

## PLANNED DEVELOPMENT PERMIT

<b>FILE NO.</b>	<b>PD 12-036</b>
<b>LOCATION OF PROPERTY</b>	<b>West side of North 10<sup>th</sup> Street, between Vestal Street and East Mission Street (825 North Tenth Street).</b>
<b>ZONING DISTRICT</b>	<b>A (PD) Planned Development</b>
<b>GENERAL PLAN DESIGNATION</b>	<b>Mixed Use Neighborhood</b>
<b>PROPOSED USE</b>	<b>166 Multi-Family Attached Residential units (including the removal of (4) four ordinance sized trees).</b>
<b>ENVIRONMENTAL STATUS</b>	<b>Mitigated Negative Declaration File No. PDC 06-069</b>
<b>OWNER</b>	<b>825 North 10<sup>th</sup> Street, LLC 825 North 10<sup>th</sup> Street San Jose, CA 95112</b>

### FACTS

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

1. The subject site is located at 825 North Tenth Street, on the west side of North 10<sup>th</sup> Street, between Vestal Street and East Mission Street.
2. The subject site has a designation of Mixed Use Neighborhood on the adopted Envision San Jose 2040 General Plan.
3. This Planned Development Permit allows construction of 166 multi-family attached residential units (including the removal of (4) four ordinance sized trees).
4. In accordance with Section 20.100.900 of the San José Municipal Code, a Planned Development Permit is required.
5. Surrounding land uses consist of light industrial uses to the north, east and the south, and railroad uses and attached residential uses (across the tracks) to the west.
6. The subject site is currently developed with a warehouse/ storage facility.
7. The subject site is zoned A (PD) Planned Development Zoning District.
8. Section 20.80.460 of the Zoning Ordinance requires that, prior to the issuance of any development permit which allows for the demolition, removal or relocation of a building, the Director shall determine whether the benefits of permitting the demolition, removal or relocation outweigh the impacts of the demolition, removal or relocation. In making such a determination, the following shall be considered:

- a. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight, or dangerous condition;
- b. The failure to approve the permit would jeopardize public health, safety or welfare;
- c. The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood;
- d. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;
- e. Rehabilitation or reuse of the existing building would not be feasible;
- f. The demolition, removal or relocation of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.

## **FINDINGS**

The Director of Planning, Building, and Code Enforcement concludes and finds, based upon an analysis of the above facts that the following are the relevant findings regarding this proposed project:

1. The Planned Development Permit, as issued, furthers the policies of the General Plan in that:
  - a. The project, with a density of 50 DU/AC, is consistent with the General Plan Land Use designation of Mixed Use Neighborhood
  - b. The project furthers the General Plan Growth Management Major Strategy because it locates high-density residential uses on an infill site where urban services and facilities are available.
2. The Planned Development Permit, as issued, conforms in all respects to the Planned Development Zoning of the property in that the building location, setbacks, density, and number of units, and number of parking spaces as shown on the final plan set conform to the development standards on the approved General Development Plan.
3. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of the proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious in that:
  - a. The architectural elements of the proposed structure are integrated into a unified design.
  - b. The project conforms to the City's Residential Design Guidelines.
4. The environmental impacts of the project including, but not limited to noise, vibration, dust, drainage, erosion, and storm water runoff, 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 the environmental impacts of this project were addressed in an Initial Study and Mitigated Negative Declaration for a Planned Development Rezoning, File No. PDC 06-069 that was adopted on November 27, 2007.
5. The benefits of permitting the demolition, removal or relocation outweigh the impacts of the demolition, removal or relocation in that the project would replace a light industrial building which is not listed on the Historic Resources Inventory with 166 multi-family attached residential units that are designed to be compatible with the adjacent residential uses.

