

## PLANNED DEVELOPMENT PERMIT AMENDMENT

<b>FILE NO.</b>	<b>PDA08-039-01</b>
<b>LOCATION OF PROPERTY</b>	<b>East side of Campbell Avenue, approximately 2,000 feet northwesterly of Newhall Street (1270 Campbell Avenue).</b>
<b>ZONING DISTRICT</b>	<b>A(PD) Planned Development</b>
<b>ZONING FILE NUMBER</b>	<b>PDC07-081</b>
<b>GENERAL PLAN DESIGNATION</b>	<b>High Density Residential (25-50 DU/AC)</b>
<b>PROPOSED USE</b>	<b>Planned Development Permit to construct 138 multi-family attached residences on a 5.18 gross acre site</b>
<b>ENVIRONMENTAL STATUS</b>	<b>Mitigated Negative Declaration</b>
<b>OWNER/ADDRESS</b>	<b>Sobrato Development Co. 10600 N. De Anza Blvd. Suite 200 Cupertino, CA 95014</b>

### 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 proposed residential density is 27.6 DU/AC.
3. The site is zoned A(PD) Planned Development, zoning file number PDC07-081.
4. The subject lot is approximately 656.97 feet wide by approximately 416.99 feet deep, having a mostly rectangular shape, with the exception of the northeast corner, which is curved. It contains approximately 5.18 acres.
5. The site is currently developed with an industrial building.
6. This is a Planned Development Permit to construct 138 multi-family attached residences with open surface parking on a 5.18 gross acre site.
7. The majority of the project site is within the City of San José with a small portion of the site, in the northwesterly corner, being within the City of Santa Clara.
8. Parking required per the approved Planned Development Zoning for all open parking is 1.5 spaces for studio and one bedroom units, 1.8 spaces for a two bedroom unit, 2.0 spaces for a three bedroom unit and each additional bedroom above three is 0.15 spaces per unit. A 10% reduction is permitted due to the sites location near transit.

9. The project provides 230 parking spaces in an open parking configuration.
10. Private open space and common open space required as part of the Planned Development Zoning is a combined 160 square feet per unit. Open space provided as part of this permit conforms to said General Development Plan standards by averaging 673 square feet of open space per unit.
11. The proposed project will meet all of the development regulations set forth in Planned Development Zoning, PDC07-081, including but not limited to heights, setbacks, densities, etc.
12. The removal 177 trees, of which 6 are of ordinance size, are proposed as part of the subject development. The project will plant 281 trees on the site, which meets the required environmental mitigation for the project.
13. An Initial Study was prepared for this project, and the Director of Planning circulated a Mitigated Negative Declaration for public review that was adopted on Septemebr 23, 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.
14. A Memorandum of Understanding between the City of San José and the City of Santa Clara regarding planning, permit approval and inspection responsibilities for the proposed development was approved by City Council on November 18, 2008.

## **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 High Density Residential (25-50 DU/AC) designation and are compatible with the surrounding area.
  - b. The proposed development furthers the Housing and Growth Management Major Strategies of the General Plan in that it is providing new and varied housing opportunities on an infill development site that is already served by City services and close to a multimodal transportation center.
  - 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.
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 proposed development places units and the community building and the leasing office at street level along Campbell Avenue, enhancing the pedestrian and residential character of the street.
  - 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. A Mitigated Negative Declaration that was adopted on Septemebr 23, 2008 addressed the environmental impacts of this project.

**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 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 José 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 José 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 “1270 Campbell” dated July 6, 2009, last revised April 15, 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 José Municipal Code.
7. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
8. **Revocation.** This Planned Development Permit is subject to revocation for violation of any of its provisions or conditions.
9. **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.
10. **Recycling.** Scrap construction and demolition material should be recycled. Integrated Waste Management staff at (408) 535-3515 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. Any deviation from these hours must be approved through a Planned Development Amendment or Planned development Adjustment; subject to the discretion of the Director of Planning, Building, and Code Enforcement.
  - c. *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.

- 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. *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.
- f. *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.
- g. *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 José upon request.
- h. *Posting of Telephone Number.* The name and phone number of the Construction/Disturbance coordinator, the hours of construction limitations, City File Number PD08-039, 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.
- i. *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.
- j. *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.

