

PLANNED DEVELOPMENT PERMIT

FILE NO.	PD11-025
LOCATION OF PROPERTY	Southeast corner of North First Street and Rosemary Street
ZONING DISTRICT	A(PD) Planned Development
ZONING FILE NUMBER	PDC11-011
GENERAL PLAN DESIGNATION	Transit Corridor Residential (25-65 DU/AC) in the Rincon South Planned Community
PROPOSED USE	A Planned Development Permit to (1) re-entitle a project previously approved under File No. PD08-053, to allow for the construction of a 290 (106 senior and 184 multi-family) affordable residential units, (2) convert the design of the multi-family units from podium parking to an above grade parking structure, (3) introduce an auto court opposite Kerley Drive, (4) make minor changes to the interior open courtyards, and (5) approve architectural changes, on the subject 4.045 gross acre site.
ENVIRONMENTAL STATUS	Addendum to the North San Jose Development Policy Update Final EIR, certified June 21, 2005 per City Council Resolution No. 72768 (State Clearing House No. 2004102067)
OWNER/ADDRESS	1st & Rosemary Family Housing, LP 1650 Lafayette Street Santa Clara, CA 95050

FACTS

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

1. This site has a designation of Transit Corridor Residential (25-65 DU/AC) in the Rincon South Planned Community on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
 - a. After applying a population-dwelling unit equivalency, the effective density of the overall project is approximately 54 dwelling units per acre, which is consistent with the Transit Corridor Residential (25-65 DU/AC) General Plan designation.

2. The project site is located in the A(PD) Planned Development Zoning District. The Planned Development Zoning (File No. PDC11-011) was reviewed by the City Council and approved with Ordinance No. 28926 adopted June 21, 2011.
3. The subject site is relatively flat, rectangular in shape, and currently undeveloped.
4. This is a Planned Development Permit to (1) re-entitle a project previously approved under File No. PD08-053, to allow for the construction of a 290 (106 senior and 184 multi-family) affordable residential units, (2) convert the design for the multi-family units from podium parking to an above grade parking structure, (3) introduce an auto court opposite Kerley Drive, (4) make minor changes to the interior open courtyards, and (5) approve architectural changes, on the subject 4.045 gross acre site.
5. Parking required per the approved Planned Development Zoning is 290 spaces are needed for the multifamily development and 75 spaces for the senior housing development. Parking provided with this permit is 290 spaces for the multifamily development and 75 spaces for the senior housing development.
6. The proposed project will meet all of the development regulations set forth in Planned Development Zoning, PDC11-011, including but not limited to heights, setbacks, densities, open space, etc.
7. The Final Environmental Impact Report (EIR) for the North San José Area Development Policies Update was certified (Resolution No. 72768) and the project approved by the City Council in June 2005. Santa Clara County and the Cities of Milpitas and Santa Clara subsequently legally challenged the EIR. In December 2006, the Santa Clara County Superior Court approved a settlement over all legal challenges and deemed the EIR adequate. An Addendum to the Final EIR was prepared for this project. An Initial Study was prepared for this project. The Director of Planning circulated a Mitigated Negative Declaration for public review that was adopted on June 11, 2008. The key issues addressed in the Initial Study included the impacts of noise on the site. The project includes mitigation measures that reduce any potentially significant impacts to a less than significant level.

FINDINGS

The Director of Planning, Building, and Code Enforcement concludes and finds, based on the analysis of the above facts, that:

1. The Planned Development Permit, as issued, furthers the policies of the General Plan, in that:
 - a. The proposed development conforms to the site's General Plan Land Use/Transportation Diagram designation in that the proposed uses and densities are consistent with those called for by the Transit Corridor Residential (25-65 DU/AC) in the Rincon South Planned Community designation and are compatible with the surrounding area.
 - b. The project maintains the existing pattern of development in the immediate vicinity.
 - c. The land to be used for the future development will be fully and efficiently utilized to maximize the potential to add to the housing stock.
 - d. The consistent architectural themes have been integrated into the design.
 - e. The proposed architecture is consistent with the North San Jose Design Guidelines.

2. The Planned Development Permit, as issued, conforms in all respects to the Planned Development Zoning of the property in that:
 - a. The proposed project conforms to the approved General Development Plan and associated notes.
3. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious, in that:
 - a. The architectural elements of the proposed project are integrated into a harmonious whole.
 - b. The project conforms to the North San Jose Design Guidelines & Rincon South Specific Plan.
 - c. On-site structures are compatible in terms of height and massing.
4. 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 the purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties. Any potential negative effects on adjacent property or properties have been addressed in that:
 - a. An Addendum to Final EIR that was adopted on June 11, 2008 addressed the environmental impacts of this project.

