

PLANNED DEVELOPMENT PERMIT AMENDMENT

FILE NO. PDA06-040-01

LOCATION OF PROPERTY 150 South King Road

ZONING DISTRICT A(PD) Planned Development (PDC05-013)

GENERAL PLAN DESIGNATION Neighborhood Community Commercial

PROPOSED USE Demolish an existing single-family residence, remove three ordinance size trees, and construct a 7,000 square foot building for commercial uses.

ENVIRONMENTAL STATUS Re-use of Negative Declaration

OWNER/ADDRESS Toan Anh Nguyen
3389 Royal Meadow Lane
San Jose, CA 95135

FACTS

1. The project site has a designation of Neighborhood Community Commercial on the City of San Jose 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the A(PD) Planned Development Zoning District.
3. The subject site is 0.62 gross acres.
4. The project is proposing demolition of an existing single-family residence, removal of three ordinance size trees and construction of a 7,000 square foot building for commercial uses.
5. The proposed project will require dedication of up to 26 feet along King Road for the public right-of-way.
6. The project proposes to provide 28 parking spaces, which supports a mix of office and take-out restaurant uses.
7. The environmental impacts of this project were address by an Initial Study and Mitigated Negative Declaration (File No. PDC05-013) which concluded that the project would not result in any significant environmental impacts. Mitigation was included in the project to ensure that the

project would not result in undue impacts on adjacent properties.

FINDINGS

1. The Planned Development Permit, as issued, furthers the policies of the General Plan in that:
 - a. The project consists of an infill housing development that conforms to the General Plan and that furthers the Plan's Growth Management and Housing Major Strategies.
2. The Planned Development Permit, as issued, conforms in all respects to the Planned Development zoning of the property in that:
 - a. The building location, setbacks, density, and number of units and parking spaces, conform to the General Development Plan.
3. 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. The architectural elements of the proposed and/or existing structure(s) are integrated into a harmonious whole.
4. The environmental impacts of the project will not have an unacceptable negative effect on adjacent property or properties in that:
 - a. The environmental impacts of this project were addressed by an Initial Study and Mitigated Negative Declaration (File No. PDC05-013) which concluded that the project would not result in any significant environmental impacts. Mitigation was included in the project to ensure that the project would not result in undue impacts on adjacent properties.
5. The location of the ordinance-size trees with respect to the proposed improvements does unreasonably restrict the economic development of the parcel in question.
6. The Director of Planning has considered all of the following criteria in evaluating the proposed demolition:
 - a. The failure to approve the permit would result in the creation of continued existence of a nuisance, blight or dangerous condition.
 - b. The failure to approve the permit would jeopardize public health, safety or welfare.
 - c. The approval of the permit should maintain the supply of existing housing stock in the City of San José
 - d. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible.

- e. Rehabilitation or reuse of the existing building would not be feasible.
- f. The approval of the demolition of the building should facilitate a project that is compatible with the surrounding neighborhood.
- g. The demolition of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.

Further, the Director of Planning concludes and finds, based on the analysis of the above facts, that:

- a. The benefits of permitting the demolition, removal or relocating of the subject structures outweigh the impacts of the demolition, removal or relocation.
- b. Finally, based upon the above-stated findings and subject to the conditions set forth below, the Director of Planning approves, pursuant to Section 20.80.460 of the San José Municipal Code, the demolition of the subject structures.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **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.
2. **Permit Expiration.** This Planned Development Permit shall automatically expire 30 months from and after the date of issuance hereof by said Director, if within such time period, the construction of buildings has not commenced, pursuant to and in accordance with the provision 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/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. **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.

