

**PLANNED DEVELOPMENT PERMIT**

<b>FILE NO.</b>	<b>PD09-027</b>
<b>LOCATION OF PROPERTY</b>	<b>North side of Olsen Drive approximately 100 feet west of Cypress Avenue</b>
<b>ZONING DISTRICT</b>	<b>A(PD) Planned Development</b>
<b>GENERAL PLAN DESIGNATION</b>	<b>Medium Density Residential MDR (8-16 DU/AC)</b>
<b>PROPOSED USE</b>	<b>Planned Development Permit to allow the construction of three single-family detached residences on a 0.24 gross acre site.</b>
<b>ENVIRONMENTAL STATUS</b>	<b>Exempt</b>
<b>APPLICANT / ADDRESS</b>	<b>Aman Dulay 5015 Amondo Drive San Jose CA 95129</b>

**FACTS**

The Director of Planning finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Medium Density Residential (8-16 DU/AC) on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The proposed residential density is 12.5 DU/AC.
3. The site is zoned A(PD) Planned Development.
4. The subject lot contains approximately 0.24 acres and is located on the north side of Olsen Drive approximately 100 feet west of Cypress Avenue.
5. The subject site is currently developed with a two-family residence.
6. The project proposes the development of three detached residential units on the site.
7. The subject site is primarily surrounded by single- and two-family residences.
8. The proposed project will meet all of the development regulations set forth in Planned Development Zoning, File No. PDC08-008, including but not limited to heights, setbacks, densities, open space, parking and environmental mitigation.
9. No ordinance sized trees are proposed for removal as part of the subject development.

10. Under the provisions of Section 15303(a), New Construction or the Conversion of Small Structures, of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is exempt from the environmental review requirements of Title 21 of the San Jose Municipal Code, implementing the California Environmental Quality Act of 1970 as amended in that the project is located in an urbanized area and is not designed for more than three single-family residences.

The Director of Planning has considered all of the following criteria in evaluating the proposed demolition.

1. The failure to approve the permit would result in the creation of continued existence of a nuisance, blight or dangerous condition in that the structures are in dilapidated condition and provide an attractive nuisance and hazard to the neighborhood.
2. The failure to approve the permit would jeopardize public health, safety or welfare.
3. The approval of the permit should maintain the supply of existing housing stock in the City of San José.
4. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible.
5. Rehabilitation or reuse of the existing buildings would not be feasible.
6. The approval of the demolition of the buildings should facilitate a project that is compatible with the surrounding neighborhood.
7. The demolition of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.

## **FINDINGS**

The Director of Planning 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 General Plan Land Use/Transportation Diagram designation of Medium Density Residential (8-16 DU/AC) for the site.
  - b. The project furthers the Housing and Growth Management Major Strategies, as the change will facilitate redevelopment of an infill site in an urbanized area.
  - c. The building scale does not overwhelm the neighborhood.
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.
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. On-site structures are compatible in terms of height and massing.
  - c. The project conforms to the Residential Design Guidelines.
4. The environmental impacts of the project including, but not limited to cultural resources; noise related impacts due to construction noise and existing noise levels; and 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. Under the provisions of Section 15303(a), New Construction or the Conversion of Small Structures, of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is exempt from the environmental review requirements of Title 21 of the San Jose Municipal Code, implementing the California Environmental Quality Act of 1970 as amended in that the project is located in an urbanized area and is not designed for more than three single-family residences.

Further, the Director of Planning 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.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Director of Planning approves, pursuant to Section 20.80.440(B) and Chapter 20.100 of the San José Municipal Code, the subject Planned Development Permit.

**APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
  - a. Acceptance of the Permit by the applicant; and
  - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire four years 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 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. **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 with Plans.** Construction and development shall conform to approved plans entitled, "South First Street Apartments", dated June 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).
6. **Revocation.** This Permit is subject to revocation for violation of any of its provisions or conditions.
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. **Planned Development District Effectuated.** Once this Planned Development Permit is accepted, the use of territory not covered by the permit shall only be land uses consistent with the Planned Development Zoning District and only upon issuance of a Planned Development Permit for those uses.
9. **Conformance with Previously Approved Zoning and Environmental Clearance.** All conditions of approval from the previously approved Planned Development Zoning (File no. PDC08-008) remain in effect.
10. **Construction Air Quality.** The following BAAQMD feasible construction dust control measures 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 need to control dust emissions.
  - b. Cover all trucks hauling soil, sand, gravel and other loose materials (including demolition debris) and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
  - c. 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.
  - d. Sweep public streets daily or as often as needed to keep streets free of visible soil material.

