

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSÉ APPROVING, SUBJECT TO CONDITIONS, A PLANNED DEVELOPMENT PERMIT TO ALLOW THE CONSTRUCTION OF AN APPROXIMATELY 6,000-SQUARE FOOT FLEET MAINTENANCE AND REPAIR FACILITY ON AN APPROXIMATELY 10.6-GROSS ACRE DEVELOPED SITE (WAREHOUSE DISTRIBUTION) LOCATED ON THE WEST SIDE OF PIERCY ROAD, APPROXIMATELY 2,070 FEET NORTHERLY OF TENNANT AVENUE (500 PIERCY ROAD)**

**FILE NO. PD21-004**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on June 1, 2021, a concurrent application (File No. PD21-004) was filed by applicants Michael Manfred and Phil Erdman of Reyes Holdings, LLC, on behalf of Lone Oak Santa Clara LLC, with the City of San José for a Planned Development Permit to allow the construction of a 6,000-square foot fleet maintenance and repair facility on an existing developed site (warehouse distribution), on that certain real property situated in the IP(PD) Planned Development Zoning District and located on the west side of Piercy Road, approximately 2,070 feet northerly of Tennant Avenue (500 Piercy Road, San José, which real property is sometimes referred to herein as the “subject property”); and

**WHEREAS**, a legal description of the subject property is attached as Exhibit "A" and depicted in the parcel map attached as Exhibit "B," which are incorporated by reference; and

**WHEREAS**, at a duly noticed public hearing on November 16, 2022, the Planning Commission considered public comments and all evidence and testimony received at the

public hearing regarding the project and recommended that the City Council approve the project; and

**WHEREAS**, this City Council received and considered the reports and recommendations of the City's Planning Commission and City's Director of Planning, Building, and Code Enforcement and conducted a duly noticed public hearing on the project, giving all persons full opportunity to be heard and to present evidence and testimony; and

**WHEREAS**, at said hearing, this City Council received in evidence a plan for the subject property entitled, "Golden Brands Fleet Shop" dated September 1, 2021, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection; said plan is incorporated by reference; and

**WHEREAS**, this City Council has heard and considered the testimony presented at the public hearing and has further considered written materials submitted on behalf of the project applicant, City staff, and other interested parties;

**NOW, THEREFORE**, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSÉ THAT:

After considering evidence presented at the public hearing, the City Council finds that the following are the relevant facts and findings regarding this proposed project:

1. **Site Description and Surrounding Uses.** The Project Site is located on the west side of Piercy Road, approximately 2,070 feet northerly of Tennant Avenue (500 Piercy Road). The approximately 6,000-square foot fleet maintenance building would be located in a paved area at the southwest corner of the approximately 10.6-acre parcel, currently developed with a warehouse distribution facility. Access to the site is from two gated driveways along Piercy Road. The new fleet maintenance and repair facility will be used only to support the existing warehouse distribution facility.

Surrounding land uses within the City boundary include a church to the northwest, a warehouse distribution center to the west, and vacant land to the south. Additionally, there are single-family houses to the north and a rural residential ranch to the east, which are in unincorporated Santa Clara County.

2. **Project Description.** The project consists of a Planned Development Permit to allow the construction of an incidental approximately 6,000-square foot fleet maintenance and repair facility to support an existing on-site warehouse distribution use on an approximately 10.6-acre site, located on the west side of Piercy Road, approximately 2,070 feet northerly of Tennant Avenue (500 Piercy Road). The fleet maintenance facility would be located in a paved area at the southwest corner of the site and would have four truck bays. Access to the site is from two gated driveways along Piercy Road.
3. **Envision San José 2040 General Plan Consistency.** The project is within the Industrial Park land use designation in the Envision San José 2040 General Plan Land Use/Transportation Diagram Map. The land use designation is intended for a wide variety of industrial users such as research and development, manufacturing, assembly, testing and offices. This land use designation supports a floor-area ratio (FAR) density up to 10.0. The floor area of this site after the construction of the fleet maintenance and repair facility would be 0.34, consistent with the allowed density.

The project is consistent with the following key General Plan policies:

Land Use Policy LU-6.3: When new uses are proposed in proximity to existing industrial uses, incorporate measures within the new use to minimize its negative impacts on existing nearby land uses.