**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. This project is required to make a fair share contribution towards the transportation improvements at the intersection of Campbell Avenue and the El Camino Real. The fair share contribution amount will be determined prior to PW clearance.
  - ii. The City has agreed to allow full access to and from the westernmost project driveway under the condition that the inbound left-turn movement at this driveway is monitored regularly. Should significant operational problems or substantial safety issues occur as a result of the inbound left-turn movement, the City may restrict this project driveway to right turns only.
  - iii. A traffic study was completed by Hexagon Transportation Consultants, Inc. and it was found that based on the City of San José level of service standards, none of the signalized study intersections would be significantly impacted by the project. Based on the County Congestion Management Plan (CMP) level of service standards, all of the CMP signalized study intersections would operate at an acceptable level of service during both the AM and PM peak hours of traffic under project conditions.
- c. **Street Vacation:** A street vacation is required in order to accomplish the land use plan as shown. 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. The preliminary title report indicates the applicant owns the street in fee. Therefore, upon vacation no further action by the City is required.
- 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. The project's preliminary Stormwater Control Plan and numeric sizing calculations have been reviewed.
  - ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
  - iii. 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. **Flood: Portions in Zone AH, Elevation 63.00' National Geodetic Vertical Datum 1929 (NGVD 1929), and Zone D**
  - i. The project is proposing a residential podium building with an at-grade garage. A portion of the project site has been designated as Flood Zone AH, Elevation 63.00' NGVD 1929, effective October 25, 2006, by a Letter of Map Revision (LOMR) issued by the Federal Emergency Management Agency (FEMA). The Santa Clara Valley Water District (District) administered the LOMR submittal in conjunction with the Downtown and Lower Guadalupe River Flood Protection Projects. The net result is that a portion of the project site will continue to remain within the 100-year floodplain (area having a one-percent or greater chance of being flooded in any given year).
  - ii. Elevate the lowest floor, including basement, above 63.00' NGVD 1929.
  - iii. An Elevation Certificate (FEMA Form 81-31) based on construction drawings is required prior to issuance of a building permit. Consequently, an Elevation Certificate based on finished construction is required prior to issuance of an occupancy permit.
  - iv. Building support utility systems such as HVAC, electrical, plumbing, air conditioning equipment, including ductwork, and other service facilities must be elevated above the base flood elevation or protected from flood damage.
  - v. Since a portion of the proposed building is within the 100-year floodplain and future property owners may be required to purchase flood insurance, the project may apply for a Letter of Map Revision (LOMR) to FEMA for removal of the building from the 100-year floodplain.
- g. **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.
- h. **Parks:** In accordance with the Parkland Dedication and Park Impact Ordinances (SJMC 19.38/14.25), the park impact fee will be due for any additional living units that are built.

i. **Street Improvements:**

- i. Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
- ii. Construct curb, gutter, and 10' attached sidewalk with tree wells along Campbell Avenue frontage.
- iii. Close any unused driveway cut(s).
- iv. Remove traffic signal at eastern most driveway.
- v. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
- vi. 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. (To assist the Applicant in better understanding the potential cost implications resulting from these requirements, existing pavement conditions can be evaluated during the Planning permit review stage. The Applicant will be required to submit a plan and the applicable fees to the PW Project Engineer for processing. The plan should show all project frontages and property lines. Evaluation will require approximately 20 working days.)

j. **Complexity Surcharge:** Based on established criteria, the public improvements associated with this project have been rated medium complexity. An additional surcharge of 25% will be added to the Engineering & Inspection (E&I) fee collected at the street improvement stage.

k. **Sanitary:** The project is required to submit plan and profile of the private sewer mains with lateral locations for final review and comment prior to construction.

l. **Electrical:**

- i. 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
- ii. Locate and protect existing electrical conduit in driveway and/or sidewalk construction.
- iii. Provide clearance for electrical equipment from driveways, and relocate driveway or electrolier. The minimum clearance from driveways is 5' in residential areas.
- iv. 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.

m. **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. Contact the City Arborist at (408) 277-2756 for the designated street tree.
- iii. 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.

n. **Private Streets:**

- i. Per Common Interest Development (CID) Ordinance, all common infrastructure improvements shall be designed and constructed in accordance with the current CID standards.
- ii. The plan set includes details of private infrastructure improvements. The details are shown for information only; final design shall require the approval of the Director of Public Works.

o. **Referrals:** This project should be referred to the California Department of Transportation (CalTrans) and the City of Santa Clara.

