agencies prior to the issuance of a final building permit and the opening the stadium. Additionally, the TPMP shall include:

- a. Special signal timing at the intersection of SR 87 Ramps and Taylor Street for soccer events. The traffic signal is currently under Caltrans jurisdiction, but is planned to be transferred to the City of San Jose for maintenance and operation. The project shall be responsible for all costs associated with modifying the traffic signal timing, including the traffic signal controller upgrade and interconnection.
- b. Temporary traffic control at the intersection of Aviation Avenue and Coleman Avenue shall be implemented for soccer events. This may include use of police, signage, etc. to manage ingress and egress.
- c. Establish detailed event traffic and parking management strategies for the stadium to provide efficient traffic flow to and from nearby freeways, including US 101, I-880, and SR 87 and to accomplish the following objectives
 - i. Provide a flexible traffic operations plan that can direct vehicles away from areas experiencing excessive traffic congestion using real-time traffic data and signage.
 - ii. Promote efficient and effective vehicular traffic circulation at the stadium;
 - iii. Coordinate emergency vehicle access to avoid interference from event traffic.
 - iv. Encourage the use of public transit services for stadium events;
 - v. Provide convenient and easy vehicular access to and from parking areas; and
 - vi. Provide safe pedestrian connections between the parking areas and the soccer stadium.
- d. The key elements of the TPMP for the soccer stadium are described in more detail below. The proposed Airport West Stadium component shall be required to implement traffic improvements to ensure that the surrounding roadway network adequately handles the high traffic volumes generated by stadium events during certain peak periods of the day. In addition to the above, the following improvements may need to be implemented as part of the TPMP:
 - i. *Project Traffic Management.*
 - 1) Coleman Avenue/Aviation Avenue Intersection – Construct the intersection to the ultimate improvement including construction of two northbound left-turns and three southbound thru lanes.
 - 2) Coleman Avenue/I-880 southbound ramps Intersection- Convert the middle lane on the I-880 southbound off-ramp from a left-turn movement to a right-turn movement beginning one hour prior to weekday and Saturday evening stadium events. Changeable message signs (CMS) would need to be installed at the off-ramp to notify drivers in real-time how the middle lane is operating. The Airport West Stadium component results in an off peak hour impact at this intersection and the above measure would lessen the effect. This improvement requires an encroachment permit from Caltrans. If Caltrans finds this mitigation unacceptable, then the Council could override this impact and adopt a statement of overriding considerations.
 - ii. *Parking Management:* After final design of the stadium, and prior to operation of the stadium, the project applicant shall develop an interim parking plan to address stadium event parking. Following the build out of the entire Airport West site, which

- ultimately includes additional office, retail and hotel uses, a more defined parking plan shall be developed and finalized. The parking plan for the stadium shall address such things as parking demand, parking supply, pre-paid/pre-assigned parking, current parking occupancy (real-time displays), parking lot design and vehicle circulation and appropriate parking management strategies.
- iii. *Temporary Traffic Control Strategies:* Manual traffic control (police officer), traffic cones and/or signage (static and changeable) may be necessary at key intersections along Coleman Avenue. The purpose of the traffic control strategies would be to direct vehicles away from areas experiencing excessive traffic congestion, effectively manage vehicles ingress and egress at the stadium driveways, direct traffic to parking and passenger loading areas on-site, and guide pedestrians and bicyclists to safe routes to and from the stadium. As an example, access to the new public street and other parking areas on-site would not be permissible from Newhall Drive prior to stadium events. Following a stadium event, however, access to and from Newhall Drive would be unrestricted except on Saturday or Sunday afternoon events that may conflict with the adjacent retail (Lowe's) peak weekend traffic. The traffic control strategies that would be implemented in this instance would make drivers aware of the pre-game limited-access situation. The TPMP prepared for the soccer stadium shall describe all of the proposed traffic control strategies in detail.
 - iv. *Signal coordination on Coleman Avenue:* Currently, there are over 600 traffic signals within the City of San Jose that are connected to central operating system. Interconnection of traffic signals allows operators to remotely adjust the timing of traffic signals to optimize the flow of traffic as volumes fluctuate throughout the day. All of the intersections located along Coleman Avenue between Taylor Street and Aviation Avenue currently are interconnected. Therefore, the system of traffic signals along Coleman Avenue can be coordinated to effectively manage the high traffic volumes generated by stadium events.
 - v. *TPMP Committee and Monitoring Program:* A TPMP committee shall be established, with ongoing responsibility to monitor, define, implement, and refine the TPMP measures and strategies. The TPMP committee shall consist of City of San Jose Staff, public safety officials (e.g., police and fire), and soccer stadium representatives. The TPMP committee shall plan ahead and tailor the TPMP to meet the demands and needs of each event held at the stadium. Any modifications to the formally adopted TPMP, as recommended by the TPMP committee, would need City approval.
39. **Emergency Vehicle Coordination.** During soccer games or major events, traffic flow shall be managed to permit emergency vehicles to avoid interference from event traffic. An emergency access plan that identifies emergency access routes to and from the stadium shall be developed and incorporated into the final Traffic and Parking Management Plan (TPMP).
40. **Transportation Demand Management (TDM) Program.** The stadium operator shall implement a Transportation Demand Management (TDM) program to encourage the use of public transportation and carpooling by employees to the satisfaction of the Director of Transportation. The TDM shall be incorporated into the TPMP. Appropriate TDM measures could include, but are not limited to the following:
- a. Provide incentives for carpoolers such as preferential parking;

