



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Christopher Burton

SUBJECT: SEE BELOW

DATE: August 1, 2022

Approved

Date

8/11/2022

COUNCIL DISTRICT: 4

SUBJECT: ADMINISTRATIVE HEARING ON THE ENVIRONMENTAL APPEAL OF THE PLANNING DIRECTOR'S DETERMINATION OF CONSISTENCY WITH THE 2000 CISCO SYSTEMS SITE 6 FINAL ENVIRONMENTAL IMPACT REPORT (SCH NO. 199082003) FOR THE PLANNED DEVELOPMENT PERMIT NO. PD21-016 (SECOND HARVEST FOODBANK PROJECT)

RECOMMENDATION

- (a) Conduct an Administrative Hearing to consider the environmental appeal of the Planning Director's Determination of Consistency with the 2000 Cisco Systems Site 6 Final Environmental Impact Report for the Second Harvest Foodbank Project in accordance with the California Environmental Quality Act (CEQA) for a Planned Development Permit (File No. PD21-016), to allow the construction of an approximately 249,230-square foot warehouse/distribution office building and maintenance an existing previously approved Planned Development Permit, File No. PD13-012, on an approximately 10.47-gross acre site located at 4553 and 4653 North First Street.
- (b) Adopt a resolution denying the environmental appeal and upholding the Planning Director's Determination of Consistency with the 2000 Cisco Systems Site 6 Final Environmental Impact Report in accordance with CEQA, as amended and approval of the Planned Development Permit, and finding that:
 - (1) The City Council has independently reviewed and analyzed the Determination of Consistency with the 2000 Cisco Systems Site 6 Final Environmental Impact Report, the previously certified 2000 Cisco Systems Site 6 Final Environmental Impact Report, related Mitigation Monitoring and Report Program for the Project, other information in the record and has considered the information contained therein, prior to acting upon or denying the appeal and upholding the Planning Director's Determination of Consistency with the Cisco Systems Site 6 Final Environmental Impact Report and the Planned Development Permit File No. PD21-016;

- (2) The Determination of Consistency with the Cisco Systems Site 6 Final Environmental Impact Report prepared for the Project has been completed in compliance with CEQA and is consistent with state and local guidelines implementing CEQA;
- (3) The Determination of Consistency with the Cisco Systems Site 6 Final Environmental Impact Report represents the independent judgment and analysis of the City of San José, as the lead agency for the Project; and
- (4) Preparation of a new environmental document is not required because the Determination of Consistency with the Cisco Systems Site 6 Final Environmental Impact Report thoroughly and adequately analyzed the project and the environmental appeal does not raise any new significant impacts that have not already been analyzed or addressed in the Determination of Consistency and the Cisco Systems Site 6 Final Environmental Impact Report in accordance with Public Resources Code section 21083 or CEQA Guidelines sections 15162 and 15185.

OUTCOME

Denial of the environmental appeal and upholding the Planning Director's Determination of Consistency (DOC) with the 2000 Cisco Systems Site 6 Final Environmental Impact Report (FEIR) would allow the project applicant to move forward with the implementation of Planned Development Permit No. PD21-016 (also referred to as the Second Harvest Foodbank Project) to allow the construction of an approximately 249,230-square foot warehouse/distribution office building and maintain an existing previously approved Planned Development Permit (File No. PD13-012) on an approximately 10.47-gross acre site located at 4553 and 4653 North First Street.

Upholding the environmental appeal would void both the Planning Director's CEQA determination and approval of the Planned Development Permit. The project applicant would be required to prepare a new or revised environmental document prior to reconsideration of the proposed project. Alternatively, the applicant could choose to not proceed with the proposed project.

EXECUTIVE SUMMARY

The City of San Jose (City) prepared an Initial Study in support of the DOC with the 2000 Cisco Systems Site 6 FEIR for the Second Harvest Foodbank Warehouse Project. The Initial Study and DOC were posted on the City's Environmental Projects webpage on May 16, 2022 and an email of its availability was sent to interested parties. During the May 18, 2022 Director's Hearing, the project was deferred for one week to the May 25, 2022 Director's Hearing, in response to a member of the public's request for additional time to review the environmental document.

On May 25, 2022, the Planning, Building, and Code Enforcement (PBCE) Deputy Director for the Planning Division, acting on behalf of the PBCE Director (Hearing Officer) held a public hearing to consider the DOC with the 2000 Cisco Systems Site 6 FEIR and Planned Development Permit No. PD21-016.

At the hearing, there were two public speakers, Marcos Espinoza and Mark Espinoza. Marcos Espinoza is the appellant for this project and Mark Espinoza is the appellant's contact person. Marcos Espinoza stated concerns that the environmental document for the project was not circulated for public review and that the health risk assessment of construction and operational air quality included in the environmental document was new information that should be circulated for review in a formal public circulation period. He identified concerns with the project's diesel truck trips and impacts to sensitive receptors including nearby school children at George Mayne Elementary School. Mark Espinoza stated that the project was not compatible with the community of Alviso and the 24-hour operations are a change of the project from the original Cisco Site 6 project therefore, a new Environmental Impact Report (EIR) should be prepared.

Staff responded verbally to the comments raised by the commenters at the public hearing. The Hearing Officer considered all the information in the administrative record including the Initial Study, DOC, and information presented at the public hearing and determined that the DOC with the Cisco Systems Site 6 FEIR was the appropriate environmental clearance under CEQA for the proposed project and approved Planned Development Permit, PD21-016.

On May 31, 2022, a timely appeal of the environmental determination was filed by Mark Espinoza on behalf of Marcos Espinoza. No project permit appeal was filed. The appellant alleges that the Initial Study and DOC were not appropriately circulated for public comments and that the Initial Study identified new significant information in the health risk assessment. The appellant stated his concerns including that the 888 daily vehicle trips, including 100 heavy diesel truck trips and 45 trucks with diesel-burning top-mounted refrigeration units would result in significant new emissions of diesel exhaust and impact surrounding sensitive receptors. The appellant alleges that this new analysis would warrant the preparation of a new EIR or Negative Declaration. A copy of the appeal is included as Exhibit A to this memorandum.

As explained in detail below, the Hearing Officer determined the Second Harvest Foodbank Project is consistent with the original project analyzed in the 2000 Cisco Systems Site 6 FEIR and therefore the DOC is the appropriate CEQA clearance. The Second Harvest Foodbank Warehouse Project was analyzed in an Initial Study prepared in support of the DOC and it was determined that the project is also consistent with the impact analysis of the 2000 Cisco Systems Site 6 FEIR, as addended.

The appellant failed to provide substantial evidence that (i) the proposed project would result in new or greater significant effects beyond those analyzed in the Initial Study/DOC and the Cisco Systems, Inc. Site 6 Project FEIR as addended or (ii) new or considerably different feasible mitigation measures or alternatives that would substantially reduce one or more significant effects

but that the project proponent declines to adopt. Therefore, pursuant to Section 15162 of the CEQA Guidelines, the City can take action on the project as being within the scope of the 2000 Cisco Site 6 FEIR.

BACKGROUND

Site Location

The project site (APN 015-39-056) is located at 4553 and 4653 North First Street in the Alviso community in San José. The site is on the west side of North First Street, north of State Route 237. The 10.47-acre project site is part of a larger 152.6-acre site evaluated under the 2000 Cisco Systems Site 6 FEIR and subsequent addenda.

The project site is surrounded by a school, religious assembly use, and a library to the north, two office buildings and a hotel (developed under the 2000 Cisco Site 6 FEIR) to the east, a surface parking lot, a detention basin, an open field, and the Guadalupe River to the south, and recreation uses (Topgolf San Jose) to the west.

2000 Cisco Systems Site 6 FEIR

On June 6, 2000, the City adopted a statement of overriding considerations and certified the Final Environmental Impact Report (EIR Resolution 69636, State Clearinghouse No. 199082003) for the Cisco Systems Site 6 Project and approved a Planned Development Zoning (File No. PDC99-054) that permitted 2.325 million square feet of new office, research and development, and manufacturing uses on 152.6 acres on both sides of North First Street, north of State Route 237. The 2000 Cisco Systems Site 6 FEIR analyzed the construction of up to 10 buildings that would be up to six stories in height and associated infrastructure improvements under two phases of construction on the 152.6-acre site. The FEIR identified the loss of farmland, the loss of burrowing owl nesting and foraging habitat, impacts to Congestion Management Plan intersections within the City of Santa Clara, impacts to three local intersections in the City of Milpitas, impacts to ten freeway segments operating at Level of Service F, impacts to local and regional carbon monoxide concentrations, noise impacts on nearby sensitive receptors during construction pile driving, alterations of existing views of scenic resources, cumulative loss of Burrowing Owl Habitat, cumulative loss of agricultural and ruderal habits that would result in the reduction in diversity of wildlife species in the Project site area, cumulative traffic impacts on intersection level of services and freeway level of services, and cumulative local and regional air quality impacts, cumulative operational traffic impacts, and cumulative aesthetic impacts due to the loss of view of open lowlands as significant and unavoidable impacts as a result of implementation of the Cisco Systems Site 6 FEIR.

