

RESOLUTION No. PC 2022-12

**A Resolution of the Planning Commission
City of Clearlake, State of California
Approving Conditional Use Permit CUP 2022-12; Design Review DR 2022-02 and
Categorical Exemption CE 2022-11 to allow
a Mix Use Commercial and Residential Development & Operation**

WHEREAS, *Sunil Joshi* (Owner) applied for approval of an Conditional Use Permit to allow the development and operation of a Mix Use Commercial & Residential Development (*two-story mixed-use building with a convenience store on the ground floor and two residential units on the second floor; coined laundromat; a retail space encompassing a drive through pizzeria, deli, ice cream shop, and outdoor dining area*). The project is located in the General Commercial GC) Zoning District located at 6653 & 6673 Old HWY 53; Clearlake, APN 040-376-20 and 040-376-21; and

WHEREAS, the the following applications have been made in accordance with the following sections of the City Municipal Code/Zoning Code: 1) 18-18.020 (A) Residential Mixed Use; 2) 18-19.070 (B) Drive-through Facilities; 3) 18-19.110 (B) On Site Alcoholic Beverage Sales and 4) 18-33 Design Review, and;

WHEREAS, theses applications have been processed in accordance with the City's Environmental Review Guidelines; and

WHEREAS, the project is Categorical Exempt from Environmental Review Pursuant to Article 19, Categorical Exemptions of the State of California Environment Quality Act (CEQA) Statute and Guidelines under Section 15332 Class 32 (*In-Fill Development Projects*), and;

WHEREAS, adequate public noticing was made for the project in accordance with the Municipal Code; and

WHEREAS, the General Plan designates the project site as "GC" General Commercial as conditioned, the proposed use and design would be consistent with the General Plan; and

WHEREAS, the project is subject to obtaining a conditional use permit from the Planning Commission in accordance with Section 18-18.020 (A) regarding residential mixed use; Section 18-19.110 (B) regarding onsite alcoholic beverage sales/consumption; and Section 18-19.070 (B) regarding drive-through facilities. Therefore, in accordance Section 18-28.040 of the Zoning Code regarding use permits, the Planning Commission finds that these uses as proposed will not be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity, or injurious to the property, improvements or potential development in the vicinity with respect to aspects including, but not limited to, the following:

- a) The nature of the proposed site, including its size and shape, and the proposed size, shape, and arrangement of structures.
- b) The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic and the adequacy of proposed off-street parking and loading,
- c) The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor,
- d) Treatment given, as appropriate, to such aspects as landscaping, open spaces, parking areas, loading areas, service areas, lighting, and signs.

and;

WHEREAS, in accordance with Section 18-19.110 of the Zoning Code the Planning Commission finds that alcoholic beverage sales and consumption on the site complies with the criteria for approval of this use permit.

WHEREAS, in accordance with Section 18-19.070 of the Zoning Code the Planning Commission finds the project site and other design enhancements to the project, including installing a minimum of a six (6) foot solid CMU wall between the drive-through aisle and the adjoining residential properties is to protect the health, safety and welfare of the public, community and the environment; and;

WHEREAS, in accordance with Section 18-20.090 of the Zoning Code the Planning Commission approves a 20% percent reduction in the number of parking spaces required due to the project's mixed use/shared parking demand; and;

WHEREAS, in accordance with Chapter 18-33, Design Review, of the Zoning Code the Planning Commission finds the project will enhance the neighborhoods community character; and

WHEREAS, with the incorporated conditions of approval, referenced as Exhibit A herein, the project complies with the Clearlake Zoning Code.

NOW, THEREFORE, BE IT RESOLVED by the City of Clearlake – Planning Commission of the City of Clearlake that the project is hereby approved, subject to approved Conditions of Approval (Exhibit A).

PASSED AND ADOPTED on this 24th day of May, 2022 by the following vote:

City of Clearlake – Planning Commission Chair

ATTEST: _____
City of Clearlake Clerk/Deputy Clerk

Exhibit A

**CITY OF CLEARLAKE
CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT CUP 20-12
DESIGN REVIEW DR 2022-02
CATEGORICAL EXEMPTION, CE 2022- 11**

**MIXED USE COMMERCIAL & RESIDENTIAL DEVELOPMENT
JS MARKET - SUNIL JOSHI**

Pursuant to the approval of the Planning Commission on May 24, 2022 there is hereby granted to Sunil Joshi **Conditional Use Permit CUP 2022-12 (Use Permit), Design Review, DR 2022-02 and a Categorical Exemption, CE 2022-11** with the following conditions of approval to allow a Mixed Use Commercial and Residential Development located at 6653 & 6673 Old Highway 53, Clearlake, CA 95422 further described as APN: 040-376-20 and 040-376-21 is subject to the following terms and conditions of approval.