Based upon the above-stated findings and subject to the conditions set forth below, the Director of Planning approves, pursuant to Chapter 20.100 of the San José Municipal Code, the subject Planned Development Permit.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the applicant; and
 - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Planned Development Permit shall automatically expire forty-eight (48) months from and after the date of issuance hereof by said Director, if within such thirty month period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Planned Development Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit in accordance with Title 20 of the San Jose Municipal Code. The Permit Adjustment must be approved prior to the expiration of this Permit.
3. **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.

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. **Conformance to Plans.** Development of the site shall conform to approved Planned Development plans entitled "1st and Rosemary Family Apartments" last dated August 12, 2011, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04), with the exception of any subsequently approved changes.
6. **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.
7. **Revocation.** This Planned Development Permit is subject to revocation for violation of any of its provisions or conditions.
8. **Planned Development District Effectuated.** Once this Planned Development Permit is accepted, the use of territory not covered by the permit shall only be land uses consistent with the Planned Development Zoning District and only upon issuance of a Planned Development Permit for those uses.
9. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Planned Development Permit incorporated by reference in this Permit in accordance with Chapter 20.100 of the San Jose Municipal Code.
10. **Recycling.** Scrap construction and demolition material should be recycled. Integrated Waste Management staff at (408) 535-8550 can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.
11. **Construction Impact Mitigation Measures.** The applicant is responsible for notifying all contractors of the conditions of this permit and that they shall perform construction activities in compliance with these conditions, or be subject to enforcement action.
 - a. *Compliance.* The applicant shall ensure that the following construction impact mitigation measures are fully complied with throughout the duration of all construction activities associated with this project and related off-site construction work. Failure to comply with these conditions by the applicant, their contractors or subcontractors shall be cause for shutdown of the project site until compliance with the following conditions can be ensured by the City. These construction impact mitigation measures shall be included in all contract documents for the project to ensure full disclosure to contractors and subcontractors.

- b. *Construction Hours.* Construction and grading activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday. This includes the staging of equipment and construction personnel. The construction hours shall be printed on all plans for the project used to construct the project. Interior construction activities that do not generate any audible noise impacts at residential properties are allowed on Saturdays between 9:00 a.m. and 5:00 p.m.
- c. *Fencing.* The site shall be wholly enclosed by security fencing where the site is accessible by vehicles. The gates to the project site shall remain locked during all other times, except for a 30-minute period immediately preceding and following the above hours of construction.
- d. *Assembly Area.* Workers shall not arrive to the site until the opening of the project gates. The applicant shall designate a location without adjacent residential units for workers to wait prior to the opening of the project gates.
- e. *Construction Deliveries.* Deliveries shall not occur outside the above construction hours. All deliveries shall be coordinated to ensure that no delivery vehicles arrive prior to the opening of the gates to prevent the disruption of nearby residents.
- f. *Street Cleaning and Dust Control.* During construction, the developer shall damp-sweep the public and private streets within and adjoining the project site each working day sufficient to remove all visible debris and soil. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.
- g. *Construction Watering.* The proposed project shall use recycled water for all grading, dust control, and other non-potable approved uses during construction to the satisfaction of the Director of Public Works.
- h. *Enforcement.* The Director of Planning, Building and Code Enforcement may order an immediate halt to construction activities on the project site any time that the Director determines that the project is not in substantial conformance with the requirements of this Permit. Within seven days of ordering such a halt to construction, the Director of Planning, Building and Code Enforcement shall issue a Notice of Noncompliance in conformance with Section 20.100.320 of Title 20 of the San José Municipal Code indicating the specific area(s) of noncompliance and providing notice that the Director may issue an Order to Show Cause why the development permit shall not be revoked, suspended, or modified if the noncompliance is not corrected.
- i. *Disturbance Coordinator.* A Construction/Disturbance Coordinator shall be identified by the developer for this project. The Construction/Disturbance Coordinator shall be responsible for ensuring compliance with the hours of construction, site housekeeping, and other nuisance compliance conditions in this permit. The coordinator shall also compile information regarding construction phasing/operations and keep the neighborhood informed of the stages of development. The coordinator shall also listen and respond to neighborhood concerns regarding construction, determine the cause of the concern (e.g., starting too early, bad muffler, etc.) and institute reasonable measures warranted to correct the problem in a timely manner. The coordinator shall maintain a log of calls and shall make that log available to the City of San Jose upon request.