Planning Permits under Cisco Systems Site 6 FEIR

Upon the Planned Development Zoning District's approval, subsequent planning permits were approved between 2000 and 2021, authorizing the buildout of the Cisco Site 6 FEIR project, as

briefly described in Table 1 and depicted in Figure 1, below. Planned Development Permit PD00-027 was never fully built out and later planning permits refined the proposed construction plans for the site. To date, a total of 1,831,624 square feet of the approved 2,325,000 square feet of research and development offices manufacturing has been constructed within the 152.6-gross acre Cisco Systems Site 6 FEIR site.

Table Error! No text of specified style in document.-1: Cisco Site 6 EIR Development Entitlements		
Date	Project Description	CEQA Analysis
June 19, 2000	PD00-027: Planned Development Permit for Phase I of Cisco Site 6 permitting 1.6 million square feet of office and research and development buildings in seven buildings on the north and south side of Nortech Parkway, west of North First Street.	DOC with Cisco Systems Site 6 FEIR
November 2000	DA08-004: Development Agreement providing assurances that the project could be developed in accordance with the existing ordinances, resolutions, policies, and regulations effective the date of the agreement. The Development Agreement had a twenty-year term and expired in 2020.	EIR (Resolution No. 69636, State Clearinghouse No. 199082003)
April 14, 2014	PD13-039: Authorized the construction of four office and research and development buildings on a 21.4-acre site.	Addendum to Cisco Systems Site 6 FEIR
June 17, 2014	PDC14-004 and PD14-007: Authorized the construction of three manufacturing buildings totaling 563,760 square feet.	Addendum to Cisco Systems Site 6 FEIR
October 2014	H14-011: Authorized the construction of a 145-room hotel	Addendum to Cisco Site 6 FEIR

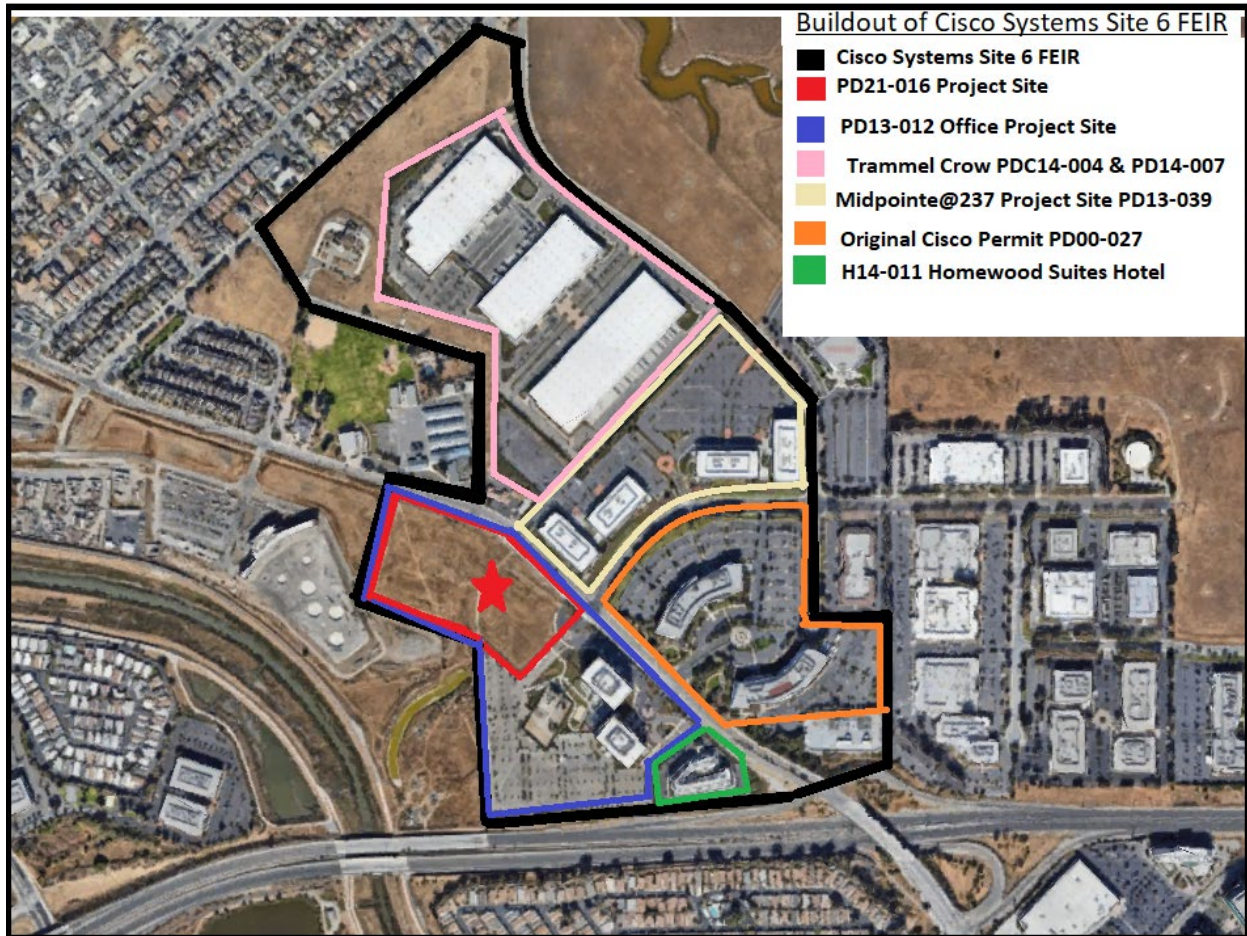


Figure 1 Buildout of Cisco Systems FEIR

In November 2013, a Planned Development Permit (File No. PD13-012) was filed for the construction of approximately 614,809 square feet of office and research and design uses on a 28.5-acre portion of the Cisco Systems Site 6 FEIR's 152.6-acre site. This PD Permit's project site is located on the west side of North First Street, north of State Road 237 and encompasses the 10.47-gross acre Second Harvest Foodbank Warehouse site. The project was approved by the Director of Planning on December 13, 2013. A permit appeal was filed and therefore the Planning Commission considered the permit and appeal on January 22, 2014. The Planning Commission approved the Planned Development Permit (File No. PD13-012) and denied the permit appeal which allowed for the construction of four buildings totaling 614,809 square feet of office and research and development use on a 28.5-acre portion of the Cisco Systems Site 6 Project FEIR's site, including the 10.47-acre Project site. The entire 28.5-acre site was graded in 2014 and two office buildings totaling 368,702 square feet and parking lots were constructed on the 18-acre southern portion of the site in 2015.

The Second Harvest Foodbank Warehouse Project, File No. PD21-016, would be located on the northern portion of the site in an area entitled for two additional office buildings. The proposed project is consistent with the the City's Planned Development zoning and within the remaining

development capacity of the Planned Development zoning as well as the development capacity of PD13-012.

Proposed Second Harvest Foodbank Warehouse Project

The Planned Development Permit application, PD21-016, was filed on August 20, 2021. The project applicant is Second Harvest of Silicon Valley represented by Noland Granberry. The Planned Development Permit would allow the construction of the Second Harvest Foodbank warehouse and office building while maintaining the site's ability to construct the previously approved Planned Development Permit's two outstanding office buildings (File No. PD13-012) as an alternative development option for the project site. The proposed project is consistent with the Planned Development Zoning for the site.

The Second Harvest Foodbank Warehouse and Office project would include one, single-story, approximately 249,230-square foot building consisting of office space, 31 loading docks, storage/warehousing space, and distribution at the rear of the building. The maximum height of the building would be 47.5 feet to the top of the roof screen. The project would include two emergency generators located to the rear (south) of the building.