- b. Charge for parking or increasing set parking rates if already charging for parking
- c. Provide on-site ticket sales for transit services (e.g. bus, LRT, Caltrain, etc.)
- d. Make information readily available regarding ridesharing/carpooling programs and transit services, and designate an on-site TDM coordinator to assist with this task;
- e. Develop a stadium employee trip reduction program that includes the following for employees; shuttle service to transit, subsidized transit passes and Eco-passes, cash-out program for no-drivers, carpooling/ridesharing program, bike lockers, and on-site showers.

41. **Public Transit and Shuttle Service.** The final TPMP prepared for the proposed stadium shall include a description of the existing public transit service in the vicinity of the Airport West Stadium site, and shall identify ways to enhance transit service to and from the stadium. The TPMP shall identify multiple transit options that encourage the use of public transit services. Implementing the TPMP will require coordination with the Valley Transportation Authority (VTA). Improvements to transit service could include but would not be limited to the following:

- a. Provide frequent VTA bus service directly to the proposed stadium prior to and following events.
- b. Provide shuttle service between the proposed stadium and the Santa Clara transit station prior to and following events. This station is currently served by five local bus routes, the Rapid bus route, Caltrain and ACE. In addition a future BART station is planned adjacent to the Santa Clara transit station as part of the planned BART extension from Fremont, through San Jose, to Santa Clara.
- c. Provide shuttle service between the soccer stadium and the Civic Center and Gish LRT stations, both located approximately 1.5 miles from the Airport West Stadium site.
- d. Publish transit information on Earthquakes' program guides.
- e. Announce transit information on local traffic radio broadcasts and print in local newspapers.
- f. Provide transit information via information desks during stadium events.
- g. Encourage the use of public transit by implementing paid parking at the stadium lots. A flat fee upon parking entry or a prepaid parking pass would help to encourage wise mode choices.

42. **Environmental Mitigation.**

- a. *Air Quality.* To reduce vehicle trips and therefore, air pollutant emissions resulting from the Airport West Stadium component, the Airport West Stadium component shall:
 - i. Encourage use of public transportation for events through advertising and financial incentives.
 - ii. Provide shuttle service between light rail and Caltrain stations.
 - iii. Provide exterior electrical outlets to encourage use of electrical landscaping equipment.