- j. *Posting of Telephone Number.* The name and phone number of the Construction/Disturbance coordinator, the hours of construction limitations, City File Number PD08-053. City contact and phone number (department and phone number), shall be displayed on a weatherproof sign posted at each entrance to the project site. A local phone number with answering service shall be maintained during the duration of project construction.

12. Public Works Clearance for Building Permit(s) or Map Approval: Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, 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.

- 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. An area wide traffic impact analysis was prepared as part of the North San Jose Area Development Policy, adopted June 2005. Traffic impacts were identified and resulted in an area wide traffic impact fees. This project is covered under the North San Jose EIR.
 - ii. Consistent with North San Jose EIR, this project is required to pay a traffic impact fee of \$1,344,936.34. This amount was based on \$6,800 per multi-family unit and a credit of \$12.69/ft² per existing industrial square footage use. The 2011 fee is subject to annual escalation of 3.3% and is subject to change July 1st 2011. This fee must be paid prior to issuance of public works clearance. Credits for existing structures on site will be applied to the residential traffic impact fee consistent with the policy and will be prorated with each building permits issued.
- c. **Street Vacation:** Various public easements exist on this site that needs to be removed in order to accomplish this land use design. These may include such items as the BSL, PSE, IEE, and WCE. The street vacation process requires further discretionary approval by the City Council and the project will be subject to this process prior to Public Works Clearance, or recording any map. It is recommended that the vacations be included in staff report verbiage as well as the land development posting notification for this PD.
- d. **Grading/Geology:**
 - i. A grading permit is required prior to the issuance of a Public Works Clearance.
 - ii. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
 - iii. Because this project involves a land disturbance of one or more acres, the applicant is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.

- iv. The Project site is within the State of California Seismic Hazard Zone. A soil 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 investigation should be consistent with the guidelines published by the State of California (CDMG Special Publication 117) and the Southern California Earthquake Center ("SCEC" report). 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) that include site design measures, source controls, and stormwater treatment controls to minimize stormwater pollutant discharges. Post-construction treatment control measures, shown on the project's Stormwater Control Plan, shall meet the numeric sizing design criteria specified in City Policy 6-29.
 - i. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
 - ii. A post construction Final Report is required by the Director of Public Works from a Civil Engineer retained by the owner to observe the installation of the BMPs and stating the all post construction storm water pollution control BMPs have been installed as indicated in the approved plans and all significant changes have been reviewed and approved in advance by the Department of Public Works.
- f. **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.
- g. **Street Improvements:**
 - i. Remove and replace broken or uplifted curb, gutter, and sidewalk along project frontage.
 - ii. Close unused driveway cut(s).
 - iii. The project will construct 10' sidewalk on Rosemary Street.
 - iv. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
 - v. An irrevocable offer of dedication will be given to the City for the future construction of the ultimate right-of-way on First Street along the project frontage.
 - vi. The Developer agrees to provide an in-lieu fee in the form of a CD which will be given to the City of San Jose prior to issuance of PW Clearance. The CD amount will be \$300,000 for future widening along the project frontage on First Street. The CD will be returned if the City does not build the improvements along the project site on First Street within 5 years. The CD shall be required prior the construction of the senior apartment phase of this project.
- h. **Electrical:**
 - i. Relocate existing electrolier to maintain 10' minimum clearance between driveway and electrolier.
 - ii. Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.

- iii. Locate and protect existing electrical conduit in driveway and/or sidewalk construction.
- iv. Provide clearance for electrical equipment from driveways, and relocate driveway or electrolier. The minimum clearance from driveways is 5' in residential areas.
- v. Provide clearance for electroliers from overhead utilities and request clearance from utility companies. Clearance from electrolier(s) must provide a minimum of 10' from high voltage lines; 3' from secondary voltage lines; and 1' from communication lines.
- vi. To assist the Applicant in better understanding the potential cost implications resulting from these requirements, the electroliers along the project frontage can be evaluated during the Planning permit review stage.

i. **Street Trees:**

- i. The locations of the street trees will be determined at the street improvement stage. Street trees shown on this permit are conceptual only.
- ii. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in park strip. Obtain a DOT street tree planting permit for any proposed street tree plantings.
- iii. Show all existing trees by species and diameter that are to be retained or removed. Obtain a street tree removal permit for any street trees that are over 6 feet in height that are proposed to be removed.