The project would provide 161 surface parking spaces (including 35 truck parking spaces) and 14 bicycle parking spaces. Access to and from the project site would be provided via the existing North First Street and Nortech Parkway intersection and two new driveways along North First Street, north of Nortech Parkway. The 42-foot-wide northernmost driveway would be restricted to right turn out only due to an existing median along North First Street. Delivery trucks would access the site from the existing North First Street and Nortech Parkway intersection and exit southbound onto North First Street from the northernmost driveway.

Environmental Review

Pursuant to CEQA Guidelines section 15162(a), the City prepared an Initial Study and found that a DOC with the 2000 Cisco Systems Site 6 FEIR is appropriate for the proposed Second Harvest Foodbank Warehouse Project. The Initial Study prepared to analyze the project concluded that the Second Harvest Foodbank Warehouse Project would not result in any changes or new significant effects on the environment beyond those already identified in the previously certified Cisco Systems Site 6 FEIR, nor would the Project result in an increase in the severity of significant effects identified in the previously certified Cisco Systems Site 6 FEIR, and that identified mitigation measures would continue to reduce each of those significant effects to a less-than-significant level. Therefore, a DOC is the appropriate environmental clearance for the proposed project.

CEQA statutes and guidelines do not require the public circulation of a DOC with a previously certified EIR. Above and beyond the requirements of CEQA, the DOC and supporting Initial Study and technical reports were posted on the City's website on May 16, 2022, and an email of the document's availability was sent to the standard interested environmental groups and all members of the public who had requested notification for the project. The Director's Hearing

was scheduled for May 18, 2022. Prior to the hearing, a member of the public requested more time for the community to review the environmental materials and with the applicant's concurrence, the Hearing Officer deferred the meeting to the next Director's Hearing date, May 25, 2022.

May 25, 2022 Planning Director's Public Hearing

On May 25, 2022, the Hearing Officer held a public hearing to consider the DOC and Planned Development Permit No. PD21-016. At the public hearing, there were two public comment speakers, Marcos Espinosa and Mark Espinosa, who spoke against the project approval citing concerns regarding the project and environmental documents including:

- Concerns that the environmental document for the project was not circulated for public review;
- The health risk assessment included in the environmental document was new information that should have been circulated for a formal public circulation period;
- Concerns with the project's diesel truck trips and impacts to sensitive receptors including nearby school children;
- The project's compatibility with the community of Alviso; and
- 24-hour operations of the project.

Staff responded verbally to the comments from the public commenters at the request of the Hearing Officer. Staff reaffirmed the environmental document does not require public circulation, the 24-hour operation of the project that was analyzed, and the project's compatibility with the General Plan land use designation, Planned Development Zoning District, and Alviso Master Plan. Staff confirmed the Initial Study for the project conducted a Health Risk Assessment as part of its analysis for the project which concluded the proposed project would have a less than significant impact to sensitive receptors. Therefore, no new or exacerbated significant environmental impacts were identified in the preparation of the Health Risk Assessment which would trigger the preparation of a subsequent environmental document. At the Hearing Officer's request, Staff explained the Initial Study also reviewed the project's greenhouse gas impacts and the project's transportation impacts. The project continues to be consistent with the City's Greenhouse Gas Reduction Strategy as confirmed by the checklist included as Appendix C in the Initial Study. Regarding transportation, staff identified the project was subject to City Council Policy 5-1's "pipeline" provisions for projects that predated the policy's effective date of March 28, 2018 and that projects approved prior to the effective date with a pre-existing CEQA clearance based on Level of Services would not be subject to the Policy's vehicle miles traveled thresholds if the project is still within the scope and fully evaluated under the previously approved environmental document (the 2000 Cisco Systems Site 6 FEIR and subsequent addenda). The Second Harvest Foodbank Project was determined to still be within the scope of the previously approved Cisco Systems Site 6 FEIR. Additionally, the trip generation estimates for the Second Harvest Foodbank Project determined that it would result in a reduction in trips as compared to the 2000 traffic analysis in the Cisco Systems Site 6 FEIR and subsequent addendum in 2013. Both analyses concluded the project would result in a less than

significant impact and therefore, the DOC was determined to be the appropriate environmental document.

The Hearing Officer considered the information presented and determined that the DOC with the 2000 Cisco Systems Site 6 FEIR was the appropriate environmental clearance under CEQA and approved the Planned Development Permit.

The Planning Director's Hearing Agenda of item 3a. including the draft Site Development Permit and all associated documents for the Planning Director's Hearing dated May 25, 2022, can be viewed at

<https://www.sanjoseca.gov/home/showpublisheddocument/85921/637884815617930000>. The audio recording of the meeting is available at https://sanjose.granicus.com/ViewPublisher.php?view_id=54.

Environmental Appeal

Pursuant to Section 21.04.140 of the San José Municipal Code, any interested person can submit a timely request to appeal to the City Council the determination made by the Planning Director, Planning Commission, or non-elected decision-making body regarding the appropriate environmental clearance for a project. At the Appeal Hearing, the City Council may uphold the Planning Director's DOC with the 2000 Cisco Systems Site 6 FEIR or require the preparation of new environmental documents in accordance with Title 21 of the San Jose Municipal Code.

On May 31, 2022, a timely environmental appeal of the DOC with the 2000 Cisco Systems Site 6 FEIR for the proposed project was filed by Mark Espinoza on behalf of Marcos Espinoza. The appeal is based on verbal comments presented at the Director's Hearing and the basis for the appeal stated in the appeal application is:

- The Initial Study was not appropriately circulated for public comments.
- The Initial Study identified new significant information in the health risk assessment. The appellant stated concerns that the 888 daily vehicle trips, including 100 heavy diesel truck trips and 45 trucks with diesel-burning top-mounted refrigeration units would result in significant new emissions of diesel exhaust and impact surrounding sensitive receptors. This new analysis would warrant the preparation of a new EIR or Negative Declaration.

ANALYSIS

The document in question is the DOC with the 2000 Cisco Systems Site 6 FEIR and associated Initial Study and technical analysis (See Exhibit C). Staff addresses the two appeal points below:

Initial Study and DOC Public Circulation

Pursuant to CEQA Guidelines Sections 15378 (a) and (c), a "Project" refers to the *whole of an action*, which has the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. The term "project"

refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term “project” does not mean each separate governmental approval.

The City determined that the Second Harvest Foodbank Project Warehouse Project is within the scope of the larger project (Planned Development Rezoning File No. PDC99-054) evaluated in the 2000 Cisco Systems Site 6 FEIR and subsequent addenda, and therefore a DOC was determined to be the appropriate level of CEQA review. The Initial Study for the Second Harvest Foodbank Warehouse Project determined the project would not result in any new or exacerbated significant environmental impacts as compared to the 2000 Cisco Site 6 FEIR and subsequent addenda. Pursuant to CEQA Guidelines and Statute, section 15164, no public circulation is required. However, as a courtesy, the DOC and its supporting documentation including the Initial Study, were posted on the City’s Environmental Projects webpage on May 16, 2022 and an email of its availability was sent to interested parties.

Health Risk Assessment

The appellant claims the health risk assessment included with the Initial Study for the project is new information that warrants the preparation of a new environmental document with public circulation. The City prepared an air quality assessment (Appendix A of the Initial Study) to evaluate the impacts of the operation and construction of the Second Harvest Foodbank Warehouse Project in comparison to the impacts evaluated in the 2000 Cisco Systems Site 6 FEIR and subsequent addenda. The 2000 Cisco Systems Site 6 FEIR identified a potentially significant impact to sensitive receptors as a result of construction emissions and included a mitigation measure (e.g, the Bay Area Air Quality Management District (BAAQMD) Best Management Practices to reduce construction emissions) to reduce impacts to less than significant levels. The proposed project would be required to implement the BAAQMD Best Management Practices as a Standard Permit Condition.

To analyze the project’s potential health risk impact, BAAQMD’s Air Quality Significance Thresholds were used, as outlined in the following table:

Health Risks and Hazards for New Sources (within a 1,000-foot Zone of Influence)		
Health Hazard	Single Source	Combined Cumulative Sources
Excess Cancer Risk	10 per one million	100 per one million
Hazard Index	1.0	10.0
Incremental Annual PM _{2.5}	0.3 µg/m ³	0.8 µg/m ³ (average)

An incremental cancer risk of greater than 10 cases per million for a 70-year exposure duration at the maximally exposed individuals would result in a significant impact. The BAAQMD Air Quality Guidelines consider exposure to annual PM_{2.5} concentrations that exceed 0.3 µg/m³

from a single source to be significant. Cancer risks that exceed 100 cases per million and annual PM_{2.5} concentrations that exceed 0.8 µg/m³ from cumulative sources are also significant. The BAAQMD significance threshold for non-cancer hazards is 1.0. The maximum health risks would be experienced by children attending George Mayne Elementary School were also analyzed; this analysis is different than residential analysis because of the shorter exposure time period (school day) and type of receptor.

