

PLANNED DEVELOPMENT PERMIT

FILE NO.	PD10-001
LOCATION OF PROPERTY	East side of Monterey Road, approximately 700 feet northerly of Tully Road
ZONING DISTRICT	A(PD) Planned Development
ZONING FILE NUMBER	PDC09-015
GENERAL PLAN DESIGNATION	High Density Residential (25-50 DU/AC)
PROPOSED USE	A Planned Development Permit to allow for the demolition of a vacant Single Room Occupancy (SRO) facility and a vacant restaurant on a 2.8 gross acres site.
ENVIRONMENTAL STATUS	Use of a Mitigated Negative Declaration for File No. PDC09-015
OWNER/ADDRESS	Monterey Road L.P. 1400 Parkmoor Avenue, Suite 190 San Jose, CA 95126

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 High Density Residential (25-50 DU/AC) on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The site is zoned A(PD) Planned Development.
3. The Planned Development Zoning (File No. PDC09-015) was reviewed by the City Council and approved with Ordinance No. 28696, adopted February 9, 2010.
4. The subject lot is rectangular in shape and contains 2.8 acres.
5. The site is currently developed with a vacant Single Room Occupancy (SRO) facility, in ground pool, landscaping, and a vacant restaurant building.
6. This is a Planned Development Permit to allow for the demolition of the all buildings on the subject 2.8 acre site, including the inground pool.
7. No ordinance sized trees will be removed as a part of the subject demolition.
8. The environmental impacts of this project were addressed in an Initial Study and Mitigated Negative Declaration for a General Plan Amendment and a Planned Development Rezoning (File Nos. GP08-07-04 and PDC09-015) that was adopted on May 27, 2009, consistent with the California Environmental Quality Act (CEQA) of 1970, as amended, in that the activity in question will not have a significant effect on the environment with mitigation.

FINDINGS

The Director of Planning, Building, and Code Enforcement concludes and finds, based on the analysis of the above facts, that pursuant to Section 20.80.460 of the San José Municipal Code the following criteria have been considered to determine whether the benefits of permitting the demolition of the existing building outweighs the impacts of demolition:

1. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;
2. The failure to approve the permit would jeopardize public health, safety or welfare;
3. The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood.
4. The approval of the permit should maintain the supply of existing housing stock in the City of San José;
5. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible, however there are no buildings of historical significance on the subject site;
6. Rehabilitation or reuse of the existing building would not be feasible; and
7. The demolition, removal or relocation of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.
8. 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 as it included the demolition of the existing buildings.
9. The environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, storm water run off, and odor, which even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties in that:
 - a. The environmental impacts of this project were addressed in an Initial Study and Mitigated Negative Declaration for a Planned Development Rezoning (File Nos. GP08-07-04 and PDC09-015) that was adopted on May 27, 2009. The Mitigated Negative Declaration identified mitigation measures in the following categories: Biological Resources and Noise. Mitigation has been included in the project to ensure that the project does not result in significant environmental impacts.
 - b. The proposed project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the California Department of Fish and Game Code.

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

- a. The proposed project conforms in all respects to the provisions of Title 20 of the San José Municipal Code.
- b. The proposed project is in conformance with the California Environmental Quality Act.

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 thirty (30) months from and after the date of issuance hereof by said Director, if within such thirty month period, the proposed demolition 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. **Release of Permit.** No demolition of the structure may be implemented unless and until this Planned Development Permit is released to the Building Division.
4. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Grading Permit as 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.
5. **Conformance to Plans.** Development of the site shall conform to approved Planned Development plans entitled "Markham Terrace Apartments, 2112 Monterey Road, San Jose, California" last dated February 16, 2010, 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. **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.
7. **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.
8. **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.

9. **Revocation.** This Planned Development Permit is subject to revocation for violation of any of its provisions or conditions.
10. **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.
11. **Conformance with Previously Approved Zoning and Environmental Clearance.** All conditions of approval and required environmental mitigation measures from the previously approved Planned Development Zoning (File no. PDC07-096) remain in effect.
12. **Demolition 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 demolition impact mitigation measures are fully complied with throughout the duration of all demolition activities associated with this project. 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 impact mitigation measures shall be included in all contract documents for the project to ensure full disclosure to contractors and subcontractors.
 - b. *DemolitionHours.* Demolition 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 personnel. The demolition hours shall be printed on all plans for the project used to construct the project.
 - c. *Enforcement.* The Director of Planning, Building and Code Enforcement may order an immediate halt to demolition 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, 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.
 - d. *Deliveries.* Deliveries shall not occur outside the above demolition 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. *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.
 - f. *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 demolition, site housekeeping, and other nuisance compliance conditions in this permit. The coordinator shall also listen and respond to community member concerns regarding demolition, 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.