4. **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.
5. **Permit Posting for Tree Removal.** Prior to commencement of and during removal of any ordinance-size tree pursuant to this Permit, the applicant shall post on the site, or cause to be posted, a copy of this Permit in conformance with the following:
 - a. The copy of the permit shall be a minimum size of 8.5 by 11.0 inches; shall be posted at each public street frontage within 2 feet of the public sidewalk or right-of-way; and shall be posted in such a manner that the permit is readable from the public sidewalk or right-of-way; or
 - b. If the site does not have a public street frontage, a copy of the permit shall be posted at a location where the permit is readable from a common access driveway or roadway.
6. **Presentation of Permit for Tree Removal.** During removal of any ordinance-size tree pursuant to this permit, the applicant shall maintain the permit on the site and present it immediately upon request by the Director of Planning, Building and Code Enforcement, Police Officers or their designee.
7. **Conformance with Plans.** Construction and development shall conform to approved plans entitled, "South King Road Development", dated November 10, 2009 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).
8. **Revocation.** This Planned Development Permit is subject to revocation for violation of any of its provisions or conditions.
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. **Construction Conformance.** A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms with all applicable requirements of the subject Permit, including the plan sets. To prevent delays in the issuance of Building Permits, please notify

Planning Division staff at least one week prior to the final Building Division inspection date.

11. **Construction Impact Mitigation Measures.** The applicant shall ensure that the following construction impact mitigation measures are fully implemented throughout the duration of construction activities associated with this project. For the purposes of this Permit, “construction” shall mean all on-site activities including site clearing, grading, and construction. Failure to comply with these conditions by the applicant, project contractors or subcontractors shall be cause for shutdown of the project site until compliance with the following conditions can be ensured by the City.
- a. *Mitigation Measures.* These construction impact mitigation measures shall be included in all contract documents for the project to ensure full disclosure to contractors and subcontractors.
 - b. *Equipment.* Mitigation of construction phase noise at the site shall include the use of quiet or “new technology” equipment, particularly with improved exhaust mufflers. All internal combustion engines used at the project site shall be equipped with the type of muffler recommended by the equipment manufacturer. In addition, all equipment shall be maintained in good mechanical condition so as to minimize noise created by faulty or poorly maintained engine, drive-train and other components.
 - c. *Construction Hours.* Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any onsite or offsite work within 500 feet of any residential unit so as to avoid the more sensitive evening, nighttime and weekend hours.
 - d. *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.
 - e. *Plans.* The construction hours shall be printed on all plans for the project used to construct the project.
 - f. *Fencing.* The site shall be wholly enclosed by security fencing. The gates to the project site shall remain locked during all other times, except for a fifteen-minute period immediately preceding and following the above hours of construction.
 - g. *Construction Employees.* Construction 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.
 - h. *Construction Activities.* Construction equipment, materials, and workers shall not be staged on any area of the site within 50 feet of an adjoining property used for residential purposes unless the Director of Planning approves a Permit Adjustment authorizing such activity. The construction staging area shall not create a public or private nuisance.
 - i. *Disturbance Coordinator.* A disturbance coordinator shall be identified by the developer for this project. The disturbance coordinator shall be responsible for ensuring compliance with the hours of construction, site housekeeping, and other construction-related conditions

in this permit.

- j. *Daily Log.* The disturbance coordinator shall maintain a log of daily activities on the project, including but not limited to, verification of site closure activities, project cleanliness, complaints on site activities and conditions and dates and times of the coordinators visits to the project if the coordinator is not solely responsible for this project site. This log shall be available for inspection by City Staff upon request.
 - k. *Telephone Contact.* A phone with answering machine for complaints or other communication during non-work hours shall be maintained during the duration of project construction. The phone number should be a local call for surrounding residents.
 - l. *Signage.* The name and phone number of the disturbance coordinator, the hours of construction limitations, the project contact telephone number, City File Number PD06-040, city contact and phone number (department and phone number) shall be displayed on a weatherproof sign posted at each entrance to the project site.
12. **Dust Control/Air Quality.** Project construction shall implement the Bay Area Air Quality Management District's list of feasible construction dust control measures. The following construction practices shall be implemented during all phases of construction on the project site:
- a. Water all active construction areas at least twice daily or as often as needed to control dust emissions.
 - b. Cover all trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
 - c. Apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas during construction of the site.
 - d. Sweep daily or as often as needed with water sweepers all paved access roads, parking areas and staging areas at construction sites to control dust.
 - e. Sweep public streets daily, or as often as needed, with water sweepers, to keep streets free of visible soil material.
 - f. Hydro seed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more).
 - g. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.) sufficient to prevent visible airborne dust.
 - h. Limit traffic speeds on unpaved roads to 15 mph.
 - i. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.