*Analysis: The fleet repair and maintenance facility use includes measures that will mitigate its operational characteristics: the use will take place indoors, has only four truck bays, and will be limited to supporting the existing on-site warehouse. Additionally, the facility would not exceed the Zoning Code 70 decibel noise performance standard at a property line.*

Implementation Policy IP-1.8: Use standard Zoning Districts to promote consistent development patterns when implementing new land use entitlements. Limit use of the Planned Development Zoning process to unique types of development or land uses which cannot be implemented through standard Zoning Districts, or to sites with unusual physical characteristics that require special consideration due to those constraints.

*Analysis: A fleet repair and maintenance facility is not an allowed use in the Industrial Park Zoning District, and therefore required a Planned Development Zoning to allow the use. Because the use is a compatible support use which is small in scale and has been designed to mitigate the operational characteristics of the existing facility, special consideration can be given to allowing the use at this site.*

Implementation Policy IP-8.5: Use the Planned Development zoning process to tailor such regulations as allowed uses, site intensities and development standards to a particular site for which, because of unique circumstances, a Planned Development zoning process will better conform to Envision General Plan goals and policies than

may be practical through implementation of a conventional Zoning District.

*Analysis: The Planned Development zoning process is being used to tailor the allowed use of the particular site to add the fleet repair and maintenance facility use. Since the entire area is designed Industrial Park in the General Plan, it is impractical for the site to obtain a General Plan Amendment to change the site to Light or Heavy Industrial to allow the requested use. The use can be mitigated to be compatible with its surroundings and to be consistent with the existing general plan land use designation through design and Planned Development Zoning standards. Therefore, the Planned Development zoning process is appropriate to allow this project at this site.*

- 4. Zoning Ordinance Consistency.** The project included a rezoning from the IP Industrial Park District to the IP(PD) Planned Development Zoning District. The surrounding parcels within the City boundary are all zoned IP Industrial Park. The surrounding parcels within the County are zoned HS-d1, Hillside (with a design review component for the Santa Clara Valley Viewshed).

### **Land Use**

The base IP Industrial Park zoning of the PD Planned Development Zoning District supports continued compatibility with the surrounding Industrial Park zoning and land uses. The Planned Development Zoning District allows all uses of the IP Industrial Park Zoning District, as amended, while adding an incidental repair and maintenance use for fleet vehicles, up to 6,000 square feet and four service bays, as an allowed use.

### **Development Regulations**

#### Height and Setbacks:

The height and setbacks for the Planned Development Zoning are listed in the table below, matching the IP Industrial Park Zoning District in the Zoning Code, as amended. The table compares the IP Industrial Park Zoning District per Section 20.50.200 of the Zoning Code and the proposed IP(PD) Planned Development Zoning District development standards. Per Section 20.60.040.B of the Zoning Code, when a Planned Development permit has been implemented, the provisions of the permit prevail over the regulations of the base district zoning of the property. The table also shows the project compliance with the project's development standards. The entire development, including the existing warehouse distribution center and the fleet maintenance and repair shop, is evaluated in the table below.

<b>Standard</b>	<b>IP Zoning District Requirements</b>	<b>IP(PD) Planned Development Zoning District Standards</b>	<b>Project Compliance with PD Standards</b>
<i>Minimum Front Setback</i>			
... to Building	15 feet	15 feet	26.1 feet
... to Parking & Circulation	25 feet	25 feet	34.2 feet
... to Loading Docks	60 feet	60 feet	340.5 feet
<i>Minimum Side Setback</i>			
... to Building	0 feet	0 feet	23 feet, 8 inches (south) 294 feet (north)
... to Parking & Circulation	0 feet	0 feet	14 feet (south) 44.8 feet (north)
... to Loading Docks	0 feet	0 feet	144.5 feet (south) 748.5 feet (north)
<i>Minimum Rear Setback</i>			
... to Building	0 feet	0 feet	46.7 feet
... to Parking & Circulation	0 feet	0 feet	5.3 feet
... to Loading Docks	0 feet	0 feet	233.2 feet
<i>Maximum Height</i>	120 feet	120 feet	32 feet

Vehicle and Bicycle Parking:

The minimum number of parking spaces and bicycle spaces in the Planned Development Zoning are listed in the tables below, consistent with Table 20-190 of the Zoning Code, as amended. The table summarizes the project compliance with the standards. The existing and project development are both evaluated because the requirements for the project are in addition to the existing uses.