- e. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
  - f. Replant vegetation in disturbed areas as quickly as possible.
  - g. If demolition debris is processed on-site (i.e., ground or crushed), additional dust control measures will be utilized to avoid all visible dust plumes leaving the site.
11. **Biological Resources.** All trees that are to be removed shall be replaced at the ratios identified in the Planned Development Rezoning Development Standards.
12. **Cultural Resources.** In compliance with state law (Section 7050.5 of the Health and Safety Code and Section 5097.94 of the Public Resources Code), in the event human remains are encountered during grading and construction, all work within 25 feet of the find will stop and the Santa Clara County Coroner's office will be notified. If the remains are determined to be Native American, the Coroner would notify the Native American Heritage Commission to identify the "Most Likely Descendant" (MLD). The City, in consultation with the MLD, would then prepare a plan for treatment, study and re-interment of the remains.

In compliance with state law (Section 7050.5 of the Health and Safety Code and Section 5097.94 of the Public Resources Code), in the event that historical artifacts are found, all work within 50 feet of the find will stop and a qualified archaeologist will examine the find. All significant artifacts and samples recovered during construction would be cataloged and curated by a qualified archaeologist and placed in an appropriate curation facility. The archaeologist must then submit a plan for evaluation of the resource to the City of San José Department of Planning, Building and Code Enforcement for approval. If the evaluation of the resource concludes that the found resource is eligible for the California Register of Historic Resources, a mitigation plan must be submitted to the City of San José Department of Planning, Building and Code Enforcement for approval. The mitigation plan must be completed before earthmoving or construction activities can recommence within the designated resource area.

13. **Hazardous Materials.** The project shall implement the following standard measures:
- a. In conformance with state and local laws, a visual inspection/pre-demolition survey, and possible sampling, shall be conducted prior to the demolition of on-site buildings to determine the presence of asbestos-containing materials and/or lead-based paint.
  - b. During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, California Code Regulations 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings would be disposed of at landfills that meet acceptance criteria for the waste being disposed.
  - c. All potentially friable ACMs shall be removed in accordance with NESHAP guidelines prior to building demolition or renovation that may disturb the materials. All demolition activities will be undertaken in accordance with Cal/OSHA standards contained in Title 8 of CCR, Section 1529, to protect workers from asbestos exposure.

- d. A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.
  - e. Materials containing more than one percent asbestos are also subject to BAAQMD regulations. Removal of materials containing more than one percent asbestos shall be completed in accordance with BAAQMD requirements.
14. **Noise.** The following measures are included in the project to reduce long-term noise impacts.
- a. Noise-generating activities at the construction site or in areas adjacent to the construction site associated with the project in any way should be restricted to the hours of 7:00 AM and 7:00 PM, Monday through Friday. No construction activities shall occur on weekends or holidays because the project site is within 500 feet of a residential area.
  - b. Equip all internal combustion engine driven equipment with intake and exhaust mufflers which are in good condition and appropriate for the equipment.
  - c. Locate stationary noise generating equipment as far as possible from sensitive receptors when sensitive receptors adjoin or are near a construction project area.
  - d. Utilize “quiet” air compressors and other stationary noise sources where technology exists.
  - e. The contractor shall prepare a detailed construction plan identifying the schedule for major noise-generating construction activities. The construction plan shall identify a procedure for coordination with the adjacent noise sensitive facilities so that construction activities can be scheduled to minimize noise disturbance.
  - f. Designate a “noise disturbance coordinator” who would be responsible for responding to any local complaints about construction noise. The disturbance coordinator would determine the cause of the noise complaints (e.g., beginning work too early, bad muffler, etc.) and institute reasonable measures warranted to correct the problem. A telephone number for the disturbance coordinator would be conspicuously posted at the construction site.
  - g. Control noise from construction workers radios so they are not audible from residential property lines.
15. **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. **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:** this project is exempt from the Level of Service Policy (Council

Policy 5-3), and no further LOS analysis is required because the project proposes 15 single-family detached units or less.

c. **Grading/Geology:**

- i) 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.
- ii) A soils report must be submitted to an accepted by the City prior to the issuance of a grading permit.

d. **Stormwater Runoff Pollution Control Measures:** This project proposes less than 10,000 s.f. of impervious surface and is not required to provide numerically sized treatment 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.

e. **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.

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. **Parks:** This residential project is subject to either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San Jose Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San Jose Municipal Code)

h. **Dedication.** Provide a 3' sidewalk easement along Olsen Drive project frontage.

i. **Street Improvements:**

- i Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
- ii Remove existing rolled curb and construct City standard curb, gutter and a 5' attached sidewalk with a 5' park strip behind the sidewalk. A 3' sidewalk easement is required.
- iii 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. **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.
- k. **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.
- l. **Private Streets:** Per Common Interest Development (CID) Ordinance, all common infrastructure improvements shall be designed and constructed in accordance with the current CID standards. Final design of infrastructure improvements shall require the approval of the Director of Public Works. Because the project proposes a valley gutter in the middle of the private drive, the entire private drive shall be concrete material

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 PD09-027 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.