GENERAL CONDITIONS:

1. The use hereby permitted shall substantially conform to the **Site Plan(s), and Project Description** and any conditions of approval imposed by the above **Conditional Use Permit (Use Permit) and Design Review applicaitons** as shown on the approved site plan for this action **dated May 24, 2022.**
2. This application for Conditional Use Permit CUP 2022-12 (Use Permit), Design Review, DR 2022-02 and Categorical Exemption, CE 2022-11 was submitted, pursuant to Section 18-19.07 and 18-18.02 of the Zoning Ordinance, by Sunil Joshi, for the development and operation of a Mixed Use Commercial and Residential Development, in the “GC”, General Commercial Zoning District located at 6653 & 6673 Old Highway 53, Clearlake, APN 040-376-20 and 040-376-20.
3. All employees shall receive “responsible beverage service training,” within 90 days of employment and shall retain documentation of this training, on the premises.
4. All graffiti shall be removed on any part of the property within 48 hours of its appearance.
5. A sign concerning the California law prohibiting minors to drink alcohol and a sign prohibiting loitering or public drinking must be posted on the site at all time.
6. The applicant shall keep a copy of the approved conditions of approval on premises at all times.
7. Trash receptacles shall be located at convenient locations outside the establishment and operators of the business shall remove all trash on a daily basis.
8. The applicant shall establish and maintain a “complaint response/community relations” program with the Police Department.
9. At no time shall vehicles block and/or create traffic congestion along Old Highway 53; Lakeview Way and/or neighboring roadways.
10. The drive through facility shall be constructed in accordance with the approved plans **prior to building occupancy/improvements** and shall be maintained in accordance with the following:
 - a. Provide sufficient stacking to accommodate a minimum of six (6) vehicles (approximately +/- 144 feet).
 - b. Maintain a minimum of a twelve (12) foot wide land on curves and eleven (11) feet on straight sections. All drive through lanes shall be integrated with on-site circulation arrows and shall merge with the driveway.
 - c. Aisles shall be separated from landscaping areas by a six-inch high, poured in place, concrete curb or other suitable protective device meeting City’s approval.
 - c. Driveways, access roads and parking areas shall be surfaced with asphalt concrete in a manner to minimize dust. Driveway approaches shall be constructed of concrete and built to minimum City of Clearlake standards.
 - d. Installation of a minimum six (6) foot tall CMU (Concrete masonry unit), wall along the drive through aisle (along the common boarder of the residential).

11. All refuse generated by the facility shall be stored in the approved disposal/storage containers, and appropriately covered. Removal of waste shall be on a weekly basis to avoid excess waste. All trash receptacles/containers shall always remain covered to prevent fugitive odors and rodent infestation.
12. **Prior to building permit issuance and/or commencing construction**, the following shall be submitted for review and approval by the City:
 - i. Subject to City Engineer approval, civil site plans identifying existing and proposed storm drains, drainage ditches, curbs, sidewalks, gutters, and striping, as regulated by the City's Design and Construction Standards, Off-Street Parking Regulations, and Parking Design Standards to be found in compliance with all other applicable local/federal/state laws (including ADA and CASP requirements)
 - ii. Subject to Public Works Department approval, an encroachment permit shall be secured for all improvements, including new driveways on Old Highway 53.
 - iii. Subject to Community Development Department approval Final Landscaping and Irrigation Plans. Plans shall demonstrate compliance with the City's Municipal Code regarding landscaping.
 - iv. Subject to Community Development Department approval a detailed Trash Enclosure Plan. The plans shall show that the enclosure will be constructed of block with an attractive cap and the gates should incorporate solid metal materials painted to match the building colors. The gates should be mounted on separate posts mounted inside the enclosure. A hose bib should be located next to the enclosure for maintenance.
 - v. Subject to Community Development Department approval an exterior lighting plan. Lighting poles, if used, should not exceed 15 feet in height. All lighting shall be shield and directed downwards and adhere to all Federal, State and local agency requirements, including the dark-sky requirements found at <https://www.darksky.org/>. All lighting shall not project beyond the project parcel boundaries
 - vi. Subject to Community Development Department approval a detailed Signage Plan for all existing and proposed signs. The sign plan shall comply with the City's Municipal Code/Design Requirements.
 - vii. Subject to Community Development Department approval a revised plan for covering the stairway to the dwellings. The plan shall be to be architecturally compatible with the main building.
13. All handicap parking areas, routes of travel, building access and bathrooms shall meet American with Disabilities Act (ADA) requirements and be subject to review and approval of a Certified Accessibility Access Specialist (CASP).
14. **Prior to the removal of any Hertiage Oak Trees**, the applicant shall obtain a Tree Removal Permit, including submitting a onsite replant plan in accordaince with the City Muncipal Code/Oak Heritage Ordinance. Additionally, the applicant shall pay the Tree Removal Mitigation Fee to the City of Clearlake for trees to be replaced offsite (*when on replacing like for like species onsite*).
15. **Prior to operation**, the permit holder shall meet and operate in full compliance with fire safety rules and regulations of the Lake County Fire District.
16. **Prior to operation**, the applicant shall to any required permits from the City of Clearlake (Building Department, Planning and Public Works), Lake County Fire Protection District, Lake County Air Quality Management District, Lake County Environmental Health Department; California Department of Acholic Beverage Control (ABC) and/or all applicable Federal, State and local agency permits.
17. Any demolition or renovation is subject to the Federal National Emissions Standard for Hazardous Air Pollutants (NESHAP) for asbestos in buildings requires asbestos inspections by a Certified Asbestos Consultant for all major renovations and all demolition. An Asbestos Notification Form with the Asbestos inspection report must be submitted to the District at least 14 days prior to beginning any demolition work. The applicant must contact the District for more details and proper approvals. Regardless of asbestos content or reporting requirements all demolition and renovation activities should use adequate water/ amended water to prevent dust generation and nuisance conditions.
18. Construction activities that involve pavement, masonry, sand, gravel, grading, and other activities that could produce airborne particulate should be conducted with adequate dust controls to minimize airborne emissions. A dust mitigation plan may be required should the applicant fail to maintain adequate dust controls.