13. **Parkland Dedication Ordinance.** This development is subject to the requirements of the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San José 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. **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 Impact Fees.* The applicant shall provide evidence to the Chief Building Official that the applicable Park Impact Fees, pursuant to Ordinance 24172 (Chapter 14.25 of Title 14 of the San José Municipal Code), have been paid to the satisfaction of the Director of Public Works.
- b. *Construction Plans.* This permit file number, PDA08-039-01, 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.

15. **Fire Clearance for Issuing Permits.** The Fire Department's review was limited to verifying compliance of the project to Article 9, Appendix III-A, and Appendix III-B of the 2001 California Fire Code with City of San José Amendments (SJFC). Compliance with all other applicable fire and building codes and standards relating to fire and panic safety shall be verified by the Fire Department during the Building Permit process.

16. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by the Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief.

17. **Fire Retardant Roof.** All buildings shall have fire retardant roofs subject to the satisfaction of the Fire Chief.

18. **Environmental Mitigation.**

a. **Air Quality.**

- i. Water all active construction areas at least twice daily and more often during windy periods to prevent visible dust from leaving the site.
- ii. Active areas adjacent to existing land uses shall be kept damp at all times or shall be treated with non-toxic stabilizers or dust palliatives.
- iii. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.
- iv. Pave, apply water at least three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
- v. Sweep daily, or more often if necessary (preferably with water sweepers) to prevent visible dust from leaving the site all paved access roads, parking areas, and staging areas at construction sites; water sweepers shall vacuum up excess water to avoid runoff-related impacts to water quality.
- vi. Sweep streets daily, or more often if necessary (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 (previously graded areas inactive for ten days or more).
- 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.
- xi. Limit traffic speed on unpaved roads to 15 mph.

**b. Biological Resources.**

- i. The proposed project shall replace trees removed at the following ratios:

<b>Table 4.4-2 Standard Tree Replacement Requirements</b>		
<b>Diameter of Tree to be Removed</b>	<b>Non-Native</b>	<b>Minimum Size of Each Replacement Tree</b>
18 inches or greater	4:1	24-inch box
12 – 18 inches	2:1	24-inch box
Less than 12 inches	1:1	15-gallon container
<p>Notes:</p> <p>X:X = Tree replacement to tree loss ratio</p> <p>Trees greater than 18-inches in diameter shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees.</p>		

- ii. 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 completed 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 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 satisfaction of the City’s Environmental Principal Planner prior to the issuance of any grading or building permit.
- iii. Pre-construction treatments:
- 1) The applicant shall retain a consulting arborist. The construction superintendent shall meet with the consulting arborist before beginning work to discuss work procedures and tree protection.
  - 2) Fence all trees to be retained to completely enclose the TREE PROTECTION ZONE prior to demolition, grubbing or grading. Fences shall be 6 ft. chain link or equivalent as approved by consulting arborist. Fences are to remain until all grading and construction is completed.

- 3) Prune trees to be preserved to clean the crown and to provide clearance. All pruning shall be completed or supervised by a Certified Arborist and adhere to the Best Management Practices for Pruning of the International Society of Arboriculture.

iv. During construction:

- 1) No grading, construction, demolition or other work shall occur within the TREE PROTECTION ZONE. Any modifications must be approved and monitored by the consulting arborist.
- 2) Any root pruning required for construction purposes shall receive the prior approval of, and be supervised by, the consulting arborist.
- 3) Supplemental irrigation shall be applied as determined by the consulting arborist.
- 4) If injury should occur to any tree during construction, it shall be evaluated as soon as possible by the consulting arborist so that appropriate treatments can be applied.
- 5) No excess soil, chemicals, debris, equipment or other materials shall be dumped or stored within the TREE PROTECTION ZONE.
- 6) Any additional tree pruning needed for clearance during construction must be performed or supervised by the consulting arborist, not by construction personnel.
- 7) As trees withdraw water from the soil, expansive soils may shrink within the root area. Therefore, foundations, footings and pavements on expansive soils near trees shall be designed to withstand differential displacement.