Vehicle Parking	Zoning Code	IP(PD) Planned Development Zoning District Development Standards	Project Compliance with PD Standards
Warehouse	One per 5,000 square feet of gross floor area or a fraction thereof	One per 5,000 square feet of gross floor area or a fraction thereof	31 spaces required (151,019 square feet)
Repair and Maintenance Facility	Four spaces per work station plus one per employee	Four spaces per work station plus one per employee	20 spaces required (Four work stations and four employees)

*Analysis: As shown on the plan set for Planned Development Permit PD21-004, there are 100 vehicle parking spaces provided in the project site, where 51 vehicle parking spaces are required, in compliance with the IP(PD) Planned Development Zoning District standards.*

Bicycle Parking	Zoning Code	IP(PD) Planned Development Zoning District Development Standards	Project Compliance with PD Standards
Warehouse	1 per 10 full-time employees	1 per 10 full-time employees	8 spaces required (80 employees)
Repair and Maintenance Facility	1 per 10 full-time employees	1 per 10 full-time employees	1 space required (4 employees)

*Analysis: As shown on the plan set for Planned Development Permit PD21-004, there are 10 bicycle parking spaces provided in the project site, where nine bicycle parking spaces are required, in compliance with the IP(PD) Planned Development Zoning District standards.*

**Additional Standards:** The Planned Development Zoning includes a minimum requirement for loading spaces. Specifically, the minimum number of loading spaces shall be per Section 20.90.410 of the Zoning Code, as amended, or one off-street loading space, plus one additional such loading space for each twenty thousand square feet of floor area. As such, nine loading spaces are required for the warehouse use, and ten loading spaces were provided.

*Analysis: As shown on the plan set for Planned Development Permit PD21-004, there are 10 loading spaces provided in the project site, where nine loading spaces are required, in compliance with the IP(PD) Planned Development Zoning District standards.*

Noise

## 5. City Council Policy Consistency

*City Council Policy 6-30: Public Outreach Policy for Pending Land Use Development Proposals*

Under City Council Policy 6-30, the project is a standard development. Standard development projects are required to provide Early Notification by website and e-mail to property owners and tenants within a 500-foot radius, and by on-site signage. Following City Council Policy 6-30, the required on-site sign has been posted at the site since July 2, 2021, to inform the neighborhood of the project. No community meeting was required or held for this project. The staff report is posted on the City's website, and staff has been available to respond to questions from the public.

## 6. California Environmental Quality Act

Under the provisions of Section 15303(c) and (d), New Construction or Conversion of Small Structures, of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), the Planned Development Zoning and associated Planned Development Permit are exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. Article 19 Categorical Exemptions includes a list of classes of projects that have been determined not to have a significant effect on the environment and that are, therefore, exempt from the Provisions of CEQA. Section 15303, Class 3 exemptions consist of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure, and the use of this exemption is limited to the maximum allowable on any legal parcel. The proposed project would involve construction of a new approximately 6,000-square foot fleet maintenance facility for repair and maintenance use on the 10.6-gross acre site with an existing approximately 151,000-square foot industrial building. The maintenance facility would consist of a one-story, prefabricated garage which would be used for servicing fleet vehicles and would include four 16-foot high metal roll-up doors to allow trucks access into the garage.

The building would be constructed on the project site, entirely within the boundary of the existing property line. As discussed above, the use of the new building would be a maintenance garage for fleet vehicles. In addition, the fleet maintenance facility

would result in reduced vehicle miles travelled (VMT) of heavy trucks associated with the existing use because fleet vehicles could be serviced on-site versus travelling to a third-party servicer for maintenance. Therefore, because the new structure is a small facility on an existing developed lot and includes minor utility extensions of reasonable length to serve such construction, the project would be consistent with the requirements stated in Section 15303 of the State CEQA Guidelines.

7. **Planned Development Permit Findings.** Section 20.100.940 of the Zoning Ordinance specifies the required findings for approval of a Planned Development Permit. These findings are made for the project based on the analysis related to General Plan, Zoning Ordinance, and CEQA conformance and subject to the conditions set forth in the Permit. In order to make the Planned Development Permit findings and recommend approval to the Planning Commission, staff must determine that:

- a. The planned development permit, as issued, is consistent with and furthers the policies of the general plan; and

*Analysis: As analyzed above, an incidental fleet maintenance and repair facility supporting a warehouse distribution use is consistent with the Industrial Park land use designation per the General Plan, including relevant goals and policies. This includes consistency with policies regarding the mitigation of potential negative impacts, compatible support uses, and Planned Development Zoning.*

- b. The planned development permit, as issued, conforms in all respects to the planned development zoning of the property; and