- g. *Posting of Telephone Number.* The name and phone number of the Disturbance coordinator, the hours of construction limitations, City File Number PD10-001, 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.
 - h. *Street Cleaning and Dust Control.* During demolition, 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.
 - i. *Site Watering.* The proposed project shall use recycled water for all grading, dust control, and other non-potable approved uses during demolition to the satisfaction of the Director of Public Works.
13. **Short-Term Air Quality Impacts / Demolition Activities.** The project developer shall implement the following measures during demolition of the existing structures to minimize short-term air quality impacts:
- a. During demolition, dust-proof chutes will be used, whenever possible, for loading construction debris onto trucks.
 - b. During demolition, watering will be used to control dust generation during the demolition of structures and the break-up of pavement materials.
 - c. The project developer shall obtain all necessary local and State Permits.
 - d. Cover stockpiles of debris, soil, sand, and any other materials that can be windblown. All trucks transporting these materials shall be covered.
 - e. Damp sweep daily or more often if determined necessary by either the Director of Planning or Public Works, all paved construction areas, to keep them free from visible dust, dirt, or debris.
 - f. Subsequent to clearing, grading, or excavating, exposed portions of the site shall be watered, landscaped, treated with non-toxic soil stabilizers, or covered as soon as possible.
14. **Recycling.** Scrap construction and demolition material shall be recycled. Integrated Waste Management staff in the Environmental Services Department can provide assistance on how to recycle debris, including information on haulers and processors. Go to <http://www.sjrecycles.org/business/cddd.htm> for more information.
15. **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. **Transportation:** This project is exempt from the Level of Service (LOS) Policy, and no further LOS analysis is required because the project proposes demolition of existing buildings only.
 - b. **Grading/Geology:**
 - i. A grading permit may be 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 more than one acre, 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.
- c. **Flood: Zone D** 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.
- d. **Street Improvements:**
- i. Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
 - ii. Improvement of the public streets shall be to the satisfaction of the Director of Public Works.
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. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
18. **Environmental Mitigation – Biological.**
- a. 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 California Department of Fish and Game, designate a construction-free buffer zone (typically 250 feet) around the nest, which shall be maintained until after the breeding season has ended and/or a qualified ornithologist has determined that the young birds