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

13. **Biological Resources.** If possible, construction should be scheduled between September 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 conducted no more than thirty (30) days prior to the initiation of these activities. The surveying ornithologist shall inspect all trees in and immediately adjacent to the construction area for raptor nests. If an active raptor nest is found in or close enough to the construction area to be disturbed by these activities, the ornithologist, shall, in consultation with the State of California, Department of Fish & Game (CDFG), designate a construction-free buffer zone (typically 250 feet) around the nest. The applicant shall submit a report indicating the results of the survey and any designated buffer zones to the City's Environmental Principal Planner, to the satisfaction of the Director of Planning, prior to the issuance of any grading or building permit.

14. **Hazards and Hazardous Materials.**

a. If a well is found on the project site, a well destruction permit shall be obtained from the Santa Clara Valley Water District and the well shall be destroyed in accordance with District standards.

b. If a septic system is found during construction, it shall be abandoned in accordance with the requirements of the Santa Clara County Sewage Disposal Ordinance.

c. If an underground storage tank(s) is found during construction, a closure plan shall be prepared and a permit for the removal of the underground storage tank(s) shall be obtained and the underground storage tank(s) removed in accordance with City procedures.

d. The project site shall be viewed by a qualified environmental professional during demolition and pre-grading activities to observe areas of the property that may have been obscured by existing structures or pavement for such items as stained soils, septic systems, underground storage tanks, and/or unforeseen buried utilities; and, if found, a mitigation program shall be developed, submitted to the City's Environmental Principal Planner, and implemented with such measures as soil testing, removal and/or offsite disposal at a permitted facility, to the satisfaction of the Director of Planning and the City's Municipal Environmental Compliance Officer.

e. If any evidence of soil and/or groundwater impact from the adjacent former underground storage tank site is encountered during grading/excavation work, the Santa Clara Valley Water District shall be contacted; testing shall be done; and, if warranted, a mitigation plan shall be developed and implemented with measures such as soil removal and/or treatment, and groundwater treatment.

Formatted: Bullets and Numbering

15. Hydrology and Water Quality

- a. A Notice of Intent and a Storm Water Pollution Prevention Plan that addresses both construction and post-construction periods and specifies erosion and sediment control measures, waste disposal controls, maintenance responsibilities and non-stormwater management controls, shall be submitted to the RWQCB and maintained onsite, respectively, to comply with the stormwater discharge requirements of the NPDES General Permit.
- b. A Storm Water Pollution Prevention Plan (SWPPP) in compliance with the local NPDES permit shall be developed and implemented including: 1) site description; 2) erosion and sediment controls; 3) waste disposal; 4) implementation of approved local plans; 5) proposed post-construction controls, including description of local post-construction erosion and sediment control requirements; 6) Best Management Practices (BMPs) such as the use of infiltration of runoff onsite, first flush diversion, flow attenuation by use of open vegetated swales and natural depressions, stormwater retention or detention structures, oil/water separators, porous pavement, or a combination of these practices for both construction and post-construction period water quality impacts; and 7) non-storm water management.
- c. The project shall incorporate Best Management Practices (BMPs) that include site design measures, source controls, and stormwater treatment controls to minimize stormwater pollutant discharges to the maximum extent practicable.

Formatted: Bullets and Numbering

16. Noise

- a. Mechanical ventilation shall be provided in accordance with Uniform Building Code requirements when windows are to be closed for noise control.
- b. Windows and sliding glass doors shall be maintained closed and STC 30 to 34 or higher rated windows and glass doors shall be installed at all the façades facing or perpendicular to South King Road of units 1 through 4 on each floor to ensure an interior noise level of 45 dB DNL can be achieved.
- c. Prior to the issuance of an occupancy permit, building plans for all units shall be checked by a qualified acoustical consultant to ensure that noise levels are attenuated sufficiently to the satisfaction of the Director of Planning.
- d. Construction activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any onsite or offsite work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific construction noise mitigation plan and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.
- e. The contractor shall use “new technology” power construction equipment with state-of-the-art noise shielding and muffling devices. All internal combustion engines used on the project site shall be equipped with adequate mufflers and shall be in good

Formatted: Bullets and Numbering

mechanical condition to minimize noise created by faulty or poorly maintained engines or other components.