- iv. Prohibit idling of trucks or buses at loading docks or areas for more than five minutes and include signage indicating such prohibition.
 - v. If necessary, shall provide 110- and 220-volt electrical outlets at loading docks to eliminate any idling of trucks to operate auxiliary equipment.
 - vi. Implement a landscape plan that provides shade trees along pedestrian pathways.
 - vii. Implement “green building” designs, such as a LEED, into buildings to increase energy efficiency, which would reduce the future energy demand of the stadium and therefore, reduce air pollutant emissions indirectly.
 - viii. Implement the dust control measures recommended by BAAQMD during construction activities.
- b. *Cultural Resources*. An archaeological monitoring program shall be undertaken by a qualified archaeologist for any subsurface construction within a 400-foot radius of the probable location of the ca. 1876 structure associated with the former McLaughlin property as outlined in the Cultural Resources Assessment completed by *Basin Research Associates* in May 1997. The frequency and duration of the monitoring shall be at the discretion of the archaeologist and dependent on his/her subsurface observations during construction operations.
- i. Construction personnel involved in the site clearing and subsequent grading and trenching shall be warned that there is a potential for the discovery of archaeological materials. Indicators of archaeological site deposits include, but are not limited to, the following: darker than surrounding soils, evidence of fire (ash, fire altered rock and earth, carbon flecks), concentrations of stone, bone and shellfish, artifacts of these materials and burials, either animal or human.
 - ii. In the event any unanticipated prehistoric or significant historic era cultural materials are exposed during construction, all grading and/or excavation operations within 50 feet of the find shall be halted, the Director of PBCE shall be notified, and a qualified professional archaeologist shall examine the find and make appropriate recommendations regarding the significance of the find and the appropriate mitigation. The recommendation shall be implemented and could include collection, recordation, and analysis of any significant cultural materials.
 - iii. In the event that human remains and/or cultural materials are found, all project-related construction shall cease within a 50-foot radius of the find 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:
 - 1) In the event of the discovery of human remains during construction, 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 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 shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains

and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.

- iv. A final report shall be submitted to the Director of PBCE. This report shall contain a description of the mitigation program that was implemented and its results, including a description of the monitoring and testing program, a list of the resources found, a summary of the resources analysis methodology and conclusion, and a description of the disposition/curation of the resources. The report shall verify completion of the mitigation program to the satisfaction of the Director of PBCE.
- c. *Geology.* A geotechnical investigation shall be completed prior to the approval of building permits. Buildings will be designed to conform to the recommendations of the geotechnical investigation. Seismic hazards will be mitigated by using construction practices in accordance with Seismic Zone 4 building Criteria as described in the San Jose Building Code.
- d. *Transportation.*
 - i. Dedicate and improve frontage along Coleman Avenue to the ultimate 130' width along the project frontage. This will include construction of a bus stop.
 - ii. Install a new traffic signal at the new project access between Aviation Avenue and Newhall Drive and include double left-turns along Coleman Avenue
 - iii. To mitigate the impact at Coleman Ave. and Brokaw Road, the project is required to construct a second westbound left-turn lane on Brokaw Road. This improvement would require modifying the east leg of the intersection, including traffic signal modifications, and would not require any right-of-way acquisition. This intersection is within City of Santa Clara jurisdiction and will require an encroachment permit from the City of Santa Clara.
- e. *Vegetation and Wildlife.* Burrowing Owl preconstruction surveys shall be conducted, per California Department of Fish and Game (CDFG) guidelines, no more than 30 days prior to the start of site grading. If no burrowing owls are found, then no further mitigation is warranted. If owls are located on or immediately adjacent to the site, a qualified burrowing owl biologist in consultation with CDFG would establish a construction-free buffer zone around the active burrow. No activities, including grading or other construction work, shall proceed until the buffer zone is established, or a CDFG approved relocation of the birds has been performed [such relocations can occur only during the non-reproductive season (September through January)]. Regardless of the time of year when burrowing owls are observed on the site, implementation of one of the following two mitigation measures is required, to the satisfaction of the Director of PBCE:
 - i. If preconstruction surveys confirm that burrowing owls occupy the site, then avoidance of impacts to the habitat utilized by these owls would be considered the preferred mitigation method. In order to effectively avoid habitat utilized by burrowing owls, a buffer distance of 75 meters (approximately 246 feet) shall be required during the nesting season (February 1 through August 31). During the non-nesting season, this distance could be reduced to 50 meters (approximately 164 feet). Avoidance would allow the use of areas currently occupied by burrowing owls to continue uninterrupted.