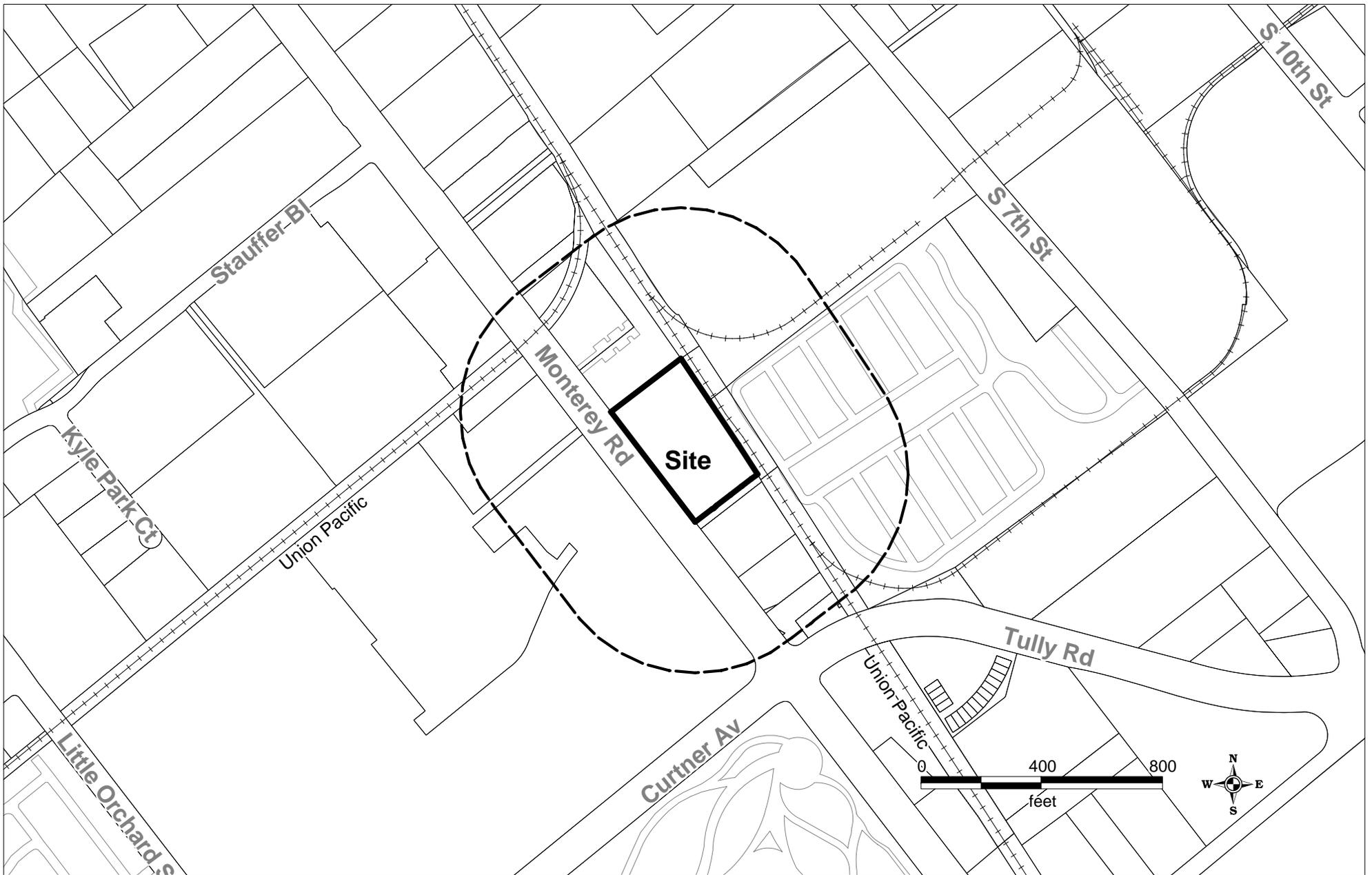
have fledged. The applicant shall submit a report to the City's Environmental Principal Planner indicating the results of the survey and any designated buffer zones to the satisfaction of the City's Environmental Principal Planner prior to the issuance of any grading or building permit.

- b. Surveys for roosting bats shall be conducted by a qualified bat biologist no more than thirty (30) days prior to any building demolition or removal, construction activities, or relocation and/or removal of trees suitable for roosting by bats. If no bats are observed to be roosting in these features, then no further action would be required and construction activities could proceed. If a female or maternity colony of bats is found on the project site, and the project can be constructed without disturbance to the roosting colony, a qualified bat biologist shall designate buffer zones (both physical and temporal) as necessary to ensure the continued success of the colony; buffer zones may include a 200-foot buffer zone from the roost and/or timing of the construction activities outside the maternity roosting season (from February 15th to April 15th and from August 15th to October 15th).
- c. If an active maternity roost is known to occur on the site and the project cannot be conducted outside of the maternity roosting season, bats shall be excluded from February 15th to April 15th and from August 15th to October 15th to prevent the formation of new maternity colonies. Such exclusion shall occur, under the direction of a qualified bat biologist, by sealing openings and providing bats with one-way exclusion doors. Bat roosts shall be monitored as determined necessary by a qualified bat biologist, and the removal or displacement of bats shall be performed in conformance with California Department of Fish and Game requirements.
- d. A biologist report outlining the results of pre-construction bat surveys and any recommended buffer zones or other mitigation shall be submitted to the City's Environmental Principal Planner and shall be approved to the satisfaction of the Director of Planning prior to the issuance of any grading, building, or tree removal permit.

APPROVED and issued on this 7TH day of April, 2010.

Joseph Horwedel, Director
Planning, Building, and Code Enforcement

Deputy



File No: PD10-001
District: 7

Noticing Radius: 500 Feet



Prepared by the Department of Planning,
Building, and Code Enforcement
2/17/2010