17. **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.
- a. **Minor Improvement Permit:** The public improvements conditioned as part of this permit require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This permit includes privately engineered plans, insurance, surety deposit, and engineering and inspection fees.
 - b. **Transportation:** The projected traffic for this project was reviewed and found to be minimal, therefore no further traffic analysis is required.
 - c. **Grading/Geology:**
 - 1) A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
 - 2) 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 investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.
 - d. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) that include site design measures, source controls, and stormwater treatment controls to minimize stormwater pollutant discharges.
 - 1) 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.
 - e. **Flood: Zone D**
 - 1) The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for zone D.

- 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. Undergrounding:
- 1) The In Lieu Undergrounding Fee shall be paid to the City for all frontage adjacent to King Road prior to issuance of a Public Works clearance. 100 percent of the base fee in place at the time of payment will be due. Currently, the 2009 base fee is \$395 per linear foot of frontage and is subject to change every January 1st based on the Engineering News Record's 20 City Average Cost Index. . The project will be required to pay the current rate in effect at the time the Public Works Clearance is issued.
 - 2) The Director of Public Works may, at her discretion, allow the developer to perform the actual undergrounding of all off-site utility facilities fronting the project adjacent to King Road. Developer shall submit copies of executed utility agreements to Public Works prior to the issuance of a Public Works Clearance.
- h. Reimbursement: The developer will be required to reimburse the City for costs advanced for the construction of street improvements along (Street Name) in accordance with City Ordinance #19663.
- i. Street Improvements:
- 1) Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
 - 2) Remove and replace broken or uplifted curb, gutter, and construct 10' new attached sidewalk and AC pavement along project frontage. A 4' sidewalk easement will be required.
 - 3) Applicant to install sanitary manhole at connection on King Road.
 - 4) Remove existing transformer shown on-site within the proposed bioswale.
 - 5) Close unused driveway cut(s).
 - 6) Proposed driveway width to be 26'.
 - 7) Irrevocable offer of dedication along King Road will be required to the satisfaction of the Director of Public Works.
 - 8) 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.