19. Any stationary prime power or backup diesel generator requires an application submitted to LCAQMD. All engines must be notified to LCAQMD prior to beginning construction activities and prior to engine Use. Mobile diesel equipment used for construction and/or maintenance must be in compliance with State registration requirements. All equipment units must meet Federal, State and local requirements. All equipment units must meet RICE NESHAP/NSPS requirements including proper maintenance to minimize airborne emissions and proper record-keeping of all activities, all units must meet the State Air Toxic Control Measures for CI engines and must meet local regulations. Contact LCAQMD for more details.
20. Site development, vegetation disposal, and site operation shall not create nuisance odors or dust. During the site preparation phase, the district recommends that any removed vegetation be chipped and spread for ground cover and erosion control. Burning is not allowed on commercial property, materials generated from the commercial operation, and waste material from construction debris, must not be burned as a means of disposal.
21. Significant dust may be generated from increase vehicle traffic if driveways and parking areas are not adequately surfaced. Surfacing standards should be included as a requirement in the use permit to minimize dust impacts to the public, visitors, and road traffic. At a minimum, the district recommends chip seal as a temporary measure for primary access roads and parking. Paving with asphaltic concrete is preferred and should be required for long term occupancy.
22. All areas subject to semi-truck / trailer traffic should require asphaltic concrete paving or equivalent to prevent fugitive dust generation. Gravel surfacing may be adequate for low use driveways and overflow parking areas; however, gravel surfaces require more maintenance to achieve dust control, and permit conditions should require regular palliative treatment if gravel is utilized. White rock is not suitable for surfacing (and should be prohibited in the permit) because of its tendency to break down and create excessive dust. Grading and re-graveling roads should utilizing water trucks if necessary, reduce travel times through efficient time management and consolidating solid waste removal/supply deliveries, and speed limits.
23. **During construction activities**, if any subsurface archaeological remains are uncovered, all work shall be halted within 100 feet of the find and the applicant shall retain a qualified cultural resources consultant from the City's approved list of consultants to identify and investigate any subsurface historic remains and define their physical extent and the nature of any built features or artifact-bearing deposits. Significant historic cultural materials may include finds from the late 19th and early 20th centuries including structural remains, trash pits, isolated artifacts, etc.
24. The cultural resource consultant's investigation shall proceed into formal evaluation to determine their eligibility for the California Register of Historical Resources. This shall include, at a minimum, additional exposure of the feature(s), photo-documentation and recordation, and analysis of the artifact assemblage(s). If the evaluation determines that the features and artifacts do not have sufficient data potential to be eligible for the California Register, additional work shall not be required. However, if data potential exists – e.g., there is an intact feature with a large and varied artifact assemblage – it will be necessary to mitigate any Project impacts. Mitigation of impacts might include avoidance of further disturbance to the resources through Project redesign. If avoidance is determined to be infeasible, pursuant to CEQA Guidelines Section 15126.4(b)(3)(C), a data recovery plan, which makes provisions for adequately recovering the scientifically consequential information from and about the historical resource, shall be prepared and adopted prior to any excavation being undertaken. Such studies shall be deposited with the California Historical Resources Regional Information Center. Archeological sites known to contain human remains shall be treated in accordance with the provisions of Section 7050.5 Health and Safety Code. If an artifact must be removed during Project excavation or testing, curation may be an appropriate mitigation. This language of this mitigation measure shall be included on any future grading plans and utility plans approved by the City for the Project.
25. If human remains are encountered, no further disturbance shall occur within 100 feet of the vicinity of the find(s) until the Lake County Coroner has made the necessary findings as to origin (*California Health and Safety Code Section 7050.5*). Further, pursuant to California Public Resources Code Section 5097.98(b) remains shall be left in place and free from disturbance until a final decision as to the treatment and disposition has been made. If the Lake County Coroner determines the remains to be Native American, the Native American Heritage Commission must be contacted within 24 hours. The Native American Heritage Commission must then identify the “most likely descendant(s)”, which parties agree will likely be the Koi Nation based upon the Tribe's ancestral ties to the area and previous designation as MLD on projects in the geographic vicinity. The landowner shall engage in consultations with the most