13. **Parkland Dedication.** This development may be subject to the requirements of the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San Jose Municipal Code,) for the dedication of land or payment of fees in lieu of the dedication of land for park purposes, under the formula contained with that Chapter. Prior to approval of the Final Map or final building permits for this development, the applicant shall enter into a parkland agreement with the City to the satisfaction of the Director of Public Works in order to fulfill the requirements of the Parkland Dedication Ordinance.

14. **Voluntary Parkland Contribution.** Prior to the issuance of occupancy for each respective building the developer shall pay an amount to the City to assist in the acquisition and/or improvement of parkland in an amount between \$400,000 and \$500,000, apportioned between the two (senior and family) projects.

15. **Building 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. *Park Acquisition Fees.* The applicant shall provide evidence to the Chief Building Official that the applicable Park Acquisition Fees have been paid, consistent with condition 13.a above.
- b. *Construction Plans.* This permit file number, *PD11-025* shall be printed on all construction plans submitted to the Building Division.
- c. *Americans with Disabilities Act.* The applicant shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
- d. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
- e. *Street Number Visibility.* Street numbers of the buildings shall be easily visible at all times, day and night.

f. *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.

16. **Archaeology.** Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.

17. **Environmental Mitigation.**

a. **Air Quality.**

i. The project shall implement measures identified by BAAQMD to reduce long-term contributions to regional and local emissions, which may include, but are not limited to, the following: (1) Allowing only natural gas fireplaces, pellet stoves, or EPA-Certified wood-burning fireplaces or stoves in residences. Conventional open-hearth fireplaces should not be permitted. EPA-Certified fireplaces and fireplace inserts are 75 percent effective in reducing emissions from this source; (2) Using electric lawn and garden equipment for landscaping maintenance; (3) Utilizing reflective (or high albedo) and emissive roofs and light colored construction materials to increase the reflectivity of roads, driveways, and other paved surfaces, and include shade trees near buildings to directly shield them from the sun's rays and reduce local air temperature and cooling energy demand.

Temporary Construction-Related Impact

- ii. Water all active construction areas at least twice daily.
- iii. Water or cover stockpiles of debris, soil, sand, or other materials that can be blown by the wind.
- iv. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.
- v. Sweep daily (preferably with water sweepers) all paved access roads, parking areas, and staging areas at construction sites.
- vi. Sweep streets daily (preferably with water sweepers) if visible soil material is carried onto adjacent public streets.
- vii. Hydroseed or apply non-toxic soil stabilizers to inactive construction areas.
- viii. Enclose, cover, water twice daily, or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.);
- ix. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.

x. Replant vegetation in disturbed areas as quickly as possible.

b. Biology.

- i. Bats. Development activities during the pallid bat and Townsend's big-eared bat nursery season (April to July) shall be preceded by predemolition surveys (within 30 days) for bat nursery colonies by a qualified bat biologist. Demolition of buildings outside of the nursery season need not be preceded by preconstruction surveys. No activities (including entering the attic) that would result in disturbance of active nurseries shall proceed prior to the completion of the surveys. The extent of construction-free zones around active bat nurseries shall be determined by the bat biologist. The California Department of Fish and Game shall be notified if any active nurseries are present on the project site.
- ii. Tree Nesting Raptors. If possible, construction shall be scheduled between October and December (inclusive) to avoid the raptor nesting season. If this is not possible, pre-construction surveys for nesting raptors shall be conducted by a qualified ornithologist to identify active raptor nests that may be disturbed during project implementation. Between January and April (inclusive) pre-construction surveys shall be conducted no more than 14 days prior to the initiation of construction activities or tree relocation or removal. Between May and August (inclusive), pre-construction surveys shall be completed no more than thirty (30) days prior to the initiation of these activities.
- iii. Tree Preservation. Prior to the issuance of any approval or permit (including a grading permit), a then-current inventory of all trees on the site shall be prepared by a certified arborist as to size, species, and location on the lot and the inventory shall be submitted on a topographical map to the Environmental Principal Planner. Prior to approval of a PD permit, the applicant shall submit a site plan showing all trees to be preserved. The applicant shall also submit a tree preservation report that details how the existing trees will be preserved during and after construction, including but not limited to the measures below. The tree preservation report shall be completed to the satisfaction of the Environmental Principal Planner and the Director of Planning, Building, and Code Enforcement.
 - (1) Damage to any tree during construction shall be reported to the City's Environmental Principal Planner, and the contractor or owner shall treat the tree for damage in the manner specified by the Environmental Principal Planner.
 - (2) No construction equipment, vehicles, or materials shall be stored, parked, or standing within the tree dripline.
 - (3) Drains shall be installed according to City specifications so as to avoid harm to trees due to excess watering.
 - (4) Wires, signs, and other similar items shall not be attached to trees.
 - (5) Cutting and filling around the base of trees shall be done only after consultation with the City arborist and then only to the extent authorized by the City arborist.
 - (6) No paint thinner, paint, plaster, or other liquid or solid excess or waste construction materials or wastewater shall be dumped at any time.
 - (7) Barricades shall be constructed around the trunks of trees as specified by a qualified arborist so as to prevent injury to trees making them susceptible to disease causing organisms.