The following table, included in the Initial Study and supporting air quality report, identifies the cancer risk, annual PM_{2.5}, and Hazard Index construction and operation emissions at George Mayne Elementary School and the maximally exposed individuals, which is the sensitive receptor that is most impacted by the project’s construction and operation. The maximally exposed individuals for this project was determined to be the Balaji Temple and residence on the temple site approximately 150 feet from the project site.

Source	Cancer Risk (per million)	Annual PM _{2.5} (µg/m ³)	Hazard Index
Project Impact at MEI			
Project Construction (Years 0-2), Unmitigated	6.81 (child)	0.05	<0.01
Project Operation (Years 2-30), Unmitigated	1.48	<0.01	<0.01
Total/Maximum Project Impact (Years 0-30), Unmitigated	8.30	0.05	<0.01
Project Impact at George Mayne Elementary School			
Project Construction (Years 0-2), Unmitigated	3.88 (child)	0.07	<0.01
Project Operation (Years 2-30), Unmitigated	2.03 (child)	0.01	<0.01
Total/Maximum Project Impact (Years 0-30), Unmitigated	5.91 (child)	0.07	<0.01
<i>BAAAQMD Recommended Threshold</i>	<i>10</i>	<i>0.3</i>	<i>1.0</i>
<i>Threshold Exceeded?</i>	<i>No</i>	<i>No</i>	<i>No</i>
Source: Illingworth & Rodkin. <i>Second Harvest Food Bank Air Quality Assessment</i> . January 24, 2022.			

The analysis concluded that the project would not result in any impacts above the BAAQMD’s threshold of significance for health risks and no new or exacerbated significant environmental impact was identified. Therefore, staff determined with support of the health risk assessment and entire Initial Study, that a DOC with the 2000 Cisco Site 6 FEIR and subsequent addenda is the appropriate level of CEQA analysis, and no subsequent EIR or Negative Declaration is warranted.

None of the comments by the appeal raised any new issues about the project’s environmental impacts, nor do they provide information indicating the project would result in new

environmental impacts or impacts substantially greater in severity than disclosed in the supporting Initial Study for the DOC that would warrant preparation of a subsequent Negative Declaration or Environmental Impact Report. Therefore, the DOC with the 2000 Cisco Systems Site 6 FEIR and associated documents are adequate in their analysis of the proposed project.

CONCLUSION

CEQA Statute and Guidelines section 15162(a) states that no subsequent EIR would need to be prepared if, on the basis of substantial evidence and in light of the whole record, the lead agency determines the project would not result in new significant environmental effects or a substantial increase in the severity of the previously identified significant effects of the previous EIR due to project changes or new information and circumstances. Additionally, a subsequent EIR would not be needed as long as any feasible mitigation measures or alternatives that now would substantially reduce one or more significant effects of the Project would be adopted as project mitigation measures or alternatives. Based on the above analysis, the comments submitted by Marcos Espinoza represent an opinion and do not demonstrate with facts and analysis a fair argument that a new environmental document is required pursuant to CEQA Guidelines section 15162.

Staff recommends the City Council deny the appeal and uphold the Planning Director's adoption of the DOC with the 2000 Cisco Systems Site 6 Final Environmental Impact Report and approval of the Planned Development Permit.

EVALUATION AND FOLLOW-UP

If the City Council denies the appeal and upholds the Planning Director's adoption of the DOC with the 2000 Cisco Systems Site 6 FEIR for the Planned Development Permit, then the applicant may proceed with the acquisition of the necessary grading and building permits and implement the required mitigation measures to complete the development of the Second Harvest Foodbank Warehouse Project.

CLIMATE SMART SAN JOSE

The recommendation in this memorandum aligns with one or more Climate Smart San José energy, water, or mobility goals. The development of the project would be:

- Consistent with the existing Envision General Plan Land Use Designation; and
- Comply with the Greenhouse Gas Reduction Strategy 2030 goal.

POLICY ALTERNATIVES

For the Environmental Appeal, City Council can either:

- a. Deny the appeal and uphold the adoption of the DOC with the 2000 Cisco Systems Site 6 FEIR and Planned Development Permit, or
- b. Grant the appeal and require that additional environmental review be conducted, resulting in a new or revised environmental document prior to consideration of the Planned Development Permit, or the applicant not moving forward with the project.

Staff recommends that the City Council deny the CEQA appeal, uphold the Planning Director's adoption of the DOC with the 2000 Cisco Systems Site 6 FEIR and associated Mitigation Monitoring and Reporting Program, and the Planned Development Permit.

PUBLIC OUTREACH

Staff followed City Council Policy 6-30: Public Outreach Policy to inform the public of the proposed project. A community meeting for the project was held via cloud-based video conferencing on November 29, 2021. Notice of the public hearing for this appeal and associated materials were distributed to the appellant, applicant, and adjacent property owner(s). Staff has been available to answer questions from the public.

This memorandum will be posted on the City Council Agenda website for the August 23, 2022 City Council meeting.

COORDINATION

The preparation of this memorandum has been coordinated with the City Attorney's Office.

CEQA

Determination of Consistency with the 2000 Cisco Systems Site 6 Final Environmental Impact Report.

/s/
CHRISTOPHER BURTON, Director
Planning, Building, and Code Enforcement

For questions, please contact Deputy Director Robert Manford at (408) 535-7900.

HONORABLE MAYOR AND CITY COUNCIL

August 1, 2022

Subject: PD21-016 Environmental Appeal

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Attachments:

Exhibit A: Environmental Appeal from Marcos Espinoza

Exhibit B: Planned Development Permit File No. PD21-016

Exhibit C: Determination of Consistency with the 2000 Cisco Systems Site 6 Final Environmental Impact Report and Mitigation Monitoring and Reporting Program (MMRP) Resolution

The Initial Study and Determination of Consistency with the 2000 Cisco Systems Site 6 Final Environmental Impact Report can be located at <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs/second-harvest-foodbank-warehouse-project>

NOTICE OF ENVIRONMENTAL APPEAL

TO BE COMPLETED BY PLANNING STAFF

FILE NUMBER	RECEIPT # _____
TYPE OF ENVIRONMENTAL DETERMINATION (EIR, MND, EX)	AMOUNT _____
	DATE _____
	BY _____

TO BE COMPLETED BY PERSON FILING APPEAL

PLEASE REFER TO ENVIRONMENTAL APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE.

THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE FOLLOWING ENVIRONMENTAL DETERMINATION:

DD21-016 ER21-143 4553 N 1st Street, San Jose, CA 95002

REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.): The city has prepared a 154 page Initial Study that has not been circulated for public review and comment. The Initial Study reports that the Project will produce 888 daily vehicle trips, including 100 heavy diesel truck trips. (See attached) separate sheet...

PERSON FILING APPEAL

NAME <u>Marcos Espinoza</u>	DAYTIME TELEPHONE [REDACTED]
ADDRESS [REDACTED]	CITY [REDACTED]
	STATE [REDACTED]
	ZIP CODE [REDACTED]
SIGNATURE <u>Marcos Espinoza</u>	DATE <u>05-27-2022</u>

CONTACT PERSON (IF DIFFERENT FROM PERSON FILING APPEAL)

NAME <u>Mark Espinoza OLA President</u>			
ADDRESS [REDACTED]		CITY [REDACTED]	STATE [REDACTED]
		ZIP CODE [REDACTED]	
DAYTIME TELEPHONE [REDACTED]	FAX NUMBER ()	E-MAIL ADDRESS [REDACTED]	

PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT.

Notice of Environmental Appeal

Case PD 21-016 ER21-143 4553 N 1st Street San Jose CA, 95002

Reasons For Appeal (Attachment)

45 of the trucks would have diesel burning top-mounted refrigeration units (TRUs). Thus, there will be significant new emissions of diesel exhaust in the area.