c. **Cultural Resources.**

- i. A systematic inspection or survey of the present ground surface will provide archaeological data regarding post-depositional disturbance levels and shall be conducted by a qualified archaeologist. An archaeological survey of the entire parcel shall be completed after the present built environment (pavement, landscaping) is removed and preparation of the ground surface for new development begins. Depending on the results of the survey, it is recommended that a monitoring program be established in order that periodic inspections of subsurface levels be coordinated to allow careful examination of vertical and horizontal soil relationships between two and eight feet (below the present surface). The monitor must be pre-approved by the Director of Planning (or his designee). After written approval, the Planning Division must be notified at least 48 hours prior to any grading or other subsurface work on the site and the applicant must provide a written protocol which stipulates the manner in which the applicant shall comply with the monitoring requirements.
- ii. If no resources are discovered through the ground survey, the archaeologist shall submit a report to the City's Environmental Principal Planner verifying that the required monitoring occurred and that no further mitigation is necessary.
- iii. If evidence of any archaeological, cultural, and/or historical deposits is found, all work within proximity of the find shall temporarily halt so that the archaeologist can examine the find and document its provenience and nature (drawings, photographs, written description). The archaeological monitor will then direct the work to either proceed if the find is deemed to be insignificant, or instruct the work to continue elsewhere or cease until adequate mitigation measures are adopted. The archaeologist

shall submit reports, to the satisfaction of the City's Environmental Principal Planner, describing the testing program and subsequent results. These reports shall identify any program mitigation that the Developer shall complete in order to mitigate archaeological impacts (including resource recovery and/or avoidance testing and analysis, removal, reburial, and curation of archaeological resources). The key elements of the treatment plan shall include the following:

- 1) Identify scope of work and range of subsurface effects (include location map and development plan).
  - 2) Describe the environmental setting (past and present) and the historic/prehistoric background of the parcel (potential range of what might be found).
  - 3) Develop research questions goals to be addressed by the investigation (what is significant vs. what is redundant information).
  - 4) Detail field strategy used to record, recover, or avoid the finds (photos, drawings, written records, provenance data maps, soil profiles, excavation techniques, standard archaeological methods) and address research goals.
  - 5) Analytical methods (radiocarbon dating, obsidian studies, bone studies, historic artifact studies [list categories and methods for artifacts], etc.).
  - 6) Report structure, outline of document contents (draft for review, final).
  - 7) Disposition of artifacts.
  - 8) Appendices: Site records, updated site records, correspondence, consultation with Native Americans, etc. The need for burial agreement plan for Native American burials can be incorporated into the treatment plan, but must be done in consultation with Most Likely Descendants. Plan should detail goals, methods, and disposition of remains and associated artifacts.
- iv. In the event that human remains and/or cultural materials are found, all project-related construction shall cease within a 50-foot radius in order to proceed with the testing and mitigation measures required. 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:
- 1) 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.
  - 2) A final report shall be submitted to the City's Environmental Principal Planner prior to release of a Certificate of Occupancy. This report shall contain a description of the mitigation programs and its results including a description of the monitoring and testing program, a list of the resources found, a summary of

the resources analysis methodology and conclusions, and a description of the disposition/curation of the resources.

**d. Geology and Soils.**

- i. A design level soils engineering investigation shall be 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. Best management practices will be used to prevent substantial erosion and siltation during development of the site.
- iii. Impacts will be reduced through design and construction in conformance with standard engineering practices for liquefaction, and for impacts related to seismic shaking.
- iv. Seismic shaking hazards would be mitigated by implementation of construction practices in accordance with Seismic Zone 4 building criteria as described in the Uniform Building Code.

**e. Hazards and Hazardous Materials.**

- i. The two closed in-place USTs, located under the planned perimeter parking area, shall be removed and properly disposed of off-site as part of the proposed redevelopment. The tank shells will be segregated from the concrete and, depending on the condition of the shells, will either be recycled or disposed of as hazardous waste if there are signs of residual contamination that cause the shells to be non-recyclable. The concrete within the tanks will likely be disposed as non-hazardous waste; however the final determination for disposition will be made by qualified personnel during removal. If required to determine either recycling and/or disposal options for these materials, sampling and analysis may be completed. Any materials determined to be hazardous waste will be managed in accordance with all applicable state and federal requirements for manifesting, transportation, and disposal. Soil sampling of the excavation pits will be completed, in the event visual or olfactory evidence (i.e. discoloration of soils or odors) is present when the USTs are removed.
- ii. Contractors working on the redevelopment project during site grading, utility installation, and removal of the closed in-place USTs, shall incorporate routine safe work practices and dust control measures and shall adhere to standard worker health and safety procedures as required under the California Department of Occupational Safety and Health Administration (Cal-OSHA) regulations.
- iii. In the event that evidence of unanticipated hazardous materials conditions is encountered, the contractor shall halt work and contact the applicant to arrange for oversight by a qualified engineer or geologist. The applicant shall submit a report to the appropriate regulatory agency and the City's Environmental Compliance Officer, for review and approval, detailing the assessment of the encountered materials and the need for additional mitigation.
- iv. **Avoidance Measures:** The project proposes to implement the following measure to avoid impacts from the use of hazardous materials adjacent to the site:

- 1) As part of the proposed redevelopment, the grade across the site would be raised by approximately one to one and one-half feet. The existing asphalt on the site would be removed including the asphalt that is in closest proximity to the railroad tracks. The existing baserock in this area would remain in place and the grade would be raised with imported soil and a new asphalt covered perimeter roadway and parking areas for the new development would be constructed. The redevelopment plans in the proximity of the railroad, therefore, would avoid disturbance of, or exposure to, subsurface soils that may have previously been exposed at the former surface of the pre-developed site to herbicides and pesticides.
- 2) In accordance with the 2007 California Fire Code, the project proposes to maintain a minimum 10-foot setback from the eastern property line of the site to avoid impacts from a 500-gallon aboveground propane tank located on the Alliance Roofing property.

**f. Hydrology and Water Quality.**

- i. Comply with the City of San José *Special Flood Hazard Area Regulations* and City's Floodplain Management Ordinance, including providing certification of the lowest floor elevation on N.G.V.D datum by a registered professional engineer or surveyor to the Director of Public Works, as set forth in Section 17.08.310.
- ii. Obtain an Elevation Certificate (FEMA Form 81-31) based on construction drawings prior to issuance of a building permit. An Elevation Certificate based on finished construction is also required prior to issuance of an occupancy permit.
- iii. Elevate building support utility systems such as HVAC, electrical, plumbing, air conditioning equipment, including ductwork, and other service facilities above the base flood elevation or otherwise protected from flood damage.
- iv. The project shall comply with Provision C.3 of NPDES permit Number CAS0299718, which provides enhanced performance standards for the management of stormwater of new development.
- v. The project shall comply with applicable provisions of the following City Policies – 1) Post-Construction Urban Runoff Management Policy (6-29) which establishes guidelines and minimum BMPs for all projects and 2) Post-Construction Hydromodification Management Policy (8-14) which provides for numerically sized (or hydraulically sized) TCMs.
- vi. Prior to the commencement of any clearing, grading or excavation, the project shall comply with the State Water Resources Control Board's National Pollutant Discharge Elimination System (NPDES) General Construction Activities Permit, to the satisfaction of the Director of Public Works, as follows:
- vii. The applicant shall develop, implement and maintain a Storm Water Pollution Prevention Plan (SWPPP) to control the discharge of stormwater pollutants including sediments associated with construction activities;
- viii. The applicant shall file a Notice of Intent (NOI) with the State Water Resources Control Board (SWRCB).
- ix. The project shall incorporate Best Management Practices (BMPs) into the project to control the discharge of stormwater pollutants including sediments associated with construction activities. Examples of BMPs are contained in the publication Blueprint

for a Clean Bay. Prior to the issuance of a grading permit, the applicant may be required to submit an Erosion Control Plan to the City Project Engineer, Department of Public Works, 200 E. Santa Clara Street, San José, California 95113. The Erosion Control Plan may include BMPs as specified in the Association of Bay Area Governments' (ABAG) Manual of Standards Erosion & Sediment Control Measures for reducing impacts on the City's storm drainage system from construction activities. For additional information about the Erosion Control Plan, the NPDES Permit requirements or the documents mentioned above, please call the Department of Public Works at (408) 535-8300.

- x. The project applicant shall comply with the City of San José Grading Ordinance, including erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction. The following specific BMPs will be implemented to prevent stormwater pollution and minimize potential sedimentation during construction:
  - 1) Restriction of grading to the dry season (April 15 through October 15);
  - 2) Utilize on-site sediment control BMPs to retain sediment on the project site;
  - 3) Utilize stabilized construction entrances and/or wash racks;
  - 4) Implement damp street sweeping;
  - 5) Provide temporary cover of disturbed surfaces to help control erosion during construction;
  - 6) Provide permanent cover to stabilize the disturbed surfaces after construction has been completed.