**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. **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.
3. **Permit Term.** This Planned Development Permit shall automatically expire four years from and after the date of approval by the Director of Planning, or by the Planning Commission on appeal, granting this Permit, if within such four-year period, the proposed use of this site has not commenced, pursuant to and in accordance with the provisions of this Planned Development Permit. The Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
4. **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.
5. **Demolition Permit.** Obtainment of a Demolition Permit is evidence of acceptance of all conditions specified in this document and the applicant's intent to fully comply with said conditions. No demolition of the structure may be implemented unless and until the Building Division issues a Demolition Permit pursuant to Section 301 of the Uniform Building Code, as adopted pursuant to the provisions of Chapter 17.04 of Title 17 of the San José Municipal Code.
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. **Revocation.** This Planned Development Permit is subject to revocation for violation of any of its provisions or conditions.
8. **Green Building.** The project shall comply with the provisions of Ordinance No. 28622 in the San Jose Municipal Code or subsequent ordinance for private-sector green building that is in effect at the time that a building permit application is submitted to the Department of Planning, Building and Code Enforcement Building Division. New residential projects with 10 or more units must receive the minimum green building certification of Green Point Rated 50 points or LEED Certified. A Green Building Deposit is required prior to issuance of building permit. The Green Building Deposit is refundable in accordance with the provisions of Ordinance No. 28622.
9. **Tract Sales Office/Model Homes.** This permit does not include the approval of a tract sales office/model homes complex/ leasing office. Such use requires a Permit Adjustment approved by the Director of Planning.
10. **Conformance to Plans.** Development shall conform to approve Planned Development Permit plans entitled, "10<sup>th</sup> Street and Mission Street," last revised on \*\*\*\*\*, \*\*, 2013, 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).
11. **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.
12. **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 the San José Municipal Code.
13. **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, PD 12-036, 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).
  - c. *Street Number Visibility.* Street numbers of the buildings shall be easily visible at all times, day and night.
  - d. *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 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.
  - e. *Building Permits.* Public Works Clearance is required prior to the issuance of a building permit.

14. **Construction Hours.** Construction activities shall conform to Title 20, as amended. No applicant or agent of an applicant shall suffer or allow any construction activity on a site located within 500 feet of any residential units before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends.
15. **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.
16. **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.
17. **Storm Water Discharge.** The applicant shall conform to the Non-Point Source Control requirement for storm water discharge associated with construction activity as required by the State Water Resource Control Board. Contact the Regional Water Quality Control Board at (415) 286-0968 for further information.
18. **Lighting.** On-site lighting shall be in conformance with the City of San Jose, Outdoor Lighting Policy and be designed, controlled and maintained so that no light source is visible from outside of the property, to the satisfaction of the Director of Planning.
19. **Archaeology.** 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 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.
20. **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 unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
21. **Roof Equipment.** All roof equipment shall not be visible from public streets or neighboring properties. Any proposed rooftop equipment must be approved through a Permit Adjustment approved in the Planning Divisions of the Department of Planning, Building, and Code Enforcement.
22. **Street Numbers.** Street numbers shall be visible day and night from the nearest street, either by means of illumination or by the use of reflective materials. Street numbers shall be displayed both on the front of each unit and on the rear, garage elevation of each unit.

23. **Walls/Fence Height/Location.** Walls and fencing for the project shall conform to the design standards shown in the approved Planned Development Permit plans. Any proposed changes must be approved through a Permit Adjustment approved in the Planning Division of the Department of Planning, Building, and Code Enforcement.
24. **Utilities.** All new on-site telephone, electrical and other overhead service facilities shall be placed underground.
25. **Sign Approval.** No project signage is approved at this time. Signage shown in the plans is conceptual only and not part of this Permit. All proposed signage must be approved through a Permit Adjustment approved in the Planning Divisions of the Department of Planning, Building, and Code Enforcement, in conformance with the requirements of the City of San Jose, Sign Ordinance.
26. **Colors and Materials.** All building colors and materials are to be those specified on the approved plan set.
27. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
28. **Fire Department Requirements.** The project shall conform to the requirements of the Fire Department at the plan review stage to the satisfaction of the Chief Building Official and the Fire Chief.
29. **Tree Removals.** A total of (4) four ordinance sized trees are proposed to be removed, as shown on the project plans, as part of this Permit.
30. **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.
31. **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.
32. **Parkland Dedication.** The project developer shall make an irrevocable offer of dedication for the area shown as “park dedication” on the Planned Development Permit plans, to the satisfaction of the Director of Parks, Recreation and Community Services and the Director of Planning. Until the property to the south of the subject site redevelops and the City of San Jose accepts park dedication, the project developer shall maintain this area (including new landscaping), to the satisfaction of the Director of Parks, Recreation and Community Services and the Director of Planning.
33. **Enclosures/Screening.** Utility Structures shall be enclosed or screened to match existing fencing, screening or landscaping.
34. **Site Clearing.** The applicant shall remove all existing buildings, structures, and signs from the subject property.
35. **Recycling.** Scrap construction and demolition material should be recycled. Integrated Waste Management staff can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.