*Analysis: As analyzed above, the project is consistent with the IP(PD) Planned Development Zoning District Development Standards. The project is consistent with the parking, setback, height, and landscaping requirements of the Planned Development Standards and the General Development Plan.*

- c. The planned development permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency; and

*Analysis: As discussed under the City Council Policy Consistency section above, the project conforms to the Public Outreach Policy for Pending Land Use and Development Proposals.*

- d. 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; and

*Analysis: The new fleet maintenance facility is built facing the street, in the back corner of a lot developed with an existing warehouse distribution facility and is accessed through an existing truck access driveway. The new facility is 32 feet high and one story, is painted grey, and has metal doors characteristic of a warehouse. This matches the existing building, which is 41 feet high and one*



*story, in scale, and has similar elevations, including the same-colored paint. The project use is appropriate and functionally and physically compatible with the existing warehouse distribution use, as the new facility is an incidental on-site facility which provides maintenance and repair to the existing truck fleet associated with the warehouse.*

- e. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

*Analysis: All construction activity and its impacts, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor, would be temporary. Additionally, the project is exempt under CEQA Section 15303(c) and (d) for new construction of small structures.*

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

#### **APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. **Acceptance of Permit.** Per San José Municipal Code Section 20.100.290(B), should Permittee fail to file a timely and valid appeal of this Planned Development Permit (sometimes referred to as "Permit") within the applicable appeal period, such inaction by the Permittee shall be deemed to be constitute all of the following on behalf of the Permittee:
  - a. Acceptance of the Permit by the Permittee; and
  - b. Agreement by the Permittee to be bound by, to comply with, and to do all things required of or by the Permittee pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Planned Development Permit shall automatically expire four (4) years from and after the date of issuance hereof by the City Council, if within such time period, the proposed use of the site or the construction of buildings (if a Building Permit is required) has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning, Building and Code Enforcement

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.

3. **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 Permittee'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 in 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.
4. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José - Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José - Santa Clara Regional Wastewater Facility 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; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager makes a determination that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.
5. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Planned Development Permit plans entitled, "Golden Brands Fleet Shop" dated September 1, 2021, on file with the Department of Planning, Building and Code Enforcement as may be amended subject to City's approval, and to the San José Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the "approved plans" or the "Approved Plan Set."
6. **Planned Development District Effectuated.** This Planned Development Permit effectuates the Planned Development Zoning as reflected in the Permit's Approved Plan Set and the corresponding legal description.

7. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City of San José.
8. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, state, and federal laws.
9. **Discretionary Review.** The City maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
10. **Refuse.** All trash and refuse storage areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the trash or refuse container(s). Trash areas shall be maintained in a manner to discourage illegal dumping.
11. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
12. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts, and garbage.
13. **Building and Property Maintenance.** The property shall be maintained in good visual and functional condition. This shall include, but not be limited to, all exterior elements of the building such as paint, roof, paving, signs, lighting, and landscaping.
14. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
15. **Construction Disturbance Coordinator.** Rules and regulation pertaining to all construction activities and limitations identified in this Permit, along with the name and telephone number of a Permittee-appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.
16. **Landscaping.** Planting and irrigation are to be provided by the Permittee, as indicated, on the final Approved plans.
17. **Replacement Landscaping.** All landscaping removed with the construction of the project shall be replaced with similar landscaping in the immediate area. All landscaped replacement areas shall be automatically irrigated.
18. **Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of any Building Permit, the project must comply with the 2019 California Fire Code, or as may be amended or updated by the City.
19. **Building Division Clearance for Issuing Permits.** Prior to the issuance of any Building permit, the following requirements shall be met to the satisfaction of the Chief Building Official:

- a. *Construction Plans.* This Permit file number, PD21-004 shall be printed on all construction plans submitted to the Building Division.
  - b. *San José 's Natural Gas Infrastructure Prohibition and Reach Code Ordinances.* The City's Natural Gas Infrastructure Prohibition and Reach Code Ordinances apply to this project and all requirements shall be met. For more information, please visit [www.sjenvironment.org/reachcode](http://www.sjenvironment.org/reachcode).
  - c. *Americans with Disabilities Act.* The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
  - d. *Emergency Address Card.* The project Permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
  - e. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any Building Permit issuance, Building Permit plans shall conform to the approved Planning development permits and applicable conditions.
  - f. *Other.* Such other requirements as may be specified by the Chief Building Official.
35. **Recycling.** Scrap construction and demolition material shall be recycled. Integrated Waste Management staff at (408) 535-8550 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:** Prior to the approval of the Tract Map by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the permittee will be required to have satisfied all of the following Public Works conditions. The permittee is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at: <http://www.sanjoseca.gov/devresources>.
- a. **Minor Improvement Permit:** The public improvements conditioned as part of this permit may require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. The Minor Improvement Permit includes privately engineered plans, insurance, surety deposit, and engineering and inspection fees.
  - b. **Transportation:** See separate Traffic Memo dated 1/3/22 for additional information. The following conditions shall be implemented:
    - i. In alignment with State of California Senate Bill 743 (SB743), the City of San Jose Policy, Transportation Impact Policy - Council Policy 5-3 has been replaced with a new Transportation Analysis Policy - Council Policy 5-1. Council Policy 5-1 replaces the transportation impacts threshold from Level of Service (LOS) under Council Policy 5-3 to Vehicle Miles Traveled (VMT).

- ii. This project would not require a detailed CEQA transportation analysis because the project is expected to result in less-than-significant VMT impacts based on Table 1 (Screening Criteria for CEQA Transportation Analysis for Development Projects) of the Transportation Analysis Handbook 2020, as an industrial project of 30,000 square feet or less.
- iii. This project is located in the Edenvale Area Development Policy in Sub-Area 3. The Policy includes a base maximum floor-area ratio (FAR) of 0.40 for development within Sub-Area 3. The April 2014 Policy update included the transfer of 494,000 square feet for future industrial/research & development/office development on individual sites in Sub-Areas 1 and 3. The square footage transfer resulted in an additional improvement to add a lane at the southbound off-ramp at State Route 85 and Bernal Road. The cost of the improvement is to be borne proportionally by a square-footage fee paid by development. This project may be subject to the improvement fee at the time of Public Works Clearance for Building Permits if the project exceeds the required FAR of 0.40.

**c. Grading/Geology:**

- i. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
- ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the latest California Plumbing Code as adopted under the City of San José Municipal Code Section 24.04.100 or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.
- iii. 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 report should also include, but not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations. 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 Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.
  - i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.
  - ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
- e. **Stormwater Peak Flow Control Measures:** The project is located in a Hydromodification Management (HM) area but will create and/or replace less than one acre of impervious surface. Therefore, this project is 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 prior to issuance of Public Works clearance.
- h. **Municipal Water:** In accordance with City Ordinance #23975, Major Water Facilities Fee may be due and payable prior to issuance of Public Works clearance. Contact Juan Renteria at (408) 794-6772 for further information.
- i. **Assessment:** This project is located within the boundaries of Improvement District 99-218SJ (Hellyer-Piercy), which sold bonds to fund the construction of the street improvements in the surrounding industrial development and to provide access to this site. The bonds are secured by the properties and an assessment has been assigned to each parcel based on its current configuration and are collected through the County property tax bills. The General Plan designation for the land within the District is "Industrial Park" ("IP"). This designation is intended to integrate new development into the planned development pattern in order to permit a cohesive area character. New permitted uses include manufacturing, warehouse, research and development, and administrative/business offices. The outstanding principal balance for Assessor's Parcel No. 678-08-061 is \$214,224.53. An annual assessment, not to exceed \$120,222.16, will be placed on the County property tax bills listed under Tax Code 024Q "IMP DIST 99-218SJ" through fiscal year 2022-

23. Any questions may be directed to Thomas Borden at (408) 535-6831.

- j. **Street Improvements:** Permittee shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.

37. **Standard Environmental Conditions.** The following measures shall be implemented during all phases of construction to control dust and exhaust at the project site:

a. **Air Quality**

- i. Water active construction areas at least twice daily or as often as needed to control dust and emissions.
- ii. All trucks hauling soil, sand, and other loose material shall be covered and all trucks shall maintain at least two feet of freeboard.
- iii. Remove visible mud or dirt track-out onto adjacent public roads using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- iv. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
- v. Pave new or improved roadways, driveways, and sidewalks as soon as possible.
- vi. Lay building pads as soon as possible after grading unless seeding or soil binders are used.
- vii. Replant vegetation in disturbed areas as quickly as possible.
- viii. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- ix. Minimize idling times either by shutting off equipment when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access points.
- x. Maintain and properly tune construction equipment in accordance with manufacturer's specifications. Check all equipment by a certified mechanic and record a determination of running in proper condition prior to operation.
- xi. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.

b. **Biological Resources**

- i. **Santa Clara Valley Habitat Plan.** The project is subject to applicable Habitat Plan conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The permittee shall submit the Santa Clara

Valley Habitat Plan Coverage Screening Form to the Director of Planning, Building, and Code Enforcement or Director's designee for approval and payment of the nitrogen deposition fee prior to the issuance of grading permits. The Habitat Plan and supporting materials can be viewed at <https://scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan>.