- g. *Tentative Map*. Prior to the issuance of a Building Permit, the developer shall secure a Tentative Map.
15. **Green Building**. Prior to the issuance of any shell or complete building permits after September 8, 2009 for the construction of buildings approved through the scope of this *Planned Development Permit*, the applicant shall submit a GreenPoint or LEED Checklist in accordance with the Private Sector Green Building Policy (Policy 6-32).
  16. **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 Jose 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.
  17. **Fire Flow**. Required fire flow for the site is as approved in writing by the Fire Chief.
  18. **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.
  19. **Irrigation Standards**. The applicant shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set and is consistent with the City of San Jose Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect prior to Certificate of Occupancy.
  20. **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.
  21. **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.
  22. **Anti-Graffiti**. The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.

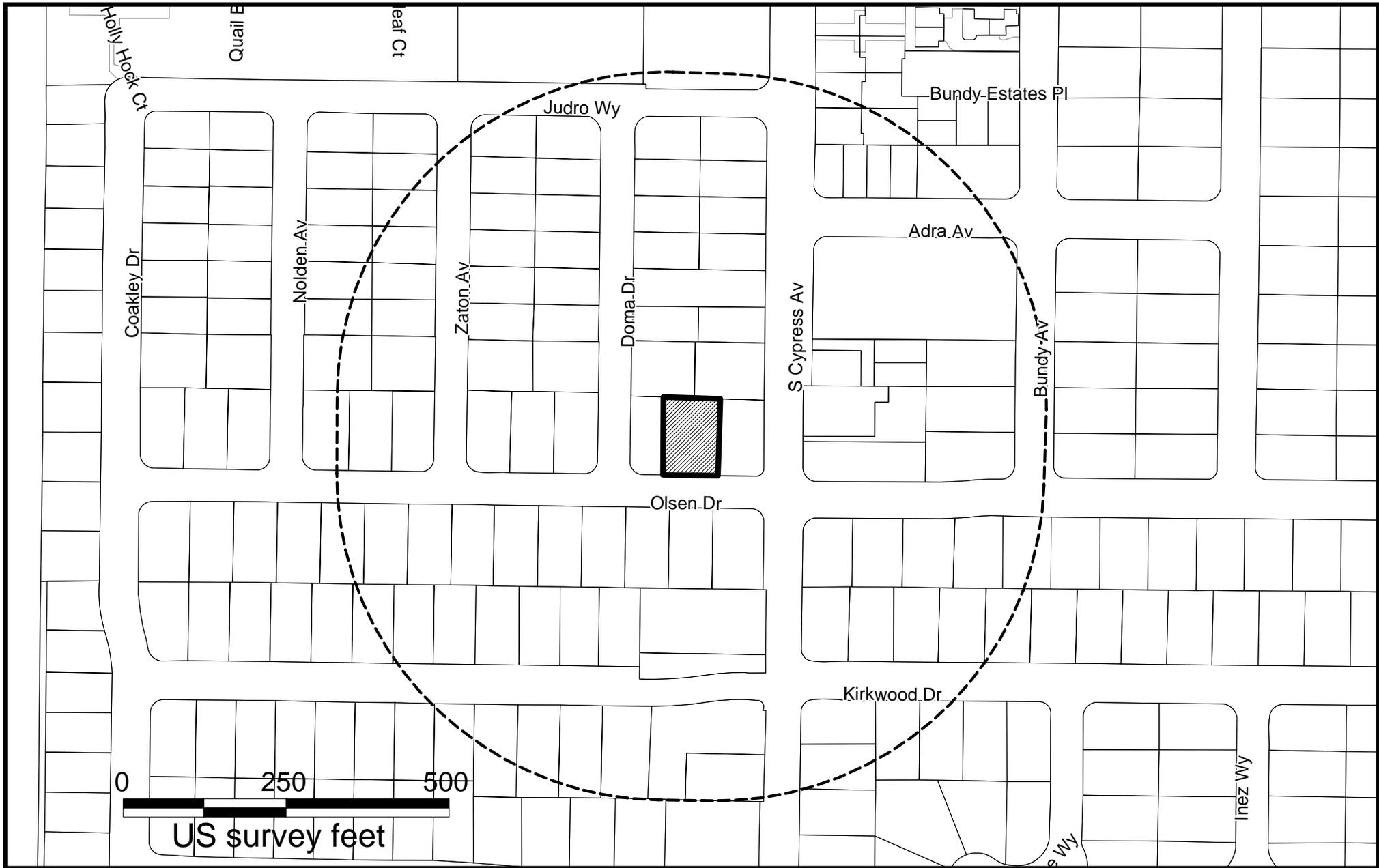
**APPROVED** and issued on this 25<sup>th</sup> day of June 2010.

Joseph Horwedel, Director  
Planning, Building and Code Enforcement

Deputy

Cc: Hamid Abtahi, 10650 S. Tantau Avenue, Cupertino CA 95014

DRAFT



08/20/2009

Noticing Radius: 500 feet

**File No: PD09-027**

**District: 1**

**Quad No: 82**