

PLANNED DEVELOPMENT PERMIT

FILE NO.	PD12-046
LOCATION OF PROPERTY	Southwest corner of Monterey Road and Curtner Avenue (300 CURTNER AVE)
ZONING DISTRICT	A(PD) Planned Development
ZONING FILE NUMBER	PDC01-048
GENERAL PLAN DESIGNATION	Open Space, Parklands, and Habitat
PROPOSED USE	Planned Development Permit to allow grading modifications at an existing cemetery.
ENVIRONMENTAL STATUS	Mitigated Negative Declaration
OWNER/ADDRESS	SCI California Funeral Services, Inc. PO Box 130548; Houston, TX 77019

FACTS

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

1. This site has a designation of Open Space, Parklands, and Habitat on the adopted San José 2040 General Plan Land Use/Transportation Diagram.
2. The site is zoned A(PD) Planned Development
3. The subject lot is approximately 113.5 acres and is bounded by Curtner Avenue to the northwest, Monterey Highway to the northeast, and railroad tracks to the south.
4. This is a Planned Development Permit for grading an an existing Cemetary approximately 6.3 acres in size.
5. The proposed project will meet all of the development regulations set forth in Planned Development Zoning, PDC01-048, including but not limited to heights, setbacks, densities, etc.
6. The proposed grading is in accordance with the previous Planned Development Zoning Permit, PDC01-048, and there is no new construction or demolition of existing structures proposed for this site.
7. An Initial Study was prepared for this project, and the Director of Planning circulated a Mitigated Negative Declaration for public review that was adopted on 12 June, 2002. This project, PDC01-048, includes 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 proposed development conforms to the site's General Plan Land Use/Transportation Diagram designation in that the proposed uses and densities are consistent with those called for by the Open Space, Parklands, and Habitat designation and are compatible with the surrounding area.
 - b. The project maintains the existing pattern of development in the immediate vicinity.
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 and associated land use regulations.
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. No new structures are proposed.
4. The environmental impacts of the project including, but not limited to grading, 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. A Mitigated Negative Declaration has been adopted for a previous and essentially the same project (File No. PDC 01-03-048) which indicated that certain mitigation measures will be incorporated into the project to prevent the occurrence of any significant adverse effect on the environment.
 - b. The proposed project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the California Department of Fish and Game Code.

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 thirty (24) months from and after the date of issuance hereof by said Director, if within such twenty four month period, the proposed use of this site or the construction of buildings 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. **Conformance to Plans.** Development of the site shall conform to approved Planned Development plans entitled "Planned Development Permit Oak Hill Memorial Park Remedial Grading PD12-046" last dated 12 June, 2002, 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.
4. **Conformance with Previously Approved Zoning.** All conditions of approval and required environmental mitigation measures from the previously approved Planned Development Zoning remain in effect.
5. **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.
6. **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.
7. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San Jose Municipal Code.
8. **Revocation.** This Planned Development Permit is subject to revocation for violation of any of its provisions or conditions.
9. **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.

10. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, and is subject to the following requirements 3-02737 to the satisfaction of the Director of Public Works:
- a. *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. A soils report must be submitted to and accepted by the City prior to issuance of a grading permit.
 - b. *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 -or- the project shall provide an Alternative Measure, where installation of post-construction treatment control measures are impracticable, subject to the approval of the Director of Planning, Building & Code Enforcement.
 - c. *Stormwater Peak Flow Control Measures:* The project is located in a Hydromodification Management (HM) area. The project must comply with the Municipal Regional Stormwater NPDES Permit (Permit Number CAS612008) (Use this until Council Policy 8-14 is updated on 2/23/10.) or City's Post-Construction Hydromodification Management Policy (Council Policy 8-14) (Use this once Council Policy 8-14 has been updated.) which requires HM projects to demonstrate that post-project runoff does not exceed estimated pre-project runoff rates and durations.
11. **Archaeology.** Formal copies of records, especially the section plot maps of the burials, shall be made and archived for future study and information. These records shall be made with rapid digital technology and efficiently archived at the Northwest Information Center at Sonoma State University, the curator for cultural resource documents for local areas in California.
- a. A program should be developed to locate, maintain, preserve, and record grave markers that are or have already sunk below the surface and are in danger of further deterioration or being lost.
 - b. A Policy to review the placing of new graves and headstones in the historic cemetery areas shall be provided with respect to maintaining the integrity of the historic sections of the cemetery.