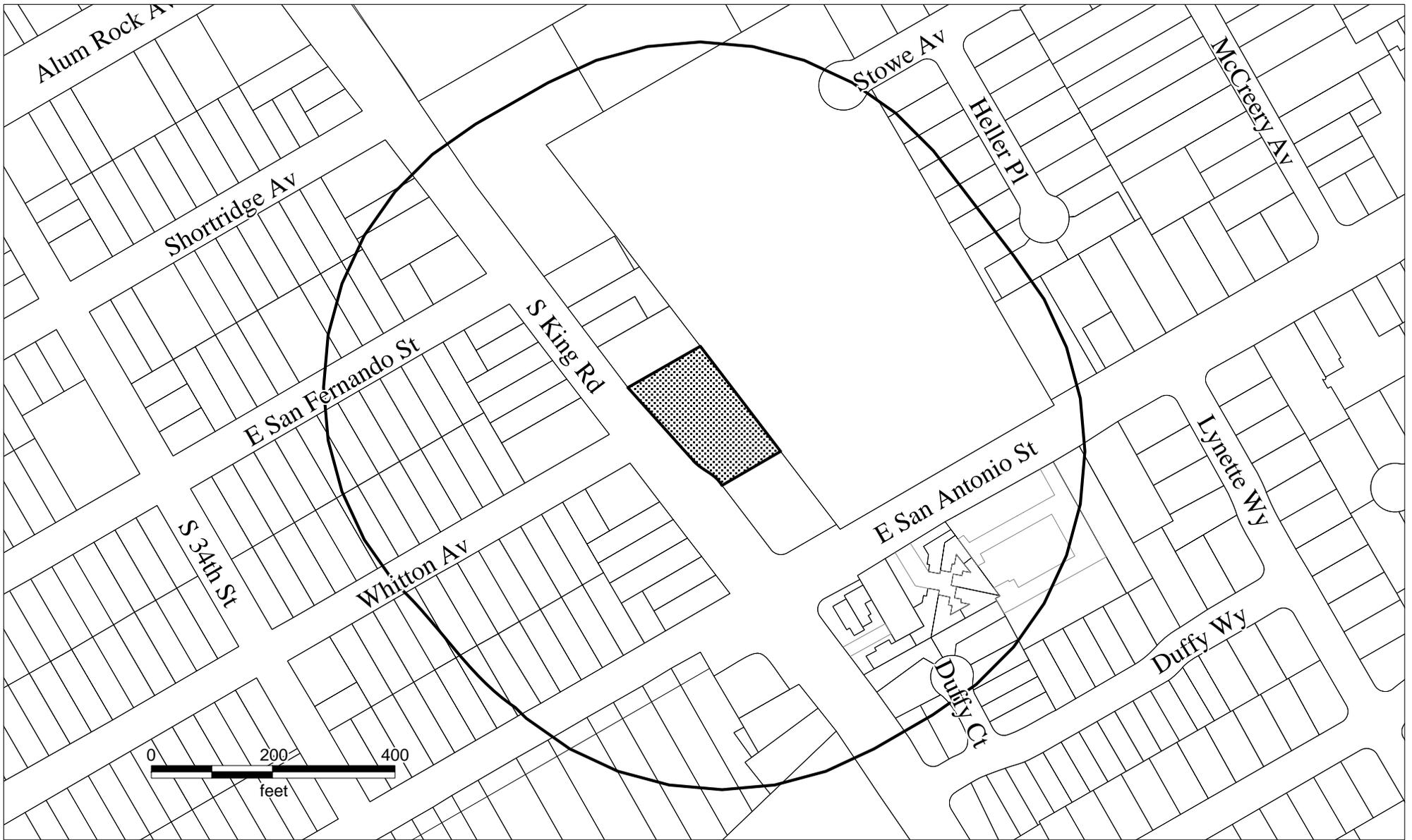
- j. SNI: This project is located within the Mayfair SNI area. Public improvements shall conform to the approved EIR and neighborhood improvement plan.
 - k. Electrical: Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
 - l. Street Trees:
 - 1) The locations of the street trees will be determined at the street improvement stage. Street trees shown on this permit are conceptual only.
 - 2) Contact the City Arborist at (408) 277-2756 for the designated street tree.
 - 3) 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 cut-outs at the back of curb. Obtain a DOT street tree planting permit for any proposed street tree plantings.
 - 4) Replace any missing street trees in empty tree wells or park strips along King Road and match existing trees per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Obtain a DOT street tree planting permit for any proposed street tree plantings.
 - 5) 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.
18. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set and mitigation shall be provided for any removal of trees. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. 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.
19. **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.
20. **Utilities.** All on-site telephone, electrical and other overhead service facilities shall be placed underground, except for electrical service on Lot 10.
21. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.

22. **Materials.** All building and materials are to be those specified on the approved plan set.
23. **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. *Construction Plans.* This permit file number, PD06-040, shall be printed on all construction plans submitted to the Building Division.
 - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
 - c. *Americans With Disabilities Act.* The applicant shall provide appropriate access as required by the Americans With Disabilities Act (ADA).
 - d. *Street Number Visibility.* Street numbers of the buildings shall be easily visible at all times, day and night.
24. **Police Issues.** The following requirements shall be provided to the satisfaction of the Director of Planning.
- a. *Address Numbers.* All buildings shall be clearly marked by address numbers.
 - b. *Security Hardware.* The project developer shall install adequate security hardware to the satisfaction of the Chief of Police and Chief Building Official.
25. **Anti-Graffiti.** Graffiti shall be removed from buildings and wall surfaces within 48 hours of defacement.

APPROVED and issued this 27th day of January, 2010.

JOSEPH HORWEDEL
Director, Planning, Building and Code Enforcement

Deputy



Location Map with Noticing

File Num: PDA06-040-01

District: 5

Quad: 68



Map Created On:
7/17/2009

Prepared by the Department of Planning, Building, and Code Enforcement
City of San Jose, California

Joseph Horwedel, Director

Noticing Radius: 500 Ft