**c. Cultural Resources.**

- i. **Subsurface Cultural Resources.** If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist in consultation with a Native American representative registered with the Native American Commission for the City of San Jose and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3 shall examine the find. The archaeologist shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and 2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to Director of PBCE or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.
- ii. **Human Remains.** If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The permittee shall immediately notify the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the NAHC within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a



location not subject to further subsurface disturbance:

- a. The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
- b. The MLD identified fails to make a recommendation; or
- c. The landowner or his authorized representative rejects the recommendation of the MLD, and the mediation by the NAHC fails to provide measures acceptable to the landowner.

**d. Geology and Soils.**

- i. To avoid or minimize potential damage from seismic shaking, the project shall be constructed using standard engineering and seismic safety design techniques. Building design and construction at the site shall be completed in conformance with the recommendations of an approved geotechnical investigation. The report shall be reviewed and approved by the City of San José Department of Public Works as part of the building permit review and issuance process. The buildings shall meet the requirements of applicable Building and Fire Codes, as adopted or updated by the City. The project shall be designed to withstand soil hazards identified on the site and the project shall be designed to reduce the risk to life or property on site and off site to the extent feasible and in compliance with the Building Code.
- ii. All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
- iii. Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
- iv. Ditches shall be installed to divert runoff around excavations and graded areas if necessary.
- v. The project shall be constructed in accordance with the standard engineering practices in the California Building Code, as adopted by the City of San José. A grading permit from the San José Department of Public Works shall be obtained prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.
- vi. If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement (PBCE) shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The permittee shall

be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee.

- e. **Hydrology and Water Quality.** Measures shall be implemented to prevent stormwater pollution and minimize potential sedimentation during construction, including, but not limited to, the following:
  - i. Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
  - ii. Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
  - iii. All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
  - iv. Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
  - v. All trucks hauling soil, sand, and other loose materials shall be covered and all trucks shall maintain at least two feet of freeboard.
  - vi. All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
  - vii. Vegetation in disturbed areas shall be replanted as quickly as possible.
  - viii. All unpaved entrances to the site shall be filled with rock to remove mud from truck tires prior to entering City streets. A tire wash system shall be installed if requested by the City.
  - ix. The permittee shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.
- f. **Noise.** Pursuant to General Plan Policy EC-1.7, project construction operations shall use best available noise suppression devices and techniques including, but not limited to the following:
  - i. Pile Driving is prohibited.
  - ii. Limit construction to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any onsite or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific "construction noise mitigation plan" and a finding by the Director of PBCE that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.
  - iii. Construct solid plywood fences around ground level construction sites adjacent

- to operational businesses, residences, or other noise-sensitive land uses.
- iv. Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good conditions and appropriate for the equipment.
  - v. Prohibit unnecessary idling of internal combustion engines.
  - vi. Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.
  - vii. Utilize “quiet” air compressors and other stationary noise sources where technology exists.
  - viii. Control noise from construction workers’ radios to a point where they are not audible at existing residences bordering the project site.
  - ix. Notify all adjacent businesses, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of “noisy” construction activities to adjacent land uses and nearby residences.
  - x. If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.
  - xi. Designate a “disturbance coordinator” who would be responsible for responding to any complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., bad muffler, etc.) and will require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.

**38. Revocation, Suspension, Modification.** This Planned Development Permit may be revoked, suspended or modified by the City Council at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:

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

In accordance with the findings set forth above, a permit to use the subject property for said purpose specified above is hereby approved.

**EFFECTIVE DATE**

The effective date of this Planned Development Permit shall be the same as effective date of the Rezoning Ordinance for File No. PDC21-017 passed for publication on \_\_\_\_\_, 2022 (the “Zoning Ordinance”) and shall be no earlier than the effective date of said Rezoning Ordinance.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2022, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
SAM LICCARDO  
Mayor

ATTEST:

\_\_\_\_\_  
TONI J. TABER, CMC  
City Clerk

**NOTICE TO PARTIES**

*The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.*