The Initial Study reports that there are sensitive receptors, including school children aged 3 to 11 at George Mayne school just 170 feet from the site, who will be impacted by these emissions during both construction and operation of the project.

There is no indication that the 2000 Cisco EIR ever included a health risk assessment to evaluate the excess cancer risks caused by these emissions.

Thus, the Initial Study includes an entirely new, never before seen health risk assessment for the Project's diesel emissions impacts on nearby sensitive receptors. This risk assessment has not been circulated for public review and

comment by affected community members in Alviso. It is wrong, and a violation of CEQA, that the City expects us to digest all of this in just a few days. This is significant new information concerning changes to the original Cisco Project and its circumstances that should be circulated for review and comment either as a new EIR or negative declaration under CEQA.



Planning, Building and Code Enforcement
CHRISTOPHER BURTON, DIRECTOR

May 27, 2022

Noland Granberry
Second Harvest of Silicon Valley
750 Curtner Avenue
San José, CA 95125

Dear Noland Granberry:

RE: **Planned Development Permit, File No. PD21-016**, located on the **Southside of North First between Bay Vista Drive and Nortech Parkway (4553 & 4653 North First Street)**

The enclosed is your copy of the Planning Director's action on this Planned Development Permit.

This permit may contain one or more conditions, such as revised plans, which must be met within a specific deadline. If conditions are not met the permit will automatically expire. Please read your permit carefully!

The Planning Director's action taken on this permit or any of the conditions of this permit may be appealed by the applicant to the Planning Commission by filing a Notice of Appeal and a \$12,058.00 fee. The appeal must be submitted in person and presented on the Notice of Appeal form available from this department on or before **5:00 p.m, June 6, 2022**. If you have any questions, please contact your Project Manager, John Tu at (408) 535-6818, or by e-mail at john.tu@sanjoseca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Manford", written over a light blue horizontal line.

Robert Kweku Manford
Deputy

cc Second Harvest of Silicon Valley, 750 Curtner Avenue, San José, CA 95125

Enclosures

JT:sg

PLANNED DEVELOPMENT PERMIT

FILE NO.	PD21-016
LOCATION OF PROPERTY	Southside of North First between Bay Vista Drive and Nortech Parkway (4553 & 4653 North First Street)
ZONING DISTRICT	A(PD) Planned Development Zoning District (File No. PDC99-054)
GENERAL PLAN DESIGNATION	Combined Industrial Commercial
PROPOSED USE	Planned Development Permit to allow the construction of an approximately 249,230-square foot warehouse/distribution office building and maintaining an existing previously approved Planned Development Permit (File No. PD13-012) on an approximately 10.47-gross acre site.
ENVIRONMENTAL STATUS	Determination of Consistency with the 2000 Cisco Site 6 Final Environmental Impact Report (FEIR) (SCH No. 199082003).
APPLICANT ADDRESS	Noland Granberry Second Harvest of Silicon Valley 750 Curtner Avenue San José, CA 95125
OWNER ADDRESS	Second Harvest of Silicon Valley 750 Curtner Avenue San José, CA 95125

FACTS AND FINDINGS

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

1. **Project Description.** The project consists of a Planned Development Permit to allow for the construction of an approximately 249,230 square foot building consisting of office space, storage/warehousing space, and distribution space with approximately 31 loading docks (6 on-grade and 25 dock high) located at the rear of the building, while maintaining the previously approved PD Permit (File No. PD13-012) as an alternative on an approximately 10.47-gross acre site.

2. **Site Description and Surrounding Uses.** The subject 10.47-acre site is a vacant site located on the southside of North First Street between Bay Vista Drive and Nortech Parkway. To the west and south is the TopGolf facilities. To the north across North First Street is George Mayne Elementary School and Balaji Temple and other office. To the east and north are other industrial and office buildings that are located within the same Planned Development Zoning District. The site is project site is located approximately 500 feet northeast of the Guadalupe River and 150 feet east of the historical channel of the river.
3. **General Plan Conformance.** The subject site has a Combined Industrial/Commercial land use designation on the Envision San José 2040 General Plan Land Use/Transportation Diagram. This category allows a significant amount of flexibility for the development of a varied mixture of compatible commercial and industrial uses, including hospitals and private community gathering facilities. Properties with this designation are intended for commercial, office, or industrial developments or a compatible mix of these uses. This designation occurs in areas where the existing development pattern exhibits a mix of commercial and industrial land uses or in areas on the boundary between commercial and industrial uses. Development intensity can vary significantly in this designation based on the nature of specific uses likely to occur in a particular area. The project would allow the construction a warehouse/distribution center and would be consistent with the surrounding office and industrial developments and the uses for this General Plan land use designation.

The project is consistent with the following General Plan policies:

Business Growth and Retention Policy – IE-2.7: Encourage business and property development that will provide jobs and generate revenue to support city services and infrastructure.

Environmental Resources Policy – ER-2.2: Ensure that a 100-foot setback from riparian habitat is the standard to be achieved in all but a limited number of instances, only where no significant environmental impacts would occur.

Goal LU-4 – Commercial: Establish commercial uses that maximize revenue to the City and provide employment for its residents in order to achieve fiscal sustainability and our desired jobs per employed resident ratio.

Analysis: The project would allow the construction an approximately 249,230-square foot warehouse/distribution building, as well as retain the entitlement of the previously approved office buildings on the subject site as an alternative. The project would enable the development of a job and revenue generating use that would support local jobs and help maintain an existing commercial use within the Alviso growth area. The subject site is approximately 500 feet northeast of the Guadalupe River and outside the riparian habitat.

4. **Alviso Master Plan Conformance**

The Alviso Master Plan was adopted in December of 1998 as a Specific Plan for development in the Alviso planning area. The Master Plan includes design guidelines to promote the preservation and enhancement of the existing small-town quality of Alviso, while providing guidance for new commercial and industrial development along North First Street near Highway 237. These design guidelines allow for flexibility for larger-scale development provided that new development contributes to the unique design and architecture of Alviso

Analysis: The Alviso Master Plan allowed a wide range of uses including warehouse, office, research and development, light manufacturing, wholesaling and service establishments. The proposed warehouse/distribution use would not include hazardous materials on-site other than ancillary office and warehouse supplies. The Alviso Master Plan identifies a number of infrastructure improvements for the area and development of the site would provide significant improvements to public rights-of-way such as the addition of sidewalks, street improvements, and landscaping. Additionally, the conceptual architecture meets the design guidelines of the Alviso Master Plan in that the site plan incorporates well with existing development within the community.

The conceptual architecture depicts development with varying materials and features that are of a similar color palette and materials that reference the industrial and nautical nature of the Alviso Area. The project incorporates significant landscaping and trees on the perimeter of the site and along the edge of the building.

5. **Zoning Conformance.** The subject site is located in an A(PD) Planned Development Zoning District (File No. PDC99-054). Pursuant to the General Development Plan of the Planned Development Zoning District, the warehouse requires the issuance of a Planned Development Permit.

Setbacks and Height

Based on the General Development Plan of the Planned Development Zoning District (File No. PDC99-054), the project is subject to the following applicable development standards.

Development Standard	Required	Provided
Building Separation	40 feet	Conforms; only one building structure on-site
Maximum Height	90 feet	47'4" feet

Parking

Based on the General Development Plan of the Planned Development Zoning District (File No. PDC99-054), the project is subject to the following development standards.

Use:	Required	Provided
Vehicles		
Warehouse/Distribution	1 per 5,000 Floor Area (209,603) 42 spaces	161
Office	1 per 333 Floor Area (39,627) 119 spaces	
Bicycle		
Warehouse/Distribution	1 per 10 full time employee (40 employees) 4 spaces	14
Office	1 per 4,000 Floor Area (39,627) 10 spaces	

6. Citywide Design Standards and Guidelines

The site is subject to the Alviso Master Plan Design Guidelines and the project conforms with the provisions of the Citywide Design Standards and Guidelines

Analysis: For a warehouse/distribution/office project, the development incorporates a significant amount of landscaping to screen the surface parking, the loading dock is located at the rear and minimizes the visibility from the street and pedestrian level. The site incorporates architectural elements such as trellis, angles, and other vertical breaks in the building. The building limits repetitive designs by utilizing a multitude of varying heights, parapets and screens to provide articulation and bring visual interests to the roof of the buildings. The use of varying length canopies and angles break the horizon planes of the building. Additional colors and windows are utilized to provide special treatment to the corners and primarily entrances to the building.