- c. There shall be monitoring of the site excavation activities to the extent determined by a qualified professional archaeologist to be necessary to insure accurate evaluation of potential impacts to prehistoric and/or historic resources. Any expansion outward from the northwest corner of the cemetery shall be monitored by a qualified archaeologist.
 - i. If no resources are discovered, the archaeologist shall submit a report to the Director of Planning verifying that the required monitoring occurred and that no further mitigation is necessary.
 - ii. If evidence of any archaeological, cultural and/or historic deposits are found, hand excavation and/or mechanical excavation will proceed to evaluate the deposits for determination of significance as defined by CEQA guidelines. The archaeologist shall submit reports, to the satisfaction of the Director of Planning, describing the testing program and subsequent results. These reports shall identify any program mitigation that the Developer shall complete in order to mitigate archaeological impacts (including resource recovery and/or avoidance testing and analysis, removal, reburial, and curation of archaeological resources).
 - iii. 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.

A final report shall be submitted to the Director of Planning prior to release of a Certificate of Occupancy. This report shall contain a description of the mitigation programs and its results including a description of the mitigation programs and its results including a description of the monitoring and testing program, a list of the resources found, a summary of the resource analysis methodology and conclusions 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 Planning.

12. **Geology.** The project shall comply with the Certificate of Geologic Hazard Clearance issued by the Department of Public Works dated January 9, 2013.
13. **Hazardous Materials.** A hazardous materials storage permit is required for the proposed project in accordance with the Fire Department requirements. Use or storage of hazardous materials, liquids, gases and/or chemicals will be subject to meeting the requirements of the Hazardous Materials Storage Ordinance, the Toxic Gas Ordinance, the applicable sections of the San Jose Fire Code, and the National Fire Codes.
14. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.

15. **Air Quality.** Dust control measures shall be implemented as outlined in the Asbestos Dust Monitoring Plan for Excavation/Grading Activities at Oak Hill Memorial Park, San Jose, CA, dated May 21, 2001. In order to prevent the release of significant amounts of asbestos fibers into the work area and surrounding area, the following mitigation measures will be incorporated throughout the duration of the project construction or grading activities for any excavation, grading, loading, and backfilling activities at the project site and following completion:
- a. Traffic control for on-site unpaved roads, parking lots, and staging areas to include restriction of construction vehicle speed at the work site to 15 miles per hour (mph) or less, water of the surfaces every two hours of active operations or sufficiently often to keep the areas adequately wetted, application of dust suppressants consistent with manufacturer's directions, application of a gravel base with a silt content of less than 56 percent and asbestos content less than 0.25 percent as established using California Air Resources Board Test Method 435 to a depth of three (3) inches on the surface(s) being used for travel, and any other effective measure.
 - b. Prior to ground disturbance, sufficient water must be applied to the area to be disturbed to saturate the soil to the depth of anticipated cuts in order to prevent visible emissions from crossing the property line.
 - c. Areas to be graded or excavated must be kept adequately wetted to prevent visible emissions from crossing the property line.
 - d. Storage piles must be adequately wetted, treated with dust suppressant, or covered when material is not being added to or removed from the piles.
 - e. Equipment must be washed down before moving from the site onto a paved public road.
 - f. Visible track-out on a paved public road(s) must be cleared using wet sweeping or a vacuum device equipped with a high-efficiency particulate air filter within 24 hours of the track-out occurrence.
16. **Tree Removals.** No tree larger than 56 inches in circumference, at a height of 24 inches above the natural grade slope, shall be removed without a Tree Removal Permit issued by the Director of Planning.
17. **Historic Resources.** New Construction shall be designed and sited in conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings and/or the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings. Prior to the issuance of a Planned Development Permit for additions within the cemetery, the project applicant shall contract a qualified architectural historian to review the proposed project for consistency with said standards. Final location and design shall be subject to review and approval by the Historic Preservation Officer and to the satisfaction of the Director of Planning.

APPROVED and issued on this **25th day of January, 2013.**

Joseph Horwedel, Director
Planning, Building, and Code Enforcement

Deputy