- (8) Whenever cuts are made in the ground near the roots of trees, appropriate measures shall be taken to prevent exposed soil from drying out and causing damage to tree roots.

c. Cultural Resources – Archaeological Resources

- i. If any significant cultural resources are exposed or discovered during preparation or subsurface construction activities, operations shall be stopped within a radius of 50 feet of the find. The Director of Planning, Building, and Code Enforcement shall be notified and a qualified professional archaeologist shall examine the find and make appropriate recommendations regarding the significance of the find and the appropriate mitigation. Recommendations could include collection, recordation, and analysis of any significant cultural materials.
- ii. Pursuant to Section 7050.5 of the Health and Safety Code and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his/her authority, the Native American Heritage Commission shall be notified to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location no subject to further subsurface disturbance. If the Director of Planning, Building, and Code Enforcement finds that the archaeological find is not a significant resource, work would resume only after the submittal of a preliminary archaeological report and after provisions for reburial and ongoing monitoring are accepted. A final report shall be prepared when a find is determined to be a significant archaeological site, and/or when Native American remains are found on the site. The final report shall include background information on the completed work, a description and list of identified resources, the disposition and curation of these resources, any testing, other recovered information, and conclusions.

d. Geology and Soils – On-site Soils

- i. Design and construct buildings in accordance with the design-level geotechnical investigation prepared for the project site, which identifies the specific design features that will be required for the project, including site preparation, compaction, trench excavations, foundation and subgrade design, drainage, and pavement design. The geotechnical investigation shall be reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance for the project.
- ii. Implement standard grading and best management practices to prevent substantial erosion and siltation during development of the site.

e. Hydrology and Water Quality

- i. Water Quality Construction. The proposed project shall comply with the NPDES General Construction Activity Stormwater Permit administered by the Regional Water Quality Control Board. Prior to future construction or grading for project with land disturbance of one acre or more, applicants shall be required to file a “Notice of Intent” (NOI) to comply with the General Permit and prepare a Stormwater Pollution Prevention Plan (SWPPP) that addresses measures that would be included in the project to minimize

and control construction and post-construction runoff. Copies of the SWPPP shall be submitted to the City of San José Department of Public Works. The following measures typically are included in a SWPPP:

- (1) Incorporate effective, site-specific Best Management Practices for erosion and sediment control during the construction and post-construction periods.
 - (2) Cover soil, equipment, and supplies that could contribute pollution prior to rainfall events or monitor runoff.
 - (3) Perform monitoring of discharges to the stormwater system.
 - (4) Preclude non-stormwater discharges to the stormwater system.
- ii. Water Quality Post-Construction. Compliance with Council Policies 6-29 and 8-14 is required at the development permit stage and shall be demonstrated by incorporating BMPs and TCMs which include, but are not limited to, the following:
- (1) Vegetated swales and flow-through areas;
 - (2) Bioretention areas or basins;
 - (3) Disconnected downspouts that are directed into landscape areas;
 - (4) Minimization of impervious surfaces and increased use of permeable pavement;
 - (5) Location of all storm drain inlets to be stenciled with, “No Dumping! Flows to Bay”; and
 - (6) Location and design of trash enclosures (all shall be covered) and materials handling areas.

f. **Noise.**

Short-term Construction Impacts.