7. Planned Development Permit Findings. Section 20.100.940 of the San José Municipal Code establishes the required findings for issuance of a Planned Development Permit.

- a. The Planned Development Permit, as approved, is consistent with and furthers the policies of the General Plan land use designation of Combined Industrial/Commercial. The proposed project is consistent with and will further these policies of the General Plan.

Analysis: As stated above, the subject site is located in the General Plan land use designation of Combined Industrial/Commercial. The project is consistent with General Plan policies regarding Business Growth and Retention, Environmental Resources, and commercial. The approximately 249,230-square foot warehouse/distribution office building and maintaining an existing previously approved Planned Development Permit (File No. PD13-012) as an alternative would preserve and add to the overall fiscal growth of the area. The project would be located approximately 500 feet from Guadalupe River.

- b. The Planned Development Permit conforms to the planned development zoning of the property. As described above, the proposed project is consistent with the development standards of the Planned Development Zoning District File Number PDC99-054.

Analysis: As discussed in the General Development Plan Conformance section above, the project meets all height and building separation requirements of the Planned Development Zoning District (File No. PDC99-054). The project also provides the required parking in conformance with the Planned Development Zoning District.

- c. The Planned Development Permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency.

Analysis: The project was noticed for a 1,000-foot radius per the City Council Policy 6-30: Public Outreach Policy. An on-site sign has been installed on the project frontage since November 5, 2021. A Community Meeting was held on November 29, 2021 via Zoom.

- 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.

Analysis: The building range from 40 to 48 feet for roofs, parapets or roof screening are consistent with the height, scale, massing, and overall architectural style of the surrounding development. The project is adjacent to a recreational facility (TopGolf) to the southwest, which includes a three-story building and 170-foot-high netting for the associated driving range. Additionally, the project is adjacent to two six-story office buildings to the east. The building incorporates similar colors and material schemes around the entire building with varying planes and angles that bring interest but also blends with the overall mix of uses in the Alviso area along North First Street.

- e. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, stormwater 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.

Analysis: In accordance with CEQA, an Initial Study/Determination of Consistency with the 2000 Cisco Site 6 Final Environmental Impact Report was prepared for the project to analyze the potential environmental impacts. The project would not involve any new significant impacts beyond those analyzed in the Final Environmental Impact Report for the Cisco Systems, Inc. Site 6 Project (File No. PDC99-054), as addended. This permit also includes standard permit conditions for, among other things, the control of dust and exhaust, minimization of noise, and control of water quality during construction. The permit also does not allow any construction activity on a site located within 500 feet of a residential unit before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends.

8. **Environmental Review.** An Initial Study/Determination of Consistency with the Cisco Site 6 EIR (SCH No. 199082003) was prepared for the project. The Cisco Site 6 EIR approved the site's Planned Development Zoning. The PD Zoning permitted 2.325 million square feet of new office/research & development (R&D)/manufacturing uses on 152.6 acres on both sides of North First Street, north of State Route 237.

Pursuant to Section 15162 of the CEQA Guidelines, the City of San José has determined that the project described below does not involve: (i) new significant effects beyond those analyzed in the Final Environmental Impact Report (EIR) for the Cisco Systems, Inc. Site 6 Project (File No. PDC99-054), as addended; or (ii) new or considerably different feasible mitigation measures or alternatives that would substantially reduce one or more significant effects but that the project proponent declines to adopt. Therefore, the City of San José can take action on the project as being within the scope of the Cisco Systems, Inc. Site 6 EIR, as addended.

In accordance with the findings set forth above, a Planned Development Permit for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The Director of Planning, Building, and Code Enforcement 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 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 Permit shall automatically expire four (4) years from and after the date of issuance hereof by the Director, 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 Director of Planning. However, 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.
3. **Use Authorization.** This Permit allows for the construction of an approximately 249,230 square foot building consisting of office space, storage/warehousing space, and distribution space located at the rear of the building, with 24 hour per day/7 day per week operations.
4. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San Jose Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
5. **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.
6. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Planned Development Permit plans entitled, "Second Harvest Food Bank" dated December 23, 2021, on file with the Department of Planning, Building and Code Enforcement ("Approved Plans"), and to the San José Building Code (San José Municipal Code, Title 24), with the exception of any subsequently approved changes.

7. **Conformance with Previously Approved Zoning.** The only applicable conditions of approval for this Second Harvest Warehouse Project from the previously approved Planned Development Zoning, File No. PDC99-054, are the Project Guidelines for Land Use and Development Standards in the General Development Plan.
8. **Prior Approval.** Planned Development PD13-012, which approved the construction of four research and development office buildings, still remains as an alternative, entitled and permitted per the previously approved permit, in lieu of the provisions of this Permit. Planned Development Permit PD13-012 superseded PD00-027 (PDSH 00-03-027 Cisco Systems, Inc., Site 6, Phase I), which no longer applies to the property whether developed pursuant to PD13-012 or this Permit.
9. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
10. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.
11. **Green Building Requirements.** This development is subject to the City's Green Building Ordinance for Private Sector New Construction as set forth in Municipal Code Section 17.84. Prior to the issuance of any shell permits, or complete building permits, for the construction of buildings approved through the scope of this Permit, the Permittee shall pay a Green Building Refundable Deposit. In order to receive a refund of the deposit, the project must achieve the minimum requirements as set forth in Municipal Code Section 17.84. The request for the refund of the Green Building Deposit together with evidence demonstrating the achievement of the green building standards indicated in Municipal Code Section 17.84 shall be submitted within a year after the building permit expires or becomes final, unless a request for an extension is submitted to the Director of Planning, Building, and Code Enforcement in accordance with Section 17.84.305D of the Municipal Code.
12. **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.
13. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
14. **Revocation.** This Permit is subject to revocation for violation of any of its provisions or conditions.
15. **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 Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
16. **Building and Property Maintenance.** The property owner or management company shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.

17. **No Extended Construction Hours.** This permit does not allow any construction activity on a site located within 500 feet of a residential unit before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends.
18. **Operation of Back-up Power Generators.**
 - a. Operation of the temporary stand-by or backup power generation facility, by definition, shall not exceed a maximum time period of four (4) consecutive months in any twelve (12) month period.
 - b. Testing of generators is limited to 7:00 a.m. to 7:00 p.m., Monday through Friday.
 - c. A Bay Area Air Quality Management District (BAAQMD) permit shall be issued for the use or facility.
19. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set.
20. **Storm Drain Protection.** No hazardous materials, paint, rinse water, or construction sediments or debris shall be allowed to enter the public right-of-way or any storm drain inlet. The storm drain system flows to the Bay.
21. **Reclaimed Water.** The project shall conform to Chapter 15.10 and 15.11 of the San José Municipal Code for use of reclaimed water and shall include an irrigation system designed to allow for the current and future use of reclaimed water for all landscaping.
22. **Irrigation Standards.** Irrigation shall be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping, the City of San José Landscape and Irrigation Guidelines and the Zonal Irrigation Plan in the Approved Plans. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
23. **Construction Disturbance Coordinator.** Rules and regulations 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.
24. **LEA Coordination:** In accordance with Title 27 CCR Section 21190 and due to the site's proximity to the disposal site Syntax Ct (SWIS #43-AN-0021), prior to issuance of building permits, the project applicant shall contact the Local Enforcement Agency (LEA) for CalRecycle. The applicant shall provide evidence of the LEA coordination and compliance to the Director of the City's Planning, Building and Code Enforcement or the Director's designee and the Environmental Compliance Officer in the San José Environmental Services Department.
25. **Flood Ordinance Requirements.** Placement of fill within parking and open space areas would be minimized to limit potential flood depths in the street areas. The project would be designed to have first floor elevations above the 100-year tidal floodplain elevation. This would result in first floor elevations of nine feet.
26. **Mechanical Equipment:** A detailed acoustical study shall be prepared during final building design to evaluate the potential noise generated by building mechanical equipment and demonstrate the necessary noise control to meet the City's 55 dBA DNL goal for nonresidential building equipment at residential property lines and the 60 dBA DNL at commercial property lines. Noise control features such as sound attenuators, baffles, and

barriers shall be identified and evaluated to demonstrate that mechanical equipment noise would not exceed 55 dBA DNL at residential property lines or 60 dBA DNL at commercial properties around the project site. The noise control features identified by the study shall be incorporated into the project prior to issuance of a building permit.