likely descendant (*MLD*). The MLD will make recommendations concerning the treatment of the remains within 48 hours as provided in Public Resources Code 5097.98.

26. The developer/landowner shall relinquish ownership of all sacred items, burial goods and all archaeological artifacts that are found on the project area to the Koi Nation for proper treatment and disposition.
27. Any modifications and/or additions to a use requiring use permit approval shall itself be subject to use permit approval. The addition of an allowed use to a premise occupied by a conditionally allowed use shall require use permit approval of the type required for the existing use. The Community Development Director shall determine when such an addition and/or change is of such a minor or incidental nature that the intent of these regulations can be met without further use permit control.
28. This use permit does not abridge or supersede the regulatory powers and permit requirements of any federal, state, or local agency requirements, which may retain a regulatory or advisory function as specified by statute or ordinance. The applicant shall obtain and maintained permits as may be required from each agency.
29. The applicant shall agree to indemnify, defend, and hold harmless the City or its agents, officers and employees from and against any and all claims, actions, demands or proceeding (*including damage, attorney fees, and court cost awards*) against the City or its agents, officers, or employees to attach, set aside, void, or annul an approval of the City, advisory agency, appeal board, or legislative body concerning the permit or entitlement when such action is brought within the applicable statute of limitations. In providing any defense under this Paragraph, the applicant shall use counsel reasonably acceptable to the City. The City shall promptly notify the applicant of any claim, action, demands or proceeding and the City shall cooperate fully in the defense. If the City fails to promptly notify the applicant of any claim, action, or proceeding, or if the City fails to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, or hold the City harmless as to that action. The City may require that the applicant post a bond, in an amount determined to be sufficient, to satisfy the above indemnification and defense obligation. Applicant understands and acknowledges that City is under no obligation to defend any claim, action, demand or proceeding challenging the City's actions with respect to the permit or entitlement.
30. If the approved use permit is not established within one (1) year of the date of approval or such longer time as may be stipulated as a condition of approval, the use permit shall expire.
31. If a structure(s) or associated site development authorized by use permit is not issued building permits (if building permits are required) within three (3) years of the date of approval, the use permit shall expire.
32. **Upon written request received prior to expiration**, the Community Development Director may grant renewals of use permit approval for successive periods of not more than one (1) year each.
 - *Approvals of such renewals shall be in writing and for a specific period.*
 - *Renewals may be approved with new or modified conditions upon a finding that the circumstances under which the use permit was originally approved have substantially changed.*
 - *Renewal of a use permit shall not require public notice or hearing unless the renewal is subject to new or modified conditions. In order to approve a renewal, the Community Development Director must make the findings required for initial approval.*
33. The Planning Commission may revoke or modify the use permit in the future if the Commission finds that the use to which the permit allows is detrimental to health, safety, comfort, general welfare of the public; constitutes a public nuisance; if the permit was obtained or is being used by fraud; and/or if one or more the conditions upon which a permit was granted are in noncompliance or have been violated. Applicant shall be notified of potential violations of the use permit prior to action taken by the Planning Commission.
34. The use permit may be transferred to new owners at the same location upon notifying the City Planning Department of said ownership transfer and upon the new owner's written agreement to maintain all conditions of approval.

35. Said Use Permits shall be subject to revocation or modification by the Planning Commission if the Commission finds that there has been:
- a) *Noncompliance with any of the foregoing conditions of approval; or*
 - b) *The Planning Commission finds that the use for which this permit is hereby granted is so exercised as to be substantially detrimental to persons or property in the neighborhood of the use. Any such revocation shall be preceded by a public hearing noticed and heard pursuant to the City of Clearlake Municipal Code. 15.*

ACCEPTANCE

I have read and understand the foregoing Conditional Use Permit and agree to each and every term and condition/mitigation measure thereof.

Date: _____

Applicant or Authorized Agent Signature

Printed Name of Authorized Agent

To be Completed by Authorized Staff Only:	
_____ Staff Name	_____ Staff Signature
Date Project Approved: _____	