36. **Public Works Clearance for Building Permit(s) or Map Approval:** (THIS SECTION IS SUBJECT TO CHANGE, PENDING RECEIPT OF FINAL PW MEMORANDUM)

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:**

The original traffic impact analysis was prepared on 12/28/06 for this project based on 129 AM and 129 PM peak hour trips. Upon review of the traffic assumption, Public Works concluded that the traffic conditions studied in late 2006 remain unchanged; therefore, an updated traffic report was not required. We still conclude that the subject project will be in conformance with both the City of San Jose Transportation Level of Service Policy (Council Policy 5-3) and the Santa Clara County Congestion Management Program.

The project site falls under two additional transportation policies: the US 101/Oakland/Mabury Transportation Development Policy and the Protected Intersection Policy.

As identified within the project's Traffic Impact Analysis report, the project impacts the intersection of First Street and Taylor Street. Per Council Policy 5-3, this intersection has been designated as a "Protected Intersection". As this intersection has been built to maximum capacity, the project shall provide a contribution to construct specific improvements to other segments of the Citywide Transportation System in order to improve system capacity and/or enhance non-auto travel modes. This project will contribute towards the 13th and Hedding Street Improvements in an amount equivalent to \$2,544 per net project trips.

This project is subject to the City's US-101/Oakland/Mabury Transportation Development Policy. The US-101/Oakland/Mabury Transportation Development Policy requires new residential and commercial developments that generate vehicular trips at either of the Policy Interchanges to pay a Traffic Impact Fee (TIF) towards the upgrade of US-101/Oakland Interchange and construction of US-101/Mabury Interchange. The 2012 TIF is \$32,595 for each project peak hour trip that travels through either the US-101/Oakland or US-101/Mabury Interchanges. This fee is subject to an annual escalation on January 1<sup>st</sup> per the Engineering News-Record Construction Cost Index for San Francisco. Based on 2012 rate and 8 trips, the project's TIF is approximately \$260,760.

c. **Grading/Geology:**

A grading permit is required prior to the issuance of a Public Works Clearance. 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.

Because this project involves a land disturbance of more than one acre, 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.

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 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 site design measures, source controls, and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.  
The project's Stormwater Control Plan and numeric sizing calculations need revisions. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
- e. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydromodification Management area and is therefore not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
- f. **Flood: Zone D** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for zone D.
- 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. **Parks:** This residential project is subject to either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San Jose Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San Jose Municipal Code) for the dedication of land and/or payment of fees in-lieu of dedication of land for public park and/or recreational purposes under the formula contained within in the Subject Chapter and the Associated Fees and Credit Resolutions.
- i. **Street Improvements:**  
The project is subject to two City Policies: Jackson-Taylor Residential Strategy and the Downtown Circulation and Access Study which requires future conversion of 10<sup>th</sup> and 11<sup>th</sup> Streets to two-way operations. Both policies maintained the existing 80-foot right-of-way width but identified different sidewalk section for 10<sup>th</sup> Street. The project should conform to the Downtown Circulation and Access Study in order to provide bike lanes. The Jackson-Taylor Residential Strategy may need to be amended.  
Remove and replace curb, gutter, and sidewalk along 10<sup>th</sup> Street. Provide a 10' attached sidewalk that includes tree wells.  
Close unused driveway cuts.  
Proposed driveway width to be 26'.

Improvement of the public streets shall be to the satisfaction of the Director of Public Works.

A Santa Clara Valley Water District permit will be required for any demolition, utility installation or street construction over and in the vicinity of the existing 66" pipeline located in Mission Street.

Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.

- j. **SNI:** This project is located within the 13<sup>th</sup> Street SNI area. Public improvements shall conform to the approved EIR and neighborhood improvement plan.
- k. **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.
- l. **Street Trees:** 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. Obtain a DOT street tree planting permit for any proposed street tree plantings. The locations of the street trees will be determined at the street improvement stage. Street trees shown on this permit are conceptual only. Contact the City Arborist at (408) 794-1901 for the designated street tree.

**APPROVED** and issued this 25<sup>th</sup> day of January, 2013.

Joseph Horwedel, Director  
Planning, Building, and Code Enforcement

---

Deputy

CC: Paul Ring/ Brian Zubradt, The Core Companies, 470 South Market Street, San Jose, CA 95113  
Eric Hayden, Republic Family of Companies, 84 West Santa Clara Street, Suite 600, San Jose, CA 95113  
Chris Roberts, Studio T-SQ, Inc., 410 12<sup>th</sup> Street, Suite 350, Oakland, CA 94607  
Mark Knudsen/ Brad Alani, Kier & Wright, 3350 Scott Boulevard # 22, Santa Clara, CA 95054