- i. Limit all construction-related activities to the hours of 7 AM to 6 PM Monday through Friday and 8 AM to 5 PM on Saturdays. Construction outside of these hours may be approved through a development permit based on a site-specific construction noise mitigation plan and a finding by the Director of Planning, Building, and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.
- ii. Equip all internal combustion engine driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
- iii. Locate stationary noise generating equipment as far as possible from sensitive receptors, such as residential uses.
- iv. Utilize “quiet” air compressors and other stationary noise sources where technology exists.
- v. Prepare a detailed construction plan identifying the schedule for major noise-generating construction activities. The construction plan shall identify a procedure for coordination with the adjacent noise sensitive facilities so that construction activities can be scheduled to minimize noise disturbance.
- vi. Designate a “noise disturbance coordinator” who would be responsible for responding to any local complaints about construction noise. The disturbance coordinator would determine the cause of the noise complaints (e.g., beginning work too early, bad muffler,

etc.) and institute reasonable measures warranted to correct the problem. A telephone number for the disturbance coordinator would be conspicuously posted at the construction site.

Interior Noise.

- vii. Building sound insulation requirements would need to include the provision of forced-air mechanical ventilation for units proposed in noise environments exceeding 60 dBA DNL, so that windows could be kept closed at the occupant's discretion to control noise.
 - viii. Special building techniques (e.g., sound-rated windows and building facade treatments) would be required to maintain interior noise levels at or below acceptable levels. These treatments would include, but are not limited to, sound rated windows and doors, sound rated wall constructions, acoustical caulking, protected ventilation openings, etc. Preliminary calculations indicate that residential units nearest I-880 and with direct line of sight to the roadway would require sound rated windows and doors with ratings ranging from STC 35-40 to assure that the 45 dBA DNL indoor standard is met. Project-specific acoustical analysis will be prepared to confirm that interior noise levels will be reduced to 45 dBA DNL or lower. The specific determination of what noise insulation treatments are necessary will be completed on a unit-by-unit basis. Results of the analysis, including the description of the necessary noise control treatments, will be submitted to the City along with the building plans for review and approval, prior to issuance of a building permit.
18. **Fire Clearance for Issuing Permits.** This review is limited to verifying compliance of the project to Chapter 5, Appendix B, and Appendix C of the 2010 California Fire Code with City of San Jose Amendments (SJFC). Additional review will be required at the building permit stage. All other code requirements for this project shall be reviewed and commented upon by both Fire and Building departments during the building permit process.
 19. **Landscaping.** Planting and irrigation are to be provided as indicated on the approved plans. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced. Permanent irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
 20. **Landscaping Maintenance.** The Property Owner and/or Home Owner's Association shall maintain on-site landscaping areas and landscaping areas along the public right-of-way areas/streets to the satisfaction of the Director of Public Works.
 21. **Irrigation Standards.** The applicant shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set and is consistent with the City of San Jose Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect prior to Certificate of Occupancy.
 22. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
 23. **Storm Water Stenciling.** All drain inlets shall be labeled "No Dumping—Flows to Bay." Please contact the City of San José, Department of Public Works, at (408) 277-5161 to obtain free stencils.

24. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set. Changes to the approved fencing shall require review by the Director of Planning, Building, and Code Enforcement.
25. **Lighting.** On-site, exterior, unroofed lighting shall conform to the Outdoor Lighting Policy and shall use fully cut-off and fully shielded, Low-Pressure Sodium fixtures. Lighting shall be designed, controlled and maintained so that no light source is visible from outside of the property.
26. **Perimeter Fencing.** Fence height and materials shall be as shown on the approved plans. Changes to the approved fencing shall require review by the Director of Planning, Building, and Code Enforcement.
27. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
28. **Transportation.** The developer shall provide Eco Passes to all residents of the project for the first year of their residence, in conformity with commitments that the Developer has chosen to make, to alleviate the parking and traffic situation on surrounding residents.
29. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
30. **Homeowner's Association.** Should the units of the project be sold to individuals, a Homeowner's Association shall be established to oversee maintenance of all common areas, including driveways/courtyards and landscaping.
31. **Inclusionary Housing.** The applicant shall comply with the City of San José Policy on Implementation of the Inclusionary Housing Requirement of Health and Safety Code Section 33413 (b) (2), as amended in connection with any and all portions of the Project involving the construction or substantial rehabilitation of residential units that will be located in a redevelopment project area to the satisfaction of the Director of Planning, Building and Code Enforcement.

APPROVED and issued on this **26th day of August 2011.**

Joseph Horwedel, Director
Planning, Building, and Code Enforcement

Deputy