27. **No Pile Driving.** Pile driving shall not be used during construction of the proposed project.

28. **Circulation Improvements.**

- a. Protected intersection signal modifications at the North First Street and Nortech Parkway intersection that include striped bike lanes adjacent to all crosswalks.
- b. The project shall contribute a fair-share fee toward Class IV bicycle lane construction, per the Better Bike Plan 2025, along its North First Street Project frontages.
- c. VTA standard eight-foot by 40-foot boarding area, VTA standard seven-foot by 25-foot shelter pad, and 13-foot full-back and shelter shall be installed at each of the existing southbound Route 59 bus stops along the project frontage. The project shall include a connection between the bus stops and the pedestrian pathways into the project buildings. The final design shall be coordinated between the project and VTA.

29. **Conformance to Mitigation Monitoring and Reporting Program.** The only mitigation measures applicable to this Second Harvest Warehouse Project are those identified in the approved Second Harvest Foodbank Warehouse Project Mitigation Monitoring and Reporting Program (MMRP). The Project shall conform to all applicable requirements contained in the Second Harvest Foodbank Warehouse Project MMRP

30. **Standard Environmental Conditions.** This project shall conform to the following City standard environmental conditions..

- a. Air Quality. The following measures shall be implemented during all phases of construction to control dust and exhaust at the project site:
 - i. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
 - ii. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
 - iii. All visible mud or dirt track track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers a least once per day. The use of dry power sweeping is prohibited.
 - iv. All vehicle speeds on unpaved roads shall be limited to 15 mph.
 - v. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
 - vi. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.

- vii. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- viii. Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

b. Biological Resources

- i. **Santa Clara Valley Habitat Plan.** The project is subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The project applicant would be required to submit the Santa Clara Valley Habitat Plan Coverage Screening Form to the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee for approval and payment of the nitrogen deposition fee prior to the issuance of a grading permit. The Habitat Plan and supporting materials can be viewed at www.scv-habitatagency.org.
- ii. **Santa Clara Valley Habitat Plan Standard Permit Condition.**
 - 1) **Condition 15. Western Burrowing Owl:** Condition 15 requires the implementation of measures to avoid and minimize direct impacts on burrowing owls, including pre-construction surveys, establishment of 250-foot non-disturbance buffers around active nests during the breeding season (February 1 through August 31), establishment of 250-foot non-disturbance buffers around occupied burrows during the nonbreeding season, and construction monitoring. Pre-construction surveys for burrowing owls are required by the Habitat Plan in areas mapped as breeding habitat. Additional fees in-lieu of providing compensatory mitigation are required for Habitat Plan covered projects that impact burrowing owls or their habitat.

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 Tribal representative registered with the Native American Heritage Commission for the City of San José 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 in consultation with the Tribal representative 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 project applicant 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 Native American Heritage Commission (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:

- 1) 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.
- 2) The MLD identified fails to make a recommendation; or
- 3) The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.

d. Hydrology and Water Quality

- 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 required to be covered trucks or maintain at least two feet of freeboard.
- vi. All paved access roads, parking areas, staging areas, and residential streets adjacent to the construction site 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 knock mud from truck tires prior to entering City streets. A tire wash system may also be employed at the request of the City.

The project proponent 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.

- ix. A Storm Water Permit shall be administered by the SWRCB. Prior to construction grading for the proposed land uses, the project proponents will file an NOI to comply with the General Permit and prepare a SWPPP which addresses measures that would be included in the project to minimize and control construction and post-construction runoff. Measures will include, but are not limited to, the aforementioned RWQCB Best Management Practices.
 - x. The SWPPP shall be posted at the project site and shall be updated to reflect current site conditions.
 - xi. When construction is complete, a Notice of Termination for the General Permit for Construction shall be filed with the SWRCB. The Notice of Termination shall document that all elements of the SWPPP have been executed, construction materials and waste have been properly disposed of, and a post-construction stormwater management plan is in place as described in the SWPPP for the site.
31. **Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the project must comply with the California Fire Code as adopted or updated by the City.
32. **Public Works Clearance for Building Permit(s):** Prior to the issuance of Building permits, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following:
<http://www.sanjoseca.gov/devresources>.
- a. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
 - b. **Transportation:**
 - i. A Local Transportation Analysis (LTA) has been performed for this project. We conclude that the subject project will be in conformance with both the City of San Jose Traffic Level of Service Policy (Council Policy 5-3), the current City of San Jose Transportation Policy (Council Policy 5-1), and the North San Jose Deficiency Plan (NSJDP) and a determination for less than significant impacts can be made with respect to transportation impact with the inclusion of the below conditions. See separate Local Transportation Analysis Memo dated May 12, 2022 for additional information.
 - ii. Pay the North San Jose Deficiency Fee associated with the approved zoning (PDC99-054) for the remaining estimated 296 PM peak hour trips in the amount of \$107,152 prior to the issuance of Building Permits.
 - c. **Grand Boulevard:** This project fronts North First Street which is designated as one of the seven Grand Boulevards per the Envision San Jose 2040 General Plan. Grand Boulevards are identified to serve as major transportation corridors for primary routes for

VTA light-rail, bus rapid transit, standard or community buses, and other public transit vehicles.

d. **Grading/Geology:**

- i. A grading permit is required prior to the issuance of a Public Works Clearance.
 - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 foot 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 Jose 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. 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.
 - iv. 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.
 - v. 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.
- e. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) 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.
- f. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).

- g. **Flood Zone AE, Elevation 12.00' North American Vertical Datum of 1988 (NAVD88):**
- i. Elevate the lowest floor 12.00' above NAVD88 or floodproof to the same elevation. For insurance rating purposes, the building's floodproofed design elevation must be at least one foot above the base flood elevation to receive rating credit. Planning and Building 11/18/13 Subject: PD13-012 Page 3 of 5
 - ii. An Elevation Certificate (FEMA Form 81-31) for each structure, based on construction drawings, is required prior to issuance of a building permit. Consequently, after the improvement is completed, an Elevation Certificate for each structure is required prior to issuance of an occupancy permit.
 - iii. If the structure is to be floodproofed, a Floodproofing Certificate (FEMA Form 81-65) for each structure, floodproofing details, and if applicable, a Flood Emergency Operation Plan and an Inspection & Maintenance Plan are required prior to the issuance of a Public Works Clearance.
 - iv. Building support utility systems such as HVAC, electrical, plumbing, air conditioning equipment, including ductwork, and other service facilities must be elevated above the base flood elevation or protected from flood damage
- h. **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.
- i. **Street Improvements:**
- i. Proposed northerly most driveway width along project frontage to be 42" per City Standards Detail R-6.
 - ii. Proposed southerly most driveway width along project frontage to be 26' per City Standard Detail R-6.
 - iii. Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
 - iv. Provide in-lieu contribution for the future Class IV protected bike lanes along the North 1st Street frontage (\$144 per LF) per the CSJ 2025 Better Bike Plan.
 - v. Provide a \$10,000 voluntary contribution towards fiber communication upgrade.
 - vi. Construct the following improvements to the existing VTA bus stops along the project frontage of N 1st Street:
 - 1) Bus stop on North 1st Street west of Tony P. Santos Way - Construct a 7' x 25' shelter pad and install a 13' VTA shelter AC powered. .
 - 2) Bust stop on North 1st street north of Nortech Parkway – Install a VTA metal bench.
 - vii. Developer shall be responsible for adjusting existing utility boxes/vaults to grade, locating and protecting the existing communication conduits (fiber optic and copper) along the project frontage.

- viii. 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. **Sanitary:** The project is required to submit plan and profile of the sewer mains with lateral locations for final review and comment prior to construction.
 - k. **Referrals:** This project should be referred to the Santa Clara Valley Transportation Authority (VTA).
33. **Building Division 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, **PD21-016** 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. *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.
34. **Revocation, Suspension, Modification.** This Planned Development Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, 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 3, Chapter 20.44, 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.