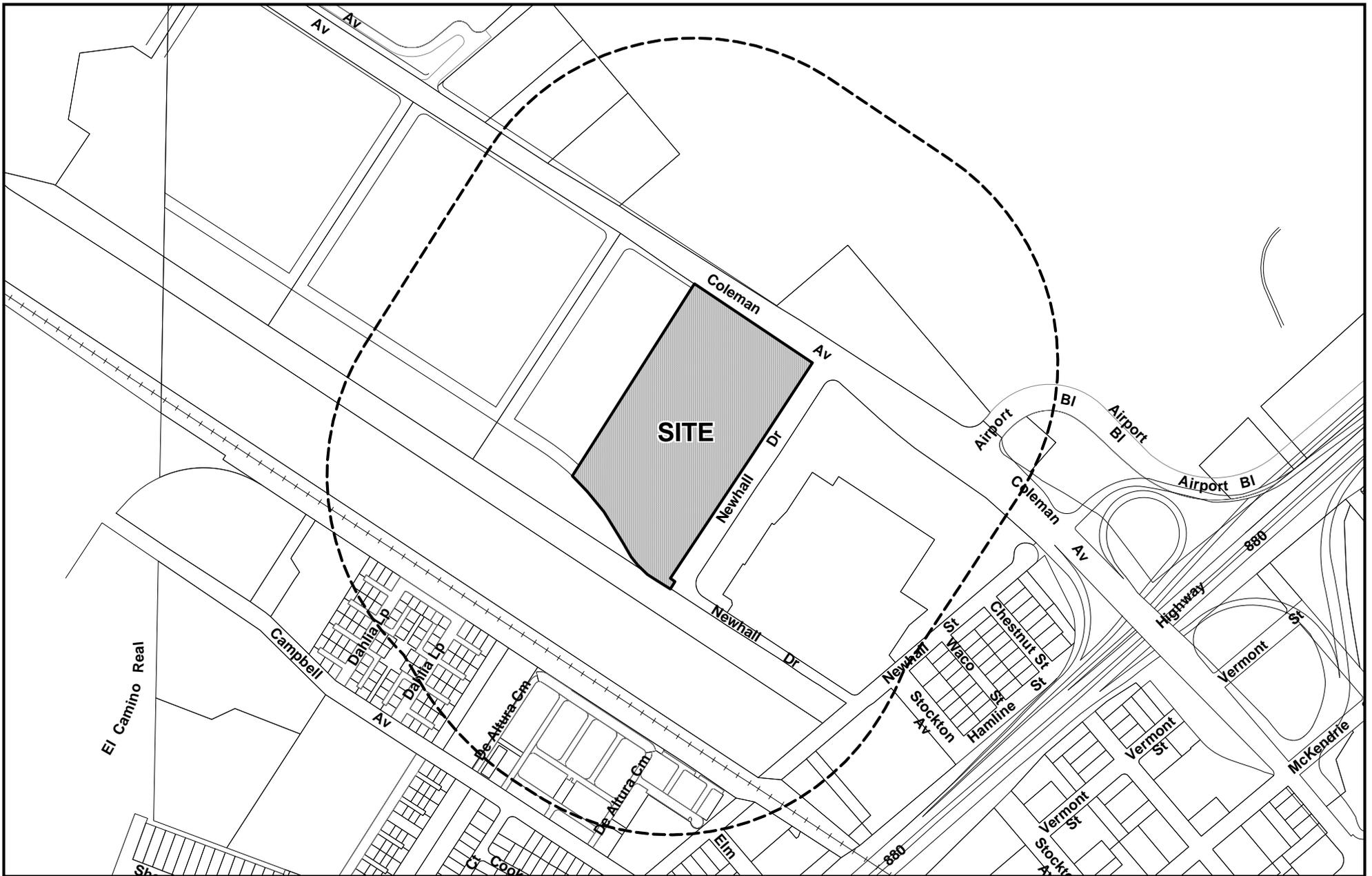
- ii. If preconstruction surveys determine that burrowing owls occupy the site, and the Director of PBCE finds that avoiding development of occupied areas is not feasible, then the owls may be evicted outside of the breeding season, with the authorization of the CDFG. The CDFG typically only allows eviction of owls outside of the breeding season [only during the non-breeding season (September 1-January 31)] by a qualified ornithologist, and generally requires habitat compensation on off-site mitigation lands. CDFG guidelines recommend that off-site mitigation lands shall be set-aside at a ratio of 6.5 acres/pair or individual owl (if only an individual is observed). A single, large contiguous mitigation site is preferable to several smaller, separated sites. The mitigation site would preferably support owl nesting and be contiguous with or at least proximal to other lands supporting burrowing owls. Sites in the same region with a long history of burrowing owl use, or that have at least been in a suitable condition for occupancy are preferred. Grazing is compatible with burrowing owl occupancy.

A final report of burrowing owls, including any protection measures, shall be submitted to the Environmental Principal Planner, and completed to the satisfaction of the Director of PBCE prior to start of grading.

APPROVED and issued on this 14th day of December, 2011.

Joseph Horwedel, Director
Planning, Building, and Code Enforcement

Deputy



File No: PD11-002

District: 3

Noticing Radius: 1000 feet



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