**g. Land Use and Planning.**

- i. The project proposes to pay in-lieu housing fees to the City of Santa Clara to provide for affordable housing in the city.

**h. Noise.**

- i. The project shall incorporate building sound insulation to meet the requirements of the California Building Code to reduce interior noise levels to 45 dBA or lower, using standard construction techniques. Prior to issuance of occupancy permits, building plans for all units will be checked by a qualified acoustical consultant to ensure that noise levels are attenuated sufficiently. All units shall have forced air ventilation systems to allow the windows to remain closed so that an interior noise level of 45 dBA can be achieved.
- ii. Project-specific acoustical analyses are required by the City of San José to insure that interior noise levels will be reduced to 45 dBA DNL or lower. It is also recommended that maximum interior noise levels be limited to 50 dBA  $L_{max}$  within bedrooms and 55 dBA  $L_{max}$  within other habitable rooms to avoid sleep disturbance and activity interference indoors. Building sound insulation requirements would need to include the provision of forced-air mechanical ventilation for all new units, so that windows could be kept closed at the occupant's discretion to control noise. Special building construction techniques (e.g., sound-rated windows and building facade treatments) may be required for new residential uses adjacent to the railroad. These treatments include, but are not limited to, sound rated windows and doors, sound rated wall constructions, acoustical caulking, etc. The specific determination of what

- treatments are necessary will be conducted 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 and approved prior to issuance of a building permit. Feasible construction techniques such as these would adequately reduce average interior noise levels to 45 dBA DNL or lower and maximum interior noise levels to 50 dBA  $L_{\max}$  in bedrooms and 55 dBA  $L_{\max}$  in other habitable rooms.
- iii. At the final design phase, a qualified acoustical consultant shall review the construction plans to ensure that the placement of a portable rock crusher on the site will reduce construction noise levels to 60 dBA  $L_{\text{eq}}$  at the nearest sensitive receivers to the east. In the event rock crusher noise levels would not be reduced to 60 dBA  $L_{\text{eq}}$  at noise sensitive receivers based on the location of intervening structures, the acoustical consultant shall identify the appropriate height and location of recycled material stockpiles to be maintained during crushing activities in order to attenuate noise to the maximum amount feasible. The required construction noise reduction measures shall be printed on all construction documents, contracts, and project plans; and be reviewed by the City's Environmental Principal Planner prior to issuance of building permits.
  - iv. Construction will be limited to the hours of 7:00 AM to 7:00 PM Monday through Friday for any on-site or off-site 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.
  - v. 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 mechanical condition to minimize noise created by faulty or poor maintained engines or other components.
  - vi. Locate stationary noise generating equipment as far as possible from sensitive receptors. Staging areas shall be located a minimum of 200 feet from noise sensitive receptors, such as residential uses.
  - vii. Proposed common open space areas on the project site must be acoustically protected to maintain noise levels in these spaces below 65 dBA DNL.
- 19. Homeowner's Association.** A Homeowner's Association shall be established to oversee maintenance of all common areas, including driveways/courtyards and landscaping.
- a. The property owner shall provide disclosure to all tenants in the rental lease agreements and/or condominium property owners in the Covenants, Conditions, and Restrictions that a University baseball stadium is located adjacent to the project, across Campbell Avenue from the site and that the site is bordered by an active railroad line to the north.
- 20. 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.

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 José 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. **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.
25. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set.
26. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
27. **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.
28. **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.
29. **Green Building.** The development is subject to the City’s Green Building Ordinance for Private Sector New Construction. Prior to the issuance of any shell or complete building permits issued on or after September 8, 2009 for the construction of buildings approved through the scope of this *Planned Development Permit Amendment*, the applicant shall pay a Green Building Refundable Deposit. The project must receive the minimum green building certification of LEED Certified or GreenPoint Rated. The request for refund of the Green Building Deposit together with green building certification evidence demonstrating the achievement of the green building standards indicated above shall be submitted within a year after the building permit expires or becomes final, unless a request for an extension is submitted to the Director of Planning, Building, and Code Enforcement in accordance with Section 17.84.305D of the Municipal Code

**APPROVED** and issued on this **21<sup>st</sup> day of April, 2010.**

Joseph Horwedel, Director  
Planning, Building, and Code Enforcement

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Deputy

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