

RESOLUTION NO. 74063

A Resolution of the City Council of the City of San José, granting, subject to conditions, a Site Development Permit to use certain real property described herein to allow development of up to 870,000 square feet of new additional Industrial Park uses, including transfer of 270,251 square feet of floor area credits, on a 26.99 gross acre site.

FILE NO. H07-035

WHEREAS, pursuant to the provisions of Part 5 of Chapter 20.100 of Title 20 of the San José Municipal Code, on September 4, 2007, an application (File No. H07-035) was filed for a Site Development Permit for the development of up to 870,000 square feet of new additional Industrial Park uses, including transfer of 270,251 square feet of floor area credits, situate in the IP – Industrial Park Zoning District, located on the southeast corner of North First Street, and Headquarters Drive, San José, and

WHEREAS, the subject property is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Part 2 Chapter 20.100 of Title 20 of the San José Municipal Code, this City Council conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this City Council gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this City Council received and considered the reports and recommendation of the Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this City Council received in evidence a development plan for the subject property entitled, "Site Development Permit: Novellus," dated September 6, 2007; said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said hearing was conducted in all respects as required by the San José Municipal Code and the rules of this City Council.

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

After considering evidence presented at the Public Hearing, the City Council finds that the following are the relevant facts regarding this proposed project:

1. The subject property is located on the southeast corner of North First Street, and Headquarters Drive (4000 North First Street, APNs 097-79-001, 097-79-002, 097-79-003, 097-79-009, 097-79-011, and 097-79-012).
2. The subject property is located in the IP-Industrial Park Zoning District.
3. The subject property has a designation of Industrial Park on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
4. The subject property is 26.99 gross acres in size.
5. The subject property is currently occupied with Industrial Park uses totaling approximately 418,707 square feet of floor area.
6. The surrounding area is currently characterized by industrial park uses. Pending applications are on file for a proposed shopping center, a proposed 5-acre park, and proposed attached residential units at a density of over 55 DU/AC to be located in the vicinity of the subject site.
7. This Site Development Permit is to reserve industrial development capacity per the provisions of the *North San José Area Development Policy* to allow entitlement for up to 870,000 square feet of new additional Industrial Park floor area. This Site Development Permit does not provide for construction on the subject site without further review and approval through a subsequent development permit process to be considered at the time of actual development.
8. As per the requirements of the California Environmental Quality Act (CEQA), an Initial Study was conducted to determine the potential effects to the environment, and the Environmental Impact Report (EIR) for the North San José Policy Update, certified June 21, 2005 per City Council Resolution No 72768 – State Clearinghouse #2004102067 -- was found complete and an Addendum was prepared for this project, which Addendum was approved by the Director of Planning, Building and Code Enforcement on September 19, 2007 and considered by the Planning Commission of City on September 26, 2007, none of which actions were protested or appealed.
9. Future industrial development of the subject site based on this Site Development Permit shall require further environmental review, including a subsequent Initial Study to determine potential effects to the environment, to be conducted as part of subsequent development permit process to be considered at the time of actual development.
10. The project proposes a Floor Area Ratio of 1:1.

This City Council concludes and finds, based upon an analysis of the above facts, that:

1. The interrelationship between the orientation, location and elevations of the proposed building(s) and structure(s) and other uses on-site are mutually compatible and aesthetically harmonious in that:
 - a. Review of all buildings, structures, and other features on the site will be reviewed as part of review of subsequent development permits that would be in effect and the project would be subject to at the time of actual development.
2. The orientation, location and elevation of the proposed building(s) and structure(s) and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood in that:
 - a. Review of all buildings, structures, and other features on the site will be reviewed as part of review of subsequent development permits that would be in effect and the project would be subject to at the time of actual development.
3. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties in that:
 - a. Future industrial development of the subject site based on this Site Development Permit shall require further environmental review, including a subsequent Initial Study to determine potential effects to the environment, to be conducted as part of further development permits to be reviewed as part of this project.
4. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior hearing, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood in that:
 - a. Review of all exterior landscaping, building, equipment, and utility treatment features will be reviewed as part of review of subsequent development permits that would be in effect and the project would be subject to at the time of actual development.
5. Traffic access, pedestrian access and parking are adequate in that:
 - a. Sufficient driveway curb cuts and driveways will be provided on site to provide access to the site without interfering with off-site circulation.
 - b. Pedestrian walkways will be provided to all major building entrances. A perimeter sidewalk will be provided.
 - c. The proposed number and size of parking spaces will comply with or exceed the requirements of the Zoning Ordinance.
6. This site has a designation of Industrial Park on the adopted San José 2020 General Plan Land Use/Transportation Diagram and the proposed industrial park uses associated with this application are consistent with this designation.

In accordance with the findings set forth above, a Site Development Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This City Council expressly declares that

it would not have granted this permit except upon and subject to each of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners or the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONCURRENT 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 Site Development Permit shall automatically expire two years from and after the date of issuance hereof by the City Council if within such two-year period construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Site Development Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning may approve a Permit Adjustment pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code to extend the term and validity of this Permit for a period of up to two (2) years. A Permit Adjustment to so extend the term of this Permit must be applied for and approved prior to the expiration of this Permit in order for a term extension to be effective.
3. **Subsequent Development Permit(s).** This Site Development Permit is to allow entitlement for up to 870,000 square feet of new additional Industrial Park floor area only, and does not allow for development of the additional floor area without further review and approval of any and all development permits that would be in effect and the project would be subject to at the time of actual development.
4. **Environmental Clearance.** Future industrial development of the subject site based on this Site Development Permit shall require further environmental review, including a subsequent Initial Study to determine potential effects to the environment, to be conducted as part of further development permits to be reviewed as part of this project.
5. **Conformance with Plans.** Further development of the subject site shall conform to approved Site Development Permit plans entitled, "Site Development Permit, Novellus, Industrial Park (IP) Development," dated September 6, 2007, on file with the Department of Planning, Building and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).

- 6. **Revocation.** This Site Development Permit is subject to revocation for violation of any of its provisions or conditions.
- 7. **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.
- 8. **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.

ADOPTED and issued this 16th day of October 2007, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, CORTESE,
LICCARDO, OLIVERIO, PYLE, WILLIAMS, REED;

NOES: NONE

ABSENT: NGUYEN

DISQUALIFIED: NONE

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk

NOTICE TO PARTIES

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