APPROVED and issued on **this 25th day of May 2022**

Christopher Burton, Director
Planning, Building, and Code Enforcement



Deputy
Robert Manford

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE DENYING AN ENVIRONMENTAL APPEAL OF AND UPHOLDING THE PLANNING DIRECTOR'S DETERMINATION OF CONSISTENCY WITH THE 2000 CISCO SYSTEMS SITE 6 FINAL ENVIRONMENTAL IMPACT REPORT (SCH1999082003) FOR PLANNED DEVELOPMENT PERMIT FILE NO. PD21-016 (SECOND HARVEST FOODBANK PROJECT)

WHEREAS, the City of San José (“City”) acting as lead agency under the California Environmental Quality Act of 1970, together with state and local guidelines implementing said Act, all as amended to date (collectively “CEQA”), prepared a project-level Final Environmental Impact Report for the Cisco Systems Site 6 (the “Cisco Systems Site 6 FEIR”) (File No. PDC99-054) to evaluate the construction of up to 2.325 million square feet of new office/research & development (R&D)/manufacturing uses facilitated by the Planned Development Zoning on 152.6 acres on both sides of North First Street, north of State Route 237; and

WHEREAS, on June 6, 2000, the City Council conducted a duly noticed public hearing and (ii) adopted of Resolution No. 69636 certifying the 2000 Cisco Systems Site 6 Final Environmental Impact Report, making certain findings concerning significant environmental impacts, mitigation measures and alternatives, adopting a Mitigation Monitoring and Reporting Program, and adopting a statement of overriding considerations all in accordance with the California Environmental Quality Act of 1970, as amended (CEQA); and (ii) approved Ordinance No. 26135 rezoning certain real property of approximately 152.6 acres, described as Cisco Systems Site 6, to the A(PD) Planned Development Zoning District; and

WHEREAS, on June 19, 2000 the Director of Planning, Building and Code Enforcement for the City of San José (sometimes referred to herein as “Director”) conducted a duly

noticed public hearing and approved the use of a Determination of Consistency with the Cisco Systems Site 6 FEIR and approved Planned Development Permit File No. PD00-027 authorizing the construction seven buildings consisting of 1.6 million square feet of office and manufacturing space west of North First Street; and

WHEREAS, on April 14, 2013, the Planning Commission for the City of San José, conducted a duly noticed public hearing and approved an Addendum to the Cisco Systems Site 6 FEIR and approved Planned Development Permit File No. PD13-039 (Resolution 14-040), authorizing the construction of four office, research and development buildings totaling 415,000 square feet on a 21.4-acre site, on the northwest corner of Nortech Parkway and Disk Drive; and

WHEREAS, on June 17, 2014, the City Council conducted a duly noticed public hearing and (i) approved an Addendum to the Cisco Systems Site 6 FEIR, North San Jose Development Policies Update Final Program Environmental Impact Report ("North San Jose PEIR") and Envision San Jose 2040 General Plan Final Program Environmental Impact Report ("2040 General Plan PEIR"), approved Ordinance No. 29428 rezoning 52 acres of the Cisco Systems Site 6 EIR located at the northeast corner of Nortech Parkway and Disk Drive, and approved Planned Development Permit File No. PD14-007, authorizing the construction of three (3) single-story manufacturing buildings totaling 563,760 square feet; and

WHEREAS, on September 24, 2014, the Director conducted a duly noticed public hearing and approved an Addendum to the Cisco Systems Site 6 FEIR and approved Site Development Permit File No. H14-011 authorizing the construction of a 145-room hotel at 4305 North 1st Street; and

WHEREAS, on January 22, 2014, City Council conducted a duly noticed public hearing denying an environmental appeal and upholding the Director's environmental

determination of an Addendum to the Cisco Systems Site 6 FEIR and approval of Planned Development Permit File No. PD13-012 authorizing the construction of 614,809 square feet of office research and development uses on a 28.5-acre portion; and

WHEREAS, subsequent to certification of the Cisco Systems Site 6 FEIR and the above-mentioned permits, a total of 1,831,624 square feet of the approved 2,325,000 square feet of research and development offices and manufacturing buildings have been constructed as part of the project within the 152.6-gross acre Cisco Systems Site 6 FEIR site; and

WHEREAS, on May 25, 2022, the Director conducted a duly noticed public hearing and (i) approved the use of the Determination of Consistency with the 2000 Cisco Systems Site 6 FEIR as the environmental clearance for Planned Development Permit No. PD21-016; and (ii) approved Planned Development Permit No. PD21-016 authorizing the construction of a 249,230-square foot of warehouse/distribution office building and maintenance an existing previously approved Planned Development Permit, File No. PD13-012, on an approximately 10.47-gross acre site located at 4553 and 4653 North First Street (the “Project”); and

WHEREAS, the Director determined that the Planned Development Permit No. PD21-016 was a part of the project considered in the Cisco Systems Site 6 FEIR and Planned Development Rezoning File No. PDC99-054, in accordance with the California Environmental Quality Act Guidelines Sections 15378 (a and c), as the term “project” refers to the whole of an action which may be subject to several discretionary approvals by government agencies. The term “project” does not mean each separate governmental approval”; and

WHEREAS, based on the Determination of Consistency and supporting Initial Study prepared for the Planned Development Permit No. PD21-016, the Director, concluded

that approval and implementation of the Second Harvest Foodbank Warehouse Project would not result in any changes or new significant effects on the environment beyond those already identified in the previously certified Cisco Systems Site 6 FEIR, nor would the Project result in an increase in the severity of significant effects identified in the previously certified Cisco Systems Site 6 FEIR, and that identified mitigation measures would continue to reduce each of those significant effects to a less-than-significant level; and

WHEREAS, on May 31, 2022, Marcos Espinoza, a community member, filed a timely appeal of the Planning Director's Determination of Consistency with the Cisco Systems Site 6 Final Environmental Impact Report, concerning the public circulation of the CEQA documents and impacts on community health risks and air quality; and

WHEREAS, notice of the date, time, and place of the hearing before the City Council on the appeal was duly and properly given pursuant to and in compliance with the provisions and requirements of Title 21 of the San José Municipal Code; and

WHEREAS, at the date, time, and place provided in said notice, or the date to which such hearing was deferred or continued by the City Council, the City Council of the City of San José conducted a public hearing *de novo* on the appeal and provided all persons with an opportunity to be heard and provide testimony or evidence on the matter of the appeal to the City Council;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE:

THAT THE CITY COUNCIL does hereby make the following findings: (1) it has independently reviewed and analyzed the Determination of Consistency with the 2000 Cisco Systems Site 6 Final Environmental Impact Report, the previously certified 2000

Cisco Systems Site 6 Final Environmental Impact Report, related Mitigation Monitoring and Report Program for the Project, other information in the record and has considered the information contained therein, prior to acting upon or denying the appeal and upholding the Planning Director's Determination of Consistency with the Cisco Systems Site 6 Final Environmental Impact Report and the Planned Development Permit File No. PD21-016, (2) the Determination of Consistency with the Cisco Systems Site 6 Final Environmental Impact Report prepared for the Project has been completed in compliance with CEQA and is consistent with state and local guidelines implementing CEQA, (3) the Determination of Consistency with the Cisco Systems Site 6 Final Environmental Impact Report represents the independent judgment and analysis of the City of San José, as lead agency for the Project, and (4) Preparation of a new environmental document is not required because Determination of Consistency with the Cisco Systems Site 6 Final Environmental Impact Report thoroughly and adequately analyzes the project and the environmental appeal does not raise any new significant impacts that have not already been analyzed or addressed in the Determination of Consistency and the Cisco Systems Site 6 Final Environmental Impact Report in accordance with Public Resources Code (PRC) Section 21083 or CEQA Guidelines Sections 15162 and 15185. The City Council designates the Director of Planning, Building and Code Enforcement, at the Director's Office at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, as the custodian of documents and records of proceedings on which this decision is based.

THAT THE CITY COUNCIL does hereby find that based upon the entire administrative record of proceedings before it and all information received that there is no substantial evidence that the Project will result in any changes or new significant effects on the environment beyond those already identified in the previously certified Cisco Systems Site 6 Final Environmental Impact Report, nor will the Project result in an increase in the severity of significant effects identified in the previously certified Cisco Systems Site 6 Final Environmental Impact Report, and that identified mitigation measures will continue to reduce each of those significant effects to a less-than-significant level; and does hereby

deny the environmental appeal and uphold the Planning Director's Determination of Consistency with the Cisco Systems Site 6 Final Environmental Impact Report. The Initial Study, Determination of Consistency with the Cisco Systems Site 6 Final Environmental Impact Report, and FEIR and addenda thereto are: (1) on file in the Office of the Director of Planning, Building and Code Enforcement, located at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, and electronically on the City of San José's Department of Planning, Building and Code Enforcement website, and (2) available for inspection by any interested person.

ADOPTED this ____ day of _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

